RECEIVED
JAN 18 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Irvin G. Condon, Probate Court Judge

Circuit Court Case No. 2014-CP-10-4336

Probate Court Case No. 2013-GC-10-1029

Appellate Case No. 2016-001141

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, ... Appellants,

v.

Keith S. Wellin, ... Respondent.

RECORD ON APPEAL
Volume 3 of 5

Robert H. Brunson, SC Bar No. 11987
Merritt G. Abney, SC Bar No. 71893
Patrick C. Wooten, SC Bar No. 77985
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806
Charleston, SC 29402-1806

A. Mattison Bogan, SC Bar No. 72629
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070
Columbia, SC 29211-1070

Attorneys for Appellants Peter Wellin, Cynthia Wellin Plum and Marjorie Wellin King

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
William G. DesChamps, IV, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402-1508

Attorneys for Respondent

Edward G.R. Bennett, Esq.
PO Box 369
Charleston, SC 29402-0369

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street,Suite A
Summerville, SC 29483

Attorneys for Special Conservator

INDEX

Official Record Page Number at Bottom Center of Page

VOLUME I

In the probate court:

1. Order Appointing Edward Bennett as Conservator dated 08/15/13 1

2. Order Granting Schwartz's Ex Parte Motion for Temporary Restraining Order dated 12/20/13 6

3. Order Amending 08/15/13 Order Appointing Edward Bennett as Conservator dated 02/21/14 20

4. Order for Petitioners' to Pay $50,228,000.00 to Special Conservator II dated 02/21/14 22

5. Order Denying Petitioners' Motion to Amend Judgment dated 07/03/14 28

6. Order Regarding Petitioners' Notice of Voluntary Dismissal dated 07/03/14 34

7. Order Appointing Wendy Wellin as Special Administrator of the Estate dated 09/17/14 40

In the circuit court:

8. Order Granting Motion to Stay dated 07/02/15 41

9. Order Affirming Probate Court Orders dated 01/13/16 44

10. Order Denying Appellants' Motion to Alter or Amend dated 05/16/16 59

In the district court:

11. Order Denying Keith Wellin's Motion for Preliminary Injunction and Dissolving Temporary Restraining Order filed 11/22/13 *(Wellin I)* 76

12. Order Denying Schwartz's Motion for TRO and Preliminary Injunction and Dissolving Temporary Restraining Order issued in State Court filed 01/07/14 *(Wellin II)* 90

13. Order Dismissing *Wellin III* (2:14-cv-00652) and *Wellin IV* (2:14-cv-00579) filed 05/28/14 101

Exhibits:

Exhibit A- Transcript of Keith Wellin Deposition dated 02/07/14

14. Consent Order Substituting Wendy Wellin as Plaintiff in *Wellin I* dated 11/25/14 .154

PLEADINGS

In the probate court:

15. Summons and Petition of Peter J. Wellin, Cynthia, W. Plum, Marjorie W. King ("Petitioners") for Appointment of Conservatorship for Keith S. Wellin ("Respondent") filed 07/19/13 157

Exhibits:

Exhibit A- Statement of the Property, Assets and Income of Keith S. Wellin

Exhibit B- Complaint in USDC SC Civil Action No.: 2-13-cv-1831-DCN ("Wellin I") dated 07/03/13

Exhibit C- Delaware Court of Chancery Action No. 8723-VCL dated 07/12/13

Exhibit D- Plaintiff's Memorandum in Support of His Motion for TRO and Order to Show Cause for Preliminary Injunction in *Wellin I* dated 07/03/13

16. Summons and Complaint filed by Lester Schwartz (*removed to USDC Civil Action No. 2:13-cv-03595-DCN, "Wellin II")* filed 12/17/13 261

17. Edward Bennett's Summons and Petition to Return Assets (*removed to USDC SC 13-cv-00652, "Wellin III")* filed 02/25/14 277

18. Petition for Special Conservator filed by Edward Bennett dated 08/01/14 282

Exhibits:

Exhibit A- General Statement of Property and Assets of Keith Wellin

Exhibit B- Reasons Justifying the Appointment of a Conservator

Exhibit C- Affidavit of Glenn Churchill dated 08/01/14

Exhibit D- Affidavit of Edward Bennett dated 08/01/14

19. Response to Bennett's Petition by Keith S. Wellin filed 08/07/14 296

20. Response to Bennett's Petition filed by Wellin Children 08/26/14 300

Exhibits:

Exhibit A- Email chain re: Petition to Lift Stay dated 08/20/14

VOLUME II

In the district court:

21. Amended Verified Complaint in *Wellin I* filed 02/28/14 312

Exhibits:

Exhibit 1- Operating Agreement of Friendship Management LLC dated 12/11/03

Exhibit 2- Agreement of Limited Partnership of Friendship Partners LP

Exhibit 3- Florida Durable General Power of Attorney dated 05/23/06

Exhibit 4- New York Durable General Power of Attorney dated 05/23/06

Exhibit 5- South Carolina Durable General Power of Attorney dated 09/20/06

Exhibit 6- Georgia Financial Power of Attorney dated 09/20/06

Exhibit 7- Maine General Durable Power of Attorney dated 09/20/06

Exhibit 8- Wellin Family 2009 Irrevocable Trust

Exhibit 9- Promissory Note dated 11/30/09

Exhibit 10- Promissory Note dated 09/04/12

Exhibit 11- Trust Protector Removal and Successor Trust Protector Appointment dated 11/20/13

Exhibit 12- Trustee Removal and Successor Trustee Appointment dated 11/20/13

Exhibit 13- Trustee Resignation dated 12/05/13

Exhibit 14- Trust Amendment dated 11/20/13

Exhibit 15- Exercise of Right of Substitution dated 11/20/13

Exhibit 16- Release of Right of Substitution dated 11/20/13

Exhibit 17- Plan of Dissolution and Liquidation of Friendship Partners

Exhibit 18- Written Consent in Lieu of a Meeting of the General Partners of Friendship Partners effective 12/01/13

Exhibit 19- Written Consent in Lieu of a Meeting of the Distribution Committee and the Individual Trustees of Wellin Family 2009 Irrevocable Trust effective 12/01/13

Exhibit 20- Wellin Family 2009 Irrevocable Trust for the Period November 13 to December 13, 2013

Exhibit 21- Written Consent in Lieu of a Meeting of the Individual Trustees of Wellin Family 2009 Trust effect 12/05/13

Exhibit 22- Letter from John Hagerty to Edward Bennett with enclosures dated 12/06/13

Exhibit 23- Letter from Edward Bennett to John Hagerty with enclosures dated 12/06/13

22. Complaint in USDC Case No. 2:14-cv-00579 filed 02/28/14 (*Wellin IV)* 596

23. Complaint against Wendy Wellin in Case No. 2:14-cv-04067 filed 10/20/14 *(Defamation action)* 600

MOTIONS

In the probate court:

24. Schwartz's Motion for Temporary Restraining Order and Memorandum of Law in Support (*removed with Wellin II)* filed 12/17/13 637

25. Schwartz's Notice and Motion for Segregation of Trust Assets to Pay Fees of Trust Protector and His Attorneys (*removed with Wellin II)* filed 12/27/13 648

26. Lester Schwartz's Motion for Extension of Temporary Restraining Order and Order to Show Cause for Preliminary Injunction filed 12/28/13 (*Wellin II)* 653

Exhibits:

Exhibit 1- Order Granting *Ex Parte* Temporary Restraining Order and Order to Show Cause for Preliminary Injunction dated 12/20/13

Exhibit 2- Plaintiff's Memorandum of Law in Support of Temporary Restraining Order and Order to Show Cause for Preliminary Injunction dated 12/17/13

Exhibit 3- Complaint in *Wellin II* dated 12/17/13

Exhibit 4- Affidavit of Lester S. Schwartz dated 12/17/13

VOLUME III

27. Petitioners' Motion to Dismiss the Special Conservator's Application for Substantive Relief and Memorandum in Support filed 02/03/14 787

Exhibits:

Exhibit A- Wellin Family 2009 Irrevocable Trust

Exhibit B- Verified Complaint and Temporary Restraining Order in *Wellin I* dated 07/03/13

Exhibit C- Excerpts from 11/18/13 Hearing Transcript in *Wellin I*

Exhibit D- Edward Bennett Letter dated 11/20/13 with attachments

Exhibit E- Excerpts from 12/31/13 Hearing Transcript in *Wellin II*

Exhibit F- Supplemental Reply Memorandum of Lester Schwartz in *Wellin II* dated 01/05/14

Exhibit G- Dissolution and Distribution Documents

Exhibit H- Summons and Complaint in *Wellin II* dated 12/17/13

Exhibit I- Order dissolving TRO in *Wellin II* dated 07/07/14

Exhibit J- Keith Wellin's Answer to Counterclaims in *Wellin II* dated 01/31/14

Exhibit K- Order Appointing Edward Bennett as Conservator dated 08/15/13

28. Petitioners' Memorandum in Opposition to Bennett's Oral Request for Relief filed 02/14/14 946

Exhibits:

Exhibit C- Letter from Bennett's Counsel to Court dated 02/05/14

Exhibit D- Email chain dated 02/11/14

29. Petitioners' Motion to Alter or Amend Judgment filed 03/03/14 986

30. Respondent's Petition to Remove Linda Austin as Designated Examiner filed 03/05/14 993

31. Special Conservator's Memorandum in Opposition dated 03/11/14 1001

32. Petitioners' Opposition to Respondent's Petition to Remove Austin as Designated Examiner filed 03/12/14 1009

Exhibits:

Exhibit A- Video of Mr. Wellin's 02/07/14 Deposition

33. Respondent's Reply to Petitioners' Opposition to Respondent's Petition to Remove Linda Austin, M.D. as Designated Examiner filed 03/18/14 1017

Exhibits:

Exhibit A- Transcript Excerpts of Keith Wellin Deposition dated 02/07/14

Exhibit B- Video of Keith Wellin Statement dated 07/02/13

Exhibit C- Affidavit of Peter Wellin filed in *Wellin I* dated 08/27/13

34. Supplemental Memorandum in Opposition to Motion for Reconsideration dated 04/10/14 1060

Exhibits:

Exhibit A- Promissory Note dated 09/04/12

Exhibit B- Pledge Agreement dated 11/30/09

Exhibit C- Written Consent in Lieu of a Meeting of the Distribution Committee and the Individual Trustees of the Wellin Family 2009 Irrevocable Trust dated 12/01/13

Exhibit D- Written Consent in Lieu of a Meeting of the Individual Trustees of Wellin Family 2009 Irrevocable Trust dated 12/05/13

35. Petitioners' Motion to Appoint New Temporary Conservator Pending Merits Hearing filed 05/01/14 1097

Exhibits:

Exhibit A- S.C. Adv. Op. 96-21, 1996 WL 914244 (S.C. Bar Eth. Adv. Comm.)

36. Bennett's Verified Petition for Order Lifting Automatic Stay filed 08/19/14 1112

In the district court:

37. Plaintiff's Motion to Substitute Party filed 10/30/14 1118

Exhibits:

Exhibit A- Certificate of Appointment of Wendy Wellin as Special Administrator dated 09/17/14

Exhibit B- Application/Petition for Appointment of Special Administrator dated 09/16/14

In the circuit court:

38. Motion to Stay filed 01/13/2015 1124

39. Appellants' Supplemental Memorandum Objecting to Respondent's Proposed Order filed 11/19/15 1129

40. Appellants' Motion to Alter or Amend Judgment filed 01/22/16 1139

41. Respondents' Return to Motion to Alter or Amend Judgment filed 01/29/16 1152

TRANSCRIPTS

In the probate court:

42. Transcript of Emergency Hearing Regarding Appointment of Conservator held 07/26/13 1157

43. Transcript of Hearing of Bennett's Application for Substantive Relief held 02/06/14 1166

44. Transcript of Hearing of Respondent's Petition to Remove Dr. Austin as Designated Examiner held 03/27/14 1197

45. Transcript of Hearing of Petitioners' Motion to Alter or Amend Judgment held 04/01/14 1220

VOLUME IV

46. Transcript of Hearing of outstanding discovery motions held 05/01/14 1247

In the circuit court:

47. Transcript of Hearing on Appeal from Probate Court held on 07/28/15 1304

48. Transcript of Hearing on Appellants' Motion to Alter or Amend held on 04/08/16 1374

In the district court:

49. Transcript of Motions Hearing before Judge Norton held on 11/18/13 1444

50. Transcript of Hearing before Judge Norton held on 11/21/13 1646

OTHER:

51. Promissory Note dated 11/30/09 1670

52. Friendship Partners Limited Partnership Agreement 1680

53. Friendship Management, LLC Operating Agreement 1706

VOLUME V

54. Purchase and Sale Agreement dated 11/30/09 1728

55. Letter from John Hagerty to Edward Bennett dated 12/06/13 1752

56. Letter from Edward Bennett to John Hagerty dated 12/06/13 1754

57. Acknowledgment of Notice of Removal in *Wellin II* dated 12/30/13 1756

58. Bennett's *Ex Parte* Application for Guidance to Probate Court filed 01/14/14 1757

59. Acknowledgment of Notice of Removal in *Wellin III* dated 03/24/14 1761

60. Notice of Voluntary Dismissal filed 05/05/14 1762

61. Petitioners' Notice of Intent to Appeal to Circuit Court filed 07/11/14 1765

62. Statement of Issues on Appeal filed 08/13/14 1768

63. Final Brief of Appellants filed 07/13/15 1771

64. Final Reply Brief of Appellants filed 07/13/15 1823

65. Respondent's Final Brief filed 07/27/15 1838

66. Respondent's Sur Reply in Opposition to Reply Brief of Appellants filed 07/27/15 1881

67. Proposed Order sent by Hood to Judge Couch on 11/09/15 1886

68. Letter from Edward Bennett to Peter Wellin, Cynthia Plum and Marjorie King dated 11/20/13 (with attachments) 1900

69. Notice of Removal of Probate Case No. 2013-GC-10-0129 to USDC Case No. 2:13-cv-03595 filed 12/27/13 (*Wellin II*) 1924

Exhibits:

Exhibit 1- Summons and Complaint in *Wellin II* dated 12/17/13

70. Notice of Removal of Probate Case No. 2013-GC-10-0129 to USDC Case No. 2:14-cv-00652 filed 03/03/14 (*Wellin III*) 1976

Exhibits:

Exhibit A- Summons and Petition to Return to Assets dated 02/25/14

71. Email from Judge Couch's law clerk dated 09/22/15 requesting proposed order from Hood/Provence 1988

72. Email from Jamie Hood dated 11/09/15 sending proposed Order in Case No. 2014-CP-10-04336 to Judge Couch 1989

73. Email from Tiffany Provence dated 05/10/16 sending her proposed Order to Judge Couch 1991

74. Email from Judge Couch's law clerk dated 05/16/16 to Merritt Abney advising that Judge Couch has entered and signed Tiffany Provence's proposed Order. 2011

75. Plaintiffs' Notice of Appeal filed 05/27/16 2033

Exhibits:

Exhibit 1- Order Affirming Probate Court filed 01/13/16

Exhibit 2- Order Denying Appellants' Motion to Alter or Amend filed 05/16/16

Exhibit 3- Order for Petitioners' to Pay $50,228,000.00 to Special Conservator II dated 02/21/14; Order Denying Petitioners' Motion to Alter or Amend Judgment dated 07/11/14; Order Regarding Petitioners' Notice of Voluntary Dismissal dated 07/11/14

2014 FEB 03 AM 11:21
FILED PROBATE CT CHASN CO

STATE OF SOUTH CAROLINA	)	
	)	IN THE PROBATE COURT
COUNTY OF CHARLESTON	)	
IN THE MATTER OF: KEITH S. WELLIN	)	Case No. 2013-GC-10-0129
Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King,	)	
Petitioners,	)	**MOTION TO DISMISS THE SPECIAL CONSERVATOR'S APPLICATION FOR SUBSTANTIVE RELIEF AND MEMORANDUM IN SUPPORT**
vs.	)	
Keith S. Wellin,	)	
Respondent.	)	

Petitioners Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Wellin Children") hereby submit this motion to dismiss the application for relief made pursuant to S.C. Code Ann. § 62-5-416(b) by Edward Bennett, Esq. ("Bennett"), Special Conservator for Keith S. Wellin ("Wellin") in the above-captioned matter.

I. INTRODUCTION

In an *ex parte* letter[1] dated January 14, 2014 (the "Application"), Bennett asks the Court to issue an order: 1) requiring the Wellin Children to pay to Wellin approximately $90 million and 2) determining that the Wellin Children, rather than Wellin, are liable for approximately $43 million in federal and state taxes. By making this request on an *ex parte* basis with no legal authority whatsoever, and by making the request without filing a summons and complaint in this Court and notwithstanding the existence of multiple lawsuits pending in the Federal District

[1] In his letter, Bennett asserts that he sent the letter to the Court *ex parte* "due to the confidentiality provisions of the original order granted on August 15th, 2013." But Bennett does not cite any specific provision of the Order, and no provision of the Order authorizes such an *ex parte* letter challenging the Wellin Children's actions and requesting relief from the Court.

Court between the same parties regarding the same issues, Bennett seeks to wholly circumvent the rules of procedure, a federal judge, and the norms of professional conduct. With this Application, Bennett is not seeking "instruction" in connection with his role as Special Conservator – he is seeking substantive relief from this Court on Wellin's behalf on several of the ultimate issues in dispute in the federal court litigation. If this Court is inclined to provide "instruction" in connection with the request, it should instruct Bennett that, if he believes his client is entitled to the requested relief, he should advise his client to assert claims via normal judicial process either by filing a lawsuit or amending the pleadings in one of the multiple suits he has already filed. In any event, as more fully set forth below, the Court should deny Bennett's present request for damages and a judicial interpretation of federal tax laws on the grounds that: 1) this Court lacks authority to order the relief, 2) Bennett has no standing to prosecute these claims, 3) another action is currently pending between the same parties regarding the same issues, and 4) determination of these issues in this manner without any formal pleadings or discovery would deny the Wellin Children their right to procedural due process.

II. FACTUAL & PROCEDURAL BACKGROUND

A. Keith Wellin Irrevocably Transfers Ownership and Control of 896 Berkshire Hathaway Shares (Representing Less Than Half of His Estate) to His Children Via Transactions in 2003 and 2009.

Keith Wellin is an 87-year old businessman who amassed considerable wealth over his lifetime. His three adult children, the Wellin Children, are all from his first marriage. Wellin's first wife and mother of his children passed away in 1970. In 2002, Wellin married his fourth and current wife, Wendy Lane Wellin. Prior to their wedding, they entered into a prenuptial agreement that significantly limited Wendy Wellin's access to her husband's wealth.

In conjunction with execution of his prenuptial agreement, Keith Wellin, guided by sophisticated tax and estate counsel at the New York law firm of Nixon Peabody, designed an estate plan to transfer wealth to the Wellin Children in a tax-efficient manner and through structures intended to protect the assets from interference by any third party. Wellin began implementing the plan in 2003 when he transferred less than half of his wealth, consisting of 896 shares of Berkshire Hathaway Class A (the "BRKa Shares"), to Friendship Partners, LP ("Friendship Partners"), a Delaware limited partnership in which Wellin was a limited partner and Friendship Management, LLC ("Friendship Management"), a Delaware limited liability company, was the general partner. Following the 2003 transfer, a revocable trust of which Wellin was trustee (the "Revocable Trust") owned 99% of the limited partnership interest (the "LP Interest"), but sole control over the partnership management and assets vested in the general partner, Friendship Management, which was controlled by the Wellin Children.

In November 2009, Wellin implemented the next stage of his estate plan by creating the Irrevocable Trust and causing the Revocable Trust to sell its LP Interest to it in exchange for a promissory note (the "Promissory Note") with a face value of approximately $50 million (the "November 2009 Transaction"). The Irrevocable Trust is an intentionally-defective grantor trust, such that it is disregarded for tax purposes, and the grantor – Wellin – continues to be taxed on any income realized by the Trust. The initial trustees of the Irrevocable Trust were the three Wellin Children and a Corporate Trustee, South Dakota Trust Company ("SDTC"). (*See* Irrevocable Trust, attached as Exhibit A, Preamble). The beneficiaries are the Wellin Children. (*See id.* at Art. IV(B)(1)). These transactions were designed by Wellin's attorneys, at his request, to ensure that a substantial portion of his wealth would pass to the Wellin Children without

interference from any third party and to minimize the impact of gift, estate, and capital gains taxes.

B. Keith Wellin, Acting Through New Counsel, Launches an Attack on His Children Beginning Around May of 2013. Keith Wellin's New Counsel Take the Position in the Lawsuit that, Due to the Unfair and One-Sided Nature of the November 2009 Transaction, Wellin Has Lost All Rights to the 896 BRKa Shares While Retaining the Related Tax Liability.

In approximately May of 2013, Wellin, almost 87 years old and in failing health, suddenly replaced his long-standing tax and estate counsel and other professional advisors with new lawyers and advisors, including Bennett, and, without explanation to his children, began seeking to claw back the transfers of wealth he had previously made to them (but not transfers he made to Wendy Wellin). Specifically, on July 3, 2013, Wellin filed a lawsuit against the Wellin Children, Friendship Partners, Friendship Management, and SDTC in the United States District Court for the District of South Carolina (Civil Action No. 2:13-cv-01831-DCN) ("*Wellin I*") and simultaneously sought and obtained an *ex parte* temporary restraining order ("TRO") that prohibited the Wellin Children from operating the entities established in 2003 and 2009 to carry out Keith Wellin's estate planning and long-standing objectives. (*See Wellin I* Complaint & TRO, attached as Exhibit B). Around this same timeframe, Bennett demanded that the Wellin Children prepay the Promissory Note (due in 2021) and indicated that Wellin wanted to give Wendy Wellin $25 million. Also around this timeframe, upon information and belief, Wellin transferred to Wendy Wellin approximately $4.5 million in cash, which she used to purchase a beach house on Sullivan's Island. It is no secret that the Wellin Children believe that the filing of litigation and Wellin's other uncharacteristic behavior were not the deliberate actions of their father, but were instead the byproduct of duress and manipulation exerted by Wendy Wellin.

The *Wellin I* Complaint alleges that the Wellin Children duped their father into entering into 2009 Transaction and that the transaction is consequently void and should be unwound. Wellin claims that the 2009 Transaction was unfair to the Revocable Trust because the $50 million purchase price for the LP Interest was too low and the Promissory Note it received in exchange was "essentially worthless". In seeking and obtaining the *ex parte* TRO from the Federal District Court in *Wellin I*, Wellin's counsel represented to the court that Wellin would suffer irreparable harm in the form of a crippling $43 million capital gains tax liability if no injunction were issued to prevent the Wellin Children from causing Friendship Partners to sell the BRKa Shares. Wellin's counsel maintained this position all the way through the hearing on their motion to extend the TRO, which took place on November 18. At the hearing, Wellin's counsel represented to the court repeatedly, through argument and expert testimony, that there was nothing Keith Wellin could do to "turn off" the grantor trust status of the Irrevocable Trust. (*See* 11/18/13 Hearing Transcript, attached as Exhibit C, at 60-61, 66-67, 87, 122-27). Consequently, they argued, extension of the TRO was necessary in order to prevent Wellin from incurring the tax liability. (*Id.*).

C. On November 20, Keith Wellin's Counsel Reverse Their Position Regarding the November 2009 Transaction, Claiming that Wellin Retained Substantial Rights Regarding the 896 BRKa Shares and Retained the Ability to Avoid the Related Tax Liability, and Purport to Exercise Those Rights Through Actions Taken By His Lawyers and Lester Schwartz.

At the November 18 hearing, the District Court took Wellin's motion to extend the TRO under advisement, but the court's questions and comments strongly indicated that it intended to dissolve the TRO and deny any further injunctive relief to Wellin. Thus, two days after the hearing, and obviously in anticipation of an order lifting the TRO and allowing Friendship Partners to sell the BRKa Shares, Wellin's counsel pursued their Plan B, which they had clearly

concocted prior to the November 18 hearing and planned to pursue in the event the hearing did not go their way. Under this Plan B, Wellin's attorneys sought to use the 2009 Transaction documents to their advantage despite the fact that *Wellin I* was premised on the allegation that the 2009 Transaction is void. Bennett delivered to the undersigned a package of legal documents through which: 1) Wellin purported to exercise a right under the Irrevocable Trust to "swap" trust assets for other assets of equal value by tendering the Promissory Note marked "paid in full" for a 58% LP Interest, which Bennett unilaterally determined to be an asset exchange of equal value; 2) Wellin purported to remove his long-standing estate counsel and the author of the Irrevocable Trust, Tom Farace, as the "Trust Protector" of the Irrevocable Trust, and in his place name Lester Schwartz ("Schwartz") – until then a complete stranger to the Wellin family – as the new Trust Protector; and 3) Schwartz, within moments of his appointment as the new Trust Protector, purported to make a lengthy set of amendments to the Irrevocable Trust, all of which were drafted by Bennett's office and plainly designed to benefit Wellin (i.e., his wife, Wendy Wellin) at the expense of the Wellin Children. (*See* Bennett 11/20/2013 Letter & Attachments, attached as Exhibit D). One of Schwartz's amendments purported to delete the Corporate Trustee's power to add beneficiaries in an effort to assist Wellin in "turning off" grantor trust status and thereby shift the capital gains tax liability for the sale of the BRKa Shares from Wellin to the Wellin Children – which Wellin's attorneys had only two days earlier repeatedly assured Judge Norton was impossible. Another amendment purported to grant to Schwartz the right to settle litigation brought against the Irrevocable Trust – apparently intended to give him the right to transfer the Irrevocable Trust's remaining assets to Wellin in return for dismissal of the litigation.

Schwartz's amendments signaled an immediate and grave threat to the Irrevocable Trust and its beneficiaries – the purported "Trust Protector" had unequivocally demonstrated a desire

to cause the Trust to incur over $40 million in taxes that it otherwise did not owe, and had effectively threatened to transfer some or all of the remaining assets of the Trust to Wellin in settlement of the litigation. The Wellin Children assumed that Bennett was directing Schwartz' actions, and that assumption was later confirmed in court filings and testimony before the federal District Court in which Schwartz confirmed that Bennett asked him to accept the appointment as Trust Protector, that Bennett's office prepared the Trust amendments, and that Schwartz views his role as that of Wellin's "agent". (*See* 12/31/2013 Hearing Tr., attached as Exhibit E, at 45:20-46:6 and 54:1-55:6; Supplemental Reply Memorandum of Lester Schwartz, attached as Exhibit F, pp. 2-3). After receiving the package of documents from Bennett on November 20, and after the District Court dissolved the TRO on November 21 and declined to enter a TRO requested by the Wellin Children to protect the Irrevocable Trust, the Wellin Children exercised their rights under the Friendship Partners partnership agreement to liquidate and dissolve the partnership, selling the BRKa Shares (as their attorneys had stated that they would at the November 18 hearing before Judge Norton, and as they have been authorized to do since 2003) over the course of about a week, and distributed the proceeds of that sale to the limited partners, *pro rata*, pursuant to the partnership agreement. (*See* Dissolution & Distribution Documents, attached as Exhibit G).

The Wellin Children also tendered, on behalf of the Irrevocable Trust, payment of the principal and interest on the Promissory Note held by the Revocable Trust by sending a check for $50,228,000 to Bennett, also as the Wellin Children's attorneys stated they would at the November 18 hearing and in a follow-up letter to the District Court. After Wellin's litigation counsel had argued at the November 18 hearing that Keith Wellin's very life was at stake due to his concerns over the loss of liquidity that could result from dissolution of the TRO, Bennett

promptly rejected the check and returned it to the Wellin Children's lawyers the same day he received it. The Wellin Children also exercised their authority under the Irrevocable Trust to distribute the remaining proceeds of the BRKa Shares that the Trust received from Friendship Partners to the beneficiaries (i.e. to themselves). As the only beneficiaries of the Irrevocable Trust and, as the only members of its Distribution Committee, the Wellin Children had the authority to make these distributions in their sole discretion. (*See* Ex. A, Art. IV(B)(1); Art. VII(B)).

D. The Trust Protector Sues the Wellin Children and Obtains an *Ex Parte* TRO in this Court. The Suit is Removed to Federal Court and the TRO is Promptly Dissolved.

On December 20, Schwartz, again acting as Wellin's "agent", filed a lawsuit in this Court (Case No. 2013-GC-10-0129, "*Wellin II*") against the same parties involved in *Wellin I* and simultaneously requested and received an *ex parte* TRO that effectively mirrored the one obtained by Wellin's attorneys, also on a *ex parte* basis, in *Wellin I*. The complaint in *Wellin II* alleges that the Wellin Children, by dissolving Friendship Partners, liquidating the BRKa Shares, disregarding Wellin's purported exercise of his swap power, and distributing Trust assets to themselves, breached duties owed to Wellin and other alleged beneficiaries of the Trust. (*See Wellin II* Complaint, attached as Exhibit H, at ¶¶ 34-36). The defendants removed *Wellin II* to the Federal District Court, and the case was assigned to Judge Norton, who also presides over *Wellin I*. Schwartz subsequently filed a motion in the District Court to extend the *ex parte* TRO issued by this Court. Following briefing and a hearing held on December 31, 2013, the District Court dissolved the TRO in *Wellin II* via a written order issued on January 7, 2014. (*See* 1/7/2014 Order, attached as Exhibit I).

On January 17, 2014, the Wellin Children answered the complaint in *Wellin II* and counterclaimed against Schwartz and Wellin. In their answer, the Wellin Children admitted the allegations regarding the dissolution and liquidation of Friendship Partners and the distributions from the Irrevocable Trust, but denied the allegation that they lacked the discretion or authority to take these actions or that the actions were otherwise improper. With their counterclaims, the Wellin Children seek a declaration from the District Court that Schwartz's appointment as Trust Protector and his purported amendments to the Irrevocable Trust are invalid. On January 31, 2014, Wellin filed an answer to the Wellin Children's counterclaims, in which he specifically alleges that the Wellin Children breached duties to him in connection with the liquidation of Friendship Partners and distributions from the Irrevocable Trust, and that he validly and effectively swapped the Promissory Note for an interest in Friendship Partners on November 20. (*See* Wellin Ans. to Ctrclms., attached as Exhibit J, ¶¶ 15-17).

E. The Wellin Children File the Instant Action for Appointment of a Conservator and Bennett Appointed Special Conservator with a Limited Role.

After the filing of *Wellin I* and a separate lawsuit filed by Wellin against the same defendants in Delaware, the Wellin Children, concerned over their father's uncharacteristic behavior and the apparent duress and manipulation exerted over him by Wendy Wellin, filed the instant action in this Court on July 19, 2013, requesting solely that the Court appoint a conservator for Wellin. On July 26, the Court held a hearing, at which the parties agreed to Bennett's appointment as a temporary special conservator with limited powers to ensure that no transfers are made from Wellin's assets without adequate consideration. (*See* Consent Order, attached as Exhibit K, ¶ A-C). The Order of appointment expressly provides that Bennett does not have the power or duties that would normally accrue to a conservator, other than those

specifically provided for in the Order. (*Id.*). Nothing in the Order grants Bennett the power to pursue legal claims on Wellin's behalf, nor can such authority be implied from the Order.

Nevertheless, under the guise of an "application for guidance", Bennett asks this Court *ex parte* – the **third** *ex parte* request for relief against the Wellin Children in 6 months – to declare that Wellin's purported exercise of the swap power was effective and complete and, therefore, that Wellin was entitled to receive approximately $90 million in distributions from Friendship Partners in exchange for the $50 million Promissory Note that Wellin continues to claim was "worthless" in his District Court filings. In addition, he asks this Court to declare that one or more of the actions taken by Wellin and Schwartz on November 20 effectively turned off grantor trust status, such that the Trust, rather than Wellin, is liable for the capital gains taxes incurred in connection with the sale of the BRKa Shares. Neither Wellin nor Bennett has filed any pleadings in connection with these matters in this Court, no discovery has been conducted, and, as of the date of this filing, no legal briefs have been filed in connection with the complex legal issues raised in the Application.

III. ARGUMENTS AND AUTHORITIES

A. This Court Lacks Jurisdiction to Grant the Requested Relief Because Bennett Has Not Filed and Served a Summons and Complaint.

Section 62-5-416 of the South Carolina Probate Code sets forth the procedure for certain requests to the probate court in connection with a person for whom a conservator has been appointed. The statute distinguishes between requests for substantive relief pursuant to subsection (a) and requests by a conservator for "instructions concerning his fiduciary responsibility" pursuant to subsection (b). S.C. Code Ann. § 62-5-416. The latter request may be made by "application", which the Code defines as any written request to the probate court. S.C. Code Ann. § 62-1-201(1). An application does not require the filing of a summons and complaint. *Id.* The Code refers to proceedings commenced by "application" as "informal

proceedings", which are not governed by the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 62-1-201(22).

By contrast, a request for substantive relief must be made by "filing a petition and summons with the appointing court". S.C. Code Ann. § 62-5-416(a). The Code refers to proceedings commenced by filing of a summons and complaint as "formal proceedings", which are governed by the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 62-1-201(17) & (34). The Reporter's Comments state that the 2010 amendments to this subsection were intended to clarify that a formal proceeding, initiated by filing of a summons and complaint, is required in connection with requests for substantive relief under subsection (a). S.C. Code Ann. § 62-5-416, reporter's cmt.

Bennett styled his *ex parte* letter of January 14 as an "Application for the Court's guidance under § 62-5-416(b)". As such, and in light of the fact that Bennett has not filed a summons and complaint, subsection 62-5-416(b) permits the Court to do no more than instruct Bennett regarding his fiduciary responsibility to Wellin.

Of course, instruction is not at all what Bennett really wants from the Court. He wants the Court to award his client $90 million in damages and declare that on November 20 the Irrevocable Trust ceased to be a grantor trust. Plainly, such an award cannot possibly constitute "instruction" to Bennett under subsection 62-5-416(b). Therefore, the requested relief is unavailable under that subsection. To the extent that the Court would otherwise have jurisdiction to award such relief, it can do so only under subsection 62-5-416(a) via a formal proceeding subject to the South Carolina Rules of Civil Procedure upon filing and service of a summons and complaint. Consequently, the Court should deny Bennett's request for substantive relief.

B. Bennett Lacks Standing to Pursue the Claim on Wellin's Behalf.

Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013); *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008). It is a concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims. *Draper*, at 219, 746 at 480 (internal citations omitted). "Standing is a fundamental requirement for instituting an action." *Id.*

Generally, a party must be a real party in interest to the litigation to have standing. *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). Rule 17(a) of the South Carolina Rules of Civil Procedure expressly requires that every action be prosecuted "in the name of the real party in interest". *Id.* Ordinarily, ownership of the right to be enforced renders one the real party in interest. *Draper*, at 220, 746 S.E.2d at 481 (internal citations omitted). Certain parties, including a conservator, may sue in their own names for the benefit of another. SCRCP 17(a); S.C. Code Ann. § 62-5-434(17). However, a special conservator has only limited authority to carry out specified duties as conferred by an order of the court. S.C. Code Ann. § 62-5-409(c).

In the instant case, the consent order appointing Bennett as special conservator expressly provides that he shall not have the rights and duties that would ordinarily accrue to a court-appointed conservator. (*See* Consent Order, Ex. K, ¶ A-C). His role as special conservator is expressly limited to ensuring that no transfers – such as the $4.5 million transfer to Wendy Wellin to allow her to purchase a beach house – are made from Wellin's assets without adequate consideration. (*See id.*). To the extent Bennett believes Wellin has transferred assets without receiving adequate consideration, nothing in the Order authorizes Bennett to initiate legal claims on Wellin's behalf, much less obtain relief from third parties through a simple request for

"instruction" from this Court. Indeed, Wellin is currently pursuing related claims on his own behalf against the same parties in the lawsuits pending in the Federal District Court and the Delaware Court of Chancery. Consequently, Bennett lacks standing to assert these claims on Wellin's behalf, and his request for relief should therefore be dismissed.

C. The Court Should Dismiss Bennett's Application Pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

Rule 12(b)(8) provides for dismissal when "another action is pending between the same parties for the same claim." S.C. R. Civ. P. 12(b)(8). The rule requires only that the claims or issues in the second case be "substantially the same," *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009), or "based on the same facts or circumstances," *Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999), as those asserted in the prior-filed litigation. Accordingly, there are three requirements for dismissal under Rule 12(b)(8): (1) a pending claim; (2) between the same parties; (3) for the same or substantially the same claim/issues or based on the same facts and circumstances. *See Corbett*, 336 S.C. at 610, 521 S.E.2d at 281; *Capital City*, 382 S.C. at 106, 674 S.E.2d at 532.

Each of these elements is satisfied with respect to the claims asserted in Bennett's Application. As Bennett acknowledges in his Application, "there is extensive ongoing litigation between Mr. Wellin and his children in several different courts." (Application, p. 2). Both *Wellin I* and the substantively identical Delaware action are lawsuits brought by Wellin, in his chosen forum, directly against the Wellin Children, among other parties, related to the same transactions at issue in the Application. Moreover, in *Wellin II*, Schwartz, Wellin and the Wellin Children all assert allegations specifically relating to the dissolution of Friendship Partners, distributions from the Irrevocable Trust, and Wellin's purported exercise of his swap power –

precisely the issues on which Bennett requests a ruling from this Court in his Application. Thus, *Wellin I, Wellin II* and the Delaware action all arise from and relate to the 2009 Transaction and the Irrevocable Trust and therefore involve "the same or substantially the same claims or issues or [are] based on the same facts and circumstances" as the Application. *Corbett*, 336 S.C. at 610, 521 S.E.2d at 281. Consequently, even if the claims asserted in the Application were properly before the Court via filing of a summons and complaint by the real party in interest, Rule 12(b)(8) would still require their dismissal.

D. A Decision on the Merits With No Opportunity for Discovery Would Violate the Wellin Children's Rights to Procedural Due Process.

A fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S .E.2d 565, 569 (Ct. App. 2002). In an unpublished opinion, the Court of Appeals held that the family court deprived a defendant of his right to procedural due process by summarily ruling that he owed alimony without requiring the claimant to file a summons and complaint and without allowing the defendant the opportunity to conduct discovery and adequately prepare his defense. *S. Carolina Dep't of Soc. Servs. v. Fleisig*, No. 2004-UP-535, 2004 WL 6336775 (S.C. Ct. App. Oct. 21, 2004). The court also found that merely granting the defendant a 10-day extension of time in which to respond to the claimant's testimony at the hearing failed to cure the procedural errors. *Id.* Because the defendant was denied a meaningful opportunity to be heard and defend himself, the Court of Appeals vacated the lower court order. *Id.*

In the instant case, the Wellin Children would plainly be deprived of their right to procedural due process if the Court rules on the merits of Bennett's Application at the hearing scheduled for February 6. This dispute involves complex issues of law and fact with respect to which the parties are about to begin months of discovery in both *Wellin I* and *Wellin II*. A

judicial determination of the issues set forth in Bennett's Application, which are at the heart of this dispute, before any discovery has taken place, in utter disregard for the South Carolina Rules of Procedure, would deprive the Wellin Children of a meaningful opportunity to be heard. A summary determination of these issues without requiring a summons and complaint would also deny to the Wellin Children their statutory right to remove the action to federal court and their constitutional right to a trial by jury. Consequently, this Court should reject Bennett's invitation to short-circuit the judicial process and should deny his request for the substantive relief described in the Application.

IV. CONCLUSION

For the foregoing reasons, the Wellin Children respectfully request that the Court dismiss Bennett's request for the substantive relief described in his Application.

[SIGANTURES ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
February 3, 2014

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **MOTION TO DISMISS THE SPECIAL CONSERVATOR'S APPLICATION FOR SUBSTANTIVE RELIEF AND MEMORANDUM IN SUPPORT**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

Richard S. Rosen, Esq.
H. Brewton Hagood, Esq.
Rosen Rosen & Hagood, LLC
PO Box 893
Charleston, SC 29402

Lydia Spry
Administrative Assistant

February 3, 2014

WELLIN FAMILY
2009 IRREVOCABLE TRUST

I, KEITH S. WELLIN, of Vero Beach, Indian River County, Florida, as Grantor, hereby transfer to PETER J. WELLIN, of Portland, Cumberland County, Maine, MARJORIE W. KING, of Bainbridge Island, Kitsap County, Washington, CYNTHIA W. PLUM, of Philadelphia, Philadelphia County, Pennsylvania, and SOUTH DAKOTA TRUST COMPANY LLC, of Sioux Falls, Minnehaha County, South Dakota, as the Trustees (hereinafter collectively referred to as the "Trustee") of the "WELLIN FAMILY 2009 IRREVOCABLE TRUST," the property identified on the attached Schedule of Property, which property and all additions, investments, and accretions shall be administered pursuant to the following terms:

ARTICLE I

Irrevocable trust

I waive irrevocably all rights, power and authority to amend or revoke this instrument or any trust hereby evidenced.

ARTICLE II

A. **Additions.** I (and any other person with the Trustee's written consent) shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during my lifetime, and/or by devise or bequest by Will, to contribute property acceptable to the Trustee to any trust created under this Agreement. After my death, any other person may, with the Trustee's written consent, at any time and from time to time, by deed, assignment or other conveyance and/or by devise or bequest by Will, contribute property

acceptable to the Trustee to any trust created under this Agreement. The addition to the trust of any such property may be indicated by attaching to this trust Agreement a schedule of property. Any additional contributions shall be held by the Trustee subject to the terms of this Agreement. The Trustee is exonerated from liability for acting in good faith in accepting any additions to the trust.

B. **Acceptance by Trustee.** The Trustee has agreed to accept said Trusteeship and all interest in property that may come to the Trustee by reason of this trust Agreement for the benefit and use of the beneficiaries, all in accordance with the provisions hereinafter set forth, and hereby acknowledges receipt of certain assets that are described on the receipt to be delivered by the Trustee to me, which receipt is attached to this Agreement as part of the attached schedule of property.

C. **Trust Estate.** All property that is from time to time held by the Trustee subject to the terms of this Agreement and contained in the attached schedule of property may be sometimes referred to herein as "the Trust Estate."

D. **Grantor Relinquishes All Rights In Assets of Trust Estate.** The Trustee is hereby vested with all right, title and interest in and to the property described in the attached schedule of property (and any property at any time added to this trust or purchased by the Trustee) and is authorized and empowered to exercise and enjoy for the purposes of the trusts herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that attend such assets. I hereby absolutely and irrevocably relinquish and divest myself of all rights, powers and incidents of ownership in and to such property. Without limiting the generality of the foregoing provisions of this paragraph, notwithstanding any other provision of this trust Agreement or any instrument pursuant to which I transfer assets to this trust, I hereby

relinquish any right directly or indirectly (a) to manage such property; (b) to defer or accelerate the enjoyment of such property or the income from it; (c) to designate the persons who possess or enjoy such property and the income from it or to affect the beneficial interests in such property; (d) to vote shares of stock held as part of the Trust Estate; (e) to direct or control the trust's investments or otherwise control actions of the Trustee; or (f) to hold any power of appointment with respect to such property.

E. **Covenant of Grantor to Provide Further Instruments.** I covenant and agree to make, execute and deliver to the Trustee such other and further assignments, covenants or instruments as the Trustee may deem necessary or appropriate to effectuate the purposes of this Agreement (including without limitation, the relinquishment of all rights in the property of the Trust Estate as set forth in paragraph D).

F. **Reliance.** The Trustee may rely on, without liability, (a) the accuracy of an item reported on a tax return, (b) a copy of a tax return provided by the taxpayer filing the return or the tax return preparer, (c) the representation of another fiduciary or family tax advisor who filed or prepared a tax return as to the amount of any item reported on that return or, (d) the representation by the family whether or not a gift or generation skipping tax form has ever been filed as well as how much of the respective exemptions have been utilized.

ARTICLE III

Governing Law

Unless changed by the Trustee, the situs of this trust is the State of South Dakota and its laws shall govern the interpretation and validity of the provisions of this instrument and all questions related to the management, administration and investment of the trusts hereby created. The situs of any trust created hereunder may be maintained in any jurisdiction

(including outside the United States), as the Trustee, in the exercise of sole and absolute discretion, may determine, and thereafter transferred at any time or times to any jurisdiction selected by the Trustee. Upon any such transfer of situs, the Trust Estate may thereafter, at the election of the Trustee, be administered exclusively under the laws of and subject, as required, to the exclusive supervision of the courts of the jurisdiction to which it has been transferred. Accordingly, if the Trustee of any trust created hereunder elects to change the situs of any such trust, the Trustee of said trust is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

ARTICLE IV

Administration of Trust Estate

Commencing on the date of this Agreement and until termination (as defined later in this Article), the Trustee shall hold, manage, invest and reinvest the Trust Estate, and shall collect the income thereof and, shall dispose of the net income and principal as follows:

A. I direct the Trustee to divide the trust property into two parts, one to be known and designated as the "Exempt Trust" and the second to be known and designated as the "Non-Exempt Trust."

1. The Exempt Trust shall consist of a fractional amount of all of the property transferred to the trust by me or any other transferor at a particular time. The denominator shall be an amount equal to the value of all of the property transferred to the trust by me or any other transferor at such time, and the numerator shall be equal to the generation skipping tax federal exemption remaining on the date of such transfer, after taking into

consideration all prior and contemporaneous allocations of such exemption by me or by any other transferor.

The Trustee of the Exempt Trust may refuse to accept any property allocated, transferred, devised or bequeathed to the Exempt Trust if the Trustee, in its discretion, believes that the acceptance of such property would cause the Exempt Trust to have an inclusion ratio, as defined in Internal Revenue Code Section 2642(a), greater than zero.

2. The Non-Exempt Trust shall consist of the remainder of the trust property not allocated to the Exempt Trust, and property that the Trustee refuses to accept as provided for in paragraph 1, above, if any.

B. With regard to the Exempt Trust, I direct the Trustee to hold and administer the property of the Exempt Trust as follows:

1. I currently have three (3) children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM (each hereinafter referred to as the "beneficiary"). I direct the Trustee at the time of the making of the first discretionary distribution as provided for below to divide the trust property into as many equal shares as shall be necessary to provide one such equal share as a separate trust with respect to each beneficiary who is then living and one such equal share for the lineal descendants (collectively) who are then living of each beneficiary who is not then living but of whom there are lineal descendants then living. After making such division the Trustee shall hold, manage, and invest each share as a separate trust for each beneficiary and his or her lineal descendants, or the lineal descendants of a predeceased beneficiary, as the case may be, and shall administer each such share as follows:

a. The Trustee shall first pay to the beneficiary, or his or her lineal descendants, such amounts from the trust income as the Trustee in its sole and absolute

discretion shall deem needed for their health, support, maintenance or education (including a college education and professional or post-graduate study), or any other reasonable purpose. Such payments of income, if any, shall be made according to their respective needs and without regard to equality of distribution. The Trustee's decision as to whether any such income shall be paid to the beneficiary or to his or her lineal descendants, and the amounts to be paid to each, shall be conclusive and binding upon all parties interested in the trust. Any remaining income shall be accumulated. The Trustee may add such accumulated income to the principal from time to time in its discretion.

b. In addition to the payments of income, as provided above, I authorize the Trustee to pay to the beneficiary, or to his or her lineal descendants, so much of the trust principal as the Trustee in its sole discretion shall deem necessary or advisable for their health, support, maintenance, or education (including a college education and professional or post-graduate study), or any other reasonable purpose. Such principal payments shall be made on the basis of need and without regard to equality of distribution. The Trustee's decision as to whether any such principal shall be paid to the beneficiary or to his or her lineal descendants, and the amounts to be paid to each, shall be conclusive and binding upon all parties interested in the trust.

c. Upon the last to die of the beneficiary and all of his or her lineal descendants, such trust shall terminate and the remaining assets of such trust shall be added equally to the principal of any other trusts then in existence under this paragraph B, to be held and administered pursuant to the terms thereof, but if there be none then as provided in Article V hereof, subject to the provisions of paragraph D, below.

C. With regard to the Non-Exempt Trust, I direct the Trustee to hold and administer the Non-Exempt Trust as follows:

1. I direct the Trustee at the time of the making of the first discretionary distribution as provided for below to divide the trust property into as many equal shares as shall be necessary to provide one such equal share as a separate trust with respect to each child of mine who is then living and one such equal share for the lineal descendants (collectively) who are then living of each child of mine who is not then living but of whom there are lineal descendants then living. After making such division the Trustee shall hold, manage, and invest each share as a separate trust for each such child (each hereinafter referred to as the "beneficiary") and his or her lineal descendants, or the lineal descendants of a predeceased beneficiary, as the case may be, and shall administer each such share as follows:

a. The Trustee shall first pay to the beneficiary, or his or her lineal descendants, such amounts from the trust income as the Trustee in its sole and absolute discretion shall deem needed for their health, support, maintenance or education (including a college education and professional or post-graduate study), or for any other reasonable purpose. Such payments of income, if any, shall be made according to their respective needs and without regard to equality of distribution. The Trustee's decision as to whether any such income shall be paid to the beneficiary or to his or her lineal descendants, and the amounts to be paid to each, shall be conclusive and binding upon all parties interested in the trust. Any remaining income shall be accumulated. The Trustee may add such accumulated income to the principal from time to time in its discretion.

b. In addition to the payments of income, as provided above, I authorize the Trustee to pay to the beneficiary, or to his or her lineal descendants, so much of the

trust principal as the Trustee in its sole discretion shall deem necessary or advisable for their health, support, maintenance, or education (including a college education and professional or post-graduate study), or for any other reasonable purpose. Such principal payments shall be made on the basis of need and without regard to equality of distribution. The Trustee's decision as to whether any such principal shall be paid to the beneficiary or to his or her lineal descendants, and the amounts to be paid to each, shall be conclusive and binding upon all parties interested in the trust.

c. Upon the last to die of the beneficiary and all of his or her lineal descendants, such trust shall terminate and the remaining assets of such trust shall be added equally to the principal of any other trusts then in existence under this paragraph C, to be held and administered pursuant to the terms thereof, but if there be none then as provided in Article V hereof, subject to the provisions of paragraph D, below.

D. Notwithstanding the foregoing, all trusts created under this Article IV shall continue and terminate on (the "termination date"): (i) the day the term of the trust ends as required by applicable law, or (ii) the death of the last to die of my lineal descendants, whichever shall first occur. On the termination date, the Trustee shall distribute the remaining trust principal as provided in Article V hereof.

ARTICLE V

Ultimate Disposition; Holdback Provisions

A. Upon termination of a trust at the end of its stated term under this instrument, the Trustee shall distribute any trust principal not otherwise effectively disposed of by the foregoing provisions of this instrument to the WELLIN FAMILY FOUNDATION, INC. incorporated on October 21, 2002, but if the WELLIN FAMILY FOUNDATION, INC. is no

longer in existence or does not qualify as an organization described in Sections 170(c), 2055(a) and 2522(a) of the Internal Revenue Code of 1986, then to HAMILTON COLLEGE of Clinton, New York, without restriction or condition of any kind, but if for any reason HAMILTON COLLEGE cannot accept this gift, then the Trustee shall distribute any trust principal not otherwise effectively disposed of to such one or more organizations selected by the Trustee, each of which is, at the time of payment, a charitable organization, and in such proportions among such organizations as the Trustee shall decide and the Trustee shall be exonerated from liability for acting in good faith.

B. Despite the preceding provisions of this instrument, upon the termination of any trust at the end of its stated term under this instrument the Trustee may elect to withhold any principal which is not effectively appointed and is otherwise required to be distributed to a beneficiary who has not reached the age of twenty-five (25) years or is disabled. The Trustee shall retain any principal so withheld in a separate trust named for that beneficiary, to be distributed to the beneficiary when he or she reaches the age of twenty-five (25) years, or if later, upon the termination of the disability. Until then, the Trustee shall apply as much of the net income and principal of the trust as the Trustee determines from time to time to be required for the health, education, maintenance and support of that beneficiary, adding any undistributed net income to principal from time to time, as the Trustee determines. If the beneficiary for whom the trust is named dies before complete distribution of the trust, the Trustee shall distribute the remaining principal of the trust to that beneficiary's estate.

ARTICLE VI

Trust Protector

A. The Trust Protector shall initially be THOMAS M. FARACE of Perinton, New York. The last Trust Protector still serving and still able and willing to serve has the authority to appoint additional successor Trust Protectors. The last of them still serving and still able and willing to serve has the authority to appoint additional successor Trust Protectors, and so forth, down through the generations. The Trust Protector may also appoint different successor Trust Protectors for different separate trusts, who in turn will have the authority to appoint successor Trust Protectors for those trusts and different successor Trust Protectors for additional different separate trusts, down through the generations. A successor Trust Protector shall not be me or any beneficiary of this trust or any subtrust of this trust, or any person who is related or subordinate to us within the meaning of Internal Revenue Code section 672(c). A successor Trust Protector may be any other person. The powers of the Trust Protector shall be exercised or not exercised in the sole and absolute discretion of the Trust Protector and shall be binding on all other persons. There shall always be a Trust Protector for each separate trust. If no successor Trust Protector is available to serve when the then serving Trust Protector dies, becomes incapacitated or resigns, I may appoint a successor Trust Protector other than myself or any beneficiary of this trust or any subtrust of this trust, or any person who is related or subordinate to us within the meaning of Internal Revenue Code section 672(c). If I am not living or do not have capacity and thus cannot act to appoint a successor Trust Protector, then my children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM, may appoint a new Trust Protector other than me or any beneficiary of this trust or any subtrust of this trust, or any person who is related or subordinate to us within the meaning of Internal Revenue Code section

672(c). This authority to appoint a new Trust Protector shall pass from PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the same fashion and in the same manner as provided above. Each named designee shall have the right to pass this authority to appoint a new Trust Protector to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the same fashion and in the same manner as provided above. The last acting designee shall have the right to pass this authority appoint a new Trust Protector to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above, and so forth, down through the generations. If at any time there is no designee appointed or acting and thus there is a vacancy in this position to appoint a new Trust Protector, then the Distribution Committee shall have the right to pass this authority to appoint a new Trust Protector to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above.

1. The Trust Protector has the authority to remove the Trustee, and to appoint a different Trustee or additional Co-Trustees. The Trust Protector also has the authority to appoint successor Trustees. When appointing successor Trustees, preference shall be given to my lineal descendants. Notwithstanding the foregoing, the Trust Protector has no authority to remove a child of mine who is then acting as a Trustee nor to appoint me.

2. The Trust Protector has the authority to amend the trust to achieve favorable tax status, or to take account of changes in the Internal Revenue Code, state law, or the cases, rulings and regulations thereunder.

3. During my lifetime, the Trust Protector has the authority to amend the provisions of the trust with regard to how the beneficiaries will benefit from the trust, and to amend the trust administrative provisions. The Trust Protector has no authority, however to amend the trust with regard to the identities of the beneficiaries.

4. The Trust Protector has the authority to appoint Distribution Committee members and to remove Distribution Committee members. The Trust Protector has the authority to appoint Investment Committee members and to remove Investment Committee members.

5. Notwithstanding the foregoing, the Trust Protector has no authority to remove a child of mine who is then serving as a member of the Distribution Committee or the Investment Committee nor to appoint me to serve as a Distribution Committee member or an Investment Committee member.

6. The Trust Protector, in that capacity, shall have no duty to monitor any trust created hereunder in order to determine whether any of the powers and discretions conferred under this instrument should be exercised. Further, the Trust Protector, in that capacity, shall have no duty to keep informed as to the acts or omissions of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to the Trust Protector shall be in the sole and absolute discretion of the Trust Protector, and shall be binding and conclusive on all persons. The Trust Protector is not required to exercise any power or discretion granted under this instrument. Absent bad faith, fraud or willful misconduct, the Trust Protector, in that capacity, is hereby exonerated from any and all liability for the acts or omissions of any fiduciary or any beneficiary hereunder or arising from any

exercise or non-exercise by the Trust Protector of the powers and discretions conferred under this instrument.

7. The Trust Protector has the authority to use trust assets to hire legal counsel to advise and defend the Trust Protector in connection with any matter concerning the trust, subject to the Trust Protector's responsibility to repay those assets if the Trust Protector is found liable of bad faith, fraud or willful misconduct.

8. The Trust Protector acting from time to time, if any, on his or her own behalf and on behalf of all successor Trust Protectors, may at any time irrevocably release, renounce, suspend, or modify to a lesser extent any or all powers and discretions conferred under this instrument by a written instrument delivered to the Trustee.

9. I have the authority to remove a Trust Protector, to replace him or her with a different Trust Protector, and to do the same with successor Trust Protectors who are not yet serving and are just in line as successor Trust Protectors, as long as any new Trust Protector is not related or subordinate to me within the meaning of Internal Revenue Code section 672(c). If due to death or disability I am unable to exercise this authority, I grant to my children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM, the authority to remove a Trust Protector, to replace him or her with a different Trust Protector, and to do the same with the successor Trust Protectors who are not yet serving and are just in line as successor Trust Protectors, as long as any new Trust Protector is not related or subordinate to my children or me within the meaning of Internal Revenue Code section 672(c). This authority to remove and replace the Trust Protector shall pass from PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the

same fashion and in the same manner as provided above. Each named designee shall have the right to pass this authority to remove and replace the Trust Protector to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the same fashion and in the same manner as provided above. The last acting designee shall have the right to pass this authority to remove and replace the Trust Protector to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above, and so forth, down through the generations. If at any time there is no designee appointed or acting and thus there is a vacancy in this position to remove and replace the Trust Protector, then the Distribution Committee shall have the right to pass this authority to remove and replace the Trust Protector to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above.

ARTICLE VII

Distribution Committee and Investment Committee

A. The following provisions shall apply to supersede or modify the general powers of the Trustee as set forth in other Articles of this instrument, where the context admits, during any period in which a Distribution Committee or an Investment Committee shall be acting.

B. I appoint my children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM, as the initial members of the Distribution Committee. Successor members shall be appointed as provided in paragraph C of this Article. If at any time there is no Distribution Committee acting hereunder, then the Trustee shall exercise all rights and powers of the Distribution Committee. The Distribution Committee shall make decisions by majority vote

of its members; provided, however, any member who is also a beneficiary hereunder shall be precluded from participating in decisions involving discretionary distributions to that member personally, except to the extent governed by and made pursuant to a standard under this instrument which constitutes an ascertainable standard within the meaning of Sections 2041 and 2514 of the Code, and no member may participate in decisions involving discretionary distributions to a beneficiary to whom such member holds a legal obligation of support. Where one member is not qualified to vote on a particular decision, then the decision shall be made by a majority of the other members. A member who does not vote or does not concur in any vote shall not be liable for any act or failure to act of the others.

1. The Distribution Committee shall direct the Trustee with regard to all discretionary distributions of trust property to beneficiaries hereunder, and the Trustee is required to follow the written directions of the Distribution Committee with respect thereto (provided, however, that the Distribution Committee shall not be authorized to direct the Trustee to make any distributions that would violate the provisions of this Agreement). The Trustee shall not be accountable for (i) any action taken pursuant to direction of the Distribution Committee or (ii) inaction of the Distribution Committee. The rights and powers conferred on the Distribution Committee shall be exercisable only in a fiduciary capacity. By accepting an appointment to serve or act hereunder such Distribution Committee members shall be deemed to have consented to submit to the jurisdiction of any courts in which jurisdiction and venue are proper to review the administration of the trust and to be made parties to any proceedings in such courts that place in issue the decisions or actions of such Distribution Committee.

2. Absent bad faith, fraud or willful misconduct, the Trustee is hereby exonerated from any and all liability for its acts or omissions that are directed by the Distribution Committee.

C. The current members of the Distribution Committee may appoint successor (other than me) Distribution Committee members to any of them. Should there not exist a Distribution Committee member, then the Trust Protector may appoint successor (other than me) Distribution Committee members. Should there not exist a Trust Protector, a successor or successors shall be appointed by instrument and delivered to the Trustee indicating the new Distribution Committee member or members by a majority in number of the beneficiaries of the trust age 18 or older. If a beneficiary lacks legal capacity, then a guardian (other than me) of such beneficiary shall make the determination. When appointing a successor, preference shall be given to my lineal descendants.

D. I appoint my children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM, as the initial members of the Investment Committee. Successor members shall be appointed as provided in paragraph E of this Article. If at any time there is no Investment Committee acting hereunder, then the Trustee shall exercise all rights and powers of the Investment Committee. The Investment Committee shall make decisions by majority vote of its members. Where one member is not qualified to vote on a particular decision, then the decision shall be made by a majority of the other members. A member who does not vote or does not concur in any vote shall not be liable for any act or failure to act of the others. Despite the general powers of the Trustee the following provisions shall apply, where the context admits, during any period in which the Investment Committee shall be acting:

1. The Trustee shall follow the written directions of the Investment Committee with respect to the retention, purchase, sale or encumbrance of trust property and the investment and reinvestment of principal and income held hereunder, the sole authority and discretion for which shall belong to the Investment Committee (provided, however, that the Investment Committee shall not be authorized to direct the Trustee to purchase any asset that would violate federal, state or local law, or the provisions of this Agreement), and accordingly the Trustee shall have no duty to review or monitor trust investments while the Investment Committee is acting. The Investment Committee shall have full authority to direct the Trustee to take any action with respect to the trust assets that the Trustee is authorized to take under Article X of this instrument. The Trustee shall be exonerated for acting in good faith in following any such direction.

2. The Trustee shall issue proxies to vote all securities held by the trust to or on the written order of the Investment Committee. The Trustee shall not thereafter be liable for the manner in which those securities are voted, for any direct or indirect result of the voting, or for any failure to vote those securities.

3. The Investment Committee, at any time and from time to time, shall have the power and authority (i) to select one or more investment advisers, managers or counselors (hereinafter "Investment Advisers"), including the Trustee or any of its affiliates, and to delegate to them any or all of its powers, whether discretionary or nondiscretionary, as set forth in this Article with respect to all or any portion of the trust assets; (ii) to negotiate the terms of, and execute management agreements with, such Investment Advisers; and (iii) to direct the Trustee to pay the compensation and costs of such Investment Advisers from the trust assets. It is understood and agreed that if the Trustee or any of its affiliates is appointed as an Investment

Adviser hereunder, fees in addition to the compensation the Trustee is entitled to receive while an Investment Committee is acting may be charged.

4. The Investment Committee, at any time and from time to time, shall have the power and authority to direct brokerage instructions for any security transactions executed with respect to the trust, provided that the broker selected is acceptable to the Trustee as a counter party. In connection therewith, the Investment Committee may (i) enter into such contracts, agreements or other arrangements as the Investment Committee deems appropriate with such brokers as it selects and (ii) direct the Trustee to pay the compensation and costs of brokers from the trust assets. I recognize that pursuant to such brokerage instructions as the Investment Committee may direct, the trust may pay more in commissions for the purchase or sale of a particular security than might have been obtained elsewhere. Neither the Trustee nor the Investment Committee shall have any liability for any such differences in brokerage commissions.

5. The Trustee shall not be accountable for any loss or depreciation in value sustained by reason of action (i) taken pursuant to direction of the Investment Committee or any Investment Adviser or (ii) not taken by reason of disapproval or inaction by the Investment Committee or any Investment Adviser pursuant to the preceding provisions of this Article. The foregoing sentence shall not be construed as placing any affirmative obligation on the Trustee to seek advice and directions from the Investment Committee or any Investment Adviser under any circumstances, it being my specific intention to relieve and exclude the Trustee of all responsibility for investment performance of the trust assets while the Investment Committee is acting. No person dealing with the Trustee shall be required or privileged to inquire whether there has been compliance with these provisions.

6. Despite the foregoing provisions of this Article if, in any case of emergency, it is impossible or impracticable for the Trustee, as determined solely by the Trustee, to obtain the direction of the Investment Committee with respect to trust investments by reasons of vacancies in such Investment Committee or the absence of members thereof, or an incapacity, disability or other condition preventing such members from acting, then all the rights, powers and discretion conferred upon the Investment Committee under this paragraph shall, until the passing of such emergency, vest in and may be exercised by the Trustee as fully and effectively as if such rights, powers and discretion had originally been conferred upon the Trustee solely. The Trustee shall incur no liability for actions taken in good faith pursuant to the powers granted by this paragraph 6.

7. The rights and powers herein conferred on the Investment Committee shall be exercisable only in a fiduciary capacity, and any Investment Adviser accepting the delegation of a discretionary function of the Investment Committee pursuant to subparagraph D. 3. of this Article also shall be considered to be acting in a fiduciary capacity. By accepting an appointment to serve or act hereunder such Investment Committee members and Investment Advisers shall be deemed to have consented to submit to the jurisdiction of any courts in which jurisdiction and venue are proper to review the administration of the trust and to be made parties to any proceedings in such courts that place in issue the decisions or actions of such Investment Committee or Investment Advisers, notwithstanding, with respect to an Investment Adviser, the terms of any investment management agreement or contract.

8. The Trustee shall have the entire care and/or custody of all of the assets comprising the trust and shall have sole responsibility for (i) making all payment of liabilities and administration expenses, and (ii) effecting all distributions pursuant to the

instruction of the Distribution Committee, whether of principal or of income, to the beneficiaries under this Agreement. The Trustee shall maintain full and accurate books of account and records of all financial transactions relative to the trust, which shall be available at all reasonable times for inspection by the Distribution Committee members, the Investment Committee members, the Trust Protector, each presently vested income, principal and remainder beneficiary of this trust, and their respective representatives, and me.

9. Absent bad faith, fraud or willful misconduct, the Trustee is hereby exonerated from any and all liability for its acts or omissions that are directed by the Distribution Committee and/or Investment Committee.

E. The current members of the Investment Committee may appoint successor (other than me) Investment Committee members to any of them. Should there not exist an Investment Committee member, then the Trust Protector may appoint successor (other than me) Investment Committee members. Should there not exist a Trust Protector, then a successor or successors shall be appointed by instrument and delivered to the Trustee indicating the new Investment Committee member or members by a majority in number of the beneficiaries of the trust age 18 or older. If a beneficiary lacks legal capacity, then a guardian (other than me) of such beneficiary shall make the determination. When appointing a successor, preference shall be given to my lineal descendants.

F. The Distribution Committee and the Investment Committee may be divided into three (3) separate committees by the majority vote of the then acting members of each Committee. In the event of such division, one (1) Distribution Committee and one (1) Investment Committee shall have all the duties and responsibilities for the trusts herein created for the benefit of my son, PETER J. WELLIN, and his lineal descendants, one (1) Distribution

Committee and one (1) Investment Committee shall have all the duties and responsibilities for the trusts herein created for the benefit of my daughter MARJORIE W. KING and her lineal descendants, and one (1) Distribution Committee and one (1) Investment Committee shall have all the duties and responsibilities for the trusts herein created for the benefit of my daughter CYNTHIA W. PLUM and her lineal descendants. Said Committees shall have the same authority and powers and be subject to the same administrative provisions as are herein set forth or provided for under the terms of this Agreement.

G. In the event that the members of either the Distribution Committee or the Investment Committee are unable to act so as to fulfill any of the Committee duties or responsibilities due to the inability to obtain the agreement of a majority of the Committee members, then the acting Trust Protector shall have the authority to break any tie decisions.

ARTICLE VIII

S Corporation Stock

Notwithstanding any provision of this Agreement to the contrary, in the event that any trust hereunder receives stock in an S corporation (as defined in Section 1361(a) of the Internal Revenue Code), the Trustee shall segregate said stock into a separate trust. Such separate trust shall be held, administered and distributed upon the same terms and conditions as the original trust except that said trust shall meet all of the requirements of either a "qualified subchapter S trust" (as set forth in Section 1361(d) of the Internal Revenue Code) or an "electing small business trust" (as set forth in Section 1361(c)(2)(A)(v) of the Internal Revenue Code), as the Trustee may determine to be in the best interests of the trust or its beneficiaries, or both; it being my express intention that any such trust shall be a permissible shareholder of an S corporation for federal income tax purposes. To effectuate the foregoing provisions of this Article, I hereby

grant to the Trustee the power, acting alone, to amend the provisions of this Agreement in any manner necessary for the sole purpose of ensuring that any such trust qualifies as a permissible shareholder of an S corporation. Further, I hereby grant to the Trustee the authority, acting alone, to file any elections necessary to qualify any such trust as a permissible shareholder of an S corporation on behalf of the trust and/or its beneficiaries. Moreover, if at any time after the execution of this Agreement, all or any portion of a trust established under this Agreement is funded with shares of stock or any other interest in a corporation, limited liability company, partnership (either general or limited), limited liability partnership, joint venture or any other business entity which wishes to become an S corporation for federal income tax purposes, I hereby grant to the Trustee the power, acting alone, to consent to any such S corporation election if the Trustee deems it to be in the best interests of the trust and/or its beneficiaries and, in connection therewith, to segregate said stock into a separate trust upon the same terms and conditions more particularly set forth in the foregoing provisions of this Article. To effectuate the provisions of the immediately preceding sentence, I hereby grant to the Trustee all of the powers and discretions otherwise set forth in this Article.

ARTICLE IX

Miscellaneous Provisions

A. **Power of Asset Substitution**. I hereby retain the power, exercisable during my lifetime, at any time and from time to time, without the consent of or approval by the Trustee, to reacquire the trust corpus or a portion thereof by substituting other property of an equivalent value.

B. **Contingent Power to Add Beneficiaries.** I grant to the corporate Trustee acting from time to time the power to add the spouse of a child of mine and the spouses of the

children of a child of mine to the class of discretionary income and principal beneficiaries of the trust during the lifetime of a child.

C. **Release of Powers.** I hereby retain the power to release the power described in paragraph A of this Article by delivering to the Trustee a written statement to that effect. This power may be exercised by my agent acting under a duly executed Power of Attorney or by my duly appointed guardian, in the event of my disability or incapacity. I authorize the Trustee acting at any point in time to give up the power described in paragraph B of this Article by delivering to the current income beneficiaries of the trust a written statement to that effect, which shall then permanently remove such power from such Trustee and all subsequent Trustees.

ARTICLE X

Trustee Provisions

A. During my lifetime or judicial determination of my incapacity, the Trustee shall not be required to inform any beneficiary who is not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis of the trust or the court in which the trust is registered and the Trustee's name and address. In addition, during the shorter of my lifetime or judicial determination of my incapacity, the Trustee shall not be required to provide any beneficiary who is not entitled to a mandatory distribution of income or principal from the trust on an annual or more frequent basis with a copy of the terms of the trust and shall not be required to provide a statement of accounts of the trust. The Trustee and the Trustee's officers, agents, and employees, if any, shall be indemnified out of and held harmless by the Trust Estate from any and all liability to any beneficiary for any loss of any kind that may result

by reason of any action or non-action taken by the Trustee and the Trustee's officers, agents, and employees in accordance with the directions in this subdivision.

B. Any Trustee may resign at any time by giving prior written notice to the Trust Protector or if none a majority of the adult competent income beneficiaries, and if a successor Trustee is not appointed within 30 days after the Trustee's resignation, the resigning Trustee may deposit the trust property with the court having jurisdiction over the administration of the trust. All trusts created under this instrument need not have or continue to have the same Trustee. The provisions of this instrument that relate to the Trustee shall be separately applicable to each trust held hereunder. While two or more Trustees are acting, the following provisions shall apply where the context admits:

1. The corporate Trustee, if any, shall have the entire care and/or custody of the trust property and of the books and records of the Trustees;

2. With respect to any matter as to which two or more Trustees have joint authority, a Trustee, by written notice, may temporarily delegate any or all of that Trustee's rights, powers, duties, and discretion as Trustee to any other Trustee sharing that authority, with the consent of the latter and the non-responsible Trustee will be exonerated for the acts or failure to act of the responsible Trustee;

3. The Trustees may establish bank and brokerage accounts and may authorize that checks or drafts may be drawn on, or withdrawal made from, any such account on the individual signature of any Trustee;

4. Any Trustee alone may perform on behalf of the Trustees all acts necessary for the acquisition, sale and transfer of personal and real property, including the giving of directions and the signing and endorsing of checks and other negotiable instruments, stock and

bond certificates and powers, deeds of real estate and related transfer documents, applications, tax forms and other forms or documents; and no person dealing with the Trustees need inquire into the propriety of any such act if such Trustee certifies in writing to that person that the Trustees have approved that act; and

5. The Trustees may execute documents by jointly signing one document or separately signing concurrent counterpart documents.

C. In the event of a difference of opinion between my individual and corporate Trustees, the decision of my individual Trustee shall be binding, but there shall be no responsibility on my corporate Trustee for the action taken pursuant to any such decision.

D. Unless specifically provided otherwise, at any time when more than one Trustee is acting, the action or decision of a majority in number shall control; and a Trustee who does not vote or does not concur in any vote shall not be liable for any act or failure to act of the others.

E. If any individual entitled to act under the preceding provisions of this Article is then disabled and such disability does not otherwise disqualify the individual from acting, the lawful guardian of that individual may sign the instrument of appointment or approval on his or her behalf.

F. If any corporate Trustee designated to act or at any time acting hereunder is merged with or transfers substantially all of its assets to another corporation, or is in any other manner reorganized or reincorporated, the resulting or transferee corporation shall become Trustee in place of its predecessor.

G. Any person designated to act in a fiduciary capacity may release or renounce any or all powers granted hereunder at any time by written instrument filed with the

trust records, and, if so specified, that release or renunciation shall bind all successors acting in that fiduciary capacity. Except as otherwise provided in the preceding sentence, the incumbent Trustee shall have all of the title, powers, and discretion granted to the original Trustee, without court order or act of transfer. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee.

ARTICLE XI

GST Provisions

A. **Perpetuity Clauses.** The "termination date" shall be whichever of the following events occurs first, (i) the day the term of the trust ends as required by applicable law, or (ii) the death of the last to die of my lineal descendants. On the termination date, the Trustee shall distribute the remaining trust principal as provided in Article V hereof.

B. **GST Administrative Provisions.** Notwithstanding any other provision of this instrument:

1. If a trust created under this instrument (the "original trust") would otherwise be partially exempt from federal generation-skipping tax after the intended allocation of a GST exemption to it, then, before such intended allocation and as of the relevant valuation date under Section 2642 of the Code with respect to such allocation, the Trustee may (but need not) create instead two separate trusts of equal or unequal value which shall be funded fractionally out of the available property, and which shall be identical in all other respects to the original trust, so that the allocation of GST exemption can be made to one trust which will be entirely exempt from federal generation-skipping tax. The two trusts created under this subparagraph (i) shall have the same name as the original trust except that the trust to which the GST exemption is allocated shall have the phrase "GST exempt" added to its name, and (ii) are

sometimes referred to herein as "related." As used in this instrument, the "GST exemption" means the exemption from federal generation-skipping tax allowed under Section 2631 of the Code.

2. If property which is held in, or is to be added or allocated to, a trust pursuant to this instrument is subject to different treatment for any reason for purposes of the federal generation-skipping tax than other property being added or allocated to, or also held in, that trust, then the Trustee may (but need not) hold such property instead as a separate trust that is appropriately designated to distinguish it from the trust to which the property otherwise would have been allocated, but that is identical in all other respects to that trust. The identical trusts resulting from application of this subparagraph are also sometimes referred to herein as "related."

3. It is my intent that the Trustee shall not be required to create or administer a trust hereunder that is only partially exempt from federal generation-skipping tax, or to commingle property subject to different treatment for federal generation-skipping tax purposes whether because the transferors with respect to the property are assigned to different generations or otherwise. The provisions of paragraph B are intended to enable the Trustee to avoid such situations by empowering the Trustee to segregate trust property (i) that is entirely exempt from federal generation-skipping tax from trust property that is not exempt, or (ii) that is otherwise treated differently from other trust property for purposes of the federal generation-skipping tax, and the provisions of this paragraph B should be applied in a manner consistent with this intention.

C. To the extent it is consistent with the Trustee's fiduciary obligations, the Trustee, in making discretionary distributions of net income and principal from the related trusts

referred to earlier in this Article, shall take advantage of the opportunities provided by the creation of such related trusts to avoid or delay federal generation-skipping tax when making discretionary distributions, to pursue different investment strategies for those trusts, if appropriate, and to maximize the amount of trust property that eventually may be distributed to my grandchildren or more remote descendants without transfer tax of any kind at the termination of all trusts created under this instrument.

D. The Trustee may at any time merge and consolidate any related trusts under this instrument and thereafter administer them as a single trust hereunder, if the Trustee determines that maintaining the trusts as separate entities will not serve to minimize federal generation-skipping taxes.

E. If any portion of a trust named for a beneficiary hereunder, in the absence of any testamentary power of appointment granted under this instrument to that beneficiary, would immediately incur a federal-generation-skipping tax upon the beneficiary's death as a result of a taxable termination, then in addition to any other power of appointment granted to that beneficiary under this instrument, the beneficiary may appoint that portion to the creditors of his or her estate. To the extent that the foregoing general power of appointment is in existence on the beneficiary's death, then unless the beneficiary directs otherwise by Will, the Trustee shall pay to the personal representative of the beneficiary's estate, from the portion of the trust to which the power pertains, the amount, if any, by which the estate and inheritance taxes payable in any jurisdiction by reason of the beneficiary's death shall be increased as a result of the inclusion of that portion in the beneficiary's estate for such tax purposes, as certified in writing by that personal representative.

F. No Trustee who is also a beneficiary hereunder shall participate in exercising discretion under this Article to create separate trusts, to merge and consolidate trusts, or to allocate GST exempt and non-exempt property among trusts, and if no Trustee who would qualify to exercise those discretions is then acting, then the Trust Protector shall appoint an individual or corporation who is not such a beneficiary as a special Trustee, whose authority shall be limited to exercising those discretions.

ARTICLE XII

Financial Powers

A. The Trustee shall have the power and authority to do any act or thing necessary or advisable for the proper administration and distribution of each trust created by this Agreement. I grant to the Trustee as to all properties and without the necessity of approval of any court or person, full power and authority during the terms of the trusts and for the purposes of division and distribution after their termination in the Trustee's continuing sole discretion the powers granted to such Trustee by the South Dakota Trust Powers Act.

B. In addition to all powers granted by law, the Trustee shall have the following powers with respect to each trust held under this instrument, exercisable in the discretion of the Trustee:

1. To retain for any period, without liability for loss or depreciation in value, any property transferred to the Trustee, including partnership interests of any kind, even though the Trustee could not properly purchase the property as a trust investment and though its retention might violate principles of investment diversification;

2. To sell at public or private sale, wholly or partly for cash or on credit, contract to sell, grant or exercise options to buy, convey, transfer, exchange, or lease (for

a term within or extending beyond the term of the trust) any trust property, and to partition, dedicate, grant easements in or over, subdivide, improve, and remodel, repair, or raise improvements on any real property of the trust, and in general to deal otherwise with the trust property in such manner, for such prices, and on such terms and conditions as any individual might do as outright owner of the property;

3. To borrow money at interest rates then prevailing from any individual, bank, or other source, whether or not the lender is then acting as a Trustee, and to create security interests in the trust property;

4. To make loans, secured or unsecured, for adequate consideration to such individuals upon such terms and conditions as the Trustee, in its discretion, shall determine;

5. To invest in interest bearing deposit accounts, bonds, common or preferred stocks, notes, real estate mortgages, common trust funds, shares of regulated investment companies, real estate (including residential real estate to be occupied by one or more of the beneficiaries hereunder), registered mutual funds (including funds for which the Trustee, or an affiliate of the Trustee, provides investment advisory, custodial or other compensated services), interests in limited liability companies, partnership interests of any kind, currencies, or other securities or property, including partial interests therein, such as life estate, term or remainder interests, and to hold funds in non-interest bearing deposit accounts pending investment or disbursement thereof, in each case without being limited by any statute or rule of law governing trust investments; and any such deposit accounts may be held at any bank, including the Trustee or any bank affiliated with the Trustee;

6. To allocate, divide, and distribute trust property in cash or in kind, or partly in each, and to value any such property for those purposes; to allocate different kinds or

disproportionate shares of property or undivided interests in property among the beneficiaries or separate trusts, without liability for, or obligation to make compensating adjustments by reason of, disproportionate allocations of unrealized gain for federal income tax purposes; and, in funding any fractional shares created hereunder in kind, to allocate that property in entire or disproportionate shares, as the Trustee determines to be in the best interests of the beneficiaries, without compensating adjustments;

7. To make such elections and allocations under the tax laws permitted to be made by the Trustee as the Trustee considers advisable (whether or not the election or allocation relates to the trust property), without regard to, or adjustments between, principal and income or the relative interests of the beneficiaries;

8. To exercise in person or by general or limited proxy all voting and other rights, powers, and privileges and to take all steps to realize all benefits with respect to stocks or other securities; and to enter into or oppose, alone or with others, voting trusts, mergers, consolidations, foreclosures, liquidations, reorganizations, or other changes in the financial structure of any business entity;

9. To cause any trust property to be held, without disclosure of any fiduciary relationship, in the name of the Trustee, in the name of a nominee, or in unregistered form;

10. To pay all expenses incurred in the administration of the trust, including reasonable compensation to any Trustee for actual services rendered, and to employ or appoint and pay reasonable compensation to accountants, depositaries, investment counsel, attorneys, attorneys-in-fact, and agents (in each case with or without discretionary powers);

11. To deal with the fiduciary or fiduciaries of any other trust or estate, even though a Trustee is also a fiduciary of the other trust or estate;

12. To compromise or abandon any claim in favor of or against the trust;

13. To purchase assets from, make loans to, or otherwise deal without restriction with the representative of my estate or the Trustee of any trust created by me, and to retain any assets purchased for any period, without liability for loss or depreciation in value, and notwithstanding any risk, unproductivity, or lack of diversification; and the determination of the Trustee with respect to the desirability of any such purchase, loan or other transaction shall be conclusive on all persons, absent bad faith;

14. To commingle for investment purposes the trust property with the property of any other trust held hereunder, allocating to each trust an undivided interest in the commingled property;

15. To merge at any time all the trust property with the property of any other trust created by me during life or by Will, and held by the same Trustee for the benefit of the same beneficiaries and upon substantially the same terms and conditions as those set forth herein, and, at the Trustee's discretion, either administer the merged assets as a single trust hereunder or transfer the trust property to that other trust, to be administered under the instrument governing that other trust, and thereafter terminate the trust hereunder as a separate entity;

16. To receive additional property from me in any event (and, if the Trustee consents in writing, from any other person) by lifetime or testamentary transfer or

otherwise, except that no gift property over which withdrawal rights are to be granted shall be transferred to the trust, or accepted by the Trustee, in December of any year;

17. To execute instruments of any kind, including instruments containing covenants and warranties binding upon and creating a charge against the trust property and containing provisions excluding personal liability;

18. To deal with matters involving the actual or threatened contamination of trust property (including interests in sole proprietorships, partnerships or corporations and any assets owned by such business entities) by hazardous substances, or involving compliance with environmental laws, including power:

a. To inspect and monitor any such property periodically, as it deems necessary, to determine compliance with any environmental law affecting such property;

b. To respond (or take any other action necessary to prevent, abate or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property and to any potential contamination of trust property, whether or not required by law;

c. To refuse to accept property as a trust asset if it determines that such property is contaminated by any hazardous substance or that such property is being used or has been used for any activities directly or indirectly involving hazardous substances which could result in liability to the trust or otherwise impair the value of trust assets, to require as a prerequisite to accepting property as a trust asset that the donor warrant that such property has not been contaminated by any hazardous substance and is not and has not been used for any activities directly or indirectly involving hazardous substances which could result in liability to

the trust or otherwise impair the value of trust assets, and to refuse to accept such property as a trust asset until receiving from the donor an indemnification agreement in which the donor agrees to indemnify the Trustee against any claims filed against the Trustee as an "owner" or "operator" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as from time to time amended, or any regulation thereunder, or any other environmental law;

d. To settle or compromise at any time any claim against the trust related to any such matter asserted by any governmental body or private party;

e. To disclaim any power which it determines may cause it to incur personal liability as a result of such matters, whether such power is set forth in this instrument, incorporated by reference herein, or granted or implied by any statute or rule of law;

f. To decline to serve as Trustee or, having undertaken to serve, resign at any time it believes there is or may be a conflict between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which might be asserted against the trust because of the type or condition of trust assets;

g. To carry at the expense of the trust estate insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust assets and the Trustee against any claims filed against the trust or against the Trustee personally under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as from time to time amended, or any regulation thereunder, or any other environmental law;

h. To waive or forbear to sue on any default in the performance of any covenant or condition of or payment due under any mortgage, deed of trust, or lease or in the performance of any guarantee or to enforce any such default in such manner

and to such extent as the Trustee determines to be advisable; to exercise and enforce and to forbear to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies, including foreclosure, in respect of any mortgage, deed of trust, lease or guarantee held hereunder, and at any foreclosure to purchase the real property covered by any mortgage or deed of trust; and to retain any real property received on any foreclosure; and

i. To charge all expenses and costs incurred by the Trustee pursuant to the authority granted under this subparagraph against income or principal as the Trustee shall determine.

19. To perform all other acts necessary for the proper management, investment, and distribution of the trust property.

20. In addition to any other powers granted to the Trustee in this trust, the Trustee shall have the following additional powers with respect to real property:

a. to make ordinary or extraordinary repairs, alterations and improvements to any building or other structure, to demolish any buildings or other structures, to construct new buildings and structures, and to make any other improvements, all as the Trustee shall determine;

b. to insure against any casualty or loss whatever, including fire, explosion and hurricane; and

c. to subdivide and plot any real property, to lay out and dedicate streets, ways and public places, to square lines, make partition or enter into any agreement or partition of any real property, and to give or receive money or other property for partition under arrangement with adjoining or neighboring owners or otherwise.

In the event I transfer any real property to the Trustee, I hereby certify to the Trustee that (i) such real property does not and will not contain dangerous, toxic or hazardous pollutants, contaminants, chemicals, wastes, materials or substances, as defined in or governed by the provisions of any applicable statutes, regulations, rules, ordinances and similar requirements of any governmental authority, agency or unit relating to the environment or Hazardous Substances (as defined below) ("Legal Requirements") and including without limitation, urea-formaldehyde, polychlorinated biphenyls, materials containing or contaminated with polychlorinated biphenyls, asbestos, asbestos containing materials, radon gas, radioactive materials and petroleum, including without limitation, crude oil and fractions thereof ("Hazardous Substances") and (ii) such real property and all operations thereon are in material compliance with applicable Legal Requirements and do not give rise to any obligation to Remediate (as defined below) any Hazardous Substances on such property or elsewhere. If the real property does contain Hazardous Substances or if the real property or operations thereon are not in material compliance with applicable Legal Requirements or give rise to an obligation to Remediate Hazardous Substances, prior to any transfer to the Trustee, I shall, in accordance with all applicable Legal Requirements, with such assurances as shall be required by the Trustee, and at my sole cost and expense, remove, contain, remediate or abate ("Remediate") all Hazardous Substances to the extent required by all applicable Legal Requirements, and otherwise bring the real property and operations thereon into compliance with all applicable Legal Requirements.

If at any time after the real property has been transferred to the Trustee, any Hazardous Substances are required to be Remediated by any applicable Legal Requirements or to otherwise preserve the value of the real property, as the Trustee in its sole discretion shall determine, all costs and expenses, including any penalties, damages and attorneys' and

consultants fees ("Damages") resulting from the existence or alleged existence or exposure to Hazardous Substances, shall be charged against the Trust Estate. Notwithstanding the above, the Trustee need not remediate any Hazardous Substances which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Agreement.

The Trustee shall not have individual liability for any loss, depreciation in the value of any real property, or any Damages resulting from the actual or alleged presence or release of Hazardous Substances on or under such property, or generated by operations thereon. I (on behalf of myself, and after my death, my personal representatives) agree to defend, indemnify and hold harmless the Trustee from and against all such Damages or depreciation in value to the extent such cannot be satisfied by the assets of the trust estate.

The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith with respect to Hazardous Substances and shall not be liable for any error of judgment made in good faith unless it shall be proved the Trustee was grossly negligent beyond a reasonable doubt in ascertaining the pertinent facts. The Trustee may consult with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith in accordance with such advice or opinion.

21. To maintain, improve, operate, drill, mine, develop, utilize, lease, or sublease, alone or with others, coal, oil, gas, or other mineral property or interest therein, real or personal, in any jurisdiction within or without the United States, or any other property or interest therein relating directly or indirectly to the exploration, drilling, mining, developing, producing, processing, treatment, storage, transportation, or marketing of such coal, oil, gas, or

other mineral property, including all products and constituents thereof; and, in general, to deal with any such property in like manner and with the same full power, authority and discretion, alone or with others, as an individual owner would possess with respect to such property.

To exercise discretion with respect to allocations between income and principal by crediting to principal only that part (and crediting to income the balance) of amounts received as the result of the severance of natural resources from lands constituting a part of the trust principal and of other rents, royalties, and returns from property subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, as may be equal to whichever is less, the deduction for amortization or depletion from time to time allowable for federal income tax purposes, or a reasonable provision for amortization or depletion, based upon such estimate of the probable productive or remaining life of the resources or other property as the Trustee considers reasonable, and upon the cost thereof to the Trustee, if purchased by the Trustee, or such other estimate of original cost or subsequent value as the Trustee from time to time considers reasonable, which discretion shall be exercised as the Trustee, in the Trustee's sole judgment, determines to be in the best interests of the beneficiaries.

22. To (a) become a limited or general partner in any partnership, (b) extend the term of any partnership and/or otherwise amend and/or modify any partnership agreement relating thereto and/or enter into new partnership agreements relating thereto, (c) contribute or invest all or any part of the principal of such trust to or in, and enter into such contracts in such forms and on such terms as it shall determine with, any business enterprise, including as a partner, sole proprietor or shareholder, (d) lend such funds or other property of such trust to any such business enterprise for such period (whether or not in excess of the period authorized by the law of any jurisdiction) and upon such other terms, including on credit, as it

shall determine, (e) continue the business of any business enterprise in the form in which it shall exist at the time the Trustee shall acquire the same or in any other form, including to incorporate any such business which shall not be carried on in corporate form, and as such partner, sole proprietor, shareholder or otherwise, join in, consent to and/or participate in (and/or dissent from and/or oppose) any decision, agreement (including any loan agreement and/or note and/or deed of trust or mortgage or guarantee relating thereto and/or extension or other modification thereof), merger, consolidation, reorganization or exchange which, in its discretion, it shall be necessary or desirable for the partners of any such partnership of which it shall be a partner or such sole proprietor or the shareholders of any corporation of which it shall be a shareholder to join in, consent to and/or participate in and, in general, in the administration of such partnership, proprietorship or corporation, to exercise all the powers it could exercise in the administration of such trust if the property owned by such partnership, proprietorship or corporation was held by it as such Trustee.

23. Other Business Interests.

a. To retain any business interest transferred to the Trustee from any source, including any other corporation or corporations succeeding to the business of that corporation by consolidation, merger, purchase of assets, or otherwise, as shareholder, security holder, creditor, partner or otherwise, for any period of time whatsoever, even though the interest may constitute all or a large portion of the trust principal and without regard to risk or productivity; to comply with the provisions of any agreement restricting transfer of the interest; to participate in the conduct of the related business or rely upon others to do so, and to take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as outright owner of the business or the business interest,

including the voting of stock (by separate trust or otherwise regardless of whether that separate trust will extend for a term within or beyond the term of the trust) and the determination of all questions of policy; to execute and amend partnership agreements; to participate in any incorporation, reorganization, merger, consolidation, sale of assets, recapitalization, liquidation, or dissolution of the business, or any change in its nature, or in any buy-sell, stock restriction, or stock redemption agreements; to invest in additional stock or securities of, or make secured, unsecured, or subordinated loans to, the business with trust funds; to elect or employ with compensation, as directors, officers, employees, or agents of the business, any persons, including a Trustee of any trust held under this instrument, or any director, officer, employee, or agent of a corporate Trustee of the trust or any other trust held under this instrument without adversely affecting the compensation to which that Trustee would otherwise be entitled; to rely upon reports of certified public accountants as to the operations and financial condition of the business, without independent investigation; to deal with and act for the business in any capacity, including in the case of a corporate Trustee any banking or trust capacity and the loaning of money out of the Trustee's own funds, and to be compensated therefore; and to sell or liquidate the business or any interest in the business.

b. Any family enterprise shall be deemed a suitable investment of trust property, even though such investment may not be marketable, may involve a high degree of investment risk, may never yield a dividend or other income, and may constitute a substantial portion or all of the trust property. Notwithstanding any rule of law with respect to the suitability of investments by a fiduciary or requirements of diversification of investments, the Trustee is expressly authorized to invest and reinvest trust funds in any family enterprise and to hold any family enterprise for any indefinite period and the Trustee shall be held harmless and

indemnified for any and all actions either taken or not taken in the exercise of its discretion under this sub-section.

c. To make or terminate elections with respect to S corporation stock and to make adjustments between income and principal to compensate for the effects of the consequences resulting from the ownership by the trust of S corporation stock, as the Trustee may deem just and equitable; except that if the trust holds S corporation stock, the Trustee shall not make adjustments which could have the effect of denying to any income beneficiary the net income of the trust to which the beneficiary must be entitled in order for the trust to qualify as a Qualified Subchapter S trust under Section 1361(d) of the Code; and during the term of any trust under this instrument, (i) if the Trustee sells any interest in a corporation or if the assets of any entity constituting a corporation in which the trust has an ownership interest are sold, and (ii) if that corporation has made an election to be taxed under Subchapter S of the Code, then Trustee, may, in its absolute and sole discretion, distribute to the income beneficiary such amounts of principal as shall be necessary to pay any income tax caused by such sale, if the income or gain attributable to such sale is taxed directly to the income beneficiary under applicable federal tax law.

d. To make purchases and sales, outright or financed, by way of short sales, puts, calls, straddles, and sales against the box, on margin or otherwise, covered or uncovered, whether of commodities, precious metals, financial instruments, contracts for future delivery, or other investment media, however speculative, and for the purpose of enabling the Trustee to exercise the powers granted under this subparagraph, to maintain and operate margin accounts, discretionary accounts, or any other type of brokerage accounts, and to pledge or

mortgage the trust property as security for loans or advances made to the Trustee in conjunction with any transactions permitted under this subparagraph.

C. The powers granted in this Article may be exercised even after termination of all trusts hereunder until actual distribution of all trust principal, but not beyond the period permitted by any applicable rule of law relating to perpetuities.

D. To the extent that such requirements can legally be waived, no Trustee hereunder shall ever be required to give bond or security as Trustee, or to qualify before, be appointed by, or account to any court, or to obtain the order or approval of any court respecting the exercise of any power or discretion granted in this instrument.

E. The Trustee's exercise or nonexercise of powers and discretions in good faith shall be conclusive on all persons. No person paying money or delivering property to any Trustee hereunder shall be required or privileged to see to its application. The certificate of the Trustee that the Trustee is acting in compliance with this instrument shall fully protect all persons dealing with the Trustee.

F. The corporate Trustee acting hereunder from time to time shall have the power, exercisable in its sole and absolute discretion without court order or approval, to retain an "affiliate" (as defined in this paragraph) to act as agent or broker in the purchase of life insurance policies, investment management, or to perform other services. Any affiliate so retained may accept its normal compensation for its services and neither the Trustee nor an affiliate shall be required to reduce or waive its compensation for its services because of the compensation received by the other. In no event shall the Trustee's retention of an affiliate be treated as a conflict of interest or similar prohibited act unless it is proved that the Trustee was clearly motivated by and acted in its own self-interest, knowing that such action was not in the interests

of the trust. For purposes of this paragraph, an "affiliate" means any individual, corporation, firm or partnership that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Trustee.

G. The Trustee, the Trust Protector, and members of both Investment and Distribution Committees, shall not be personally liable to any beneficiary or other party interested in the trust, or to any third parties, for any claim against the trust for the diminution in value of trust property resulting from matters involving hazardous substances, including any reporting of or response to (1) the contamination of trust property by hazardous substances, or (2) violations of any environmental laws related to the trust; provided that the Trustee shall not be excused from liability for its own negligence in administration of the trust property or wrongful or willful acts.

H. Notwithstanding any contrary provision of this instrument, the Trustee may withhold a distribution to a beneficiary from a trust hereunder until receiving from the beneficiary an indemnification agreement in which the beneficiary agrees to indemnify the Trustee against any claims filed against the Trustee as an "owner" or "operator" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as from time to time amended, or any regulation thereunder, or any other environmental law.

ARTICLE XIII

Administrative Powers and Rules

The provisions of this Article shall apply to each trust held under this instrument:

A. If a beneficiary eligible to receive income or principal distributions is disabled at the time of distribution, then the Trustee may, without further responsibility, either (i) make those distributions to the beneficiary directly, to a lawful guardian of the beneficiary, or to

a qualified individual or trust company designated by the Trustee as custodian for that beneficiary under an applicable Uniform Transfers to Minors Act or similar law, or (ii) expend that distributable property for the benefit of the beneficiary in such manner as the Trustee considers advisable. Determinations made by the Trustee under this paragraph in good faith shall be conclusive on all persons.

B. All net income accrued or undistributed at the termination of any interest shall be treated as if it had accrued or been received immediately after that termination.

C. In determining whether to make discretionary distributions of net income or principal to a beneficiary, the Trustee may consider such circumstances and factors as the Trustee believes are relevant, including the other income and assets known to the Trustee to be available to that beneficiary and the advisability of supplementing such income or assets, and shall be exonerated for acting in good faith. As used throughout this instrument:

1. The term "support" means support in reasonable comfort;

2. The term "education" includes, but is not limited to, the expenses of private schooling at the elementary and secondary school level, college, graduate and professional schools, and specialized or vocational training; and

3. The term "health" shall be construed liberally to include all forms of mental or physical health care, including, but not limited to, nursing home or other extended care.

D. Notwithstanding any other provision of this instrument, I hereby limit the general discretionary powers of the Trustee so that (i) no Trustee shall participate in any decision regarding a discretionary distribution to that Trustee personally, except to the extent governed by and made pursuant to a standard under this instrument which constitutes an ascertainable

standard within the meaning of Sections 2041 and 2514 of the Code, and (ii) no Trustee may use trust income or principal to discharge the legal obligation of the Trustee individually to support or educate a beneficiary hereunder.

E. To the fullest extent permitted by law, (i) no power of appointment or power of withdrawal shall be subject to involuntary exercise, and (ii) no interest of any beneficiary shall be subject to anticipation, to claims for alimony, maintenance, or support, to voluntary transfer without the written consent of the Trustee, or to involuntary transfer in any event.

F. The Trustee shall distribute any trust principal or net income as to which a power of appointment is exercised to the designated appointee or appointees (whether living at the time of exercise or thereafter born) upon such conditions and estates, in such manner (in trust or otherwise), with such powers, in such amounts or proportions, and at such time or times (but not beyond the period permitted by any applicable rule of law relating to perpetuities) as the holder of the power may specify in the instrument exercising the power. To be effective, the exercise of any power of appointment granted hereunder shall make specific reference to the provision creating the power. In determining whether a testamentary power of appointment has been exercised, the Trustee, without liability, may rely on a Will admitted to probate in any jurisdiction as the Will of the holder of the power or may assume the holder left no Will in the absence of actual knowledge of one within three months after the holder's death.

G. Notwithstanding any other provision of this instrument, the term of any trust hereunder shall cease as provided by applicable law, and the Trustee, subject to the holdback provisions of a previous Article of this instrument, shall then distribute the trust principal to the beneficiary for whom the trust is named.

H. The Trustee reserves the right to terminate any trust hereunder without necessity of court approval if the Trustee believes such trust to be too small to administer economically or practically. In the event of such termination the Trustee shall transfer the assets of such trust to those individuals under the trust entitled to net income from the trust at the time of such distribution and shall have no liability to any other beneficiary of such trust.

ARTICLE XIV

Life Insurance Provisions

A. I consider life insurance policies as proper investments of trust income and principal. In addition to the other powers granted to the Trustee, the Trustee at all times and in all events, and acting alone in the sole discretion of the Trustee, is specifically authorized, but not obligated, to receive or acquire, and to retain, any one or more policies of insurance, including policies on my life, the life of any other person, or the joint lives of any two or more persons, directly or indirectly in any arrangement deemed appropriate by the Trustee; to pay such premiums as are required or permitted to be paid thereby out of trust principal; to enter into split-dollar or premium sharing arrangements with any appropriate corporation or other entity; to split any policy into two or more policies; to convert any policy of term life insurance to whole life insurance; and to exercise any and all rights, powers, discretions, elections, options, privileges, and other incidents of ownership with respect to any such policy available to the Trustee as owner, including without limitation the rights to change the beneficiary, to borrow money for any purpose (from the issuing company, the banking department of any corporate Trustee acting hereunder, or others) using the policy as security, to select optional modes of settlement, to allow dividends to remain with the insurance company or to use them to reduce premiums or to purchase additional insurance, to allow cash values to be used to pay premiums, to surrender any

such policy for its cash value, to convert any such policy to a paid-up policy, or to settle or sell any insurance policy. The Trustee is hereby exonerated from any and all liability for the results of any exercise or non-exercise of any incident of ownership with respect to any such policies. On behalf of myself and my successors, heirs and assigns, I hereby indemnify and hold harmless the Trustee from and against any and all claims, liabilities, penalties and costs, including attorneys' fees, arising from any claim, demand, order or other action related in any way to investing in and retaining any such insurance policies and exercising or failing to exercise any incident of ownership therein. Notwithstanding any contrary provision of this instrument, the Trustee may also at any time require any beneficiary hereunder to indemnify and hold harmless the Trustee from and against any and all claims, liabilities, penalties and costs, including attorneys' fees, arising from any claim, demand, order, or other action related in any way to investing in and retaining any such insurance policies and exercising or failing to exercise any incident of ownership therein and the Trustee may withhold a distribution to or for the benefit of that beneficiary until receiving from that beneficiary such indemnification.

B. With respect to any life insurance policies payable to the Trustee hereunder (whether or not owned by the Trustee), I direct that:

1. The Trustee shall have no responsibility for payment of premiums or assessments on the policies, and the companies issuing them shall have no responsibility to see to the fulfillment of any trust hereunder or to the application of any proceeds;

2. The Trustee's receipt and release shall release and discharge any obligor for any payment made and shall bind every trust beneficiary hereunder; and

3. The Trustee shall have no duty to bring suit for payment of any of the policies or plan benefits, unless the Trustee holds funds out of which the Trustee may be indemnified against all expenses of suit, including legal fees.

ARTICLE XV

Spendthrift Provisions

No interest in the principal or income of any trust shall vest in any beneficiary and neither the principal nor the income shall be liable for the debts of any beneficiary nor subject to assignment or anticipation by the beneficiary, to garnishment, attachment, execution or bankruptcy proceedings, to claims for alimony or support or any other claims of any other creditor nor shall any beneficiary have the power to sell, assign, encumber or in any manner anticipate or dispose of any interest in the trust or the income prior to actual distribution to such beneficiary.

ARTICLE XVI

Interpretive Rules

For all purposes of this instrument:

A. In determining who is a descendant of mine or of any other person:

1. Legal adoption before the adopted person reached the age of twenty-one years, but not thereafter, shall be equivalent to blood relationship; and

2. A person born out of lawful wedlock and those claiming through that person shall be considered to be descendants of (i) the natural mother and her ancestors, and (ii) if the natural father acknowledges paternity, the natural father and his ancestors, in each case unless a decree of adoption terminates such natural parent's parental rights.

B. Whenever reference is made to the descendants, "per stirpes," of a person, representation shall be calculated from the generation of that person's children, whether or not a child of that person in fact is living at the time of calculation.

C. For purposes of this trust I and/or any beneficiaries shall be considered disabled, incapacitated or incompetent only if so declared by a court of competent jurisdiction or if so certified in writing by two licensed physicians familiar with me and/or the beneficiaries. The Trustee shall not be considered to be on notice of any such disability, incapacity or incompetency unless and until Trustee has received a copy of such court order or written certifications.

D. The term "Trustee" and any pronoun referring to that term designate the Trustee or Trustees at any time acting hereunder, regardless of number.

