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THE STATE OF NEW HAMPSHIRE

7th Circuit

Probate Division
Trust Docket

DOCKET NO. 317-2013-EQ-00865

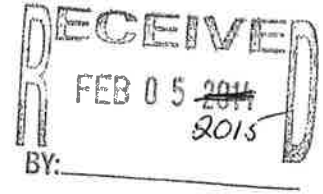
JOHN MARK HALLETT, ET AL

VS.

WILLIAM E. BRENNAN, ET AL

AND

BARBARA D. RASKIN HEBERT HALLETT, ET AL.



Motion to Consider the Proposed Amended Petition

Invocation of Safe Harbor and NH RSA 564-B:10-1014

NOW COME THE PETITIONERS, by and through their counsel, Attorney Francis J. Coffey, in a Motion to Consider the Proposed Amended Petition and Invoke the Safe Harbor Statute and state the following:

1. The Richard S. Hallett 1996 Revocable Trust (the Trust) Agreement contained a No-Contest or "Interrorem" Clause at Article 13.
2. A Beneficiary of the Trust may be "No-Contested" out of the Trust if they oppose the administration of this Trust, or any amendment thereto, or impair, or invalidate or set

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aside the Trust or the Trust amendment, or any of their provisions. (paraphrased from the Trust Declaration)

3. However, a No-Contest clause is unenforceable if an action is brought by a Beneficiary for the construction or interpretation of the terms of the trust. Such a ruling could be made based on the pleadings.
4. A No-Contest clause is also unenforceable in the case of an action solely to challenge the acts of the trustee or other fiduciary of the trust and the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust.
5. Although this action is indeed brought by Beneficiaries to report the omissions and acts of the Trustees because they believe the Trustees committed a breach of fiduciary duties or breach of trust, it does not have that sole purpose.
6. The Beneficiaries bring this action to report the omissions of the Trustees and/or for construction or interpretation of the terms of the trust. As such, this action could be protected by the unenforceability clause of NH RSA 564-B:10-1014.
7. Even so, by statute there can be no violation of the No-Contest clause at this stage of the proceeding by the Petitioners if they invoke the Safe Harbor Statute and ask

for a ruling on a proposed or pending Petition. NH RSA 564-B:10-1014

8. The Court has issued a prior order that the Beneficiaries' current pending Petition in this case could violate the No-Contest clause of the Trust Declaration if not amended and the Beneficiaries do not prevail at trial to prove that the Trustees committed a breach of trust or breach of fiduciary duty. (the saving language of NH RSA 564-B:10-1014)
9. Therefore, the Court has offered the Beneficiaries a choice. To accede (drop the Petition), go with the original Petition and risk the consequences, or amend their Petition. The Beneficiaries choose the later.
10. The Beneficiaries have also interpreted the Court's order to suggest that a propose Amended Petition be submitted to the Court before actually re-filing.
11. Attached to this Motion is a proposed Amended Petition.

Whereas, the Petitioners ask the Court to rule:

- A. that if the Petitioners prove at trial in this action that the Trustees have committed one act of a Breach of Trust, that NH RSA 564-B:10-1014 protects them from the No-Contest clause by making the clause unenforceable in regard to the entire action filed;

- B. that the No-Contest clause is unenforceable against the Beneficiary/Petitioners in this case because the action is brought for the construction or interpretation of the terms of the trust.
- C. that pursuant to NH RSA 564-B:10-1014 (the safe harbor statute) no part of this Proposed Amended Petition constitutes a contest of the Trust by the Petitioners within the meaning of the Trust's No-Contest provision and that they are not in violation of the No Contest Clause of Article 13;
- D. that If the Court finds any part and/or all of this Proposed Amended Petition violates the Article 13 No-Contest clause then the Petitioners ask the Court to point out what part of the Petition may be in violation and allow the Petitioners' to further amend the Petition or reserve that right;
- E. or enter an order that is lawful, fair and just to the interests of all the parties.

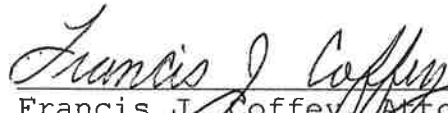
Respectfully Submitted,

John Mark Hallett,
Amy Hallett Hebert,
Hannah R. Hebert,
Rachael M. Hebert, and

Patricia Hallett Sanderson,
the Petitioners,
by their Attorney:

2-4-15

date



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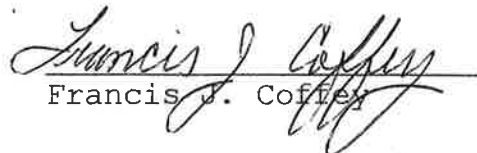
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Certification

I CERTIFY THAT I did provide a copy of this pleading to Attorneys Ralph Suozzo and Linda Smith at 1001 Elm St. Suite 205, Manchester, NH 03101 by first class mail or by electronic mail at rsuozzo@morrisonmahoney.com and lsmith@morrisonmahoney.com and to Attorney Janie Lanza Vowles at 81 Merriam Av. Leominster, Ma 01453 by first class mail or by electronic mail at jvowles@jlvlaw.com.

