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BY _____
DEPUTY

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4 *In Propria Persona*

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 IN THE MATTER OF THE ESTATE OF
WILLIAM POWELL LEAR, also known as
10 WILLIAM P. LEAR, W.P. LEAR and BILL
LEAR,
Deceased.

11 Patrick Christopher Lear,
12 Beneficiary / Petitioner

v.
13 Harold P. Dayton, James L. Murphy,
Richard B. Rowley,
14 Trustees / Respondents

Case No.: PR78-2800

v.
15 *DUNHAM TRUST COMPANY*,
Tommy L. Tucker,
16 Successor Trustees / Respondents

Dept. No: 7

v.
17 *COOKE, ROBERTS & REESE, LTD*,
David J. Reese,
18 Attorneys / Respondents

v.
19 *GRANT THORNTON, LLP*, James L. Murphy
Accountants / Respondents /

20
21 **ERRATA TO REPLY TO OPPOSITION**
22 **TO PETITION TO SET ASIDE ACCOUNTINGS**

23 COMES NOW Patrick Christopher Lear, Petitioner, as named heir in the Estate of William
24 Powell Lear and beneficiary of the The William P. Lear and the Moya Olsen Lear Family Trust
25 Agreement (LFT) dated March 9, 1978 and submits this **Errata to Reply to Opposition to**
26 **Petition to Set Aside Accountings.**

1 Petitioner hereunder lists the minor errors and corrections in and to Petitioner's *Reply to*
2 *Opposition to Petition to Set Aside Accountings* filed with the Clerk of the instant Court on June
3 30, 2005.

- 4 1. Page 3, line 10, is corrected to read: "proceedings. NRCP 56(g)."
- 5 2. Page 3, line 17, is corrected to read: "The document designated as "affidavit" is properly
6 stricken pursuant to NRS §53.045, NRS §53.010 and NRCP 56(e)."
- 7 3. Page 6, line 2, is corrected to read: "enforcing NRS §163.180, NRS §165.180 and NRS
8 §165.100."
- 9 4. Page 6, line 14, is corrected to read: "Co., 91 Nev. 450, 538 P.2d 152 (1975)."
- 10 5. Page 10, line 13, is corrected to add a period after "\$2,523,292" and now reads "new
11 unaccounted for amount to appear and disappear in the sum of \$2,523,292."
- 12 6. Page 11, line 2, is corrected to read: "establishing the necessity, cause and order for a
13 complete and accurate forensic audit of the LFT as requested in"
- 14 7. Page 19, line 12, is corrected to read "prevent this Petitioner from obtaining any papers,
15 books, records, documents and information. *Respondent GT* knew or should have known
16 that by knowingly having participated in the breach of duty of LFT Trustees, *GT* became
17 a joint tortfeasor with the LFT Trustees and is liable as such. Hendricks v. Grant
18 Thornton, 973 S.W.2d 348 (1998); Laventhol, Krekstein, Horwath & Horwath v.
19 Tuckman, 372 A.2d 168 (1976); Restatement of Torts (Second) §876."
- 20 8. Page 21, line 25, is corrected to read "misfeasance and malfeasance. Laventhol,
21 Krekstein, Horwath & Horwath v. Tuckman, supra; Avianca, Inc. v. Corriea, 705 F.Supp.
22 666 (1989). Petitioner never provided *Respondents* LFT Trustees, *GT*, accountant".
- 23 9. Page 25, line 5, the following is appended to end of the line: "See Section 8(d),
24 particularly, page 48, lines 18-22 and Section 8(g) in its entirety, herein."
- 25 10. Page 25, line 20, is corrected to read: "As clearly shown on Exhibit C of the affidavit
26 contained in the *Opposition, de facto* Trustee Grant Thornton, LLP did"

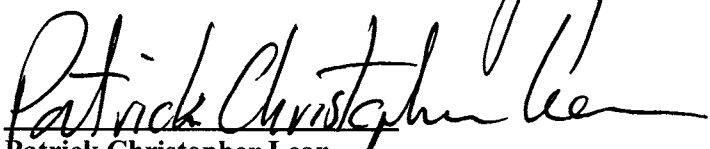
- 1 11. Page 26, line 22, is corrected to read “everything it touches. The mismanagement and
2 misaccountings of the LFT was not discovered until after the”.
- 3 12. Page 26, line 25, a quotation mark is added immediately after the word “beneficiaries.”
- 4 13. Page 27, line 23, the word “and” replaces the comma which follows the word “property”.
- 5 14. Page 28, lines 1 and 2 are corrected to read: “telephone conversation of April 7, 2005
6 with Christian William Lear and voicemail of May 4, 2005 both of which make nearly
7 identical statements: “there isn’t going to be anything left anyway.” See *Set Aside*
8 Exhibit 83.”
- 9 15. Page 33, line 10, the word “trail” is corrected to “trial”.
- 10 16. Page 33, line 13, the parenthesis which reads “(SLWDC)” is changed to read “(SLWDC /
11 SILVERLAKE)”
- 12 17. Page 33, line 23, is corrected to read: “timely notices and had no intentions on providing
13 other relevant information regarding the LFT to the remaindermen beneficiaries. It”.
- 14 18. Page 36, line 15, is corrected to read: “The aforementioned misrepresentations made
15 under oath in the 13th Intermediate Accounting with regard to the nature of the”.
- 16 19. Page 36, line 19, is corrected to read: “an impartial and independent Court appointed
17 receiver. Ledbetter v. First State Bank & Trust Co., 85 F.3d 1537 (1996).”
- 18 20. Page 36, line 23, the word “paid” is inserted after “price” and is corrected to read:
19 “discounted price paid by Sierra Pacific Power Company to the LFT for the purchase and
20 acquisition of”.
- 21 21. Page 37, line 1, the “X” at the beginning of the line is replaced by “1”.
- 22 22. Page 37, line 2, the word “only” is inserted immediately after the word “would”.
- 23 23. Page 37, line 26, is corrected to read “communication to Petitioner of June 15, 2005, the
24 eldest beneficiary of the LFT, Rev. Mary Louise Ellenberger stated:”
- 25 24. Page 42, line 19, the words “See Section 8(g) herein.” are added immediately following
26 the words “process and outcome.”

- 1 25. Page 48, line 26, the words "See Table 1." are deleted.
- 2 26. Page 49, line 12, is corrected to read: "simple question to Trustee, Murphy, would have
- 3 provided the answer." However, in their *Opposition*".
- 4 27. Page 56, line 18, is corrected to read: "On August 11, 2003, this Court ordered an
- 5 independent audit of the LFT and on November 4, 2003,"
- 6 28. Page 61, lines 11-16, the indented text is a quote and is therefore enclosed in quotes.
- 7 29. Page 65, line 5, the word "severe" is corrected to "sever".
- 8 30. Page 65, line 20, the words "partner and" are inserted between "managing" and
- 9 "accountant".
- 10 31. Page 66, line 1, the quote by Jacqueline Lear "go f__k yourself" was misquoted and
- 11 should read "f__k off!"
- 12 32. Page 71, line 3, is corrected to read: "Silver Lake Asset Purchase Agreement – with
- 13 selected relevant exhibits only – complete agreement with all exhibits will be provided on
- 14 CD-ROM upon request."

15 The *Reply to Opposition to Petition to Set Aside* attached to this Errata contains certain
16 grammatical, spelling and punctuation corrections that do not change the substantive issues
17 presented.

18 No further corrections are made to Petitioner's *Reply to Opposition to Petition to Set Aside*
19 *Accountings*.

20 DATED this 5th day of July, 2005.

21 
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19 v.
GRANT THORNTON, LLP,
20 James L. Murphy
Accountants / Respondents

22 **REPLY TO OPPOSITION TO PETITION TO SET ASIDE ACCOUNTINGS**

23 COMES NOW Patrick Christopher Lear, Petitioner, as named heir in the Estate of William
24 Powell Lear and vested remainderman beneficiary of the The William P. Lear and the Moya Olsen
25 Lear Family Trust Agreement (LFT) dated March 9, 1978 and submits this *Reply to Opposition to*
26 *Petition to Set Aside Accountings.*

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1 **JUDICIAL NOTICE**

2 Judicial notice of adjudicatory fact and objection related to the document entitled and designated
3 as “Affidavit of James L. Murphy” dated May 20, 2005 and attached to Opposition to Petition to Set
4 Aside Accountings as filed by *Respondents* LFT Trustees Tommy L. Tucker, James L. Murphy,
5 Grant Thornton, LLP accountant James L. Murphy and joindered by Grant Thornton, LLP (GT) on
6 June 7, 2005 is not an affidavit and does not meet the legal requirements of an affidavit. Said
7 document contains conclusions and assertions that are not of James L. Murphy’s personal
8 knowledge, contains speculation, bare assertions and is not notarized as required by law and
9 Petitioner objects to it being recognized or treated as a valid affidavit by the Court or in the
10 proceedings. NRCPC 56(g).

11 Affidavits (NRS 53.045.1) submitted in support of motions must be made on personal
12 knowledge, demonstrate that the witness is competent to testify and must otherwise conform to the
13 requirements of NRCPC 56(e). NCPM §11.12.

14 Let the record show that the aforementioned document does not meet the requirements of law for
15 affidavits and that it is taken as such for the purposes of the Court in the proceeding and is
16 hereinafter referred to as the “affidavit”.

17 The document designated as “affidavit” is properly stricken pursuant to NRS §53.045, NRS
18 §53.010 and NRCPC 56(e).

19 **BACKGROUND**

20 On April 26, 2005, Petitioner filed with this Court a *Petition To Set Aside Accountings (Set*
21 *Aside)*, and thereafter caused LFT Trustees, James L. Murphy and Tommy L. Tucker to be served
22 with the *Petition To Set Aside* and a Summons.

23 On May 23, 2005 co-*Trustees* James L. Murphy and Tommy L. Tucker filed their *Opposition to*
24 *Petition to Set Aside Accountings (Opposition)*.

25 On May 24, 2005 James L. Murphy and Tommy L. Tucker by and through David J. Reese, Esq.,
26 filed a *Request for Submission* of Petition to Set Aside Accountings in violation of the Rules of

1 Court.

2 On May 31, 2005, Petitioner filed an *Objection to Request for Submission*.

3 On June 7, 2005, *de facto* LFT Trustee *Grant Thornton, LLP* joindered in the *Opposition*.

4 Co-Trustees, James L. Murphy and Tommy L. Tucker and *de facto* Trustee *Grant Thornton,*
5 *LLP's* (collectively, *Respondents*) *Opposition* is specifically and generally unresponsive.
6 *Respondents'* *Opposition* makes unsupported, incoherent, frivolous and meritless statements which
7 are apparently intended to confuse and confound the issues presented and to cause further undue
8 costs in litigation to Petitioner and to the LFT. *Respondents* misrepresent facts and law, continuously
9 conclude this Petitioner doesn't understand the accounting practices used by *Respondents* but
10 completely fail to explain what standards were used or to provide any evidence to rebut Petitioner's
11 complaint and evidence. By moving to dismiss the Petition to Set Aside, *Respondents* admit that
12 they did not use standard accounting procedures, and that the accountings as presented to this Court
13 for confirmation cannot be understood by beneficiaries or others not privy to the insider dealings and
14 management of the LFT. The failure of *Respondents* to specifically deny the allegations made in the
15 *Set Aside* provides sufficient grounds for this Court to summarily grant this Petitioner's prayer for
16 relief and Order a true, correct, complete and accurate accounting of the LFT.

17 Notice will also be taken that On June 9, 2005 Petitioner filed an Affidavit of Disqualification for
18 Bias, Prejudice and Conflict of Interest for the recusal of Judge Peter I. Breen due to his bias and
19 prejudice against this Petitioner and his close relationship with Respondent Grant Thornton's
20 managing partner, Brian Wallace. This probable bias and prejudice was further aggravated by the
21 fact that Judge Peter I. Breen had sat on the case of the LFT for numerous years and openly declined
22 to review the LFT proceedings, management and accountings even though he was continually
23 informed that this Petitioner was not served with legal processs, accountings, or other information
24 regarding the LFT for decades. Judge Breen was also recused upon grounds that he knew and was
25 informed of the fact that the Trustees, their attorney, David J. Reese, Esq., LFT beneficiary Pat Lear,
26 Esq., and other beneficiaries had covert and secret *ex-parte* communications with the Judge and had

1 advised other beneficiaries not to participate in the proceedings and process, and refused to hold the
2 Trustees and Trust attorney to any professional or ethical standards or to hold the Trustees and Trust
3 attorney to specific performance under the LFT and laws of the State of Nevada.

4 Judge Peter I. Breen was duly served with the Affidavit of Disqualification on June 10, 2005, and
5 failed, neglected or otherwise refused to respond.

6 OVERVIEW

7 Petitioner's Set Aside presents a myriad of issues, regarding untrue, incorrect, incomplete, and
8 inaccurate accountings, untrue, incorrect, incomplete and inaccurate audit, breach of fiduciary duties,
9 disloyalty, mismanagement, waste, double and inappropriate billings, etc., all of which are relevant to
10 the LFT and provide sound reasons for this Court to grant Petitioner's prayer: Petitioner has shown
11 that (1) accountings are deficient and deceptive (2) Trustees and their attorney have failed, neglected
12 and refused to execute their respective and interrelated duties within the framework of the LFT and
13 as required by contract, court order and by law (3) *Respondents* did not use accounting standards as
14 they have been adopted by the Nevada Board of Accountancy and to which *Respondents* as Trustees
15 and accountants are bound to perform, (4) there are substantial irregularities and unaccounted for
16 properties, (5) there have been substantial misallocations of funds in contravention to the intent of
17 WPLSr as reflected in the Last Will and Testament of WPLSr and in the LFT, (6) James L. Murphy
18 did and assumed to act as LFT Trustee, as the negotiator, seller and buyer of very valuable Trust
19 property, he acted as Grant Thornton partner and accountant for the LFT, as well as a substantial
20 member and controller of the audit team which failed and neglected to provide a true, correct,
21 complete and accurate audit of the LFT, to name only a few.

22 On November 10, 2004, November 23, 2004 and April 29, 2005, Judge Peter I. Breen expressed
23 his bias and prejudice when he stated his unwillingness to review any accounts prior to 2000, most of
24 which were produced by *Respondents* Grant Thornton, LLP and James L. Murphy, as CPAs who
25 were collectively acting as *de facto* Trustees. This usurpation and mismanagement is aggravated by
26 the fact that *Respondents* cannot overcome the numerous violations of Petitioner's fundamental right

1 to due process and to equal protection of the law. *Respondents* cannot overcome their own
2 discriminatory and hostile pattern of conduct or their collective gross negligence in abiding by and
3 enforcing NRS §163.180, NRS §165.180 and NRS §165.100. *Respondents* failed and refused to give
4 proper notice to an entire class of beneficiaries, namely, the remaindermen beneficiaries of the LFT.

5 The *Respondents' Opposition* does not provide any authority for failing and refusing to file with
6 this Court or to provide the accounts to the LFT beneficiaries in a timely manner for the years 1983,
7 1984, 1985, 1986, 1987, 1988, 1989, 1993, 1995, 1996, 1997, 1998, 1999, 2000 2001, 2002, 2003 or
8 2004 as required in part by NRS 165.040(2) .

9 The *Respondents' Opposition* does not provide any valid authority for violating this Petitioner's
10 right to legal notice regarding any litigation or Court filing, or for violating Petitioner's guaranteed
11 right to due process and equal protection of the law. See *Set Aside* §3 & §4. Notice is fundamental to
12 the right to due process and is mandatory in the State of Nevada. Orders and judgments without
13 notice to the interested parties are properly set aside and vacated. See: Clark County Sports
14 Enterprises, Inc. v. Kaighn, 93 Nev. 395, 566 P.2d 411 (1977); Monroe, Ltd. v. Central Telephone
15 Co., 91 Nev. 450, 538 P.2d 152 (1975).

16 The *Respondents' Opposition* admits that Trustees don't have a written instrument properly
17 executed by this Petitioner, excusing them from performing their duties and obligations. See *Set*
18 *Aside* §5, NRS §163.170 and NRS §165.170.

19 The *Respondents' Opposition* admits that Trustees and their attorneys have (1) a legal duty to
20 perform under and enforce the Last Will and Testament of WPLSr, (2) a legal obligation to perform
21 under and enforce the terms and conditions of the LFT as they existed at the time of the death of
22 WPLSr, (3) a legal duty to execute and manage the Trust in accordance with lawful Court Orders (4)
23 a legal obligation to abide by the laws and Constitution for the State of Nevada and the laws and
24 Constitution for the United States of America, (5) a legal obligation to provide timely legal notice to
25 this Petitioner regarding any litigation or hearing with regard to the LFT and to timely and accurately
26 describe the rights and interests affected, (6) a legal duty and obligation to timely provide true,

1 correct, complete and accurate accountings of the LFT and to provide LFT beneficiaries access to
2 trust records and papers for the purpose of verifying the validity of Trustees' accountings, (7) a legal
3 duty and obligation of the highest degree to perform in good faith, with due care, loyalty and ethical
4 integrity, (8) a legal duty and obligation to perform and manage the Trust under the "prudent man"
5 rule (9) a duty and obligation to manage the trust to the benefit of all beneficiaries without hostility,
6 deceit, discrimination or preference, (10) a legal duty and obligation to adhere to accounting
7 standards as adopted by the Nevada Board of Accountancy and accounting standards as enacted by
8 the Nevada legislature and imposed upon the LFT Trustees, accountants and (11) a legal duty and
9 obligation to adhere to standards of Professional Conduct as enacted by the legislature and adopted
10 by the Supreme Court and imposed on attorneys practicing in the State of Nevada. *Set Aside*, §§6, 7,
11 8, 9, 10, 11, 12, 13, 14, 15.

12 This Petitioner has detailed and evidenced how the above duties and obligations have been
13 evaded, grossly neglected and violated. The Trustees have failed and neglected to refute or rebut
14 Petitioner's allegations of (1) mismanagement, (2) misaccountings, (3) missing or unaccounted for
15 LFT property, (4) incorrect, incomplete and inaccurate Charge and Discharge Statements,
16 compilations, which do not adhere to any recognized standard, (5) violations of due process of law,
17 (6) violations of equal protection of the law, (7) violations of fiduciary duties and obligations, (8)
18 hostility toward certain beneficiaries, (9) attorney malpractice, and (10) attorney breach of contract,
19 all of which effectively amount to nonfeasance, misfeasance and malfeasance, which has adversely
20 affected Petitioner's rights and interests in and to the LFT.

21 Further, *Respondents Opposition* presents no evidence or argument which would be sufficient to
22 deny this Petitioner's *Set Aside*. To the contrary, *Respondents* introduced new evidence which raises
23 even more cause for an Order in favor of Petitioner.

