

10-15-2010

# Beaudoin v. Davidson Trust Co. Clerk's Record Dckt. 37828

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# LAW CLERK

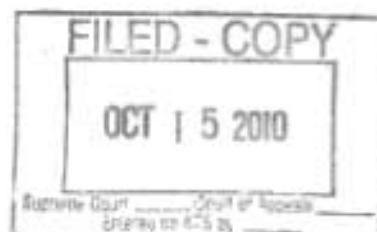
Vol. 1 of 6

In the  
**SUPREME COURT**  
of the  
**STATE OF IDAHO**

VIRGINIA R. BEAUDOIN,  
PLAINTIFF-APPELLANT

v.

DAVIDSON TRUST COMPANY,  
DEFENDANTS-RESPONDENT



## CLERK'S RECORD ON APPEAL

Appealed from the District Court of the  
Second Judicial District of the State of Idaho,  
in and for the County of Nez Perce

The Honorable CARL B. KERRICK

Supreme Court No. 37828-2010

John C. Mitchell  
ATTORNEY FOR PLAINTIFF-APPELLANT

Keith D. Brown  
ATTORNEY FOR DEFENDANT-RESPONDENT

# 37828

IN THE SUPREME COURT OF THE STATE OF IDAHO

VIRGINIA R. BEAUDOIN,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 37828-2010
	)	
v.	)	
	)	
DAVIDSON TRUST COMPANY,	)	
	)	
Defendant-Respondents	)	

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District  
of the State of Idaho, in and for the County of Nez Perce

BEFORE THE HONORABLE CARL B. KERRICK, DISTRICT JUDGE

Counsel for Appellant

John C. Mitchell  
P O Drawer 285  
Lewiston, ID 83501

Counsel for Respondent

Keith D. Brown  
601 W Riverside Ave, Suite 1500  
Spokane, WA 99201

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 37828-2010
	)	
v.	)	TABLE OF CONTENTS
	)	
DAVIDSON TRUST COMPANY,	)	
	)	
Defendant-Respondent.	)	

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 37828-2010
	)	
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## Virginia Beaudoin vs. Davidson Trust Company

Date	Code	User	Judge
11/6/2007	NCOC	KATHY	New Case Filed-Other Claims
	ATTR	KATHY	Plaintiff: Beaudoin, Virginia Attorney Retained John Charles Mitchell
	COMP	KATHY	Complaint Filed
	FSUM	KATHY	Summons Filed
11/7/2007		KATHY	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Mitchell, John Charles (attorney for Beaudoin, Virginia) Receipt number: 0305186 Dated: 11/7/2007 Amount: \$88.00 (Check) For: Beaudoin, Virginia (plaintiff)
11/14/2007		JENNY	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Randall & Danskin Receipt number: 0305558 Dated: 11/16/2007 Amount: \$58.00 (Check) For: Davidson Trust Company, (defendant)
	NOAP	JENNY	Notice Of Appearance - Laurel H. Siddoway
	ATTR	JENNY	Defendant: Davidson Trust Company, Attorney Retained Laurel H Siddoway
	AKSV	JENNY	Acknowledgment Of Service - plf
11/19/2007	ANSW	JENNY	Answer
	NTSV	JENNY	Notice Of Service (Defendant's First Written Discovery to Plaintiff)
3/11/2008	NTSV	JENNY	Notice Of Service - plf
7/14/2008	RQSC	JENNY	Request For Scheduling Conference
9/19/2008	OPSC	JENNY	Order For Telephonic Scheduling Conference
	HRSC	JENNY	Hearing Scheduled (Telephonic Scheduling Conference 09/29/2008 09:45 AM)
9/29/2008	HRHD	JENNY	Hearing result for Telephonic Scheduling Conference held on 09/29/2008 09:45 AM: Hearing Held
	OSTP	JENNY	Order Setting Trial & Pre-trial Conference
	HRSC	JENNY	Hearing Scheduled (Pretrial Conference 06/12/2009 10:00 AM)
	HRSC	JENNY	Hearing Scheduled (Jury Trial 06/22/2009 09:00 AM) 3-4 days
10/7/2008	NTSV	JENNY	Notice Of Service - plf
3/9/2009	STIP	JENNY	Stipulation to Conduct of Out-of-State Depositions
3/10/2009	HRSC	DONNA	Hearing Scheduled (Scheduling Conference 04/15/2009 08:30 AM) Telephonic (to set mediation)
3/18/2009	MISC	JENNY	Consent and Waiver
4/3/2009	CONT	DONNA	Continued (Scheduling Conference 04/20/2009 08:15 AM) Telephonic REGISTER OF ACTIONS (to set mediation)

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Virginia Beaudoin vs. Davidson Trust Company

Date	Code	User	Judge
4/10/2009	CONT	DONNA	Continued (Scheduling Conference 04/21/2009 08:15 AM) Telephonic (to set mediation) I CALLED BOTH ATTNY'S AND TOLD THEM ABOUT THIS CHANGE.
4/14/2009	STIP	JENNY	Stipulation to Continue Trial
4/21/2009	CONT	DONNA	Continued (Scheduling Conference 05/06/2009 08:15 AM) Telephonic (to set mediation)
	ORDR	JENNY	Order to Continue Trial
	CONT	JENNY	Hearing result for Jury Trial held on 06/22/2009 09:00 AM: Continued 3-4 days
	CONT	JENNY	Hearing result for Pretrial Conference held on 06/12/2009 10:00 AM: Continued
5/6/2009	HRHD	DONNA	Hearing result for Scheduling Conference held on 05/06/2009 08:15 AM: Hearing Held Telephonic (to set mediation)
5/7/2009	HRSC	DONNA	Hearing Scheduled (Mediation 08/18/2009 09:00 AM)
5/20/2009	CONT	DONNA	Continued (Mediation 09/09/2009 09:00 AM)
6/1/2009	OPSC	JENNY	Order For Telephonic Scheduling Conference
	HRSC	JENNY	Hearing Scheduled (Telephonic Scheduling Conference 06/16/2009 11:30 AM)
6/16/2009	HRHD	JENNY	Hearing result for Telephonic Scheduling Conference held on 06/16/2009 11:30 AM: Hearing Held
	OSTP	JENNY	Order Setting Trial & Pre-trial Conference
	HRSC	JENNY	Hearing Scheduled (Pretrial Conference 03/26/2010 11:00 AM)
	HRSC	JENNY	Hearing Scheduled (Jury Trial 04/19/2010 09:00 AM)
9/9/2009	HRHD	DONNA	Hearing result for Mediation held on 09/09/2009 09:00 AM: Hearing Held CASE DID NOT SETTLE AT THE MEDIATION.
1/25/2010	MTSJ	JENNY	Defendant's Motion for Summary Judgment
	BRFD	JENNY	Defendant's Brief in Support of Motion for Summary Judgment
	AFFD	JENNY	Affidavit of Laurel Siddoway
	AFFD	JENNY	Affidavit of J. Todd Edmonds
	AFFD	JENNY	Affidavit of Jan Shelby
	NTHR	JENNY	Notice Of Hearing
	HRSC	JENNY	Hearing Scheduled (Motion for Summary Judgment 02/23/2010 10:00 AM)
	AFFD	JENNY	Affidavit of Larry Lemaster
1/26/2010	AFFD	JENNY	Affidavit of Larry Lemaster

REGISTER OF ACTIONS

2.

Date: 6/30/2010

## Second Judicial District Court - Nez Perce County

User: DEANNA

Time: 02:24 PM

## ROA Report

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Virginia Beaudoin vs. Davidson Trust Company

Virginia Beaudoin vs. Davidson Trust Company

Date	Code	User	Judge
2/11/2010	MEMO	JENNY	Plaintiff's Memorandum in Opposition to Motion for Summary Judgment
	AFFD	JENNY	Affidavit of John C. Mitchell
2/17/2010	BRFD	JENNY	Reply Brief in Support of Motion for Summary Judgment
	AFFD	JENNY	Reply Affidavit of J. Todd Edmonds in Support of Motion for Summary Judgment
	MOTN	JENNY	Motion to Strike Affidavit (D)
	MOTN	JENNY	Motion to Shorten Time (D)
2/18/2010	ORDR	JENNY	Order to Shorten Time
	NTHR	JENNY	Notice Of Hearing
	HRSC	JENNY	Hearing Scheduled (Hearing 02/23/2010 10:00 AM) Motion to Strike
2/22/2010	MISC	JENNY	Opposition to Motion to Strike Affidavit
	HRVC	JENNY	Hearing result for Motion for Summary Judgment held on 02/23/2010 10:00 AM: Hearing Vacated
	HRVC	JENNY	Hearing result for Hearing held on 02/23/2010 10:00 AM: Hearing Vacated Motion to Strike
3/1/2010	NTHR	JENNY	Amended Notice Of Hearing
	HRSC	JENNY	Hearing Scheduled (Motion for Summary Judgment 03/23/2010 11:00 AM)
	NTHR	JENNY	Amended Notice Of Hearing
	HRSC	JENNY	Hearing Scheduled (Hearing 03/23/2010 11:00 AM) Motion to Strike
3/18/2010	NTSV	JENNY	Notice Of Service - def
3/19/2010	NTSV	JENNY	Notice Of Service - def
3/23/2010	MINE	JENNY	Minute Entry Hearing type: Motion for Summary Judgment Hearing date: 3/23/2010 Time: 11:03 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JENNY Tape Number: CTRM #1 JOHN MITCHELL FOR PLAINTIFF LAUREL SIDDOWAY FOR DEFENDANT
	DCHH	JENNY	District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages
	ADVS	JENNY	Hearing result for Motion for Summary Judgment held on 03/23/2010 11:00 AM: Case Taken Under Advisement
	ADVS	JENNY	Hearing result for Hearing held on 03/23/2010 11:00 AM: Case Taken Under Advisement Motion to Strike

REGISTER OF ACTIONS

3.

Date: 6/30/2010

Second Judicial District Court - Nez Perce County

User: DEANNA

Time: 02:24 PM

ROA Report

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Case: CV-2007-0002364 Current Judge: Carl B. Kerrick

Virginia Beaudoin vs. Davidson Trust Company

Virginia Beaudoin vs. Davidson Trust Company

Date	Code	User	Judge
3/23/2010	HRVC	JENNY	Hearing result for Pretrial Conference held on 03/26/2010 11:00 AM: Hearing Vacated
	HRVC	JENNY	Hearing result for Jury Trial held on 04/19/2010 09:00 AM: Hearing Vacated
5/7/2010	DEOP	JENNY	Memorandum Opinion and Order on Defendant's Motion for Summary Judgment
	CDIS	JENNY	Civil Disposition entered for: Davidson Trust Company,, Defendant; Beaudoin, Virginia, Plaintiff. Filing date: 5/7/2010
	STAT	JENNY	Case Status Changed: Closed
	SUBC	JENNY	Notice of Withdrawal and Substitution Of Counsel
	ATTR	JENNY	Defendant: Davidson Trust Company, Attorney Retained Keith D Brown
5/19/2010	FJDE	JENNY	Final Judgement for Defendant Davidson Trust Company
6/2/2010	STIP	JENNY	Stipulation Extending the Time for Defendant to Serve and File its Memorandum of Costs
	ORDR	JENNY	Order Extending the Time for Defendant to Serve and file its Memorandum of Costs
6/10/2010	STIP	JENNY	Stipulation Extending the Time for Defendant to Serve and File Its Memorandum of Costs
6/14/2010	ORDR	JENNY	Order Extending the Time for Defendant to Serve and file its Memorandum of Costs
6/18/2010	MEMC	JENNY	Defendants Memorandum Of Costs
6/23/2010	APSC	DEANNA	Appealed To The Supreme Court
	NTAP	DEANNA	Notice Of Appeal
		DEANNA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Mitchell, John Charles (attorney for Beaudoin, Virginia) Receipt number: 0011851 Dated: 6/24/2010 Amount: \$101.00 (Check) For: Beaudoin, Virginia (plaintiff)
	BNDC	DEANNA	Bond Posted - Cash (Receipt 11852 Dated 6/24/2010 for 100.00)
	BNDC	DEANNA	Bond Posted - Cash (Receipt 11853 Dated 6/24/2010 for 150.00)
	BONC	DEANNA	Condition of Bond Estimate for reporter's transcript
	BONC	DEANNA	Condition of Bond Estimate for clerk's record

JOHN CHARLES MITCHELL  
Idaho State Bar No. 7159  
CLARK and FEENEY  
Attorney for Plaintiff  
The Train Station, Suite 201  
13<sup>th</sup> and Main Streets  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516

FILED

2007 NOV 6 PM 1 58

FATTY G. WEEKS  
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

vs.

DAVIDSON TRUST COMPANY,

Defendant.

Case No. CV

07-02364

COMPLAINT and DEMAND FOR  
JURY TRIAL

COMES NOW the Plaintiff, by and through her attorney of record, John Charles Mitchell, of the  
Law Offices of Clark and Feeney, and for a cause of action and claim for relief against the Defendant,  
complains, states, and alleges as follows:

I.

INTRODUCTION

1. This is an action to recover damages resulting from negligent misrepresentation, infliction  
of emotional distress, and breach of fiduciary duty.

2. The Plaintiff seeks relief based on negligent misrepresentation, infliction of emotional  
distress, and breach of fiduciary duty. The Plaintiff seeks both actual and consequential damages.

COMPLAINT and DEMAND FOR JURY TRIAL

1

II.

PARTIES

3. The Plaintiff, Virginia R. Beaudoin, currently resides in Nez Perce County, Idaho.

4. Defendant Davidson Trust Company is a wholly owned subsidiary of Davidson Companies, a holding company incorporated in the State of Montana, which conducts business in the State of Idaho.

III.

JURISDICTION AND VENUE

5. The Plaintiff resides in Nez Perce County, State of Idaho, and the Defendant conducts business in the State of Idaho. It is within this Court's jurisdiction to hear and decide this matter.

6. The amount in controversy exceeds the jurisdiction of the Magistrate's Division.

IV.

STATEMENT OF THE FACTS

7. On February 1, 1982, Geraldine M. Schneider established the Geraldine M. Schneider Revocable Living Trust. Said Trust Agreement was amended and restated on June 23, 1994. On May 9, 1996, Geraldine M. Schneider executed the 2<sup>nd</sup> Amended and Restated Geraldine M. Schneider Revocable Living Trust. Attached hereto as Exhibit A is a true and correct copy of the 2<sup>nd</sup> Amended and Restated Geraldine M. Schneider Revocable Living Trust (hereafter "Trust") incorporated by reference as is fully set forth.

8. Pursuant to the 2<sup>nd</sup> amendment on May 9, 1996, the Trustee was Norwest Capital Management & Trust Co., a Montana Corporation. Upon information and belief, sometime in 1995 or 1996, the Defendant was appointed and contracted to become the Trustee of the Trust. The Defendant is full-service trust company. As part of its standard services regarding trust services, the Defendant assumes legal responsibility and liability, interprets the trust agreement, adheres to the terms of the trust agreement, responds to beneficiary questions, and distributes income and principal.

9. Geraldine M. Schneider had two daughters. The Plaintiff is one daughter and Margaret Mary VanDyke is the other. Both daughters were beneficiaries under the Trust.

10. Geraldine M. Schneider passed away on or about March 10, 2004. Pursuant to the terms of the Trust, after Geraldine M. Schneider passed away, the daughters were to receive an equal share of the Trust Estate to be paid for the benefit of each daughter.

11. Margaret Mary VanDyke passed away on March 30, 2007. Margaret May VanDyke did not have any children.

12. Shortly after, Margaret Mary VanDyke's passing, an agent of the Trustee, notified the Plaintiff that she personally was to receive Margaret Mary VanDyke's share of the Trust Estate. At this time, the Plaintiff informed the Defendant that it was her understanding that the Plaintiff's children, and not her personally, were to receive Margaret Mary VanDyke's share of the Trust Estate, to which the Defendant responded that the Plaintiff personally, and not her children were to receive Margaret Mary VanDyke's share of the Trust Estate.

13. The Defendant then proceeded to transfer approximately \$360,000 to an account in the Plaintiff's name.

14. As a result of the Defendant's representation and subsequent distribution of funds, the Plaintiff, on the advice of one of the financial advisors of D.A. Davidson & Co., another of Davidson Companies wholly owned subsidiaries, retired from her occupation as a beautician. The Plaintiff got rid of all of her necessary business supplies and inventory and referred her clients to other beauticians in the area. A notice of retirement was published in the local newspaper and a retirement party was given for the Plaintiff in which she received numerous gifts from well wishers. Furthermore, the Plaintiff planned a trip with her family as a result of this distribution that could not be canceled.

15. Subsequently the Defendant contacted the Plaintiff and informed her that the distribution pursuant to the terms of the Trust was to go to her children and not her personally.

16. Since paying back the distribution the Plaintiff has experienced high levels of stress and

anxiety in attempting to re-establish her business.

V.

STATEMENT OF CLAIMS

BREACH OF FIDUCIARY DUTY

17. The Plaintiff incorporates by reference the proceeding paragraphs as if fully set forth.

18. The Defendant is a professional company that engages in trust services. One of the services that the Defendant provides is trust management. As trustee of the Trust, a service for which the Defendant received compensation, the Defendant has a fiduciary duty to the Plaintiff, as beneficiary, to accurately interpret the Trust provisions, and to administer the Trust in accordance to the Trust provisions.

19. The Defendant breached this fiduciary duty to the Plaintiff when it represented to the Plaintiff that she was entitled to receive a distribution pursuant to the terms of the Trust when in fact she was not. This duty was further breached when the Defendant assured the Plaintiff that she was entitled to the distribution and proceeded to transfer the distribution into an account for the Plaintiff.

NEGLIGENCE

20. The Plaintiff incorporates by reference the proceeding paragraphs as if fully set forth.

21. As paid Trustee of the Trust, the Defendant undertook to perform the duties of a Trustee and in doing so owed the Plaintiff a duty to use due care in performing said duties. The Defendant breached this duty when it negligently misinterpreted the provisions of the Trust and misrepresented to the Plaintiff that she was entitled to receive a distribution from the Trust.

INFLECTION OF EMOTIONAL DISTRESS

22. The Plaintiff incorporates by reference the proceeding paragraphs as if fully set forth.

23. The Defendant is a professional trust management company. As a result of the Defendant's misrepresentation of the terms of the Trust and the Defendant's erroneous distribution to the Plaintiff, the Plaintiff quit her job and divested her clientele. While the Plaintiff is attempting to re-establish her business, the loss of income has caused her to suffer high levels of stress and anxiety.

VI.

DAMAGES

24. As a direct and proximate result of the Defendant's conduct, the Plaintiff has suffered general damages. The exact nature, extent, and amount of such damages will be proven at trial.

25. As a direct and proximate result of the Defendant's conduct, the Plaintiff has suffered special damages, including but not limited to lost income, business expenses, and trip expenses. The exact nature, extent, and amount of such damages will be proven at trial.

VII.

ATTORNEY FEES AND COSTS

26. As a direct result of the Defendant's actions, the Plaintiff has been required to institute and prosecute this action, and has incurred costs and attorney's fees. The Plaintiff has employed the law firm of Clark and Feeney, and agreed to pay said firm a reasonable attorney's fee. The sum of \$3,000.00 is a reasonable attorney fee for instituting and prosecuting this action in the event of default and no appearance by the Defendant, and no other complications. In the event this matter is contested, a greater sum would be reasonable for such attorney's fees, and Plaintiff's attorney's fees incurred herein should be awarded to it pursuant to the provisions of Idaho Code section 12-120 and 12-121.

VIII.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays for relief and judgment, order and decree of this court against the Defendant as follows:

- A. For general damages together with prejudgment interest against the Defendant in an amount to be proven at trial;
- B. For special damages, including but not limited to lost income, business expenses, and trip expenses against the Defendant in an amount to be proven at trial;
- C. For an award of a reasonable attorney's fee against the Defendant in the amount of \$3,000.00 if judgment is entered by default, or for such further and additional amounts as the court deems just and equitable if judgment is entered other than by default;



D. For such other and further relief as the Court deems just and equitable.

Dated This 2 day of November, 2007.

CLARK and FEENEY

By: *John Charles Mitchell*  
John Charles Mitchell  
Attorney for Plaintiff

STATE OF IDAHO )  
 ) ss. )  
County of Nez Perce )

VIRGINIA R. BEAUDOIN, being first duly sworn on oath, deposes and says:

That she is the plaintiff herein; that she has read the foregoing instrument, knows the contents thereof  
and the facts stated therein are true to the best of her knowledge, information and belief.

*Virginia R. Beaudoin*  
VIRGINIA R. BEAUDOIN

SUBSCRIBED AND SWORN to before me this 2 day of November, 2007.



*Elizabeth Bielenberg*  
Public in and for the State of Idaho.  
residing at Lewiston, therein.  
My Commission Expires: 2-10-09

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all issues in this cause and state pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure; that said plaintiff will not stipulate to a jury of less than twelve (12) persons in number.

DATED this 9<sup>th</sup> day of November, 2007.

CLARK and FEENEY

By

  
John Charles Mitchell  
Attorney for Plaintiff

2ND AMENDED AND RESTATED  
GERALDINE M. SCHNEIDER REVOCABLE LIVING TRUST

THIS AGREEMENT, made this 9 day of MAY, 1996, by and between GERALDINE M. SCHNEIDER of Glasgow, Montana, Trustor, and NORWEST CAPITAL MANAGEMENT & TRUST CO., MONTANA, a Montana corporation, Trustee.

RECITALS

WHEREAS, the parties have previously entered into a Trust Agreement dated February 1, 1982; and

WHEREAS, said Trust Agreement was amended and restated on the 23rd day of June, 1994; and

WHEREAS, Article III of said Trust Agreement reserves the right by the Trustor to amend or revoke the agreement in whole or in part; and

WHEREAS, the Trustor, Geraldine M. Schneider is hereby desirous of amending the entire agreement.

NOW THEREFORE, the Trustor does hereby amend the Geraldine M. Schneider Revocable Living Trust and all amendments thereto, and substitutes the following agreement in its entirety.

ARTICLE I.  
PARTIES

The Trustor is a single woman. I have two adult children, namely: Virginia Ruth Beaudoin, of Great Falls, Montana; and Margaret Mary VanDyke, of Estes Park, Colorado.

ARTICLE II.  
SCHEDULE OF ASSETS

At the date of these presents, the Trust Estate shall initially consist of those assets presently held by the Trustee by

said former agreement.

So long as this agreement remains unrevoked, either the Trustor or any other person may add additional property to the trust by deed, assignment, bequest, devise or otherwise. If so added, such property shall be governed by the provisions hereof with like effect as if presently included in the Trust Estate.

ARTICLE III.  
RIGHT OF REVOCATION

The Trustor shall have the right at any time and from time to time during the Trustor's lifetime, by instrument in writing subscribed by the Trustor and delivered to the Trustee during the Trustor's lifetime, to alter, amend or revoke this agreement, either in whole or in part; provided, however, that if altered or amended, the duties, powers and responsibilities of the Trustee shall not be substantially changed without its consent.

ARTICLE IV.  
TRUSTOR'S POWERS

During Trustor's lifetime (except during periods of time when, in the opinion of the Trustee, the Trustor is physically or mentally incapable of prudently managing her own affairs,) the Trustee shall pay to or for the benefit of Trustor, or her order, from the net income of the Trust Estate and, if net income shall be insufficient, then from the principal of the Trust Estate, such sums and at such times as the Trustor shall direct by an instrument in writing, subscribed by her, and filed with the Trustee during Trustor's lifetime. All net income of the Trust Estate not required by the provisions of this or the next succeeding section

of this agreement to be distributed, shall be accumulated and may from time to time be added to principal and invested and reinvested, as the Trustee in its sound discretion shall determine; provided, however, that upon the death of the Trustor, all undistributed or accumulated or accrued net income of the Trust Estate shall, in any event, be added to the principal thereof.

During any period or periods of time when Trustor, in the opinion of the Trustee after consultation and concurrence of the Advisor, shall be physically or mentally incapable of prudently managing her own affairs, the Trustee shall disburse from the net income of the Trust Estate and to the extent the net income shall be insufficient, then from the principal thereof to or for the benefit of Trustor, such sums from time to time as in the judgment of the Trustee are required to provide for the reasonable support, comfort, maintenance, welfare, medical, dental, hospital or similar care for the Trustor without the appointment of a conservator or guardian in accordance with the standard of living now enjoyed by her. The Trustee may make such payments on the Trustor's behalf rather than to the Trustor. The discretion granted by this provision to the Trustee shall not be limited or qualified by any written directions filed by the Trustor with the Trustee, during any period or periods of time when Trustor shall, in the opinion of the Trustee, be physically or mentally incapable of prudently managing her own affairs, any such written directions shall be inoperative.

In determining whether or not Trustor is physically or

mentally incapable under this article, the Trustee shall consult with the Advisor, Virginia Ruth Beaudoin, and she must concur that the Trustor is incapable, and in making its determination under this article, the Trustee and Advisor may rely on written medical opinion issued by a licensed medical doctor.

The Trustee is also authorized to arrange for the services of a companion for the Trustor, convalescent care, extended care or nursing home care, if the Advisor deems that any such care is necessary and advisable for the support, comfort, maintenance, welfare, medical, dental, hospital or similar care of the Trustor.

ARTICLE V.  
DISPOSITIVE PROVISIONS

Commencing with the date of the Trustor's death, the Trustee shall divide the Trust Estate so as to provide one share for each living child of the Trustor, Virginia Ruth Beaudoin, and Margaret Mary VanDyke, or their issue by right of representation.

In the event that there are outstanding any notes or loans from the trust to any of the beneficiaries at the time of the death of the Trustor, then said promissory note and loan shall be allocated to that respective beneficiary's share of the Trust Estate.

A. In regard to Virginia Ruth Beaudoin's share, the Trustee shall pay to or for the benefit of said Virginia Ruth Beaudoin, or her order, all of the net income of the Trust Estate. The Trustee shall, during the lifetime of said Virginia Ruth Beaudoin, pay or apply to her benefit, any amount, including all of the principal of said share, as directed by instrument in writing, subscribed by

her, and filed with the Trustee. All of the income required by the provisions of this trust to be distributed that are not distributed shall be accumulated and may be added from time to time to the principal of the trust and invested and reinvested as the Trustee, in its sound discretion, shall determine, provided, however, upon the death of the beneficiary, Virginia Ruth Beaudoin, or upon the death of the Trustor if the beneficiary has predeceased the Trustor, all undistributed or accumulated net income shall be added to the principal of the trust and be distributed according to the terms of the Will of Virginia Ruth Beaudoin.

i. In the event that Virginia Ruth Beaudoin shall have principal and/or accumulated income in her share of the trust at the time of her death she shall have a power of appointment to be exercised by her Will distributing said property as she shall designate. In the event the beneficiary does not leave a Will appointing said property, said property shall be held for the benefit of her issue.

ii. In the event the property is held for the benefit of the issue of the beneficiary the Trustee shall pay so much of the net income of the trust in such amounts and in such manner as the Trustee shall deem necessary or desirable to provide for the reasonable care, support, maintenance and education of her issue. Said income shall be paid in monthly or other convenient installments. The amount of such payments and the proportion of such payments shall be made at the Trustee's discretion or to accumulate the balance, if any, of said net income and to add the

same to the principal of the trust. In using such income, the Trustee in its discretion may pay or apply the same to or for the use of one member of said class or apportion it for the benefit of various members to the exclusion of others in such manner as it shall from time to time deem advisable without equality of treatment, taking into consideration the best interests and welfare of all such members, including the desirability of augmenting their respective estates and all other circumstances which the Trustee deem prudent.

iii. The Trustee may also pay or apply for the benefit of any child of Virginia Ruth Beaudoin or issue of any such child of the beneficiary from time to time, such sums from the principal of the trust as the Trustee deems necessary or advisable to provide for their proper care, support, maintenance and education.

iv. At the time that the youngest child of the beneficiary, Virginia Ruth Beaudoin, has attained the age of twenty-five (25) years, the Trustee shall divide this share of the trust so as to provide one share for each of Virginia Ruth Beaudoin's issue. The issue may, by written request, withdraw all or any portion of his share of said trust then remaining.

v. If any of the issue of Virginia Ruth Beaudoin should die before receiving complete distribution of the trust held for their benefit, the Trustee shall distribute the balance of such trust to the surviving issue of the deceased child of Virginia Ruth Beaudoin by right of representation. Upon the death of the child of Virginia Ruth Beaudoin, the share for the benefit of the issue of



the deceased child of Virginia Ruth Beaudoin shall be distributed outright to such issue by right of representation in equal shares. If she should die without issue, then to the beneficiary's Virginia Ruth Beaudoin, heirs at law.

B. In regard to Margaret Mary VanDyke's share, in the event that she shall survive the death of the Trustor, the Trustee shall pay or apply so much of the net income to or for the use of said Margaret Mary VanDyke during her lifetime as said beneficiary shall direct in writing. The Trustee shall, during the lifetime of said Margaret Mary VanDyke, pay or apply for her benefit, so much or all of the principal of the Trust as in its sole discretion it may deem advisable for her proper education, health, maintenance or support. The provisions of this paragraph are intended to primarily as a means of affording financial assistance to said Mary Margaret VanDyke but this enumeration is to serve only as a guide and shall not be construed to restrict the discretionary powers conferred upon the Trustee by this paragraph. In exercising this discretion hereunder the Trustee may inquire as to any other income or property of Margaret Mary VanDyke for whom such principal is to be used. Any decision of the Trustee with respect to the exercise of said discretionary power shall be made in good faith and shall fully protect the Trustee and shall be binding on and conclusive upon all persons interested in this Trust.

All of the income required by the provisions of this trust to be distributed that are not distributed shall be accumulated and may be added from time to time to the principal of the trust and

invested and reinvested as the Trustee, in its sound discretion, shall determine, provided, however, upon the death of the beneficiary, Margaret Mary VanDyke, or upon the death of the Trustor if the beneficiary has predeceased the Trustor, all undistributed or accumulated net income shall be added to the principal of the trust and be distributed according to the terms of this Trust.

i. Upon the death of Margaret Mary VanDyke her share of this Trust shall terminate and shall be distributed to the surviving issue by right of representation of Virginia Ruth Beaudoin. In the event that Virginia Ruth Beaudoin's issue are not surviving then to Virginia Ruth Beaudoin, and in the event that she has predeceased leaving no issue surviving then to the Estate of Virginia Ruth Beaudoin.

ii. In the event that Margaret Mary VanDyke shall predecease the Trustor, the entire Margaret Mary VanDyke share of the Trust Estate shall be added to the Virginia Ruth Beaudoin share.

ARTICLE VI.  
RULE AGAINST PERPETUITY

It is an express condition of this Trust Agreement controlling over all other provisions, that the duration of any trust hereunder in no event shall continue for a period longer than the lives of all of the issue of the Trustor who may be living at the time of the death of the Trustor, and the survivors of all of them and twenty-one (21) years thereafter, at the end of which time the entire Trust Estate, principal and any undistributed income, shall be distributed outright unto the persons then entitled to receive

the income therefrom or to have it accumulated for their benefit, in the same shares as those in which such income is then being distributed to, or accumulated for, them.