2-4-15

date



Francis J. Coffey

THE STATE OF NEW HAMPSHIRE

7th Circuit

Probate Division
Trust Docket

DOCKET NO. 317-2013-EQ-00865

John Mark Hallett,
Amy Hallett Hebert,
Hannah R. Hebert,
Rachael M. Hebert, and
Patricia Hallett Sanderson, the Petitioners

Vs.

William E. Brennan,

Individually, residing at 73 Cider Mill Road Bedford, NH 03110
and as Trustee of the Richard S. Hallett 1996 Revocable Trust,
and its sub-trusts known as the Hallett Family Trust and Hallett
Marital Qualified Terminable Interest Property (QTIP) Trust of

85 Brook Street
Manchester, NH 03104,

and

Barbara D. Raskin Hebert Hallett,

aka Barbara D. Hebert Hallett aka Barbara D. Hallett,
Individually and as Trustee of the Richard S. Hallett 1996
Revocable Trust and its sub-trusts known as the Hallett Family
Trust and Hallett Marital Qualified Terminable Interest Property
(QTIP) Trust residing at and with a mailing address of

18 Tonga Drive
Bow, NH 03304,

the Respondents.

FIRST AMENDMENT to Verified Petition

**A Verified Petition for a Declaratory Judgment that the
Trustees have Failed in their Duties to Administer, Invest and
Manage Trust, and Distribute Trust Property; Failed their Duty**

**of Loyalty; Failed in Duties of Recordkeeping and
Identification of Trust Property; and Failed their Duty to
Inform and Report**

NOW COME the Petitioners, as Qualified Beneficiaries of the Richard S. Hallett 1996 Revocable Trust (the Trust) who file this Verified Petition for a Declaratory Judgment that William E. Brennan and Barbara D. Raskin Hebert Hallett aka Barbara D. Hebert Hallett aka Barbara D. Hallett as Individuals and as Trustees of the Trust have failed in their duties as Trustees and/or committed other acts in violation the Trust Declaration and New Hampshire law and request equitable relief from the Court.

Notice

In accordance with the Rules of the Circuit Court, State of New Hampshire, Probate Division at Rule 15 (B) Execution of Pleadings, this pleading conspicuously contains the following statement. **"This pleading was prepared by Commonwealth of Massachusetts Attorney Francis J. Coffey."**

Parties to this Action

The 5 Petitioners

1. John Mark Hallett (Mark) resides at 124 Beals Road in Bedford, NH 03110. He is the biological son and first born child of Richard S. Hallett.

2. Amy Hallett Hebert (Amy) resides at 103 Deerhaven Road in Weare, NH 03281. She is the biological daughter and third born child of Richard S. Hallett.
3. Hannah R. Hebert (Hannah) resides at 103 Deerhaven Road in Weare, NH 03281. She is the biological granddaughter of Richard S. Hallett and the first born child of Amy Hallett Hebert.
4. Rachael M. Hebert (Rachael) resides at 103 Deerhaven Road in Weare, NH 03281. She is the biological granddaughter of Richard S. Hallett and the second born child of Amy Hallett Hebert.
5. Patricia Hallett Sanderson (Patsy) resides at 213 58th Street East in Palmetto, Fl 34221. She is the biological sister of Richard S. Hallett.

The Respondents

6. William E. Brennan (Mr. Brennan), as an individual and Trustee, resides at 73 Cider Mill Road in Bedford, NH 03110. He is a NH Attorney with an office at 85 Brook Street in Manchester, NH 03104. William E. Brennan was named as Independent Successor Trustee of the Trust and assumed that role at the moment of Richard S. Hallett's death on April 19, 1997.
7. Barbara D. Raskin Hebert Hallett, (Barbara) aka Barbara D. Hallett in the Trust Agreement, aka Barbara D. Hebert Hallett,

is an individual and a Trustee residing at 18 Tonga Drive in Bow, NH 03304. She is the second wife of Richard S. Hallett and was married to him when he died. She was named Successor Trustee of the Trust and assumed that role at the moment of Richard S. Hallett's death on April 19, 1997. She is the 9th Qualified Beneficiary of the Trust.

Jurisdiction and Venue

8. This Court has jurisdiction over the Petitioner's claims and requested relief pursuant to NH RSA 564-B:2-202 and 2-203.
9. Relying upon NH RSA 564-B:2-204, Venue properly lies in this Circuit because the administration of the Trust appears to have been conducted solely from Barbara's residence, located at 18 Tonga Drive in the Town of Bow of Merrimack County.

BRIEF INTRODUCTION

10. Respondents Mr. Brennan and Barbara are present Co-Trustees of the Richard S. Hallett 1996 Revocable Trust (the Trust).
11. The Petitioners are 5 of the 9 Qualified Beneficiaries and 5 of the 8 Remaindermen of the Trust.
12. Petitioners Hannah and Rachael were and are entitled to permissible distribution of trust principle.
13. Petitioners Hannah and Rachael were and are entitled to annual unrequested reports.

14. All of the Petitioners were and are entitled to reports reasonably related to the administration of the Trust from the Respondents.
15. The Respondents have failed to report timely.
16. The Respondents have failed to contribute life insurance proceeds to the Trust assets.
17. The Respondents have failed to maintain separate "Trust" accounts and one of the Respondents has co-mingled funds.
18. The respondents have committed various breaches of trust.