24 //

25 //

26 //

1 **SUMMARY**

2 Burden of proof shifted to *Respondents* to show their compliance with their fiduciary duties and
3 obligations after Petitioner established his *prima facie* case demonstrating *Respondents'* breach of
4 fiduciary duty. 76 Am Jur 2d §627; Gemstar, Ltd. v. Ernst & Young, 917 P2d 222 (Ariz. 1996);
5 Confederated Tribes of Warm Springs v. U.S., 248 F3d 1365 (2001). In their Opposition,
6 *Respondents* have failed and neglected to prove that they performed their fiduciary duties as required
7 by the Last Will and Testament of WPLSr, the LFT and under the laws and Constitution of the State
8 of Nevada thereby admitting said breach.

9 LFT Trustees are liable for mismanagment, imprudence, fraud, and other acts of nonfeasance,
10 misfeasance and malfeasance. NRS §163.115, NRS §165.180, NRS §165.200. LFT Trustee, James
11 L. Murphy had far more than one hat to wear in this matter and shifted colors back and forth like a
12ameleon. LFT Trustee, Murphy even billed the Trust for his \$400 lunch as a partner and accountant
13for Grant Thornton. The accountings of the LFT are subject to a petition to set aside pursuant to
14NRS §165.120 and §163.115(1)(f) and the accounting firm Grant Thornton and partner and
15accountant are subject to suit pursuant to NRS §11.2075.

16 *Respondents'* made numerous misrepresentations of fact and numerous vague and unsubstantiated
17claims in their Opposition. Since March 18, 2004, this Petitioner has been able to obtain certain
18papers, books, records and documents from LFT Trustees but only after and pursuant to the Court
19Order of November 10, 2004. All other discovery which this Petitioner has attempted to obtain
20regarding the LFT and its management and accountings has been obstructed by *Respondents*.

21 In their *Opposition*, *Respondents* attempt to shift the blame for their failure and neglect to
22provide notice to this Petitioner on Petitioner **without** having been excused by this Petitioner from
23performing their duties and obligations toward Petitioner. NRS 163.170 and 165.170. *Set Aside*
24Section 1.1, page 6, lines 7-10. However, consistently, over the last two centuries, the American
25Courts have ruled that Justice is served only when the parties are given adequate notice and an
26opportunity to respond in open court and Orders entered by Court without the appropriate notice are

1 jurisdictional nullities and therefore all accountings submitted to this Court for approval since
2 August 24, 1983 remain open for set aside and review. Clark County Enterprises, Inc. v. Kaighn,
3 supra, Monroe, Ltd. v. Central Telephone Co., supra.

4 *Respondents'* claim compliance with their fiduciary obligations, applicable standards and claim to
5 have acted within the wide scope of powers granted to them under the LFT. However, said
6 statements are made after misrepresenting the law, omitting certain relevant Court Orders which
7 confirm the restriction on their powers and particularly misquote the tenor of the LFT. These vague
8 inuendos and misrepresentations are for self-serving and improper purposes.

9 In their *Opposition, Respondents'* again present their self-serving misrepresentation, that a
10 conflict of interest existed between Trustees Dayton and Murphy with the buyer of Silver Lake
11 Water Co (SILVERLAKE), Sierra Pacific Power Company (SPPC) when Dayton and Murphy sat on
12 the Board of Directors of Sierra Pacific Power Co., and that this conflict was disclosed to all parties.
13 The affirmation under oath of July 28, 2000 which was made a part of the 13th Intermediate Annual
14 Accounting and was presented to this Court and to a very limited number and kind of LFT
15 beneficiaries is contrary to the facts. Neither this Petitioner nor his brother were given any such
16 notice of conflict and were not even informed of the nature and extent of this substantial transaction
17 that affected their rights and interests in the LFT corpus.

18 *Respondents* failed and neglected to answer and address the issues raised with regards to the true
19 nature, terms and conditions of the sale of SILVERLAKE to SPPC and the subsequent distribution of
20 the proceeds from the below market value sale. However, the schedule of SILVERLAKE assets sold
21 by *Respondents* to SPPC reveals that the largest and most valuable asset was 732 acre-feet of water
22 rights whose value is estimated, by very conservative standards, to be worth at least \$7.3 million or
23 over three times more than the total amount received for all assets of SILVERLAKE from SPPC in
24 1999 and as much as \$35 million or sixteen-times more than the total amount received for all assets
25 of SILVERLAKE from SPPC. The sale of SILVERLAKE caused a significant damage to this
26 Petitioner and other LFT beneficiaries.

1 *Respondents* made the unsubstantiated statement that their accounts are true, correct, complete
2 and accurate for each of the 17 Intermediate Annual Accountings (some of which comprise more
3 than one year) however, the evidence provides a very different factual basis. Several instances
4 highlight the fallacy of *Respondents'* bare assertions. The selection of a few of the many instances
5 are as follows:

6 (1) The first example is in relation to the Capistrano Industrial Park, Ltd. (CP) partnership (see
7 “Section 6.10.3 Write-offs exceed value of assets” in Set Aside). This Petitioner clearly complained
8 that the 1991 Charge and Discharge statement reported a write-off which exceeded the reported
9 value of the Capistrano Partnership (CP) investment. Significant and material differences and
10 irregularities exist between the CP financial statements and those reported in the LFT’s accountings.
11 This in turn raises new questions about the accuracy, completeness and correctness of BV’s audit
12 which was directly supervised and structured by LFT Trustee and Grant Thornton accountant James
13 L. Murphy and was effected under the oversight and counsel of Trust attorney David J. Reese. See
14 Section 8 (d) entitled “Inaccurate Writeoffs” herein.

15 (2) LFT Trustee and accountant James L. Murphy’s affidavit and Exhibit E attached thereto and
16 as related to the Estate and related accountings raise new questions which if accepted as true, cause a
17 new unaccounted for amount to appear and disappear in the sum of \$2,523,292.

18 (3) Another example relates to the unaccounted for Riverhouse and the unaccounted for Peter
19 Paul Rubens paintings as the *Respondents* have failed and neglected to recognize that Riverhouse
20 was exchanged by Moya Lear for a life estate and transferred into the LFT at the creation of the LFT.
21 *Respondents* have continuously failed and refused to produce Schedules A & B of the LFT which
22 would also corroborate this Petitioner’s substantiated complaint that two very valuable Peter Paul
23 Rubens paintings belonged to WPLSr at the time of his death and that the paintings were not and are
24 not accounted for. Trustees were and are in breach of their fiduciary obligation by converting said
25 paintings to third parties and failing to report and account for these transactions and the corpus of the
26 Trust.

1 NRS §163.170, NRS §165.170, see also *Set Aside* Section 1.1. The 14th Amendment to the
2 Constitution for the United States of America is also applicable to the right to fundamental due
3 process and to the acts and omissions of those acting under color of State law, i.e., notice and
4 opportunity to be heard in a full, fair and impartial manner.

5 **2) RIGHT OF ACTION**

6 This Petitioner filed a *Motion for Declaratory Relief* on June 14, 2004. This Court has
7 declined and failed to determine and declare the rights and relationships of the parties. On April 26,
8 2005, this Petitioner filed a *Petition to Set Aside Accountings (Set Aside)*. The *Set Aside* action was
9 commenced by Petitioner as an heir in the Estate of WPLSr and as a beneficiary in the Lear Family
10 Trust (LFT). NRS §163.115, NRS §164.010 and NRS §164.015 are clear and unambiguous. Any
11 beneficiary of a Trust may commence an action to set aside accountings of a Trust in the State
12 District Court where the Trust is located. The Court has jurisdiction to set aside prior orders and
13 judgments of the Court and has jurisdiction over the accountings of the Trust and those who
14 participated in their making and their presentations to the Court for confirmation. Petitioner has
15 made claims against the LFT Trustees, James L. Murphy, Harold P. Dayton (deceased) Richard B.
16 Rowley (deceased) and Thomas L. Tucker who were and are required by law to file annual
17 accountings by March 2nd of each year. Petitioner alleges that LFT Trustees did not timely file each
18 and every annual accounting in a timely manner, did not use or otherwise demand that generally
19 accepted accounting standards and methods be used to account for the LFT, did not truthfully,
20 correctly, completely, and accurately account for the LFT and did not give Petitioner notice of the
21 accountings and management of the LFT for a period exceeding 20 years. Trustees accepted
22 payment from the LFT for services they did not render or properly perform.

23 Petitioner has made claims against the LFT Trustees, Grant Thornton, LLP, the accounting firm,
24 and Grant Thornton Partner and accountant, James L. Murphy, who compiled and made the LFT
25 accountings and failed, neglected and refused to use accepted accounting standards and methods,
26 failed to timely produce accountings of the LFT, did not use generally accepted accounting standards

1 and methods when compiling, making and accounting for the LFT;

2 **3) BURDEN OF PROOF**

3 Petitioner has presented and extensively documented *Respondents* Grant Thornton, LLP (*GT*),
4 LFT Trustees, David J. Reese, Esq. and *CR&R*'s breach of trust and duty by showing that
5 *Respondents*, failed and refused to timely provide this Petitioner LFT notices and accountings as
6 required by Court Order, by contract and by NRS §165.030 through NRS §165.120, and when they
7 were produced in multi-year fashion, did not provide true, correct, complete and accurate
8 accountings. This failure and refusal to provide due and timely notice of proper accountings joined
9 with the failure and refusal to give due and timely notice of other legal actions affecting the LFT,
10 changing the terms and conditions of the LFT without notice to Petitioner, covertly and secretly
11 taking and disposing of trust corpus, double billing the Trust, gross imprudence, is the basis for
12 damage to this Petitioner, and constitutes ground to believe and know that fraud, mismanagement,
13 nonfeasance, misfeasance and malfeasance were rampant.

14 *Respondents* Harold P. Dayton, James L. Murphy, Richard B. Rowley, Tommy L. Tucker and
15 Dunham Trust Company as LFT Trustees are fiduciaries and are bound and held to perform the
16 duties and obligations of Trustees under the express terms and conditions of the LFT Agreement and
17 as required by law.

18 *Respondents* Cooke, Roberts and Reese, Ltd and David J. Reese, Esq. as attorneys for LFT
19 Trustees are fiduciaries and are bound and held to perform the duties and obligations of Trustees
20 under the express terms and conditions of the LFT Agreement and as required by law since when an
21 attorney represents a trustee in his or her capacity as trustee, that attorney assumes a duty of care and
22 fiduciary duties toward the beneficiaries as a matter of law. Charleston v. Hardesty, 108 Nev. 878,
23 882-883, 839 P.2d 1303 (1992).

24 As evidenced by Petitioner in his *Set Aside*, including but not limited to paragraphs 121
25 through 141 and exhibit 44, *GT* is the *de facto* trustee of the LFT by performing and receiving
26 remuneration for the performance of trustee duties through its partner, James L. Murphy, and is

1 therefore a fiduciary in that capacity.

2 *GT* is also a fiduciary by the nature of their engagement with the LFT. *GT* prepares the LFT's
3 tax returns, financial statements, and including but not limited to, performs "miscellaneous services
4 related to property sales and other related matter", engages in "meetings on other sales and land
5 development projects" etc. *Set Aside*, exhibit 44, pp.372 & 376.

6 The Restatement (Second) of Torts §874 (comment a) provides that a fiduciary relationship will
7 be held to exist between two persons when one of them is under a duty to act or give advice for the
8 benefit of another upon matters within the scope of the relation.

9 In Gemstar v. Ernst & Young, 917 P.2d 222 (Ariz. 1996), the accountants were initially hired to
10 prepare the corporations' tax returns and financial statements. The accountants then involved
11 themselves in property sales for their client. At the close of evidence, plaintiffs moved for a directed
12 verdict that the accountants were fiduciaries as a matter of law. The court granted plaintiff's motion
13 and gave this instruction to the jury:

14 "An accountant *must* act with utmost loyalty, good faith and disclosure for his
15 client. This special relationship is sometimes referred to as a fiduciary
16 relationship.

17 *As fiduciaries, defendants stood in a trust relationship with plaintiffs.*

18 **Defendants have the burden of proving full compliance** with all of their
19 fiduciary duties. If the defendants failed to prove this full compliance, then the
20 fiduciary relationship has been breached." [Bold added]

21 Gemstar v. Ernst & Young, supra, at 233

22 Based on expert testimony that the accountants owed fiduciary duties, the Supreme Court of
23 Arizona found that the trial court's directed verdict was proper and that the jury instruction was not
24 erroneous.

25 In Confederated Tribes of Warm Springs v. U.S., 248 F.3d 1365 (2001), the court held

26 "Under trust law principles, if a trustee fails to keep proper accounts, "all doubts
will be resolved against him and not in his favor." William F. Fratcher, *Scott on
Trusts*, §172 (4th ed. 1987); see also *Bigelow v. RKO Radio Pictures, Inc.*, 327
U.S. 251, 264, 66 S.Ct. 574, 90 L.Ed. 652 (1946) ("[t]he most elementary
conceptions of justice and public policy require that the wrongdoer shall bear the
risk of the uncertainty which his own wrong has created."). More generally, as
the Second Circuit stated in *Donovan v. Bierwirth*, 754 F.2d at 1058 (quoting

1 *Nedd v. United Mine Workers*, 556 F.2d 190, 210 (3d Cir.1977)) “**once the**
2 **beneficiaries have established their *prima facie* case by demonstrating the**
3 **trustees’ breach of fiduciary duty, “the burden of explanation or justification**
4 **... shifts to the fiduciaries.”**” [emphasis added]

5 *Respondents* LFT Trustees Harold P. Dayton, Richard B. Rowley, Tommy L. Tucker, James L.
6 Murphy and *GT* accountant James L. Murphy and *GT* have failed to meet their of burden of proof by
7 defaulting on the *Set Aside*, and by filing their Opposition, LFT Trustee Tommy L. Tucker, James L.
8 Murphy, *GT* accountant James L. Murphy and *GT* attempt to evade their fiduciary obligations and
9 the risk associated with their continued breach. In an action brought by a beneficiary charging a
10 breach of trust, the beneficiary bears the burden to prove in what respects the trustee beached that
11 duty. While the beneficiary has the initial burden of proving the existence of the fiduciary duty and
12 the trustee’s failure to perform it, once the trust beneficiary has established a *prima facie* case by
13 demonstrating the trustees’ breach of fiduciary duty, the burden of the explanation or justification
14 shifts to the fiduciaries. The trustee must show the use of due care, diligence and skill with respect
15 to trust investments and in the prudent management of the Trust. In short, the trustees must prove
16 that they acted with the utmost good faith toward the beneficiary and made full disclosure of all facts
17 related to the transactions at issue. 76 Am Jur 2d Trusts §627. The only showing of *Respondents GT*,
18 accountant Murphy, Trustee Murphy, Trustee Tommy L. Tucker, Dunham Trust Company, David J.
19 Reese, Esq. and *CR&R* was that of a conspiracy against this Petitioner’s rights and interests to and
20 under the LFT. This was done through a conspiracy of silence and by maintaining a hostile,
21 vindictive and malicious manner in order to evade the duties and obligations that they undertook for
22 compensation and to assume the risk and liabilities for multiple breaches of trust, nonfeasance,
23 misfeasance and malfeasance.

23 //

24 //

25 //

26 //

1 **4) BAD FAITH AND MISREPRESENTATIONS OF FACT AND LAW**

2 The indicia for "bad faith" include "that the claims [or defenses or propositions] advanced were
3 meritless, that the counsel [and/or client] knew or should have known this, and that the motive for
4 filing...was for an improper purpose such as harassment." *Smith v. Detroit Federation of Teachers*
5 *Local No. 231, 829 F.2d 1370, 1375 (6th Cir. 1987)*. When bad faith is found to exist the Court may
6 preclude defenses and evidence and enter such other orders or sanctions as are appropriate. *Titus v.*
7 *Mercedes-Benz of North America, 695 F.2d 746, 749 n. 6 (3rd Cir. 1982)*

8 **a) Opposition to Petition to Set Aside Accountings**

9 Contrary to the continuing misrepresentation of *Trustees'* attorney David J. Reese, Esq., Judge
10 Peter I. Breen directed only that this Petitioner supply a supplemental **summary** of the *Set Aside*.
11 See: *Opposition* page 8, lines 25-27. This Petitioner purposely incorporated and reiterated his
12 *Petition to Set Aside Accountings* in his *Supplemental Summary to Petition to Set Aside Accountings*
13 (Summary) for the purpose of compelling the *Respondents* to answer in a timely, constructive and
14 truthful manner rather than in vague generalities and frivolous ramblings. The maxim *Dolus*
15 *versatur in generalibus* – fraud lurks in generalities, applies in the case presented and to
16 *Respondents'* Opposition. To this should be added the maxims that "once a fraud always a fraud"
17 and "fraud taints everything it touches."

18 Petitioner's Supplemental Summary was provided for the convenience of the parties only. This
19 Petitioner's objective with the filing of his *Set Aside* is to obtain true, correct, complete and accurate
20 audit and accounting of the LFT without engaging in lengthy and costly litigation with Trustees who
21 have continually breached long recognized fiduciary duties and the law in collusion with their
22 attorney who has openly engaged in malpractice in and out of court. *Respondents* know or should
23 know that accounting is a precise and rigorous discipline that is intended to provide the client(s) with
24 a clear and accurate picture of their fiscal condition. *Respondents* not only failed to produce timely
25 accountings as required by law, *Respondents* willfully and knowingly produced, filed and served
26 untruthful, incorrect, inaccurate and incomplete accountings. Other beneficiaries of the LFT were

1 aware of and knew that the LFT Trustees, and in particular, James L. Murphy, mismanaged the Trust
2 and provided intentionally vague and deceptive accounting summaries to conceal the
3 mismanagement.

4 *Respondents* made numerous vague statements in their *Opposition* such as:

5 “The Petition to Set Aside Accountings is an obvious effort to harass the Lear
6 *Trustees* and unduly burden the Court with a mammoth “fugitive document”
7 consisting of unsupported, untrue and outrageous allegations, and a newly devised
8 and unauthorized change of caption. Hundreds of pages of unsupported, and
9 often, incomplete, irrelevant or immaterial exhibits are attached to the Petition.”

10 Nowhere in the *Respondents’ Opposition* is there any substantiation to these empty and
11 unsupported inuendos. *Respondents* could not substantiate their allegations since they are blatant
12 misrepresentations of the facts and merely are inserted in the text, along with many other such
13 misrepresentations of fact and law for the improper purpose of causing unnecessary delays and
14 excessive costs in litigation.