ARTICLE VII.  
DEFINITIONS

As used in this Trust Agreement where appropriate, the masculine includes the feminine, and the singular includes the plural (and vice versa), and the following terms have the following meanings:

"Issue" means all persons who are descended from the person referred to, either by legitimate birth to, or legal adoption by him or any of his legitimately born or legally adopted descendants.

"Child" means naturally born or legally adopted children of the Trustor.

A child in gestation at the time of an event, who is later born alive, is "living" or "surviving" at the time of such event.

ARTICLE VIII.  
TRUSTEE'S ACCOUNTS

The Trustor expressly waives any requirement that the trust or trusts created by this agreement be submitted to the jurisdiction of any court, that the Trustee be appointed or confirmed by any court, and that the Trustee's accounts be heard and allowed by any court. This provision, however, shall in nowise prevent any of the beneficiaries hereunder or the Trustee from requesting any of the procedures waived in this article.

ARTICLE IX.  
SUCCESSOR TRUSTEE

If at any time the Trustee shall resign or shall for any other reason cease or becomes unable to act as Trustee hereunder, the beneficiary or a majority of the beneficiaries to whom or to whole use the current net income of the Trust Estate is at the time authorized or required to be paid or applied and who shall at the time be at least twenty-one (21) years of age, may, by written instrument signed and acknowledged by him or them, as the case may be, and delivered to the appointee, appoint as successor Trustee hereunder any corporation organized for the laws of the State of Montana or authorized to do business therein and having corporate power and authority to administer the trust hereunder.

The Trustee may at any time be removed from its office as Trustee hereunder by delivery to it of a written instrument signed and acknowledged by the person or persons having at the time the power to appoint a successor Trustee as above provided.

The Trustee may at any time resign its office as Trustee hereunder by delivering written notice of resignation to the persons or person having at the time the power to appoint a successor Trustee as above provided.

Any corporation which shall, by merger, consolidation, purchase or otherwise, succeed to substantially all the personal trust business of the Trustee, shall, upon succession and without any appointment or other action by any person, be and become successor Trustee hereunder.

Any successor Trustee shall have, from and after its

appointment or succession to office hereunder and without any assignment or other action by any person, all the title, interest, rights and powers, including discretionary rights and powers, which are by the provisions of this agreement granted to and vested in the Trustee named herein.

ARTICLE X.  
TRUSTEE'S POWER TO TERMINATE  
SMALL ACCOUNTS

Any provision of this agreement to the contrary notwithstanding, the Trustee may at any time with the concurrence of the Adviser (hereinafter named) terminate any trust hereunder and transfer, pay over and deliver all of the then principal and income of such trust to the person or persons then entitled to the income from such trust, free of trust, if in its judgment the principal of such trust is so small that it would be inadvisable to continue to hold it in trust.

ARTICLE XI.  
PAYMENT TO MINORS

Whenever income or principal is to be used for the benefit of a person under the age of eighteen (18) years or a person who in the sole judgment of the Trustee is incapable of managing his/her own affairs, the Trustee may make payment of such property in any or all of the following ways:

A. By paying such property to the parent, guardian, conservator or other person having the care and control of such person under the age of eighteen (18) years for his benefit or to any authorized person as custodian for him under any applicable Gifts to Minors Act.

B. By paying such property to the guardian, conservator, committee or other person having the care and control of such incapable person.

C. By paying directly to any such beneficiary such sums as the Trustee may deem advisable as an allowance.

D. By expending such property in such other manner as the Trustee in its discretion believes will benefit any such beneficiary.

Upon the termination of any estate hereunder, if principal becomes vested in and payable to a person under the age of eighteen (18) years, the Trustee may make payment thereof in any of the ways set forth in the preceding Subclause or may defer payment of any part of all thereof, meanwhile applying to the use of such beneficiary so much or all of such principal and of the income therefrom, as the Trustee in its discretion may deem advisable. Any income not expended by the Trustee shall be added to principal. The Trustee shall pay any remaining principal to such beneficiary upon his attaining the age of eighteen (18) years or to his estate upon death prior to such payment in full.

Any payment or distribution authorized in this Article shall be a full discharge to the Trustee with respect thereto.

ARTICLE XII.  
TRUSTEE'S POWERS

The Trustee shall have all the powers, duties and obligations set forth and described in M.C.A. § 72-34-301 et seq., as amended, and may serve without giving bond.

ARTICLE XIII.  
ADVISER TO THE TRUSTEE

Virginia Ruth Beaudoin is hereby appointed the Adviser to the Trustee. The Trustee shall secure the consent of the Adviser before:

1. Making any changes in the investment strategy or composition of the overall portfolio; however, the Adviser's consent is not required for individual investments within the investment strategy;

2. Discretionary payments of principal;

3. The making of loans to a beneficiary; or

4. Determining whether or not the Trustor is physically or mentally capable of prudently managing her own affairs.

Upon the death, incompetency, resignation or refusal to act of the Adviser, the Trustee may act solely without the Adviser's concurrence or consent.

ARTICLE XIV.  
DEATH OF AN INCOME BENEFICIARY

Upon the death of the income beneficiary other than the Trustor, income accrued by not yet payable, subject to any charges or advances against it, shall belong to the next successive beneficiary.

ARTICLE XV.  
LAW GOVERNING

This trust shall become effective, as of the day and year first above written, upon the execution of this agreement by both the Trustor and the Trustee. It shall be governed and construed in all respects according to the laws of the State of Montana.

ARTICLE XVI.  
COMPENSATION OF TRUSTEE

The Trustee shall be entitled to reasonable compensation for his services hereunder.

IN WITNESS WHEREOF, the Trustor has hereunto set her hand and seal, and the Trustee has caused these presents to be executed by its authorized officer and its seal to be hereunto affixed.

Geraldine M. Schneider  
Trustor

NORWEST CAPITAL MANAGEMENT &  
TRUST CO., MONTANA

By: [Signature]  
Trustee

ATTEST:

Brett Weber

STATE OF MONTANA)

: ss  
County of Valley)

On this 2nd day of May, 1996 before me, the undersigned, a Notary Public for the State of Montana, personally appeared Geraldine M. Schneider of Glasgow, Montana, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.



[Signature]  
Notary Public for the State of Montana  
Residing at Glasgow, Montana  
My Commission expires April 5, 1997



STATE OF MONTANA )  
: ss  
County of Cascade)

On this 9<sup>th</sup> day of May, 1996, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Greg Hughes, known to me to be the V.P. of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

(Notarial Seal)

Mary Dolores Lomas  
Notary Public for the State of Montana  
Residing at Great Falls  
My Commission expires 9-7-99

TRUST3/2RLT-SCH

## Last Will and Testament

I, Geraldine M. Schneider, a resident of Glasgow, Valley County, Montana, being of legal age and of sound and disposing mind and memory, and not acting under duress, menace, fraud, constraint, nor undue influence of any person whomsoever, do hereby make, publish and declare this my Last Will and Testament, and hereby expressly revoke all other and former Wills made by me.

### I.

I hereby declare that I am a single woman. I have two adult children, namely: Margaret Mary Schneider and Virginia Ruth Beaudoin.

### II.

I direct that all debts, administrative expenses, taxes (including any interest and penalties thereon) imposed by any jurisdiction whatsoever by reason of my death, upon or with respect to any property includable in my estate for the purposes of any such taxes, or upon or with respect to any person receiving any such property, whether such property shall pass under or outside, or shall have passed outside, the provisions of this Will, be paid from my residual estate as an expense of the administration thereof without apportionment.

### III.

I hereby give, devise and bequeath all of my personal property and household effects, including jewelry, clothing, furniture, furnishings, silver, books, pictures and other like items used on or about my person or about my residence at the time of my death, except as provided in Article IV below, unto my beloved children, Margaret Mary Schneider and Virginia Ruth Beaudoin, in equal shares, share and share alike.

### IV.

It is my intention to prepare a separate written statement to be in existence at the time of my death to dispose of certain items of tangible personal property. It is my intention that this provision

shall be in accord with M.C.A. 72-2-312. I do hereby devise to such persons named in such written statement, the said items of tangible personal property listed therein. If, at the time of my death, no separate writing be in existence or none can be found, then this devise shall lapse, and the property pass as provided in Article III above.

## V.

I hereby give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and wheresoever situate, which I now own, may die possessed of or may be entitled to at the time of my death, to the Northwestern Union Trust Company, a Montana corporation, as Trustee under a certain Trust Agreement entitled the Geraldine M. Schneider Revocable Living Trust, dated the 1st day of February, 1982, between myself, as Trustor, and the Northwestern Union Trust Company, a Montana corporation, as Trustee, with amendments thereto, to be added to and commingled with the trust property of that trust, and held or distributed, in whole or in part, as if it had been an original part thereof. If the foregoing devise and bequest should lapse or fail for any reason, I give, devise and bequeath the residue of my estate to my heirs at law.

## VI.

I hereby nominate and appoint the Northwestern Union Trust Company, a Montana corporation, to serve as Personal Representative of this my Last Will and Testament without bond.

## VII.

The Personal Representative named herein shall have all of the powers, duties and obligations set forth and described in Title 72, Chapter 3, Part 6, M.C.A., as the same now stands at the date of the execution of this my Last Will and Testament. I do hereby specifically grant to my Personal Representative the power to continue any incorporated business or venture which I may have been engaged in at the time of my death throughout the period of the administration of

my estate, and any other powers, obligations, duties and any other applicable laws of the State of Montana are also conferred upon my Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand to this my Last Will and Testament this 1st day of February, 1982.

Geraldine M. Schneider

The foregoing instrument was, at the date thereof, made, signed, published and declared by the said Geraldine M. Schneider as her Last Will and Testament, in the presence of us, who in her presence, at her request, and in the presence of each other, have signed our names as witnesses, and we declare that at the time of the execution of this instrument, the testatrix, according to our best knowledge and belief, was of sound mind and under no constraint or undue influence.

William B. Baker, residing at Glasgow, Montana.  
William B. Baker, residing at Glasgow, Montana.

STATE OF MONTANA)  
 : ss  
 COUNTY OF VALLEY)

We, Geraldine M. Schneider, William B. Baker and William B. Baker, the testatrix and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testatrix signed and she executed the instrument as her Last Will and that she signed willingly and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witnesses and that to the best of his knowledge, the testatrix was, at that time,

eighteen or more years of age, of sound mind and under no constraint or undue influence.

Elizabeth M. Schuman Testatrix

W. Eugene Becton Witness

Edmund Hunt Witness

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_

Elizabeth Becton and Edmund Hunt, witnesses,  
this 1st day of February 1982.

(Notarial Seal)

[Signature]  
Notary Public for the State of Montana  
Residing at Glasgow, Montana.  
My Commission expires April 5, 1982.

FILED

2007 NOV 19 PM 4 27

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

PATTY D. WEEKS

CLERK OF THE DIST. COURT

DEPUTY

Attorneys for Defendant

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

ANSWER

Davidson Trust Co., by its undersigned counsel, answers plaintiff's Complaint as follows. Notwithstanding its being mis-named by the Complaint, Davidson Trust Co. assumes that plaintiff will take the steps necessary to substitute the correctly-named corporation as defendant, and therefore answers the Complaint as if it had been named the defendant.

1 - 2. Paragraphs 1 and 2 are characterizations of plaintiff's claims, and require no response by the defendant.

ANSWER - 1

RANDALL & DANSKIN, P.S.  
ATTORNEYS AND COUNSELORS  
1500 BANK OF AMERICA FINANCIAL CENTER  
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31.

1 **PARTIES, JURISDICTION AND VENUE**

2 3 - 6. Answering paragraphs 3 through 6, Davidson Trust Co., believing itself to  
3 the intended defendant, again points out that it has been misnamed by plaintiff's  
4 Complaint, but otherwise admits the allegations of paragraphs 3 through 6.  
5

6 **STATEMENT OF THE FACTS**

7 7. Answering paragraph 7, defendant admits that Exhibit A to the Complaint  
8 is a true and correct copy of the 2<sup>nd</sup> Amended and Restated Geraldine M. Schneider  
9 Revocable Living Trust delivered to it at the time it agreed to serve as trustee. Defendant  
10 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
11 allegations of the paragraph.  
12

13 8. Answering paragraph 8, defendant admits the allegations of the first three  
14 sentences of the paragraph. It denies that the fourth sentence fully or fairly describes its  
15 role as trustee.  
16

17 9 - 11. Answering paragraphs 9 through 11, defendant denies that plaintiff was a  
18 beneficiary of the Trust after her interest was fully distributed to her in 2006 and denies  
19 that following the death of Geraldine M. Schneider "the daughters were to receive an  
20 equal share of the Trust Estate to be paid for the benefit of each daughter." (emphasis  
21 added). Defendant admits the remaining allegations of the paragraphs.  
22

23 12. Answering paragraph 12, defendant admits that one of its employees  
24 concluded in error that Margaret Mary VanDyke's share of the Trust assets was to pass to  
25 the plaintiff and so informed the plaintiff. Defendant lacks knowledge or information at  
26  
27  
28

ANSWER - 2

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32.

1 this time sufficient to form a belief as to the truth of plaintiff's characterization of the  
2 conversation and therefore denies all remaining allegations of the paragraph.

3  
4 13. Defendant admits the allegations of paragraph 13.

5 14. Defendant lacks knowledge or information sufficient to form a belief as to  
6 the truth of the allegations of paragraph 14 and therefore denies the same.

7  
8 15. Defendant admits the allegations of paragraph 15.

9 16. Defendant lacks knowledge or information sufficient to form a belief as to  
10 the truth of the allegations of paragraph 14 and therefore denies the same.

11  
12 **STATEMENT OF CLAIMS**

13 **BREACH OF FIDUCIARY DUTY**

14 17. Defendant incorporates its answers to the preceding paragraphs as if fully  
15 set forth herein.

16  
17 18 - 19. Answering paragraphs 18 and 19, defendant admits that it provides  
18 trust administration services, that as trustee of the Trust, it had a duty to administer the  
19 Trust in accordance with the Trust provisions, and that it received compensation for its  
20 services. Defendant denies all remaining allegations of the paragraphs.

21  
22 **NEGLIGENCE**

23  
24 20. Defendant incorporates its answers to the preceding paragraphs as if fully  
25 set forth herein.

26 21. Answering paragraph 21, defendant admits that as a compensated trustee it  
27 had certain duties, but denies that plaintiff was a beneficiary following distribution of her  
28

ANSWER - 3

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1 full share of the Trust Estate in 2006 and denies all remaining allegations of the  
2 paragraph.

3  
4 **INFLECTION OF EMOTIONAL DISTRESS**

5 22. Defendant incorporates its answers to the preceding paragraphs as if fully  
6 set forth herein

7  
8 23. Answering paragraph 23, defendant admits that it provides trust  
9 administration services, but denies all remaining allegations of the paragraph.

10 **DAMAGES, ATTORNEYS FEES AND COSTS**

11  
12 24 -26. Defendant denies all allegations of paragraphs 24 through 26.

13  
14 **AFFIRMATIVE DEFENSES**

15  
16 1. Plaintiff fails to state a claim upon which relief can be granted.

17 2. Plaintiff's own fault exceeded that of the defendant and she is barred from  
18 recovery by her contributory fault.

19  
20 3. Alternatively, plaintiff's damages are materially attributable to her own  
21 comparative fault, and must be reduced for her fault.

22 4. For defendant to have distributed the Trust funds to the plaintiff and for  
23 plaintiff to have retained them would have been a breach of trust, and a breach of the  
24 plaintiff's and defendant's fiduciary duty owed to her children.

25  
26 5. Plaintiff has failed to mitigate her damages.

27  
28  
ANSWER - 4

RANDALL & DANSKIN, P.S.  
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34.

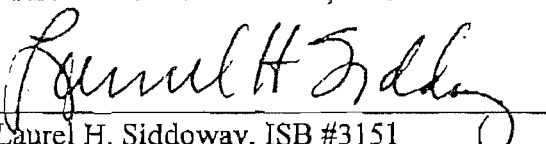
1 WHEREFORE, defendant prays for relief as follows:

- 2 1. That plaintiff's claim be dismissed with prejudice and that she take  
3 nothing thereby,  
4  
5 2. For an award of its attorney's fees herein pursuant to Sections 12-120 and  
6 12-121 of the Idaho Code, and  
7  
8 3. For such other and further relief as the Court deems just and equitable.

9 DATED this 19th day of November, 2007.

10 RANDALL & DANSKIN, P.S.

11  
12 By:

  
13 Laurel H. Siddoway, ISB #3151  
14 Attorneys for Defendant  
15  
16  
17  
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28

ANSWER - 5

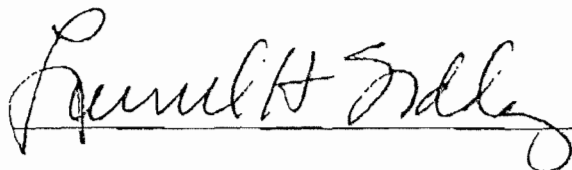
RANDALL & DANSKIN, P.S.  
ATTORNEYS AND COUNSELORS  
1500 BANK OF AMERICA FINANCIAL CENTER  
601 WEST RIVERSIDE AVENUE  
SPOKANE, WASHINGTON 99201-0653  
(509) 747-2052

## CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of November, 2007, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

☒ Via First Class Mail  
☐ By Hand Delivery  
☐ Via Facsimile:  
☐ By E-mail:  
☐ By Overnight Delivery



ANSWER - 6

RANDALL & DANSKIN, P.S.  
ATTORNEYS AND COUNSELORS  
1500 BANK OF AMERICA FINANCIAL CENTER  
601 WEST RIVERSIDE AVENUE  
SPOKANE, WASHINGTON 99201-0653  
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36.

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

Attorneys for Defendant

FILED

2010 JAN 25 AM 11 16

PATTY O. WEEKS  
CLERK OF DISTRICT COURT

*Patty O. Weeks*  
DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

Defendant Davidson Trust Co. moves the Court for summary judgment dismissal of plaintiff's claims, on grounds that undisputed facts establish that there is no genuine issue of material fact and defendant is entitled to judgment as a matter of law.

This motion is based upon a supporting brief and affidavits of J. Todd Edmonds, Jan Shelby, Larry LeMaster and Laurel Siddoway, filed herewith.

DATED this 22<sup>nd</sup> day of January, 2010.

RANDALL & DANSKIN, P.S.

By:

*Laurel H. Siddoway*

Laurel H. Siddoway, ISB #3151  
Attorneys for Defendant

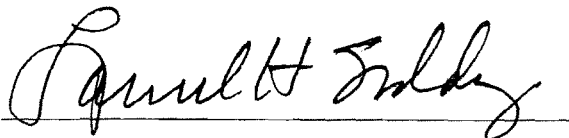
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT - 1

### CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☐ Via First Class Mail
- ☐ By Hand Delivery
- ☐ Via Facsimile:
- ☐ By E-mail:
- ☒ By Overnight Delivery



LAUREL H. SIDDOWAY, ISB #3151  
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Attorneys for Defendant

FILED  
2010 JAN 25 AM 11 16  
PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
*Patty O. Weeks*  
DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

DEFENDANT'S BRIEF IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT

**Summary of Argument**

Virginia Beaudoin contends in this action that Davidson Trust Co. ("Davidson Trust") is liable for substantial damages because a trust assistant stated, mistakenly, that she was the beneficiary of a trust administered for the benefit of her sister – a report that Mrs. Beaudoin doubted at the time was correct. Davidson Trust later recognized that it was Virginia Beaudoin's children, not Virginia Beaudoin, who were the rightful beneficiaries, and appropriately distributed the trust assets to them. Mrs. Beaudoin nonetheless asserts damages equal to the \$370,000 she had hoped to receive.

DEFENDANT'S BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT - 1

Based on undisputed facts, and as a matter of law, Mrs. Beaudoin has no claim.

She has no claim for breach of fiduciary duty because upon the death of her sister, the beneficiaries of her trust were fixed and determinable as Virginia's children, Brooks and Briana Beaudoin. Davidson Trust Co.'s *fiduciary* duty was owed to Brooks and Briana. Davidson Trust owed no fiduciary duty to Virginia Beaudoin at that point that it could breach.

She has no claim for negligence. First, the act complained of was a representation. Representations made negligently are actionable, if at all, only as negligent misrepresentation. Like many states, Idaho limits the tort of negligent misrepresentation to a narrow class of situations, which the facts of this case do not meet.

Second, any party claiming negligent misrepresentation must have *justifiably* relied on the misrepresentation. Undisputed facts establish that Mrs. Beaudoin had many compelling reasons to doubt the report: her own first-hand knowledge that her children had been named the beneficiaries in 1996, her prior receipt of a copy of the Trust agreement, her knowledge that the trustor (her mother) had lacked mental capacity to change the beneficiary designation, and her son's doubt and disappointment. Yet Mrs. Beaudoin did nothing to review the Trust agreement, which was available to her, or to otherwise investigate her or her son's doubts. As a matter of law, she did not justifiably rely.

She has no claim for infliction of emotional distress because she complains of no intentional or outrageous conduct, and negligent infliction of emotional distress is simply a category of the tort of negligence – a claim she does not have.

Finally, and with respect to all of her claims, Mrs. Beaudoin's greater-than-50% comparative fault forecloses any recovery.

### **Material Undisputed Facts**

Virginia Beaudoin was adopted as an infant by Geraldine Schneider, who had adopted another infant daughter, Margaret, six years earlier.<sup>1</sup> Virginia and Margaret<sup>2</sup> were Mrs. Schneider's only children. In February 1982, Mrs. Schneider established the Geraldine M. Schneider Revocable Living Trust (hereafter "the Trust"), which she thereafter amended twice. The second amendment to the Trust dated May 9, 1996 (hereafter "the Second Amended Trust") is the trust document at issue in this case.<sup>3</sup> A true and complete copy of the Second Amended Trust is attached as Exhibit A to the Affidavit of Laurel Siddoway, filed herewith. Generally, the Second Amended Trust provided that income and principal were available to Mrs. Schneider during her lifetime and that upon her death, the assets would be divided into two equal shares – one for the benefit of Virginia and one for the benefit of Margaret.<sup>4</sup>

Prior to executing the Second Amended Trust, Mrs. Schneider asked Virginia to meet with her and her lawyer, Jim Rector, to discuss some of the anticipated changes.<sup>5</sup> Among the changes discussed was Mrs. Schneider's decision that if Margaret outlived Mrs. Schneider (as expected) then upon Margaret's death, any assets remaining in Margaret's share of the Trust

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<sup>1</sup> Deposition of Virginia Beaudoin taken on April 28, 2008 (hereafter "Virginia Beaudoin Depo.") at p. 17, Exhibit B to Affidavit of Laurel Siddoway (hereafter "Siddoway Aff.").

<sup>2</sup> In discussing administration of the Trust during the lifetime of the two daughters, we refer to the plaintiff as "Virginia" and to Margaret Van Dyke as "Margaret" for ease of reference. Elsewhere we refer to the plaintiff as Mrs. Beaudoin.

<sup>3</sup> Complaint, p. 2, ¶ 7, Ex. A to Siddoway Aff.

<sup>4</sup> Second Amended Trust, Ex. A to Siddoway Aff.

<sup>5</sup> Virginia Beaudoin Depo. at pp. 14-16, 22, Ex. B to Siddoway Aff.



would pass to Virginia's children, Brooks and Briana, whom Mrs. Schneider adored.<sup>6</sup> Virginia told her husband Barry about the change.<sup>7</sup> Several years later, in or about 2000, Virginia told her son Brooks that Margaret's share of the Trust would pass to him and Briana.<sup>8</sup>

Virginia had been given a fiduciary role and a considerable amount of authority for the management of her mother's assets and estate. In 1994, Virginia was given a durable power of attorney, at a time when her mother was getting forgetful and doing some strange things, and Mrs. Schneider's attorney, Jim Rector, suggested that a durable power of attorney be put into place.<sup>9</sup> With execution of the Second Amended Trust in 1996, Virginia was appointed Adviser to the Trustee, a co-fiduciary role. Davidson Trust was required to obtain Virginia's consent before changing investment strategy, making discretionary payments of principal, making loans or determining that Mrs. Schneider was incapable of handling her own affairs.<sup>10</sup> Following Mrs. Schneider's death and the creation of the separate trusts for the daughters, Virginia (unlike her sister) enjoyed the right to draw out all of her principal if she wished, leaving none for her children, who were otherwise the remainder beneficiaries of her trust.<sup>11</sup> In contrast, Margaret was only entitled to receive income, with the principal retained for the benefit of Brooks and Briana upon Margaret's death.<sup>12</sup>

Virginia was sufficiently familiar with the terms of the Trust and durable power of attorney to act on her rights and authority. By 1999, the Trustee, with Virginia's required

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<sup>6</sup> *Id.*

<sup>7</sup> Response to Defendant's Interrogatory No. 2, Ex. D to Siddoway Aff.

<sup>8</sup> Virginia Beaudoin Depo. at pp. 11-12, Ex. B to Siddoway Aff.

<sup>9</sup> *Id.* at p. 20 and at Depo. Ex. 2.

<sup>10</sup> Second Amended Trust, Ex. A to Siddoway Aff. at Article XIII, pp. 12-13.

<sup>11</sup> *Id.*, Article V, Section A, pp. 4-7.

<sup>12</sup> *Id.*, Article V, Section B, pp. 7-8.

consent, had determined that Mrs. Schneider no longer had the mental capacity to manage her affairs. Accordingly it was Virginia, exercising the authority she possessed under her durable power of attorney, who authorized Davidson Trust to engage in annual gifting in and after January 1999, authorizing Davidson Trust to make the following gifts on the following dates:

On January 26, 1999:

\$10,000 to Virginia Beaudoin  
\$10,000 to Virginia's husband, Barry  
\$10,000 to Virginia's son, Brooks  
\$10,000 to Virginia's daughter, Briana, and

\$10,000 to Margaret Van Dyke

On January 17, 2001:

\$10,000 to Virginia Beaudoin  
\$10,000 to Virginia's husband, Barry  
\$10,000 to Virginia's son, Brooks  
\$10,000 to Virginia's daughter, Briana, and

\$10,000 to Margaret Van Dyke

On January 15, 2002:

\$11,000 to Virginia Beaudoin  
\$11,000 to Virginia's husband, Barry  
\$11,000 to Virginia's son, Brooks  
\$11,000 to Virginia's daughter, Briana

\$11,000 to Margaret Van Dyke<sup>13</sup>

In light of Virginia's authority to act as her mother's attorney-in-fact following Mrs. Schneider's incapacity, Davidson Trust consulted Virginia in March 2000 about whether to change the Trust to protect Margaret's share from claims by Margaret's ex-husband. A copy of a

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<sup>13</sup> Affidavit of J. Todd Edmonds, filed herewith, (hereafter "Edmonds Aff.") at ¶2 and at Exs. 1 and 2 to Edmonds Aff.; Virginia Beaudoin Depo. at pp. 33-34, Ex. B to Siddoway Aff.

letter to Virginia from Trust Officer Larry LeMaster, dealing with this issue, is attached to the Affidavit of Larry LeMaster, filed herewith (hereafter "LeMaster Aff.").<sup>14</sup> LeMaster provided Virginia with a copy of the Second Amended Trust with his letter, calling her attention to the provisions dealing with what would become, on Mrs. Schneider's death, Margaret's share of the Trust.<sup>15</sup>

Geraldine Schneider died on March 10, 2003.<sup>16</sup> In April 2003, Davidson Trust Co. opened separate accounts for the half of the trust assets that were to be held for the benefit of Virginia and the half that were to be held for the benefit of Margaret.<sup>17</sup> Again, Virginia was sufficiently familiar with the terms of the Trust to act on her unique right to compel distributions, and between the opening of her account in April 2003 and October 2006, she withdrew the entire \$374,346.87 available in her share of the trust.<sup>18</sup> Following Virginia's exhaustion of her share of the Trust in October 2006, the only Geraldine Schneider Trust assets for which Davidson Trust served as trustee were those in the remainder trust for the primary benefit of Margaret.<sup>19</sup>

On March 30, 2007, Margaret died. With her death, the beneficiaries of the Trust were fixed and determinable as Brooks and Briana. With Margaret's death, Virginia Beaudoin had no interest, contingent or otherwise, under any Trust agreement being administered by Davidson Trust.<sup>20</sup>

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<sup>14</sup> Affidavit of Larry LeMaster, filed herewith at ¶ 2, and appended exhibit.

<sup>15</sup> *Id.*

<sup>16</sup> Edmonds Aff. at ¶ 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ¶ 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, ¶ 5, Virginia Beaudoin Depo. at p. 27, Ex. B to Siddoway Aff.

Margaret's husband reported her death to Jan Shelby, a trust assistant for Davidson Trust, on the day of her death, which was a Friday.<sup>21</sup> He asked if Ms. Shelby would let Mrs. Beaudoin know that Margaret had passed, because the two sisters had been estranged. He also had questions for Ms. Shelby about some final expenses.<sup>22</sup> Ms. Shelby tried to reach Mrs. Beaudoin the same day – not to tell her she was the beneficiary, but to let her know her sister had died.<sup>23</sup> When she was unable to reach Mrs. Beaudoin she called again on Saturday, from home, because she thought it was important to let her know of her sister's death as soon as possible.<sup>24</sup>

It was Ms. Shelby's understanding from discussions she had had in the past with a former Trust Officer, Linda Russell, that when Margaret died, the funds *would* pass to Mrs. Beaudoin. So when Ms. Shelby reached Mrs. Beaudoin and reported Margaret's death, she mentioned the expenses and said something to the effect that "as the beneficiary, we'll need your permission to pay these expenses."<sup>25</sup>

Mrs. Beaudoin has likewise testified that Ms. Shelby tried to reach her on Friday and then did reach her on Saturday, March 31.<sup>26</sup> The two women dispute much of the content of their conversation, however. For purposes of this summary judgment motion, Mrs. Beaudoin's version of the conversation is assumed to be true. Mrs. Beaudoin testified that the following exchange took place with Ms. Shelby, whom Mrs. Beaudoin believed was a secretary:

On a Friday, the 30<sup>th</sup> of March, there was a phone call on my home phone from Jan Shelby telling me she was from D.A. Davidson and she had something that she needed to

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<sup>21</sup> Affidavit of Jan Shelby, filed herewith, at ¶ 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, at ¶ 3.

<sup>26</sup> Virginia Beaudoin Depo. at p. 12, Ex. B to Siddoway Aff.

discuss with me and would I please call her back. And I didn't get home from work until late that day, it was about six o'clock, and I thought, well, I'll just call her Monday because it's too late now. So Saturday, the next day, which would have been the 31<sup>st</sup>, right, I got a call at noon from Jan Shelby telling me that my sister had passed away and that I was the beneficiary. And I told her, "I don't think that's right," I said, "I think this money goes to my kids." "Oh, no," she said, "it goes to you." And I said "really," and she goes "yeah."

After this, Mrs. Beaudoin has testified, the two discussed what she needed to do.<sup>27</sup>

Mrs. Beaudoin acknowledges that when she told her son Brooks that she, rather than he, would inherit the assets from Margaret's share of the Trust, he expressed surprise and disappointment.<sup>28</sup> Mrs. Beaudoin did not investigate her or Brooks' doubts by reviewing the Trust agreement herself, consulting an attorney, or expressing any further questions or doubts to Davidson Trust. She has testified to the following explanation "why not":

Q. If you had you own questions about whether Miss Shelby was correct about the beneficiary and your son also had questions, why didn't you do anything to investigate whether Miss Shelby might be mistaken about the trust?