E. The term "lawful guardian" means successively in the order named, (i) the court-appointed conservator, (ii) either parent (other than me), or (iii) the individual having personal custody (whether or not court-appointed) where no conservator has been appointed.

F. The term "charitable organization" means any organization which is described in Sections 170(c) and 2055(a) of the Code.

G. The term "Code" means the Internal Revenue Code of 1986, as from time to time amended.

H. The term "hazardous substance(s)" shall mean any substance defined as hazardous or toxic or otherwise regulated by any federal, state or local law(s), rule(s) or regulation(s) relating to the protection of the environment or human health ("environmental law(s)").

I. The corporate Trustee may rely on any notice, certificate, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine, or upon any evidence reasonably deemed by it to be sufficient, in making any payment or distribution. The Trustee shall incur no liability for any payment or distribution reasonably made in good faith and without actual notice of knowledge of a changed condition or statute affecting any person's interest in the trust.

J. The "spouse" of any person means the person, if any, who is married to and not living separate and apart from that person (other than for medical reasons), or who satisfied these requirements at that person's death and has not remarried.

K. If any beneficiary under this trust instrument in any manner, directly or indirectly, contests or attacks the validity of this instrument, or any disposition under this instrument, my Will, or any other trust created by me by filing suit against the Trustee under this instrument, my executor, or the Trustee or Trustees under any other trust created by me, or otherwise, any share or interest given to such beneficiary under the provisions of this instrument is hereby revoked and shall be disposed of in the same manner provided hereunder as if that contesting beneficiary and all descendants of that beneficiary had predeceased me.

L. Notwithstanding any other provisions of this instrument, I hereby limit the general discretionary powers of the Trustee so that (i) no Trustee shall participate in any decision regarding a discretionary distribution to that Trustee personally, except to the extent governed by and made pursuant to a standard under this instrument which constitutes an ascertainable standard within the meaning of Section 2041 and 2514 of the Code, and (ii) no Trustee (other than me) may use trust income or principal to discharge the legal obligation to the Trustee individually to support or educate a beneficiary hereunder.

ARTICLE XVII

Trustee Compensation

A. **Corporate Trustee.** South Dakota Trust Company shall be entitled to receive compensation for its services as Trustee hereunder in accordance with its schedule of rates, including the applicable minimum fee, as published from time to time, even though such rates may exceed the commissions customarily allowed in the jurisdiction in which the appointment of South Dakota Trust Company, as Trustee is made or as specified in a separate letter agreement. In addition to such fees, the Corporate Trustee, or its affiliates shall also be entitled to receive any payments under Rule 12 b-1 of the Investment Company Act of 1940 from any registered investment company.

B. **Individual Trustee.** The Individual Trustees, and any Successor Individual Trustees, shall be entitled to compensation as provided for under the laws of the state where the trust is being administered, as may be amended by such state from time to time. Any Individual Trustee shall have the right at any time from time to time, if so desired, to waive such compensation by a written notification delivered to the Corporate Trustee, the Distribution Committee and the Investment Committee.

ARTICLE XVIII

Execution In Counterpart

This trust Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this trust Agreement may contain more than one counterpart signature page and this trust Agreement may be executed by the affixing of the signatures of each of the signers to one of such counterpart signature pages. All of those counterpart signature pages shall be read as

though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

I now sign this trust agreement on NOV. 2. 2009, 2009.

KEITH S. WELLIN, Grantor

The trusts created by the foregoing instrument are accepted as of the day and year last above written.

PETER J. WELLIN, Trustee

MARJORIE W. KING, Trustee

CYNTHIA W. PLUM, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

By:
As its:

though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

I now sign this trust agreement on _____, 2009.

_____
KEITH S. WELLIN, Grantor

The trusts created by the foregoing instrument are accepted as of the day and year last above written.

_____
PETER J. WELLIN, Trustee

_____
MARJORIE W. KING, Trustee

_____
CYNTHIA W. PLUM, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

_____
By:
As its:

though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

I now sign this trust agreement on _____, 2009.

_____
KEITH S. WELLIN, Grantor

The trusts created by the foregoing instrument are accepted as of the day and year last above written.

_____
PETER J. WELLIN, Trustee

Marjorie W. King
MARJORIE W. KING, Trustee

_____
CYNTHIA W. PLUM, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

_____
By:
As its:

though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

I now sign this trust agreement on _____, 2009.

_____
KEITH S. WELLIN, Grantor

The trusts created by the foregoing instrument are accepted as of the day and year last above written.

_____
PETER J. WELLIN, Trustee

_____
MARJORIE W. KING, Trustee

_____
CYNTHIA W. PLUM, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

_____
By:
As its:

though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

I now sign this trust agreement on _____, 2009.

_____
KEITH S. WELLIN, Grantor

The trusts created by the foregoing instrument are accepted as of the day and year last above written.

_____
PETER J. WELLIN, Trustee

_____
MARJORIE W. KING, Trustee

_____
CYNTHIA W. PLUM, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

Patti Graumann
By: Patti Graumann
As its: Trust Officer

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) ss:

On this 2 day of Nov, 2009, before me the subscriber, personally appeared KEITH S. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

Notary Public
My commission expires:

David O. Souther
Notary Public - South Carolina
My Commission Expires Nov. 18, 2015

STATE OF MAINE)
COUNTY OF CUMBERLAND) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared PETER J. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

Notary Public
My commission expires:

STATE OF WASHINGTON)
COUNTY OF KITSAP) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared MARJORIE W. KING to me personally known to be the same person described in and who executed the foregoing Instrument, and she duly acknowledged to me that she executed the same.

Notary Public
My commission expires:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared KEITH S. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

_____
Notary Public
My commission expires:

STATE OF MAINE)
COUNTY OF CUMBERLAND) ss:

On this 2nd day of Nov., 2009, before me the subscriber, personally appeared PETER J. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

Marie Booth
Notary Public
My commission expires:
Oct. 16, 2010

STATE OF WASHINGTON)
COUNTY OF KITSAP) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared MARJORIE W. KING to me personally known to be the same person described in and who executed the foregoing Instrument, and she duly acknowledged to me that she executed the same.

_____
Notary Public
My commission expires:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared KEITH S. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

_____
Notary Public
My commission expires:

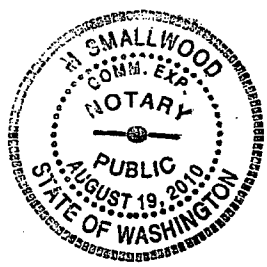
STATE OF MAINE)
COUNTY OF CUMBERLAND) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared PETER J. WELLIN to me personally known to be the same person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he executed the same.

_____
Notary Public
My commission expires:

STATE OF WASHINGTON)
COUNTY OF KITSAP) ss:

On this 2nd day of November, 2009, before me the subscriber, personally appeared MARJORIE W. KING to me personally known to be the same person described in and who executed the foregoing Instrument, and she duly acknowledged to me that she executed the same.



M. Smallwood
Notary Public
My commission expires: 8/19/2010

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss:

On this 2nd day of Nov, 2009, before me the subscriber, personally appeared CYNTHIA W. PLUM to me personally known to be the same person described in and who executed the foregoing Instrument, and she duly acknowledged to me that she executed the same.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Alexandra S. Jones, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Sept. 18, 2012
Member, Pennsylvania Association of Notaries

Alexandra S. Jones
Notary Public
My commission expires: 9/18/12

STATE OF SOUTH DAKOTA)
COUNTY OF _____) ss:

On this _____ day of _____, 2009, before me, the subscriber, personally appeared _____ to me known, who being by me duly sworn, did depose and say that he/she resides at _____; that he/she is _____ of South Dakota Trust Company LLC, the corporation described in and which executed the above Instrument; that he/she knows the seal of said corporation and that the seal affixed to said Instrument is such corporate seal; that it was so affixed to said Instrument by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

_____
Notary Public
My commission expires:

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss:

On this _____ day of _____, 2009, before me the subscriber, personally appeared CYNTHIA W. PLUM to me personally known to be the same person described in and who executed the foregoing Instrument, and she duly acknowledged to me that she executed the same.

_____
Notary Public
My commission expires:

STATE OF SOUTH DAKOTA)
COUNTY OF Minnehaha) ss:

On this 4th day of November, 2009, before me, the subscriber, personally appeared Patti Graumann to me known, who being by me duly sworn, did depose and say that he/she resides at Sioux Falls SD; that he/(she) is a trust officer of South Dakota Trust Company LLC, the corporation described in and which executed the above Instrument; that he/(she) knows the seal of said corporation and that the seal affixed to said Instrument is such corporate seal; that it was so affixed to said Instrument by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Mary L Meadors
Notary Public
My commission expires: 10/11/2012

MARY L. MEADORS NOTARY SEAL PUBLIC SOUTH DAKOTA

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, Plaintiff, Versus Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, South Dakota Trust Company, LLC as co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, Friendship Partners, LP, Defendants.	C/A No. 2:13cv1813 DCN **ORDER FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION**

A TRUE COPY
Attest: Robin L. Blume
By: _____
DEPUTY CLERK

This matter comes before the Court upon a Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction by Plaintiff Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 for a Temporary Restraining Order and Order to Show Cause for Preliminary Injunction against Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, South Dakota Trust Company, LLC as co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, and Friendship Partners, LP.

Plaintiff's Complaint raises a number of claims against Defendants, including claims for breach of fiduciary duty and violation of the South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, *et seq.* This Court has subject matter jurisdiction pursuant to 28

U.S.C. § 1332 (diversity of citizenship). This Court has personal jurisdiction over Defendants because a substantial part of the transactions or occurrences underlying Plaintiff's claims occurred within the Charleston Division of this District.

Plaintiff's Verified Complaint and Memorandum in Support of his Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction assert the following facts, which form a basis for this order:

Plaintiff is an 86 year old entrepreneur and Wall Street investor who amassed a sizable net worth over the years by making prudent investments, one of which was the purchase of many Class A Berkshire Hatthaway common shares (hereinafter "BRKa") in the 1960s when a share cost less than $200 and today sells for approximately $168,000. During the Plaintiff's older years, he began creating trusts, partnerships, LLCs and other entities in which to place certain of his assets for estate planning purposes such that he could financially provide for his wife, three children (the individually named Defendants), and his grandchildren after his death.

In 2003, Plaintiff formed Friendship Partners, LP and transferred to it 896 shares of BRKa. Plaintiff owned 98.90% of Friendship Partners, LP, and Friendship Management, LLC, an LLC whose members are the Plaintiff's three children and a related trust, owned the balance.

Plaintiff's health began deteriorating in or around 2006 and, such deterioration has continued until today, essentially leaving the Plaintiff in precarious health. Plaintiff's health issues have left him with a compromised, diminished, and often a complete lack of capacity at various times since 2006. Plaintiff executed five different durable powers of attorney in five different states naming his son Defendant Peter Wellin as his attorney-in-fact and his daughter Defendant Cynthia W. Plum as his successor attorney-in-fact. Plaintiff also named his son Defendant Peter Wellin as the successor trustee to the Keith S. Wellin Florida Revocable Living

Trust and his daughter Defendant Cynthia W. Plum as backup successor trustee to serve in the event his son could not.

In or around October and November 2009, Plaintiff was experiencing diminished mental capacity due to his health problems and medications being taken to treat the same. At this time Defendant Peter Wellin contacted the Plaintiff and proposed the Plaintiff execute a two part "tax advantaged transaction" (hereinafter the "November 2009 Transaction"). The first part, which the Plaintiff effectuated on November 2, 2009, was the creation of the Wellin Family 2009 Irrevocable Trust, whose trustees and beneficiaries are the Plaintiff's three children and their issue. The second part of the November 2009 Transaction was for the Plaintiff to sell his 98.90% interest in Friendship Partners, LP to the Wellin Family 2009 Irrevocable Trust. Although the 896 BRKa shares that Plaintiff transferred to Friendship Partners LP in 2003 were worth approximately $90,000,000 in November 2009, Plaintiff received as consideration for the sale a $49,000,000 promissory note from the Wellin Family 2009 Irrevocable Trust. Although the face value of the note was approximately $49,000,000, it was not then and is not now worth its face value on the open market. Further, Plaintiff retained the income tax liability associated with any liquidation of the 896 BRKa shares or the Wellin Family 2009 Irrevocable Trust's sale of the 98.90% interest in Friendship Partners, LP to anyone but the Plaintiff.

Currently, the 896 BRKa shares are owned by Friendship Partners, LP. The Wellin Family 2009 Irrevocable Trust owns 98.90% of Friendship Partners, LP and, while Friendship Management, LLC owns only approximately 1% of Friendship Partners, LP, it controls its assets pursuant to the Limited Partnership Agreement. Since the Plaintiff's three children, the three individual Defendants Peter Wellin, Cynthia W. Plum, and Marjorie W. King, are jointly the majority members of and in control of Friendship Management, LLC and are the trustees and

beneficiaries of the Wellin Family 2009 Irrevocable Trust, they have sole control over and ownership of the 896 BRKa shares and would collect the income proceeds of the shares' liquidation, but are not responsible for the income tax liability generated upon the shares' liquidation.

The 2009 Transaction, coupled with certain other transactions discussed in the Verified Complaint, has left the Plaintiff in a very precarious financial situation at present. Should the Defendants sell the 896 BRKa shares or the 98.90% interest in Friendship Partners, LP and trigger the approximately $40,000,000 in tax liability to the Plaintiff, he will be unable to satisfy the same and will be left insolvent.

The court has considered the Plaintiff's *ex parte* Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction and Memorandum in Support of the same; the Plaintiff's Verified Complaint in which it appears that the Plaintiff will suffer irreparable injury if injunctive relief is not granted; the Affidavit of Michael Simon, and Plaintiff's counsel's statement in the Motion and Memorandum in Support that notice of this Motion was not given to counsel for the Defendants and that it should not be required. On the basis of these pleadings and papers, it appears to the Court that Plaintiff will suffer immediate and irreparable injury, loss, and damage before notice can be given and Defendants or their attorney can be heard in opposition to the issuance of a Temporary Restraining Order, in that Defendants could sell or cause to be sold 896 BRKa shares and/or the 98.90% interest in Friendship Partners, LP, either of which would generate approximately $40,000,000 in income tax liability for the Plaintiff, and the court is of the opinion that the temporary restraining order should be issued. Therefore, **IT IS ORDERED:**

1. That Defendants, as well as their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise (collectively, the "Enjoined Parties") be temporarily restrained and enjoined from selling, trading, gifting, transferring, negotiating, or otherwise disposing of any or all of the 896 BRKa shares owned by Friendship Partners, LP or the 98.90% interest in Friendship Partners, LP owned by the Wellin Family 2009 Irrevocable Trust, without the express, written, and notarized consent of the Plaintiff or his current attorney-in-fact.

2. Plaintiff's Motion for Preliminary Injunction will be heard by this court at 10:00 am on Thursday, July 18, 2013.

3. Plaintiff is not required to post bond or other security.

4. The Temporary Restraining Order issued by this order will expire on the fourteenth day after the date of this order unless within such time the order is extended for good cause shown, or unless Defendants consent to an extension.

David C. Norton
United States District Judge

July 3, 2013
Charleston, South Carolina

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KEITH WELLIN, et al.	:	
	:	
vs.	:	
	:	
PETER J. WELLIN, et al.	:	25:13 CV 1831

Motion hearing held on Monday, November 18, 2013, commencing at 11:02 a.m., before the Hon. David C. Norton, in Courtroom II, United States Courthouse, 81 Meeting Street, Charleston, South Carolina, 29401.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

EXHIBIT C

A. Well, I have seen these type transactions before. It's called a gift that keeps on giving, in that you make the gift, but since you're the grantor, if there's income tax incurred by the trust, then the tax is actually paid by grantor. And so that is a tax planning technique such that you're not using the assets you gave away to pay taxes in the future, you're actually diluting the grantor's estate to pay those taxes.

The difference in this case is that every time I have ever worked on one of those before, the lawyer has allowed for the grantor to substitute a trustee, if there was issues that came up, that way he had some control over what tax liability -- the timing of any tax liability and the amount that he might incur.

Q. And was there such a trustee in this trust?

A. The ability to --

Q. Yes.

A. I'm not a trust expert, but I am told that there is not.

Q. Does that mean basically that what happened in 2009, Mr. Wellin agreed to place stock in a trust?

A. He had placed a partnership interest that owned the stock in the trust, yes.

Q. And at that time it was worth how much money? Roughly $90 million?

A. Yes, sir.

Q. And did he keep for himself any control of that amount of

money?
A. No, sir.
Q. And did he completely turn that -- the control of it over to basically his three children?
A. He turned it over to the trustees, yes, sir.
Q. And --
A. And the general partner of the partnership.
Q. Which are his children?
A. Yes.
Q. And if the stock that makes up the asset in that trust, if those stock certificates are negotiated and sold, who gets the tax consequences?
A. The grantor, Mr. Wellin.
Q. And in your professional opinion, as a CPA, to a CPA degree of certainty, if that, plus other debts from this -- these gifts in 2013 and other matters occur, the stock is sold, and temporary restraining order is lifted, and they've indicated in their filings they want it lifted so they can sell the stock, what does that do to Mr. Wellin?
A. It would definitely cause him to have to liquidate all his current assets, those assets that are easily turned into cash within a year. And essentially he would become insolvent.
Q. And I know you're not a doctor, but what does insolvency do to anybody?
MR. BRUNSON: Objection, Your Honor.

object to on the basis of relevancy. The plaintiff has brought a separate lawsuit in Delaware, and has indicated that the fairness of the transaction is an issue of Delaware law, only being litigated in Delaware, and expressly not litigated before this Court. The affidavit from Mr. Gumb actually has a caption from the Delaware lawsuit, where it was submitted to offer his opinion on fairness. Therefore, it's not relevant to these proceedings.

THE COURT: Okay. I'll overrule your objection. Go ahead.

MR. R. HOOD: Thank you, Your Honor.

BY MR. R. HOOD:

Q. You with me?

A. Yes, sir. Well, what concerned me about the fairness of it, from a standpoint of the way I understood the law, but also just the understanding of how these transactions work, is that the way this was set up, it really doesn't give Mr. Wellin any opportunity to have input about a transaction that could cost him over $40 million. And whereas in most cases, there would be mechanisms, I guess, that can be put in place, specifically I understand replacing the trustee, if that were to occur.

The other thing that bothered me about it overall is that these -- the interest and/or the note, the -- in other words, the stock, what happened was he gave away a partnership

interest to the trust. And through a valuation, they were able to discount the $90 million down to $49 million. And so they gave a note to Mr. Wellin for the $49 million, for that partnership interest. And so that note, not only the interest, but that note can be paid in kind with stock. And so that would be another tax that he would have to incur to sell that stock to satisfy the note. So it devalues the note by the amount of the tax.

But the other thing that's happened over time that I saw was that there was a note entered into in 2009 that did provide for the interest to be paid by a note. But as far as I could tell, and I tried to confirm this with some attorneys that are involved --

MR. BRUNSON: I'm just going to object to offering opinions from attorneys not involved.

THE COURT: Thank you.

A. As far as I can tell, the note doesn't allow for other substantial changes to it. In this case, in 2012 -- well, in 2010, '11 and '12, the interest rate was reduced, but also in 2012 the maturity was extended three years. And so by extending that maturity, which is the farthest they could go to 2021 and still use that prescribed federal rate of .94 percent, essentially those two things further discounted the note, because it put it out further to be paid.

And so at a man Mr. Wellin's age, which I refer to in

into, the tax lawyers have explained to them how they can mitigate the risk of something like this happening, without undoing the grantor trust.

Q. So you don't know what effect it would have had on the benefits of having a grantor trust in this fact situation, if Mr. Wellin had retained the right to change trustees. You don't know that, do you?

A. I just know it's done. There's people in this room, I'm sure, that can answer that question more thoroughly than myself.

Q. But you're not one of them.

A. No,, sir.

Q. And I believe you also said that that issue just goes to the timing of the tax liability. But, in fact, if Mr. Wellin had had the right to change trustees, the fact is, he still would have had capital gains tax liability when the stock was sold, if it was prior to his death.

A. If the stock is sold prior to his death, he would have that liability.

Q. Now, it's an unpleasant topic to bring up, but we need to. If Mr. Wellin were to die today, before the TRO were lifted, there would be a shift in tax liability for the $153 million approximately of stock that is currently being held by the partnership and the trust, is that correct?

A. That's correct.

here, but --

THE COURT: You don't have to show me a picture. The answer to that is yes, right?

MR. J. HOOD: No --

THE COURT: You mean it never went down?

MR. J. HOOD: I tell you what; when Mr. Brunson's argument, I'll uploaded into this and I'll show you. I mean, basically you can see the green. It's been pretty good. Certainly it dipped down, but in the time frame that it did, we are not seeing appreciatable losses. And I don't think there's any claim to that effect.

So in 2009, there's no protection for Keith Wellin, which I just alluded to, and the problems with the note. Keith is unable to turn off the grantor trust's status on his own, and prepay the note, which would in essence in this case avoid bankrupting him. And he can't remove the children as trustees. That is -- he is able to appoint trustees, but he's not able to remove the children as trustees.

So what we see is that through the transaction, Keith basically gives up the entire up side, but kept 100 percent of the risks.

And I mentioned grantor trust status, and I think that's probably a significant point, in light of some of the testimony earlier. Here, you know, for grantor trust status, there are two rights that are required to be present which

exist, and that's a right to substitute property held within the trust, and that's a right held by Mr. Wellin, and the right to add beneficiaries. That's a right held by South Dakota Trust. If both of those rights are released, then the trust itself becomes a complex trust, and is its own entity for income tax purposes.

South Dakota will not agree to turn off grantor trust status without the children's consent, as they indicate in their pleadings, they are a directed trust. So here, if Mr. Wellin dies, the trust becomes a separate taxpayer. The children can sell those shares now, before he passes, hold them for 30 plus days and then reinvest them, and Mr. Wellin becomes liable for the entire tax consequence, and the trust, overnight, gets a $40 million benefit.

And if he dies before any sale, the trust is responsible for 40 million in taxes, which is the inherent conflict that Professor Freeman alluded to.

So before 2009, Mr. Wellin could sell his interests, which would cover all the taxes, plus significant money left over, and Mr. Wellin would have all of his assets to use as he saw fit. But today what we know is upon the sale, he has to pay all taxes, he doesn't get the benefit of the note, if ever, until 2021. And even then he could get a limited partnership interest or some other partner -- excuse me -- some other property, and the children could sell their shares, but make

no distributions forever, effectively freezing Keith and his heirs out.

By that I mean if the children, instead of paying cash for the $49.8 million note, transfer to him an LP interest, they're not obligated to make a distribution until the partnership expires on its own, which is in 2100, or through some other provisions. So there is a possibility that any assets would be held in the trust, and that they're able to hold them frozen until any time they see fit to make a distribution. And then only at that time would they have to give Mr. Wellin his pro rata share, if they were to satisfy the note with limited partnership interest.

So today Mr. Wellin is in the unenviable position of having to sell his assets to meet the tax consequences, and the sale of those assets trigger more taxes, sort of like a dog chasing its tail, ultimately rendering him insolvent or bankrupt.

Here, we know the children were fiduciaries, the transaction does not protect Mr. Wellin. We've alleged no one has explained to him that he was leaving all the up side in the shares to the children, but at the same time retaining all tax liability. And his affidavit supports that testimony or that statement.

We also have annual novations that were completed in 2010, '11 and '12. Each of those decreased the interest rate. And

in 2012 the term for the note was extended by an additional three years, making it even less likely that Mr. Wellin will see the benefit of the 2009 transaction during his life. And there was no appraisal performed with each of those interests in the subsequent novations.

So with that, Your Honor, I hope that I have explained the 2003 and 2009 circumstances as it relates to Mr. Wellin. And really, the reason that we're here today and have filed this lawsuit on his behalf, is his legitimate concern that the incentive, the 40 million reasons to sell the shares during his life would render him bankrupt, and he has been the victim of a series of transactions that have left him in a precarious situation which he never understood or appreciated, and had he, he never would have agreed with.

When we started this morning I gave you a little bit of the details of his background and his experience. Obviously a very successful businessman, and one who has created great wealth for himself and his clients, and his family, all through his own efforts. His children now sit on the pile of cash that he has amassed. And he has come into this Court on bended knee, asking the Court to look at the circumstances and determine if the relief requested is appropriate.

THE COURT: Since you said that the children sit on a pile of cash, and if they cash out these shares there's an even bigger pile of cash, how is there irreparable harm?

Because there's a big old pot of money that he can get reimbursed by.

MR. J. HOOD: The irreparable harm? Is that Mr. Wellin will have to pay the taxes when they're due.

THE COURT: Okay. And then he gets reimbursed.

MR. J. HOOD: If we're successful, the taxes have been paid for an event that you've just lost all opportunity to control any of the down side. You've lost all estate planning, you've lost everything by going that route.

THE COURT: From what you say, they lost all estate planning because there's nothing in the estate.

MR. J. HOOD: No, I mean, he has -- we're talking about, you know, this portion of his estate.

THE COURT: Basis for any injunction is it's irreparable harm and money damage. If you can get money damages, then you don't get -- it's not irreparable harm. And what I'm saying here is, using your words, the children are sitting on a pile of cash, and if they cash those shares out, there's even a bigger pile of cash. Why is that not sufficient?

MR. J. HOOD: Well, there's a couple of reasons. One is if they are to sell now, the taxes become due immediately. The only thing that Mr. Wellin has, remains his note. So in order to satisfy those taxes, he has to sell all of his other assets. And those sales trigger additional tax consequences.

So in order to build up the pot of money to pay the Federal Government for the income tax associated with the money he earned, he now has to liquidate everything, and it still won't be enough. And so that's why it's irreparable to him in these exact circumstances.

We have asked for equitable relief in addition to the cause of actions that we have asserted dealing with rescinding, unwinding some of these transactions. And to the extent that we're able to accomplish that, and these tax consequences have been incurred, that's something that we won't be able to undo. I don't know of a mechanism to get money back from the IRS in those circumstances.

One of the other elements that I'm responsible to demonstrate to your satisfaction, Your Honor, is the likelihood of success on the merits. And we have called the witnesses who testified to discuss both Mr. Wellin's capacity, his current function, his status, his affect. And we've also identified and called Mike Simon, Barry Gumb and John Freeman to provide some of the factual information that we believe will ultimately be presented at the trial of the case.

THE COURT: Of course, as Mr. Brunson observed up front, none of these people testified, with the exception of his personal physician, about 2009.

MR. J. HOOD: That's correct.

THE COURT: Isn't that what you're worried about?

EVANS, CARTER, KUNES & BENNETT, P. A.
ATTORNEYS AT LAW
115 CHURCH STREET
CHARLESTON, SOUTH CAROLINA 29401

T. HEYWARD CARTER, JR.†
ROBERT M. KUNES†
EDWARD G. R. BENNETT**
ANDREW W. CHANDLER*†
M. JEAN LEE
F. PATRICIA SCARBOROUGH**
DAVID H. KUNES**

†CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW
**LICENSED IN SC AND NY
*LICENSED IN SC AND GA
**LICENSED IN SC AND NC

MAILING ADDRESS:
P. O. BOX 369
CHARLESTON, SC 29402-0369

TELEPHONE (843) 577-2300
TELECOPIER (843) 577-2055
WWW.ECKB.COM

November 20, 2013

RECEIVED
NOV 21 2013
NELSON, MULLINS
39113/01500

Mr. Peter J. Wellin
2 Ship Channel Road
S. Portland, ME 04106-5135

Mrs. Cynthia W. Plum
10 Waterman Avenue
Philadelphia, PA 19118

Mrs. Marjorie W. King
1884 Beans Bight Road NE
Bainbridge Island, WA 98110

Re: The Wellin 2009 Family Irrevocable Trust

Dear Mr. Wellin, Mrs. Plum and Mrs. King,

Please find enclosed the following:

1. An instrument signed by Keith S. Wellin removing Thomas Farace as Trust Protector of the above referenced Trust, and appointing Lester S. Schwartz, Esq., as the successor Trust Protector.

2. An instrument signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, removing South Dakota Trust Company LLC as Trustee and appointing in its place Brown Brothers Harriman Trust Company of Delaware, N.A. as successor Trustee.

3. An instrument signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, making certain amendments to the Trust pursuant to the authority granted to him in Article VI thereof.

EXHIBIT D

4. An instrument signed by Keith S. Wellin on November 20, 2013 exercising the right granted to him under Article IX of the Trust to reacquire Trust assets, whereby he has substituted the note issued by the Trust to him with a face value of $49,802,115 for interests in Friendship Partners, L.P. with an equivalent value. The original of the promissory note has been transmitted to Brown Brothers Harriman Trust Company of Delaware, N.A. marked "paid in full". Also enclosed is a calculation of the outstanding balance of the promissory note.

5. An instrument signed by Keith S. Wellin, which will be effective as of 11:59pm tonight, releasing his right to substitute Trust assets. With this release, the status of this Trust as a "grantor trust" is terminated.

Copies of the documents referenced in #1 and #2 above have been forwarded to South Dakota Trust Company. Copies of all documents referenced above have been forwarded to Brown Brothers Harriman Trust Company of Delaware, N.A.

For your records and information, the Trust's contact at Brown Brothers is Lynn W. Watson, 919 N. Market Street, Suite 420, Wilmington, DE 19801.

Best Regards,

Edward G. R. Bennett

cc: Mr. Robert H. Brunson
Mrs. Bryson M. Geer
Mr. John B. Hagerty
Mr. Patrick C. Wooten
Mrs. Lynn W. Watson
Mr. Robert B. Hood
Mr. James B. Hood
Mr. Lester S. Schwartz
Mr. Brett D. Sovine

EVANS, CARTER, KUNES & BENNETT, P. A.
ATTORNEYS AT LAW
115 CHURCH STREET
CHARLESTON, SOUTH CAROLINA 29401

T. HEYWARD CARTER, JR.†
ROBERT M. KUNES†
EDWARD G. R. BENNETT**
ANDREW W. CHANDLER*†
M. JEAN LEE
F. PATRICIA SCARBOROUGH**
DAVID H. KUNES**

†CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW
**LICENSED IN SC AND NY
*LICENSED IN SC AND GA
**LICENSED IN SC AND NC

MAILING ADDRESS:
P. O. BOX 369
CHARLESTON, SC 29402-0369

TELEPHONE (843) 577-2300
TELECOPIER (843) 577-2055
WWW.ECKB.COM

November 20, 2013

Mr. Peter J. Wellin
2 Ship Channel Road
S. Portland, ME 04106-5135

Mrs. Cynthia W. Plum
10 Waterman Avenue
Philadelphia, PA 19118

Mrs. Marjorie W. King
1884 Beans Bight Road NE
Bainbridge Island, WA 98110

Re: The Wellin 2009 Family Irrevocable Trust

Dear Mr. Wellin, Mrs. Plum and Mrs. King,

Please find enclosed the following:

1. An instrument signed by Keith S. Wellin removing Thomas Farace as Trust Protector of the above referenced Trust, and appointing Lester S. Schwartz, Esq., as the successor Trust Protector.

2. An instrument signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, removing South Dakota Trust Company LLC as Trustee and appointing in its place Brown Brothers Harriman Trust Company of Delaware, N.A. as successor Trustee.

3. An instrument signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, making certain amendments to the Trust pursuant to the authority granted to him in Article VI thereof.

TRUST PROTECTOR REMOVAL AND SUCCESSOR TRUST PROTECTOR APPOINTMENT

WELLIN FAMILY 2009 IRREVOCABLE TRUST

The Wellin Family 2009 Irrevocable Trust was created by agreement dated November 2, 2009 between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees.

Article VI, Section A, thereof, named Thomas M. Farace as the Trust Protector.

Article VI, Section A, Subsection 9 provides that "I [Keith S. Wellin] have the authority to remove a Trust Protector, to replace him or her with a different Trust Protector, and to do the same with successor Trust Protectors who are not yet serving and are just in line as successor Trust Protectors, as long as any new Trust Protector is not related or subordinate to me within the meaning of Internal Revenue Code section 672(c)."

Pursuant to the authority cited above, Thomas M. Farace is hereby removed as Trust Protector, effective the date hereof. Lester S. Schwartz, Esq., who is neither related or subordinate to the Grantor, is hereby appointed as successor Trust Protector, such appointment to be effective upon his execution of this instrument.

In witness whereof the undersigned has set his hand and seal this 20th day of November, 2013.

Keith S. Wellin, Grantor

Appointment Accepted:

Lester S. Schwartz

State of South Carolina
County of Charleston

PERSONALLY APPEARED before me on this 20th day of November, 2013, Keith S. Wellin, to me known and known to me to the individual described in and who acknowledged the foregoing instrument and acknowledged to me that he executed the same.

(SEAL)
Notary Public for South Carolina
My Commission Expires: April 25, 2022

TRUSTEE REMOVAL AND SUCCESSOR TRUSTEE APPOINTMENT

By instrument dated November 2, 2009, South Dakota Trust Company LLC was appointed as a Trustee of that certain Trust originally executed on November 2, 2009 between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees and known as the Wellin Family 2009 Irrevocable Trust.

By instrument dated as of the date hereof, Lester S. Schwartz, Esq. was appointed as Trust Protector of the Wellin Family 2009 Irrevocable Trust.

Article VI(A)(1) thereof grants the Trust Protector "the authority to remove the Trustee, and to appoint a different trustee or additional Co-Trustees. The Trust Protector also has the authority to appoint successor Trustees." Pursuant to such authority, South Dakota trust Company LLC is hereby removed as Trustee, effective the date hereof. Furthermore, pursuant to such authority, Brown Brothers Harriman Trust Company of Delaware, N.A. is appointed as Trustee in place of South Dakota Trust Company LLC, such appointment to be effective upon execution of this instrument by a representative of Brown Brothers Harriman Trust Company of Delaware, N.A.

In witness whereof the undersigned has set his hand and seal this 20th day of November, 2013.

Lester S. Schwartz, Esq.

Appointment Accepted:

Brown Brothers Harriman Trust Company of Delaware, N.A.

By: Lynn Welch Watson
Vice President

Its: _____

State of South Carolina

County of Charleston

PERSONALLY APPEARED before me on this 20th day of November, 2013, Lester S. Schwartz, to me known and known to me to the individual described in and who acknowledged the foregoing instrument and acknowledged to me that he executed the same.

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: 4/25/2022

TRUST AMENDMENT

The Wellin Family 2009 Irrevocable Trust

On November 30, 2009, a Trust was created between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees, such Trust being known as The Wellin Family 2009 Irrevocable Trust (the "Trust"). This Amendment, when coupled with the original Trust agreement, shall constitute the entire Trust agreement and may be relied upon by any person as constituting the entire Trust Agreement as of the date hereof without reference to any prior Amendment.

Under §A(3) of Article VI of that instrument, the Trust Protector is given the power:

> "...to amend the provisions of the trust with regard to how the beneficiaries will benefit from the trust, and to amend the trust administrative provision. The Trust Protector has no authority, however to amend the trust with regard to the identities of the beneficiaries."

By instrument dated November 20, 2013, Lester S. Schwartz, Esq. was appointed as the Trust Protector of the Trust. He has determined to amend the Trust as follows:

1. The Trust shall have a situs in the State of Delaware; provided, however, that the Trust shall continue to be administered pursuant to the laws of the State of South Dakota until such time as the governing law is changed pursuant to the provisions of Article III of the Trust.

2. Article IV shall be amended by adding a new Section (E), which shall read as follows:

> E. Notwithstanding the foregoing, each beneficiary shall have the right at his or her death to appoint by Will such portion or all of the accumulated income and principal of any trust held under this Article for his or her benefit; provided, however, that (i) such appointment may only be made in favor of a trust for the benefit of his or her spouse; (ii) such trust may grant to such spouse no greater than an income interest for life in the appointed assets, and (iii) such appointment may only be made with the consent of the corporate Trustee (which consent may be granted or withheld in its sole and absolute discretion).

3. Article VI(A)(9) is hereby amended by deleting the first paragraph therefrom and substituting the following in lieu thereof:

> 9. I have the authority to remove a Trust Protector, to replace him or her with a different Trust Protector, and to do the same with successor Trust Protectors who are not yet serving and are just in line as successor Trust Protectors, as long as any new Trust Protector is not related or subordinate to me within the meaning of Internal Revenue Code section 672(c).
>
> Upon the later of my death or November 20, 2018, my children, PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM, acting by majority vote (or should there be separate Trust Protectors for each subtrust, as provided in Paragraph (A),

above, my child who is the beneficiary of each particular subtrust), may, not more frequently than once every five (5) years, by written notice to the then serving Trust Protector, have the right to request appointment of a committee of three individuals to consider whether a Trust Protector should be removed and replaced. The majority vote of such committee shall be sufficient to remove and replace any Trust Protector with such other Trust Protector as the committee may determine. The individuals who may be appointed to such committee (i) may not be beneficiaries of the Trust, (ii) may not be related or subordinate to either the Trust Protector or any of my children (or child, as the case may be) (within the meaning of §672(c) of the Internal Revenue Code), (iii) must each be Fellows of the American College of Trust and Estate Counsel (ACTEC), and (iv) much each be members of different law firms. Within thirty (30) days of the delivery to the Trust Protector of a written request by my children (or child, as the case may be), my children, by majority vote (or child, as the case may be), and the Trust Protector shall each appoint a committee member. A third committee member shall be chosen by the first two committee members, acting jointly; provided, however, that if a third committee member is not appointed within sixty (60) days of the written notice requesting the appointment of a committee, either my children (or child, as the case may be) or the Trust Protector may petition the Probate Court having jurisdiction over the Trust to appoint such third committee member. The appropriate compensation (at their customary hourly rates) shall be paid to any such committee (if nominated) from the Trust assets.

The committee shall consider information provided by the Trust Protector and my children (or child, as the case may be) (as well as information from such other person(s) as the committee may determine) and, within 30 days of the date of appointment of the last committee member, shall determine whether to remove and replace the Trust Protector. In making its determination, the committee shall consider all issues it considers relevant. As the role of Trust Protector is a limited role (unlike the role of Trustee), the committee is encouraged to consider the duties assigned to the Trust Protector under this Agreement and which, if any, of those duties are being actively undertaken by the Trust Protector, and the Trust Protector's experience with respect to the nature of the duties. Any such consideration shall consider whether any attempted change in Trust Protector may have been initiated for the purpose of seeking a Trust Protector who may not be as likely to honor the Settlor's intent or whether there are genuine personality, performance, and/or expense issues involved in seeking such change of Trust Protector.

Upon completion of the decision for which the committee is appointed, the committee shall have no further responsibility and its powers shall terminate.

This ability to request a committee to remove and replace the Trust Protector shall pass from PETER J. WELLIN, MARJORIE W. KING and CYNTHIA W. PLUM to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the same fashion and in the same manner as provided above. Each named designee shall have the right to pass this authority to request a committee to remove and replace the Trust Protector to whomever they designate either by an instrument in writing or by their Last Will and Testament admitted to probate and such designee shall exercise the authority in the same fashion and in the same manner as provided above. The last acting designee shall have the right to pass this authority to request a committee to remove and replace the Trust Protector

to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above, and so forth, down through the generations. If at any time there is no designee appointed or acting and thus there is a vacancy in this position to request a committee to remove and replace the Trust Protector, then the Distribution Committee shall have the right to pass this authority to request a committee to remove and replace the Trust Protector to whomever they designate and such designee shall exercise the authority in the same fashion and in the same manner as provided above.

4. Article IX shall be amended by deleting Section (B) therefrom.

5. Article IX shall be amended by deleting Section (C) therefrom and substituting the following in lieu thereof, which shall be re-labeled as (B):

B. Release of Powers. I hereby retain the power to release the power described in paragraph A of this Article by delivering to the Trustee a written statement to that effect. This power may be exercised by my agent acting under a duly executed Power of Attorney or by my duly appointed guardian, in the event of my disability or incapacity.

A corporate Trustee, with the prior written consent of the Trust Protector, may restore the released power at any time.

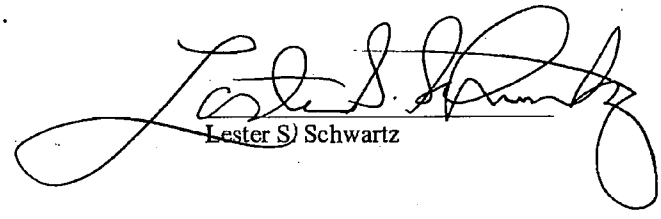
6. Article X(D) shall be amended by deleting Section (D) therefrom and substituting the following in lieu thereof:

D. Unless specifically provided otherwise, all powers and discretions conferred by law of this Agreement upon the Trustees must be exercised by the unanimous vote of the Trustees in office from time to time (excepting the vote of any Trustee who is also a beneficiary who is ineligible to participate in the exercise of the power or discretion because he, as a beneficiary, may be affected by the exercise of such power or discretion).

7. Article XII shall be amended by adding the following, which shall be Paragraph (I) thereof:

I. Notwithstanding any other provision of this Agreement, with respect to any litigation brought by or against any Trust created under this Agreement, if any Trustee of such is a party to such litigation in both an individual or corporate capacity and his or her capacity as a Trustee, then the Trust Protector shall represent such Trust with respect to such litigation, and shall have the power to pay, compromise, contest, submit to arbitration, or otherwise settle such litigation in favor of or against the trust, and may prosecute or defend such litigation for the protection of trust assets. The provisions of this Paragraph (H) shall apply notwithstanding the fact that there may be one or more co-Trustees then serving who are not parties to the litigation in an individual or corporate capacity.

In all other respects the Trust instrument shall remain as originally written, this amendment shall be effective this 20th day of November, 2013.



Lester S. Schwartz

State of South Carolina)
)
County of Charleston)

PERSONALLY APPEARED before me on this 20th day of November, 2013, **Lester S. Schwartz**, to me known and known to me to the individual described in and who acknowledged the foregoing instrument and acknowledged to me that he executed the same.

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: 4/25/2022

EXERCISE OF RIGHT OF SUBSTITUTION

THE WELLIN FAMILY 2009 IRREVOCABLE TRUST

The Wellin Family 2009 Irrevocable Trust was created by agreement dated November 2, 2009 between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees (the "2009 Trust").

Article IX(A) of the 2009 Trust provides as follows:

> A. Power of Asset Substitution. I hereby retain the power, exercisable during my lifetime, at any time and from time to time, without the consent of or approval by the Trustee, to reacquire the trust corpus or a portion thereof by substituting other property of an equivalent value.

Effective this 20th day of November, 2013, the Grantor, Keith S. Wellin, does hereby exercise the right granted to him by Article IX(A) of the 2009 Trust and substitute the promissory note issued by the 2009 Trust in his favor on September 4th, 2012 with a face value of $49,802,115 and a current outstanding balance of $50,211,446.55 (being principal and accrued but unpaid interest as of the date hereof) (the "Note") in exchange for Units in Friendship Partners, LP representing an assignee interest therein with a fair market value equal to $50,211,446.55.

The number of Units in Friendship Partners, L.P. transferred in substitution for the Note are determined in accordance with the calculations attached hereto as Schedule A. The discounts applied to the assets of Friendship Partners, LP and the individual units are consistent with the discounts applied by the general partner of Friendship Partners LP with respect to various transfers between the 2009 Trust and Keith S. Wellin from 2009 through 2012, and the calculation is consistent with the methodology employed by Management Planning Inc. in its report dated November 30, 2009.

Keith S. Wellin recognizes that the cash held by Friendship Partners, L.P. may be different than the estimated balance reflected on Schedule A. If the general partner of Friendship Partners, L.P. provides to Keith S. Wellin evidence of a different cash balance, the Units transferred to Keith S. Wellin shall be adjusted to reflect a number of Units transferred to Keith S. Wellin with a fair market value equal to the value determined by inserting the correct cash balance into the calculations on Schedule A.

In compliance with that Temporary Restraining Order issued by Judge David C. Norton on July 3, 2013 in the United States District Court, District of South Carolina, Charleston Division in *Wellin et. al. v. Wellin et. al., C/A No. 2:13c1813 DCN*, this shall constitute the consent of Keith S. Wellin that the partnership interests be transferred by the 2009 Trust to Keith S. Wellin, individually.

Keith S. Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust dated December 11, 2001, as subsequently amended and restated

5:12 PM 11/20/2013

Friendship Partners, LP

Freely Traded Value

As of November 20, 2013

Assets		
Cash	$	10,000
Equity Investment		
Berkshire Hathaway Inc. - 906 A Shares[1]	$	156,266, 880
Total Assets	$	156,276,880
Liabilities and Partners' Capital		
Liabilities		--
Partners' Capital (Net Asset Value)	$	156,276,880
Total Liabilities and Partners' Capital	$	156,276,880
Net Asset Value	$	156,276,880
Less: Minority Interest Discount (15%)	$	(23,441,532)
Freely Traded Value of Friendship Partners LP	$	132,835,348
Freely Traded Value Per Unit (based on 1,000,000 units issued and outstanding)	$	132.835
Freely Traded Value Per Unit	$	132.835
Less: Marketability Discount of 35%	$	(46.49)
Fair Market Value Per Unit	$	86.34
Fair Market Value of 581,554.8645 Limited Partnership Units (based on 1,000,000 units issued and outstanding)	**$**	**50,211,447**

[1]Based on the closing price of Berkshire Hathaway Class A stock as of the date of substitution.

Compound Period ..... : Annual

Nominal Annual Rate .... : 2.590 %

CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	11/30/2009	49,802,115.00	1		
2	Payment	11/30/2010	1,289,874.78	1		
3	Rate Change	12/06/2010	Rate: 1.530 %	Compounding: Annual		
4	Payment	11/30/2011	770,969.29	1		
5	Rate Change	11/30/2011	Rate: 1.200 %	Compounding: Annual		
6	Rate Change	09/04/2012	Rate: 0.840 %	Compounding: Annual		
7	Payment	11/30/2012	555,007.83	1		
8	Payment	11/20/2013	50,211,446.55	1		

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	11/30/2009				49,802,115.00
2009 Totals		0.00	0.00	0.00	
1	11/30/2010	1,289,874.78	1,289,874.78	0.00	49,802,115.00
Rate	12/06/2010		21,203.42	21,203.42-	49,823,318.42
	12/06/2010	Rate: 1.530 %	Compounding: Annual		
2010 Totals		1,289,874.78	1,311,078.20	21,203.42-	
2	11/30/2011	770,969.29	749,765.87	21,203.42	49,802,115.00
Rate	11/30/2011		0.00	0.00	49,802,115.00
	11/30/2011	Rate: 1.200 %	Compounding: Annual		
2011 Totals		770,969.29	749,765.87	21,203.42	
Rate	09/04/2012		456,815.02	456,815.02-	50,258,930.02
	09/04/2012	Rate: 0.840 %	Compounding: Annual		
3	11/30/2012	555,007.83	100,628.02	454,379.81	49,804,550.21
2012 Totals		555,007.83	557,443.04	2,435.21-	
4	11/20/2013	50,211,446.55	406,896.34	49,804,550.21	0.00
2013 Totals		50,211,446.55	406,896.34	49,804,550.21	
Grand Totals		52,827,298.45	3,025,183.45	49,802,115.00	

RELEASE OF RIGHT OF SUBSTITUTION

THE WELLIN FAMILY 2009 IRREVOCABLE TRUST

The Wellin Family 2009 Irrevocable Trust was created by agreement dated November 2, 2009 between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees (the "2009 Trust").

Article IX(A) of the 2009 Trust provides as follows:

> A. Power of Asset Substitution. I hereby retain the power, exercisable during my lifetime, at any time and from time to time, without the consent of or approval by the Trustee, to reacquire the trust corpus or a portion thereof by substituting other property of an equivalent value.

Article IX(B) of the 2009 Trust provides as follows:

> B. Release of Powers. I hereby retain the power to release the power described in paragraph A of this Article by delivering to the Trustee a written statement to that effect. This power may be exercised by my agent acting under a duly executed Power of Attorney or by my duly appointed guardian, in the event of my disability or incapacity.

Effective as of 11:59pm this 20th day of November, 2013, the Grantor, Keith S. Wellin, does hereby release the power granted to him under Article IX(A) of the 2009 Trust and relinquish any right to reacquire the trust corpus, or any portion thereof, of the 2009 Trust.

Keith S. Wellin does acknowledge that, prior to the execution of this instrument, he did exercise the power granted to him in Article IX(A) of the 2009 Trust and reacquire a portion of the 2009 Trust's interest in Friendship Partners, L.P. in exchange for a promissory note issued by the 2009 Trust on September 4, 2012. This instrument is intended to be effective after the time of such exercise.

Keith S. Wellin

State of South Carolina

County of Charleston

PERSONALLY APPEARED before me on this 20th day of November, 2013, Keith S. Wellin, to me known and known to me to the individual described in and who acknowledged the foregoing instrument and acknowledged to me that he executed the same.

(SEAL)
Notary Public for South Carolina
My Commission Expires: April 23, 2022
5:15 PM 11/20/2013

PROMISSORY NOTE

$49,802,115.00 **Sioux Falls, South Dakota**
September 4, 2012

1. FOR VALUE RECEIVED, PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, in their capacity as Trustees, and not individually, including any successor Trustee(s) serving from time to time, (the "Borrowers"), of the WELLIN FAMILY 2009 IRREVOCABLE TRUST, (the "Trust"), created under an Agreement of Trust dated November 2, 2009, by and between KEITH S. WELLIN, as Grantor, and PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, hereby unconditionally promise to pay to the order of the KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST, created under an Agreement of Trust dated December 11, 2001, as amended and restated, by and between KEITH S. WELLIN as Grantor and KEITH S. WELLIN as Trustee (the "Payee") the principal sum equal to Forty-Nine Million Eight Hundred Two Thousand One Hundred Fifteen and 00/100 Dollars ($49,802,115.00) on September 3, 2021 (the "Maturity Date"). The Note is given for the purpose of continuing, revising and restating the Note dated November 30, 2011, and is not intended to evidence or create any new indebtedness.

2. (a) The Borrowers hereby unconditionally promise to pay to the order of the Payee interest on the unpaid principal amount of this Promissory Note for the period from and including the date hereof to but excluding the Maturity Date, at the applicable federal mid-term rate in effect on the date hereof as determined under Section 1274(d) of the Internal Revenue Code (26 U.S.C. §1274(d)), per annum, compounded annually from the date of this Promissory Note, to wit 0.84%. The Borrowers shall pay to the Payee a partial year interest payment on November 30, 2012 (along with interest on the November 30, 2011, Note to date), and then shall pay the Payee annual interest only payments on each November 30 thereafter until paid in full. Interest shall be calculated on the basis of a year of 365 days and actual days elapsed (including the first day but excluding the last day) in the period for which it is payable. All accrued and unpaid interest shall be payable on the Maturity Date. This is an unqualified obligation of the Borrowers to pay the sum set forth above, with interest as provided, which obligation is payable as provided herein regardless of the income or lack thereof of the Borrowers.

(b) Notwithstanding the foregoing, the Borrowers hereby unconditionally promise to pay to the order of the Payee interest at a rate of 7% per annum (the "Post-Default Rate"), calculated in the same manner as in paragraph 2(a), on any amount of principal or interest payable by the Borrowers under this Promissory Note that shall not be paid in full when due (whether at the Maturity Date, by acceleration, or otherwise) for the period from and including the due date of such payment to but excluding the date the same is paid in full.

(c) The Borrowers may, at the Borrowers' option, prepay all or any portion of the principal of this Promissory Note at any time without premium or penalty of any kind, provided that the Borrowers simultaneously pay accrued and unpaid fees, expenses, interest (including, to the extent applicable, interest at the Post-Default Rate), to but excluding the date of such prepayment, on the amount of principal so prepaid.

DRAFT

3. The Borrowers may, at the Borrowers' option, execute and deliver to the Payee on any anniversary of this Promissory Note another promissory note that (except as provided in the next sentence of this paragraph) is identical to this Promissory Note in form and substance (each other such promissory note being referred to herein as a "Capitalized Interest Note") in satisfaction of the Borrowers' obligation to pay interest hereon that has accrued and remains unpaid. Each Capitalized Interest Note shall be in a principal amount equal to the accrued and unpaid interest to which it relates, shall be dated the date of the execution and delivery thereof, and shall bear interest at the "Applicable Federal Rate" as defined in Section 7872 (or any successor provisions) of the Internal Revenue Code of 1986, as amended, and as determined by reference to the maturity of such Capitalized Interest Note. Without limiting the obligation of the Borrower under any Capitalized Interest Note, the execution and delivery of any Capitalized Interest Note shall constitute payment of the interest hereon to which such Capitalized Interest Note relates. The undersigned Borrower and maker of this Promissory Note shall have the right, but not the obligation, to make any payments due hereunder by transferring to the Payee one or more limited partnership units ("Units") of the FRIENDSHIP PARTNERS L.P. The value of the Units shall be determined by mutual agreement of the parties, or, if they are unable to agree, by an independent appraiser selected by the Payee.

4. Right of Set-Off. The Borrowers agree that, in addition to (and without limitation of) any right of set-off the Payee may otherwise have, the Payee shall be entitled, at its option, to offset amounts owing by the Payee to the Borrowers, in dollars or in any other currency (regardless of whether such amounts are then due to the Borrowers), against any amount payable by the Borrowers to the Payee under this Promissory Note that is not paid when due; provided that nothing contained herein shall require the Payee to exercise any such right.

5. Representations and Warranties. The Borrowers hereby represent and warrant to the Payee as follows:

(a) Organization; Powers. (i) The Borrowers are the Trustees of a trust duly organized and validly existing under the laws of the jurisdiction of its formation, (ii) the Trustees have all requisite power and authority to carry out the terms of its Trust, including, but not limited to, carry on its activities as now conducted, and (iii) the Investment Trustee has the legal capacity and full power and authority to execute and deliver, and to bind the Borrowers to perform their obligations under, this Promissory Note, and to execute and deliver any and all documents and instruments in connection therewith.

(b) Authorization; Enforceability. The Borrowers have all necessary corporate, trust, partnership or other power, authority and legal right to execute, deliver and perform its obligations under this Promissory Note; the execution, delivery and performance by the Borrowers of this Promissory Note have been duly authorized by all necessary trust action on its part (including, without limitation, any required approvals); and this Promissory Note has been duly and validly executed and delivered by the Borrowers and constitutes legal, valid and binding obligations, enforceable against the Borrowers in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency, or any securities exchange, are necessary for the execution, delivery or performance by the Borrowers of this Promissory Note or for the legality, validity or enforceability hereof or thereof.

(d) No Breach. None of the execution and delivery of this Promissory Note, the consummation of the transactions herein and therein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, the fiduciary duties of the Trustees under the Trust, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or, to the knowledge of the Borrowers, any agreement or instrument to which the Borrowers are a party or by which they or their Property are bound or to which they are subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any Property of the Borrowers pursuant to the terms of any such agreement or instrument.

(e) Indebtedness for Borrowed Money. To the knowledge of the Borrowers, there are no Liens on the assets or properties of the Borrowers existing as of the date hereof.

6. This Promissory Note evidences the obligation of the Borrowers to pay to the Payee the deferred purchase price for a 98.8963% limited partnership interest in FRIENDSHIP PARTNERS L.P., a Delaware limited partnership (herein referred to as the "Interest") transferred by the Payee to the Borrowers, and the payment hereof is secured by a pledge of the Interest, and the proceeds thereof (the "Pledged Interest"), under a Pledge Agreement dated November 30, 2009 (as the same may be modified and supplemented from time to time, the "Pledge Agreement") between the Borrowers and the Payee. Terms defined in the Pledge Agreement but not herein have the respective meanings ascribed to such terms in the Pledge Agreement.

7. Expenses. The Borrowers agree to pay or reimburse Payee for: (a) all reasonable out-of-pocket costs and expenses of Payee (including, without limitation, the reasonable fees and expenses of legal counsel) in connection with (i) any default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated); and (b) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Promissory Note or any other document referred to herein.

8. Definitions. As used herein, the following terms shall have the following respective meanings:

"Business Day" shall mean a day other than Saturday, Sunday or any day on which banks located in the State of Delaware are authorized or obligated to close.

"Dollars" or "$" refers to lawful money of the United States of America.

"Lien" shall mean, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Promissory Note, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

9. If one or more of the following events shall occur and be continuing (each an "Event of Default"):

(a) The Borrowers shall default in the payment of any interest when due under this Promissory Note and the same shall continue for thirty (30) or more Business Days;

(b) Any representation or warranty made herein (or in any modification or supplement hereto) by the Borrowers, or any certificate furnished to Payee pursuant to the provisions hereof, shall prove to have been false or misleading as of the time made or furnished in any material respect;

(c) The Borrowers shall incur any indebtedness for borrowed money without the prior written consent of Payee (which consent shall not be unreasonably withheld) or any event specified in any note, agreement, indenture or other document evidencing or relating to any other indebtedness for borrowed money of the Borrowers shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, such indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity;

(d) A proceeding or case shall be commenced, without the application or consent of the Borrowers, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of the Borrowers or of all or any substantial part of their Property, or (iii) similar relief in respect of the Borrowers under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) or more days; or an order for relief against the Borrowers shall be entered in an involuntary case under the Federal Bankruptcy Code of 1978, as amended from time to time, presently codified as Title 11 of the United States Code (the "Bankruptcy Code");

(e) The Borrowers shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of themselves or of all or a substantial part of their Property, (ii) make a general assignment for the benefit of their creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any corporate action for the purpose of effecting any of the foregoing;

(f) A final judgment or judgments for the payment of money of $50,000 or more in the aggregate shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against the Borrowers and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and the Borrowers shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrowers to enforce any such judgment;

(g) The Borrowers shall default in the payment of any principal of or interest on this Promissory Note when due or in the performance of the Borrowers' obligations under the Pledge Agreement and any such default shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers;

(h) Any representation or warranty made in the Pledge Agreement by the Borrowers shall prove to have been false as of the time made in any material respect and shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers; or

(i) The Trust shall terminate, be liquidated or dissolved.

THEREUPON: (1) in the case of an Event of Default other than one referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, if not already fully due and payable at the Maturity Date, Payee may, by notice to the Borrowers, declare the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers; and (2) in the case of the occurrence of an Event of Default referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall automatically be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers.

10. Payments of principal and interest and any other amounts under this Promissory Note may be made in cash or in property (whether tangible or intangible) or a combination thereof. Any property other than cash transferred in payment of any amount of principal of or interest on this Promissory Note shall be valued as of the date of such payment in

accordance with the principles set forth in Treasury Regulations §§25.2512-1 to 25.2512-8 (26 C.F.R. §§25.2512-1 to 25.2512-8). Payments hereunder shall be made to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers.

11. Notices to the Payee hereunder shall be sent by certified mail or delivered by a recognized commercial courier service to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers. Notices to the Borrowers shall be sent by certified mail or delivered by a recognized commercial courier service to the Borrower, Wellin Family 2009 Irrevocable Trust, South Dakota Trust Company LLC, Trustee, 201 South Phillips Avenue, Suite 200, Sioux Falls, South Dakota 57104, or such other address as the Borrowers shall notify the Payee.

12. The terms of this Promissory Note may be waived, altered or amended only by an instrument in writing duly executed by the Payee and the Borrowers. No failure to exercise and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

13. The Investment Trustee has executed and delivered this Promissory Note for and on behalf of all of the Borrowers, in their capacity as Trustees, and in no case shall any Borrower be personally liable for or on account of any of the obligations of the Borrowers hereunder, recourse for which obligations shall be limited to the Collateral (which shall consist of the Pledged Interest) and any other assets of the Trust. Subject to the foregoing provisions of this paragraph, this Promissory Note shall be binding upon any successor Trustees of the Trust, and all references herein to the "Borrowers" shall include all such successor trustees but shall exclude any person or entity that, at the time of determination, shall have ceased to be a Trustee of the Trust. The Trust is personally obligated and fully liable for the amount due under this Promissory Note. The Payee has the right to sue on this Promissory Note and obtain a personal judgment against the Trust for satisfaction of the amount due under this Promissory Note either before or after a foreclosure of the Pledged Interest under the Delaware Uniform Commercial Code.

14. Choice of Law. This Promissory Note shall be governed by, and construed in accordance with, the law of the State of Delaware, without giving effect to any principles of choice of law thereof that could require the application of the law of another jurisdiction.

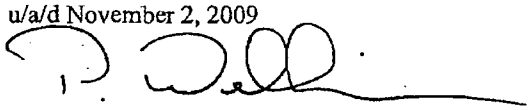
15. Waiver of Jury Trial. THE BORROWERS AND, BY ITS ACCEPTANCE OF THIS PROMISSORY NOTE, PAYEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009



Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee

Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

By: Patti Graumann
As its: Trust Officer

13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee
Cynthia W. Plum, Trustee

_____
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

_____
By: Patti Graumann
As its: Trust Officer

13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

Marjorie W. King
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

_____
By: Patti Graumann
As its: Trust Officer

13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

_____
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

Patti Graumann
By: Patti Graumann
As its: Trust Officer

EVANS, CARTER, KUNES & BENNETT, P. A.
ATTORNEYS AT LAW
115 CHURCH STREET
CHARLESTON, SOUTH CAROLINA 29401

T. HEYWARD CARTER, JR.†
ROBERT M. KUNES†
EDWARD G. R. BENNETT**
ANDREW W. CHANDLER*†
M. JEAN LEE
F. PATRICIA SCARBOROUGH**
DAVID H. KUNES**

†CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW
**LICENSED IN SC AND NY
*LICENSED IN SC AND GA
**LICENSED IN SC AND NC

MAILING ADDRESS:
P. O. BOX 369
CHARLESTON, SC 29402-0369

TELEPHONE (843) 577-2300
TELECOPIER (843) 577-2055
WWW.ECKB.COM

November 20, 2013

Mrs. Lynn W. Watson
Brown Brothers Harriman Trust Company of Delaware, N.A.
919 N. Market Street, Suite 420
Wilmington, DE 19801

Dear Lynn,

Enclosed for your records are copies of correspondence to South Dakota Trust Company LLC, the Trustee for the Wellin Trust that has been removed, as well as correspondence to Mr. Wellin's children, the three individual Trustees.

I have also enclosed the originals of the documents listed in the letter to the individual trustees, along with an acknowledgment of receipt. If you would, please sign the acknowledgment and return it to me in the enclosed envelope.

If you need any additional documentation, please let me know.

Best Regards,

F. Patricia Scarborough

cc: Mr. Brett D. Sovine

EVANS, CARTER, KUNES & BENNETT, P. A.
ATTORNEYS AT LAW
115 CHURCH STREET
CHARLESTON, SOUTH CAROLINA 29401

T. HEYWARD CARTER, JR.†
ROBERT M. KUNES†
EDWARD G. R. BENNETT**
ANDREW W. CHANDLER*†
M. JEAN LEE
F. PATRICIA SCARBOROUGH**
DAVID H. KUNES**

†CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW
**LICENSED IN SC AND NY
*LICENSED IN SC AND GA
**LICENSED IN SC AND NC

MAILING ADDRESS:
P. O. BOX 369
CHARLESTON, SC 29402-0369

TELEPHONE (843) 577-2300
TELECOPIER (843) 577-2055

WWW.ECKB.COM

November 20, 2013

Ms. Patti Graumann
South Dakota Trust Company, LLC
201 S. Phillips Avenue, Suite 200
Sioux Falls, SD 57104

Re: The Wellin 2009 Family Irrevocable Trust

Dear Ms. Graumann,

Please find enclosed an instrument removing Thomas Farace as Trust Protector of the above referenced Trust, and appointing Lester S. Schwartz, Esq., as the successor Trust Protector. Also please find enclosed an instrument signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, removing South Dakota Trust Company LLC as Trustee and appointing in its place Brown Brothers Harriman Trust Company of Delaware, N.A. as successor Trustee. The Trust's contact at Brown Brothers is Lynn W. Watson, 919 N. Market Street, Suite 420, Wilmington, DE 19801. Please transmit to her all books and records for the above referenced Trust which are in your possession.

Best Regards,

Edward G. R. Bennett

cc: Ms. Nell E. Mathews
Ms. Nosizi Ralephata
Mrs. Lynn W. Watson (without attachments)
Mr. Brett D. Sovine (without attachments)
Mr. Lester S. Schwartz (without attachments)
Mr. Robert B. Hood
Mr. James B. Hood

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LESTER S. SCHWARTZ, as Trust Protector of the Wellin Family 2009 Irrevocable Trust

vs.

PETER J. WELLIN, et al. : 2:13 CV 3595

Motion hearing held on Tuesday, December 31, 2013, commencing at 11:01 a.m., before the Hon. David C. Norton, in Courtroom II, United States Courthouse, 81 Meeting St., Charleston, South Carolina, 29401.

APPEARED FOR PLAINTIFF:

ROSEN, ROSEN & HAGOOD
By: H. Brewton Hagood, Esq.
Richard S. Rosen, Esq.
Daniel F. Blanchard, III, Esq.
P.O. Box 893
Charleston, SC 29402

APPEARED FOR DEFENDANTS:

NELSON MULLINS RILEY & SCARBOROUGH
By: Merritt G. Abney, Esq.
Robert H. Brunson, Esq.
151 Meeting Street
Charleston, SC 29401

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

EXHIBIT E

Q. Let me just ask you this question, as a novice in this area, is this tax strategy, this business of creating irrevocable trusts and having grantor status turned on and off, is that common in your profession?

A. It is. It's gotten to be common in recent years.

Q. And have you yourself done South Dakota trusts in the past?

A. I have set up a -- drafted a South Dakota trust document.

MR. ROSEN: Let me consult with my manager for a second.

That's all the questions I have for now.

MR. BRUNSON: Could I have a moment --

THE COURT: Sure.

MR. BRUNSON: -- before I cross-examine?

THE COURT: No problem.

(Brief interruption in proceedings.)

CROSS-EXAMINATION

BY MR. BRUNSON:

Q. Good morning, Mr. Schwartz. As I think you know, I'm Robert Brunson representing the defendants. You were appointed on November the 20th?

A. Yes, sir.

Q. Is that right? And who contacted you specifically to tell you that they wanted to hire you?

A. It was Edward Bennett.

Q. Edward Bennett? And he's the attorney for whom?
A. For Mr. Wellin.
Q. And what did Mr. Bennett tell you as to why Mr. Wellin was interested in replacing Tom Farace as his trust protector?
A. Reasons were that he was making some amendments and corrections dealing with the trust document. But --
Q. Mr. Farace wouldn't make those amendments for him?
A. I'm not aware of that. I don't know what communications that they had with Mr. Farace.
Q. You're aware that Tom Farace was Mr. Wellin's lawyer for a decade or so with respect to --
A. Yes, I am.
Q. -- his estate planning, correct?
A. Yes, I am.
Q. And you're aware that Mr. Farace wrote the trust document that we're talking about today that was created in 2009, right?
A. I've been informed that, yes.
Q. Would you agree that Mr. Farace would understand the intent of the trust document that he wrote for his client, Mr. Wellin, better than you, on November the 20th?
A. I'm not -- Well, I wouldn't say better than me. Because the -- in this situation, the grantor is still alive and able to communicate.
Q. Isn't it true that you have to gather the intent of a

Q. So when you were first contacted in early October, that's when you reviewed the documents?
A. That's correct.
Q. And then a couple weeks later you met with Mr. Wellin?
A. That's correct.
Q. Okay. And when did -- well, with respect to the amendments that you made on November the 20th, who physically wrote that document? The amendments document.
A. I reviewed and revised it, but it was -- it was a joint effort. It was done through Edward Bennett's office.
Q. So is it fair to say that the amendments were written by Edward Bennett?
A. I'm not sure who wrote them. I reviewed them, I modified them. I made my changes to what -- based on what I was comfortable doing as the -- based on my discretion as trust protector.
Q. When you met with Mr. Wellin, did you review all of those amendments with him?
A. We talked briefly, or, you know, we talked about the -- some of the provisions that needed to be made.
Q. Did Mr. Wellin tell you that he wanted to make those amendments to the trust?
A. He did indicate that to me.
Q. Did he explain to you why he wanted to make those amendments?

A. He made it known to me.
Q. He made it known to you. How did he do that?
A. He was able to communicate. We were able to talk and I was able to understand him.
Q. How did he make it known to you?
A. He spoke to me.
Q. Well --
A. And he answered questions.
Q. Let's take an example. You removed South Dakota Trust as the corporate trustee, right? That was one of your amendments?
A. That's correct.
Q. And did Mr. Wellin tell you, I would like for you to remove South Dakota Trust as the corporate trustee?
A. That was more on -- in lines in their failure to take the appropriate action as the co-trustee to protect the interests of the trust.
Q. Was Mr. Wellin aware of that? I'm sorry. Improper question. Did Mr. Wellin tell you that he understood that South Dakota Trust was not doing what they had been asked to do?
A. Under the trust document, I have to -- I have the power to remove and replace the trustee, and I don't have to have Mr. Wellin's consent or directive, it's based on my sole and absolute discretion as trust protector.

IN THE DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lester S. Schwartz, as Trust Protector of the Wellin Family 2009 Irrevocable Trust, Plaintiff vs. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, Friendship Management, LLC, Cynthia W. Plum as Manager of Friendship Management, LLC, Friendship Partners, LP and Keith S. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2011, as Trustee of the KSW 2011 Qualified Grantor Retained Annuity Trust, and Trustee of the KSW 2012 Qualified Grantor Retained Annuity Trust u/a/d November 28, 2012 Defendant(s).	Civil Action No. 2:13-CV-03595-DCN **SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

Plaintiff Lester S. Schwartz, as Trust Protector of the Wellin Family 2009 Irrevocable Trust (the "Trust"), hereby supplements his reply memorandum of law in support of his motion for an extension of the temporary restraining order entered on December 20, 2013, and for a preliminary injunction, as follows:

1. **Plaintiff's Standing to Commence this Action.**

Plaintiff's initial reply memorandum points out that the trust agreement was amended on November 20, 2013, to specifically give Plaintiff, as trust protector, the power to "represent" the Trust with respect to any litigation brought by or against the Trust if any Trustee is a party to such litigation in both an individual or corporate capacity and his or her capacity as a Trustee and

EXHIBIT F

to give the Plaintiff "the power to pay, compromise, contest, submit to arbitration, or otherwise settle such litigation in favor of or against the trust" and to "*prosecute or defend such litigation for the protection of trust assets.*" *See* Wellin Family 2009 Irrevocable Trust Amendment dated 11.20.13 ¶ 7 (emphasis added). The power to "prosecute" litigation includes the power to commence an action. Notwithstanding this amendment, Defendants argued at the hearing held on December 31, 2013, that Plaintiff lacks standing to commence or initiate this action.

In addition to the terms of the trust amendment, South Dakota trust law empowers Plaintiff to commence this action. *See* S.D. CODIFIED LAWS § 55-3-20.1. South Dakota statutory law provides that "*[i]n addition to other remedies available by law and procedures or powers set out in a trust instrument*, the settlor, *or the settlor's agent*, a cotrustee, or a qualified beneficiary as defined in [S.D. CODIFIED LAWS § 55-2-13], may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative." *Id.* (emphasis added). The statute authorizes a "settlor's agent"—which includes a trust protector—to bring an action to remove a trustee. *See* Stewart E. Sterk, *Trust Protectors, Agency Costs, and Fiduciary Duty*, 27 CARDOZO L. REV. 2761, 2804 (2006) ("The relationship between the trust's settlor and a trust protector is founded primarily on trust; the settlor trusts the protector to act as a faithful agent."); Philip J. Ruce, *The Trustee and the Trust Protector: A Question of Fiduciary Power. Should A Trust Protector Be Held to A Fiduciary Standard?*, 59 DRAKE L. REV. 67, 68 (2010) ("'[A] trust protector is an individual (or committee or entity) who is not a trustee but who is nevertheless granted powers under the trust that supersede corresponding powers of the trustee.' For practical purposes, a trust protector is generally a person selected by the settlor of a trust to represent the interests of the settlor in making decisions related to the trust that the settlor is unable to make, most often because the settlor is deceased. The idea behind the trust protector is to have a 'living

embodiment' of the settlor to represent the settlor's interests, even after the settlor is gone. The trust protector is, at its core, an agent."); Reid K. Weisbord, *Social Security Representative Payee Misuse*, 117 PENN ST. L. REV. 1257, 1283 (2013) ("Like a trustee, a trust protector is an agent of the settlor and beneficiaries . . . ."). Although the term "trust protector" is relatively new to American courts and there is a paucity of case law on the subject, a federal district court has held that a trust protector has the right to sue a trustee for a breach of trust, a right to remove a trustee, and to seek a trust accounting. *See Shelden v. Trust Co. of Virgin Islands, Ltd.*, 535 F. Supp. 667, 671 (D.P.R. 1982) (observing that trust protector acts as a representative of the settler and as guardian of his interests in the trust and "is a party with real interest in the trust and in the accounting sought").

In summary, in addition to the authorization provided in the trust amendment, South Dakota statutory law further provides Plaintiff with the power to commence this action.[1]

2. South Dakota Law Authorizes the Court to Grant Injunctive Relief Pending a Final Decision on Plaintiff's Request to Remove Defendants as Trustees.

Defendants erroneously contend that federal law governs whether or not an injunction should be issued in this case. *See* Defs' Opp. Memo. pp. 10-11. Instead, where an injunction explicitly authorized by state law is sought in a diversity case, the Supreme Court's decision in *Erie R.R. v. Tompkins,* 304 U.S. 64 (1938), mandates that state standards governing the issuance of preliminary injunctions be followed. *See Capital Tool & Mfg. Co., Inc. v. Maschinenfabrik Herkules*, 837 F.2d 171, 172 (4th Cir. 1988); *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*, 894 F. Supp. 2d 691, 706 (E.D. Va. 2012) (in a diversity case involving alleged violation of

[1] Plaintiff's Complaint seeks, *inter alia*, to remove Defendants as trustees of the trust. *See* Complaint p. 10. The trust agreement also gives Plaintiff, as trust protector, the power to amend the trust. *See* Wellin Family 2009 Irrevocable Trust Agreement Art. VI. Well-settled law holds that the holder of such a power has standing, on behalf of the trust beneficiaries, to bring suit against the trustee to enforce the trust. See RESTATEMENT (THIRD) OF TRUSTS § 94(1) & cmt. d(1) (2012) (discussing trust protector's power to sue to enforce trust).

a Virginia statute allowing for injunctive relief, the Court examined *Capital Tool* and held that Virginia law, not FED. R. CIV. PRO. 65, applied and that Virginia law did not require a movant to prove irreparable harm or the lack of an adequate remedy at law); *Redner's Markets, Inc. v. Joppatowne G.P. Ltd. P'ship*, CIV.A. RDB-11-1864, 2013 WL 2903285 (D. Md. June 13, 2013) (following *Capital Tool* and holding that a federal court sitting in diversity should apply state substantive law to the issuance of a preliminary injunction).

Article III of the trust agreement in this case states it shall be governed by South Dakota law. *See* Wellin Family 2009 Irrevocable Trust Agreement Art. III. South Dakota substantive law provides that "[p]ending a final decision on a request to remove a trustee, the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries." S.D. CODIFIED LAWS § 55-3-20.1. During the hearing on December 31, 2013, a question was asked whether this language authorizes the Court to grant an "injunction" pending a final decision on the merits. The language in the South Dakota statute is patterned on § 706(c) of the Uniform Trust Code. *See* UNIF. TRUST CODE § 706(c). The comments to that section elucidate that "[s]ubsection (c) authorizes the court to intervene pending a final decision on a request to remove a trustee" and "[a]mong the relief that the court may order . . . is an injunction prohibiting the trustee from performing certain acts . . . ." *Id.*

In sum, irrespective of Rule 65, S.D. CODIFIED LAWS § 55-3-20.1 empowers this Court to grant "appropriate relief as may be necessary to protect the trust property"—including an injunction against the trustees—pending a final decision on Plaintiff's Complaint. Moreover, when a statute empowers a court to grant injunctive relief, the party seeking an injunction is not required to establish the traditional prerequisites, *i.e.*, irreparable harm and lack of an adequate remedy at law, before the injunction can issue. *See Envtl. Def. Fund, Inc. v. Lamphier*, 714 F.2d

331, 338 (4th Cir. 1983) ("Where a statute authorizes injunctive relief for its enforcement, plaintiffs need not plead and prove irreparable injury."); *Capital Tool*, 837 F.2d at 172 ("[A] complainant need not allege or prove irreparable harm when it invokes a statute that authorizes injunctive relief."); *Abdo v. IRS,* 234 F.Supp.2d 553, 564 (M.D.N.C.2002), *aff'd,* 63 Fed.Appx. 163 (4th Cir. 2003); *United States v. Music Masters, Ltd.,* 621 F.Supp. 1046, 1058 (W.D.N.C.1985).

For the reasons stated above and in Plaintiff's prior memoranda of law and affidavits, Plaintiff respectfully requests the Court to grant his motion for extension of the temporary restraining order and issuance of a preliminary injunction.

ROSEN, ROSEN & HAGOOD, LLC

/s/ Daniel F. Blanchard, III
Richard S. Rosen, Esquire
H. Brewton Hagood , Esquire
Daniel F. Blanchard, III, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
rsrosen@rrhlawfirm.com
bhagood@rrhlawfirm.com
dblanchard@rrhlawfirm.com

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina.
January 5, 2014.

WRITTEN CONSENT IN LIEU OF A MEETING OF THE GENERAL PARTNER OF FRIENDSHIP PARTNERS, LP

Effective December 1, 2013

The undersigned, being the sole general partner (the "***General Partner***") of Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***"), by execution of this document hereby (i) consents to and adopts the following resolutions as of the date of this document, which resolutions shall have the same force and effect as if adopted by an affirmative vote of a meeting of the General Partner duly called and held and (ii) direct that this Written Consent be filed with the minutes of the proceedings of the Partnership.

WHEREAS, pursuant to Section 10.2(a)(i) of the Agreement of Limited Partnership of the Partnership (the "***Partnership Agreement***"), the General Partner has the authority to dissolve the Partnership; and

WHEREAS, the General Partner has determined that the Partnership is no longer serving its original purpose and it is in the best interest of the partners of the Partnership for the Partnership to dissolve and liquidate as described in that certain Plan of Dissolution and Liquidation, a copy of which is attached hereto as **Exhibit A** (the "***Plan of Dissolution and Liquidation***").

NOW, THEREFORE, upon consideration of the above matters, among other things, and having regard for the interests of the Partnership and its partners, **BE IT RESOLVED**, that the General Partner hereby consents to the dissolution, winding up and liquidation of the Partnership and in conjunction with such dissolution, winding up and liquidation hereby approves and adopts the Plan of Dissolution and Liquidation; and

FURTHER RESOLVED; that the General Partner is authorized and directed to do or cause to be done all acts and things the General Partner may deem necessary or proper in order to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned has executed this Written Consent in Lieu of a Meeting.

FRIENDSHIP MANAGEMENT, LLC

By: _____
Cynthia W. Plum, Manager

EXHIBIT G

PLAN OF DISSOLUTION
AND LIQUIDATION OF
FRIENDSHIP PARTNERS, LP

This Plan of Dissolution and Liquidation (the "***Plan***") is intended to accomplish the dissolution and liquidation of Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***"), in accordance with the Delaware Revised Uniform Limited Partnership Act (the "***Act***").

1. ***Approval and Adoption of Plan***. Friendship Management, LLC, a Delaware limited liability company, the sole general partner of the Partnership (the "***General Partner***"), pursuant to Section 10.2(a)(i) of the limited partnership agreement of the Partnership (the "***Partnership Agreement***") by written consent has adopted and approved this Plan, effective as of December 1, 2013 (the "***Effective Date***").

2. ***Cessation of Business and Investment Activities***. After the Effective Date, the Partnership shall not engage in any business or investment activities except to the extent necessary to preserve the value of its assets, wind up its business and investment affairs, and distribute its assets in accordance with this Plan.

3. ***Hiring Consultants and Advisors***. For the purpose of effecting the dissolution of the Partnership, the Partnership may hire or retain, at the discretion of the General Partner, such consultants and advisors as the General Partner deems necessary or desirable to supervise or facilitate the dissolution and winding up of the Partnership.

4. ***Plan of Distribution***.

From and after the Effective Date, the Partnership shall complete the following actions:

(i) The Partnership shall pay its known creditors in satisfaction of known liabilities of the Partnership or make reasonable provision for payment thereof.

(ii) The Partnership shall establish reserves reasonably adequate to meet any and all contingent or unforeseen liabilities or obligations of the Partnership as determined by the General Partner in the General Partner's absolute discretion, provided that at the expiration of one year from the Effective Date, the balance of such reserves remaining after payment of such contingencies or liabilities shall be distributed to the partners of the Partnership in accordance with Section 5.1 of the Partnership Agreement.

(iii) The Partnership shall distribute to its partners, in accordance with Section 10.3(c) and Section 5.1 of the Partnership Agreement, all remaining assets, if any, including all available cash, including the cash proceeds of any sale, exchange or disposition, except such cash, property or assets as are reserved for paying or making reasonable provision for the claims and obligations of the Partnership. Such distributions may occur all at once or in a series of

distributions and shall be in cash or assets, in such amounts, and at the time or times as the General Partner may determine in its absolute discretion.

5. ***Cancellation of Limited Partner Interests.*** The distributions to the Partnership's limited partners pursuant to Section 4 hereof shall be in complete cancellation of the outstanding limited partner interests of the Partnership. From and after the Effective Date, and subject to applicable law, each limited partner of the Partnership shall cease to have any rights in respect thereof, except the right to receive distributions pursuant to and in accordance with Section 4(ii) and (iii) hereof.

6. ***Expenses of Dissolution.*** In connection with and for the purposes of implementing and assuring completion of this Plan, the Partnership may, in the absolute discretion of the General Partner, pay any brokerage, agency, professional and other fees and expenses of persons rendering services to the Partnership in connection with the collection, sale, exchange or other disposition of the Partnership's property and assets and the implementation of this Plan.

7. ***Indemnification.*** The Partnership shall continue to indemnify the General Partner, its members and managers, and its officers, agents and employees in accordance with the Partnership Agreement and contractual arrangements as therein or elsewhere provided, and such indemnification shall apply to acts or omissions of such persons in connection with the implementation of this Plan and the winding up of the affairs of the Partnership.

8. ***Authorization.*** The General Partner is hereby authorized, without further action by any of the other partners of the Partnership, to do and perform, any and all acts, and to make, execute, deliver or adopt any and all agreements, resolutions, conveyances, certificates and other documents of every kind which are deemed necessary, appropriate or desirable, in the absolute discretion of the General Partner, to implement this Plan and the transactions contemplated hereby, including, without limiting the foregoing, all filings or acts required by any state or federal law or regulation to wind up its affairs.

IN WITNESS WHEREOF, the undersigned has caused this Plan of Dissolution and Liquidation to be duly executed as of the Effective Date.

FRIENDSHIP MANAGEMENT, LLC

By: Cynthia W. Plum, Manager

Cynthia W. Plum, Manager

WRITTEN CONSENT IN LIEU OF A MEETING OF THE DISTRIBUTION COMMITTEE AND THE INDIVIDUAL TRUSTEES OF WELLIN FAMILY 2009 IRREVOCABLE TRUST

Effective December 1, 2013

The undersigned, being all of the members of the Distribution Committee (the "***Distribution Committee***") and the individual Trustees (the "***Individual Trustees***") of the Wellin Family 2009 Irrevocable Trust (any reference herein to the "***Trust***" shall refer to the Wellin Family 2009 Irrevocable Trust and any trust created thereunder), by execution of this document hereby (i) consent to and adopt the following resolutions as of the date of this document, which resolutions shall have the same force and effect as if adopted by an affirmative vote of a meeting of the Distribution Committee duly called and held and (ii) direct that this Written Consent be filed with the records of the Trust.

WHEREAS, pursuant to Article VII of the Trust, the Distribution Committee is empowered to direct discretionary distributions of Trust property to the beneficiaries of the Trust;

WHEREAS, the Distribution Committee has become aware of a liquidating distribution (the "***Partnership Distribution***") to be received by the Trust from Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***") with respect to the Trust's limited partner interest in the Partnership; and

WHEREAS, the Distribution Committee has decided to exercise its discretion to authorize and cause a distribution from the Trust in an amount equal to the excess of the Partnership Distribution over $52,000,000 (the $52,000,000 hereinafter referred to as the "***Trust Retained Amount***") to Cynthia W. Plum, Peter J. Wellin, and Marjorie W. King, as beneficiaries of the Trust, outright and free of trust and in equal shares (each such distribution share hereinafter referred to as the "***One-Third Share of the Excess Partnership Distribution***").

NOW, THEREFORE, upon consideration of the above matters, among other things, and having regard for the interests of the beneficiaries of the Trust, **BE IT RESOLVED**, that Peter J. Wellin and Marjorie W. King, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum; that Marjorie W. King and Cynthia W. Plum, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Peter J. Wellin; and that Peter J. Wellin and Cynthia W. Plum, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Marjorie W. King; and for the avoidance of doubt, if the Partnership Distribution is distributed to the Trust in more than one distribution, then the Trust may distribute the One-Third Share of the Excess Partnership Distribution to each of the before named beneficiaries as soon as the Trust has sufficient cash to do so and before the funding of the Trust with the Trust Retained Amount; and

FURTHER RESOLVED, that Peter J. Wellin and Marjorie W. King hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum on behalf of the Trust; that Marjorie W. King and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Peter J. Wellin on behalf of the Trust; that Peter J. Wellin and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Marjorie W. King on behalf of the Trust, and that each member of the Distribution Committee and Individual Trustee hereby acknowledges that each such distribution directly from the Partnership to the before mentioned beneficiaries shall be deemed to be a distribution from the Partnership to the Trust followed by a distribution from the Trust to the beneficiaries for Trust accounting purposes;

FURTHER RESOLVED, that each of the members of the Distribution Committee and each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin by Cynthia W. Plum his attorney in fact

Peter J. Wellin

Marjorie W. King

FURTHER RESOLVED, that Peter J. Wellin and Marjorie W. King hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum on behalf of the Trust; that Marjorie W. King and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Peter J. Wellin on behalf of the Trust; that Peter J. Wellin and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Marjorie W. King on behalf of the Trust, and that each member of the Distribution Committee and Individual Trustee hereby acknowledges that each such distribution directly from the Partnership to the before mentioned beneficiaries shall be deemed to be a distribution from the Partnership to the Trust followed by a distribution from the Trust to the beneficiaries for Trust accounting purposes;

FURTHER RESOLVED, that each of the members of the Distribution Committee and each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin

Marjorie W. King

WRITTEN CONSENT IN LIEU OF A MEETING OF THE INDIVIDUAL TRUSTEES OF WELLIN FAMILY 2009 IRREVOCABLE TRUST

Effective December 5, 2013

The undersigned, being all of the individual Trustees (the "***Individual Trustees***") of the Wellin Family 2009 Irrevocable Trust (any reference herein to the "***Trust***" shall refer to the Wellin Family 2009 Irrevocable Trust and any trust created thereunder), by execution of this document hereby (i) consent to and adopt the following resolutions as of the date of this document, which resolutions shall have the same force and effect as if adopted by an affirmative vote of a meeting of the Individual Trustees duly called and held and (ii) direct that this Written Consent be filed with the records of the Trust.

WHEREAS, On Sept. 4, 2012, the trustees of the Trust in their capacities as trustee of the Trust issued a promissory note (the "***Note***") to the Keith S. Wellin Florida Revocable Living Trust (the "***Payee***") in the original principal amount of $49,802,115.00;

WHEREAS, the outstanding balance of the Note consisting of unpaid principal and accrued interest as of Dec. 6, 2013 is or will be $50,228,000.00 (the "***Outstanding Balance of the Note***");

WHEREAS, the Trust is anticipating the receipt of a liquidating distribution (the "***Partnership Distribution***") from Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***") with respect to the Trust's limited partner interest in the Partnership; and

WHEREAS, the Individual Trustees desire to use a portion of such Partnership Distribution to pay off the Note.

NOW, THEREFORE, upon consideration of the above matters, among other things, and having regard for the interests of the beneficiaries of the Trust, **BE IT RESOLVED,** that the Individual Trustees hereby approve and authorize a payment to the Payee in an amount equal to the Outstanding Balance of the Note in satisfaction of the Note; and

FURTHER RESOLVED, that the Individual Trustees hereby agree to authorize the Partnership to pay a portion of the Trust's share of the Partnership Distribution in an amount equal to the Outstanding Balance of the Note directly to the Payee in satisfaction of the Note and that the Individual Trustees hereby acknowledge that such payment directly from the Partnership to the Payee shall be deemed to be a distribution from the Partnership to the Trust followed by a payment from the Trust to the Payee for Trust accounting purposes;

FURTHER RESOLVED, that each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin by Cynthia W. Plum his Attorney in FACT

Marjorie W. King

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin

Marjorie W. King

Marjorie W. King

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO.
COUNTY OF CHARLESTON	)	
Lester S. Schwartz, as Trust Protector of the Wellin Family 2009 Irrevocable Trust, Plaintiff	)	
vs.	)	SUMMONS
Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, Friendship Management, LLC, Cynthia W. Plum as Manager of Friendship Management, LLC, Friendship Partners, LP and Keith S. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2011, as Trustee of the KSW 2011 Qualified Grantor Retained Annuity Trust, and Trustee of the KSW 2012 Qualified Grantor Retained Annuity Trust u/a/d November 28, 2012 Defendant(s).	)	

2013 JUL 17 PM 3:51

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned, Rosen, Rosen & Hagood, at their offices at 151 Meeting Street, Suite 400, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint as required by this Summons, Plaintiff will apply to the Court for the relief demanded in the Complaint.

EXHIBIT H

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Richard S. Rosen, Esquire
H. Brewton Hagood, Esquire
Daniel F. Blanchard, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
Email: rsrosen@rrhlawfirm.com

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
December 20, 2013.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LESTER S. SCHWARTZ, *as Trust Protector of the Wellin Family 2009 Irrevocable Trust,*	)	No. 2:13-cv-3595-DCN
Plaintiff,	)	
vs.	)	**ORDER**
PETER J. WELLIN, *et. al.,*	)	
Defendants.	)	

This matter is before the court on plaintiff Lester Schwartz's motion to extend the state court-ordered temporary restraining order ("TRO") and for a preliminary injunction. For the reasons stated below, the motion is denied.

I. BACKGROUND

As the parties are very familiar with the facts of this case, the court dispenses with a lengthy recitation of them. Friendship Management, LLC is the 1.1% owner and sole general partner of Friendship Partners, LP. The Wellin Family 2009 Irrevocable Trust ("the Trust") holds the remaining 98.9% interest in Friendship Partners. On December 1, 2013, Cynthia Wellin Plum, as manager of Friendship Management, directed the liquidation of Friendship Partners. According to its liquidation plan, Friendship Partners intended to distribute the proceeds of its liquidated assets to its partnership on a pro rata basis. The Trust would therefore receive 98.9% of Friendship Partners' assets.

Keith Wellin's three adult children, as the Trust's individual trustees, make up the Trust's distribution committee. On December 1, 2013, with notice of Friendship

EXHIBIT I

Partners' liquidation plan, the Wellin children executed written consents to the distribution of Trust assets. Specifically, they directed the Trust to retain enough money to satisfy the note held by their father. At the same time, the Wellin children authorized the equal distribution of the balance of the Trust's principal to themselves as the Trust's named beneficiaries.

On December 5, 2013, Brown Brothers Harriman, the newly-installed corporate trustee for the Trust, resigned its position as corporate trustee.

On December 6, 2013, Friendship Partners sold all its assets, including the 896 Class A Berkshire Hathaway common shares that Keith Wellin had contributed to the partnership. Friendship Partners then distributed all its assets to the members of its partnership, Friendship Management and the Trust. Upon receiving the bulk of Friendship Partners' assets, the Trust set aside about $52 million to pay off the note held by Keith Wellin. The remaining money, about $95 million, was distributed equally among the Wellin children.

On December 17, 2013, attorney Lester S. Schwartz, in his capacity as trust protector of the Trust, filed a complaint in Charleston County Probate Court against Keith Wellin, his three adult children, Friendship Management, and Friendship Partners.[1] In his complaint, plaintiff asserts that the Wellin children have "frustrated the intent and purposes of the Trust," which was to provide for Keith's grandchildren as well as his children, by liquidating Friendship Partners' assets and putting most of the proceeds into their own bank accounts. Plaintiff's complaint asserts the following six causes of action:

[1] On January 3, 2013, plaintiff voluntarily dismissed Friendship Partners and Keith Wellin from the case without prejudice. As a result, there is complete diversity among the parties.

(i) Breach of fiduciary duty (as to the three Wellin children);

(ii) Conversion (as to the three Wellin children);

(iii) Removal of trustees (as to the three Wellin children);

(iv) Restitution (as to all defendants);

(v) Recovery of attorneys' fees (as to the three Wellin children);

(vi) Temporary restraining order, and temporary and permanent injunction (as to all defendants).

On December 20, 2013, Charleston County Probate Judge Irvin Condon issued an ex parte TRO that enjoined the Wellin children from "disposing of or exercising any control over any of the cash, funds, or proceeds realized by the sale of the 896 Class A Berkshire Hathaway common shares" without plaintiff's express written consent or upon court order. The state court's TRO also stated that it "does not preclude the investing by the Trustees of the restrained assets consistent with their duties as prudent Trustees. The trust funds need to be traceable and accountable to the Trust Protector and this Court."

On December 27, 2013, the Wellin children, Friendship Management, and Friendship Partners removed the case to this court. On December 30, 2013, plaintiff filed an emergency motion to extend the state court's TRO and for a preliminary injunction. The matter has been fully briefed and the parties presented oral argument at a hearing held on December 31, 2013.

II. STANDARDS

The court evaluates a request for a temporary restraining order under the same rubric as a request for a preliminary injunction. See Virginia v. Kelly, 29 F.3d 145, 147 (4th Cir. 1004) (applying preliminary injunction standard to a request for a temporary restraining order); Smith v. S. Carolina Election Comm'n, 874 F. Supp. 2d 483, 497

(D.S.C. 2012) (same). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); see Munaf v. Geren, 553 U.S. 674, 689-90 (2008) ("A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right." (internal citation and quotation marks omitted)); In re Microsoft Corp. Antitrust Litig., 333 F.3d 517, 526 (4th Cir. 2003) ("[P]reliminary injunctions are extraordinary interlocutory remedies that are granted in limited circumstances and then only sparingly."), abrogated on other grounds by eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006).

III. DISCUSSION

Plaintiff asks the court to impose a further TRO and a preliminary injunction that feature the same restrictions imposed by the state court TRO. This proposed injunction seeks to prevent the Wellin defendants from:

> being able to sell, trade, negotiate, gift, alienate, hide, convert or otherwise dispose of the proceeds of the sale of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP by Keith S. Wellin in 2003 or from participating in, authorizing, or allowing such transactions without the express, written, and notarized consent of the Plaintiff or further order of this court.[2]

Pl.'s Mot. for Prelim. Inj. Ex. 1 at 2.

[2] The injunction sought resembles the injunction unsuccessfully sought in a related case, Wellin v. Wellin, No. 13-cv-01831. In that case, Keith Wellin sought to keep his three children

> from being able to sell, trade, negotiate, gift, or otherwise dispose of any of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP . . . . [and/or] the 98.90% limited partnership interest in Friendship Partners, LP . . . without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney.

Pl.'s Mot. for TRO, Wellin v. Wellin, No. 13-cv-01831, ECF No. 5 at 1.

A party seeking a preliminary injunction must demonstrate that: (1) he is likely to succeed on the merits: (2) that he is likely to suffer irreparable harm in the absence of injunctive relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. Winter, 555 F.3d at 320. A court considering whether to impose a preliminary injunction must separately consider each of the four Winter factors. Pashby v. Delia, 709 F.3d 307, 321 (4th Cir. 2013).

As an initial matter, plaintiff contends that he need not meet the four-pronged preliminary injunction standard described by the Supreme Court and the Fourth Circuit. Specifically, he argues that "[W]here an injunction explicitly authorized by state law is sought in a diversity case, the Supreme Court's decision in Erie R.R. v. Tompkins, 304 U.S. 64 (1938), mandates that state standards governing the issuance of preliminary injunctions be followed." Pl.'s Reply to Mot. for Prelim. Inj. 3 (emphasis added). To support his argument, plaintiff relies on Environmental Defense Fund v. Lamphier, 714 F.2d 331 (4th Cir. 1983). In Lamphier, the defendants appealed the entry of a permanent injunction entered after the district court found them liable for violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, et seq. The Fourth Circuit affirmed, explaining that RCRA's enforcement provision "explicitly calls for the judicial issuance of injunctions to coerce compliance with the Act's requirements. Where a statute authorizes injunctive relief for its enforcement, plaintiffs need not plead and prove irreparable injury." Lamphier, 714 F.2d at 338. Plaintiff argues that since South Dakota law states that "the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries," S.D. Codified Laws § 55-3-20.1 (2013), under Lamphier, this statutory language exempts him from having to

prove irreparable injury because it amounts to the explicit authorization of injunctive relief.

Plaintiff's reasoning fails. The Lamphier court dealt exclusively with the post-trial imposition of a permanent injunction, and did not address whether its holding governed the evaluation of preliminary injunctions or TROs. Indeed, one of the cases cited in plaintiff's reply distinguishes between permanent and preliminary injunctions. Capital Tool & Mfg. Co. v. Maschinenfabrik Herkules, 837 F.2d 171, 172 (4th Cir. 1988) (explaining that Lamphier's ruling applies to the imposition of permanent injunctions and invoking the Fourth Circuit's preliminary injunction test while evaluating the trial court's denial of a preliminary injunction).[3] Indeed, the Fourth Circuit has very recently explained that "courts considering whether to impose preliminary injunctions must separately consider each Winter factor." Pashby, 709 F.3d at 321. To agree with plaintiff on this issue would be to ignore the clear, current teachings of this circuit.

Even if Lamphier did apply to the case at hand, plaintiff's argument would still fail because the South Dakota trust law that plaintiff has invoked does not expressly authorize court-ordered injunctive relief. Rather, the statute simply states that a court "may order appropriate relief" to protect trust assets "pending a final decision on a request to remove a trustee." S.D. Codified Laws § 55-3-20.1. This language simply codifies a court's inherent power by reiterating that the court may award appropriate relief to parties before it. Moreover, the South Dakota statute's language is fundamentally different from the statutory language at issue in the cases cited by plaintiff.

[3] The other cases cited in plaintiff's reply, Redner's Markets, Inc. v. Joppatowne G.P. Limited Partnership, No. 11-cv-1864, 2013 WL 2903285 (D. Md. June 13, 2013), and E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc., 894 F. Supp. 2d 691 (E.D. Va. 2012) explicitly addressed the entry of permanent, not preliminary, injunctions.

See 42 U.S.C. § 6928 ("[The EPA] Administrator may commence a civil action . . . for appropriate relief, including a temporary or permanent injunction."); Va. Code Ann. § 59.1-337 (West) ("Actual or threatened misappropriation may be enjoined."). The statutes at issue in Lamphier and Kolon Industries expressly authorized injunctive relief. Section 55-3-20.1 does not.

Thus, the court must consider whether plaintiff has demonstrated each of the four Winter factors.[4]

A. Likelihood of Success on the Merits

Plaintiff first contends that he has demonstrated that he is likely to succeed on the merits of this case because he "has made a sufficient showing that Defendants, as co-trustees, participated in and committed serious breaches of trust and are not serving solely the best interests of all beneficiaries." Pl.'s Reply in Supp. of Mot. for Prelim. Inj. 12.

"Although [the likelihood-of-success] inquiry requires plaintiffs . . . to make a clear showing that they are likely to succeed at trial, plaintiffs need not show a certainty of success." Pashby, 709 F.3d. at 321 (internal citations omitted) (emphasis added). It is not enough if a plaintiff only provides sufficient factual allegations to survive a Rule 12(b)(6) motion to dismiss. Torres Adv. Enterp. Solutions LLC v. Mid-Atl. Prof'ls, Inc., No. 12-cv-03679, 2013 WL 531215, at *3 (D. Md. Feb. 8, 2013) (internal citations omitted).

[4] The court's analysis would be much the same if it were to employ South Dakota law when evaluating plaintiff's request for a preliminary injunction. When determining whether a preliminary injunction should issue, South Dakota courts consider "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." Dacy v. Gors, 471 N.W.2d 576, 579 (S.D. 1991) (quotations omitted).

The parties agree, at least in part, on the facts that underlie this lawsuit. Defendants do not dispute that they liquidated Friendship Partners' assets and, after transferring those assets to the Trust, deposited about $95 million of Trust assets into their own bank accounts. However, the complaint draws further legal conclusions that the court need not credit at this juncture. Specifically, the complaint alleges that defendants' actions breached duties that defendants owed to Friendship Partners and to the Trust's grantor and other beneficiaries. See Compl. ¶¶ 34-36. Plaintiff's assertions do not amount to a clear showing that he is likely to succeed on the merits of his claims. Thus, plaintiff has failed to make the first showing required under Winter.

B. Irreparable Harm

At the hearing, plaintiff argued that he has shown that he is likely to suffer irreparable harm if the state court's TRO is dissolved.

The Supreme Court has instructed that

> The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (emphasis in original). Moreover, the Fourth Circuit has explained that "a preliminary injunction is not normally available where the harm at issue can be remedied by money damages." Bethesda Softworks, LLC v. Interplay Entm't Corp., 452 F. App'x 351, 353 (4th Cir. 2011) (citing Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp., 17 F.3d 691, 693-94 (4th Cir. 1994)).

At the hearing, plaintiff admitted that the damages he seeks – the return of $95 million to the trust plus attorneys' fees – are all monetary. Plaintiff's counsel also

admitted that the Trust retains the roughly $52 million set aside to pay the amount of the note held by Keith Wellin. Plaintiff has not even alleged that the Wellin defendants are likely to become insolvent before issues in this case are resolved. See Hughes, 17 F.3d at 694 (explaining that irreparable harm may be found where the moving party's business will fail absent a preliminary injunction, or where the defendant may become insolvent before damages are awarded). As a result, plaintiff has not met the second Winter factor.

C. Balance of the Equities

Plaintiff next argues that the balance of the equities tips in his favor because defendants have unclean hands and because the injunction would preserve the status quo.

In considering the balance of the equities between the parties, the court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the relief requested." Winter, 555 U.S. at 24 (quoting Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 542 (1987)).

The injunction plaintiff seeks would not preserve the status quo. Rather, it would give plaintiff veto power over the decisions made by defendants in their roles as trustees. Even if plaintiff is the proper trust protector of the Trust – a proposition that defendants dispute – he seeks a power that the trust protector has never before held. In addition, defendants fiercely dispute that their actions are anything other than legal and in keeping with the governing provisions of both Friendship Partners and the Trust itself. Without more, plaintiff has failed to show that defendants have unclean hands. For these reasons, plaintiff has not made the third showing required under Winter.

D. Public Interest

Finally, plaintiff argues that the grant of an injunction would serve the public interest by "maintaining the integrity of trusts and insuring the availability of relief upon final judgment." Pl.'s Reply at 15.

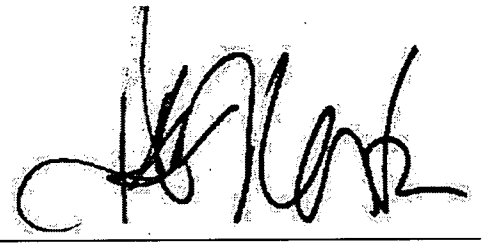
The Supreme Court has admonished that "courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction." Winter, 555 U.S. at 24. When other considerations do not weigh meaningfully on this factor, the court can find that the likelihood of success on the merits satisfies the public interest prong of the preliminary injunction test. Pashby, 709 F.3d at 330.

The public interest does not play a meaningful role in the requested injunction. Because plaintiff has not clearly shown that he is likely to succeed on the merits of this case, the court finds that he has also not met the fourth requisite Winter factor.