15 Petitioner did not include some evidentiary exhibits in their entirety for the sake of brevity and
16 only included the relevant document pages and clearly labeled these partial exhibits in the Table of
17 Exhibits on pages 170, 171, 172 and 173 of the *Set Aside*. This Petitioner attached each and every
18 exhibit for the specific purpose of providing relevant, pertinent, material and irrefutable evidence of
19 the *Respondents’* fraudulent mismanagement of the LFT. *Respondents’* do not refute the
20 documentary evidence submitted which clearly shows that *Respondents’* bare and vague assertions
21 are unsupported by substantive evidence and are misrepresentations of fact that were craftily
22 designed to deceive and cloud the issues presented in the Set Aside. LFT Trustees and their attorney,
23 David Reese were fully aware that the effort at this time is to clean up the entire LFT for two (2)
24 newly appointed Trustees to replace deceased *Respondents* Rowley and Dayton. Trust attorney
25 David Reese has previously engaged in unethical misconduct and malpractice in relation to the LFT
26 and LFT Trustees and is charged with such in the Set Aside. The Opposition of LFT Trustees James
L. Murphy, Tommy L. Tucker, *GT* accountant James L. Murphy and *GT*, as craftily drawn and filed
by Reese, was presented for the improper purpose of evasion and causing unnecessary delays and

1 excessive costs in litigation to the Petitioner and to the LFT.

2 **b) Respondents' Obstruction**

3 Since March 2004, LFT Trustees, James L. Murphy, Richard B. Rowley, Harold P. Dayton,
4 Tommy L. Tucker, Dunham Trust Company, *GT*, *GT* accountant James L. Murphy, and David J.
5 Reese, Esq. and/or CR&R have engaged in a conspiracy of silence and have obstructed virtually
6 every effort by this Petitioner from obtaining any information from them about the dealings and
7 management of the LFT.

8 On April 1, 2004, *Respondents* offered to meet with this Petitioner and his brother to discuss his
9 concerns and this Petitioner accepted the offer, however, **after** *Respondents* produced the documents
10 requested. See Petitioner's March 31, 2004 letter – Exhibit 7. *Respondents* are always asserting that
11 they are willing to “discuss.” Petitioner was subjected to such a "discussion" on October 28, 2004,
12 when this Court Ordered Petitioner and his brother into a room with Respondent's agents and other
13 beneficiaries who knew or reasonably should have known that the Trust was mismanaged, and where
14 threats and intimidation against this Petitioner were the only things that were espoused and
15 presented. Petitioner had to get a Court Order to have Trustees produce any Trust records at all.
16 Quite to the contrary of *Respondents'* bare and baseless assertions, *Respondents* have failed,
17 neglected, refused to timely respond to discovery, have advised others not to participate in the
18 proceedings, and have generally and secretly used their best efforts to obstruct and delay the
19 discovery process, a true, correct accurate and complete audit and the instant litigation. On January
20 15, 2005, Petitioner sent and served the LFT Trustees James L. Murphy, Harold P. Dayton and
21 Richard B. Rowley with a set of interrogatories pursuant to NRC 33 regarding the unaccounted for
22 Rubens paintings and provided the Trustees with the recorded bill of sale of said paintings to
23 WPLSr, as filed with the Washoe County recorder's office. Exhibit 4. See also *Set Aside*, exhibit 1,
24 pages 2-4 of 646. *Respondents* Trustees failed and refused to provide an answer or respond to the
25 interrogatories within the time allowed and still refuse to respond.

26 On February 28, 2005, Respondent *GT*'s legal representatives caused a letter to be mailed to

1 Petitioner threatening him with sanctions if Petitioner made any further requests for information
2 from *GT*. Trustee James L. Murphy is a partner and accountant for *GT* and the LFT accountings were
3 compiled and done by *GT* and *GT* was paid by the Trust for its accounting services as well as billing
4 and being paid for other acts such as paying \$400 for Murphy's lunch and taking other actions that
5 were properly and dutifully the responsibility of the LFT Trustees.

6 On May 5, 2005, Petitioner mailed a Request for Production of Documents pursuant to NRC
7 Rule 34 to LFT Trustee and *GT* accountant James L. Murphy. Petitioner telephoned James L.
8 Murphy on May 20, 2005 to confirm his appointment to pick-up the requested documents whereupon
9 James L. Murphy told him that "there are no documents" and later added "your request is fake"
10 thereby continuing the pattern of hostility and obstruction. See Affidavit attached hereto as Exhibit
11 5.

12 On June 7, 2004 *GT* filed a Motion for Sanctions against Petitioner along with a Motion for
13 Protective Order to deny Petitioner any access to LFT documents, records, books, papers and
14 information and thereby misapplied the threat made in their February 28, 2005 letter to Petitioner
15 which improperly threatened Petitioner if Petitioner persisted in his discovery.

16 Since January 15, 2005, this Petitioner has diligently attempted to obtain relevant discovery from
17 *Respondents* and others, in the form of interrogatories to trace unaccounted for property, in the form
18 of Requests for production of documents, in the form of admissions and confessions all for the
19 purpose of revealing the nature of the relationships between the parties. *GT*'s Motion for Sanctions
20 and Motion for Protective Order are merely a continuation of *Respondents* policy to obstruct and
21 prevent this petitioner from obtaining any papers, books, records, documents and information.
22 *Respondent GT* knew or should have known that by knowingly having participated in the breach of
23 duty of LFT Trustees, *GT* became a joint tortfeasor with the LFT Trustees and is liable as such.
24 Hendricks v. Grant Thornton, 973 S.W.2d 348 (1998); Laventhol, Krekstein, Horwath & Horwath v.
25 Tuckman, 372 A.2d 168 (1976); Restatement of Torts (Second) §876. Petitioner's Opposition to
26 Grant Thornton's Motion for Sanctions and Petitioner's Opposition to Motion for Protective Order

1 are reiterated and incorporated herein in their entirety.

2 *Respondents'* assertion in their *Opposition*, that “a simple inquiry of the Trustees or their
3 accountants would have explained these matters to the Petitioner”. [emphasis added] *Opposition*,
4 p.17 lines 3-4 is made in bad faith and is false as is made clear by the *GT* threats and motions to
5 prevent this Petitioner access to any meaningful and relevant evidence.

6 The repeated statements by *Respondents* that a simple question to Trustee, Murphy, would have
7 provided the answer is false, made in bad faith and is contrary to every act performed by
8 *Respondents* during the last fifteen months. See Affidavit James L. Murphy, May 20, 2005, p.3,
9 numbered para. 8 lines 16-17.

10 **5) PETITIONER'S RIGHTS V. RESPONDENTS' OBLIGATIONS**

11 **1987, 1988 & 1989 Correspondence**

12 Petitioner attempted to obtain information pertaining to the LFT during the years 1987, 1988 and
13 1989. All of Petitioner's requests at that time were met with polite but empty replies from acting *de*
14 *facto* Trustees, Respondent *Grant Thornton, LLP* as shown by the April 3, 1989 communication
15 from Respondent *GT* Partner, James L. Murphy. See: *Opposition*, Exhibit C to affidavit. The written
16 response communication from *GT* and accountant Murphy refused to provide any information to
17 Petitioner, including the LFT accountings and other public court filings while misrepresenting that
18 said documents are “confidential and personal”. Judicial notice shall be taken that on November 27,
19 2002 Patrick James Martin, Esq. reported in a written communication to LFT beneficiaries: “I spoke
20 with Mr. Reese yesterday and he advised me that the Trustees intended to serve only those
21 beneficiaries who have always been served over the years.” Exhibit 2, page 1. At all times relevant,
22 LFT Trustees had a duty to produce and provide annual LFT accountings and Trust information to
23 beneficiaries, including remaindermen. *August 13, 1982, Court Order; NRS §165.045; NRCP 5,*
24 *Baker Boyer National Bank v. Garver*, 719 P2d 583 (1986), *Waits v. Hamlin*, 776 P2d 1003 (1989),
25 *In Re Marriage of Petrie*, 19 P3d 443 (2001), 90A CJS §331. This unethical and discriminatory
26 practice has continued to the damage of this Petitioner.

1 *Respondents'* agree with this Petitioner and admit that no notice or accountings were provided to
2 anyone but the income and outright LFT beneficiaries. See *Set Aside* Exhibit 59. This Court will
3 note that NRS §165.040 does not distinguish between classes of beneficiaries and NRS §165.020
4 specifically includes remaindermen beneficiaries in the definition of the word "beneficiary" or
5 "beneficiaries". *Respondents'* argument is once again made in bad faith and for an improper
6 purpose.

7 *Respondents* persist on calling this Petitioner a "contingent remainderman," when the LFT's
8 income tax returns filed with the IRS for the years 2000, 2001, 2002 and 2003 show that LFT
9 remaindermen beneficiaries are "skip persons" or in legal parlance, "vested". Comerica Bank, N.A.
10 v. U.S., 93 F.3d 225 (6th Cir. 1996). This continued misrepresentation is at variance with evidence
11 that has been provided to this Court and is contrary to both law and fact.

12 Further, this Petitioner has on numerous occasions since June 14, 2004 pointed out the fallacy of
13 *Respondents'* attempt at twisting Nevada State law so as to allow the *Respondents* to differentiate
14 and discriminate against one class of beneficiaries, the remaindermen, and this Petitioner has
15 continuously supported his claims with legal authorities, which include but are not limited to, NRS
16 165.020 and the expert opinion by Robert Whitman on numerous occasions. *Respondents* have not
17 addressed nor rebutted Petitioner's allegations, evidence or given any valid reason why the law
18 should be changed. *Set Aside*, exhibit 63 p.486 – 489 of 646.

19 By stating in their Opposition that "if PCL [Petitioner] disagreed with the Trustees' position
20 regarding notice of accountings, he should have taken action long before 2005, over seventeen (17)
21 years later" See: *Opposition*, page 7, lines 22-24. *Respondents* know or should know the *Opposition*
22 and affidavit of James L. Murphy were presented in bad faith. See *Opposition*, affidavit of James L.
23 Murphy. Not only did *Respondents* know of their legal obligation to provide said accountings in a
24 timely manner to Petitioner since 1978 and in accordance with the LFT, in compliance with this
25 Court's Orders confirming Respondent LFT Trustees' and directing them to specific performance
26 and pursuant to the Constitution and laws of the State of Nevada. There is no valid excuse or defense

1 for *Respondents*. *Respondents* David J. Reese, Esq. and CR&R were specifically engaged by the LFT
2 Trustees to assist them in ensuring compliance with NRS §165.030 - §165.120, which includes the
3 timely filings of annual accountings with the Court and the service of the same upon this Petitioner
4 pursuant to NRS §165.045. Set Aside, Exhibit 12, page 84 of 646. The weight of evidence, the facts,
5 and *Respondents'* own statements and representations show the breach, mismanagement and
6 malpractice. The 17 years of breach of legal duty to perform and provide due process to all LFT
7 beneficiaries provides these *Respondents* with no defense whatever.

8 By knowingly refusing to provide any accountings to Petitioner pursuant to NRS §165.045 or to
9 provide other trust information for a period exceeding two decades, David J. Reese, Esq. and *CR&R*
10 knew or should have known that they had breached their contract with LFT Trustees and engaged in
11 and are liable for malpractice and breach of fiduciary duties for their nonfeasance as well as their
12 misfeasance and malfeasance. Laventhol, Krekstein, Horwath & Horwath v. Tuckman, supra;
13 Avianca, Inc. v. Corriea, 705 F.Supp. 666 (1989). Petitioner never provided *Respondents* LFT
14 Trustees, *GT*, accountant James L. Murphy, David J. Reese or *CR&R* a written waiver relieving or
15 excusing said *Respondents* from performing any of the duties and obligations imposed upon them
16 under Nevada State law or the LFT. Petitioner did not exempt any of the *Respondents* from liability
17 for their failure to perform any of the duties imposed upon them by State law or the LFT. NRS
18 §163.170, NRS §165.170. This Petitioner requires and demands specific performance and has not
19 waived his right to pursue the *Respondents* for breach.

20 *Respondents* statements that “the claims of the Petitioner are barred by the doctrine of *res*
21 *judicata* or are otherwise, void of substance or merit” are unsupported by fact, are vague and made in
22 bad faith. (*Opposition*, p.19, lines 8-11). While citing Valley Bank v. Neuhoff, 102 Nev. 579 (1986),
23 *Respondents* omit a central tenet of our legal system, the concept of fundamental notice and hearing.
24 Contrary to Petitioner, appellants in Valley Bank v. Neuhoff, supra, received legal notice and
25 participated in the proceedings before the court. The case of Clark County Sports Enterprises, Inc. v.
26 Kaighn, supra, is more on point. The failure of one of the parties to serve a judgement upon another

1 interested party voided the *ex-parte* Order and it was set aside. *Respondents* knew or reasonably
2 should have known that due process requires "timely" notice.

3 In the case at bar, as repeatedly stated by this Petitioner on numerous occasions and as
4 recognized by this Court on March 18, 2004, there are "some serious questions about ... notice here
5 and opportunity to be heard." See Court Transcript, March 18, 2004, p.5 lines 21-23. The
6 accountings of the LFT, the acts of the Trustees and Orders of this Court since the end of August,
7 1983 cannot meet the definition of *res judicata* when the rights of this Petitioner and others to due
8 process and equal protection of the law have been violated for a period exceeding two decades. The
9 *ex parte* proceedings have continued for the last year under the undue and unethical influence of
10 Patricia Lear Esq., David J. Reese and others such as the managing partner of *GT*, Brian Wallace
11 who was engaged in business with Judge Peter I. Breen. The Orders issued by this Court between
12 August 24, 1983 and March 18, 2004 are properly *ex-parte* orders and void *ab initio*. *Respondents*
13 had an affirmative duty to provide Petitioner with notice and service of process. NRS §155.010;
14 NRC 5.

15 In the instant case the August 13, 1982 Court Order makes the LFT subject to NRS 165.045
16 which specifies the manner in which notice is to be given to LFT beneficiaries but *Respondents* have,
17 in bad faith, refused to recognize their obligations as Ordered by this Court.

18 In Luc v. Oceanic Steamship Company, 84 Nev. 576 (1968), the court stated:

19 "The giving of notice is a jurisdictional requirement, and where a rule or statute
20 prescribes the manner in which notice is to be given, that mode must be complied
with or the proceeding will be a jurisdictional nullity."

21 This Court did not have any power to enter any Orders or approve any accountings during the
22 period of August 24, 1983 through February 27, 2004.

23 In Pratt v. Rice, 7 Nev. 123 (1871), the court stated

24 "if on a motion there is not good cause for haste or concealment, and facts are to
25 be found in the ascertainment of which the opposite party is deeply interested,
such party has a right to notice and an opportunity to be heard. ... There is no
26 reason in favor of the course pursued, and many against it; on its face, and

1 unobjected to, it is, to say the least, extraordinary and irregular; and **when**
2 **objected to, it must be set aside.**”

[Emphasis added]

3 As stated in Clark County Sports Enterprises v. Kaighn, 93 Nev. 395 (1977) and in Maheu v.
4 District Court, 88 Nev. 26, 493 P.2d 709 (1972):

5 “a central tenet of our legal system is the concept of notice and hearing. Justice is
6 served only when parties are given adequate notice and an appropriate
7 opportunity to respond in open court. This court has reiterated this concept over
8 and over – as long ago as 1871 ...”.

Maheu v. District Court, supra

9 In Turner v. Saka, 90 Nev. 55 (1974), the court held

10 “it is also fundamental that although an order’s subject matter would lie within the
11 court’s jurisdiction if properly applied for, **it is void if entered without required**
12 **notice.**”

[Emphasis added]

13 In Matthews v. District Court, 91 Nev.96, 531 P.2d 852 (1975), the court stated

14 “an *ex-parte* order improperly granted is void – deemed to be a product of an act
15 in excess of the court’s jurisdiction.”

16 And:

17 “we need not consider the validity of these excuses; for the respondent court,
18 having manifestly acted without notice where notice was required, thereby acted
19 without or in excess of its jurisdiction. [cases omitted].”

20 In Monroe, Ltd v. Central Telephone Co, 91 Nev. 450 (1975), the Supreme Court stated:

21 “NRCPC 7(b)(1) requires that a motion shall be in writing unless made during a
22 hearing or trial, and NRCPC 5(a) mandates that every written motion other than one
23 that may be heard *ex parte* shall be served upon each of the parties. ... The
24 requirement of a written motion stating the grounds with particularity is intended
25 to guarantee that the adverse party be informed not only of its pendency, but also
26 the basis upon which the movant seeks the order. ... **Failure to comply with**
court rules is a valid ground for vacating an order. See In the Matter of the
Estate of Powell, 62 Nev. 10, 135 P.2d 435 (1943).”

[Emphasis added]

27 *Respondents* LFT Trustees, David J. Reese, *CR&R* knew or should have known of the legal
28 requirement to provide this Petitioner with notice of LFT accountings, as prescribed by statute under
29 NRS §165.045. Rule 5, NRCPC, requires that every written motion, other than one which may be

1 heard *ex-parte*, shall be served upon each of the parties. This Court also had an obligation to make
2 such provision for service of notice upon Petitioner and representation on the LFT accountings
3 pursuant to NRS §165.100.

4 In other words, each and every Order or other determination which the *Respondents* have
5 pursued and obtained from this Court or any other Court without notice to this Petitioner are
6 jurisdictional nullities, this includes each and every accounting submitted to this Court between
7 August 24, 1983 through February 27, 2004. Pursuant to NRS §15.050, an order made out of court
8 without notice to the adverse party, may be vacated or modified without notice by the judge who
9 made it.

10 *Respondents'* statement that "there is no showing of fraud or wrongdoing by the Trustees, their
11 accountants, or their attorneys" is self-serving, unsupported by fact, is vague, unresponsive and is
12 made in bad faith. (*Opposition*, p.19, lines 7-8). Valuable property is missing from the LFT without
13 accounting, self-serving dealings were made by Trustees, significant sums were distributed without
14 regards for and outside of the terms and conditions of the LFT, significant sums were imprudently
15 wasted, double billings were made against the LFT, unethical misconduct and malpractice were
16 rampant, untruthful, incorrect, incomplete and inaccurate accountings were craftily, vaguely and
17 deceitfully drafted and presented as true, correct, accurate and complete and an untruthful, incorrect,
18 incomplete, inaccurate and vague audit was done at the expense of the LFT and was presented as
19 good and sufficient when the audit was not. See Section 8(d), particularly, page 49, lines 18-22 and
20 Section 8(g) in its entirety, herein.

21 In view of the many irregularities and unaccounted for assets and property, the LFT accountings
22 since 1978 to 2003 should be set aside. NRS §165.120. Failure to provide notice vitiates any prior
23 approval by this Court.