Facts of the Case

19. The following facts of the case found below and throughout this Petition are based upon Petitioners' information and belief.
20. Richard S. Hallett (Dick) and Marilyn Muir (Mal) married in 1952. After their marriage the couple brought three children into the world, John Mark Hallett, Matthew Hallett, and Amy Hallett. They lived together as a family in the Bedford NH area.
21. In 1985 Dick filed a divorce petition against Mal and a divorce was granted to him in 1986.
22. On March 7, 1987 Dick married a once divorced woman by the name of Barbara Raskin Hebert (Barbara).

- 23.** Approximately nine years later, in the spring of 1996, Dick was living at 18 Tonga Dr. in Bow, NH when he was diagnosed with cancer.
- 24.** Soon after, Dick executed the Richard S. Hallett 1996 Revocable Trust Agreement forming the Richard S. Hallett 1996 Revocable Trust (the Trust), naming him as sole trustee.
- 25.** By reference only, the Trust also created a future for two sub-trusts, the Hallett Family Trust and the Hallett Marital QTIP Trust which were to come into existence upon Dick's death and to survive, not independently, but at the pleasure of the Trust.
- 26.** Dick composed and signed an amendment to the Trust Agreement 5 days before he died reducing his son Matt's benefit to a \$20,000 remainder along with several other changes including adding his sister Patricia Hallett (aka Patricia Ober aka Patricia Hallett Sanderson) as a qualified beneficiary.
- 27.** Attached to the original petition in this case are copies of the Divorce Decree, the Trust Agreement, and the Trust Agreement's Amendment.
- 28.** Soon after the Trust was formed Dick transferred the following significant commercial real estate holdings for nominal amounts to his Revocable Trust: a. all his interest in the Two Wheels Limited Partnership valued at least

\$325,000.00 or more, to be determined during discovery or at trial; b. the real property and buildings located at 300 Elm Street in Milford NH valued then at approximately \$550,000.00 and c. the real property and building located on Gosling Road in Newington NH valued then at approximately \$600,000.00.

29. Richard S. Hallett died on April 19, 1997.
30. Upon his death, Barbara, along with the 5 Petitioners, became Qualified Beneficiaries (as defined by statute) of the Trust.
31. Barbara also became a Successor Co-Trustee.
32. During the settlement process of Dick's estate Barbara signed a No-Asset Affidavit (prepared by Mr. Brennan) and they both filed it with the Probate court. That No-Asset Affidavit was false.
33. Dick owned assets at the time of his death, at the very least in the form of a promissory note due him from Milford Lumber and/or Muir Lumber for past due rents.
34. After Dick's death Milford Lumber and/or Muir Lumber continued to make the promissory note check payments to the then deceased Richard S. Hallett for approximately 18 months. Those checks were either cashed by forgery or deposited into Barbara's personal bank account and were probably never reported to the Probate Court.

35. Barbara collected the promissory note payments on behalf of Richard S. Hallett, his Estate, or the Trust after declaring Richard S. Hallett had no assets when he died.
36. As a Beneficiary of the Trust Barbara was allocated (a Trust Declaration term) the 300 Elm Street property. That conveyance clearly contradicted and violated a 1986 Superior Court order which directed the 300 Elm Street to be sold to the three children of Dick and Mal.
37. Barbara was also entitled (subject to conditions during her lifetime) to receive the net income from the two sub trusts. If that net income was less than \$75,000 (as adjusted every 5 years by a CPI) then the Trustees were authorized, in their discretion, to distribute principal to Barbara to supplement her annual income.
38. Barbara is not a Remainderman of the Trust.
39. Barbara now seeks (by a Petition that was consolidate into this case) to have all but one of the Remaindermen Beneficiaries No-Contested out of the Trust.
40. The four grandchildren of Dick (two of who are Petitioners Rachael and Hannah and were minors and of tender years at the time of Dick's death) have been eligible to receive principle distributions from the Trust at all times since Dick's death at the discretion of the Trustees for their medical care, education, support and maintenance in reasonable comfort.

41. The grandchildren are Remaindermen in equal shares per capita of the Hallett Family Trust upon Barbara's death or marriage.
42. As of March 1, 2012, in the approximately 14 years and 11 months following the death of Richard S. Hallett, the Trustees have paid a grand total of approximately \$18,116.00 in discretionary distributions to all 4 grandchildren for their medical care, education, support and maintenance in reasonable comfort.
43. In stark contrast, during that same period, Barbara paid herself (if the Petitioners calculations are correct) \$2,969,326.00 or more since Dick Hallett's death over the years until today from a combination of trust assets, income, and proceeds from the sale of the 300 Elm Street property, as detailed below, including \$40,000.00 in recent discretionary distributions,
44. From 1997 to December 31, 2010 Barbara paid herself approximately \$266,000.00 or more in cash from the Hallett Family Trust income, \$1,106,874.00 or more in cash from the Hallett QTIP Trust income, and then while managing the QTIP asset expensed off \$13,019.00 or more in cash for travel which the Petitioners believe went to her personally, expensed off \$53,723.00 in cleaning expense which the Petitioners believe went to her personally, and siphoned off \$111,043.00 in

depreciation expense that the Petitioners believe Barbara did not retain for future repairs but paid to herself as cash, and then expensed off \$82,667 in real estate commissions which the Petitioners believe went to her personally, since Barbara was a licensed NH Real Estate broker in 1997.