III. CONCLUSION

For these reasons, the court **DENIES** plaintiff Lester S. Schwartz's motion to extend the temporary restraining order issued by the state court and for a preliminary injunction, ECF No. 4. The court also hereby **DISSOLVES** the temporary restraining order that was issued by the state court on December 20, 2013.

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

January 7, 2014
Charleston, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Lester S Schwartz as Trust Protector of the Wellin Family 2009 Irrevocable Trust, Plaintiff, Versus Peter J Wellin, Individually and as Co-Trustee and Beneficiary of the Wellin Family 2009 Irrevocable Trust; Cynthia W Plum, Individually and as Co-Trustee and Beneficiary of the Wellin Family 2009 Irrevocable Trust; Marjorie W King, Individually and as Co-Trustee and Beneficiary of the Wellin Family 2009 Irrevocable Trust; Friendship Management LLC; Cynthia W Plum, as Manager of Friendship Management LLC, Defendants.	C/A No. 2:13-cv-03595-DCN **COUNTERCLAIM DEFENDANT KEITH WELLIN AS GRANTOR OF THE WELLIN FAMILY 2009 IRREVOCABLE TRUST U/A/D/ NOVEMBER 2, 2009 ANSWER TO COUNTERCLAIMS**
Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, as Co-Trustees of the Wellin Family 2009 Irrevocable Trust, Counterclaim Plaintiffs, Versus Lester S. Schwartz, Esq. as Trust Protector of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, and Keith Wellin, as Grantor of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Counterclaim Defendants.	

EXHIBIT J

Comes now the Counterclaim Defendant, Keith Wellin as Grantor of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009 (hereinafter "this Counterclaim Defendant"), responding to the Counterclaims of Counterclaim Plaintiffs as follows:

1. Each and every allegation not specifically admitted herein is denied.

2. The allegations contained in Paragraphs 1 through 58 constitute the Counterclaim Plaintiffs' Answer to the Complaint which were not directed towards this Counterclaim Defendant, and therefore, no response is required. To the extent a response is required, this Counterclaim Defendant denies those allegations.

3. In response to the allegations contained in Paragraph 59 of the Counterclaims, this Counterclaim Defendant reasserts and re-alleges the above paragraphs as if fully restated herein verbatim.

4. The allegations contained in Paragraph 60 of the Counterclaims state conclusions of law to which no response is required. To the extent a response is required, this Counterclaim Defendant denies the allegations contained in Paragraph 60.

PARTIES AND JURISDICTION

5. In response to the allegations contained in Paragraph 61 of the Counterclaims, this Counterclaim Defendant admits that Keith Wellin is an individual residing in Charleston, South Carolina and further admits that on November 20, 2013 he did in fact exercise his powers as grantor of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, and removed Tom Farace, Esq. as Trust Protector and replaced him with Lester S. Schwartz, who is an individual residing in Charleston, South Carolina. All remaining and inconsistent allegations contained in Paragraph 61 of the Counterclaims are denied.

6. The allegations contained in Paragraph 62 of the Counterclaims state conclusions of law to which no response is required. To the extent a response is required, this Counterclaim Defendant denies the allegations contained in Paragraph 62.

FACTUAL BACKGROUND FOR COUNTERCLAIMS

7. In response to the allegations contained in Paragraph 63 of the Counterclaims, this Counterclaim Defendant reasserts and re-alleges the above paragraphs as if fully restated herein verbatim.

8. In response to the allegations contained in Paragraph 64 of the Counterclaims, this Counterclaim Defendant admits that Mr. Wellin has amassed a fortune during his lifetime and further responds that he has been wrongfully denied access to his money by the Defendants in this action.

9. In response to the allegations contained in Paragraph 65 of the Counterclaims, this Counterclaim Defendant admits that in approximately 2001, Keith Wellin consulted attorneys, primarily Tom Farace at Nixon Peabody, LLP in New York, for guidance in development and execution of an asset protection and estate planning strategy.

10. This Counterclaim Defendant admits the allegations contained in Paragraph 66 of the Counterclaims insofar as it alleges that Keith Wellin was advised and assisted with his asset protection and estate planning by Tom Farace and Nixon Peabody, his accountant, Michael E. Simon, and his stock broker at UBS, Brian McLoughlin. This Counterclaim Defendant denies so much of the remaining allegations contained in Paragraph 66 of the Counterclaims as can be construed to allege that Keith Wellin continuously trusted and/or was continuously advised and assisted with his asset protection and estate planning by Tom Farace and Nixon Peabody, his accountant, Michael E. Simon, and his stock broker at UBS, Brian McLoughlin for more than a

decade up until a few weeks before this lawsuit was filed. Further responding, this Counterclaim Defendant was advised and assisted in transactions relating to his asset protection and estate planning by his children, who acted in their own self-interest in these transactions and in violation of their duties and obligations to this Counterclaim Defendant.

11. This Counterclaim Defendant denies, as written, the allegations contained in Paragraphs 67 and 68 of the Counterclaims.

12. This Counterclaim Defendant denies the allegations contained in Paragraph 69, 70 and 71 of the Counterclaims.

13. In response to the allegations contained in Paragraph 72 of the Counterclaims, including parts (a), (b), and (c), to include subparts i) through vi), this Counterclaim Defendant craves reference to the various documents and instruments described and denies any allegations inconsistent therewith.

14. This Counterclaim Defendant denies the allegations contained in Paragraph 73 of the Counterclaims.

15. In response to the allegations contained in Paragraph 74 of the Counterclaims, this Counterclaim Defendant admits that the General Partner of the Partnership took steps to liquidate and dissolve the Partnership on or around December 1, 2013 and also caused the Partnership to distribute certain assets. This Counterclaim Defendant denies that the General Partner acted in accordance with its authority under the limited partnership agreement and maintains that such actions were in violation of the duties and obligations of the General Partner.

16. In response to the allegations contained in Paragraph 75 of the Counterclaims, this Counterclaim Defendant admits that on or about December 6, 2013, a check was delivered to counsel for Keith Wellin. This Counterclaim Defendant denies the remaining allegations

contained in Paragraph 75 of the Counterclaims. Further responding, the Counterclaim Plaintiffs wrongfully and in bad faith attempted to force Keith Wellin to accept this partial payment for his interest as full payment of a promissory note that no longer existed.

17. This Counterclaim Defendant admits the allegations contained in Paragraph 76 of the Counterclaims. Further responding, counsel for this Counterclaim Defendant returned the check because it was marked as full payment for a promissory note that no longer existed, as this Counterclaim Defendant had validly and effectively substituted the promissory note for an interest in Friendship Partners, LP.

18. This Counterclaim Defendant admits the allegations contained in Paragraphs 77 and 78 of the Counterclaims.

FOR A FIRST COUNTERCLAIM
(Declaratory Judgment as to Naming Schwartz as Trust Protector and All Actions Taken by Schwartz in his Capacity as Trust Protector)

19. In response to the allegations contained in Paragraph 79 of the Counterclaims, this Counterclaim Defendant reasserts and re-alleges the above paragraphs as if fully restated herein verbatim.

20. In response to the allegations contained in Paragraph 80 of the Counterclaims, this Counterclaim Defendant admits that on November 20, 2013, Keith Wellin executed a document that did in fact replace Tom Farace as Trust Protector of the Irrevocable Trust with Lester Schwartz.

21. In response to the allegations contained in Paragraph 81 of the Counterclaims, this Counterclaim Defendant craves reference to the Irrevocable Trust Agreement and the November 20, 2013 amendments thereto and denies any allegations inconsistent therewith.

22. This Counterclaim Defendant denies the allegations contained in Paragraph 82 of the Counterclaims.

23. The allegations contained in Paragraph 83 of the Counterclaims state conclusions of law to which no response is required. To the extent a response is required, this Counterclaim Defendant denies the allegations contained in Paragraph 83.

24. This Counterclaim Defendant denies the allegations contained in Paragraphs 84 and 85 of the Counterclaims.

FOR A SECOND COUNTERCLAIM
(Declaratory Judgment as to the Purported Trust Amendments)

25. In response to the allegations contained in Paragraph 86 of the Counterclaims, this Counterclaim Defendant reasserts and re-alleges the above paragraphs as if fully restated herein verbatim.

26. This Counterclaim Defendant denies the allegations contained in Paragraphs 87 and 88 of the Counterclaims.

27. The allegations contained in Paragraph 89 of the Counterclaims state conclusions of law to which no response is required. To the extent a response is required, this Counterclaim Defendant denies the allegations contained in Paragraph 89.

28. This Counterclaim Defendant denies the allegations contained in Paragraph 90, to include the WHEREFORE Paragraph.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS COUNTERCLAIM DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

29. This Counterclaim Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of investigation and/or discovery in the case and are consistent with the Federal Rules of Civil Procedure.

HOOD LAW FIRM, LLC
172 Meeting Street / P.O. Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630
Email: Info@hoodlaw.com

s/ James. B. Hood
Robert H. Hood (1939)
Molly H. Craig (6671)
James B. Hood (9130)

Attorneys for the Counterclaim Defendant Keith Wellin, as Grantor of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009

January 31, 2014
Charleston, South Carolina

2014 FEB 14 AM 11:51
FILED PROBATE CT CHRSN CO

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON)

IN THE MATTER OF: KEITH S. WELLIN Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, Petitioners, vs. Keith S. Wellin, Respondent.	Case No. 2013-GC-10-0129 **PETITIONERS' MEMORANDUM IN OPPOSITION TO EDWARD BENNETT'S ORAL REQUEST FOR RELIEF**

Petitioners Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Wellin Children") hereby submit this memorandum of law in opposition to the oral request made by Edward Bennett, Esq. ("Bennett"), Special Conservator for Respondent Keith S. Wellin ("Wellin"), that the Wellin Family 2009 Irrevocable Trust (the "Trust") pay Bennett $50 million. Bennett's request is improper and should not be permitted as detailed herein on the basis, among other reasons, that the Trust is not a party before this Court.

I. INTRODUCTION

Before the Court is an oral request made by Bennett at a hearing held on February 6, 2014, in the above-captioned matter. Specifically, Bennett's counsel orally requested that this Court order the Trust to pay him $50 million, which he represented he would accept on behalf of Wellin. (Exhibit A, Hearing Tr. 55:4-15). Bennett made this oral request without filing a lawsuit or asserting any claim against the Trust, which is not a party to this conservatorship action. In fact, Bennett has not even filed a lawsuit or asserted a claim against the Wellin Children or any other party; he merely made an oral request at a hearing in this conservatorship

action. Neither the Trust (from whom Bennett seeks to recover the $50 million) nor the Wellin Children have had the opportunity to file an answer, assert affirmative defenses, move to dismiss, move for summary judgment, file legal briefs addressing the merits of Bennett's request, conduct discovery, or otherwise litigate Bennett's "request" pursuant to the Rules of Civil Procedure. Given the posture of this action and the nature of Bennett's request, this Court plainly does not have jurisdiction to grant the relief requested by Bennett, and an order granting his request would violate the most basic due process rights of the Trust and all other interested parties. To the extent Bennett believes that Wellin is entitled to recover $50 million or any other amount of money from the Trust (or any other third party), he should take one or more of the following steps: 1) file a lawsuit on Wellin's behalf against the appropriate parties and assert the appropriate causes of action; 2) advise Wellin to seek leave to amend one of his existing lawsuits to assert the appropriate causes of action against the appropriate parties; or 3) advise Wellin to continue pursuing his suit in federal district court (Civil Action 2:13-cv-1831-DCN) in which Wellin is seeking to recover the very same $50 million that Bennett now seeks to recover.

Furthermore, the $50 million at issue is an asset that Wellin has never had in his possession, and the limited partnership interest that was liquidated to generate the $50 million has been owned by the Trust for the past four and half years since Wellin sold it to the Trust in 2009 in exchange for a promissory note. This promissory note, which has a face value of $50 million (the "Note"), is the asset that Bennett claims Wellin had at the time Bennett was appointed as special conservator but no longer has today. The Note comes due in 2021, and Wellin's attorneys have repeatedly described it as "essentially worthless" to Wellin in filings made in the federal litigation before Judge Norton. Bennett, acting on behalf of Wellin, claims to have "substituted" this Note for other assets owned by the Trust on November 20, 2013.

Bennett contends that Wellin received no value in return for this Note, and that Wellin's loss of the Note changed the status quo under his watch. The Trustees of the Trust contend that the Note was not validly substituted in the November 20 transaction and that Wellin continued to own the Note after the transfer. This is a legal dispute that will need to be decided in the litigation brought by Wellin against the Trust in federal court. The point, however, is that absolutely no money has been transferred from Wellin to the Wellin Children (or to the Trust) since Bennett's appointment as special conservator. If Bennett would like the Trust to "return" the Note to Wellin so that Wellin is in the same position he was in at the time Bennett was appointed (and that he was in for the past four and half years), the Trustees of the Trust are happy to do so.[1]

II. PROCEDURAL AND FACTUAL BACKGROUND

On January 14, 2014, Bennett sent an *ex parte* letter to this Court requesting that the Court issue an order requiring the Wellin Children to pay Wellin approximately $90 million and determining that the Wellin Children, rather than Wellin, are liable for approximately $43 million in federal and state taxes. In this letter, Bennett characterized his request for substantive relief as an "application" submitted pursuant to S.C. Code Section 62-5-416(b). On February 3, the Wellin Children filed a motion to dismiss Bennett's application. (Exhibit B, Motion to Dismiss). In that motion, the Wellin Children provided an overview of the factual and procedural background leading up to Bennett's application. (*Id.* at 2-10). To avoid duplication, the Wellin Children incorporate that factual and procedural background herein by reference.

On February 5, Bennett's new counsel, Tiffany Provence ("Provence") sent a letter to the Court responding to the Wellin Children's motion. In the letter, Provence clarified that Bennett

[1] As noted above, the Trustees contend that the Trust never received the Note as it was not validly substituted.

was not asking the Court to order payment of any money right away, but rather was asking the Court for instruction as to whether Bennett should *file an action* to recover money. (Exhibit C, Provence Letter, at 2 ("Should this Court agree that [Bennett] has a duty, then he will most certainly bring a Petition to Return Assets and serve said petition upon all parties along with the required summons. To do so without this Court's permission would be both premature and expensive.").

On February 6, the Court held a hearing on Bennett's application. At the beginning of the hearing, Provence reiterated that Bennett was seeking instruction as to whether he should file an action, which she argued would be appropriate if Bennett believed Wellin was entitled to some substantive relief. Provence stated:

> This isn't a formal proceeding. [They've] made a motion to dismiss based on lack of jurisdiction, standing, lack of due process. I think that I want to be incredibly clear with the court that we're seeking this court's instruction as to whether or not Mr. Bennett has the authority, as special conservator, to bring an action to return these assets to the estate of Mr. Wellin. At that point, Your Honor, we are going to serve a summons, we're going to serve a complaint, there's going to be opportunity for discovery, but as I mentioned earlier, I'm just not convinced that a finding of capacity in a month from now is going to eliminate the duty that my client had to this court when this substitution occurred.

(Exhibit A, Hearing Tr. 13:21 – 14:12; *see also* 23:17 – 24:6 (stating that Bennett could have filed the summons and petition to return the assets without the court's blessing, but that Bennett was just being careful in seeking the court's blessing first).

However, near the end of the hearing, Provence reversed herself and requested that the Court immediately order – prior to the filing of any summons, complaint, or other process – payment of $50 million to Bennett:

> Your Honor, may it please the court, could we ask that the court consider that Mr. Bennett be allowed to accept the $50 million that

> was originally tendered, absent the conditions, as special conservator, not as counsel, but accept what we've agreed upon is due him, due the length of time that this may stay in litigation and the aging health of the alleged incapacitated? Since it's been admitted today by both parties that that's a minimum of what he's owed, would they be willing to surrender that to Mr. Bennett as conservator?

(*Id.* at 55:4-15). Later in the hearing, Provence characterized Bennett's request as one for a "judgment" for the $50 million. (*Id.* at 66:12-15 ("And Your Honor, I would repeat I believe this court has full jurisdiction over that asset, and we would seek that judgment before this court."). At the hearing, Provence never cited any statute or case that would permit this Court to order the Trust (or anyone else) to pay $50 million to Bennett in the absence of any claim or other formal process. In fact, the only argument made by anyone in support of the Court's authority to grant Bennett this extraordinary relief came from Mr. Hood, who said that the Court does have jurisdiction to grant this relief because "[t]his is a court of equity." (*Id.* at 75:11-12). At the end of the hearing, the Court asked the parties to submit some "brief and proposed orders," and said: "Maybe if I don't sign that, there will be some separate litigation." (*Id.* at 75:25 – 76:3).

On February 11, Provence emailed the Court and requested a deadline for the parties to submit "supplemental materials I offered the court or the submission of the dual proposed Orders requested by the Court." (Exhibit D, E-mail Chain). Provence suggested a deadline of February 14. (*Id.*). Counsel for the Wellin Children responded, stating that they did not know what Provence intended to submit and could not possibly respond to Provence's "supplemental materials" and proposed order before even seeing them. (*See id.*). Provence responded and stated that "the additional submission is simply the proposed Order on the $50,000,000.00 being held by the Wellin Children and a brief in support of the same." (*Id.*). Provence also stated that, at the hearing, she and Mr. Hood "both argued that the court had [jurisdiction and authority to

require the children to surrender the funds] under the S.C. Code as well as equitable principals [sic]." (*Id.*). The Court then responded and instructed the parties to submit any proposed orders and briefs by February 14 at noon. (*Id.*).

III. ARGUMENT

Entry of Bennett's proposed order, given the current procedural posture of this action, would violate the most basic principals of justice and fundamental fairness and violate the Due Process rights of parties not before the Court. Entering an order requiring a non-party to a conservatorship action to pay $50 million to a conservator (or to the Court or any other party) in the absence of any lawsuit, legal claim, or other pleadings would be unprecedented in American jurisprudence and would fly in the face of the Rules of Civil Procedure and procedural due process. In the motion to dismiss Bennett's original "application," the Wellin Children made four independent arguments as to why the Court could not and should not grant the relief requested. (Exhibit B, Motion, at 10-15). Those four arguments apply with equal or greater force here, as Bennett's new request is not even based on a written "application." It is simply an oral request made at the tail end of a hearing on the application. The Wellin Children incorporate those four arguments herein and make the additional and supplemental arguments below.

A. This Court Lacks Jurisdiction to Grant the Requested Relief Because Bennett Has Not Filed and Served a Summons and Complaint or Otherwise Asserted any Claim for the Relief He Seeks.

A request for substantive relief on behalf of a person for whom a conservator has been appointed must be made through "formal proceedings," which requires the person seeking the substantive relief to "fil[e] a petition and summons with the appointing court." (Exhibit B, Motion, at 10-11 (citing S.C. Code §§ 62-5-416(a); 62-1-201(17)). Further, any proceedings

concerning the internal affairs of a trust must be maintained through "formal proceedings." S.C. Code § 62-7-201(a). Proceedings concerning the internal affairs of a trust for purposes of this statute include proceedings "concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts." *Id.* In formal proceedings, once the summons and complaint are filed against the party from whom relief is sought, that party is permitted to file an answer, assert affirmative defenses, file a motion to dismiss, conduct discovery, demand a jury trial[2], and otherwise take advantage of their rights under the South Carolina Rules of Civil Procedure. *See* S.C. Code § 62-1-201(17); *see generally* SCRCP.

Without a summons and complaint, the court does not acquire jurisdiction over the party against whom relief is sought. *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996) ("A summons is not a mere notice, but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction."); *Louden v. Moragne*, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct. App. 1997) ("Service of the summons brings the defendant within the court's jurisdiction and gives the court the power to render a personal judgment against the person served."). Hence, the Court does not have jurisdiction over Bennett's oral request. Any request of this nature would entitle the interested and affected parties to a jury trial. The Wellin Children hereby demand the jury trial to which they are entitled under S.C. Code Ann. § 62-1-306[3]

---

[2] "If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State." S.C. Code § 62-1-306. The Wellin Children do not waive their right to a jury trial on Bennett's request for $50 million and hereby demand one.

[3] The Wellin Children obviously do not concede the request for $50 million is procedurally proper in this context but nevertheless assert their jury trial rights now to avoid any contention

Here, Bennett's request that the Court order the Trust to pay him $50 million is unquestionably both a request for substantive relief and a request concerning the internal affairs of a Trust. Thus, such a request must be pursued, if at all, through formal proceedings. Bennett has not filed a summons or complaint or otherwise asserted any type of claim against the Trust, the Wellin Children, or any other party. In fact, Bennett has not even brought "informal proceedings" for the relief requested. *See* S.C. Code § 62-1-201(22) (requiring informal proceedings to be commenced through an "application"). Bennett has simply asked the Court for the relief through an oral request made during a hearing on his application. Accordingly, the Court does not have jurisdiction to grant Bennett's request.

B. The Court Does Not Have Jurisdiction to Grant the Relief Requested Based on the Petition Filed by the Wellin Children.

To the extent Bennett argues that this Court somehow has jurisdiction to grant the relief requested because the Wellin Children filed a formal proceeding requesting appointment of a conservator, the South Carolina Code contradicts Bennett's position. The Code expressly defines the scope of the probate court's jurisdiction upon the filing of a summons and petition for appointment of a conservator. Section 62-5-402 provides:

> After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:
>
> (1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
>
> (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and

---

those have been waived. Thus, to the extent any adverse order is entered based on Bennett's request, the Wellin Children will have been deprived of their right to a jury trial.

> (3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62-5-433.

S.C. Code § 62-5-402. Section 62-5-433 provides that claims in favor of or against any incapacitated person that exceed $25,000 must be brought in the circuit court, while claims for less than $25,000 in favor of or against the incapacitated person may be brought in circuit court or probate court. *See* S.C. Code § 62-5-433(A)(1).

Here, Bennett's request that the Trust (or the Wellin Children, or both) pay him $50 million does not fall under any of these three categories. The only category that even relates to requests for payments from third parties to the protected person is subsection (3). However, a claim must be made for the probate court to have jurisdiction under subsection (3). Even then, the probate court will only have jurisdiction if the claim is for less than $25,000, and Bennett's request exceeds this threshold. Thus, this Court does not have jurisdiction to grant Bennett's request pursuant to the conservatorship action brought by the Wellin Children.

C. The Court Does Not Have Jurisdiction to Grant the Relief Requested Because the Trust is Not a Party to this Action.

Even if the Court somehow had jurisdiction to grant substantive relief against the Petitioners in this action, the Court would not have jurisdiction to grant the relief against the Trust, which is what Bennett seems to be requesting. Through his oral request, Bennett is apparently requesting that the Court order *the Trust* to pay Bennett the approximately $50 million that remains in the Trust account. Bennett contends that Wellin validly "substituted" or "swapped" the Note with other assets held by the Trust and is entitled to over $90 million *from the Trust* pursuant to that swap. The Note that Wellin purported to substitute was a Note that is held by Wellin's Revocable Trust and that required *the Trust* to pay Wellin's Revocable Trust

$50 million in the year 2021. Again, while the legal and procedural basis for Bennett's request for $50 million has not been briefed and is unsupported by law, the request appears to be based on Bennett's contention that Wellin is owed at least $50 million *by the Trust*.

Reviewing the petition filed by the Wellin Children clearly demonstrates that they brought this action in their individual capacities, as concerned children of Wellin, and not as trustees of the Trust. While Bennett has not even asserted a claim against the Wellin Children in their individual capacities, he certainly has not asserted a claim against them in their Trustee capacities. "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a result of service, acceptance, or waiver of process, or an appearance." *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008). "Stated differently, for relief to be granted against a trust, the trust—through its trustee—must be made a party to the action." *Id.*

In *Ashton*, a husband and wife were involved in divorce proceedings, and the wife requested that the trial court order the husband, who was the sole trustee of a family trust, to pay certain money to her. *Id.* at 603. The trial court granted the order. The Court of Appeals of Texas granted a petition for writ of mandamus and held that the trial court's order was erroneous and void because the trust was not a party to the action, as the husband was only before the court in his individual capacity. *Id.* at 604 ("Although Ivan was before the court in his individual capacity, he was not sued in his capacity as trustee of the I.A. Trust. We conclude the trial court erroneously granted relief against the trust in that circumstance.").[4]

[4] This well-settled legal principle is recognized in other contexts of South Carolina law. For example, to the extent Bennett's request could be construed as seeking a declaration of rights—which he does seek to affect rights of others—the South Carolina Declaratory Judgment Act mandates that "all persons *shall be* made parties who have or claim any interest which would be affected by the declaration." S.C. Code Ann. § 15-53-80 (emphasis added). This requirement has been equated with the Rule 19, SCRCP, analysis. *See Hardwick v. Lib. Mut. Ins. Co.*, 243 S.C. 162, 169, 133 S.E.2d 71, 73-74 (1963) ("No sound reason appears to us why, in considering

South Carolina courts have also recognized the distinction between suing a party in an individual versus trustee or corporate capacity. *See, e.g.*, S.C. Code § 62-7-1010(c) ("A claim . . . may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim."); *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 600, 748 S.E.2d 781, 789 (S.C. 2013) (noting that "Auto–Owners acknowledged that Rhodes sued Eadon in his corporate capacity"); *Freemantle v. Preston*, 398 S.C. 186, 190, 728 S.E.2d 40, 42 (S.C. 2012) ("Appellant named as Defendants . . . several former and current Council members in their official and individual capacities."); *see also Stoltenberg v. Newman*, 179 Cal. App. 4th 287, 294, 101 Cal. Rptr. 3d 606, 611 (2009) ("Hence, a third person with a claim against the trust or trustee may assert the claim against the trust by bringing an action against the trustee in the trustee's representative capacity."). Bennett is clearly aware of the distinction between suing someone in their individual, as opposed to trustee, capacity. In the litigation currently pending in federal court and filed by Wellin with Bennett's assistance, Wellin

---

a demurrer, the distinction between necessary and proper parties made in other cases should not apply in actions under the Uniform Declaratory Judgments Act."). The Code also mandates that "no declaration shall prejudice the rights of persons not parties to the proceeding." (*Id.*)

Any request for a declaration of rights must include all persons or entities who may have an interest that would be affected by the declaration. S.C. Code Ann. § 15-53-80. The "necessary party" "is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined." *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 137, 644 S.E.2d 699, 701 (2007) (quoting *Slatton v. Slatton*, 289 S.C. 128, 130, 345 S.E.2d 248, 249 (1986)); *see also Lee v. Kelley*, 298 S.C. 155, 159, 378 S.E.2d 616, 618 (Ct. App. 1989) (finding estate of property owner was necessary party when parties were signatories to contract that provided for a property transfer, refinance, mortgage loan, and payment terms, among other arrangements related to the sale and purchase financing of certain property); *Guimarin & Doan, Inc. v. Georgetown Textile & Manuf. Co.*, 249 S.C. 561, 568, 155 S.E.2d 618 (1967) (finding subcontractors' interests sufficient under the Declaratory Judgment Act to keep them in the action because "[t]he declaration which Guimarin primarily seeks would exonerate them, while a contrary declaration might result in their being called upon for indemnity"). The Trust, in the context of Bennett's oral request, is just such a necessary and "affected" party and its rights cannot be declared or infringed by an Order from this Court without notice and a jury trial.

names as defendants: "Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009" and "South Dakota Trust Company, LLC as co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009." (*See* Compl. in Civ. Action No. 2:13-1831-DCN). Bennett and Wellin's other attorneys styled the complaint in this way for a reason—namely, if they had only named the Wellin Children in their individual capacity, the Trust would not be a party to that litigation.

Again, Bennett has not even asserted a claim against the Wellin Children in their individual capacities, but he certainly has not asserted a claim against them in their Trustee capacities, as would be required to recover $50 million from the Trust. For this additional reason, the Court does not have jurisdiction to grant Bennett's request.

D. Granting Bennett's Request for Relief Would Violate the Trust's and the Wellin Children's Rights to Procedural Due Process.

In their motion to dismiss, the Wellin Children argued that granting the relief requested in Bennett's "application" would violate their due process rights, as the Wellin Children have not had the opportunity to file an answer, assert affirmative defenses, move to dismiss, conduct discovery, or otherwise defend themselves in a meaningful manner pursuant to the South Carolina Rules of Civil Procedure. (Exhibit B, Motion to Dismiss, at 14-15). Those arguments apply with greater force to Bennett's oral request at the February 6 hearing for an order requiring the Trust to pay him $50 million. Bennett's oral request was not submitted in the form of an application, which is necessary to initiate an "informal proceeding," nor was it even reduced to writing. While Bennett is submitting a proposed order granting his requested relief and a memorandum in support, his deadline to submit these materials is the same deadline the Wellin Children have to submit this memorandum. Thus, if the Court grants Bennett's oral request, the

Trust, a non-party to this conservatorship proceeding, would be required to pay $50 million to Bennett without even having the opportunity to read and respond to the arguments Bennett is advancing in support of his request. This would plainly violate the Trust's and Wellin Children's due process rights and rights to a jury trial.

E. The Court's Equitable Powers Are Limited by the Doctrines Discussed Above.

The Wellin Children anticipate that Bennett will argue in his memorandum that the Court has authority to grant the requested relief pursuant to the Court's equitable powers. However, the Court's equitable powers are not broad enough to allow the Court to simply disregard the Rules of Procedure and due process and to grant the extraordinary relief requested by Bennett. "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." *Johnson v. Lloyd*, 399 S.C. 470, 476, 732 S.E.2d 198, 201 (Ct. App. 2012). As explained above, granting the relief requested by Bennett with the case in this posture would require the Court to ignore the most fundamental statutes, rules, and precedent of our courts.

Further, "equitable relief is unnecessary when an adequate remedy for money damages is available at law." *Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 8, 732 S.E.2d 876, 879 (S.C. 2012). In the past eight months, two separate *ex parte* TROs have been entered against the Wellin Children restricting their ability to use the same $50 million (or, in the case of the first TRO, the stock that was liquidated to generate the $50 million) now requested by Bennett. Judge Norton has dissolved both of these TROs because, *inter alia*, no irreparable harm is present where, as here, Wellin can sue – and has sued – his children for money damages, and Wellin failed to demonstrate a likelihood of success on the merits. (*See* Civil Action No. 2:13-cv-1831, Dkt. No. 79 (dissolving *ex parte* TRO and finding that no irreparable harm existed and that the other elements necessary for injunctive relief had not been established); Civil Action No. 2:13-

3595, Dkt. No. 15 (dissolving the *ex parte* TRO granted by this Court and making similar findings)). Here, Bennett has not even argued, much less established, that the elements necessary for obtaining injunctive relief are present. *See Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (S.C. 2004) ("For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted: (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law."). Yet, the relief Bennett requests – that the Trust (or the Wellin Children) pay $50 million to him (or possibly the Court) – is much broader than the injunctive relief that Judge Norton has found improper *twice* over the past eight months. Those injunctions merely froze the assets in the Trust's possession, whereas Bennett's current request would actually require the Trust to surrender the same assets to Bennett.. Having twice lost before Judge Norton in their effort merely to freeze these assets during the federal court litigation, Wellin's attorney's have now come to this court seeking to circumvent that litigation entirely and take the assets from the Trust.

Similarly, the relief requested by Bennett is broader than the relief allowed under the "attachment" statute, but Bennett has not satisfied the requirements for the equitable remedy of attachment. Under the attachment statute, a plaintiff may "at the time of issuing the summons or any time afterwards" have the property of a defendant attached, "as a security for the satisfaction of such judgment as the plaintiff may recover." S.C. Code § 15–19–10. "[T]he purpose of attachment generally is to take a defendants property into legal custody so that it may be applied to the plaintiffs debt, when established." *Scratch Golf Co.*, 361 S.C. at 122, 603 S.E.2d at 908 (internal citation omitted). However, "[a]n attachment is merely a provisional remedy in aid of an action, and hence, to make it available, an action must be commenced in regular form." *Id.*

(internal citation omitted). Here, Bennett has not commenced an action in regular form. Instead, he has simply made an oral request to the Court. If the equitable remedy of attachment is not available to Bennett, the broader relief that he is seeking, which has no statutory or common law support, is not available either.[5]

F. The Wellin Children Do Not Agree that Wellin is Entitled to the $50 Million Sought.

At the February 6 hearing, Bennett's counsel repeatedly stated that the parties agreed that Wellin was entitled to "at least $50 million." This assertion is false as the Wellin Children do not agree to this.

The asset that forms the basis for Bennett's request for $50 million is the Note, which has a face value of approximately $50 million. However, the Note does not come due until 2021. This maturity date is on the face of the Note and is not disputed by the parties. The Note gives the makers of the Note (i.e. the Trustees of the Trust) the right to prepay the Note in their discretion. The Trustees tendered full payment of the Note to Bennett on December 6, but Bennett sent the check back to the undersigned with a letter rejecting it. While the Trustees have a right to prepay the Note, they do not have the obligation to do so, and the Trustees could wait until 2021 to pay back the Note. More importantly, the Trustees certainly have no obligation to prepay the Note to Wellin under the current circumstances—namely, where Wellin refuses to accept the $50 million payment in satisfaction of the Note, and instead insists on only accepting the $50 million if he can continue to sue the Wellin Children to void the very note for which he accepted the $50 million. No maker of a note would ever prepay under such circumstances.

[5] To the extent Bennett argues that the Court has authority to grant the requested relief pursuant to South Carolina Code Section 62-5-416(c), he is clearly incorrect. That subsection authorizes this Court to issue the orders referenced in 62-5-416(a), as appropriate, after formal proceedings have been initiated, or give instructions, as appropriate, after informal proceedings have been initiated pursuant to 62-5-416(b). Here, Bennett has not initiated formal proceedings, so 62-5-416(c) does not apply.

Yet, Bennett is now requesting that this Court order the Trustees, who are not even before the Court, to do just that.

Furthermore, even if the Wellin Children believed that Wellin was owed at least $50 million—which they do not—such belief would not authorize this Court to grant the relief requested.

G. Wellin is Already Suing the Trust and the Wellin Children to Recover the Same $50 Million that Bennett is Now Seeking on Behalf of Wellin.

In the action filed by Wellin last July and currently pending before Judge Norton ("*Wellin I*"), Wellin seeks to recover the same $50 million that Bennett now seeks, plus additional money to which Wellin claims he is entitled. More specifically, in *Wellin I*, Wellin requests that the Court "unwind" the transactions that resulted in creation of the Trust and the Note and return all money conveyed from Wellin to his children back to Wellin. Thus, if this Court grants Bennett's request, the Court will be granting Wellin a judgment for a portion of the money Wellin is currently seeking in *Wellin I*. The parties in *Wellin I* are just beginning discovery, and to grant a judgment for a portion of the money sought in that federal action would plainly be improper and could result in duplicative judgments.

IV. CONCLUSION

For the foregoing reasons, and the reasons set forth in the Wellin Children's Motion to Dismiss Bennett's application, the Court should deny the oral request made by Bennett's counsel at the February 6 hearing and enter the proposed order submitted by the Wellin Children herewith.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
February 14, 2014

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by US Mail and/or hand delivery postage prepaid, to the following address(es):

Pleadings: **PETITIONERS' MEMORANDUM IN OPPOSITION TO EDWARD BENNETT'S ORAL REQUEST FOR RELIEF**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483

Donna Horn
Administrative Assistant

February 14, 2014

PROVENCE MESSERVY

COUNSELORS & ATTORNEYS AT LAW

February 5, 2014

Via Hand Delivery

The Honorable Irvin G. Condon
Charleston County Probate Judge
100 Broad St., Suite 469
Charleston, SC 29401

RE: In the matter of: Keith S. Wellin
Peter Wellin, Cynthia Wellin Plum and Marjorie Wellin King v. Keith S. Wellin
Case No.: 2013-GC-10-0129

Dear Judge Condon:

I am writing this letter in response to the Petitioner's Motion to Dismiss the Special Conservator's Application.

As counsel for Mr. Bennett as Special Conservator, I have several issues with the above stated Motion. They are as follows:

1. Petitioners state in their Factual and Procedural Background that "the Wellin Children believe that the filing of litigation and Wellin's other uncharacteristic behavior were not the deliberate actions of their father, but were instead the byproduct of duress and manipulation exerted by Wendy Wellin." Not only is this the belief of the Wellin Children, but it is also the primary basis for their Petition to Appoint Conservator dated July 19, 2013. These same children are now seeking to remove this Court's jurisdiction over the very same assets and prohibit the Special Conservator from seeking this Court's assistance in returning them to Mr. Wellin. To this end, it is essential to remember that absent the request by the Wellin Children to appoint a conservator to protect Wellin from his spouse, this Court would not be involved in now seeking to protect his assets from the Petitioners.
2. Petitioners argue that this Court lacks jurisdiction because my client did not file and serve a summons and complaint under §62-5-416(a). Unfortunately, the Petitioners have simply misread this statute. As the Court is well aware, Section (a) applies to those parties other than the Conservator who wish to bring an action. Not only is this clear by the plain reading of the statute, but also by the fact that the only party requiring service of the summons and petition under this section are "the conservator and other persons as the court may direct."
3. Petitioners then assert that my client lacks standing because the Court's order is limited to expressly ensuring that no transfers are made without consideration. This is exactly what has

TIFFANY N. PROVENCE, ESQ. • JAMES H. MESSERVY, ESQ. • DAVID E. CAUSEY, ESQ.

300 NORTH CEDAR STREET, SUITE A • SUMMERVILLE, SC 29483 • 843.871.9500 • FAX 843.261.7035

Exhibit C

happened. Exhibit A of the Petition for Appointment of Conservator acknowledges, "Wellin also holds a promissory note with a face value of approximately $49 million." On November 20, 2013, Mr. Wellin exercised his power under the Trust to substitute that same promissory note for a 58% interest in the family partnership. The Petitioners are going to great lengths and litigation to prohibit Mr. Wellin from receiving his 58% interest and have instead distributed the same to themselves. While Petitioners have offered the face value of the original promissory note (not the partnership issue for which it was substituted), they have done so only under the condition that it represents Mr. Wellin's full interest in the family partnership. Mr. Wellin has refused to accept said payment and as Special Conservator my client supports this decision under the belief that to do so would be a clear violation of his fiduciary duty to Mr. Wellin. Therefore, because assets belonging to Wellin were transferred to the trust and no consideration has been received, my client clearly has standing to seek instructions from this Court under §62-5-416(b) concerning his fiduciary responsibility under these circumstances.

4. Next, Petitioners use Rule 12(b)(8) of the South Carolina Rules of Civil Procedure to claim that this Court must dismiss this application. Not only is there no action pending in any court in which the relief requested relates to the substitution of the assets by Keith Wellin, there is also no action where my client is named as a party to the same. While the discussion of this substitution certainly exists in other actions, there is no other action in which any claim is pending to determine the effectiveness of the substitution or my client's responsibilities related thereto.
5. Lastly, Petitioners state that this Court's review of this matter would violate the Wellin Children's right to procedural due process. Again, it was the Wellin Children who both requested and consented to the appointment of my client as Special Conservator under the guise of a desire to protect their father's assets. Now that he is attempting to fulfill his duties, they seek discovery on an issue that is a matter of law in an effort to protect these assets for themselves. My client has reviewed the documents related to the substitution and feels that it was effective as a matter of law. I have attached a copy of the same again for the convenience of the Court. As a result, he feels it would be a clear violation of his fiduciary duty to accept the offer of $50,228,000 for an asset the children have liquidated for a much higher value. He has provided the Court and opposing counsel copies of the relevant documents and opposing counsel actively participated in the scheduling of this hearing. He now seeks instruction from this Court as to the extent of his duty as Special Conservator to seek the fair and adequate consideration he feels Mr. Wellin is due. Should this Court agree that he has a duty, then he will most certainly bring a Petition to Return Assets and serve said petition upon all parties along with the required summons. To do so without this Court's permission would be both premature and expensive.

Under both South Carolina law and under Article XVI(C) of the trust, Mr. Wellin is presumed to have had capacity during his execution of the documents in question. For that reason, my client believes that it is his responsibility to enforce the substitution as not only was it within Mr. Wellin's rights, but it also benefits Mr. Wellin financially.

It was by agreement of all parties that my client would serve as Special Conservator for Mr. Wellin to ensure that "transfers of assets are not made without fair and adequate consideration." The fact that the Petitioners, not the alleged influencer (Wendy Wellin), are holding the assets in question and that it benefits them financially to deny the substitution does not change my client's duty. For this reason, we respectfully reiterate our request to the Court to offer appropriate instructions to my client or issue an appropriate order under §62-5-416(c).

Sincerely,

Tiffany N. Provence, Esq.
Provence Messervy LLC

Cc via Email: Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Gedney M. Howe, III, Esq.
Robert H. Brunson, Esq

EXERCISE OF RIGHT OF SUBSTITUTION

THE WELLIN FAMILY 2009 IRREVOCABLE TRUST

The Wellin Family 2009 Irrevocable Trust was created by agreement dated November 2, 2009 between Keith S. Wellin, as Grantor, and Peter J. Wellin, Marjorie W. King, Cynthia W. Plum and South Dakota Trust Company LLC, as Trustees (the "2009 Trust").

Article IX(A) of the 2009 Trust provides as follows:

> A. Power of Asset Substitution. I hereby retain the power, exercisable during my lifetime, at any time and from time to time, without the consent of or approval by the Trustee, to reacquire the trust corpus or a portion thereof by substituting other property of an equivalent value.

Effective this 20th day of November, 2013, the Grantor, Keith S. Wellin, does hereby exercise the right granted to him by Article IX(A) of the 2009 Trust and substitute the promissory note issued by the 2009 Trust in his favor on September 4th, 2012 with a face value of $49,802,115 and a current outstanding balance of $50,211,446.55 (being principal and accrued but unpaid interest as of the date hereof) (the "Note") in exchange for Units in Friendship Partners, LP representing an assignee interest therein with a fair market value equal to $50,211,446.55.

The number of Units in Friendship Partners, L.P. transferred in substitution for the Note are determined in accordance with the calculations attached hereto as Schedule A. The discounts applied to the assets of Friendship Partners, LP and the individual units are consistent with the discounts applied by the general partner of Friendship Partners LP with respect to various transfers between the 2009 Trust and Keith S. Wellin from 2009 through 2012, and the calculation is consistent with the methodology employed by Management Planning Inc. in its report dated November 30, 2009.

Keith S. Wellin recognizes that the cash held by Friendship Partners, L.P. may be different than the estimated balance reflected on Schedule A. If the general partner of Friendship Partners, L.P. provides to Keith S. Wellin evidence of a different cash balance, the Units transferred to Keith S. Wellin shall be adjusted to reflect a number of Units transferred to Keith S. Wellin with a fair market value equal to the value determined by inserting the correct cash balance into the calculations on Schedule A.

In compliance with that Temporary Restraining Order issued by Judge David C. Norton on July 3, 2013 in the United States District Court, District of South Carolina, Charleston Division in *Wellin et. al. v. Wellin et. al., C/A No. 2:13c1813 DCN*, this shall constitute the consent of Keith S. Wellin that the partnership interests be transferred by the 2009 Trust to Keith S. Wellin, individually.

Keith S. Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust dated December 11, 2001, as subsequently amended and restated

5:12 PM 4/20/2013

Friendship Partners, LP

Freely Traded Value

As of November 20, 2013

Assets		
Cash	$	10,000
Equity Investment		
Berkshire Hathaway Inc. - 906 A Shares[1]	$	156,266,880
Total Assets	$	156,276,880
Liabilities and Partners' Capital		
Liabilities		–
Partners' Capital (Net Asset Value)	$	156,276,880
Total Liabilities and Partners' Capital	$	156,276,880
Net Asset Value	$	156,276,880
Less: Minority Interest Discount (15%)	$	(23,441,532)
Freely Traded Value of Friendship Partners LP	$	132,835,348
Freely Traded Value Per Unit (based on 1,000,000 units issued and outstanding)	$	132.835
Freely Traded Value Per Unit	$	132.835
Less: Marketability Discount of 35%	$	(46.49)
Fair Market Value Per Unit	$	86.34
Fair Market Value of 581,554.8645 Limited Partnership Units (based on 1,000,000 units issued and outstanding)	**$**	**50,211,447**

[1]Based on the closing price of Berkshire Hathaway Class A stock as of the date of substitution.

Compound Period ..... : Annual

Nominal Annual Rate .... : 2.590 %

CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	11/30/2009	49,802,115.00	1		
2	Payment	11/30/2010	1,289,874.78	1		
3	Rate Change	12/06/2010	Rate: 1.530 %	Compounding: Annual		
4	Payment	11/30/2011	770,969.29	1		
5	Rate Change	11/30/2011	Rate: 1.200 %	Compounding: Annual		
6	Rate Change	09/04/2012	Rate: 0.840 %	Compounding: Annual		
7	Payment	11/30/2012	555,007.83	1		
8	Payment	11/20/2013	50,211,446.55	1		

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	11/30/2009				49,802,115.00
2009 Totals		0.00	0.00	0.00	
1	11/30/2010	1,289,874.78	1,289,874.78	0.00	49,802,115.00
Rate	12/06/2010		21,203.42	21,203.42-	49,823,318.42
	12/06/2010	Rate: 1.530 %	Compounding: Annual		
2010 Totals		1,289,874.78	1,311,078.20	21,203.42-	
2	11/30/2011	770,969.29	749,765.87	21,203.42	49,802,115.00
Rate	11/30/2011		0.00	0.00	49,802,115.00
	11/30/2011	Rate: 1.200 %	Compounding: Annual		
2011 Totals		770,969.29	749,765.87	21,203.42	
Rate	09/04/2012		456,815.02	456,815.02-	50,258,930.02
	09/04/2012	Rate: 0.840 %	Compounding: Annual		
3	11/30/2012	555,007.83	100,628.02	454,379.81	49,804,550.21
2012 Totals		555,007.83	557,443.04	2,435.21-	
4	11/20/2013	50,211,446.55	406,896.34	49,804,550.21	0.00
2013 Totals		50,211,446.55	406,896.34	49,804,550.21	
Grand Totals		52,827,298.45	3,025,183.45	49,802,115.00	

PROMISSORY NOTE

$49,802,115.00 **Sioux Falls, South Dakota**
September 4, 2012

1. FOR VALUE RECEIVED, PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, in their capacity as Trustees, and not individually, including any successor Trustee(s) serving from time to time, (the "Borrowers"), of the WELLIN FAMILY 2009 IRREVOCABLE TRUST, (the "Trust"), created under an Agreement of Trust dated November 2, 2009, by and between KEITH S. WELLIN, as Grantor, and PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, hereby unconditionally promise to pay to the order of the KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST, created under an Agreement of Trust dated December 11, 2001, as amended and restated, by and between KEITH S. WELLIN as Grantor and KEITH S. WELLIN as Trustee (the "Payee") the principal sum equal to Forty-Nine Million Eight Hundred Two Thousand One Hundred Fifteen and 00/100 Dollars ($49,802,115.00) on September 9, 2021 (the "Maturity Date"). The Note is given for the purpose of continuing, revising and restating the Note dated November 30, 2011, and is not intended to evidence or create any new indebtedness.

2. (a) The Borrowers hereby unconditionally promise to pay to the order of the Payee interest on the unpaid principal amount of this Promissory Note for the period from and including the date hereof to but excluding the Maturity Date, at the applicable federal mid-term rate in effect on the date hereof as determined under Section 1274(d) of the Internal Revenue Code (26 U.S.C. §1274(d)), per annum, compounded annually from the date of this Promissory Note, to wit 0.84%. The Borrowers shall pay to the Payee a partial year interest payment on November 30, 2012 (along with interest on the November 30, 2011, Note to date), and then shall pay the Payee annual interest only payments on each November 30 thereafter until paid in full. Interest shall be calculated on the basis of a year of 365 days and actual days elapsed (including the first day but excluding the last day) in the period for which it is payable. All accrued and unpaid interest shall be payable on the Maturity Date. This is an unqualified obligation of the Borrowers to pay the sum set forth above, with interest as provided, which obligation is payable as provided herein regardless of the income or lack thereof of the Borrowers.

(b) Notwithstanding the foregoing, the Borrowers hereby unconditionally promise to pay to the order of the Payee interest at a rate of 7% per annum (the "Post-Default Rate"), calculated in the same manner as in paragraph 2(a), on any amount of principal or interest payable by the Borrowers under this Promissory Note that shall not be paid in full when due (whether at the Maturity Date, by acceleration, or otherwise) for the period from and including the due date of such payment to but excluding the date the same is paid in full.

(c) The Borrowers may, at the Borrowers' option, prepay all or any portion of the principal of this Promissory Note at any time without premium or penalty of any kind, provided that the Borrowers simultaneously pay accrued and unpaid fees, expenses, interest (including, to the extent applicable, interest at the Post-Default Rate), to but excluding the date of such prepayment, on the amount of principal so prepaid.

3. The Borrowers may, at the Borrowers' option, execute and deliver to the Payee on any anniversary of this Promissory Note another promissory note that (except as provided in the next sentence of this paragraph) is identical to this Promissory Note in form and substance (each other such promissory note being referred to herein as a "Capitalized Interest Note") in satisfaction of the Borrowers' obligation to pay interest hereon that has accrued and remains unpaid. Each Capitalized Interest Note shall be in a principal amount equal to the accrued and unpaid interest to which it relates, shall be dated the date of the execution and delivery thereof, and shall bear interest at the "Applicable Federal Rate" as defined in Section 7872 (or any successor provisions) of the Internal Revenue Code of 1986, as amended, and as determined by reference to the maturity of such Capitalized Interest Note. Without limiting the obligation of the Borrower under any Capitalized Interest Note, the execution and delivery of any Capitalized Interest Note shall constitute payment of the interest hereon to which such Capitalized Interest Note relates. The undersigned Borrower and maker of this Promissory Note shall have the right, but not the obligation, to make any payments due hereunder by transferring to the Payee one or more limited partnership units ("Units") of the FRIENDSHIP PARTNERS L.P. The value of the Units shall be determined by mutual agreement of the parties, or, if they are unable to agree, by an independent appraiser selected by the Payee.

4. Right of Set-Off. The Borrowers agree that, in addition to (and without limitation of) any right of set-off the Payee may otherwise have, the Payee shall be entitled, at its option, to offset amounts owing by the Payee to the Borrowers, in dollars or in any other currency (regardless of whether such amounts are then due to the Borrowers), against any amount payable by the Borrowers to the Payee under this Promissory Note that is not paid when due; provided that nothing contained herein shall require the Payee to exercise any such right.

5. Representations and Warranties. The Borrowers hereby represent and warrant to the Payee as follows:

(a) Organization; Powers. (i) The Borrowers are the Trustees of a trust duly organized and validly existing under the laws of the jurisdiction of its formation, (ii) the Trustees have all requisite power and authority to carry out the terms of its Trust, including, but not limited to, carry on its activities as now conducted, and (iii) the Investment Trustee has the legal capacity and full power and authority to execute and deliver, and to bind the Borrowers to perform their obligations under, this Promissory Note, and to execute and deliver any and all documents and instruments in connection therewith.

(b) Authorization; Enforceability. The Borrowers have all necessary corporate, trust, partnership or other power, authority and legal right to execute, deliver and perform its obligations under this Promissory Note; the execution, delivery and performance by the Borrowers of this Promissory Note have been duly authorized by all necessary trust action on its part (including, without limitation, any required approvals); and this Promissory Note has been duly and validly executed and delivered by the Borrowers and constitutes legal, valid and binding obligations, enforceable against the Borrowers in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency, or any securities exchange, are necessary for the execution, delivery or performance by the Borrowers of this Promissory Note or for the legality, validity or enforceability hereof or thereof.

(d) No Breach. None of the execution and delivery of this Promissory Note, the consummation of the transactions herein and therein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, the fiduciary duties of the Trustees under the Trust, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or, to the knowledge of the Borrowers, any agreement or instrument to which the Borrowers are a party or by which they or their Property are bound or to which they are subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any Property of the Borrowers pursuant to the terms of any such agreement or instrument.

(e) Indebtedness for Borrowed Money. To the knowledge of the Borrowers, there are no Liens on the assets or properties of the Borrowers existing as of the date hereof.

6. This Promissory Note evidences the obligation of the Borrowers to pay to the Payee the deferred purchase price for a 98.8963% limited partnership interest in FRIENDSHIP PARTNERS L.P., a Delaware limited partnership (herein referred to as the "Interest") transferred by the Payee to the Borrowers, and the payment hereof is secured by a pledge of the Interest, and the proceeds thereof (the "Pledged Interest"), under a Pledge Agreement dated November 30, 2009 (as the same may be modified and supplemented from time to time, the "Pledge Agreement") between the Borrowers and the Payee. Terms defined in the Pledge Agreement but not herein have the respective meanings ascribed to such terms in the Pledge Agreement.

7. Expenses. The Borrowers agree to pay or reimburse Payee for: (a) all reasonable out-of-pocket costs and expenses of Payee (including, without limitation, the reasonable fees and expenses of legal counsel) in connection with (i) any default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated); and (b) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Promissory Note or any other document referred to herein.

8. Definitions. As used herein, the following terms shall have the following respective meanings:

"Business Day" shall mean a day other than Saturday, Sunday or any day on which banks located in the State of Delaware are authorized or obligated to close.

"Dollars" or "$" refers to lawful money of the United States of America.

"Lien" shall mean, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Promissory Note, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

9. If one or more of the following events shall occur and be continuing (each an "Event of Default"):

(a) The Borrowers shall default in the payment of any interest when due under this Promissory Note and the same shall continue for thirty (30) or more Business Days;

(b) Any representation or warranty made herein (or in any modification or supplement hereto) by the Borrowers, or any certificate furnished to Payee pursuant to the provisions hereof, shall prove to have been false or misleading as of the time made or furnished in any material respect;

(c) The Borrowers shall incur any indebtedness for borrowed money without the prior written consent of Payee (which consent shall not be unreasonably withheld) or any event specified in any note, agreement, indenture or other document evidencing or relating to any other indebtedness for borrowed money of the Borrowers shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, such indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity;

(d) A proceeding or case shall be commenced, without the application or consent of the Borrowers, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of the Borrowers or of all or any substantial part of their Property, or (iii) similar relief in respect of the Borrowers under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) or more days; or an order for relief against the Borrowers shall be entered in an involuntary case under the Federal Bankruptcy Code of 1978, as amended from time to time, presently codified as Title 11 of the United States Code (the "Bankruptcy Code");

(e) The Borrowers shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of themselves or of all or a substantial part of their Property, (ii) make a general assignment for the benefit of their creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any corporate action for the purpose of effecting any of the foregoing;

(f) A final judgment or judgments for the payment of money of $50,000 or more in the aggregate shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against the Borrowers and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and the Borrowers shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrowers to enforce any such judgment;

(g) The Borrowers shall default in the payment of any principal of or interest on this Promissory Note when due or in the performance of the Borrowers' obligations under the Pledge Agreement and any such default shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers;

(h) Any representation or warranty made in the Pledge Agreement by the Borrowers shall prove to have been false as of the time made in any material respect and shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers; or

(i) The Trust shall terminate, be liquidated or dissolved.

THEREUPON: (1) in the case of an Event of Default other than one referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, if not already fully due and payable at the Maturity Date, Payee may, by notice to the Borrowers, declare the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers; and (2) in the case of the occurrence of an Event of Default referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall automatically be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers.

10. Payments of principal and interest and any other amounts under this Promissory Note may be made in cash or in property (whether tangible or intangible) or a combination thereof. Any property other than cash transferred in payment of any amount of principal of or interest on this Promissory Note shall be valued as of the date of such payment in

accordance with the principles set forth in Treasury Regulations §§25.2512-1 to 25.2512-8 (26 C.F.R. §§25.2512-1 to 25.2512-8). Payments hereunder shall be made to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers.

11. Notices to the Payee hereunder shall be sent by certified mail or delivered by a recognized commercial courier service to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers. Notices to the Borrowers shall be sent by certified mail or delivered by a recognized commercial courier service to the Borrower, Wellin Family 2009 Irrevocable Trust, South Dakota Trust Company LLC, Trustee, 201 South Phillips Avenue, Suite 200, Sioux Falls, South Dakota 57104, or such other address as the Borrowers shall notify the Payee.

12. The terms of this Promissory Note may be waived, altered or amended only by an instrument in writing duly executed by the Payee and the Borrowers. No failure to exercise and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

13. The Investment Trustee has executed and delivered this Promissory Note for and on behalf of all of the Borrowers, in their capacity as Trustees, and in no case shall any Borrower be personally liable for or on account of any of the obligations of the Borrowers hereunder, recourse for which obligations shall be limited to the Collateral (which shall consist of the Pledged Interest) and any other assets of the Trust. Subject to the foregoing provisions of this paragraph, this Promissory Note shall be binding upon any successor Trustees of the Trust, and all references herein to the "Borrowers" shall include all such successor trustees but shall exclude any person or entity that, at the time of determination, shall have ceased to be a Trustee of the Trust. The Trust is personally obligated and fully liable for the amount due under this Promissory Note. The Payee has the right to sue on this Promissory Note and obtain a personal judgment against the Trust for satisfaction of the amount due under this Promissory Note either before or after a foreclosure of the Pledged Interest under the Delaware Uniform Commercial Code.

14. **Choice of Law. This Promissory Note shall be governed by, and construed in accordance with, the law of the State of Delaware, without giving effect to any principles of choice of law thereof that could require the application of the law of another jurisdiction.**

15. Waiver of Jury Trial. THE BORROWERS AND, BY ITS ACCEPTANCE OF THIS PROMISSORY NOTE, PAYEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

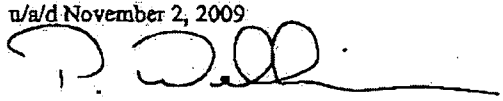
13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009



Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee

Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

By: Patti Graumann
As its: Trust Officer

13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee

Cynthia W. Plum, Trustee

Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

By: Patti Graumann
As its: Trust Officer

13673.570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

Marjorie W. King
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

_____
By: Patti Graumann
As its: Trust Officer

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

_____
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

Patti Graumann
By: Patti Graumann
As its: Trust Officer

13673570.2

ACKNOWLEDGMENT

THE WELLIN FAMILY 2009 IRREVOCABLE TRUST

I hereby acknowledge receipt of:

1. Original instrument dated November 20, 2013 and signed by Keith S. Wellin removing Thomas Farace as Trust Protector of the above referenced Trust, and appointing Lester S. Schwartz, Esq., as the successor Trust Protector.

1. Original instrument dated November 20, 2013 and signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, removing South Dakota Trust Company LLC as Trustee and appointing in its place Brown Brothers Harriman Trust Company of Delaware, N.A. as successor Trustee.

2. Original instrument dated November 20, 2013 and signed by Lester S. Schwartz, Esq., as Trust Protector of the above referenced Trust, making certain amendments to the Trust pursuant to the authority granted to him in Article VI thereof.

3. Original instrument dated November 20, 2013 signed by Keith S. Wellin exercising the right granted to him under Article IX of the Trust to reacquire Trust assets, whereby he substituted the note issued by the Trust to him with a face value of $49,802,115 for interests in Friendship Partners, L.P. with an equivalent value.

4. Original promissory note dated September 4, 2012, between the above reference Trust and the Keith S. Wellin Florida Revocable Living Trust, with a face value of $49,802,115.

5. Original instrument dated November 20, 2013 (with an effective date and time of 11:59pm on November 20, 2013) signed by Keith S. Wellin releasing his right to substitute Trust assets.

The books and records of the above referenced Trust shall be adjusted to reflect the transactions consummated by the documents listed above.

Lynn W. Watson, Brown Brothers Harriman Trust Company of Delaware, N.A., as Trustee of the Wellin Family 2009 Irrevocable Trust, dated November 2, 2009

11-21-2013

FRIENDSHIP PARTNERS L.P.

To: Cynthia W. Plum, Manager of FRIENDSHIP MANAGEMENT LLC, General Partner (of FRIENDSHIP PARTNERS L.P.)

Re: Transfer of Interest — Section 9.2(a)

The undersigned, as transferee of limited partnership units constituting 58.1554% of FRIENDSHIP PARTNERS, L.P. (Partnership) hereby agrees and represents:

- To be bound by the Agreement of Limited Partnership of FRIENDSHIP PARTNERS L.P.
- To assume the obligations of the Transferor to the Partnership.
- That the transfer:
  - (a) Is in accordance with and would not violate the Securities Act of 1933, as amended, or any other Federal, State or local law;
  - (b) Would not require the Partnership to register as an investment company under the investment Company Act of 1940, as amended;
  - (c) Would not jeopardize the status of the Partnership for Federal Tax purposes as a partnership;
  - (d) Would not cause the partnership to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code;
  - (e) Results in rights only as an assignee under the Delaware Revised Uniform Limited Partnership Act.

This document may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all the signers had signed a single signature page.

Dated: November 15, 2013

Keith S. Wellin

From: Elizabeth Sykes [mailto:ESykes@charlestoncounty.org]
Sent: Tuesday, February 11, 2014 3:38 PM
To: 'Tiffany Provence'
Cc: James B. Hood (james.hood@hoodlaw.com); Bobby Hood; Richard Rosen (rsrosen@rrhlawfirm.com); Brew Hagood (bhagood@rrhlawfirm.com); Frank Blanchard; Bryson Geer; Patty Scarborough (scarborough@eckb.com); Edward Bennett; Andrew W. Chandler; Robert Brunson; Merritt Abney; Patrick Wooten; Michelle J. Weil
Subject: RE: Proposed Order and Request for Deadline

Counsel:

The Court will set a deadline for Friday, February 14 by noon for the submission of proposed orders and briefs. I will not be in the office on Friday so please make sure to copy our Law Clerk, Michelle Weil, on all further emails and correspondences.

Thank you,

Elizabeth

Elizabeth T. Sykes
Guardianship/Conservatorship Clerk
Charleston County Probate Court
100 Broad Street, Suite 469
Charleston, SC 29401
P.843.958.5187
F.843.958.5191
esykes@charlestoncounty.org

From: Tiffany Provence [mailto:tiffany@provencemesservy.com]
Sent: Tuesday, February 11, 2014 2:39 PM
To: Elizabeth Sykes
Cc: James B. Hood (james.hood@hoodlaw.com); Bobby Hood; Richard Rosen (rsrosen@rrhlawfirm.com); Brew Hagood (bhagood@rrhlawfirm.com); Frank Blanchard; Bryson Geer; Patty Scarborough (scarborough@eckb.com); Edward Bennett; Andrew W. Chandler; Robert Brunson; Merritt Abney; Patrick Wooten
Subject: Re: Proposed Order and Request for Deadline

Elizabeth,

To clarify for the benefit of all parties, the additional submission is simply the proposed Order on the $50,000,000.00 being held by the Wellin Children and a brief in support of the same. At the hearing, Mr. Brunson argued that the Court lacked jurisdiction and the authority to require the children to surrender the funds. Mr. Hood and I both argued that the court had that ability under

Exhibit D

the S.C. Code as well as equitable principals. The Judge asked that I provide him with a brief on that authority and asked both parties to submit proposed Orders on the same.

I am assuming that Ms. Geer has a copy of the transcript but for the benefit of all involved, this discussion can be found at the close of the hearing (Page 76, lines 1,2) where Judge Condon states, "Well, on that issue, submit some, I guess, brief and proposed orders, and I'll take a look at that." To that end, I believe opposing counsel should be well aware of the issues we intend to address as they are identical to those raised in their Motion to Dismiss and argued at the hearing.

I would respectfully request that a prompt deadline be set for submission of all documents as I don't think it was the Judge's intention to allow each party to review or respond.

Sincerely,

Tiffany N. Provence

Tiffany N. Provence
Provence Messervy LLC
300 North Cedar Street, Suite A
Summerville, SC 29483

www.ProvenceMesservy.com
TNProvence@gmail.com
(843) 871-9500 (office)
(843) 261-7035 (fax)

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

On Feb 11, 2014, at 2:08 PM, Bryson Geer <bryson.geer@nelsonmullins.com> wrote:

Elizabeth: We have some minor comments to the attached proposed order and will submit a redline to the Court by the end of the day today. As to the second round of proposed orders and the additional submission proposed by Ms. Provence, we are unclear on what she intends to submit and therefore are not in a position to respond by Friday especially given that there is no petition pending that sets forth her claims. We would be agreeable to her making her submission by this Friday, and then we would

respectfully request 10 days to review and respond with our own proposed order and/or such other evidence or briefing as is necessary in light of the evidence and/or arguments she submits.

Please let us know if this approach is agreeable to the Court, and please do not hesitate to contact us if the Court needs anything further from us.

Kind regards,

Bryson

Nelson Mullins

Bryson Moore Geer
Attorney at Law
bryson.geer@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP
Liberty Center, Suite 600
151 Meeting Street, Charleston, SC 29401
Tel: 843.720.4306
Fax: 843.722.8700
www.nelsonmullins.com
(View Bio)

From: Robert Brunson
Sent: Tuesday, February 11, 2014 9:51 AM
Subject: FW: Proposed Order and Request for Deadline

Robert Brunson
Nelson Mullins
843-534-4226
robert.brunson@nelsonmullins.com

From: Tiffany Provence [mailto:tiffany@provencemesservy.com]
Sent: Tuesday, February 11, 2014 9:49 AM
To: Elizabeth Sykes
Cc: Robert Brunson; James.hood@hoodlaw.com; bobby.hood@hoodlaw.com; Richard Rosen; lester.schwartz@sctaxlawyer.com; Patricia Scarborough; Andrew W. Chandler; Edward G. R. Bennett
Subject: Proposed Order and Request for Deadline

Elizabeth,

Per my call this morning, please find a copy of a proposed Order in the Matter of Keith Wellin which only addresses the ruling made from the bench by Judge Condon.

After the hearing, we realized that a deadline had not been established for submission of the supplemental materials I offered the court or the submission of the dual proposed Orders requested by the Court. Could you please confirm a deadline with Judge Condon so that all parties can ensure a timely submission of the same? We would prefer a

deadline as early as close of business Friday to move this along; however, I have not contacted opposing counsel to determine the amount of time they may need.

Thank you in advance for your attention to this matter.

Tiffany Provence

Tiffany N. Provence
Provence Messervy LLC
300 North Cedar Street, Suite A
Summerville, SC 29483

www.ProvenceMesservy.com
TNProvence@gmail.com
(843) 871-9500 (office)
(843) 261-7035 (fax)

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

<20140211_Proposed Order.doc>

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE PROBATE COURT
IN THE MATTER OF: KEITH S. WELLIN Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, Petitioners, vs. Keith S. Wellin, Respondent.	)	Case No. 2013-GC-10-0129 **MOTION TO ALTER OR AMEND JUDGMENT**

PROBATE COURT
14 MAR -3 PM 3:56

Petitioners Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Wellin Children") submit this motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend this Court's order filed on February 21, 2014 (the "Order"), directing the Wellin Children to pay $50,228,000 to Synovus Trust Company ("Synovus"), the second Special Conservator appointed by this Court for Respondent Keith S. Wellin ("Wellin"). Counsel for the Wellin Children received written notice of the Order on February 21, 2014.

With this motion, the Wellin Children request that the Order be vacated in its entirety and that the Court instead enter an order dismissing all requests of the first Special Conservator, Edward Bennett ("Bennett"), for substantive relief.[1] The specific grounds for this Motion are as follows:

1. This Court lacked jurisdiction to grant the relief set forth in the Order for the following reasons:

[1] Bennett initially requested via *ex parte* letter dated January 14, 2014, that the Court order the Wellin Children to pay him $90 million and determine the federal income tax status of the Wellin Family 2009 Irrevocable Trust. At the hearing on his initial request held on February 6, 2014, Bennett's attorney orally requested that the Court order the Wellin Children pay him $50 million.

a. Bennett failed to commence a "formal proceeding" by filing and serving a summons and complaint, which is required before this Court may grant substantive relief. A request for substantive relief on behalf of a person for whom a conservator has been appointed must be made through "formal proceedings," which requires the person seeking the substantive relief to "fil[e] a petition and summons with the appointing court." S.C. Code §§ 62-5-416(a); 62-1-201(17). Further, any proceedings concerning the internal affairs of a trust must be maintained through "formal proceedings." S.C. Code § 62-7-201(a). Without a summons and complaint, the court does not acquire jurisdiction over the party against whom relief is sought. *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996). Because Bennett did not file a summons and complaint in connection with his request for relief, this Court was without jurisdiction to order the requested relief.[2]

b. The filing of a petition for appointment of a conservator by the Wellin Children did not grant this Court jurisdiction to require them to pay $50 million. Section 62-5-402 provides that, after service of a summons and complaint seeking appointment of a conservator, this Court has exclusive jurisdiction over certain matters inapplicable here and concurrent jurisdiction over matters seeking to determine "the validity of claims for or against the person or estate of the protected person *except as limited by Section 62-5-433*." S.C. Code Ann. § 62-5-402(3) (emphasis added). Section 62-5-433 sets forth the procedure for settlement of claims in favor of or against incapacitated persons and provides that claims exceeding $25,000 must be addressed to the circuit court. Here, neither Bennett nor Wellin asserted any claim for the person or estate of Wellin prior to the Court's order requiring the Wellin Children to pay $50 million. Rather, Bennett merely made an oral request at a hearing. Further, even if Bennett's oral request could somehow be characterized as a "claim," that claim would exceed $25,000. Thus, this Court would still lack jurisdiction over the claim.

c. This Court lacks jurisdiction over the Wellin Family 2009 Irrevocable Trust (the "Trust"), which is the entity that holds the subject funds. The Wellin Children brought the instant action in their individual capacities as Wellin's children because they were concerned that his current wife is dissipating his assets; they did not bring the action as trustees of the Trust. Bennett has not even asserted a claim against the Wellin Children in their individual capacities, much less in their capacities as trustees of the Trust. "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a result of service, acceptance, or waiver of process, or an appearance." *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008). "Stated differently, for relief to be granted against a trust, the trust—through its trustee—must be

[2] On February 25, 2014, four days *after* this Court issued the Order, Bennett filed a Summons and Petition to Return Assets in this Court in connection with the same request for substantive relief that gave rise to the Order, thereby implicitly recognizing that this Court was without jurisdiction to order substantive relief in the absence of a formal proceeding. *See* Exhibit A.

made a party to the action." *Id.* Because the Trust is not a party to this action, this Court lacked jurisdiction to grant the relief requested, and the Order should be vacated.

2. Bennett lacked standing in his position as special conservator to pursue any claims on Wellin's behalf at the time of his application to this Court. Under South Carolina law, only a real party in interest has authority bring suit, S.C. R. Civ. P. 17(a). A special conservator has only that authority expressly conferred by order of the probate court. S.C. Code Ann. § 62-5-409(c). This Court's order appointing Bennett as Special Conservator vested him solely with the duty to ensure that no transfers were made from Wellin's estate without adequate consideration and expressly provided that Bennett did not have the typical rights and duties of a court-appointed conservator. *See* Consent Order. Consequently, Bennett lacked the authority to pursue claims on Wellin's behalf when the request for substantive relief was made, and the Order therefore should be vacated.

3. South Carolina Rule of Civil Procedure 12(b)(8) required dismissal of Bennett's request for relief because the same parties are litigating *precisely* the same issues regarding ownership of the same funds in the South Carolina Federal District Court and elsewhere. Indeed, on February 28, 2014, Wellin filed an amended complaint in 2:13-cv-01831-DCN, in which he expressly pleads the *identical* facts alleged on his behalf by Bennett in his January 14, 2014, *ex parte* application to this Court related to Wellin's purported exercise of a right to substitute other assets belonging to him for assets of the Trust. *See* Am. Compl., attached as Exhibit B. An order by this Court regarding the same funds at issue in the federal court action could result in duplicative and/or inconsistent judgments. Because another matter is pending between the same parties regarding the same issues, this Court should have dismissed Bennett's request for relief pursuant to Rule 12(b)(8).

4. Issuance of the Order in the absence of a summons and complaint, discovery or a trial by jury represents a clear violation of the procedural due process rights of the Wellin Children and the Trust. Bennett's request that the Wellin Children be required to pay him $50 million was made orally in the middle of a hearing and was not even reduced to writing. Although Bennett submitted a proposed order granting his requested relief and a memorandum in support, the Court required the Wellin Children to submit their own brief and order on the same day and did not allow them an opportunity to respond to Bennett's submission. Thus, the Court required a non-party to this action, the Trust, to pay $50 million without service of a summons and complaint, without the opportunity to conduct any discovery, without a trial, and without even the opportunity to respond in writing to the arguments made by Bennett in connection with his request. Because the Order denied the Wellin Children and the Trust their rights to procedural due process, the Order should be vacated.

5. This Court improperly invoked its equitable powers in granting the requested relief. The Court's equitable powers do not allow it to simply disregard the Rules of Civil Procedure and due process rights of the parties. *Johnson v. Lloyd*, 399 S.C. 470, 476, 732 S.E.2d 198, 201 (Ct. App. 2012). Moreover, equitable relief was improper here

because Bennett has an adequate remedy at law – namely, initiating formal proceedings seeking money damages. *See Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (S.C.2012). In the past eight months, two separate *ex parte* TROs have been entered against the Wellin Children restricting their ability to use the same $50 million (or, in the case of the first TRO, the stock that was liquidated to generate the $50 million) at issue in the Order. The Federal District Court dissolved both of these TROs because, *inter alia*, no irreparable harm is present where, as here, Wellin can sue – and has sued – his children for money damages, and Wellin failed to demonstrate a likelihood of success on the merits. (*See* Civil Action No. 2:13-cv-1831, Dkt. No. 79 (dissolving *ex parte* TRO and finding that no irreparable harm existed and that the other elements necessary for injunctive relief had not been established); Civil Action No. 2:13-3595, Dkt. No. 15 (dissolving the *ex parte* TRO granted by this Court and making similar findings)). Here, Bennett has not even argued, much less established, that the elements necessary for obtaining injunctive relief are present. Thus, by ordering payment of $50 million to a third party pending the outcome of the federal court litigation, this Court improperly invoked its equitable power, and therefore the Order should be vacated.

6. The Order repeatedly and erroneously states that the Wellin Children agree that Wellin is entitled to "at least $50 million," referring to such money as "the undisputed funds". The Wellin Children have unambiguously disputed that Wellin is entitled to recover any funds from the Wellin Children prior to the year 2021. The Wellin Children assert that Wellin is entitled to "at least $50 million" only in satisfaction of the promissory note that does not come due until 2021 (the "Note") given by the Trust to a revocable trust of which Wellin is trustee. The Wellin Children, in their capacities as trustees of the Trust, tendered payment in that amount to Bennett, as counsel for Wellin, in prepayment and satisfaction of the Note. Bennett rejected the payment in breach of the Note. The Trust remains ready, willing and able to make the payment, but only in satisfaction of the Note. Other than payment of the Note (which does not come due until 2021), the Wellin Children do not owe Wellin anything. Because the fundamental premise of the Order – that the Wellin Children agree they owe Wellin "at least $50 million" – is incorrect, the Order should be vacated.

7. The Order states:

> On November 20, 2013, Wellin substituted the Promissory Note, valued by Petitioners in their Petition at $49,000,000 (plus interest) for a 58% interest in Friendship Partners. Prior to the substitution, Special Conservator Edward G. R. Bennett reviewed the transaction per this Court's Order to ensure adequate value was received for the transfer of assets. On the date of the substitution, the Promissory Note was valued at approximately $50,211,447. Based on the longstanding valuation of Friendship Partners, this was the equivalent of 58.15548645% interest in Friendship Partners; therefore, Bennett approved the substitution.

(Order at 2). The Wellin Children dispute the validity and effectiveness of Wellin's alleged substitution of assets.and, in the absence of any discovery on this matter, dispute any findings about steps Bennett claims to have taken prior to this alleged substitution. Further, the Wellin Children dispute the valuation of the Note and the partnership units used by Bennett. Because no claim relating to this substitution had been asserted at the time of the Court's order, the Wellin Children have not had the opportunity to assert affirmative defenses, conduct discovery, make legal arguments to the Court, or make factual arguments to a jury regarding this alleged substitution. The Court's findings are based solely on Bennett's bare allegations in his proposed order. The Court cannot simply make findings on these matters in the absence of any pleadings, discovery, evidentiary record, or even legal argument from the parties.

8. The Order also states in the findings of fact: "That on November 20, 2013, Wellin substituted the Promissory Note valued at approximately $49,802,115 for a 58.15548645% interest in Friendship Partners." (Order at 3). As noted above, the Wellin Children dispute this finding of fact, and there are no facts in the record to support this finding. The Court has not solicited or received the competing arguments of the parties regarding this alleged substitution of assets. Thus, the Court is in no position to make a finding of fact as to this alleged substitution.

9. Under the "Conclusions of Law," the Order states that "this Court has jurisdiction over the assets belonging to Keith S. Wellin, including the Promissory Note or any asset for which it was substituted." (Order at 4). This is error. The Court does not have jurisdiction over assets held by individuals or entities other than Wellin merely because Wellin claims that he is entitled to recover such assets from those individuals or entities (whether he claims to be entitled to such assets through a substitution or otherwise). Even if the Court believes that Wellin is correct in asserting that he is entitled to recover certain assets from others, the Court does not have jurisdiction over such assets in the absence of a summons, complaint, or even a claim.

10. The Order cites to *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009), and *In re Estate of Ahern*, 359 Ill. App. 3d 805, 835 N.E.2d 95 (2005). (Order at 5). Neither of these cases involves a court ordering a non-party to pay money in the absence of a summons, complaint, or even a claim against the individual or entity being ordered to pay, and, thus, these cases are distinguishable from the instant case and do not support the Court's Order.

11. The Court's Order references the fact that the Wellin Children have voluntarily appeared as Trustees in other matters before this Court. (Order at 6). This has no legal significance. A voluntary appearance in one matter does not confer jurisdiction over a party in a separate matter.

The Wellin Children herein incorporate by reference their Petition in this matter, with attachments, their Motion to Dismiss the Special Conservator's Application for Substantive Relief and Memorandum in Support filed on February 3, 2014, Petitioner's Memorandum in

Opposition to Edward's Bennett's Oral Request for Relief filed on February 14, 2014, the arguments made at the hearings before the Court, and such other and further pleadings, memoranda and/or affidavits as the Wellin Children may file prior to any hearing on this Motion.

CONCLUSION

Based on the foregoing, the Wellin Children respectfully request that this Court vacate the Order requiring payment of $50 million to Synovus.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
March 3, 2014

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

PROBATE COURT
14 MAR -3 PM 3:56

Pleadings: **MOTION TO ALTER OR AMEND JUDGMENT**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483

Lydia Spry
Administrative Assistant

March 3, 2014

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	
	)	
In Matter of: Keith S. Wellin	)	C/A No. 2013-GC-10-0129
	)	
Peter J. Wellin, Cynthia W. Plum and Marjorie W. King,	)	**RESPONDENT'S PETITION TO REMOVE LINDA AUSTIN, M.D. AS DESIGNATED EXAMINER**
Petitioners	)	
	)	
Versus	)	
	)	
Keith S. Wellin,	)	
Respondent	)	
	)	

Respondent Keith S. Wellin (hereinafter "Respondent"), by and through his undersigned attorneys, petitions this Court for an Order removing Linda Austin, M.D. as a Designated Examiner of Respondent under S.C. Code Ann. § 62-5-407(b). Additionally, Respondent seeks guidance from the Court as to the scope of the examination to be conducted by the Designated Examiners, including guidelines that ensure these examiners retain their neutrality, limit their communications to Respondent and his essential care providers, and provide a clarification that the only standard to be considered by these Designated Examiners is whether Respondent presently has the capability to understand or communicate decisions regarding his property and affairs, without regard to Respondent's prior medical history, past decisions, or other ongoing litigation.

FACTS

On July 19, 2013, Petitioners Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King (hereinafter "Petitioners") filed a Petition for Protective Order and Appointment of Conservator, contending that Respondent had deficient mental capacity and seeking to have the Court appoint a conservator to manage his property

and affairs. On August 15, 2013, the Court appointed Edward G.R. Bennett, Esq. as a Special Conservator for Respondent and Special Trustee for the Keith S. Wellin Florida Revocable Living Trust and also stayed any requirement that Respondent submit to a medical examination, pending the outcome of mediation. The parties were unsuccessful in mediating this matter.

Subsequently, on January 17, 2014, the Court appointed L. William Mulbry, Jr., M.D. and Gordon Teichner, Ph.D., ABPP, as Designated Examiners of Respondent pursuant to S.C. Code Ann. § 62-5-407(b). See Ex. A. However, because Dr. Mulbry had an affiliation with MUSC, the Court removed him as a Designated Examiner on January 24, 2014 after the Petitioners argued that Dr. Mulbry's affiliation with MUSC resulted in at least the potential for a lack of objectivity. All parties consented to the appointment of Linda Austin, M.D. in place of Dr. Mulbry, and the Court appointed her as a Designated Examiner on February 20, 2014. See Ex. B. The Court also authorized disclosure of Respondent's medical records to Dr. Austin and Dr. Teichner. Id.

The February 20, 2014 order permitted the Designated Examiners to communicate with other individuals in formulating their opinions, without providing any further instruction about the scope of the examination. The order also explained that an "incapacitated person" is:

> any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

Id.; see S.C. Code Ann. § 62-5-101(1). However, the Court gave no further clarification of the standard these examiners were supposed to follow or the permissible scope of

their examination. The order did not explain that a person does not need to have full knowledge and understanding of all decisions he has made regarding his property, but needs only be capable of understanding present and future decisions to be found competent. See In re Estate of Weeks, 329 S.C. 251, 263 (Ct. App. 1997) (stating "the 'capacity to know or understand; rather than the actual knowledge or understanding, is sufficient'"); In re Campbell, 367 S.C. 209, 213 (Ct. App. 2006) aff'd as modified, 379 S.C. 593 (2008) (where physician found person was "*capable* of handling her own financial affairs"). The order also failed to explain to the examiners that only Respondent's present state of mind is relevant in their determination, and that any prior issues Respondent may have had should have no bearing on their report to the Court. See In re Thames, 344 S.C. 564, 572 (Ct. App. 2001) ("Where a transaction is challenged on the ground of mental incompetency, the individual's competency on the date of that transaction must be determined."). Therefore, the order should have clarified to the Designated examiners that the standard for determining whether a person is incapacitated in a conservatorship proceeding is whether that person presently has the capability to understand or communicate decisions regarding his property and affairs, without regard to any of the person's prior medical history or decisions.

Through no fault of her own and without clarification from the Court, Dr. Austin communicated with some of Respondent's medical providers, Respondent's wife, Wendy C.H. Wellin, and one of the Petitioners, Peter Wellin. At Dr. Austin's request, Mrs. Wellin was present during Dr. Austin's examination of Respondent. As Dr. Austin's examination of Respondent was not limited to Respondent and his essential care providers, the results of her examination could be called into question

and may lack the requisite objectivity and certainly the appearance of objectivity. Therefore, to ensure that all findings in this conservatorship proceeding are based on neutral and objective evidence, the Court should remove Dr. Austin as Respondent's Designated Examiner and appoint a new examiner with clarification of the undertaking and the applicable standards.

DISCUSSION

The appointment of a conservator is a life-altering event, wherein a Court finds that a person may not be capable of managing his or her daily affairs. S.C. Code Ann. § 62-5-401. Such a finding can have a profound psychological and emotional impact on a person. With the potential to have this great of an effect on a person's life, the Probate Court must keep "the best interests of the allegedly incapacitated person in mind" throughout the conservatorship proceeding and ensure that it makes an objective decision. In re Campbell, 379 S.C. 593, 600 (2008). To aid the Court in making its decision, the allegedly incapacitated person is required to "be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained." S.C. Code Ann. § 62-5-407(b). The Court must appoint "neutral and objective examiners" as "only an unbiased examiner can render an opinion to the probate court that considers the best interests of the allegedly incompetent party." Id. at 600–01.

All parties believed that Dr. Austin would be able to provide the Court with an objective opinion regarding Respondent. However, without guidance as to the scope of the examination, Dr. Austin has taken actions that will call into question the objectiveness of any opinion she submits to the Court.

During her examination of Respondent, Dr. Austin requested that Mrs. Wellin be present. While Respondent loves and adores his wife, Mrs. Wellin's attendance at her husband's examination may raise concerns about the objectiveness of the exam. In fact, in one of the parallel proceedings in which Petitioners and Respondent are adverse parties, at Petitioners' insistence, the federal court ordered that Mrs. Wellin not attend Respondent's independent medical examination. Petitioners were presumably concerned about how Respondent would answer the examiner's questions while Mrs. Wellin was present. Dr. Austin's examination of Respondent may give the appearance of having been affected by this same concern. Thus, the objectiveness of any report Dr. Austin issues to the Court based on this initial examination will now be called into question. The only way to ensure that Respondent's examination is conducted in a fair and neutral manner, is to limit attendance to Respondent and his essential care providers as needed. Otherwise, the process will be called into question based upon the attendance at this examination rather than the results of the same.

Further, with no guidance as to any boundaries on the scope of her examination, Dr. Austin questioned Respondent extensively about the details of the transactions at issue in the other ongoing lawsuits. Respondent did not have his counsel present during this examination to ensure his rights were not waived. As a neutral and objective examiner, Dr. Austin's examination of Respondent should have remained content neutral, and it was not necessary for her to inquire about this other litigation for purposes of making a determination of the questions presented to her. In one of the suits pending in federal court, an examiner was similarly not given any instructions about the scope of her examination, and she proceeded to question Respondent about the litigation. This resulted in the filing of an emergency motion.

While the judge was not available to clarify the appropriate limits of that examination and the examination proceeded, this Court, going forward, should instruct examiners that they should not make any inquiry into the details of ongoing litigation when examining Respondent. Such a clarification will safeguard the neutrality and objectiveness of the examination and ensure that Respondent is not interrogated without counsel present.

As part of her examination of Respondent, Dr. Austin also approached and communicated with Petitioner Peter Wellin. Dr. Austin requested permission to do so from counsel for the Petitioners. Respondent was not aware of this request or the permission granted by counsel for the Petitioners. Had that request been shared, Respondent's counsel would have strenuously objected. Mr. Wellin is an adverse party to Respondent in this and other pending litigation, and Respondent maintains that Mr. Wellin and his siblings have stolen in excess of $150 million from him. Moreover, Peter Wellin has not seen his father in over a year, except at his recent deposition and would be unable to provide any reliable information about his father's current state or abilities. Under these circumstances, Dr. Austin communicating with Mr. Wellin during her examination of Respondent was inappropriate and clouds the appearance of objectivity and neutrality in her findings. Additionally, this interaction with Peter Wellin makes Respondent uncomfortable in communicating with Dr. Austin. Knowing the details of his life, medical conditions and litigation views are being discussed with adverse parties rightfully makes Respondent reluctant to participate.

Without sufficient guidance, the current examination process lacks the necessary fairness and neutrality required. Without appropriate guidance and limitations on the scope of the proceeding, Dr. Austin was unaware that her interactions with Petitioner Peter Wellin would affect the objectiveness of her report to this Court. However, the door has been opened, and Dr. Austin can no longer issue an opinion to the Court that will allow it to make a decision based on purely objective information, as is required in this conservatorship proceeding. There can be no more biased of a source of information than a defendant accused of orchestrating a massive fraud, wrongfully converting enormous sums for his personal unjust enrichment to the Respondent's detriment. Especially when that party maintains a position not of objective concern but of hostility towards his father. To interject that information into this process poisons the process well beyond repair. Having been exposed to an adverse party and obtaining "his side of the story" is akin to the undue influence identified in In re Campbell and requires court intervention. As such, in order to protect Respondent's rights to a fair proceeding, the Court should remove Dr. Austin as a Designated Examiner under S.C. Code Ann. § 62-5-407(b).

CONCLUSION

Therefore, Respondent prays that the Court enter an Order removing Linda Austin, M.D. as a Designated Examiner pursuant to S.C. Code Ann. § 62-5-407(b). Going forward, Respondent seeks guidance from the Court as to the scope of the examination to be conducted by the Designated Examiners, including guidelines that ensure these examiners retain their neutrality, limit their communications to Respondent and his essential care providers, and that the only standard to be considered by these Designated Examiners is whether Respondent presently has the

capability to understand or communicate decisions regarding his property and affairs, without regard to Respondent's prior medical history, past decisions, or other ongoing litigation.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
James B. Hood (SC #70212)

Attorneys for the Respondent
Keith S. Wellin

315, 2014
Charleston, 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, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 5 day of March, 2014.

STATE OF SOUTH CAROLINA	) IN THE PROBATE COURT
	)
COUNTY OF CHARLESTON	) CASE 2013-GC-10-129
IN THE MATTER OF KEITH S. WELLIN	)
PETER WELLIN, CYNTHIA WELLIN PLUM, and MARJORIE WELLIN KING,	)
Petitioners.	)
vs.	)
KEITH S. WELLIN,	)
Respondent.	)

MEMORANDUM IN OPPOSITION TO RECONSIDERATION

The Special Conservator through his undersigned attorney submits this Memorandum in Opposition to Reconsideration. The Motion to Alter or Amend Judgment was filed by the Petitioners (the "Wellin Children") with this court on March 3, 2014 pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

The motion is void of any grounds, supporting documents, statues or cases which have not already been reviewed by this Court in making its decision. As a result, we respectfully request that the Petitioners' motion be denied and the Order requiring the Wellin Children to surrender assets belonging to their father ("Wellin") be upheld.

PROCEDURAL HISTORY

Edward G. R. Bennett was appointed by the Court as Special Conservator and Special Trustee on August 15, 2013 by consent of Petitioners. Section C of the Order Appointing Special Conservator requires Edward G. R. Bennett to "ensure that transfers of assets are not made without fair and adequate consideration." This matter was before the Court pursuant to a filing by the Special Conservator of an Application on January 14, 2014 pursuant to S. C. Code §62-5-416(b). In the Application, Bennett sought clarification from this Court as to his duty and

obligation to Wellin, his protected person, with regard to a November 20, 2013 transaction pursuant to which Wellin transferred an asset and received no consideration. Upon instruction from the Court, the Petitioners were served with a copy of the Application and related attachments and had proper notice of the February 6, 2014 hearing. Despite Petitioners' continuing allegations of *ex parte* communications, the Special Conservator properly followed the requirements of both the S. C. Code and the directions of this Court.

After the hearing, both parties were offered eight (8) days to submit written briefs on the issues presented at the hearing. On February 21, 2014 the Court issued its Order whereby it required the Wellin Children to pay $50,228,000 belonging to Wellin to Synovus Trust Company, N. A. and further appointed Synovus as Special Conservator II.

ARGUMENT: THE COURT HAS JURISDICTION

The motion sets forth the following grounds for reconsideration based on lack of jurisdiction: (1) Bennett failed to commence a "formal proceeding" as required by S. C. Code §62-5-416(a) and therefore the court lacked jurisdiction over the party against whom relief is sought, or (2) the filing of the Petition for Appointment of a Conservator did not grant this Court jurisdiction to require "them" (the Wellin Children) to pay $50 million, or (3) this matter involves the internal affairs of a trust and must be maintained through a "formal proceeding" under S.C. Code §62-7-201(a), or (4) this Court lacks jurisdiction over the 2009 Wellin Family Irrevocable Trust which is the entity that holds these funds. Each ground is addressed below.

Bennett failed to commence a "formal proceeding" as required by S. C. Code §62-5-416(a). The Wellin Children's continued attempts to escape the jurisdiction of this Court through removal and misapplication of the S. C. Code are well documented in the Court's file. "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22-23, 579 S.E.2d 334, 336 (S.C. Ct. App. 2003). The statutes that apply in this case, where a fiduciary is seeking instruction (as opposed to an interested party), are S.C. Code Ann. §62-5-416(b) and 416(c). S.C. Code Ann. §62-5-416(b) states, "Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not adjudication and does not preclude a formal proceeding."

Meanwhile S.C. Code Ann. §62-5-416(c) states, "After notice and hearing as the court *may* direct, the court may give appropriate instructions or make *any* (emphasis added) appropriate order." In the matter before this Court, the Special Conservator filed an application under S.C. Code Ann. §62-5-416(b) and as a result of a hearing on the matter, as to which all parties had notice and in which all parties participated, the Court issued an appropriate Order protecting the assets of Mr. Wellin under S.C. Code Ann. §62-5-416(c).

The filing of the Petition for Appointment of a Conservator did not grant this Court jurisdiction to require "them" (the Wellin Children) to pay $50 million. It is both obvious but crucial that the Court recall that although the Wellin Children frame this as substantive relief and assert the Court has no jurisdiction over them, they have also openly acknowledged that these funds do not belong to them. They have admitted as much by both their actions and their attorney's testimony in court. Special Conservator Hr'g Tr. 47:5-7, 69:25, 70:1-2, Feb. 6, 2014. The Court's Order was issued under the authority of Section 62-5-416(c) pursuant to which the Court has the authority "to make any appropriate order."

This Order should not personally affect them in that the funds in question do not and have never belonged to the Wellin Children, and they have admitted such. There is no substantive relief ordered, other than perhaps the loss of a legal strategy or the ability to manipulate their father, neither of which is a concern of this Court or in the best interest of Wellin.

The Wellin Children's continued attempts to frame this as matter as relief against "them" and to attempt to distinguish relevant case law by now calling themselves a "non-party" are both factual inaccurate.

This matter involves the internal affairs of a trust and must be maintained through a "formal proceeding" under S.C. Code §62-7-201(a). Petitioners again raise in their motion an argument that a formal proceeding is required as this matter involves the internal affairs of a trust. Unfortunately, Petitioners have misread or misapplied the statue. The Reporters Comments are clear in explaining "The subsection provides two illustrative and nonexclusive lists of such proceedings. The lists have this in common: all items on both lists are matters of dispute primarily between and among the trustees and the beneficiaries of trusts, i.e. matters internal to trust administration, and are *not* matters immediately involving third parties, such as creditors and debtors of trusts." S.C. Code Ann. §62-7-201(a) (emphasis added). The issue at hand does not involve the internal affairs of a trust nor does the Order make a decision on any such issue.

The Special Conservator and Wellin are tantamount to a creditor seeking funds that the Wellin Children have already acknowledged belong to him. The Petitioners' repeated attempts to hide behind a trust and their duties as trustees to shield them from this Court's jurisdiction are inappropriate and inaccurate.

This Court lacks jurisdiction over the 2009 Wellin Family Irrevocable Trust which is the entity that holds these funds. The Wellin Children again assert that because these funds are currently held by a Trust (with the three of them servings as the Trustees) the Court again lacks jurisdiction. S.C. Code Ann. §62-5-402 states that "after the service of summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has: ... (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended or distributed to or for the use of the protected person or any of his dependents." The funds in question are indisputably an asset in the estate of Wellin. Hiding them in a trust does not rob this Court of jurisdiction over the funds.

As to personal jurisdiction over the Wellin Children as Trustees, it is important to remember that the Wellin Children conceded in Court that their Petition subjects them, individually, to the personal jurisdiction of this Court. Significant discussion was given to this issue in Special Conservator's Brief already considered by this Court prior to its decision. "The Wellin Children, as Trustees, have voluntarily appeared in this Court and have removed matters related to trust affairs filed by the Trust Protector, Lester Schwartz. The Wellin Children, as Trustees, did not raise any objection as to Personal Jurisdiction [over] them as Trustees" (Spec. Conservator Br. 11). A similar effort to appear voluntarily in one capacity, while hiding behind a different fiduciary title to avoid negative consequences has been addressed in the matter of Ex Parte Cannon. *See* Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (S.C. Ct. App. 2009). Cannon was properly relied upon and cited by this Court in making its decision. Although Petitioners' Motion to Alter or Amend attempts to distinguish this case based on the claim that this is a separate matter, that argument has no merit as every action brought in this Court has been done under the same case number and in relation to the same matter, the protection of Wellin.

ARGUMENT: BENNETT HAS STANDING

The Wellin Children move this Court to amend its Order based on an argument that Bennett lacked standing to pursue any claims on Wellin's behalf. The original Order appointing the Special Conservator is clear that Bennett has a duty to "ensure that transfers of assets are not made without fair and adequate consideration." (See Order 1). To obligate a fiduciary with a duty but to deny them the basic powers needed to perform that duty is both practically and legally absurd. When a Conservator is appointed, there does not need to be an order appointing him as such, then a separate order granting him the powers to fulfill his duties. The appointment of Bennett as Special Conservator carried with it his standing to perform his duties. Again, we remain quite confident that had Mr. Wellin's wife been the party holding the funds, the Petitioners would have quite a different opinion on the Special Conservator's standing to remedy the situation.

ARGUMENT: DISMISSAL WAS NOT APPROPRIATE

A dismissal was not required for several reasons as outlined in the Special Conservator's Brief. Petitioners asked this court to dismiss this matter because "another action is pending between the same parties for the same claim" pursuant to S.C. R. Civ. P. 12(b)(8). However, they then acknowledge during the hearing that there is in fact no such action before the Federal Court or any other court. "That action does not currently contain a claim relating to this substitution of assets . . ." Special Conservator Hr'g Tr. 25:2-4, Feb. 6, 2014. In addition, all parties acknowledge that Edward G. R. Bennett as Special Conservator is not a party to any of the current litigation. While the file before this Court is thick with the litigation between Mr. Wellin and the Petitioners, a review of the same will show that S.C. R. Civ. P. 12(b)(8) does not apply as this is not the same issue nor is it the same parties (Spec. Conservator Br. 13).

Exclusive jurisdiction over Wellin's assets vested in this Court upon the Wellin Children's filing of the Petition for Appointment of Conservator. S.C. Code Ann. §62-1-302(2)(i) affords the Probate Court exclusive jurisdiction over *all* (emphasis added) subject matter related to protective proceedings and guardianship proceedings under Article 5. This is the only Court responsible for instructing the Special Conservator, protecting the assets of Mr. Wellin, and determining his capacity.

ARGUMENT: THERE WAS NO VIOLATION OF DUE PROCESS

Due process is violated when a party is denied fundamental fairness. City of Spartanburg v. Parris, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (S.C. 1968). No due process violation has occurred in this matter. Special Conservator Bennett, made his concerns known to the parties by his January 14, 2014 letter, which this Court treated as an application under S. C. Code §62-5-416(a) and directed that he serve it on all interested parties. After said service, the Petitioners actively participated in the scheduling of a hearing on the Application. Prior to the hearing, the Petitioners filed with this Court a Motion to Dismiss listing the issues they are now asserting they did not have knowledge of. Lastly, counsel for the Special Conservator included in her Notice of Appearance clarification of the issues to be addressed at the hearing and properly responded to the Petitioners' Motion to Dismiss. Petitioners' claim that they lacked knowledge of the issues to be addressed or that an oral amendment occurred that broadened the scope of the hearing is factually unfounded. The only oral amendment at the hearing (as noted in Footnote 1 of the Motion to Alter or Amend) was a reduction in the scope of the proceeding based on our agreement that Summons and Petition may be required on those funds (namely the additional $42 million) in dispute that the Wellin Children have already disbursed to themselves.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep't. of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (S.C. 1997). That opportunity was offered as detailed in our brief on the same (Spec. Conservator Br. 13).

ARGUMENT: THE ORDER SHOULD NOT BE VACATED DUE TO AN ERROR BY PETITIONER'S ATTORNEY

As the Court will clearly recollect and the transcript will evidence, Mr. Brunson, who represents the Wellin Children both individually and in their various fiduciary capacities to their father, stated that $50 million is due to Mr. Wellin. He further acknowledged an attempt to pay said funds. "The $50 million is what's due on the face of the note. I don't think there's any question about that," explained Petitioners' attorney, Mr. Brunson. Special Conservator Hr'g Tr. 69:25, 70:1-2, Feb. 6, 2014. Mr. Brunson also acknowledged that "It's been offered to him, and

he's turned it down. So it's not like anybody has taken money out of Mr. Wellin's account and run off with it." Special Conservator Hr'g Tr. 47:5-7, Feb. 6, 2014.

The Petitioners themselves listed the Promissory Note as an asset in need of protection and their attorney acknowledged in this Court the undisputed sum of $50,228,000 is due to their father. The check they tendered was not post dated for the year 2021. It is unfortunate that apparently after the hearing, Mr. Brunson communicated with his clients who wished to change their legal strategy, but it is not grounds to vacate the Order. The fundamental premise of the Order is that the Wellin Children owe their father at least $50 million dollars because their actions in tendering it to him (albeit with unacceptable legal conditions) and their attorney's testimony indicated as much. Furthermore, notwithstanding Mr. Brunson's statement that the note would not be due until 2021 if the substitution were invalid, the liquidation of the collateral securing the note (i.e., the partnership) by the Petitioners would have triggered an immediate acceleration of the obligation under the note. Under any possible scenario, the money is Mr. Wellin's.

ARGUMENT: THE FINDINGS OF FACT ARE APPROPRIATE

The remaining grounds for the Motion to Alter or Amend are based on the Petitioners' dislike of various findings of fact made by the Court. While these are addressed within the above discussion, the Special Conservator would like to reiterate that this Court was provided with a copy of all documents surrounding this transaction and, as such, there is a sufficient evidentiary basis to support the Court's findings.

CONCLUSION

Respectfully, the Wellin Children's Motion to Alter or Amend should be denied as it is nothing more than continued legal strategy to deprive Wellin of his own assets. Petitioner's initiated the proceeding in this Court alleging the need to protect their father and his assets and we respect the Court's decision to do exactly that in its current Order.

PROVENCE MESSERVY LLC

By: _____

Tiffany N. Provence

100 Fairway Drive

Summerville, South Carolina 29483

Telephone: 843.871.9500

Facsimile: 843.261.7035

Email: TNProvence@gmail.com

Summerville, South Carolina

March 11, 2014

2014 MAR 12 AM 10:05
FILED PROBATE CT CHRSN CO

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON)

IN THE MATTER OF: KEITH S. WELLIN Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, Petitioners, vs. Keith S. Wellin, Respondent.	Case No. 2013-GC-10-0129 **RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO REMOVE LINDA AUSTIN, M.D. AS DESIGNATED EXAMINER**

Petitioners Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Petitioners") submit this response in opposition to Respondent's motion to remove Dr. Linda Austin as a designated examiner. This motion is just another attempt to manipulate the judicial process by screening relevant facts from the courts. It should be denied.

INTRODUCTION

From the outset of the litigation ostensibly between Mr. Wellin and his children (originally instituted by Mr. Wellin in federal court last July), Mr. Wellin's counsel has sought to filter the information available to the finders of fact so that decisions are made based on only one slanted version of the facts, rather than all relevant facts. Respondent's counsel has for many months succeeded in prohibiting access to Mr. Wellin, who is in fact barely able to communicate, tube-fed, highly medicated, constantly fatigued, regularly hospitalized, and grossly misinformed about the litigation now under way. Mr. Wellin's counsel would have the Court believe that Mr. Wellin, who spends his good days propped up in a recliner fading in and

out of consciousness, actually manages his multi-million dollar estate and this extremely complex litigation. This façade has been maintained by repeated manipulations of the court system and with appalling success, thus far.

It is instructive to review the pattern pursued by Mr. Wellin's counsel in this and related litigation in seeking to avoid an objective examination of the facts:

- On July 3, 2013, Respondent's counsel approached the federal court on an *ex parte* basis and obtained a TRO before Respondent's children could present the true facts to the Court. Three days after holding a hearing on the *ex parte* TRO and hearing the arguments from both sides, the court dissolved the TRO. Although Respondent's counsel represented to the court that Respondent would appear at the TRO hearing, he did not.

- On July 26, 2013, this Court heard Petitioners' petition for a conservator. Mr. Wellin's counsel strenuously objected to any court-appointed doctor examining Respondent and agreed to have Respondent's counsel serve as his temporary conservator to avoid such examinations. At this hearing, Respondent's counsel claimed that he would have brought Mr. Wellin to the hearing to show the Court that Respondent was perfectly competent, but stated that he did not do so because Respondent was not having a good day that day.