A. Well, because when I told her I thought the children were beneficiaries, I thought it was her duty to find out if they were or weren't. I already knew.

Q. You already knew what?

A. That they were the beneficiaries.

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<sup>27</sup> Virginia Beaudoin Depo. at p. 12, Ex. B to Siddoway Aff. Jan Shelby denies that Virginia Beaudoin ever questioned her status as a beneficiary or suggested that she thought her children were the beneficiaries. Ms. Shelby's testimony is that if Mrs. Beaudoin had expressed doubt that she was the proper beneficiary, she would have notified a Trust officer so that the Trust agreement could be reviewed, and that she wouldn't have presumed to "reassure" Mrs. Beaudoin about her entitlement. Ms. Shelby's testimony is also that she offered to send a copy of the Trust instrument to Mrs. Beaudoin but that Mrs. Beaudoin said that she already had a copy and did not need another. Shelby Aff. at ¶¶ 4, 5.

<sup>28</sup> Virginia Beaudoin Depo at p. 43, Ex. B to Siddoway Aff.

Q. Did you tell her you expected her to investigate that?

A. No.

Q. Why not?

A. Because it was obvious that they didn't read the will in its entirety and I didn't have a copy of the will and I didn't know that maybe it had been changed.

Q. So it was your – your belief at the time you spoke with Jan Shelby that it was obvious that Davidson Trust had not read the trust in its entirety?

A. Yes.<sup>29</sup>

Mrs. Beaudoin contends, and the Court will therefore assume it to be true for purposes of this motion, that in reliance on the belief that she would inherit Margaret's remaining share of the Trust, she decided to quit her self-employment as a cosmetologist.<sup>30</sup> According to Mrs. Beaudoin, by the second week of April she had notified Sherry Lyons, the owner of the Nail Elegance salon at which she worked, that she would be giving up the hair station that she leased in the salon.<sup>31</sup> Ms. Lyons' recollection is that Mrs. Beaudoin gave notice even earlier; Ms. Lyons recalls that notice was timely under the 30-day notice requirement under Mrs. Beaudoin's lease, meaning that Mrs. Beaudoin gave notice almost immediately after hearing from Jan Shelby.<sup>32</sup> In either event, by mid-April, Ms. Lyons had identified a new tenant for the station and placed an ad in the Lewiston Tribune announcing an open house to introduce the new

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<sup>29</sup> *Id.*, pp. 49-50.

<sup>30</sup> Complaint, ¶ 14.

<sup>31</sup> Virginia Beaudoin Depo., pp. 8-9, Ex. B to Siddoway Aff.

<sup>32</sup> Deposition of Sherry Lyons taken on February 10, 2009 (hereafter "Sherry Lyons Dep.") at pp. 10-11, Ex. C to Siddoway Aff.

cosmetologist, B.K. Kachelmier, to Nail Elegance customers.<sup>33</sup> Sponsoring and advertising such an open house was something that Ms. Lyons typically did when a new cosmetologist was joining the salon.<sup>34</sup>

In mid-June 2007, in the process of acting on a final distribution of the remainder of the Geraldine Schneider Trust, J. Todd Edmonds, a trust officer for Davidson Trust, reviewed the Second Amended Trust and recognized that an error had been made. He promptly notified or caused Mrs. Beaudoin, Brooks Beaudoin and Briana Beaudoin to be notified.<sup>35</sup> Upon hearing that she was not the beneficiary, Mrs. Beaudoin requested and was able to obtain a copy of the Second Amended Trust from Jim Rector, her late mother's attorney.<sup>36</sup>

The Trust assets of over \$370,000 were thereafter properly distributed to Brooks and Briana (each receiving one-half, or \$185,869.37) in accordance with the terms of the Trust Agreement.<sup>37</sup> Mrs. Beaudoin re-commenced work as a cosmetologist in or about July or August 2007.<sup>38</sup> This suit followed. Mrs. Beaudoin asserts three causes of action: a claim for breach of fiduciary duty, a claim for negligence, and a claim for infliction of emotional distress.

### Legal Argument

**I. Beaudoin has no claim for breach of fiduciary duty because at the time of the conduct complained of, Davidson Trust had no fiduciary relationship to her.**

To establish a claim for breach of fiduciary duty, a plaintiff must establish that the defendant owed plaintiff a fiduciary duty and that the fiduciary duty was breached. *Tolley v. Thi*

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Edmonds Aff. at ¶ 6.

<sup>36</sup> Virginia Beaudoin Depo. at p. 14, Ex. B to Siddoway Aff.

<sup>37</sup> Edmonds Aff. at ¶ 6.

<sup>38</sup> Response to Defendant's Interrogatory No. 16, Ex. D to Siddoway Aff.

Co., 140 Idaho 253, 261, 92 P.3d 503, 511 (2004). Whether a fiduciary relationship exists is a question of law. *Hayden Lake Protection Dist. V. Alcorn*, 141 Idaho 388, 401, 111 P.3d 73, 86 (2005). Generally speaking, Davidson Trust owes a fiduciary relationship to beneficiaries of trusts for which it serves as trustee, but it does not owe a fiduciary duty to everyone in the world simply because it is a trust company. Compare *Wade Baker & Sons Farms v. Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints*, 136 Idaho 922, 928, 42 P.3d 712, 715 (Id. App. 2002) (churches may stand in a fiduciary relationship to members, but Church corporation did not stand in a fiduciary relationship to plaintiff), *Podolan v. Idaho Legal Aid Services, Inc.*, 123 Idaho 937, 947, 854 P.2d 280, 290 (Id. App. 1993) (Legal Aid Services, like other lawyers, stands in a fiduciary relationship to clients, but plaintiff was not its client at the time of the acts complained of), *Allen v. Stoker*, 138 Idaho 265, 61 P.3d 622 (2002) (status as attorney did not create a duty owed to non-client heirs with whom attorney dealt in representing the personal representative).

Where a fiduciary relationship once existed, but then ceased, the existence of a claim for breach of fiduciary relationship depends on whether the acts complained of occurred while the fiduciary relationship existed, or after it was over. In *County Cove Development, Inc. v. May*, 143 Idaho 595, 602-3, 150 P.3d 288 295-6 (2006), the Idaho Supreme Court held that the fact that plaintiffs and defendants were once partners and thereby stood in a fiduciary relationship would not support a claim for breach of fiduciary duty for conduct taking place after the partnership relationship had ended. This was found to be the case even though the plaintiffs contended that they believed and understood that the defendants were still acting on their behalf. *Id.* The termination of the partnership terminated the fiduciary relationship. *Id.* On similar



reasoning, the Idaho Supreme Court held in *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007) that the corporation, directors and officers of a corporation owed no fiduciary duty to a shareholder prior to the time he became a shareholder, even though they did owe him a fiduciary duty thereafter. 155 P.3d at 1174.

Here, Virginia Beaudoin was *once* a beneficiary of the Trust, but her status as a beneficiary ended when she exhausted her share of the Trust in October 2006. She might contend that she continued to have a *contingent* stake in Margaret's share – she would receive assets in the unlikely event that (1) both her children died first, (2) Margaret died next, and (3) she survived them all, with assets remaining in Margaret's share – but even that remote contingency terminated the moment Margaret died. Upon Margaret's death, Brooks and Briana's status as the beneficiaries was fixed and determinable. It was the two of them who were owed a fiduciary duty by Davidson Trust, not Mrs. Beaudoin.

Any duty owed by Davidson Trust to Mrs. Beaudoin was not a fiduciary duty.

## **II. Beaudoin has no claim for negligence.**

### **A. Beaudoin is complaining of a misrepresentation, but negligent misrepresentation is actionable in Idaho only when committed by an accountant.**

While Virginia Beaudoin couches her second claim for relief as “negligence,” she is complaining about a negligent misrepresentation. A party cannot circumvent limitations imposed on recovery for negligent misrepresentation by characterizing its action as one for negligence. As pointed out by the U.S. Supreme Court in *United States v. Neustadt*, 366 U.S. 696, 706, 81 S.Ct. 1294 (1961), asserting a claim of “negligence” based on breach of a duty “to use due care in obtaining and communicating information upon which [a] party may reasonably

be expected to rely in the conduct of his economic affairs” “is only to state the traditional and commonly understood legal definition of the tort of negligent misrepresentation. . .” *Neustadt* cites both the Restatement of Torts and Prosser for the proposition that “negligent misrepresentation” is simply the species of negligence that can occur in obtaining and communicating information. *See id.*, footnote 16. While *Neustadt* involved a party who was trying to circumvent limitations on recovery under the Federal Tort Claims Act by characterizing a claim for negligent misrepresentation as one for negligence, its logic extends to any setting in which recovery for negligent misrepresentation is circumscribed. Otherwise, limitations on recovery for negligent misrepresentation would be meaningless. A plaintiff would simply recast her negligent misrepresentation claim as a negligence claim.

In first recognizing the tort of negligent misrepresentation in *Idaho Bank & Trust Co. v. First Bancorp of Idaho*, 115 Idaho 1082, 1084, 772 P.2d 720, 721 (1989), the Idaho Supreme Court limited the cause of action to claims against public accountants for negligently prepared financial statements that present the three elements identified as essential in *Credit Alliance v. Arthur Andersen & Co.*, 493 N.Y.S.2d 435, 483 N.E.2d 110 (Id. App. 1985).<sup>39</sup> The Idaho Supreme Court specifically declined the plaintiff’s invitation to adopt the Restatement of Tort’s more open-ended liability of “professionals” generally. 115 Idaho at 1084, 772 P.2d at 722.

Later Idaho cases continue to explicitly limit the negligent misrepresentation cause of action to accountants and affirm that summary judgment is proper outside that narrow context.

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<sup>39</sup> The required elements are that (1) the accountants must have been aware that the financial reports were to be used for a particular purpose or purposes, (2) in the furtherance of which a known party or parties was intended to rely, and (3) there must have been some conduct on the part of the accountants linking them to that party or parties, which evinces the accountants’ understanding of that party or parties’ reliance. 493 N.Y.S.2d at 443, 483 N.E.2d at 118.

*Duffin v. Idaho Crop Imp. Ass'n*, 126 Idaho 1002, 1010, 895 P.2d 1195, 1203 (1995) (“[W]e expressly hold that, except in the narrow confines of a professional relationship involving an accountant, the tort of negligent misrepresentation is not recognized in Idaho”). In *Mannos v. Moss*, *supra*, the Idaho Supreme Court was asked to extend the tort of negligent misrepresentation to include misrepresentations made by business persons in accounting documents but refused to extend the tort outside the accountant relationship.

**B. The Court can determine as a matter of law that Beaudoin did not justifiably rely on Ms. Shelby’s statement that she was a beneficiary.**

In addition to the insurmountable hurdle to a negligent misrepresentation claim presented by *Duffin* and *Mannos*, Mrs. Beaudoin is unable, as a matter of law, to demonstrate the essential element of justifiable reliance.

In its decision in *Stewart Title of Idaho, Inc. v. Nampa Land Title Co., Inc.* 110 Idaho 330, 333, 715 P.2d 1000 (1986), the Idaho Supreme Court discussed the “newly emerging tort” of negligent misrepresentation, which had so far not been recognized in Idaho. The Supreme Court declined to recognize or reject the tort in *Stewart Title* (recognizing but substantially limiting it later) but it observed that a necessary element of the claim was “justifiable reliance.”

Reasonable or justifiable reliance is also an element of an equitable estoppel claim, and it has been discussed extensively in equitable estoppel cases. It is found lacking where the party claiming to be misled had access to accurate information. *See, e.g., Alder v. Mountain States Telephone & Telegraph Co.*, 92 Idaho 506, 511, 446 P.2d 628, 633 (1968) (a party claiming estoppel must be “excusably ignorant of the true facts”); *Tiffany v. City of Payette*, 121 Idaho 396, 403, 825 P.2d 493, 500 (1992) (party claiming estoppel must show “lack of knowledge and

of the means of knowledge of the truth as to the facts in question"); *Williams v. Blakley*, 114 Idaho 323, 325, 757 P.2d 186, 188 (1987) (one of the elements is that the party asserting estoppel "did not know or could not discover the truth"); *Mason v. Tucker & Associates*, 125 Idaho 429, 871 P.2d 846 (Idaho App.1994) (equitable estoppel may be applied only for so long as plaintiff did not know and could not discover the truth). On a related issue, Idaho courts hold that a party's failure to read a contract, where he had the opportunity to read it, will not excuse his obligation to perform according to its terms. *McCall v. Potlatch Forests, Inc.*, 69 Idaho 410, 415, 208 P.2d 799, 802 (1949); *West v. Prater*, 57 Idaho 583, 593-94, 67 P.2d 273, 277 (1937); *Irwin Rogers Insurance Agency, Inc. v. Murphy*, 122 Idaho 270, 273, 833 P.2d 128, 131 (Idaho App.1992); *Liebelt v. Liebelt*, 118 Idaho 845, 848, 801 P.2d 52, 55 (Idaho App.1990).

Overwhelming and undisputed evidence outlined above establishes that Virginia Beaudoin was not excusably ignorant of the true facts, nor did she lack the means of discovering the true facts:

- She had first-hand knowledge that her children had been named the beneficiaries in 1996 and even met with Mrs. Schneider and attorney Jim Rector to discuss it;
- She understood that her mother had named Brooks and Briana as the beneficiaries because she "adored them." She has never articulated any reason why her mother's intent to make them beneficiaries would have changed;
- She told her husband that their children were the beneficiaries;
- She knew that her mother was mentally incapacitated by 1999, and therefore could not have made further changes to the Trust or her Will;
- She told her son Brooks in 2000 that he and his sister were the beneficiaries;

- She had been provided with her own copy of the Second Amended Trust at least once, by Larry LeMaster in 2000;
- She admits that she believed her children were the beneficiaries when she learned of her sister's death;
- Her son Brooks expressed his surprise and disappointment to her; and
- Even if she claims to have lost or misplaced the copy of the Second Amended Trust provided to her in 2000, she unquestionably had ready access to it. Upon being told in June 2007 that she would *not* receive the remainder of Margaret's share of the Trust, she requested and obtained a copy from Jim Rector.

Mrs. Beaudoin cannot reasonably contend that it was unduly burdensome for her to request and review a copy of the Trust in March 2007 when she thought that her children might be deprived of their entitlement. After all, she went to the trouble of asking Mr. Rector for a copy of the Trust when she thought she might be deprived of her entitlement. Mrs. Beaudoin had ready access to the Trust document and compelling reasons to believe that Ms. Shelby was mistaken.

### **III. Beaudoin has no claim for infliction of emotional distress.**

The third cause of action asserted by Virginia Beaudoin is for "infliction of emotional distress." As a matter of law, she has no claim for intentional or negligent infliction of emotional distress.

#### **A. Intentional infliction of emotional distress.**

To recover for intentional infliction of emotional distress, a plaintiff must show that (1) the defendant's conduct was intentional or reckless, (2) the conduct was extreme and outrageous, (3) there was a causal connection between the wrongful conduct and the plaintiff's emotional distress, and (4) the emotional distress was severe. *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 834, 801 P.2d 37 41 (1990). Liability is generated only by conduct that is very

extreme, and must be not merely unjustifiable, but rise to the level of “atrocious” and “beyond all possible bounds of decency,” such that it would cause an average member of the community to believe that it was outrageous. *Johnson v. McPhee*, 147 Idaho 455, 210 P.3d 563, 572 (Id. App. 2009), citing *Edmonson v. Shearer Lumber Products*, 139 Idaho 172, 180, 75 P.3d 733, 741 (2003).

Virginia Beaudoin has neither pleaded the elements of intentional infliction of emotional distress nor do the undisputed facts present any genuine issue of fact on the first, second or fourth elements.<sup>40</sup>

**B. Negligent Infliction of Emotional Distress.**

The tort of negligent infliction of emotional distress is “simply a category of the tort of negligence,” requiring the elements of a common law negligence action. *Johnson v. McPhee, supra*, 210 P.3d at 574. In addition, there must be some physical manifestation of the plaintiff’s emotional injury. *Id.*

Because Mrs. Beaudoin’s claim is in substance a claim for negligent misrepresentation, which fails for the reasons set forth above, she has no claim for negligent infliction of emotional distress.

**IV. All of Beaudoin’s claims are foreclosed by her greater-than-50% comparative fault.**

Davidson Trust asserted as its second affirmative defense that Virginia Beaudoin’s own fault exceeded that of Davidson Trust and she is barred from recovery by her contributory fault. Idaho broadly recognizes comparative fault where damages are sought for negligence or even

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<sup>40</sup> Virginia Beaudoin has testified to only minor emotional distress. Virginia Beaudoin Depo. at p. 42, Ex. B to Siddoway Aff.

intentional wrongdoing. If a jury finds that Mrs. Beaudoin is 50% or more at fault for her damages, then she will not be entitled to any recovery. I.C. § 6-801.

The same facts that undercut justifiable reliance, itemized above, establish Mrs. Beaudoin's greater-than-50% fault. Mrs. Beaudoin might argue that Davidson Trust was the trustee, which of course is true; but Mrs. Schneider had given Mrs. Beaudoin a co-fiduciary role that she had accepted and acted upon. The key difference, and what should be a controlling one, is that Davidson Trust's assistant's error was innocent or at worst negligent, and was caught and rectified. The undisputed facts, even viewed in the light most favorable to Mrs. Beaudoin, demonstrate recklessness on her part.

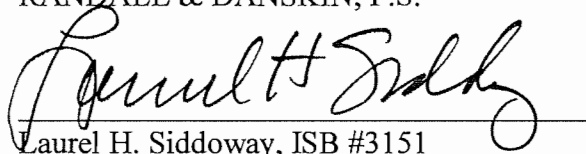
**V. Conclusion.**

For the foregoing reasons, the Court should grant summary judgment in defendant's favor and dismiss plaintiff's claims.

DATED this 22nd day of January, 2010.

RANDALL & DANSKIN, P.S.

By:



Laurel H. Siddoway, ISB #3151

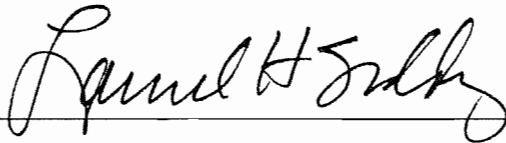
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☐ Via First Class Mail
- ☐ By Hand Delivery
- ☐ Via Facsimile:
- ☐ By E-mail:
- ☒ By Overnight Delivery

  
\_\_\_\_\_



Attorneys for Defendant

FILED

2010 JAN 25 AM 11 16

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
*Patty O. Weeks*  
DEPUTY

## VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

AFFIDAVIT OF  
LAUREL SIDDOWAY

STATE OF WASHINGTON )  
COUNTY OF SPOKANE ) :SS

I, Laurel Siddoway, attest as follows under penalty of perjury:

1. I am the attorney for Davidson Trust Company. I make this affidavit in support of its motion for summary judgment. The matters set forth herein are matters that are personally known to me, as to which I am competent to testify.

2. Attached hereto as Exhibit A is a true and complete copy of the 2<sup>nd</sup> Amended and Restated Geraldine M. Schneider Revocable Living Trust dated May 9, 1996 in the form

AFFIDAVIT OF  
LAUREL SIDDOWAY - 1

attached and offered by the plaintiff's Complaint herein.

3. Attached hereto as Exhibit B are the following true and complete pages of, and exhibits from, the deposition of Virginia Beaudoin taken in this matter on April 28, 2008:

The cover page,

Pages 8-9, 11-12, 14-17, 20, 22, 27, 33-34 , 42-43, 49-50,

Exhibit 2, and

The signature page.

4. Attached hereto as Exhibit C are the following true and complete pages of the deposition of Sherry Lyons taken in this matter on February 10, 2009:

The cover page,

Pages 10-11,

Exhibit 4, and

The signature page.

5. Attached hereto as Exhibit D are true and complete portions of plaintiff's objections and responses to Defendant's First Written Discovery to Plaintiff, including the following:

The cover page,

Interrogatory No. 2 and the response thereto,

Interrogatory No. 16 and the response thereto, and

The signature page.

Laurel H Siddoway  
Laurel Siddoway

SUBSCRIBED AND SWORN to before me this 22 day of January, 2010.



Kelly Bergstrom  
NOTARY PUBLIC in and for the State  
of Washington, Residing at Spokane Valley  
My Commission Expires: 5/3/2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☐ Via First Class Mail
- ☐ By Hand Delivery
- ☐ Via Facsimile
- ☐ By E-mail
- ☒ By Overnight Delivery

Laurel H Siddoway

# Exhibit A

AFFIDAVIT OF LAUREL SIDDOWAY

62.

2ND AMENDED AND RESTATED  
GERALDINE M. SCHNEIDER REVOCABLE LIVING TRUST

THIS AGREEMENT, made this 9 day of MAY, 1996, by and between GERALDINE M. SCHNEIDER of Glasgow, Montana, Trustor, and NORWEST CAPITAL MANAGEMENT & TRUST CO., MONTANA, a Montana corporation, Trustee.

RECITALS

WHEREAS, the parties have previously entered into a Trust Agreement dated February 1, 1982; and

WHEREAS, said Trust Agreement was amended and restated on the 23rd day of June, 1994; and

WHEREAS, Article III of said Trust Agreement reserves the right by the Trustor to amend or revoke the agreement in whole or in part; and

WHEREAS, the Trustor, Geraldine M. Schneider is hereby desirous of amending the entire agreement.

NOW THEREFORE, the Trustor does hereby amend the Geraldine M. Schneider Revocable Living Trust and all amendments thereto, and substitutes the following agreement in its entirety.

ARTICLE I.  
PARTIES

The Trustor is a single woman. I have two adult children, namely: Virginia Ruth Beaudoin, of Great Falls, Montana; and Margaret Mary VanDyke, of Estes Park, Colorado.

ARTICLE II.  
SCHEDULE OF ASSETS

At the date of these presents, the Trust Estate shall initially consist of those assets presently held by the Trustee by

said former agreement.

So long as this agreement remains unrevoked, either the Trustor or any other person may add additional property to the trust by deed, assignment, bequest, devise or otherwise. If so added, such property shall be governed by the provisions hereof with like effect as if presently included in the Trust Estate.

ARTICLE III.  
RIGHT OF REVOCATION

The Trustor shall have the right at any time and from time to time during the Trustor's lifetime, by instrument in writing subscribed by the Trustor and delivered to the Trustee during the Trustor's lifetime, to alter, amend or revoke this agreement, either in whole or in part; provided, however, that if altered or amended, the duties, powers and responsibilities of the Trustee shall not be substantially changed without its consent.

ARTICLE IV.  
TRUSTOR'S POWERS

During Trustor's lifetime (except during periods of time when, in the opinion of the Trustee, the Trustor is physically or mentally incapable of prudently managing her own affairs,) the Trustee shall pay to or for the benefit of Trustor, or her order, from the net income of the Trust Estate and, if net income shall be insufficient, then from the principal of the Trust Estate, such sums and at such times as the Trustor shall direct by an instrument in writing, subscribed by her, and filed with the Trustee during Trustor's lifetime. All net income of the Trust Estate not required by the provisions of this or the next succeeding section

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of this agreement to be distributed, shall be accumulated and may from time to time be added to principal and invested and reinvested, as the Trustee in its sound discretion shall determine; provided, however, that upon the death of the Trustor, all undistributed or accumulated or accrued net income of the Trust Estate shall, in any event, be added to the principal thereof.

During any period or periods of time when Trustor, in the opinion of the Trustee after consultation and concurrence of the Advisor, shall be physically or mentally incapable of prudently managing her own affairs, the Trustee shall disburse from the net income of the Trust Estate and to the extent the net income shall be insufficient, then from the principal thereof to or for the benefit of Trustor, such sums from time to time as in the judgment of the Trustee are required to provide for the reasonable support, comfort, maintenance, welfare, medical, dental, hospital or similar care for the Trustor without the appointment of a conservator or guardian in accordance with the standard of living now enjoyed by her. The Trustee may make such payments on the Trustor's behalf rather than to the Trustor. The discretion granted by this provision to the Trustee shall not be limited or qualified by any written directions filed by the Trustor with the Trustee, during any period or periods of time when Trustor shall, in the opinion of the Trustee, be physically or mentally incapable of prudently managing her own affairs, any such written directions shall be inoperative.

In determining whether or not Trustor is physically or

65.



mentally incapable under this article, the Trustee shall consult with the Advisor, Virginia Ruth Beaudoin, and she must concur that the Trustor is incapable, and in making its determination under this article, the Trustee and Advisor may rely on written medical opinion issued by a licensed medical doctor.

The Trustee is also authorized to arrange for the services of a companion for the Trustor, convalescent care, extended care or nursing home care, if the Advisor deems that any such care is necessary and advisable for the support, comfort, maintenance, welfare, medical, dental, hospital or similar care of the Trustor.

ARTICLE V.  
DISPOSITIVE PROVISIONS

Commencing with the date of the Trustor's death, the Trustee shall divide the Trust Estate so as to provide one share for each living child of the Trustor, Virginia Ruth Beaudoin, and Margaret Mary VanDyke, or their issue by right of representation.

In the event that there are outstanding any notes or loans from the trust to any of the beneficiaries at the time of the death of the Trustor, then said promissory note and loan shall be allocated to that respective beneficiary's share of the Trust Estate.

A. In regard to Virginia Ruth Beaudoin's share, the Trustee shall pay to or for the benefit of said Virginia Ruth Beaudoin, or her order, all of the net income of the Trust Estate. The Trustee shall, during the lifetime of said Virginia Ruth Beaudoin, pay or apply to her benefit, any amount, including all of the principal of said share, as directed by instrument in writing, subscribed by

her, and filed with the Trustee. All of the income required by the provisions of this trust to be distributed that are not distributed shall be accumulated and may be added from time to time to the principal of the trust and invested and reinvested as the Trustee, in its sound discretion, shall determine, provided, however, upon the death of the beneficiary, Virginia Ruth Beaudoin, or upon the death of the Trustor if the beneficiary has predeceased the Trustor, all undistributed or accumulated net income shall be added to the principal of the trust and be distributed according to the terms of the Will of Virginia Ruth Beaudoin.

i. In the event that Virginia Ruth Beaudoin shall have principal and/or accumulated income in her share of the trust at the time of her death she shall have a power of appointment to be exercised by her Will distributing said property as she shall designate. In the event the beneficiary does not leave a Will appointing said property, said property shall be held for the benefit of her issue.

ii. In the event the property is held for the benefit of the issue of the beneficiary the Trustee shall pay so much of the net income of the trust in such amounts and in such manner as the Trustee shall deem necessary or desirable to provide for the reasonable care, support, maintenance and education of her issue. Said income shall be paid in monthly or other convenient installments. The amount of such payments and the proportion of such payments shall be made at the Trustee's discretion or to accumulate the balance, if any, of said net income and to add the

same to the principal of the trust. In using such income, the Trustee in its discretion may pay or apply the same to or for the use of one member of said class or apportion it for the benefit of various members to the exclusion of others in such manner as it shall from time to time deem advisable without equality of treatment, taking into consideration the best interests and welfare of all such members, including the desirability of augmenting their respective estates and all other circumstances which the Trustee deem prudent.

iii. The Trustee may also pay or apply for the benefit of any child of Virginia Ruth Beaudoin or issue of any such child of the beneficiary from time to time, such sums from the principal of the trust as the Trustee deems necessary or advisable to provide for their proper care, support, maintenance and education.

iv. At the time that the youngest child of the beneficiary, Virginia Ruth Beaudoin, has attained the age of twenty-five (25) years, the Trustee shall divide this share of the trust so as to provide one share for each of Virginia Ruth Beaudoin's issue. The issue may, by written request, withdraw all or any portion of his share of said trust then remaining.

v. If any of the issue of Virginia Ruth Beaudoin should die before receiving complete distribution of the trust held for their benefit, the Trustee shall distribute the balance of such trust to the surviving issue of the deceased child of Virginia Ruth Beaudoin by right of representation. Upon the death of the child of Virginia Ruth Beaudoin, the share for the benefit of the issue of

the deceased child of Virginia Ruth Beaudoin shall be distributed outright to such issue by right of representation in equal shares. If she should die without issue, then to the beneficiary's Virginia Ruth Beaudoin, heirs at law.

B. In regard to Margaret Mary VanDyke's share, in the event that she shall survive the death of the Trustor, the Trustee shall pay or apply so much of the net income to or for the use of said Margaret Mary VanDyke during her lifetime as said beneficiary shall direct in writing. The Trustee shall, during the lifetime of said Margaret Mary VanDyke, pay or apply for her benefit, so much or all of the principal of the Trust as in its sole discretion it may deem advisable for her proper education, health, maintenance or support. The provisions of this paragraph are intended to primarily as a means of affording financial assistance to said Mary Margaret VanDyke but this enumeration is to serve only as a guide and shall not be construed to restrict the discretionary powers conferred upon the Trustee by this paragraph. In exercising this discretion hereunder the Trustee may inquire as to any other income or property of Margaret Mary VanDyke for whom such principal is to be used. Any decision of the Trustee with respect to the exercise of said discretionary power shall be made in good faith and shall fully protect the Trustee and shall be binding on and conclusive upon all persons interested in this Trust.

All of the income required by the provisions of this trust to be distributed that are not distributed shall be accumulated and may be added from time to time to the principal of the trust and

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invested and reinvested as the Trustee, in its sound discretion, shall determine, provided, however, upon the death of the beneficiary, Margaret Mary VanDyke, or upon the death of the Trustor if the beneficiary has predeceased the Trustor, all undistributed or accumulated net income shall be added to the principal of the trust and be distributed according to the terms of this Trust.

i. Upon the death of Margaret Mary VanDyke her share of this Trust shall terminate and shall be distributed to the surviving issue by right of representation of Virginia Ruth Beaudoin. In the event that Virginia Ruth Beaudoin's issue are not surviving then to Virginia Ruth Beaudoin, and in the event that she has predeceased leaving no issue surviving then to the Estate of Virginia Ruth Beaudoin.

ii. In the event that Margaret Mary VanDyke shall predecease the Trustor, the entire Margaret Mary VanDyke share of the Trust Estate shall be added to the Virginia Ruth Beaudoin share.

ARTICLE VI.  
RULE AGAINST PERPETUITY

It is an express condition of this Trust Agreement controlling over all other provisions, that the duration of any trust hereunder in no event shall continue for a period longer than the lives of all of the issue of the Trustor who may be living at the time of the death of the Trustor, and the survivors of all of them and twenty-one (21) years thereafter, at the end of which time the entire Trust Estate, principal and any undistributed income, shall be distributed outright unto the persons then entitled to receive

the income therefrom or to have it accumulated for their benefit, in the same shares as those in which such income is then being distributed to, or accumulated for, them.

ARTICLE VII.  
DEFINITIONS

As used in this Trust Agreement where appropriate, the masculine includes the feminine, and the singular includes the plural (and vice versa), and the following terms have the following meanings:

"Issue" means all persons who are descended from the person referred to, either by legitimate birth to, or legal adoption by him or any of his legitimately born or legally adopted descendants.

"Child" means naturally born or legally adopted children of the Trustor.