24 *Respondents'* argument that Petitioner should have taken action upon the absolute silence by
25 *Respondents* LFT Trustees to his inquiries, when taken in the light of the refusal by *GT Partner*
26 James L. Murphy to provide documentation to this Petitioner, is made in bad faith and is frivolous

1 and wholly insufficient to shift the burden of *Respondents* to show there was no nonfeasance,
2 misfeasance, malfeasance or malpractice. *Respondents* James L. Murphy, Harold P. Dayton and /or
3 Richard B. Rowley failed, neglected and refused to respond to any communication by this Petitioner
4 until March 2004 as admitted by them in their letter of March 10, 2004 which states:

5 “These statements are being sent **for the first time to the** contingent
6 beneficiaries, i.e. the **remaindermen**. Our attorney has advised us Nevada
7 Statutes were changed to encourage, if not require, that contingent beneficiaries
8 be advised periodically of a trust’s status”

March 10, 2004 letter to beneficiaries
by James L. Murphy, Harold P. Dayton and Richard B. Rowley
[Emphasis added]

9 As clearly shown on Exhibit C of the affidavit contained in the *Opposition, de facto* Trustee
10 Grant Thornton, LLP did respond to Petitioner on April 3, 1989 as evidenced by the signature:
11 “GRANT THORNTON, James L. Murphy, Partner.” However the April 3, 1989 and the previous
12 correspondence from Grant Thornton, LLP, was also non-responsive, misrepresented facts and law
13 and was made for the purpose of increasing the cost of managing the LFT by offering to “discuss”
14 any “questions of a general nature” presumably at Grant Thornton, LLP partner level billing rates as
15 illustrated in *Set Aside* §121-141 and *Set Aside* Exhibit 44. The April 3, 1989 letter by Grant
16 Thornton, LLP states a refusal to provide this Petitioner with any information about the LFT except
17 if Grant Thornton, LLP “should [we] receive permission to do so from William P. Lear, Jr.” There
18 are no provisions of law or of the LFT and there is no Court Order which allows or directs a Trustee
19 to render the interests of a remainderman beneficiary subservient to and subject to the permission of
20 an income beneficiary. In other words, *Respondents* are using their own double-billing scheme,
21 misrepresentations of fact and law to excuse their dereliction of duty and thereby defraud
22 remaindermen beneficiaries. Whether this LFT remainderman beneficiary had pursued the matter in
23 1987, 1988, 1989 or since is immaterial to the matter before the Court. *Respondents* cannot be
24 relieved from their duties by a beneficiary, except explicitly and in writing and this Petitioner has
25 already repeatedly stated that he has not relieved the *Respondents* of any of their duties and
26 obligations but to the contrary requires specific performance. NRS §163.170 and NRS §165.170.

1 NRS 163.170 and NRS 165.170 unambiguously declare that Trustee must administer the Trust with
2 the Terms and Conditions of the Trust unless a written waiver is obtained.

3 *Respondents* make further bad faith arguments, once again showing their attempt at unjust
4 enrichment by offering to “discuss” and requiring the consent of William P. Lear, Jr. before
5 providing information while at the same time arguing that the information was public and was
6 available for this Petitioner from the Court. Whether this Petitioner was able to do so is immaterial
7 to the issue before the Court. This Petitioner has alleged that there is substantial unaccounted
8 property and fraud and whether this Petitioner would have become aware of this or not prior to 2004
9 is immaterial and requires speculation that neither this Court nor the Trustees are capable of
10 answering objectively. There is no statute of limitation on fraud. Maxim of law: fraud taints
11 everything it touches. The mismanagement and misaccounting of the LFT was not discovered until
12 after the Court ordered the LFT Trustees to produce records.

13 The *Respondents* and their attorney David J. Reese misrepresent that “the 2000 accounting has
14 been noticed to all beneficiaries”. On or about March 10, 2004 LFT Trustees caused a written
15 communication to be mailed to this Petitioner admitting to the first ever contact with LFT
16 remaindermen beneficiaries thus illustrating another misrepresentation of fact in Respondent’s
17 Opposition.

18 *Respondents* state this Court has considerable authority to approve acts of *Trustees* and relieving
19 them of duties and restrictions. Neither NRS 163.180 nor its legislative history provide for or
20 authorize such a broad and unrestrained discharge of trustees from their breaches of duties and / or
21 malpractice nor from what William Powell Lear, Sr. (WPLSr) had in mind when he wrote his last
22 will and testament and trust. Only a beneficiary can relieve a Trustee of duties and obligations owed
23 to him or her as clearly evidenced by NRS 163.170 and NRS 165.170. This Petitioner has not
24 relieved and will not relieve the LFT Trustees of their duties and obligations and the LFT Trustees
25 have provided no evidence which would support an opposing view.

26 LFT remaindermen beneficiaries have been systematically alienated and deprived of the use and

1 benefit of a significant portion of their rights and interest in the LFT and in contravention of the will
2 of WPLSr and law. For instance, let us compare the shares of this Petitioner and of Jacqueline Lear
3 who has outwardly expressed much hostility toward this Petitioner for attempting to claim and secure
4 his rights: At the present time, both Jacqueline Lear and this Petitioner are beneficiaries of *corpus* of
5 the LFT in the amount of 2.5% each, however, and for the purpose of illustration only, if this
6 Petitioner had received distribution of his share at the end of 2003, the value of his share would have
7 been less than half what Jacqueline Lear has received from the LFT to date, or more specifically, for
8 every dollar received by Jacqueline Lear, this Petitioner would have received \$0.47, forgetting for a
9 moment inflation and the continuing depreciation of Petitioner's purchasing power of the thing or
10 things that the LFT property was converted into and exchanged for. The systematic deprivation and
11 disparity arises from the fact that the *corpus* of the LFT has been raided and stripped of valuable and
12 productive property and converted and distributed to those who were not entitled to it. Such
13 alienation and disparity in the rights and interests of the beneficiaries are unjust, inequitable and
14 contrary to the intent of WPLSr. Petitioner has reason to believe and is informed that *Respondents*
15 have no intention of leaving anything in the LFT. This was clearly stated by Jacqueline Lear in her
16 hostile telephone conversation of April 7, 2005 with Christian William Lear and voicemail of May 4,
17 2005 both of which make nearly identical statements: "there isn't going to be anything left anyway."
18 See *Set Aside* Exhibit 83.

19 **6) TRUSTEES' MANAGEMENT**

20 **a) Generally – Failure to Comply**

21 *Respondents'* statement that James L. Murphy, Harold P. Dayton and Richard B. Rowley were to
22 administer the Trust in accordance with all of the powers duties and responsibilities as set forth in the
23 LFT, is at best a half-truth because it leaves out any and all lawfully issued Court Orders which
24 directed the LFT Trustees to administer the Trust in a particular manner and it leaves out what the
25 law requires. This is part of a continuing pattern of misrepresentation by *Trustees'* attorney David J.
26 Reese, Esq. who alternately chooses to evade or abide by the LFT, this Court's orders and the laws

1 as best suits the Trustees interests and agenda and to the damage of the LFT and the rights and
2 interests of the LFT beneficiaries. This and other matters before the Court shows a continuing pattern
3 of breach of fiduciary duty and a willful and callous disregard for the rights and interests of
4 beneficiaries.

5 **b) Misrepresentation of Applicable Law**

6 In a further and continuing pattern of contradictions, page 5, lines 25-26 and page 6, lines 1-2 of
7 the *Opposition* are diametrically opposed and at variance to the statement made by *Respondents* and
8 their attorney on page 6, lines 20-26 and again in contradiction with page 7, lines 1-6. By
9 alternately pleading that the LFT is bound by NRS 165.030 through 165.120 and then pleading that
10 the LFT is bound under NRS 165.135 is nonsensical, contradictory, at variance with the truth, was
11 made in bad faith and is a waste of time and resources for all parties involved. *Respondents* were
12 bound to manage the Trust pursuant to NRS 165.030 through NRS 165.120. LFT *Trustees'* attorneys
13 COOKE, ROBERTS AND REESE, LTD (CR&R) and David J. Reese, Esq. contracted with the LFT
14 to provide competent legal services in accordance with NRS 165.030 through NRS 165.120. See *Set*
15 *Aside*, Exhibit 12, p.84-85 of 646. Since August 13, 1982, the Uniform Trustees' Accounting Act,
16 NRS 165.030 through NRS 165.120, has required *Respondents* to produce and serve the LFT annual
17 accountings to Petitioner and other remaindermen beneficiaries. The argument made by
18 *Respondents* or their attorneys that the Court never instructed *Respondents* to provide notice to LFT
19 remaindermen beneficiaries or that the LFT is subject to NRS 165.135 is a misrepresentation of
20 facts, is frivolous, is contrary to the records of this Court, is contrary to the attorney contract, and is
21 made in bad faith. The *Opposition* does not refute David J. Reese's and CR&R's malpractice and
22 breach of contract in neglecting, failing and refusing to provide competent legal service regarding
23 annual accountings to this Court, to Petitioner and to other LFT remaindermen beneficiaries pursuant
24 to the terms of his engagement contract and law. *Respondents'* *Opposition* effectively admits to the
25 breach of contract, breach of trust and malpractice complained of.

26 //

1 **c) Limitations - Allocation of Principal and Income**

2 *Respondents* once again misrepresent that they have absolute discretion in determining principal
3 and income and that their “considerable powers” are provided for under the LFT’s Article SIXTH
4 (c). See *Opposition* pg. 9 lines 12-23.

5 The purpose of Article SIXTH (c) is to permit *Respondents* to withhold income from distribution
6 to certain eligible recipient beneficiaries. Considering that the LFT was set up to take advantage of
7 the generation skipping tax (GST), should the need arise, the *Respondents* would have to be able to
8 withhold income from distribution - for the protection of the LFT - for the purpose of enabling the
9 *Respondents* to operate the Trust within the requirements of the GST, i.e., **without** distributing
10 *corpus* to income beneficiaries.

11 *Respondents* state that they “have exercised their discretionary power in a fair and impartial
12 effort to carry out the intent of the Trustors” but this bare assertion is conclusory and unsupported by
13 fact. This same conclusory and unsupported assertion is contrary to the evidence which not only
14 shows the hostility and the continued attempt to disqualify any beneficiary who questions the
15 mismanagement of the LFT, it clearly shows the arbitrary misallocations of principal and income and
16 the unfair and discriminatory practices of LFT Trustees and their attorney..

17 *Respondents* continue their misrepresentations by stating that:

18 “This power is granted notwithstanding the provisions of the Uniform Principal
19 and Income Act (NRS 164.140-164.370)”.

20 *Opposition*, page 18, lines 1-2.

21 Article SIXTH (c) states, in pertinent part:

22 **Notwithstanding** the provisions of that certain act passed by the Legislature of
23 the State of Nevada, known as the **Revised Uniform Principal and Income Act**,
N.R.S. 164.140 – 164.370, inclusive, **to the contrary**, the *Trustees* shall have the
power ... [emphasis added]

24 The Uniform Principle and Income Act does apply to the LFT. Trustees have certain limited
25 powers, but the exercise of the powers cannot be contrary to the Act.

26 Judicial notice shall be taken that Article SIXTH (c) includes the words “to the contrary”.

1 Therefore, *Respondents* statement in their *Opposition*, page 18, lines 1-2 should correctly read:

2 “This power may be exercised but not contrary to the provisions of the Uniform Principal and
3 Income Act (NRS 164.140-164.370)”.

4 *Respondents* are bound in fiduciary duty and obligation under Article SIXTH (c) and by the
5 Uniform Principal and Income Act (NRS 164.140-164.370)

6 **d) August 13, 1982 Court Order**

7 On August 13, 1982, this Court entered an Order approving a June 30, 1981 Agreement, the
8 founding document creating Trust “B”, directing LFT Trustees to manage the Trust in accordance
9 with and pursuant to NRS Chapters 163 and 164, without exception, evasion or exclusion. Set Aside,
10 exhibit 5, p.29 of 646 and exhibit 8, p.48 of 646.

11 *Respondents*, were **never** granted the discretion to allocate principal and income without regards
12 to the provisions of NRS Chapter 164 and were bound by the terms of the LFT and by Order of the
13 Court to administer the LFT in accordance with the provisions of NRS Chapter 164.

14 In their *Opposition* (p.9, line 23.5-27.5 and p.10 line 1), *Respondents*’ statement that

15 “in an abundance of caution, the *Trustees* sought instructions from the Court and
16 obtained Court approval for some of the more significant Trust business, such as
17 the settlement of the Bombardier royalty claim and the settlement of the
contamination litigation involving the Stead property”

18 is a deceptive twisting of words. *Respondents* willful violations of this Court’s Orders, *Respondents*
19 willful refusal to provide notice to LFT remaindermen beneficiaries, and *Respondents* CR&R willful
20 breach of contract and, continued evasion of law, to name only three, cannot by any stretch of the
21 imagination be deemed to be “cautious”. The deceit and vagueness used to obtain "Court approval"
22 also taints the factual basis of this bare assertion.

23 In an exploit of bad faith and twisted logic, David J. Reese states that:

24 “Court approval of the methodology of distribution did not amount to an
25 amendment of the Trust, as charged by PCL, but it was a Court clarification of the
Trustees’ power of discretion regarding income, principal and allocation of Trust
expenses.”

26 In fact, as admitted by *Respondents* LFT Trustees in their October 22, 1991 report to

1 beneficiaries, the Bombardier royalties were a wasting asset and to be treated at a maximum of 5% as
2 income. *Respondents* LFT Trustees proposed to allocate these same royalties as 20% income and
3 stated they “realize this may be somewhat arbitrary”¹, while requesting the input and waiver of only
4 the income beneficiaries on the matter for determination. See *Set Aside*, Exhibit 19, p.127 of 646.
5 The LFT income beneficiaries replied with a request to treat these same royalties as 40% income and
6 *Respondents* sought a Court Order, without notice to and to the damage of the LFT remaindermen.
7 This so called "Court approval" to ratify the admittedly “arbitrary” allocation scheme was designed
8 and intended to defraud the LFT remaindermen beneficiaries without their knowledge and consent.
9 The LFT does not provide *Respondents* LFT Trustees with any arbitrary powers or the authority to
10 commit fraud.

11 The issue raised by this Petitioner in his *Set Aside* and on many occasions previously is precisely
12 that *Respondents* LFT Trustees, David J. Reese, Esq. and *CR&R* knew or should have known that
13 they violated Petitioner’s right to due process and equal protection of the law when seeking to
14 change the terms and conditions of the LFT without providing any legal notice to or obtaining the
15 written permission of those at whose expense and damage these changes were made, i.e., the LFT
16 remaindermen beneficiaries and who were intentionally excluded. When confronted with their
17 nonfeasance, misfeasance, and malfeasance *Respondents* vindictively and unjustly claim that this
18 Petitioner has violated the *in terrorem* clause of the LFT, Article NINTH. *Respondents* failed to
19 provide any legal authority for their fraudulent acts which are therefore admitted. Petitioner is
20 justified in seeking a Court Order appointing a Receiver, setting aside all LFT accountings and prior
21 Court orders, for seeking a true, correct, complete and accurate forensic audit of the LFT *ab initio*,
22 and for seeking recovery and damages from the *Respondents* for any and all nonfeasance,
23 misfeasance and malfeasance regarding the LFT.

24
25 ¹ Black’s Law Dictionary, Sixth Edition defines “Arbitrary” as: In an unreasonable manner, as fixed or done capriciously or at
26 pleasure. ... Ordinarily, “arbitrary” is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would
be one performed without adequate determination of principle and one not founded in nature of things. Huey v. Davis,
Tex.Civ.App., 556 SW.2d 860, 865

1 Seeking and obtaining a Court Order declaring the Bombardier royalties to be 40% income and
2 call this arbitrary change of the LFT a “clarification” and not an arbitrary and *ex-parte* amendment to
3 the allocation of interests in the LFT is a gross twisting of language and a gross misrepresentation of
4 fact and constitutes malpractice. The admitted "arbitrary" act was in clear and continuing violation
5 of the intent of WPLSr, the spirit and letter of WPLSr' Last Will and Testament, the LFT and the
6 Constitution and laws of the State of Nevada. David J. Reese, Esq. knew or should have known that
7 no Order issued by this Court or any other Court could have been “fair, impartial, and equitable”
8 when the remaindermen were defrauded of their rights in and under the LFT without notice and
9 written permission. These unlawful and unauthorized amendments to the LFT were and remain
10 unfair, unjust, fraudulent, in breach of trust, breach of contract, and rubber stamped by a Court
11 without jurisdiction and authority.

12 This Court was also prohibited from effecting changes to the intent of WPLSr as stated in several
13 motions or replies by this Petitioner or Petitioner’s brother, Christian William Lear. 90A CJS §318,
14 §347. Judge Peter I. Breen’s attempted ratification of these unlawful and unauthorized changes is no
15 more or less than a concealment of this Court’s role in these continued *ex parte* acts and omissions
16 and is properly considered as a gross violation of the powers granted to the Court and a gross
17 violation of this Petitioner’s rights to due process which resulted in Petitioner being defrauded of his
18 lawful rights and interests in and under the LFT. Fraud is not a judicial function. Yates v. Village of
19 Hoffman Estates, 209 F.Supp.757 (1962).

20 Due to the numerous misrepresentations of law and material fact in violation of the Supreme
21 Court Rules of Professional Conduct as well as the empiric gimmickry and malpractice performed by
22 David J. Reese over the course of the last fifteen months and this Petitioner’s observation that these
23 continued misrepresentations and exhibitions of moral turpitude are increasing over time, this
24 Petitioner intends to move this Court to Order a psychological examination and screening of David J.
25 Reese, Esq. as this Petitioner has reason to believe that David J. Reese lacks basic morals and
26 cognitive abilities and may not be competent to represent the LFT, give valid testimony, or to stand

1 trial for his complicity.

2 7) SILVER LAKE WATER DISTRIBUTION COMPANY

3 The *Respondents* misrepresent the facts. LFT *Trustees* did not sell the LFT's partnership interest
4 in Silver Lake Water Distribution Company (SLWDC / SILVERLAKE), rather they sold the LFT's
5 share of the assets of said company. See *Opposition* pg. 14, lines 14-15.

6 In his Set Aside, Petitioner alleged incomprehensible accountings of the Silver Lake transaction
7 due to the three (3) different and conflicting sale price figures between the accountings and a "Letter
8 to Beneficiaries." In their *Opposition*, *Respondents* failed and refused to address, explain and
9 disclose (1) the sums actually received by the LFT for the sale of the assets of the SLWDC (2) the
10 arbitrary allocation of only 15.34% of the proceeds of the sale to the LFT remaindermen
11 beneficiaries who have a 72% interest in the corpus of the LFT, and in bad faith state "a simple
12 question to Trustee, Murphy, would have provided the answer." Affidavit James L. Murphy, May 20,
13 2005, p.3, numbered para. 8 lines 16-17. LFT Trustees and LFT attorney Reese did not intend to give
14 timely notices and had no intentions on providing other relevant information regarding the LFT to
15 the remaindermen beneficiaries. It was not until this Court Ordered the Trustees to disclose LFT
16 records that Petitioner got his first real glimpse of the gross and arbitrary mismanagement of the
17 Trust. The numerous issues raised by Petitioner in his Set Aside stand, gross mismanagement
18 occurred and continues to occur, the accountings and audit are deficient, incomplete, untrue,
19 incorrect and inaccurate, *Respondents* were paid for their individual and collective nonfeasance,
20 misfeasance and malfeasance by the LFT, and Petitioner has been damaged by the acts and
21 omissions of the *Respondents*.. *Respondents'* *Opposition* is unresponsive and insufficient to support
22 any order in their favor.