- On August 1, 2013, Defendants in the federal litigation moved for the federal court to permit Defendants to have a doctor of their choice examine Respondent. Respondent's counsel opposed this motion, insisting that Mr. Wellin was not healthy enough to allow any new doctors to examine him. They even claimed such an examination may kill Mr. Wellin. On December 12, 2013, Judge Norton granted Defendants' motion to compel a medical examination over Respondent's counsel's objections. Unfortunately, when these doctors traveled to Charleston from Emory University in Atlanta to conduct the examination, Mr. Wellin's counsel again sought to limit access to relevant facts by prohibiting them from asking Mr. Wellin about his understanding of the litigation he is supposedly directing. Their evaluations are not yet complete because Mr. Wellin refused to respond to such questions, claiming it is a "private matter."

- On December 20, 2013, counsel for the purported Trust Protector (who is acting as Respondent's "agent")[1] approached this Court on an *ex parte* basis mere days after meeting with counsel for the Defendants in that action and obtained a TRO without allowing Defendants' counsel to present a contrary view of the facts to

[1] Counsel for the Trust Protector have stated in filings with the federal court that the Trust Protector views himself as the "agent" of Respondent, and the Trust Protector has admitted in discovery responses in the federal action that he is being paid by Respondent.

the Court. After this action was removed and both sides presented the merits to the District Court, Judge Norton promptly dissolved the *ex parte* TRO.

- On January 14, 2014, Respondent's counsel sent this Court an *ex parte* letter arguing that Petitioners had converted nearly $100 million rightfully owned by Respondent and requesting an order requiring Petitioners to turn over this money to Respondent. Respondent's counsel sent this letter to Petitioners' counsel only after being instructed to do so by this Court and provided no legitimate basis for sending such an *ex parte* communication to this Court.

- Mr. Wellin's counsel has stonewalled proper requests for a full set of Mr. Wellin's medical records and has instead cherry-picked a small subset of information to present to the courts. Indeed, Mr. Wellin's counsel has objected to all discovery requests served by Petitioners in this action and argued that any discovery, aside from the examination of the court-appointed doctors, simply is not allowed in a conservatorship action. Petitioners have filed motions to compel and are awaiting a hearing on those motions.

- On December 30, 2013, this Court inquired as to whether the parties would agree to have the same doctors authorized to examine Mr. Wellin by the federal court serve as the examining physicians in this action to determine if a conservator should be appointed. Notwithstanding their claims that Mr. Wellin should not be examined by any new doctors, Mr. Wellin's counsel insisted that two additional doctors be appointed by this Court. On January 24, 2014, Mr. Wellin's counsel emailed the Court and proposed that Dr. Austin serve as one of those doctors, and the Petitioners consented.

- On February 7, 2014, Respondent's counsel deposed Respondent on an emergency basis at Respondent's house. Respondent was plainly not able to provide meaningful answers to questions about the complex litigation that he is supposedly managing, so Respondent's counsel spoon-fed all answers in the form of blatantly leading questions requiring only a sign of agreement. Many of the leading questions were highly complicated and it was obvious that Mr. Wellin did not understand what he was agreeing to. During cross-examination when non-leading questions were posed, Mr. Wellin demonstrated that he lacks an understanding of the litigation he is pursing. (See Exhibit A, Video of Respondent's Deposition).

Now, after the court-appointed doctor chosen by Respondent's counsel has invested significant time reviewing medical records, examining Respondent, and talking to Respondent's treating physicians and family members, Respondent's counsel has moved this Court to remove Dr. Austin and ignore her opinions about Respondent's cognitive abilities. The reason to

remove her? That she interviewed Mr. Wellin's wife and son about his condition. A motion of this nature could only be motivated by a fear that Dr. Austin will opine to this Court that Respondent does indeed need a conservator. Rather than acting in the best interests of Respondent, Mr. Wellin's counsel is seeking to squelch relevant findings and to further mislead the Court about Mr. Wellin's current condition. This pattern of obfuscation must not be tolerated any further by this Court.

ARGUMENT

Respondent's counsel asks the Court to remove Dr. Austin as a designated examiner on the basis that Dr. Austin spoke to two of Respondent's family members—his wife and his son—in addition to conducting her examination of Respondent. This motion should be denied for many good reasons.

First, obtaining a medical history of a patient by consulting with relatives, particularly where the patient has trouble communicating, is a routine and commonly known medical practice. Presumably, if one of the team of doctors in Respondent's stable believed that an examination of this nature should ignore input from the Respondent's family, this motion would have included an affidavit to that effect. One cannot imagine a licensed doctor would say such an absurd thing as that, and indeed, the motion has no such support.

Second, Respondent's counsel does not identify any statement made by Respondent's wife or son that might have impacted—much less *improperly* impacted—Dr. Austin's opinions about Respondent's cognitive abilities. Indeed, Dr. Austin, whom Respondent's counsel proposed to conduct this examination, is a highly qualified medical doctor perfectly capable of speaking to an examinee's family members in conjunction with an examination and deciding what, if any, import to give information received from those family members. Further, Dr.

Austin is aware that Respondent's son and Respondent are in litigation with one another and is capable of taking that into consideration when deciding what weight, if any, to give her conversation with Respondent's son. Similarly, Dr. Austin is perfectly capable of giving her conversation with Respondent's wife any weight that she deems appropriate as a medical doctor.[2]

Third, this motion ignores the plain language of the order appointing Drs. Austin and Teichner—language that appears to be standard for orders appointing examiners in conservatorship actions. The order specifically provides for the release of all medical records of Respondent to those doctors and provides that those doctors, "like any expert, are permitted to communicate with other individuals in formulating their opinions." The clear purpose of these provisions is to provide the court-appointed experts with the ability to obtain any relevant information that exists bearing on the Respondent's cognitive abilities so that the experts—who know best what information is relevant and what information is not—can reach a fully informed opinion about Respondent's capacity. Also, to the extent Respondent's counsel argues that this Court has somehow failed to adequately inform Dr. Austin of the standard she should apply in rendering her opinion, this argument should be rejected. The Court's order appointing Drs. Austin and Teichner specifically defines an "incapacitated person" as that term is defined in the South Carolina Code. Upon information and belief, this is the same form order with the same

[2] In the motion, Respondent's counsel asserts that Petitioners must be concerned about Mrs. Wellin's presence at any examination of Respondent because of the Defendants' request in federal court that Mrs. Wellin not be present during the examination of the medical experts selected by Defendants in that action. But the medical experts selected by Defendants in the federal action requested an examination of Respondent without the presence of Mrs. Wellin or anyone else. Had those medical experts wanted Mrs. Wellin to be present during the examination, Defendants in that action would not have opposed it. Here, Dr. Austin, in her expert judgment, apparently found it helpful to interview Mrs. Wellin and to allow her to be present during her examination of Respondent. The Court should defer to her judgment on this matter.

definition of "incapacitated person" that the probate court normally gives to court-appointed examiners in conservatorship actions. The Court and the parties by virtue of consenting to these appointments must believe Drs. Austin and Teichner are capable of applying that standard to Respondent.

CONCLUSION

Throughout this litigation, Petitioners have sought the truth regarding Respondent's cognitive abilities and the impetus for Respondent's bizarre recent behavior, all taken through his new counsel. On the other hand, Respondent's counsel has consistently sought to keep Respondent in the shadows and suppress any evidence, no matter how relevant, that undermines their narrative. If examination by neutral, court-appointed doctors reveals that Respondent has sufficient cognitive ability to manage his own affairs and to pursue the complex litigation that he has filed, then Petitioners want that information discovered promptly and will accept those findings, absent a legitimate objection. If, on the other hand, examination by neutral, court-appointed doctors reveals that Respondent does not have sufficient cognitive abilities and needs a conservator, then Petitioners want that information discovered promptly and want a conservator (other than Respondent's counsel) appointed, absent a legitimate objection.

Dr. Austin has followed the Court's instructions by examining Respondent and communicating with other individuals, including Respondent's health care providers and family members, and examining Respondent's medical records. The Court should not remove Dr. Austin and render her time wasted in the absence of a legitimate basis. Thus, Petitioners respectfully request that the Court deny Respondent's motion. If the Court does not deny Respondent's motion on the briefs, Petitioners respectfully submit that the Court should hold a hearing and give Dr. Austin the opportunity to defend the reliability of her opinions.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
March 12, 2014

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO REMOVE LINDA AUSTIN, M.D. AS DESIGNATED EXAMINER**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483

Lauren Lynch

March 12, 2014

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	
	)	
In Matter of: Keith S. Wellin	)	C/A No. 2013-GC-10-0129
	)	
Peter J. Wellin, Cynthia W. Plum and Marjorie W. King,	)	**REPLY TO RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO REMOVE LINDA AUSTIN, M.D. AS DESIGNATED EXAMINER**
Petitioners	)	
	)	
Versus	)	
	)	
Keith S. Wellin,	)	
Respondent	)	
	)	

The Respondent Keith S. Wellin (hereinafter "Respondent") hereby replies to Petitioner's Response in Opposition to Respondent's Petition to Remove Linda Austin, M.D. as Designated Examiner as follows:

Rather than offer a response in good faith to Respondent's Petition to remove Dr. Austin as a Designated Examiner, Petitioners begin their response by launching into an unjustified tirade of allegations against Respondent and Respondent's counsel. While the Petitioners have nearly mastered the art of hyperbole and mordancy, they have fallen short of their obligation to provide fairness, integrity, and civility, not only in court but also in all written and oral communications. If any pattern of behavior should not be tolerated by this Court, it is the very manner in which the Petitioners and their counsel have engaged and participated in this litigation. Before replying to the paucity of arguments set forth by the Petitioners that are actually relevant to Respondent's petition, it is necessary for Respondent to provide a clear record to the Court.

The Petitioners first offer a misleading and incredibly offensive description of Respondent, based presumably upon the Petitioners' counsel's limited interaction with

him and perhaps the Petitioners' own experience with Respondent over the last year, which consists only of their observations of him during his recent deposition. Petitioners have not come to see their father in over a year, yet they are comfortable characterizing him as "barely able to communicate, tube-fed, highly medicated, constantly fatigued, regularly hospitalized, and grossly misinformed about the litigation" and a gentleman "who spends his good days propped up in a recliner fading in and out of consciousness."

Respondent has suffered a variety of medical conditions which have left him with physical limitations. In 2008, Respondent was diagnosed and treated for squamous cell carcinoma of the tongue, and in 2011, he suffered a stroke. Due to these events, Respondent developed a speech impediment, necessitating his use of a speech therapist and interpreter. Respondent has previously been diagnosed and treated for Non-Hodgkin's lymphoma, chronic kidney disease, hypotension, and adrenal gland insufficiency. He also deals with multiple heart problems and pulmonary issues. Respondent takes numerous medications for his conditions. All of this has taken a toll on Respondent's physical stamina and has at times left him fatigued. In fact, earlier this year, Respondent suffered two bouts of pneumonia, which affected his ability to swallow and eat normally, forcing Respondent to rely on the use of a feeding tube. Respondent's physicians ordered him to remain at home and receive in-home medical care during his recovery. However, contrary to what Petitioners would have the Court believe, despite Respondent's physical limitations, his mental faculties are quite intact.

It is abusive to demean any human being for their physical disabilities much less infer mental incapacity because of them. Respondent works assiduously five days

a week to ameliorate his speech and physical shortcomings. The inhumanity of this attack on a bright elderly man is outrageously cruel; it is a manipulative tactic for the single purpose of Petitioners trying to negate the efficacy of these lawsuits. Respondent knows precisely what he is doing; he wants the money his children took from him.

Petitioners next levy unfounded accusations that Respondent's counsel has attempted to manipulate the judicial process by screening relevant facts from the courts, while at the same time providing their own rewrite of history. Petitioners suggest that for many months there has been prohibited access to Respondent. What the Petitioners fail to reveal to the Court is that offers have been made to the Petitioners to allow Respondent's grandchildren to come and visit Respondent. Despite these offers, Petitions have elected to rely upon the character assassination employed by their counsel in virtually every written paper and argument before all courts involved in this litigation. In fact, Respondent's deposition was conducted only after Respondent's counsel filed a motion with the federal court to obtain leave to do so because the Petitioners would not agree to proceed with the deposition at that time.

Petitioners further suggest that Respondent's counsel agreed to the appointment of a special conservator in this case in order to avoid having a court-appointed doctor examine Respondent. However, Petitioners do not mention the fact that they expressly consented to the appointment of a temporary conservator by the Court and a stay of the requirement that Respondent undergo any examination so that the parties would have a chance to mediate certain issues.

Petitioners claim that Respondent's counsel consistently sought to delay the examination of Respondent by their paid expert witnesses from Georgia and to limit

access to relevant facts in the federal litigation. Petitioners do not tell the Court that these examinations were delayed because the Petitioners would not agree to conduct the examinations in Respondent's home and insisted on conducting them at the Charleston Place Hotel. The federal court disagreed and ordered the examinations to be performed at Respondent's home. Petitioners also do not mention that these examinations had to be conducted around Petitioners' paid expert witnesses from Georgia's own schedules which resulted in a significant further delay because of their limited availability. The Petitioners are correct in noting Respondent's concern that examiners are questioning him about the litigation strategy employed and issues that are very sensitive in nature. It is inexplicable that a represented party to be subjected to interrogation about litigation matters without access to his lawyer. We maintain that position and have asked for clarification from the Court on that issue specifically.

Petitioners also accuse Respondent of stonewalling requests from them for a full set of his medical records because the undersigned have objected to the discovery served by Petitioners in this matter. We have objected to the discovery served in this matter for the reasons set forth in our papers on file with the Court. However, the Petitioners failed to inform the Court that we have provided them with all of the medical records in our possession including several thousand pages from home healthcare providers as well as MUSC. Further, the Court's order appointing examiners permits those examiners to obtain access to any records they see fit to obtain. This gives them the opportunity to obtain the records they feel are necessary as opposed to placing a burden on Respondent. Petitioners have provided the Court with a video of Respondent's deposition, and for completeness, a transcript of the same.

is attached as Exhibit A. Please also see a separate video of a statement given by Respondent attached herewith as Exhibit B and produced in the federal litigation.

We urge the Court to review the deposition and to read the transcript associated with it. The deposition conveys what has been conveyed all along: The Respondent is an 87-year-old gentleman who has suffered a stroke which severely limits his physical movement and has had tongue cancer which inhibits his ability to speak. Physical and mental disability, however, are vastly different issues, a point which neither the Petitioners nor their counsel seem to understand. Respondent's stamina has been greatly reduced by the physical toll his illnesses have imposed upon him, and the video gives ample evidence that he cannot withstand long examinations. As one watches the full hour of the deposition, it is apparent that fatigue inhibits Respondent's ability to speak as the deposition goes on. Fatigue, however, does not equate to a lack of understanding or capacity.

As Respondent wrestles with detailed questions about the complexity of the various transactions at issue, we also urge the Court to keep in mind that very few clients understand planning of this sort. Perhaps it is best to keep in mind the statement from Respondent's son Peter, in his Affidavit of August 23, 2013, attached herewith as Exhibit C, that the planning was based on "a concept [he] never fully understood." If Peter could not understand the planning at the time the planning was done, it cannot have been appropriate for Dr. Austin to spend more than an hour asking Respondent to explain these issues many years after the fact.

When Petitioners finally get to their one page of argument out of six total pages, they say the motion should be denied for "many good reasons". First, Petitioners argue that obtaining a medical history by consulting with relatives

particularly where the patient has trouble communicating is routine and commonly known in medical practice. This has nothing to do with the relief sought by Respondent. Respondent is concerned about conversations with Peter Wellin who, as previously mentioned, has not seen his father in over a year and has no information that he can share that would be reasonably reliable or even remotely reliable for purposes of establishing Respondent's current capacity. With access to any medical records these examiners need as well as treating physicians, one can hardly claim that communicating with an adverse litigant who is accused of taking over $150 million of his father's money and who has not communicated with his father since Father's Day of 2013 over the phone is for the purpose of obtaining a medical history.

The second reason stated by the Petitioners in opposition to Respondent's request is that Respondent does not identify any statements made by Respondent's wife or son that may have impacted or much less *improperly* impacted Dr. Austin's opinions about Respondent's cognitive abilities. The Petitioners entirely miss the point of Respondent's request to remove Dr. Austin. As it relates to Respondent's wife, Dr. Austin conducted her only examination of Respondent while Respondent's wife was present. Dr. Austin has never had a separate independent session with Respondent. Dr. Austin is charged with making an objective determination of Respondent's capacity and as such, we contend that she should be examining him individually to make a determination as set forth under the laws of this state.

As to conversations with Peter Wellin, the Respondent cannot begin to gauge which statements may or may not improperly impact Dr. Austin's opinions, as the Respondent was not present or privy to Dr. Austin's conversation with Peter Wellin. However, since Dr. Austin thought it necessary to seek the permission and approval of

counsel for the Petitioners prior to speaking to Peter Wellin, it underscores that the same should have been sought from counsel for Respondent prior to communicating with Peter Wellin. To the extent that objective medical data regarding procedures or medications or treatment modalities is necessary, that information can be obtained by physicians from family members. However, the subjective opinions and beliefs of an adverse litigant about the relationship between him and his father or similar opinions have no place in an objective medical determination of capacity. Since Peter Wellin has not been involved with his father's medical case in over a year, he cannot offer any relevant objective medical information.

As the Respondent set forth in his petition, the court's ultimate conclusion of whether Respondent has or lacks capacity with respect to specific issues, each having different legal standards, is an incredibly important determination to the independence and wellbeing of Mr. Wellin. To have that determination potentially impacted by an examination tainted with the distain noted by the vitriol found in the Petitioners' own filings explains precisely why communicating with them is inappropriate. If Petitioners can describe their father as they do in their opposition, Respondent shutters to think what they would say to a medical examiner who could potentially assist them in taking and keeping over $150 million from him. The tone, tenor, and manner in which the Petitioners have engaged in this litigation is precisely why it is inappropriate for an independent examiner to communicate with Peter Wellin or any of the adverse parties in the litigation.

The third reason set forth by the Petitioners is that Respondent's request ignores the plain language of the Court's order appointing Dr. Austin. In one of the only clauses expressed in the entire course of litigation upon which Respondent can

agree with his children, the Petitioners state that the clear purpose of the provisions in the Court's order that permit examiners to communicate with other individuals in formulating an opinion "is to provide the court-appointed experts with the ability to obtain relevant information that exists bearing on the Respondent's cognitive abilities." As previously stated, speaking with Peter Wellin who has not seen his father in over a year and who has not spoken with him cannot possibly provide any relevant information bearing on Respondent's cognitive abilities. Those cognitive abilities are to be judged as he is today in his current state at the time of the examination not based upon Peter Wellin's subjective and self-serving misinformation.

The Petitioners also argue that we have faulted the Court for failing to adequately inform Dr. Austin of the standard she should apply. Respondent was clear in his petition that the circumstances of this case warrant further explanation. While Petitioners contend that the court-appointed examiners are able to understand and apply the standard as written in the order, Dr. Austin's conduct during her examination suggests otherwise. Without clear instructions from the Court and through no fault of her own, Dr. Austin took actions that compromised her ability to render a neutral and objective opinion. Respondent's request for additional explanation to examiners is to prevent this very thing from happening in the future. While the order appointing physicians includes the definition of an "incapacitated person," it provides no explanation that this determination is only to be made based on Respondent's present abilities. The order should state that it is inappropriate for an examiner to speak with adverse parties in this and other litigation in making their determination and that their communications should be limited to Respondent and his medical providers and related to matters appropriate for the purpose of the

examination. An order clarifying these items will make the scope and undertaking of the court-appointed examiners' task clear.

Conclusion

Respondent is entitled to have this conservatorship proceeding, and the court-ordered examinations related thereto, conducted in a fair and objective manner. Therefore, Respondent respectfully requests that this Court grant the relief set forth in his Petition to Remove Linda Austin, M.D. as a Designated Examiner.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H Hood
Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
James B. Hood (SC #70212)

Attorneys for the Respondent
Keith S. Wellin

March 18, 2014
Charleston, 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, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 18 day of March, 2014.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KEITH WELLIN, et al.,
Plaintiff,
vs. CASE NO. 2:13-cv-01831-DCN
PETER J. WELLIN, et al.,
Defendants.

LESTER S. SCHWARTZ,

Plaintiff,

vs. CASE NO. 2:13-cv-03595-DCN

PETER J. WELLIN, et al.,

Defendants.

VIDEOTAPED
DEPOSITION OF: KEITH S. WELLIN
DATE: February 7, 2014
TIME: 10:00 AM
LOCATION: 126 Tradd Street
Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIE H. BRUEGGER, RPR, CRR

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

APPEARANCES OF COUNSEL:
ATTORNEYS FOR THE PLAINTIFF
KEITH WELLIN:

HOOD LAW FIRM
BY: ROBERT H. HOOD
JAMES B. HOOD
172 Meeting Street
Charleston, SC 29401
(843)577-1214
bobby.hood@hoodlaw.com
james.hood@hoodlaw.com

ATTORNEYS FOR THE PLAINTIFF
LESTER S. SCHWARTZ:

ROSEN, ROSEN & HAGOOD
BY: H. BREWTON HAGOOD
151 Meeting Street, Suite 400
Charleston, SC 29401
(843)577-6726
bhagood@rrhlawfirm.com

ATTORNEYS FOR THE DEFENDANTS
PETER J. WELLIN, CYNTHIA W. PLUM, and
MARJORIE KING:
NELSON MULLINS
BY: ROBERT H. BRUNSON
BRYSON M. GEER
Liberty Center, Sixth Floor
151 Meeting Street
Charleston, SC 29401
(843)534-4221
robert.brunson@nelsonmullins.com
bryson.geer@nelsonmullins.com

APPEARANCES CONTINUED:
ALSO PRESENT:
Steven Barksdale, Legal Videographer
Brittni Carnes, Speech Therapist
Lester S. Schwartz
Peter J. Wellin
Cynthia W. Plum

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent reserves reading and signing of this deposition.

* * * * * * * * * * * * *

(PLF. EXH. 7, Answers to Defendants' First Interrogatories to Keith S. Wellin, were marked for identification.)

MR. ROBERT HOOD: This is the deposition of the plaintiff, Keith Wellin, in a case pending in the federal district court for preservation purposes ordered by Judge David Norton. Present are the parties, a speech therapist, and the plaintiff.

I would ask the court reporter to please swear in Mr. Wellin and the therapist.

BRITTNI CARNES

was placed under oath and interpreted the proceeding:

EXHIBIT
tabbies
A

KEITH S. WELLIN
being first duly sworn, testified as follows:
EXAMINATION
BY MR. ROBERT HOOD:
Q. Good morning, Keith. How are you today?
A. I'm fine.
Q. Good. It's February the 7th. Where are we today? What town are we in?
A. Charleston.
Q. And where are we physically in Charleston?
A. On Tradd Street.
Q. At your house on Tradd Street?
A. 126.
Q. What did he say?
A. 126 --
THE THERAPIST: 126.
THE WITNESS: -- Tradd Street.
BY MR. ROBERT HOOD:
Q. 126 Tradd Street.
And today are you on any medicine --
MR. BRUNSON: Does she need a microphone?
BY MR. ROBERT HOOD:

Q. Are you on any medication of any kind that would impair your ability to intelligently understand and answer my questions?
A. No.
Q. Do you realize that you're under oath, that we're videotaping this deposition and your answers to my questions?
A. Yeah.
Q. First, as to your estate planning, in creating your estate plan, did you allow your attorney to work with and communicate with your children?
A. Yeah.
Q. And why did you do that?
A. I had faith in them.
Q. You had faith in your children?
A. I trusted them.
Q. You trusted them.
And did Tom Farace communicate mainly with your children?
A. Yes.
Q. And because Tom Farace was your lawyer and your children were acting in a fiduciary capacity, did you believe the communications were privileged?

MR. BRUNSON: Object to the form.
BY MR. ROBERT HOOD:
Q. Did you believe -- it's okay. Did you believe the communications were privileged?
MR. BRUNSON: Same objection.
THE WITNESS: Uh-huh.
BY MR. ROBERT HOOD:
Q. Your answer is yes?
A. Yes.
Q. And do you maintain that they are privileged up to today?
MR. BRUNSON: Same objection.
THE WITNESS: I do.
BY MR. ROBERT HOOD:
Q. You do was your answer?
A. (Witness nods head affirmatively.)
(PLF. EXH. 1, Wellin Family 2009 Irrevocable Trust, was marked for identification.)
BY MR. ROBERT HOOD:
Q. Now, on November the 20th, 2013, there was a substitution of assets and a sale of stock. Did you have a chance to review, prior to today's deposition, Exhibit 1, which is the Wellin Family 2009 Irrevocable Trust?
A. No.

Q. Did you review the trust, the trust documents?
A. (Witness shakes head negatively.)
Q. Have you reviewed it at some point in the past?
A. (Witness shakes head negatively.)
Q. Let me show you what I'm talking about, Exhibit 1. This is the Wellin Family Irrevocable Trust. At some point in the past, have you read that document?
A. I haven't read it.
MR. BRUNSON: I'm sorry. I didn't understand that answer.
THE THERAPIST: I haven't read it.
MR. BRUNSON: I have not read it, okay.
BY MR. ROBERT HOOD:
Q. Did you say you have not read it?
A. I haven't read it.
THE THERAPIST: Try one more time, Keith. Deep breath. Really loud.
BY MR. ROBERT HOOD:
Q. Have you read the document at some point in the past, the irrevocable trust document?
A. No.

Q. Okay. And do you remember that in 2013, November the 20th, was it your intent to substitute the promissory note issued in this trust for an equally-valued interest in the Friendship Partners?
MR. BRUNSON: Objection, leading.
(PLF. EXH. 2, Exercise of Right of Substitution, was marked for identification.)
BY MR. ROBERT HOOD:
Q. And was that done in Exhibit 2 with your signature?
MR. BRUNSON: Same objection.
MR. ROBERT HOOD: Could you hand that to him?
THE WITNESS: Uh-huh.
BY MR. ROBERT HOOD:
Q. Is that your signature?
A. Yes.
Q. Sir?
A. Yes.
Q. Yes, okay.
MR. BRUNSON: I'm not clear as to whether he's answering is that his signature or if he was answering the prior question.
MR. ROBERT HOOD: Thank you.

MR. BRUNSON: I was going to give you an opportunity to clarify that if you'd like.
BY MR. ROBERT HOOD:
Q. Is this your signature, Mr. Wellin?
A. It is my signature.
MR. BRUNSON: Thank you.
BY MR. ROBERT HOOD:
Q. And did you sign the instrument making this substitution of assets freely and voluntarily?
A. Yes.
Q. And were you unduly influenced in making this decision in any way?
A. In no way.
MR. BRUNSON: Object to the form, leading.
(PLF. EXH. 3, Release of Right of Substitution, was marked for identification.)
BY MR. ROBERT HOOD:
Q. And Exhibit 3 is the release of the right of substitution. Is that your signature?
A. Yes.
Q. And was it your intent to release your substitution power under the trust after making this substitution?

MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Did you sign that instrument making this release freely and voluntarily?
A. I did.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. And were you unduly influenced in making the decision to release this power in any way?
A. Absolutely not.
MR. BRUNSON: Objection, leading, calls for a legal conclusion.
BY MR. ROBERT HOOD:
Q. Did you approve your children liquidating the Friendship Partners and selling the Berkshire stock, ultimately taking $31 million, each of them, from you?
MR. BRUNSON: Objection, leading.
THE WITNESS: Absolutely not.
BY MR. ROBERT HOOD:
Q. How would you describe what your children have done to you?
A. They stole that stock and to steal money from me.

Q. They stole money from you?
A. Uh-huh.
Q. Money you made in your lifetime?
MR. BRUNSON: Objection, leading.
THE WITNESS: Correct.
BY MR. ROBERT HOOD:
Q. And was that money you made in your lifetime?
A. Yes.
(PLF. EXH. 4, Trust Protector Removal and Successor Trust Protector Appointment, was marked for identification.)
BY MR. ROBERT HOOD:
Q. And Exhibit 4 is the removal of the trust protector, Tom Farace, and the appointment of Lester Schwartz. Is that your signature?
A. Uh-huh.
Q. Your answer's yes?
A. Yes.
Q. Was it your intent to remove Mr. Farace and appoint Lester Schwartz as trust protector on November the 20th, 2013?
MR. BRUNSON: Objection.
THE WITNESS: Absolutely.
MR. BRUNSON: Objection, leading.

BY MR. ROBERT HOOD:
Q. Prior to doing so, did you have an opportunity to meet Mr. Schwartz?
A. I did.
Q. And did you understand that Mr. Schwartz would make decisions to exercise or not exercise his powers as trust protector in his sole and absolute discretion?
THE WITNESS: Uh-huh.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. And did you sign Exhibit 4 removing Farace --
MR. BRUNSON: I'm sorry. I'm sorry, Mr. Hood. I didn't hear the answer to that last question.
MR. ROBERT HOOD: He said yes.
BY MR. ROBERT HOOD:
Q. Did you sign Exhibit 4, removing Mr. Farace and appointing Mr. Schwartz as trust protector, freely and voluntarily?
MR. BRUNSON: Objection, leading.
THE WITNESS: I did.
BY MR. ROBERT HOOD:
Q. Were you unduly influenced in making

this decision?
MR. BRUNSON: I'm sorry. Did he say yes or no to that?
THE THERAPIST: He said: I did. He said yes.
MR. BRUNSON: Thank you.
MR. ROBERT HOOD: If you would allow me, please, to continue.
BY MR. ROBERT HOOD:
Q. Did you make that decision without any undue influence?
MR. BRUNSON: Objection, leading.
THE WITNESS: Absolutely.
BY MR. ROBERT HOOD:
Q. Now, there were some gifts made in 2013. Between 2009 and January 2013, was Peter your power and Ceth your successor power of attorney?
A. They were.
Q. And did you place special trust and confidence in your son and daughter to manage or assist in managing your affairs during November 2009 and January 2013?
A. At that time I did.
MR. BRUNSON: Objection, leading.

BY MR. ROBERT HOOD:
Q. Did you at the time consider Peter to be a knowledgeable person, acting in your best interests, from a financial, accounting, and estate planning perspective?
A. I did. At that time I did.
MR. BRUNSON: Objection, leading.
If you could please instruct the witness to just wait a second before he answers so that I have an opportunity to object.
BY MR. ROBERT HOOD:
Q. Did you make gifts of $10 million in cash to each of your children in January of 2013?
A. Yes.
Q. Did you believe that you had enough liquid assets to cover these gifts to allow you to maintain your lifestyle and to provide for your wife, Wendy, and others as your then estate planning documents provided?
A. I did.
Q. And were you aware that these gifts were in cash?
A. No.
Q. And did you understand that because stocks were sold to make the gifts, it would

actually cost you $57 million to make $30 million in gifts?
A. Never.
Q. And did Peter and Ceth ever make you aware of the tax consequences and financial implications associated with making these gifts?
A. They did not.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Did Peter or Ceth ever tell you that you did not have sufficient liquid assets to cover these gifts?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. Did Peter or Ceth ever suggest to you that you obtain other advice from other attorneys, an accountant, before making these gifts?
MR. BRUNSON: Objection, leading.
THE WITNESS: Never.
BY MR. ROBERT HOOD:
Q. Did Mike Simons -- if Mike Simons had advised you, your accountant, against making these gifts in 2013, would you still have made them?
MR. BRUNSON: Objection, leading.

THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. Did Peter encourage you to make these gifts in January 2013?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. And did you rely on the advice and representations Peter and Ceth made in making these gifts?
A. I did.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. And had you known the financial consequences of making these gifts, would you have made them?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. Did you feel that your three children misled you about the nature of these gifts and acted against your interest?
MR. BRUNSON: Objection, leading.
THE WITNESS: I do.
BY MR. ROBERT HOOD:

Q. Sir?
A. Yes.
Q. Do you now wish to recover the value of these gifts?
A. I would like to.
Q. The November '09 transaction, before 2013, did you ever understand that you were selling 98.9 percent interest in Friendship Partners to the 2009 Trust?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. Were you in regular contact with Tom Farace during the fall of 2009 as this transaction developed?
A. No.
Q. Did you --
THE THERAPIST: He's going to answer.
THE WITNESS: No. I hardly heard from him.
BY MR. ROBERT HOOD:
Q. No. I hardly heard from him. Is that what you said? Thank you.
Did you trust your children and believe that they would act in your best interest

in discussing matters with Tom Farace?
MR. BRUNSON: Objection, leading.
THE WITNESS: I did.
BY MR. ROBERT HOOD:
Q. And what, if anything, did Peter tell you about the November 2009 transaction?
A. Nothing.
Q. Did Peter ever tell you that that transaction was a tax advantaged transaction?
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Did Peter tell you it was a tax advantaged transaction?
A. Yes.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Sir?
A. He did.
Q. He did.
From '09 to '13, as modifications were made to the promissory note, did Peter or Ceth ever explain to you the true nature of the transaction as you now understand it?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.

BY MR. ROBERT HOOD:
Q. Did Peter tell you or lead you to believe that this transaction was in your best interest?
MR. BRUNSON: Objection, leading.
THE WITNESS: Yes.
BY MR. ROBERT HOOD:
Q. And did you rely upon this statement in consenting to this transaction?
A. Absolutely.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Was this statement by Peter, in fact, true?
MR. BRUNSON: Objection, leading.
THE WITNESS: No.
BY MR. ROBERT HOOD:
Q. In effect, Mr. Wellin, did you understand that in making this transaction, you were transferring to your three children the stock or money the stock was worth and taking a tax liability upon yourself by retaining no upside possibility other than minimal interest?
MR. BRUNSON: Objection, leading.
THE WITNESS: No. I didn't understand

that at all.
BY MR. ROBERT HOOD:
Q. You did not understand that at all.
Was any of this told to you by Peter or Ceth?
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. The tax liability.
A. No.
Q. If you had been aware of the tax consequences and other implications of the 2009 transaction, would you have consented to it?
MR. BRUNSON: Objection, leading.
THE WITNESS: I would not.
BY MR. ROBERT HOOD:
Q. Did you first learn of the implications of what they did to you after meeting and hiring Edward Bennett in 2013?
A. That's correct.
Q. And prior to that, did you ever understand the nature of this transaction?
A. No.
Q. Do you feel that your three children misled you about the nature of this transaction and acted against your best interest?

MR. BRUNSON: Objection, leading.
THE WITNESS: I do.
BY MR. ROBERT HOOD:
Q. Do you now wish to undo this transaction?
A. I would like to.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Now, this lawsuit, was this lawsuit your idea?
A. Absolutely.
Q. Do you still want to pursue this lawsuit, Mr. Wellin?
A. Until I drop dead.
Q. Did you review and approve this lawsuit before I filed it?
A. I absolutely did.
(PLF. EXH. 5, Verified Complaint, was marked for identification.)
BY MR. ROBERT HOOD:
Q. That's Exhibit 5. And you verified the complaint on Exhibit 5, I believe. Is this your signature on the last page? Next-to-the-last page, probably. That's our lawsuit against them.
A. Uh-huh.

Q. Is that your signature?
A. Yes.
Q. Sir?
A. Yes, it is.
Q. And did you thereby verify the truthfulness and correctness of this lawsuit we brought?
A. Uh-huh.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Thank you. And your answer is yes?
A. Yes.
Q. Now, we also hired an attorney -- you hired an attorney in Delaware and brought a lawsuit there, and you verified the complaint in Delaware as well. Is that correct?
A. That's correct.
(PLF. EXH. 6, Verified Complaint for Injunctive and Declaratory Relief, was marked for identification.)
MR. ROBERT HOOD: And the Delaware complaint will be Exhibit 6.
BY MR. ROBERT HOOD:
Q. Are you aware that your children maintain that this lawsuit is Wendy's bidding?

A. My what?
Q. That your children are claiming that this lawsuit is being brought because Wendy's making you do it.
A. She didn't have a damn thing to do with it.
Q. Is that crystal clear to you?
MR. BRUNSON: Objection to the form.
BY MR. ROBERT HOOD:
Q. Is that your truthful response, that this is your lawsuit?
A. Absolutely. Wendy didn't have anything to do with it.
Q. Every time we have a hearing, this lawyer over here says this is Wendy's lawsuit. Whose lawsuit is this?
A. He doesn't know what he's talking about.
MR. BRUNSON: Objection, leading.
THE WITNESS: He's full of it.
BY MR. ROBERT HOOD:
Q. He's full of it. I agree with you.
Are you aware --
MR. BRUNSON: Objection and move to strike.

BY MR. ROBERT HOOD:
Q. Are you -- well, if someone claims that this is Wendy's lawsuit and her doing and not yours, would that be truthful?
A. No.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Are you aware that your children maintain -- I'm sorry. I just asked that.
How do you describe your feelings towards Wendy?
A. I love her. I am completely dependent on her in most matters except this. This is my doing.
Q. You love her, you're completely dependent upon her, and what was the other thing?
A. In most matters, but this is my doing.
Q. This lawsuit. Sir, is that correct?
A. Yes.
Q. Sir? It is?
A. (Witness nods head affirmatively.)
Q. Okay. Did you enter into a prenuptial agreement with Wendy when y'all got married years ago, prenuptial agreement?
A. I did.

Q. No one disputes y'all had a prenuptial agreement, but was that -- did that agreement go into effect if you divorced?
MR. BRUNSON: Did he answer the first question? Was that a yes or a no?
THE THERAPIST: I believe it was a yes.
BY MR. ROBERT HOOD:
Q. Did you enter -- I'll ask it again. Did you enter into a prenuptial agreement with Wendy when y'all got married?
A. I did.
MR. BRUNSON: Is that a yes?
BY MR. ROBERT HOOD:
Q. Is that a yes answer?
A. Uh-huh.
Q. And you shook your head yes.
Was it your idea that your children be parties to this agreement?
A. I can't remember, but I guess so.
Q. You can't remember, but you guess so.
Do you know whose idea it was? You just don't remember?
MR. BRUNSON: Object to the form.
THE WITNESS: I don't remember.

BY MR. ROBERT HOOD:
Q. If you do, you do. If you don't, you don't. It's been a while.
A. I don't.
Q. Was it your intent that the prenuptial agreement limit what you would give Wendy during your lifetime or at your death?
A. Absolutely not.
Q. Would you ever want to tie your hands on what gifts you could give to your wife during your lifetime or at your death?
A. No.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Did you understand that the prenuptial agreement only came into play if there was a divorce?
A. I don't remember.
Q. Did you transfer $4.5 million to Wendy to purchase y'all's home on Sullivan's Island?
A. I did.
Q. Did you do that voluntarily?
A. Yes.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:

Q. Do you intend for Wendy to own that home?
A. I do.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. In January 2013, you also gave Wendy a gift of $10 million. Do you approve of this gift today?
A. I do.
Q. In 2013, did you also give Wendy $25 million?
A. I did.
Q. And have all of your gifts to Wendy been what you desired to do?
A. Yes.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Were all of these gifts to Wendy made by you freely, voluntarily, and free from undue influence?
MR. BRUNSON: Objection, leading.
THE WITNESS: They were.
BY MR. ROBERT HOOD:
Q. Was Wendy ever prevented from making contact with your children?

A. No.
Q. Ever prevented you, I'm sorry, from -- has Wendy ever prevented you from making contact with your children?
A. No.
Q. Two of them are here today. When's the last time you've seen them? Has it been over a year?
MR. BRUNSON: Objection, leading.
THE WITNESS: About a year, I guess. I don't know. I can't remember. It's been quite a while.
BY MR. ROBERT HOOD:
Q. A good while?
A. (Witness nods head affirmatively.)
Q. Has Wendy ever prevented you from contacting your advisers, a lawyer or accountant or any adviser?
A. No.
Q. Has Wendy ever prevented you from contacting or seeing anyone you want to contact or to see?
A. No.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:

Q. Have you ever -- have you been satisfied with the way Wendy has managed your health and healthcare?
A. Absolutely.
Q. Have you been satisfied with the way Wendy's managed your financial affairs?
A. Uh-huh.
MR. BRUNSON: Objection, leading.
BY MR. ROBERT HOOD:
Q. Your answer's yes?
A. Yes.
Q. If someone is going to assist you in managing your affairs, who do you want it to be?
A. Wendy.
Q. Have you today answered my questions of your own free will, truthfully and accurately, Mr. Wellin?
A. I have.
Q. And when this speech therapist has helped us today, has she accurately repeated any questions where we needed her to repeat what you said?
A. Uh-huh.
Q. She has. Is that correct?
A. Yes.

Q. I want you to turn to this camera, and I want you to tell this lawyer and those two children of yours watching why you brought this lawsuit.
A. I brought this lawsuit because I thought my children stole a large part of my estate. They stole from me. That's why.
Q. And do you want them to give what they've stolen from you back?
A. Absolutely I want to get it back.
Q. We were served with interrogatories in this lawsuit, and we have answered those, and the answer to Interrogatory No. 8, in substance, starts with, after an objection: The plaintiff responds that the current version of Keith S. Wellin's Florida Revocable Living Trust contains provisions for plaintiff's wife, Wendy, some of his children, both his and Wendy's grandchildren, various friends and employees, certain charities. The current version of the revocable trust provides for a larger distribution to Wendy upon the plaintiff's -- your -- death than previous versions of the revocable trust. The plaintiff -- you, Mr. Wellin -- intend to provide Wendy with a larger amount under the revocable trust because of

your love, your affection and -- for her and out of appreciation for her acting in your best interests while handling your finances, health matters when you have been dealing with various health issues over the past several years. Due to the breach of the duties and obligations the children owed to you in various capacities and the children violated of your trust, you have reduced or eliminated the distribution to the children previously made -- previously, and you would -- that they would have received under the trust. Instead, the plaintiff has left some of that amount that he would have passed to his children through the revocable trust to his and Wendy's grandchildren, as he has great love and affection for them. The plaintiff intentionally made these changes to the revocable trust freely and voluntarily without any undue influence.
Is that a true response to the question they asked us?
MR. BRUNSON: Objection.
THE WITNESS: It is.
BY MR. ROBERT HOOD:
Q. Sir?
A. It is, yes.

MR. BRUNSON: Object to the form.
BY MR. ROBERT HOOD:
Q. Did anybody influence you or make you say those things that I just read?
MR. BRUNSON: Object to the form.
THE WITNESS: Nobody.
BY MR. ROBERT HOOD:
Q. And are they, in effect, your feelings and your response to this situation?
A. They are.
Q. And then Question No. 11, we answered: The Defendant Peter -- Peter S. Wellin, it should say, it says J -- made a false representation -- no, I'm sorry. I don't know Peter's initial. I thought it was you.
The Defendant Peter Wellin, who's right behind me, made a false representation to you, Mr. Wellin, that the --
MR. BRUNSON: I'm sorry. Don't you need to read the question before the answer?
MR. ROBERT HOOD: No. I'm not going to waste time with it because we have a time limit.
MR. BRUNSON: Well, how does he know the answer if he doesn't know the question?

MR. ROBERT HOOD: He's read these. If you'll let me conduct my examination correctly.
BY MR. ROBERT HOOD:
Q. -- November '09 transaction was tax advantaged and in the plaintiff's best interests that you relied upon in consenting to that transaction. In reality, the '09 transaction was anything but tax advantaged for you, as it benefited your three children while subjecting you to a large amount of tax liability.
Is that a true statement?
A. That is a true statement.
Q. Mr. Wellin, the last one is --
MR. BRUNSON: I object to the form of the question.
BY MR. ROBERT HOOD:
Q. -- Question No. 12, and your response is the children did not inform you --
MR. BRUNSON: Same objection, answer with no question.
BY MR. ROBERT HOOD:
Q. -- that they would use the November '09 transaction to try to control your spending during your lifetime and amount of assets that you could leave to your wife at your death.

The children did not fully inform you of the tax consequences of the November '09 transaction.
The children did not inform you through the November '09 transaction that you were taking all the tax liability upon yourself, but retaining no upside possibility, other than a minimal interest rate, under the terms of the promissory note.
The children did not explain to you that the gifts in January of 2000 (sic) would cause such a large tax liability that coupled with the income tax liability from '09 irrevocable trust would leave you potentially insolvent and restrict your ability to make charitable gifts and gifts to your wife that you want to make at your death.
A. (Inaudible)
MR. BRUNSON: I'm sorry. Objection. There's no question. He's just reading to the witness.
BY MR. ROBERT HOOD:
Q. And did your children fail to inform you that your long-time accountant, Mike Simons, advised against the 2013 gifts?

A. No.
MR. BRUNSON: Objection. There's no question.
THE WITNESS: No one said anything.
BY MR. ROBERT HOOD:
Q. No one said anything.
And did Peter Wellin fail to inform you that he instructed Mike Simons not to contact Tom Farace, your attorney, about the 2000 (sic) gifts?
A. No.
MR. BRUNSON: Objection to the form. The gifts were in 2013.
BY MR. ROBERT HOOD:
Q. And that the children failed to inform you that you did not have sufficient liquid assets to cover the 2013 gifts?
A. That's true.
MR. BRUNSON: Objection, leading and asked and answered.
BY MR. ROBERT HOOD:
Q. And finally, on Question 16, your answer: On November the 18th, the plaintiff's children's attorney, Mr. Brunson, stated they intended to sell all of the Berkshire stock

controlled by Friendship Partners, LP. The plaintiff recognized that such a sale of stock would potentially cause you to incur considerable tax liability, which you would be unable to afford, due to the significant income tax and gift tax liability that you already incurred from the gifts your children wrongfully encouraged you to make in 2013.

Upon hearing the children's intention to sell the stock, you utilized the substitution power retained by you as the grantor of the Wellin Family 2009 Irrevocable Trust to substitute the promissory note issued to you by the trust for an equally-valued interest in Friendship Partners, LP. You then executed a release of your substitution power under the trust. By effectively turning off the grantor trust status of the Wellin 2009 Irrevocable Trust, you believed that your children would reconsider selling the Berkshire stock, as the trust of which they were trustees and beneficiaries would now be responsible for some of the tax consequences.

Had you not been able to turn off the grantor trust status of the Wellin 2009 Irrevocable Trust, you would have -- you would

have substituted the promissory note, along with other assets, sufficient to gain control of all interest in Friendship Partners, LP owned by the 2009 Irrevocable Trust. If you were to retain all tax liability, you would have to own all the -- you wanted to own all of the partnership. At that point, the children could not have benefited from the sale of the stock and would have no reason to sell it unless they were only trying to hurt you. By taking these actions, the plaintiff, yourself, hoped that your children would not sell the stock solely to harm you by causing you a huge tax liability.

Is that a truthful statement?

MR. BRUNSON: Object to the form.

THE WITNESS: It is.

BY MR. ROBERT HOOD:

Q. And have I correctly read your answers under oath to their questions pertinent to this lawsuit, the information you can give?

A. Yes.

MR. BRUNSON: His 30 minutes has expired.

MR. ROBERT HOOD: We are two minutes past 30 minutes, but I think we started two

minutes late.

BY MR. ROBERT HOOD:

Q. But I would like for you to -- we're going to take a break to lay back in that special chair you have and relax, and when you're ready -- we're going to leave the room. When you're ready, we'll come back in, cut the TV on, and Mr. Brunson has the right to ask you some questions.

Are you okay with that?

A. Uh-huh.

Q. Just take a rest.

MR. ROBERT HOOD: The nurses are here. Y'all check his blood pressure and make sure he's okay.

We'll go off the record.

(A recess transpired.)

MR. ROBERT HOOD: Before we go on the record, Brew Hagood has requested that I put on the record that this deposition can be used in all pending cases involving Mr. Wellin and the Wellin trust, including the one that's been brought in probate court.

MR. HAGOOD: Correct, because the parties agreed before Judge Norton that the cases were going to be consolidated for discovery.

MR. BRUNSON: We have no objection.

MR. ROBERT HOOD: Okay. We're all right? You're okay?

THE WITNESS: Uh-huh.

MR. BRUNSON: It's 11:02 on my watch. We're ready to start.

EXAMINATION

BY MR. BRUNSON:

Q. Good morning, Mr. Wellin. I'm Robert Brunson. I'm representing your children. Do you understand that?

A. I do.

Q. I wanted to ask you just a couple of questions. What medications are you taking today?

A. What what?

Q. What medications, what medicines are you taking today?

A. I don't know.

Q. You don't?

A. My wife handles that.

THE THERAPIST: His wife knows all that. There is a nurse in the back.

MR. BRUNSON: You can't -- he can only answer.

BY MR. BRUNSON:

Q. What is the date of today?
A. 7th.
THE THERAPIST: 7th.
THE WITNESS: February 7th.
BY MR. BRUNSON:
Q. And I'm going to tell you three words right now. At the end of my 30 minutes, I'm going to ask you to repeat these three words to me, okay: Blue, pencil, and bus.
A. Blue, pencil, and what?
Q. Pencil.
A. What was the last one?
Q. Blue, bus, and pencil.
A. Blue, bus, and pencil.
Q. Do you understand those three words?
A. Uh-huh.
Q. And you understand I'm going to ask you to repeat them to me at the end of the deposition?
A. Uh-huh.
Q. Thank you.
What is your current net worth?
A. 30 million. (Inaudible) I can't remember. Maybe 30 million, something like that.
MR. BRUNSON: Can you tell me what

he's saying?
THE WITNESS: Maybe 30 million, something like that.
THE THERAPIST: He said maybe 30 million.
MR. BRUNSON: Maybe 30 million. Do you understand what he said before that?
THE THERAPIST: Keith, can you take a deep breath and say it one more time really loud?
THE WITNESS: I said my children have stolen a lot of my assets, but my net worth is 30 million until I get the money back.
BY MR. BRUNSON:
Q. I understand. You testified earlier that in 2013, you gave your wife $25 million.
A. Uh-huh.
Q. Is that correct? Is that right?
A. Yeah.
Q. Yes?
A. Yeah.
Q. That was a gift?
A. Uh-huh.
Q. Is that in addition to the $10 million you gave her in January of 2013?
A. It is.

Q. So in 2013, you gave your wife a total of $35 million?
A. Uh-huh.
Q. When did you give her the 25 million, what month?
A. I can't remember.
Q. You can't remember. Was it before or after you brought this lawsuit?
A. I think it was before, but I'm not sure.
Q. Okay. And in addition to that, you also gave her a house -- four-and-a-half million dollars to buy a house at Sullivan's Island. Is that right?
A. Uh-huh.
Q. So actually, last year you gave Wendy almost $40 million?
A. Yeah.
Q. Did you consult with Mike Simons before you gave her the $25 million gift?
A. I don't think so. I can't remember.
Q. Why did you give her the $25 million gift?
A. Because I wanted to.
Q. Any other reason?

A. No.
(DFT. EXH. 1, 1/13/10 Letter to Keith Wellin from Tom Farace, was marked for identification.)
BY MR. BRUNSON:
Q. I'm going to ask you some questions now about the transaction that took place in 2009. I'm going to ask the nurse here to hand you Exhibit No. 1 to your deposition. This is Defendant's Exhibit No. 1. This is a letter to you dated January 13th, 2010.
MR. BRUNSON: If you could flip him over to the third page.
BY MR. BRUNSON:
Q. Do you see that this letter is from Tom Farace to you? Do you see his name on the bottom of the letter?
A. Uh-huh.
Q. Now back to the first page. Do you realize that January 13th, 2010, was after you had exchanged your interest in the Friendship Limited Partnership in exchange for a $50 million note, right?
A. I don't know.
Q. You don't know, okay.

In the first paragraph of this letter, Mr. Farace writes: It appears there is a bit of confusion regarding the November 30th, 2009, sale transaction and its impact on the distribution of your estate, particularly to your children. I'm led to believe that you may think that the result of the November 30th transaction is a reduction of wealth passing to your children. That is simply not the case. In fact, the November 30th transaction should result in more wealth passing to your children.

Do you recall asking a question of Mr. Farace, your attorney, after you had completed the November 30th transaction, about the amount of wealth that would be passing to your children?

A. No.

Q. Do you recall receiving this letter from Mr. Farace?

A. No.

Q. In the next paragraph of the letter, he states --

MR. ROBERT HOOD: Just so the record's clear, by the use of this record and the exhibit --

MR. BRUNSON: I'm going to pause the

clock while you're talking. Go ahead.

MR. ROBERT HOOD: By the use of this exhibit, you're violating his attorney-client privilege with Mr. Farace, and we do not agree that you have a right to have a copy of this letter or the right to use this letter for any purpose in this litigation.

Just so I don't waive my rights to assert attorney-client privilege, the letter, on its face, clearly states attorney-client privileged communication. How you got it, I'd love to know.

MR. BRUNSON: Anything else?

MR. ROBERT HOOD: No.

MR. BRUNSON: Are you done?

BY MR. BRUNSON:

Q. The second paragraph of the letter, Mr. Wellin, states: Before I discuss the numbers, I want to remind you of the prior planning. In 2003, you contributed Berkshire Hathaway shares to Friendship Partners, LP for a 99-percent limited partnership interest. The current liquidation value for those units is approximately $90 million. By liquidation value, I'm referring to the value of Berkshire Hathaway shares that

would be received if the partnership were liquidated and its assets distributed to its partners.

Did you understand, in January 2010, that in 2003, six years earlier, you had created Friendship Partners and taken a 99-percent interest in that entity?

A. I didn't create it. (Inaudible) I had nothing to do with it.

Q. You had nothing to do with the 2003 transaction in which you gave up control of your Berkshire Hathaway shares and took a 99-percent interest in Friendship Limited Partners. Is that correct?

A. I never thought I was giving up control.

Q. You never thought that?

A. That was stolen from me.

Q. It was stolen from you? Do you think it was stolen from you in 2003?

A. I don't know (inaudible)

Q. I'm sorry?

A. I don't know. 2003 was when they got ahold of it.

Q. Today do you believe they stole the

money from you in 2003?

A. Absolutely.

Q. They stole it in 2003?

A. Absolutely.

Q. Okay. Thank you.

Mr. Farace goes on in the next paragraph to state: We put this partnership structure in place in order to arrange your estate for estate tax savings pursuant to the Strangi case.

Do you recall the Strangi case?

A. No.

Q. He says: The Strangi case was later questioned on appeal. Under the original Strangi case, a significant lack of control and marketability discount was allowed in valuing the limited partnership units in a decedent's estate. The Strangi discount, estimated at 40 to 45 percent, would likely not be available under current law.

Was that your understanding?

A. I vaguely remember something about it.

MR. BRUNSON: Could you interpret that?

THE THERAPIST: I really don't

remember.
THE WITNESS: I vaguely remember something about it. I don't remember the detail.
BY MR. BRUNSON:
Q. Okay. Do you remember that the 2003 transaction was undertaken in order, in part, to save on estate and gift taxes?
A. Yes. That's what I was told.
Q. That's what you were told?
A. (Witness nods head affirmatively.)
Q. And who told you that?
A. Peter.
Q. Peter?
A. (Witness nods head affirmatively.)
Q. He told you that in 2003?
A. Uh-huh.
Q. Did you ever have a conversation with Tom Farace about your estate planning?
A. No.
Q. Never once spoke to your lawyer about estate planning ever?
A. I don't remember. I hardly ever heard from him. He's the reason for (inaudible) with Peter.
MR. BRUNSON: Can you understand that?

THE THERAPIST: He's the reason for --
THE WITNESS: I hardly ever heard from Tom Farace. I just heard everything through Peter.
BY MR. BRUNSON:
Q. You've never heard from Tom Farace?
A. Hardly ever.
Q. Ever. Have you ever seen him?
A. Yeah, years ago.
Q. Years ago. When's the last time you saw Tom Farace?
A. I can't remember. It was years ago.
Q. Do you understand that Tom Farace is with a very large New York law firm, Nixon Peabody?
A. He's a lousy lawyer.
MR. BRUNSON: Say that.
THE THERAPIST: He's a lousy lawyer.
THE WITNESS: He's a lousy lawyer.
BY MR. BRUNSON:
Q. He's a lousy lawyer?
A. I don't care what law firm he's with. He ought to be disbarred.
THE THERAPIST: Say that again. Deep breath.

THE WITNESS: I don't care what law firm he is with. He should be disbarred.
MR. BRUNSON: He should be --
THE WITNESS: Disbarred. He's not a good lawyer.
BY MR. BRUNSON:
Q. Who prepared -- prior to your hiring Edward Bennett, who prepared your estate planning documents, what lawyer?
A. I didn't have any real estate planning.
THE THERAPIST: Real loud, Keith.
THE WITNESS: I didn't have any real estate planning. (Inaudible)
MR. BRUNSON: Can you repeat what he said?
THE THERAPIST: Say it again, Keith.
THE WITNESS: I never had any formal real estate planner.
THE THERAPIST: He never had a formal real estate planner.
BY MR. BRUNSON:
Q. A formal estate planner? So did you write your wills yourself?
A. Tom Farace wrote them.

THE THERAPIST: Tom Farace wrote them.
BY MR. BRUNSON:
Q. Tom Farace wrote your wills, okay.
You testified earlier that Peter, your son, who you trusted, told you -- made misrepresentations to you. Is that right?
A. (Inaudible)
MR. BRUNSON: Can you repeat that?
THE THERAPIST: Say that again, Keith.
THE WITNESS: (Inaudible)
THE THERAPIST: What specifically.
BY MR. BRUNSON:
Q. Do you believe that Peter lied to you? Did Peter lie to you?
A. I do.
THE THERAPIST: I do.
BY MR. BRUNSON:
Q. You do? What lie did Peter tell you?
A. I can't remember.
Q. You can't remember what lie he told you?
A. No.
Q. Can you remember when he told you a lie?
A. No.

Q. Was anybody else there when Peter lied to you?
A. No.
Q. Nobody else was there?
Where was it? Was it here or in Maine or somewhere else?
A. I believe it was here, but I can't remember.
MR. BRUNSON: Can you --
THE THERAPIST: I think it was here, but I can't remember.
BY MR. BRUNSON:
Q. What did Peter or Ceth or Mari say to you, if anything, that caused you to enter into the transactions that you did in 2009?
A. Peter told me there would be some tax advantage.
Q. Peter said it would be tax advantaged?
A. I believe so.
Q. And was it?
A. I relied completely on him.
(Inaudible)
THE THERAPIST: But I relied completely on him.
And what else did you say after that,

Keith?
THE WITNESS: I said go ahead.
THE THERAPIST: Say it again.
THE WITNESS: So I said go ahead.
THE THERAPIST: So I said go ahead.
BY MR. BRUNSON:
Q. And so you entered into the 2009 deal because it was tax advantaged?
A. Because he told me it was.
Q. Now, were there tax advantages to entering into the 2009 transaction?
A. I don't remember. I don't think so.
Q. You don't think so? Explain that.
A. I'm telling you I don't remember.
Q. Well, then how is it that you believe it wasn't true if you don't remember?
A. Then I remembered.
Q. Did somebody else tell you that?
A. No.
Q. No? Nobody's told you that the 2009 transaction was, in fact, not a tax advantaged transaction?
A. I learned later. (Inaudible) They stole from me. I didn't have control of it.
THE THERAPIST: They stole from you

and had control of it? Is that what you said, Keith?
THE WITNESS: They stole from me, so I did not control it.
THE THERAPIST: They stole it from me, so I did not control it.
BY MR. BRUNSON:
Q. But my question was: Has anybody told you that the 2009 transaction did not have tax advantages?
A. I learned later it was (inaudible), but (inaudible) didn't tell me anything, including Peter and Tom Farace.
Q. Now, after the 2009 transaction was completed, okay, what conversations have you had with Peter, Ceth, or Mari about that transaction?
A. Practically none.
MR. BRUNSON: What was that?
THE THERAPIST: Say it again, Keith, really loud.
THE WITNESS: Practically none.
THE THERAPIST: Practically none.
THE WITNESS: I don't remember any.
BY MR. BRUNSON:
Q. So I'm clear, you don't remember Peter

or Ceth or Mari ever telling you anything about the 2009 transaction after it was completed on November 30th, 2009?
A. No.
Q. Now I want to ask you some questions about the 2013 gifts that you made to your children and to Wendy. Do you know what I'm talking about?
A. Uh-huh.
Q. How much did you give to Peter?
A. Each 10 million.
Q. Gave them each 10 million. Was that your idea?
A. Yeah.
Q. Yes?
A. (Witness nods head affirmatively.)
Q. Why?
A. Because I thought I had a lot more money than I had.
Q. Did you have a conversation with Brian McLaughlin about making those gifts?
A. No.
Q. Do you recall making a phone call, being on a phone call with Brian McLaughlin and instructing him what stock to sell in order to

Page 57

make those gifts?
A. I don't remember.
Q. You don't remember that call.
Can you testify today under oath that you did not have that call?
A. I don't remember what we talked about.
THE THERAPIST: I don't remember what we talked about.
BY MR. BRUNSON:
Q. Do you recall having a conversation with Ceth and Mari, your daughters, after making those gifts, about the gifts?
A. I think they called me and thanked me.
THE THERAPIST: I think they called me and thanked me.
BY MR. BRUNSON:
Q. Do you recall meeting with them in person?
A. No.
Q. You don't recall talking to Ceth where she said she was thinking about hiring a money manager to help her invest?
A. On the phone, yes.
MR. BRUNSON: What's that?
THE THERAPIST: On the phone, yes.

Page 58

BY MR. BRUNSON:
Q. On the phone. And what did you tell her?
A. I think I told her that I thought she could manage it herself.
THE THERAPIST: I think I told her that I thought she could manage it herself.
BY MR. BRUNSON:
Q. And did you tell the same thing to Mari?
A. Mari and I (inaudible) --
MR. BRUNSON: Can you repeat what he said?
THE THERAPIST: Say it again, Keith, really loud.
THE WITNESS: Mari and I did not have that conversation.
THE THERAPIST: Mari I did not have that conversation.
BY MR. BRUNSON:
Q. Did any of your children tell you anything that was not true that caused you to make the 2013 gifts to them?
A. No.
Q. Who is Lester Schwartz?

Page 59

A. He is the trustee.
Q. The trustee?
A. For me.
Q. He's your trustee?
A. (Witness nods head affirmatively.)
Q. Why did you select him?
A. He was recommended.
Q. He's a friend of yours?
A. No.
Q. I couldn't understand you. Sorry.
A. He was recommended to me.
THE THERAPIST: He was recommended to me.
BY MR. BRUNSON:
Q. And do you recall that your trust protector before that was Tom Farace?
A. I don't remember that.
Q. You don't remember that?
A. No.
Q. Do you remember that you replaced Tom Farace with Lester Schwartz as your trust protector?
A. Yes.
Q. Yes? Why did you do that?
A. Tom Farace is a bad lawyer. I told

Page 60

you before he should be sued for malpractice.
THE THERAPIST: Because Tom Farace is a bad lawyer. I told you before he should be sued for malpractice.
BY MR. BRUNSON:
Q. Do you plan to sue Tom Farace for malpractice?
A. I haven't decided that. I may.
Q. Do you recall testifying that on November the 20th, you sought to substitute the satisfied promissory note worth $50 million on the face of it for a percentage of ownership in Friendship Limited Partners?
A. Uh-huh.
Q. Did you -- was it your idea to do that?
A. Uh-huh.
Q. Why?
A. I don't remember.
Q. You don't remember? Okay.
MR. ROBERT HOOD: Mr. Wellin, are you getting tired? Do you want to take a break? Do you want to lean back in your chair and just rest for a minute?
MR. BRUNSON: I think he is, and I'd

like to take a break for that reason. Let's stop. It's 23 minutes into the examination.
MR. ROBERT HOOD: Just rest for a minute. Do you want some water, or can the nurses get you anything?
MR. BRUNSON: Would you like to rest for a few minutes, and then we'll ask some more questions?
This is on the record.
THE WITNESS: I'd rather wait. I would like to get this over with.
MR. ROBERT HOOD: He'd like to get it over with. Let's keep going.
MR. BRUNSON: Okay. That's fine. Let's go back on the record.
MR. ROBERT HOOD: If you want to stop at any time, tell him. Lean back in your chair. You're in charge, not him.
MR. BRUNSON: And this is still on the record.
MR. ROBERT HOOD: It's all on the record, Mr. Brunson. He's in charge, and not you. You be polite to him.
MR. BRUNSON: And what I was going to say, Mr. Hood, is if at any point you think the

witness needs to take a break, I'll obviously defer to you, so just let me know.
MR. ROBERT HOOD: Are you okay?
THE WITNESS: (Nods head affirmatively.)
MR. ROBERT HOOD: Good.
Do you have a question?
MR. BRUNSON: Yeah. I'll resume in just a second. I had to turn off my computer because we were taking a break. I've just resumed my computer, so I will now resume the clock.
BY MR. BRUNSON:
Q. Why did you enter into a prenuptial agreement before you married Wendy?
A. I really don't know. (Inaudible) Somebody probably recommended it to me.
THE THERAPIST: Somebody probably recommended it to me.
BY MR. BRUNSON:
Q. Do you recall that the prenuptial agreement limited the amount that Wendy was entitled to inherit from you?
A. I didn't want to (inaudible) the agreement itself. My daughter wrote the prenup agreement.

THE THERAPIST: My daughter wrote the prenuptial agreement.
What did you say before that, Keith? Really loud, deep breath.
THE WITNESS: I said I don't remember the details. My daughter wrote the agreement.
THE THERAPIST: I don't remember the details. My daughter wrote the agreement.
BY MR. BRUNSON:
Q. Do you recall your daughter wrote the agreement?
A. (Witness nods head affirmatively.)
Q. Who? What daughter?
A. (Indicating)
Q. Ceth? You think Ceth wrote your prenuptial agreement in 2001?
A. That's the way I remember it.
THE THERAPIST: That's the way I remember it.
BY MR. BRUNSON:
Q. And do you recall that you amended the prenuptial agreement about six months or so after you got married?
A. No.
Q. You don't recall that?

A. I didn't give the damn thing any thought.
THE THERAPIST: Can you say that again?
THE WITNESS: I really didn't think about it.
THE THERAPIST: I really didn't think about it.
BY MR. BRUNSON:
Q. Mr. Wellin, after you made the gifts to your children in January of 2013, what happened that caused you to decide to sue them for fraud?
A. I'm sorry. My memory's not too good.
THE THERAPIST: I'm sorry. My memory's not too good.
THE WITNESS: I've forgotten.
THE THERAPIST: I forgot.
THE WITNESS: I can't remember.
BY MR. BRUNSON:
Q. Well, do you understand that there's a big difference between on one day wanting to give $10 million to each of your children and then six months later suing?
A. (Inaudible)
Q. You understand that those are two

different things?
A. And so is the -- I don't remember now what it was.
MR. BRUNSON: Can you repeat?
THE THERAPIST: I can't remember now what it was.
THE WITNESS: It was (inaudible).
THE THERAPIST: Really loud, Keith.
THE WITNESS: I don't remember now what it was.
THE THERAPIST: I remember now what it was.
BY MR. BRUNSON:
Q. You don't remember now what it was?
A. (Witness shakes head negatively.)
Q. What happened that caused you to stop using Tom Farace as your lawyer and start using Edward Bennett?
A. His bills were sky high, and his recommendations (inaudible) were no good.
THE THERAPIST: His bills were sky high.
BY MR. BRUNSON:
Q. His bills were sky high and what was no good?

A. His recommendations.
Q. Representation was no good?
A. Recommendations.
THE THERAPIST: Recommendations.
BY MR. BRUNSON:
Q. Recommendations, okay.
And are there any particular recommendations that he made that you now think were no good?
A. No. (Inaudible)
Q. Mr. Wellin, you testified that you have created an estate plan now, and you are planning to leave some money to your grandchildren. Is that right?
A. (Witness nods head affirmatively.)
Q. How much are you planning to leave your grandchildren?
MR. ROBERT HOOD: Wait a minute. Keith, you don't have to answer that unless you want to. What you do in your will is private for you, and this man has no right to know about it. You can answer it or not, whatever you want to do.
THE WITNESS: No answer.
BY MR. BRUNSON:
Q. No answer.

Mr. Wellin, at the beginning of this deposition, I told you three words, and I told you I would ask you to tell me what they were. Can you tell me those three words?
A. Give me -- give me a hint.
Q. Sorry. Can't do that.
Mr. Wellin, before today, did you practice your deposition? Did you practice giving answers and questions with other people?
A. No.
Q. You did not? You just came in here today and answered these questions that Mr. Hood asked you for the very first time?
A. (Witness nods head affirmatively.)
Q. Is that right?
A. Uh-huh.
Q. Did you ever practice with Wendy, your wife?
A. She asked me some questions, none of these questions.
Q. Did Wendy suggest any answers that you should give in your deposition?
A. No.
Q. She didn't tell you anything about what you should say?

A. No.
MR. ROBERT HOOD: You've had your 30 minutes.
MR. BRUNSON: I've got 20 seconds left.
BY MR. BRUNSON:
Q. Is there anything else you'd like to say, Mr. Wellin, to your children and your grandchildren at this time?
A. I've said it all. I think money was stolen. I intend to get it back.
MR. BRUNSON: What did he say?
THE THERAPIST: Really loud, Keith. Really loud, deep breath.
THE WITNESS: I have said it all. I think money was stolen from me. I intend to get it back.
THE THERAPIST: Money was stolen from me, and I need to get it back.
MR. ROBERT HOOD: That's the end of the deposition. You've had 30 minutes.
MR. BRUNSON: I agree.
MR. ROBERT HOOD: Thank you, Mr. Wellin. Lean back in your chair and just rest. We can tell you're very tired. Just rest.

Thank you very much. We're through. Everybody's going to leave.

MR. BRUNSON: You're not going to ask any more?

MR. ROBERT HOOD: No. He's too tired.

(The deposition was concluded at 11:32 AM.)

SIGNATURE OF DEPONENT

DEPONENT: KEITH S. WELLIN
DEPOSITION DATE: FEBRUARY 7, 2014
REPORTER: MARIE H. BRUEGGER
CASE CAPTION: KEITH WELLIN vs. PETER WELLIN

(Please return both Signature of Deponent pages)

I, the undersigned, KEITH S. WELLIN, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)
DEPOSITION DATE: FEBRUARY 7, 2014
REPORTER: MARIE H. BRUEGGER
CASE CAPTION: KEITH WELLIN vs. PETER WELLIN

PAGE	LINE	CHANGE	REASON

_____
KEITH S. WELLIN Date

I, Marie H. Bruegger, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

_____
Marie H. Bruegger, RPR, CRR
My commission expires
April 18, 2021

CERTIFICATE OF REPORTER

I, Marie H. Bruegger, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 10th day of February, 2014, at Charleston, Charleston County, South Carolina.

_____
Marie H. Bruegger
Registered Professional
Reporter, CCR
My commission expires
April 18, 2021

INDEX

	Page/Line
STIPULATION	4 1
KEITH S. WELLIN	5 1
EXAMINATION BY MR. HOOD	5 5
EXAMINATION BY MR. BRUNSON	40 9
SIGNATURE OF DEPONENT	70 1
CERTIFICATE OF REPORTER	72 1

REQUESTED INFORMATION INDEX

(No Information Requested)

EXHIBITS

	Page/Line
PLF. EXH. 1, Wellin Family 2009 Irrevocable Trust	7 17
PLF. EXH. 2, Exercise of Right of Substitution	9 7
PLF. EXH. 3, Release of Right of Substitution	10 17
PLF. EXH. 4, Trust Protector Removal and Successor Trust Protector Appointment	12 10
PLF. EXH. 5, Verified Complaint	22 18
PLF. EXH. 6, Verified Complaint for Injunctive and Declaratory Relief	23 18
PLF. EXH. 7, Answers to Defendants' First Interrogatories to Keith S. Wellin	4 11
DFT. EXH. 1, 1/13/10 Letter to Keith Wellin from Tom Farace	44 2

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, Plaintiffs, vs. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, South Dakota Trust Company, LLC as co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, Friendship Partners, LP, Defendants.	Civil Action No. 2:13-cv-01831-DCN **AFFIDAVIT OF PETER WELLIN**

I, Peter Wellin, being duly sworn, depose and state as follows:

1. I am 57 years old and reside in South Portland, Maine. My father, Keith Wellin ("Dad"), is the plaintiff in this lawsuit.

2. I am a graduate of Stanford University and the University of Rochester Medical School. I practiced for about 5 years as an emergency room physician before being drawn into commercial real estate. I now serve as president of Wellin & Co., a real estate development company based in Maine.

EXHIBIT tabbies C

3. I am one of Dad's three children, all from his first marriage to my mother, Carol Woodhouse. My two sisters are Cynthia Wellin Plum ("Ceth") and Marjorie Wellin King ("Mari"). Our mother passed away from an illness in 1970. In 1974, Dad married Ariane Reed, but they divorced in 1984. In 1985, Dad married Nancy Negley, but they divorced in 2001. In 2002, Dad married his current wife, Wendy Lane (now Wendy Lane Wellin) ("Wendy").

4. Dad has eight grandchildren: my three children, Ceth's two children, and Mari's three children.

5. Through hard work as an investment advisor and business executive, and through wise investing, Dad amassed a sizable fortune during his lifetime. A large portion of that wealth came from the growth in value of certain Class A Berkshire Hathaway Common Stock ("BRKa Shares") which Dad purchased in the 1960s and early 1970s.

6. In or around 2001, which was about the time Dad's marriage with Nancy Negley was ending and before Dad married Wendy, Dad began consulting with Tom Farace, Esq. ("Farace") at the law firm Nixon Peabody, LLP, in New York, and received guidance regarding the development of an asset protection and estate planning strategy. Dad hired Farace as his estate planning lawyer and, until a few months prior to the filing of this lawsuit, relied on him continuously to provide estate planning advice and to draft legal documents to effectuate Dad's estate plans.

7. For at least a decade, and up until a few weeks before filing this lawsuit, Dad has continuously relied on his financial advisors, Brian McLoughlin and Andrew Dupont, first at Morgan Stanley and later at UBS, to advise and assist him regarding his investment and estate planning. He has also continuously relied on his long time

accountant, Mike Simon ("Simon"), to advise and assist him with tax and estate planning. Dad has always carefully selected and relied upon highly qualified professionals to advise him regarding his finances and estate planning.

8. In 2001, after Dad and Nancy divorced but before Dad married Wendy, Dad created the Keith S. Wellin Florida Revocable Living Trust. Dad named himself as trustee and, by 2008, had nominated me as successor trustee and Ceth as backup successor trustee. Dad has held certain assets, including BRKa Shares, in this trust from time to time.

9. When Dad and Wendy married in 2002, they entered into a prenuptial agreement which required Wendy to acknowledge that Dad's net worth exceeded $150 million and to acknowledge that Dad intended to manage and retain ownership of his assets during their marriage. The prenuptial agreement limited the amount that Wendy and her children would receive upon Dad's death, or upon Dad and Wendy's divorce, to approximately $7.6 million. The prenuptial agreement also provided that, in the event that Dad became infirm or mentally incapacitated, Wendy would be required to provide me and my sisters with reasonable access to Dad and would not take any action to prohibit me and my sisters from seeing Dad.

10. In early 2003, shortly after his marriage to Wendy, Dad had a series of conversations with Farace regarding his estate planning and the best way to protect his assets. These conversations ultimately led Dad to make certain minor modifications to the prenuptial agreement and to develop a detailed estate plan for the benefit of me and my sisters. This detailed estate plan was set forth in a booklet created by Farace and entitled "Keith S. Wellin Estate Planning, Family Limited Partnership, Strangi Structure (900 Shares), April 2003." In April of 2003, my sisters and I each received a copy of this booklet with

a cover letter from Farace stating that this was the estate plan that Farace and Dad had discussed and stating that Dad was interested in pursuing this plan. On May 12, 2003, Farace had a conference call with me and my sisters during which Farace explained the estate plan and answered our questions about it. Prior to receiving the April 2003 documents, my sisters and I had not had any communication regarding this estate plan. This estate plan was developed entirely by Dad, Farace, and other professionals working for our father (Dad).

11. The estate plan executed by Dad in 2003 transferred 896 BRKa Shares to certain entities controlled and managed by me and my sisters. Specifically, the plan created an LLC, which was majority-owned by me and my sisters, and created a limited partnership, of which the LLC was the general partner. Dad made himself a limited partner in the partnership, such that he would have no control over the disposition of the BRKa Shares. Ceth was named Manager of the LLC. Thus, in 2003, Dad irrevocably gave me and my sisters control over the disposition of the 896 BRKa Shares at issue in this lawsuit.

12. Dad's two prior marriages had ended in expensive divorce settlements, and Dad told me that he wanted to set aside at least half of his assets, which were primarily BRKa Shares, and protect them for his children and grandchildren. During the summer of 2003, when we were at our family vacation home in Friendship, Maine, Dad told me that he wanted to pursue the estate plan set forth in the documents drafted by Farace because it would protect Dad from himself.

13. In the fall of 2003, Farace sent me and my sisters a letter with certain revisions to the estate plan. The revisions, which were requested by Dad, further restricted the ability of a limited partner of the limited partnership (*i.e.*, Dad) to transfer his limited partnership

interest to a spouse. These revisions, which were incorporated into the final estate plan, effectively eliminated any ability of Wendy or her family members to reach the assets of the limited partnership, including the 896 BRKa Shares.

14. After this 2003 transfer of 896 BRKa shares to the limited partnership, Dad retained control over his remaining assets, some of which he planned to use for living expenses, and the remainder of which he planned to bequeath to his lineal descendants, Wendy, and numerous other friends, charities, and other entities, as set forth in his trust documents.

15. Over the next several years, Dad amended the trust documents several times. Several of these amendments increased the inheritance which Wendy would receive upon Dad's death. While the trust initially provided for Wendy to receive $7.6 million in cash upon Dad's death, the various amendments increased this amount to $25 million.

16. In 2006, Dad executed documents appointing me as his power of attorney for South Carolina, New York, Florida, Georgia, and Maine.

17. In October of 2008, Dad was diagnosed with cancer. After his diagnosis, I spoke with Dad and Wendy regularly about his condition and his treatment options. Wendy asked that I speak with Dad's treating physician, and she seemed to value my professional knowledge, judgment, and active involvement in Dad's care. Within weeks of his initial diagnosis, Dad underwent an exploratory laparotomy, which revealed a second cancer (lymphoma) and led to a severe pneumonia that resulted in Dad being moved to the intensive care unit. Upon learning of Dad's condition, I chartered a flight with Netjets using Dad's account and was at his bedside within hours. My meeting with Dad that December morning in the ICU was the last time that any of us (his children) have been allowed by Wendy to be with Dad alone and unsupervised.

18. Dad's recovery from the surgery was followed by approximately six months of radiation and chemotherapy. Scans after his treatment revealed that Dad was cancer-free. However, during this time, he was repeatedly hospitalized for fevers and infections. From the treatments, he had developed a persistent inability to maintain an adequate white blood cell count and blood pressure upon standing. As a result of his loss of taste and appetite, Dad required a feeding tube, which he remains dependent on to this day. Despite his declining physical health, Dad remained mentally sharp and able to clearly communicate his wishes with respect to his finances and affairs.

19. During this time period, I continued to talk regularly with Dad by phone, but the timing of the calls was controlled by Wendy. I saw him in person briefly only once in 2009 on his birthday in August. Dad's susceptibility to infection and his general weakness and immobility caused by the cancer and treatment were cited by Wendy as justification for isolating Dad and limiting visitors. However, these restrictions on visitations with Dad clearly applied more to me, my sisters, and our children than it did to Wendy's family, as well as her friends and neighbors, who were granted regular access to Dad.

20. My telephone conversations with Dad during 2009, while regular, were not initiated by him as much as in the past, and increasingly focused on his health. When we talked, he was often tired and weak, but he was clear-headed.

21. As the year of 2009 progressed and Dad's weakened condition and immobility became more chronic, Wendy seemed to take greater steps to isolate and alienate Dad from me and my sisters.

22. Gathering the family at the house in Friendship, Maine in August for Dad's birthday had been a long-standing tradition, but the birthday plans were drastically scaled back in

August of 2009. Wendy told Mari to cancel her family's trip from Seattle to Friendship, effectively disinviting Mari and her family. My family and Ceth's family were limited to a two hour visit with Dad. The cake was cut, and we were given a portion to take home with us. It was a sad moment and the last birthday any of his children have been invited to, although it was clear he was delighted to have us there. This visit was the only time any of us (his children) saw Dad in person in 2009.

23. When I first saw Dad that day, he was sitting in the living room. We talked briefly before the family gathered. He said there was some information on a side table behind me from Tom Farace outlining another recommended estate strategy. He asked me to take the materials with me to review. He said he favored the strategy because of its potential tax benefits, but more importantly because it added another layer of protection by removing the assets from his estate. This conversation was the first time I had heard of this strategy. I did not present this idea to Dad, or try to persuade him to use this strategy, as alleged in the complaint in this case. I did not tell Dad that this would be a "tax advantaged transaction," as alleged in the complaint. This strategy was developed entirely by Farace and other attorneys at Nixon Peabody through consultation with my father (Dad).

24. After my visit to Friendship, I spoke with Farace in more detail about the estate planning strategy outlined in the materials Dad gave me. Farace explained to me that, through this approach, Dad would sell his limited partnership interest to an "intentionally defective grantor trust" – a concept I never fully understood – in exchange for a promissory note. Ceth, Mari, and I would be the beneficiaries of this trust. Thus, under this strategy, Ceth, Mari, and I would receive ownership over the 896 BRKa Shares in the partnership that

we had controlled since 2003 and, in return, we would sign a promissory note to Dad and provide Dad with certain guarantees that we would pay this promissory note when it came due. According to Farace, the primary advantages of this approach were that it would freeze the current value of the partnership units and pass future appreciation to us (Dad's children) and grandchildren more efficiently.

25. Farace told me that, because the family partnership already existed, the transaction would be simpler from a paperwork standpoint, but it was complicated nonetheless. In October of 2009, at Dad's direction, Farace drafted and circulated the legal documents for the estate plan and contacted and retained South Dakota Trust Company to serve as independent trustee. Farace also hired MPI Management Planning, Inc. to conduct an independent appraisal of the limited partnership interest being sold by Dad to the trust in the transaction. MPI Management Planning, Inc. appraised the value of Dad's limited partnership interest at approximately $49.8 million, applying a discount off of the liquidation value of the partnership assets to account for a limited partner's lack of control and the consequent lack of marketability of the interest.

26. In November of 2009, Dad, Ceth, Mari, and I signed all the legal documents provided by Farace, completing the transaction. These legal documents included guarantee and pledge agreements which required Ceth, Mari, and me each to personally guarantee a portion of the $49.8 million promissory note. Because of the requirement for these substantial personal guarantees on a $49.8 million note, and because of the volatility of the stock market at that time, Ceth, Mari, and I only agreed to the 2009 transaction after careful consideration of the risks that we would assume. At no point was I concerned that Dad did not understand the effect of this transaction, which was a transaction he proposed and

agreed to through his lawyer, and which was consistent with Dad's longstanding plan to transfer the bulk of his estate to his lineal descendants.

27. After the closing of this transaction, Farace sent Dad, Ceth, Mari, and me a binder containing all the executed documents related to the transaction. Farace also sent Dad a schedule showing his updated net worth following the November 2009 transaction. Dad questioned Farace as to whether the transaction had achieved Dad's intended effect of increasing the amount of wealth passing to his children. Farace responded to this question with a letter to Dad providing a detailed explanation of the structure of the transaction and how it accomplished Dad's goal of passing wealth to his children and reducing the amount of tax in connection with the transfer. With this letter, Farace enclosed schedules comparing the value of Dad's estate *with* the limited partnership interest (i.e. prior to the November 2009 transaction) to the value of Dad's estate *without* the limited partnership interest (i.e. after the November 2009 transaction). These schedules state that Dad's net worth in January 2010 (after the transaction) was approximately $156 million. The $156 million included approximately $90 million in Dad's brokerage accounts at UBS, plus the promissory note which had a face value of approximately $49.8 million, plus $15 million in real estate holdings, paintings, and miscellaneous equities and partnership interests. The schedule for the taxable estate calculation clearly shows that, after the November 2009 transaction, the value of the limited partnership interest was zero, as it had been transferred to Dad's children.

28. More than three years after the November 2009 transaction, on January 15, 2013, Dad called me and explained that he wanted to make a gift in the amount of $5 million to each of his children, and a smaller gift in the amount of $2 million to each of his

grandchildren. Dad and I talked about how such gifts would likely cause him to incur significant tax liability, but he said that he wanted to make the gifts anyway. He then said that he intended to give $5 million to Wendy as well. Dad instructed me to contact his accountant, Michael Simon, to assess the tax consequences of the gifts. I suggested that Dad also consult Farace, but Dad said that there was no need to do so. Dad had previously made gifts to his children and grandchildren irrespective of gift tax consequences, so his decision was not surprising to me. Further, I was aware at this time that Wendy wanted to reduce Farace's role in Dad's affairs, as confirmed by statements she made during a family meeting the prior March.

29. Following Dad's instructions, I called Michael Simon regarding the gifts. Simon's initial reaction was that he wished Dad had made the gifts in 2012, before the increase in the federal gift tax rate. Simon also explained that Dad's gifting directly to his grandchildren would cause Dad to incur an additional generation-skipping penalty. Simon also asked whether Farace should be consulted, and I told Simon that Dad said that he saw no need to involve Farace. However, I urged Simon to contact Farace directly if he would be more comfortable doing so. Simon told me that he would assess the tax consequences of the proposed gifts and get back to me.

30. After I spoke to Simon, Dad called me back. I told him that Simon had expressed concern with the tax consequences of the gifts, in particular the generation-skipping penalty on the gifts to the grandchildren. Dad said he understood but said without hesitation that he wanted to move forward with the gifts to us (his children) and increase the amount to $10 million each. In light of the advice from Simon, he decided to forgo the gifts directly to the grandchildren.

31. Subsequently, Dad called me again and asked if I had spoken with Simon again for a more specific estimate of the tax consequences of the gifts. I told him that Simon was out for the day. Dad again confirmed his gifting plan, but asked me not to alert Brian McLoughlin at UBS to initiate the necessary arrangements until he had spoken with Wendy that evening.

32. Subsequently, Dad called me again and instructed me to alert both Simon and McLoughlin of his intention to move forward with the gifts. During this call, we discussed the particulars, including how much stock Dad wanted to sell and from what account. I also learned he intended to increase his gift to Wendy to $10 million. I could hear someone speaking to him at times while we talked.

33. After my phone call with Dad, I spoke with Simon and informed him of Dad's intention to increase the gifts to me, Ceth, Mari, and Wendy to $10 million and not to make the gifts to the grandchildren. Simon opined that Dad should expect to pay as much as $27 million over two years in gift taxes and capital gains taxes. I asked Simon if he would like to speak to Dad directly, but he declined.

34. Subsequently, Dad called me to discuss the gifts again, this time on my office line, and I informed him of Simon's opinion regarding the amount of anticipated tax liability. Dad and I discussed his overall financial situation, specifically the fact that Dad had approximately $90 million in his two personal brokerage accounts, in addition to substantial real estate holdings in Maine and Georgia and other less liquid assets, such that his total assets were worth about $150 million. We discussed the fact that, after removing the $40 million to make the gifts, Dad would have approximately $50 million in net liquid assets, in addition to his less liquid holdings. Dad said he believed $50

million was more than enough to pay the taxes associated with the gifts and fund his and Wendy's living expenses for the remainder of his life. Dad also said that he was convinced that the BRKa Shares, which constituted the primary holding in Dad's brokerage accounts, would continue to appreciate.

35. We spoke again on Monday the following week. Dad reaffirmed the plan to make the gifts and said he was ready to proceed.

36. As Dad instructed, I alerted Brian McLoughlin at UBS of Dad's final decision to make the gifts. McLoughlin arranged a conference call to discuss the gifts on January 23, 2013. During the conference call, McLoughlin confirmed with Dad his intention to make the gifts and to authorize the transfers from his brokerage accounts. McLoughlin specifically described what he understood Dad wanted him to do – namely, to liquidate enough securities to fund a transfer of $10 million in cash to each of the UBS accounts of Wendy, me, Ceth, and Mari. Dad confirmed McLoughlin's understanding and specifically instructed him regarding which particular securities he wanted sold and how much to fund from each of his brokerage accounts. McLoughlin then explained that he would initiate the process and forward Dad a Letter of Authorization requiring his signature by overnight envelope. On January 24, 2013, Dad executed the Letter of Authorization, and Ceth, Mari, and I received and accepted the funds later that same week, as did Wendy.

37. In May 2013, I noted a transfer of $4.5 million was made from Dad's remaining revocable trust account at UBS to Wendy's account. In a later email, Wendy announced they were purchasing a beach house on Sullivan's Island, and my understanding is that Wendy did, in fact, purchase a house on Sullivan's Island last month for approximately

$4.5 million. From December of the prior year, Wendy's spending from this account at UBS for which she had responsibility began to increase substantially, including monthly credit card bills totaling as much as $72,000 in January and checks written to several individuals for tens of thousands of dollars.

38. Also in May 2013, Dad's long-trusted attorney, Farace, was apparently dismissed in favor of a new trust and estate attorney, Edward Bennett, Esq., of Charleston. In the weeks leading up to the filing of this lawsuit, Dad's new counsel, Mr. Bennett, demanded that Ceth, Mari, and I prepay the principal balance on the promissory note, which does not come due until 2021, in order to fund a $25 million bequest by Dad to Wendy. In response, Ceth, Mari, and I requested information regarding Dad's assets and Dad and Wendy's recent expenditures in order to respond. Mr. Bennett refused to provide the information, and this lawsuit followed.

39. I have been told by way of a letter from Edward Bennett to my lawyers that Dad, within the weeks leading up to this lawsuit, has purportedly revoked all of my Powers of Attorney for him, removed me as successor trustee of his revocable trust, and removed Ceth as backup successor trustee of the trust.

40. Contrary to the allegations made in this litigation, I have no desire – and have never had any desire – to bankrupt Dad, or to otherwise cause him harm. Also, notwithstanding his pursuit of these legal proceedings against me and my sisters, I continue to love my father, continue to want him to be happy, and continue to want him to have the best medical and psychological care available, and have no intention to interfere with his ability to support Wendy.

41. If the Court grants Dad's motion for a preliminary injunction, my sisters and I will lose the ability to trade or sell any of the BRKa Shares without Dad's consent. Such a restriction has already caused problems by preventing the trust from paying the attorneys' fees and costs being incurred by the partnership and by South Dakota Trust Company in this lawsuit and the other lawsuit filed by Dad in Delaware. The litigation instituted by Dad against us – and any additional litigation which may be instituted by Dad against us – could last a long time and will be expensive. Enjoining me and my sisters from selling any of the partnership's assets without Dad's consent could impose a financial hardship on me and my family, and my sisters and their families. Also, in the event that Warren Buffett's health declines, or other events occur which make selling the BRKa Shares a wise decision, my sisters and I could lose millions of dollars in a short period of time if we do not have the ability to dispose of the BRKa Shares without Dad's consent. Obtaining Dad's consent, in light of the current circumstances, would not likely be easy or quick. As stated above, I have no intention or desire to sell any of the stock owned by the partnership for the purpose of bankrupting or otherwise injuring Dad.

FURTHER AFFIANT SAYETH NOT.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

PETER WELLIN

SWORN to and subscribed before me
this 26th day of August, 2013.

_____, (L.S.)
Notary Public for _____

PATRICIA A. DAY
Notary Public, Maine
My Commission Expires April 28, 2018

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE 2013-GC-10-129
IN THE MATTER OF KEITH S. WELLIN	)	
PETER WELLIN, CYNTHIA WELLIN PLUM, and MARJORIE WELLIN KING, Petitioners.	)	
vs.	)	
KEITH S. WELLIN, Respondent.	)	

SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO RECONSIDERATION

The Special Conservator through his undersigned attorney submits this Supplemental Memorandum in Opposition to Reconsideration. The Motion to Alter or Amend Judgment was filed by the Petitioners (the "Wellin Children") with this Court on March 3, 2014 pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Petitioners seek to have this Court vacate its Order dated February 21, 2014. A hearing was held on April 1, 2014 wherein Petitioners reitterated the arguments found in the Motion to Alter or Amend. The Special Conservator has previously submitted a Memorandum in Opposition to Reconsideration and respectfully requests that the Court review the same prior to its ruling as this Supplemental Memorandum will only address additional issues raised in the hearing or those upon which the Court offered an additional opportunity to respond. Those issues are as follows:

1) Is the Promissory Note Due and Payable?

2) Have the Wellin Children, in their capacity as Trustees, appeared in this action?

3) If the Court finds the Wellin Children have not appeared as Trustees, do the Wellin Children, as individuals, have the right to raise lack of due process and lack of jurisdiction arguments on behalf of the Trust?

ARGUMENT: THE PROMISSORY NOTE IS DUE AND PAYABLE

In response to this Court's order that the $50,228,000 owed to Mr. Wellin be held by Special Conservator II, the Wellin Children now argue that despite their previous attempts to pay the funds to the Respondent, Keith Wellin, those funds are not due.

This Court's Order correctly held that, at a minimum, Keith Wellin is currently owed $50,228,000. Keith Wellin and the Special Conservator, Edward G. R. Bennett, maintain that Keith Wellin validly exercised the rights granted to him in the Wellin 2009 Irrevocable Family Trust (the "2009 Trust") and substituted his promissory note issued by the Trust with a face value of $49,802,115 for an interest in Friendship Partners, LP (the "Partnership") with an equal value.[1] Assuming that Keith Wellin did validly exercise his right of substitution, he was entitled to a share of the liquidating distribution from the Partnership, valued in excess of $90,000,000.[2] The Wellin Children maintain that the substitution was invalid and that Keith Wellin continued to own only the promissory note at the time of the Partnership's liquidation. However, regardless of which position ultimately prevails, Keith Wellin is currently entitled to no less than $50,228,000.

Now faced with this Court's Order requiring them to relinquish these funds, the Wellin Children maintain that the promissory note provides Keith Wellin only the right to receive the principal on September 3, 2021. However, if the substitution were determined to be invalid, the promissory note would be currently due and payable to Keith Wellin for the following reasons:

1) An event of default has occurred. An "Event of Default" under the terms of the note has occurred, which would cause all amounts due under the note to be immediately payable. Section 9(g) of the promissory note (a copy of which is attached hereto as Exhibit A) defines an "Event of Default" as "[t]he Borrowers[3] shall default in the payment of any principal of or interest on this Promissory Note

---

[1] In calculating the percentage interest in the Partnership interest acquired, Respondent used the method of valuation established by the Petitioner children, which they had used the previous three years in making interest payments to him under the note in Partnership interests. Using this valuation method, the Respondent determined that a 58.15548645% Partnership Interest had a value equivalent to the balance due on the note as of the date of the substitution.

[2] Cynthia Plum, in her capacity as Manager of Friendship Management, LLC, the general partner of the Partnership, has refused to provide the Respondent or the Special Conservator with an accounting of the Partnership. As such, Respondent has been unable to determine with precision the amount due to him on the liquidation.

[3] The Borrowers are the Trustees of the 2009 Trust, three of which are the Wellin Children.

when due **or in the performance of the Borrowers' obligations under the Pledge Agreement.**" (emphasis added).

The Pledge Agreement (a copy of which is attached hereto as Exhibit B) provided Keith Wellin with a security interest in the Partnership Interests held by the 2009 Trust, as well as any distributions or proceeds therefrom to secure payment of his promissory note (see Section 3 of the Pledge Agreement). Section 5 of the Pledge Agreement provided that

> "[n]othing contained herein shall be construed to prohibit the Borrowers (as the Trustees) from distributing any Collateral to any beneficiary of the Trust in accordance with the Agreement of Trust of the Trust (sic). Collateral so distributed shall continue to be subject to the security interest created hereby and **any such distribution shall expressly so provide.**" (emphasis added)

The instrument executed by the Trustees of the 2009 Trust purporting to authorize the distribution of approximately $31,800,000 to each of the Wellin Children (a copy of which is attached hereto as Exhibit C) fails to provide, as required by the Pledge Agreement, that such funds (being proceeds from the liquidation of the Partnership interests) continue to be subject to Keith Wellin's security interest. Such failure constitutes an Event of Default under the promissory note. Section 9 of the promissory note provides that

> "in the case of an event of Default other than one referred to in clause (d) or (e) of this Section 9[4] with respect to the Borrowers, if not already fully due and payable at the Maturity Date, Payee may, by notice to the Borrowers, declare the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers."

Taken together, the terms of the note and the Pledge Agreement require that, if the promissory note was not satisfied when Keith Wellin exercised his right to substitute assets, then any amounts owed under the note are immediately due and payable. Such a result is only fair to Respondent.

[4] Clauses (d) and (e) are inapplicable to this situation.

2) The Trustees have Already Authorized the Payment. Even if it were found that an Event of Default had not occurred, the Trustees of the 2009 Trust have already authorized payment to Keith Wellin of any amount due under the note. A resolution of the Trustees of the 2009 Trust (a copy of which is attached at Exhibit D) provides that:

> "the Individual Trustees [being the Wellin Children] hereby agree to authorize the Partnership to pay a portion of the Trust's share of the Partnership Distribution in an amount equal to the Outstanding Balance of the Note [being the note owed to Keith Wellin] directly to the Payee in satisfaction of the Note."

The purpose of the Security Agreement was to protect Keith Wellin, something the Wellin Children claimed they wanted when they brought this proceeding to have a Conservator appointed for their father. However, the actions of the Wellin Children - siphoning off the funds of the 2009 Trust which were supposed to protect Keith Wellin's note and now alleging it is not due – demonstrate their true motivation. Even though the Wellin Children have now determined it in their best interests, both financially and legally, not to make payment on the note, that does not override the fact that amounts due under the note are currently payable to Keith Wellin (assuming the note still exists) because of the actions of the children themselves.

Even if the note were not currently due under the terms of the documents, equity should require that the note be paid, as the debtor under the note (the 2009 Trust) **has already authorized the payment.** As a court of equity, this Court should not allow the Petitioners, who brought this very action under the guise of protecting their father, to now manipulate the facts to prevent this Court from providing the protection they sought. They have, through their actions, caused the note to come due (assuming it still exists), and if their actions have not caused it to come due, the Trustees have authorized it to be paid. They should not be allowed to change their minds now to deprive Keith Wellin of funds he is entitled to and to deprive this Court jurisdiction over an asset they asked this Court to protect.

ARGUMENT: THE WELLIN CHILDREN HAVE APPEARED IN THEIR CAPACITY AS TRUSTEES

The Wellin Children assert that the Court lacks jurisdiction to require the funds be released because the funds owed to Keith Wellin are currently held by the 2009 Trust (with the three of them servings as the Trustees).

S.C. Code Ann. §62-5-402 states that "after the service of summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has: ... (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended or distributed to or for the use of the protected person or any of his dependents." The funds in question are indisputably an asset in the estate of Wellin. Hiding them in a trust does not rob this Court of jurisdiction over the funds.

Interestingly, the Wellin Children claim they are only present as individuals, but simultaneously raise several arguments on behalf of the Trust and themselves as Trustees. The argument discussed above, that the Promissory Note is not payable, is just one example. Therefore, the Court must address whether or not the Trust has appeared in this matter.

The Special Conservator believes that *Ex parte Cannon* was appropriately relied upon by this Court's Order for the finding that where a party voluntarily appears, it waives any objections to the exercise of jurisdiction by failing to object. Ex parte Cannon, 385 S.C. 643, 658, 685 S.E.2d 814, 822 (Ct. App. 2009). Voluntary appearance is equivalent to personal service. Rule 4(d), SCRCP; Ex parte Cannon, 385 S.C. at 658; 685 S.E.2d at 814. Although Petitioners' Motion to Alter or Amend attempts to distinguish this case based on the claim that this is a separate matter, that argument has no merit as every action brought in this Court has been undertaken using the same case number and in relation to the same matter - the protection of Keith Wellin.

A review of the transcripts from the hearings and the issues raised in this Court make it clear that the Wellin Children have appeared and had representation both as individuals and as Trustees in this matter. Examples include the following:

1) Robert Brunson, Esquire, represents the Wellin Children both individually and as Trustees. Mr. Brunson confirms this in his opening statement during the April 1st hearing when he states, "I am counsel for the individual petitioners, . . . as individuals. They are also trustees for the Wellin Family 2009 Trust. I represent them in that capacity in other matters . . ." Transcript pp. 5 ln. 1-7.
2) The Wellin Children have voluntarily appeared in this Court and have removed (as Trustees) matters related to trust affairs filed by the Trust Protector, Lester Schwartz. At that time, the Wellin Children did not raise any objection as to Personal Jurisdiction over them as Trustees.
3) In discussing the Note during the initial hearing, counsel for the Wellin Children made arguments regarding the substitution transaction, which undisputedly involved trust assets and did not involve them individually. Transcript pp. 32 ln. 5-10; 33 ln. 11-23.
4) The Wellin Children are raising arguments on behalf of the Trust; therefore, the Wellin Children are acting in their capacities as Trustees. See, e.g., Motion to Alter or Amend Grounds 1b, 6, 7.
5) During the motion hearing on this issue, Mr. Brunson made multiple statements on behalf of the Trust including, but not limited to:
    a. "It is absolutely not Mr. Wellin's money. It's the Trust's money." Transcript pp. 30 ln. 7-8.
    b. "Okay, we're going to have to litigate that. But the money is going to stay right there in the Trust until there's a judgment, surviving appeal, by the proper Court that has jurisdiction over that." Transcript pp. 30 ln. 21-25.
    c. "The Trust remains, to our knowledge, ready willing and able to pay the note when Mr. Wellin agrees to accept that in full satisfaction of the note." Transcript pp. 50 ln. 1-3.

Despite these appearances, the Wellin Children seek to have this Court rely on *In re Ashton* for its holding that "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a result of service, acceptance, or waiver or process, or an appearance." In re Ashton, 266 S.W.3d 602, 604 (Tex. App. 2008). While no South Carolina court has directly addressed the issue presented here, it would be an error to rely on this case as it can be easily distinguished. *In re Ashton* was a divorce proceeding wherein the Plaintiff (Wife) sought relief against the Defendant's (Husband) Trust and is

inapplicable in the Wellin matter for several reasons. First, the Wellin Children were the Petitioners in this matter, alleging that their father's assets were in need of protection and included this very asset on their Inventory and Appraisement. By petitioning this Court, they submitted to its personal jurisdiction. They were not the Defendants in a marital dispute, nor has substantive relief been ordered against a Trust holding their personal assets, as they have acknowledged these funds belong to their father. Second, the Probate Code affords this Court great latitude in protecting the assets of an alleged incapacitated party and therefore application of a family court case is not appropriate.

In addition to Cannon, should this Court wish to review additional cases outside of South Carolina regarding individuals who are also trustees of property that belongs to the alleged incapacitated, there are much more relevant decisions than *In re Ashton.* Courts in both Florida and Tennessee have holdings relevant to the Probate Code and the decision before this Court. Those courts held that when parties appear and participate in an action, they waive any right to challenge failure to sue them as trustees. In re Conservatorship of Groves, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003); In re Guardianship of Brown, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993) ("Wallace petitioned the court to be appointed guardian for the incompetent ward Delphene Wengatz Brown. In doing so, she clearly submitted herself individually to the court's jurisdiction... Thus, all interested parties were properly before the court, so that it was not necessary to name or serve Wallace in her capacity as trustee or depository." (internal citations omitted)); Finkelstein v. Se. Bank, N.A., 490 So. 2d 976, 979 (Fla. Dist. Ct. App. 1986) ("They did not raise jurisdiction as an issue in their motion to dismiss the complaint, or in their later motion to dissolve the agreed temporary restraining order. . . . By their actions, they waived any right to challenge jurisdiction because of appellee's failure to sue them in their capacity as trustees. Furthermore, the depository itself did not need to be named in the suit, where all parties interested in the trust res were before the court."). Florida has further held that when an individual petitions to be appointed guardian for an incompetent, the individual submits to the court's jurisdiction, and it is not necessary to name or serve that individual in their capacity as a trustee. In re Guardianship of Brown, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993). Conservatorship determinations vest jurisdiction over the person's property in the trial court and it may, in appropriate circumstances, exercise control over the incapacitated person's property indirectly through its power over persons over whom it has jurisdiction. In re Conservatorship of Groves, 109 S.W.3d at 349.