A child in gestation at the time of an event, who is later born alive, is "living" or "surviving" at the time of such event.

ARTICLE VIII.  
TRUSTEE'S ACCOUNTS

The Trustor expressly waives any requirement that the trust or trusts created by this agreement be submitted to the jurisdiction of any court, that the Trustee be appointed or confirmed by any court, and that the Trustee's accounts be heard and allowed by any court. This provision, however, shall in nowise prevent any of the beneficiaries hereunder or the Trustee from requesting any of the procedures waived in this article.

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ARTICLE IX.  
SUCCESSOR TRUSTEE

If at any time the Trustee shall resign or shall for any other reason cease or becomes unable to act as Trustee hereunder, the beneficiary or a majority of the beneficiaries to whom or to whole use the current net income of the Trust Estate is at the time authorized or required to be paid or applied and who shall at the time be at least twenty-one (21) years of age, may, by written instrument signed and acknowledged by him or them, as the case may be, and delivered to the appointee, appoint as successor Trustee hereunder any corporation organized for the laws of the State of Montana or authorized to do business therein and having corporate power and authority to administer the trust hereunder.

The Trustee may at any time be removed from its office as Trustee hereunder by delivery to it of a written instrument signed and acknowledged by the person or persons having at the time the power to appoint a successor Trustee as above provided.

The Trustee may at any time resign its office as Trustee hereunder by delivering written notice of resignation to the persons or person having at the time the power to appoint a successor Trustee as above provided.

Any corporation which shall, by merger, consolidation, purchase or otherwise, succeed to substantially all the personal trust business of the Trustee, shall, upon succession and without any appointment or other action by any person, be and become successor Trustee hereunder.

Any successor Trustee shall have, from and after its

appointment or succession to office hereunder and without any assignment or other action by any person, all the title, interest, rights and powers, including discretionary rights and powers, which are by the provisions of this agreement granted to and vested in the Trustee named herein.

ARTICLE X.  
TRUSTEE'S POWER TO TERMINATE  
SMALL ACCOUNTS

Any provision of this agreement to the contrary notwithstanding, the Trustee may at any time with the concurrence of the Adviser (hereinafter named) terminate any trust hereunder and transfer, pay over and deliver all of the then principal and income of such trust to the person or persons then entitled to the income from such trust, free of trust, if in its judgment the principal of such trust is so small that it would be inadvisable to continue to hold it in trust.

ARTICLE XI.  
PAYMENT TO MINORS

Whenever income or principal is to be used for the benefit of a person under the age of eighteen (18) years or a person who in the sole judgment of the Trustee is incapable of managing his/her own affairs, the Trustee may make payment of such property in any or all of the following ways:

A. By paying such property to the parent, guardian, conservator or other person having the care and control of such person under the age of eighteen (18) years for his benefit or to any authorized person as custodian for him under any applicable Gifts to Minors Act.

B. By paying such property to the guardian, conservator, committee or other person having the care and control of such incapable person.



C. By paying directly to any such beneficiary such sums as the Trustee may deem advisable as an allowance.

D. By expending such property in such other manner as the Trustee in its discretion believes will benefit any such beneficiary.

Upon the termination of any estate hereunder, if principal becomes vested in and payable to a person under the age of eighteen (18) years, the Trustee may make payment thereof in any of the ways set forth in the preceding Subclause or may defer payment of any part of all thereof, meanwhile applying to the use of such beneficiary so much or all of such principal and of the income therefrom, as the Trustee in its discretion may deem advisable. Any income not expended by the Trustee shall be added to principal. The Trustee shall pay any remaining principal to such beneficiary upon his attaining the age of eighteen (18) years or to his estate upon death prior to such payment in full.

Any payment or distribution authorized in this Article shall be a full discharge to the Trustee with respect thereto.

ARTICLE XII.  
TRUSTEE'S POWERS

The Trustee shall have all the powers, duties and obligations set forth and described in M.C.A. § 72-34-301 et seq., as amended, and may serve without giving bond.

ARTICLE XIII.  
ADVISER TO THE TRUSTEE

Virginia Ruth Beaudoin is hereby appointed the Adviser to the Trustee. The Trustee shall secure the consent of the Adviser before:

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1. Making any changes in the investment strategy or composition of the overall portfolio; however, the Adviser's consent is not required for individual investments within the investment strategy;

2. Discretionary payments of principal;

3. The making of loans to a beneficiary; or

4. Determining whether or not the Trustor is physically or mentally capable of prudently managing her own affairs.

Upon the death, incompetency, resignation or refusal to act of the Adviser, the Trustee may act solely without the Adviser's concurrence or consent.

ARTICLE XIV.  
DEATH OF AN INCOME BENEFICIARY

Upon the death of the income beneficiary other than the Trustor, income accrued by not yet payable, subject to any charges or advances against it, shall belong to the next successive beneficiary.

ARTICLE XV.  
LAW GOVERNING

This trust shall become effective, as of the day and year first above written, upon the execution of this agreement by both the Trustor and the Trustee. It shall be governed and construed in all respects according to the laws of the State of Montana.

ARTICLE XVI.  
COMPENSATION OF TRUSTEE

The Trustee shall be entitled to reasonable compensation for his services hereunder.

IN WITNESS WHEREOF, the Trustor has hereunto set her hand and seal, and the Trustee has caused these presents to be executed by its authorized officer and its seal to be hereunto affixed.

Geraldine M. Schneider  
Trustor

NORWEST CAPITAL MANAGEMENT &  
TRUST CO., MONTANA

By: [Signature]  
Trustee

ATTEST:

Brett Weber

STATE OF MONTANA)

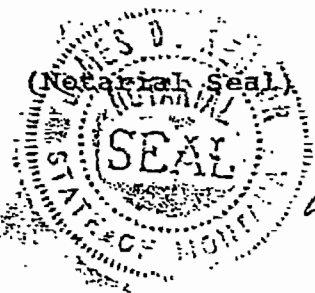
: ss  
County of Valley)

On this 2nd day of May, 1996 before me, the undersigned, a Notary Public for the State of Montana, personally appeared Geraldine M. Schneider of Glasgow, Montana, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal the day and year last above written.

(Notarial Seal)

[Signature]  
Notary Public for the State of Montana  
Residing at Glasgow, Montana  
My Commission expires April 5, 1997



STATE OF MONTANA )

: ss

County of Cascade)

On this 9<sup>th</sup> day of May, 1996, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Greg Hughes, known to me to be the V. P. of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

(Notarial Seal)

Mary Dolores Jones  
Notary Public for the State of Montana  
Residing at Great Falls  
My Commission expires 9-7-99

TRUST3/2RLT-SCH

COPY

## Last Will and Testament

I, Geraldine M. Schneider, a resident of Glasgow, Valley County, Montana, being of legal age and of sound and disposing mind and memory, and not acting under duress, menace, fraud, constraint, nor undue influence of any person whomsoever, do hereby make, publish and declare this my Last Will and Testament, and hereby expressly revoke all other and former Wills made by me.

### I.

I hereby declare that I am a single woman. I have two adult children, namely: Margaret Mary Schneider and Virginia Ruth Beaudoin.

### II.

I direct that all debts, administrative expenses, taxes (including any interest and penalties thereon) imposed by any jurisdiction whatsoever by reason of my death, upon or with respect to any property includable in my estate for the purposes of any such taxes, or upon or with respect to any person receiving any such property, whether such property shall pass under or outside, or shall have passed outside, the provisions of this Will, be paid from my residual estate as an expense of the administration thereof without apportionment.

### III.

I hereby give, devise and bequeath all of my personal property and household effects, including jewelry, clothing, furniture, furnishings, silver, books, pictures and other like items used on or about my person or about my residence at the time of my death, except as provided in Article IV below, unto my beloved children, Margaret Mary Schneider and Virginia Ruth Beaudoin, in equal shares, share and share alike.

### IV.

It is my intention to prepare a separate written statement to be in existence at the time of my death to dispose of certain items of tangible personal property. It is my intention that this provision

shall be in accord with M.C.A. 72-2-312. I do hereby devise to such persons named in such written statement, the said items of tangible personal property listed therein. If, at the time of my death, no separate writing be in existence or none can be found, then this devise shall lapse, and the property pass as provided in Article III above.

## V.

I hereby give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and wheresoever situate, which I now own, may die possessed of or may be entitled to at the time of my death, to the Northwestern Union Trust Company, a Montana corporation, as Trustee under a certain Trust Agreement entitled the Geraldine M. Schneider Revocable Living Trust, dated the 1st day of February, 1982, between myself, as Trustor, and the Northwestern Union Trust Company, a Montana corporation, as Trustee, with amendments thereto, to be added to and commingled with the trust property of that trust, and held or distributed, in whole or in part, as if it had been an original part thereof. If the foregoing devise and bequest should lapse or fail for any reason, I give, devise and bequeath the residue of my estate to my heirs at law.

## VI.

I hereby nominate and appoint the Northwestern Union Trust Company, a Montana corporation, to serve as Personal Representative of this my Last Will and Testament without bond.

## VII.

The Personal Representative named herein shall have all of the powers, duties and obligations set forth and described in Title 72, Chapter 3, Part 6, M.C.A., as the same now stands at the date of the execution of this my Last Will and Testament. I do hereby specifically grant to my Personal Representative the power to continue any incorporated business or venture which I may have been engaged in at the time of my death throughout the period of the administration of

my estate, and any other powers, obligations, duties and any other applicable laws of the State of Montana are also conferred upon my Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand to this my Last Will and Testament this 1st day of February, 1982.

Geraldine M. Schneider

The foregoing instrument was, at the date thereof, made, signed, published and declared by the said Geraldine M. Schneider as her Last Will and Testament, in the presence of us, who in her presence, at her request, and in the presence of each other, have signed our names as witnesses, and we declare that at the time of the execution of this instrument, the testatrix, according to our best knowledge and belief, was of sound mind and under no constraint or undue influence.

William B. Bickel, residing at Glasgow, Montana.  
William Bickel, residing at Glasgow, Montana.

STATE OF MONTANA)

: ss  
 COUNTY OF VALLEY)

We, Geraldine M. Schneider, William Bickel and William Bickel, the testatrix and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testatrix signed and she executed the instrument as her Last Will and that she signed willingly and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witnesses and that to the best of his knowledge, the testatrix was, at that time,

eighteen or more years of age, of sound mind and under no constraint or undue influence.

Laurel M. Siddoway Testatrix

W. Eugene Beaton Witness

William H. Beaton Witness

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_

W. Eugene Beaton and William H. Beaton, witnesses,  
this 1st day of February 1982.

(Notarial Seal)

[Signature]  
Notary Public for the State of Montana  
Residing at Glasgow, Montana.  
My Commission expires April 5, 1982.



# Exhibit B

AFFIDAVIT OF LAUREL SIDDOWAY

82.

RECEIVED

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JUN 23 2008

RANDALL & DANSKIN, P.S.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN, )

Plaintiff, )

vs. )

CASE NO. CV 07-02364

DAVIDSON TRUST COMPANY, )

Defendant. )

DEPOSITION OF VIRGINIA R. BEAUDOIN  
TAKEN ON BEHALF OF THE DEFENDANT  
AT LEWISTON, IDAHO  
APRIL 28, 2008, AT 1:25 P.M.

**COPY**

1 salon?

2 A. There were three hair stations and there were three  
3 nail stations.

4 Q. How long had you been working at that location?

5 A. Five years.

6 Q. Let me have you mark an exhibit for me.

7 (Thereupon, Deposition Exhibit No. 1 was marked  
8 for identification by the court reporter.)

9 BY MS. SIDDOWAY:

10 Q. Ms. Beaudoin, what's been marked as Exhibit 1 to your  
11 deposition is four pages that were produced to me in discovery  
12 by your attorney Mr. Mitchell. Can you take a look at Exhibit  
13 1 and if you recognize it, tell me what it is?

14 A. Actually what I'm seeing is my add in the paper talking  
15 about my leaving.

16 Q. Alright. And it looks like the add ran on April 22 and  
17 April 24th of 2007?

18 A. Correct.

19 Q. New did you place the add or did Nail Elegance and Hair  
20 Studio?

21 A. Sherry Lyons at Nail Elegance, the owner, is the one  
22 that placed the add.

23 Q. And do you have any idea when she placed the add so  
24 that it could run on the 22nd and the 24th?

25 A. I believe it was about the week before.

1 Q. Can you recall or can you infer from that when you must  
2 have told her that you were going to be retiring and  
3 wouldn't -- April 27th would be your last day of work?

4 A. I believe I told her -- let's see. Gosh, I think it  
5 was probably the second week in April, so she ran this the  
6 following week.

7 Q. And the add says "Ginny's last day. Come by and wish  
8 her good luck on her new venture. And join Gwen, Elizabeth,  
9 Christina and Sherry in welcoming BK back."

10 A. BK was another co-worker that moved and came back.

11 Q. And was she going to take over your hair station?

12 A. I had called BK when I decided I was going to quit and  
13 told her that if she wanted to come back, she could have my  
14 station.

15 Q. Now did you have a written lease agreement for that  
16 station?

17 A. No, so just verbal, just verbal.

18 Q. And what were the terms? Did you pay a fixed price or  
19 was it a percentage of your revenues or how did that work?

20 A. I paid a fixed price.

21 Q. What was it?

22 A. Three hundred.

23 Q. Do you know whether the owner had a waiting list or  
24 that other people had expressed interest in taking one of the  
25 other stations if it became available?

1 A. No.

2 Q. Alright. And this BK, what is her full name?

3 A. Betty Kaye Kachelmier.

4 Q. Can you spell that because she will ask me later and  
5 I'll have no idea.

6 A. The Kachelmier, K-a-c-h-e-l-m-i-e-r, I believe.

7 Q. And she was back living in the Lewiston-Clarkston area?

8 A. Yes.

9 Q. Okay. And did you in the April 2007 time frame, did  
10 you have written records that you kept with the names,  
11 addresses and contact information for your clientele?

12 A. Yes.

13 Q. What form did those take?

14 A. Explain to me what you mean.

15 Q. Did you have them on a computer in a software program  
16 did you just --

17 A. I have an address book.

18 Q. An address book, okay. Did you ever explore selling  
19 that client list to anyone else at the time you retired?

20 A. In Lewiston in this business you don't sell your list,  
21 you just tell other people where to go or who you would  
22 suggest.

23 Q. And when did you start talking to your clients about  
24 the fact that you were going to be retiring and who you  
25 recommended they see?

1 A. As soon as -- well, as soon as I had talked to  
2 Scott Baldwin which was probably first week in April.

3 Q. Did you have more than one conversation with  
4 Scott Baldwin?

5 A. Yes.

6 Q. How many conversations did you have with him in  
7 April-May 2007 time frame, approximately?

8 A. I would guess probably about four.

9 Q. Can you describe for me the conversation that you  
10 recall having prior to the time you started telling your  
11 clients that you were going to be retiring and recommending who  
12 they see thereafter?

13 A. Are you talking about with Scott Baldwin, the  
14 conversation I had with him?

15 Q. Yes.

16 A. I remember calling Scott and telling him that  
17 D.A. Davidson had called me and told me that I was going to be  
18 the beneficiary. And he said, "Yeah, I heard that. Isn't that  
19 great." And I said, "yeah." So I said, "Scott, I have wanted  
20 to quit work for awhile," I said, "do you think it's going to  
21 be feasible for me to quit my job and draw a monthly  
22 disbursement." And he said, "Well, let me sit down and figure  
23 this out." And then he said, "I think we should meet with the  
24 trust officer to discuss this." And at that point in time he  
25 made an appointment with Todd Edmunds to come to Lewiston to

1 discuss things.

2 Q. So is it your recollection as you sit here today that  
3 you had the conversation with Todd Edmunds prior to the time  
4 you started giving your clients notice that you were going to  
5 be retiring?

6 A. No, I didn't speak to Todd Edmunds, I spoke to a  
7 secretary of his. I believe, she's a secretary, I'm not sure.

8 Q. Okay. Tell me about that conversation.

9 A. On a Friday, the 30th of March, there was a phone call  
10 on my home phone from Jan Shelby telling me she was from D.A.  
11 Davidson and she had something that she needed to discuss with  
12 me and would I please call her back. And I didn't get home  
13 from work until late that day, it was about six o'clock, and I  
14 thought, well, I'll just call her Monday because it's too late  
15 now. So Saturday, the next day, which would have been the  
16 31st, right, I got a call at noon from Jan Shelby telling me  
17 that my sister had passed away and that I was the beneficiary.  
18 And I told her, "I don't think that's right," I said, "I think  
19 this money goes to my kids." "Oh, no," she said, "it goes to  
20 you." And I said "really," and she goes "yeah." And I said,  
21 "Well, what do I do now? I mean what am I supposed to do?"  
22 And she says, "Well, we will have to -- I'll call you back on  
23 Monday," and she said, "there's some things I need for you to  
24 take care of like her -- I needed to get a hold of her landlord  
25 to cancel her lease, I needed to get in touch with her husband,

1 Herbert Budge. I needed to contact the mortuary for her  
2 cremation and method of payment.

3 Oh, and then we discussed when Herbert was going to be  
4 moving out of their apartment. She had canceled all the  
5 utilities, and I said, "Well, leave them on until he can get  
6 out, you know, and I said, "Give him at least a month. He's  
7 got to find a place to live." So that's all I can remember.

8 Q. Okay. Just to clarify as you were describing that,  
9 sometimes you were using pronouns like "I" and "she" because  
10 you were describing a conversation, I didn't know whether you  
11 were talking about you or Jan Shelby.

12 So one question I have is when you and she were talking  
13 about the various things that needed to be done, was she saying  
14 that she was going to take care of those things or that you  
15 should take care of contacting the mortuary, et cetera?

16 A. She was telling me what I needed to do.

17 Q. Okay. And then in terms of turning off the utilities,  
18 do I understand you to say -- to have testified that Jan Shelby  
19 had had them turned off, and you suggested that they should be  
20 kept on for long enough for Mr. Budge to move out?

21 A. Right.

22 Q. Approximately how long did this conversation on  
23 Saturday take place, how long was it?

24 A. Ten or fifteen minutes, I suppose.

25 Q. And do you recall Miss Shelby asking you during that

1 conversation if you had a copy of the trust document?

2 A. No.

3 Q. Did you have a copy of the trust document?

4 A. No.

5 Q. Did you later obtain a copy of the trust document?

6 A. Yes.

7 Q. When?

8 A. It wasn't until after I was called the first of July  
9 and told that I was no longer the beneficiary.

10 Q. And from whom did you obtain a copy of the trust  
11 document at that time?

12 A. Jim Rector.

13 Q. Is Jim Rector still in active practice in Montana?

14 A. Yes, he is.

15 Q. Okay. What had made you believe that you were not the  
16 beneficiary when you first got the phone call from Miss Shelby?

17 A. Because several years ago my mother -- well, my mother  
18 changed her will all the time. She was worried about my  
19 sister. And she wanted me to go to Jim Rector's office with  
20 her because she wanted to talk about what was going to happen  
21 to my sister's money when my sister passed away.

22 Q. And did you go to Mr. Rector's office?

23 A. Yes, I did.

24 Q. And what was -- what was discussed at Mr. Rector's  
25 office?

1 A. That she wanted -- if my sister were to predecease me,  
2 she wanted the money that my sister had to go to my children.

3 Q. And was it your understanding that Mr. Rector was then  
4 going to amend the trust document to reflect that?

5 A. Yes.

6 Q. And were you provided with a copy of the amended trust  
7 document that created this scheme?

8 A. You know, I do not recall if I had that.

9 Q. Did you talk to anyone after meeting with Mr. Rector  
10 about the fact that your mother had made this change to the  
11 trust?

12 A. No.

13 Q. Do you know what -- do you recall what the dispositive  
14 scheme was for the funds that were in your sister Margaret's  
15 account prior to this change? Do you know where they were  
16 going to go prior to the time she amended the trust so that  
17 they would go to your children?

18 A. It would probably have come back to me.

19 Q. Did your mother say why she wanted to amend the trust  
20 document so that Margaret's trust assets would pass to your  
21 children?

22 A. Yeah, she said that she -- well, she adored the kids,  
23 my two kids, and just kind of felt that that would be something  
24 that they could use and I agreed.

25 Q. So did you ever tell your children that the trust

provided that Margaret's assets would pass to them?

A. Yes, I did.

Q. When did you tell them that?

A. Oh, gosh, probably about -- oh, in about -- oh, gosh, probably about 2000 maybe.

Q. And were they both living away from your home at that time?

A. Right.

Q. So you -- I take it you telephoned them and told them that this change had been made?

A. I don't believe I told Briana, but Brooks wanted me to come out and visit, and it was just something that came up in the conversation.

Q. Did you know that your sister was ill or was in ill health?

A. I knew my sister was an alcoholic.

Q. When was the last time you had spoken with your sister prior to her death?

A. I had more e-mail contact with her than I did verbal because I couldn't stand to talk to her, but the last phone conversation I would say was when my mother passed away, so that was 2004, March.

Q. And why was it unpleasant or difficult to talk to your sister?

A. Because she wanted her money right now. She told me

that she couldn't come to the funeral unless she had her money and she did not come.

Q. I saw something in the -- I guess your medical records that you are adopted?

A. Uh-huh.

Q. Was your sister adopted also?

A. Uh-huh.

Q. Were you adopted as babies or were you older?

A. We were both babies. She's six years older than I.

Q. And did you -- were you estranged for a long period in your life?

A. It wasn't until she -- let's see, it was -- she lived in Denver, and she married this fellow by the name of Phil Lockwood, whether they were married or not, I don't know, but they lived together. And they borrowed a lot of money from my mother as a loan and they defaulted on their loan. Oh, this could be a really long story, I don't know where to stop. And she was just always trying to get money out of my mom and I -- and I didn't like that.

Q. Okay. How many times as best you can recall did you meet or speak with Jim Rector about your mother's trust?

A. I think the one time that he had me come down there with her for that amendment to her will, and then when he wrote up my husband's and my will.

Q. Okay. So at the time while you were living in Glasgow

you had a will prepared?

A. Right, and that would have been approximately '82 -- no, probably '80s.

Q. Let me run through some dates that I got from your husband and just confirm that I have got the time line straight.

As I understand it, you and Mr. Beaudoin were married in November of 1972?

A. Uh-huh.

Q. And you were at Montana State at the time?

A. Yes.

Q. What were you studying?

A. Art.

Q. Did you complete a degree?

A. No.

Q. I take it that your son Brooks was born sometime in 1975 or thereabouts?

A. Yes.

Q. What is his birthday?

A. March 19, '75.

Q. And then you moved to Glasgow in June of 1978?

A. Uh-huh, yes.

Q. And lived there for about four years until about September of 1982?

A. Yes.

Q. And it sounds like while you were living there that Briana would have been -- was born?

A. Yes.

Q. And I take it she was born in 1980 or thereabouts?

A. '79.

Q. What is her birthday?

A. July 19.

Q. Alright. And then you moved to Great Falls in 1982 and you were there for about 15 years until 1997?

A. Yes.

Q. The time that you visited Mr. Glasco's office with your mother --

A. Mr. Rector's.

Q. I'm sorry, Mr. Rector's office, yes, thank you. To talk about having your children be the beneficiaries of your sister's trust. Was that while you were living in Great Falls?

A. I don't remember, I don't recall.

Q. And then when you moved to Lewiston in 1997, it sounds like then Brooks was already graduated from high school and off to college, and Briana was probably in her junior or senior year of high school?

A. When we moved to Lewiston?

Q. Yes.

A. No, she had already graduated and she was going to the Art Institute.

1 Q. Okay. Let me go through some other exhibits with you  
2 here, some documents.

(Thereupon, Deposition Exhibit No. 2 was marked  
for identification by the court reporter.)

5 (Thereupon, a discussion was had off the record.)  
6 BY MS. SIDDOWAY:

7 Q. Take a look at Exhibit 2 to your deposition, if you  
8 will, for a moment. And do you recognize it as a power of  
9 attorney that your mother executed in your favor in January of  
10 1994?

11 A. Uh-huh.

12 Q. And do you recall what -- well, first of all, do you  
13 recall who prepared it? And I would point out to you that it  
14 appears to be marked for return to Jim Rector on the left-hand  
15 side there.

16 A. That must be, Mary Lou Eide, yeah.

17 Q. Was there anything in particular that prompted your  
18 mother to have this power of attorney prepared, to your  
19 knowledge?

20 A. Yeah in '94 she was -- she was very forgetful, that's  
21 when we decided to move her -- was that then. Let's see, '94,  
22 she was just doing some really strange things, and I think, if  
23 I'm not mistaken, I think Jim called me and said he thought  
24 maybe we should be doing something.

25 Q. Okay. On the second page it looks like the notary

1 public who notarized your mother's signature was in Great  
2 Falls, and the name is Sharon Bennyhoff or something like that,  
3 do you know who the notary was?

4 A. I don't.

5 Q. And can you recall the circumstances under which your  
6 mother executed this in Great Falls?

7 A. I do not recall.

8 Q. Prior to the time your mother moved to -- you had to  
9 put her in a nursing home, did you rely on this power of  
10 attorney to engage in any property transactions or make  
11 payments on her behalf?

12 A. No.

13 Q. So it was pretty much once you put her in a nursing  
14 home that you started handling her financial -- assisting her  
15 with her financial affairs?

16 A. Yeah, that was pretty limited, D.A. Davidson took care  
17 of most of it. I mean I just had a checking account for  
18 incidentals that she needed.

19 Q. Okay.

20 (Thereupon, Deposition Exhibit No. 3 was marked  
21 for identification by the court reporter.)

22 BY MS. SIDDOWAY:

23 Q. Do you recognize Exhibit 3 to your deposition as the  
Second Amended and Restated Geraldine M Schneider Revocable  
Living Trust?

1 A. Uh-huh, yes.

2 Q. And this one was dated May 9, 1996. Is this the  
3 amendment and restatement that was prepared after you had the  
4 meeting with Mr. Rector and your mother discussed what she  
5 wanted to do for your children?

6 A. It must be, yes.

7 Q. Now the recitals to this trust document state that the  
8 parties have previously entered into a trust agreement dated  
9 February 1, 1982. It would appear at least from the face of  
10 this that that was the beginnings of the trust arrangement.

11 Do you know what happened in 1982 that prompted the  
12 trust to be created?

13 A. Let's see, '82, I believe my sister was married to a  
14 fellow by the name of Jerry Vandyke, and he along with my  
15 sister came to borrow money from my mother.

16 Q. And your father -- or your father had passed away years  
17 before this, right, before 1982?

18 A. Right.

19 Q. Was your mother still working in 1982?

20 A. Let's see, no, she was not.

21 Q. To the best of your knowledge, was Mr. Rector the one  
22 that created the first trust agreement?

23 A. Yes.

24 Q. And then the recitals say that the trust agreement was  
25 amended and restated for the first time on the 23rd day of

1 June, 1994. Do you recall what change was made to the trust in  
2 June of 1994?

3 A. No.

4 Q. Did your mother have any assets that were not in the  
5 trust to the best of your knowledge?

6 A. She had -- oh, her diamond ring and a ballet program  
7 signed by Charlie Russell and just a few little odds and ends,  
8 Havlin china.

9 Q. Did she have any real property?

10 A. No.

11 Q. I saw some reference to a New York Life Insurance  
12 Policy. Did she have a life insurance policy at the time she  
13 died?

14 A. Yes.

15 Q. And what was the amount of that policy?

16 A. Oh, I think it was just -- it was a small one, just  
17 enough to pay for a funeral; but let's see, it must have been  
18 about three thousand dollars, I think.

19 Q. Did she have any property or accounts that were held in  
20 joint tenants with rights of survivorship to your knowledge?

21 A. No.

22 Q. At page 3 of the trust agreement --

23 A. May I -- I forgot some things.

24 Q. Sure.

25 A. She did have some mineral rights.

1 Q. Okay. I have seen reference to those, yes.

2 Can you take a look at page 3 of Exhibit 3 down at the  
3 bottom. It says, "In determining whether or not to Trustor is  
4 physically or mentally incapable under this article, the  
5 Trustee shall consult with the advisor Virginia Ruth Beaudoin,  
6 and she must concur that the Trustor is incapable," et cetera,  
7 et cetera. Did you and the trustee ever confer and determine  
8 that your mother was physically or mentally incapable?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. It was with Larry LeMaster and it would have been in --  
12 let me think -- gosh, I don't recall the year. I don't know.

13 Q. Okay. Article 5 of the trust agreement contains  
14 dispositive provisions. And the second paragraph says, "In the  
15 event there are any outstanding notes or loans from the trust  
16 to any of the beneficiaries at the time of the death of the  
17 Trustor, then the promissory note alone shall be allocated to  
18 that beneficiary's share of the trust estate."

19 When I deposed your husband earlier and he testified to  
20 a promissory -- a loan and promissory noted that been made to  
21 you, he testified that to the best of his knowledge that note  
22 was forgiven?

23 A. Right.

24 Q. So is that your recollection as well that it was  
25 forgiven rather than being charged to you under this provision?

1 A. Yes.

2 Q. And when was it forgiven?

3 A. I believe it wasn't forgiven until mom passed away.

4 Q. And so then did you make the decision to forgive it?

5 A. No.

6 Q. Who made the decision?

7 A. I believe the trust.

8 Q. Do you know if there was any writing that was prepared  
9 in connection with the forgiveness of that loan?

10 A. No, I don't know.

11 Q. Let me have you turn back to -- let me ask a  
12 preliminary question. You were aware, were you not, at the  
13 time of your mother's death, that the trust that was created  
14 for you was under your control, you could distribute principle  
15 to yourself at any time?

16 A. Uh-huh.

17 Q. Your husband testified earlier that you nonetheless  
18 decided to keep the assets in trust for a time?

19 A. Uh-huh.

20 Q. What was your reason for deciding to keep them in trust  
21 rather than withdrawing all of them?

22 A. I don't know, I just felt safe with it being in a  
23 trust, I don't know.

24 Q. But there came a time when you did withdraw them?

25 A. Uh-huh.

1 Q. Why did you change your mind?

2 A. Because I was working with Linda Russell who was  
3 another trust officer and she -- she would never return calls,  
4 she wouldn't get things done, meaning we were trying to  
5 transfer some mineral rights or something. And she just -- I  
6 got tired of trying to deal with her and I asked Scott if I  
7 couldn't take everything out of trust. And I didn't really  
8 feel like there was enough money in there to be in trust  
9 really.

10 Q. Do you recall how much you withdrew and when you  
11 withdrew it?

12 A. Well, let's see, it was when Joe Travis moved to  
13 Moscow, I don't know, I would imagine about four years ago.

14 Q. Were you aware that there was a provision under the  
15 trust agreement that if you hadn't taken the funds out, that at  
16 the time your daughter Briana turned 25, the trust would be  
17 divided into two trusts for your children?

18 A. Uh-huh.

19 Q. I'm going to have you take a look at page 6 of the  
20 trust agreement. And paragraph roman numeral four, read that  
21 to yourself, if you will.

22 A. Okay.

23 Q. Did you ever discuss that provision with anyone?

24 A. No.

25 Q. Alright. And it may be that this was only in the event

1 you predeceased your mother. I just noticed it as I was  
2 reviewing it, but you don't recall discussing this with anyone?