45. Therefore, between the time Dick Hallett died in 1997 until December 31, 2010 Barbara appears to have paid herself approximately \$1,633,326.00 from the two trusts and paid herself another \$576,000 from the rent, sale, and seller financing of the 300 Elm Street property while holding a \$480,000.00 promissory secured by a mortgage. All totaled, Barbara collected \$2,689,326.00 or more.
46. In addition, Barbara's income from the Trust is estimated to be approximately another \$240,000.00, for a grand total paid by her from trust assets and income of \$2,969,326.00 (two million, nine hundred sixty nine thousand, three hundred twenty six and 00/100 dollars) or more.
47. Meanwhile, during that same time period the Trustees have acted in less than good faith.
48. The Trustees have failed to report to the Beneficiaries.
49. With Barbara at the controls they have scrutinized and/or discouraged requests for distribution to the grandchildren of Richard S. Hallett.
50. The Trustees failed to assess the grandchildren's needs.

51. The Trustees failed to notify the grandchildren of their potential benefits while they were minors and/or when they reached the age of majority.
52. Barbara created arbitrary or nebulous standards for approval of disbursement or failed to establish standards at all.
53. Barbara has discouraged communication between the beneficiaries and herself, by failing to communicate with the grandchildren in person.
54. Barbara communicates by text and emails, and the grandchildren are forced to send multiple communiqués in order for her to respond.
55. Barbara is often out of town and away on global sorties.
56. Barbara has further discouraged communication between the beneficiaries and herself and/or created an acrimonious relationship with them as demonstrated by her written refusal to engage in any communication with Amy regarding distribution requests for Amy's children because of a letter Amy sent to Attorney Brennan and Barbara asking for a disclosure and a report of the Trust's assets, a disclosure and reporting required by law since 2004.
57. Barbara has further discouraged communication between the beneficiaries and herself when she fails to respond to letters requesting information on trust income and expenses and then,

after allowing Attorney Brennan to respond (which generates a bill to the trust) she demands that the beneficiaries pay Attorney Brennan's legal bill.

58. At the time of the filing of the original Petition in this case, despite numerous requests, the Trustees have never once sent a complete report of the Trust Assets to all of the qualified beneficiaries that complies with NH law since April 19, 1997.

59. As of the filing of the original Petition the Trustees have never sent the 4 grandchildren any type of report, complete or incomplete, since 1997.

60. Since November of 2011, the Petitioners have repeatedly questioned the Trustees in writing about their duties and responsibilities to report and inform to any and all of the Qualified Beneficiaries of the Trust on the financial condition of the Trust. Mark also questioned expenses.

61. In fact, the Petitioners have written many letters to both Trustees. Within those letters the Petitioners requested, pleaded and sometimes demanded answers to questions about Trust assets and expenses. Most letters went unacknowledged and unanswered.

62. When pressed for reporting information Attorney Brennan has used terms and phrases in letters to Mark such as "We have reached the end of the line." and "This is it."

63. New Hampshire adopted the Model Uniform Trust Code in 2004 and codified it at RSA 564-B. The NHUTC became effective October 1, 2004.
64. A duty to report to the qualified beneficiaries applied to all then existing trusts and was retroactive.
65. The Trustees in this case never complied with that law in 2004.
66. After a September 2005 amendment to the NHUTC the grandchildren were still entitled to a mandatory annual report in conformance with NH RSA 564-B:8-813.
67. The Trustees never complied with the amended NH law.
68. The Trustees basically did little or nothing in terms of reporting or disclosing to the qualified beneficiaries from 1997 until 2002 when Amy hired a lawyer to contact Attorney Brennan.
69. During a brief letter to Amy's lawyer in 2002, Mr. Brennan informed Amy through her counsel that the money for Amy's children was "invested" and non-liquid. From 2002 until December of 2011 the Petitioners received nothing from the Trustees in terms of reports.
70. Then in November of 2011 Mark contacted the Trustees and asked for a disclosure of trust assets and some kind of a report.

71. In December of 2011 Attorney Brennan sent Mark a letter dated December 6th, 2011 and a compact disc containing 13 years of trust tax returns with no explanations.
72. The Trustees sent nothing to the other Qualified Beneficiaries.
73. Mark wrote to the Trustees asking for a meeting. That request was granted and a meeting was scheduled in Attorney Brennan's office. Barbara did not appear.
74. During that meeting (Mark and Amy claim not knowing about, realizing, or recognizing the divorce decree requirement regarding the conveyance of 300 Elm Street) Mark asked Attorney Brennan if Barbara was ready to hand over the proceeds of the 300 Elm Street conveyance, as Mark thought that was his father's intent and Barbara's promise.
75. Attorney Brennan told Mark that the 300 Elm Street property proceeds were Barbara's to do with what she wished, as that property was conveyed to her by the trust free and clear, representing to Mark that he had no legal claim to the 300 Elm Street property.
76. Attorney Brennan never mentioned the divorce decree at that meeting.
77. During that meeting Mark also asked Mr. Brennan about a life insurance policy. Attorney Brennan represented to Mark that it did not exist.