As in Ahern, cited by the Court in its order, the Wellin Children have made arguments that indicate that they appear on behalf of the Trust, subjecting it to the court's jurisdiction. In re Estate of

Ahern, 359 Ill. App. 3d 805, 812, 835 N.E.2d 95, 101 (2005) ("However, we find that some of the arguments Robert made in objecting to the petition for guardianship and in contesting the award of fees to Dutton indicate that he did in fact appear on behalf of the Trust and thus subjected it to the trial court's personal jurisdiction"). The Wellin Children, by petitioning for the appointment of a conservator for Mr. Wellin, consented to the Court's jurisdiction. Under the logic of Brown and Ahern, the Wellin Children have waived any objection to lack of jurisdiction as Trustees. There is no dispute that the Wellin Children as individuals are properly before the court and under the logic of Brown, which comports with Cannon, the controlling South Carolina precedent, and Ahern, cited with favor by the Court in its Order, as interested parties they do not need to be served in their capacity as Trustees.

ARGUMENT: IF THE COURT FINDS THE TRUST HAS NOT APPEARED, THE WELLIN CHILDREN, AS INDIVIDUALS, DO NOT HAVE THE RIGHT TO RAISE ISSUES ON BEHALF OF THE TRUST

Although the Special Conservator argues that the Wellin Children have appeared in both capacities, should this Court find the Trust has not made an appearance, an interesting legal question is raised. Petitioner states that "[m]y clients, as individuals, are making arguments as to why this Court can not Order a nonparty to pay $50,000,000 over to the special conservator. But by doing so, the Trust itself is not making an appearance . . ." Transcript pp. 5 ln. 11-15. In response, the Special Conservator requests that this court ask itself whether the Wellin Children have the right to raise lack of due process and lack of jurisdiction on behalf of another party?

Generally, an individual may not raise issues on behalf of another who is not a party to the action. See § 3531.9.2 *Rights Of Others—Party has Independent Standing*, 13A Fed. Prac. & Proc. Juris. § 3531.9.2 (3d ed.). However, the Court of Appeals has held "where a party has a duty to another party and might be held to account for breach of this duty, it has standing to assert a claim on the behalf of the second party." Peppertree Resorts, Ltd. v. Cabana Ltd. P'ship, 315 S.C. 36, 40, 431 S.E.2d 598, 600-01 (Ct. App. 1993). In this matter, the Wellin Children as individuals do not have a duty to the Trust or themselves as Trustees. Furthermore, there is no risk of breach of duty to them. The only risk is a breach of duty is to their father, Mr. Wellin.

In arguing that the Wellin Children have not appeared while simultaneously raising multiple issues only properly raised by the Trust, the Petitioners have created an interesting paradigm. Either, the

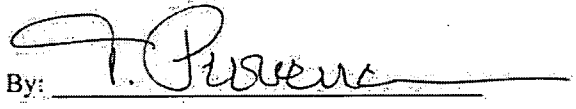
Wellin Children have appeared as Trustees to make this argument or they (as individuals) lack standing to assert these claims on behalf of the Trust.

CONCLUSION

The Special Conservator and this Court are charged with acting in the best interest of Keith Wellin. Upon the filing of the Wellin Children's Petition for Appointment of Conservator, this Court was granted "exclusive jurisdiction to determine the need for a conservator or other **protective order** until the proceedings are terminated." (emphasis added) S.C. Code Ann. §62-5-402 (2014).

In the matter before this Court, the Special Conservator appropriately filed an Application under S.C. Code Ann. §62-5-416(b) and as a result of a hearing on the matter, of which all parties had notice and participated, the Court issued an appropriate Order protecting the assets of Mr. Wellin under S.C. Code Ann. §62-5-416(c). For these reasons, as well as those detailed in our Memorandum in Opposition to Alter or Amend, the Wellin Children's Motion should be denied as it is nothing more than continued legal strategy to deprive Keith Wellin of his own assets. Petitioners initiated the proceeding in this Court alleging the need to protect their father and his assets, and we respect the Court's decision to do exactly that in its current Order.

PROVENCE MESSERVY LLC

By: 

Tiffany N. Provence
300 N . Cedar Street, Suite A
Summerville, South Carolina 29483
Telephone: 843.871.9500
Facsimile: 843.261.7035
Email: TNProvence@gmail.com

April 10, 2014
Summerville, South Carolina

EXHIBIT "A"
* See Page 5 *

PROMISSORY NOTE

$49,802,115.00

Sioux Falls, South Dakota
September 4, 2012

1. FOR VALUE RECEIVED, PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, in their capacity as Trustees, and not individually, including any successor Trustee(s) serving from time to time, (the "Borrowers"), of the WELLIN FAMILY 2009 IRREVOCABLE TRUST, (the "Trust"), created under an Agreement of Trust dated November 2, 2009, by and between KEITH S. WELLIN, as Grantor, and PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, hereby unconditionally promise to pay to the order of the KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST, created under an Agreement of Trust dated December 11, 2001, as amended and restated, by and between KEITH S. WELLIN as Grantor and KEITH S. WELLIN as Trustee (the "Payee") the principal sum equal to Forty-Nine Million Eight Hundred Two Thousand One Hundred Fifteen and 00/100 Dollars ($49,802,115.00) on September 3, 2021 (the "Maturity Date"). The Note is given for the purpose of continuing, revising and restating the Note dated November 30, 2011, and is not intended to evidence or create any new indebtedness.

2. (a) The Borrowers hereby unconditionally promise to pay to the order of the Payee interest on the unpaid principal amount of this Promissory Note for the period from and including the date hereof to but excluding the Maturity Date, at the applicable federal mid-term rate in effect on the date hereof as determined under Section 1274(d) of the Internal Revenue Code (26 U.S.C. §1274(d)), per annum, compounded annually from the date of this Promissory Note, to wit 0.84%. The Borrowers shall pay to the Payee a partial year interest payment on November 30, 2012 (along with interest on the November 30, 2011, Note to date), and then shall pay the Payee annual interest only payments on each November 30 thereafter until paid in full. Interest shall be calculated on the basis of a year of 365 days and actual days elapsed (including the first day but excluding the last day) in the period for which it is payable. All accrued and unpaid interest shall be payable on the Maturity Date. This is an unqualified obligation of the Borrowers to pay the sum set forth above, with interest as provided, which obligation is payable as provided herein regardless of the income or lack thereof of the Borrowers.

(b) Notwithstanding the foregoing, the Borrowers hereby unconditionally promise to pay to the order of the Payee interest at a rate of 7% per annum (the "Post-Default Rate"), calculated in the same manner as in paragraph 2(a), on any amount of principal or interest payable by the Borrowers under this Promissory Note that shall not be paid in full when due (whether at the Maturity Date, by acceleration, or otherwise) for the period from and including the due date of such payment to but excluding the date the same is paid in full.

(c) The Borrowers may, at the Borrowers' option, prepay all or any portion of the principal of this Promissory Note at any time without premium or penalty of any kind, provided that the Borrowers simultaneously pay accrued and unpaid fees, expenses, interest (including, to the extent applicable, interest at the Post-Default Rate), to but excluding the date of such prepayment, on the amount of principal so prepaid.

13673570.2

EXHIBIT "_____"

3. The Borrowers may, at the Borrowers' option, execute and deliver to the Payee on any anniversary of this Promissory Note another promissory note that (except as provided in the next sentence of this paragraph) is identical to this Promissory Note in form and substance (each other such promissory note being referred to herein as a "Capitalized Interest Note") in satisfaction of the Borrowers' obligation to pay interest hereon that has accrued and remains unpaid. Each Capitalized Interest Note shall be in a principal amount equal to the accrued and unpaid interest to which it relates, shall be dated the date of the execution and delivery thereof, and shall bear interest at the "Applicable Federal Rate" as defined in Section 7872 (or any successor provisions) of the Internal Revenue Code of 1986, as amended, and as determined by reference to the maturity of such Capitalized Interest Note. Without limiting the obligation of the Borrower under any Capitalized Interest Note, the execution and delivery of any Capitalized Interest Note shall constitute payment of the interest hereon to which such Capitalized Interest Note relates. The undersigned Borrower and maker of this Promissory Note shall have the right, but not the obligation, to make any payments due hereunder by transferring to the Payee one or more limited partnership units ("Units") of the FRIENDSHIP PARTNERS L.P. The value of the Units shall be determined by mutual agreement of the parties, or, if they are unable to agree, by an independent appraiser selected by the Payee.

4. Right of Set-Off. The Borrowers agree that, in addition to (and without limitation of) any right of set-off the Payee may otherwise have, the Payee shall be entitled, at its option, to offset amounts owing by the Payee to the Borrowers, in dollars or in any other currency (regardless of whether such amounts are then due to the Borrowers), against any amount payable by the Borrowers to the Payee under this Promissory Note that is not paid when due; provided that nothing contained herein shall require the Payee to exercise any such right.

5. Representations and Warranties. The Borrowers hereby represent and warrant to the Payee as follows:

(a) Organization; Powers. (i) The Borrowers are the Trustees of a trust duly organized and validly existing under the laws of the jurisdiction of its formation, (ii) the Trustees have all requisite power and authority to carry out the terms of its Trust, including, but not limited to, carry on its activities as now conducted, and (iii) the Investment Trustee has the legal capacity and full power and authority to execute and deliver, and to bind the Borrowers to perform their obligations under, this Promissory Note, and to execute and deliver any and all documents and instruments in connection therewith.

(b) Authorization; Enforceability. The Borrowers have all necessary corporate, trust, partnership or other power, authority and legal right to execute, deliver and perform its obligations under this Promissory Note; the execution, delivery and performance by the Borrowers of this Promissory Note have been duly authorized by all necessary trust action on its part (including, without limitation, any required approvals); and this Promissory Note has been duly and validly executed and delivered by the Borrowers and constitutes legal, valid and binding obligations, enforceable against the Borrowers in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency, or any securities exchange, are necessary for the execution, delivery or performance by the Borrowers of this Promissory Note or for the legality, validity or enforceability hereof or thereof.

(d) No Breach. None of the execution and delivery of this Promissory Note, the consummation of the transactions herein and therein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, the fiduciary duties of the Trustees under the Trust, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or, to the knowledge of the Borrowers, any agreement or instrument to which the Borrowers are a party or by which they or their Property are bound or to which they are subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any Property of the Borrowers pursuant to the terms of any such agreement or instrument.

(e) Indebtedness for Borrowed Money. To the knowledge of the Borrowers, there are no Liens on the assets or properties of the Borrowers existing as of the date hereof.

6. This Promissory Note evidences the obligation of the Borrowers to pay to the Payee the deferred purchase price for a 98.8963% limited partnership interest in FRIENDSHIP PARTNERS L.P., a Delaware limited partnership (herein referred to as the "Interest") transferred by the Payee to the Borrowers, and the payment hereof is secured by a pledge of the Interest, and the proceeds thereof (the "Pledged Interest"), under a Pledge Agreement dated November 30, 2009 (as the same may be modified and supplemented from time to time, the "Pledge Agreement") between the Borrowers and the Payee. Terms defined in the Pledge Agreement but not herein have the respective meanings ascribed to such terms in the Pledge Agreement.

7. Expenses. The Borrowers agree to pay or reimburse Payee for: (a) all reasonable out-of-pocket costs and expenses of Payee (including, without limitation, the reasonable fees and expenses of legal counsel) in connection with (i) any default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated); and (b) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Promissory Note or any other document referred to herein.

8. Definitions. As used herein, the following terms shall have the following respective meanings:

"Business Day" shall mean a day other than Saturday, Sunday or any day on which banks located in the State of Delaware are authorized or obligated to close.

"Dollars" or "$" refers to lawful money of the United States of America.

"Lien" shall mean, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Promissory Note, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

9. If one or more of the following events shall occur and be continuing (each an "Event of Default"):

(a) The Borrowers shall default in the payment of any interest when due under this Promissory Note and the same shall continue for thirty (30) or more Business Days;

(b) Any representation or warranty made herein (or in any modification or supplement hereto) by the Borrowers, or any certificate furnished to Payee pursuant to the provisions hereof, shall prove to have been false or misleading as of the time made or furnished in any material respect;

(c) The Borrowers shall incur any indebtedness for borrowed money without the prior written consent of Payee (which consent shall not be unreasonably withheld) or any event specified in any note, agreement, indenture or other document evidencing or relating to any other indebtedness for borrowed money of the Borrowers shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, such indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity;

(d) A proceeding or case shall be commenced, without the application or consent of the Borrowers, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of the Borrowers or of all or any substantial part of their Property, or (iii) similar relief in respect of the Borrowers under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) or more days; or an order for relief against the Borrowers shall be entered in an involuntary case under the Federal Bankruptcy Code of 1978, as amended from time to time, presently codified as Title 11 of the United States Code (the "Bankruptcy Code");

(e) The Borrowers shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of themselves or of all or a substantial part of their Property, (ii) make a general assignment for the benefit of their creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any corporate action for the purpose of effecting any of the foregoing;

(f) A final judgment or judgments for the payment of money of $50,000 or more in the aggregate shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against the Borrowers and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and the Borrowers shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrowers to enforce any such judgment;

(g) The Borrowers shall default in the payment of any principal of or interest on this Promissory Note when due or in the performance of the Borrowers' obligations under the Pledge Agreement and any such default shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers;

(h) Any representation or warranty made in the Pledge Agreement by the Borrowers shall prove to have been false as of the time made in any material respect and shall have continued unremedied for thirty (30) or more days after notice thereof by the Payee to the Borrowers; or

(i) The Trust shall terminate, be liquidated or dissolved.

THEREUPON: (1) in the case of an Event of Default other than one referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, if not already fully due and payable at the Maturity Date, Payee may, by notice to the Borrowers, declare the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers; and (2) in the case of the occurrence of an Event of Default referred to in clause (d) or (e) of this Section 9 with respect to the Borrowers, the principal amount then outstanding of, and the accrued interest on, this Promissory Note to be accelerated, whereupon such amounts shall automatically be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrowers.

10. Payments of principal and interest and any other amounts under this Promissory Note may be made in cash or in property (whether tangible or intangible) or a combination thereof. Any property other than cash transferred in payment of any amount of principal of or interest on this Promissory Note shall be valued as of the date of such payment in

accordance with the principles set forth in Treasury Regulations §§25.2512-1 to 25.2512-8 (26 C.F.R. §§25.2512-1 to 25.2512-8). Payments hereunder shall be made to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers.

11. Notices to the Payee hereunder shall be sent by certified mail or delivered by a recognized commercial courier service to the Payee at 161 Coquille Way, Vero Beach, Florida 32963-3468, or such other address as the Payee shall notify the Borrowers. Notices to the Borrowers shall be sent by certified mail or delivered by a recognized commercial courier service to the Borrower, Wellin Family 2009 Irrevocable Trust, South Dakota Trust Company LLC, Trustee, 201 South Phillips Avenue, Suite 200, Sioux Falls, South Dakota 57104, or such other address as the Borrowers shall notify the Payee.

12. The terms of this Promissory Note may be waived, altered or amended only by an instrument in writing duly executed by the Payee and the Borrowers. No failure to exercise and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

13. The Investment Trustee has executed and delivered this Promissory Note for and on behalf of all of the Borrowers, in their capacity as Trustees, and in no case shall any Borrower be personally liable for or on account of any of the obligations of the Borrowers hereunder, recourse for which obligations shall be limited to the Collateral (which shall consist of the Pledged Interest) and any other assets of the Trust. Subject to the foregoing provisions of this paragraph, this Promissory Note shall be binding upon any successor Trustees of the Trust, and all references herein to the "Borrowers" shall include all such successor trustees but shall exclude any person or entity that, at the time of determination, shall have ceased to be a Trustee of the Trust. The Trust is personally obligated and fully liable for the amount due under this Promissory Note. The Payee has the right to sue on this Promissory Note and obtain a personal judgment against the Trust for satisfaction of the amount due under this Promissory Note either before or after a foreclosure of the Pledged Interest under the Delaware Uniform Commercial Code.

14. **Choice of Law. This Promissory Note shall be governed by, and construed in accordance with, the law of the State of Delaware, without giving effect to any principles of choice of law thereof that could require the application of the law of another jurisdiction.**

15. Waiver of Jury Trial. THE BORROWERS AND, BY ITS ACCEPTANCE OF THIS PROMISSORY NOTE, PAYEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee

Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

By: Patti Graumann
As its: Trust Officer

13673570 2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

Cynthia W. Plum, Trustee

_____
Cynthia W. Plum, Trustee

_____
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

_____
By: Patti Graumann
As its: Trust Officer

3673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

Marjorie W. King
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

_____
By: Patti Graumann
As its: Trust Officer

13673570.2

16. Counterparts. This Agreement may be executed in one or more written, fax, PDF and electronic counterparts, all of which taken together shall constitute one and the same instrument and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the Borrowers hereto have caused this Promissory Note to be duly executed by its duly authorized representative, as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

_____
Peter J. Wellin, Trustee

_____
Cynthia W. Plum, Trustee

_____
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC,
Trustee

Patti Graumann
By: Patti Graumann
As its: Trust Officer

13673570.2

EXHIBIT "B"
See page 6

PLEDGE AGREEMENT

PLEDGE AGREEMENT dated as of the 30th day of November, 2009 (this "Agreement") between PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, in their capacity as Trustees, and not individually, including any successor Trustee(s) serving from time to time, (the "Borrowers"), of the WELLIN FAMILY 2009 IRREVOCABLE TRUST, (the "Trust"), created under an Agreement of Trust dated November 2, 2009 by and between KEITH S. WELLIN, as Grantor, and PETER J. WELLIN, CYNTHIA W. PLUM, MARJORIE W. KING, and SOUTH DAKOTA TRUST COMPANY LLC, as Trustees, hereby unconditionally promise to pay to the order of the KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST, created under an Agreement of Trust dated December 11, 2001, as amended and restated, by and between KEITH S. WELLIN as Grantor and KEITH S. WELLIN as Trustee, (the "Payee").

The Borrowers have executed and delivered to the Payee a Promissory Note dated as of the date hereof (as modified, substituted, refinanced, extended, and supplemented and in effect from time to time, the "Promissory Note") in the original principal amount sum equal to the fair market value of a 98.8963% limited partnership interest in FRIENDSHIP PARTNERS L.P., a Delaware limited partnership, as determined by an independent appraiser.

To induce the Payee to accept the Promissory Note as the deferred purchase price for a 98.8963% limited partnership interest in FRIENDSHIP PARTNERS L.P., a New York limited partnership (the "Partnership") owned by the Payee, which the Payee transferred to the Borrowers on the date hereof, the Borrowers have agreed to pledge and grant a security interest in the Collateral as security for the Secured Obligations. Accordingly, the parties hereto agree as follows:

Section 1. Definitions. Terms defined in Articles 8 and 9 of the Delaware UCC (including terms defined in any other Articles thereof and made applicable to either Article 8 or 9 by reference therein) but not in this Agreement have the respective meanings ascribed to such terms in the Delaware UCC. As used herein:

"Collateral" shall have the meaning ascribed to such term in Section 3 hereof.

"Lien" shall mean any voluntary or involuntary lien, pledge, mortgage or security interest.

"Delaware UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Delaware.

"Partnership Agreement" shall mean the Partnership Agreement of the Partnership, dated as of December 12, 2003, as the same may be modified and supplemented and in effect from time to time.

"Pledged Interest" shall have the meaning ascribed to such term in Section 3(a) hereof.

3674194.2

EXHIBIT "_____"

"Secured Obligations" shall mean the obligations of the Borrowers under the Promissory Note and under this Agreement.

Section 2. Representations and Warranties. The Borrowers represent and warrant to the Payee that:

(a) The Borrowers have the full power, authority and legal right under the Agreement of Trust of the Trust to execute and deliver the Promissory Note and this Agreement and to pledge and grant a security interest in the Collateral as the trustees of the Trust (each a "Trustee" and collectively, the "Trustees").

(b) Each of the Promissory Note and this Agreement has been duly executed and delivered by the Borrowers and, subject to paragraph 13 of the Promissory Note and Section 6.05 hereof, constitutes the legal, valid and binding obligation of the Borrowers, enforceable against the Borrowers in accordance with its terms.

(c) The Borrowers own the entire beneficial interest in the Collateral in which the Borrowers purport to grant a security interest pursuant to Section 3 hereof, and no Lien will exist upon such Collateral as of the time of the "Closing" (as defined in the Purchase Agreement between the WELLIN FAMILY 2009 IRREVOCABLE TRUST under agreement dated November 2, 2009 and the KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST under agreement dated December 11, 2001, as amended and restated), by reason of any action by any Trustee, except for the security interest in favor of the Payee created hereby, which security interest constitutes a first-priority, perfected security interest in and to all of such Collateral.

Section 3. Collateral. As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, the Borrowers hereby pledge and grant to the Payee a security interest in all of the right, title and interest of the Borrowers in the following property, whether now owned by the Borrowers or hereafter acquired and whether now existing or hereafter coming into existence (all being collectively referred to herein as "Collateral"):

(a) the membership interest of the Borrowers in the Partnership (the "Pledged Interest");

(b) all of the rights of the Borrowers under the Partnership Agreement (including, without limitation, all right, title and interest (if any) of the Borrowers to vote as a member and all rights of the Borrowers to property, assets, membership interests and distributions under the Partnership Agreement);

(c) all present and future rights of the Borrowers to receive payments of money or other distributions or payments arising out of or in connection with the membership interest of the Borrowers in the Partnership and of the Borrowers' rights under the Partnership Agreement; and

(d) all proceeds of and to any of the property of the Borrowers described in the preceding clauses of this Section 3 (including, without limitation, all rights to receive money and all causes of action, claims and warranties now or hereafter held by the Borrowers in respect of any of the items listed above) and, to the extent related to any property described in said clauses or such proceeds, all books, correspondence, credit files, records, invoices and other papers.

Section 4. Further Assurances; Remedies. In furtherance of the grant of the security interest pursuant to Section 3 hereof, the Borrowers hereby agree with the Payee as follows:

4.01 Delivery and Other Perfection. The Borrowers shall:

(a) if any certificate representing or evidencing the Pledged Interest is received by the Borrowers, forthwith either (x) transfer and deliver to the Payee such certificate, which thereafter shall be held by the Payee, pursuant to the terms of this Agreement, as part of the Collateral or (y) take such other action as the Payee shall deem necessary or appropriate to duly record the Lien created hereunder in such certificate representing or evidencing such Pledged Interest;

(b) execute and deliver written instructions to the Partnership to register the Lien created hereunder in the books and records maintained by the Partnership for such registrations and cause the Partnership to execute and deliver to the Payee a written confirmation to the effect that the Lien created hereunder has been duly registered in such books and records; and

(c) give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary or desirable (in the judgment of the Payee) to create, preserve, perfect or validate the security interest granted pursuant hereto or to enable the Payee to exercise and enforce the Payee's rights hereunder with respect to such security interest, including, without limitation, causing any or all of the Collateral to be transferred of record into the name of the Payee or the Payee's nominee (and the Payee's agree that if any Collateral is transferred into the Payee's name or the name of the Payee's nominee, the Payee will thereafter promptly give to the Borrowers copies of any notices and communications received by the Payee with respect to the Collateral).

4.02 Other Financing Statements and Liens. The Borrowers shall not file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to the Collateral in which the Payee is not named as the sole secured party.

4.03 Preservation of Rights. The Payee shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

4.04 Special Provisions Relating to Collateral.

(a) So long as no Event of Default (as defined in the Promissory Note) shall have occurred and be continuing, the Borrowers shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Collateral for all purposes not inconsistent with the terms of this Agreement or the Promissory Note.

(b) So long as no Event of Default (as defined in the Promissory Note) has occurred and is continuing, the Borrowers shall be entitled to receive and retain any distributions in respect of the Collateral.

(c) If any Event of Default (as defined in the Promissory Note) shall have occurred, then so long as such Event of Default shall continue, all distributions with respect to the Collateral shall be paid directly to the Payee and applied to the payment or prepayment of the Secured Obligations in such manner as the Payee may determine.

4.05 Events of Default, Etc. During the period during which an Event of Default (as defined in the Promissory Note) shall have occurred and be continuing, the Payee (i) shall have all of the rights and remedies with respect to the Collateral of a secured party under the Delaware UCC (whether or not such rights and remedies are provided for in the Uniform Commercial Code or otherwise in the jurisdiction where they are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Payee was the sole and absolute owner thereof (and the Borrowers agree to take all such action as may be appropriate to give effect to such right) and (ii) may, upon 10 business days' prior notice to the Borrowers of the time and place, with respect to the Collateral or any part thereof which shall then be or shall thereafter come in the possession, custody or control of the Payee, sell, lease, assign or otherwise dispose of all or any part of such Collateral, at such place or places as the Payee deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived).

4.06 Automatic Transfer and Retention. Upon the death of the Grantor of the Payee, a revocable living trust, without demand, notice or other formalities of any kind, all of which are hereby expressly waived by the Borrowers: (a) such Collateral with a value equal to the sum of the then outstanding principal of and any accrued and unpaid interest on the Promissory Note shall automatically be transferred to the Payee in payment of the Promissory Note; (b) such transfer shall be deemed to have been effected immediately prior to the death of the Payee; (c) such transfer shall automatically divest the Borrowers of, and vest in the Payee, all right, title and other interest in such Collateral; (d) the Payee may retain such Collateral in satisfaction (in part or in full, as the case may be) of the Secured Obligations hereunder without necessity of any further disposition thereof, including any public or private sale; and (e) Section

4.11 hereof shall apply to any surplus Collateral after giving effect to any such aforementioned automatic transfer. Any property other than cash transferred to and retained by the Payee pursuant to this Section 4.06, in payment of any amount of principal of or interest on the Promissory Note, shall be valued as of the date of such transfer in accordance with the principles set forth in Treasury Regulations §§ 25.2512-1 to 25.2512-8 (26 C.F.R. §§ 25.2512-1 to 25.2512-8).

4.07 Deficiency. If the proceeds of sale, collection or other realization of or upon the Collateral pursuant to Section 4.05 hereof are insufficient to cover the costs and expenses of such realization and the payment in full of the Secured Obligations, the Borrowers shall, subject to paragraph 13 of the Promissory Note and Section 6.05 hereof, remain liable for any deficiency.

4.08 Application of Proceeds. Except as otherwise herein expressly provided, the proceeds of any collection, sale or other realization of all or any part of the Collateral pursuant hereto, shall be applied by the Payee:

First, to the payment of the costs and expenses of such collection, sale or other realization, including reasonable out-of-pocket costs and expenses of the Payee and the fees and expenses of its agents and counsel, and all expenses incurred and advances made by the Payee in connection therewith;

Next, to the payment in full of the Secured Obligations, in such manner as the Payee may determine; and

Finally, to the payment to the Borrowers, or the Borrowers' successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

4.09 Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to the Payee while no Event of Default (as defined in the Promissory Note) has occurred and is continuing, upon the occurrence and during the continuance of any Event of Default (as defined in the Promissory Note) the Payee is hereby appointed the attorney-in-fact of the Borrowers for the purpose of carrying out the provisions of this Section 4 and taking any action and executing any instruments that the Payee may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, so long as the Payee shall be entitled under this Section 4 to make collections in respect of the Collateral, the Payee shall have the right and power to receive, endorse and collect all checks made payable to the order of the Borrowers representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

4.10 Further Assurances. The Borrowers agree that, from time to time upon the written request of the Payee, the Borrowers will execute and deliver such further documents, agreements and instruments and do such other acts and things as the Payee may reasonably request in order fully to effect the purposes of this Agreement.

4.11 Termination. When all Secured Obligations shall have been paid in full, this Agreement shall terminate, and the Payee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Collateral and money received in respect thereof, to or on the order of the Borrowers.

Section 5. Transfer of Collateral.

Nothing contained herein shall be construed to prohibit the Borrowers (as the Trustees) from distributing any Collateral to any beneficiary of the Trust in accordance with the Agreement of Trust of the Trust. Collateral so distributed shall continue to be subject to the security interest created hereby and any such distribution shall expressly so provide.

Section 6. Miscellaneous.

6.01 Expenses. The Borrowers agree, subject to Section 6.05 hereof, to reimburse the Payee for all reasonable costs and expenses of the Payee (including, without limitation, the reasonable fees and expenses of legal counsel) in connection with (a) any Event of Default (as defined in the Promissory Note) and any enforcement or collection proceeding resulting therefrom, including, without limitation, all manner of participation in or other involvement with (i) performance by the Payee of any obligations of the Borrowers in respect of the Collateral that the Borrowers have failed or refused to perform, (ii) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Payee in respect thereof, by litigation or otherwise, including expenses of insurance, (iii) judicial or regulatory proceedings and (iv) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (b) the enforcement of this Section 6.01, and all such costs and expenses, shall be Secured Obligations entitled to the benefits of the security interest created hereby and of the Collateral provided pursuant to Section 3 hereof.

6.02 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by the Borrowers and the Payee.

6.03 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

6.04 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware.

6.05 No Personal Liability. The Borrowers have executed and delivered this Agreement in their capacity as Trustees, and in no case shall any Borrower be personally liable for or on account of any of the obligations of the Borrower hereunder, recourse for which obligations shall be limited to the Collateral and any other assets of the Trust, except with respect

to liability in respect of any misrepresentation under Section 2 hereof. Subject to the foregoing provisions of this paragraph, this Agreement shall be binding upon any successor Trustees of the Trust, and all references herein to the "Borrowers" shall include all such successor Trustees but shall exclude any person or entity that, at the time of determination, shall have ceased to be a Trustee of the Trust. The Trust is obligated and fully liable for the amount due under the Promissory Note. The Payee has the right to sue on the Promissory Note and obtain a personal judgment against the Trust for satisfaction of the amount due under the Promissory Note either before or after a foreclosure of the Pledged Interest under the Delaware Uniform Commercial Code.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

/s/ Peter J. Wellin
Peter J. Wellin, Trustee

/s/ Cynthia W. Plum
Cynthia W. Plum, Trustee

/s/ Marjorie W. King
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

/s/ Patti Graumann
By: Patti Graumann, Trust Officer

PAYEE:

KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST u/a/d December 11, 2001, as amended and restated

/s/ Keith S. Wellin
Keith S. Wellin, Trustee

194.2

to liability in respect of any misrepresentation under Section 2 hereof. Subject to the foregoing provisions of this paragraph, this Agreement shall be binding upon any successor Trustees of the Trust, and all references herein to the "Borrowers" shall include all such successor Trustees but shall exclude any person or entity that, at the time of determination, shall have ceased to be a Trustee of the Trust. The Trust is obligated and fully liable for the amount due under the Promissory Note. The Payee has the right to sue on the Promissory Note and obtain a personal judgment against the Trust for satisfaction of the amount due under the Promissory Note either before or after a foreclosure of the Pledged Interest under the Delaware Uniform Commercial Code.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

WELLIN FAMILY 2009 IRREVOCABLE TRUST
u/a/d November 2, 2009

/s/ Peter J. Wellin
Peter J. Wellin, Trustee

/s/ Cynthia W. Plum
Cynthia W. Plum, Trustee

Marjorie W. King
/s/ Marjorie W. King
Marjorie W. King, Trustee

SOUTH DAKOTA TRUST COMPANY LLC, Trustee

/s/ Patti Graumann
By: Patti Graumann, Trust Officer

PAYEE:

KEITH S. WELLIN FLORIDA REVOCABLE LIVING TRUST u/a/d December 11, 2001, as amended and restated

/s/ Keith S. Wellin
Keith S. Wellin, Trustee

13674194.2

EXHIBIT "C"

WRITTEN CONSENT IN LIEU OF A MEETING OF THE DISTRIBUTION COMMITTEE AND THE INDIVIDUAL TRUSTEES OF WELLIN FAMILY 2009 IRREVOCABLE TRUST

Effective December 1, 2013

The undersigned, being all of the members of the Distribution Committee (the "***Distribution Committee***") and the individual Trustees (the "***Individual Trustees***") of the Wellin Family 2009 Irrevocable Trust (any reference herein to the "***Trust***" shall refer to the Wellin Family 2009 Irrevocable Trust and any trust created thereunder), by execution of this document hereby (i) consent to and adopt the following resolutions as of the date of this document, which resolutions shall have the same force and effect as if adopted by an affirmative vote of a meeting of the Distribution Committee duly called and held and (ii) direct that this Written Consent be filed with the records of the Trust.

WHEREAS, pursuant to Article VII of the Trust, the Distribution Committee is empowered to direct discretionary distributions of Trust property to the beneficiaries of the Trust;

WHEREAS, the Distribution Committee has become aware of a liquidating distribution (the "***Partnership Distribution***") to be received by the Trust from Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***") with respect to the Trust's limited partner interest in the Partnership; and

WHEREAS, the Distribution Committee has decided to exercise its discretion to authorize and cause a distribution from the Trust in an amount equal to the excess of the Partnership Distribution over $52,000,000 (the $52,000,000 hereinafter referred to as the "***Trust Retained Amount***") to Cynthia W. Plum, Peter J. Wellin, and Marjorie W. King, as beneficiaries of the Trust, outright and free of trust and in equal shares (each such distribution share hereinafter referred to as the "***One-Third Share of the Excess Partnership Distribution***").

NOW, THEREFORE, upon consideration of the above matters, among other things, and having regard for the interests of the beneficiaries of the Trust, **BE IT RESOLVED**, that Peter J. Wellin and Marjorie W. King, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum; that Marjorie W. King and Cynthia W. Plum, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Peter J. Wellin; and that Peter J. Wellin and Cynthia W. Plum, in their capacity as members of the Distribution Committee, hereby vote in favor of and authorize the distribution of a One-Third Share of the Excess Partnership Distribution to Marjorie W. King; and for the avoidance of doubt, if the Partnership Distribution is distributed to the Trust in more than one distribution, then the Trust may distribute the One-Third Share of the Excess Partnership Distribution to each of the before named beneficiaries as soon as the Trust has sufficient cash to do so and before the funding of the Trust with the Trust Retained Amount; and

EXHIBIT

FURTHER RESOLVED, that Peter J. Wellin and Marjorie W. King hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum on behalf of the Trust; that Marjorie W. King and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Peter J. Wellin on behalf of the Trust; that Peter J. Wellin and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Marjorie W. King on behalf of the Trust, and that each member of the Distribution Committee and Individual Trustee hereby acknowledges that each such distribution directly from the Partnership to the before mentioned beneficiaries shall be deemed to be a distribution from the Partnership to the Trust followed by a distribution from the Trust to the beneficiaries for Trust accounting purposes;

FURTHER RESOLVED, that each of the members of the Distribution Committee and each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin by Cynthia W. Plum his attorney in fact
Peter J. Wellin

Marjorie W. King

FURTHER RESOLVED, that Peter J. Wellin and Marjorie W. King hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Cynthia W. Plum on behalf of the Trust; that Marjorie W. King and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Peter J. Wellin on behalf of the Trust; that Peter J. Wellin and Cynthia W. Plum hereby agree to authorize the Partnership to directly distribute an amount equal to the One-Third Share of the Excess Partnership Distribution to Marjorie W. King on behalf of the Trust, and that each member of the Distribution Committee and Individual Trustee hereby acknowledges that each such distribution directly from the Partnership to the before mentioned beneficiaries shall be deemed to be a distribution from the Partnership to the Trust followed by a distribution from the Trust to the beneficiaries for Trust accounting purposes;

FURTHER RESOLVED, that each of the members of the Distribution Committee and each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

_____
Cynthia W. Plum

_____
Peter J. Wellin

Marjorie W. King
Marjorie W. King

EXHIBIT "D"

WRITTEN CONSENT IN LIEU OF A MEETING OF THE INDIVIDUAL TRUSTEES OF WELLIN FAMILY 2009 IRREVOCABLE TRUST

Effective December 5, 2013

The undersigned, being all of the individual Trustees (the "***Individual Trustees***") of the Wellin Family 2009 Irrevocable Trust (any reference herein to the "***Trust***" shall refer to the Wellin Family 2009 Irrevocable Trust and any trust created thereunder), by execution of this document hereby (i) consent to and adopt the following resolutions as of the date of this document, which resolutions shall have the same force and effect as if adopted by an affirmative vote of a meeting of the Individual Trustees duly called and held and (ii) direct that this Written Consent be filed with the records of the Trust.

WHEREAS, On Sept. 4, 2012, the trustees of the Trust in their capacities as trustee of the Trust issued a promissory note (the "***Note***") to the Keith S. Wellin Florida Revocable Living Trust (the "***Payee***") in the original principal amount of $49,802,115.00;

WHEREAS, the outstanding balance of the Note consisting of unpaid principal and accrued interest as of Dec. 6, 2013 is or will be $50,228,000.00 (the "***Outstanding Balance of the Note***");

WHEREAS, the Trust is anticipating the receipt of a liquidating distribution (the "***Partnership Distribution***") from Friendship Partners, LP, a Delaware limited partnership (the "***Partnership***") with respect to the Trust's limited partner interest in the Partnership; and

WHEREAS, the Individual Trustees desire to use a portion of such Partnership Distribution to pay off the Note.

NOW, THEREFORE, upon consideration of the above matters, among other things, and having regard for the interests of the beneficiaries of the Trust, **BE IT RESOLVED**, that the Individual Trustees hereby approve and authorize a payment to the Payee in an amount equal to the Outstanding Balance of the Note in satisfaction of the Note; and

FURTHER RESOLVED, that the Individual Trustees hereby agree to authorize the Partnership to pay a portion of the Trust's share of the Partnership Distribution in an amount equal to the Outstanding Balance of the Note directly to the Payee in satisfaction of the Note and that the Individual Trustees hereby acknowledge that such payment directly from the Partnership to the Payee shall be deemed to be a distribution from the Partnership to the Trust followed by a payment from the Trust to the Payee for Trust accounting purposes;

FURTHER RESOLVED, that each of the Individual Trustees is authorized and directed to do or cause to be done all acts and things he or she deems necessary or proper in order to carry out the distributions described above and to fully effectuate the purposes of these resolutions.

1

DEFS_000008

EXHIBIT

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin by Cynthia W. Plum his Attorney in FACT

Marjorie W. King

IN WITNESS WHEREOF, the undersigned have executed this Written Consent in Lieu of a Meeting. This consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Cynthia W. Plum

Peter J. Wellin

Marjorie W. King

Marjorie W. King

DEFS_000010

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON)

FILED
PROBATE COURT
14 MAY -1 AM 9:08

IN THE MATTER OF: KEITH S. WELLIN Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, Petitioners, vs. Keith S. Wellin, Respondent.	Case No. 2013-GC-10-0129 **PETITIONERS' MOTION TO APPOINT NEW TEMPORARY CONSERVATOR PENDING MERITS HEARING**

Petitioners Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Petitioners") move this Court to appoint a new temporary conservator for Keith Wellin ("Wellin") in place of Edward G. R. Bennett ("Bennett") pending the merits hearing on the Petition for Appointment of Conservator. It has become a conflict of interest for Bennett to continue serving in the dual capacity of conservator and attorney for Wellin, particularly in light of the recent opinion of one of this Court's appointed medical examiners that Wellin is not competent to manage his financial affairs at this time.

I. **The Appointment of Bennett as Special Conservator and Special Trustee Was Intended to Be Temporary.**

On July 3, 2013, Wellin filed an action against his adult children in the United States District Court for the District of South Carolina, Charleston Division ("federal court action"). On July 19, 2013, Petitioners filed in this Court a Petition for Appointment of Conservator for Wellin. This Court held a hearing on July 26, 2013, at which time Wellin's counsel, including Bennett and Mr. Hood, strenuously objected to any court-appointed doctor examining Wellin and

vehemently denied that Wellin lacked capacity to manage his own affairs. The parties were in the process of scheduling a mediation of the federal court action at the time of the hearing in this Court. As a temporary measure, the parties agreed to the appointment of Bennett as a temporary conservator with limited powers and agreed to stay the conservatorship action pending the federal court mediation. At the time, Petitioners believed that, if the federal court mediation was unsuccessful, a merits hearing in the conservatorship action would be held in the near future, such that Bennett would not be in his temporary conservator role for an extended period of time. On August 15, 2013, this Court issued an order appointing Bennett as Special Conservator and Special Trustee, and stayed the Petition for Appointment of Conservator pending the outcome of the mediation. Under this order, Bennett received very limited powers to act as Wellin's conservator; he did not receive all the powers given to a full conservator. The parties unsuccessfully mediated the federal court action in October 2013. Bennett has remained as Wellin's temporary conservator ever since August 15, 2013.

II. This Court Appointed Two Independent Physicians, including Dr. Linda Austin, Recommended by Wellin's Counsel, to Opine on Wellin's Mental Capacity and Need for a Conservator.

After the unsuccessful mediation in the federal action, Petitioners requested that the Court proceed with the conservatorship action by appointing two independent medical examiners to examine Wellin pursuant to South Carolina Code Section 62-5-407. In December 2013, this Court inquired as to whether the parties would agree to have the same doctors authorized by the federal court to examine Wellin serve as the examining physicians in this action to determine if a conservator should be appointed. Notwithstanding their prior claims that Wellin's health would be jeopardized if he was examined by any new doctors, Wellin's counsel insisted that two additional doctors be appointed by this Court. Therefore, on January 17, 2013, the Court

appointed two independent examining physicians to report to the Court their findings as to Wellin's mental condition using the Court's established examiners guidelines, to report their opinions as to whether Wellin is an incapacitated person, and to report whether Wellin needs this Court to appoint a conservator for him. Upon objection by Petitioners to one of the physicians, Wellin's counsel proposed that Dr. Linda Austin serve in lieu of that physician, and the Petitioners consented. Accordingly, on February 20, 2014, the Court issued another order appointing Linda Austin, M.D., as one of the two independent examining physicians. (Dr. Gordon Teichner remained as the other examining physician.) The Court's Order appointing these physicians stated that, "The doctors, like any expert, are permitted to communicate with other individuals in formulating their opinions."

III. Wellin's Counsel Sought to Exclude Dr. Austin and to Delay These Proceedings.

After Dr. Austin invested significant time reviewing medical records, examining Wellin, and talking to Wellin's treating physicians and two family members, Wellin's counsel sought to remove Dr. Austin as one of the examiners because she had spoken with Wellin's wife and Wellin's son in the course of her evaluation of Wellin. Following a hearing on Respondent's motion on March 27, 2014, where this Court heard arguments of counsel and testimony by Dr. Austin on her work to date and her objectivity, the Court did not remove Dr. Austin. However, pursuant to the Court's directives, the parties, with the Court's assistance, developed a set of guidelines for the examining physicians going forward, which the Court provided to Drs. Austin and Teichner for their use in proceeding with their examinations. Pursuant to the guidelines, the medical examiners were, and are, allowed to speak with family members if they feel it is necessary. Thereafter, Dr. Austin had difficulty scheduling a time to examine Wellin through Wellin's attorneys and ultimately contacted the Court for assistance. Further, Petitioners' counsel

recently contacted Dr. Teichner's office to determine whether Dr. Teichner had examined Wellin. Petitioner's counsel was informed that Wellin's counsel had cancelled a previously scheduled examination and that no examination was scheduled yet. Thus, nearly two and half months after his appointment, Dr. Teichner still has not examined Wellin.

IV. Dr. Austin's Opinion Is That Keith Wellin Is Not Competent to Manage His Financial Affairs at This Time and That a Conservator Should Be Appointed.

After the Court authorized her to continue, Dr. Austin examined Wellin a second time. On April 24, 2014, Dr. Austin issued her report to the Court, opining that Wellin is not competent to manage his financial affairs at this time and that a conservator should be appointed. In her report, Dr. Austin provided eight single-spaced typed pages of details regarding her evaluation, findings, and bases for her findings and opinions. These findings confirm much of what Petitioners suspected and feared—Wellin does not have the capacity to pursue complex litigation against his children, does not understand the nature of such litigation, and is submissive to his wife and current attorneys.

More specifically, Dr. Austin diagnosed Wellin with major neurocognitive disorder due to multiple etiologies, including cerebrovascular disease, adrenal insufficiency, and cortical atrophy. She found that the cognitive issues resulting from etiologies that compromise Wellin's ability to make complex financial decisions include: memory impairment; extremely poor focus and concentration combined with disinhibition of impulse; and mood swings including manic episodes in which he demonstrates rage and grandiosity. Dr. Austin opined that Wellin does not have the ability to execute instruments, enter into contractual relationships, dispose of property, or even marry or divorce. Importantly, Dr. Austin found "a current pattern of childlike interpersonal relationships in which he is either entirely and uncritically dependent and

submissive (such as to his wife *and current attorneys*) or suspicious and hostile, if not clinically paranoid (such as to his children and former attorney)." (Report at 4) (emphasis added).

V. In Light of Recent Developments, Bennett, Who Serves in the Dual Capacity of Wellin's Attorney and Special Conservator, Should Be Removed From His Temporary Special Conservator and Trustee Appointment, and a New Temporary Conservator Should be Appointed Pending the Merits Hearing.

Bennett should be removed as Special Conservator and Special Trustee and a new temporary conservator appointed pending a hearing and final decision on Petition's Appointment for Conservator for Wellin in light of the following developments:

(1) Dr. Austin's opinions set forth in her report, as summarized above;

(2) Since his appointment as special conservator, Bennett permitting Wellin to engage in complex financial and contractual transactions with significant financial impact on Wellin and others while claiming that he is taking directions from Wellin, whom Bennett contends is competent.

(3) Bennett filing a lawsuit, seeking substantive relief, and making representations on behalf of and at the direction of his client, Wellin, based upon Wellin's stated wishes and instructions and Bennett's belief that Wellin is competent to make such decisions;

(4) Bennett simultaneously making financial decisions and conducting financial transactions in his dual capacity role as Special Conservator and Special Trustee for Wellin and attorney for Wellin;

(5) The revelation that Bennett permitted, and, as Wellin's estate planning attorney, perhaps recommended, Wellin to transfer at least $30 million of his assets to Mrs. Wellin last summer, notwithstanding Wellin's simultaneous arguments in federal court that Wellin's health was suffering and at risk due to Wellin's concern over his lack of liquidity and the possibility that he would not be able to satisfy his upcoming tax liability.

(6) Dr. Austin's finding that Wellin is at times "entirely and uncritically dependent and submissive," such as to his wife and "current attorneys" (with Bennett being one of those "current attorneys").

(7) The length of time that Bennett has been temporary conservator and the likelihood that the merits of this conservatorship action will not be determined for several more months.

The South Carolina Bar Ethics Advisory Committee issued an advisory opinion in November 1996 in which it opined that, even if South Carolina law would allow an attorney to serve in the dual capacity of conservator and attorney for the ward, the lawyer may not ethically do so under the South Carolina Rules of Professional Conduct ("SCRPC"). *See* S.C. Adv. Op. 96-21, 1996 WL 914244 (S.C. Bar Eth. Adv. Comm.) (attached as Exh. A). The reasoning behind this advisory opinion is that the SCRPC contemplate that a lawyer's representation of a client is subject to control either by (1) a competent client, or (2) a conservator appointed to represent the client. *See id.*, citing S.C. Rules 1.2 and 1.14. Wellin's capacity has been called into question since at least July 2013; and recently an independent physician appointed by this Court, Dr. Austin, has found Wellin to be incompetent to manage his financial affairs. Therefore, under SCRPC 1.2 and 1.14, that leaves Bennett's legal representation of Wellin subject to control of a conservator appointed to represent Wellin. However, that conservator is also Bennett. Therefore, the system of control contemplated by SCRPC 1.2 and 1.14 is "undermined" by Bennett serving in "the dual capacity of conservator and attorney;" and court approval "cannot provide the degree of oversight contemplated by these rules." *Id.* In addition, "the roles of conservator and attorney create a number of potential conflicts" that are "so pervasive" under Rule 1.7(b) that "a lawyer could not reasonably undertake the representation." *Id.*

Although Petitioners consented to the appointment of Bennett as Special Conservator, knowing that he also was Wellin's new estate lawyer at the time, they did so under a compromise that Bennett's powers would be limited and with the understanding that Bennett would serve in that position for a short period of time, minimizing the risk of any conflicts. Further, Petitioners had not seen the above-referenced advisory opinion until recently. The concerns referenced in

that advisory opinion are particularly acute here, where Bennett, while serving as Wellin's conservator, is actively serving as Wellin's attorney in high-stakes litigation, apparently taking instructions from Wellin, and taking the position that Wellin is competent to instruct Bennett on what he should and should not do as Wellin's attorney. Further, since his appointment, Bennett has had his conservator powers increased, thereby exacerbating the conflict. Specifically, on January 14, 2014, Bennett sent this Court an *ex parte* letter arguing that Petitioners had converted approximately $92 million rightfully owned by Wellin and requesting an order requiring Petitioners to turn over that money to Wellin. On February 2, 2014, this Court expanded Bennett's limited conservator powers to include the power to bring lawsuits on behalf of Wellin against third parties, including Petitioners, to recover assets allegedly belonging to Wellin which were transferred by Wellin on or after August 15, 2013.

In addition, and since then, Bennett has become more involved in matters as Wellin's attorney. For example, on November 20, 2013, Bennett sent the undersigned counsel a package of documents purporting to take numerous actions on behalf of Wellin pursuant to the Irrevocable Trust (even though in federal court Wellin was claiming the Irrevocable Trust was null and void). Specifically, these documents purported to have Wellin "swap" a promissory note with a face value of $50 million for partnership units in a family limited partnership. These documents also purported to make various changes to the Irrevocable Trust and to remove Tom Farace, who was Wellin's long-time lawyer and the architect of Wellin's estate plan, as the Trust Protector and to appoint a local friend of Bennett, Lester Schwartz, as the new Trust Protector. Bennett purportedly took these steps on November 20, 2013—steps that could have a significant financial impact on Wellin and others—because Wellin wanted Bennett to do so. Furthermore, in Bennett's January 14, 2014 *ex parte* letter to this Court, which he states is sent in his role as

special conservator for Wellin, he asked this Court to issue an order requiring Petitioners to pay to Wellin approximately $90 million and determine that Petitioners, rather than Wellin, were liable for approximately $43 million in federal and state taxes. In other words, rather than filing a summons and complaint to recover money on behalf of Wellin, Bennett sought to circumvent the rules of procedure by seeking substantive relief from this Court on Wellin's behalf, via an *ex parte* letter, on issues in dispute in the federal court litigation. On February 25, 2014, Bennett filed an action in this Court, naming himself in his capacity as Special Conservator and Keith Wellin as Petitioners, which Petitioners removed to federal court.[1]

An essential point is that Bennett, as Wellin's attorney and an advocate for his client, believes that Wellin is not incompetent and that Wellin is capable of managing his own affairs; and, thus, Bennett presumably takes directions from Wellin as attorney for Wellin. *See* SCRPC 1.2 (subject to certain limited exceptions, "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued"). As such, Bennett cannot reasonably be expected to continue to serve as Bennett's conservator, limited or not, when that role requires an independent person who will make decisions that are in the best interest of his ward, even if in conflict with the ward's wishes. In other words, Wellin needs a conservator who does not steadfastly maintain that Wellin is competent to make his own decisions and take directions from Wellin. Rather, Wellin needs a conservator who acknowledges Wellin's limitations and acts in Wellin's best interests only. This is particularly true considering this Court now has an emphatic opinion from

[1] A motion to dismiss this action is pending in federal court. It is incomprehensible why Bennett would think it necessary or appropriate to expend his client's resources to file this lawsuit when there are not one, but two other suits already pending over the exact same issue before the exact same court. Even if it were legally allowable to do so, this litigious behavior is not in the best interest of Wellin and only serves to further dissipate his resources.

an independent court-appointed physician nominated by Wellin's counsel that Wellin is not competent to manage his financial affairs and requires appointment of a conservator; and a finding that Wellin exhibits a current pattern of childlike interpersonal relationships in which part of the time he is "entirely and uncritically dependent and submissive" to his current attorneys, and Bennett is one of those attorneys.

Finally, when Petitioners agreed to have Bennett serve as Special Conservator, they were aware that Wendy Wellin was seeking to have Wellin give her an additional $25 million to secure her inheritance. Bennett and Wellin's other counsel refused to answer direct questions as to whether this transaction had already taken place before the Petition was filed. Until very recently, Petitioners were unaware that, in fact, Bennett, as Wellin's attorney, had allowed Wellin to make this gift to his wife before he was appointed Special Conservator. Having allowed or even encouraged Wellin to make this gift as Wellin's attorney, Bennett obviously has an interest in this Court finding that Wellin was competent at the time such gift was made. This interest is in plain conflict with his current role as Special Conservator with broad powers to seek recovery of Wellin's lost assets. An independent conservator with such powers would likely seek immediate return of this $25 million transfer to Wellin's wife, but Bennett has a conflict of interest in relation to that very significant issue because he blessed the transaction in the first instance.

CONCLUSION

Bennett, who was appointed Special Conservator and Special Trustee for Keith Wellin as an interim compromise in July 2013 pending the parties' mediation of their disputes in October 2013, should be removed and replaced with a new temporary conservator pending the merits hearing on the Petition for Conservator, because a Court-appointed medical examiner has

determined Wellin to be incompetent to manage his financial affairs and because Bennett now has a clear conflict of interest in continuing to serve as both Wellin's lawyer and conservator. Petitioners affirm that, prior to filing this motion, they attempted to resolve this matter with opposing counsel but were unable to do so.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
April 30, 2014

EXHIBIT A

Westlaw.

SC Adv. Op. 96-21, 1996 WL 914244 (S.C.Bar.Eth.Adv.Comm.)

South Carolina Bar Ethics Advisory Committee

Ethics Advisory Opinion 96-21

November 1996

Upon request by a SC Bar member, the Ethics Advisory Committee has rendered this opinion on the ethical propriety of contemplated conduct. This committee is not the disciplinary authority over attorneys in this state. Such authority is the SC Supreme Court.

Facts:
An attorney is serving as a conservator for a minor under S.C. Code Ann. § 62-5-401. Following the appointment of the attorney as conservator, the minor child has a cause of action arising out of an accident and needs the services of an attorney. The attorney conservator would like to represent the minor in the personal injury claim. The attorney intends to present any settlement for approval before the Court of Common Pleas pursuant to § 62-5-433.

Question:
Is a conflict of interest created if the attorney acts both as conservator for the minor child and the child's attorney in the personal injury claim?

Summary:
The Committee does not issue opinions on questions of law and accordingly offers no opinion on whether South Carolina law would allow a conservator for a ward to also act as attorney for the ward with court approval.

A lawyer who has been appointed as conservator for a ward may not act as attorney for the ward even with court approval. The South Carolina Rules of Professional Conduct contemplate that a lawyer's representation of a client is subject to control either by a competent client or by a conservator appointed to represent the client. S.C. Rules 1.2 and 1.14. If a lawyer serves in the dual capacity of conservator and attorney, this system of control is undermined. Court approval cannot provide the degree of oversight contemplated by these rules. In addition, the roles of conservator and attorney create a number of potential conflicts. Under Rule 1.7(b), these conflicts are so pervasive that a lawyer could not reasonably undertake the representation.

Opinion:

The committee does not issue opinions on questions of law, and accordingly does not express an opinion on whether a lawyer may legally serve as conservator for a minor and as attorney for the minor with court approval. The Committee notes, however, the following Code sections:

(1) S. C. Code § 62-5-422, which provides that a court may approve a transaction with a conservator or attorney that is affected by a conflict of interest.

(2) Section 62-5-426, which provides for the enlargement of any of the statutorily enumerated powers of a conservator with court approval.

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

The Committee also notes that the South Carolina Supreme Court has held that a lawyer may serve in the dual capacity of executor and attorney for the estate provided certain requirements are met, including court approval. See In re James, 267 S.C. 474, 229 S.E. 2d. 594 (1976).

Even if South Carolina law would allow an attorney to serve in the dual capacity of conservator and attorney for the ward, the Committee concludes that the attorney may not ethically do so under the South Carolina Rules of Professional Conduct.

*2 In Opinion RI-213 (1994 WL 423008), the Standing Committee on Professional and Judicial Ethics of the Michigan Bar considered whether a lawyer holding a county contract for appointment as a public guardian or conservator may also agree to act as legal counsel in a matter in which a ward may have a need for legal representation. The Committee decided that it was improper for the lawyer to serve in these dual capacities, even with court approval. The Committee reasoned that the Rules of Professional Conduct contemplate a system of checks and balances in which the lawyer's advice is subject to approval by either a competent client (Rule 1.2), or by a person duly appointed to represent the interests of an incompetent client (Rule 1.14). If the attorney serves as both conservator and attorney, this system of checks and balances is undermined:

> In other words, the scheme contemplated in MRPC 1.14 is that there are two distinct individuals assisting the client or ward, and each acts as a check on the other. In the arrangement proposed in this inquiry, there is no check on the authority of the lawyer who serves as both legal counsel and as guardian/ conservator for the ward.

1994 WL 423008, at page 3.

The Michigan committee rejected the argument that court supervision would overcome these problems because it decided that "supervision will not and cannot rise to the level anticipated in the MRPC."Id. at 5.

The Michigan committee also found that the proposed dual representation violated MRPC 1.7 (b). The South Carolina equivalent of that rule provides as follows:

> A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Michigan committee stated:

> Under the facts presented, the lawyer has undertaken guardian/ conservator duties to the ward, and as fiduciary owes certain reporting duties to the court, which in a particular case may materially limit the lawyer's ability to represent the ward in legal matters. The decision-making ability of the lawyer as guardian/ conservator regarding the conduct of the legal matter may be overshadowed by the fiduciary's judgment as counsel of record.

Id. at 5.

The comments to Rule 1.7 (b) state: "when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer cannot properly ask for such agreement or provide representation on the basis of the client's consent."Given the potential conflicts and problems associated with dual service as conservator and attorney, the Committee concludes that a disinterested lawyer would de-

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

cide that such representation cannot properly be undertaken, even with judicial consent on behalf of the ward.

SC Adv. Op. 96-21, 1996 WL 914244 (S.C.Bar.Eth.Adv.Comm.)

END OF DOCUMENT

© 2014 Thomson Reuters. No Claim to Orig. US Gov. Works.

14 MAY -1 P 3:09 CHARLESTON COUNTY PROBATE COURT

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified via electronic mail and by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **PETITIONERS' MOTION TO APPOINT NEW TEMPORARY CONSERVATOR PENDING MERITS HEARING**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402
ghowe@gedneyhowe.com

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402
bobby.hood@hoodlaw.com
molly.craig@hoodlaw.com
james.hood@hoodlaw.com

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369
Bennett@eckb.com

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483
tiffany@provencemesservy.com

Administrative Assistant

May 1, 2014

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON In Matter of: Keith S. Wellin Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King Petitioners, vs. Keith S. Wellin, Respondent.	IN THE PROBATE COURT Appeal From Probate Court For Charleston County CASE NO.: 2013-GC-10-0129 **VERIFIED PETITION FOR ORDER LIFTING AUTOMATIC STAY**

FILED
14 AUG 19 PM 4:06
PROBATE COURT
CHARLESTON COUNTY

Introduction

Edward G. R. Bennett, as Special Conservator for Keith S. Wellin, submits this Verified Petition for an Order Lifting Automatic Stay pursuant to Rule 241 of the South Carolina Appellate Court Rules. In the above entitled case, Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King filed their Notice of Intent to Appeal the following probate court orders on July 11, 2014: (1) Order Directing Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King to Pay $50,228,000 to Synovus Trust Company dated February 21, 2014; (2) Order Denying their Motion to Alter or Amend Judgment dated July 3, 2014; and (3) Order Regarding Notice of Voluntary Dismissal dated July 3, 2014. Their Statement of Issues on Appeal was subsequently filed on August 13, 2014.

Edward G. R. Bennett respectfully requests that the Court issue an order lifting the automatic stay imposed pursuant to S.C. Code Section 62-1-308, and Rules 20S and 241 of the South Carolina Appellate Court Rules pending appeal as it pertains to this Court's jurisdiction to

appoint a Conservator for Keith S. Wellin and to appoint a Special Trustee for the Keith S. Wellin Florida Revocable Living Trust.

Factual Background

This matter was commenced by the filing of a Petition for Protective Order and Appointment of Conservator on July 19, 2013 by Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King (hereinafter "Petitioners"), alleging that their father, Keith S. Wellin (hereinafter "Respondent") lacks capacity to manage his property and affairs. At the request of Petitioners, the Court held an emergency hearing on July 26, 2013 at which time Respondent and Petitioners agreed to the appointment of Edward G. R. Bennett as Special Conservator and as Special Trustee for the Keith S. Wellin Florida Revocable Living Trust (the "Revocable Trust"). On August 15, 2013, the Court entered a Protective Order reflecting this agreement and appointing Mr. Bennett. On February 6, 2014 this Court held a hearing pursuant to S.C. Code §62-5-416(b) whereby the Special Conservator filed an application requesting this Court's guidance. As a result of that application, this Court issued an Order on February 21, 2014 requiring Petitioners to return $50,228,000.00 of Respondent's funds by surrendering the same to Synovus Trust Company, N.A. who would serve as Special Conservator II. Petitioners' filed a Motion to Alter or Amend the February order to avoid the payment of the funds. A hearing was held on their Petition on March 31, 2014. Effective May 1, 2014, this Court appointed Glenn P. Churchill, Esq. to serve as *Guardian Ad Litem* for Keith S. Wellin.

Prior to this Court's ability to rule on the Motion to Alter or Amend, Petitioners filed a Notice of Voluntary Dismissal relying on Rule 41(a)(1)(A) of the South Carolina Rules of Civil

Procedure. On July 3, 2014 this Court issued several Orders which upheld the February 21, 2014 Order directing the Wellin Children (Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King) to Pay $50,228,000 to Synovus Trust Company dated February 21, 2014 and denied their Notice of Voluntary Dismissal of this action in its entirety.

Since these hearings, Keith S. Wellin has suffered from continued medical issues resulting in multiple hospitalizations. Keith S. Wellin is both physically disabled and chronically ill. On August 1, 2014 Edward G. R. Bennett, as Special Conservator for Keith S. Wellin, filed a subsequent Petition to request the appointment of a Conservator for Keith S. Wellin and a Special Trustee for the Revocable Trust. In this Petition, an emergency hearing has been requested. This Petition was supported by an affidavit from Glenn P. Churchill that states Keith S. Wellin is a person in need of this Court's protection due to physical disability. Keith S. Wellin, by and through his counsel, has filed an Answer agreeing to the same. Therefore, Edward G. R. Bennett now respectfully requests that the Court issue an order lifting the automatic stay imposed pursuant to S.C. Code Section 62-1-308, and Rules 20S and 241 of the South Carolina Appellate Court Rules pending appeal as it pertains to this Court's jurisdiction to appoint a Conservator for Keith S. Wellin and a Special Trustee for the Revocable Trust, and schedule an emergency hearing on the same.

Argument

Pursuant to Rule 205 and 241 of the South Carolina Appellate Court Rules, the filing of the notice of appeal in this action acts to automatically stay matters decided in the orders being appealed. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court or an appellate court. See also S.C. Code Section 62-1-308. Rule 241(c) of the

South Carolina Appellate Court Rules allows any party to move for an order lifting the stay. In determining whether an order should be issued pursuant to this rule, the lower court should consider whether such an order is necessary to prevent a contested issue from becoming moot. See South Carolina Appellate Court Rule 241(c)(2).

The matter in question and upon which this Petition is filed is this Court's jurisdiction to appoint a Conservator for Keith S. Wellin and a Special Trustee for the Revocable Trust. An Order lifting the stay is necessary to prevent this issue from becoming moot. As noted in the Court's July 3, 2014 Order finding that Voluntary Dismissal is not applicable, the Wellin Children are not required to participate but this Court must continue to provide protection and to act in the best interests of Keith S. Wellin. Due to the likely length of time to appeal, the poor health of Keith S. Wellin and his advanced age, failure to offer him immediate protection will deny him his right to a hearing and deny him this Court's protection of his assets. Mr. Wellin is vulnerable due to his physical limitations, the limited role of the Special Conservator and Special Trustee, and the ongoing litigation regarding his assets. If the stay is not lifted, he continues to be at risk. Furthermore, the Special Conservator, who was appointed on a temporary basis, finds himself without relief.

While the newly filed Petition may also provide this Court jurisdiction over the matter, we request that this Court lift the stay and schedule an emergency hearing to appoint a temporary Conservator for Keith S. Wellin.

Conclusion

Based on the foregoing, Respondent respectfully request that the Court issue an order lifting the stay pursuant to Rule 241 of the South Carolina Appellate Court Rules.

Tiffany N. Provence, Esq.
300 North Cedar St., Ste A
Summerville, SC 29483
(843) 871-9500

Attorney for the Edward G. R. Bennett, as Special Conservator for Keith S. Wellin

Aug. 19, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN MATTER OF: KEITH S. WELLIN

PETER J. WELLIN, CYNTHIA W. PLUM, AND MARJORIE W. KING

Petitioners,

vs.

KEITH S. WELLIN,

Respondent.

IN THE CIRCUIT COURT

Appeal From Probate Court
For Charleston County

CASE NO.: 2013-GC-10-0129

VERIFICATION

FILED
14 AUG 19 PM 4:06
CHARLESTON COUNTY
CLERK OF COURT

PERSONALLY appeared before me, Edward G.R. Bennett, Esquire, who, being duly sworn, deposes and says that he is an interested party in the foregoing action; that he has read the within Petition for Order Lifting Automatic Stay and the facts stated in the Petition herein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those, he believes them to be true.

Edward G. R. Bennett, Esquire

SWORN to before me
this 19 day of August, 2014

Barbara Rossi Ruckh
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 3-3-2019

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, *Plaintiff,* Versus Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, *Defendants.*	C/A No. 2:13-cv-01831-DCN **PLAINTIFF'S MOTION TO SUBSTITUTE PARTY**

The Plaintiff, Keith Wellin (hereinafter "Plaintiff"), by and through his undersigned counsel, hereby moves this Court for leave to substitute Wendy C. H. Wellin, as the Special Administrator of the Estate of Keith Wellin and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2011, as the named Plaintiff in this action pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure.

On July 3rd, 2013, the Plaintiff filed a Complaint under the Caption Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2011, v. Peter J. Wellin, et al., pursuant to 28 U.S.C. § 1331, 1391(b)(2), and L.R. 3.01(A)(1).

On September 14, 2014, Keith Wellin passed away.

On September 17, 2014, Wendy C. H. Wellin was appointed as Special Administrator for the estate of her husband, Keith Wellin. Certificate of Appointment, Charleston County Probate Court (attached as **Exhibit A**). As Special Administrator, Wendy C. H. Wellin is authorized to

protect the Estate of Keith Wellin prior to the appointment of a general Personal Representative. Order of Appointment, Charleston County Probate Court (attached as **Exhibit B**).

Rule 25(a)(1) permits the substitution of parties in the event of death of a party upon motion of the representative party.

Mrs. Wellin asks that the Court grant this motion and substitute her as the named Plaintiff in the earlier-filed Complaint in this action.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ Robert H. Hood
Robert H. Hood (1939)
Molly H. Craig (6671)
James B. Hood (9130)

Attorneys for the Plaintiff
Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001

October 30, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF CHARLESTON

IN THE MATTER OF KEITH S. WELLIN

CASE NUMBER 2014ES10-01478

CERTIFICATE OF APPOINTMENT

This is to certify that

WENDY C. H. WELLIN

is/are the duly qualified

_____ PERSONAL REPRESENTATIVE
_____ GUARDIAN
_____ CONSERVATOR
_____ TRUSTEE
_X_ SPECIAL ADMINISTRATOR

in the matter and that this appointment, having been executed on the **17TH** Day of **September, 2014,** is now is full force and effect, including authorization to receive all monies, income principle, interest & dividends of and belonging to said estate.

Restrictions:

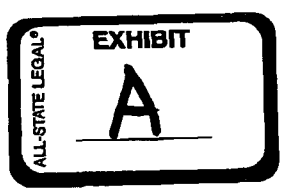
The Special Administrator, Wendy C. H. Wellin, is authorized to protect the Estate of Decedent prior to the appointment of a general Personal Representative.

Executed this 17th day of September, 20 14.

Irvin G. Condon, Probate Court Judge
By Estate Clerk

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141PC (1/91)
62-1-305, 62-3-103, 62-5-304, 62-5-421, 62-7-201



STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON)

APPLICATION/*PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

IN THE MATTER OF:
KEITH S. WELLIN
(Decedent)

2014 SEP 16 PM 3:38
PROBATE COURT
CHARLESTON COUNTY

CASE NUMBER: 2014-ES10-0001478

***COMPLETE THIS SECTION ONLY IF FILING PETITION FOR SPECIAL ADMINISTRATOR**

*
Petitioner(s)

vs.

*
Respondent(s)

☒ **INFORMAL** ☐ ***FORMAL**

Appointment of a Special Administrator is requested:

INFORMAL PROCEEDING:

- ☒ to protect the Estate of Decedent prior to the appointment of a general Personal Representative.
- ☐ to safeguard Estate assets until a Successor Personal Representative is appointed due to the death or disability of _____, the previously appointed Personal Representative.
- ☐ to enforce a creditor's security interest upon property of the Estate or to institute proceedings to establish the Decedent's liability to the extent of the limits of insurance protection only.
- ☐ to take appropriate actions involving Estate assets, specifically: _____.
- ☐ to obtain medical, tax, or other confidential records, specifically:_____.

- ☐ to gain access to and take possession of any Wills, deeds to cemetery plots, and insurance policies, or other Estate related documents in Decedent's safe deposit box located at: _____.
- ☐ Other: _____.

FORMAL PROCEEDING:

- ☐ Appointment of a Special Administrator is requested to preserve the Estate and to secure the Estate and to secure the Estate's proper administration because: _____. .
- ☐ Other: _____.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN addition TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

FORM #332ES (1/2014)
62-3-614, 62-3-615, 62-3-616, 62-3-617, 62-3-618, 34-19-50

6

ALL-STATE LEGAL® EXHIBIT B

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 16th day of September, 2014

Notary Public for South Carolina
My Commission Expires: 4/25/2022

Signature: Wendy C. H. Wellin
Print Name: WENDY C. H. WELLIN
Address: [redacted]
Telephone (Work):
(Home):
(Cell): 917-208-6960
Email: WCHWELLIN@AOL.COM
Relationship to Decedent/Estate: WIFE

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this day of , 20 .

_____, Probate Court Judge

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment of Special Administrator in the above estate be ☒ GRANTED ☐ ~~DENIED~~ as follows:

RESTRICTIONS: The Special Administrator, Wendy C. H. Wellin, is authorized to protect the Estate of Decedent prior to the appointment of a general Personal Representative.

Executed this 17th day of September, 2014

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept appointment and agree to perform the duties and discharge the trust of the office of Special Administrator of the foregoing Estate and submit to the jurisdiction of the Court in this matter.

Signature: Wendy C H. Wellin
Print Name: WENDY C H. WELLIN
Address: [redacted]
Telephone (Work):
(Home):
(Cell): 917-208-6960
Email: WCHWELLIN@AOL.COM

Attorney: F. PATRICIA SCARBOROUGH
Address: 115 CHURCH STREET
CHARLESTON, SC 29401
Telephone: 843-577-2300
Email: SCARBOROUGH@ECKB.COM

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Wendy C. H. Wellin, Petitioner, vs. Peter Wellin, Cynthia W. Plum, Marjorie W. King, Respondents and Counter-Petitioners, vs. Wendy C.H. Wellin, Hamilton College, Keith S. Wellin Florida Revocable Living Trust, Campbell Hart, and Heather Lane, Counter-Respondents. IN THE MATTER OF: Keith S. Wellin, Deceased.	)	Civil Action No. 2014-CP-10-07038 MOTION TO STAY

FILED
2015 JAN 13 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Respondents and Counter-Petitioners Peter Wellin, Cynthia W. Plum, and Marjorie W. King ("Respondents") hereby move this Court for an order staying this action pending the resolution of a related action currently pending between Respondents and Petitioner Wendy C. H. Wellin in the United States District Court for the District of South Carolina, Civil Action Number 2:14-cv-4067-DCN (the "Federal Action"). The basis for this motion is that this action and the Federal Action involve common issues of law and fact, and most or all of the issues in this action will likely be resolved through the Federal Action. Thus, granting a stay of this action will conserve judicial resources,

avoid duplicative and parallel litigation, and reduce the time and money expended by the litigants. Further, a stay will not prejudice any party to this action. In support of this motion, Respondents rely upon any memoranda of law, affidavits, or further materials that may be submitted to the Court at or prior to the hearing on this motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Respondents and Counter-Petitioners Peter Wellin, Cynthia W. Plum, and Marjorie W. King

Charleston, South Carolina

January 13, 2015

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia W. Plum and Marjorie W. King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: MOTION TO STAY

Counsel/Party Served:

John T. Lay, Jr., Esq.
Gray T. Culbreth, Esq.
John D. Hudson, Jr., Esq.
Lindsay Anne Joyner, Esq.
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29202
Attorneys for Wendy C.H. Wellin, individually

Robert H. Hood, Esq.
James B. Hood, Esq.
Molly H. Craig, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402
Attorneys for Wendy C.H. Wellin as Special Administrator and for the Keith S. Wellin Florida Revocable Living Trust

Henry H. Melchor, Esq.
Bond Schoeneck & King
One Lincoln Center
Syracuse, NY 13202-1355
Attorney for Hamilton College

Marvin D. Infinger, Esq.
Nexsen Pruet, LLC
PO Box 486
Charleston, SC 29402
Attorney for Heather Lane and Campbell Lane Hart

F. Patricia Scarborough, Esq.
Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, PA
PO Box 369
Charleston, SC 29402-0369

FILED
2015 JAN 13 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

Donna Horn
Administrative Assistant

Jan 13, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Wendy C. H. Wellin Plaintiff, vs. Peter Wellin, Cynthia W. Plum and Marjorie W. King Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-07038 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Robert H. Hood James B. Hood Address: Hood Law Firm PO Box 1508 Charleston, SC 29402 843-577-1201 E-mail:james.hood@hoodlaw.com	Defendant's Attorney: Patick C. Wooten Address: Nelson Mullins Riley & Scarborough LLP PO Box 1806, Charleston SC 29402 Phone: 843-534-4102 Fax: 843-722-8700 E-mail: Patrick.wooten@nelsonmullins.comOther:

☒ **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: 30 min. 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 ☐ Plaintiff /☒ Defendant — January 13, 2015 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: $ _____

ADDITIONAL ATTORNEYS:

Attorneys for Counter-Respondent Hamilton College:

Henry H. Melchor, Esq.
Bond Schoeneck & King
One Lincoln Center
Syracuse, NY 13202-1355
315-218-8175
hmelchor@bsk.com

Attorneys for Counter-Respondent Heather Lane and Campbell Hart:

Marvin D. Infinger, Esq.
Nexsen Pruet, LLC
PO Box 486
Charleston, SC 29402
843-579-7834
Email: minfinger@exsenpruet.com

Attorneys for the Keith S. Wellin Florida Revocable Living Trust:

Robert H. Hood, Esq.
James B. Hood, Esq.
Molly H. Craig, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402
843-577-1201
Email: bobby.hood@hoodlaw.com
James.hood@hoodlaw.com

Attorneys for Counter-Respondent Wendy C. H. Wellin:

John T. Lay, Jr., Esq.
Gray T. Culbreth, Esq.
John D. Hudson, Jr., Esq.
Lindsay Anne Joyner, Esq.
Gallivan, White & Boyd, PA
PO Box 7368
Columbia, SC 29202
803-724-1850
Email: jlay@gwblawfirm.com
gculbreath@gwblawfirm.com
jhudson@gwblawfirm.com
ljoyner@gwblawfirm.com

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Circuit Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No. 2014-CP-10-4336

FILED
2015 NOV 19 PM 2:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King,

Appellants.

v.

Keith S. Wellin,

Respondent.

SUPPLEMENTAL MEMORANDUM OBJECTING TO RESPONDENTS' PROPOSED ORDER

Robert H. Brunson, SC Bar No. 11987
Merritt G. Abney, SC Bar No. 71893
Patrick C. Wooten, SC Bar No. 77985
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Following oral argument in connection with this appeal from the probate court, this Court informed the parties that it intended to affirm the probate court's orders, which required the Wellin Children to pay approximately $50 million to Synovus Bank as special conservator for Keith Wellin and which vacated the Wellin Children's notice of dismissal of the underlying conservatorship action.[1] The Court instructed counsel for Respondents[2] to prepare a proposed order and informed counsel for Appellants that they would have ten days in which to submit objections to the proposed order. Respondents submitted their proposed order (the "Proposed Order") affirming the probate court on November 9, 2015. Appellants hereby submit this objection to the Proposed Order.

Appellants object to the Proposed Order on the basis that it contains the same errors of law and erroneous findings of fact made by the probate court. Each of these errors was explained in detail in the Wellin Children's briefing to this Court and at oral argument, and, therefore, Appellants will not rehash them all here. This objection focuses solely on the discussion in the Proposed Order regarding subject matter jurisdiction because this section of the order altogether fails to address Appellants' arguments and fundamentally misapplies the Probate Code. Although the Proposed Order is simply wrong on the law and the facts and should be rejected *in toto* on that basis, the order plainly should, at a minimum, address the Wellin Children's specific

[1] All capitalized names and terms are defined in the Appellants' Final Brief and Appellants' Final Reply Brief filed in connection with this appeal.

[2] Keith Wellin was the respondent in the underlying conservatorship action, but he passed away in September of 2014. His widow, Wendy Wellin, has been appointed special administrator of his estate by the probate court in a separate proceeding, but she has not been substituted as a party to this appeal. Nor should she be substituted, because the conservatorship action obviously became moot when Keith Wellin died. Edward Bennett, who was appointed special conservator for Keith Wellin prior to his death, is the party whose "request for guidance" from the probate court resulted in the order directing the Wellin Children to pay funds to Synovus, but Bennett also is not formally a party to this appeal. Because it is unclear what party is the "Respondent" for purposes of this appeal, the Wellin Children use the generic term "Respondent" to refer to whoever is opposing this appeal.

arguments regarding subject matter jurisdiction and explain how the probate court had jurisdiction despite the plain language of the Probate Code, which expressly and unequivocally excludes precisely this type of dispute from the probate court's jurisdiction in conservatorship proceedings.

The probate court is a court of limited jurisdiction, and, as such, it can exercise only such powers as are directly conferred upon it by legislative enactment. *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E.2d 920, 923 (1965). Accordingly, the Probate Code expressly defines the scope of the probate court's jurisdiction upon the filing of a summons and petition for appointment of a conservator.[3] Section 62-5-402 provides that, in a conservatorship action, the probate court has jurisdiction to determine essentially three categories of disputes:

> After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:
>
> (1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
>
> (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and
>
> (3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62-5-433.

S.C. Code § 62-5-402.

In this action, the probate court held that it had subject matter jurisdiction based upon Section 62-5-402(2), and that is the basis upon which Respondent's Proposed Order primarily

[3] The underlying action in the probate court was commenced by the Wellin Children by the filing of a summons and petition requesting appointment of a conservator for Keith Wellin. All of the orders at issue on appeal were issued by the probate court in the conservatorship proceeding.

relies as well. That is, the Proposed Order states that the subject $50 million was an asset of Keith Wellin's estate, which the probate court had exclusive jurisdiction to manage. But the $50 million was ***not*** part of Keith Wellin's estate. There is no genuine dispute over this fact. The $50 million represents a portion of the proceeds from the liquidation of Friendship Partners that was distributed by the partnership to the Irrevocable Trust in December 2013. It is undisputed that Friendship Partners (not Keith Wellin) owned the securities that were sold to generate the funds, and that Friendship Partners distributed those funds to the Irrevocable Trust (not to Keith Wellin). Keith Wellin asserted a *claim* to those funds in federal district court, but the district court has ***not*** decided that claim. To this day, the subject funds remain in an account in the name of the Trust maintained with UBS Bank. If the $50 million in proceeds had been an asset of Keith Wellin's estate, Keith Wellin would have had no reason to file multiple lawsuits in federal court in an effort to obtain the $50 million from the Irrevocable Trust. Unless and until the district court says otherwise in connection with those lawsuits, the funds belong to the Irrevocable Trust. Section 62-5-402(2) grants to the probate court jurisdiction only over assets that are already in the protected person's estate. The section does not grant the probate court jurisdiction to decide the protected person's legal claim to assets in the hands of another party.

In the Proposed Order, Respondent strains to bring this case within the ambit of Section 62-5-402(2) by conflating the $50 million, an asset held by the Irrevocable Trust, with the Promissory Note, an asset held by Keith Wellin's estate that the Wellin Children identified in their petition for appointment of a conservator. (*See* Proposed Order at 7, stating that the subject $50 million is an asset of the estate because "Petitioners expressly identified the *Promissory Note* as an estate asset of which they sought protection . . .") (emphasis added). But the $50 million in cash and the Promissory Note are completely different assets. The Wellin Children's statement

that Keith Wellin owned a Promissory Note worth $50 million cannot possibly be construed as an acknowledgement that he also owns the $50 million in cash held by the Irrevocable Trust. Prior to the probate court's orders, the Wellin Children, on behalf of the Irrevocable Trust, had tendered a check for $50 million in payment of the Promissory Note, but Edward Bennett rejected that tender of payment on Keith Wellin's behalf. By rejecting the tender, Bennett ensured that the $50 million did ***not*** become an asset of Keith Wellin's estate. Thus, the statement in the Proposed Order that the subject $50 million was an asset of Keith Wellin's estate is demonstrably false. There is no basis for this Court to find that the probate court had jurisdiction under S.C. Code § 62-5-402(2) because the subject $50 million was not an asset of Keith Wellin's estate.[4]

Because the $50 million was not an asset in the possession of Keith Wellin, but rather was the subject of a ***claim*** asserted by Keith Wellin (in the federal district court), the probate

---

[4] The Proposed Order also states that the $50 million was an asset of Keith Wellin's estate because the Wellin Children admitted to the probate court that Keith Wellin was entitled to the $50 million. But that is **not** what the Wellin Children said. The Wellin Children unambiguously stated to the probate court that the Wellin Children, in their capacities as trustees of the Irrevocable Trust, had tendered payment of the $50 million to Bennett, as counsel for Keith Wellin's Revocable Trust, in prepayment and satisfaction of the Promissory Note, that Bennett rejected the payment and sent the check back to counsel for the Irrevocable Trust, that the $50 million was therefore in possession of the Trust, and that Keith Wellin is entitled to the funds, ***but only in satisfaction of the Promissory Note.*** R. 569, 572, 574-575 ("[The $50 million] belongs to Mr. Wellin, ***but only in full exchange for payment of the note.***") (emphasis added). As these portions of the transcript from the hearing before the probate court demonstrate, counsel for the Wellin Children was explaining to the court that the Wellin Children, at the time, remained willing to pay the funds to Keith Wellin ***but only provided that it was accepted in satisfaction of the Promissory Note.*** At no point at the hearing or otherwise have the Wellin Children acknowledged that the $50 million was an asset of Keith Wellin's estate within the meaning of § 62-5-402(2). Respondent's continued insistence otherwise is disingenuous. In any event, even if the Wellin Children had admitted that Keith Wellin was entitled to the $50 million—which they did not—such an admission would not somehow make the $50 million, which is and was undisputedly in the possession of the Irrevocable Trust, part of Keith Wellin's estate.

court's jurisdiction to grant any relief with respect to those funds should properly be analyzed under S.C. Code § 62-5-402(3). That section, which expressly grants the probate court jurisdiction over "claims for or against the person or estate of the protected person," is directly on point. Remarkably, however, Respondent's Proposed Order does not even reference it. The reason for that is because the term "claim," as defined by the Probate Code, expressly excludes "demands or disputes regarding title of a . . . protected person to specific assets alleged to be included in the estate." S.C. Code Ann. § 62-1-201(4). There is no question that the dispute between Keith Wellin and the Wellin Children over the $50 million held by the Irrevocable Trust is a dispute "regarding title of a . . . protected person to specific assets alleged to be included in the estate." Thus, the Probate Code expressly and unequivocally provides that the probate court does not have jurisdiction to decide whether or not Keith Wellin owns the $50 million.

The South Carolina Supreme Court's decision in *Matter of Howard* illustrates the operation of S.C. Code Ann. § 62-1-201(4) and is directly on point. 315 S.C. 356, 434 S.E.2d 254 (1993). *Howard* involved a probate court proceeding concerning the estate of a decedent. The probate court decided *inter alia* that the personal representative should have title to a gun that was in the possession of a third party. On appeal, the Supreme Court held that the probate court lacked subject matter jurisdiction to decide ownership of the gun because the gun was not in the possession of the estate and § 62-1-201(4) expressly deprives the probate court of jurisdiction over the dispute:

> The definition of "claims" in the Probate Code expressly excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate. S.C.Code Ann. § 62-1-201(4) (1986). Therefore, the dispute about title to the gun is not a "claim" that could be presented to the probate court under Section 62-3-806.

315 S.C. at 364, 434 S.E.2d at 258 n.8. Likewise, in the instant case, the probate court lacked subject matter jurisdiction to determine ownership of the $50 million (an asset alleged by Respondent to be included in the estate).

The Proposed Order does not even respond to these arguments and does not even reference S.C. Code § 62-5-402(3) or § 62-1-201(4). Respondent ignores these arguments because there is no viable response to them. The Probate Court squarely provides that the probate court lacks jurisdiction to decide this dispute, which, incidentally, is currently being litigated between the same parties in federal court. Thus, this Court should reverse the probate court orders *in toto* or, at a minimum, address the Wellin Children's specific arguments stated herein and explain how the probate court had subject matter jurisdiction despite the express language of the Probate Code stating that it did not.[5]

[SIGNATURE BLOCK ON FOLLOWING PAGE]

[5] The Proposed Order also states, without any discussion, that the probate court also had subject matter jurisdiction pursuant to S.C. Code Ann. §§ 62-5-408(1) and 62-7-201. (Proposed Order at 8.) The arguments regarding why these provisions did not provide the probate court with jurisdiction over this dispute are adequately set forth in Appellants' Final Brief. (*See* Final Br. App. at 22-33.) In any event, as previously explained in Appellants' Final Brief and herein, the specific subject matter jurisdiction statute at § 62-5-402(3) expressly provides that the probate court does ***not*** have jurisdiction over this dispute. Thus, even if §§ 62-5-408(1) and 62-7-201 did arguably apply (they do not), the legislature's specific exclusion of this type of dispute from the probate court's jurisdiction in §§ 62-5-408(1) and 62-7-201 governs the question.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Merritt G. Abney
SC Bar No. 71893
E-mail: merritt.abney@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina
November 19, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Circuit Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No. 2014-CP-10-4336

FILED
2015 NOV 19 PM 2:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, ... Appellants.

v.

Keith S. Wellin, ... Respondent,

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellants' Initial Brief on Respondents by depositing copies of it in the United States Mail, postage prepaid, addressed to the below Counsel of Record:

Pleadings: **SUPPLEMENTAL MEMORANDUM OBJECTING TO RESPONDENTS' PROPOSED ORDER**

Counsel Served:

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402
Attorney for Respondent

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483
Attorney for Special Conservator

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369
Special Conservator

Lydia Spry
Administrative Assistant

November 19, 2015

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
Case No.: 2014-CP-10-4336

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King,
Plaintiffs,

vs.

Keith S. Wellin
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Appellants' Attorney:	**Respondent's Attorney:**
Merritt G. Abney, Esq. Nelson Mullins Riley & Scarborough LLP 151 Meeting Street, Suite 600 Charleston, SC 29401 Phone: (843) 534-4110; Fax: (843) 722-8700 Email: merritt.abney@nelsonmullins.com	Robert H. Hood, Esq. Molly H. Craig, Esq. James B. Hood, Esq. Hood Law Firm, LLC PO Box 1508 Charleston, SC 29402 Phone: (843) 577.4435; Fax: (843) 722.1630 Email: bobby.hood@hoodlaw.com molly.craig@hoodlaw.com james.hood@hoodlaw.com

☒ 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 Alter or Amend Judgment**
Estimated Time Needed: **15 minutes** Court Reporter Needed: **Yes**

SECTION II: Motion Type

☒ Written motion attached –
☐ Form Motion—I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant — January 22, 2016 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: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Probate Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No. 2014-CP-10-4336

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King,

Appellants.

v.

Keith S. Wellin,

Respondent.

FILED
2016 JAN 22 PM 4:42
JULIE J. ARMSTRONG
CLERK OF COURT

MOTION TO ALTER OR AMEND JUDGMENT

Robert H. Brunson, SC Bar No. 11987
Merritt G. Abney, SC Bar No. 71893
Patrick C. Wooten, SC Bar No. 77985
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Wellin Children") submit this motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend this Court's order filed on January 13, 2016 (the "Order"), which affirmed certain orders issued by the probate court. The probate court orders required the Wellin Children to pay approximately $50 million to Synovus Bank, as special conservator for Keith Wellin, and vacated the Wellin Children's notice of dismissal of the underlying conservatorship action.[1] Counsel for the Wellin Children received written notice of the Order on January 18, 2016.

With this motion, the Wellin Children request that the Order be vacated in its entirety and that the Court instead enter an order reversing the probate court orders, dismissing all requests of the first Special Conservator, Edward Bennett ("Bennett"), for substantive relief,[2] and finding that the underlying conservatorship proceeding was validly dismissed. The specific grounds for this Motion are as follows:

1. The probate court lacked subject matter jurisdiction in the conservatorship proceeding to order the Wellin Children to pay $50 million to Synovus for the following reasons:

    a. S.C. Code Ann. § 62-5-402 expressly defines and limits the scope of the subject matter jurisdiction of the probate court in conservatorship proceedings. The probate court erroneously ruled that it had jurisdiction to require the Wellin Children to pay $50 million pursuant to its authority under Section 62-5-402(2) to determine how Keith Wellin's estate must be managed, expended or distributed. However, the subject $50 million was ***not*** part of Keith Wellin's estate. There is no genuine dispute over this fact. The $50 million

[1] All capitalized names and terms are defined in the Appellants' Final Brief and Appellants' Final Reply Brief filed in connection with this appeal.

[2] Bennett initially requested, via *ex parte* letter dated January 14, 2014, that the Court order the Wellin Children to pay him $90 million and determine the federal income tax status of the Wellin Family 2009 Irrevocable Trust. At the hearing on his initial request held on February 6, 2014, Bennett's attorney orally requested that the Court order the Wellin Children pay him $50 million. The Court ordered that $50 million be paid to Synovus Bank during the pendency of litigation between the parties in Federal District Court.

represents a portion of the proceeds from the liquidation of Friendship Partners that was distributed by the partnership to the Irrevocable Trust in December 2013. It is undisputed that Friendship Partners (not Keith Wellin) owned the securities that were sold to generate the funds, and that Friendship Partners distributed those funds to the Irrevocable Trust (not to Keith Wellin). Keith Wellin asserted a claim to those funds in Federal District Court, but that court has not yet decided the claim. To this day, the subject funds remain in an account in the name of the Irrevocable Trust maintained with UBS Bank. Unless and until the District Court says otherwise in connection with the litigation pending before it, the funds belong to the Irrevocable Trust. Section 62-5-402(2) grants to the probate court jurisdiction only over assets that are already in the protected person's estate. The section does not grant the probate court jurisdiction to decide the protected person's legal claim to assets in the hands of another party.

The Order conflates the $50 million, an asset held by the Irrevocable Trust, with the Promissory Note, an asset held by Keith Wellin's estate that the Wellin Children identified in their petition for appointment of a conservator. (*See* Order at 8, stating that the subject $50 million is an asset of the estate because "Petitioners expressly identified the *Promissory Note* as an estate asset of which they sought protection . . .") (emphasis added). But the $50 million in cash and the Promissory Note are completely different assets. The Wellin Children's statement that Keith Wellin owned a Promissory Note worth $50 million cannot possibly be construed as an acknowledgement that he also owns the $50 million in cash held by the Irrevocable Trust. Prior to the probate court's orders, the Wellin Children, on behalf of the Irrevocable Trust, had tendered a check for $50 million in payment of the Promissory Note, but Edward Bennett rejected that tender of payment on Keith Wellin's behalf. By rejecting the tender, Bennett ensured that the $50 million did not become an asset of Keith Wellin's estate. Thus, the statement in the Proposed Order that the subject $50 million was an asset of Keith Wellin's estate is demonstrably false. There is no basis for this Court to find that the probate court had jurisdiction under S.C. Code § 62-5-402(2) because the subject $50 million was not an asset of Keith Wellin's estate.[3]

b. The probate court also lacked subject matter jurisdiction under § 62-5-402(3), which expressly grants the probate court jurisdiction over "claims for or against the person or estate of the protected person . . ." The term "claim," as

[3] On February 25, 2014, four days *after* the probate court issued the order requiring the Wellin Children to pay $50 million to Synovus, Bennett filed a separate Summons and Petition to Return Assets in the probate court in which he requested the identical substantive relief sought in his initial application for guidance filed in the conservatorship proceeding, thereby implicitly recognizing that the probate court lacked jurisdiction in the conservatorship proceeding to order the relief requested. The Wellin Children removed the action initiated by the Petition to Return Assets to the District Court, which subsequently dismissed the case because it was redundant of other litigation filed by Keith Wellin in the District Court.

defined by the Probate Code, expressly excludes "demands or disputes regarding title of a . . . protected person to specific assets alleged to be included in the estate." S.C. Code Ann. § 62-1-201(4). Thus, the Probate Code expressly and unequivocally provides that the probate court does not have jurisdiction to decide whether or not Keith Wellin owns the $50 million. *Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254, 258 n.8 (1993). Moreover, even if a dispute about ownership of the $50 million could be a "claim", no such claim had been asserted in any pleading against the Wellin Children or the Irrevocable Trust in the probate court in connection with the $50 million when the probate court issued its order. Furthermore, even if Bennett's request in his "application for guidance" could constitute a "claim" under subsection 62-5-402(3), the probate court's jurisdiction under that subsection is expressly limited by Section 62-5-433, which provides that the probate court lacks jurisdiction to resolve claims in an amount greater than $25,000.

c. The probate court lacked subject matter jurisdiction under § 62-5-416 to order the Wellin Children to pay $50 million because Bennett did not file a summons and complaint pursuant to S.C. Code §§ 62-5-416(a). A request for substantive relief on behalf of a person for whom a conservator has been appointed must be made through "formal proceedings," which requires the person seeking the relief to "fil[e] a petition and summons with the appointing court." S.C. Code §§ 62-5-416(a); 62-1-201(17). The probate court had no authority to order the Wellin Children to pay $50 million in connection with Bennett's informal request for guidance pursuant to S.C. Code Ann. § 62-5-416(b). Section 62-5-416 authorized the probate court to do no more in response to Bennett's request than to "instruct" him regarding his fiduciary responsibility to Keith Wellin. An order requiring the Wellin Children to pay $50 million cannot possibly constitute "instruction" to Bennett under subsection 62-5-416(b).

   Section 62-5-416(c) did not supply jurisdiction for the subject orders. The provision in that section authorizing the court to "give appropriate instruction" corresponds to § 62-5-416(b), and the provision allowing the court to "make any appropriate order" corresponds to § 62-5-416(a). Because Bennett "requested instructions" under § 62-5-416(b), the "any appropriate order" clause in § 62-5-416(c) does not apply. In any event, § 62-5-416(c) does not permit the probate court to issue an order, in connection with a request under either § 62-5-416(a) or § 62-5-416(b), that exceeds the scope of its jurisdiction under S.C. Code Ann. § 62-5-402. *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E.2d 920, 923 (1965) ("The probate court is a court of limited jurisdiction owing its present existence to creation by statute, rather than the Constitution, and as such, can exercise only such powers as are directly conferred upon it by legislative enactment . . . .").

d. The probate court lacked subject matter jurisdiction under § 62-7-201, which addresses the court's jurisdiction to resolve issues concerning the internal and

external affairs of a trust because the subject dispute is not an action "concerning a trust" as no summons and complaint were filed under § 62-7-201. Moreover, § 62-7-201 expressly provides that the probate court "will not, over the objection of a party, entertain proceedings under this section involving a trust registered or having its principal place of administration in another state, unless . . . the interests of justice would be otherwise seriously impaired." It is undisputed that the Irrevocable Trust's principal place of administration is not South Carolina. Thus, the probate court lacked jurisdiction to address the affairs of the Irrevocable Trust over the Wellin Children's objection, unless the "interests of justice would be seriously impaired." The probate court made no findings regarding why the "interests of justice would be seriously impaired" if it failed to exercise jurisdiction—nor was there any basis for such a finding.

e. The Order erroneously concludes, without any discussion, that the probate court also had subject matter jurisdiction pursuant to S.C. Code Ann. §§ 62-5-408(1), which empowers the probate court to "preserve and apply the property of the person to be protected as may be required for his benefit." As explained above, the $50 million was ***not*** property of Keith Wellin. Thus, this provision does not provide the probate court with jurisdiction to decide Keith Wellin's claim to the $50 million owned by the Irrevocable Trust.

f. Even if §§ 62-5-408(1), 62-5-416(c) or 62-7-201 did arguably apply to the subject dispute (they do not), the legislature's specific exclusion of this type of dispute from the probate court's jurisdiction in §§ 62-5-408(1) and 62-7-201 governs the question and provides that the probate court lacked jurisdiction to issue the subject orders.

g. The probate court lacked subject matter jurisdiction because any jurisdiction in the probate court was divested by the Wellin Children's removal to the Federal District Court of Bennett's Petition to Return Assets, in which he also sought to recover the subject $50 million from the Wellin Children. *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013).

2. The probate court lacked personal jurisdiction over the Irrevocable Trust, and it is undisputed that the Wellin Children hold the $50 million in their capacity as trustees of the Irrevocable Trust. The Wellin Children brought the conservatorship action in their individual capacities as Keith Wellin's children because they were concerned that his current wife was dissipating his assets and exercising undue influence over him; they did not bring the action as trustees of the Irrevocable Trust. The Irrevocable Trust was not made party to the conservatorship action and was never served with a summons and complaint before the Court ordered it to pay $50 million. "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a result of service, acceptance, or waiver of process, or an appearance." *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008). "Stated differently, for relief to be granted against a trust, the trust—through its trustee—must be made a party to the action." *Id.* The fact that Wellin Children, in their fiduciary capacities as trustees of the

Irrevocable Trust, are represented by the same counsel who represented them in the conservatorship proceeding cannot provide the probate court with jurisdiction. And a voluntary appearance in one matter does not confer jurisdiction over a party in a separate matter. Because the Trust is not a party to this action, and did not consent to the jurisdiction of the probate court, the probate court lacked jurisdiction to grant the relief requested, and its order requiring the Trust to pay $50 million must be vacated.

3. Bennett lacked standing in his position as special conservator to pursue any claims on Keith Wellin's behalf at the time of his application to the probate court. Under South Carolina law, only a real party in interest has authority bring suit, S.C. R. Civ. P. 17(a). A special conservator has only that authority expressly conferred by order of the probate court. S.C. Code Ann. § 62-5-409(c). The probate court's order appointing Bennett as Special Conservator vested him with only the duty and power to ensure that no transfers were made from Keith Wellin's estate without adequate consideration and expressly provided that Bennett did not have the typical rights and duties of a court-appointed conservator, such as the right to pursue legal claims on the ward's behalf. Consequently, Bennett lacked the authority to pursue claims on Keith Wellin's behalf when the request for substantive relief was made, and the Order therefore should be vacated.

4. South Carolina Rule of Civil Procedure 12(b)(8) required dismissal of Bennett's request for relief because the same parties are litigating *precisely* the same issues regarding ownership of the same $50 million in the Federal District Court and elsewhere. An order by this Court regarding the same funds at issue in the federal court action could result in duplicative and/or inconsistent judgments. Because another matter was pending between the same parties regarding the same issues, the probate court should have dismissed Bennett's request for relief pursuant to Rule 12(b)(8). Indeed, this Court stayed a separate proceeding filed by Wendy Wellin in the probate court for formal probate of Keith Wellin's will for precisely this reason.

5. Issuance of the probate court orders in the absence of a summons and complaint, discovery, or a trial by jury represents a blatant violation of the procedural due process rights of the Wellin Children and the Irrevocable Trust. Bennett's request that the Wellin Children be required to pay him $50 million was made orally in the middle of a hearing and was not even reduced to writing. Although Bennett submitted a proposed order granting his requested relief and a memorandum in support, the Court required the Wellin Children to submit their own brief and order on the same day and did not allow them an opportunity to respond to Bennett's submission. Thus, the Court required a non-party to this action, the Irrevocable Trust, to pay $50 million without service of a summons and complaint, without the opportunity to conduct any discovery, without a trial, and without even the opportunity to respond in writing to the arguments made by Bennett in connection with his request. The Court's conclusion that the probate court gave the Wellin Children due process under these circumstances is wholly unsupported by the record. *S. Carolina Dep't of Soc. Servs. v. Fleisig*, No. 2004-UP-535, 2004 WL 6336775 (Ct. App. Oct. 21, 2004) (family court deprived a defendant of his right to procedural due process by summarily ruling that he owed alimony without requiring the claimant to file a summons and complaint

and without allowing the defendant the opportunity to conduct discovery and adequately prepare his defense).

6. This Court erred in affirming the probate court's conclusion that it had the authority under equitable principles to require the Wellin Children to pay $50 million. The probate court is creature of statute and, as such, has no inherent equitable powers other than those expressly granted to it by the legislature. *Greenfield v. Greenfield*, 245 S.C. 604, 610, 141 S.E.2d 920, 923 (1965). In any event, any equitable powers the probate court may have do not allow it to simply disregard its jurisdictional limitations, the Rules of Civil Procedure, and the due process rights of the parties. *Johnson v. Lloyd*, 399 S.C. 470, 476, 732 S.E.2d 198, 201 (Ct. App. 2012).

   Moreover, equitable relief was improper here because Bennett has an adequate remedy at law – namely, initiating formal proceedings seeking money damages. *See Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (S.C.2012). Prior to Bennett making his request to the probate court, two separate *ex parte* TROs were entered against the Wellin Children restricting their ability to use the same $50 million (or, in the case of the first TRO, the stock that was liquidated to generate the $50 million) at issue in the Order. The Federal District Court dissolved *both* of these TROs because, *inter alia*, no irreparable harm is present where, as here, Keith Wellin could sue – and did sue – his children for money damages, and Keith Wellin failed to demonstrate a likelihood of success on the merits. (*See* Civil Action No. 2:13-cv-1831, Dkt. No. 79 (dissolving *ex parte* TRO and finding that no irreparable harm existed and that the other elements necessary for injunctive relief had not been established); Civil Action No. 2:13-3595, Dkt. No. 15 (dissolving the *ex parte* TRO granted by this Court and making similar findings)). Here, Bennett did not even argue, much less establish, that the elements necessary for obtaining injunctive relief were present. Thus, by ordering payment of $50 million to a third party pending the outcome of the federal court litigation, the probate court improperly invoked its alleged equitable powers to grant preliminary relief that the District Court had twice found inappropriate, and therefore the Order should be vacated.