3 A. No.

4 Q. And turn to page 7 of the trust. When was the first  
5 time you ever read this trust agreement all the way through?

6 A. Probably when it was sent to me. Gosh, I can't  
7 remember when I got it, it was in the past year.

8 Q. And did you read -- I guess I gather you read paragraph  
9 B on page 7 at that time?

10 A. Uh-huh.

11 Q. And would you have agreed that the trust does -- excuse  
12 me, turning to page 8, subsection roman numeral one under  
13 section B, would you agree that the trust provides that upon  
14 Margaret's death, the remaining -- the assets remaining in her  
15 trust were to pass to your children?

16 A. Yes.

17 Q. Okay. So at that time you had distributed -- you had  
18 claimed all of the principle in your trust; right?

19 A. Right.

20 Q. And your children and not you were the beneficiary of  
21 Margaret's portion of the trust; right?

22 A. Right.

23 Q. Take a look at page 12 of the trust agreement, and  
24 could you read article 13 to yourself.

25 A. Okay, I got to read this again.

1 Q. Was it paid according to its terms up until the time of  
2 your mother's death or did she forgive the entire note?

3 A. Can I explain how this happened, okay. My sister had  
4 borrowed a considerable amount of money from my mother and  
5 defaulted on a loan that required payments and she didn't make  
6 any payments. And when -- I think Mick is the one that  
7 discovered it and he said, well, you have got to keep things  
8 even here, he said, she -- you know, your mother's losing  
9 interest on this money that she lent your sister, and you two  
10 girls are supposed to keep things even, so he said I think it's  
11 only fair that you get what she got. And so that's what we  
12 did, we bought our house here with the money that they said  
13 that we -- they felt that we were able to have.

14 Q. Okay. So in other words, it was characterized as a  
15 loan but it was never intended to be a loan, it was intended to  
16 be evening things up with your sister's situation?

17 A. Right.

18 Q. Alright. That makes sense.

19 (Thereupon, Deposition Exhibit No. 6 was marked  
20 for identification by the court reporter.)

21 BY MS. SIDDOWAY:

22 Q. Why don't you take a moment, if you will,  
23 Mrs. Beaudoin, read Exhibit 6.

24 (Thereupon, a discussion was had off the record.)

25 (Thereupon, Deposition Exhibit Nos. 7, 8, 9 & 10

1 were marked for identification by the court reporter.)

2 BY MS. SIDDOWAY:

3 Q. Exhibit 6, if you will, Mrs. Beaudoin, and do you  
4 recognize that as a letter that you directed to Mr. LeMaster in  
5 January of 1999?

6 A. Actually I didn't direct the letter, they talked to me  
7 about doing this and I said that was fine.

8 Q. And by "they," you mean Davidson Trust?

9 A. Yes.

10 Q. Was it Mr. LeMaster who talked to you about it?

11 A. I believe it was.

12 Q. And the prior year and in 1999, had fifty thousand  
13 dollars a year been gifted to -- ten thousand dollars a piece  
14 to your sister, yourself, your husband and your children?

15 A. Uh-huh.

16 Q. Did Davidson Trust Company want to have something in  
17 writing from you directing them to make those disbursements?

18 A. Actually I believe that's what this was.

19 Q. And did they recommend that you indicate that you were  
20 doing it pursuant to the power of attorney?

21 A. Yes.

22 Q. Do you recall whether -- I see a copy of this was  
23 provided to and signed by your mother, at least appears to be,  
24 is that your mother's signature?

25 A. Uh-huh.

1 Q. Is the reason that the direction came from you rather  
2 than your mother was because there was some question about your  
3 mother's mental capacity as of January 1999?

4 A. Uh-huh, yes.

5 Q. Do you know who drafted this letter? Did Davidson  
6 trust?

7 A. Uh-huh.

8 Q. Do you know who at Davidson Trust drafted it?

9 A. It would have been one of the secretaries, I'm sure,  
10 and I don't know who that would have been.

11 Q. And Larry LeMaster was in Great Falls; is that right?

12 A. Yes, he is now retired.

13 Q. Was he still the trust officer in 1999?

14 A. I believe he was.

15 Q. Let me have you take a look at Exhibit 7. Now I don't  
16 know if you recognize this, this is something that was  
17 generated I think internally for me, have you ever seen these  
18 documents before?

19 A. No.

20 Q. Is it your recollection -- I will represent to you that  
21 these are records of distributions from the trust and other  
22 payments from the trust. Is it your recollection that there  
23 were fifty thousand dollar annual gifts made in 1998, 1999,  
24 2001 and 2002?

25 A. Apparently there were, I don't recall. I know there

1 were -- I remember two years maybe of it, but I don't remember  
2 it being this many.

3 Q. And then the third page back in Exhibit 7 is a gift to  
4 Briana, a graduation gift to Briana and was that distribution  
5 made pursuant to your direction on behalf of your mother?

6 A. Yes.

7 Q. And that's all the questions I have about that.

8 Let me have you take a look at Exhibit 8. And I'd like  
9 you to read that all the way through if you could, just to  
10 yourself.

11 A. Okay, I don't recall this.

12 Q. Okay. That was my first question was going to be do  
13 you recall receiving this letter from Larry LeMaster in March  
14 of 2000?

15 A. Uh-huh.

16 Q. Do you have any recollection as you sit here today of  
17 what the situation was with your sister that appears to have  
18 been the cause of concern at that time?

19 A. This must have been with Phil, I don't --

20 Q. It appears that there was a concern that your sister's  
21 ex-husband might attach amounts that were due her under the  
22 trust, and he was making a recommendation that they would not  
23 be attachable if they were discretionary, but that would have  
24 adverse tax consequences for the trust?

25 A. Yes, now this is coming back. My sister and Vandyke,



1 Q. And what -- do you know as you sit here today what  
2 percentage of your client base returned to you?

3 A. I probably have maybe half.

4 Q. And what have you done this last year to develop new  
5 business to fill your schedule?

6 A. I haven't.

7 Q. Well, what have you done to try to develop new business  
8 to fill your schedule?

9 A. I just take new customers when they call.

10 Q. You haven't done any advertising or --

11 A. I did a Christmas advertisement, just Christmas and New  
12 Years.

13 Q. And where did you place that add?

14 A. Lewiston Tribune and the Moneysaver.

15 Q. Anything else that you can think of that you have done  
16 this last year?

17 A. No.

18 Q. I apologize if I already asked you this, sometimes I  
19 forget what I have already covered. Did you contact Nail  
20 Elegance when you found that you would -- well, when you  
21 decided to return to work?

22 A. Yes.

23 Q. And explore the possibility of getting a hair station  
24 there?

25 A. The stations were full.

1 Q. Did they have room for another station?

2 A. No.

3 Q. Do they maintain a waiting list for the hair stations?

4 A. No.

5 Q. Is it fair to say that do you attribute your business  
6 loss primarily to not being at the Nail Elegance location or  
7 just to the fact that you referred your client base to other  
8 hairdressers?

9 A. Both.

10 Q. What do you think was the importance of the Nail  
11 Elegance location?

12 A. The camaraderie we had, everybody worked very well  
13 together, we had fun. Our customers were very comfortable.  
14 We'd go to hair shows together and come back with new things.  
15 And it was an easy place to get to, parking was plentiful.

16 Q. And how does that compare to the location where you are  
17 working now?

18 A. Well, I'm kind of in the trees, I'm not visible. I'm  
19 working with a lady that is very critical of my work. She  
20 always tells me she's glad to have me there but why would she  
21 be critical. It's not visible, I have to tell everybody how to  
22 get there when they call. I had one customer say, well, it's  
23 way out there and I'm not coming out there in the winter. So,  
24 you know, it's just location, I suppose.

25 Q. Is your lease arrangement at the new location written

1 or verbal?

2 A. Verbal.

3 Q. And is it month to month?

4 A. Month to month.

5 Q. So you could move, but you just haven't found a better  
6 situation?

7 A. No.

8 Q. Have you been looking for a better situation?

9 A. No.

10 Q. Why not?

11 A. Because I don't want to move all my people again, I  
12 don't want to -- I don't want to go through this again.

13 Q. Okay. You are claiming, at least in correspondence  
14 with your attorney to date, a substantial part of the damages  
15 that you claim from Davidson Trust Company are emotional pain  
16 and suffering damages. What are your complaints or  
17 symptomology?

18 A. Well, I'm not working with my old friends. I have had  
19 a lot of anxiety over this whole situation. It has cost me  
20 money. I don't know, that's all I can say.

21 Q. Alright. Your attorneys provided me with some  
22 discovery responses about your damage claim and I'm aware of  
23 expenses in the form of your claim of business loss, your -- an  
24 amount you had paid to rent a vacation home on the Oregon  
25 Coast, some gifts you had given to your children, and am I --

1 is there anything else that you recall as you sit here today?

2 A. Well, my portfolio took a hit because I had to pay all  
3 that money back that was distributed from the amount of money  
4 that was deposited in my account.

5 Q. What portfolio loss do you claim?

6 A. Well, I had gifted my kids six thousand dollars each,  
7 the trip, the cost of the trip. Oh, I can't even think of what  
8 else, but all that -- all that money came out of what I thought  
9 I was getting from as a beneficiary. I never would have done  
10 any of that had I not thought I had the money and I had to pay  
11 it back through my portfolio.

12 Q. When your son Brooks learned that Margaret had died,  
13 did you and he discuss at all his expectation that he was going  
14 to be a beneficiary of her share of the trust?

15 A. Yes, we did.

16 Q. Tell me about that discussion.

17 A. Well, when I called and told him that Margaret had  
18 passed away he said, well, aren't I a beneficiary, and I said,  
19 well, I thought you were but they are telling me that it's me.

20 Q. And then?

21 A. And he was -- I could tell he was very disappointed.

22 Q. Did you and he discuss it any further?

23 A. No.

24 Q. When you gifted your children the six thousand dollars  
25 a piece, did you explain to them that you were gifting it to

1 alleviate the pain. I'm feeling stale, I'd like to learn  
2 something new. I don't necessarily want to get a degree but  
3 I'd like to take some classes. I don't know, I just want to do  
4 something different.

5 Q. And the conversation you had was with -- in which you  
6 were told that you were the beneficiary of your sister's trust  
7 was with Jan Shelby; right?

8 A. Correct.

9 Q. And Jan Shelby was not the trust officer, she was a  
10 trust assistant?

11 A. Okay.

12 Q. Did you know that?

13 A. No, I didn't know who she was.

14 Q. Had you received correspondence from Miss Shelby in the  
15 past?

16 A. Not that I recall.

17 Q. Had you spoken with her in the past?

18 A. No.

19 Q. This was the first time she had ever called you?

20 A. Yes.

21 Q. Did you have any understanding of what her working  
22 relationship was with Linda Russell or Todd Edmonds or had you  
23 -- that just made that a very compound question. Did you know  
24 what her working status was --

25 A. No.

1 Q. If you had your own questions about whether Miss Shelby  
2 was correct about the beneficiary and your son also had  
3 questions, why didn't you do anything to investigate whether  
4 Miss Shelby might be mistaken about the trust?

5 A. Well, because when I told her I thought the children  
6 were beneficiaries, I thought it was her duty to find out if  
7 they were or weren't. I already knew.

8 Q. You already knew what?

9 A. That they were the beneficiaries.

10 Q. Did you tell her you expected her to investigate that?

11 A. No.

12 Q. Why not?

13 A. Because it was obvious that they didn't read the will  
14 in its entirety and I didn't have a copy of the will and I  
15 didn't know that maybe it had been changed.

16 Q. So it was your -- your belief at the time you spoke  
17 with Jan Shelby that it was obvious that Davidson Trust had not  
18 read the trust in its entirety?

19 A. Yes.

20 Q. So were you -- was it your position that if they made a  
21 mistake, you would get to keep the money and they would still  
22 have to give additional funds to your children?

23 A. No. Because it didn't dawn on me that -- I thought  
24 that was the case that my children were supposed to get the  
25 money but when she said, no, no, it says here that you are, the

1 beneficiary, and I thought, well, she's got the copy of the  
2 will, I don't. She must know.

3 Q. She -- and she has a different recollection of the  
4 phone conversation but that will be --

5 A. I'd like to hear what she had to say.

6 Q. Your attorney will find out what she has to say. And  
7 you did then when you talked to Scott Baldwin, you told him  
8 that you had thought she was wrong, didn't you?

9 A. Yes.

10 Q. And what do you recall Scott Baldwin saying when you  
11 told Scott you thought she was wrong?

12 A. He said I cannot believe that you told her and she  
13 didn't listen.

14 Q. When did you have this conversation with Scott?

15 A. It was -- let's see, well, it was after -- must have  
16 been around the first of July or after they had called me and  
17 said I was not the beneficiary.

18 Q. Okay. Have you ever provided -- that you can recall,  
19 have you ever provided a copy of the trust document to anyone  
20 to review it on your behalf, any attorney, any accountant, any  
21 estate planner any insurance provider?

22 A. No.

23 Q. Did you ever provide a copy of the trust document to  
24 your -- to your son Brooks?

25 A. No.

1 Q. Did he ever ask you for it?

2 A. No.

3 Q. A couple more questions about your medical records.  
4 There are some chart notes for July 12th, 2007, and the  
5 subjective -- notes of your subjective comments are that you  
6 reported to Dr. Fox that you were having difficulty taking a  
7 deep breath?

8 A. Uh-huh.

9 Q. Do you recall that?

10 A. Yes.

11 Q. What do you recall about that difficulty?

12 A. I think it was part of my anxiety, I just felt like I  
13 couldn't get a deep breath, it was exhausting.

14 Q. And then her chart notes for an appointment on  
15 August 8th of 2007 say, "She reports being back to work, first  
16 week back." Is that correct, were you back to work by early  
17 August 2007?

18 A. Yes.

19 Q. And her chart notes also say, "Reports did not have to  
20 use Ativan very much." By August 2007, had you quit using it  
21 at all -- quit using Ativan entirely?

22 A. No.

23 Q. You are still using it a little bit?

24 A. Off and on.

25 Q. And what would be the indications that would cause you

## POWER OF ATTORNEY

\*\*\*\*\*

THIS POWER OF ATTORNEY SHALL NOT BE  
AFFECTED BY DISABILITY OF THE PRINCIPAL

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, GERALDINE M. SCHNEIDER, of Valley County, Montana, do hereby make, constitute and appoint my daughter, VIRGINIA RUTH BEAUDOIN, of Great Falls, Montana, to be my agent and attorney in fact, with full power and authority in my name, place and stead, to transact any and all business of every kind or character whatsoever, and to do any and all acts in connection therewith, to make, execute and deliver any and all deeds, mortgages, conveyances, leases (including oil, gas and mineral leases), contracts, or other documents affecting or relating to real property, or oil, gas or mineral interests, or any other interest therein, whether situate in the State of Montana or elsewhere; to deal with any governmental agency, and to make contracts therewith, and to receive payments therefrom, and to execute any instruments and to do any acts that may be required or desired thereby; to make, execute and deliver any and all releases, satisfactions of indebtedness, acquittances, and discharges; to sign, execute and deliver all instruments of transfer of personal property including, but without limitation, stocks, bonds, mortgages, notes, accounts, claims and demands; to collect any and all moneys, claims or demands owing or which might become owing to me, and to sue for and compromise the same, or any thereof, and to deliver receipts, releases and acquittances thereof; to subscribe my name to any and all checks, drafts, bill and notes, and to receive the proceeds of any said checks, drafts, bills or notes, either by cashing the same or transferring the same; in general, to deal with any and all property, either real or personal, of any nature or description, in which I have or may acquire any interest, and to do and perform any and all acts in connection therewith, and to execute any and all writings, documents and papers, whether such instruments are formal or otherwise, in my name, in all instances as fully

STATE OF MONTANA - County of Valley, SS.  
Filed for record in Valley County on JAN. 6, 1994 at 4:25 P.M. and recorded in Book  
18 Page 564-565 of MISC. RECORDS  
Recorder by Mary D. Dwyer deputy. Fee P.M. \$ 12.00

RE: Jim Rector  
Box 1360  
Glasgow, MT 59230

EXHIBIT 2  
WIT: Beaudoin  
DATE: 4-25-08

L.C. Reporting AFFIDAVIT OF LAUREL SIDDOWAY

92. 042

and completely as I might do if personally present and acting,  
and in addition to any of the foregoing enumerated powers, to do  
any act, deed or thing whatsoever which I may lawfully do through  
or by attorneys in fact, as fully as I could do if personally  
present.

And I hereby ratify and confirm anything whatsoever my  
said attorney shall and may do by virtue hereof, and I do hereby  
further give to my said attorney full power of substitution, and  
the right to appoint agents to perform any of the acts and  
exercise any of the powers herein conferred on my said attorney.

This power of attorney shall not be affected by  
disability of the undersigned.

If this power of attorney is recorded in the office of  
the Clerk and Recorder in and for the County of Valley, State of  
Montana, it shall remain in full force and effect until written  
revocation thereof is duly recorded in said office.

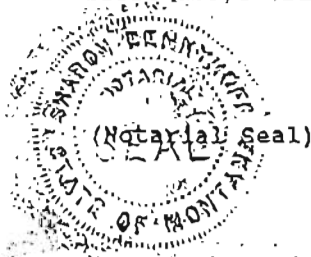
IN WITNESS WHEREOF, I have hereunto set my hand and  
seal this 4<sup>th</sup> day of JAN, 1994.

*Geraldine M. Schneider*  
GERALDINE M. SCHNEIDER

STATE OF MONTANA)  
: ss  
County of Valley)

On this 4<sup>th</sup> day of January, 1994, before me,  
the undersigned, a Notary Public for the State of Montana,  
personally appeared Geraldine M. Schneider of Valley County,  
Montana, known to me to be the person whose name is subscribed to  
the within instrument, and acknowledged to me that she executed  
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my Notarial Seal the day and year in this certificate  
first above written.



MISC11/PA-SCHN

*Sharon Bennix*  
Notary Public for the State of Montana  
Residing at Great Falls  
My Commission expires 6-9-96

93307  
STATE OF MONTANA } ss.  
County of Valley

I hereby certify that the Instru-  
ment to which this certificate is annexed  
is a true, complete and correct copy of  
the original on file in my office.

Witness My Hand and seal of office  
this 6<sup>th</sup> day of Jan, 1994

*Mary Lou Eide*  
MARY LOU EIDE Clerk & Recorder

By *Myrtle Emery*  
Deputy

AFFIDAVIT OF LAUREL SIDDOWAY

93306

93.

043

REPORTER'S CERTIFICATE

I, Linda L. Carlton, a Certified Shorthand Reporter, do hereby certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time any witnesses were placed under oath;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

-----  
LINDA L. CARLTON, C.S.R., #336

Notary Public

425 Warner Avenue

Lewiston, Idaho 83501

My Commission Expires September 24, 2010

# Exhibit C

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

vs.

DAVIDSON TRUST COMPANY,

Defendants.

Case No. CV2007-02364

COPY

DEPOSITION OF SHERRY LYONS  
TAKEN ON BEHALF OF THE DEFENDANT  
AT LEWISTON, IDAHO  
FEBRUARY 10, 2009, AT 12:00 P.M.

REPORTED BY:

NANCY K. TOWLER, C.S.R.  
Notary Public

&

Coeur d'Alene, Idaho  
Northern Offices  
208.765.1700  
1.800.879.1700

Spokane, Washington  
509.455.4515  
1.800.879.1700  
www.mmcourt.com

Boise, Idaho  
Southern Offices  
208.345.9611  
1.800.234.9611

AFF

REL SIDDOWAY

96

1 Q. That's fine. You don't need to do that. Let me  
2 hand you what's been marked as Exhibit 3. Is that the  
3 rental agreement you had with Virginia Beaudoin?

4 A. Yes, it is.

5 Q. And then finally, Exhibit 4 is a copy of the ad  
6 that appeared in the Lewiston paper, along with a copy  
7 of the check and payment for that ad?

8 A. Yes, it is.

9 Q. Now, the ad that you placed announced that Ginny  
10 was going to be leaving and that BK was going to be  
11 joining you, correct?

12 A. Yes.

13 Q. And you had an open house of sorts?

14 A. Yes, we had a big open house.

15 Q. Okay. Now, is this something that you typically  
16 do when you have a new cosmetologist joining you?

17 A. Uh-huh, pretty much. Ginny's was a little bit  
18 more special because she had been there a while and she  
19 was kind of like a family member.

20 Q. Uh-huh. But you had done this before?

21 A. Yes.

22 Q. All right. And you were the one that placed the  
23 ad? Ginny did not place the ad?

24 A. No.

25 Q. And you -- did you pay for the ad?



1 A. Yes, I did. There's a copy here somewhere of my  
2 check on the back of one of these.

3 Q. And did either Ginny or BK contribute to the cost  
4 of the ad?

5 A. No.

6 Q. And how about the open house? Can you tell me  
7 what happened at the open house? Were there  
8 refreshments?

9 A. Yes. Yes.

10 Q. And did you pay for those?

11 A. Yes, I did.

12 Q. And what time was the open house?

13 A. It was all day that particular day, the date of  
14 May 1st.

15 Q. Okay. Do you -- I notice that in the rental  
16 agreement it says that a -- someone whose renting a  
17 station from you is supposed to give 30 days notice of  
18 termination. Do you recall how much notice you got from  
19 Ginny when she terminated her rental with you?

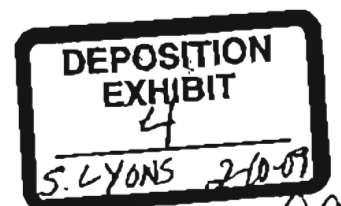
20 A. It was probably six weeks, really. She was -- or  
21 maybe it was right at -- it was somewhere between six  
22 weeks and 30 days.

23 Q. Is it your recollection that it was at least the  
24 required 30 days?

25 A. Oh, yeah, I think so.

Friday, April 27 - Is  
Ginny's Fashio Day at  
Nail Elegance  
& Hair Studio  
Come in and get a new look  
or a new style.  
And join Gwen,  
Elizabeth, Christina &  
Sherry in welcoming  
B.K. back!  
She'll be taking appointments  
for Tues. May 1st at  
1049 21<sup>st</sup> St., Lewiston

AFFIDAVIT OF LAUREL SIDDOWAY



00

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3644  
08-71072223

Date 4-19-07

Pay to the order of Christina Ruick \$ 75.00  
Seventy Five & no/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 030081 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3644 ⑆0000007500⑆

Check 3644 Amount \$75.00 Date 4/24/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3645  
08-71072223

Date 4-19-07

Pay to the order of Ginny Brundin \$ 53.00  
Fifty Three & no/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 035080 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3645 ⑆0000005300⑆

Check 3645 Amount \$53.00 Date 4/25/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3646  
08-71072223

Date 4-19-07

Pay to the order of Sherry Lyons \$ 8.00  
Eight & no/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 03580 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3646 ⑆0000000800⑆

Check 3646 Amount \$8.00 Date 4/20/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3647  
08-71072223

Date 4-19-07

Pay to the order of Lewiston Tribune \$ 61.35  
Sixty One & 35/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 03580 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3647 ⑆0000006135⑆

Check 3647 Amount \$61.35 Date 4/23/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3649  
08-71072223

Date 4-19-07

Pay to the order of Qwest \$ 117.56  
One Hundred Seventeen & 56/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 03580 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3649 ⑆0000011756⑆

Check 3649 Amount \$117.56 Date 4/24/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3650  
08-71072223

Date 4-20-07

Pay to the order of Ginny Brundin \$ 21.00  
Twenty One & no/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 03580 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3650 ⑆0000002100⑆

Check 3650 Amount \$21.00 Date 4/25/2007

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3651  
08-71072223

Date 4-20-07

Pay to the order of Christina Ruick \$ 15.00  
Fifteen & no/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 300809 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3651 ⑆0000001500⑆

Check 3651 Amount \$15.00 Date 4/24/2007  
AFFIDAVIT OF LAUREL SIDDOWAY

Nail Elegance  
Sherry Lyons  
1019 2nd Street 208-716-0245  
Twin Falls, Idaho 83401

3654  
08-71072223

Date 4-26-07

Pay to the order of Rosanne \$ 100.90  
One Hundred & 90/100 Dollars

BANNER BANK  
1019 2nd Street  
Twin Falls, ID 83401

To 03580 Sherry Lyons  
⑆323371076⑆ 32 00008120⑆ 3654 ⑆0000010090⑆

Check 3654 Amount \$100.90 Date 4/30/2007

REPORTER'S CERTIFICATE

I, Nancy K. Towler, Certified Shorthand  
Reporter, do hereby certify:

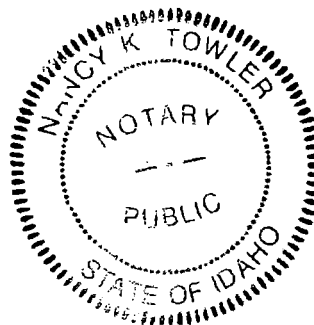
That the foregoing proceedings were taken  
before me at the time and place therein set forth, at  
which time any witnesses were placed under oath;

That the testimony and all objections made  
were recorded stenographically by me and were  
thereafter transcribed by me or under my direction;

That the foregoing is a true and correct  
record of all testimony given, to the best of my  
ability;

That I am not a relative or employee of any  
attorney or of any of the parties, nor am I  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my  
hand and seal this 20<sup>th</sup> day of February, 2009



*Nancy K. Towler*  
NANCY K. TOWLER, C.S.R. #623  
Notary Public  
3213A 6th Street  
Lewiston, Idaho 83501  
Commission expires 12/14/10

# Exhibit D

JOHN CHARLES MITCHELL  
Idaho State Bar No. 7159  
CLARK and FEENEY  
Attorney for Plaintiff  
The Train Station, Suite 201  
13<sup>th</sup> and Main Streets  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516

**RECEIVED**

DEC 26 2007

RANDALL & DANSKIN, P.S.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

vs.

DAVIDSON TRUST COMPANY,

Defendant.

Case No. CV 2007-02364

**PLAINTIFF'S ANSWER TO  
DEFENDANT'S FIRST WRITTEN  
DISCOVERY TO PLAINTIFF**

COMES NOW Plaintiff and hereby answers Defendant's First Written Discovery to Plaintiff as follows:

It should be noted that this responding party has not fully completed its investigation of the facts related to this case, has not fully completed its discovery in this action, and has not completed its preparation for trial. All of the answers contained herein are based only upon such information and documents which are presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party.

It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth. The following Interrogatory responses are given without prejudice to the responding party's right to

Answers to Defendant's First  
Written Discovery to Plaintiff 1

AFFIDAVIT OF LAUREL SIDDOWAY

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LEWISTON, IDAHO 83501

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produce evidence of any subsequently discovered fact or facts which this responding party may later recall.

The responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The answers contained herein are made in a good-faith effort to supply as much factual information and as much specification of legal contentions as is presently known but should in no way be to the prejudice of this responding party in relation to further discovery, research or analysis.

**INTERROGATORY NO. 1:** Please state the name, address, and telephone number of all individuals who you believe may have knowledge regarding any matters at issue in this action.

**ANSWER:**

1. Joe Travis - D.A. Davidson - 111 North Washington, Suite 6, Moscow, Idaho 83843, phone number unknown.
2. Linda Russel - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
3. Jan Shelby - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
4. Scott Baldwin - D.A. Davidson - 301 D Street, Suite A, Lewiston, ID 83501, (208) 743-0818
5. J. Todd Edmonds - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
6. James Rector - 635 1<sup>st</sup> Avenue, Glasgow, Montana 59230, (406) 228-4385
7. Mick Taleff - 104 4<sup>th</sup> Street N., Suite 301, Great Falls, Montana 59401, (406) 761-9400
8. Barry Beaudoin - 1769 Wheatlands Ave., Lewiston, ID 83501, (208) 798-8073
9. Brooks Beaudoin - 727 Quincy St. N.E., Minneapolis, MN 55413, (612) 669-1334

**INTERROGATORY NO. 2:** Please state separately, with respect to each individual identified by you in response to Interrogatory No. 1 the specific matters at issue in this action as to which the person or

Answers to Defendant's First  
Written Discovery to Plaintiff

2

AFFIDAVIT OF LAUREL SIDDOWAY

LAW OFFICES OF  
CLARK AND FEENEY  
LEWISTON, IDAHO 83501

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witness has knowledge.

**ANSWER:**

1           1 & 2. Joe Travis and subsequently Linda Russel were trust officers that the Plaintiff had contact  
2 with regarding the Geraldine M. Schneider Revocable Living Trust.

3           3. Jan Shelby was the Davidson Trust employee that called the Plaintiff to tell her that her sister  
4 passed away and that she was the beneficiary.

5           4. Scott Baldwin is the Plaintiff's financial advisor. Plaintiff talked to him after her sister's death  
6 (April 2<sup>nd</sup>, 2007). He was sorry but excited to be able to add to the Plaintiff's portfolio. Plaintiff believes  
7 the Trust had notified him. At that time, Plaintiff talked to him about whether the money she had in her  
8 portfolio combined with the money she would receive from the Trust would be enough for the Plaintiff to  
9 retire and take a monthly distribution. Scott suggested a meeting with J. Todd Edmonds.

10           5. On Scott Baldwin's suggestion, a meeting was set up with the Plaintiff, her husband Barry  
11 Beaudoin, Scott, and J. Todd Edmonds to discuss what the Plaintiff should and could do as a result of the  
12 distribution. At this time (April 23<sup>rd</sup>, 2007) the Plaintiff mentioned that she would like to stop working and  
13 take a monthly distribution. It was agreed at the meeting that it would be fine for the Plaintiff to retire at the  
14 end of the month and that she would begin receiving monthly distributions in June.

15           6. James Rector assisted Plaintiff's mother in putting her will in place and it is believed that he will  
16 attest that she changed her will frequently.

17           7. Mick Tuleff had Plaintiff's mother's will on file when she moved to Great Falls. Plaintiff  
18 believes he assisted in moving her mother's Trust from Norwest Bank & Trust to Davidson Trust Company.

19           8 & 9. Barry Beaudoin (Plaintiff's husband) and Brooks Beudoin (Plaintiff's son). Several years  
20 ago when her mother lived in Glasgow, she had Plaintiff go to the office of James Rector to discuss her  
21 children getting Margaret Van Dyke's share after she passed away. Mr. Rector and Plaintiff's mother wanted  
22 to know what Plaintiff had thought about it. Plaintiff believes that she probably told Barry and Brooks about  
23  
24

25           Answers to Defendant's First  
26           Written Discovery to Plaintiff

3

AFFIDAVIT OF LAUREL SIDDOWAY

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CLARK AND FEENEY  
LEWISTON, IDAHO 83501

105



this conversation.

**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of all documents in your possession relating to Geraldine M. Schneider Revocable Living Trust and all amendments and restatements thereof, including, although not by way of limitation, all trust agreements and all correspondence with lawyers, trustees, family members, and others.

**RESPONSE:**

See Exhibit A.

**INTERROGATORY NO. 3:** Identify every attorney, accountant, family member, trust company representative or other person with whom you have ever discussed the distributive or dispositive terms of the Geraldine M. Schneider Revocable Trust, and the amendments and restatements thereof. For purposes of this interrogatory, the expression "distributive or dispositive terms" is intended to mean those provisions of the Trust agreement that address the rights of you and/or other beneficiaries to request or receive distributions, including upon the death of another beneficiary.