78. In a letter from Mark to Attorney Brennan on 12/26/11 and in letters that followed Mark pointed out the law and requested, pleaded and then demanded that the Trustees comply with the statutes and provide him with answers to questions regarding the Trust assets and Trust property expenses.
79. Mark was met with responses that were filled with hostility, anger, and written demands for Attorney Brennan's legal fees from both Trustees, and then eventual silence.
80. The information sent by the Trustees to any of the qualified beneficiaries regarding the condition of the trust assets and expenses failed to comply with NH law.
81. Meanwhile, based on what little information the beneficiaries did receive, Mark began asking more questions of the Trustees regarding trust expenses. Mark was met with further hostility and silence from both Attorney Brennan and Barbara.
82. The following exchange took place between Mark and Attorney Brennan in a letter written by Mark on February 20, 2012 and responded to in an email by Attorney Brennan:

Mark writing to Atty. Brennan: "Bill, do you and/or Barbara as Trustees have any legal requirement to notify the beneficiaries of the Hallett Family or Hallett Marital QTIP Trust of their rights, benefits or your

duties and what are they and if so or not, why and on what basis and frequency and why?"

Atty. Brennan's reply: "THE TRUST DOES NOT REQUIRE THE TRUSTEES TO PROVIDE ANY TYPE OF NOTICE TO THE BENEFICIARIES."

83. NH law is clear that all of the Qualified Beneficiaries of this Trust were entitled to notice and even more than just a report after NH adopted the Uniform Trust Code in 2004.

84. In fact the Trustees were required in 2004 to retroactively report and inform the conditions of the trust to all the qualified beneficiaries by certified mail along with their right to an annual report, and a right to challenge the contents of the report by time limitation. The Trustees never complied with that 2004 law.

85. After a 2005 amendment to NH law the grandchildren were still entitled to a mandatory annual report in conformance with NH RSA 564-B:8-813. That statute placed a "Duty to Inform and Report" upon the Trustees, by a shall requirement, to provide a Trustee's Report comparable to that described in NH RSA 564-B:8-813(d) to all permissible distributees of Trust income or principal.

86. The Trustees have never complied with that NH law.

87. Meanwhile, when this lack of the Trustees' understanding of the law was brought to Mr. Brennan's and Barbara's attention

by Mark and that Mark was considering court intervention, the Trustees threatened to hire outside counsel at the expense of the Trust if the Petitioners challenged the Trustees decision not to report and disclose, as illustrated in this exchange between Mark and Attorney Brennan in the letter written by Mark on February 20, 2012 and responded to in an email by Attorney Brennan:

Mark writing to Atty. Brennan: "If you fail to answer my questions (regarding aspects of the trust assets and reporting requirements), you leave me no alternative than to pursue legal action."

Attorney Brennan's reply: "IT IS THIS TYPE OF COMMENT THAT CAUSE (SIC) ME DISTRESS. IF YOU FEEL THAT YOU ARE REQUIRED TO PURSUE LEGAL ACTION THAT IS UP TO YOU. THE RESULT OF A CHALLENGE TO THE TRUST, EITHER DIRECT OR INDIRECT, IS OUTLINED IN ARTICLE 13 OF THE TRUST.

(Article 13 is the Interrorem Clause) IF YOU ELECT TO FOLLOW THIS COURSE OF ACTION YOU WILL LEAVE BARBARA AND I NO CHOICE BUT TO RETAIN OUTSIDE COUNSEL AT THE EXPENSE OF THE TRUST."

88. The Trust document does not authorize the use of Trust assets by the Trustees to hire attorneys in the course of the Trustees' improper administration of the Trust. (see Richard'S.

Hallett 1996 Revocable Trust Agreement Article 11 paragraphs O
and P)

89. Mark wrote to the trustees again on 2/20/12 and cautioned them that legal action might result if they maintained their silence and did not provide answers to his inquiries, questions that he clearly felt were reasonably related to the administration of the trust.
90. Attorney Brennan responded in writing calling such legal action "reckless" and referred Mark to the Trust's No-Contest Clause at Article 13.
91. There is evidence and the Petitioners will testify that the assets of Trust are being mismanaged by these Trustees.
92. The Trustees claim that at the time of Dick Hallett's death in 1997, or shortly thereafter, the Hallett Family Sub-Trust assets were valued at \$325,000 due to the apparent liquidation of the 2 Wheels Limited Partnership (the Partnership).
93. However the evidence will show that the Trustees did not liquidate the assets of the Partnership, they only ended the Partnership. In fact they converted the Trust's interest in that non-liquid Partnership asset into a non-liquid interest only investment scheme at 9% interest.
94. That interest (all of it) was then paid to Barbara, at the expense of the 4 remaindermen.