7. The Order erroneously finds certain factual findings were supported by the evidence, but no evidentiary hearing was permitted and no evidence was admitted into the probate court. In any event, the probate court's factual findings are wholly unsupported by the record.

   a. The Order erroneously affirms the probate court's finding that that the Wellin Children agreed that Keith Wellin was entitled to at least $50 million. But that is not what the Wellin Children said. The Wellin Children unambiguously stated to the probate court and this Court that the Wellin Children, in their capacities as trustees of the Irrevocable Trust, had tendered payment of the $50 million to Bennett, as counsel for Keith Wellin's Revocable Trust, in prepayment and satisfaction of the Promissory Note, that Bennett rejected the payment and sent the check back to counsel for the Irrevocable Trust, that the $50 million was therefore in possession of the Irrevocable Trust, and that Keith Wellin was at one point entitled to the funds, but only in satisfaction of

the Promissory Note. R. 569, 572, 574-575 ("[The $50 million] belongs to Mr. Wellin, *but only in full exchange for payment of the note.*") (emphasis added). As these portions of the transcript from the hearing before the probate court demonstrate, counsel for the Wellin Children was explaining to the court that the Wellin Children, at that point in time, remained willing to pay the funds to Keith Wellin but only provided that it was accepted in satisfaction of the Promissory Note. At no point at the hearing or otherwise have the Wellin Children acknowledged that the $50 million belonged to Keith Wellin or was an asset of his estate within the meaning of § 62-5-402(2). In any event, even if the Wellin Children had admitted that Keith Wellin was entitled to the $50 million—which they did not—such an admission would not somehow make the $50 million, which is and was undisputedly in the possession of the Irrevocable Trust, part of Keith Wellin's estate.

b. The Order also appears to affirm, without any discussion, the following finding by the probate court:

> On November 20, 2013, Wellin substituted the Promissory Note, valued by Petitioners in their Petition at $49,000,000 (plus interest) for a 58% interest in Friendship Partners. Prior to the substitution, Special Conservator Edward G. R. Bennett reviewed the transaction per this Court's Order to ensure adequate value was received for the transfer of assets. On the date of the substitution, the Promissory Note was valued at approximately $50,211,447. Based on the longstanding valuation of Friendship Partners, this was the equivalent of 58.15548645% interest in Friendship Partners; therefore, Bennett approved the substitution.

(Order at 12-13). There are no facts in the record to support this finding, and neither Bennett nor Keith Wellin testified in the probate court. The Wellin Children dispute the validity and effectiveness of Keith Wellin's alleged substitution of assets and the allegations regarding any steps Bennett claims to have taken prior to this alleged substitution. Further, the Wellin Children dispute the valuation of the Promissory Note and the partnership units used by Bennett. These issues are at the heart of the dispute that currently remains pending in the District Court, and they will be decided by that court only upon a full evidentiary record following discovery. Because no complaint relating to the substitution of assets had even been filed in the probate court at the time of the probate court's order, the Wellin Children were not given the opportunity to assert affirmative defenses, conduct discovery, make legal arguments to the court, or make factual arguments to a jury regarding this alleged substitution. The probate court's findings are based solely on Bennett's bare allegations and say-so. The probate court cannot simply make findings on these matters in the absence of any pleadings, discovery, evidentiary record, or even legal argument from the parties.

8. This Court erred in failing to reverse the probate court's order finding ineffective the Wellin Children's voluntary dismissal and in failing to find that the dismissal vacated the probate court's orders issued prior to dismissal. Rule 41 states, in relevant part, that a plaintiff may voluntarily dismiss an action without a court order at any time before the opposing party files an answer or motion for summary judgment. S.C. R. Civ. P. 41(a)(1)(A). The plaintiff's right to voluntarily dismiss an action is "unconditional", and dismissal becomes effective when the notice is filed with the clerk. *Matter of Morrison*, 321 S.C. 370, 373, 468 S.E.2d 651, 653 (1996) (citing *Marex Titanic, Inc. v. Wrecked & Abandoned Vessel*, 2 F.3d 544 (4th Cir. 1993)). Judicial approval of the voluntary dismissal is not required. *See In re Matthews*, 395 F.3d 477, 480 (4th Cir. 2005). A voluntary dismissal operates to leave the parties as if no action had been brought in the first place and divests the court of jurisdiction to take further action in the case. *Truluck v. Snyder*, 362 S.C. 108, 116, 606 S.E.2d 792, 796 (Ct. App. 2004), abrogated on other grounds by *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008); *Marex Titanic, Inc.*, 2 F.3d at 546 (citing *Dove v. CODESCO*, 569 F.2d 807, 809 n.3 (4th Cir. 1978)).

   The Court erred in concluding that answers are not required in conservatorship proceedings and, therefore, Rule 41(a)(1)(A) is inapplicable to conservatorship proceedings. The Probate Code itself expressly states that the South Carolina Rules of Civil Procedure apply to probate court proceedings, including conservatorship actions. S.C. Code Ann. § 62-1-304; *see also In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) ("The South Carolina Rules of Civil Procedure are applicable in the probate court to the extent they are not inconsistent with the Probate Code or probate court rules. A motion to alter or amend a judgment pursuant to Rule 59(e), SCRCP, is not inconsistent with the Probate Code and is therefore applicable."). Finally, even assuming that no responsive pleading is required in conservatorship actions, that would not render Rule 41(a)(1)(A) "inconsistent" with the procedure for such actions for purposes of SCRCP 81.

9. The Court erred in finding that the conservatorship action—and therefore this appeal—is not moot in light of the fact that Keith Wellin is deceased and Wendy Wellin has been appointed as Special Administrator of the Estate. The underlying action and the orders at issue on appeal were premised entirely upon the notion that Keith Wellin was a vulnerable adult whose estate was in need of protection. Keith Wellin is now deceased, Wendy Wellin has been appointed Special Administrator, and she has substituted herself as the plaintiff in the District Court litigation in which she is seeking turnover of precisely the same assets at issue in this appeal. The District Court can order any necessary preliminary relief in connection with these funds (the District Court expressly denied Keith Wellin's requests for preliminary relief in connection with these assets) and is the only court with jurisdiction to do so.

   This Court erroneously applied an exception to the mootness doctrine on the ground that, although there is currently no need for a conservator, there was no dispute in the probate court that Keith Wellin was entitled to the $50 million and his Estate should not have to bring separate litigation to recover it. But there absolutely ***is*** a continuing dispute over ownership the subject $50 million and that is issue is currently being

litigated between the Wellin Children and the Estate in the District Court. In light of Keith Wellin's death, Wendy Wellin's appointment as Special Administrator of his Estate, and her substitution as a party in the District Court litigation, the conservatorship proceeding and the probate court's orders are moot.

The Wellin Children incorporate herein by reference their Appellants' Brief, Appellants' Reply Brief, and Supplemental Memorandum Objecting to Appellee's Proposed Order, along with all exhibits and references to these briefs contained in the Record on Appeal, and any and all arguments, factual positions and legal positions asserted prior to, during, and after the probate court and Circuit Court hearings in this matter not herein listed are adopted and incorporated the same as if fully set forth herein as additional grounds supporting this motion. Moreover, all arguments set forth in any written motions or submissions, including any supporting memoranda and exhibits, as well as all arguments made during oral argument before this Court or the probate court in support of said motions, or at any time in these proceedings, are incorporated herein by reference.

CONCLUSION

Based on the foregoing, the Wellin Children respectfully request that this Court vacate the Order and enter an order reversing the orders of the probate court *in toto* and finding that the underlying conservatorship action has been validly dismissed.

[SIGNATURES ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King

Charleston, South Carolina

January 22, 2016

14 - 4336

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **MOTION TO ALTER OR AMEND JUDGMENT**

Counsel Served:

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

FILED
2016 JAN 22 PM 4:42
JULIE J. ARMSTRONG
CLERK OF COURT

Lydia Spry
Administrative Assistant

January 22, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Probate Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No.: 2014-CP-10-4336

FILED
2016 JAN 29 PM 4:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Peter J. Wellin, Cynthia Wellin Plum and Marjorie Wellin King — Appellants.

v.

Keith S. Wellin — Respondent.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO ALTER OR AMEND JUDGMENT

Tiffany N. Provence, Esq.
PROVENCE MESSERVY, LLC
300 N. Cedar Street
Suite A
Summerville, SC 29483
(843) 871-9500
(843) 261-7035 (fax)
Attorney for Respondent, Edward G. R. Bennett, as Special Conservator for Keith S. Wellin

Robert H. Hood, Esq
James B. Hood, Esq.
HOOD LAW FIRM, LLC
Post Office Box 1508
Charleston, SC 29402
Attorney for Keith S. Wellin

Respondents submit this return to Appellants' motion to alter or amend this Court's order filed January 13, 2016 affirming the Probate Court's Order. As further discussed below, Respondents submit that the Court properly affirmed the Probate Court and Appellants' motion should be denied.

It is not disputed that a Rule 59(e) motion is permissible, if not required, in a probate appeal. As stated by the Court of Appeals in *Williams v. Williams*, 329 S.C. 569, 579-80, 496 S.E.2d 23, 29 (Ct. App. 1998) *rev'd on other grounds*, 335 S.C. 386, 517 S.E.2d 689 (1999):

> The circuit court has the authority to hear motions to alter or amend the judgment when it sits in an appellate capacity, and these motions are required in order to preserve issues for further review by the Court of Appeals or the Supreme Court in cases where the circuit court fails to address an issue raised by a party.

See also Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004)(a "party must file [a Rule 59(e), SCRCP] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") However, the Appellants' motion is not necessary for appellate preservation in this case because the motion does not ask this Court to rule on any issue raised in their appeal but not ruled upon by the Court in the order of January 13, 2016. Rather, the motion simply asks the Court to alter its decision and to reverse the Probate Court order based on the same arguments and reasoning previously presented in its briefing and arguments. And, while a party is allowed to revisit previously raised arguments in "one final chance" to change the trial court's mind, the Respondents respectfully submit that the Court has properly affirmed the Probate Court and the motion to alter or amend should be denied. *Elam*, 602 S.E.2d at 779 ("there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but

also to revisit a previously raised argument"; *see also Home Med. Sys., Inc. v. S. Carolina Dep't of Revenue*, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009).

This appeal has proceeded under the provisions of S.C. Code Ann. § 62-1-308, pursuant to which the parties submitted extensive briefs with legal arguments and a Record on Appeal containing all the matters designated by the parties as pertinent and necessary to the consideration of the issues raised, and Oral Argument was heard on July 28, 2015. Respondents maintain that the order fully and completely evidences that this Court has carefully and properly considered all the issues raised, and correctly concluded that the Probate Court had subject matter jurisdiction and statutory authority to issue the protective order. The Court also correctly concluded that the Probate Court had personal jurisdiction over the Appellants in their individual and fiduciary capacities as Trustees and that the Special Conservator had standing to seek instruction and direction from the Probate Court regarding the $50,228,000 estate asset. On other points, the Court correctly found that Rule 12(b)(8), SCRCP, did not require dismissal of the Special Conservator's application and that the Appellants' Notice of Voluntary Dismissal was ineffective under Rule 41(a)(1)(A). Ultimately, in all respects, the Probate Court properly exercised its equitable powers in compliance with due process and its factual findings and legal conclusions are fully supported by the evidence and the applicable law.

Without burdening the Court with repetitious briefing and arguments, the Respondents hereby incorporate their previously filings and oral arguments and respectfully request that the Court deny the motion to alter or amend.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

By: _____

Tiffany N. Provence, Esq.
PROVENCE MESSERVY, LLC
300 N. Cedar Street
Suite A
Summerville, SC 29483
(843) 871-9500
(843) 261-7035 (fax)
Attorney for Respondent, Edward G. R. Bennett, as Special Conservator for Keith S. Wellin

Robert H. Hood, Esq
James B. Hood, Esq.
HOOD LAW FIRM, LLC
Post Office Box 1508
Charleston, SC 29402
Attorney for Keith S. Wellin

Charleston, South Carolina
January 29, 2016

CERTIFICATE OF SERVICE

I, the undersigned Paralegal of the law office of Provence Messervy, LLC, attorney for Respondent, Edward G. R. Bennett, as Special Conservator for Keith Wellin, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONDENTS' RETURN TO APPELLANT'S MOTION TO ALTER OR AMEND JUDGMENT**

FILED
2016 JAN 29 PM 4:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Counsel Served:

Merritt G. Abney, Esquire
Nelson Mullins Riley & Scarborough, LLP
151 Meeting St., 6th Floor
Charleston, SC 29401

Amanda L. Winn

January 29, 2016

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON)

IN THE MATTER OF:) Case No.
KEITH S. WELLIN) 2013-GC-10-0129
)
)
Peter Wellin, Cynthia Wellin)
Plum and Marjorie Wellin King,)
)
Petitioners,)
)
v.)
)
Keith S. Wellin,)
)
Respondent.)

COPY

****

PROCEEDINGS BEFORE THE HONORABLE IRVIN G. CONDON

DATE TAKEN: Friday, July 26, 2013

TIME: 2:00 p.m.

PLACE: Charleston County Judicial Center
Courtroom 4A
100 Broad Street
Charleston, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

****

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

A P P E A R A N C E S

REPRESENTING THE PETITIONERS:

ROBERT H. BRUNSON, ESQUIRE
BRYSON M. GEER, ESQUIRE
PATRICK C. WOOTEN, ESQUIRE
Nelson, Mullins, Riley & Scarborough, LLP
P.O. Box 1806
Charleston, South Carolina 29402-1806
robert.brunson@nelsonmullins.com

REPRESENTING THE RESPONDENT:

ROBERT H. HOOD, ESQUIRE
Hood Law Firm, LLC
172 Meeting Street
Charleston, South Carolina 29401
bobby.hood@hoodlaw.com

EDWARD G.R. BENNETT, ESQUIRE
F. PATRICIA SCARBOROUGH, ESQUIRE
Evans, Carter, Kunes & Bennett, P.A.
115 Church Street
P.O. Box 369
Charleston, South Carolina 29402-0369
scarborough@eckb.com

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

(The proceedings commenced at 2:00 p.m.)

THE COURT: Good afternoon. My name is Irvin Condon, Probate Judge for Charleston County.

This is the matter of Keith S. Wellin, Charleston County Probate Case No. 2013-GC-10-0129.

We're here on an emergency basis for a preliminary hearing considering appointment of a conservator to handle the assets of the alleged incapacitated person.

It's my understanding that counsel have come to an agreement on how to resolve this.

Mr. Bennett, do you want to put that on the record?

MR. BENNETT: Yes, we have.

Agreement that we've come to is that I would be appointed as special conservator and also special trustee of Mr. Wellin's revocable trust without any determination being made of his capacity and without the need for him to be seen by the two doctors that we discussed. We have agreed to mediate with Tom Wills.

My job as special conservator and special trustee will be to keep everything status quo pending mediation. The Wellins or Mr. Wellin will continue to be able to use his funds for the customary and ordinary living expenses as they have been living over the past

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

years. We will only stop -- My role really is just to stop transfers of his assets to third parties or to Mrs. Wellin from anything on that.

What we didn't discuss but obviously needs to be pointed out is that legal fees will be incurred in this case, and those are not customary and necessary living expenses but, obviously, would have to be paid as well. And I also mentioned, I don't know of any, but if there are charitable pledges out there, those would certainly be satisfied.

I believe that's pretty much the agreement other than the fact that this is all conditioned upon Mr. Hood talking with our client and responding to the Court by noon on Monday.

THE COURT: Mr. Bennett, the other thing I didn't address, normally we bond our conservators, but you, as an attorney, we would look at not placing any bond on your services as trustee or as special conservator.

Let me ask counsel on the other side. Is that a fair representation of the agreement?

MR. BRUNSON: It is. I think with the -- This probably goes without saying, but that the special conservator be subject to the duties and obligations as set forth in the South Carolina Probate Code. And, in

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

addition to that, the issue of no immediate need for examination by two doctors, my understanding is that that is on an interim basis, subject to mediation, and, if mediation is unsuccessful, we can revisit that issue.

THE COURT: And I guess this would come under duties and obligations. As a special conservator or special trustee, you're able to agree on what that involves. Generally, you're not looking for an inventory and appraisement unless an appointment occurs later.

MR. BRUNSON: On an interim basis, right. I don't think it was clear when Mr. Bennett made the statement on the record that he's being appointed on an interim basis, subject to mediation, and if we're able to resolve these matters in mediation, then it's a moot point, but, if we're not, at that point we would reserve the right to come back to the Court for a more permanent solution.

THE COURT: Correct. Mr. Bennett, does that sound -- Mr. Hood?

MR. HOOD: So it's my understanding, your Honor, there's no determination of capacity until -- that issue will be addressed after mediation, if unsuccessful.

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

THE COURT: That's my understanding. You'll try mediation first, and then you'll come back. And I guess the issue could occur that you could start the mediation, and if he -- if they were to find that he didn't have capacity, what would you do in that case? Would you come in here and have the appointment of conservator or would you still continue to mediate?

MR. HOOD: I wouldn't think that in mediation capacity would be an issue. Money is the issue in mediation usually. I just want to make it clear we're reserving all rights to take on head on the issue of capacity if and when that would ever be addressed by the Court. We're not agreeing to anything about incapacity for Mr. Keith Wellin at this time.

THE COURT: Right. That's the Court's understanding.

MR. HOOD: Yes, sir.

THE COURT: We're just basically keeping everything intact. You're going to go through mediation. Hopefully that resolves not only the money issues but also the family issues and brings the family back together.

Mr. Bennett.

MR. BENNETT: Your Honor, one other issue, just to clarify. Normally it would be a conflict of

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

interest for a conservator to pay his own law firm, and so I would ask that our legal fees would be permissible and appropriate.

THE COURT: Any objection to Mr. Bennett paying his normal, customary attorneys' fees to his own firm?

MR. BRUNSON: No, your Honor.

THE COURT: Okay. No issue there.

Anything else for today?

MR. BENNETT: I think that covers it.

MR. BRUNSON: Nothing from the Petitioner.

THE COURT: Who would like to submit a written order addressing this today?

MR. BRUNSON: We'll be glad to.

THE COURT: Okay. Provided by Mr. Bennett and Mr. Hood first.

MR. HOOD: Ed will do it.

THE COURT: That's fine. Mr. Bennett, you can just run it by all the attorneys involved and go from there.

MR. BENNETT: Will do.

THE COURT: Anything else for today? Questions from our law clerks, summer law clerks, here today?

MR. BRUNSON: I'd just say on the record we

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

appreciate the Court's accommodation for the hearing today.

THE COURT: You're welcome. And I apologize if we've interrupted anybody's vacation. Sorry about that.

That concludes everything today. Have a great weekend.

(The proceedings concluded at 2:07 p.m.)

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 28th day of July, 2013, in the City of Charleston, County of Charleston, State of South Carolina.



Kendra E. Johnston

Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
August 24, 2022

Electronically signed by Kendra Johnston (401-179-812-4485) cd6dff27-64d8-43ea-a267-5f7092bee746

STATE OF SOUTH CAROLINA
PROBATE COURT
COUNTY OF CHARLESTON

IN THE MATTER OF: KEITH S. WELLIN

PETER WELLIN, CYNTHIA WELLIN PLUM, and MARJORIE WELLIN KING,

Petitioners,

vs. CASE NO. 2013-GC-10-129

KEITH S. WELLIN,

Respondent.

BEFORE: HONORABLE IRVIN G. CONDON

DATE: February 6, 2014

TIME: 1:02 PM

LOCATION: Charleston County Probate Court
100 Meeting Street, 4th Floor
Charleston, SC

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

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

0a57c3eb-4318-403a-8b42-0a909723c66d

APPEARANCES OF COUNSEL:
ATTORNEYS FOR THE PETITIONERS
PETER WELLIN, CYNTHIA WELLIN PLUM, and MARJORIE WELLIN KING:
NELSON, MULLINS, RILEY & SCARBOROUGH
BY: ROBERT H. BRUNSON
BRYSON M. GEER
MERRITT G. ABNEY
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401
(843) 534-4226
robert.brunson@nelsonmullins.com
bryson.geer@nelsonmullins.com
merritt.abney@nelsonmullins.com
ATTORNEYS FOR RESPONDENT KEITH S. WELLIN:

HOOD LAW FIRM
BY: ROBERT H. HOOD, SR.
JAMES B. HOOD
172 Meeting Street
Charleston, SC 29401
(843) 577-1214
bobby.hood@hoodlaw.com
james.hood@hoodlaw.com
ATTORNEYS FOR EDWARD BENNETT AS CONSERVATOR:
PROVENCE MESSERVY
BY: TIFFANY N. PROVENCE
300 North Cedar Street, Suite A
Summerville, SC 29483
(843) 871-9500
tiffany@provencemesservy.com

ATTORNEYS FOR EDWARD BENNETT INDIVIDUALLY:

EVANS, CARTER, KUNES & BENNETT, PA
BY: F. PATRICIA SCARBOROUGH
115 Church Street
Charleston, SC 29401
(843) 577-2300
scarborough@eckb.com

APPEARANCES CONTINUED:
ATTORNEYS FOR THE TRUSTEE PROTECTOR LESTER SCHWARTZ:

ROSEN, ROSEN & HAGOOD
BY: RICHARD S. ROSEN
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
rrosen@rrhlawfirm.com

(INDEX AT REAR OF TRANSCRIPT)

THE COURT: Good afternoon. My name is Irvin Condon, probate judge in Charleston County, in the matter of Keith S. Wellin, Charleston County Probate Case No. 2013-GC-10-129. And this is our law clerk, Michelle Weil, and our guardianship/conservatorship clerk, Elizabeth Sykes.

Counsel ready to proceed?

MS. PROVENCE: We are, Your Honor.

THE COURT: I didn't know if it was beneficial to talk beforehand, but I thought it'd be best just to come on in.

MS. PROVENCE: That's fine, Your Honor.

If the court would, though, I just have one question with regards to the exhibits that we have today. Everything that we have is actually already in the court's record, so I wasn't sure if your preference was for me to submit it individually or just to ask the court to take judicial notice. Everything has already been received. I just wasn't sure what you were comfortable with.

THE COURT: I can refer to it in the file. If I can't find it, I'll ask you for it, if

that's best.

I guess even before we start, the issue of capacity and the need for a conservator, I know we've got one doctor that the parties don't have an objection to. Do we have an agreement on the other doctor?

MR. BRUNSON: Your Honor, Mr. Wellin's counsel has proposed a second doctor who we have considered, and we've discussed this with counsel for Mr. Wellin. The doctor is Linda Austin, and we don't object to her. She has historically strong ties to MUSC, which, as the court has recognized, we've excluded doctors from MUSC for conflicts reasons.

We would like to explore with her or have the court explore with her whether she has any existing relationship that would constitute a conflict on her part. If she doesn't believe she does, then we would agree to have her be the second doctor.

THE COURT: Yeah. We've had a lot of difficulty finding somebody that didn't have a relationship with MUSC or Roper St. Francis.

MR. BRUNSON: We were going to pick somebody, propose somebody from Columbia, but

0a57c3eb-4318-403a-8b42-0a909723c66d

we're satisfied with Dr. Austin with that caveat.
MR. JAMES HOOD: Your Honor, Jamie Hood, on behalf of Mr. Wellin..
We totally were happy to let them contact Dr. Austin and question her about her conflict or no conflict, whatever, just so we can move this forward.
And we would just like to ask somebody local, given Mr. Wellin's condition. We had experienced some scheduling difficulty getting some other physicians in there, so having somebody who can do it locally I think would go a long way to speeding the process up, and we're all anxious to get it moved forward.
THE COURT: But you have no objection to Ms. Austin, or Dr. Austin?
MR. JAMES HOOD: No, Your Honor. She was -- after we got Ms. Sykes's email, I proposed Dr. Austin to them about ten or 12 days ago, and we're just waiting to get agreement on it.
THE COURT: And I guess your concern, from the children's side, was the relationship with MUSC, and you have no objections that you know of?
MR. BRUNSON: We would just like to

explore with her to what extent she does have a relationship with MUSC. She may not even feel comfortable, under the circumstances, accepting it, given that she used to be a professor there, I believe her husband is a professor there, and she used to be a doctor there, but it appears now she doesn't practice there, at least not primarily, so I didn't want to just call her and have a conversation with her ex parte without raising it. That's why we're where we are.
THE COURT: But you don't have an issue with her -- I guess her husband's working over there at MUSC now?
MR. BRUNSON: Well, I'd like to talk to him about it. I'm familiar with her and have a lot of respect for her, and I believe if she were to assure me that she doesn't feel there would be any conflict, that would go a long way towards resolving the problem.
THE COURT: Let me ask counsel: Can y'all do a joint call, or do you have an objection with Mr. Brunson calling her?
MR. JAMES HOOD: No, Your Honor. I think two days ago, we met and did a conference on some of the pending matters, and I told them I was

happy to let them make the phone calls whenever they wanted to, and I trust them as officers of the court not to try to duly influence the doctor. I'm not worried about that. I just want them to do it and let's get it over.
THE COURT: Well, why don't you contact her directly, and then let us know as quickly as possible.
MR. BRUNSON: We'll do that.
THE COURT: And I raised that because it looks like if there's no need for the conservatorship, then what we're doing here today, does that go away, or are you back over in federal court?
MS. PROVENCE: Your Honor, Tiffany Provence on behalf of Edward Bennett as special conservator. I'm stating that simply because I'm new to the party. I think I'm probably the only one that wasn't present previously.
I think the information that we provide today will probably show that that's not going to go away because of the fact that the issue in question occurred while Mr. Bennett was appointed special conservator. I'm not sure that a finding now -- since we have a court order

appointing special conservator, and it technically occurred on his watch, I'm not sure that finding that there's no need for a permanent conservator is going to unravel the duty question that we're posing to the court today.
THE COURT: Saying that there's no need for a conservator, then it would be Mr. Wellin bringing the action individually, wouldn't it?
MS. PROVENCE: Well, Your Honor, that's really the instruction at the end of the day that we're looking for from the court, because my client feels that he has a duty under the standing order, and I guess his question is if that -- if the capacity issue were to be removed from the court or if we were to have a finding that Mr. Wellin did have capacity, does that remove his obligation during the time that he served as fiduciary. We would have to look to this court for that instruction. Since it is such a unique order and a unique situation, we would still be asking, I think ultimately, that the court answer that question.
THE COURT: I'm sure the children wouldn't hold him responsible for anything that

0a57c3eb-4318-403a-8b42-0a909723c66d

occurred would be what -- who would have grounds to object? Would that be Mr. Wellin?

MS. PROVENCE: I believe, Your Honor. My concern, representing Mr. Bennett as special conservator, would be that primarily Mr. Wellin or really any of the beneficiaries of his estate could attack the special conservator for failing to protect the funds.

THE COURT: If you had a hold harmless from the children, would that help you?

MS. PROVENCE: Well, I think there's a lot of contingencies. If the conservatorship were withdrawn or the court were to hold that he, in fact, was capacitated to make that decision, and there were hold harmless agreements to the same, then we might, at that point, lack jurisdiction before the court. I think absent those, we're still here.

THE COURT: Mr. Brunson, do you want to weigh in on any of that?

MR. BRUNSON: Well, Your Honor, I think we need some clarification of exactly what the question is. What is it that Mr. Bennett would like to have the court answer? Because we don't -- well, I don't want to start discussing

hypotheticals about what he might be asking. We're a little confused, because the paperwork is not entirely consistent about what they're seeking here today, so maybe we could begin with --

THE COURT: It looks like he's wanting to substitute a promissory note piece of paper for actual liquid funds or stock.

MR. BRUNSON: Well, he already purported to do what he -- Mr. Wellin on his own, notwithstanding the fact that he had a special conservator in place, purported to swap out a promissory note to a trust in exchange for a percentage of ownership in a limited partnership. That's done.

So if there is some belief on the part of Mr. Wellin that that was wrong, that somehow he was aggrieved, and he should be entitled to damages from that, he's already suing in federal court, and that will be resolved there. That's the only place that that can be resolved at this point. So I'm not sure what the question is for this court.

MS. PROVENCE: I'm happy to clarify, Your Honor, if you would like at this time.

THE COURT: Okay. And I guess I'd

like to do that, but I guess -- I know you've got a motion, what, to dismiss, and then whether you want it to be, I guess, pled more fully with a summons and petition and an answer, is that necessary, Ms. Provence, or can you go forward today?

MS. PROVENCE: Your Honor, in our opinion, it's not necessary in the fact that my client was bringing an application before this court under the South Carolina Code, which allows for an application when a conservator is seeking instruction. Unfortunately, I think that statute has been a little misconstrued, because Section A of that statute requires a summon and complaint be served upon the conservator when another interested party is seeking a hearing on the same.

It's a little silly at this point to say that he should have served a summons and complaint on himself and then sought the court's instruction as to who else to serve in that matter.

At the end of the day, Your Honor, while I can certainly more than sympathize with your desire not to have to -- just the sheer amount of documents makes you want to run. I

think the problem is that our question today is not Mr. Bennett speaking on behalf of Mr. Wellin saying that he's aggrieved; our question is the duty that is very specific in your court order states that my client, as special conservator, is responsible for ensuring that if any assets are traded, fair value is received. That's the easiest way to sum up our issue.

My client did not have a duty to stop Mr. Wellin from making the substitution, but he did have a duty to ensure that it was for fair consideration and to protect those assets under this court order until such time as it's determined whether or not a conservator is necessary.

So, Your Honor, if they would like to argue their motion to dismiss first before we get to the issues, we're more than happy to have that. I mean, quite frankly, I responded to the court by letter yesterday because I again felt that he made an application by a letter. This isn't a formal proceeding. We've made a motion to dismiss based on lack of jurisdiction, standing, lack of due process. I think that I want to be incredibly clear with the court that we're seeking this

0a57c3eb-4318-403a-8b42-0a909723c66d

court's instruction as to whether or not Mr. Bennett has the authority, as special conservator, to bring an action to return these assets to the estate of Mr. Wellin.

At that point, Your Honor, we are going to serve a summons, we're going to serve a complaint, there's going to be opportunity for discovery, but as I mentioned earlier, I'm just not convinced that a finding of capacity in a month from now is going to eliminate the duty that my client had to this court when this substitution occurred.

MR. BRUNSON: That helps. It helps to understand what the question is, because it's never been framed that way until just now.

So now what Mr. Bennett is asking the court is whether he has the authority to bring an action to recover funds, damages essentially to Mr. Wellin, as a result of a transaction that Mr. Bennett engineered on behalf of Mr. Wellin back in November. That's the question before this court, question without a complaint pending against Mr. Bennett seeking any relief from him for any violation of any duty, without any discovery, without any witnesses testifying,

without any briefs of what the law might be applying to that question. I don't think anybody could intelligently argue that before the court today, Your Honor, because it's just not framed up.

And frankly, we would have objected on the basis of ripeness had this been the question that was framed, because there is -- it's not a ripe question as to whether Mr. Bennett, as the conservator, has the authority to bring an action on behalf of Mr. Wellin, because Mr. Bennett hasn't yet been sued or challenged for violating any duty that previously existed.

In other words, if at some point -- it seems like Mr. Bennett is nervous because during his watch, in a very limited role as special conservator, where his job was to preserve the status quo, he, on behalf of Mr. Wellin, engineered a transaction to exchange a $50 million promissory note for ownership in a limited partnership, and he's concerned that that transaction wasn't respected by third parties, and that Mr. Wellin has been damaged, and he could later be liable for that, okay.

Maybe one day somebody will sue him

for that. I don't know. But that's when the question will come up as to whether under the law Mr. Bennett had a duty to prevent -- to not enter into that transaction in the first place or to enter into it more carefully so that Mr. Wellin wasn't harmed or whether he had a duty to do something afterwards, notwithstanding the fact that Mr. Wellin has already brought a lawsuit in his own right seeking that same relief in federal court.

So to be more clear, number one, the relief to have this court to determine what Mr. Bennett's duty was in November is not ripe because nobody has at this point challenged him for that, and that should be a way in a court in the future if at any point somebody says he did violate his duty at that time.

Secondly, with respect to advice on whether Mr. Bennett should -- has authority under the existing order to bring a lawsuit on Mr. Wellin's behalf, we think the clear question to that is no, he doesn't have that authority. The order is very clear on its terms in that it doesn't provide any power to the special conservator beyond preserving the status quo of

Mr. Wellin's assets, and so that doesn't mean going out and bringing lawsuits against third parties.

Secondly, if he were to bring a lawsuit, how can he do that? Mr. Wellin's already suing in his own right, without a conservator appointed for him, in federal court. So there would have to be some determination that Mr. Wellin doesn't have capacity to be bringing the lawsuit that he is currently bringing with Mr. Hood as his counsel. So that's our position.

THE COURT: Thank you.

Ms. Provence, let me ask you this: Is there any damage that's going to occur currently or I guess until we have a determination?

MS. PROVENCE: Absolutely, Your Honor, and that's probably the largest thing that I think this court needs to understand is we're talking about the status quo.

Well, the status quo was that Mr. Wellin held a promissory note valued at approximately $50 million. Those funds have been offered, but in exchange for a release with regards to the substitution.

So I just want to make clear to the

0a57c3eb-4318-403a-8b42-0a909723c66d

court that when we're talking about the status quo of an 87-year-old elderly gentleman who everyone has acknowledged as having health problems, he's currently being deprived of the benefit of, at a minimum, $50 million. The amount in dispute is whether or not he's then owed an additional $42 million.

So I would like to agree -- as a mediator in training, Your Honor, I'd love to start with where we can agree. So I can agree with Mr. Brunson that Mr. Bennett is uncomfortable with the situation. That's exactly why he's seeking the court's instruction. I would be uncomfortable as well if my job was to protect someone's assets, and yet there was a $50 million to $92 million asset that I didn't have protection over.

And Mr. Brunson takes a little bit of liberty with the orders in that it says he just has to maintain the status quo, and I think if we carefully examine the order, we're going to find that what it says is is that my client is responsible for ensuring that any asset that is traded, he receives adequate value in return. That's our problem. What is the adequate value?

But if everyone, Your Honor, can agree today that at the very minimum, adequate value is going to be $50 million, and at the highest, adequate value is going to be $92 million, then we are happy to accept the $50 million with no strings attached and have the court hold the amount in dispute, because the issue is Mr. Brunson is stating that relief has been sought in another court with regards to this substitution.

I don't want to misstate to this court. I'm new to this party. I've been here less than a week. I've reviewed a lot of documents, but I am not aware of a single action in another court that is based on this substitution. The substitution is mentioned, it appears in other pleadings, but I am not aware of Mr. Wellin -- and I would ask Mr. Hood to correct me if I am misstating -- having brought an action challenging the validity of this substitution.

Your Honor, I just -- I think for us to put this off while $92 million -- we don't know where the money is. We don't know. We've not been told that it's in escrow. We're not -- it's not being held under the jurisdiction of any order

that we're aware of. The TRO with regards to those funds has been lifted.

I think that's incredibly risky. It would make me nervous. It makes me nervous on behalf of my client, not because he orchestrated this or he orchestrated that, but because we're talking about $92 million in question, and we're talking about the fact that everybody in the room seems to agree that at the minimum, he's getting 50, but yet my client doesn't have that in his possession and is not abiding by the order.

Our concern, Your Honor, is he is under a fiduciary duty. I think it's irresponsible, at best, to say that a fiduciary has to be sued in order to come to the court that appointed him and to ask for instructions as to what his duty is. I mean, we're basically hanging our fiduciaries out there, especially when they're court appointed under a special circumstance, to hang them out and say: No, you have to wait until this is ripe. Somebody's got to actually sue you, in this situation, your own client, who we all agreed you could serve in a dual capacity. Now we've got to wait for Mr. Wellin to actually sue you or for him to pass away and his wife or his

children sue you, and then, Your Honor, we'll be back before the court.

THE COURT: Let me ask you: This is not part of the suit that's over in federal court?

MS. PROVENCE: Your Honor, I can't -- I don't want to misstate. My answer would be I've not seen any pleadings where the substitution is being challenged.

THE COURT: Because I thought the agreement with the appointment of the special conservator was to maintain the status quo until the lawsuits in federal court were resolved.

MS. PROVENCE: And that, Your Honor, if you look at the order, I think is the premise, but keep in mind that we didn't restrict Mr. Wellin's ability to transfer assets, so long as he received equal assets in return.

So by status quo, what my client's job was was to make sure that his estate as a whole was protected. The problem that we're running into is essentially that there's a question, a $92 million question, floating out there.

Again, if the court would prefer to hear these issues on a different day, I think that this could be handled very similarly, in my

0a57c3eb-4318-403a-8b42-0a909723c66d

opinion, Your Honor, to a creditor's claim where -- a petition for return of assets to the estate, where we can file the summons on the appropriate parties and have the funds, then we can have testimony, we can have discovery, but until that time, what is going to happen with the $92 million. And at the very minimum, my client has a duty to protect 50 of that, and we would hope the court would protect the remainder until that issue can be resolved.

Again, they brought us here, Your Honor. I know that you probably don't want us here, but we started with --

THE COURT: No. It's good to see everybody.

MS. PROVENCE: We started with perhaps one of the lengthiest petitions for appointment of conservator I've ever seen alleging that this man needs to be protected, and now that the special conservator that everyone agreed upon is attempting to protect those assets, we're arguing over it.

THE COURT: But I guess what you're proposing today is instruction whether to bring an action, bring a suit, whether in this court or

another court, related to that?

MS. PROVENCE: And seek the court's direction as to the assets. I mean, where should the assets be placed until that is determined? And does my client --

If you read the Code, Your Honor, it clearly states -- and it's difficult in this situation, because we're dealing with a special conservator, which is a unique situation, but the Code clearly states, in 62-5-424(b)(17), if I remember correctly, that a conservator is given the duties necessary to bring about the powers for which he was appointed. Whether those be limited or specific, it doesn't say. And then 17 gives us the ability to prosecute, defend, and do all of the other things that conservators do.

Our best conservators, when appointed, review the records and pursue people who have wronged someone that is allegedly incapacitated. I think he already has that power, quite frankly. I don't think that he necessarily needed this court's blessings, but rather than file the summons and the petition, petition to return the assets, he wrote an application to the court saying: Court, I've been appointed a special

administrator -- or special conservator. There's not law on this. There's not code on this. I'm seeking your instruction. On my watch, more than $50 million, and quite possibly $92 million, has been removed from this estate. I'm not comfortable with it, and I need your help.

MR. BRUNSON: May I?

MS. PROVENCE: Please.

MR. BRUNSON: I didn't mean to interrupt you. I thought you were finished.

First of all, Your Honor, as to the question of if Mr. Wellin has been wronged as a result of his attempt to exercise the substitution of assets in November, and he has damages, if he's been wronged, he can sue or a conservator on his behalf can sue somebody to recover damages for him being wronged.

He currently has an action pending in federal court before Judge Norton, Mr. Wellin himself, all the parties that would be necessary in order to adjudge whether he was wronged or not, including his three children individually, the limited partnership, the management company that made the decisions on behalf of the limited partnership, and the irrevocable trust. That

action is pending in federal court.

Now, that action does not currently contain a claim relating to this substitution of assets, but the test under the South Carolina Rules of Civil Procedure, Rule 12(b)8, is where a South Carolina State Court is required to dismiss an action if that action is already pending before another court, which is what our argument is here.

And the standard under Rule 12(b)(8) is that a pending claim, which it is in another court, between the same parties, which it is -- Mr. Wellin is a party, as are his three children, as well as the additional parties who are not a party to this petition before this court -- and whether it's substantially the same claim and issues based on the same facts and circumstances.

And there's no question about that. The pleadings contain references to this transaction, the most recent pleadings filed in the federal court action. There's no question it's the same facts and circumstances.

So if the question is is redress already being sought on behalf of Mr. Wellin in another court, the question is unequivocally yes, it is. I don't think anybody could make an

0a57c3eb-4318-403a-8b42-0a909723c66d

Page 26

argument and pass Rule 11 muster otherwise.
Now, the second issue is whether this court -- and this is the rather narrow question presented this morning, or this afternoon -- is whether this court should advise Mr. Bennett, in his capacity as special conservator, whether he has the duty and authority to pursue an action for Mr. Wellin to seek the same relief that Mr. Wellin could be seeking right now himself in federal court, and the answer to that is no.
Now, my opponent argued that she believes the conservator does -- a conservator does have power to sue, and she referred to Section 62-5-424, and there it does set forth that in normal circumstances, a conservator would have that power.
But as the court will recall, we all showed up here last July and negotiated this thing so that Mr. Bennett would be a special conservator, with very limited powers, and the order appointing him specifically states that he does not have the powers generally accorded to a conservator under the probate code.
In addition, as Mr. Bennett himself stated on the record at the hearing before this

Page 27

court back in July, he said: My job as special conservator and special trustee will be to keep everything status quo, pending mediation. The Wellins or Mr. Wellin will continue to be able to use his funds for the customary and ordinary living expenses as they have been living over the past years. We will only stop -- my role really is just to stop transfers of his assets to third parties or to Mrs. Wellin or anything like that.
What we were concerned with at the time was that Mr. Wellin's wife, Wendy, who we believe is behind all this litigation, was going to give herself money, as power of attorney for Mr. Wellin or otherwise, from his assets. That's why the special conservator was put into place.
Now, Mr. Bennett, in November, took it upon himself to go way beyond that by working with Mr. Wellin to engineer this substitution, and that's a whole 'nother ball game, and whether he exceeded his authority or violated duties by doing that, that's a separate question that may be sorted out somewhere down the road.
But the question before you right now is whether he has the power, duty, and authority to sue, in this court or otherwise, and the answer

Page 28

to that is clearly no. He doesn't under the code. He doesn't under the order that's in place for him as special conservator.
So all this court would need to say is: Mr. Bennett, you've asked me for my advice. My advice is no, you don't have an obligation or a duty to pursue litigation relative to this substitution transaction.
THE COURT: Ms. Provence?
MS. PROVENCE: I'm going to try to keep it brief, Your Honor. I know we haven't even hit the motion yet.
Mr. Brunson just acknowledged that the substitution wasn't the subject of litigation. I can assure you that my client, as special conservator, is not a party to that litigation. I can assure you that the relief we are seeking today, which is to return the assets to the estate that is protected by this court, is not a subject matter of that jurisdiction.
We keep mentioning what my client did as attorney, what he's done as attorney. Irrelevant in here. He was appointed as a special conservator, and everyone knew he was also Mr. Wellin's private counsel.

Page 29

Your Honor, to accomplish the order, you must have the duties and powers to do so. I mean, that's kind of, to me, 101. But the most interesting and I guess the thing that troubles me the most about this case, the most bottom line basic as I can get it, is that Mr. Brunson just stated the purpose of this was to stop the transfers and assets to third parties, because they were worried about Wendy Wellin. But now that they have the assets, now that they're holding them, we don't need this court. We know we told you that he's allegedly incapacitated, and we wanted your protection, but now that we're holding $92 million, unaccounted for, don't worry about it. No problem. You can just wipe your hands of it and tell us to go to another court.
Your Honor, I'm impressed with Edward Bennett. We just met, we don't have a long history together, but he's one of the most comprehensive, well-educated fiduciaries I've ever had the benefit to work with, and I think to say to that type of fiduciary: You may not make an application to the court to seek the court's instructions because you haven't been sued yet is a level of irresponsibility that I don't think any

court would feel comfortable with.
The issue here is assets that belong to the estate. If we're going to fight about what the value of those assets are another day, then we would just ask the court to protect that asset, give the alleged incapacitated -- had they not brought a petition for conservatorship, Your Honor, at the very least, he would have the $50 million in his hand.
I just find it interesting that we are complaining about the very action that we brought. We didn't come here voluntarily. I'm sure Mr. Wellin did not choose to be brought into probate court and deemed incapacitated, and I don't think a protective proceeding, which was designed to protect his assets from third parties, should then be ignored because it's the petitioner that's now holding the assets.
THE COURT: Let me ask you this. I'm looking at the order. In Paragraph 2(c), Mr. Bennett shall have no duties and responsibilities that normally would accrue to a conservator or trustee, other than those in this order. I'm trying to find out where you indicated that he has a duty to --

MS. PROVENCE: Well, it's the first line, Your Honor. Edward Bennett is to ensure that transfers of assets are not made without fair and adequate consideration.
So we've had a promissory note go out, and nothing -- a promissory note that on its face, which you have a copy of, is valued at approximately $50 million has left the protected estate, and nothing has come back. There has been no transfer, no receipt of adequate value.
And if my client, Your Honor -- if my client had received an offer of: We would like to tender this $50 million to you as special conservator and provide you with protection on the remainder of the funds, whether they be in escrow or held with the court, until such time as this matter is fully resolved, you wouldn't see us here today.
But the issue being that he's been charged with a duty to protect assets, and I think if you were in his shoes and --
THE COURT: Let me ask you this: Did somebody else accept the note?
MS. PROVENCE: I'm sorry?
THE COURT: Who accepted the transfer,

the trustee?
MS. PROVENCE: The independent trustee, yes. The children serve as co-trustees, but the independent co-trustee did accept it.
MR. BRUNSON: That's not true, is it? That's not true. I'm sorry. I realize you're new to this, but that transaction didn't take place. Our view is that that just didn't -- it was never accepted. The three children are the three trustees who were in place at the time.
MS. PROVENCE: Your Honor, I actually can provide the court -- it's in my wonderful stack of documents here, but I'm more than happy to show the court, and it was provided as an attachment in yesterday's letter. It's referenced in Mr. Bennett's letter to this court, an acknowledgment signed by Lynn Watson, of Brown Brothers, acknowledging the transfer that we're discussing.
MR. BRUNSON: Acknowledging that you sent her the note.
MS. PROVENCE: Acknowledging that she's received the documents and accepted them.
MR. BRUNSON: I mean, that's just -- that's taking great, great, great liberties with

the facts to say that anybody accepted that note in completion of that transaction. That's just not --
THE COURT: Let me ask you this: Is there any agreement just to hold all the assets until the litigation in federal court has been resolved?
MR. BRUNSON: Well, let me address -- if I may, I'll address that question first, because that's where she ended.
So in November, Mr. Wellin purported to mark satisfied this note worth $50 million and give it to the trust in exchange for assets from the trust, ownership in a limited partnership, which he claims are not worth $50 million, but $90 million, okay, so he was trying to trade in $50 million for $90 million. Our position is that transaction never took place, we didn't accept it, and so forth.
But the $50 million, we tendered payment to Mr. Bennett on behalf of the trust to Mr. Wellin of the full amount of the note. True? Didn't we tender that?
MS. PROVENCE: With the contingency that that represented the full amount due.

0a57c3eb-4318-403a-8b42-0a909723c66d

MR. BRUNSON: The face amount of the note, we tendered payment of it. Mr. Bennett chose, for whatever reasons, to reject that, okay, and they want to now litigate and claim that they're really entitled to $90 million for a $50 million note instead of $50 million.

Some court somewhere is bound to make that determination one day. It's actually supposed to be in the federal court, because that's where the subject matter is currently pending. We can't have -- I mean, we've got actions in Delaware, South Dakota, probate court here, and two actions in federal court. I mean, this has all got to be consolidated and fairly heard by a court, and that's all we're trying to achieve.

So to answer the question, the $50 million is currently being held for the trust by the limited partnership, so the trust has the full $50 million for the note there.

Now, the other $42 million that they claim they're entitled to is not in the limited partnership, which is not a party to this action, it's not in the trust, which is not a party to this action, it is in the individual accounts of

the beneficiaries to whom it was distributed, the sole beneficiaries of the trust, and this court has no jurisdiction to require them to do anything.

Now, should that money be frozen pending outcome of this, that exact issue has been teed up for the federal court, and it has absolutely ruled no, a TRO is inappropriate, because what we're talking about here is money damages, and the fundamental rule of injunctions is you're only entitled to one if there's not an adequate remedy, which damages are.

THE COURT: Let me ask you this: I know Mr. Bennett's coming in here concerned about his fiduciary duty. You don't have any -- your clients would have no problem with what Mr. Bennett has done, or do you today? I mean, really, it'd be Mr. Wellin that would be upset with the special conservator.

MR. BRUNSON: Right.

THE COURT: I guess his attorney is -- I guess you want Mr. Bennett to go forward, or do you want to step in? I guess your position is that there's no need for a conservator, and he should be doing it individually.

MR. JAMES HOOD: Where we're currently postured now, Mr. Bennett's petitioned to go forward so he can have some guidance to determine whether or not to bring an action to recover Mr. Wellin's money.

These children have taken $150 million from him. We are fighting this in federal court, but we are not dealing with the asset substitution.

There is no question that my client is entitled to $50 million, and they won't give to it him, period, because he will not sign off as a complete release for a promissory note that he maintains he has substituted pursuant to his rights under the trust that's in front of you, Your Honor. So he's being deprived of $50 million they acknowledge that they're not even entitled to. And these are the same kids who are fighting to declare him incompetent.

Beyond that, there is a fight over whether the value of the substituted assets are $50 million or $90 million. In federal court, we're asking the entirety, the $150 million, to be returned to him.

So we know that no matter what

happens, Mr. Wellin's entitled to at least $50 million. Maybe Mr. Wellin gets $90 million if the asset substitution was proper and effective, plus all of the prejudgment interest and other damages he's entitled to by the wrongful withholding of his funds by his children, or $150 million, but in any event, he's stuck.

And the children want to go to a forum where they have argued for the longest possible discovery period, diligence period, so frankly, I think so that by the time this comes due, for an 87-year-old man who's been in the hospital three times for pneumonia, may not be here to have his day in court, so he's going to be deprived of $50 million so they can fight over his money.

And we would just ask this court to do what this court is designed to do, and that is to give Mr. Wellin, through his conservator that was appointed by everyone's consent, including my client's consent, the opportunity to at least get the $50 million back, protect the 40, and let the court decide who's right about this asset substitution, so he can go on living the last few years of his life, hopefully.

MR. BRUNSON: I don't think he

0a57c3eb-4318-403a-8b42-0a909723c66d

answered the question.
MR. JAMES HOOD: If there's some question I didn't answer --
THE COURT: Well, I guess I was asking if Mr. Bennett didn't come forward and pursue this action, I guess the one that would be damaged would be your client. I think you answered it by saying yes, you wanted him to go forward.
MR. JAMES HOOD: I did. That's the first thing I said out of my mouth.
THE COURT: He wanted him to go forward, but if he didn't go forward, would you be looking at bringing an action against Mr. Bennett?
MR. JAMES HOOD: I'm not free to discuss that, Your Honor. In fairness, I would need to confer with my client about what, if anything, he'd want to do. I can tell you that it's my understanding that he is completely satisfied with the help that Mr. Bennett's given him, but in this situation, what we're dealing with is a very significant issue to him, all created by his children, and we would just implore and beg the court to entertain it so we can move towards some resolution for this frail 87-year-old man.

MR. BRUNSON: Just a procedural note, Your Honor. There's no motion pending before you for an injunction, for conjunctive relief. If there was, it would need to be briefed, and we would have an opportunity to oppose it. And as you know, there's standards for injunctions in South Carolina, including success on merits and adequacy of remedy at law. So just procedurally, I just want to be clear, this court doesn't even have before it the issue of whether it could possibly freeze the assets of my clients today.
The question before the court, which was framed earlier, is simply Mr. Bennett simply wants to know whether currently he has the duty and the ability, under the order appointing him as special conservator, to bring an action in this court or some other court.
MS. PROVENCE: And to clarify, Your Honor, to do exactly what the petitioner has asked you to do, which is to protect his assets until such a determination is made. I think it's important to remember he claims this court has no jurisdiction over those children. Once they signed this petition --
MR. BRUNSON: Let's not argue.

MS. PROVENCE: Okay. That's fine.
THE COURT: Again, I guess, Mr. Hood, you're instructing that you do want Mr. Bennett to go forward as special conservator?
MR. JAMES HOOD: Yes, Your Honor, so we can ask -- or he can receive instructions from the court so he can proceed to try to recover assets that we know are ours.
THE COURT: And as far as today, I guess you filed an application. You did file a motion to dismiss.
MR. BRUNSON: Right, because the ex parte letter that Mr. Bennett sent to this court, which eventually was shared with us, very clearly asks that this court -- not for advice, but for this court to essentially grant a judgment of $90 million for Mr. Wellin, and so we filed a motion to dismiss and sent a letter to the court asking for clarification about exactly what we were going to be arguing here today. Now the question is framed differently.
THE COURT: The question is: Are you ready to go forward if the court finds that Mr. Bennett should go forward, or do you need additional -- do you need a summons and a petition

and then answer and discovery, or are you ready to go forward today?
MR. BRUNSON: Well, the question is does Mr. Bennett have the duty and power under the existing order appointing him as special conservator to bring an action for relief on behalf of Mr. Wellin, and that question I think we're really arguing right now.
Now, if the question is whether it's appropriate for Mr. Bennett to do that or whether he's entitled to some relief at some point, that is what we'd move to dismiss, because that's just far beyond the jurisdiction of this court, and it's a Rule 12(b)(8) issue.
So I guess I'm back to where I started in trying to understand what exactly it is the relief -- I think as the question has been narrowly framed, that relief is appropriate before this court. Anything broader than that is not. Certainly, an injunction would far exceed.
MS. PROVENCE: Your Honor, again, I'm confused on the injunction, because if we're acknowledging that the children petitioned and stated that his assets need to be protected, and that they're within the jurisdiction of this

0a57c3eb-4318-403a-8b42-0a909723c66d

court, and that one of the assets has allegedly been substituted, whether we go down the road of whether that substitution was valid in this court or not, I'm a little confused as to --

They've acknowledged -- and we're grateful to have the information as to where the other money is, because it makes more sense, so it's been distributed, and it's in their pocket.

The $50 million, Your Honor, I think we -- and perhaps we can all agree in court today that if that's the minimum that he's owed, and that amount can be surrendered without strings, we receive that money today, we get the court's instructions on the duties that my client owes. We're looking for protection, Your Honor. He was appointed in this court.

My interpretation of the order and the interpretation of the Code is that he has a duty to Mr. Wellin, as a special conservator, to protect those assets. We can't possibly protect them if they're in the possession of a party outside of our control, especially if we're now alleging that party's outside the court's control. That makes it even scarier for me.

THE COURT: Let me ask, Mr. Brunson,

do you believe that he needs a conservator, somebody to protect his assets or that he's incapacitated? I mean, that's what the children have filed.

MR. BRUNSON: Right. We brought this petition. We believe he's under undue influence, and he's too weak in various ways at his age to manage his own affairs.

THE COURT: And so if that is true, and we come and we get two experts, we find out he needs a conservator, what that conservator's duty is, then, what, to go in and --

MR. BRUNSON: At that point, clearly, that conservator would be substituted under Rule 17(a) in the federal court action, and if he believed that Mr. Wellin is entitled to damages because his substitution of assets was not honored, he would amend the complaint, assert a cause of action there, which is the only place that it could be brought right now, and he would pursue that against the children.

I mean, this is -- the idea that we would come into this court, take this one issue out of the federal court, and have it resolved here, without a record, without discovery, without

even a motion for injunction being filed, without any claim being asserted against the three petitioners -- they brought a petition, there's not a counterclaim pending against them for anything -- it's mind-boggling. It far exceeds anything that due process would require.

THE COURT: Well, I think what he's asking today is under this order, whether he needs to go ensure, safeguard, or get the assets of the alleged incapacitated person.

MR. BRUNSON: He's asking whether he has a duty and whether he has a right, not whether he should, whether he has a duty and whether he has a right under the order appointing him to special conservator. That's how I understood the question. And the answer is no, he does not. He has neither the duty nor the right under the order appointing him, because as I read you the transcript earlier, his role as special conservator was very narrowly confined.

And one other point that I don't think has been made clear --

THE COURT: Well, let me ask you this: If you're in here asking for a conservator to be appointed, the kids are for their father, and

somebody has taken money from the father, you would want that conservator to go after whoever took the money?

MR. BRUNSON: Not Mr. Bennett, because he doesn't have the power to do that.

THE COURT: I'm just talking about any conservator.

MR. BRUNSON: Well, if --

THE COURT: If you prevail in the conservatorship action and a conservator is appointed, wouldn't the conservator's duty be to safeguard and to gather all the assets for the alleged incapacitated person?

MR. BRUNSON: As they're set out in the probate code for a full conservator.

But one other thing that I think has not been clear, if I could, because you're getting the facts here piecemeal, but this --

THE COURT: It all may end up in federal court, but I guess the question today is should Mr. Bennett pursue --

MR. BRUNSON: Should he be the plaintiff in the federal court action. That, I think, is what you're asking.

THE COURT: Well, no, not necessarily,

0a57c3eb-4318-403a-8b42-0a909723c66d

because I think we get into this with our veterans' guardianships and conservatorships.

MS. PROVENCE: Just to clarify, Judge, that's not what we're asking for.

THE COURT: I know that's not why you're here today, but I'm just trying to -- we always look at the supremacy clause, and federal court is above it, but then the state courts are --

MR. BRUNSON: Well, it doesn't -- I mean, it could be another state court. The fact is under Rule 12(b)(8), there is a prior action pending on the subject matter of this, so any action -- even if you were to rule that Mr. Bennett should sue the children or whoever to recover this is going to have to be in the federal court, because that's where the action is pending. You can't go forum shopping, which is essentially what they're trying to do here.

And I think still there's one other key fact that hasn't been made clear, and that is Mr. Wellin has not -- it's not like somebody has stolen his assets. I mean, the money that we're talking about wasn't taken out of the household account. It's not like he gave away money. He

has a $50 million note, which he still has. It's just a question of whether that note was substituted or not.

And the $50 million is sitting there. It's been offered to him, and he's turned it down. So it's not like anybody has taken money out of Mr. Wellin's account and run off with it. This is a legal dispute about the efficacy of a transaction; it's not an issue of theft.

MS. PROVENCE: Your Honor, I think you very wisely came in and started with some basic questions on the conservatorship, and I'm pretty sure that I can respect the questions you were asking, because we just heard again that he's in frail health, and they're worried about undue influence.

I'd like to highlight as an aside that there's no undue influence. They have no standing. If we want to argue standing, they have no standing to argue undue influence between a living man and his spouse. There's no such case in South Carolina as undue influence between a spouse while the man is still living, hence the reason that this delay works so beautifully in their favor.

You know, we keep talking about the ex parte letter. Mr. Bennett contacted this court and was told to submit an application. That's what he did. He received instruction from the court to copy everybody on the letter. That's what he did.

I'm happy they're acknowledging that at the minimum, he's owed $50 million. Let us at least walk out of here today with that, with no strings attached.

But I take serious issue with the statement that this court does not have jurisdiction. If a conservator has to petition to return assets to the estate, this court is a court of exclusive jurisdiction on that matter. It is the federal exception. It is Marshall v. Marshall. If a conservator -- and I think he acknowledged that when you said it.

So it's kind of backwards to say: So, Mr. Brunson, if you'd gotten what you wanted at that first hearing, if you'd gotten a full conservator, would that conservator have the jurisdiction to petition to return those assets to the court? Absolutely, yes, he would. But because we got a special conservator, not only do

we want to deny him the ability to bring that petition, but we don't even want to let him go forward in a procedural fashion informally to request to the court whether or not he should do that. Whether or not he should do that is irrelevant to me. If you have a duty to do something, then you should do it.

When I read this order, quite frankly, Your Honor, I interpret it as you haven't received the assets that you feel you were due in exchange. You have a duty to bring this action. You have a duty to bring this action.

I want to clarify, because it is technical, Your Honor, and I've had at least a week to wrap my head around it, but the value in the asset did not change until after the time of substitution. It was the children's decision to liquidate, another part of this legal strategy that changed the asset value, not the substitution itself.

So it's not that Mr. Bennett tried to say: Hey, let me approve this transfer of $50 million in exchange for $92 million. Part of our testimony today was going to be how did Mr. Bennett, as special conservator, guarantee

0a57c3eb-4318-403a-8b42-0a909723c66d

himself that when that promissory note was exchanged, that the consideration received, which was a 58-percent interest in the partnership, was of adequate consideration.

Mr. Bennett was fine with that, with owning a 58-percent interest in the partnership. It was not until the children then liquidated that that that 58 percent became $92 million, and then 42 of it disappeared.

At the end of the day, Your Honor, I think that it's pretty clear. As long as this court is accepting a conservatorship to protect Mr. Wellin from his wife, Wendy Wellin, then they fully support anything that a conservator would have to do, but if he's coming to this court to ask guidance under a special conservatorship to protect Mr. Wellin from his own children, who are acknowledging that they're parties to other litigation against him, then we want this court to step down and not accept jurisdiction and argue that we don't have standing.

And maybe we're not as far apart as we seem, but I'm just -- I just do probate work. I don't practice a lot in the federal court. But what I do know is the federal court exception, and

I do know that we're going to be here if a conservator, whether it's a special conservator, whether it's Mr. Bennett, whether it's someone else, if they reviewed this transaction on its face and saw that there was no consideration received, they're going to bring an action to petition to return these assets to the estate, and that's all we're asking the court if we have the authority to do.

THE COURT: Thank you.

Anything else?

MR. BRUNSON: Yes, Your Honor. I mean, the first question is does he have the power under the existing order. The answer to that is clearly no. The existing order says, as you pointed out earlier, that he doesn't have the general powers of a conservator, only what's specifically stated, and it doesn't state he has the power to bring an action on behalf of Mr. Wellin, period.

So the question then becomes should the court expand his authority and power today to empower him to bring a lawsuit, and if so, if he wants to have that power, and he wants to join the -- or he wants to bring a proper

complaint in a proper court, that's a different question. Again, we weren't on notice of that one, but that's a different question altogether.

THE COURT: Let me ask them, the trust protector and trustee, do they have a position or do they have any -- they've been in this court also.

MR. ROSEN: Your Honor, on behalf of the trustee protector, Lester Schwartz, Richard Rosen.

We are very concerned that these assets are someplace we don't know where. Nobody knows where they are. Nobody's accounted for them. Despite numerous requests, nobody's responding. So we would like to know where the assets are. We would like a court order to protect those assets. We came here previously to try to get one, which unfortunately Judge Norton dissolved.

But these are children who are parties to this conservatorship, they brought the action, and they are within the jurisdiction of this court, so we agree with Ms. Provence that the court should do something to protect these assets.

Thank you.

MR. BRUNSON: And, of course, it's a key point that Judge Norton has considered this exact issue and said an injunction is absolutely not proper.

THE COURT: I understand. I'm not sure if we're totally there. I think we're looking at a lawsuit, rather than --

MR. BRUNSON: Well, no, it's a protection of assets question.

THE COURT: And again, I guess Mr. Wellin's attorney, you do want Mr. Bennett, as conservator, to pursue any assets that may be --

MR. JAMES HOOD: Absolutely. We do see this as an issue of theft.

MR. BRUNSON: And I just need to clarify. Is Mr. Wellin himself not capable of being a plaintiff in his own right? We need to know.

MR. ROBERT HOOD: He's very capable.

MR. BRUNSON: Then he doesn't need a conservator.

THE COURT: Well, Mr. Brunson, you've come here looking for a conservator.

MS. PROVENCE: Are they withdrawing their petition for appointment of a conservator?

0a57c3eb-4318-403a-8b42-0a909723c66d

MR. BRUNSON: Are we going to agree that a conservator should be appointed? Because we want somebody other than Mr. Bennett.

MS. PROVENCE: Well, he just said he doesn't need one. Now he wants somebody. We just -- what they want, Your Honor, is somebody that can protect the children.

THE COURT: Let me help you here. I think the order was to maintain the status quo, but I think this court does have the duty to ensure and protect assets of any alleged incapacitated person, so we're going to strike Mr. Bennett as special conservator, pursue any actions that he thinks are necessary to protect assets of an alleged incapacitated person, and then we'll --

There are some new revisions to the probate code and dealing with transfer and removal, and I'll have you look at those. I think in the interest of justice, sometimes actions that may start in one court may and should end up in one court that's hearing all of them, so we can look at those.

But I would say Mr. Bennett should pursue the action. In the interim, we'll try to

get the two doctors to get their reports, so that we can have the merits hearing on whether he does need a conservator.

MS. PROVENCE: Your Honor, may it please the court, could we ask that the court consider that Mr. Bennett be allowed to accept the $50 million that was originally tendered, absent the conditions, as special conservator, not as counsel, but accept what we've agreed upon is due him, due the length of time that this may stay in litigation and the aging health of the alleged incapacitated? Since it's been admitted today by both parties that that's a minimum of what he's owed, would they be willing to surrender that to Mr. Bennett as conservator?

THE COURT: Before I ask Mr. Brunson, I'll ask Mr. Wellin's attorney. I guess you would say yes to that?

MR. JAMES HOOD: Yes, sir. We're moving in the right direction.

THE COURT: Mr. Brunson, would you consider that?

MR. BRUNSON: No, Your Honor. We'll pay them the $50 million that is due on the note, the note will be satisfied, and that will be

resolved. If that's not acceptable, if they're not willing to agree to that, the $50 million will just sit right there in the trust until the court decides who's entitled to it.

MR. ROSEN: Your Honor, as counsel for the trust protector, we're not aware that there are any funds in any trust. We've seen documentation that the funds have been distributed to the individual children, so we're not aware of any funds in any trust. If Mr. Brunson knows something different --

MR. BRUNSON: You should know this, but the $50 million that's due on the note is right there ready to be paid. We presented a check to Mr. Bennett. He sent it back the same day. It's just sitting there waiting.

MR. ROSEN: He says right there. We don't know where where is.

THE COURT: Which bank is it in?

MR. BRUNSON: The bank, is it UBS? It's the same place it's always been.

MR. ROSEN: We'd like to know the account number.

MR. BRUNSON: Mr. Rosen, I think in full context, Mr. Schwartz fired the corporate

trustee which had the account, hired another one, who then resigned, so there is no account for the trust, but the three children, as trustees, are holding the money in an account of the limited partnership for the payment of that note. There is no account that the current trustees even have access to.

So perhaps that's the source of confusion for Mr. Rosen, the fact that he removed the corporate trustee, so we can't have an account for the trust.

MR. ROSEN: Your Honor, at a minimum, could we request counsel to provide us with some documentation that there is some kind of trust account? Because as of today, I don't think anybody, other than Mr. Brunson's team, has seen this documentation he's talking about. We've asked for it.

MR. BRUNSON: What are you talking about?

MR. ROSEN: An account is a trust account.

MR. BRUNSON: What's your question?

THE COURT: Mr. Brunson, I think you indicated there is no trust account, but it's held

0a57c3eb-4318-403a-8b42-0a909723c66d

in a partnership account.
MR. BRUNSON: The partnership is holding the money for the trust pursuant to the instructions from the trust.
THE COURT: And that's in UBS in which state or which city?
MR. BRUNSON: Well, it's in New York. I mean, it's all over the place.
Could I have just a moment?
THE COURT: Sure.
(Brief pause.)
MR. BRUNSON: Your Honor, I have a proposal. We will pay the $50 million into this probate court.
THE COURT: We don't accept the money. You'll have to get somebody else.
MR. BRUNSON: Well, as long as it is subject to a court's jurisdiction as being held by a court. My clients have no interest in that $50 million. It belongs to Mr. Wellin, but only in full exchange for payment of the note.
THE COURT: Maybe you'll agree to Special Conservator No. 2. Is there a No. 2 out there?
MS. PROVENCE: Your Honor, again, I

hate to always be the blond, but they just acknowledged that it belonged to Mr. Wellin. This court has appointed a special conservator, their own inventory lists it as an asset, but yet Mr. Brunson said to this court: We're not going to turn it over absent a release.
Now, we're happy to participate in the signing or have this court order state that the acceptance does not acknowledge anything with regards to this legal dispute, but I think to look at the probate court and say: We acknowledge the amount on his inventory, we acknowledge it belonged to Mr. Wellin, we agreed to the appointment of the special conservator, but we're not going to turn it over, because the special conservator won't sign a release.
This is an 87-year-old man. Just at the amount of paperwork, I can tell you we're going to be going around and around for a while, and Your Honor, the delay works in their favor.
THE COURT: I think what he's asking is you're willing to pay it over, Mr. Brunson, but just to hold it --
MR. BRUNSON: To the court.
THE COURT: But not to --

MR. BRUNSON: Not to Mr. Bennett, no, sir.
THE COURT: How about to another fiduciary? The problem we have is that we used to have these small estates, and judges would handle the money, and then something happened up in Dorchester County with a predecessor, so probate courts don't hold any money, so we've got to have somebody out there as a third party to hold it, either another bank, fiduciary.
MR. BRUNSON: If they're so concerned about the $50 million, we'll pay into the federal court. Let us know.
MS. PROVENCE: But Your Honor, I'm confused. Are they saying that they're happy -- they've acknowledged it belongs to Mr. Wellin. Are they stating that they're happy to pay it over to a different conservator, or they're wanting to put it -- I believe what they're saying is: We want to put it somewhere where he can't access or use it. And when you're 87 years old and in failing health, they've acknowledged this money belongs to him, they're going to --
THE COURT: Mr. Brunson, why don't we do this. Why don't we put it in the special

conservator's name under a restrictive order that Mr. Bennett can have no withdrawals unless he has court approval, this court's approval. We have a number of -- all of our conservatorships have --
MR. BRUNSON: We would want an independent, separate conservator appointed. We've got major problems with how Mr. Bennett has performed as the conservator for Mr. Wellin, as the children of Mr. Wellin, and so we really just -- frankly, we don't trust him. We're not going to put the money in his account.
I'm not saying he's going to run off with it himself. I don't want that to -- that's not what I'm saying. What I am saying is he is such an advocate for who we think the real party at interest here is that we're not willing to do that.
Now, the court can obviously order what it -- actually, I don't think this court does have jurisdiction to order that. I think we could agree --
THE COURT: Agree to it. Is there somebody else in his firm, or the whole firm you've got issues with?
MR. BRUNSON: I'm sure we can agree on

0a57c3eb-4318-403a-8b42-0a909723c66d

a fiduciary to hold the funds, with the funds in counsel. I'm not sure.

THE COURT: That's what I was proposing. Special Conservator No. 2, who would that be? I've got somebody in --

MS. PROVENCE: Well, your Honor, I'm just confused because they just acknowledged that it's his money.

MR. BRUNSON: It's only his when he marks the note completely satisfied.

MS. PROVENCE: Why is that? Explain that to the court.

THE COURT: Mr. Brunson, what I'm trying to do is you may have to go through a little bit of litigation just to get where you want to get.

He's offering a settlement. I'm trying to get you a middle ground here.

MS. PROVENCE: I understand, but to me the middle ground is surrendering the $50 million to be held by a special conservator that's already under a duty to this court. I understand they don't like him because he's not pursuing Wendy Wellin in the way that they want him to and is instead looking into what the children's actions

are right now, but quite frankly, that's the role of a conservator.

I understand, Your Honor, but to me -- and I don't mean to be disrespectful, but the middle ground is not to turn the money over so that -- and to restrict it, as long as they're willing to turn it over so that it can be accessed.

We have a large concern with a tax payment that could be coming as a result of this liquidation, a very large tax payment, and he may need access to those funds. We don't mind getting court approval, as long as we're going through the normal court approval process and showing the issue.

But I just have difficulty with them listing the asset on their inventory, acknowledging in court that it belongs to Mr. Wellin, and then refusing to surrender it to a court-appointed conservator. It's just contradictory.

MR. BRUNSON: We're not willing to let them have access to that money until they're willing to mark that note as satisfied. I thought we could work out something, but apparently, we

can't.

MS. PROVENCE: Again, I feel like this court is being used as a litigation strategy. They just said it belonged to Mr. Wellin. Their inventory lists it, Your Honor, as an asset.

MR. BRUNSON: If they have a position, we have a position. That's going to be litigated, and some court is going to rule who's entitled to how much.

THE COURT: I think the good middle ground is to have -- is there another person that could hold the $50 million?

MR. BRUNSON: Your Honor, I think we're just going to -- I need to consult with my clients. I think I've gone too far with this idea. I thought if I could pay it into the court, that would be one thing, but now we're getting a little far afield from that.

THE COURT: We can check with our clerk of court. They may accept it downstairs. Would that be acceptable?

MR. BRUNSON: I'll have to consult with my clients. I need to tell them about the full context of the hearing and so forth.

THE COURT: I understand.

MS. PROVENCE: Do we know, Your Honor, if it would earn interest with the clerk of court? I don't believe it does in Dorchester County, but we also don't hold funds regularly, so I wasn't sure.

THE COURT: I'm not sure about that.

MS. PROVENCE: The issue there being, Your Honor, as I'm sure you realize with that amount of money, this could be providing a significant annual or monthly income for Mr. Wellin's regular living expenses, which is one of the tasks that my client is responsible for, so the longer we delay, we're looking at -- I don't compute interest, but --

THE COURT: Well, I'm not sure. There's no issue as far as cash flow now, is there, for the incapacitated person?

MS. PROVENCE: This tax payment, Your Honor, could present a huge issue, which we acknowledge that that is beyond the scope of today's hearing, but it could, in fact, produce a huge issue.

THE COURT: Why don't you see if you can work something out, if somebody could hold the money. Mr. Brunson, you're still not comfortable

0a57c3eb-4318-403a-8b42-0a909723c66d

with the clerk of court or with a third party?
MR. BRUNSON: No, Your Honor. I think the money's just probably better sitting right where it is until a court rules on the underlying liability issue.
MS. PROVENCE: Could I ask what the fear is? Would that be appropriate? Just so that we understand what the fear is under the special conservatorship.
MR. BRUNSON: You're just going to need to go get a judgment.
MS. PROVENCE: And Your Honor, I would repeat I believe this court has full jurisdiction over that asset, and we would seek that judgment before this court.
MR. BRUNSON: I mean, the court doesn't have jurisdiction over the asset. The trust is not even a party to this proceeding. The owner of the asset is not here.
MR. JAMES HOOD: I think he said the children have the money. He brought the petition.
MR. BRUNSON: No. We're talking about the $50 million.
MR. ROBERT HOOD: He concedes the $50 million is Keith Wellin's. All the money is

Keith Wellin's. He made it all. They've taken $90 million of it, his children, contrary to his wishes. All we're saying is they concede that this $50 million is his. Put it in the court, under the court's order and control, in an interest-bearing account, so Mr. Wellin can sleep tonight knowing his money is in the hands of the court, not his three children that have stolen $90 million dollars from him.
THE COURT: Mr. Brunson, do you concede that that $50 million is Mr. Wellin's?
MR. BRUNSON: As soon as he signs off that it's paid in satisfaction of the note, he's entitled to receive that consideration.
MR. ROBERT HOOD: He's trying to get an advantage in a case in federal court he's not entitled to. It's Mr. Wellin's money, and it doesn't have any strings attached to it.
MR. BRUNSON: I'm sorry. Did I answer your question, Your Honor?
THE COURT: Well, I didn't -- I think you indicated it's his money.
MR. BRUNSON: It's not his money until the note is marked satisfied. We've tendered payment of the note. He's rejected it. We

tendered payment. I mean, the check went to Mr. Bennett. Mr. Bennett sent it back the same day saying: We refuse to accept this payment of the note. When he's willing to accept it as payment of the note, we'll be willing to pay it, but otherwise, the court --
THE COURT: Let me ask Ms. Provence, why aren't they willing to accept the $50 million? You're saying it should be that the stock that was sold --
MS. PROVENCE: Well, Your Honor, the condition that they're stating is that he's accepting the payment in exchange for a release of the promissory note, and then simultaneously, they're stating that: We're arguing in federal court that the substitution was valid, which exchanged that promissory note for a partnership interest, which has since been liquidated and is worth 92.
Their arguments conflict each other, because we're essentially stating that he's either made that substitution or he has not. They want us to argue that in federal court. If he has not made the substitution, he's entitled to $50 million. If he has made the substitution,

he's entitled to approximately $92 million.
The minimum he's entitled to -- and that's why they said it's Keith Wellin's money, but what they're doing is telling this court that the special conservator must sign off releasing Mr. Wellin's ability to participate in the very federal litigation they keep saying is the case that we need to be hopping over to.
There's no way, Your Honor, I could allow my client, as special conservator, to sign a release to that effect. Now, we're more than happy to sign stating that acceptance of the funds does not mean anything in the federal litigation, but to sign something saying that that means that we are accepting the value of the promissory note would be, to me, a clear violation of my client's duties to Mr. Wellin.
But it's confusing to me how we're stating it's his money, they brought this petition, they said he needed to be protected, and they're refusing to turn over at least a minimum they know is due to him.
THE COURT: Mr. Brunson, is that the minimum that's due, the 50?
MR. BRUNSON: The $50 million is

0a57c3eb-4318-403a-8b42-0a909723c66d

what's due on the face of the note. I don't think there's any question about that.

THE COURT: Let me ask you this: Any issue with the special conservator holding the $50 million and also the note until the litigation's resolved?

MR. BRUNSON: I just don't think that accomplishes anything. The money's safe right where it is. It's in a trust for his -- for payment of that note.

And, you know, Your Honor, we've tried to work this out. We haven't been able to work it out. This court doesn't have jurisdiction to order us to pay that note, because the party's not here who owns -- who has the $50 million. That's not my clients individually, that's the trust. So I'm not sure we're making progress.

MS. PROVENCE: Well, then how --

THE COURT: Is that a different trust, or is that the trust --

MR. BRUNSON: It's a trust that's not a party to this litigation. There are several trusts out there.

THE COURT: It's not the one that I guess Mr. Rosen's client is trust protector of?

MR. BRUNSON: It is, but that trust is not a party to this petition for special conservator. This petition is appointing conservator for Keith Wellin. And there is an irrevocable trust that Mr. Wellin created long ago that's a party to the federal litigation that's not a party to this litigation. That's who has the $50 million.

MS. PROVENCE: So he has the authority to require the condition, but not the authority to release the money. I mean, Your Honor, we're chasing our tails at this point. I just think, though, that we've stated in court, and I think the difference is -- when we say what's the difference, the difference is an 87-year-old man, by their accounts who is in horrible health, being able to lay his head down at night and know where his minimum amount of money is.

I just -- to say this court doesn't have jurisdiction over a protected person when they brought the action stating that he needed to be protected and consented to the conservator, who is trying to do his job in protecting him, is a little bit contradictory.

I absolutely think you have

jurisdiction. I'm more than happy to brief the issue on why I think you have jurisdiction and ask that this court reconsider accepting or allowing the special conservator to deposit that $50 million contingent on no releases.

THE COURT: Anything else?

So we've got the order for special conservator. I don't think that gives Mr. Bennett the authority to pursue that action, but I believe, based on what we've heard today, you've brought an action -- the kids have brought an action against dad, and a special conservator is appointed. Dad, through his individual attorney here, is indicating that he does want the special conservator to proceed, so I'll indicate Mr. Bennett should proceed.

And I'll have Ms. Provence -- and both of you can submit proposed orders, but I believe those assets and the note should be turned over to a fiduciary, and I believe this court -- I mean, that's our job is to protect incapacitated adults, and if you're indicating that it's his money, I don't know what the harm is for the conservator to hold the money and the note.

MR. BRUNSON: Is that -- that's not an

order of the court to --.

THE COURT: What I'm asking for is Ms. Provence is saying that we've got the authority to do that. I need to pursue that before I sign that. I'm not ordering that today. What I am ordering is that Mr. Bennett does have the right to pursue an action.

MR. BRUNSON: That part I understand.

THE COURT: The other part, Ms. Provence is indicating that this court does have the ability or the right to order the payment of monies to an incapacitated person. I think you may need to bring maybe the same action for that $50 million.

MR. BRUNSON: If they want to sue the trust for that, they can bring an action. Bring the complaint, get the proper party in the proper court, and we'll litigate it. This is just not it. The trust is not a party, Your Honor. I mean that respectfully. The court cannot order a nonparty to do -- to pay $50 million over to somebody else.

THE COURT: Well, that nonparty is represented here today and doesn't know where that money is, do they?

0a57c3eb-4318-403a-8b42-0a909723c66d

MR. BRUNSON: Well, they're not entitled to. They're not entitled to know that.
THE COURT: The trust protector and trustee?
MR. ROSEN: Your Honor, I'm a little confused. I thought the children were the trustees. The children are the trustees. They are parties. They brought this action, so they are parties.
MR. BRUNSON: Not as trustees of the irrevocable trust.
MR. ROSEN: I don't think that makes any difference.
MR. BRUNSON: It absolutely makes a difference.
THE COURT: Well, they're the parties in the conservatorship, aren't they?
MR. BRUNSON: As the children, as individuals, not as trustees of a trust, which is a completely separate issue.
MR. ROBERT HOOD: It sounds like they want to take more than $90 million. And the $50 million conceded by them is my client's. Go ahead and rule and protect my client and put that money in the court, no strings attached, on a

court order that can be used for whatever.
But there's no reason for Mr. Brunson to have that money in an account somewhere in New York, controlled by these three children. Daddy gave them $10 million each in 2013, in addition to the $90 million -- $93 million they just took. So for Lord's sakes, leave that $50 million where Keith Wellin knows it's secure, it's not in his hands or any of these lawyers' hands, it's in the court's hands.
And you do have that jurisdiction. This is a court of equity. Your job is to do equity for these parties. He's conceded it's my client's money. Put it where the court can protect it, away from his clients, whose conduct is obvious.
MR. BRUNSON: I just think I need to clarify one thing for the record. If I said it's Keith Wellin's money, the context of that statement was as soon as he agrees to mark the note as satisfied. I mean, nobody is going to pay a debt if the creditor is unwilling to say this is in full and fair satisfaction of the debt. That's the only issue.
THE COURT: Well, on that issue,

submit some, I guess, brief and proposed orders, and I'll take a look at that. Maybe if I don't sign that, there will be some separate litigation.
MS. PROVENCE: Thank you, Your Honor.
THE COURT: Anything else for today?
MR. BRUNSON: No. Thank you, Your Honor.
THE COURT: Thank you.
(The proceedings were concluded at 2:20 PM.)

CERTIFICATE OF REPORTER

I, Marie H. Bruegger, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of February, 2014, at Charleston, Charleston County, South Carolina.

Marie H. Bruegger
Registered Professional
Reporter, CCR
My commission expires
April 18, 2021

0a57c3eb-4318-403a-8b42-0a909723c66d

A

abiding 20:11
ability 21:16 23:15 39:15 49:1 69:6 73:11
able 27:4 70:12 71:17
ABNEY 2:5
absent 10:17 55:7 59:6
absolutely 17:16 35:8 48:24 53:3 53:13 71:25 74:14
accept 19:5 31:23 32:4 33:18 50:20 55:6,9 58:15 64:20 68:3,4,8
acceptable 56:1 64:21
acceptance 59:9 69:12
accepted 31:25 32:9,23 33:1
accepting 7:3 50:12 68:13 69:15 72:3
access 57:7 60:20 63:12,23
accessed 63:8
accomplish 29:1
accomplishes 70:8
accorded 26:22
account 46:25 47:7 56:23 57:1,2,4,6 57:10,15,21,22,25 58:1 61:11 67:6 75:3
accounted 52:13
accounts 34:25 71:16
accrue 30:22
accurate 1:22 77:5
achieve 34:16
acknowledge 36:17 59:9,11,12 65:20
acknowledged 18:3 28:13 42:5 48:18 59:2 60:16,22 62:7
acknowledging 32:18,20,22 41:23 48:7 50:18 63:18
acknowledgment 32:17
action 9:8 14:3,18 15:10 19:14,19 22:25 24:18 25:1 25:2,7,7,20 26:7 30:11 34:23,25 36:4 38:6,13 39:16 41:6 43:15 43:19 45:10,23 46:12,14,17 49:11 49:12 51:6,19 52:21 54:25 71:21 72:9,11,12 73:7 73:13,16 74:8
actions 34:12,13 54:14,20 62:25
actual 11:7
addition 26:24 75:5
additional 18:6 25:13 40:25
address 33:8,9
adequacy 39:8
adequate 18:24,25 19:2,4 31:4,10 35:12 50:4
adjudge 24:21
administrator 24:1
admitted 55:12
adults 72:21
advantage 67:16
advice 16:18 28:5,6 40:15
advise 26:5
advocate 61:15
affairs 43:8
affixed 77:9
afield 64:18
afternoon 4:1 26:4
age 43:7
aggrieved 11:17 13:3
aging 55:11
ago 6:19 7:24 71:5
agree 5:19 18:8,10 18:10 19:1 20:9 42:10 52:23 54:1 56:2 58:22 61:21 61:22,25
agreed 20:23 22:20 55:9 59:13
agreement 5:5 6:20 21:10 33:5
agreements 10:15
agrees 75:20
ahead 74:24
alleged 30:6 44:10 45:13 54:11,15 55:11
allegedly 23:19 29:12 42:1
alleging 22:18 42:23
allow 69:10
allowed 55:6
allowing 72:3
allows 12:10
altogether 52:3
amend 43:18
amount 12:25 18:5 19:7 33:22,25 34:1 42:12 59:12 59:18 65:9 71:18
annual 65:10
answer 9:23 10:24 12:4 21:6 26:10 27:25 34:17 38:3 41:1 44:16 51:14 67:19
answered 38:1,7
anxious 6:13
anybody 15:2 25:25 33:1 47:6 57:16
apart 50:22
apparently 63:25
APPEARANCES 2:1 3:1
appears 7:6 19:17
application 12:9,11 13:21 23:24 29:23 40:10 48:3
applying 15:2
appointed 8:24 17:7 20:16,19 23:13,17,25 28:23 37:19 42:16 44:25 45:11 54:2 59:3 61:6 72:13
appointing 9:1 26:21 39:15 41:5 44:14,18 71:3
appointment 21:10 22:17 53:25 59:14
appropriate 22:4 41:10,18 66:7
approval 61:3,3 63:13,14
approve 49:22
approximately 17:22 31:8 69:1
April 77:23
argue 13:17 15:3 39:25 47:19,20 50:20 68:23
argued 26:11 37:9
arguing 22:21 40:20 41:8 68:15
argument 25:8 26:1
arguments 68:20
aside 47:17
asked 28:5 39:19 57:18
asking 9:22 11:1 14:16 36:23 38:4 40:19 44:8,11,24 45:24 46:4 47:14 51:8 59:21 73:2
asks 40:15
assert 43:18
asserted 44:2
asset 18:16,23 30:5 36:8 37:3,22 49:16,19 59:4 63:17 64:5 66:14 66:17,19
assets 13:6,12 14:4 17:1 18:15 21:16 21:17 22:2,21 23:3,4,24 24:14 25:4 27:8,14 28:18 29:8,10 30:2,4,16,18 31:3 31:20 33:5,13 36:21 39:11,20 40:8 41:24 42:1 42:20 43:2,17 44:9 45:12 46:23 48:14,23 49:10 51:7 52:12,16,17 52:24 53:9,12 54:11,15 72:19
ASSOCIATES 1:21
assure 7:17 28:15 28:17
attached 19:6 48:10 67:18 74:25
attachment 32:15
attack 10:7
attempt 24:13
attempting 22:21
attorney 27:13 28:22,22 35:21 53:11 55:17 72:13
ATTORNEYS 2:2 2:10,16,20 3:2
Austin 5:10 6:1,5 6:16,16,19
authority 14:2,17 15:10 16:19,22 26:7 27:20,24 51:9,22 71:9,10 72:9 73:4
aware 19:14,17 20:1 56:6,9

B

B 2:12
back 8:13 14:21 21:2 27:1 31:9 37:21 41:15 56:15 68:2
backwards 48:19
ball 27:19
bank 56:19,20 60:10
based 13:22 19:15 25:16 72:10
basic 29:6 47:11
basically 20:17
basis 15:7
Beach 1:23

beautifully 47:24
beg 38:23
behalf 6:3 8:16 13:2 14:20 15:11 15:18 16:21 20:5 24:16,24 25:23 33:21 41:7 51:19 52:8
belief 11:15
believe 5:18 7:5,16 10:3 27:12 43:1,6 60:19 65:3 66:13 72:10,18,20
believed 43:16
believes 26:12
belong 30:2
belonged 59:2,13 64:4
belongs 58:20 60:16,23 63:18
beneficial 4:11
beneficiaries 10:6 35:1,2
benefit 18:4 29:21
Bennett 2:16,20,21 8:16,23 10:4,23 13:2 14:2,16,20 14:23 15:9,11,15 16:3,19 18:11 26:5,19,24 27:16 28:5 29:18 30:21 31:2 33:21 34:2 35:17,22 38:5,13 39:13 40:3,13,24 41:4,10 45:4,21 46:15 48:2 49:21 49:25 50:5 51:3 53:11 54:3,13,24 55:6,15 56:15 60:1 61:2,7 68:2,2 72:8,16 73:6
Bennett's 16:13 32:16 35:14 36:2 38:19
best 4:12 5:1 20:14 23:17
better 66:3
beyond 16:25 27:17 36:20 41:13 65:20
bit 18:18 62:15 71:24
blessings 23:22
blond 59:1
bobby.hood@ho... 2:14
bottom 29:5
bound 34:7
brief 28:11 58:11 72:1 76:1
briefed 39:4
briefs 15:1
bring 14:3,17 15:10 16:20 17:4 22:24 22:25 23:12 36:4 39:16 41:6 49:1 49:11,12 51:6,19 51:23,25 73:13,16 73:16
bringing 9:8 12:9 17:2,9,10 38:13
broader 41:19
Brothers 32:18
brought 16:8 19:19 22:11 30:7,11,13 43:5,20 44:3 52:21 66:21 69:19 71:21 72:11,11 74:8
Brown 32:17
Bruegger 1:16 77:3 77:21
Brunson 2:4 5:7,24 6:25 7:14,22 8:9 10:19,21 11:8 14:13 18:11,18 19:8 24:7,9 28:13 29:6 32:5,20,24 33:8 34:1 35:20 37:25 39:1,25 40:12 41:3 42:25 43:5,13 44:11 45:4,8,14,22 46:10 48:20 51:12 53:1,8,15,20,22 54:1 55:16,21,23 56:10,12,20,24 57:19,23,24 58:2 58:7,12,17 59:5 59:22,24 60:1,11 60:24 61:5,25 62:9,13 63:22 64:6,13,22 65:25 66:2,10,16,22 67:10,12,19,23 69:23,25 70:7,21 71:1 72:25 73:8 73:15 74:1,10,14 74:18 75:2,17 76:6
Brunson's 57:16
BRYSON 2:5
bryson.geer@nel... 2:8

C

call 7:8,21
calling 7:22
calls 8:1
capable 53:16,19
capacitated 10:14
capacity 5:3 9:15 9:17 14:9 17:9 20:23 26:6
carefully 16:5 18:21
Carolina 1:1 12:10 25:4,6 39:7 47:22 77:4,10
CARTER 2:21
case 1:7 4:4 29:5 47:21 67:16 69:7
cash 65:16
cause 43:19 77:7
caveat 6:1
CCR 77:22
Cedar 2:18
Center 2:6
certainly 12:23 41:20
CERTIFICATE 77:1
Certified 77:3
certify 77:4,6
challenged 15:12 16:14 21:8
challenging 19:20
change 49:16
changed 49:19
charged 31:20
Charleston 1:2,14 1:15,23 2:7,13,23 3:5 4:2,4 77:9,9
Charlotte 1:24
chasing 71:12
check 56:15 64:19 68:1
children 9:24 10:10 21:1 24:22 25:12 32:3,9 36:6 37:6,8 38:22 39:23 41:23 43:3,21 46:15 50:7,17 52:20 54:7 56:9 57:3 61:9 66:21 67:2,8 74:6,7,18 75:4
children's 6:22 49:17 62:25
choose 30:13
chose 34:3
Church 2:22
circumstance 20:19
circumstances 7:3 25:16,21 26:15
city 58:6
Civil 25:5
claim 22:1 25:3,10 25:15 34:4,22 44:2
claims 33:15 39:22
clarification 10:22 40:19
clarify 11:23 39:18 46:3 49:13 53:16 75:18
clause 46:7
clear 13:25 16:11 16:21,23 17:25 39:9 44:22 45:17 46:21 50:11 69:16
clearly 23:7,10 28:1 40:15 43:13 51:15
clerk 4:5,6 64:20 65:2 66:1
client 9:13 12:9 13:5,9 14:11 18:22 20:5,10,22 22:7 23:5 28:15 28:21 31:11,12 36:10 38:7,16 42:14 65:12 69:10 70:25 74:24
clients 35:16 39:11 58:19 64:15,23 70:16 75:15
client's 21:18 37:20 69:16 74:23 75:14
code 12:10 23:6,10 24:2 26:23 28:1 42:18 45:15 54:18
Columbia 1:24 5:25
come 4:12 16:2 20:15 30:12 31:9 38:5 43:10,23 53:23
comes 37:11
comfortable 4:23 7:3 24:6 30:1 65:25
coming 35:14 50:15 63:10
commission 77:22
company 24:23
complaining 30:11
complaint 12:14,19 14:7,22 43:18 52:1 73:17
complete 36:13 77:5
completely 38:18 62:10 74:20
completion 33:2
comprehensive 29:20
compute 65:14
concede 67:3,11
conceded 74:23 75:13
concedes 66:24
concern 6:21 10:4 20:12 63:9
concerned 15:21 27:10 35:14 52:11 60:11

concluded 76:9
condition 6:9 68:12 71:10
conditions 55:8
Condon 1:11 4:2
conduct 75:15
confer 38:16
conference 7:24
confined 44:20
conflict 5:18 6:6,6 7:18 68:20
conflicts 5:14
confused 11:2 41:22 42:4 60:15 62:7 74:6
confusing 69:18
confusion 57:9
conjunctive 39:3
consent 37:19,20
consented 71:22
conservator 2:16 5:3 8:17,24 9:1,3 9:7 10:5,7 11:11 12:11,15 13:5,14 14:3 15:10,17 16:25 17:6 21:11 22:18,20 23:9,11 24:1,15 26:6,12 26:12,15,20,23 27:2,15 28:3,16 28:24 30:23 31:14 35:19,24 37:18 39:16 40:4 41:6 42:19 43:1,11,14 44:15,20,24 45:2 45:7,10,15 48:13 48:17,22,22,25 49:25 50:14 51:2 51:2,17 53:12,21 53:23,25 54:2,13 55:3,8,15 58:23 59:3,14,16 60:18 61:6,8 62:4,21 63:2,20 69:5,10 70:4 71:3,4,22 72:4,8,12,15,23
conservators 23:16 23:17
conservatorship 8:12 10:12 30:7 45:10 47:12 50:12 50:16 52:21 66:9 74:17
conservatorships 46:2 61:4
conservator's 43:11 45:11 61:1
consider 55:6,22
consideration 13:12 31:4 50:2,4 51:5 67:14
considered 5:9 53:2
consistent 11:3
consolidated 34:14
constitute 5:17
consult 64:14,22
contact 6:5 8:7
contacted 48:2
contain 25:3,18
context 56:25 64:24 75:19
contingencies 10:12
contingency 33:24
contingent 72:5
continue 27:4
CONTINUED 3:1
contradictory 63:21 71:24
contrary 67:2
control 42:22,23 67:5
controlled 75:4
conversation 7:9
convinced 14:9
copy 31:7 48:5
corporate 56:25 57:10
correct 19:18
correctly 23:11
counsel 2:1 4:8 5:8 5:9 7:20 17:11 28:25 55:9 56:5 57:13 62:2 77:7
counterclaim 44:4
County 1:2,14 4:3 4:4 60:7 65:3 77:9
course 53:1
court 1:1,14 4:1,10 4:15,20,24 5:12 5:16,21 6:15,21 7:11,20 8:3,6,10 8:14,25 9:5,6,12 9:16,20,23,24 10:9,13,17,19,24 11:5,19,22,25 12:10 13:4,13,19 13:25 14:11,17,22 15:3 16:10,12,15 17:7,12,18 18:1 19:6,9,12,15 20:15,19 21:2,3,4 21:9,12,23 22:9 22:14,23,25 23:1 23:24,25 24:19 25:1,6,8,11,14,20 25:24 26:3,5,10 26:17 27:1,25 28:4,9,19 29:11 29:16,23 30:1,5 30:14,19 31:16,22 31:25 32:12,14,16 33:4,6 34:7,9,12 34:13,15 35:2,7 35:13,21 36:7,22 37:14,16,17,22 38:4,11,23 39:9 39:12,17,17,22 40:2,7,9,14,15,16 40:18,22,23 41:13 41:19 42:1,3,10 42:16,25 43:9,15 43:23,24 44:7,23 45:6,9,19,20,23 45:25 46:5,8,11 46:17 48:2,5,12 48:14,14,24 49:4 50:12,15,19,24,25 51:8,10,22 52:1,4 52:6,16,23,24 53:5,10,22 54:8 54:10,21,22 55:5 55:5,16,21 56:3 56:19 57:24 58:5 58:10,14,15,19,22 59:3,5,8,11,21,24 59:25 60:3,13,24 61:3,18,19,22 62:3,12,13,22 63:13,14,18 64:3 64:8,10,16,19,20 64:25 65:2,6,15 65:23 66:1,4,13 66:15,16 67:4,8 67:10,16,21 68:6 68:7,16,23 69:4 69:23 70:3,13,19 70:24 71:13,19 72:3,6,20 73:1,2,9 73:10,18,20,23 74:3,16,25 75:1 75:12,14,25 76:5 76:8
courts 46:8 60:8
court's 4:18 12:19 14:1 18:13 23:2 23:22 29:23 42:13 42:23 58:18 61:3 67:5 75:10
court-appointed 63:20
co-trustee 32:4
co-trustees 32:3
created 38:22 71:5
creditor 75:22
creditor's 22:1
CRR 1:16
current 57:6
currently 17:10,14 18:4 24:18 25:2 34:10,18 36:1 39:14
customary 27:5
CYNTHIA 1:4 2:2

D

dad 72:12,13
Daddy 75:4
Dakota 34:12
damage 17:14
damaged 15:23 38:6
damages 11:18 14:18 24:14,16 35:10,12 37:5 43:16
DATE 1:12
day 9:12 12:22 15:25 21:24 30:4 34:8 37:14 50:10 56:16 68:3 77:9
days 6:19 7:24
dealing 23:8 36:8 38:20 54:18
debt 75:22,23
decide 37:22
decides 56:4
decision 10:14 49:17
decisions 24:24
declare 36:19
deemed 30:14
defend 23:15
Delaware 34:12
delay 47:24 59:20 65:13
deny 49:1
deposit 72:4
deprived 18:4 36:16 37:14
designed 30:16 37:17
desire 12:24
Despite 52:14
determination 17:8 17:15 34:8 39:21
determine 16:12 36:3
determined 13:14 23:4
difference 71:14,15 71:15 74:13,15
different 21:24 52:1,3 56:11 60:18 70:19
differently 40:21
difficult 23:7
difficulty 5:22 6:10 63:16
diligence 37:10
direction 23:3 55:20
directly 8:7
disappeared 50:9

discovery 14:8,25 22:5 37:10 41:1 43:25
discuss 38:15
discussed 5:9
discussing 10:25 32:19
dismiss 12:2 13:17 13:22 25:6 40:11 40:18 41:12
dispute 18:5 19:7 47:8 59:10
disrespectful 63:4
dissolved 52:19
distributed 35:1 42:8 56:8
doctor 5:4,6,8,10 5:20 7:6 8:3
doctors 5:13 55:1
documentation 56:8 57:14,17
documents 12:25 19:14 32:13,23
doing 8:12 27:20 35:25 69:4
dollars 67:9
Dorchester 60:7 65:3
downstairs 64:20
Dr 6:1,5,16,19
dual 20:23
due 13:23 33:25 37:11 44:6 49:10 55:9,10,24 56:13 69:22,24 70:1
duly 8:3
duties 23:12 27:20 29:2 30:21 42:14 69:17
duty 9:4,13 13:4,9 13:11 14:10,24 15:13 16:3,6,13 16:17 20:13,17 22:8 26:7 27:24 28:7 30:25 31:20 35:15 39:14 41:4 42:18 43:11 44:12 44:13,17 45:11 49:6,11,12 54:10 62:22

E

earlier 14:8 39:13 44:19 51:16
earn 65:2
easiest 13:8
Edward 2:16,20 8:16 29:17 31:2
effect 69:11
effective 37:3
efficacy 47:8
either 60:10 68:21
elderly 18:2
eliminate 14:10
Elizabeth 4:6
email 6:18
empower 51:23
ended 33:10
engineer 27:18
engineered 14:20 15:19
ensure 13:11 31:2 44:9 54:11
ensuring 13:6 18:23
enter 16:3,5
entertain 38:23
entirely 11:3
entirety 36:23
entitled 11:17 34:5 34:22 35:11 36:11 36:17 37:1,5 41:11 43:16 56:4 64:8 67:14,17 68:24 69:1,2 74:2 74:2
equal 21:17
equity 75:12,13
escrow 19:24 31:15
especially 20:18 42:22
essentially 14:18 21:21 40:16 46:18 68:21
estate 10:6 14:4 21:19 22:3 24:5 28:18 30:3 31:9 48:14 51:7
estates 60:5
EVANS 2:21
event 37:7
events 77:7
eventually 40:14
everybody 20:8 22:15 48:5
everyone's 37:19
ex 7:9 40:13 48:2
exact 35:6 53:3
exactly 10:22 18:12 39:19 40:19 41:16
examine 18:21
exceed 41:20
exceeded 27:20
exceeds 44:5
exception 48:16 50:25
exchange 11:12 15:19 17:23 33:13 49:10,23 58:21 68:13
exchanged 50:2 68:17
excluded 5:13
exclusive 48:15
exercise 24:13
exhibits 4:16
existed 15:13
existing 5:17 16:20 41:5 51:14,15
expand 51:22
expenses 27:6 65:11
experienced 6:10
experts 43:10
expires 77:22
Explain 62:11
explore 5:15,16 7:1
extent 7:1

F

F 2:22
face 31:6 34:1 51:5 70:1
fact 8:22 10:14 11:10 12:8 16:7 20:8 46:11,21 57:9 65:21
facts 25:16,21 33:1 45:18
failing 10:7 60:22
fair 13:7,11 31:3 75:23
fairly 34:14
fairness 38:15
familiar 7:15
far 40:9 41:13,20 44:5 50:22 64:15 64:18 65:16
fashion 49:3
Fast 1:22
father 44:25 45:1
favor 47:25 59:20
fear 66:7,8
February 1:12 77:9
federal 8:13 11:18 16:9 17:7 21:4,12 24:19 25:1,20 26:9 33:6 34:9,13 35:7 36:7,22 43:15,24 45:20,23 46:7,16 48:16 50:24,25 60:12 67:16 68:15,23 69:7,13 71:6
feel 7:2,17 30:1 49:10 64:2
feels 9:13
felt 13:20
fiduciaries 20:18 29:20
fiduciary 9:19 20:13,14 29:22 35:15 60:4,10 62:1 72:20
fight 30:3 36:20 37:15
fighting 36:7,18
file 4:25 22:3 23:22 40:10
filed 25:19 40:10 40:17 43:4 44:1
find 4:25 18:21 30:10,24 43:10
finding 5:22 8:25 9:2,16 14:9
finds 40:23
fine 4:13 40:1 50:5
finished 24:10
fired 56:25
firm 2:11 61:23,23
first 13:17 16:4 24:11 31:1 33:9 38:10 48:21 51:13
floating 21:22
Floor 1:14
flow 65:16
foregoing 77:5
formal 13:21
forth 26:14 33:19 64:24
forum 37:8 46:18
forward 6:7,14 12:5 35:22 36:3 38:5,8,12,12 40:4 40:23,24 41:2 49:3
frail 38:24 47:15
framed 14:15 15:4 15:8 39:13 40:21 41:18
Francis 5:23
frankly 13:19 15:6 23:20 37:10 49:8 61:10 63:1
free 38:14
freeze 39:11
Friendly 1:22
front 36:15
frozen 35:5
full 33:22,25 34:20 45:15 48:21 56:25 58:21 64:24 66:13 75:23
fully 12:3 31:17 50:14
fundamental 35:10
funds 10:8 11:7 14:18 17:22 20:2 22:4 27:5 31:15 37:6 56:7,8,10 62:1,1 63:12 65:4 69:12
further 77:6
future 16:16

G

G 1:11 2:5
game 27:19
gather 45:12
GEER 2:5
general 51:17
generally 26:22
gentleman 18:2
getting 6:10 20:9 45:17 63:12 64:17
give 27:13 30:6 33:13 36:11 37:18
given 6:9 7:4 23:11 38:19
gives 23:14 72:8
go 6:12 7:18 8:13 8:22 12:5 27:17 29:16 31:5 35:22 36:2 37:8,23 38:8 38:11,12 40:4,23 40:24 41:2 42:2 43:12 44:9 45:2 46:18 49:2 62:14 66:11 74:23
going 5:24 8:22 9:4 14:6,6,7,10 17:2 17:14 18:21 19:3 19:4 22:6 27:12 28:10 30:3 37:14 40:20 46:16 49:24 51:1,6 54:1,12 59:5,15,19,19 60:23 61:11,12 63:13 64:7,8,14 66:10 75:21
good 4:1 22:14 64:10
gotten 48:20,21
grant 40:16
grateful 42:6
great 32:25,25,25
Greenville 1:24
ground 62:18,20 63:5 64:11
grounds 10:1
guarantee 49:25
guardianships 46:2
guardianship/co... 4:6
guess 5:2 6:21 7:12 9:14 11:25 12:1,3 17:15 22:23 29:4 35:21,22,23 38:4 38:6 40:2,10 41:15 45:20 53:10 55:17 70:25 76:1
guidance 36:3 50:16