**ANSWER:**

1. James Rector.
2. Barry Beaudoin.
3. Brooks Beaudoin.
4. Jan Shelby.
5. Scott Baldwin.
6. J. Todd Edmonds.

**INTERROGATORY NO. 4:** With respect to the conversations with "an agent of the Trustee" alleged in paragraph 12 of your Complaint, state the following:

- a) The identity of the agent of the Trustee,
- b) His or her position or title, if known to you,

Answers to Defendant's First  
Written Discovery to Plaintiff 4

AFFIDAVIT OF LAUREL SIDDOWAY

LAW OFFICES OF  
CLARK AND FEENEY  
LEWISTON, IDAHO 83501

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- 2003-2007: Nail Elegance & Hair Studio - Sherry Lyons, 1049 21<sup>st</sup> Street, Lewiston, ID 83501.

- 2007- : Karen's - Karen Rhodes,  
All self employed except 1984-1988 and 1990-1992

**INTERROGATORY NO. 14:** Please identify all business and professional license you have held over the last twenty (20) years, stating, with respect to each license, the exact title of the license and the full name and address of the licensing agency.

**ANSWER:**

Cosmetologist (5/20/1984 to 12/31/2001) - Montana Board of Barbers and Cosmetologists - 301 South Park, 4<sup>th</sup> Floor, Helena, MT 59620-0513.

Registered Cosmetologist (9/10/1997 to present) - Idaho Board of Cosmetology (Idaho Bureau of Occupational Licenses, 1109 Main Street, Suite 220, Boise, ID 83702-5642.

**INTERROGATORY NO. 15:** Please provide an itemization of each cost, expense or other element of damage you claim to have sustained as a result of the acts or omissions of the defendant alleged by your complaint.

**ANSWER:**

- Non-cancelable travel expenses: \$1,542.00

- Lost income: See Exhibit E

- Portfolio withdrawals: \$3,000.00

**INTERROGATORY NO. 16:** Please describe in detail everything you have done, if anything, to mitigate the damages you contend have been caused by the actions or omissions of the defendant alleged by your Complaint.

**ANSWER:**

In July of 2007, the Plaintiff found a place to restart hairdressing, ordered color line, put ads in paper,

sent out cards letting know Plaintiff was back to work, made telephone calls, had business cards made and sent them out in notes, sat at her station with no appointments scheduled hoping for walk ins, and went to hair show in Spokane.

**INTERROGATORY NO. 17:** Please identify any health or mental health professional you have consulted for the stress and anxiety alleged by paragraph 23 of your Complaint.

**ANSWER:**

Valerie Fox, M.D.

**INTERROGATORY NO. 18:** For each individual whom you expect to call as an expert witness at trial, please state:

- (a) The subject matter on which the expert is expected to testify;
- (b) The substance of the facts to which the expert is expected to testify;
- (c) The substance of the opinions to which the expert is expected to testify;
- (d) A summary of the grounds for each such opinion.

**ANSWER:**

No expert witnesses have been consulted at this time. This response may be supplemented.

**REQUEST FOR PRODUCTION NO. 7:** Please produce all documents that reflect or otherwise support the costs, expenses or other items of damage identified by you in response to Interrogatory No. 15.

**RESPONSE:**

See Exhibit E

**REQUEST FOR PRODUCTION NO. 8:** Please produce all documents that touch upon or concern your claim against the defendant.

**RESPONSE:**

See Exhibit F

Dated This 20 day of December 2007.

CLARK and FEENEY

By:

John Charles Mitchell  
John Charles Mitchell  
Attorney for Plaintiff

STATE OF IDAHO )

) ss.

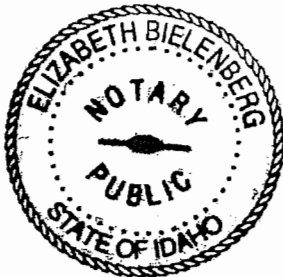
County of Nez Perce )

VIRGINIA R. BEAUDOIN, being first duly sworn on oath, deposes and says:

That she is the Plaintiff above named, that she has read *Plaintiff's Answers to Defendant's First Written Discovery to Plaintiff*, and the contents thereof and the facts stated therein are true to the best of her knowledge, information and belief.

Virginia R. Beaudoin  
VIRGINIA R. BEAUDOIN

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of December, 2007.



Elizabeth Bielenberg  
Public in and for the State of Idaho.  
residing at Lewiston, therein.  
My Commission Expires: 2-10-09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of December, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Laurel H. Siddoway  
Randall & Danskin, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (FAX)

John Charles Mitchell  
John Charles Mitchell

Answers to Defendant's First  
Written Discovery to Plaintiff 12

AFFIDAVIT OF LAUREL SIDDOWAY

LAW OFFICES OF  
CLARK AND FEENEY  
LEWISTON, IDAHO 83501

109

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

Attorneys for Defendant

FILED

2010 JAN 25 AM 11 16

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
*Patty O. Weeks*  
DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

AFFIDAVIT OF  
J. TODD EDMONDS

STATE OF WASHINGTON )

COUNTY OF SPOKANE ) ss.:

I, J. Todd Edmonds, attest as follows under penalty of perjury:

1. I am a Vice President, Trust Officer and Branch Manager of Davidson Trust Co.

By March 2007, I had assumed trust officer responsibility for the Geraldine Schneider Revocable Trust. The only remaining portion of that trust as of March 2007 was an account for the primary benefit of Margaret Van Dyke that had been established following Mrs. Schneider's death. This affidavit addresses matters that are personally known to me, as to which I am competent to testify.

AFFIDAVIT OF  
J. TODD EDMONDS - 1

2. I have reviewed Davidson Trust Co.'s records of its administration of the Geraldine Schneider Trust. They reveal that in January 1998, Geraldine Schneider made gifts to family members and that by January 1999, it was Virginia Beaudoin, exercising her authority under her durable power of attorney for her mother, Geraldine Schneider, who began directing Davidson Trust Co. to continue the gifting annually. The following gifts were made on the following dates. Those made in and after 1999 were based on Mrs. Beaudoin's instruction:

February 26, 1998:

- \$10,000 to Virginia Beaudoin
- \$10,000 to Virginia's husband, Barry
- \$10,000 to Virginia's son, Brooks
- \$10,000 to Virginia's daughter, Briana

- \$10,000 to Margaret Van Dyke

January 26, 1999

- \$10,000 to Virginia Beaudoin
- \$10,000 to Virginia's husband, Barry
- \$10,000 to Virginia's son, Brooks
- \$10,000 to Virginia's daughter, Briana

- \$10,000 to Margaret Van Dyke

January 17, 2001

- \$10,000 to Virginia Beaudoin
- \$10,000 to Virginia's husband, Barry
- \$10,000 to Virginia's son, Brooks
- \$10,000 to Virginia's daughter, Briana

- \$10,000 to Margaret Van Dyke

January 15, 2002

- \$11,000 to Virginia Beaudoin
- \$11,000 to Virginia's husband, Barry

\$11,000 to Virginia's son, Brooks  
\$11,000 to Virginia's daughter, Briana

\$11,000 to Margaret Van Dyke

The size of the gifts increased in 2002 due to an increase in the annual gift tax exemption that year to \$11,000. Attached as Exhibit 1 is a true and correct copy of Mrs. Beaudoin's letter of January 14, 1999 directing Davidson Trust to follow this gifting program. Exhibit 2 is a collection of true and correct statements of the trust account, documenting the dates of the distributions, including those that were made at Mrs. Beaudoin's direction.

3. Geraldine Schneider died on March 10, 2003. In April 2003, Davidson Trust opened separate accounts for the one-half of the trust assets that were to be held for the primary benefit of Virginia Beaudoin and the one-half of the trust assets that were to be held for the primary benefit of Margaret Van Dyke.

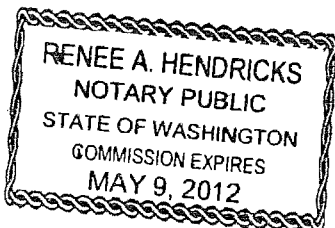
4. Following the separation into the two trusts, Mrs. Beaudoin acted on her right to compel distributions to her of both income and principal from her half of the trust. Between the opening of her account in April 2003 and October 2006, she withdrew the entire \$374,346.87 available from her share of the trust. After Virginia Beaudoin exhausted her half of the trust in October 2006, the only Geraldine Schneder Trust assets for which Davidson Trust Co. served as trustee were those in the remainder trust for the primary benefit of Margaret Van Dyke.

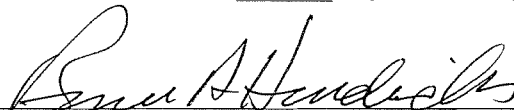
5. On March 30, 2007, Margaret Van Dyke died. With her death, the beneficiaries of the Trust were fixed and determinable as Brooks and Briana Beaudoin. As of Margaret's death on March 30, 2007, Virginia Beaudoin had no interest under any trust agreement being administered by Davidson Trust Co.

6. Nonetheless, I am aware that an assistant at Davidson Trust Co. mistakenly believed and reported that Virginia Beaudoin was the beneficiary of the portion of the trust that had been established for the primary benefit of Margaret. In mid-June 2007, in the process of acting on final distributions, I reviewed the trust agreement and realized that an error had been made. I promptly notified or caused Virginia Beaudoin, Brooks Beaudoin and Briana Beaudoin to be notified. The Trust assets of over \$370,000 were thereafter distributed to Brooks Beaudoin and Briana Beaudoin (one-half each, or \$185,869.37) in accordance with the terms of the Trust Agreement.

  
\_\_\_\_\_  
J. Todd Edmonds

SUBSCRIBED AND SWORN to before me this 22 day of January, 2010.



  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, Residing at Spokane  
My Commission Expires: 5/9/2012

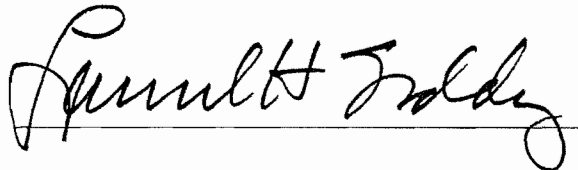


**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- |                                     |                       |
|-------------------------------------|-----------------------|
| <input type="checkbox"/>            | Via First Class Mail  |
| <input type="checkbox"/>            | By Hand Delivery      |
| <input type="checkbox"/>            | Via Facsimile:        |
| <input type="checkbox"/>            | By E-mail:            |
| <input checked="" type="checkbox"/> | By Overnight Delivery |



---

**Exhibit 1**

AFFIDAVIT OF J. TODD EDMONDS

115 .

**COPY**

January 14, 1999

Davidson Trust Co.  
Attn: Larry LeMaster  
P.O. Box 2309  
Great Falls, MT 59403

RE: Geraldine Schneider Trust

Dear Larry:

On behalf of my mother, acting by reason of the Power of Attorney I have relating to her affairs, I hereby direct the Trustee to undertake a program of gifting in order to benefit the Trust and its beneficiaries. This program of gifting is necessary in order to reduce the potential tax impact upon the Trust and my mother's estate, the beneficiaries of the Trust and their economic situations. Given the size of the Trust, failure to undertake an aggressive gifting program will only result in unnecessary taxes being paid to the government.

Accordingly, I request that the Trustee immediately begin a gifting program by which the sum of \$10,000.00 is gifted each year to me; my husband, Barry; my son, Brooks; my daughter, Briana; and my sister, Margaret. The gifting should be made immediately in 1998 and at the first available date each year thereafter.

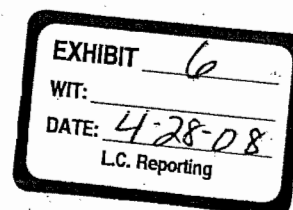
In the event my sister has any concerns about this program I am willing to work with the Trustee and Margaret to make certain that adequate resources remain in the Trust to address those concerns as well as the needs of my mother. I think you will agree that maintaining the status quo merely harms all of the family members and benefits only the government. Please contact me should you have any questions regarding this matter.

Sincerely,

*Virginia Beaudoin*  
Virginia Beaudoin, Power of Attorney  
For Geraldine Schneider

Dated this 17th day of January, 1999

*Geraldine Schneider*  
Geraldine Schneider



041

2002 116

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## **Exhibit 2**

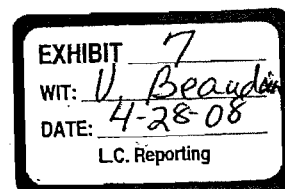
AFFIDAVIT OF J. TODD EDMONDS

117.

ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SEC GL(ALL)  
 05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
 REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
 AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/	SECURITY	---TRAN---	RG	SEC	TAX S P	INCOME/	PRINCIPAL/
AC REMIT	NUMBER	TYPE NUMBER	CD	CLASS	CDE P T	UNITS	BOOK VALUE
02/24/98		2 98022402400			593	113.05-	.00
		PYMT TO OWLS CPS					.00
		PHARMACY EXPENSES					
02/24/98		2 98022402401			610	35.00-	.00
		PYMT TO TERRANCE STYLING SALON					.00
02/26/98		2 98022601257			570	.00	50,000.00-
		WITHDRAWAL PER REQUEST					.00

F6/Forward F7/Reverse F11/Change F12/Inquiry F20/Hardcopy D0/Exit



AFFIDAVIT OF J. TODD EDMONDS

118.

ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SEC CL(ALL)  
 05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
 REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
 AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/	SECURITY	---TRAN----	RG	SEC	TAX S P	INCOME/	PRINCIPAL/
AC	REMIT	NUMBER	TYPE	NUMBER	CD CLASS CDE P T	UNITS	BOOK VALUE
01/26/99		2	99012600001		630	.00	50,000.00-
	REMITTANCE TO GERALDINE SCHNEIDER						.00
	WITHDRAWAL FOR ANNUAL GIFTS						
01/28/99		2	99012800127		610	48.00-	.00
	PYMT TO MISTY DECK-BURNETT						.00
	HAIR CARE FOR JANUARY						

F6/Forward F7/Reverse F11/Change F12/Inquiry F20/Hardcopy D0/Exit \_

ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SEC CL(ALL)  
 05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
 REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
 AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/	SECURITY	---TRAN----	RG	SEC	TAX S P	INCOME/	PRINCIPAL/
AC REMIT NUMBER	TYPE NUMBER	CD CLASS	CDE P T	UNITS	BOOK VALUE		
06/05/00	1	00052508536		066	.00	683.00	
00007	UNITED STATES TREASURY						.00
	SOCIAL SECURITY PAYMENT						
	516037712						
06/07/00	2	00060700005		610	9,700.00-	.00	
	PYMT TO VIRGINIA BEAUDOIN						.00
	PURCHASE OF CAR FOR BRIANNA'S						
	GRADUATION GIFT						

F6/Forward F7/Reverse F11/Change F12/Inquiry F20/Hardcopy D0/Exit \_

ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SEC GL(ALL)  
05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/	SECURITY	---TRAN---	RG	SEC	TAX	S	P	INCOME/	PRINCIPAL/
AC REMIT	NUMBER	TYPE NUMBER	CD	CLASS	CDE	P	T	UNITS	BOOK VALUE
01/17/01		6 01010808370			630			.00	50,000.00-
00011	DISTRIBUTION TO								.00
	GERALDINE SCHNEIDER								
	% VIRGINIA BEAUDOIN								
01/25/01	36960410	1 01010211715	41	SZZ	090			360.00	.00
	GENERAL ELECTRIC COMPANY								.00
	DIVIDEND DUE 01/25/01								
	DIVD ON 2,250 SHS @ .16 PER SH								

F6/Forward    F7/Reverse    F11/Change    F12/Inquiry    F20/Hardcopy    D0/Exit \_



ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SGL(ALL)  
 05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
 REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
 AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/ SECURITY	---TRAN----	RG	SEC	TAX S P	INCOME/	PRINCIPAL/
AC REMIT NUMBER	TYPE NUMBER	CD	CLASS	CDE P T	UNITS	BOOK VALUE
01/15/02	6 02010809065			630	.00	50,000.00-
00011	DISTRIBUTION TO					.00
	GERALDINE SCHNEIDER					
	% VIRGINIA BEAUDOIN					

F6/Forward F7/Reverse F11/Change F12/Inquiry F20/Hardcopy D0/Exit \_

ACCOUNT 30-0818-70 GERALDINE SCHNEIDER REV LIVING TRUST SEC CL(ALL)  
 05/09/96 - 09/30/03 SECURITY(ALL) TRAN(C) PORT(ALL) CASH(ALL)  
 REG(ALL) LOC(ALL) TAX(ALL) REMIT(ALL) ADM(ALL) INV(ALL)  
 AMOUNT(ALL) INST(ALL) BRANCH(ALL) T/D N

POST DT/ SECURITY	---TRAN----	RG	SEC	TAX S P	INCOME/	PRINCIPAL/
AC REMIT NUMBER	TYPE NUMBER	CD	CLASS	CDE P T	UNITS	BOOK VALUE
01/10/02	3 02010408103			640	2,813.54-	.00
FEE FOR PERIOD ENDING 12/31/01						.00
01/15/02	2 02011501584			630	.00	5,000.00-
GERALDINE SCHNEIDER						.00
% VIRGINIA BEAUDOIN						
ADDITIONAL DISBURSEMENT FOR						
2002 GIFTING						

F6/Forward F7/Reverse F11/Change F12/Inquiry F20/Hardcopy D0/Exit \_



testify.

2. When Meg Van Dyke died, her husband called to tell me. He asked me if I would let her sister, Ginny Beaudoin, know that she had passed, because the two sisters had been estranged. He also had some questions for me about some final expenses. My reason for calling Ginny Beaudoin after receiving Meg's husband's call was not to tell her she was the beneficiary, but, at Meg's husband's request, to let her know that her sister had died. I tried to call Ginny on the Friday when I heard from Meg's husband, but could not reach her so I called her again on Saturday, from my home. I thought it was important to let her know of her sister's death as soon as possible.

3. It was my understanding from discussions I had had in the past with a former Trust Office, Linda Russell, that when Meg died, the funds would pass to Ginny. So when I reached her and reported her sister's death, I did mention the expenses and said something to the effect that "as the beneficiary, we'll need your permission to pay these expenses."

4. I don't recall everything that was said or exactly how it was said in our conversation, but I believe strongly that Ginny did NOT say anything about believing that her children were the beneficiaries. That would have been a completely new concept. If there had been any suggestion that I was mistaken, I would have referred the question to a trust officer. It would not have been my role to make that judgment, and I never passed myself off as a trust officer. I would never have "reassured" someone that they were a beneficiary based solely on my belief or assumption that they were.

5. I specifically recall that I asked Ginny whether she had a copy of the trust document during the course of the conversation. She was asking me questions about expenses

that I couldn't answer because I was home and didn't have the document with me. I explained that to her and I recall telling her that I could send her a copy of the Trust document the following Monday. She told me I didn't need to because she already had it.

Jan Shelby  
Jan Shelby

SUBSCRIBED AND SWORN to before me this 22 day of January, 2010.



Kelly Bergstrom  
NOTARY PUBLIC in and for the State  
of Washington, Residing at Spokane Valley  
My Commission Expires: 5/3/2010

### CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

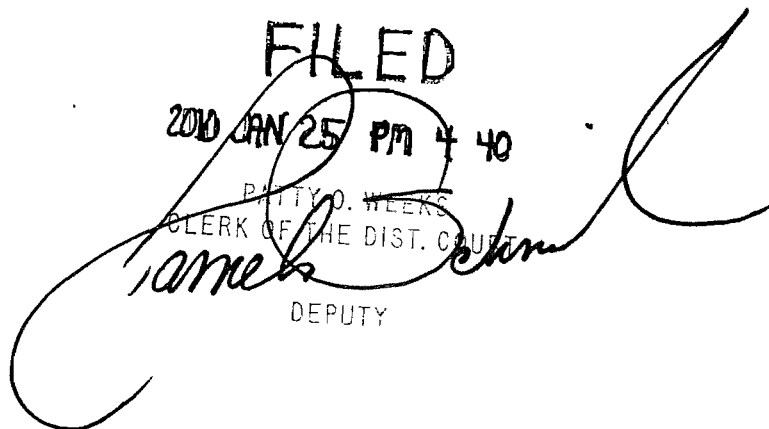
John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☐ Via First Class Mail
- ☐ By Hand Delivery
- ☐ Via Facsimile
- ☐ By E-mail
- ☒ By Overnight Delivery

  
\_\_\_\_\_

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

Attorneys for Defendant



DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

AFFIDAVIT OF  
LARRY LEMASTER

STATE OF MONTANA     )  
COUNTY OF CASCADE    ) ss.:

I, Larry LeMaster, attest as follows under penalty of perjury:

1. I am presently retired. Prior to my retirement, I was employed by Davidson Trust Co. as a Vice President and Trust Officer. In the course of my work for Davidson Trust Co., I had occasion to serve as a trust officer for the Geraldine Schneider Revocable Trust. This affidavit addresses matters that are personally known to me, as to which I am competent to testify.

2. At the request of Davidson Trust Co., I have reviewed the attached letter. It

AFFIDAVIT OF LARRY LEMASTER - 1

128.

bears my signature and is a letter that I would have sent to Virginia Beaudoin on or shortly after its March 8, 2000 date (although the "Exhibit" sticker was obviously added by someone at a later time). Although I do not have a specific recollection of the matters discussed in the letter, I see that it says, in part, ". . . I have enclosed a copy of the Restated Trust Agreement dated May 9, 1996" and that below my signature, there is an indication, by "Enc.," that the letter was sent with an enclosure. Based on those statements and references and my usual business practice, a copy of the 1996 Trust document would have been sent to Virginia Beaudoin with the March 8, 2000 letter.

15/  
\_\_\_\_\_  
Larry LeMaster

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of January, 2010.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Montana, Residing at Great Falls  
My Commission Expires: \_\_\_\_\_

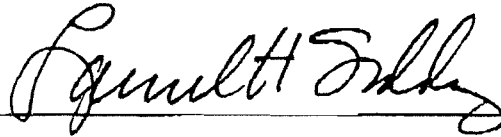


**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- |                                     |                       |
|-------------------------------------|-----------------------|
| <input type="checkbox"/>            | Via First Class Mail  |
| <input type="checkbox"/>            | By Hand Delivery      |
| <input type="checkbox"/>            | Via Facsimile:        |
| <input type="checkbox"/>            | By E-mail:            |
| <input checked="" type="checkbox"/> | By Overnight Delivery |





**DAVIDSON TRUST CO.**  
WEALTH MANAGEMENT

**DAVIDSON TRUST CO.**  
**MONTANA**

Davidson Building  
8 Third Street North  
P.O. Box 23099 (59403-23099)  
Great Falls, MT 59401  
Phone: 406-791-7320  
Toll-Free: 800-634-5326  
FAX: 406-791-7385

283 West Front St., Suite 103  
Missoula, MT 59802  
Phone: 406-543-9952  
Toll-Free: 888-218-9884  
FAX: 406-549-3479

P.O. Box 152  
Kalispell, MT 59903-0152  
Phone: 406-257-7320  
Toll-Free: 888-257-7334  
FAX: 406-752-6157

2825 3rd Ave. North  
P.O. Box 2040 (59103)  
Billings, MT 59101  
Phone: 406-248-9329  
Toll-Free: 888-218-9885  
FAX: 406-256-9643

**DAVIDSON TRUST CO.**  
**IDAHO**

18 Northwest Blvd., 6th Floor  
P.O. Box 6900 (83814)  
Coeur d'Alene, ID 83814  
Phone: 208-667-1212  
Toll-Free: 800-233-7588  
FAX: 208-664-2588

**DAVIDSON TRUST CO.**  
**WASHINGTON**

Old City Hall  
21 North Wall St., Suite 400  
P.O. Box 423 (99210)  
Spokane, WA 99201  
Phone: 509-456-8323  
Toll-Free: 800-476-8323  
FAX: 509-456-6692  
A DADCO COMPANY

March 8, 2000

Virginia Beaudoin  
106 Marine View Court  
Lewiston, ID 83501

RE: Geraldine Schneider Revocable Trust  
30-0818-70

Dear Ginny:

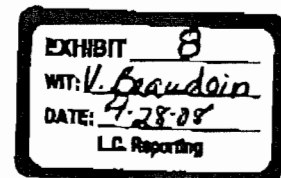
Pursuant with our telephone conversation regarding the dispositive provisions of you mother's trust, I have enclosed a copy of the Restated Trust Agreement dated May 9, 1996. Paragraph B, page 7 discusses the payment provisions regarding Margaret Mary Van Dyke's share. The document states that the trustee "shall" pay the income to Margaret, so any legal entity could attach the income from her share. The principal pay out however is discretionary and cannot be attached. The only option, if the situation justifies it, would be to amend this paragraph and make the income payment discretionary also. The problem with this is that the trust would be taxed at a considerably higher rate than most individuals, but if there is a concern and probability that Margaret's ex-husband would attach her income interest, then this would be an option.

If you have any comments or questions please give me a call.

Sincerely,

Larry LeMaster  
Vice President and Trust Officer

Enc.



LAUREL H. SIDDOWAY, ISB #3151  
 RANDALL & DANSKIN, P.S.  
 601 West Riverside Avenue, Suite 1500  
 Spokane, WA 99201-0653  
 Phone: 509/747-2052  
 FAX: 509/624-2528

Attorneys for Defendant

FILED  
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 PATTY O. WEEKS  
 CLERK OF THE DIST. COURT  
 DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
 COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

AFFIDAVIT OF  
 LARRY LEMASTER

STATE OF MONTANA     )  
 COUNTY OF CASCADE    ) ss.:

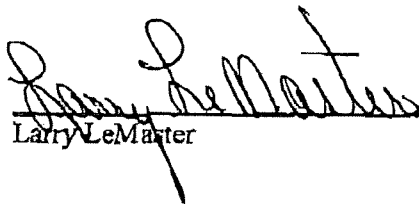
I, Larry McMaster, attest as follows under penalty of perjury:

1. I am presently retired. Prior to my retirement, I was employed by Davidson Trust Co. as a Vice President and Trust Officer. In the course of my work for Davidson Trust Co., I had occasion to serve as a trust officer for the Geraldine Schneider Revocable Trust. This affidavit addresses matters that are personally known to me, as to which I am competent to testify.

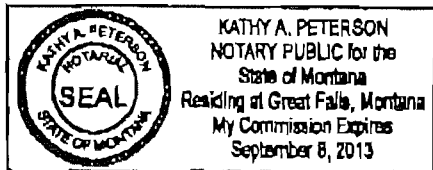
2. At the request of Davidson Trust Co., I have reviewed the attached letter. It

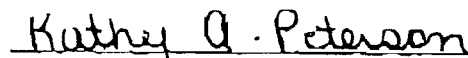
AFFIDAVIT OF LARRY LEMASTER - 1

bears my signature and is a letter that I would have sent to Virginia Beaudoin on or shortly after its March 8, 2000 date (although the "Exhibit" sticker was obviously added by someone at a later time). Although I do not have a specific recollection of the matters discussed in the letter, I see that it says, in part, ". . . I have enclosed a copy of the Restated Trust Agreement dated May 9, 1996" and that below my signature, there is an indication, by "Enc.," that the letter was sent with an enclosure. Based on those statements and references and my usual business practice, a copy of the 1996 Trust document would have been sent to Virginia Beaudoin with the March 8, 2000 letter.

  
Larry LeMaster

SUBSCRIBED AND SWORN to before me this 26 day of January, 2010.



  
NOTARY PUBLIC in and for the State  
of Montana, Residing at Great Falls  
My Commission Expires: September 8, 2013  
CASCADe County

## CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of January, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Ferney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☐ Via First Class Mail
- ☐ By Hand Delivery
- ☒ Via Facsimile:
- ☐ By E-mail:
- ☐ By Overnight Delivery

Kelly Beigton



**DAVIDSON TRUST CO.**  
WEALTH MANAGEMENT

**DAVIDSON TRUST CO.  
MONTANA**

Davidson Building  
2 Third Street North  
P.O. Box 2309 (59403-2309)  
Great Falls, MT 59401  
Phone: 406-791-7320  
Toll-Free: 800-634-5436  
FAX: 406-791-7325

283 West Front St., Suite 103  
Missoula, MT 59802  
Phone: 406-543-9952  
Toll-Free: 888-218-9884  
FAX: 406-549-3479

P.O. Box 152  
Kalispell, MT 59903-0152  
Phone: 406-257-7720  
Toll-Free: 888-257-7724  
FAX: 406-752-6157

2823 2nd Ave. North  
P.O. Box 2040 (59103)  
Billings, MT 59101  
Phone: 406-248-9229  
Toll-Free: 888-218-9885  
FAX: 406-256-9443

**DAVIDSON TRUST CO.  
IDAHO**  
38 Northwest Blvd., 4th Floor  
P.O. Box 6800 (83814)  
Coeur d'Alene, ID 83814  
Phone: 208-667-1212  
Toll-Free: 800-233-7588  
FAX: 208-666-3588

**DAVIDSON TRUST CO.  
WASHINGTON**  
Old City Hall  
21 North Wall St., Suite 400  
P.O. Box 423 (99210)  
Spokane, WA 99201  
Phone: 509-454-8323  
Toll-Free: 800-476-8323  
FAX: 509-454-4672  
A DADCO COMPANY

March 8, 2000

Virginia Beaudoin  
106 Marine View Court  
Lewiston, ID 83501

RE: Geraldine Schnelder Revocable Trust  
30-0818-70

Dear Ginny:

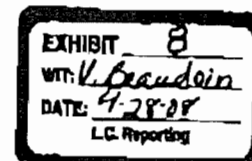
Pursuant with our telephone conversation regarding the dispositive provisions of you mother's trust, I have enclosed a copy of the Restated Trust Agreement dated May 9, 1996. Paragraph B, page 7 discusses the payment provisions regarding Margaret Mary Van Dyke's share. The document states that the trustee "shall" pay the income to Margaret, so any legal entity could attach the income from her share. The principal pay out however is discretionary and cannot be attached. The only option, if the situation justifies it, would be to amend this paragraph and make the income payment discretionary also. The problem with this is that the trust would be taxed at a considerably higher rate than most individuals, but if there is a concern and probability that Margaret's ex-husband would attach her income interest, then this would be an option.

If you have any comments or questions please give me a call.

Sincerely,

Larry LeMaster  
Vice President and Trust Officer

Enc.



JOHN CHARLES MITCHELL  
Idaho State Bar No. 7159  
CLARK and FEENEY  
Attorney for Plaintiff  
The Train Station, Suite 201  
13<sup>th</sup> and Main Streets  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516

FILED

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PATTY O. WEERS  
CLERK OF THE DISTRICT COURT  
*Patty O. Weers*  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

vs.

DAVIDSON TRUST COMPANY,

Defendant.

Case No. CV 2007-02364

**PLAINTIFF'S MEMORANDUM  
IN OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT**

COMES NOW the above-named Plaintiff, by and through her attorney of record, John Charles Mitchell of the law firm of Clark and Feeney, and submits the following Memorandum in Opposition to Motion for Summary Judgment.