23 This Petitioner has previously stated, no document appears in the record of this Court with
24 respect to the approval of the sale of the assets of SLWDC that discloses the conflict of interest of
25 Murphy and Dayton who effectively acted as seller, negotiator and buyer. Trustee Rowley was at a
26 minimum grossly negligent in not objecting and reporting this significant conflict and what Murphy

1 and Dayton intended to do with the corpus of the LFT. *Respondents* Opposition is unsupported by
2 evidence and the bare assertions are made in bad faith. As proof of Respondent Trustees' bad faith
3 pleading and misrepresentation of fact, *Respondents* LFT Trustees affirmed in pertinent part in their
4 13th Annual Intermediate Accountings:

5 "That neither any seller to, nor buyer from, the Trustees of Trust property during
6 the accounting period was at the time of sale or purchase, a relative, partner,
7 employer, employee or business associate of any of the Trustees."

8 Thirteenth Intermediate Accounting of Trustees of
9 Lear Family Trust "B", filed July 31, 2000
10 p.2, lines 24-27;
11 *Set Aside*, Exhibit 43, page #277

12 Trutees Murphy and Dayton (sellers) were sitting on the Board of Directors of Sierra Pacific
13 Power Co., when the LFT corpus property was sold to Sierra Pacific for below market value.

14 The assets sold by the LFT and the Moya Olsen Lear Trust to Sierra Pacific Power Company
15 include but are not limited to land, wells, pump houses, water tanks, over 21 miles of pipeline, misc.
16 equipment including software and customer files, pipeline easements, a Sierra Pacific Power Co.
17 water contract, and most importantly, 732 acre feet of water rights. See Figure 1 below.

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Figure 1

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Summary of Silver Lake Water assets sold to SPPC

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2 well sites
1 one million gallon storage tank / transfer station
1 two million gallon storage tank site
1 "water yard"

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Buildings:

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6 pump houses

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1 one million gallon storage tank / transfer station
1 two million gallon storage tank site

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2 825' deep wells

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Emergency Intertie

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Silverlake's one-half interest in emergency intertie

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All the radio telemetry control system assoc. with above assets

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All supply, transmission and distribution mains associated with the above water system, approximately 21.29 miles.

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Meter inventory

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Meter inventory in stock at the time of escrow closing

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Sensus meter reading equipment

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Two solid state interrogators, charging stands and adapter rings

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Other:

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TAABS Billing Software including Upgrades
732 Acre Feet of Water Rights
System Maps
Customer files (approximately 1700 customers)
Plant operation, Maintenance and Equipment files
Pipeline Easements
Sierra Pacific Power Co. Wholesale Water Contract.

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See Exhibit 1 [Emphasis added]

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Recent research in water rights shows that in 2003, in the Stead area, water rights were worth approximately \$10,000 per acre foot and have recently sold for as much as \$40,000 per acre foot. For the purpose of argument, a price of \$10,000 per acre-foot multiplied by 732 acre-feet, the amount of acre-feet of water sold by the Trustees Murphy and Dayton to Sierra Pacific in 1999, equals \$7,320,000 just for water rights and does not include infrastructure or customer base. The fair

1 market value of the water rights alone accruing to the LFT (excluding but not limited to a 50%
2 interest in 3 million gallon water tank storage capacity, 21+ miles of pipelines, pipeline easements,
3 water meters, pump houses, and others, all of which were assets of SLWDC) conservatively exceeds
4 \$3,660,000 (50% of \$7,320,000 due the LFT) is over three times more, **for the water rights alone**,
5 than what Trustees stated **all** of SILVERLAKE's assets sold for in the 1999 Charge and Discharge
6 Statement. See *Petition to Set Aside Accountings*, page 88, para. 316. This is not just imprudence, it
7 is self dealing and gross mismanagement.

8 *Respondents* barren assertions that "the Sierra Pacific Power Company offer was substantially
9 higher than other offers received by the Trustees" does not have or hold water. *Respondents'* bare and
10 unsubstantiated assertions are insufficient to form a valid defense and provide no grounds for the
11 relief requested. Even if this bare assertion were taken as true, everyone else is forced to assume that
12 the LFT was under an obligation to divest itself of these highly valuable assets at a time when a
13 prudent man would not have divested himself of this property at grossly discounted prices, and
14 especially when such a conflict of interest and self dealing was present.

15 The aforementioned misrepresentations made under oath in the 13th Intermediate Accounting
16 with regard to the nature of the relationship between Trustees and Sierra Pacific and the continuing
17 misrepresentations are one of the many reasons why this Petitioner has prayed this Court to remove
18 the Respondent Trustees and is good and sufficient reason to grant said removal and to place Trust
19 records in the care and custody of an impartial and independent Court appointed receiver. Ledbetter
20 v. First State Bank & Trust Co., 85 F.3d 1537 (1996).

21 Trustees' failure to deny that they participated in the discussions that led to the sale and transfer
22 of SILVERLAKE to Sierra Pacific Power Company admits that they participated in these
23 discussions and that the sale was not an arms-length transaction and this is confirmed by the deeply
24 discounted price paid by Sierra Pacific Power Company to the LFT for the purchase and acquisition
25 of SILVERLAKE assets.

26 //

1 Further, Judicial Notice shall be taken that when *Respondents* filed a Petition for Confirmation of
2 the sale of SILVERLAKE with this Court, the public document which is attached hereto as Exhibit
3 1, known as the *Silver Lake Water Asset Purchase Agreement* was provided to the Court under seal
4 and the LFT beneficiaries who received notice of the sale were informed that they would only be
5 able to review said public document at the offices of McDonald, Carano, Wilson, LLP or its
6 predecessor(s). *Respondents* attempted to mislead and conceal the contents of the purchase
7 agreement from the LFT income and outright beneficiaries. See *Set Aside* §310 pp.87-88 & *Set Aside*
8 Exhibit 39.

9 The self dealing sale of SILVERLAKE defrauded all of the LFT's beneficiaries of significant
10 sums and of a substantial corpus asset.

11 **8) ACCOUNTING METHODS AND BOOKKEEPING**

12 **a) Generally**

13 In a continuing pattern of vague, frivolous and unsubstantiated generalities, *Respondents* state
14 that they have managed the LFT "in accordance with its [LFT] terms and the Court orders regarding
15 its administration" and that the accounts "are professionally prepared, are true, correct, complete and
16 accurate to the best of the *Trustees'* knowledge". However, there is substantial evidence in
17 Petitioner's *Set Aside* to show that *Respondents* evaded or violated the LFT, this Court's Orders, the
18 laws of the State of Nevada, the Professional Code of Ethics for Accountants, that their attorneys
19 violated the Professional Rules of Conduct, that the *Respondents* violated the spirit and letter of
20 WPLSr's Last Will and Testament, that the LFT was breached and violated, that Trustees are
21 deceitfully using this Court's Orders, when convenient, for the purpose of presenting an aura of
22 legitimacy to otherwise wholly unauthorized and/or illegal transactions, that the accountings do not
23 meet any recognized standard of accounting practice and finally that the *Respondents* have willfully
24 and wantonly made misrepresentations on the LFT's income tax returns, all of which remain
25 un rebutted and are therefore admitted.

26 //

1 As reported in Petitioner's Set Aside, other LFT beneficiaries including but not limited to
2 William P. Lear, Junior, and Jacqueline Lear are aware of some of *Respondents'* violations.

3 Since April 26, 2005, Petitioner has received further and similar communications. In her written
4 communication to Petitioner of June 15, 2005, the eldest beneficiary of the LFT, Rev. Mary Louise
5 Ellenberger stated: "I am certainly aware that there have been errors made in the process of
6 executing my father's will over the past 27 years." Exhibit 6.

7 This Petitioner has requested copies of all the accounts approved by the surviving grantor as
8 discussed in Article TENTH of the LFT. *Respondents'* have failed and refused to produce any such
9 accounts and approvals, leaving this Petitioner, the Court and other LFT beneficiaries with only one
10 conclusion: they do not exist. *Respondents'* two paragraphs mentioning Article TENTH without
11 providing any accountings performed thereunder, illustrate how Trustees' attorney David J. Reese
12 craftily padded his *Opposition* with irrelevant, immaterial and impertinent statements.

13 *Respondents'* argument that they could not provide any accountings to this Court or to the
14 beneficiaries due to the prior *LFT Trustees* failing to provide accountings in a timely manner are
15 made in bad faith and imply that *Respondents* did not know the property or funds that they had
16 received and held in Trust. thereby justifying this Petitioner's prayer for the immediate removal of
17 the Trustees and the entire trust being assigned to a competent and independent receiver appointed
18 by this Court.

19 **b) Two Sets of Books**

20 In their Opposition to Petitioner's allegation that there are two set of books, *Respondents* state
21 "The simple explanation for this fact is that there are 'timing' differences" as to when such amounts
22 are reported to the Internal Revenue and when they appear in annual accountings to the Court."
23 *Respondents'* claim is in contradiction with the accounts submitted to this Court and to LFT
24 beneficiaries, namely that the accountings presented are on the "income tax basis" and are therefore
25 presumed to be on the same time schedule. Both the intermediate annual accountings and the LFT
26 tax returns are on the prior year calendar year basis.

1 Of no less importance, *Respondents* misrepresent that this difference is because the amounts
2 disclosed as distributions to LFT beneficiaries in the charge and discharge statement for the years
3 2000, 2001, 2002 and 2003 are significantly more than those disclosed to the IRS in the LFT's tax
4 returns for those same years. Petitioner has reason to believe that the discrepancy is due to
5 unauthorized conversion and distributions of corpus which are prohibited in a Trust taking advantage
6 of the GST and therefore the numbers must be "massaged" and falsified for the purpose of not
7 arousing suspicions by the IRS. In any case, the difference does exist for the same accounting year
8 which ended on the last day of December of each year. The annual accounting of the LFT is due on
9 March 1st following the close of the prior accounting year. The amount distributed to income
10 beneficiaries during the prior accounting year should not be different from those reported on LFT tax
11 returns which are due on April 15th, forty five days later. The *Respondents'* assertion is not factually
12 rational and it does not properly explain these significant annual differences in any manner which
13 could be understood. Simply stated, if the amounts distributed to income beneficiaries from the LFT
14 from January 1, 2001 to December 31, 2001, total \$100,000, then the annual accounting due on
15 March 1st and the tax return due on April 15th should reflect \$100,000. In *Respondents'* vague
16 scenario, there is a miraculous change that must necessarily occur between March 1st and April 15th.

17 On numerous occasions throughout their *Opposition*, and in James L. Murphy unverified and
18 conclusory statement that is improperly called and designated as an "affidavit" and was attached to
19 the *Opposition*, *Respondents* claim that this Petitioner does not understand the Charge and Discharge
20 Statements or the accountings as presented by *Respondents* but in no event attempt to explain these
21 accounts or rebut this Petitioner's allegation that the accountings do not meet any recognized
22 standard and therefore admits that the accountings as presented to this Court and the LFT
23 beneficiaries are of no use to the LFT beneficiaries. There is no standard accounting procedure to use
24 and apply to the LFT, Grant Thornton, James L. Murphy accountings. *Respondents* effectively admit
25 the validity of this Petitioner's allegations as set forth in the *Petition to Set Aside Accountings*.

26 //

1 As is made clear in the *Set Aside* paragraphs 272 to 286 inclusive which are incorporated and
2 reiterated herein, the accountings provided by *Respondents* are not clear, don't comply with any
3 recognized standard and raise more questions than they answer and as such this Petitioner **cannot**
4 understand the Charge and Discharge Statements. This inability to understand the LFT accountings
5 goes far beyond just this Petitioner. Petitioner consulted several other experienced accountants and
6 recognized authorities in the field of trust management who could not decipher or understand the
7 same LFT Charge and Discharge Statements. Not only do the accountings presented by *Respondents*
8 fail to meet with any recognized standard of accounting they are in violation of the requirements as
9 set forth under NRS 165.040, to which the LFT is bound. Further, the *Respondents* themselves
10 recognize that the accountings as presented for the year 2003 are not intended for those who are not
11 informed in matters of accountings therefore their argument is made in bad faith and is at best
12 deceitful and self-serving. This Petitioner is not an accountant but this does not excuse the
13 *Respondents* from producing vague summary accountings which are not understandable by a
14 beneficiary of average intelligence or even his accountant. This vague and empiric methodology
15 reeks of the hostile and arbitrary pattern of conduct of the *Respondents* who devised and
16 implemented a scheme to conceal the management and true condition of the LFT.

17 **c) Assets Not Properly Accounted For**

18 In the Petition to Set Aside Accountings, Petitioner alleged that certain notes receivable secured
19 by real estate were listed in the Inventory of Assets schedules through January 1, 2002 and then
20 seemed to disappear from the Inventories of Assets until that category reappeared in the December
21 31, 2003 schedule.

22 In response, Respondent LFT Trustee and accountant Murphy addressed this issue in his
23 unverified and improper affidavit of May 20, 2005 and referred the reader to Exhibit D of said
24 affidavit for an explanation which raises new questions and compounds the violations of standards
25 made by Respondent in the accountings presented to this Court and to the LFT beneficiaries for
26 approval.

1 A careful review of Exhibit D reveals it to be deficient in several key areas. First, there is no
2 heading on the exhibit so one cannot be certain of exactly what elements are reported. Second, there
3 are a myriad of undefined abbreviations for each of the three years on the schedule so that one does
4 not know the source of the transactions reported. Third, the column entitled “ADD” is without
5 explanation so one cannot be certain the source of these apparent increases – in fact, the column
6 includes one negative number for one transaction followed by a positive number of identical
7 magnitude for another transaction with no explanation. Fourth, the third column entitled “PAID” is
8 without explanation and one is not certain who paid whom.

9 By carefully reading the footnotes to this schedule, one can assume that these notes receivable
10 were reported as “Notes Receivable – Secured by Real Estate” through January 1, 2002 and as
11 “Other Equities” thereafter.

12 Investments are generally classified as debt (instruments that are liabilities of the issuing party)²
13 or equity (ownership of the issuing party)³ and these instruments are undoubtedly of the debt
14 classification. Thus, their inclusion as “Other Equities” is totally inappropriate and in violation of
15 generally accepted accounting principles.

16 In addition, the change of classification of this major asset violates the pervasive accounting
17 principle of consistency . . . “Consistency in applying accounting methods over a span of time has
18 always been regarded as an important quality that makes accounting numbers more useful.”⁴

19 Trustee James Murphy has violated the consistency principle by changing the method of
20 disclosure without notice or justification. In fact, his footnote 3 in Exhibit D is incorrect. He
21 declares in that footnote that the notes receivable are shown as “Other Equities” in the December 31,
22 2003 inventory. In fact, in that inventory, he has reverted to showing this asset as “Notes Receivable
23 – Secured by Real Estate.” Again the change is without notice or justification. Thus, for the years

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25 ² See Statement of Financial Accounting Concepts 3, ¶ 28-29. The SFAC are promulgated by the Financial Accounting Standards
Board and establish the theoretical framework for generally accepted accounting principles and their application to financial
statements.

26 ³ See Statement of Financial Accounting Concepts 3, ¶ 43-44.

1 2002 and 2003, Trustee James Murphy is not even consistent on the accounting methodology on the
2 beginning and ending inventory reports for the same year.

3 In summary, in attempting to justify this confusing situation within his statements,
4 Trustee James Murphy has provided an exhibit that is confusing, deficient in several areas, includes
5 unexplained transactions between unidentified entities, does not answer the questions raised, and
6 contains at least one factual error. Further, he has made at least two changes in application of
7 accounting principles without notice or justification. Finally, for at least two Inventory of Assets
8 statements, he has incorrectly reported debt investments as equity investments. This Petitioner and
9 certainly the other LFT beneficiaries have a right to a clear explanation from *Respondents GT*, LFT
10 Trustee and *GT* accountant James L. Murphy which has been denied them.

11 *Respondents* only make bare and unsupported assertions in defense of the unaccounted for
12 property, stating principally that this Petitioner does not understand the accountings in an effort to
13 place the blame and burden for this problem upon this Petitioner when the *Respondents* have the
14 burden of proof to show that their accounts meet the accounting and legal requirements to which the
15 accountants and Trustees are subject. For this reason, the *Respondents* are presumed to have
16 breached their fiduciary duties and obligations and the accounts are incorrect, inaccurate and
17 deficient.

18 The accountings presented by *Respondents* to LFT beneficiaries and to this Court must stand on
19 their own without necessitating numerous questions to *Respondents* which compound the double-
20 billing and self-serving scheme developed and implemented by *Respondents* in conspiracy with each
21 other and in derogation of their fiduciary duties and obligations.

22 Further, the audit performed by BV was not independent, as Grant Thornton accountant James L.
23 Murphy was an integral part of the audit team and maintained substantial oversight over the audit
24 process and outcome See Section 8(g) herein. This Petitioner also has reason to believe that the
25

26 ⁴ See Statement of Financial Accounting Concepts 2, ¶ 120.

1 auditor maintained a conflict of interest with a party adverse to the LFT and ought to have
2 disqualified itself for this reason from performing the audit. *Respondents* Trustees completely fail
3 and neglect to rebut any of the allegations made by this Petitioner regarding the lack of standards of
4 the LFT's accounts. In particular, if the accounts are deficient, the audit is itself automatically
5 deficient when it fails and neglects to raise and address this important issue.

6 **d) Inaccurate Write-Offs**

7 The reporting for the Capistrano Industrial Park, Ltd., Partnership (CP) by the Trustees has raised
8 serious questions about the veracity of the information contained in the Trustees' financial
9 statements distributed to selected LFT beneficiaries and filed with the court.

10 The CP was initially included in the LFT statements in 1991 as one of the assets transferred from
11 the William P. Lear Estate and is designated "Investment in Capistrano Industrial Park, Ltd.
12 Partnership (5.25% interest)." There is no explanation in the William P. Lear Estate financial
13 statements as to why this asset is recorded at no value even though the partnership has shown
14 consistent earnings/loss amounts and distributions to partners.