H

H 1:16 2:4,12 77:3 77:21
HAGOOD 3:3
hand 30:9 77:8
handle 60:5
handled 21:25
hands 29:16 67:7 75:9,9,10
hang 20:20
hanging 20:17
happen 22:6
happened 60:6
happens 37:1
happy 6:4 8:1 11:23 13:18 19:5 32:13 48:7 59:7 60:15,17 69:12 72:1
harm 72:23
harmed 16:6
harmless 10:9,15
hate 59:1
head 1:23 49:15 71:17
health 18:3 47:15 55:11 60:22 71:16
hear 21:24
heard 34:15 47:14 72:10
hearing 12:16 26:25 48:21 54:22 55:2 64:24 65:21
held 17:21 19:25 31:16 34:18 57:25 58:18 62:21
help 10:10 24:6 38:19 54:8
helps 14:13,13
hereunto 77:8
Hey 49:22
highest 19:3
highlight 47:17
Hilton 1:23
hired 57:1
historically 5:11
history 29:19
hit 28:12
hold 9:25 10:9,13 10:15 19:6 33:5 59:23 60:8,9 62:1 64:12 65:4,24 72:24
holding 29:11,14 30:18 57:4 58:3 70:4
Honor 4:9,14 5:7 6:2,17 7:23 8:15 9:10 10:3,21 11:24 12:7,22 13:16 14:5 15:4 17:16 18:9 19:1 19:21 20:12 21:1 21:5,13 22:1,12 23:6 24:11 28:11 29:1,17 30:8 31:2 31:11 32:11 36:16 38:15 39:2,19 40:5 41:21 42:9 42:15 47:10 49:9 49:14 50:10 51:12 52:8 54:6 55:4,23 56:5 57:12 58:12 58:25 59:20 60:14 62:6 63:3 64:5,13 65:1,8,19 66:2,12 67:20 68:11 69:9 70:11 71:11 73:19 74:5 76:4,7
HONORABLE 1:11
honored 43:18
Hood 2:11,12,12 6:2,3,17 7:23 17:11 19:18 36:1 38:2,9,14 40:2,5 53:13,19 55:19 66:20,24 67:15 74:21
hope 22:9
hopefully 37:24
hopping 69:8
horrible 71:16
hospital 37:12
household 46:24
huge 65:19,22
husband 7:5
husband's 7:12
hypotheticals 11:1

I

idea 43:22 64:16
ignored 30:17
implore 38:22
important 39:22
impressed 29:17
inappropriate 35:8
incapacitated 23:19 29:12 30:6 30:14 43:3 44:10 45:13 54:12,15 55:12 65:17 72:21 73:12
including 24:22 37:19 39:7
income 65:10
incompetent 36:19
incredibly 13:24 20:3
independent 32:2,4 61:6
INDEX 3:11
indicate 72:15
indicated 30:24 57:25 67:22
indicating 72:14,22 73:10
individual 34:25 56:9 72:13
individually 2:20 4:20 9:8 24:22 35:25 70:16
individuals 74:19
influence 8:3 43:6 47:16,18,20,22
informally 49:3
information 8:20 42:6
injunction 39:3 41:20,22 44:1 53:3
injunctions 35:10 39:6
instructing 40:3
instruction 9:11,20 12:12,20 14:1 18:13 22:24 24:3 48:4
instructions 20:16 29:24 40:6 42:14 58:4
intelligently 15:3
interest 37:4 50:3,6 54:20 58:19 61:16 65:2,14 68:18
interested 12:16 77:7
interesting 29:4 30:10
interest-bearing 67:6
interim 54:25
interpret 49:9
interpretation 42:17,18
interrupt 24:10
inventory 59:4,12 63:17 64:5
irrelevant 28:23 49:6
irresponsibility 29:25
irresponsible 20:14
irrevocable 24:25 71:5 74:11
Irvin 1:11 4:2
issue 5:3 7:12 8:23 9:15 13:8 19:7 22:10 26:2 30:2 31:19 35:6 38:21 39:10 41:14 43:23 47:9 48:11 53:3 53:14 63:15 65:7 65:16,19,22 66:5 70:4 72:2 74:20 75:24,25

issues 13:18 21:24 25:16 61:24
it'd 4:11 35:18

J

JAMES 2:12 6:2 6:17 7:23 36:1 38:2,9,14 40:5 53:13 55:19 66:20
james.hood@hoo... 2:15
Jamie 6:2
job 15:17 18:14 21:18 27:1 71:23 72:21 75:12
join 51:25
joint 7:21
JR 1:21
judge 4:2 24:19 46:3 52:18 53:2
judges 60:5
judgment 40:16 66:11,14
judicial 4:21
July 26:18 27:1
jurisdiction 10:16 13:23 19:25 28:20 35:3 39:23 41:13 41:25 48:13,15,23 50:20 52:22 58:18 61:20 66:13,17 70:13 71:20 72:1 72:2 75:11
justice 54:20

K

keep 21:15 27:2 28:11,21 48:1 69:7
Keith 1:3,8 2:10 4:3 66:25 67:1 69:3 71:4 75:8,19
key 46:21 53:2
kids 36:18 44:25 72:11
kind 29:3 48:19 57:14
KING 1:5 2:3
knew 28:24
know 4:10 5:4 6:24 8:7 12:1 16:1 19:22,23 22:12 28:11 29:11 35:14 36:25 39:6,14 40:8 46:5 48:1 50:25 51:1 52:12 52:15 53:18 56:12 56:18,22 60:13 65:1 69:22 70:11 71:17 72:23 73:24 74:2
knowing 67:7
knows 52:13 56:10 75:8
KUNES 2:21

L

lack 10:16 13:23,23
large 63:9,11 77:4
largest 17:17
law 2:11 4:5 15:1 16:2 24:2 39:8
lawsuit 16:8,20 17:5,10 51:23 53:7
lawsuits 17:2 21:12
lawyers 75:9
lay 71:17
leave 75:7
left 31:8
legal 47:8 49:18 59:10
length 55:10
lengthiest 22:17
Lester 3:2 52:9
letter 13:20,21 32:15,16 40:13,18 48:2,5
let's 8:5 39:25
level 29:25
liability 66:5
liable 15:24
liberties 32:25
liberty 2:6 18:19
life 37:24
lifted 20:2
limited 11:13 15:16 15:20 23:13 24:23 24:24 26:20 33:14 34:19,22 57:4
Linda 5:10
line 29:5 31:2
liquid 11:7
liquidate 49:18
liquidated 50:7 68:18
liquidation 63:11
listing 63:17
lists 59:4 64:5
litigate 34:4 73:18
litigated 64:7
litigation 27:12 28:7,14,16 33:6 50:19 55:11 62:15 64:3 69:7,13 70:22 71:6,7 76:3
litigation's 70:6
little 11:2 12:13,17 18:18 42:4 62:15 64:18 71:24 74:5
living 27:6,6 37:23 47:21,23 65:11
local 6:9
locally 6:12
LOCATION 1:14
long 6:12 7:18 21:16 29:18 50:11 58:17 63:6,13 71:5
longer 65:13
longest 37:9
look 9:19 21:14 46:7 54:19,23 59:10 76:2
looking 9:12 30:20 38:13 42:15 53:7 53:23 62:25 65:13
looks 8:11 11:5
Lord's 75:7
lot 5:21 7:16 10:12 19:13 50:24
love 18:9
Lynn 32:17

M

M 2:5
maintain 18:20 21:11 54:9
maintains 36:14
major 61:7
making 13:10 70:17
man 22:18 37:12 38:25 47:21,23 59:17 71:15
manage 43:8
management 24:23
Marie 1:16 77:3,21
MARJORIE 1:4 2:3
mark 33:12 63:24 75:20
marked 67:24
marks 62:10
Marshall 48:16,17
matter 1:3 4:3 12:21 28:20 31:17 34:10 36:25 46:13 48:15
matters 7:25
mean 13:19 17:1 20:17 23:3 24:9 29:3 32:24 34:11 34:13 35:17 43:3 43:22 46:11,23 51:13 58:8 63:4 66:16 68:1 69:13 71:11 72:20 73:19 75:21
means 69:14
mediation 27:3
mediator 18:9
Meeting 1:14 2:6 2:13 3:4
mentioned 14:8 19:16
mentioning 28:21
merits 39:7 55:2
MERRITT 2:5
merritt.abney@... 2:9
MESSERVY 2:17
met 7:24 29:18
Michelle 4:5
middle 62:18,20 63:5 64:10
million 15:19 17:22 18:5,7,15,16 19:3 19:4,5,22 20:7 21:22 22:7 24:4,4 29:14 30:9 31:8 31:13 33:12,15,16 33:17,17,20 34:5 34:6,6,18,20,21 36:6,11,16,22,22 36:23 37:2,2,7,15 37:21 40:17 42:9 47:1,4 48:8 49:23 49:23 50:8 55:7 55:24 56:2,13 58:13,20 60:12 62:20 64:12 66:23 66:25 67:2,4,9,11 68:8,25 69:1,25 70:5,15 71:8 72:5 73:14,21 74:22,23 75:5,6,6,7
mind 21:15 63:12
mind-boggling 44:5
minimum 18:5 19:2 20:9 22:7 42:11 48:8 55:13 57:12 69:2,21,24 71:18
misconstrued 12:13
misstate 19:11 21:6
misstating 19:19
moment 58:9
money 19:23 27:13 35:5,9 36:5 37:15 42:7,13 45:1,3 46:23,25 47:6 57:4 58:3,15 60:6 60:8,22 61:11 62:8 63:5,23 65:9 65:25 66:21,25 67:7,17,22,23 69:3,19 71:11,18 72:22,24 73:25 74:25 75:3,14,19
money's 66:3 70:8
monies 73:12
month 14:10
monthly 65:10

morning 26:4
motion 12:2 13:17 13:22 28:12 39:2 40:11,18 44:1
mouth 38:10
move 6:7 38:23 41:12
moved 6:14
moving 55:20
MULLINS 2:4
MUSC 5:12,13,23 6:23 7:2,13
muster 26:1
Myrtle 1:23

N

N 2:17
name 4:1 61:1
narrow 26:3
narrowly 41:18 44:20
NC 1:24
necessarily 23:21 45:25
necessary 12:5,8 13:15 23:12 24:20 54:14
need 5:3 8:11 9:3,7 10:22 24:6 28:4 29:11 35:24 38:16 39:4 40:24,25 41:24 53:15,17,20 54:5 55:3 63:12 64:14,23 66:11 69:8 73:4,13 75:17
needed 23:21 69:20 71:21
needs 17:18 22:19 43:1,11 44:8
negotiated 26:18
neither 44:17 77:6
NELSON 2:4
nervous 15:15 20:4 20:4
never 14:15 32:8 33:18
new 8:18 19:12 32:6 54:17 58:7 75:3
night 71:17
nobody's 52:13,14
nonparty 73:21,23
normal 26:15 63:14
normally 30:22
North 2:18
Norton 24:19 52:18 53:2
Notary 77:4
note 11:6,12 15:20 17:21 31:5,6,23 32:21 33:1,12,22 34:2,6,20 36:13 39:1 47:1,2 50:1 55:24,25 56:13 57:5 58:21 62:10 63:24 67:13,24,25 68:4,5,14,17 69:15 70:1,5,10 70:14 72:19,24 75:21
nother 27:19
notice 4:21 52:2
notwithstanding 11:10 16:7
November 14:21 16:13 24:14 27:16 33:11
number 16:11 56:23 61:4
numerous 52:14

O

object 5:11 10:2
objected 15:6
objection 5:5 6:15 7:21
objections 6:23
obligation 9:18 28:6
obvious 75:16
obviously 61:18
occur 17:14
occurred 8:23 9:2 10:1 14:12
offer 31:12
offered 17:23 47:5
offering 62:17
officers 8:2
official 77:9
okay 11:25 15:24 33:16 34:3 40:1
old 60:21
Once 39:23
opinion 12:8 22:1
opponent 26:11
opportunity 14:7 37:20 39:5
oppose 39:5
orchestrated 20:5,6
order 8:25 9:14,21 13:4,13 16:20,23 18:21 19:25 20:11 20:15 21:14 24:21 26:21 28:2 29:1 30:20,24 39:15 41:5 42:17 44:8 44:14,17 49:8 51:14,15 52:16 54:9 59:8 61:1,18 61:20 67:5 70:14 72:7 73:1,11,20 75:1
ordering 73:5,6
orders 18:19 72:18 76:1
ordinary 27:5
originally 55:7
outcome 35:6
outside 42:22,23
owed 18:6 42:11 48:8 55:14
owes 42:14
owner 66:19
ownership 11:13 15:20 33:14
owning 50:6
owns 70:15

P

PA 2:21
paid 56:14 67:13
paper 11:6
paperwork 11:2 59:18
Paragraph 30:20
part 5:18 11:15 21:4 49:18,23 73:8,9
parte 7:9 40:13 48:2
participate 59:7 69:6
parties 5:4 15:22 17:3 22:4 24:20 25:11,13 27:9 29:8 30:16 50:18 52:20 55:13 74:8 74:9,16 75:13
partnership 11:13 15:21 24:23,25 33:14 34:19,23 50:3,6 57:5 58:1,2 68:17
party 8:18 12:16 19:12 25:12,14 28:16 34:23,24 42:21 60:9 61:15 66:1,18 70:22 71:2,6,7 73:17,19 77:7
party's 42:23 70:14
pass 20:25 26:1
PATRICIA 2:22
pause 58:11
pay 55:24 58:13 59:22 60:12,17 64:16 68:5 70:14 73:21 75:21
payment 33:21 34:2 57:5 58:21 63:10,11 65:18 67:25 68:1,3,5,13 70:10 73:11
pending 7:25 14:22 24:18 25:1,7,10 27:3 34:11 35:6 39:2 44:4 46:13 46:17 77:7
people 23:18
percent 50:8
percentage 11:13
performed 61:8
period 36:12 37:10 37:10 51:20
permanent 9:3
person 44:10 45:13 54:12,15 64:11 65:17 71:20 73:12
PETER 1:4 2:2
petition 12:4 22:2 23:23,23 25:14 30:7 39:24 40:25 43:6 44:3 48:13 48:23 49:2 51:7 53:25 66:21 69:20 71:2,3
petitioned 36:2 41:23
petitioner 30:17 39:19
petitioners 1:6 2:2 44:3
petitions 22:17
phone 8:1
physicians 6:11
pick 5:24
piece 11:6
piecemeal 45:18
place 11:11,20 16:4 27:15 28:2 32:7 32:10 33:18 43:19 56:21 58:8
placed 23:4
plaintiff 45:23 53:17
pleadings 19:17 21:7 25:18,19
please 24:8 55:5
pled 12:3
PLUM 1:4 2:2
plus 37:4
PM 1:13 76:10
pneumonia 37:13
pocket 42:8
point 10:16 11:21 12:17 14:5 15:14 16:14,16 41:11 43:13 44:21 53:2 71:12
pointed 51:16
posing 9:5
position 17:11 33:17 35:23 52:5 64:6,7

possession 20:11 42:21
possible 8:8 37:9
possibly 24:4 39:11 42:20
postured 36:2
power 16:24 23:20 26:13,16 27:13,24 41:4 45:5 51:13 51:19,22,24
powers 23:12 26:20 26:22 29:2 51:17
practice 7:7 50:24
predecessor 60:7
prefer 21:23
preference 4:19
prejudgment 37:4
premise 21:14
present 8:19 65:19
presented 26:4 56:14
preserve 15:17
preserving 16:25
pretty 47:12 50:11
prevail 45:9
prevent 16:3
previously 8:19 15:13 52:17
primarily 7:7 10:5
prior 46:12
private 28:25
probably 8:18,21 17:17 22:12 66:3
probate 1:1,14 4:2 4:4 26:23 30:14 34:12 45:15 50:23 54:18 58:14 59:11 60:7
problem 7:19 13:1 18:25 21:20 29:15 35:16 60:4
problems 18:3 61:7
procedural 39:1 49:3
procedurally 39:8
Procedure 25:5
proceed 4:8 40:7 72:15,16
proceeding 13:22 30:15 66:18
proceedings 76:9
process 6:13 13:24 44:6 63:14
produce 65:21
Professional 1:16 77:3,21
professor 7:4,5
progress 70:17
promissory 11:6,12 15:20 17:21 31:5 31:6 36:13 50:1 68:14,17 69:15
proper 37:3 51:25 52:1 53:4 73:17 73:17
proposal 58:13
propose 5:25
proposed 5:8 6:18 72:18 76:1
proposing 22:24 62:4
prosecute 23:15
protect 10:8 13:12 18:14 22:8,9,21 30:5,16 31:20 37:21 39:20 42:20 42:20 43:2 50:12 50:17 52:17,24 54:7,11,14 72:21 74:24 75:15
protected 21:20 22:19 28:19 31:8 41:24 69:20 71:20 71:22
protecting 71:23
protection 18:16 29:13 31:14 42:15 53:9
protective 30:15
protector 3:2 52:5 52:9 56:6 70:25 74:3
Provence 2:17,17 4:9,13 8:15,16 9:10 10:3,11 11:23 12:5,7 17:13,16 21:5,13 22:16 23:2 24:8 28:9,10 31:1,24 32:2,11,22 33:24 39:18 40:1 41:21 46:3 47:10 52:23 53:24 54:4 55:4 58:25 60:14 62:6 62:11,19 64:2 65:1,7,18 66:6,12 68:7,11 70:18 71:9 72:17 73:3 73:10 76:4
provide 8:21 16:24 31:14 32:12 57:13
provided 32:14
providing 65:9
Public 77:4
purported 11:9,11 33:11
purpose 29:7
pursuant 36:14 58:3
pursue 23:18 26:7 28:7 38:5 43:21 45:21 53:12 54:13 54:25 72:9 73:4,7
pursuing 62:23
put 19:22 27:15 60:19,20,25 61:11 67:4 74:24 75:14

Q

question 4:16 6:5 8:23 9:4,14,23 10:23 11:21 13:1 13:3 14:14,21,22 15:2,7,9 16:2,21 20:7 21:21,22 24:12 25:17,20,22 25:24 26:3 27:21 27:23 33:9 34:17 36:10 38:1,3 39:12 40:21,22 41:3,7,9,17 44:16 45:20 47:2 51:13 51:21 52:2,3 53:9 57:23 67:20 70:2
questions 47:12,13
quickly 8:8
quite 13:19 23:20 24:4 49:8 63:1
quo 15:18 16:25 17:19,20 18:1,20 21:11,18 27:3 54:9

R

raised 8:10
raising 7:9
read 23:6 44:18 49:8
ready 4:8 40:23 41:1 56:14
real 61:15
realize 32:6 65:8
really 9:11 10:6 27:7 34:5 35:18 41:8 61:9
Realtime 77:3
REAR 3:11
reason 47:24 75:2
reasons 5:14 34:3
recall 26:17
receipt 31:10
receive 40:6 42:13 67:14
received 4:22 13:7 21:17 31:12 32:23 48:4 49:9 50:2 51:6
receives 18:24
recognized 5:13
reconsider 72:3
record 4:18 26:25 43:25 75:18 77:5
records 23:18
recover 14:18 24:16 36:4 40:7 46:16
redress 25:22
refer 4:24
referenced 32:15
references 25:18
referred 26:13
refuse 68:3
refusing 63:19 69:21
regards 4:16 17:24 19:9 20:1 59:10
Registered 1:16 77:3,21
regular 65:11
regularly 65:4
reject 34:3
rejected 67:25
related 23:1 77:7
relating 25:3
relationship 5:17 5:23 6:22 7:2
relative 28:7
release 17:23 36:13 59:6,16 68:13 69:11 71:11
releases 72:5
releasing 69:5
relief 14:23 16:9,12 19:8 26:8 28:17 39:3 41:6,11,17 41:18
remainder 22:9 31:15
remedy 35:12 39:8
remember 23:11 39:22
removal 54:19
remove 9:18
removed 9:15 24:5 57:9
repeat 66:13
REPORTED 1:16
Reporter 1:16 77:1 77:3,4,22
reports 55:1
represented 33:25 73:24
representing 10:4
request 49:4 57:13
requests 52:14
require 35:3 44:6 71:10
required 25:6
requires 12:14
resigned 57:2
resolution 38:24
resolved 11:19,20 21:12 22:10 31:17 33:7 43:24 56:1 70:6

resolving 7:19
respect 7:16 16:18 47:13
respected 15:22
respectfully 73:20
responded 13:19
Respondent 1:9 2:10
responding 52:15
responsibilities 30:22
responsible 9:25 13:6 18:23 65:12
restrict 21:15 63:6
restrictive 61:1
result 14:19 24:13 63:10
return 14:3 18:24 21:17 22:2 23:23 28:18 48:14,23 51:7
returned 36:24
review 23:18
reviewed 19:13 51:4
revisions 54:17
Richard 3:4 52:9
right 16:9 17:6 26:9 27:23 35:20 37:22 40:12 41:8 43:5,20 44:12,14 44:17 53:17 55:20 56:3,14,17 63:1 66:3 70:8 73:7,11
rights 36:15
RILEY 2:4
ripe 15:9 16:13 20:21
ripeness 15:7
risky 20:3
road 27:22 42:2
ROBERT 2:4,12 53:19 66:24 67:15 74:21
ROBERTS 1:21
robert.brunson... 2:8
role 15:16 27:7 44:19 63:1
room 20:8
Roper 5:23
Rosen 3:3,3,4 52:8 52:10 56:5,17,22 56:24 57:9,12,21 74:5,12
Rosen's 70:25
rrosen@rrhlawfi... 3:6
rule 25:5,9 26:1 35:10 41:14 43:15 46:12,14 64:8 74:24
ruled 35:8
rules 25:5 66:4
run 12:25 47:7 61:12
running 21:20

S

S 1:3,8 2:10 3:4 4:3
safe 70:8
safeguard 44:9 45:12
sakes 75:7
satisfaction 67:13 75:23
satisfied 6:1 33:12 38:19 55:25 62:10 63:24 67:24 75:21
saw 51:5
saying 9:6 13:3 23:25 38:8 60:15 60:19 61:12,14,14 67:3 68:3,9 69:7 69:14 73:3
says 16:16 18:19,22 51:15 56:17
SC 1:15,23,23,23 1:24,24 2:7,13,18 2:23 3:5
SCARBOROUGH 2:4,22
scarborough@ec... 2:24
scarier 42:24
scheduling 6:10
Schwartz 3:2 52:9 56:25
scope 65:20
seal 77:9
second 5:8,20 26:2
Secondly 16:18 17:4
Section 12:13 26:14
secure 75:8
see 22:14 31:17 53:14 65:23
seek 23:2 26:8 29:23 66:14
seeking 11:3 12:11 12:16 13:25 14:23 16:9 18:13 24:3 26:9 28:17
seen 21:7 22:18 56:7 57:16
sense 42:7
sent 32:21 40:13,18 56:15 68:2
separate 27:21 61:6 74:20 76:3
serious 48:11
serve 12:20 14:6,6 20:23 32:3
served 9:19 12:15 12:18
set 26:14 45:14
settlement 62:17
shared 40:14
sheer 12:24
shoes 31:21
shopping 46:18
show 8:21 32:14
showed 26:18
showing 63:14
side 6:22
sign 36:12 59:16 69:5,10,12,14 73:5 76:3
signed 32:17 39:24
significant 38:21 65:10
signing 59:8
signs 67:12
silly 12:17
similarly 21:25
simply 8:17 39:13 39:13
simultaneously 68:14
single 19:14
sir 55:19 60:2
sit 56:3
sitting 47:4 56:16 66:3
situation 9:21 18:12 20:22 23:8 23:9 38:20
sleep 67:6
small 60:5
sold 68:10
sole 35:2
somebody 5:22,25 5:25 6:8,11 15:25 16:16 24:16 31:23 43:2 45:1 46:22 54:3,5,6 58:16 60:9 61:23 62:5 65:24 73:22
Somebody's 20:21
someone's 18:15
someplace 52:12
soon 67:12 75:20
sorry 31:24 32:6 67:19
sorted 27:22
sought 12:19 19:8 25:23
sounds 74:21
source 57:8
South 1:1 12:10 25:4,6 34:12 39:7 47:22 77:4,9
speaking 13:2
special 8:16,24 9:1 10:4,7 11:10 13:5 14:2 15:16 16:24 20:19 21:10 22:19 23:8,25 24:1 26:6 26:19 27:1,2,15 28:3,15,23 31:13 35:19 39:16 40:4 41:5 42:19 44:15 44:19 48:25 49:25 50:16 51:2 54:13 55:8 58:23 59:3 59:14,15 60:25 62:4,21 66:8 69:5 69:10 70:4 71:2 72:4,7,12,14
specific 13:4 23:14
specifically 26:21 51:18
speeding 6:13
spouse 47:21,23
SR 2:12
St 5:23
stack 32:13
standard 25:9
standards 39:6
standing 9:14 13:23 47:19,19,20 50:21
start 5:2 10:25 18:10 54:21
started 22:13,16 41:15 47:11
state 1:1 25:6 46:8 46:11 51:18 58:6 59:8 77:4
stated 26:25 29:7 41:24 51:18 71:13
statement 48:12 75:20
states 13:5 23:7,10 26:21
stating 8:17 19:8 60:17 68:12,15,21 69:12,19 71:21
status 15:18 16:25 17:19,20 18:1,20 21:11,18 27:3 54:9
statute 12:12,14
stay 55:10
step 35:23 50:20
stock 11:7 68:9
stolen 46:23 67:8
stop 13:9 27:7,8 29:7
strategy 49:18 64:3
Street 1:14 2:6,13 2:18,22 3:4
strike 54:12
strings 19:6 42:12 48:10 67:18 74:25

strong 5:12
stuck 37:7
subject 28:14,19 34:10 46:13 58:18
submit 4:20 48:3 72:18 76:1
substantially 25:15
substitute 11:6
substituted 36:14 36:21 42:2 43:14 47:3
substitution 13:10 14:11 17:24 19:10 19:16,16,20 21:7 24:13 25:3 27:18 28:8,14 36:9 37:3 37:23 42:3 43:17 49:17,19 68:16,22 68:24,25
success 39:7
sue 15:25 20:21,24 21:1 24:15,16 26:13 27:25 46:15 73:15
sued 15:12 20:15 29:24
suing 11:18 17:6
suit 21:4 22:25
Suite 2:6,18 3:4
sum 13:8
Summerville 2:18
summon 12:14
summons 12:4,18 14:6 22:3 23:23 40:25
support 50:14
supposed 34:9
supremacy 46:7
sure 4:19,22 8:24 9:2,24 11:21 21:19 30:12 47:13 53:6 58:10 61:25 62:2 65:5,6,8,15 70:17
surrender 55:14 63:19
surrendered 42:12
surrendering 62:20
swap 11:11
Sykes 4:7
Sykes's 6:18
sympathize 12:23

T

tails 71:12
take 4:21 32:7 43:23 48:11 74:22 76:2
taken 36:6 45:1 46:24 47:6 67:1
takes 18:18
talk 4:11 7:14
talking 17:18 18:1 20:7,8 35:9 45:6 46:24 48:1 57:17 57:19 66:22
tasks 65:12
tax 63:9,11 65:18
team 57:16
technical 49:14
technically 9:1
teed 35:7
tell 29:16 38:17 59:18 64:23
telling 69:4
ten 6:19
tender 31:13 33:23
tendered 33:20 34:2 55:7 67:24 68:1
terms 16:23
test 25:4
testifying 14:25
testimony 22:5 49:24
Thank 17:12 51:10 52:25 76:4,6,8
theft 47:9 53:14
thereof 77:7
thing 17:17 26:18 29:4 38:10 45:16 64:17 75:18
things 23:16
think 6:12 7:24 8:18,20 9:22 10:11,17,22 12:12 13:1,24 15:2 16:21 17:17 18:20 19:21 20:3,13 21:14,24 23:20,21 25:25 29:21,25 30:15 31:20 37:11 37:25 38:7 39:21 41:7,17 42:9 44:7 44:21 45:16,24 46:1,20 47:10 48:17 50:11 53:6 54:9,10,19 56:24 57:15,24 59:10,21 61:15,19,20 64:10 64:13,15 66:2,20 67:21 70:1,7 71:12,13,25 72:2 72:8 73:12 74:12 75:17
thinks 54:14
third 15:22 17:2 27:8 29:8 30:16 60:9 66:1
thought 4:11 21:9 24:10 63:24 64:16 74:6
three 24:22 25:12 32:9,9 37:12 44:2 57:3 67:8 75:4
ties 5:12
Tiffany 2:17 8:15
tiffany@provenc... 2:19
time 1:13 9:18 11:24 13:13 16:17 22:6 27:11 31:16 32:10 37:11 49:16 55:10
times 37:13
today 4:17 8:12,21 9:5 11:4 12:6 13:1 15:4 19:2 22:24 28:18 31:18 35:17 39:11 40:9 40:20 41:2 42:10 42:13 44:8 45:20 46:6 48:9 49:24 51:22 55:12 57:15 72:10 73:5,24 76:5
today's 65:21
told 7:25 19:24 29:12 48:3
tonight 67:7
totally 6:4 53:6
trade 33:16
traded 13:7 18:24
training 18:9
transaction 14:19 15:19,22 16:4 25:19 28:8 32:7 33:2,18 47:9 51:4
transcript 3:11 44:19 77:5
transfer 21:16 31:10,25 32:18 49:22 54:18
transfers 27:8 29:8 31:3
tried 49:21 70:11
TRO 20:1 35:8
troubles 29:4
true 32:5,6 33:22 43:9 77:5
trust 8:2 11:12 24:25 33:13,14,21 34:18,19,24 35:2 36:15 52:4 56:3,6 56:7,10 57:3,11 57:14,21,25 58:3 58:4 61:10 66:18 70:9,16,19,20,21 70:25 71:1,5 73:16,19 74:3,11 74:19
trustee 3:2 27:2 30:23 32:1,3 52:5 52:9 57:1,10 74:4
trustees 32:10 57:3 57:6 74:7,7,10,19
trusts 70:23
try 8:3 28:10 40:7 52:18 54:25
trying 30:24 33:16 34:15 41:16 46:6 46:19 62:14,18 67:15 71:23
turn 59:6,15 63:5,7 69:21
turned 47:5 72:19
two 7:24 34:13 43:10 55:1
type 29:22

U

UBS 56:20 58:5
ultimately 9:22
unaccounted 29:14
uncomfortable 18:11,14
underlying 66:4
understand 14:14 17:18 41:16 53:5 62:19,22 63:3 64:25 66:8 73:8
understanding 38:18
understood 44:15
undue 43:6 47:15 47:18,20,22
unequivocally 25:24
unfortunately 12:12 52:18
unique 9:21,21 23:9
unravel 9:4
unwilling 75:22
upset 35:18
use 27:5 60:21

V

v 48:16
valid 42:3 68:16
validity 19:20
value 13:7 18:24,25 19:2,4 30:4 31:10 36:21 49:15,19 69:15
valued 17:21 31:7
various 43:7
veterans 46:2
view 32:8
violate 16:17
violated 27:20
violating 15:12
violation 14:24 69:16
voluntarily 30:12
vs 1:7

W

wait 20:20,24
waiting 6:20 56:16
walk 48:9
want 7:8 8:4 10:19 10:25 12:3,25 13:24 17:25 19:11 21:6 22:12 34:4 35:22,23 37:8 38:17 39:9 40:3 45:2 47:19 49:1,2 49:13 50:19 53:11 54:3,6 60:20 61:5 61:13 62:16,24 68:22 72:14 73:15 74:22
wanted 8:2 29:13 38:8,11 48:20
wanting 11:5 60:18
wants 39:14 51:24 51:24,25 54:5
wasn't 4:19,22 8:19 15:22 16:6 28:14 46:24 65:4
watch 9:2 15:16 24:3
Watson 32:17
way 6:12 7:18 13:8 14:15 16:15 27:17 62:24 69:9
ways 43:7
weak 43:7
week 19:13 49:15
weigh 10:20
Weil 4:5
Wellin 1:3,4,4,5,8 2:2,2,3,10 4:3 5:10 6:3 9:8,17 10:2,5 11:9,16 13:2,10 14:4,19 14:20 15:11,18,23 16:5,8 17:9,21 19:18 20:24 24:12 24:19 25:12,23 26:8,8 27:4,9,14 27:18 29:9 30:13 33:11,22 35:18 37:2,18 40:17 41:7 42:19 43:16 46:22 50:13,13,17 51:20 53:16 58:20 59:2,13 60:16 61:8,9 62:24 63:19 64:4 67:6 69:17 71:4,5 75:8
Wellins 27:4
Wellin's 5:7 6:9 16:21 17:1,5 21:16 27:11 28:25 36:5 37:1 47:7 53:11 55:17 65:11 66:25 67:1,11,17 69:3,6 75:19
well-educated 29:20
Wendy 27:11 29:9 50:13 62:23
went 68:1
weren't 52:2
we'll 8:9 21:1 54:16 54:25 55:23 60:12 68:5 73:18
we're 6:1,13,20 7:10 8:12 9:4,12 10:17 11:2 13:18 13:25 14:6 17:18 18:1,21 19:24 20:1,6,7,17 21:20 22:21 23:8 29:13 30:3 32:18 34:15 35:9 36:1,23 38:20 41:8,22 42:5,15,22 46:4 46:23 50:22 51:1 51:8 53:6,6 54:12 55:19 56:6,9 59:5 59:7,14,18 61:10 61:16 63:13,22 64:14,17 65:13 66:22 67:3 68:15 68:21 69:11,18 70:17 71:11
we've 5:4,9,13,21 13:22 19:23 20:24 31:5 34:11 55:9 56:7 57:17 60:8 61:7 67:24 70:11 71:13 72:7,10 73:3
wife 20:25 27:11 50:13
WILLIAM 1:21
willing 55:14 56:2 59:22 61:16 63:7 63:22,24 68:4,5,8
wipe 29:15
wisely 47:11
wishes 67:3
withdrawals 61:2
withdrawing 53:24
withdrawn 10:13
withholding 37:6
Witness 77:8
witnesses 14:25
wonderful 32:12
words 15:14
work 29:21 50:23 63:25 65:24 70:12 70:12
working 7:12 27:17
works 47:24 59:20
worried 8:4 29:9 47:15
worry 29:14
worth 33:12,15 68:19
wouldn't 9:9,25 31:17 45:11
wrap 49:15
wrong 11:16
wronged 23:19 24:12,15,17,21
wrongful 37:5
wrote 23:24

Y

Yeah 5:21
years 27:7 37:24 60:21
yesterday 13:20
yesterday's 32:15
York 58:7 75:4
y'all 7:21

$

$10 75:5
$150 36:6,23 37:7
$42 18:7 34:21
$50 15:19 17:22 18:5,15 19:3,5 24:4 30:9 31:8,13 33:12,15,17,20 34:6,6,18,20 36:11,16,22 37:2 37:15,21 42:9 47:1,4 48:8 49:23 55:7,24 56:2,13 58:13,20 60:12 62:20 64:12 66:23 66:25 67:4,11 68:8,25 69:25 70:5,15 71:8 72:5 73:14,21 74:23 75:7
$90 33:16,17 34:5 36:22 37:2 40:17 67:2,9 74:22 75:6
$92 18:16 19:4,22 20:7 21:22 22:7 24:4 29:14 49:23 50:8 69:1
$93 75:6

1

1:02 1:13
100 1:14
101 29:3
11 26:1
115 2:22
12 6:19
12(b)(8) 25:9 41:14 46:12
12(b)8 25:5
151 2:6 3:4
17 23:14
17(a) 43:15
172 2:13
18 77:23

2

2 58:23,23 62:4
2(c) 30:20
2:20 76:10
2013 75:5
2013-GC-10-129 1:7 4:4
2014 1:12 77:9
2021 77:23
29401 2:7,13,23 3:5
29483 2:18

3

300 2:18

4

4th 1:14
40 37:21
400 3:4
42 50:9

5

50 20:10 22:8 69:24
534-4226 2:7
577-1214 2:14
577-2300 2:23
577-6726 3:5
58 50:8
58-percent 50:3,6

6

6 1:12
600 2:6
62-5-424 26:14
62-5-424(b)(17) 23:10

7

7th 77:9
704)573-3919 1:25

8

803)731-5224 1:25
843 2:7,14,19,23 3:5
843)722-8414 1:23
843)785-3263 1:23
843)839-3376 1:23
864)234-7030 1:25
87 60:21
87-year-old 18:2 37:12 38:24 59:17 71:15
871-9500 2:19

9

92 68:19

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN RE: KEITH S. WELLIN
CASE NO. 2013GC-10-0129

HEARING

DATE: March 27, 2014
TIME: 1:03 p.m.
LOCATION: Charleston County Probate Court
100 Broad Street
Charleston, SC
BEFORE: JUDGE IRVIN G. CONDON
REPORTED BY: Ann P. Harris, NCRA Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376

Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

APPEARANCES OF COUNSEL:

ATTORNEYS FOR KEITH S. WELLIN:
HOOD LAW FIRM, LLC
BY: ROBERT H. HOOD, SR., and
JAMES B. HOOD
172 Meeting Street
Charleston, SC 29401
(843) 577-4435
james.hood@hoodlaw.com

ATTORNEYS FOR PETER WELLIN, CYNTHIA WELLIN PLUM, and MARGORIE WELLIN KING:
NELSON, MULLINS, RILEY & SCARBOROUGH, LLP
BY: BRYSON M. GEER
151 Meeting Street, 6th Floor
Charleston, SC 29401-2239
(843) 720-4306
bryson.geer@nelsonmullins.com

ATTORNEYS FOR THE SPECIAL CONSERVATOR EDWARD G. R. BENNETT:
BY: TIFFANY N. PROVENCE
300 N. Cedar Street, Suite A
Summerville, SC 29483
(843) 871-9500
tiffany@provencemesservy.com

(INDEX AT REAR OF TRANSCRIPT)

THE COURT: Good afternoon. My name is Irvin Condon, probate judge of Charleston County. This is the matter for Mr. Wellin, Charleston County Probate Case Number 2013GC10-0129. We are here on the motion to disqualify one of the designated examiners, Dr. Austin.

Counsel ready to proceed?

MR. ROBERT HOOD: Your Honor, I just wanted to introduce to you Keith Wellin. This is very much involving him daily, and he wanted to be here, and if at any time you have any questions about anything, he will be happy to answer them.

THE COURT: All right. Thank you. Thank you for being here.

MR. JAMES HOOD: May it please the Court, your Honor, Jamie Hood on behalf of Mr. Wellin. We are here on our petition seeking two things from the Court. One has to do with the removal of Dr. Austin as an examiner, and the second is for additional instruction as to the remaining examinations to be performed.

In this instance, your Honor, the focus of the Court is on the best interest of Mr. Wellin, and the examination of Mr. Wellin and the investigation thus far by Dr. Austin has been

conducted in a manner that we feel can no longer provide the Court with objective information for three essential reasons. One has to do with who is in attendance at the examination. Number two has to do with the subject matter that was discussed during the examination. And number three has to do with some conduct or contact with some third parties. And so if we could, I would just run through those three.

I know your Honor is familiar with the case, the facts and details surrounding it, and there have been some detailed briefing in this, and I am going to refrain from devolving into some of the language that we have seen utilized in some of the court papers. But the examination conducted by Dr. Austin is supposed to be an examination of Mr. Wellin. The statute gives this Court direction, and it says the Court shall direct that the person to be protected be examined by one or more physicians, and that is 62-5-407(b), and that's the authority upon which this Court issued the order instructing Dr. Austin to conduct the examination. And we submit, your Honor, that the inclusion of third parties in this case, Wendy Wellin, his wife, during the examination, is not consistent with the

statutory prescription. It is an unambiguous statute, and the statute says that that person shall be examined, and that is what we believe is the appropriate course. The reason we think that is appropriate is because ultimately, one, this is a determination of whether Mr. Wellin has capacity. It is not a team exercise. And ultimately the determination of any expert who is evaluating him to be presented to this Court needs to be based upon what that expert learned from Mr. Wellin.

Regardless of what Dr. Austin's findings are, our concern is that they are going to be susceptible to criticism and the lack of objectivity because now in this instance if she concludes that Mr. Wellin does in fact have capacity, his children will assert that her presence, Wendy Wellin's presence, was inappropriate. Why do we expect them to do that? Because in federal court they went to great lengths in their examinations that have already taken place to ensure that the order from the Court specifically forbade Mrs. Wellin from attending the examinations. Their claims relate to a theory of undue influence by Mrs. Wellin over her husband, Mr. Wellin. And all of that together is the

precise reason why it is not appropriate for the examination of Mr. Wellin in his current capacity to be done with her present.

THE COURT: Let me ask you this: Could that be cured if she did an independent exam of him without Mrs. Wellin there, if the doctor came back by?

MR. JAMES HOOD: I think anyone your Honor instructs to come back by do an examination of just Mr. Wellin. If they determine that some care providers or his nursing aides are necessary for some comfort or medical reason, fine, but the inquiry to determine the capacity issue should be a dialogue between the examining physician and the person examined as opposed to two people in a room.

THE COURT: Okay. Well, I guess what I was asking, if Dr. Austin came back by, would that cure the issue if the exam was done as you mentioned?

MR. JAMES HOOD: In this instance, your Honor, I don't believe that it would because of some of the other points I have alluded to now.

THE COURT: Does the other side waive the fact -- are you going to argue that Mrs. Wellin was there so it is not a good examination?

MS. GEER: No, your Honor.

THE COURT: Does that help you or not?

MR. JAMES HOOD: No, it doesn't because my concern is for you to make the determination. The questions and answers, the determination needs to be from him, and so we want the examination to be based on what the examining physician and Mr. Wellin discussed and hers or his interpretation is the same. But more directly to that question you have there is the scope and the subject matter of what was discussed.

During the examination, there was a detailed discussion of Mr. Wellin's estate planning and his history. That's the subject of some very contentious litigation, some of which still resides here, most of which is across the street. I don't believe then the subject matter of Mr. Wellin's complicated estate planning is appropriate for the purpose of determining capacity. The capacity determination has to do with his current state of mind, not of his actual knowledge, but whether he has the ability to know and understand. And to cross-examine him about the intricate details or the general structure of his estate plan in 2009 or '13, I don't believe is appropriate. Moreover,

those are issues and some of which may or may not be privileged, we don't know, but I am not comfortable having our client examined about sensitive matters that are involved in litigation where questions are being asked that might otherwise not be proper; for example, questions related to his current estate plan. We take the position that Mr. Wellin has the ability to change his estate plan on any given day, and what he currently has is nobody's business, and we don't think it is appropriate to go into it, and if I were present and such a question were asked, I would instruct him not to answer that question. Likewise, if he were asked questions about his interaction in his relationship with his wife, that is subject to spousal privilege.

THE COURT: Let me ask you about the estate plan. I think in our ED report, designated examiner's report, didn't we list the eight rights to look at, and I think one was the ability to execute instruments.

MR. JAMES HOOD: I think that is absolutely right. It is not the ability to understand his prior estate plan. The ability to execute instruments has to do with his current

cognitive function and whether he has got the ability to actually understand.

THE COURT: But I don't think the doctor is going to understand the estate plan either, is she? She is just generally asking questions.

MR. JAMES HOOD: I wasn't present, but it is my understanding that the conversation had to do with some of the details that is subject to the ongoing litigation. I think the litigation is essentially that Mr. Wellin never appreciated the true nature and extent of his estate because his children had fiduciary responsibilities and powers of attorney, and so in 2009 he gave away a 99 percent interest for an amount of money that was inadequate, that he didn't understand and ultimately has basically been deprived of essentially a hundred fifty million dollars.

So his fundamental misunderstanding about the estate plan is part of the very nature of the claim, and so to use his understanding of the estate plan as a tool to determine his current capacity, I don't think that is a fair marker.

Secondly, when we look at the conversation and the discussion, I think that's the

portion that indicates that further clarification would be appropriate from the Court, and I understand and I have obviously read your Honor's order where you identify the definition of capacity and the standard form order, but in a case like this with all of these additional factors, additional moving pieces, I think it might be helpful to any examining physician to clarify the scope and purpose of their charge.

So, you know, as I put in my papers, much of this conversation -- we are not suggesting this is Dr. Austin's fault. She is involved. She knows of the history, she knows what is going on and she has asked some questions about it, and unless a physician is charged with a scope and an understanding and undertaking, we don't think -- or we are concerned that the likelihood or possibility to come back here and deal with this again would be present, and nobody wants to do that.

THE COURT: Let me ask you this: I know opposing counsel suggested having Dr. Austin come in and you examine Dr. Austin, I guess, to determine her independence. We could also give instructions at that time. Is that something that is doable or you think Dr. Austin needs to be

removed?

MR. JAMES HOOD: I am sorry, have Austin come in now --

THE COURT: Prior to, I guess, the final determination. Isn't that what counsel recommended? I think in your papers, the alternative, you said have her come in and you could examine her whether she is independent or not.

MR. JAMES HOOD: Well, I think at the capacity hearing that you ultimately would have, that is our opportunity to determine -- to cross-examine her on her independence or her bias at that time.

THE COURT: I think opposing counsel, though, is recommending doing that prior to -- for determination whether she should be qualified or disqualified.

MR. JAMES HOOD: Well, and my third point to that point directly has do with the communication with Mr. Peter Wellin in this case, and Dr. Austin communicated with counsel for the petitioners whether it was okay for her to speak with Peter Wellin, and they indicated that it was. We didn't know about that. She spoke with

Mr. Wellin. She wanted to get his side of the story. Well, it only takes a drop of blood to taint an entire bucket of water. Peter Wellin's vitriol is spelled out in the petitioner's pleadings. The description of his father in their opposition to their motion is demeaning, it is abusive and if that is any indication of how Peter Wellin feels about his father, and there is a conversation, we think that that witness should no longer participate.

MR. ROBERT HOOD: I would like to add to what Jamie has argued, your Honor.

THE COURT: Let me speak to counsel. No objection to two lawyers?

MS. GEER: Your Honor, I would object to being ganged up on. There is a big side over here, and we would object.

THE COURT: Any objection from Mr. Hood also arguing?

MS. GEER: Yes, sir, we do object. Thank you.

MR. JAMES HOOD: One more point. The fundamental nature of the litigation is that the Wellin children have taken a hundred and fifty million dollars from their father. Their response

is that Mr. Wellin is being unduly influenced by Mrs. Wellin, and the course of conduct through the entire thing has been it is all someone else's fault. That is the concern that we have of Peter Wellin communicating with Dr. Austin. He has got 150 million reasons to impart to her his subjective thoughts about the relationship between him and his father, the past, anything. It matters not to the determination of his current capacity. Peter Wellin has not seen his father except to attend Mr. Wellin's deposition, that you have seen, in a year. So he has no information to share about what his current mental capacity is.

THE COURT: All right. But the other side is going to stand up and they are going to say the doctor should make that determination as far as the weight to be given, what each side is saying.

MR. JAMES HOOD: You know, I can't help but take a great exception to that. I think in the context of In Re Campbell, we shouldn't be asking an independent person to weigh each side of a contentious litigation where we are contending the children stole a hundred and fifty million dollars, and they are contending that dad doesn't know what is going on. I mean, that is more than an

independent examiner's obligation. Her obligation is only to determine whether he has capacity today or the date of the examination to have actual knowledge. She is not being hired to forensically determine the nature and extent of the litigation, the nature and extent of the relationship with Mr. Wellin vis-a-vis his wife or his children or the nature and extent of the transactions. None of that has any bearing. And Mr. Wellin, or Mr. Peter Wellin, that she needed to get his side of the story, the concern is that the scope is far beyond the charge here, and so if you are having to dig into this case to sort out the merits of the arguments of Mr. Wellin and his team and Peter Wellin and his team and the underlying litigation over this trust, the transaction, their conduct, the fact that they have admitted that they owe 50 million but they won't give it to him, and we have had to file a lawsuit over that, all of these things, is too much. And so what we think is the examination should be a determination of whether a person has the ability to actually understand and direct his or her affairs, not anything to do with the reams of paper, the documents from federal court, and not trying to determine who is

believable and who is not. I think that, at the end of the day, is your determination, and we don't think that your determination should be bound or influenced by another expert having to do the same factual analysis in weighing of the competing evidence. If it were competing medical evidence, if they were obtaining objective data, that is part of your order, and we understand, but Peter Wellin hasn't seen his father in a year. Peter Wellin, they indicate that he is a physician. He is not a practicing physician. As a physician, he hasn't treated his dad. So we just don't think, that given the stakes and given what this means to Mr. Wellin, that his children are contending that he lacks capacity, that decision can be tainted by the same person who we believe stole a hundred and fifty million dollars from him.

And Mr. Wellin is here and happy to answer any questions if you have any.

THE COURT: Okay. Counsel?

MS. GEER: Thank you, your Honor.

May it please the Court, the starting point, as I think we all agree on, is 62-5-407(b). The Court is to appoint an examiner. The goal of the statute is to find an objective examiner or

examiners to examine the person.

The Court may recall our difficulty in finding two examiners to serve in this case, because we have substantial donations of money to MUSC and Roper by the Wellins, and so we had to find a doctor who was not connected with either of those institutions, which was difficult in this town. Mr. Wellin's counsel proposed Dr. Austin. We had initial concerns because Dr. Austin was previously affiliated with one of these institutions, and with the Court's permission and permission from opposing counsel, we called Dr. Austin and talked to her about this past affiliation. At the end of the conversation, we believed that she could be objective. So Dr. Austin was appointed by this Court with agreement by all counsel, and it appears that since that time, Dr. Austin has invested substantial time and energy to review medical records and examine Mr. Wellin, as well as interviewing various individuals, as we have discussed. And now we are being asked -- the Court is being asked to start this process over, and so the question is why. Why do we need to start over? And the other side says that Dr. Austin can no longer be objective. If we

Page 17

look at the Court's order, Dr. Austin has done exactly what the Court's order directed. The plain language sets forth her role and defines mental incapacity and instructs her that, like any expert, she is permitted to communicate with other individuals in formulating her opinions. We believe that this is a standard provision. The Court would know better than us, but we believe that is standard and that it makes perfect sense. You cannot make a decision as to a person's capacity by putting blinders on and looking at today's date, talking with them on today's date and figuring out do they have capacity, can they manage their money, their assets, their affairs. You have to look at their medical history. I think any doctor that we talk to would tell you that. And there is no evidence in the record, no affidavit on the other side from a doctor that says you shouldn't look to the person's medical history. So that is what Dr. Austin did. You need to look at what physical and mental disabilities the person has, when they started, how long they have been having them, and what effects they have had on them over the timeframe at issue. You also need to be able to talk to family members and treating

Page 18

physicians to determine what they know about the person's medical history. Again, that was authorized by the order and we think appropriate and proper.

There is no argument by the other side that Dr. Austin is no longer objective because she has some newly discovered connection to the Wellin children. She is not a lifelong personal friend of the Wellin children. She has no connection to them whatsoever. She has not been retained as or ever served as an expert witness for the Wellin children. So what has happened since her appointment to make her not objective? And it says she allowed Wendy Wellin to sit in on an exam of Mr. Wellin and that she talked to Mr. Wellin's son, Peter. Neither of these is inappropriate, and neither rendered her not objective.

As the Court previously suspected correctly, Dr. Austin can use her medical expertise and her judgment to determine who is credible, who is not, what records are relevant to her decision, what weight to give any particular evidence or testimony that she receives from anyone. She is perfectly capable of doing that. Receiving information from either Wendy Wellin or Peter do

Page 19

not render her not objective.

And I do want to comment on one statement about the Wendy Wellin issue and that we objected to her being present in federal court. The reason we objected to her presence in Mr. Wellin's examination in the federal matter was because the physicians that were examining her then advised us that they would like to do an independent and solo exam of Mr. Wellin. In their judgment and expertise, that is how they wanted to conduct it, so we believed it was important for the doctors to be able to conduct the exam as they felt appropriate. Dr. Austin obviously has felt differently. In her judgment and expertise, she felt that it would be helpful to have Wendy Wellin present, and so we don't object to that. We believe it should be in the doctor's discretion as to how they conduct their examination.

The main concern of objectiveness, if you look at the In Re Campbell case that is cited in Mr. Wellin's brief, it's instructive on that point. In that case the daughter was seeking the appointment of a conservator for her mother due to alleged dementia. The examiner -- the two examiners, I believe, that were appointed by the

Page 20

Court had been previously listed as expert witnesses for the mother and were lifelong personal friends of the mother. And so the daughter says that is not objective, that doctor cannot be objective in this case, a lifelong personal friend who was previously the hired retained expert, and the Appellate Court agreed. That is not what we have here. We do not have that circumstance here. There is no connection to the Wellin children between --

THE COURT: Is communication an issue? I know in that case too they had what? Didn't the daughter travel with the experts down to the exam, I think down in Florida?

MR. JAMES HOOD: They actually flew the two doctors on a private jet down to Florida with the person they purported to appoint as a conservator.

THE COURT: In this case here, the doctor has spoken to one of the children.

MS. GEER: Your Honor, in my view of it she has talked to people on both sides. She is objective in that case. In Campbell, you have people started out with a relationship that were not objective. I don't think there is -- in

gathering information and reviewing records and talking to people, that doesn't all of a sudden render someone not objective, just like your Honor hearing a court case does not render him not objective anymore because he has heard testimony from one side or the other. You are still an objective person who can make rulings on what you have heard, weigh the credibility of what you have heard and make a decision. It doesn't render the person unobjective to get information from different parties.

In our view, what we are talking about here is whether Dr. Austin, who we all agreed at the outset was objective, and there has been nothing that has been submitted to this Court that shows that she is not an objective person anymore, whether she is entitled to full access to Mr. Wellin's medical history, medical records and talk to people who have information about his medical history and medical records or whether this Court should filter that information, and it is our position that there is no support in the case law or the statutes for a filtering of information. As long as you have an objective examiner, that examiner can determine what is important and what

is not, what is relevant and what is not, and we ask the Court to deny Mr. Wellin's motion to remove Dr. Austin.

THE COURT: Does anyone else want to be heard?

MR. JAMES HOOD: Your Honor, at this point we are not challenging the objectiveness if we haven't examined Dr. Austin. That would only come in the event that she provides an opinion to the Court and we examine her and then that issue would be raised. The purpose of this is to avoid getting to that step and having to deal with it then; instead, deal with it now so we can begin the process and end the process in a way that is fair to Keith, in a process that includes --

THE COURT: I guess what they were throwing out was to have Dr. Austin come in, you examine her just on the independence, not on her opinion. Is that an alternative or are you indicating that any communications she has already had with the son is tainted in her testimony?

MR. JAMES HOOD: It is that indeed, but their alternative option was to have a hearing on her independence, and again, if you think that that is necessary to make a determination of

objectivity, then certainly we can go that route and evaluate objectivity, but my global problem with it in its entirety is that the process has to be fair to Mr. Wellin, and if the determination of his capacity, his ability to run his day-by-day life is taken from him and given to somebody else based upon anything his son, who is suing him or is involved in litigation with him, has said, the whole process is tainted.

THE COURT: Let me ask you this: Talking about globally, the other examiner, any issues with that examiner?

MR. JAMES HOOD: No, and that was the reason for bringing this to the Court's attention. Now, the other examiner was scheduled to come in I think maybe two days later, and we notified their office, and we filed this, and we were going to try to get some clarification from the Court regarding some of the scope issues that we have asked for, the relief we have asked for in our papers. So we don't anticipate it. We don't anticipate the next one having any problems. What we hope is that whoever you select will have a clearer understanding so that we don't have to have the whole process shrouded in doubt from the beginning.

THE COURT: Yes, ma'am?

DR. AUSTIN: I am Linda Austin. May I speak?

THE COURT: I don't know if it is appropriate at this time to do that unless counsel agrees -- if y'all want to examine her on independence. I didn't realize you were here. Well, any problem with Dr. Austin staying here, I guess?

MR. JAMES HOOD: Well, I don't have any problem with her staying here. I mean, she is here. I mean, for purposes of the relief we are seeking, what she has to say doesn't change our position. I mean, our point is to bring it to you before she makes the determination because if she finds him to have capacity, they're going to attack the objectiveness based on Wendy being present.

THE COURT: They have already indicated they have waived that.

MR. JAMES HOOD: They say that now. They have said a lot of things. They said he had a right to fifty million dollars, but they still don't give it to us. We don't take that on faith.

MS. GEER: Your Honor, we can have a stipulation as to that if there is any question on

that.
THE COURT: Okay. I need to make sure that you can stipulate to that. Let me ask you this -- what we are struggling with is they revised the Probate Code, first revision what? Twenty-five years plus, since 1987. The only area that they couldn't agree on was Article 5, which deals with guardianships and conservatorships. There is a big debate there. We didn't have a new version of the National Probate Court Standards, and in that they talk about the more evidence, the better for whoever is hearing the case.
So we have got two examiners. They talk about the need for not only doctors but other social workers and nurses, lay witnesses. So I'm not sure which you envision at the merits hearing, but what the National Probate Court Standards is advocating for is, I guess, the more evidence for whoever is hearing it, the better. And I know you have got other experts that you have called to examine Mr. Wellin. I am not sure if they would be called at this merits hearing also. If we can lay out some groundwork, and then we have got some other doctors so we don't run into the same issue.
We also look at those basic eight

rights, those to be pulled within probably the root provisions of the Probate Code. That didn't happen, but we still send those up to our examiners because we are not generally dealing with a preliminary guardianship and conservatorship, we are dealing with a limited -- I mean, that's our charge, limited guardianship or conservatorship if that is needed or if there is an alternative such as a power of attorney or a trust. We are to do the least restrictive alternative. I am just throwing that out there. You know, we can get you a copy of the National Probate Court Standards. They talk about determination of incapacity, Standard 3.3.9, and it goes into discussion there. I guess that is sort of the model. We have got the statute that was passed back in 1987. We had hoped to update it and revise it. That didn't happen, and maybe we should have given the two examiners more direction at the beginning of the exam and agreed on who they were going to talk to. I am not sure if y'all can come to that agreement toward the other doctor and then you can also deal with the doctor, Dr. Austin, that has already been appointed. And I guess you have other experts that you may or may not want to call and other lay

people you may want to call.
MR. JAMES HOOD: We do. I would like to think that moving forward, at least for the direction, we would be happy to submit what we would propose to be a clarification or for the petitioners to revise and mark up, I would like to think that we could agree upon, give to the Court, but if there is some item that we can't agree on it, we will be happy to send two of them and identify the differences between the two, at least give us a chance to reach an agreement.
THE COURT: As to what direction for the examiner?
MR. JAMES HOOD: Say that again; I'm sorry.
THE COURT: As far as the direction for the designated examiner, is that what you are indicating, sort of a roadmap for them, what they should look at or can look at, who they can talk to?
MR. JAMES HOOD: As it relates to previously you did an order appointing a physician examiner, and so you have the typed portion there at the bottom. What we would do is just come up with some agreed-upon language about what the scope

is, what is in balance, what is out of balance, so that we don't have to come back and deal with this again.
THE COURT: I am not sure if we attached that, but there should have been a designated examiner's report also.
MR. JAMES HOOD: There is. You reference it. And the second point, you asked whether at the capacity hearing what we envisioned. We do envision calling his medical care providers, many of whom who have already testified as to his capacity and having capacity in federal court. I expect they may call some of their -- they have two experts who have already seen him. Perhaps they will call him -- I don't know -- and as well some other people who have day-to-day experience with Mr. Wellin. We would certainly expect to call witnesses to present that testimony to the Court.
THE COURT: Okay. Is that what y'all are agreeing to?
MS. GEER: I'm not sure what I am agreeing to. I just want to make sure.
THE COURT: Normally we had a hearing for guardianship and conservatorship, and normally in order to save costs, we appoint the same

attorney guardian ad litem. Normally it is mom or dad in a nursing home, and clearly they need a guardian or conservator. We generally waive the testimony taking the reports and make a finding. We look to the attorney guardian ad litem, if they consent to this case here or if they are not consenting. So this is one where we would take testimony. We would have the two designated examiners and maybe probably it would be appropriate that they testify last, that they hear all of the lay testimony and other experts' testimony and then give their recommendation also.

MS. GEER: Your Honor, that is what we had envisioned as well, and we plan to call witnesses at that hearing as well.

THE COURT: Okay. I guess the question is whether you want to depose -- was it Dr. Austin and Dr. Teichner prior to the hearing? Is that something that you want to do or you want to wait until the hearing?

MS. GEER: Your Honor, I would anticipate -- do we get a copy of the report prior to the hearing? Is that how that works?

THE COURT: Generally, but in this case here we may wait for the final report until we hear

all of the testimony and what the witnesses have to say.

MS. GEER: Well, then, if we are not going to have a report prior to the hearing, I would think we would want to depose them to know what their opinions are prior to the hearing.

THE COURT: Let me ask you this: If they give a report or a preliminary report, would you still want to depose them?

MS. GEER: It is tough to say without seeing the report and what's in it, but I guess I would say we would want to reserve the right to do that.

THE COURT: I would say you probably would depose them.

MS. GEER: Yes.

THE COURT: Well, we are here to help. I am just trying to lay out some ground rules and figure out what's the best way to proceed. I guess the first issue today is Dr. Austin. She is here today. Do you want any testimony as far as her independence, or do you want to come back another day?

MR. JAMES HOOD: You know, at this point, again our objection doesn't have to do with

her objectivity; it has to do with the process in its entirety and in the fundamental unfairness of that to Mr. Wellin and the appearance of that. So to answer your question, no, I don't think it makes sense to examine her now. She has one meeting with Mrs. Wellin present, and she has apparently spoken with Peter Wellin and she has done some other research, and she has reviewed records and things of that nature, but at this point --

THE COURT: Let me ask you about the other examiner, the other doctor. You know experts can rely or talk to other individuals. Who should the doctor be limited to talking to?

MR. JAMES HOOD: We feel like the physicians that you appoint should be permitted to talk to any medical care provider, and that would include doctors, nurses, physical therapists, things of that nature. If there are independent third parties, we don't have a problem, who have experience with him day to day, that they were interested in querying, we don't have any problem with that. What we do have a problem with --

THE COURT: They would have him talk to other family members; you don't agree with that?

MR. JAMES HOOD: Well, I don't think we

should in this case where there is so much at stake, because whether the doctor has talked to Mrs. Wellin about her side of the story or Peter Wellin about his side of the story, there is just too big of a risk that the whole process is going to be tainted. So why not discuss, and then if they need to hear day-to-day testimony from them, they can come in here and sit through the -- they will be sitting through the hearing, and they will be hearing all of the testimony at that time. Then we will know at least what they have heard so that the concern can be minimized, at least from your perspective.

THE COURT: All right.

MS. GEER: Your Honor, I am just confused, because if you are going to hear it anyway, and we are talking about leaving your final determination until the end of all of the testimony, she is going to hear it anyway. I think you are totally handcuffing the doctors if they cannot talk to family members. There is only so much that the physicians are going to be able to provide. I mean, their day-to-day life, what they are able to do, what they are not, the family members know that best, and you need to look at it

over a time frame, as I said earlier, and so I do not see the problem with talking to family members and with entrusting to Dr. Austin's judgment what weight to give to them.

MR. ROBERT HOOD: Judge, as to talking to family members --

MS. GEER: Your Honor, I am again objecting.

THE COURT: I will let him. He is okay.

MR. ROBERT HOOD: Going forward, talking to family members, what we have got here is a case where I think we are going to prove to a jury's satisfaction in a trial that three children set about to make sure their stepmother inherited nothing and that this man died a pauper for marrying her. That's the theme of our case. They have taken 159 million dollars in gifts from him over his lifetime. On top of that, they are now taking what is left. They have already taken it. They have ignored the fact that in his best estate planning advice, a substitution should be done and he should get what was in this trust and pay the taxes of what he got in the trust, and they should pay the taxes in what they took out of the trust,

but, no, they have taken all of the money out of the trust and left him with 42 million dollars in taxes. They have taken 30 million dollars in gifts and left him with 57 million dollars in taxes.

THE COURT: As I understand it -- let me ask you this: Generally doesn't an expert talk to whoever they can?

MR. ROBERT HOOD: The problem is, this doctor doesn't know any of that when she is talking to Peter. Basically he has stolen over a hundred million dollars. She doesn't know that. What kind of motivation has that man got? He doesn't send see his daddy. He is standing in the room when I deposed his daddy, to preserve his testimony, and his father looks right at him and says, "You have taken my money, I want it back." Yet he is spending all of this money on doctors and lawyers questioning his capacity. That is why he is here today. He has got as much capacity to talk about his case as anyone I have ever represented. Before we started, he and I were over here talking about --

THE COURT: I understand. The question is whether an expert can talk to other individuals, and who should that be. Generally an expert talks

to --

MR. ROBERT HOOD: Any doctor, any healthcare provider that has taken care of him, please talk to them. We encourage that. I put five of them on the stand in federal court in Judge Norton's courtroom, and all five said he has got full capacity. Basically, "Why have you got me here?" Because of them. They want to keep that money they have taken. We don't want them and he doesn't want them to keep it. It is not right. It is his money, he earned it in his lifetime, and it is not right to demean him at the end of his life, as his children that he has given all this to, to say he has no capacity. It is infuriating to any normal human being that that would have to happen to them, and it is going to be a disgrace if this Court lets it happen to them.

THE COURT: Save that for Tuesday's hearing, okay?

MR. ROBERT HOOD: Yes, sir.

THE COURT: Let me ask, any objection for the Court calling Dr. Austin just to ask her about her independence and then taking it under advisement?

MS. GEER: None, your Honor.

MR. ROBERT HOOD: Your Honor, in a court of equity, I think you can do anything you want. This has nothing to do with Dr. Austin. I know she is probably a brilliant doctor. I am sure she is very honest, and I am sure she is a very good doctor. I have never represented her. I have represented most of the doctors in this town, by the way, but at the end of the day, when I found out she had talked to Peter, that stole all this money and has a vendetta against the stepmother and against his father, I said we will never get an independent view of this situation.

THE COURT: Okay.

MR. ROBERT HOOD: And that's the problem --

THE COURT: Let me ask you this: Dr. Austin was recommended by your firm?

MR. ROBERT HOOD: I wanted her. That is how it all started. Bobby Hood started it, and I apologize. I never dreamed that she would have -- unless these lawyers gave her the phone number, how she would even know how to contact the guy.

THE COURT: Okay. I am going to take it under advisement. I am going to call Dr. Austin

and have her testify as to her -- not on her report, the report she is going to give, but just on the qualifications, generally how you do an exam and whether you can be independent in this case.

DR. AUSTIN: Thank you.

THE COURT: You can come forward.

LINDA SMITH AUSTIN, M.D.,

being first duly sworn, testified as follows:

THE COURT: Any objection if I ask her a few questions?

MR. ROBERT HOOD: We are listening.

MS. GEER: No objection, your Honor

THE COURT: All right.

EXAMINATION

BY THE COURT:

Q. Dr. Austin, can you state your full name for the record?

A. Linda Smith Austin, M.D.

Q. Okay. And if you would give your professional background.

A. I am a psychiatrist. I am board certified. I graduated from Duke Medical School. I trained at Duke and Georgetown. I was on faculty at MUSC for 23 years. I am now in private practice.

Q. Okay. And could you describe your private practice?

A. Yes. It is a general adult psychiatry practice. I see adults from age 18 on up.

Q. How long have you been in private practice?

A. Well, I just saw on Healthgrades I have been a psychiatrist for 37 years.

Q. You have heard the issues here this afternoon. I guess -- well, let me back up. How do you generally do an exam when you are appointed by a court? Like I said, have you been appointed by a court before to do this type of exam?

A. Not this type of an exam.

Q. Okay. Generally how would you do an exam?

A. You know, first of all, in general in psychiatry we do recommend talking to family members very liberally because family members can give so much important information, otherwise you are left with just talking with the patient themselves in a typical scenario. I want to stress that in this situation the issue is, is there a dementia or other neurocognitive problem that is affecting Mr. Wellin's judgment.

Q. Well, let's not give an opinion, okay?

A. No, but that's the question, and so one has to talk to family members because of the nature of the issue, that these -- that the question of dementia, dementia by its nature, by its definition, is a waxing and waning process, so that in the course of a day, in the course of an hour, a person can have very changing mental status.

In this particular situation, I was told from the beginning that there was a very narrow period of time, namely from 10 o'clock a.m. to 10:30 when I could see the patient, and that that was when he was at his best. Well, I need to understand how the patient is not only at his best but at his worse, and it was really -- so that was one issue.

The second issue was that there was an incredibly complex medical history, and I only got part of the records. I did ask Mr. Hood for all of the records, and I am sure they tried to get them but couldn't get them, but there were really important things that I did not have access to. And so, for example, Mrs. Wellin gave me a piece of information that was referred to in just one note in the chart. Dr. Stapleton and Dr. McCurdy, who I

talked to, weren't aware of that. Without going into details, there were two extremely important diagnoses that caused waxing and waning mental status that there was virtually no documentation about. So I did get some information about that from Wendy Wellin.

Peter Wellin is a physician. These issues go back to 2009, and I was really interested in hearing if the neurocognitive issues that I was concerned about were longstanding, i.e., going back five years, or were they just that particular day, and without talking to a family member who sees that person, how would I know that? So that was the nature of those conversations.

I will say also, Dr. Peter Wellin actually was incredibly civil and very restrained. Mrs. Wellin was equally civil and restrained, and I don't really feel that there was any conversation other than to try to help me understand the medical diagnoses.

Q. Okay. Do you believe you can give an independent recommendation or determination or finding?

A. Yes, I do.

Q. Okay. And you base that on --

A. I base that on my examination of Mr. Wellin. I have gone through the records that I do have that are about two feet high, and I have had conversations with two doctors and two family members.

Q. Is there anyone else that you need to talk to?

A. Yes.

Q. Who else?

A. Dr. Fernandez is the endocrinologist. He has an endocrine issue that I think is very relevant.

Q. Anyone else? Any other family members you need to talk to?

A. No.

THE COURT: Let me ask counsel, do you have any questions?

EXAMINATION

BY MR. ROBERT HOOD:

Q. Let me just make sure you understand a few things, because that is what started this whole problem.

A. Sure.

Q. Do you realize Keith's capacity in '03 and '09 have nothing to do with what you are doing?

Do you understand that? They have nothing to do with is he under undue influence. Is he incompetent as of the day of your examination, that's it, and so I don't know how you ever got back -- do you understand this trust started in '03, going up through changes in '09? The whole point of our lawsuit is they have pulled the wool over his eyes. He trusted his children, particularly his son that was nice to you on the telephone. He believed them because he loved them, and they lied to him, and they stole from him.

MS. GEER: Your Honor, I make objection to this. I believe Mr. Hood is testifying to some certain facts which we completely disagree with.

MR. ROBERT HOOD: I am just getting started.

THE COURT: Overruled.

MR. ROBERT HOOD: Thank you, your Honor.

BY MR. HOOD:

Q. You are a very intelligent, wonderful doctor, and you have helped thousands of patients. I want you to help Keith Wellin. What we are dealing with here is Keith Wellin's capacity when you talk to him. When I talk to him, I say,

"Keith, I am getting ready to sue your children for stealing money. Do you want me to do that?"

"Yes, sir."

"Are you sure."

"Absolutely."

I put that in a video deposition. Have you seen that?

A. I have.

Q. So you have seen how clear he is about what he wants. He wants his money given back to him. He has been totally abused, in his mind, by his children. Now, that has nothing to do with what you are doing. You are looking at can he intelligently say to Bobby, "Sue my children." That's what we are dealing with. Does he have the capacity to do what we are doing for him. That's what we are dealing with. And so we are not dealing with did he understand what was put together by a lawyer in '03. To be honest with you, I had a lawyer, who is sitting back there, put together a lot for stuff to me. I don't understand it, and I am a lawyer. The point is, is what they put together was a tax advantage to protect daddy, and daddy believed it, and that's the case that we have brought. So as you come into this picture,

what they are trying to do is get you to say he never knew what he was doing, he doesn't know what he is doing now, and Wendy is making him do everything and is stealing every penny she can steal from him, and we -- that's what they are trying to get you tainted to do.

So, please, as you focus on these facts, you are focusing on one person, the person you have been asked to evaluate. Five other doctors have done the same thing, and they have treated him, and they have seen him in the good times, and they have seen him in the bad times, and, yes, he is good in the mornings, yes, he is good when it gets tuned up, yes, when he gets through with his body functions, but he is good, and if he is only good for five minutes, that's what we are talking about, his capacity in those five minutes to understand what you as a doctor analyze, and that is: Can he understand his financial matters, can he talk about them, can he decide things in an intelligent fashion for his best interest with financial matters, can he decide who should handle his financial matters, is anyone doing anything improper to him -- those are what you are looking at, not what anyone else brings to

the table.
And you and I before today have never even met, but I did check you out. You are a very good doctor, you are very highly respected, and somehow someone got you off track here. Let's get you back to what this case is about. It is about Keith Wellin, and I am all in favor if the judge says you are going to go forward, I want you to just come back, no one else around, any time of day or night you want to see him in any condition or all conditions, and you decide, as I have decided, that this man is extremely intelligent, and he has got it all together. Not all of the time. Hell, he has been through a stroke, cancer, and a lot of medicine and a lot of procedures. He has had pneumonia the last three times, recently in the last two months, but he is with us, and he is here today, and you could take him outside in one of these rooms, just the two of you, and talk right now, and I think you would agree with me that he has got capacity. That's all we are talking about here today, not his understanding of some lawyer's document that we are fighting over, not some understanding of what his son wants to say.
THE COURT: Let me ask this: Are you

agreeing that if the doctor examines Mr. Wellin independently, you are withdrawing your objection?
MR. ROBERT HOOD: I would like to hear her say she will do that.
MS. GEER: Your Honor, just to preserve any objections for the record, I did object to the last five minutes or so of testifying. I think there were some inaccurate facts in there, and we certainly are not trying to taint the process or trying to elicit any particular opinions from Dr. Austin. We want her to do her examination and render the opinions she thinks are appropriate, and so I would strenuously object to that.
THE COURT: Your objection is noted.
BY MR. HOOD:
Q. Did they send you a copy of what they filed with this Court about Keith?
A. Yes, I think so.
Q. One more thing. So they basically have Keith sitting over here drooling, nodding in and out and wetting all over him himself and a total invalid. He has been here since we started this thing 30 minutes ago, or an hour ago. He is doing fine, and he is ready to answer questions people want to ask, if anyone wants to ask him.

So can we get you -- if you'll answer this question -- can we get you to focus on Keith Wellin, not these lawyers that have a lot of money involved -- and their client has a huge amount of money involved, and we are in litigation -- but focus on this individual and does he have capacity to decide his financial matters and his future with the money he made? They never made a nickel. He made it all, his mind made it all, and his guts and hard work, and it is his, and now he realizes what they have done, take it all away from him, keep what they can keep, give Wendy nothing, and let him die miserable. That's what is going on here.
A. Mr. Hood, you say you want me to be objective, but you clearly are trying to influence me. I think there is a question, and what I intend to do in my report is to explain this as clearly as I can and then let the judge decide, because one of the challenges of this case is that there are medically a number of waxing and waning medical issues going on, namely, and the reason I asked about 2009, in 2009 he had an MRI --
THE COURT: Dr. Austin, the question is whether you can be independent.
A. Well, I certainly plan to be. I

certainly plan to be. I think what I am trying to say, though, is that perhaps I need instruction from the Court about do we look at one freeze frame in time in a man whose mental status exam fluctuates from hour to hour, or does one take that into consideration knowing that people can make financial decisions at any time, and, your Honor, if you could -- do you understand? Am I making myself clear?
Q. We will be happy to meet with the judge and go through the details of what we think is right and what's wrong, and what is wrong is what was going on in '09. That ain't got nothing to do with what we're doing here, okay? What we are dealing with is his capacity the day you examined him and while you are talking to him and while you are assessing and evaluating him at that moment, not anything else. He could have been spaced out on all kind of medicines back in '09 on a given day and doesn't even know where he was. That happens to a lot of patients. But that is not your charge.
(Mr. Keith Wellin spoke to the Court at this time.)
THE COURT: Tell him thank you.
MR. WELLIN'S AIDE: He says he

understands how to manage his own business. He knows everything about his business and what to do.
THE COURT: Okay.
MR. WELLIN'S AIDE: Nobody can do it better than he can.
THE COURT: Thank you.
MR. ROBERT HOOD: Thank you, your Honor.
BY MR. HOOD:
Q. Can you focus on --
THE COURT: Why don't we do this: I think you are indicating with counsel and for the other examiner, maybe if y'all can get together and agree on the scope of what the examiner should look at. Generally we do have him talk to everyone that they could talk to, even if it's good for one side and bad for the other or vice versa, but generally we have our experts talk to all of the family members that they can talk to before they come in and render an opinion. They are generally the ones that know of --
MR. ROBERT HOOD: But here you have family members who haven't seen him in a year.
THE COURT: I understand.
MR. ROBERT HOOD: And he gave ten

million dollars last year each. They haven't bothered to come see him and say, "Thank you, Daddy." Not one of them. Nor call him nor write him.
THE COURT: I think that goes to the weight. I don't disagree with you.
Counsel?
MS. GEER: Your Honor, am I understanding right, the parties are going to try to come to some agreement as to the scope of Dr. Austin's exam, and is it Dr. Teichner? The other doctor.
THE COURT: Teichner.
MS. GEER: Dr. Teichner's exam, and then --
THE COURT: You also need to come to an agreement on the merits hearing. Generally the statute indicates two designated examiners, but of course you have got a petitioner's respondent's case. Do you want to agree on how many other laypersons and experts you are going to call also, and then the order of calling them? Generally we would have the designated examiners testify last after they hear all of the testimony. They may give a preliminary report but also update that

based on what they heard in court that day.
MS. GEER: Would it be appropriate for Jamie and I to get together and see what we can agree on on both of those issues and submit to the Court, and as to -- I guess as to both, whatever we do not agree on, we could send your Honor a red line or two separate versions, whatever, and then your Honor could decide any issues that we do not reach agreement on.
THE COURT: Mr. Hood, does that sound agreeable?
MR. ROBERT HOOD: He doesn't know about talking to his children. This is an unbelievable set of facts here. The reason we're having a hard time, you know, he had cancer of his throat. His mind is fine; it is getting those words out.
THE COURT: He will be allowed to testify also at his own hearing. You can call him also.
MR. ROBERT HOOD: Right. And we will have all of his treating doctors here, all of which have written letters and given affidavits and testified that he is competent. They are all right here in town.
THE COURT: I am looking at the

National Probate Court Standards, and it says the more evidence, the better. Generally we are dealing with a cost issue. I would also indicate if the cost does become an issue, there is in the Probate Code the ability to -- a new provision there dealing with the awarding of attorneys' fees and costs related to any action can be charged against the party.
MR. ROBERT HOOD: Good.
THE COURT: I just bring that to everyone's attention.
How much time do y'all need to get together to lay out those ground rules?
MR. ROBERT HOOD: Jamie and I are getting ready to go to Louisville, Kentucky, to try a right interesting case. Two weeks.
THE COURT: Okay.
MR. ROBERT HOOD: He says he will do it by Friday.
THE COURT: Okay. You mean by tomorrow?
MR. JAMES HOOD: Yes.
THE COURT: Okay.
MR. ROBERT HOOD: Whether they will agree or not, it could be months.

MS. GEER: Your Honor, as soon as we get it, we will look at it and submit something to the Court.

THE COURT: And the other designated examiner, I guess, is holding off until he gets direction from the Court?

MR. JAMES HOOD: He is ready. Teichner said just call him back or arrange through his office when we had whatever we were going to get from the Court, if anything.

THE COURT: Okay.

MR. JAMES HOOD: So we will get whatever your Honor signs, send it to them, and he will schedule it around his schedule.

THE COURT: Let me ask you, if y'all get together tomorrow, if you cannot agree, when do you want to get together next?

MR. JAMES HOOD: I think my preference would be if we can't agree, just have the conflicting order sent to you and let your Honor decide and let's go ahead and get the examinations over with so we can move on.

MS. GEER: That is agreeable to us.

MR. JAMES HOOD: Rather than the process of trying to get here, how many pieces

there are and how much it costs.

THE COURT: All right. Anything else for today?

Doctor, thank you. You may step down.

(The Witness was excused.)

THE COURT: And we are scheduled Tuesday at 1 o'clock, I believe, also. Anything else from counsel?

MS. GEER: No, your Honor.

MR. JAMES HOOD: No, your Honor.

THE COURT: Thank you, Mr. Wellin.

(The hearing was adjourned at 2:10.)

CERTIFICATE OF REPORTER

I, Ann P. Harris, Certified Merit Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 29th day of March 2014 at Charleston, Charleston County, South Carolina.

_____

Ann P. Harris, RMR
My Commission expires
June 23, 2018

INDEX

Page/Line

WITNESS/EXAMINATION
LINDA SMITH AUSTIN, M.D.
BY THE COURT..... 37/15
BY MR. ROBERT HOOD..... 41/19
COURT REPORTER'S CERTIFICATE..... 55

EXHIBITS

(No exhibits were proffered.)

A

ability 7:22 8:8,20 8:23,24 9:2 14:22 23:5 52:5
able 17:25 19:12 32:22,24
absolutely 8:23 43:5
abused 43:11
abusive 12:7
access 21:17 39:22
accurate 1:21 55:6
action 52:7
actual 7:21 14:3
ad 29:1,5
add 12:11
additional 3:20 10:6,7
adjourned 54:12
admitted 14:17
adult 38:3
adults 38:4
advantage 43:23
advice 33:22
advised 19:8
advisement 35:24 36:25
advocating 25:18
affairs 14:23 17:14
affidavit 17:17
affidavits 51:22
affiliated 16:10
affiliation 16:14
affixed 55:12
afternoon 3:1 38:10
age 38:4
ago 46:23,23
agree 15:23 25:7 27:7,8 31:24 45:20 49:14 50:20 51:4,6 52:25 53:16,19
agreeable 51:11 53:23
agreed 20:7 21:13 26:20
agreedupon 27:25
agreeing 28:20,22 46:1
agreement 16:17 26:21 27:11 50:10 50:17 51:9
agrees 24:6
ahead 53:21
aide 48:25 49:4
aides 6:11
aint 48:13
alleged 19:24
allowed 18:14 51:17
alluded 6:22
alternative 11:7 22:19,23 26:8,10
amount 9:15 47:4
analysis 15:5
analyze 44:19
ann 1:16 55:3,23
answer 3:12 8:13 15:19 31:4 46:24 47:1
answers 7:5
anticipate 23:21,21 29:22
anymore 21:5,16
anyway 32:17,19
apologize 36:20
apparently 31:6
appearance 31:3
appearances 2:1
appears 16:17
appellate 20:7
appoint 15:24 20:17 28:25 31:15
appointed 16:16 19:25 26:24 38:11 38:12
appointing 27:22
appointment 18:13 19:23
appreciated 9:11
appropriate 5:4,5 6:1 7:18,25 8:11 10:2 18:3 19:13 24:5 29:10 46:12 51:2
area 25:6
argue 6:24
argued 12:12
arguing 12:19
argument 18:5
arguments 14:14
arrange 53:8
article 25:7
asked 8:5,12,14 10:14 16:22,22 23:19,20 28:8 44:9 47:21
asking 6:17 9:5 13:20
assert 5:16
assessing 48:17
assets 17:14
associates 1:20
attached 28:5
attack 24:16
attend 13:10
attendance 4:4
attending 5:22
attention 23:14 52:11
attorney 9:14 26:9 29:1,5
attorneys 2:2,7,13 52:6
austin 3:6,19,25 4:16,22 6:17 10:21,22,25 11:3 11:22 13:5 16:8,9 16:13,16,18,25 17:1,20 18:6,19 19:13 21:13 22:3 22:8,17 24:2,2,8 26:23 29:17 30:20 35:22 36:3,17,25 37:5,7,16,18 46:11 47:23 56:4
austins 5:11 10:12 33:3 50:11
authority 4:21
authorized 18:3
avoid 22:11
awarding 52:6
aware 40:1

B

b 2:4 4:20 15:23 56:9
back 6:6,9,17 10:18 26:16 28:2 30:22 34:16 38:10 40:8 40:10 42:5 43:10 43:20 45:6,9 48:19 53:8
background 37:20
bad 44:12 49:17
balance 28:1,1
base 40:25 41:1
based 5:9 7:7 23:7 24:17 51:1
basic 25:25
basically 9:17 34:10 35:7 46:19
beach 1:22
bearing 14:9
beginning 23:25 26:19 39:10
behalf 3:16
believable 15:1
believe 5:3 6:21 7:17,25 15:16 17:7,8 19:17,25 40:21 42:13 54:7
believed 16:15 19:11 42:10 43:24
bennett 2:14
best 3:23 30:19 32:25 33:21 39:13 39:14 44:22
better 17:8 25:12 25:19 49:5 52:2
beyond 14:11
bias 11:13
big 12:16 25:9 32:5
blinders 17:11
blood 12:2
board 37:21
bobby 36:19 43:14
body 44:15
bothered 50:2
bottom 27:24
bound 15:3
brief 19:21
briefing 4:12
brilliant 36:4
bring 24:14 52:10
bringing 23:14
brings 44:25
broad 1:13
brought 43:25
bryson 2:10,12
bucket 12:3
business 8:10 49:1 49:2

C

call 26:25 27:1 28:13,15,17 29:14 36:25 50:3,21 51:18 53:8
called 16:12 25:20 25:22
calling 28:10 35:22 50:22
campbell 13:20 19:20 20:23
cancer 45:14 51:15
cant 13:18 27:8 53:19
capable 18:24
capacity 5:6,16 6:2 6:13 7:19,19 9:23 10:4 11:11 13:9 13:13 14:2 15:15 17:11,13 23:5 24:16 28:9,12,12 34:18,19 35:7,14 41:24 42:24 43:16 44:17 45:21 47:6 48:15
care 6:11 28:10 31:16 35:3
carolina 1:1 55:5 55:14
case 1:4 3:4 4:11,24 10:5 11:21 14:13 16:3 19:20,22 20:5,12,19,23 21:4,22 25:12 29:6,24 32:1 33:13,17 34:20 37:4 43:24 45:6 47:19 50:20 52:16
cause 55:9
caused 40:3
cedar 2:15
certain 42:14
certainly 23:1 28:17 46:9 47:25 48:1

certificate 55:1 56:7
certified 37:22 55:3
certify 55:5,8
challenges 47:19
challenging 22:7
chance 27:11
change 8:8 24:13
changes 42:6
changing 39:8
charge 10:9 14:12 26:7 48:21
charged 10:15 52:7
charleston 1:2,13 1:14,22 2:5,11 3:2 3:3 55:13,13
charlotte 1:24
chart 39:25
check 45:3
children 5:16 9:13 12:24 13:23 14:7 15:14 18:8,9,12 20:9,20 33:14 35:13 42:8 43:1 43:12,14 51:13
circumstance 20:8
cited 19:20
civil 40:16,17
claim 9:21
claims 5:23
clarification 10:1 23:18 27:5
clarify 10:8
clear 43:9 48:9
clearer 23:23
clearly 29:2 47:15 47:17
client 8:3 47:4
code 25:5 26:2 52:5
cognitive 9:1
columbia 1:24
com 2:6,12,17
come 6:9 10:18,22 11:3,7 22:9,17 23:15 26:21 27:24 28:2 30:22 32:8 37:6 43:25 45:9 49:19 50:2,10,16
comfort 6:12
comfortable 8:3
comment 19:2
commission 55:24
communicate 17:5
communicated 11:22
communicating 13:5
communication 11:21 20:11
communications 22:20
competent 51:23
competing 15:5,6
complete 55:7
completely 42:14
complex 39:18
complicated 7:18
concern 5:12 7:4 13:4 14:11 19:19 32:12
concerned 10:17 40:10
concerns 16:9
concludes 5:15
condition 45:10
conditions 45:11
condon 1:15 3:2
conduct 4:7,22 13:2 14:16 19:11 19:12,18
conducted 4:1,15
conflicting 53:20
confused 32:16
connected 16:6
connection 18:7,9 20:9
consent 29:6
consenting 29:7
conservator 2:13 19:23 20:18 29:3
conservatorship 26:5,7 28:24
conservatorships 25:8
consideration 48:6
consistent 4:25
contact 4:7 36:22
contending 13:22 13:24 15:14
contentious 7:15 13:22
context 13:20
conversation 9:8 9:25 10:11 12:9 16:14 40:18
conversations 40:14 41:4
copy 26:12 29:22 46:16
correctly 18:19
cost 52:3,4
costs 28:25 52:7 54:1
couldnt 25:7 39:21
counsel 2:1 3:7 10:21 11:5,15,22 12:13 15:20 16:8 16:12,17 24:5 41:16 49:12 50:7 54:8 55:9
county 1:2,13 3:2,4 55:13
course 5:4 13:2 39:7,7 50:19
court 1:1,13 3:1,13 3:16,18,23 4:2,15 4:17,18,21 5:9,19 5:21 6:4,16,23 7:2 8:17 9:3 10:2,20 11:4,15 12:13,18 13:14 14:25 15:20 15:22,24 16:2,16 16:22 17:8 18:18 19:4 20:1,7,11,19 21:4,15,20 22:2,4 22:10,16 23:10,18 24:1,4,18 25:2,10 25:17 26:12 27:7 27:12,16 28:4,12 28:18,19,23 29:16 29:24 30:7,14,17 31:10,23 32:14 33:9 34:5,23 35:5 35:17,18,21,22 36:2,13,16,24 37:6,9,13,15 38:12,13 41:16 42:17 45:25 46:14 46:17 47:23 48:3 48:22,24 49:3,6 49:11,24 50:5,13 50:16 51:1,5,10 51:17,25 52:1,10 52:17,20,23 53:3 53:4,6,10,11,15 54:2,6,11 56:5,7
courtroom 35:6
courts 16:11 17:1,2 23:14
credibility 21:8
credible 18:20
criticism 5:13
crossexamine 7:23 11:13
cure 6:18
cured 6:5
current 6:2 7:20 8:7,25 9:22 13:9 13:13
currently 8:10
cynthia 2:7

D

d 37:7,18 56:1,4
dad 13:24 15:12 29:2
daddy 34:13,14 43:23,24 50:3
daily 3:10
data 15:7
date 1:11 14:3 17:12,12
daughter 19:22 20:3,13
day 8:9 15:2 30:23 31:20,20 36:8 39:7 40:11 42:3 45:9 48:15,19 51:1 55:12
daybyday 23:5
days 23:16
daytoday 28:16 32:7,23
deal 10:18 22:12,13 26:22 28:2
dealing 26:4,6 42:24 43:15,17,18 48:15 52:3,6
deals 25:8
debate 25:9
decide 44:21,22 45:11 47:7,18 51:8 53:21
decided 45:11
decision 15:15 17:10 18:21 21:9
decisions 48:7
defines 17:3
definition 10:4 39:6
demean 35:12
demeaning 12:6
dementia 19:24 38:24 39:5,5
deny 22:2
depose 29:17 30:5 30:9,15
deposed 34:14
deposition 13:11 43:6
deprived 9:17
describe 38:1
description 12:5
designated 3:6 8:18 27:17 28:6 29:8 50:18,23 53:4
detailed 4:12 7:13
details 4:11 7:23 9:9 40:2 48:11
determination 5:6 5:8 7:4,5,20 11:5 11:17 13:9,16 14:21 15:2,3 22:25 23:4 24:15 26:13 32:18 40:22
determine 6:10,13 9:22 10:23 11:12 14:2,5,25 18:1,20 21:25
determining 7:19
devolving 4:13
diagnoses 40:3,20
dialogue 6:14
didnt 8:19 9:16 11:25 20:12 24:7 25:9 26:2,17
die 47:13
died 33:16
differences 27:10
different 21:11

differently 19:14
difficult 16:7
difficulty 16:2
dig 14:12
direct 4:18 14:23
directed 17:2
direction 4:17 26:19 27:4,12,16 53:6
directly 7:9 11:20
disabilities 17:21
disagree 42:14 50:6
discovered 18:7
discretion 19:17
discuss 32:6
discussed 4:5 7:8 7:11 16:21
discussion 7:13 9:25 26:14
disgrace 35:16
disqualified 11:18
disqualify 3:5
doable 10:25
doctor 6:6 9:4 13:16 16:6 17:16 17:18 20:4,20 26:22,23 31:11,13 32:2 34:9 35:2 36:4,6 42:22 44:18 45:4 46:1 50:12 54:4
doctors 19:12,17 20:16 25:14,24 31:17 32:20 34:17 36:7 41:4 44:10 51:21
document 45:23
documentation 40:4
documents 14:24
doesnt 7:3 13:24 21:2,9 24:13 30:25 34:6,9,11 34:12 35:10 44:2 48:20 51:12
doing 11:16 18:24 41:25 43:13,16 44:2,3,24 46:23 48:14
dollars 9:18 12:25 13:23 15:17 24:22 33:18 34:2,3,4,11 50:1
donations 16:4
dont 6:21 7:16,25 8:2,10 9:3,23 10:16 15:2,12 19:16 20:25 23:21 23:21,24 24:4,10 24:23,23 25:24 28:2,15 31:4,19 31:21,24,25 35:9 40:18 42:4 43:21 49:11 50:6
doubt 23:25
dr 3:6,19,25 4:16 4:22 5:11 6:17 10:12,21,22,25 11:22 13:5 16:8,9 16:12,16,18,25 17:1,20 18:6,19 19:13 21:13 22:3 22:8,17 24:2,8 26:23 29:17,18 30:20 33:3 35:22 36:3,16,25 37:5 37:16 39:25,25 40:15 41:10 46:10 47:23 50:11,11,14
dreamed 36:20
drooling 46:20
drop 12:2
due 19:23
duke 37:22,23
duly 37:8

E

e 40:10 56:1,9
earlier 33:1
earned 35:11
ed 8:18
edward 2:14
effects 17:23
eight 8:19 25:25
either 9:5 16:6 18:25
elicit 46:10
elses 13:3
encourage 35:4
endocrine 41:11
endocrinologist 41:10
energy 16:19
ensure 5:21
entire 12:3 13:3
entirety 23:3 31:2
entitled 21:17
entrusting 33:3
envision 25:16 28:10
envisioned 28:9 29:14
equally 40:17
equity 36:2
essential 4:3
essentially 9:11,18
estate 7:13,18,24 8:7,9,18,24 9:4,12 9:20,22 33:21
evaluate 23:2 44:9
evaluating 5:8 48:17
event 22:9
events 55:10
everyones 52:11
evidence 15:6,6 17:17 18:22 25:11 25:18 52:2
exactly 17:2
exam 6:5,18 18:14 19:9,12 20:13 26:19 37:3 38:11 38:13,14,16 48:4 50:11,14
examination 3:24 4:4,6,15,16,22,25 6:2,9,25 7:6,12 14:3,21 19:6,18 37:14 41:1,18 42:3 46:11 56:3
examinations 3:21 5:20,23 53:21
examine 10:22 11:8 16:1,19 22:10,18 24:6 25:21 31:5
examined 4:19 5:3 6:15 8:3 22:8 48:15
examiner 3:19 15:24,25 19:24 21:24,25 23:11,12 23:15 27:13,17,23 31:11 49:13,14 53:5
examiners 3:6 8:19 14:1 16:1,3 19:25 25:13 26:3,18 28:6 29:9 50:18 50:23
examines 46:1
examining 6:14 7:7 10:8 19:7
example 8:6 39:23
exception 13:19
excused 54:5
execute 8:21,25
exercise 5:7
exhibits 56:10
expect 5:18 28:13 28:17
experience 28:16 31:20
expert 5:8,10 15:4 17:4 18:11 20:1,6 34:6,24,25
expertise 18:19 19:10,14
experts 20:13 25:20 26:24 28:14 29:11 31:11 49:18 50:21
expires 55:24
explain 47:17
extent 9:12 14:5,6 14:8
extremely 40:2 45:12
eyes 42:8

F

fact 5:15 6:24 14:17 33:21
factors 10:6
facts 4:11 42:14 44:8 46:8 51:14
factual 15:5
faculty 37:23
fair 9:23 22:14 23:4
faith 24:23
familiar 4:10
family 17:25 31:24 32:21,24 33:2,6 33:12 38:18,19 39:3 40:12 41:4 41:13 49:18,23
far 3:25 13:16 14:11 27:16 30:21
fashion 44:21
fast 1:21
father 12:5,8,25 13:8,10 15:9 34:15 36:11
fault 10:12 13:4
favor 45:7
federal 5:19 14:24 19:4,6 28:12 35:5
feel 4:1 31:14 40:18
feels 12:8
fees 52:6
feet 41:3
felt 19:12,13,15
fernandez 41:10
fiduciary 9:13
fifty 9:18 12:24 13:23 15:17 24:22
fighting 45:23
figure 30:19
figuring 17:13
file 14:19
filed 23:17 46:17
filter 21:21
filtering 21:23
final 11:5 29:25 32:17
financial 44:20,22 44:23 47:7 48:7
find 15:25 16:6
finding 16:3 29:4 40:23
findings 5:12
finds 24:16
fine 6:12 46:24 51:16
firm 2:3 36:17
first 25:5 30:20 37:8 38:17
five 35:5,6 40:11 44:9,16,18 46:7
flew 20:15
floor 2:10

florida 20:14,16
fluctuates 48:5
focus 3:23 44:7 47:2,6 49:10
focusing 44:8
follows 37:8
forbade 5:22
foregoing 55:6
forensically 14:4
form 10:5
formulating 17:6
forth 17:3
forward 27:3 33:11 37:6 45:8
found 36:8
frame 33:1 48:3
freeze 48:3
friday 52:19
friend 18:8 20:5
friendly 1:21
friends 20:3
full 21:17 35:7 37:16
function 9:1
functions 44:15
fundamental 9:19 12:23 31:2
further 10:1 55:8
future 47:7

G

g 1:15 2:14
ganged 12:16
gathering 21:1
geer 2:10,12 7:1 12:15,20 15:21 20:21 24:24 28:21 29:13,21 30:3,10 30:16 32:15 33:7 35:25 37:12 42:12 46:5 50:8,14 51:2 53:1,23 54:9
general 7:24 38:3 38:17
generally 9:5 26:4 29:3,24 34:6,25 37:3 38:11,15 49:15,17,20 50:17 50:22 52:2
georgetown 37:23
getting 22:12 42:15 43:1 51:16 52:15
gifts 33:18 34:3
give 10:23 14:18 18:22 24:23 27:7 27:11 29:12 30:8 33:4 37:2,19 38:20 39:1 40:21 47:12 50:25
given 8:9 13:17 15:13,13 23:6 26:18 35:13 43:10 48:19 51:22
gives 4:17
global 23:2
globally 23:11
go 8:11 23:1 40:8 45:8 48:11 52:15 53:21
goal 15:24
goes 26:14 50:5
going 4:13 5:12 6:24 9:4 10:13 13:15,15,25 23:17 24:16 26:20 30:4 32:5,16,19,22 33:11,13 35:16 36:24,25 37:2 40:1,10 42:6 45:8 47:13,21 48:13 50:9,21 53:9
good 3:1 6:25 36:6 44:11,13,14,15,16 45:4 49:16 52:9
graduated 37:22
great 5:19 13:19
greenville 1:24
ground 30:18 52:13
groundwork 25:23
guardian 29:1,3,5
guardianship 26:5 26:7 28:24
guardianships 25:8
guess 6:16 10:22 11:4 22:16 24:9 25:18 26:15,24 29:16 30:11,19 38:10 51:5 53:5
guts 47:9
guy 36:23

H

h 2:3 56:9
hand 55:11
handcuffing 32:20
handle 44:23
happen 26:3,17 35:15,17
happened 18:12
happens 48:20
happy 3:12 15:18 27:4,9 48:10
hard 47:10 51:14
harris 1:16 55:3,23
hasnt 15:9,11
havent 22:8 49:23 50:1
head 1:22
healthcare 35:3
healthgrades 38:7
hear 29:10,25 32:7 32:16,19 46:3 50:24
heard 21:5,8,9 22:5 32:11 38:9 51:1
hearing 1:7 11:11 21:4 22:23 25:12 25:16,19,22 28:9 28:23 29:15,18,20 29:23 30:4,6 32:9 32:10 35:19 40:9 50:17 51:18 54:12
hell 45:13
help 7:2 13:18 30:17 40:19 42:23
helped 42:22
helpful 10:8 19:15
hereunto 55:11
high 41:3
highly 45:4
hilton 1:22
hired 14:4 20:6
history 7:14 10:13 17:15,19 18:2 21:18,20 39:18
holding 53:5
home 29:2
honest 36:5 43:19
honor 3:8,16,22 4:10,23 6:9,21 7:1 12:12,15 15:21 20:21 21:3 22:6 24:24 29:13,21 32:15 33:7 35:25 36:1 37:12 42:12 42:19 46:5 48:7 49:8 50:8 51:6,8 53:1,13,20 54:9 54:10
honors 10:3
hood 2:3,3,4,6 3:8 3:15,16 6:8,20 7:3 8:22 9:7 11:2,10 11:19 12:11,18,22 13:18 20:15 22:6 22:22 23:13 24:10 24:20 27:2,14,21 28:7 30:24 31:14 31:25 33:5,11 34:8 35:2,20 36:1 36:14,18,19 37:11 39:19 41:19 42:13 42:15,18,20 46:3 46:15 47:14 49:7 49:9,22,25 51:10 51:12,20 52:9,14 52:18,22,24 53:7 53:12,18,24 54:10 56:6
hoodlaw 2:6
hope 23:22
hoped 26:16
hour 39:7 46:23 48:5,5
huge 47:4
human 35:15
hundred 9:18 12:24 13:23 15:16 34:10
husband 5:24

I

identify 10:4 27:10
ignored 33:21
im 25:15 27:14 28:21
impart 13:6
important 19:11 21:25 38:20 39:22 40:2
improper 44:24
inaccurate 46:8
inadequate 9:16
inappropriate 5:18 18:16
incapacity 17:4 26:13
include 31:17
includes 22:15
inclusion 4:23
incompetent 42:3
incredibly 39:18 40:16
independence 10:23 11:13 22:18 22:24 24:7 30:22 35:23
independent 6:5 11:8 13:21 14:1 19:9 31:18 36:12 37:4 40:22 47:24
independently 46:2
index 2:20
indicate 15:10 52:3
indicated 11:24 24:18
indicates 10:1 50:18
indicating 22:20 27:18 49:12
indication 12:7
individual 47:6
individuals 16:21 17:6 31:12 34:24
influence 5:24 42:2 47:15
influenced 13:1 15:4
information 4:2 13:12 18:25 21:1 21:10,19,21,23 38:20 39:24 40:5
infuriating 35:14
inherited 33:15
initial 16:9
inquiry 6:13
instance 3:22 5:14 6:20
institutions 16:7,11

instruct 8:13
instructing 4:22
instruction 3:20 48:2
instructions 10:24
instructive 19:21
instructs 6:9 17:4
instruments 8:21 8:25
intelligent 42:21 44:21 45:12
intelligently 43:14
intend 47:16
interaction 8:15
interest 3:23 9:15 44:22
interested 31:21 40:8 55:10
interesting 52:16
interpretation 7:8
interviewing 16:20
intricate 7:23
introduce 3:9
invalid 46:22
invested 16:18
investigation 3:25
involved 8:4 10:12 23:8 47:4,5
involving 3:10
irvin 1:15 3:2
isnt 11:5
issue 6:13,18 17:24 19:3 20:11 22:10 25:24 30:20 38:23 39:4,16,17 41:11 52:3,4
issued 4:21
issues 8:1 23:12,19 38:9 40:8,9 47:21 51:4,8
item 27:8