**INTRODUCTION AND FACTS**

The Plaintiff (hereafter "Virginia") contends that the Defendant, Davidson Trust Co. (hereafter "Davidson Trust") is liable to her for the damages that she suffered as a result of Davidson Trust's administration of the trust that her mother set up. The short version of the factual history of this case is that after her sister passed away, Davidson Trust, the trustee of the trust set up by Virginia's mom, contacted Virginia and told her that she was entitled to receive her sister's share of

Memo in Opposition to Motion  
for Summary Judgment

1

the trust. Virginia's mom had passed away several years before and Virginia had already taken her share out of the trust. While Davidson Trust claims there is some dispute as to whether or not Virginia mentioned any doubt to Davidson Trust during this initial contact about her entitlement to her sister's share and Virginia's knowledge of the terms of the trust, there is absolutely no dispute that Virginia subsequently talked with her D.A. Davidson & Co. financial advisor about retiring due to her receipt of her sister's share of the trust. There is no dispute that the Plaintiff's financial advisor recommended that a meeting be set up with a trust officer of Davidson Trust. There is no dispute that a meeting occurred with Virginia, her husband, her financial advisor, and J. Todd Edmonds, a Vice President, Trust Officer and Branch Manager of Davidson Trust who has submitted an affidavit in this matter. There is no dispute that at this meeting it was decided that Virginia could retire due to her receipt of her sister's share of the trust. There is no dispute that Davidson Trust actually transferred her sister's share of the Trust into Virginia's account with D.A. Davidson & Co. There is no dispute that Virginia subsequently retired from her occupation, that she made monetary gifts to her children, that she made non refundable vacation arrangements, and that she took distributions from her D.A. Davidson account. There is also no dispute that Virginia only did this because she was told that she was to receive her sister's share of the trust, which in fact she actually did from Davidson Trust. There is also no dispute that after Virginia had already done these things that Davidson Trust, in the process of acting on final distributions, reviewed the trust document and determined that Virginia's children, and not Virginia, were supposed to receive her sister's share and subsequently withdrew the money that represented her sister's share that it had previously transferred into Virginia's account.

The Plaintiff and Margaret Van Dyke were the only children of Geraldine Schneider. In



February of 1982, Mrs. Schneider established the Geraldine M. Schneider Revocable Living Trust (hereafter "Trust"). Mrs. Schneider subsequently amended the Trust and the second amendment to the Trust dated May 9, 1996 is the trust document at issue in this case. A true and complete copy of the Second Amended Trust is attached as Exhibit A to the Affidavit of Laurel Siddoway. The Trust provides that the upon the death of Mrs. Schneider, the assets of the Trust were to be divided into two equal shares - one share for Virginia and the other share for Margaret. *Id.* According to the Trust, Virginia had no restrictions with regards to her share while Margaret was only entitled to receive income from the principal of her share. *Id.* According to the Trust, upon the death of Margaret, her share was to pass to Virginia's children and if no children were surviving at the time of Margaret's death then Virginia was to receive Margaret's share. *Id.*

Sometime in 1995 or 1996, Davidson Trust was appointed and contracted to become the Trustee of the Trust. *See* Complaint ¶ 8; Answer ¶ 8. Davidson Trust is a full-service trust company. *See* Complaint ¶ 8; Answer ¶ 8.

Margaret passed away on March 30, 2007. Margaret did not have any children. *See* Complaint ¶ 11. Virginia has two children - Brooks and Brianna.

Shortly after Margaret's passing, Jan Shelby, an agent of Davidson Trust, notified Virginia that she personally was to receive Margaret Mary VanDyke's share of the Trust. *See* Complaint ¶ 12; Deposition of Virginia Beaudoin, pg. 12, lns. 9-20 (Attached as Exhibit A to the Affidavit of John Charles Mitchell) At this time, Virginia informed Jan that it was her understanding that her children, and not her personally, were to receive Margaret's share of the Trust Estate, to which Jan responded that Virginia personally, and not her children, were to receive Margaret's share of the Trust. *Id.* Davidson Trust admits that one of its employees concluded in error that Virginia's sister's

share of the Trust assets was to pass to Virginia and so informed Virginia. *See* Answer ¶ 12.

Scott Baldwin, with D.A. Davidson & Co., was Virginia's financial advisor. *See* Plaintiff's Answer to Defendant's First Written Discovery to Plaintiff, Answer to Interrogatory No. 2 ¶ 4 (Attached as Exhibit B to the Affidavit of John Charles Mitchell); Deposition of Virginia Beaudoin, pg. 11, lns. 16-25. Virginia talked to him after her sister's death, sometime in the first week of April 2007. *Id.* She told him that Davidson Trust had told her that she was the beneficiary and he said that he had already heard that. *Id.* At that time, Virginia talked to him about whether the money she had in her portfolio combined with the money she would receive from the Trust would be enough for Virginia to retire and take a monthly distribution. *Id.* Scott suggested a meeting with J. Todd Edmonds. *Id.* J. Todd Edmonds is a Vice President, Trust Officer and Branch Manager of Davidson Trust. *See* Affidavit of J. Todd Edmonds.

On Scott Baldwin's suggestion, a meeting was set up with the Virginia, her husband Barry Beaudoin, Scott, and J. Todd Edmonds to discuss what Virginia should and could do as a result of the distribution. *See* Plaintiff's Answer to Defendant's First Written Discovery to Plaintiff, Answer to Interrogatory No. 2 ¶ 5; Deposition of Virginia Beaudoin, pg. 54, lns. 1-3. At this meeting, sometime during the last week of April, 2007, Virginia mentioned that she would like to stop working and take a monthly distribution. *Id.* It was agreed at the meeting that it would be fine for Virginia to retire at the end of the month and that she would begin receiving monthly distributions in June. *Id.*

Davidson then proceeded to transfer approximately \$360,000 to an account in Virginia's name. *See* Complaint ¶ 13; Deposition of Virginia Beaudoin, pg. 55, lns. 22-23. Subsequently Davidson Trust contacted Virginia and informed her that the distribution pursuant to the terms of

the Trust was to go to her children and not her personally. *See* Complaint ¶ 15.

As a result of Davidson Trust's representation and subsequent distribution of funds Virginia retired from her occupation as a beautician. *See* Complaint ¶ 14. Virginia got rid of all of her necessary business supplies and inventory and referred her clients to other beauticians in the area. *Id.* A notice of retirement was published in the local newspaper and a retirement party was given for Virginia in which she received numerous gifts from well wishers. *Id.* Furthermore, Virginia planned a trip with her family as a result of this distribution that could not be canceled. *Id.* Virginia made monetary gifts to her children and also took distributions from her D.A. Davidson account only because she was told that she was to receive her sister's share of the Trust. *See* Deposition of Virginia Beaudoin, pg. 42, lns. 21-25, pg. 43, pg. 44, lns. 1-11.

Virginia did not have a copy of the Trust document until after Davidson Trust contacted her and told her that she was not entitled to her sister's share. *See* Deposition of Virginia Beaudoin, pg. 14, lns. 3-9.

Virginia did not read the Trust document all the way through until the event described above had already occurred. *See* Deposition of Virginia Beaudoin, pg. 27, lns. 4-7.

Virginia did not recall receiving a copy of the Trust document with Larry LeMaster's letter in March of 2000. *See* Deposition of Virginia Beaudoin, pg. 35, lns. 12-25, pg. 36, lns. 1-14.

## ARGUMENT

### A. STANDARD OF REVIEW

Summary judgment is appropriate only when there is no genuine issue of material fact and only after the pleadings, depositions, admissions, and affidavits show that there is no genuine issue as to any material fact. I.R.C.P. 56(c) (West 2007). The burden of proving the absence of an issue

of material fact rests at all times upon the moving party. *Blickenstaff v. Clegg*, 140 Idaho 572, 577, 97 p.3d 439, 444 (2004) (citations omitted). To meet this burden the moving party must challenge in its motion, and establish through evidence, that no issue of material fact exists for an element of the nonmoving party's case. *Id.* The facts are to be liberally construed in favor of the party opposing the motion, who is also to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982); *Moss v. Mid-America Fire & Marine Ins. Co.*, 103 Idaho 298, 647 P.2d 754 (1982). If reasonable persons could reach different findings or draw conflicting inferences from the evidence, the motion must be denied. *Wade Baker & Sons Farms v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 136 Idaho 922, 42 P.3d 715 (2002).

B. FIDUCIARY DUTY

To establish a claim for breach of fiduciary duty, plaintiff must establish that defendant owed plaintiff a fiduciary duty and that the fiduciary duty was breached. *See Mitchell v. Barendregt*, 120 Idaho 837, 820 P.2d 707 (1991). While Virginia agrees that whether or not a fiduciary relationship exists is a matter of law, Virginia disagrees that as a matter of law Davidson Trust had no fiduciary duty to Virginia after Margaret passed away.

Davidson Trust takes the position that Virginia ceased to be a beneficiary the moment that Margaret died. Davidson Trust appears to concede that it owes a fiduciary duty to beneficiaries however limits that duty only to beneficiaries that are entitled to trust property. In other words, while Virginia was a beneficiary and a fiduciary duty was at one time owed to Virginia, that when she withdrew her share from the Trust and when Virginia's children's right to her sister's share became fixed, that her status as beneficiary and thus any fiduciary duty owed by Davidson Trust terminated.

With that being said, Davidson Trust provides no direct authority on point in support of its position.

Neither case cited by Davidson Trust is on point or factually similar. In one case, the Idaho Supreme Court held that a fiduciary relationship did exist between former partners for conduct that occurred after the partnership was terminated. This holding of course makes sense however is not analogous to our case. In our case, the Trust had not been terminated or wound up when Davidson Trust committed the alleged breach. J. Todd Edmonds states that he did not realize an error had been made until he was getting ready to act on final distributions of the Trust. In the other case the Idaho Supreme Court held that a corporation, its directors and officers did not owe a fiduciary duty to a shareholder prior to the time he became a shareholder. This holding also makes sense but again is not analogous to our case. Mrs. Schneider established the Trust and Virginia was a beneficiary. No affirmative action was taken by Mrs. Schneider to remove Virginia as a beneficiary nor did Virginia decline to be a beneficiary. The Trust had not been terminated or wound up when Davidson Trust committed the alleged breach. Virginia was still a beneficiary of the Trust at the time the acts occurred and Davidson Trust has provided no legal authority supporting its contention that Virginia was no longer a beneficiary. As a matter of law, Davidson Trust owed all of the Trust beneficiaries a fiduciary duty while the Trust was still in existence.

Regardless, Davidson Trust's argument fails because after Margaret's death, Davidson Trust continued to treat Virginia as a beneficiary. Davidson Trust represented to her that she was to receive her sister's share and subsequently proceeded to transfer her sister's share into Virginia's account. When an affirmative duty generally is not present, a legal duty may arise if one voluntarily undertakes to perform an act, having no prior duty to do so. *Baccus v. Ameripride Services, Inc.* 145 Idaho 346, 350, 179 P.3d 309, 313 (2008). In such a case the duty is to perform the voluntarily-

undertaken act in a non-negligent manner. *Id.* The facts are not in dispute that after Virginia's sister passed away she was told by Davidson Trust that she was to receive her sister's share, that Virginia met with Davidson Trust when it was decided that she could retire, and that Davidson Trust actually transferred her sister's share into Virginia's account. All of these actions were taken voluntarily by Davidson Trust after Virginia's sister passed away. Davidson Trust continued to treat her as a beneficiary and as such continued to owe Virginia a fiduciary duty. Davidson Trust has failed to establish that as a matter of law it did not owe Virginia a fiduciary duty.

C. NEGLIGENCE

Contrary to Davidson Trust's belief, Virginia claim for negligence is not a negligent misrepresentation claim characterized merely as a negligence claim. The elements of a negligence claim are a duty the defendant owes to the plaintiff, a breach of that duty by the defendant, a causal connection between the breach and the plaintiff's injury, and actual injury. *See Schmechel v. Dille*, 148 Idaho 176, \_\_\_, 219 P.3d 1192, 1203 (2009).

Well established trust law is that a trustee has the duty to administer the trust according to the trust instrument. Well established trust law is that the trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use. Well established trust law is that a trustee is under a duty to use any special skills or expertise it possesses. Well established trust law is that a violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

As addressed above, Virginia was and is at all times a beneficiary of the Trust, or at the very least for the purposes of summary judgment, Davidson Trust assumed a duty to Virginia after her sister passed away.

Davidson Trust proceeded to breach its duties by failing to administer the Trust according to the Trust instrument, failing to exercise care, skill, prudence, and diligence, and failing to use the special skills and expertise it possesses after Virginia's sister passed away by notifying her that she was to receive her sister's share, by being present during a meeting with Virginia when it was decided that she could retire because of her receipt of her sister's share, and by actually transferring her sister's share into Virginia's account. Given all favorable inferences to Virginia, it appears that Davidson Trust failed to even read the Trust provisions until after all this had occurred.

Furthermore, at the very least for the purposes of summary judgment, as set forth above, Davidson Trust's conduct is connected to Virginia's injuries which in fact did occur. Virginia retired from her occupation, gifted money to her kids, and made vacation plans as a result of Davidson Trust's actions. When she was forced to pay the money back she was damaged.

Virginia's negligence claim against Davidson Trust is more than a negligent misrepresentation claim. The claim is grounded in a duty, a breach of that duty, a connection between that breach and the actual injury of Virginia. For the purposes of summary judgment, all facts and inferences are to be liberally construed in favor of Virginia. Given this standard it would be inappropriate to dismiss her negligence claim on summary judgment based on the facts stated above. As such Virginia respectfully requests that the Court deny Davidson Trust's motion for summary judgment on this issue.

#### D. JUSTIFIABLE RELIANCE

Davidson Trust's contention that Virginia cannot justifiably rely on Davidson Trust's conduct is without merit. On a preliminary note the issue of justifiable reliance is generally a question of fact. *See King v. Lang*, 136 Idaho 905, 911, 42 P.3d 698, 704 (2002). The following facts support

justifiable reliance and are undisputed:

- Davidson Trust is a professional trust company.
- Davidson Trust is the Trustee.
- Virginia is a beneficiary under the terms of the Trust.
- After Virginia's sister died, Davidson Trust contacted Virginia and during this contact informed Virginia that she was to receive her sister's share of the Trust.
- Subsequently a meeting was held with her financial advisor and an individual who is a Vice President, a Trust Officer and a Branch Manager of Davidson Trust where it is discussed and decided that Virginia can retire as a result of her receiving her sister's share.
- Davidson Trust actually transferred Virginia's sister's share into her account.
- Only after the distribution had been made did Davidson Trust review the Trust agreement.

If you cannot justifiably rely on a professional trust company administering the terms of a trust who can you rely on? With that being said Davidson Trust still contends that Virginia was not excusably ignorant of the true facts, nor did she lack the means of discovering the true facts. However most if not all of these facts have dispute.

Davidson Trust claims she had first hand knowledge that her children had been named beneficiaries and had met with her mother and attorney Jim Rector to discuss it. The only first hand knowledge about the terms of a trust is the Trust document itself and Virginia testified that she did not have a copy of the Trust document until after Davidson Trust contacted her and told her that she was not entitled to her sister's share, that she had not read the Trust document all the way through



until the event described above had already occurred, and that she did recall receiving a copy of the Trust document with Larry LeMaster's letter in March of 2000. Regardless of Davidson Trust's contentions about justifiable reliance, for the purposes of summary judgment, Virginia never had a copy of the Trust until after Davidson Trust took the money back and never read the Trust agreement in its entirety until after that. Without having seen the actual Trust document, Virginia cannot be positive of any of its terms. History shows that her mom previously amended the Trust. The mental competency to manage one's own affairs is different than the capacity to change a will or trust. A dispute exists whether or not Virginia told Jan Shelby that she thought her children were to get her sister's share and whether or not Jan responded by telling Virginia that she was the beneficiary.

Clearly the issue of justifiable reliance is a question of fact and just as clear is that the material facts with regards to this issue are in dispute. As such Virginia respectfully requests that the Court deny Davidson Trust's motion for summary judgment on this issue.

#### E. COMPARATIVE FAULT

Finally, Davidson Trust's contention that all of Virginia's claims should be barred because of comparative fault is also without merit. Comparative fault is only applicable to the negligence action, not the breach of fiduciary duty action, and like justifiable reliance, comparative fault is a question of fact. Davidson Trust characterizes its mistake as innocent or negligent and characterizes Virginia's conduct as reckless. Nothing can be further from the truth. Davidson Trust is a professional trust company. Davidson Trust incorrectly told Virginia she was the beneficiary of her sister's share. Davidson Trust has a copy of the Trust agreement and is paid to administer the Trust in accordance to the Trust provisions. Davidson Trust failed to review the Trust provisions in a timely manner. Only after Virginia made substantial changes in her life, which Davidson Trust knew

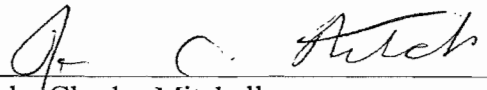
about, did it bother to review the terms of the Trust. Davidson Trust transferred her sister's share into her account before reviewing the terms of the Trust. Davidson's conduct was more than just a mistake, more than just negligent. Not only was its conduct reckless, its conduct is outrageous given the facts and its status as trustee and its position as a professional trust company.

**CONCLUSION**

Based on the foregoing, Virginia respectfully requests that this Court deny Davidson Trust's Motion for Summary Judgment.

Dated This 11 day of February 2010.

CLARK and FEENEY

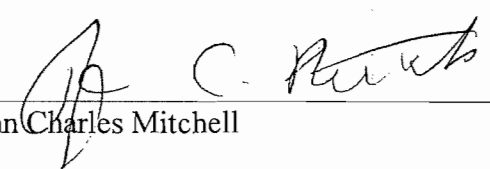
By:   
John Charles Mitchell  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11th day of February, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Laurel H. Siddoway  
Randall & Danskin, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (FAX)

  
John Charles Mitchell

JOHN CHARLES MITCHELL  
Idaho State Bar No. 7159  
CLARK and FEENEY  
Attorney for Plaintiff  
The Train Station, Suite 201  
13<sup>th</sup> and Main Streets  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516

FILED

2010 FEB 11 PM 4 19

PATTY O. WEEKS

CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Case No. CV 2007-02364

Plaintiff,

**AFFIDAVIT OF JOHN C. MITCHELL**

vs.

DAVIDSON TRUST COMPANY,

Defendant.

STATE OF IDAHO

) ss.

County of Nez Perce

JOHN CHARLES MITCHELL, after being first duly sworn on oath, deposes and says:

1. Your affiant is the attorney of record for Plaintiff Virginia R. Beaudoin, and has personal knowledge of the facts herein alleged.

2. Attached hereto as Exhibit "A" is a true and correct copy of the cover page, signature page, and reporter's certificate of the Deposition and relevant excerpts of Virginia R. Beaudoin taken at Lewiston, Idaho on April 28, 2008.

3. Attached hereto as Exhibit "B" is a true and correct copy of the Plaintiff's Answer to

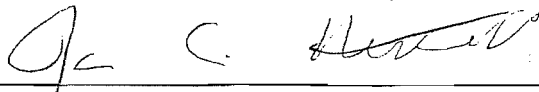
Affidavit of John C. Mitchell

1

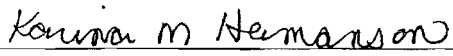
Defendant's First Written Discovery to Plaintiff without attachments.

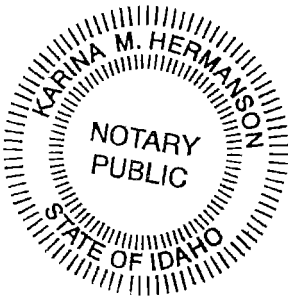
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 4 day of February, 2010.

  
\_\_\_\_\_  
JOHN CHARLES MITCHELL

SUBSCRIBED AND SWORN to before me this 11 day of February, 2010.

  
\_\_\_\_\_  
Notary Public in and for the State of Idaho  
Residing at Lewiston therein.  
My Commission Expires: April 25, 2014

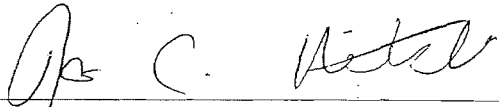


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of February, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Laurel H. Siddoway  
Randall & Danskin, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653

- ☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (FAX)

  
\_\_\_\_\_  
John Charles Mitchell

# EXHIBIT A

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN, )  
 )  
Plaintiff, )  
 )  
vs. ) CASE NO. CV 07-02364  
 )  
DAVIDSON TRUST COMPANY, )  
 )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

DEPOSITION OF VIRGINIA R. BEAUDOIN  
TAKEN ON BEHALF OF THE DEFENDANT  
AT LEWISTON, IDAHO  
APRIL 28, 2008, AT 1:25 P.M.

**COPY**



1 salon?

2 **A.** There were three hair stations and there were three  
3 nail stations.

4 **Q.** How long had you been working at that location?

5 **A.** Five years.

6 **Q.** Let me have you mark an exhibit for me.

7 (Thereupon, Deposition Exhibit No. 1 was marked  
8 for identification by the court reporter.)

9 BY MS. SIDDOWAY:

10 **Q.** Ms. Beaudoin, what's been marked as Exhibit 1 to your  
11 deposition is four pages that were produced to me in discovery  
12 by your attorney Mr. Mitchell. Can you take a look at Exhibit  
13 1 and if you recognize it, tell me what it is?

14 **A.** Actually what I'm seeing is my add in the paper talking  
15 about my leaving.

16 **Q.** Alright. And it looks like the add ran on April 22 and  
17 April 24th of 2007?

18 **A.** Correct.

19 **Q.** New did you place the add or did Nail Elegance and Hair  
20 Studio?

21 **A.** Sherry Lyons at Nail Elegance, the owner, is the one  
22 that placed the add.

23 **Q.** And do you have any idea when she placed the add so  
24 that it could run on the 22nd and the 24th?

25 **A.** I believe it was about the week before.

1 **Q.** Can you recall or can you infer from that when you must  
2 have told her that you were going to be retiring and  
3 wouldn't - April 27th would be your last day of work?

4 **A.** I believe I told her - let's see. Gosh, I think it  
5 was probably the second week in April, so she ran this the  
6 following week.

7 **Q.** And the add says "Ginny's last day. Come by and wish  
8 her good luck on her new venture. And join Gwen, Elizabeth,  
9 Christina and Sherry in welcoming BK back."

10 **A.** BK was another co-worker that moved and came back.

11 **Q.** And was she going to take over your hair station?

12 **A.** I had called BK when I decided I was going to quit and  
13 told her that if she wanted to come back, she could have my  
14 station.

15 **Q.** Now did you have a written lease agreement for that  
16 station?

17 **A.** No, so just verbal, just verbal.

18 **Q.** And what were the terms? Did you pay a fixed price or  
19 was it a percentage of your revenues or how did that work?

20 **A.** I paid a a fixed price.

21 **Q.** What was it?

22 **A.** Three hundred.

23 **Q.** Do you know whether the owner had a waiting list or  
24 that other people had expressed interest in taking one of the  
25 other stations if it became available?

1 **A.** No.

2 **Q.** Alright. And this BK, what is her full name?

3 **A.** Betty Kaye Kachelmier.

4 **Q.** Can you spell that because she will ask me later and  
5 I'll have no idea.

6 **A.** The Kachelmier, K-a-c-h-e-l-m-i-e-r, I believe.

7 **Q.** And she was back living in the Lewiston-Clarkston area?

8 **A.** Yes.

9 **Q.** Okay. And did you in the April 2007 time frame, did  
10 you have written records that you kept with the names,  
11 addresses and contact information for your clientele?

12 **A.** Yes.

13 **Q.** What form did those take?

14 **A.** Explain to me what you mean.

15 **Q.** Did you have them on a computer in a software program  
16 did you just -

17 **A.** I have an address book.

18 **Q.** An address book, okay. Did you ever explore selling  
19 that client list to anyone else at the time you retired?

20 **A.** In Lewiston in this business you don't sell your list,  
21 you just tell other people where to go or who you would  
22 suggest.

23 **Q.** And when did you start talking to your clients about  
24 the fact that you were going to be retiring and who you  
25 recommended they see?

1 **A.** As soon as - well, as soon as I had talked to  
2 Scott Baldwin which was probably first week in April.

3 **Q.** Did you have more than one conversation with  
4 Scott Baldwin?

5 **A.** Yes.

6 **Q.** How many conversations did you have with him in  
7 April-May 2007 time frame, approximately?

8 **A.** I would guess probably about four.

9 **Q.** Can you describe for me the conversation that you  
10 recall having prior to the time you started telling your  
11 clients that you were going to be retiring and recommending who  
12 they see thereafter?

13 **A.** Are you talking about with Scott Baldwin, the  
14 conversation I had with him?

15 **Q.** Yes.

16 **A.** I remember calling Scott and telling him that  
17 D.A. Davidson had called me and told me that I was going to be  
18 the beneficiary. And he said, "Yeah, I heard that. Isn't that  
19 great." And I said, "yeah." So I said, "Scott, I have wanted  
20 to quit work for awhile," I said, "do you think it's going to  
21 be feasible for me to quit my job and draw a monthly  
22 disbursement." And he said, "Well, let me sit down and figure  
23 this out." And then he said, "I think we should meet with the  
24 trust officer to discuss this." And at that point in time he  
25 made an appointment with Todd Edmunds to come to Lewiston to

1 discuss things.

2 Q. So is it your recollection as you sit here today that  
3 you had the conversation with Todd Edmunds prior to the time  
4 you started giving your clients notice that you were going to  
5 be retiring?

6 A. No, I didn't speak to Todd Edmunds, I spoke to a  
7 secretary of his. I believe, she's a secretary, I'm not sure.

8 Q. Okay. Tell me about that conversation.

9 A. On a Friday, the 30th of March, there was a phone call  
10 on my home phone from Jan Shelby telling me she was from D.A.  
11 Davidson and she had something that she needed to discuss with  
12 me and would I please call her back. And I didn't get home  
13 from work until late that day, it was about six o'clock, and I  
14 thought, well, I'll just call her Monday because it's too late  
15 now. So Saturday, the next day, which would have been the  
16 31st, right, I got a call at noon from Jan Shelby telling me  
17 that my sister had passed away and that I was the beneficiary.  
18 And I told her, "I don't think that's right," I said, "I think  
19 this money goes to my kids." "Oh, no," she said, "it goes to  
20 you." And I said "really," and she goes "yeah." And I said,  
21 "Well, what do I do now? I mean what am I supposed to do?"  
22 And she says, "Well, we will have to -- I'll call you back on  
23 Monday," and she said, "there's some things I need for you to  
24 take care of like her -- I needed to get a hold of her landlord  
25 to cancel her lease, I needed to get in touch with her husband,

1 Herbert Budge. I needed to contact the mortuary for her  
2 cremation and method of payment.

3 Oh, and then we discussed when Herbert was going to be  
4 moving out of their apartment. She had canceled all the  
5 utilities, and I said, "Well, leave them on until he can get  
6 out, you know, and I said, "Give him at least a month. He's  
7 got to find a place to live." So that's all I can remember.

8 Q. Okay. Just to clarify as you were describing that,  
9 sometimes you were using pronouns like "I" and "she" because  
10 you were describing a conversation, I didn't know whether you  
11 were talking about you or Jan Shelby.

12 So one question I have is when you and she were talking  
13 about the various things that needed to be done, was she saying  
14 that she was going to take care of those things or that you  
15 should take care of contacting the mortuary, et cetera?

16 A. She was telling me what I needed to do.

17 Q. Okay. And then in terms of turning off the utilities,  
18 do I understand you to say -- to have testified that Jan Shelby  
19 had had them turned off, and you suggested that they should be  
20 kept on for long enough for Mr. Budge to move out?

21 A. Right.

22 Q. Approximately how long did this conversation on  
23 Saturday take place, how long was it?

A. Ten or fifteen minutes, I suppose.

Q. And do you recall Miss Shelby asking you during that

1 conversation if you had a copy of the trust document?

2 A. No.

3 Q. Did you have a copy of the trust document?

4 A. No.

5 Q. Did you later obtain a copy of the trust document?

6 A. Yes.

7 Q. When?

8 A. It wasn't until after I was called the first of July  
9 and told that I was no longer the beneficiary.

10 Q. And from whom did you obtain a copy of the trust  
11 document at that time?

12 A. Jim Rector.

13 Q. Is Jim Rector still in active practice in Montana?

14 A. Yes, he is.

15 Q. Okay. What had made you believe that you were not the  
16 beneficiary when you first got the phone call from Miss Shelby?

17 A. Because several years ago my mother -- well, my mother  
18 changed her will all the time. She was worried about my  
19 sister. And she wanted me to go to Jim Rector's office with  
20 her because she wanted to talk about what was going to happen  
21 to my sister's money when my sister passed away.

22 Q. And did you go to Mr. Rector's office?

23 A. Yes, I did.

24 Q. And what was -- what was discussed at Mr. Rector's  
25 office?

1 A. That she wanted -- if my sister were to predecease me,  
2 she wanted the money that my sister had to go to my children.

3 Q. And was it your understanding that Mr. Rector was then  
4 going to amend the trust document to reflect that?

5 A. Yes.

6 Q. And were you provided with a copy of the amended trust  
7 document that created this scheme?

8 A. You know, I do not recall if I had that.

9 Q. Did you talk to anyone after meeting with Mr. Rector  
10 about the fact that your mother had made this change to the  
11 trust?

12 A. No.

13 Q. Do you know what -- do you recall what the dispositive  
14 scheme was for the funds that were in your sister Margaret's  
15 account prior to this change? Do you know where they were  
16 going to go prior to the time she amended the trust so that  
17 they would go to your children?

18 A. It would probably have come back to me.

19 Q. Did your mother say why she wanted to amend the trust  
20 document so that Margaret's trust assets would pass to your  
21 children?

22 A. Yeah, she said that she -- well, she adored the kids,  
23 my two kids, and just kind of felt that that would be something  
24 that they could use and I agreed.

25 Q. So did you ever tell your children that the trust

1 Q. Okay. I have seen reference to those, yes.

2 Can you take a look at page 3 of Exhibit 3 down at the  
3 bottom. It says, "In determining whether or not to Trustor is  
4 physically or mentally incapable under this article, the  
5 Trustee shall consult with the advisor Virginia Ruth Beaudoin,  
6 and she must concur that the Trustor is incapable," et cetera,  
7 et cetera. Did you and the trustee ever confer and determine  
8 that your mother was physically or mentally incapable?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. It was with Larry LeMaster and it would have been in --  
12 let me think -- gosh, I don't recall the year. I don't know.

13 Q. Okay. Article 5 of the trust agreement contains  
14 dispositive provisions. And the second paragraph says, "In the  
15 event there are any outstanding notes or loans from the trust  
16 to any of the beneficiaries at the time of the death of the  
17 Trustor, then the promissory note alone shall be allocated to  
18 that beneficiary's share of the trust estate."

19 When I deposed your husband earlier and he testified to  
20 a promissory -- a loan and promissory noted that been made to  
21 you, he testified that to the best of his knowledge that note  
22 was forgiven?

23 A. Right.

24 Q. So is that your recollection as well that it was  
25 forgiven rather than being charged to you under this provision?