15 Without further explanation the LFT statement for 1991 includes among other Equity
16 Adjustments "Record tax basis of Capistrano Industrial Park Partnership – (52,968.20)". This
17 negative tax basis is thus the beginning value for CP for the LFT wherein CP reported income is
18 added to the value and cash disbursements from CP are deducted from the reported value.

19 This method is referred to as the "*equity method*" and is appropriate for reporting on the tax
20 basis. However, in the *Grant Thornton, LLP (GT)* compilation report accompanying this statement,
21 *GT* reports "The Trust's policy is to prepare its statement on the basis of cash receipts and cash
22 disbursements;" While *GT* states that the compilations are on *cash basis* of accounting, this equity
23 adjustment and the consequent treatment in 1991 and later years undeniably report this asset on the
24 *modified cash basis* (wherein revenue and expenses are reported on the cash basis but certain
25 liabilities and assets can be reported on the accrual or tax basis). This incorrect disclosure of the
26 reporting basis is an obvious violation of SSARS 1 and consequently a violation of the Nevada

1 Board of Public Accountancy and the American Institute of CPA's Code of Professional Ethics
2 (CPE) Rules 102-1 and 201. Thus, the question on the source of the (52,968.20) is unanswered and,
3 further, the question of the inaccurate description of the basis for accounting on the compilation
4 statement is also unanswered.

5 For the years 1992 through 1998 the LFT statements show that CP is accounted for in a manner
6 consistent with the *equity method* or the *tax method of accounting for investees* and the arithmetic for
7 these transactions appears accurate within the statements for this period. However, when the
8 amounts reported on the LFT statements are compared with the partnerships statements for CP for
9 this period, disturbing questions arise. In each case, the amount of cash disbursement on the LFT
10 statements is 5.25% of the total cash disbursed by CP to its partners. However, in none of these
11 years is the amount of reported tax income on the LFT statements equal to 5.25% of the tax net
12 income reported on the CP statements. See Table 1 below.

13 In each year 5.25% of the CP reported tax income is different from the CP income as reported on
14 the LFT statements. Further, except for 1997, the difference between the two income numbers is
15 substantial and material. These differences are unexplained by any information available to users of
16 the LFT's Charge and Discharge statements, the three categories of LFT beneficiaries. The cash
17 distributions reported on the LFT statements are consistent with the cash distributions reported in the
18 CP statements while the income reported on the LFT statements are not consistent with the CP
19 statements. It should be pointed out that the distributions made by CP have flowed through an
20 independent third party, the transferring bank while the income reported by the LFT cannot be
21 verified by an outside third party.

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TABLE 1

Capistrano / LFT Reported Income Comparison Table			
Year	Tax Income as Reported by CP	5.25% of reported tax income	LFT reported CP Income
1992	(631,801)	(33,170)	10,367
1993	196,738	10,329	16,592
1994	127,318	6,684	13,020
1995	131,323	6,894	15,841
1996	159,415	8,369	12,081
1997	235,606	12,369	12,798
1998	360,723	18,938	25,277

Numerous serious questions arise in the final year of LFT statements in which CP appears, 1999. This is the year in which the CP investment is sold. During that year, the book value of the investment is increased by \$431,463 from (\$61,862.20) to \$369,600.80 the book value used in reporting the sale of CP. There is absolutely no explanation for this dramatic increase in the value of CP except as described below.

The first question regarding the sale of LFT's interest in CP is that the LFT statements report \$8,332 in income from CP. In previous years (1992 through 1998) such income was added to the carrying value of CP. However, in 1999 this income was not added to that book value and there is no explanation for this significant change in accounting policy by the trustees of the LFT.

The second question arises from the Statement of Funds Provided and Used in the 1999 LFT statement. Under the heading "Funds were used as follows:" is the entry "Income applicable of Capistrano that reduced recorded book value - 431,463." In spite of the nature of the description of the entry as a book value adjustment, this entry is undeniably included in the category of "Funds were used as follows:" It is ludicrous to conclude that this entry actually represents the transfer of funds from the LFT to CP in the amount of \$431,463, as required under the cash basis method of accounting. There is no other evidence in the statements of such a transfer and, in fact, that transfer

1 of funds in these circumstances simply does not make sense. Thus, the question can be asked: why
2 is this entry included in the category of “Funds Used” when the transaction undoubtedly involves no
3 such transfer of funds?

4 The third question that arises from this transaction is the caption of the transaction in the
5 Statement of Funds Provided and Used. Consider that the book value as reported in the sale of CP is
6 \$431,463 higher than the beginning reported book value of CP. This increase in value would require
7 a debit to the book value of CP with the offsetting credit to income as reported by CP. While the
8 Trustees do report this as “income” the transaction is described as reducing the book value of CP
9 when, in fact, such a transaction would have increased the book value of CP. This third question is
10 then in two parts: (1) Why is a transaction that is obviously an accrual adjustment included in the
11 category of “Funds were used as follows:” (a *cash basis* caption)? and (2) why is a transaction that
12 plainly would increase book value under the equity method of accounting reported as decreasing the
13 book value of that investment?

14 The fourth question on this entry is the source of the \$431,463 adjustment. Research into the
15 financial statements of both the William P. Lear Estate and CP yields absolutely no basis or
16 explanation for this adjustment. There is, of course, no explanation provided by the Trustees in the
17 LFT statements and LFT beneficiaries are left with the question: What is the source for this \$431,463
18 equity adjustment?

19 The final question on this issue concerns the distribution of cash from the proceeds of the sale of
20 CP. In the Schedule of Major Asset Sales, the Trustees of LFT report that \$102,298.14 of the
21 \$254,625 sales proceeds is allocated to the Remaindermen. However, an analysis of the schedule
22 Remaindermen Account Transactions reveals no entry which could have contained the transfer of
23 this \$102,298.14 to the Remaindermen Account. What was the disposition of the \$102,298.14 which
24 was allocated to the Remaindermen?

25 Consider the breadth and depth of the unanswered questions relations to this single investment:
26 (1) Why was the initial transfer from the William P. Lear Estate of CP recorded at no value when

1 there was a full history of transactions related to this asset? (2) What was the source for the 1991
2 unexplained adjustment to the book value of CP of (\$52,968.20) made by the Trustees for the LFT?
3 (3) Why do the Trustee for the LFT and *GT* describe the accounting method for CP as “cash basis”
4 when the method is undeniably the “equity method” as used in tax basis accounting? (4) Why is the
5 amount of income for the CP as reported by the Trustees in the LFT statements significantly at
6 variance with 5.25% of the reported tax income by CP when the cash distributions for the CP as
7 reported by the Trustees in the LFT statements are consistent with 5.25% of the reported
8 distributions to partners by CP? (5) Why was the income from CP in 1999 not added to the book
9 value of the investment as was the income for the years 1992 through 1998? (6) Why was the
10 adjustment to the CP account in 1999 of \$431,463 reported as a use of funds on the *Funds Provided*
11 *and Used* statement? (7) Why is an obvious accrual adjustment included in the category of “Funds
12 were used as follows:”? (8) Why was an accrual adjustment that increased the carrying value of the
13 CP asset shown as an adjustment that reduced the carrying value of that asset? (9) What is the
14 source of the \$431,463 adjustment? (10) Why is the allocation of \$102,298.14 proceeds allocated to
15 the Remaindermen not included in the Statement of Remaindermen Account Transactions?

16 When LFT Trustee and *GT* accountant James L. Murphy responded to the *Set Aside*, he simply
17 demonstrated the arithmetic of the equity method with absolutely no explanation that in any way
18 addresses a single one of the ten questions just enumerated. In fact, his explanation contains three
19 source numbers. The first (beginning book value of the CP of (\$52,968.20)) is an amount that
20 simply appears with no explanation and is not consistent with the data from the William P. Lear
21 Estate statements. The second (CP income of \$10,377) is at significant and material variance with
22 5.25% of the reported CP tax income for that year. The third (cash received from CP of \$5,250) is
23 consistent with the CP statements and, by coincidence, subject to confirmation by bank records. LFT
24 Trustee and *GT* accountant James L. Murphy still has ten remaining unanswered questions relating to
25 the CP investment and this highlights the gross deficiencies in the accountings as they have been
26 presented to this Court and the LFT beneficiaries over the years.

1 Respondent *GT*, LFT Trustee and *GT* accountant James L. Murphy have eliminated all footnotes
2 from the LFT financial statements and *GT* also eliminates them in their compilation without making
3 the required reference in their compilation report. Respondents *GT*, LFT Trustee and *GT* accountant
4 James L. Murphy are required to disclose material omissions from their accountings.

5 The third Fiduciary Accounting Principle states that:

6 “A fiduciary account shall contain sufficient information to put the interested
7 parties on notice as to all significant transactions affecting administration during
the accounting period.”

8 NRS 165.040 (1)(c) requires each intermediate account to include:

9 “In a separate schedule, additions to trust principle during the accounting period
10 with the dates and sources of acquisition, investments collected, sold or charged
off during the accounting period, investments made during the accounting period,
11 with the date, source and cost of each, deductions from principal during the
accounting period, with the date and purpose of each, and the trust principal,
12 invested or uninvested, on hand at the end of the accounting period, reflecting the
approximate market value thereof.”

13 The near total lack of disclosure on the transactions surrounding CP and the explanations and
14 sources for those transactions is a blatant violation of the third Fiduciary Accounting Principle and
15 NRS 165.040 (1)(c). In addition, these errors and omissions by LFT Trustee and *GT* accountant
16 James L. Murphy and *GT* appear to be inconsistent with the Code of Professional Ethics rules 102-1,
17 201-B, 202, 501, and 501-4.

18 Judicial notice will be taken that Petitioner based his analysis of CP on the papers, records and
19 documents which had been in Barnard, Vogler & Co.’s possession for the performance of their audit
20 and while having this information at their disposal, Barnard, Vogler & Co. failed and neglected to
21 raise the inconsistencies in accounting standards and the Code of Professional Ethics rules 102-1,
22 201-B, 202, 501 and 501-4 as discussed above.

23 Finally, while it appears that *CP*’s current value basis at the time of sale (1999) was \$254,625.00,
24 the derived net amount transferred to the LFT as a result of the sale of its interest in *CP* is
25 approximately \$25,000. Over the years, *CP* made numerous distributions of capital to the LFT,
26 thereby reducing the LFT’s net equity in *CP* to approximately \$25,000.00. Upon the sale of the *CP*

1 interest, *Respondents* distributed the sums of \$66,304.35 to the “Principal beneficiaries” and
2 \$68,198.76 to the “Income beneficiaries, totaling \$134,503.11. Petitioner has reason to believe that
3 the approximate sum received by and transferred to the LFT as a result of the sale of its interest in
4 *CP* was \$25,000.00 and that *Respondents* distributed LFT *corpus* properly belonging to the LFT
5 remaindermen to the LFT’s income and outright beneficiaries and distributed no funds to and to the
6 damage of the LFT remaindermen beneficiaries. The 1999 Charge and Discharge Statement shows
7 no actual *CP* distribution to the LFT remaindermen. *Set Aside*, exhibit 43, page 287 of 646.

8 In their *Opposition*, *Respondents* failed and refused to explain how the (\$52,968.20) figure was
9 derived and said figure appears to be either arbitrary or an “ANTB” entry (Amount Needed To
10 Balance). In bad faith, Respondent James L. Murphy stated in an affidavit dated May 20, 2005: “a
11 simple question to Trustee, Murphy, would have provided the answer.” However, in their
12 *Opposition*, *Respondents* refuse to address, answer, clarify and provide evidence to any question
13 raised by Petitioner and merely state that Petitioner “does not understand” the various issues. The
14 evidence provided in this case very clearly illustrates the obfuscation, obstruction, refusals and
15 unresponsiveness of *Respondents GT*, LFT Trustees, David J. Reese, Esq. and *CR&R*, and their
16 hostile and dilatory practices, their vindictive, not impartial, disloyal and fraudulent administration of
17 the LFT.

18 Judicial notice will be taken that *Respondents* did not rebut or refute Petitioner’s allegation with
19 regard to the inaccurate write-off of \$145,333.77 on the 1991 Charge and Discharge Statements and
20 these are therefore admitted.

21 **e) Riverhouse and Rubens Paintings**

22 The *Opposition* as much as admits to the *Respondents’* failure and neglect to perform due
23 diligence and their dereliction of duty with regard to the property received from the Estate or from
24 the previous Trustees. To wit, Riverhouse was specifically included in the LFT by way of Article
25 FOURTH (g). This Petitioner has reason to believe that said Riverhouse and the two Peter Paul
26 Rubens paintings are included on one or both of the Schedules which were attached to the LFT at

1 Article THIRD. However, the *Respondents* have openly refused to produce said schedules despite
2 Petitioner's numerous requests since March 2004. This Petitioner also has reason to believe that
3 *Respondents* are deliberately refusing to produce the aforementioned LFT Schedules as they would
4 provide concrete evidence of their bad faith pleading, mismanagement and malfeasance, and will
5 probably show other unaccounted for property, in addition to Riverhouse and the two Peter Paul
6 Rubens paintings.

7 *Respondents* make a lengthy argument about WPLSr's quitclaim of Riverhouse to Moya Olsen
8 Lear but, in bad faith, fail to address the fact that Moya Olsen Lear exchanged and committed
9 Riverhouse into the LFT for the right to enjoy its use for the rest of her life. The LFT Article
10 FOURTH (g) and Moya Olsen Lear being named as beneficiary of the estate and Trust of WPLSr in
11 the Petition for Letters Testamentary are *prima facie* evidence of this exchange. *Set Aside*, exhibit 3,
12 p.12 of 646 & exhibit 4, p.25 of 646. Petitioner's allegation and evidence stand.

13 *Respondents* know that the legal owner of said two Peter Paul Rubens paintings is WPLSr or
14 properly his estate and the LFT, but in a continuance of bad faith and misrepresentations state "[T]he
15 Seventeen Annual Accountings submitted to the Court by the Trustees of Lear Trust B ... are true,
16 correct, complete and accurate to the best of the Trustees' knowledge and belief." *Opposition*, p.9
17 lines 8-11. The very valuable Rubens paintings are missing from the LFT corpus and have never
18 been accounted for by *Respondents*. Petitioner has reason to believe that the Rubens paintings were
19 unlawfully and fraudulently converted and sold and that the proceeds from the unlawful and
20 fraudulent sale were not returned to the LFT.

21 **f) Estate Tax and Related Accountings**

22 In their *Opposition*, *Respondents* allege that this Petitioner doesn't understand the accountings as
23 presented by *Respondents*. James L. Murphy, in his affidavit dated May 20, 2005 and in bad faith
24 claims that the Estate tax "is clearly a matter related to the probate estate of W. P. Lear and of the
25 Lear Family Trust B" but fails to explain why he discusses this matter at length in his letter to
26 beneficiaries of July 25, 1991 and why the Estate's tax liability further appears in the accountings of

1 the LFT for the years 1991 and 1992 and in his Exhibit E to *Respondents* Opposition.

2 At issue in Petitioner's *Petition to Set Aside Accountings* and the LFT Trustees' *Opposition* is the
3 \$3,251,662 in IRS and State of Nevada interest on estate taxes as reported in the July 25, 1991 letter
4 from LFT Trustee and *GT* accountant James L. Murphy and the other trustees to selected LFT
5 beneficiaries. James Murphy identifies estate taxes paid by the Estate and the LFT of \$5,014,902
6 including interest (federal and state) of \$3,251,662. There is no indication in the LFT financial
7 statements through 1991 that reconciles to these numbers and there is no indication of any interest
8 paid by the LFT. In the Trustees' *Opposition* LFT Trustee and *GT* accountant James L. Murphy
9 includes a one page explanation attached to the *Opposition* as *Exhibit E*. Consistent with the other
10 explanations of Trustee James Murphy, the *Opposition* and *Exhibit E* thereto raise more questions
11 and provide no additional insight the previous questions raised.

12 On April 10, 1991, the Estate of William P. Lear and the IRS entered into a *Stipulation* that was
13 affirmed by the United States Tax Court. The April 10, 1991 Order declares that as of that date,
14 "There is no deficiency in Estate tax due from, nor overpayment due to, the petitioner." The
15 stipulation shows a total tax liability, after overassessments and State of Nevada credits of
16 \$2,663,531 of which \$1,747,244 had been paid on that date leaving \$915,996 not paid. This
17 document was agreed to by both the representatives of the Estate, including Grant Thornton, LLP
18 and Trustee and *GT* accountant James Murphy, representatives of the IRS, and the Tax Court. Thus
19 the numbers in this document can be accepted as uncontested. In light of *Exhibit E* and for the
20 purpose of argument, this Petitioner assumes that this stipulation addresses only the tax liability issue
21 and does not include interest on unpaid taxes.

22 It is important to determine if the data presented by LFT Trustee and *GT* accountant James
23 Murphy in his *Exhibit E* are consistent with the stipulation. Both the stipulation and *Exhibit E* arrive
24 at a tax due (excluding interest) of \$2,663,531. However, *Exhibit E* does so using numbers that do
25 not reconcile to the stipulation. The stipulation shows an additional IRS tax assessment on July 12,
26 1982 of \$173,579 and an overassessment (with State of Nevada credit) of \$2,830,073. In *Exhibit E*,

1 LFT Trustee and *GT* accountant James L. Murphy declares the 1982 assessment was \$6,995,515 and
2 the settlement, for which James Murphy credits Grant Thornton and himself, to be \$9,234,467. For
3 comparison sake, these numbers are presented in the table below.

4 **TABLE 2**

5

Comparison of Tax Assessments as reported in U.S. Tax Court <i>Stipulation</i> and in <i>Exhibit E</i>		
Item	As per stipulation	As per Exhibit E
1982 additional IRS assessments	\$173,579	\$6,995,515
Overassessment and Nevada credits	\$2,830,073	\$9,234,467

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10
11 Nowhere in the *Opposition*, in LFT Trustee and *GT* partner and accountant James Murphy's
12 affidavit or in his *Exhibit E* are the differences highlighted in Table 2 addressed. Certainly, LFT
13 Trustee and *GT* partner and accountant James Murphy had access to the stipulation and, by taking
14 credit for the settlement, was, himself, a party to that settlement. Why, then, are Murphy's numbers
15 at such a large variance from the numbers on the *Stipulation*? Again, in attempting to answer
16 questions, LFT Trustee and *GT* accountant James L. Murphy is simply raising more unanswered
17 questions.

18 The data on payments of taxes in the *Stipulation* and data on payments of taxes and interest in
19 *Exhibit E* can be reconciled. However, it is first necessary to establish the timing of the payments of
20 the \$3,251,662 in interest. In *Exhibit E*, Murphy refers to the \$3,251,662 in interest as ". . . amounts
21 owed as of March 31, 1991." In his July 21, 1991 letter certain beneficiaries, he describes this same
22 amount as "Total payments made are as follows:" Thus, according to his own declarations, the
23 \$3,251,662 in interest was paid between March 31, 1991 and July 21, 1991. Therefore, all payments
24 referenced in the stipulation were for tax liability and none were applied to interest.