95. When Amy asked the Trustees in 2002 if there was any money available for Dick's grandchildren's (specifically Hannah and Rachael) Trustee Brennan wrote to Amy's lawyer that the money was all tied up and earning interest. Barbara was collecting the interest. Barbara also received other compensation from the 2 Wheels Partnership that included favorable rates for rental space from the former Partner of Dick.
96. The Trustees have also admitted to paying the expense of Attorney Brennan's legal and administration fees from the Trust principle instead of the Trust's interest income.
97. Not coincidentally, paying expenses from principle does not reduce the amount of income paid to Barbara for that year, but it certainly does erode the Trust Corpus.
98. Since 1997 the Trustees have failed to invest Trust assets in a manner to provide for capital growth to the Hallett Family Trust principle and therefore the Trustees are claiming the principle balance is now less than \$325,000 even though after 15 years it could be considerably more.
99. This may be a violation of NH RSA 564-B:8-803.
100. The Petitioner will present testimonial evidence that the Hallett Family Trust Assets (of which the four grandchildren are Remaindermen), even after the disbursements to the grandchildren from the Trust principle, could be worth more if modest capital growth is included.

- 101.** The Richard S. Hallett 1996 Trust Agreement calls for any life insurance policy in Richard S. Hallett's name, listing a Trustee as a Beneficiary, shall be paid into the Hallett Family Trust for the benefit of the beneficiaries.
- 102.** Mr. Brennan and Barbara at first refused to acknowledge that a life insurance policy or policies even existed, but then when pressed Attorney Brennan admitted that there was an insurance policy or policies and that they/it did name a Trustee (Barbara) as a beneficiary.
- 103.** When Mark asked for details of the life insurance policies, Mr. Brennan and Barbara have refused requests for more information.
- 104.** The true amount of the benefit was unknown at the time of filing the original Petition and the life insurance proceeds were never paid into the Trust.
- 105.** There is evidence that The Hallett Marital QTIP Trust is being mismanaged by the present Trustees.
- 106.** The only asset reported in the Marital QTIP Trust is a small commercial strip mall on Gosling Road in Newington NH with annual gross rent receipts ranging up to \$160,000.
- 107.** The copies of the tax returns sent by the Trustees are difficult to analyze and fail to comply with the NHUTC, Probate Court Rule 108, and/or other NH reporting Law.

108. When Mark originally asked for a list of the vendors paid by the Trusts his request was denied by Mr. Brennan.
109. The expenses reported by the Trustees may be disproportionate to the age, value, and income of the building.
110. Expenses such as the roof replacements were expensive and infrequent and improperly expensed off in accordance with general accounting principles.
111. Mysterious accounting and legal fees were paid in round numbers to individuals.
112. Miscellaneous expenses were paid in large, even numbers to other individuals.
113. The curb appeal of the property is poor and charges for landscaping were excessive.
114. The Trustees, with Barbara at the controls, do not keep Trust funds separate from Barbara's personal funds.
115. Barbara personally enters into lease agreements with tenants and makes no mention of the Trust in those rental contracts.
116. Tenants pay Barbara personally for rent.
117. Barbara co-mingles Trust funds.
118. Barbara deposits rent checks into accounts held in her name only.

- 119.** Barbara represents by omission to many parties paying her money due the Trust or providing services to the Trust that she is the fee simple owner of the Newington property.
- 120.** Due to higher than normal expenses of the only QTIP asset, including excessive and improper depreciation expenses and mysterious tax expense, Barbara recently claimed on March 1, 2012 (for the first time ever) that she was unable to meet her net-income distributions in 2007, 2008, 2009, and 2010.
- 121.** Barbara retroactively invaded the principle of the Trust on her own, possibly without consulting Attorney Brennan, and paid herself \$40,000 at some point for her own benefit from the Trust funds.
- 122.** Meanwhile, Barbara has routinely covertly limited and/or discouraged the grandchildren's distribution requests.
- 123.** In contradiction to the reported invasion of principle actions by Barbara, Attorney Brennan wrote to Mark in December of 2011 and he stated that Barbara had never once invaded the principle of the Hallett Family Trust since 1997 and that the balance was still \$325,000.
- 124.** The Trustees were late reporting the 2011 or 2012 Trust tax returns to the qualified beneficiaries, despite a request for those returns.
- 125.** Up until December of 2011 when Mark began communicating with Attorney Brennan regarding Mark's, his sister's and

brother's and the grandchildren's rights regarding the condition of the trust assets, Attorney Brennan admitted he had done little or no work or no supervision as Trustee on either of the Trusts for the last 14 years and 8 months.

126. In fact Attorney Brennan admitted he had distanced himself from his duties as Trustee and allowed Barbara to take almost complete control over the asset management with little or no oversight.

127. Attorney Brennan wrote to Mark on 12/22/2011 "I am unable to do this (supervise the management or co-management of the Newington property)" as Co-Trustee.

128. During a meeting between Mark and Attorney Brennan in December of 2011, it was revealed that Attorney Brennan claimed he had no knowledge of the life insurance policy.

129. Attorney Brennan answered very few questions and he needed to speak with Barbara and ask her how she intended to handle Mark's requests for more information.