J

james 2:4,6 3:15 6:8,20 7:3 8:22 9:7 11:2,10,19 12:22 13:18 20:15 22:6,22 23:13 24:10,20 27:2,14 27:21 28:7 30:24 31:14,25 52:22 53:7,12,18,24 54:10
jamie 3:16 12:12 51:3 52:14
jet 20:16
jr 1:20
judge 1:15 3:2 33:5 35:5 45:7 47:18 48:10
judgment 18:20 19:10,14 33:3 38:25
june 55:24
jurys 33:14

K

keep 35:8,10 47:11 47:12
keith 1:3 2:2 3:9 22:15 42:23,24 43:1 45:7 46:17 46:20 47:2 48:22
keiths 41:24
kentucky 52:15
kind 34:11 48:19
king 2:8
knew 44:2
know 4:10 7:22 8:2 10:10,21 11:25 13:18,24 17:8 18:1 20:12 24:4 25:19 26:11 28:15 30:5,24 31:11 32:11,25 34:9,11 36:4,22 38:17 40:13 42:4 44:2 48:20 49:21 51:12 51:15
knowing 48:6
knowledge 7:21 14:4
knows 10:13,13 49:2

L

lack 5:13
lacks 15:15
language 4:14 17:3 27:25
large 55:5
law 2:3 21:22
lawsuit 14:19 42:7
lawyer 43:19,20,22
lawyers 12:14 34:18 36:21 45:22 47:3
lay 25:15,22 26:25 29:11 30:18 52:13
laypersons 50:21
learned 5:10
leaving 32:17
left 33:20 34:2,4 38:21
lengths 5:19
letters 51:22
liberally 38:19
lied 42:11
life 23:6 32:23 35:12
lifelong 18:8 20:2,5
lifetime 33:19 35:11
likelihood 10:17
likewise 8:14
limited 26:6,7 31:13
linda 24:2 37:7,18 56:4
line 51:7 56:1
list 8:19
listed 20:1
listening 37:11
litem 29:1,5
litigation 7:15 8:4 9:10,10 12:23 13:22 14:5,15 23:8 47:5
llc 2:3
llp 2:9
location 1:13
long 17:22 21:24 38:5
longer 4:1 12:10 16:25 18:6
longstanding 40:10
look 8:20 9:24 17:1 17:15,19,20 19:20 25:25 27:19,19 29:5 32:25 48:3 49:14 53:2
looking 17:11 43:13 44:25 51:25
looks 34:15
lot 24:21 43:21 45:14,15 47:3 48:21
louisville 52:15
loved 42:10

M

m 1:12 2:10 37:7 37:18 39:11 56:4
maam 24:1
main 19:19
making 44:3 48:8
man 33:16 34:12 45:12 48:4
manage 17:13 49:1
manner 4:1
march 1:11 55:12
margorie 2:8
mark 27:6
marker 9:23
marrying 33:17
matter 3:3 4:5 7:10 7:17 19:6
matters 8:4 13:8 44:20,22,23 47:7
mccurdy 39:25
mean 13:25 24:11 24:12,14 26:6 32:23 52:20
means 15:13
medical 6:12 15:6 16:19 17:15,19 18:2,19 21:18,18 21:19,20 28:10 31:16 37:22 39:18 40:19 47:20
medically 47:20
medicine 45:15
medicines 48:19
meet 48:10
meeting 2:4,10 31:5
member 40:12
members 17:25 31:24 32:21,25 33:2,6,12 38:19 38:19 39:3 41:5 41:13 49:19,23
mental 13:13 17:3 17:21 39:8 40:3 48:4
mentioned 6:19
merit 1:16 55:3
merits 14:13 25:16 25:22 50:17
met 45:3
million 9:18 12:25 13:6,23 14:18 15:17 24:22 33:18 34:2,3,4,11 50:1
mind 7:21 43:11 47:9 51:16
minimized 32:12
minutes 44:16,18 46:7,23
miserable 47:13
misunderstanding 9:19
model 26:15
mom 29:1
moment 48:17
money 9:15 16:4 17:14 34:1,16,17 35:9,11 36:10 43:2,10 47:3,5,8
months 45:17 52:25
mornings 44:13
mother 19:23 20:2 20:3
motion 3:5 12:6 22:2
motivation 34:12
move 53:22
moving 10:7 27:3
mri 47:22
mullins 2:9
musc 16:5 37:24
myrtle 1:22

N

n 2:15,15 56:1
name 3:1 37:17
narrow 39:11
national 25:10,17 26:12 52:1

nature 9:12,20 12:23 14:5,6,8 31:9,18 39:3,5 40:14
nc 1:24
ncra 1:16
necessary 6:11 22:25
need 16:24 17:20 17:24 25:2,14 29:2 32:7,25 39:13 41:6,14 48:2 50:16 52:12
needed 14:10 26:8
needs 5:9 7:5 10:25
neither 18:16,17 55:8
nelson 2:9
nelsonmullins 2:12
neurocognitive 38:24 40:9
never 9:11 36:6,11 36:20 44:2 45:2 47:8
new 25:9 52:5
newly 18:7
nice 42:9
nickel 47:8
night 45:10
nobodys 8:10
nodding 46:20
normal 35:15
normally 28:23,24 29:1
nortons 35:6
notary 55:4
note 39:24
noted 46:14
notified 23:16
number 3:4 4:4,6 36:22 47:20
nurses 25:15 31:17
nursing 6:11 29:2

O

object 12:15,17,20 19:16 46:6,13
objected 19:4,5
objecting 33:8
objection 12:14,18 30:25 35:21 37:9 37:12 42:12 46:2 46:14
objections 46:6
objective 4:2 15:7 15:25 16:15,25 18:6,13,17 19:1 20:4,5,23,25 21:3 21:5,7,14,16,24 47:15
objectiveness 19:19 22:7 24:17
objectivity 5:14 23:1,2 31:1
obligation 14:1,1
obtaining 15:7
obviously 10:3 19:13
oclock 39:11 54:7
office 23:17 53:9
official 55:12
okay 6:16 11:23 15:20 25:2 28:19 29:16 33:10 35:19 36:13,24 37:19 38:1,15 39:1 40:21,25 48:14 49:3 52:17,20,23 53:11
ones 49:20
ongoing 9:10
opinion 22:9,19 39:1 49:20
opinions 17:6 30:6 46:10,12
opportunity 11:12
opposed 6:15
opposing 10:21 11:15 16:12
opposition 12:6
option 22:23
order 4:21 5:21 10:4,5 15:8 17:1,2 18:3 27:22 28:25 50:22 53:20
outset 21:14
outside 45:18
overruled 42:17
owe 14:17

P

p 1:12,16 55:3,23
page 56:1
paper 14:24
papers 4:15 10:10 11:6 23:20
part 9:20 15:7 39:19
participate 12:10
particular 18:22 39:9 40:11 46:10
particularly 42:9
parties 4:8,24 21:11 31:19 50:9
party 52:8 55:9
passed 26:16
patient 38:21 39:12 39:14
patients 42:22 48:21
pauper 33:16
pay 33:23,25
pending 55:10
penny 44:4
people 6:15 20:22 20:24 21:2,19 27:1 28:16 46:24 48:6
percent 9:15
perfect 17:9
perfectly 18:24
performed 3:21
period 39:11
permission 16:11 16:12
permitted 17:5 31:15
person 4:18 5:2 6:15 13:21 14:22 15:16 16:1 17:21 20:17 21:7,10,16 39:8 40:13 44:8,8
personal 18:8 20:2 20:5
persons 17:10,19 18:2
perspective 32:13
peter 2:7 11:21,24 12:3,7 13:4,9 14:9 14:14 15:8,9 18:16,25 31:7 32:3 34:10 36:9 40:7,15
petition 3:17
petitioners 11:23 12:4 27:6 50:19
phone 36:21
physical 17:21 31:17
physician 6:14 7:7 10:8,15 15:10,11 15:11 27:22 40:7
physicians 4:20 18:1 19:7 31:15 32:22
picture 43:25
piece 39:23
pieces 10:7 53:25
place 5:21
plain 17:2
plan 7:24 8:7,9,18 8:24 9:4,20,22 29:14 47:25 48:1
planning 7:13,18 33:22
pleadings 12:5
please 3:15 15:22 35:4 44:7
plum 2:8
plus 25:6
pneumonia 45:16
point 11:20,20 12:22 15:23 19:22 22:7 24:14 28:8 30:25 31:9 42:7 43:22
points 6:22
portion 10:1 27:23
position 8:8 21:22 24:14
possibility 10:17
power 26:9
powers 9:13
practice 37:25 38:2 38:4,6
practicing 15:11
precise 6:1
preference 53:18
preliminary 26:5 30:8 50:25
prescription 5:1
presence 5:17,17 19:5
present 6:3 8:12 9:7 10:19 19:4,16 24:17 28:18 31:6
presented 5:9
preserve 34:14 46:5
previously 16:10 18:18 20:1,6 27:22
prior 8:24 11:4,16 29:18,22 30:4,6
private 20:16 37:24 38:2,5
privilege 8:16
privileged 8:2
probably 26:1 29:9 30:14 36:4
probate 1:1,13 3:2 3:4 25:5,10,17 26:2,12 52:1,5
problem 23:2 24:8 24:11 31:19,21,22 33:2 34:8 36:15 38:24 41:22
problems 23:22
procedures 45:15
proceed 3:7 30:19
process 16:23 22:14,14,15 23:3 23:9,25 31:1 32:5 39:6 46:9 53:25
professional 37:20
proffered 56:10
proper 8:6 18:4
propose 27:5
proposed 16:8
protect 43:23
protected 4:19
prove 33:13
provence 2:15
provencemesservy 2:17
provide 4:2 32:23
provider 31:16 35:3
providers 6:11 28:10

provides 22:9
provision 17:7 52:5
provisions 26:2
psychiatrist 37:21 38:8
psychiatry 38:3,18
public 55:4
pulled 26:1 42:7
purported 20:17
purpose 7:19 10:9 22:11
purposes 24:12
put 10:10 35:4 43:6 43:18,20,23
putting 17:11

Q

qualifications 37:3
qualified 11:17
querying 31:21
question 7:9 8:12 8:13 16:23 24:25 29:16 31:4 34:23 39:2,4 47:2,16,23
questioning 34:18
questions 3:11 7:5 8:5,6,14 9:6 10:14 15:19 37:10 41:17 46:24

R

r 2:14
raised 22:11
reach 27:11 51:9
read 10:3
ready 3:7 43:1 46:24 52:15 53:7
realize 24:7 41:24
realizes 47:10
really 39:15,21 40:8,18
reams 14:24
rear 2:20
reason 5:4 6:1,12 19:5 23:14 47:21 51:14
reasons 4:3 13:6
recall 16:2
receives 18:23
receiving 18:24
recommend 38:18
recommendation 29:12 40:22
recommended 11:6 36:17
recommending 11:16
record 17:17 37:17 46:6 55:7
records 16:19 18:21 21:1,18,20 31:8 39:19,20 41:2
red 51:6
reference 28:8
referred 39:24
refrain 4:13
regarding 23:18
regardless 5:11
relate 5:23
related 8:7 52:7 55:9
relates 27:21
relationship 8:15 13:7 14:6 20:24
relevant 18:21 22:1 41:12
relief 23:20 24:12
rely 31:12
remaining 3:21
removal 3:19
remove 22:2
removed 11:1
render 19:1 21:3,4 21:9 46:12 49:20
rendered 18:17
report 8:18,19 28:6 29:22,25 30:4,8,8 30:11 37:2,2 47:17 50:25
reported 1:16
reporter 1:16 55:1 55:4
reporters 56:7
reports 29:4
represented 34:20 36:6,7
research 31:8
reserve 30:12
resides 7:15
respected 45:4
respondents 50:19
response 12:25
responsibilities 9:13
restrained 40:16 40:17
restrictive 26:10
retained 18:10 20:6
review 16:19
reviewed 31:8
reviewing 21:1
revise 26:17 27:6
revised 25:4
revision 25:5
right 3:13 8:23 13:14 24:22 30:12 32:14 34:15 35:10 35:12 37:13 45:19 48:12 50:9 51:20 51:23 52:16 54:2
rights 8:19 26:1
riley 2:9
risk 32:5
rmr 55:23
roadmap 27:18
robert 2:3 3:8 12:11 33:5,11 34:8 35:2,20 36:1 36:14,18 37:11 41:19 42:15,18 46:3 49:7,22,25 51:12,20 52:9,14 52:18,24 56:6
roberts 1:20
role 17:3
room 6:15 34:13
rooms 45:19
root 26:1
roper 16:5
route 23:1
rules 30:18 52:13
rulings 21:7
run 4:8 23:5 25:24

S

s 1:3 2:2 56:9
satisfaction 33:14
save 28:25 35:18
saw 38:7
saying 13:17
says 4:18 5:2 16:24 17:18 18:13 20:3 34:15 45:8 48:25 52:1,18
sc 1:14,22,22,22,24 1:24 2:5,11,16
scarborough 2:9
scenario 38:22
schedule 53:14,14
scheduled 23:15 54:6
school 37:22
scope 7:10 10:9,15 14:11 23:19 27:25 49:14 50:10
seal 55:12
second 3:20 28:8 39:17
secondly 9:24
see 33:2 34:13 38:4 39:12 45:10 50:2 51:3
seeing 30:11
seeking 3:17 19:22 24:13
seen 4:14 13:10,11 15:9 28:14 43:7,9 44:11,12 49:23
sees 40:12
select 23:23
send 26:3 27:9 34:12 46:16 51:6 53:13
sense 17:9 31:5
sensitive 8:4
sent 53:20
separate 51:7
serve 16:3
served 18:11
set 33:15 51:14
sets 17:3
share 13:12
shouldnt 13:20 17:19
shows 21:16
shrouded 23:25
side 6:23 12:1,16 13:15,17,21 14:10 16:24 17:18 18:5 21:6 32:3,4 49:16
sides 20:22
signs 53:13
sir 12:20 35:20 43:3
sit 18:14 32:8
sitting 32:9 43:20 46:20
situation 36:12 38:23 39:9
smith 37:7,18 56:4
social 25:15
solo 19:9
somebody 23:6
son 18:15 22:21 23:7 42:9 45:24
soon 53:1
sorry 11:2 27:15
sort 14:13 26:15 27:18
sound 51:10
south 1:1 55:4,13
spaced 48:18
speak 11:23 12:13 24:3
special 2:13
specifically 5:22
spelled 12:4
spending 34:17
spoke 11:25 48:22
spoken 20:20 31:6
spousal 8:16
sr 2:3
stake 32:2
stakes 15:13
stand 13:15 35:5
standard 10:5 17:7 17:9 26:14
standards 25:10,17 26:12 52:1
standing 34:13
stapleton 39:25
start 16:22,24
started 17:22 20:24 34:21 36:19,19 41:21 42:5,16 46:22
starting 15:22
state 1:1 7:20 37:16 55:4

statement 19:3
status 39:8 40:4 48:4
statute 4:17 5:2,2 15:25 26:16 50:18
statutes 21:23
statutory 5:1
staying 24:8,11
steal 44:5
stealing 43:2 44:4
step 22:12 54:4
stepmother 33:15 36:10
stipulate 25:3
stipulation 24:25
stole 13:23 15:16 36:9 42:11
stolen 34:10
story 12:2 14:11 32:3,4
street 1:13 2:4,10 2:15 7:16
strenuously 46:13
stress 38:22
stroke 45:14
structure 7:24
struggling 25:4
stuff 43:21
subject 4:5 7:10,14 7:17 8:16 9:9
subjective 13:6
submit 4:23 27:4 51:4 53:2
submitted 21:15
substantial 16:4,18
substitution 33:22
sudden 21:2
sue 43:1,14
suggested 10:21
suggesting 10:11
suing 23:7
suite 2:15
summerville 2:16
support 21:22
supposed 4:16
sure 25:2,16,21 26:21 28:4,21,22 33:15 36:4,5 39:20 41:20,23 43:4
surrounding 4:11
susceptible 5:13
suspected 18:18
sworn 37:8

T

t 56:9
table 45:1
taint 12:3 46:9
tainted 15:15 22:21 23:9 32:6 44:6
take 8:7 13:19 24:23 29:7 36:24 45:18 47:11 48:5
taken 5:20 12:24 23:6 33:18,20 34:1,3,16 35:3,9
takes 12:2
talk 17:16,25 21:18 25:11,14 26:13,20 27:19 31:12,16,23 32:21 34:6,19,24 35:4 39:3 41:7,14 42:25,25 44:20 45:19 49:15,16,18 49:19
talked 16:13 18:15 20:22 32:2 36:9 40:1
talking 17:12 21:2 21:12 23:11 31:13 32:17 33:2,5,12 34:9,21 38:18,21 40:12 44:17 45:21 48:16 51:13
talks 34:25
tax 43:23
taxes 33:24,25 34:3 34:4
team 5:7 14:14,15
teichner 29:18 50:11,13 53:7
teichners 50:14
telephone 42:10
tell 17:16 48:24
ten 49:25
testified 28:11 37:8 51:23
testify 29:10 37:1 50:23 51:18
testifying 42:13 46:7
testimony 18:23 21:5 22:21 28:18 29:4,8,11,12 30:1 30:21 32:7,10,19 34:14 50:24
thank 3:13,14 12:21 15:21 37:5 42:18 48:24 49:6 49:7 50:2 54:4,11
thats 4:20 7:14 9:25 26:6 33:17 36:14 39:2 42:4 43:15,16,24 44:5 44:16 45:21 47:13
theme 33:17
theory 5:23
therapists 31:17
thereof 55:10
theyre 24:16
thing 13:3 44:10 46:19,23
things 3:18 14:20 24:21 31:8,18 39:22 41:21 44:21
think 5:4 6:8 8:11 8:18,20,22 9:3,10 9:23,25 10:7,16 10:25 11:6,10,15 12:9 13:19 14:20 15:1,3,12,23 17:15 18:3 20:14 20:25 22:24 23:16 27:3,7 30:5 31:4 31:25 32:19 33:13 36:2 41:11 45:20 46:7,18 47:16 48:1,11 49:12 50:5 53:18
thinks 46:12
third 4:7,24 11:19 31:19
thoughts 13:7
thousands 42:22
three 4:3,6,9 33:14 45:16
throat 51:15
throwing 22:17 26:11
tiffany 2:15,17
time 1:12 3:11 10:24 11:14 16:18 16:18 24:5 32:10 33:1 39:11 45:9 45:13 48:4,7,23 51:15 52:12
timeframe 17:24
times 44:12,12 45:16
today 14:2 30:20 30:21 34:19 45:2 45:18,22 54:3
todays 17:12,12
told 39:10
tomorrow 52:21 53:16
tool 9:22
top 33:19
total 46:21
totally 32:20 43:11
tough 30:10
town 16:8 36:7 51:24
track 45:5
trained 37:23
transaction 14:16
transactions 14:8
transcript 2:20 55:6
travel 20:13
treated 15:12 44:11
treating 17:25 51:21
trial 33:14
tried 39:20
true 9:12 55:6
trust 14:16 26:9 33:23,24,25 34:2 42:5
trusted 42:8
try 23:17 40:19 50:9 52:15
trying 14:25 30:18 44:1,6 46:9,10 47:15 48:1 53:25
tuesday 54:7
tuesdays 35:18
tuned 44:14
twentyfive 25:6
two 3:17 4:4 6:15 12:14 16:3 19:24 20:16 23:16 25:13 26:18 27:9,10 28:13 29:8 40:2 41:3,4,4 45:17,19 50:18 51:7 52:16
type 38:13,14
typed 27:23
typical 38:22

U

ultimately 5:5,7 9:17 11:11
unambiguous 5:1
unbelievable 51:13
underlying 14:15
understand 7:22 8:24 9:2,4,16 10:3 14:22 15:8 34:5 34:23 39:14 40:19 41:20 42:1,5 43:18,21 44:18,19 48:8 49:24
understanding 9:8 9:21 10:16 23:24 45:22,24 50:9
understands 49:1
undertaking 10:16
undue 5:24 42:2
unduly 13:1
unfairness 31:2
unobjective 21:10
update 26:17 50:25
use 9:21 18:19
utilized 4:14

V

various 16:20
vendetta 36:10
versa 49:17
version 25:10
versions 51:7
vice 49:17
video 43:6
view 20:21 21:12 36:12
virtually 40:4
visavis 14:7
vitriol 12:4

W

wait 29:19,25
waive 6:23 29:3
waived 24:19
waning 39:6 40:3 47:20
want 7:6 19:2 22:4 24:6 26:25 27:1 28:22 29:17,19,19 30:5,9,12,21,22 34:16 35:8,9,10 36:3 38:22 42:23 43:2 45:8,10 46:11,25 47:14 50:20 53:17
wanted 3:9,10 12:1 19:10 36:18
wants 10:19 43:10 43:10 45:24 46:25
wasnt 9:7
water 12:3
waxing 39:6 40:3 47:20
way 22:14 30:19 36:8
weeks 52:16
weigh 13:21 21:8
weighing 15:5
weight 13:17 18:22 33:4 50:6
wellin 1:3 2:2,7,7,8 3:3,9,17,24,24 4:17,24 5:6,10,15 5:22,24,25 6:2,6 6:10,24 7:8 8:8 9:11 11:21,24 12:1,8,24 13:1,2,5 13:10 14:7,9,10 14:14,15 15:8,9 15:14,18 16:20 18:7,9,11,14,15 18:25 19:3,9,15 20:9 23:4 25:21 28:17 31:3,6,7 32:3,4 39:23 40:6 40:7,15,17 41:2 42:23 45:7 46:1 47:3 48:22 54:11
wellins 5:17 7:13 7:17 12:3 13:11 16:5,8 18:15 19:6 19:21 21:18 22:2 38:25 42:24 48:25 49:4
wendy 4:24 5:17 18:14,25 19:3,15 24:17 40:6 44:3 47:12
went 5:19
wetting 46:21
whats 30:11,19 48:12
whatsoever 18:10
wife 4:24 8:15 14:7
william 1:20
withdrawing 46:2
witness 12:9 18:11 54:5 55:11 56:3
witnesses 20:2 25:15 28:18 29:15 30:1
wonderful 42:21
wont 14:18
wool 42:7
words 51:16
work 47:10
workers 25:15
works 29:23
worse 39:15
write 50:3
written 51:22
wrong 48:12,12

X

x 56:1,9

Y

yall 24:6 26:21 28:19 49:13 52:12 53:15
year 13:12 15:9 49:23 50:1
years 25:6 37:24 38:8 40:11
youll 47:1

Z

0

03 1:12 41:24 42:6 43:19
09 41:25 42:6 48:13 48:19

1

1 1:12 54:7
10 39:11,12 54:12
100 1:13
13 7:25
15 56:5
150 13:6
151 2:10
159 33:18
172 2:4
18 38:4
19 56:6
1987 25:6 26:16

2

2 54:12
2009 7:24 9:14 40:8 47:22,22
2013gc100129 1:4 3:4
2014 1:11 55:13
2018 55:24
23 37:24 55:24
2347030 1:25
27 1:11
29401 2:5
294012239 2:11
29483 2:16
29th 55:12

3

3 26:14,14
30 34:3 39:12 46:23
300 2:15
37 38:8 56:5

4

41 56:6
42 34:2

5

5 25:7
50 14:17
55 56:7
57 34:4
5733919 1:25
5774435 2:5

6

625407 4:20 15:23
6th 2:10

7

704 1:25
7204306 2:11
7228414 1:23
7315224 1:25
7853263 1:23

8

803 1:25
8393376 1:23
843 1:23,23,23 2:5 2:11,16
864 1:25
8719500 2:16

9

9 26:14
99 9:14

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2013GC10-0129

IN RE: KEITH S. WELLIN,)

MOTION TO ALTER OR AMEND JUDGMENT
BEFORE THE HONORABLE IRVIN G. CONDON, JUDGE OF PROBATE

* * * * * * * * * * * * * * * * *

DATE TAKEN: Tuesday, April 1, 2014

TIME: 1:00 p.m.

PLACE: Charleston County Probate Court
100 Broad Street
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * * * * * * * * * * * * * *

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

APPEARANCES

REPRESENTING THE PETITIONER:

BRYSON M. GEER, ESQUIRE
ROBERT H. BRUNSON, ESQUIRE
Nelson Mullins Riley & Scarborough
151 Meeting Street/Sixth Floor
P.O. Box 1806 (29402-1806)
Charleston, South Carolina
29401-2239
Bryson.geer@nelsonmullins.com
Robert.brunson@nelsonmullins.com

REPRESENTING KEITH WELLIN:

JAMES A. "DREW" BRADSHAW, ESQUIRE
Hood Law Firm
172 Meeting Street
Charleston, South Carolina 29401
Drew.bradshaw@hoodlaw.com

REPRESENTING EDWARD BENNETT:

TIFFANY N. PROVENCE, ESQUIRE
Provence Messervy
300 N. Cedar Street, Suite A
Summerville, South Carolina 29483
Tiffany@provencemesservy.com

INDEX

REPORTER'S CERTIFICATE 100

INDEX OF EXHIBITS

(No exhibits were offered or marked for identification.)

THE COURT: Thank you. Good afternoon. Please be seated. Good afternoon, again. My name is Irvin Condon, Probate Judge for Charleston County. This is the matter of Keith S. Wellin, Charleston County Probate Case No. 2013GC10-0129. We're here on a motion to Alter or Amended Judgment. Are Counsel ready to proceed.

MR. BRUNSON: Yes, your Honor. Your Honor, Robert Brunson, appearing for the petitioners. And, again, this is an action that originated as a petition to have a conservator appointed for Keith Wellin, and then there have been subsequent Orders entered which we are now moving to reconsider.

The Order that the Court entered on February the 21st, after last having a hearing on these matters on February the 6th, there were two Orders. One authorized Mr. Bennett, as the special conservator, to pursue claims on behalf of his ward, Keith Wellin, and the other Order ordered a Trust, which is not a party to these proceedings, to pay $50,000,000 to the special conservator.

Because -- I need to make one thing

clear at the outset. I am counsel for the individual petitioners, Peter Wellin, Cynthia Plum, and Mari King, as individuals. They are also trustees of the Wellin Family 2009 Trust. I represent them in that capacity in other matters, but they are not appearing and have not appeared before this Court in their capacity as trustees, nor has the Wellin Family 2009 Trust made an appearance in this Court.

My clients, as individuals, are making arguments as to why this Court cannot Order a nonparty to pay $50,000,000 over to the special conservator. But by doing so, the Trust itself is not making an appearance and my clients are not taking on the mantle of making arguments in their capacity as trustees on behalf of the Trust. I just want to make that crystal clear on the record.

THE COURT: Counsel on the other side is going to argue that you made an appearance, based on the motion to remove the Trust Protector's Action. Is that an appearance? And then, also, I think at one of the hearings, we almost had a settlement, and I

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 6

think you indicated that the Trust and the children would pay over the money to a conservator that we were trying to work out with. Was that an appearance?

MR. BRUNSON: That was not an appearance, and I'm glad you raised that so that I can make that very clear for the record. First of all, that was not an appearance. That was settlement discussions which involved the Court. That was not an appearance on behalf of the Trust.

Secondly, with respect to the argument that the Trust made an appearance, just so we're clear, what we're referring to, there was one lawsuit filed by Lester Schwartz, who was the Trust protector in the Probate Court, seeking certain relief against the Trust. That case was removed to Federal Court on the basis of diversity, and it remains in Federal Court. The other lawsuit that was removed from this Court was brought after our last hearing. Mr. Bennett brought a lawsuit seeking relief relating to the $50,000,000 that the Court is being asked to pay to a special conservator. That lawsuit also was

Page 7

removed to Federal Court on the basis of diversity, and the Trust was a Defendant to that lawsuit.

Now, both the Schwartz lawsuit and the Bennett lawsuit, which were removed to Federal Court, bore the civil action number -- the same civil action number as the petition that is currently before the Court. Those civil action numbers were placed on those Summons and Complaints by counsel for Mr. Schwartz and counsel for Mr. Bennett. Those were mistakes. Those numbers should not have been put on those pleadings. Those were separate lawsuits, which should have had a separate civil action number. By the decision of counsel to place those numbers on those pleadings, that does not ipse dixit place these matters before this Court.

In addition, even if a matter were brought against the Trust before this Court and the Trust removed it to Federal Court, that removal would not constitute a waiver of personal jurisdiction. And I would refer the Court to -- and I'll provide the supplemental authority to the Court after the hearing, but

Page 8

it's the Holzsager, H-O-L-Z-S-A-G-E-R, v. Valley Hospital, 646 F. 2d, 792, at page 796. It's a Second Circuit case. Another Second Circuit case, Cantor Fitzgerald, LP v. Peaslee, P-E-A-S-L-E-E. The cite for that case is 88 F. 3d 152, page 157, Second Circuit 1996.

There's another Fourth Circuit case as well, which is Mobil Oil Company De Venezuela v. Jimenez. That's 948 F. 2d 1282. And that case I'm now quoting from says, During this period between filing of the action in State Court and its removal to the Federal Court, a Defendant may lose his right to challenge personal jurisdiction if he has taken any action which, under state law, will qualify as a waiver of such rights on his part.

But I believe the ruling of the Court there was that removal in itself does not constitute a waiver of personal jurisdiction. And that's what these cases stand for. And, in fact, had the Trust chosen to challenge personal jurisdiction in either of those cases, Schwartz or Bennett, it could have removed to Federal Court and then filed a Rule

Page 9

12(b) Motion to Dismiss on the basis of a lack of personal jurisdiction, and there would have been no waiver in those cases. And so for those reasons, there is no personal jurisdiction over the Trust in this petition to have a conservator role.

In addition to that, your Honor --

THE COURT: And also with the settlement negotiations that went on in Court, is that -- is that an appearance or not an appearance?

MR. BRUNSON: That is not an appearance. The way I recall the colloquy with the Court was that there was discussion concerning payment of the funds into the Court. The Court indicated that it wouldn't entertain payment of funds directly into the Court; they would have to be paid to a third party. I was having those discussions, and at no point did I indicate that I had -- was making an appearance in that context on behalf of the Trust or on behalf of my clients as trustees, but, rather, those were informal settlement negotiations, which were not consummated, and they were not consummated because, ultimately, the terms were unacceptable to the parties.

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 10

The other initial observation that I think is important to make before we get back into the details of our arguments -- and this is not in our motion to reconsider -- the Bennett lawsuit, which was filed in this Court and then removed to Federal Court on March the 3rd, contains -- it follows up on this Court giving Mr. Bennett the authority to pursue a claim. Prior to that, Mr. Bennett didn't have authority to pursue a claim. After he received it -- as we actually suggested in the last hearing, he should file a Complaint and pursue his claims in the proper course. He did that; we removed it to Federal Court.

We believe that actually deprives this Court of any jurisdiction today to make a ruling on the $50,000,000, because the Court's ruling with respect to requiring a payment of $50,000,000 to a special conservator is essentially to secure a portion of damages for a claim for breach of contract or other cause of action that Mr. Bennett has asserted. And that underlying litigation is no longer before this Court; it is now before the Federal Court. And, therefore, as your Honor is

Page 11

aware, when a case is removed, the State Court loses all jurisdiction with respect to that matter. So I believe it's important interpose to that argument at this point as well.

THE COURT: Let me ask you, Mr. Brunson, are they going to argue that the children have conceded that there was 50 million due to Dad -- is that not the position? I thought you were litigating the difference between the 50 and the 90, whatever the appreciation is?

MR. BRUNSON: And that's the fundamental problem with the Order that the Court has entered. Because that Order incorrectly finds that the $50,000,000 that we keep just loosely referring to as the $50,000,000 is due. Let me take a step back and say, first of all, I never conceded on the record previously that that money is due currently. And, in fact, the last -- if you look back at the transcript of the last hearing, the last thing I said was, I said, I'm going to make it very clear -- actually, let me go to that.

THE COURT: They're quoting you -- they're saying it is clear that the children owe the $50,000,000.

Page 12

MR. BRUNSON: Mr. Bobby Hood was interjecting from the back of the courtroom. And he said that "He," referring to me, Conceded it's my client's money. And then I said -- and this is the next to the last statement, other than "thank you" that I said at the hearing, was, "I just think I need to clarify one thing for the record. If I said it's Keith Wellin's money, the context of that statement was, as soon as he agrees to mark the note as satisfied. I mean, nobody is going to pay a debt if the creditor is unwilling to say this is in full and fair satisfaction of the debt. That's the only issue."

And I made that clarification repeatedly throughout the transcript. If you look at page 58, line 17, I said, Well -- actually, that's the wrong cite. On page 62, line 6, Ms. Provence said, "Well, your Honor, I'm just confused because they just acknowledged that it's his money." And I stated, "It's only his when he marks the note completely satisfied."

And that is exactly what our position is. So to take a step back and explain what

Page 13

is going on here, in 2009, Mr. Wellin, through his estate planning counsel, Tom Farace from Nixon Peabody in New York, set up a transaction. Previously, in 2003, he had created a Family Limited Partnership into which Mr. Wellin had placed half of his assets, all consisting of Berkshire Hathaway stock. That was in 2003. He, at that point, had conceded all control over those assets. I can't remember the exact amount at the time. I think it was about $62,000,000, if my memory serves correctly. And he did that for various reasons on the advice of his estate planning counsel.

In 2009, his estate planning counsel, based on further developments in the law relating to tax and other issues, suggested that Mr. Wellin engage in a new transaction. And he suggested that Mr. Wellin -- that they create a 2009 Wellin Family Trust, which was an Irrevocable Trust, and that the ownership -- that Mr. Wellin transfer his ownership interest of the units of that family partnership into this Trust. And that, in exchange, he receive a promissory note with a

Page 14

face value of approximately $50,000,000, which would come due some years into the future. Mr. Wellin entered into that transaction, the Trust was created; the Trust took over ownership of the shares of the Family Limited Partnership, which held and controlled the Berkshire Hathaway stock.

Now, earlier this year, Mr. Wellin, for reasons that aren't entirely clear, brought a lawsuit in Federal Court to seek to undo that transaction. And then in November of this year, after some litigation in Federal Court concerning injunctions about whether -- what would happen with those assets and ultimately the Federal Court chose not to have an injunction in place, Mr. Wellin, through his counsel, purported to -- and he still is holding this $50,000,000 note that he took in exchange for his ownership in those shares which he sold to the Trust -- he purported to --

THE COURT: Let me stop you there. I guess that was one -- I thought no one knew where the note is. Does anyone know where the note is?

Page 15

MS. PROVENCE: Your Honor, we believe the note is with the trustee, Brown and Brown (sic), marked satisfied.

MR. BENNETT: Delivered to the then trustee, the Trust -- they marked paid in full.

MR. BRUNSON: By Mr. Wellin's counsel.

THE COURT: I guess -- you came in -- the children came in and were asking for a conservator here to protect their dad? We granted you that; we got a temporary conservator. And your pleadings indicate that he owns the assets.

MR. BRUNSON: Right.

THE COURT: And one of those assets, I guess, is a note. You also reference 50 million. I don't know if that first reference in your petition is to individual assets that he has exceeding 50 million and the note is in addition to that 50 million. And I can reference you to your petition, your initial petition that's in the file.

MR. BRUNSON: I don't remember. He did own a note at the time, and that's really all that matters. And the note had a face value of about 50 million.

Page 16

THE COURT: I guess what this Court was trying to do was to protect -- as you say, protect his assets. If you're going to litigate in Federal Court, that's fine. But shouldn't somebody hold those until that litigation is resolved?

MR. BRUNSON: Well, if I could just finish, so we're clear on where the note is and who has it and so forth. So he did -- he purported to do this swap transaction, where he purported to give the note back to the Trust marked satisfied. So when Mr. Bennett just said over here, it's marked satisfied, or Ms. Provence did, that's because the attorneys for Mr. Wellin marked it satisfied and purported to give it to the Trust by sending it to a corporate trustee who had just been appointed and who immediately thereafter resigned and who has never performed any function as the trustee and who did not accept that note as a part of that swap transaction. That's our position. I'm sure they'll take a different position in Federal Court where this is all going to be litigated.

Page 17

So that's why this corporate trustee, Brown Brothers Harriman, which is resigned now but is still holding the original note marked as satisfied. Now, Mr. Wellin takes the position that by simply handing that note over, pursuant to his swap power in the Trust agreement, as the grantor of the Trust, that immediately made him the owner of 58 percent of the units of the family partnership; that he had that right to do that under the Trust. Our position is that that swap transaction was not completed. He purported to engage in that transaction, but steps were not taken to complete that transaction, and that will all be litigated in the Federal Court.

Now, subsequently, the Family Limited Partnership sold all the stock in Berkshire Hathaway, distributed that stock to the beneficiaries of the Trust, which are my three clients, and my clients are trustees of the Trust; they're also the only three named beneficiaries of the Trust. They received their shares of money from the limited partnership, but the Trust kept $50,000,000 in it. Because -- and it also, at that point or

Page 18

thereabouts, tendered payment of that note to Mr. Wellin's counsel, Mr. Bennett; sent a check, I believe, in the exact amount due to pay and satisfy that note.

Now, if at that point Mr. Bennett had -- on behalf of his client had said, Thank you, we accept this, the note is fully satisfied, sent the note back to the Trust marked satisfied, he gets to keep $50,000,000, no question about that. It was a perfect tender of full payment of the note. Mr. Bennett, however, and Mr. Wellin take the position that the note had already been swapped to the Trust, that the note no longer existed at that point. And so we couldn't satisfy it, "we" meaning my clients -- or, rather, "we" meaning the 2009 Irrevocable Trust could not pay off a note that had already been swapped out for this percentage of ownership of those shares. So we have a stalemate. And at some point, the Federal Court, Judge Norton, is going to decide who is right and who is wrong in terms of the various activities surrounding that swap transaction.

Our position is that Mr. Wellin

Page 19

continues to hold the note. Even though it's physically in the hands of the trustee, the corporate trustee, and even though it's been marked as satisfied, it hasn't been, because Mr. Wellin has neither effectively carried out the swap nor accepted our tender of payment of $50,000,000 for the note.

Now, the $50,000,000 that was tendered, because that check was never cashed -- I believe it was returned and is sitting in a lockbox or something -- the $50,000,000 that would have been used to satisfy that check is still -- is still Trust corpus, property owned by the Trust. It's physically held in an account at UBS, a Trust account, and it's sitting there. And those are moneys that are earmarked for payment of the note when the note comes due.

THE COURT: You're saying the minimum that Mr. Wellin is going to be entitled to is I guess the 50 million, and you're litigating over the appreciation for when the swap occurred?

MR. BRUNSON: The litigation concerns whether the swap was valid, because Mr. Wellin

Page 20

takes the position that, as a result of entering into the swap, he should receive $90,000,000 instead of $50,000,000. That's the crux of that dispute. Now --

THE COURT: But at a minimum, he's going to be entitled to, you're estimating, what, 50 million?

MR. BRUNSON: Well, when the note comes due -- the note is not due, and this, I think, is a factor that perhaps eluded the Court, and it may be my fault by not communicating this clearly at the last hearing. But the note doesn't come due until the year 2021. Now, we can -- "we," meaning the Trust, can prepay the note; obviously, prepayment of the note requires a meeting of the minds. If they're not going to accept our tender, then the note can't be repaid.

THE COURT: Is there any harm by one person holding both, such as a conservator holding the 50 million and also the note, pending your litigation over in Federal Court?

MR. BRUNSON: That would frankly be a decision of the Federal Court because the Trust is not a party to this litigation. The

Page 21

Trust has the account with the $50,000,000 in it. And so if the Court thinks that there's a need for an injunction to be put into place, the Federal Court can enter an injunction prohibiting the Trust from spending those funds, from keeping -- or, presumably, the Court could even order the Trust to pay that $50,000,000 into some special account -- escrow account or into the Court or some other account if a proper showing is made for an injunctive relief in a Court that has jurisdiction over the issue, which is the Federal Court.

THE COURT: What does this Court have jurisdiction over? If you're asking for a conservator and if he owns assets, do we have jurisdiction over any of those assets?

MR. BRUNSON: I do believe you have jurisdiction over Mr. Wellin's assets -- Mr. Wellin's assets, and this is a fundamental problem with the briefing of Mr. Wellin's counsel -- or Mr. Bennett's counsel, rather, on this issue, is that they assume that Mr. Wellin has some ownership right to this $50,000,000 sitting in this Irrevocable Trust,

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 22

but he absolutely does not. Those are not his assets. His assets, right now, include the note. He still has the note, because, as I've noted, he didn't properly swap it and he hasn't accepted payment of it.

THE COURT: But they're indicating the note is being held by the trustee or former trustee of the Trust?

MR. BRUNSON: That's correct. Just physically. The physical paper is in the hands of the corporate trustee, Brown Brothers Harriman, which has resigned, but I guess -- I'm not sure if they know what to do with it. I'm not really sure of the details as to why it's in their hands as opposed to Mr. Bennett's hands or the Trust protector. But that note doesn't belong to my clients, the individual Wellin children who have brought this petition, under any circumstance. The note, at some point -- right now belongs to Mr. Wellin. But he has given it to this corporate trustee, which is physically holding it, but which has not accepted that as consideration for swapping out ownership shares in the Family Limited Partnership.

Page 23

It's just physically in their possession.

THE COURT: Now, let me make sure, your children are the successor trustee to them -- Brown Brothers was the trustee before that, or was that a different Trust?

MR. BRUNSON: It's the same Trust. The way it was set up is that there were three individual trustees, which are my three clients, and then there was one corporate trustee, which was a directed trustee. That it was basically -- had certain duties that were defined by the Trust and by the law. And what happened was as a part -- at the same time that Mr. Wellin, through his counsel, purported to do the swap transaction back on November the 20th, he also replaced the Trust protector. The Trust protector originally on this Wellin 2009 Family Trust was Tom Farace, who was the same lawyer who drew up all the estate planning documents. And Mr. Wellin replaced him with Lester Schwartz on November the 20th, the same day that the swap was done. And then Mr. Schwartz immediately set about making amendments to the Trust with the -- to -- I don't probably need to get too tangled up.

Page 24

THE COURT: I guess what I was asking, the corporate trustee was --

MR. BRUNSON: The corporate trustee was also replaced. The original corporate trustee was South Dakota Trust Company, had been the corporate trustee from the inception of the Trust.

THE COURT: But the assets in the Trust went from, what, the original trustee, South Dakota, to Brown Brothers, to the three children?

MR. BRUNSON: I have to think about that for a second. Well, what the Trust held on November 20th was ownership interest in the Family Limited Partnership and some fairly small amount of cash, I believe, in order just to pay Trust administrative expenses. So when that stock was sold and the assets of the Family Limited Partnership were distributed to the Trust, they actually flowed directly to the beneficiaries. Because, at that point, there was no corporate trustee. South Dakota had been removed, Brown Brothers had been appointed and immediately resigned. So there

Page 25

was no corporate trustee in place at that point. So I think that answers your question.

THE COURT: I guess what I was asking, what did Brown Brothers hold? Did they ever hold any of the stock or the cash?

MR. BRUNSON: I don't think they ever did.

THE COURT: Did they just have the note or the piece of paper?

MR. BRUNSON: Right. I think in South Dakota -- there was a separate case brought in South Dakota Probate Court concerning their attempt to resign without incurring any liability in the process. And I believe at that point they still held the accounts of the Trust.

So if I could use an analogy as to why we find this Order so objectionable. If Mr. Bennett, as the special conservator for Mr. Wellin, or Mr. Wellin himself, went to the Cadillac dealership and said, Here is a check for $50,000, I want those two Cadillacs. Okay. One Cadillac is worth $50,000; the other is worth $42,000. And Mr. Wellin says, Here is $50,000.

Page 26

THE COURT: Let me stop you right there before you even get to the Cadillac. I think your pleadings indicate that it was through hard work and wise investing that this money was earned. So with the Cadillac sitting there, was it already his Cadillac?

MR. BRUNSON: Not yet. I'm getting to that point. So he presents a check for -- and this is in the context with this case pending. He presents a check for $50,000 and says to the dealer, Give me those two cars. And the dealer says, Well, I will sell you the $50,000 car for the $50,000 if you execute all the necessary paperwork, but I'm not going to throw in the $42,000 car as well.

And so Mr. Bennett comes to you and says, your Honor, the Probate Court, you need to Order the Cadillac dealership to put that $50,000 car in a garage because it belongs to us. Okay? Now, the question whether that -- you then have to enter an Order requiring the Cadillac dealership to take their car and put it in a garage and lock it up for some unknown period of time. And, by the way, let Mr. Bennett and Mr. Wellin come drive it whenever

Page 27

they came to the Court and said, We'd like to go take a spin. This Court would never think of doing that. Why? Because you don't have jurisdiction, first of all, over the Cadillac dealership; it's not a party to the case. Second of all, for you to do that, you're going to have to be making judgments about whether there was a contract in place or not, whether there was adequate consideration for one of those cars. I mean, for that to be resolved, Mr. Wellin and Mr. Bennett are going to have to file a lawsuit in Court.

THE COURT: Let me stop you there. What if it was a Cadillac and it was Mr. Wellin's, and he gave it to his children to hold, and then you came to the Court and you want a conservator, and he wants to get his assets, do we go get that Cadillac? And would it have appreciated to a Rolls Royce and you litigate what the difference is?

MR. BRUNSON: What if Mr. Wellin --

THE COURT: And he gave it to the children to hold.

MR. BRUNSON: Individually or in a Trust?

Page 28

THE COURT: In a Trust, any which way. And you come in and you say, He's got assets to protect, does the Court go protect that asset, or do we step back?

MR. BRUNSON: No. I'm assuming you're going to say it was five years ago, and Mr. Wellin gave his children a car and it's now a Rolls Royce, and he gave it to them five years ago, and now he has a conservator appointed, the Court is not going to say, You can go back and get that car that he gave away five years ago. I'm sure this Court --

THE COURT: I'm not saying gave it away. I'm saying if he gave it to somebody to hold or somebody is holding it for him.

MR. BRUNSON: Well, if he had a contract and it was a bailment situation or something similar in the law where he had a Cadillac and he gave it to a third party and said, This is my Cadillac, but I want you to hold it in your garage, that's a totally different story. He clearly has ownership of that Cadillac at that point. Now, if the guy at the garage said, No, no, no, he really gave this to me, this is now my Cadillac, then that's an issue for the

Page 29

Court to decide. Mr. Wellin, through his conservator, is going to have to file suit against the owner of the garage holding the Cadillac, and a Court with proper jurisdiction over the owner of the garage is going to hear his defenses. He may say, there was an offer, an acceptance, it was a contract, this is now my car, and it no longer belongs to Mr. Wellin. Mr. Wellin may say, I didn't intend to give it to him; I just wanted him to hold it for me. Those are factual disputes. So you're going to have to have a Complaint filed stating causes of actions; the parties are going to do discovery, take depositions, and they're going to go before a jury, and a jury is going to decide who owns this Cadillac.

And this Court, the Probate Court, just because a conservator has been appointed by Mr. Wellin, certainly wouldn't issue an Order saying, I'm going to require that garage to hold that car until this lawsuit that's been brought in another Court has been resolved.

THE COURT: No. I think what we're trying to do here is you've come to the Court asking for a conservator, the children have,

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 30

and you have indicated that he has assets and you've got some of those assets -- or at least a minimum of 50 million or this note.

MR. BRUNSON: That's where there's a disconnect. The $50,000,000 held by the Trust in no way, shape or form -- it's not his money. It is absolutely not Mr. Wellin's money. It's the Trust's money. Mr. Wellin was the grantor of the Trust, but that gives him no ownership interest. It's an Irrevocable Trust, so the trustees control what happens with that money.

Now, the confusion, you know, about -- from the record last time was that the Trust has tendered payment of that $50,000,000 to Mr. Wellin in full payment of the note, which means he's agreeing you owe me $50,000,000, and that's what the note is worth. He's claiming the note is worth 90 million, and I'm not going to accept 50 million.

Okay, we're going to have to go litigate that. But the money is going to stay right there in the Trust until there's a judgment, surviving appeal, by the proper Court that has jurisdiction over that.

Page 31

Really, the core issue, your Honor, is does this Court have jurisdiction over the Trust? Because if you had jurisdiction over the Trust, this is a different issue. But as I've tried to make very clear --

THE COURT: Why would it be different? We're litigating who owns the 50 million?

MR. BRUNSON: Well, if you had jurisdiction over the Trust, what you could Order the Trust to do -- you could Order it to do certain things. And whether you could properly Order it under these circumstances to pay this money to a special conservator is subject to a different question, which I'm going to get to. So the first question is whether this Court has jurisdiction over the Trust. And I don't believe the Court does. It's not a party; it's never made an appearance; it's never been served.

THE COURT: We'll take a look at that. But I guess, to get back to the fundamental issue, you came in here asking for a conservator, the children did, for their dad, saying he's got assets to be managed. In their petition they indicate there's a note,

Page 32

there's also this 50 million. And in your statements here you've indicated that -- if I understand the litigation in Federal Court, at a minimum, Dad will get 50 million. The difference is whatever the note is worth.

MR. BRUNSON: He won't necessarily get 50 million any time soon. He can get 50 million in 2021 when the note is due.

THE COURT: Does anybody have a copy of the note? I've never seen the note.

MR. BRUNSON: We do have a copy of the note. Not with me, but I can provide a copy to the Court. We have an original -- we have a copy of it clean, and then we have a copy of it marked satisfied by Mr. Bennett. So the first question is jurisdiction.

THE COURT: You've asked for us to protect the assets and safeguard the assets of Mr. Wellin. And we don't even have --

MR. BRUNSON: If the Court wants to have Brown Brothers Harriman send that note back to the Court, the original note, for the Court to hold --

THE COURT: I'm not even sure what position they are. Are they the former

Page 33

trustee?

MR. BRUNSON: They're the former trustee, but I'm sure they wouldn't have any objection. They'd probably love to get rid of that thing.

THE COURT: Did the existing trustees or new trustees get all the assets from the former trustee?

MR. BRUNSON: Do they or did they?

THE COURT: Did they?

MR. BRUNSON: I think the process of transferring accounts from South Dakota was aborted because Brown Brothers resigned. And I think the only account that I'm aware of right now held by the Trust would be held by the individual trustees. Because there is no corporate trustee to hold it.

But the second -- the first question is jurisdiction. The second question, though, is what you're really getting to, and that is I've been asked to protect this man's assets. Okay? If this $50,000,000 is his assets, then I should be allowed to protect that money. And that's my core point, is he has absolutely no claim to that $50,000,000 where it is right

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 34

now. He has claim to the physical note, which he could exchange for $50,000,000 if he would agree that it was in full and fair satisfaction of the note. But if he doesn't choose to do that, then he would hold the note. And I don't care if a special conservator holds the note or the Court, or whoever, until the Court that does have jurisdiction over the Trust and where these exact claims are now being pursued, both by Mr. Bennett as special conservator and by Mr. Wellin in his individual capacity. But these exact issues are pending in the Federal Court as to whether that swap is a valid transaction or not, whether Mr. Wellin would be entitled to a 58 percent ownership that he purported to make that swap for. And if the Court rules that the swap was not effective, then Mr. Wellin may very well say, Okay, now I want my $50,000,000; here is the note. It's satisfied. Give me my $50,000,000.

That's when he would be entitled to his 50 million. But the Federal Court is not going to award him $50,000,000. He has to agree that -- in exchange with the Trust, he

Page 35

would have to give the Trust the full satisfaction of the note and then receive his $50,000,000 as a part of that transaction.

THE COURT: I guess what I was asking earlier, what is the harm in a conservator? You mentioned the petition to have Wells Fargo appointed. We chose another corporate fiduciary to serve as conservator. What is the harm of them holding this note and also the 50 million and then let you litigate in Federal Court?

MR. BRUNSON: The harm, your Honor, is it is depriving -- again, let me make it clear: I am not speaking at this point as counsel for the Trust. The Trust is not here. But as counsel for the individual children, I will tell you the Court -- the problem is the Court doesn't have the jurisdiction to do that.

THE COURT: That's over the trustee issue, I understand.

MR. BRUNSON: You just don't have jurisdiction to do it.

THE COURT: But if they're assets of Mr. Wellin, would we have jurisdiction?

Page 36

MR. BRUNSON: I believe the Court does have jurisdiction over the assets of Mr. Wellin. So an asset of Mr. Wellin is the note -- the physical paper note that's being held by Brown Brothers.

THE COURT: It's being held by a trustee or former trustee?

MR. BRUNSON: Right, who has no dog in this fight at all, and they're just physically holding the paper. And I'm not sure at what point they would release it or to whom. I don't think we've gotten it back from them. I'm not sure about that, but I believe they still have it. But the point is, the asset of Mr. Wellin is the note. And it has either a value of $50,000,000 or $90,000,000.

THE COURT: I don't disagree with you. And that needs to be litigated in Federal Court.

MR. BRUNSON: Right. And so if the Federal Court thinks, you know, that an injunction is proper, then it can do what you're proposing to do, because it has jurisdiction over the subject matter, it has jurisdiction over the parties. It can do

Page 37

that. They're free to file a motion for an injunction in Federal Court requesting that relief. And if it's awarded, so be it. But you shouldn't get that relief from this Court, which has -- doesn't have jurisdiction over the dispute and doesn't have jurisdiction over the party holding the money.

THE COURT: If Mr. Wellin has assets, we will have jurisdiction over that?

MR. BRUNSON: Right. You would have to conclude that the $50,000,000 being held by the Trust somehow is an asset of Mr. Wellin's. I don't know how you get there until Mr. Wellin gets that money by -- by exchanging the note for it in full satisfaction of the note, which means he would have to give up his $90,000,000 claim.

THE COURT: Well, I'm back to the middle, where somebody is holding the 50 million and somebody is holding the note.

MR. BRUNSON: Well, somebody is holding the 50 million, the party that owns it. It's like any other lawsuit, you know; the Plaintiff is suing the Defendant for money. The Defendant has some assets, and they either

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 38

will or will not be able to pay the judgment if there is ever a judgment. But Courts don't generally take the assets of the Defendant before there's been any adjudication of the rights of the parties and say, I don't trust you; I'm going to hold your assets until this lawsuit is over. That just doesn't happen. That's what they tried to do in Federal Court twice -- I believe twice. And twice the Federal Court said, An injunction is absolutely not proper under these circumstances. All we're talking about here is a dispute over money. And so there is an adequate remedy at law. If you win your lawsuit, you'll get a judgment and the money is right there and you're going to recover. You don't get an injunction under those circumstances.

THE COURT: I wasn't going there. I was just going based on your petition, you asked for a conservator and somebody to protect his assets, and your petition indicated that he had 50 million. And if the children are holding that either as individuals or trustees, why not give it to a conservator and

Page 39

then go litigate the difference over in Federal Court?

MR. BRUNSON: Do you have the petition there?

THE COURT: I do.

MR. BRUNSON: Would you mind if I come take a look at it?

THE COURT: Sure.

MR. BRUNSON: I just didn't bring the petition with me today.

The 50 million --

THE COURT: I guess for the others it may not --

MR. BRUNSON: So may I just stand here?

THE COURT: Sure.

MR. BRUNSON: The petition in Exhibit A says in paragraph 6-A, Through hard work and wise investing, Keith Wellin amassed a large fortune during his lifetime. Upon information and belief, Wellin currently owns stock and cash worth over $50,000,000.

And then subpoint B says, Wellin also holds a promissory note with the face value of approximately $49,000,000.

So to be clear, the $49,000,000 is what

Page 40

I'm talking about. I'm rounding that up to 50 million. That's the money that's in the Trust. And he holds the note with that face value, but it's not due until the year 2021, unless the Trust chooses to prepay the note, which it tried to do but he refused it.

The other $50,000,000 referred to in paragraph 6-A, those are his other assets. Because, remember, when Mr. Wellin, back in 2003, when he first gave up half of his estate and put that into this Family Limited Partnership, he kept the other half. So he gave up $60,000,000, but he kept $60,000,000 for himself. And that's what this is described in there as -- upon information and belief is $50,000,000, that's what we believed at the time were his assets in terms of stock and cash. And that's what needed to be protected, because we have -- and continue to have a very strong belief that his wife has usurped control of the household and is driving all of this litigation, driving all of these lawyers, wasting all this money, trying to undo the estate planning that Mr. Wellin has had in effect for over a decade.

Page 41

THE COURT: Anything else you want to address in your motion?

MR. BRUNSON: Sure. We can walk through the whole thing.

THE COURT: But I guess, again, for the record, the note that we just mentioned is being held by, I guess, a former trustee of the Trust?

MR. BRUNSON: It's being held by Brown Brothers Harriman, which was the corporate trustee -- was appointed to be the corporate trustee and held that position for about a week and then it resigned, I believe. The Trust protector takes the position that the resignation was ineffective, that they still are the corporate trustee. We take -- I'm not sure we've taken a position. But Brown Brothers takes the position that they are no longer the trustee.

I'm having trouble getting in my computer. Just one second.

So the additional arguments that the petitioners are making as to why the $50,000,000 should not be ordered to be paid to a special conservator is that there has

Page 42

been -- have been no special proceedings, as required by South Carolina Code 62-5-416-A and Probate Code Section 62-1-201-17. 62-5-416-A, of course, is the statute that Mr. Bennett initially came to this Court on seeking an -- making an application, requesting instructions concerning his fiduciary responsibility. The position of the petitioners is this statute would require -- in Order for a Court to Order any party, even if it had had jurisdiction over the party, to pay funds to another party, it would have to be upon filing of a Petition and Summons with this Court. And when this Order was entered, it was prior to the filing of any Petition and Summons. This Court issued the Order that it did based merely upon an application made by Mr. Bennett for instructions concerning his fiduciary responsibility.

Now, the Court entered two Orders. One Order answered Mr. Bennett's application. It said, whatever your fiduciary responsibility is, and, yes, you can go sue somebody if you want to recover assets. That's fine. We think that was justified under subsection B

Page 43

here. But any claim for substantive relief would require the filing of a Summons and Complaint. That simply was not done.

In addition, this is a claim that exceeds $25,000. Obviously, $50,000,000 is more than $25,000. Under Probate Code Section 62-5-402, the Legislature and the Probate Court provides that after the service of the Summons and Petition in a proceeding seeking the appointment of a conservator, the Probate Court in which the Summons and Petition are filed has exclusive jurisdiction to determine the need for a conservator, which is what we came to this Court seeking. And then under subsection 3 of that statute, it says, Concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person, except as limited by section 62-5-433. When we go to Section 62-5-433, it indicates that claims exceeding the amount of $25,000 must be resolved in the Circuit Court, not in the Probate Court. And, therefore, even if the party had jurisdiction, even if these assets did belong to Mr. Wellin, any claim with

Page 44

respect to that must be resolved in the Circuit Court and not in the Probate Court.

THE COURT: Let me just stop you there, I guess. How would you define claim? I'm looking at the Probate Code definition 62-1-201, which is for --

MR. BRUNSON: Just a moment.

THE COURT: I've got it here if it will help you. It talks about claims. But then it goes on to say, The term does not include disputes regarding title of a decedent or a protected person to the specific assets alleged to be included in the estate.

I know you haven't had a chance to look at that, and I know that it is kind of unique that we've got jurisdiction to handle an unlimited -- a million dollar, I guess, wrongful death action, but if an incapacitated person is hurt, we're only limited to 25,000, I believe.

MR. BRUNSON: That's right, under 443.

THE COURT: But under this other definition for claim, it talks about, if a protected person owns money or owns an asset, then it's not included in that limited 25,000.

Page 45

MR. BRUNSON: Well, if Mr. Wellin had this asset and there was no claim here, he wouldn't need protection of the Court, right? He would have it in -- Mr. Bennett would have it in the account, right? But he doesn't have it. All he has is a claim to this $50,000,000, which is being held by this 2009 Irrevocable Trust, a third party. All Mr. Wellin has is a claim. That's all he has.

THE COURT: I'm saying, even if it is just a claim -- well, if he owns the asset, I think the Court has jurisdiction under that definition.

MR. BRUNSON: Well, I guess I don't understand how he would have -- how he could -- he doesn't have the asset, so he does have a claim. If he had the asset, we wouldn't be here. He doesn't have the asset, so the Court doesn't have jurisdiction. And if it's a claim, then it's a claim in excess of $25,000, which means it has to be resolved by the Circuit Court.

THE COURT: I'm saying that definition under the Probate Code says the term does not include, I guess, a dispute over assets.

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 46

Otherwise, I don't know how we'd ever get a conservatorship over 25,000.

MR. BRUNSON: Well, I may submit a supplemental brief on that point because I haven't looked at that.

THE COURT: But even before that, in 62-5-402, I know the other side is going to argue that once you filed your Summons and Petition and then you also asked for a protective order, does not that earlier code section indicate that the Court has the right to manage the person's assets? Let me find it myself here. You filed a Summons and Petition seeking the appointment of a conservator; it says, Until termination of the proceeding, the Probate Court will make the summons and petitioner file as an exclusive jurisdiction to determine how the estate of a protected person, which is subject to the laws of this state, must be managed, expended, or distributed to or for the use.

And if he has an asset, does that not apply to that asset?

MR. BRUNSON: His asset is the note.

THE COURT: So we can Order the note to

Page 47

be turned over to the conservator is what you're saying?

MR. BRUNSON: Absolutely. No question about that. Now, there may be some question from Brown Brothers because they're a third party, but I can't speak for them. But from our perspective, the note belongs to Mr. Wellin, and he can hold it himself or you can send it to a special conservator. We don't care. It's not ours; the note doesn't belong to the children.

THE COURT: I guess what I'm saying is -- I'm just trying to do what you want done, which is to protect the assets of Mr. Wellin. And we're a Court here, and I'm worried that you have litigation over in Federal Court, and I'm not sure if you've seen any of the federal government reports the GAO office has issued; they've got a number on guardianships and conservatorships, and they're critical of state courts not being proactive in protecting the elderly. So I'm not trying to step on what Judge Norton is doing or what is litigating over there, but they're saying we need to make sure that we

Page 48

protect the elderly. And that the will contest, I guess, has kind of gone away, and the will contest now occurs during a person's lifetime. I'm not sure what we have going on here, but you've come in to ask for protection of Mr. Wellin and his assets, and we're trying to give that to you. But you're saying the only thing he owns is a piece of paper and a note that a former trustee has.

MR. BRUNSON: Well, that's not the only thing he owns. He also had another $50,000,000. What he has today, I don't know. But I'm sure Mr. Bennett knows that and could provide the Court an accounting if the Court requested that information. But the Court should not be confused by our petition that I read to you earlier that says there are two things -- there are two buckets. Okay? One bucket has the note in it, and that's worth close to 50 million. The other note -- the other bucket has stock and cash worth 50 million. So at that point in time, his total assets were right at $100,000,000, and half of that was represented by the note, which is his asset. He owns it. The Court can certainly,

Page 49

pursuant to this code section, just refer to, you have jurisdiction, and his conservator does, with respect to his assets. But that summary doesn't reach out to some third party and bring money back in, not without a judgment.

THE COURT: I guess that's back to the children as individuals or trustees. I think the other side will argue that.

MR. BRUNSON: That's why I'm trying to be very clear that the children are not -- the trustees are not parties to this action.

I've already argued that the Court doesn't have jurisdiction over the 2009 Trust. And I've clarified, but just to be clear, our clients, in this proceeding, the Wellin children in their individual capacities, absolutely do not agree that the Trust owes the $50,000,000 now; that that note is not due until the year 2021.

And we walked through this earlier, but the Trust, a third party, not a party to these proceedings, made a tender of that $50,000,000, to pay the note, that was rejected by Mr. Wellin. The Trust remains, to

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 50

our knowledge, ready, willing and able to pay the note when Mr. Wellin agrees to accept that in full satisfaction of the note.

THE COURT: Are you stating that individually or as representing the trustees?

MR. BRUNSON: Individually. My clients, as individuals, can certainly take the position with respect to what they believe the legal rights are of the Trust without being the Trust. And that is the spirit in which -- the context in which I'm making this statement.

In addition, this action should be dismissed pursuant to Rule 12(b)(8) because there's a prior proceeding pending in Federal Court concerning the same subject matter here.

In addition, if the Court were to Order the Trust, a nonparty, to pay $50,000,000 to a special conservator, that would violate due process rights. There's been no service of a Summons and Complaint, no personal jurisdiction, no opportunity for discovery; there's been no trial; jury -- the right to a jury trial has not been waived, has not been honored, and no opportunity to brief these

Page 51

issues before the Court previously.

In addition, equity; this is an overextension of the equity powers of this Court. The equity powers of the Court do not allow it to impose -- to grant -- I'm sorry -- does not allow it to impose requirements on a party over which it does not have jurisdiction. And in addition, the rules for injunctive relief would still apply.

So if your Honor were to issue an Order requiring payment of this $50,000,000 -- and let's just assume the Court had jurisdiction over the Trust, that would be an injunction. So in Order -- that would be injunctive equitable relief. In Order for this Court to grant an injunction --

THE COURT: Let me ask you this: The 62-5-402 doesn't allow the Court to do that?

MR. BRUNSON: I'm not saying you don't have power to issue an injunction, but there are standards in South Carolina law under which an injunction can be granted. Number one, there has to be a showing of likelihood of success on the merits. In other words, Mr. Bennett would have to show this Court that he

Page 52

is likely to win in the litigation over the swap transaction. And this Court would have to accept that, and that would be his burden of proof. In addition to proving it, he would be likely to succeed on the merits, he would have to show he has no adequate remedy at law.

Now, what an adequate remedy at law means is if money damages are sufficient to fulfill a judgment that you may get in the future, that is a remedy at law, and that is adequate. Injunctions are only proper when there is no adequate remedy at law. And there's been absolutely no showings here that we're talking about anything other than money. That's exactly the issue that Judge Norton faced when previously he had -- he had, on an ex parte basis, based on representations made to him by Mr. Wellin's counsel, he put a TRO in effect, prohibiting the Wellin children and various entities that they were associated with from spending any of their money.

And then when we had a hearing, he concluded and issued a written Order saying, We're talking about money here. The injunctive relief is inappropriate. If Mr.

Page 53

Wellin obtains a judgment against these Defendants, these Defendants will have to pay him money. That's all he will get. There's no reason for him to have injunctive relief. Similarly, here, if Mr. Bennett, as the special conservator, is successful in his suit pending now in Federal Court and the jury there concludes the swap transaction was completed and that Mr. Wellin is entitled to 58 percent of the limited partnership and that, therefore, he gets a judgment for $90,000,000, that's $90,000,000. He's got a judgment. He can go and he can collect it.

THE COURT: I'm back to the 62-5-402, how you say a protected person is subject -- must be managed and expended and distributed. If it's an asset of Mr. Wellin, does the Court have to step in and protect that asset? Isn't that what the Federal government is saying over here in the GAO reports?

MR. BRUNSON: I'm not familiar with the GAO reports. I'm sorry. I will have to take a look at those. This Court, nor any Court using its equity powers, should order a party, much less a nonparty, to do something unless

Page 54

the elements of injunctive relief have been met. And I don't believe that the Probate Court --

THE COURT: Let me ask you, if Brown Brothers is holding Mr. Wellin's note, as you say, can we Order Brown Brothers to pay that to the conservator or give that to the conservator?

MR. BRUNSON: As a practical matter, you can Order that and they would probably do it, because I don't think they care. But if they cared, they would absolutely not to have to comply with the Order because you don't have jurisdiction. And when I say you, the Court, the Court doesn't have jurisdiction over them. They would be perfectly within their rights to say --

THE COURT: Even under 62-5-402? That's true if it's Mr. Wellin's asset?

MR. BRUNSON: Well, if it's Mr. Wellin's asset and it's being held by a third party, then that third party, until it is willing to relinquish that asset, should be able to hold it until the Court either acquires jurisdiction over that party and the elements

Page 55

of an injunction have been met. And so let's say -- let's play that out. So you have Brown Brothers that's holding this note, and Mr. -- it is Mr. Wellin's asset, which we agree. So Mr. Wellin says, your Honor, we'd like to have an Order from this Court requiring Brown Brothers to return that note to us because it's our asset.

In Order for this Court to do that, in an enforceable Order, the Court would first have to have jurisdiction over Brown Brothers. So what it would do is it would instruct Mr. Bennett to file a lawsuit against Brown Brothers claiming that they are converting or otherwise improperly holding Mr. Wellin's assets. And then in the context of that lawsuit, whatever Court hears that would have to --

THE COURT: I don't see that under 62-5-402. It says the Probate Court should determine that. Do we still have to get a third party to bring the action -- or, I mean, get the conservator to bring an action?

MR. BRUNSON: Respectfully, the Probate Code does not and cannot empower this Court to

Page 56

Order nonparties who don't have a judgment against them to pay money back, even if this Court thinks that money belongs to a ward of the Court. There has to be a litigation -- the rights of the ward are very important, and we absolutely are -- agree with that, and that's why we brought this petition.

But the rights of third parties are important too, and they are entitled to their due process rights. They're entitled to not have an Order to require them to do something if the Court doesn't have jurisdiction over them. They have a right to not have injunctive relief ordered to them if there's no likelihood of success on the merits and if there's an act (ph) of law. The Probate Court doesn't dispense with the rights of third parties in Order to protect the rights of those who need protection. That's why you have a conservator. You have -- A, we have Mr. Bennett here, who is a conservator and who is now empowered by this Court by your most recent Order to bring a lawsuit. So Mr. Wellin is no longer in need of protection. If somebody has his assets, he's got his hit man

Page 57

right here, who could bring a lawsuit and go pursue it against that third party. And then it's up to the Court during that litigation on the merits to determine whether these are or are not Mr. Wellin's assets.

This Court, your Honor, respectfully, you are not in a position to judge whether these are or are not Mr. Wellin's assets. Now, there's no question with respect to his assets that are undisputed -- for example, his cash and stock that are in accounts that Mr. Bennett has control over now, you have complete control over those. There's no question that those are his assets. But if there was a Cadillac down at the Cadillac dealership and Mr. Bennett said, That's mine, and the Cadillac dealership said, No, it's not yours, this Court doesn't get to decide that, unless there's a Complaint filed, there's a right to a jury, there's a judgment, there's personal jurisdiction, all of those things, that those things have to be honored.

THE COURT: Anything else that you want to argue?

MR. BRUNSON: That's all I have, your

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 58

Honor.
THE COURT: Thank you.
Ms. Provence.
MS. PROVENCE: Thank you, your Honor. This is a document that's already in the file. I'm not sure if you'd prefer that I offer it as an exhibit, but we've discussed it. It's the check that's in question. Can I just approach and provide you with a copy and ask that you take judicial notice of the same?
THE COURT: Thank you.
MS. PROVENCE: Your Honor, you've made my job relatively easy today because I can tell by your questions and your statements with regard to what I will probably argue, that you've read our Memorandum in Opposition to this motion. I appreciate you doing so before the hearing, and I'm sure you're well aware that I made multiple requests to see if we could have a decision on briefs only, as I felt that all parties had had an adequate opportunity to provide the Court with this information.
So to that end, I will rely on our Memorandum in Opposition with regards to some

Page 59

of the basics that have been raised, which I think include an understanding of 416-B and C, most specifically this Court's ability to enter any appropriate Order, as well as your argument with regards to standing.
I think a lot has been made of Mr. Bennett's ability to come before this Court and whether or not he had standing to make his request. I certainly think it's clear that the Court, by amending and giving the second Order, intended for him to have the ability to protect Mr. Wellin. To say that we're now authorized to do so but we weren't authorized to do so at the time we were here seems a little bit contradictory. And with regard to 12(b)(8), I would just ask the Court to please refer to the transcripts in which we had this initial hearing, where we did in fact get to the bottom of the issue, which is that there is not already pending this issue with this named party. It's just not there. And I don't think that this Court was required to dismiss based on that.
I'd like to focus, your Honor, just on some of the specifics that were raised that I

Page 60

think the Court has asked some good questions about. And the first is this allegation that the Trust was not a party. I would urge the Court to read the transcripts from today's hearing prior to making a decision and review the number of times that Mr. Brunson has said, "we" the Trust, or, "we" being the Trust.
While he indicated that they could have challenged personal jurisdiction in the Federal Court or during the removal, I think it's important for this Court to understand that they did not. You know, we go a lot to the kids are here but they're not here as the Trust.
And, your Honor, all I can reflect on is thinking back to situations I've had in the past where we're discussing an asset, whether it be maybe life insurance proceeds or a form of -- maybe a bank account, where the title is unclear, and this Court is making a determination between the interested parties as to who the rightful owner of the account is. I can't recall a situation where the insurance company was present or the bank was present. The interested parties are heard.

Page 61

If the Trust does not have an interest in that money, then when they're arguing about due process -- we've heard a lot about due process, and they continue to raise that their due process rights were violated. I beg the Court to ask, whose due process rights are we violating? The kids or the Trust? Because the Trust, as an entity simply holding this money, wouldn't have -- I'm curious as to what the depositions or the discovery on that would be. They're not arguing that they are entitled to that.
I think Mr. Brunson gave a very good overview of what has gone on in this case, and I think you're probably more familiar with it at this point than you care to be. But I think that the one piece of the story that's lacking is that the documents gave Mr. Wellin the ability to make this swap. The argument is -- and going on in Federal Court, that the swap was not valid. But let's presume for a moment that it was valid. Then it's not that Mr. Wellin has the value of the note, but he has the 58 percent partnership interest. And the reason, your Honor, I think this is so

Page 62

important to understand is what we see in the difference between the first hearing and today's hearing is a complete turn of the monies not due.

And the reason I handed you a copy of the check is because they're now arguing that the money isn't due until, I believe, 2021. Your Honor, since we like analogies, I'm going to give you one of a mortgage. That was a secured note. If you hold a secured note on a home and the home is sold, the note becomes due. You don't get the option of paying off your mortgage down the road when it's convenient for you. Their letter states, and the testimony has been in this Court, that the general partner has liquidated the partnership assets. They've sold the collateral. They've sold it, and they've distributed it to themselves. And then by this letter on December 6, they attempted to pay the $50,000 (sic), and a copy of the check is provided to the Court, to Mr. Wellin.

So not only do we have a situation where the children, as individuals, on their petition listed the asset when they begged

Page 63

this Court to protect their father, but we also have an acknowledgment that the Friendship Partners and Nelson Mullins, acting on behalf, attempted to pay this fund of $50,228,000 on December 5th of 2013.

The reason that that check was rejected is quite simple. It came with a string, and it was a pretty significant string. The conservator -- special conservator at that time would have to agree that that means that the swap was not valid. He would have to be saying, I'm agreeing to take this $50,000,000 and will waive his right to pursue the additional $40,000,000.

And the questions that you've asked, your Honor, are completely on point with regards to, isn't this an asset that belongs to Mr. Wellin? Absolutely. They can hide it in a Trust all day long. They can stand here in Court and say they're here as individuals, but I think the testimony from both hearings will reflect something entirely different. The issue at hand, which you've identified, is either he surrendered the note for a 58 percent interest or, if they're successful in

Page 64

Federal Court, he didn't. But either way, the worst case scenario is the $50,000,000.

Your Honor, I have read some of the guardianship reports, and I'm very familiar with the issues before this Court as far as protecting the assets. I disagree with Judge Norton in Federal Court because I think when you say injunctive relief is not appropriate because it's just money, that's lot easier to say unless you are the gentleman that earned all of the money, who is of ill health and desires to have control of some of his money returned. You know, I understand the thought is, well, it can always be paid back. But the question I look with regards to a petition on a conservatorship is the fact we're already well aware that some of these assets will have to be used to pay tax consequences that were incurred as a result of some of these transactions.

So to say that we're going to sit and wait for this to play out in Federal Court, when I believe the jurisdiction of this Court is incredibly important and proper, is a little bit selfish, your Honor.

Page 65

I would say that the difference in this case is pretty clear. The reason that they're making due process arguments, the reason that they're making standing arguments, the reason that we are having debates over substantive relief -- I've never heard a substantive relief argument in an issue where the Court -- the Court has not asked these children to pay their own money. The $42,000,000 issue in Federal Court is money they have disbursed to themselves. That's the reason, your Honor, as soon as I became involved in this case, I said, These are the issues that are appropriate to address under the application. With regards to the other issue, we need permission from the Court to file an appropriate case to seek those funds. But with regards to the $50,000,000, your Honor, they've misapplied 416-B and C; this is not substantive relief. This Court isn't ordering the children to pay anything. And this is most certainly, under the Probate Code, and the restrictions with regard to your monetary jurisdiction, this is not a claim. This is not -- we're not asking the Court to review or

Page 66

approve a wrongful death claim or a claim on behalf of a minor. This is the issue by the very letter that we've presented and the check that we've presented is money that is acknowledged that is owed to him. It's convenient that they now want to say it's due in 2021, but I think when they liquidated the collateral, that argument is no longer appropriate in the sense that they don't get the benefit of selling the asset without paying on the note that's due.

Your Honor --

THE COURT: Let me ask you this: Under 416, can the Court Order the payment of the asset, or do we have to do it under 402?

MS. PROVENCE: Well, your Honor, actually, I was reviewing 402 and the comments when we were discussing that, and I would argue that either is appropriate. 416-C clearly allows the special conservator to give an application. You know, so much to-do is made over this ex parte letter, which ultimately all parties received; everyone participated in the hearing.

At the end of the day, 416-C allows any

Page 67

appropriate Order, but, your Honor, I'm just as comfortable with 5-402 as a protective proceeding. I'm just not sure that it falls under three as far as a claim for or against the person. I guess I'm just having difficulty viewing it as a claim in the sense that the money was already offered. So, your Honor, I think when you ordered -- you know, whatever -- we indicated this at the first hearing -- whatever needs to be placed on the record or added to an Order to state that, we don't intend to seek this money twice. Mr. Brunson says that the harm -- what's the harm that's going to be done? Well, they could get this $50,000,000, and then we could walk over to Federal Court and say we're owed 90. I think arguing that we could get away with that is a little bit ludicrous and insulting to the Federal Court. If this Court Orders that the minimum due, the minimum asset belonging to Mr. Wellin at this time is the $50,000,000, I don't see how we could then go over to the Federal Court and argue that they were owed 92, of which clearly 50 of that was being protected by this Court.

Page 68

THE COURT: Is there any harm in a conservator holding the 50 million and holding the note at the same time until resolution of the federal litigation?

MS. PROVENCE: I don't think there's a harm in them holding the note, your Honor. One of the things that's been overlooked is -- what the petitioners call a receipt and I call an acknowledgment is that Brown Brothers did in fact, and the Court has a copy of, the acknowledgment whereby they stated that they had accepted the note in exchange for the 58 percent. But in Order to protect their fear that we won't litigate this matter twice -- and I believe the original Order indicated language that the note was to be surrendered, we had no objection to that, your Honor, any language that needs to be added to indicate that the parties aren't going to try to seek repayment of these funds twice. But it just seems inconsistent to me to state that -- and what Mr. Brunson is trying to avoid saying today I can appreciate because, clearly, when you read the transcript from the first hearing and then you read their brief that was

Page 69

submitted after the hearing, his clients clearly weren't happy with his acknowledgment that, at a minimum, 50 million is due in exchange for the note, and a maximum 90-plus million is due in exchange for the 58 percent partnership agreement. That's the only thing that's changed since our original hearing, is their stance on that issue. But, your Honor, under which code the Court Orders that, I think either is appropriate, I think that what we fail to recognize is that once this Court identifies an asset belonging to a protected person, great jurisdiction is given to this Court in Order to protect that asset. They're the ones that wanted him to be protected. It's confusing now, but it seems that the parties he needs to be protected from are the very ones that brought the petition.

Our only issue, your Honor, with the Order -- and to be quite candid is one that I did not intend to raise until today, is that, you know, while I understand the Court's decision to turn the funds over to Synovus, since that time, we have in fact learned that the fees that will be paid for holding those

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 70

funds are approximately $100,000 annually -- Correct? -- annually. There may be an ability for us to negotiate that down, but the lowest possible negotiation would be in the $75,000 range. Your Honor, I can certainly understand, after the debate that went forward in the courtroom, why the Court leaned in that direction. But since the petitioners have asked the Court to alter or amend, I would respectfully ask this Court to reconsider that decision. The funds are not going to be invested while held with Synovus; that's a fee we're paying merely for them holding them, therefore, I would ask the Court to reconsider and place the funds in a restricted account, allow the Court to have complete jurisdiction over those funds as far as having to get an Order for any of those funds to be released, and allow them to fall under the conservator that has already been appointed, such that Mr. Wellin is not being required to pay $100,000 annually for the length of time that this may go on.

THE COURT: They have proposed Wells

Page 71

Fargo and submitted the paperwork with Wells Fargo. We're just looking at a neutral third party, which they also pled.

MS. PROVENCE: I understand, your Honor. Looking at the costs, and apparently --

THE COURT: I'm sure there's a cost for whoever the Trust has holding the money too. I'm sure there's a similar cost if the Trust is holding that kind of money.

MR. JUTZELER: Your Honor, I'm Jeremy Jutzeler with Synovus Trust Company. I just wanted to address that issue. I could, obviously, go to our account review committee and, you know, seek, you know, lessening the fee. I think at the time that we came up with that figure it was based on our custody fee schedule, which -- but at the time we were also being named special conservator, so we were trying to count in the factors that a fiduciary -- some fiduciary duty that we may be asked to do. So that's why it may be considered a little bit of a higher custody schedule.

But if we're clearly defined as strictly a custody schedule, we can possibly go to our

Page 72

account review committee for less. Or we can also look at doing an extend -- (inaudible) -- platform investment management.

THE COURT: We're not sure which way we're going to go.

MR. JUTZELER: I understand.

THE COURT: Thank you. Ms. Provence, anything else on the jurisdiction? They indicated we don't have jurisdiction over the trustees. They're not here and --

MS. PROVENCE: I think we've covered the issue in our Memo in Opposition. I would just ask you to reflect on that. Clearly, by the Order that was issued, the Court did some homework after the hearing and appropriately added some case law. There is case law on point. I just don't think you get the benefit of appearing in one capacity but not appearing in the other. At the end of the day, your Honor, the only benefit to that is that -- I think it's clear that the children are intending to use their position in Order to continue to blackmail Mr. Wellin with his own money. The only way he gets control of his own money is if he agrees to waive the 42

Page 73

million, which they conveniently have disbursed to themselves. I don't think anybody is hiding the Court from seeing what is going on as far as children versus trustees. I believe the case law is on point. I think this Court certainly has jurisdiction over them.

THE COURT: I think they had a Texas case, I believe, that indicated -- if you have any comments on that Texas case?

MS. PROVENCE: I reviewed the case, your Honor. That was the one that I was saying as far as the addition to the Order. I felt that it was appropriate and I thought it was on point.

THE COURT: I'm talking about in their memorandum, their current one.

MS. PROVENCE: I did not actually see the case that they -- the one that he listed for the Court. I think he said he would file with follow-up.

THE COURT: It's the Ashton case.

MS. PROVENCE: I apologize. Let me see if I can find where they referred to it.

I apologize, your Honor.

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 74

THE COURT: If you want to address that in your proposed Order, we could do it there.
MS. PROVENCE: I'm happy to address it in my proposed Order, but I do believe that that was the case, if I remember correctly, which was with regards to the issue where they're stating that -- Mr. Brunson argued that they did not accept jurisdiction during the removal process. I mean, first of all, I think when we have a South Carolina case that's on point with regards to your ability to appear in Probate Court and appear in one capacity, and I believe in our case it was, I'm here as PR but not as trustee --
THE COURT: Or not as an individual.
MS. PROVENCE: Not as an individual, I'm sorry, because it was a rule to show cause issue. I think when we have a South Carolina --
THE COURT: When you go from an individual to a trustee is the question, I guess.
MS. PROVENCE: Yes. But I think still, when we have someone appearing -- again, they brought this petition. It's not as if they

Page 75

were brought to Probate Court against their will. They alleged as individuals that their father's assets needed protecting. This asset is specifically listed on the inventory. They then attempted, I guess as -- arguably, in multiple capacities, to tender those same funds. Again, I think when I reviewed the February hearing transcript, as well as the commentary made today, that we, the trustee, or we, being the Trust, to ask this Court to differentiate the two -- I mean, if the children had separate counsel, your Honor, that were representing them in their capacity as trustee, I may be able to accept their argument. But to say that we attended this hearing and we had these discussions, the matter was not raised as far as the negotiations were concerned, there's a South Carolina case on point, but we're going to look to Texas with regards to whether or not we can bring in a trustee, again, I guess I ask the Court to look at what due process violation is there as to the Trust? Because I don't think there's an argument that the beneficiaries -- I understand the arguments

Page 76

with the 42 million, clearly. But with regards to these funds, it's being held by the Trust, but I don't think there's an argument that the children are entitled to these funds. So I look at it like I would look at a case where we're arguing over who insurance proceeds are belonging to. I've never had an insurance company come in the room and argue lack of due process because they -- you know, they're paying the money to someone. It's just an issue of who the appropriate party is.
And I think in this case it's very difficult to sit on this side and have Mr. Brunson arguing "we" and "us" and "they." If he's representing them in all capacities and they were the petitioners, they're serving -- they served their father in multiple fiduciary roles, whether it be trustees, whether it be power of attorney. You know, to come in here and argue that, I'm here in this capacity but not in another, I find to be a disregard for this Court's jurisdiction and a little bit contrary to common sense. And I would just beg the Court -- I'm happy to brief the Texas case, your Honor. I only read it initially.

Page 77

And if I remember, that was Mr. Brunson's argument with regards to the removal. I'm happy to brief the issue, but I don't think it changes what South Carolina case law says on this specific point in Probate Court.
THE COURT: Okay. Thank you. Anybody else? Or, Mr. Brunson?
MR. BRUNSON: If I could respond to a couple of things, your Honor. First, Counsel indicated that there's a case in South Carolina on point, and I think she's referring to the Canon -- in Re: Canon case. Totally different. I'm reading here from the case -- from headnote 12 in the case. The second paragraph under the headnote, Canon and his counsel appeared at the August 10th, September 24th, November 15th and 20th, 2007, hearings and never made a motion or an objection as to the personal jurisdiction of the Circuit Court. At the August 10th hearing -- and I'm paraphrasing a little bit -- counsel for the special administrators began by discussing their motion related to the recommendation that one or more of the personal representatives and trustees be removed.

Electronically signed by Eve Wilbanks (101-177-349-6970) 27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 78

It goes on to say, No objection was made by Canon or his counsel. Canon specifically consented to the terms of the August 10th Order, which formed the basis for all contempt proceedings. In other words, there's no question that Canon appeared as the trustee in the proceedings, even consented to an Order requiring him to pay $350,000 in to the Court.

So in that case it was a much clearer question; it was in fact very clear that Canon had waived. Here, the children have never been named as trustees. And as soon as any relief was sought against the Trust, the children made it very clear that they are here only in their individual capacities and not in their capacities as trustees.

Now, as I was sitting here, I was thinking, why don't they just sue the Trust? Why don't they just serve a Summons and Complaint and gain personal jurisdiction over the Trust? That would solve the issue, wouldn't it? Well, the answer to that is that's what they did. Mr. Vanvitsu's (ph) Trust -- the Trust removed that case to Federal Court. So this Court -- not only does

Page 79

this Court not have jurisdiction over the Trust, it can't get it. Because if they sue the Trust, the Trust is going to remove again to Federal Court. This Court can't get jurisdiction over the Trust, because the Trust won't consent to it.

Now, a few other issues I think I'd like to touch on if you'll bear with me. Ms. Provence indicated -- she stated that, as a new position, that the money is not due. That's not true. If you look at that transcript, repeatedly I said in there the $50,000,000 for the note will be paid as soon as it's in full and fair satisfaction of the debt, which is the same thing I'm saying today. One statement taken out of context is their argument that I conceded that the note was due today. And that's where I said the $50,000,000 is what is due on the face of the note. That's what I said, quote/unquote. The $50,000,000 is what is due on the face of the note. What I was saying was it's a note for payment of $50,000,000. I wasn't saying it's due and payable today under any circumstances. Repeatedly throughout I said -- and I'm

Page 80

looking now on page 58, line 17, My clients have no interest in that $50,000,000. It belongs to Mr. Wellin, but only in full exchange for payment of the note."

I said it again, as I pointed out earlier, and I won't requote the same language.

THE COURT: That's due, what, 2021?

MR. BRUNSON: I'm sorry?

THE COURT: The note is due when?

MR. BRUNSON: The note is due, on its face, in 2021. It's been extended a number of times, but that's where on its current face is due.

Now, she also said repeatedly that "we," being presumably Mr. Bennett as conservator, have not asked the children to pay their own money. And she says it's not the children's money. That's absolutely true; that's my whole point. My clients don't have that $50,000,000. It's not their money. That money belongs to the Trust, which they happen to be trustees of. And as trustees of that, they are Defendants with respect to this exact issue in Federal Court, after they were sued

Page 81

in this Court and they were removed to Federal Court, which deprived this Court, respectfully, of jurisdiction over the issue.

THE COURT: But the assets in the Trust, who do they belong to? Who is the ultimate beneficiary?

MR. BRUNSON: The three children. They are the three beneficiaries of the Trust and the three trustees, other than the corporate trustee.

THE COURT: Mr. Wellin is not a beneficiary of that?

MR. BRUNSON: He is not. He has no beneficial interest whatsoever. It was an Irrevocable Grantor Trust. In addition, Ms. Provence said they don't seek to seek the money twice. That's a silly argument. I didn't intend to argue that. I don't think they're trying to collect the money twice. What I'm saying is if it were the car -- let's go back to this Cadillac. You wouldn't say, We think you owe me two cars. I gave you $50,000, and you owe me two cars.

THE COURT: I'm not even going there. I'm saying that the car originally was Mr.

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 82

Wellin's. And if you're acknowledging it is Mr. Wellin's, then give it back to the conservator and let him hold it until you litigate, I guess, the appreciation on the car.

MR. BRUNSON: And that's why I say, again, it's not. The car is not Mr. Wellin's. The money in the Trust -- at one point Mr. Wellin owned that $50,000,000 in the form of Berkshire Hathaway stock. But in 2003, he put that stock into a Family Limited Partnership. In 2009, he sold the last of his ownership rights to the Trust, the Irrevocable Trust. And what he got back is a $50,000,000 note. He still has the $50,000,000 note. That is his asset. The 50 million cash sitting in the Trust is not his asset. It is absolutely not his asset. Now, one day --

THE COURT: Well, the Trust owes 50 million on this note, I guess, to Mr. Wellin at some point in time, 2021?

MR. BRUNSON: Right. When the note comes due in 2021, he can come collect it, or, as the children have already offered him, to prepay the note. And if he were to accept the

Page 83

terms of prepayment, he could have the money. But he hasn't accepted those terms. So it's not his. You don't get to dictate the terms of the transaction.

THE COURT: But, at a minimum, he's going to be entitled to prepayment on that note is what you're indicating?

MR. BRUNSON: He is entitled to prepayment of the note if he agrees he is accepting it in full --

THE COURT: Full.

MR. BRUNSON: -- payment of the note. He is not entitled to a down payment of $50,000,000 towards what he believes is $90,000,000.

THE COURT: I wasn't planning on -- let you litigate that. But if you're saying that he's entitled to X dollars in satisfaction of this note, what is the harm in a conservator holding those until you litigate over in Federal Court?

MR. BRUNSON: Well, the harm is it would be beyond the jurisdiction of this Court to do it. My clients, the three individual children, it's not their money. They're not

Page 84

being harmed. If the Trust were here before the Court, the Trust --

THE COURT: Let's say we get past all of that and the Court buys Ms. Provence's arguments that the Trust has appeared, the Trust is holding the 50 million, what is the harm in holding the Trust's assets and the note and let you litigate in the Federal Court?

MR. BRUNSON: Well, I can answer that question as lawyer for the individual children whose position is that's beyond the jurisdiction of the Court, and it's inherently harmful when a Court exercises jurisdiction that it doesn't have, no matter what the circumstances are.

Now, the Trust may have a different position as to why it would be harmed if it had to give up $50,000,000 that it's currently holding, but I'm not presenting the Trust's position today.

If I could have just a second.

THE COURT: Take your time.

MR. BRUNSON: Okay. I misspoke. I need to correct the record. I said earlier that

Page 85

the Bennett lawsuit that he brought here, which was removed to Federal Court, named the Trust as a Defendant. I was just mistaken. He only sues the three -- these three individual clients. He does not name the Trust as a Defendant. However, the point is the same. If he were to sue the Trust, which he would need to do in Order to give this Court jurisdiction to Order the Trust to do anything at all, the Trust would remove to Federal Court. And, your Honor, if --

THE COURT: If in the Federal case we have like that is -- the Trust protector was sued and that was removed?

MR. BRUNSON: Correct. Right. There's diversity in these cases, and they all belong, to me, together. There's three different lawsuits doing the same thing right now in Federal Court.

THE COURT: I don't disagree with you. I just was trying to protect Mr. Wellin's assets, like he petitions.

MR. BRUNSON: I understand that. And I'm sure that's your intention. I don't have any question about that.

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 86

MS. PROVENCE: Just very briefly on --
THE COURT: Just a second.
MR. BRUNSON: I do need to correct the record on something Ms. Provence said as well. She indicated that when the Family Limited Partnership liquidated the assets, the note became due immediately. That's just not true. That's not what -- I'm sure she's just mistaken, but that's not what the terms of the note provide. And if they contend that it does, they should provide that language to the Court. Because we've looked at it very carefully.
THE COURT: You've got a copy of the note that we can at least see --
MR. BRUNSON: Sure.
THE COURT: If you get a copy over to the Court, that would be helpful. The other thing we're struggling with is we want to make sure Mr. Wellin's assets are protected. I don't know if you've been able to talk with the Trust protector or work out any arrangements, to make sure that whatever their job is, that that's being done. But I guess you can't appear here individually, not as

Page 87

representing the trustees?
MR. BRUNSON: I'm sorry. I'm not following you.
THE COURT: This Court's duty is to protect the assets of Mr. Wellin.
MR. BRUNSON: Right.
THE COURT: Some of those assets -- you're indicating it's either a note or there's money in this Trust?
MR. BRUNSON: It's the note.
THE COURT: It's the note. I guess making sure that the Trust assets are there, properly invested, that type of thing, we've got a Trust protector, and I know that litigation is over in Federal Court also.
MR. BRUNSON: Speaking as counsel for the children -- and not waiving any position with respect to the Trust -- their concern for their father in having a conservator appointed -- I believe it would be Mr. Bennett's obligation to ask Brown Brothers to return the note to Mr. Wellin. And if Brown Brothers refuses, he should sue them and ask for an injunction or a judgment against Brown Brothers. That's how that should play out.

Page 88

But that's clearly Mr. Bennett's responsibility as the special conservator. And, hopefully, the Court will very soon appoint a permanent conservator.
THE COURT: Anything else for today?
MS. PROVENCE: Just briefly, your Honor -- very briefly, I promise. I think I would like the opportunity, if the Court will allow us the ability, to address one question that has hit me as we sit here. And that is, I'm not sure that the children, as individuals, have the ability to appear in this courtroom and argue lack of due process or a lack of jurisdiction over another party that's not even present. To me, that party would have to make an appearance in Order -- essentially 80 percent of their arguments are based on the children as trustees. And Mr. Brunson just said, and I quote, The children tendered the payment. The children tendered the payment.
MR. BRUNSON: As trustees.
MS. PROVENCE: Okay. But in other words, the problem being is I'm not sure, and I would ask this Court to review the same, if

Page 89

a -- if we're genuinely buying into the argument that they are two separate entities, then how is the Trust -- how are these individual children today -- their attorney is making an argument on behalf of an entity that is allegedly not present. If that entity is negatively harmed by your Order, then that entity needs to appeal that Order or needs to make a motion with regards to that Order. They clearly have service of it. It's just an interesting question that I would like the opportunity to brief for the Court because I don't understand how you make a lack of due process, lack of standing argument on a party that's not present. It's an interesting question that I think it would be worth this Court's time.
And, your Honor, you've correctly identified the question three times today. You've asked, What is the harm here? The harm is it takes away the children's power. That's the harm. As long as they have control over the money -- I don't believe I misspoke, and if I did, I will correct myself when briefing the issue, your Honor. But this is a secured

Electronically signed by Eve Wilbanks (101-177-349-6970)
27b92dc0-fe4b-4dba-980e-313bd1e93b98

Page 90

note. I do not believe that they can argue that it's not due until 2021 when -- again, we're accepting their argument that it's just the note. Mr. Brunson says, It's just the note; it's just the note.

A presumably competent man under the authority of this document made a legitimate swap. The reason that Mr. Bennett has not sued Brown Brothers is because you have a document before you where Brown Brothers acknowledges accepting the note in exchange for the 58 percent partnership interest. Therefore, for him to sue them to recover the note would again be putting my client in the position of acknowledging that his client is going to be shorted $42,000,000. He's not going to do that. He was appointed to protect Mr. Wellin's assets, and that's what he's attempting to do. He attempted to do so at the request of the children, and we appreciate the Court's time.

I do have one housekeeping matter, your Honor, that we discussed prior to, and I believe for the most part we are in agreement with. A default issue was raised in the

Page 91

Federal Court. After Mr. Wellin consulting with both Mr. Hood as well as Mr. Bennett, he wishes to withdraw the default.

Prior to filing that withdrawal in the Federal Court, we are seeking to have this Court issue an Order, not for the Federal Court but simply for the file here, that Mr. Bennett is not in any way in violation of his fiduciary duty to Mr. Wellin by allowing that withdrawal without an exchange of -- receiving anything in return. We just simply are asking the Court to review the situation for the purposes of not having a party down the road allege that Mr. Bennett was not following his fiduciary requirements by withdrawing the default. When you're talking about withdrawing a default on a $42,000,000 case, your Honor, we're just going to protect the file. The parties have read the Order that I have. Mr. Hood could not be present, but at one point we were floating this as a Consent Order, your Honor, and I will affirm to the Court that both myself and Mr. Hood have signed the Consent Order, the issue being that Mr. Brunson and Mr. Hood and myself, the

Page 92

language we're getting hung up on is, Upon consent of his client; i.e., they're not comfortable signing the Consent Order that states that Mr. Wellin has the ability to consent to something, while my client felt it imperative to have in the record for this Court that he did in fact consult with Mr. Wellin prior to withdrawing and just wanted that acknowledgement.

If you're comfortable, I think we've agreed to hand up a proposed Order, and I'm happy for the other party to state any objections that they have to it. But we thought this would be the easiest way to handle the matter.

THE COURT: Who else could object? I guess the children and also Mrs. Wellin.

MR. BENNETT: I think any heir of his estate at some point could do so.

MS. PROVENCE: Right. Mrs. Wellin, essentially, or any heir in the future.

THE COURT: Has she consented too? Has she signed off?

MS. PROVENCE: She's not consented in the sense that what we're asking the Court to

Page 93

do is state that these parties agree -- the parties to the default, the three parties to the default have agreed that he's not violating his fiduciary duty. I would be happy to have -- ask Ms. Wellin if she would be willing to consent to the same. But since we did end up circulating it as a Consent Order and, instead, we're just asking for the Court to sign an Order, I wasn't sure how to handle that.

THE COURT: Counsel?

MR. BRUNSON: Can I see it again?

Just for the record, we don't believe that Mr. Wellin has the capacity to consent, so we've stated that objection. The caption is the Federal Court caption, but it's in the Probate Court and -- I think -- hang on a second. The caption for Probate Court is my three clients are the petitioners, and Mr. Keith Wellin is the respondent. But this caption is wrong. It has Mr. Bennett as the petitioner. But he's not. There's no pending action in Probate Court where he's a petitioner. So those are our objections. I just noticed that.

Page 94

MS. PROVENCE: It's fine. Your Honor, I think the reason for that issue was in -- as far as seeking the Court's approval, he's petitioning to have the Court approve his withdrawal of the consent. I'm happy to switch the caption and send it by e-mail. Would you like a hard copy or can I just send it by e-mail?

THE COURT: You can send it by e-mail with the corrections. And I'm not sure if I understand -- you've got everybody signing off that may object to what the special conservator is doing? I guess it would be the children and potentially Mrs. Wellin?

MS. PROVENCE: Technically, your Honor, it could be any future heirs, really. That's the problem is, we don't -- it's not a confined class.

THE COURT: I would say now it is, but they could sign off for -- the rights for any heirs or designees that they might have. It may be advisable to have Mrs. Wellin sign off too.

MS. PROVENCE: I'll contact her counsel.

THE COURT: I'm not exactly sure what is

Page 95

going on in that default. But what you're signing here is Mr. Wellin having -- giving up a rights is what you're saying?

MS. PROVENCE: Correct. And in an effort to protect Mr. Bennett as far as agreeing to giving up that right, we just didn't want a future issue with regard to allegations of inappropriate conduct. And anyway -- the reason being, your Honor, statements have been made with regards to they're not happy with his -- but, yet, we've not really had any petitions or issues where actual conduct has been raised. My job being to protect Mr. Bennett, I'm just trying to make sure that I put something in the file that states that he has consulted with Mr. Hood, as well as consulted with Mr. Wellin, and agrees to the withdrawal of the default. Thank you, your Honor.

THE COURT: Sure. Anything else for today?

MS. GEER: Your Honor, I will just report to you in follow-up from our last hearing that Jamie Hood sent me some proposed guidelines that we're going to try to agree on

Page 96

on Friday, and I sent him back our proposed changes yesterday. I think he's either starting a trial today or tomorrow. So anyway, as soon as he gets back to me, we'll try to send your Honor something for your review.

THE COURT: Okay.

MS. PROVENCE: Procedurally, your Honor, I know we bother Elizabeth a lot after these hearings with regards to deadlines because we always discuss things like proposal of Orders, submissions of -- I think Mr. Brunson offered some legal and I offered to brief an issue. If we could establish those deadlines before we leave the courtroom, I think that might be a weight off of Elizabeth's shoulders from getting 47 e-mails on the same --

THE COURT: What would you like to agree to? I guess if you want to submit proposed Orders; the other thing I'd have you look at, if there's some other way to craft a protective arrangement where -- I think you understand what the Court is trying to do in not harm your litigation over in Federal Court. But just since you're not always here

Page 97

litigating, and maybe it's something between the parties and also the Trust protector, if there's some way to --

MR. BRUNSON: Ten days is fine.

MS. PROVENCE: I think we can agree on ten days for proposals, your Honor.

THE COURT: But if you come up with some protective arrangement that protects everyone, we're fine with that also.

MS. PROVENCE: Thank you, your Honor.

MR. BRUNSON: Just quickly, one other thing, Dr. Austin has contacted Peter Wellin and asked him some questions about -- in further pursuit of her work in the case, and we were hesitant to have him communicate with her until we were clear on what you were going to do. Is it okay for him to communicate with her, or should we wait for you to enter an Order?

THE COURT: I would wait. And we want to wait until we get the guidelines, as agreed to by counsel. You weren't at that hearing, but that's kind of what they agreed to. We were going to hopefully knock that out Friday and take up any differences yesterday or today

and have it -- but she needs to wait before she does anything else until we have all the guidelines for both the experts.

MR. BRUNSON: With your permission, we'll just advise her of that.

THE COURT: Just tell her any objection to that. Let me ask you this also: I know we've got, what, a motions hearing, what, April the 17th?

MR. BRUNSON: I think that's right.

THE COURT: Any way to resolve those prior to that hearing?

MR. BRUNSON: I hope so. I think they're our discovery motions, but the Hoods aren't here and Mr. Howe is not here, and I think they are the people involved. But we'll try.

THE COURT: Try that. Otherwise, I may need to move that date. I have one other case I need to put in that has an emergency. But we may need to move it a day or two. But I know that's difficult considering everybody's calenders. But we'll leave it as scheduled for you. Anything else for today?

MS. PROVENCE: Thank you, your Honor.

MS. GEER: Thank you.

THE COURT: Thank you. Appreciate it.

(The deposition concluded at 2:55 p.m.)

Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 2nd day of April, 2014, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
December 16, 2014



Electronically signed by Eve Wilbanks (101-177-349-6970)

27b92dc0-fe4b-4dba-980e-313bd1e93b98