25 In Exhibit E, he shows total payments made between April 1, 1991 and May 30, 1991 of
26 \$2,634,712 (all but \$134,712 paid from Estate funds). In addition, he shows in that document total

1 payments and credits to the State of Nevada of \$643,052 and payments from land sales, on which the
 2 IRS had placed liens, of \$920,000. Thus the total payments and credits in that statement are
 3 \$4,167,658. The sum of the unpaid interest (\$3,251,662) and the non-paid amount from the
 4 stipulation (\$915,996) also totals \$4,167,658. The table below shows the source of tax and interest
 5 liability and the source of payments of that liability.

6 **TABLE 3**

7

Tax and Interest Obligations and Payments Made on Behalf of Estate			
Source of Tax and Interest Liability		Source of Payment as per Exhibit E	
Total Tax Liability-Stipulation	2,663,240	Pmt by Estate with tax return	834,194
IRS interest	3,026,152	Pmt by Estate on Jan. 21, 1979	117,550
State of Nevada Interest	225,510	Paid from Land Sale Proceeds	795,500
		Nevada Interest and Credits	643,052
		Paid from Land Sale Proceeds	920,000
		Payments by Estate	2,500,000
		LFT payment (May 30, 1991)	134,712
		Adjustment, interest to May 31	(30,106)
Total Tax, Interest Obligation	5,914,902	Total Payments per Exhibit E	5,914,902

16

17 The following conclusions stem from this analysis. First, the taxes and interest for the Estate
 18 were fully paid by the end of 1991. Second, the payment of \$134,712 was the only LFT payment
 19 identified Exhibit E. The following analysis addresses the source of the remaining payments:

- 20 a) The payment with the tax return (\$834,194) and the payment on January 21, 1979
 21 (\$117,550) were clearly made by the Estate.
- 22 b) An analysis of the Charge and Discharge Statements of the LFT for the years 1979 through
 23 1991 show no proceeds for any land sale that were distributed to the IRS in settlement of a
 24 tax lien. If any LFT property were subject to a tax lien and if the proceeds of the sale of any
 25 LFT property were distributed in escrow to the IRS to release those liens, these facts are of
 26 such importance to the beneficiaries that they should have been disclosed in the appropriate

1 Charge and Discharge Statements. To not disclose such facts would have been in violation
2 of the Third Fiduciary Accounting Standard⁵ and NRS 165.040 (1)(c)⁶. Absent these
3 required disclosures, one must assume that the proceeds from the sale of land subject to IRS
4 lien were from Estate transactions and not from LFT transactions.

5 c) In the same manner, had the LFT made the payment of interest to the State of Nevada, the
6 Third Fiduciary Accounting Standard and NRS 165.040(1)(c) would have required
7 disclosure in the LFT Charge and Discharge Statement. Absent these required disclosures,
8 one must assume that the proceeds from the payment of State of Nevada tax interest was
9 from Estate transactions and not from LFT transactions.

10 d) The payments of \$2,500,000 from April 1, 1991 through May 30, 1991 are identified as
11 payments from the Estate of W. P. Lear and even include check numbers⁷.

12 e) The only remaining payment is the May 30, 1991 from the LFT for \$134,712. Thus, LFT
13 Trustee and *GT* accountant James L. Murphy has demonstrated with his own statements and
14 computations that only \$134,712 of the total Estate tax and interest obligations were paid by
15 the LFT. His presentation in Exhibit E is somewhat oblique, indirect, and circuitous but it
16 is, without question, consistent with the stipulation and the conclusion that all payments
17 except for the \$134,712 were from assets of the Estate.

18 f) However, the conclusion that all payments except for the \$134,712 were from assets of the
19 Estate is not consistent with the data as presented in the LFT financial statements as
20 compiled by Grant Thornton, LLP under the direction of Trustee and accountant James
21 Murphy from source documents prepared by Trustee James Murphy. An analysis of the
22

23 ⁵ The third Fiduciary Accounting Principle states that "A fiduciary account shall contain sufficient information to put the interested
parties on notice as to all significant transactions affecting administration during the accounting period."

24 ⁶ NRS 165.040 (1)(c) requires each intermediate account to include: "In a separate schedule, additions to trust principle during the
25 accounting period with the dates and sources of acquisition, investments collected, sold or charged off during the accounting
period, investments made during the accounting period, with the date, source and cost of each, deductions from principal during
the accounting period, with the date and purpose of each, and the trust principal, invested or uninvested, on hand at the end of the
accounting period, reflecting the approximate market value thereof."

26 ⁷ Interestingly, no check number is included for the payment from LFT on May 30, 1991.

1 LFT Charge and Discharge Statements show the following payments by the LFT on behalf
2 of the Estate of William P. Lear.

3 **Table 4**

Payments made on behalf of Estate for Tax & Interest thereon as Reported in LFT Charge & Discharge Statements		
Year	Item	Amount
1985	Amount due from Estate for Estate taxes	\$525,500
1986	Increase in amount due from Estate for Estate taxes	\$99,500
1988	Increase in amount due from Estate for Estate taxes	\$80,000
1989	Increase in amount due from Estate ⁸ for Estate taxes	\$60,000
1990	Increase in amount due from Estate for Estate taxes	\$30,000
1991	Payments by LFT for Estate Taxes and other Costs	\$1,863,004
	Total Payments by Trust for Estate Taxes	\$2,658,004
1990	— Total LFT payments of Estate Taxes as reported in Exhibit E	\$134,712
	Unexplained Estate Tax payments in LFT statements	\$2,523,292

15
16 The facts are clear. LFT Trustee and *GT* accountant James L. Murphy demonstrated without
17 question in *Exhibit E* that all but \$134,712 of the Estate tax and interest payments was made from
18 Estate assets. However, the 1985 through 1991 LFT Charge and Discharge statements with source
19 data generated by LFT Trustee and *GT* accountant James L. Murphy and compiled by *Grant*
20 *Thornton, LLP* (compilation by Grant Thornton, LLP as of May 1, 1987) with the assistance of Mr.
21 Murphy show without question Estate tax payments that exceed by \$2,523,292 the \$134,712 as
22 reported in Trustee James Murphy's own analysis in *Exhibit E*.

23 Notice shall be taken that *Respondents' Exhibit E* fails to disclose the payor and/or payee of
24

25 ⁸ The December 31, 1988 Inventory of Assets statement on the 1989 statement mistakenly shows the cumulative LFT payments to
26 the IRS on behalf of the Estate as \$625,000 instead of \$705,000. The December 31, 1988 Inventory of Assets statement on the
1988 statement does show the correct amount of \$705,000. This is but one more example of obvious error in the collection of LFT

1 funds as for instance, “Estate of W.P. Lear, check 361, April 1, 1991 – 1,000,000” or “Paid from
2 land sale proceeds: Lien released May 15, 1991 from escrow – 800,000”. *Exhibit E*.

3 Notice shall also be taken that Grant Thornton, LLP performed the compilation of the Charge and
4 Discharge Statements for the Estate of William P. Lear, Sr. as of May 1, 1990 through the final
5 accounting of the Estate of William P. Lear, Sr. on December 31, 1991, concurrently with the
6 accountings for the LFT which *GT* had been performing from May 1, 1987 to date.

7 Since the unaccounted for amounts are so significant, Petitioner requests that the Court order
8 LFT Trustee and *GT* accountant James L. Murphy to produce the cancelled checks and any other
9 related source documents associated with the \$2,658,004 of LFT payments on behalf of Estate taxes
10 so that the serious questions raised can be finally answered.

11 **g) Barnard, Vogler & Co. Audit**

12 On August 11, 2003, this Court ordered an independent audit of the LFT and on November 4,
13 2003 determined that the audit of the LFT was to cover the five years 1996 through 2000. LFT
14 Trustee Richard B. Rowley and LFT Trustee and GT accountant James L. Murphy, engaged the firm
15 of Barnard Vogler & Co. (BV) on December 1, 2003 to audit the five Charge and Discharge
16 Statements for the years 1996 through 2000.

17 In their *Opposition, Respondents* state that:

18 “As further assurance that the Trustees have properly accounted, the Court and
19 the beneficiaries have the benefit of an **independent** audit performed by the
20 **independent** auditing firm of Barnard and Volger for the accountings from 1996
through 2000. The **independent** auditor found no “discrepancies” such as are
suggested by the Petitioner.”

21 *Opposition to Petition to Set Aside Accountings*, page 17, lines 9 – 14
[Emphasis added]

22 Numerous “errors” become apparent when Petitioner closely reviewed the BV audit. These
23 errors lead the careful examiner who is mindful of the standards of accounting to conclude, among
24 others things, and at best, that BV failed to maintain independence in appearance.

25
26 statements in contradiction to statement by trustees and is in violation of SSARS 1 contrary to statements.

1 On July 28, 2004 BV issued its audit report on those statements and on August 30, 2004 released
2 the statements to the Trustees. There is no explanation for the 33 day delay between the issuance of
3 the audit report and its release to the Respondents.

4 BV made a number of very serious material omissions from the audited statements and made a
5 number of other serious errors in reporting violations of the Auditing Standards:

6 First, the BV audit statements cover a single five year period beginning January 1, 1996 and
7 ending December 31, 2000. The Charge and Discharge Summary Statement, the Statement of
8 Income, and the Statement of General Expenses are for this five year period with no accounting for
9 the individual five years within the period. While the statements do include Inventory of Assets as of
10 January 1, 1996 and December 31, 2000, they do not include such inventories for December 31 for
11 the years 1996, 1997, 1998, or 1999.

12 NRS § 165.040 requires the trustees to file reports with the court within 60 days of the end of
13 each calendar year.⁹ Thus there is an unquestioned statutory requirement for annual reports to be
14 filed each year with the Court and on or before March 1st. BV knew or should have known of this
15 requirement and should have insisted on reporting on five complete individual annual reports rather
16 than the single and cumulative five year statement that it included in its report. By issuing the audit
17 report on the five year summary report instead of audit reports on five individual annual reports, BV
18 has wantonly disregarded the clear requirements of NRS § 165.040.

19 Second, the financial statements as reported by BV have total dollar amounts that are identical to
20 the five individual Charge and Discharge Statements as compiled by GT and submitted to the Court
21 by LFT Trustee and GT accountant James L. Murphy. Consequently, any errors, misstatements, and
22 other improper accounting treatments in those individual statements are continued in the summary
23 statement as audited by BV. Consider, for example, the numerous problems associated with the sale
24 of the Capistrano Partnership in 1999 as stated and shown above. The errors with regard to that sale

25
26 ⁹ For the 1998 and earlier years, the requirement was for the report to be filed within 75 days after the end of the calendar year.

1 as reported in LFT Trustee and GT accountant James L. Murphy's 1999 Charge and Discharge
2 Statement were carried forward in the summary statement as audited by BV. In other words, by not
3 making a single adjustment to the five individual statements as filed by LFT Trustee and GT
4 accountant James L. Murphy, BV failed to correct the many errors, misstatements, and other
5 improper accounting treatments as documented above and erroneously issued an unqualified audit
6 report on the inaccurate, incomplete and defective summary statements.

7 Third, while BV does point out in its management letter to the Trustees the lack of reporting on
8 the interest of the individual groups of beneficiaries, the improper omission of fair market values of
9 assets, the lack of notice in the compilation report of the elimination of footnotes, the lack of
10 segregation of duties resulting in a severe weakness in internal controls for the LFT, and the use of
11 outdated terminology, BV fails to point out the improper identification of the "cash basis" as the
12 basis for the LFT statements. In fact, the LFT statements use cash basis for income and expenses but
13 most assets are accounted for on the tax basis and receivables and payables are accounted for on the
14 accrual basis. This combination of accounting bases is generally referred to as the "modified cash
15 basis" of accounting. Yet, BV does not correct this error in its audit report and, in fact, in footnote 1
16 to the financial statements, describes the method of accounting as the "cash basis." It is disturbing
17 that Respondents GT and LFT Trustee and GT accountant James L. Murphy continually identified
18 their compiled statements as being on the "cash basis" and even more disturbing that BV continued
19 this error in its audit of these same statements.

20 Fourth, the statements as audited by BV dramatically fail to provide sufficient information on
21 transactions as required by the third Fiduciary Accounting Principle¹⁰ and by NRS § 165.040¹¹. In

22
23 ¹⁰ The third Fiduciary Accounting Principle states that "A fiduciary account shall contain sufficient information to put the interested
parties on notice as to all significant transactions affecting administration during the accounting period."

24 ¹¹ NRS 165.040 (1)(c) requires each intermediate account to include: "In a separate schedule, additions to trust principle during the
25 accounting period with the dates and sources of acquisition, investments collected, sold or charged off during the accounting
26 period, investments made during the accounting period, with the date, source and cost of each, deductions from principal during
the accounting period, with the date and purpose of each, and the trust principal, invested or uninvested, on hand at the end of the
accounting period, reflecting the approximate market value thereof:"

1 summary, these promulgated and statutory requirements address the need for adequate information
2 on all significant transactions to fully inform the users, the Court and the LFT beneficiaries, of the
3 financial statements. By combining income and expense transactions for all five years, BV failed to
4 give the annual details on income and expense transactions that would have been useful to the users
5 of the statements. The many cases of inadequate disclosure described above in the compiled
6 statements have been carried through to the five year summary statements audited by BV. Finally,
7 the audited statements contain schedule 3 “Major Asset Sales” in which all major asset sales are
8 summarized by year. In these transactions, essential to the statements users, BV not only repeats the
9 lack of disclosure in the compiled statements but exacerbates the problem by commingling numerous
10 major asset sales in each individual year to a single disclosed number. Therefore, BV has violated
11 these provisions for the third Fiduciary Accounting Principle and NRS § 165.040 in an even more
12 egregious fashion than have Respondents GT and LFT Trustee and GT accountant James L. Murphy
13 in their compiled statements.

14 Fifth, there are two very serious concerns with the sale of the Silver Lake Water Distribution
15 Company as reported in the 1999 compiled statement and included in the summary of the audited
16 statements.

- 17 1. The first serious concern with the sale of the Silver Lake Water Distribution Company is
18 the level of proceeds received for this asset. According to the 1999 compiled statement, the
19 LFT received \$289,000 for the notes receivable associated with the company and
20 \$599,484.34 for the remaining assets. The fair market value of these assets, primarily the
21 732 acre feet of water and physical storage and transmission assets, would have been at
22 least \$7,000,000 (seven million dollars) in 1999. Consequently, the sale of these assets to
23 Sierra Pacific Power Company (SPPC) was made at a small fraction of the market value of
24 those assets. This fact would have been of extreme interest to the users of the statements
25 and should have been included in the statements. BV knew, or should have known that the
26 fair market value of this major asset was substantially greater than the proceeds received for

1 those assets and should have required disclosure of this fact in the audited financial
2 statements.

- 3 2. The second concern is the relationship of two of the LFT Trustees, Harold P. Dayton and
4 James L. Murphy with SPPC at the time of the sale. During 1999, LFT Trustees James
5 Murphy and Harold Dayton were members of the Board of Directors of SPPC and each
6 owned material amounts of SPPC stock. There can be no question that Trustees Murphy
7 and Dayton were related parties to this transaction because they were members of the
8 management of both buyer and seller for that transaction and, because of their ownership of
9 SPPC stock were in a position to personally benefit from a sale that was grossly
10 advantageous to SPPC.

11 Statement of Financial Accounting Standards (SFAS) is the Authoritative pronouncement of the
12 Financial Accounting Standards Board. The Code of Professional Conduct as adopted by the
13 Nevada Board of Accountancy requires accountants and auditors in Nevada to follow all
14 promulgated rules of the FASB.

15 If an accountant includes comprehensive footnotes to the financial statements, as BV did in its
16 audit of the LFT, the SFAS No. 57 pronouncement describes the required disclosures for related
17 parties under generally accepted accounting principles.

18 SFAS No. 57 defines related parties to include the management of either party. (SFAS 57, ¶
19 24(f)). The standard further specifically defines management to include members of the Board of
20 Directors. (SFAS 57, ¶ 24(f)). In the Opposition to the Petition to Set Aside Accountings, LFT
21 Trustee and GT accountant James L. Murphy, argues that he and Trustee Harold Dayton were
22 excluded from any meeting of the SPPC Board of Directors in which the sale was discussed.
23 However, SFAS 57 defines a related party as a member of the Board of Directors, not just Directors
24 who attend certain meetings. Presumably the influence of Directors extends to relationships with
25 other Directors and to communications that take place outside specific meetings. In addition, these
26 two LFT Trustees continued to hold their stock in SPPC during the entire negotiation period of the

1 sale of the Silver Lake Water Distribution Company. There can be no doubt that both of these
2 Trustees meet the SFAS definition of related parties for this transaction.

3 SFAS 57 further requires that for any transaction between related parties, the appropriate
4 financial statements will include disclosures of:

- 5 “a. The nature of the relationship(s) involved
- 6 b. A description of the transactions, including transactions to which no amounts
7 or nominal amounts were ascribed, for each of the periods for which income
8 statements are presented, and such other information deemed necessary to an
9 understanding of the effects of the transactions on the financial statements
- 10 c. The dollar amounts of the transactions for each of the periods for which
11 income statements are presented and the effects of any change in the method
12 of establishing the terms from that used in the preceding period
- 13 d. Amounts due from or to related parties as of the date of each balance sheet
14 presented, and if not otherwise apparent, the terms and manner of
15 settlement.”

(SFAS 57 ¶ 2).

12 The BV audited statement does list three related party situations including the fact that the Silver
13 Lake Water Distribution Company is owned in part by the LFT and in part by Moya Lear and Moya
14 Corporation. However, these statements fail completely to disclose the related party affiliation
15 between the LFT and the SPPC because two of the Trustees of LFT are also members of the Board
16 of Directors of SPPC and own material amounts of SPPC stock. This is a clear violation of SFAS
17 57.

18 Further, the BV audited statement summarized the major asset sales for 1999 and does not make
19 the specific disclosures required by SFAS 57 ¶ 2. Thus, the BV audited statements not only fail to
20 disclose the related party affiliation but fail to make the required transaction disclosures from a
21 transaction between those related parties.

22 BV did in fact make this fundamental error in their audit of these statements. BV was certainly
23 aware of the related party requirements in SFAS 57 as they identified three other related party
24 situations in the statements. BV certainly knew or should have known the full facts of one of the
25 largest transactions in the period under audit. One explanation would be that they were essentially
26 appointed by one of the related parties in the Silver Lake transaction LFT Trustee and GT accountant

1 James L. Murphy and thus failed to maintain independence in appearance. There can be no more
2 serious transgression by an auditor than for that auditor to express an opinion on financial statements
3 of a client with whom the auditor does not have independence. For this reason alone, the BV audited
4 financial statements should be set aside by the Court. The other problems with the BV audited
5 statements cited above only serve to reinforce this conclusion and that BV's audit was untrue,
6 incorrect, incomplete and inaccurate and was tainted by the acts and omissions of GT and GT
7 accountant, James L. Murphy who maintained substantial control and influence over the audit and its
8 outcome.