Count I

**Trustees' Duty to Administer, Invest and Manage Trust, and
Distribute Trust Property**

NH RSA 564-B:8-801

and

Duty of Loyalty

NH RSA 564-B:8-802

130. The Petitioners restate and incorporate by reference each of the paragraphs above and below as if fully set forth herein.

131. As Co-Trustees of the Trust, Mr. Brennan and Barbara, owed and continue to owe duties to the Petitioners to administer, invest and manage the Trust and distribute the Trust property in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with NH RSA Chapter 564-B.

132. The Trust Declaration explicitly states that any life insurance policy in the name of Richard S. Hallett that names a Trustee as a Beneficiary must be deposited in the Trust. Barbara was named as a Beneficiary to at least one life insurance policy. Barbara is a Trustee. The Trustees failed to contribute any Life Insurance proceeds into the Trust.

133. The Trustees failed to maintain liquidity in the asset makeup of the Trust assets and thereby discouraged distribution to the Beneficiaries.

134. Mr. Brennan and Barbara may have violated their duties by failing to act in good faith in accordance with the Trust's terms and purposes and the interests of the Petitioners pursuant to NH R.S.A 564-B:8-802 by performing other acts described in this pleading.

135. The Petitioners ask for relief that justice and the law requires.

Count II

Trustees' Duty to Administer, Invest and Manage Trust, and Distribute Trust Property

NH RSA 564-B:8-801

and

Duty of Loyalty

NH RSA 564-B:8-802

136. The Petitioners restate and incorporate by reference each of the paragraphs above and below as if fully set forth herein.

137. As Co-Trustees of the Trust, Mr. Brennan and Barbara, owed and continue to owe duties to the Petitioners to administer, invest and manage the Trust and distribute the Trust property in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with NH RSA Chapter 564-B.

138. During the settlement process of Dick's estate Barbara signed a No-Asset Affidavit, prepared by Mr. Brennan and they

both filed it with the Probate court. That No-Asset Affidavit was false.

139. Dick owned assets at the time of his death, at the very least in the form of a promissory note due him from Milford Lumber and/or Muir Lumber for past due rents.

140. After Dick's death Milford Lumber and/or Muir Lumber continued to make the promissory note check payments to the then deceased Richard S. Hallett for approximately 18 more months.

141. Those checks were either cashed by forgery or deposited into Barbara's personal bank account.

142. Those funds were never reported to the Probate Court.

143. The Trust Declaration allows for other moneys of Richard S. Hallett to contribute to the Hallett Family sub-trust.

144. The Petitioners ask for relief that justice and the law requires.

Count III

Recordkeeping and Identification of Trust Property

NH RSA 564-B:8-810

145. The Petitioners restate and incorporate by reference each of the paragraphs above and below as if fully set forth herein.

146. As Co-Trustees of the Trusts, Mr. Brennan and Barbara owed and continue to owe a duty to keep adequate records of the administration of the trust.

147. A Trustee must also keep trust property separate from the Trustee's own property.

148. The Trustees must also cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

149. Barbara personally rented Trust property to others and personally collect the rents.

150. The Trustees have no records from 1997 and 1998.

151. The Trustees have failed to keep other proper records and to indentify the Trust property to others.

152. The Petitioners ask for relief in an order that justice and the law requires.

Count IV

Duty to Inform and Report

NH R.S.A 564-B:8-813 and NH Trust law

153. The Petitioners restate and incorporate by reference each of the paragraphs above and below as if fully set forth herein.

154. Under NH law the Petitioners (as Trust Beneficiaries and equitable owners of the Corpus) are entitled to copies of the

Trust Declaration and a schedule of assets transferred to the trust and any information reasonably related to the administration of the Trust, in order to scrutinize the Trustees' investment decisions and to determine whether the Trustees were discharging their duty to use reasonable care and skill to make trust property productive, and to assure that Trustees were discharging their duty to deal impartially with all beneficiaries within restrictions and conditions imposed by trust.

155. The Petitioners have requested from the Co-Trustees, and Petitioners are entitled to, an annual report of the Trust property since 1997. That report should include amounts of liabilities, receipts, and disbursements, including the source and amount of the Trustee's compensation, a listing of the Trust Assets, and the Assets' market values and information reasonably related to the management of the Trust Assets. Complete information has not been provided.

156. The Co-Trustees were also required by statute to notify the Qualified Beneficiaries who have attained 21 years of age and those who have the rights of a qualified beneficiary by no later than 60 days after any change in the method or rate of the trustee's compensation.

157. Trustee Brennan's compensation by the trust on or about February of 2012 was changed from zero over the prior 14 plus

years to \$1,292.23 and at least 5 of the 9 qualified beneficiaries were never notified of this change.

158. While the Co-Trustees have provided some limited financial information in the form of tax returns to some of the Qualified Beneficiaries, the information provided has created confusion and uncertainty about the assets, liabilities, receipts, and disbursements of the Trust.

159. The Co-Trustees are largely unresponsive to the Qualified Beneficiaries requests for answers to legitimate questions regarding the expenses, deductions, income, and/or management fees paid.

160. The Co-Trustees have failed to report as evidence by their 14 years and 8 months of neglect and then 16 months of obstinate silence in regards to the Petitioner's requests for information.

161. The Petitioners paid a Forensic Accountant to examine the partial records provided by the Trustees and the Accountant has submitted a scathing report requesting more information from the Trustees. The Trustees have taken the position through counsel that there are no accounting irregularities and have refused to submit answers to the Accountants Inquiries or produce the records requested.

162. The Petitioners request that the Court declare that the Co-Trustees have failed to comply with NH Law and request relief.

Count V

Request for Attorney Fees and Costs

564-B:10-1004

- 163.** The Petitioners restate and incorporate by reference each of the paragraphs above and below as if fully set forth herein.
- 164.** In the absence of a statute, the general rule in NH is that each party to a lawsuit is responsible for payment of his or her own attorney's fees pursuant to the NH Supreme Court's opinion in Van Der Stok v. Van Voorhees, 151 N.H. 679, 684 (2005). But there are judicial exceptions, and in this case the exceptions are clearly present in favor of awarding fees and costs to the Petitioners.
- 165.** Here, the Petitioners are being forced to litigate against their own Trustees whose position is patently unreasonable. As such, the Court may award attorney fees to the prevailing party.
- 166.** Indeed, when Petitioner's are being forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention such as in this case, then the Court may award attorney fees to the prevailing party.
- 167.** In addition to those judicially created exceptions, in a judicial proceeding involving the administration of a trust,

the Court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy in accordance with a statute (in this case NH RSA 564-B:10-1004).

168. As such, the Court should award attorneys fees and costs to the Petitioners either by statute or by a judicially created exception as justice and equity requires, to be paid personally by the Trustees.

WHEREFORE, the Petitioners pray that this Honorable Court enter an order (that includes but may not be limited to) declaring that Co-Trustees William E. Brennan and Barbara D. Raskin Hebert Hallett have jointly or severally failed in their duties to comply with Trust Declaration and/or the law as to at least any one or all of the following:

- A. A Trustees' Duty to Administer, Invest and Manage a Trust, and Distribute Trust Property;
- B. A Trustees' Duty of Loyalty;
- C. A Trustees' Duty of Recordkeeping and Identification of Trust Property;
- D. A Trustees' Duty of Informing and Reporting;

If any such finding is made, then the Court may enter an order in accordance with NH RSA 564-B:10-1001. (Remedies for Breach of

Trust) That Statute defines a "Breach of Trust" as a violation by a trustee of a duty the trustee owes to a beneficiary. To remedy a breach of trust that has occurred or may occur, the court may:

- (1) compel the trustee to perform the trustee's duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) order a trustee to account;
- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in RSA 564-B:7-706;
- (8) reduce or deny compensation to the trustee;
- (9) subject to RSA 564-B:10-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief, including relief under RSA 547:3-b.

Furthermore, if any such a finding of a breach of duty is made, then the Court may enter an order in accordance with NH RSA 564-B:7-706 (Removal of Trustee) which states that a trustee may be removed by the Court on its own initiative.

In addition to the power to remove a trustee pursuant to RSA 564:9, the court may remove a trustee if:

- (1) the trustee has committed a serious breach of trust;
 - (2) lack of cooperation among co-trustees substantially impairs the administration of the trust;
 - (3) because of unfitness, unwillingness, persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
 - (4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.
- (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under RSA 564-B:10-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

The Court may also enter an order assessing damages personally against the Trustees under NH RSA 564-B:10-1002 (Damages for Breach of Trust) or enter an order as justice requires.

DATED: _____

Verification

We, John Mark Hallett, Amy Hallett Hebert, Hannah R. Hebert, Rachael M. Hebert, and Patricia Hallett Sanderson hereby verify, under oath, that the foregoing factual allegations are true to the best of our information and belief.

John Mark Hallett
124 Beals Road
Bedford, NH 03110

State of New Hampshire

County of Hillsborough

This Verified Petition was read, signed, and sworn to be true, to the best of his information and belief under the pains and penalties of perjury, by John Mark Hallett before me on _____ 2015.

Justice of the Peace



Amy Hallett Hebert
103 Deerhaven Road
Weare, NH 03281

State of New Hampshire

County of Hillsborough

This Verified Petition was read, signed, and sworn to be true, to the best of her information and belief under the pains and penalties of perjury, by Amy Hallett Hebert before me on _____ 2015.

Justice of the Peace



Hannah R. Hebert
103 Deerhaven Road
Weare, NH 03281

State of New Hampshire

County of Hillsborough

This Verified Petition was read, signed, and sworn to be true, to the best of her information and belief under the pains and penalties of perjury, by Hannah R. Hebert before me on _____ 2015.

Justice of the Peace

Rachael M. Hebert
103 Deerhaven Road
Weare, NH 03281

State of New Hampshire

County of Hillsborough

This Verified Petition was read, signed, and sworn to be true, to the best of her information and belief under the pains and penalties of perjury, by Amy Hallett Hebert before me on _____ 2015.

Justice of the Peace

Patricia Hallett Sanderson
213 58th Street East
Palmetto, Fl 34221

State of Florida

County of _____

This Verified Petition was read, signed, and sworn to be true, to the best of her information and belief under the pains and penalties of perjury, by Patricia Hallett Sanderson before me on _____ 2015.

Notary Public/Justice of the Peace