9 **9) NO CONTEST CLAUSE - TRUSTEES' FRAUD & MISMANAGEMENT**

10 *Trustees* allege that this Petitioner has violated the *in terrorem* clause of the LFT, also known as
11 Article NINTH effectively claiming that a beneficiary who questions the honesty and integrity of the
12 *Trustees* is subject to Article NINTH, validating previous statements by Shanda Lear-Baylor that
13 *Trustees*, particularly Grant Thornton's James L. Murphy, operated the LFT as an "iron-fisted
14 dictatorship". Exhibit 3.

15 *Respondents* Trustees, David J. Reese, Esq. and *CR&R* have, by their mismanagement,
16 nonfeasance, misfeasance and malfeasance become so enmeshed with the LFT that they are unable
17 to separate their own interests from that of the Trust and its beneficiaries and entertain an
18 antagonistic and hostile attitude toward LFT beneficiaries thereby justifying their removal from the
19 LFT. For instance, the *Trustees* misrepresent this Petitioner's opposition to James L. Murphy
20 appointing two other trustees as the evidence of Petitioner's challenge. Petitioner challenged the
21 authority of Murphy to appoint another Trustee by himself, and requested information as to the
22 background, knowledge and experience of the candidate. *Respondents'* claim fails for lack of a
23 provision allowing one LFT Trustee to appoint two other Trustees and this Petitioner explained this
24 at length in his Joinder with regard to this matter. Petitioner's Joinder is incorporated and reiterated
25 herein in its entirety for the purpose of illustrating the fallacy of *Respondents'* intentional
26 misrepresentations that are clearly evidenced by the Court records themselves. *Respondents*

1 unsupported assertions are a waste of Court time and resources as well as a further waste of LFT
2 resources.

3 Further, this Petitioner has never questioned the *Respondents'* authority to legitimately and
4 prudently settle claims against the Trust. However, this Petitioner does strenuously object to the
5 *Respondents* violating his rights to due process and then entering into settlements with third parties
6 which are not in the best interests of this and other LFT beneficiaries' interests. The provisions in
7 the LFT which grant Trustees significant power to settle matters and resolve disputes assumes that
8 LFT Trustees will act with prudence, due diligence and in the best interests of the LFT beneficiaries.
9 This Petitioner has stated and continues to state herein that *Respondents* have and are continuing to
10 act primarily in a manner which discriminates against and is to the detriment of LFT remaindermen
11 beneficiaries. *Respondents'* violation of their fiduciary duties and obligations and malpractice are in
12 issue in the case at bar and the *Respondents'* argument assumes facts not in evidence, i.e., their good
13 faith attempts to manage the LFT in the best interests of all beneficiaries without bias or prejudice
14 toward one class of LFT beneficiaries, the LFT remaindermen. *Respondents* have not acted in good
15 faith, and quite to the contrary, have continually acted in violation of the rights of others and have
16 exhibited imprudence, negligence, mismanagement, discrimination and hostilities unbecoming
17 fiduciaries.

18 This Petitioner has clearly questioned and contested the *Respondents'* twisted interpretation of
19 their power and authority to determine what is Trust income and what is Trust principal. This
20 complaint and challenge is legitimate, supported by valid evidence and arguments and is not
21 prohibited under the LFT and is allowed by law..

22 Judicial notice will be taken that the cases provided by Respondents in support of their attempt to
23 alienate Petitioner from his rights to and under the LFT are only relevant to show the validity of an *in*
24 *terrorem* clause in a Trust.

25 Further, if the LFT were to grant such vast and unlimited power to determine what is principal
26 and what is income, the intent of the Trustor, WPLSr to grant the income to his children and the

1 principal to his grand-children could be completely subverted, simply on the whim of the LFT
2 *Respondents* deciding that the entirety of the LFT was income. Such an interpretation would also
3 render WPLSr's intent as specified in his Last Will and Testament and in the LFT, null and void,
4 since it would grant to *Respondents* the power to do as they wished with the assets of the trust at any
5 time and in any manner. *Respondents* know that an interpretation of granting *Respondents* with
6 unlimited and absolute power over the LFT is completely contrary to the Trust and the law itself.
7 *Respondents'* Opposition cannot be sustained under any pretense and stands as evidence that the
8 *Respondents* have assumed utter disdain for the Trust, the law and certain beneficiaries who stand in
9 the way of their gross mismanagement and arrogance. The Opposition is nothing more and nothing
10 less than an extension of *Respondents'* conspiratorial scheme and ill-gotten *ex-parte* Court Orders
11 starting on December 2, 1991, whereby *Respondents* assumed the power to distribute 40% of LFT
12 corpus to income beneficiaries when such distribution is not authorized and is effectively prohibited
13 by the LFT itself. All this was done while Murphy double billed the LFT for services as both a
14 Trustee and as the primary *GT* accountant for the LFT, took lunch breaks at up to \$400 at the
15 expense of the LFT, engaged in self-dealing with Trust corpus, and kept the books in a manner in
16 which no one else can decipher and understand.

17 An interpretation of the LFT granting Trustees unlimited and absolute power of the LFT is
18 contrary to reason, to the LFT itself, and to the Last Will and Testament of WPLSr and grossly
19 misrepresents both the fact and law. Not only is such an interpretation self-serving in the extreme, it
20 would allow the Trustees to violate their agreement with the IRS, thereby permitting the *Respondents*
21 to subvert the intent of WPLSr, which even this Court is powerless to change. In effect, *Respondents*
22 show their intent to completely nullify and pervert the LFT into a mere alter-ego for the benefit of
23 the Trustee and the income and outright beneficiaries while making blatant misrepresentations about
24 the nature of the LFT on the tax returns, every year, since the time when the *Respondents* first made
25 this self-serving and unfounded and "arbitrary" claim. This reason alone should be sufficient reason
26 to sever and separate the LFT from the gross mismanagement of the *Respondents* and place it in the

1 hands of an independent receiver appointed by this Court. This reason alone should be sufficient to
2 completely audit the LFT and to completely set aside the accountings and to hold *Respondents* liable
3 for mismanagement and for damages that they caused to the LFT and to its beneficiaries.

4 In effect, *Respondents* are claiming their own infamy and perversions in support of their attempt
5 to subject this Petitioner to Article NINTH of the LFT. Judicial notice will be taken that
6 *Respondents* have not only failed, neglected and refused to provide legal notice for a period
7 exceeding two decades, but since March 2004 they have failed, neglected and refused to produce any
8 books, records, documents, papers or information regarding the LFT without first forcing this
9 Petitioner to obtain a Court Order, engaged in unethical conduct and malpractice to obstruct this
10 Petitioner's access to LFT books, records, documents and subsequently managed, via undue
11 influence of a Nevada State District Court Judge to disqualify Petitioner's brother and now are
12 attempting to compound these violations, in a self-serving scheme to cover up and conceal their own
13 nonfeasance, misfeasance and malfeasance by maliciously and vindictively claiming that this
14 Petitioner is before the Court in violation of Article NINTH of the LFT. In light of Judge Peter I.
15 Breen's covert and snug relationship with Grant Thornton, LLP's managing partner and accountant,
16 Brian Wallace, it is no surprise to this LFT remainderman that *Respondents* believe they are
17 impervious to any type of litigation against any of their numerous breaches of fiduciary duties and
18 obligations and malpractice. As stated by LFT outright beneficiary Jacqueline Lear in relationship to
19 the hostility and abuse by *Respondents*: "I know they [the LFT Trustees] are violating the law ...
20 there isn't going to be anything left anyway so just let it go, ... it's not like we had to work for this
21 money anyway." When Christian William Lear asked Jacqueline to put her concerns in writing,
22 Jacqueline answered "f__k off". See *Set Aside*, Exhibit 83. LFT outright beneficiary Mary Louise
23 Ellenberger recently stated in a written communication to Petitioner: "I am certainly aware that there
24 have been errors made in the process of executing my father's will over the past 27 years." Exhibit 6.

25 William Powell Lear, Senior was not tolerant of the type of abuse engaged in by *Respondents*
26 and certain LFT income and outright beneficiaries and did take extraordinary measures to prevent the

1 subversion of his will and the perversion of the LFT by incorporating Article NINTH, an *in terrorem*
2 clause in the LFT. *Respondents* are proposing to continue their perversion of WPLSr's Will and of
3 the LFT by threatening Petitioner with Article NINTH and for the improper purpose of preventing
4 beneficiaries from requiring specific performance from the *Respondents* and for calling the
5 *Respondents* to account for their nonfeasance, misfeasance and malfeasance.

6 **10) ISSUES NOT ADDRESSED**

7 Trustees failed to deny any and all allegations made by this Petitioner in his *Set Aside* with regard
8 to: (1) the Bombardier Settlement Agreement, (2) Inaccurate Write-Offs, (3) failure to adhere to
9 accounting standards, (4) maintaining oversight of the Barnard, Vogler & Co. audit, (5) invasion of
10 Trust Corpus, (6) distribution of LFT remaindermen assets to third parties or to income and outright
11 beneficiaries in violation of the LFT and this Court's Orders.

12 *Respondents* neglected, failed and refused to address or rebut receiving a "hold harmless"
13 agreement from the LFT outright and income beneficiaries, as set forth in §89 of the *Set Aside* and
14 receipt of such "hold harmless" agreement by *Respondents* is therefore admitted. *Set Aside*, Exhibit
15 14, p.91-94 of 646. Pursuant to their December 5, 1985 request, *Respondents* LFT Trustees obtained
16 said "hold harmless" agreement from the LFT outright and income beneficiaries, to "protect us [LFT
17 Trustees] from trust management related law suits initiated by Lear beneficiaries", relieving the LFT
18 Trustees as to those beneficiaries from any or all of the duties, restrictions and liabilities which
19 would otherwise be imposed on the LFT Trustees under the LFT, the laws of the State of Nevada and
20 the Orders of this Court. *Set Aside*, exhibit 14, p.91-92 of 646.

21 *Respondents* managed the LFT with *carte blanche* and compromised and corrupted these same
22 beneficiaries at the expense of and to the damage of Petitioner and other LFT beneficiaries similarly
23 situated, possibly making the LFT outright and income beneficiaries accomplices to *Respondents'*
24 fraud and mismanagement. A number of LFT outright and income beneficiaries have written *ex-*
25 *parte* letters to the Judge Breen to influence his decisions against Petitioner, engaged in hostility,
26 interference with Petitioner's rights to and under the LFT, and obstruction of Petitioner's discovery

1 process. *Set Aside*, exhibits 67, 69, 76 & 83.

2 **11) RESERVATION OF RIGHTS**

3 Petitioner reserves the right to seek and obtain Orders vacating determinations and Court Orders
4 which were obtained and issued without notice to this LFT remainderman beneficiary, at a later date,
5 if he deems it necessary.

6 Petitioner reserves the right to take such further action as necessary.

7 **CONCLUSION**

8 Trustees have engaged in a continuing conspiracy of silence starting in 1983 to date by failing
9 and neglecting to provide this Petitioner with any legal notice and with continues with Trustees'
10 Opposition which fails and neglects to refute or rebut this Petitioner's *Set Aside* with supporting
11 evidence and documentation and thereby admits the allegations of mismanagement and fraud alleged
12 herein, and is proper grounds for appointing a independent receiver and ordering a forensic audit of
13 the LFT.

14 *Respondents'* hostile attempt to alienate Petitioner from his substantive rights to and under the
15 LFT for exposing their mismanagement, fraud, breaches, violations and malpractice and their
16 improper and wrongful misuse and abuse of their position, authority and power as trustees and
17 fiduciaries to their own use and advantage at the expense of and to the detriment and damage of
18 Petitioner is further proof of *Respondents'* "iron-fisted dictatorship over the financial lives of Mr.
19 Lear's children and grandchildren", in derogation of William P. Lear, Senior's intent, including but
20 not limited to his Last Will and Testament, the LFT, and in violation of the Constitution and laws of
21 the State of Nevada. See Exhibit 3, p.1, line 22-23, *Set Aside*, exhibits 2 & 3.

22 *Respondents* have willfully, knowingly, and continually breached legal duties and moral
23 obligations imposed upon them by the LFT, Court Orders and the law. *Respondents'* Opposition was
24 craftily and deceitfully drawn for the improper purposes of influencing this Court, causing
25 unnecessary delays and costs in litigation. *Respondents'* Opposition is frivolous, presented in bad
26 faith, and is insufficient in fact and law to support an Order in *Respondents'* favor and to grant

1 *Respondents* any relief.

2 The primary objective of the Court at the present time is to clean up the entire LFT for new
3 replacement Trustees so that they can start with a clean slate. Petitioner's *Petition to Set Aside*
4 *Accountings* is consistent with that objective. Petitioner has standing as a matter of law, has a right of
5 action against the *Respondents*, has a good and sufficient cause of action, and his prayer for relief
6 should be granted in its entirety.

7 **PRAYER**

8 WHEREFORE, this Petitioner respectfully petitions this Court for the following:

- 9 a) Deny LFT Trustees' *Opposition to Petition to Set Aside Accountings*;
- 10 b) Deny *Grant Thornton, LLP's Joinder in Trustees' Opposition to Petition to Set Aside*
11 *Accounting*.
- 12 c) Order that all the LFT accounts since 1978 be set aside and more particularly from January
13 1983 to the present pursuant to NRS §165.120 and NRS §163.115;
- 14 d) Due to the amount of alleged fraud, the disappearance of valuable property from the LFT and
15 the continual failure to produce, file and serve true, correct, complete and accurate
16 accountings for a period exceeding 20 years, and under the circumstances the risk that Trust
17 records may be impaired or destroyed, this Petitioner hereby petitions this Court to Order all
18 books, papers and records, documents, notes, telephone records, time sheets, work-products,
19 computers and any and all other related documents or information whether stored on paper or
20 in electronic, magnetic or optical format, pertaining to the LFT, its accountings and the audit
21 of *BV* be taken immediately and without delay into the possession of an independent receiver
22 appointed by this Court and that the independent Court appointed receiver take control of all
23 bank accounts, property and assets of any kind or nature in which the LFT has any right, title,
24 claim or interest;
- 25 e) Order a true, correct, complete and accurate forensic audit of the LFT from March 9, 1978 to
26 the present, by an independent, disinterested, impartial, qualified and bonded auditing

1 company licensed to do business in Nevada and that it be entirely billed and charged against
2 the respondents, individually and severally if any negligence, unethical conduct, fraud, or
3 unlawful acts be found that were proximately caused by the Respondents;

4 f) Order LFT Trustees James L. Murphy, Harold P. Dayton, Richard B. Rowley, Dunham Trust
5 Company and Tommy L. Tucker to post with this Court their performance bonds or other
6 errors and omissions insurance to stand as surety for any acts, omissions, negligence or
7 maladministration of the LFT;

8 g) Order *COOKE, ROBERTS & REESE, LTD*, and David J. Reese, Esq., to post their errors and
9 omissions insurance with this Court to stand as surety for any acts, omissions, negligence,
10 breach of contract, violations of the laws of the State of Nevada and damages to the LFT and
11 its beneficiaries;

12 h) Order *GRANT THORNTON, LLP*, and accountant James L. Murphy to post their bond or
13 errors and omissions insurance with this Court;

14 i) Order any distributions to LFT outright beneficiaries frozen from the present up to and
15 including August 30, 2005 or until a true, correct, complete and accurate forensic audit of the
16 LFT is completed and approved by a Court of competent jurisdiction, whichever occurs later;

17 j) Impose sanctions upon and against Trust Attorney David J. Reese for engaging in unethical
18 conduct and bad-faith pleading and in counseling and advising the LFT Trustees to engage in
19 breaches of obligations, violations of fiduciary duties, disloyalty, violations of the LFT
20 agreement, violations of State law, abuse and misuse of Trust funds while violating
21 Petitioner's rights to due process and equal protection of the law;

22 k) Order the removal of *COOKE, ROBERTS AND REESE, LTD* and David J. Reese, Esq. as LFT
23 Trustees' attorney;

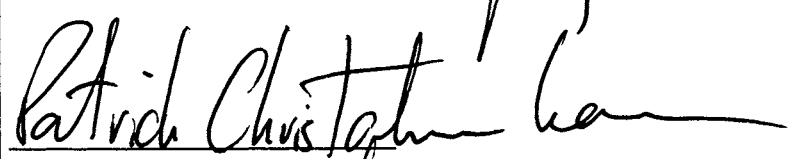
24 l) Order the disbarment of David J. Reese, Esq;

25 m) Order that *COOKE, ROBERTS AND REESE, LTD*'s license be revoked;

26 n) Order the disbarment of Patricia Lear, Esq;

- 1 o) Order the removal of LFT Trustee James L. Murphy as LFT Trustee;
- 2 p) Order the removal of LFT Trustee *DUNHAM TRUST COMPANY* and Tommy L. Tucker as
- 3 LFT Trustee;
- 4 q) Order LFT Trustees and Trust attorney David J. Reese and GT to personally and privately pay
- 5 Petitioner for any and all costs, fees, and expenditures caused by or accrued during this
- 6 litigation;
- 7 r) Order LFT Trustees and Trust attorney David J. Reese to personally and privately pay
- 8 Petitioner for any and all costs incurred by Petitioner in commencing and prosecuting this
- 9 action; and,
- 10 s) for such other relief this Court deems just and proper and according to right, interest and law;

11 DATED this 5th day of July, 2005

12 

13 Patrick Christopher Lear
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17 Fax: 775-884-4211

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TABLE OF EXHIBITS

Exhibit	Document Dated	Document Title
1.	23-Dec-98	Silver Lake Asset Purchase Agreement – with selected relevant exhibits only – complete agreement with all exhibits will be provided on CD-ROM upon request.
2.	27-Nov-02	Letter to Beneficiaries by Patrick James Martin, Esq. legal counsel for LFT income beneficiary Shanda Lear-Baylor
3.	5-Nov-04	Reply Points and Authorities by Beneficiary Shanda Lear-Baylor in support of her Petition of Beneficiary for Reconstitution of Board of Trustees of the William P. Lear Trust
4.	15-Jan-05	1st Set of Interrogatories MURPHY DAYTON ROWLEY.
5.	20-May-05	Affidavit regarding May 20, 2005 telephone conversation with James L. Murphy re Rule 34 Request
6.	15-Jun-05	Letter from LFT outright beneficiary Mary Louise Ellenberger
7.	31-Mar-04	Petitioner's letter to LFT Trustees.