1 A. Yes.

2 Q. And when was it forgiven?

3 A. I believe it wasn't forgiven until mom passed away.

4 Q. And so then did you make the decision to forgive it?

5 A. No.

6 Q. Who made the decision?

7 A. I believe the trust.

8 Q. Do you know if there was any writing that was prepared  
9 in connection with the forgiveness of that loan?

10 A. No, I don't know.

11 Q. Let me have you turn back to -- let me ask a  
12 preliminary question. You were aware, were you not, at the  
13 time of your mother's death, that the trust that was created  
14 for you was under your control, you could distribute principle  
15 to yourself at any time?

16 A. Uh-huh.

17 Q. Your husband testified earlier that you nonetheless  
18 decided to keep the assets in trust for a time?

19 A. Uh-huh.

20 Q. What was your reason for deciding to keep them in trust  
21 rather than withdrawing all of them?

22 A. I don't know, I just felt safe with it being in a  
23 trust, I don't know.

24 Q. But there came a time when you did withdraw them?

25 A. Uh-huh.

1 Q. Why did you change your mind?

2 A. Because I was working with Linda Russell who was  
3 another trust officer and she -- she would never return calls,  
4 she wouldn't get things done, meaning we were trying to  
5 transfer some mineral rights or something. And she just -- I  
6 got tired of trying to deal with her and I asked Scott if I  
7 couldn't take everything out of trust. And I didn't really  
8 feel like there was enough money in there to be in trust  
9 really.

10 Q. Do you recall how much you withdrew and when you  
11 withdrew it?

12 A. Well, let's see, it was when Joe Travis moved to  
13 Moscow, I don't know, I would imagine about four years ago.

14 Q. Were you aware that there was a provision under the  
15 trust agreement that if you hadn't taken the funds out, that at  
16 the time your daughter Briana turned 25, the trust would be  
17 divided into two trusts for your children?

18 A. Uh-uh.

19 Q. I'm going to have you take a look at page 6 of the  
20 trust agreement. And paragraph roman numeral four, read that  
21 to yourself, if you will.

22 A. Okay.

23 Q. Did you ever discuss that provision with anyone?

24 A. No.

25 Q. Alright. And it may be that this was only in the event

1 you predeceased your mother. I just noticed it as I was  
2 reviewing it, but you don't recall discussing this with anyone?

3 A. No.

4 Q. And turn to page 7 of the trust. When was the first  
5 time you ever read this trust agreement all the way through?

6 A. Probably when it was sent to me. Gosh, I can't  
7 remember when I got it, it was in the past year.

8 Q. And did you read -- I guess I gather you read paragraph  
9 B on page 7 at that time?

10 A. Uh-huh.

11 Q. And would you have agreed that the trust does -- excuse  
12 me, turning to page 8, subsection roman numeral one under  
13 section B, would you agree that the trust provides that upon  
14 Margaret's death, the remaining -- the assets remaining in her  
15 trust were to pass to your children?

16 A. Yes.

17 Q. Okay. So at that time you had distributed -- you had  
18 claimed all of the principle in your trust; right?

19 A. Right.

20 Q. And your children and not you were the beneficiary of  
21 Margaret's portion of the trust; right?

22 A. Right.

23 Q. Take a look at page 12 of the trust agreement, and  
24 could you read article 13 to yourself.

25 A. Okay, I got to read this again.

1 Q. Was it paid according to its terms up until the time of  
2 your mother's death or did she forgive the entire note?

3 A. Can I explain how this happened, okay. My sister had  
4 borrowed a considerable amount of money from my mother and  
5 defaulted on a loan that required payments and she didn't make  
6 any payments. And when -- I think Mick is the one that  
7 discovered it and he said, well, you have got to keep things  
8 even here, he said, she -- you know, your mother's losing  
9 interest on this money that she lent your sister, and you two  
10 girls are supposed to keep things even, so he said I think it's  
11 only fair that you get what she got. And so that's what we  
12 did, we bought our house here with the money that they said  
13 that we -- they felt that we were able to have.

14 Q. Okay. So in other words, it was characterized as a  
15 loan but it was never intended to be a loan, it was intended to  
16 be evening things up with your sister's situation?

17 A. Right.

18 Q. Alright. That makes sense.

19 (Thereupon, Deposition Exhibit No. 6 was marked  
20 for identification by the court reporter.)

21 BY MS. SIDDOWAY:

22 Q. Why don't you take a moment, if you will,  
23 Mrs. Beaudoin, read Exhibit 6.

24 (Thereupon, a discussion was had off the record.)

25 (Thereupon, Deposition Exhibit Nos. 7, 8, 9 & 10

1 were marked for identification by the court reporter.)

2 BY MS. SIDDOWAY:

3 Q. Exhibit 6, if you will, Mrs. Beaudoin, and do you  
4 recognize that as a letter that you directed to Mr. LeMaster in  
5 January of 1999?

6 A. Actually I didn't direct the letter, they talked to me  
7 about doing this and I said that was fine.

8 Q. And by "they," you mean Davidson Trust?

9 A. Yes.

10 Q. Was it Mr. LeMaster who talked to you about it?

11 A. I believe it was.

12 Q. And the prior year and in 1999, had fifty thousand  
13 dollars a year been gifted to -- ten thousand dollars a piece  
14 to your sister, yourself, your husband and your children?

15 A. Uh-huh.

16 Q. Did Davidson Trust Company want to have something in  
17 writing from you directing them to make those disbursements?

18 A. Actually I believe that's what this was.

19 Q. And did they recommend that you indicate that you were  
20 doing it pursuant to the power of attorney?

21 A. Yes.

22 Q. Do you recall whether -- I see a copy of this was  
23 provided to and signed by your mother, at least appears to be,  
24 is that your mother's signature?

25 A. Uh-huh.

1 Q. Is the reason that the direction came from you rather  
2 than your mother was because there was some question about your  
3 mother's mental capacity as of January 1999?

4 A. Uh-huh, yes.

5 Q. Do you know who drafted this letter? Did Davidson  
6 trust?

7 A. Uh-huh.

8 Q. Do you know who at Davidson Trust drafted it?

9 A. It would have been one of the secretaries, I'm sure,  
10 and I don't know who that would have been.

11 Q. And Larry LeMaster was in Great Falls; is that right?

12 A. Yes, he is now retired.

13 Q. Was he still the trust officer in 1999?

14 A. I believe he was.

15 Q. Let me have you take a look at Exhibit 7. Now I don't  
16 know if you recognize this, this is something that was  
17 generated I think internally for me, have you ever seen these  
18 documents before?

19 A. No.

20 Q. Is it your recollection -- I will represent to you that  
21 these are records of distributions from the trust and other  
22 payments from the trust. Is it your recollection that there  
23 were fifty thousand dollar annual gifts made in 1998, 1999,  
24 2001 and 2002?

25 A. Apparently there were, I don't recall. I know there

1 were -- I remember two years maybe of it, but I don't remember  
2 it being this many.

3 Q. And then the third page back in Exhibit 7 is a gift to  
4 Briana, a graduation gift to Briana and was that distribution  
5 made pursuant to your direction on behalf of your mother?

6 A. Yes.

7 Q. And that's all the questions I have about that.

8 Let me have you take a look at Exhibit 8. And I'd like  
9 you to read that all the way through if you could, just to  
10 yourself.

11 A. Okay, I don't recall this.

12 Q. Okay. That was my first question was going to be do  
13 you recall receiving this letter from Larry LeMaster in March  
14 of 2000?

15 A. Uh-huh.

16 Q. Do you have any recollection as you sit here today of  
17 what the situation was with your sister that appears to have  
18 been the cause of concern at that time?

19 A. This must have been with Phil, I don't --

20 Q. It appears that there was a concern that your sister's  
21 ex-husband might attach amounts that were due her under the  
22 trust, and he was making a recommendation that they would not  
23 be attachable if they were discretionary, but that would have  
24 adverse tax consequences for the trust?

25 A. Yes, now this is coming back. My sister and Vandyke,

1 Q. And what -- do you know as you sit here today what  
2 percentage of your client base returned to you?

3 A. I probably have maybe half.

4 Q. And what have you done this last year to develop new  
5 business to fill your schedule?

6 A. I haven't.

7 Q. Well, what have you done to try to develop new business  
8 to fill your schedule?

9 A. I just take new customers when they call.

10 Q. You haven't done any advertising or --

11 A. I did a Christmas advertisement, just Christmas and New  
12 Years.

13 Q. And where did you place that add?

14 A. Lewiston Tribune and the Moneysaver.

15 Q. Anything else that you can think of that you have done  
16 this last year?

17 A. No.

18 Q. I apologize if I already asked you this, sometimes I  
19 forget what I have already covered. Did you contact Nail  
20 Elegance when you found that you would -- well, when you  
21 decided to return to work?

22 A. Yes.

23 Q. And explore the possibility of getting a hair station  
24 there?

25 A. The stations were full.

1 Q. Did they have room for another station?

2 A. No.

3 Q. Do they maintain a waiting list for the hair stations?

4 A. No.

5 Q. Is it fair to say that do you attribute your business  
6 loss primarily to not being at the Nail Elegance location or  
7 just to the fact that you referred your client base to other  
8 hairdressers?

9 A. Both.

10 Q. What do you think was the importance of the Nail  
11 Elegance location?

12 A. The camaraderie we had, everybody worked very well  
13 together, we had fun. Our customers were very comfortable.  
14 We'd go to hair shows together and come back with new things.  
15 And it was an easy place to get to, parking was plentiful.

16 Q. And how does that compare to the location where you are  
17 working now?

18 A. Well, I'm kind of in the trees, I'm not visible. I'm  
19 working with a lady that is very critical of my work. She  
20 always tells me she's glad to have me there but why would she  
21 be critical. It's not visible, I have to tell everybody how to  
22 get there when they call. I had one customer say, well, it's  
23 way out there and I'm not coming out there in the winter. So,  
24 you know, it's just location, I suppose.

25 Q. Is your lease arrangement at the new location written

1 or verbal?

2 A. Verbal.

3 Q. And is it month to month?

4 A. Month to month.

5 Q. So you could move, but you just haven't found a better  
6 situation?

7 A. No.

8 Q. Have you been looking for a better situation?

9 A. No.

10 Q. Why not?

11 A. Because I don't want to move all my people again, I  
12 don't want to -- I don't want to go through this again.

13 Q. Okay. You are claiming, at least in correspondence  
14 with your attorney to date, a substantial part of the damages  
15 that you claim from Davidson Trust Company are emotional pain  
16 and suffering damages. What are your complaints or  
17 symptomology?

18 A. Well, I'm not working with my old friends. I have had  
19 a lot of anxiety over this whole situation. It has cost me  
20 money. I don't know, that's all I can say.

21 Q. Alright. Your attorneys provided me with some  
22 discovery responses about your damage claim and I'm aware of  
23 expenses in the form of your claim of business loss, your -- an  
24 amount you had paid to rent a vacation home on the Oregon  
25 Coast, some gifts you had given to your children, and am I --

1 is there anything else that you recall as you sit here today?

2 A. Well, my portfolio took a hit because I had to pay all  
3 that money back that was distributed from the amount of money  
4 that was deposited in my account.

5 Q. What portfolio loss do you claim?

6 A. Well, I had gifted my kids six thousand dollars each,  
7 the trip, the cost of the trip. Oh, I can't even think of what  
8 else, but all that -- all that money came out of what I thought  
9 I was getting from as a beneficiary. I never would have done  
10 any of that had I not thought I had the money and I had to pay  
11 it back through my portfolio.

12 Q. When your son Brooks learned that Margaret had died,  
13 did you and he discuss at all his expectation that he was going  
14 to be a beneficiary of her share of the trust?

15 A. Yes, we did.

16 Q. Tell me about that discussion.

17 A. Well, when I called and told him that Margaret had  
18 passed away he said, well, aren't I a beneficiary, and I said,  
19 well, I thought you were but they are telling me that it's me.

20 Q. And then?

21 A. And he was -- I could tell he was very disappointed.

22 Q. Did you and he discuss it any further?

23 A. No.

24 Q. When you gifted your children the six thousand dollars  
25 a piece, did you explain to them that you were gifting it to

1 them because you had received the three hundred and sixty  
2 thousand or so from your sister?

3 A. Yeah, I was going to give them each twelve, I believe,  
4 but for some reason Scott thought that six was enough for now  
5 and he thought maybe I should give the other six later.

6 Q. Have you asked your children if they will return those  
7 gifts in light of the fact that you were mistaken about being  
8 the beneficiary of your children's trust?

9 A. No.

10 Q. Why not?

11 A. Because I don't take away something I give.

12 Q. Have either of them offered to return the six thousand  
13 in light of the fact that they, not you, inherited the trust?

14 A. No, no.

15 Q. In reviewing medical records that were produced by  
16 Valerie Fox, she was identified as the only person who has  
17 treated you for any symptoms of anxiety or depression?

18 A. Uh-huh.

19 Q. Have you seen anyone other than her?

20 A. No.

21 Q. Who -- the medical records that we were provided start  
22 -- only start within the last couple of years?

23 A. Uh-huh.

24 Q. Was she your doctor -- how long has he been your  
25 primary care physician?

1 A. Just for the last couple years.

2 Q. Who did you see prior to her?

3 A. Well, I had had several because the medical community  
4 here, my doctor turned into a hospitalist, I mean it's just --  
5 I have had to keep finding somebody new because of certain  
6 circumstances, but that's the reason that's all you got from  
7 her, I suppose.

8 Q. What was the name of your prior primary physician?

9 A. Before her, Dr. Fisher, James Fisher.

10 Q. According to the medical records, you saw Dr. Fox in  
11 December 2006 and at that time you reported difficulty  
12 sleeping?

13 A. Uh-huh.

14 Q. You also reported that your spine bothered you every  
15 day?

16 A. Yes.

17 Q. And she has a notation in her chart of seasonal  
18 effective disorder?

19 A. Yes.

20 Q. Were those all issues that you discussed with her in  
21 December 2006?

22 A. Yes.

23 Q. Did she prescribe you any medications to address those  
24 complaints?

25 A. The seasonal effects I have a light that I use, I'm

1 also on Wellbutrin which I have taken for quite a while, I  
2 don't recall how long. She did give me Ambien which I don't  
3 tolerate very well.

4 Q. That's for sleeping?

5 A. Uh-huh.

6 Q. Okay.

7 A. And she did give me an antianxiety but I can't remember  
8 what it was called.

9 Q. Let me just go through the medications she has in the  
10 December appointment. She did identify the Wellbutrin and did  
11 you start taking that for seasonal effective disorder?

12 A. No, I have taken it for a while just because I have  
13 just been -- it's just -- part of me I'm just kind of  
14 depressed.

15 Q. And Trazodone?

16 A. That's for sleep.

17 Q. DSR 50 milligram caps?

18 A. DSR, it's a hormone.

19 Q. Okay. Progesterone, also a hormone?

20 A. Uh-huh.

21 Q. Estradiol?

22 A. Uh-huh, Estradiol.

23 Q. Oh, sorry.

24 A. That's alright.

25 Q. And Armor?

1 A. Armothroid.

2 Q. What do you take that for?

3 A. Hypothyroid.

4 Q. Ativan?

5 A. Ativan was the antianxiety.

6 Q. And did you say that didn't work well?

7 A. Well, I couldn't take it. I don't tolerate drugs very  
8 well.

9 Q. So which of those drugs are you still -- is that the  
10 only one of those drugs that you are not taking any more or are  
11 there others that you are not taking?

12 A. No, I think that's the only one I don't take.

13 Q. Her chart notes indicate that at the time you visited  
14 her in 2006 you said that you planned on working for another  
15 nine years; does that sound right?

16 A. Possibly, yeah.

17 Q. So had your plan been to work to age 62?

18 A. Well, not unless I had to.

19 Q. You did actually testify earlier that when you spoke to  
20 Scott Baldwin after talking to Jan Shelby you mentioned that  
21 you'd like to quit work if you could?

22 A. Uh-huh, yes.

23 Q. And why did you want to quit work if you could?

24 A. It's a hard job standing in one place all the time and  
25 I do have neck and back issues, shoulder. I do exercise to

1 to take it?

2 **A.** I just get kind of -- I get really tired.

3 **Q.** You had an appointment with her September 24, 2007,  
4 according to her records, and the dictated chart notes said,  
5 "Reports stress due to loss of clientele. Reports that she's  
6 considering a lawsuit against D.A. Davidson. Feels extremely  
7 hungry, reports that it could be due to stress. Goes to Susan  
8 Aubuchon --

9 **A.** Aubuchon.

10 **Q.** Who is Susan Aubuchon?

11 **A.** She's a chiropractor.

12 **Q.** And what have you seen Susan Aubuchon for?

13 **A.** Chiropractic care, back, neck. She adjusts my whole  
14 body.

15 **Q.** Did you have -- does your back complaint, is this  
16 arthritis or were you involved in an accident at some point?

17 **A.** I was involved in an accident back in 1982.

18 **Q.** Was there any kind of personal injury settlement as a  
19 result of that accident?

20 **A.** No.

21 **Q.** And have you had problems since then with your back?

22 **A.** Yes.

23 **Q.** And do you recall having -- feeling extremely hungry  
24 during this period of time and believing that it could be due  
25 to stress?

1 **A.** Yes.

2 **Q.** Was that problem that continue or has that problem  
3 passed?

4 **A.** I'd say it's probably passed.

5 **Q.** Let me just take a look at my notes and see if there is  
6 anything else I want to cover with you.

7 Do you know whether -- have your children told you  
8 whether they have spent any of the funds that they received  
9 from the trust at this point?

10 **A.** I believe my son paid off a mortgage. And my daughter  
11 is going to school and she's also taking a distribution because  
12 she -- she is not working while she goes to school.

13 **Q.** And are you glad that they have access to those funds  
14 to use for those purposes?

15 **A.** Sure.

16 **Q.** And would you agree with me that it was D.A. Davidson's  
17 responsibility once it identified its mistake to make sure the  
18 funds got to your children?

19 **A.** Yes.

20 **Q.** Did you have any conversations other than the one  
21 conversation with Jan Shelby in which anyone from Davidson  
22 Trust told you that you were the beneficiary of your sister's  
23 trust?

24 **A.** Todd Edmunds.

25 **Q.** Tell me about the conversation with Todd Edmunds.

1 **A.** Todd Edmunds, my husband and Scott Baldwin all met on  
2 the 28th of April of last year to discuss the possibility of my  
3 retiring on the money I was receiving as the beneficiary.

4 **Q.** And did you tell Mr. Edmunds at that time that you had  
5 some questions about whether you or your children were the  
6 correct beneficiaries of your sister's trust?

7 **A.** No.

8 **Q.** Alright. So you didn't bring it to his attention?

9 **A.** No.

10 **Q.** Did he say anything about having reviewed the trust  
11 agreement or having concluded himself that you were the  
12 beneficiary?

13 **A.** No.

14 **Q.** And are you quite sure that meeting was on April 27th?

15 **A.** It was the 26th or the 28th, it was on a Monday. Must  
16 have been the 26th, I don't know. I have got it written in my  
17 book, I don't recall for sure.

18 **Q.** And is your book a calendar?

19 **A.** My workbook, my appointment book.

20 **Q.** And so that would have been after your last day of work  
21 at Nail Elegance?

22 **A.** Yes.

23 **Q.** And a couple weeks after you told Nail -- the owners of  
24 Nail Elegance that you were going to retire?

25 **A.** Yes.

1 **Q.** Alright. Any other conversations with Davidson Trust  
2 that you rely upon for your claim?

3 **A.** Not that I recall.

4 **Q.** Okay. I think that's all I have for you.

5 **A.** Okay.

6 **Q.** Thank you.

# EXAMINATION

7 BY MR. MITCHELL:

8 **Q.** I just have a couple quick questions. And one of them  
9 I should probably already know the answer but my understanding  
10 is that D.A. Davidson Trust Company went ahead and physically  
11 distributed the money from the trust into a account for your --  
12 into your own account?

13 **A.** Yes.

14 **Q.** Do you remember exactly what the -- did you direct them  
15 to make that distribution?

16 **A.** No.

17 **Q.** Is that a distribution that Scott coordinated or do you  
18 know how it came about that -- who authorized or who stated,  
19 you know, we need to take this money from the trust and set up  
20 into an account for Virginia Beaudoin?

21 **A.** It was the trust department that deposited the money in  
22 my portfolio.

23 **Q.** Okay. Do you know what approximate date they did that?

24 **A.** Well, I remember -- okay, this is part of that  
25

CHANGES IN FORM AND SUBSTANCE REQUESTED BY  
VIRGINIA R. BEAUDOIN, BE MADE IN HER FOREGOING ORAL EXAMINATION  
TRANSCRIPT:

(Note: If no changes desired, please sign on space indicated.)

CHANGES IN FORM AND SUBSTANCE & REASONS THEREFORE:

PAGE LINE EXPLANATION

I hereby acknowledge that I have been instructed to carefully  
read the transcript of my foregoing oral examination taken on  
the 28th day of April, 2008, and to submit any changes in form  
and substance on this CHANGE PAGE; that I have done so and the  
answers set forth, together with the changes on this page, if  
any, are the answers I gave.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
2008.

-----  
VIRGINIA R. BEAUDOIN



REPORTER'S CERTIFICATE

I, Linda L. Carlton, a Certified Shorthand Reporter, do hereby certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time any witnesses were placed under oath;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

-----  
LINDA L. CARLTON, C.S.R., #336

Notary Public

425 Warner Avenue

Lewiston, Idaho 83501

My Commission Expires September 24, 2010

# EXHIBIT B

JOHN CHARLES MITCHELL  
Idaho State Bar No. 7159  
CLARK and FEENEY  
Attorney for Plaintiff  
The Train Station, Suite 201  
13<sup>th</sup> and Main Streets  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,	)	
	)	Case No. CV 2007-02364
	)	
Plaintiff,	)	
	)	<b>PLAINTIFF'S ANSWER TO</b>
vs.	)	<b>DEFENDANT'S FIRST WRITTEN</b>
	)	<b>DISCOVERY TO PLAINTIFF</b>
DAVIDSON TRUST COMPANY,	)	
	)	
Defendant.	)	

COMES NOW Plaintiff and hereby answers Defendant's First Written Discovery to Plaintiff as follows:

It should be noted that this responding party has not fully completed its investigation of the facts related to this case, has not fully completed its discovery in this action, and has not completed its preparation for trial. All of the answers contained herein are based only upon such information and documents which are presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party.

It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth. The following Interrogatory responses are given without prejudice to the responding party's right to

Answers to Defendant's First  
Written Discovery to Plaintiff

1

AFFIDAVIT OF JOHN C. MITCHELL

**FILE COPY**

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produce evidence of any subsequently discovered fact or facts which this responding party may later recall. The responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The answers contained herein are made in a good-faith effort to supply as much factual information and as much specification of legal contentions as is presently known but should in no way be to the prejudice of this responding party in relation to further discovery, research or analysis.

**INTERROGATORY NO. 1:** Please state the name, address, and telephone number of all individuals who you believe may have knowledge regarding any matters at issue in this action.

**ANSWER:**

1. Joe Travis - D.A. Davidson - 111 North Washington, Suite 6, Moscow, Idaho 83843, phone number unknown.
2. Linda Russel - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
3. Jan Shelby - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
4. Scott Baldwin - D.A. Davidson - 301 D Street, Suite A, Lewiston, ID 83501, (208) 743-0818
5. J. Todd Edmonds - Davidson Trust Company - West 601 Riverside, Suite 1000, Spokane, WA 99201 (509) 456-8323
6. James Rector - 635 1<sup>st</sup> Avenue, Glasgow, Montana 59230, (406) 228-4385
7. Mick Taleff - 104 4<sup>th</sup> Street N., Suite 301, Great Falls, Montana 59401, (406) 761-9400
8. Barry Beaudoin - 1769 Wheatlands Ave., Lewiston, ID 83501, (208) 798-8073
9. Brooks Beaudoin - 727 Quincy St. N.E., Minneapolis, MN 55413, (612) 669-1334

**INTERROGATORY NO. 2:** Please state separately, with respect to each individual identified by you in response to Interrogatory No. 1 the specific matters at issue in this action as to which the person or

witness has knowledge.

**ANSWER:**

1 & 2. Joe Travis and subsequently Linda Russel were trust officers that the Plaintiff had contact with regarding the Geraldine M. Schneider Revocable Living Trust.

3. Jan Shelby was the Davidson Trust employee that called the Plaintiff to tell her that her sister passed away and that she was the beneficiary.

4. Scott Baldwin is the Plaintiff's financial advisor. Plaintiff talked to him after her sister's death (April 2<sup>nd</sup>, 2007). He was sorry but excited to be able to add to the Plaintiff's portfolio. Plaintiff believes the Trust had notified him. At that time, Plaintiff talked to him about whether the money she had in her portfolio combined with the money she would receive from the Trust would be enough for the Plaintiff to retire and take a monthly distribution. Scott suggested a meeting with J. Todd Edmonds.

5. On Scott Baldwin's suggestion, a meeting was set up with the Plaintiff, her husband Barry Beaudoin, Scott, and J. Todd Edmonds to discuss what the Plaintiff should and could do as a result of the distribution. At this time (April 23<sup>rd</sup>, 2007) the Plaintiff mentioned that she would like to stop working and take a monthly distribution. It was agreed at the meeting that it would be fine for the Plaintiff to retire at the end of the month and that she would begin receiving monthly distributions in June.

6. James Rector assisted Plaintiff's mother in putting her will in place and it is believed that he will attest that she changed her will frequently.

7. Mick Tuleff had Plaintiff's mother's will on file when she moved to Great Falls. Plaintiff believes he assisted in moving her mother's Trust from Norwest Bank & Trust to Davidson Trust Company.

8 & 9. Barry Beaudoin (Plaintiff's husband) and Brooks Beudoin (Plaintiff's son). Several years ago when her mother lived in Glasgow, she had Plaintiff go to the office of James Rector to discuss her children getting Margaret Van Dyke's share after she passed away. Mr. Rector and Plaintiff's mother wanted to know what Plaintiff had thought about it. Plaintiff believes that she probably told Barry and Brooks about

this conversation.

**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of all documents in your possession relating to Geraldine M. Schneider Revocable Living Trust and all amendments and restatements thereof, including, although not by way of limitation, all trust agreements and all correspondence with lawyers, trustees, family members, and others.

**RESPONSE:**

See Exhibit A.

**INTERROGATORY NO. 3:** Identify every attorney, accountant, family member, trust company representative or other person with whom you have ever discussed the distributive or dispositive terms of the Geraldine M. Schneider Revocable Trust, and the amendments and restatements thereof. For purposes of this interrogatory, the expression "distributive or dispositive terms" is intended to mean those provisions of the Trust agreement that address the rights of you and/or other beneficiaries to request or receive distributions, including upon the death of another beneficiary.

**ANSWER:**

1. James Rector.
2. Barry Beaudoin.
3. Brooks Beaudoin.
4. Jan Shelby.
5. Scott Baldwin.
6. J. Todd Edmonds.

**INTERROGATORY NO. 4:** With respect to the conversations with "an agent of the Trustee" alleged in paragraph 12 of your Complaint, state the following:

- a) The identity of the agent of the Trustee,
- b) His or her position or title, if known to you,

- c) When the conversation took place,
- d) Whether the conversation was in-person or by phone,
- e) How long the conversation took, and
- f) As specifically as you can recall, everything that the agent of the Trustee said to you and that you said to him or her.

**ANSWER:**

- a) Jan Shelby.
- b) Plaintiff believes Jan Shelby's position to be Personal Trust Assistant.
- c) Saturday March 31<sup>st</sup>, 2007.
- d) Phone.
- e) Ten or fifteen minutes.
- f) On Saturday, March 31<sup>st</sup>, Ms. Shelby called the Plaintiff and told her that her sister, Margaret Van Dyke, had passed away on Friday and that the Plaintiff was the beneficiary of her sister's share of the Trust. Plaintiff told her that she thought her children were the recipients. Ms. Shelby assured Plaintiff that her children were not the recipients, and that she was the beneficiary. She told the Plaintiff that she would call the Plaintiff on Monday with more details regarding what immediately needed to be done as a result of her sister's death (Plaintiff's sister's landlord and crematorium needed to be notified). They talked a little about Margaret Van Dyke's situation and had other small talk.

**INTERROGATORY NO. 5:** With respect to the allegation of paragraph 12 of your Complaint that "the Plaintiff informed the Defendant that it was her understanding that the Plaintiff's children, and not her personally, were to receive Margaret Mary Van Dyke's share of the Trust Estate," please state the entire basis for your believe at that time that your children, and not you personally, were entitled to receive the Van Dyke share of the Trust Estate:

**ANSWER:** Plaintiff's basis for belief is that several years ago (Plaintiff believes sometime in the late 1980s or early 1990s) when her mother lived in Glasgow, she had Plaintiff go to the office of James Rector to discuss her children getting Margaret Van Dyke's share after she passed away. Mr. Rector and Plaintiff's mother wanted to know what Plaintiff had thought about it.

**INTERROGATORY NO. 6:** With respect to the allegation of paragraph 14 of your Complaint herein that you retired from your occupation as a beautician as a result of defendant's representations and distribution of funds, please state the type of organization by which you were employed (e.g., corporation, partnership, sole proprietorship) and the exact legal name, if any, of the business organization.

**ANSWER:**

Sole proprietorship - Hair Designs by Ginny Beaudoin

**REQUEST FOR PRODUCTION NO. 2:** With respect to the allegation of paragraph 14 of your Complaint herein that you retired from your occupation as a beautician as a result of defendant's representations and distribution of funds, please produce all federal and state income tax returns reflecting the income generated and expense incurred in the conduct of your business as a beautician from 2001 to the present time.

**RESPONSE:**

See Exhibit B

**REQUEST FOR PRODUCTION NO. 3:** With respect to the allegation of paragraph 14 of your Complaint herein that you retired from your occupation as a beautician as a result of defendant's representations and distribution of funds, please produce all personal property tax returns reflecting property tax payable on the equipment and assets of your beautician business for the period from 2001 to the present time.

**RESPONSE:**

See Exhibit B



**INTERROGATORY NO. 7:** With respect to the allegation of paragraph 14 of your Complaint herein that you retired from your occupation as a beautician as a result of defendant's representations and distribution of funds, please identify the accountant or bookkeeper, if any, who prepares the financial books and records for the business.

**ANSWER:**

Yvonne's Business Services, - quarterly preparation, Yvonne Long - 640 15<sup>th</sup> Street, Clarkston, WA 99403, (509) 758-7072

Presnell & Gage - tax preparation, 1216 Idaho, Lewiston, ID 83501, (208) 746-8281

Su Brown & Associates - tax preparation, 77 Southway Ave., Suite B, Lewiston, ID 83501, (208) 743-7790

**INTERROGATORY NO. 8:** With respect to the allegation of paragraph 14 of your Complaint herein that you retired from your occupation as a beautician as a result of defendant's representations and distribution of funds, please state whether the financial books and records for the business were maintained on accounting software, and if so, identify the full and correct name and version of the accounting software on which the financial books and records of the business were maintained.

**ANSWER:**

Plaintiff does not believe that the financial records and books were maintained on accounting software.

**REQUEST FOR PRODUCTION NO. 4:** If your answer to Interrogatory No. 8 is yes, please produce a copy of all of the electronic accounting data for the beautician business.

**RESPONSE:**

Not applicable.

**INTERROGATORY NO. 9:** Did you ever offer for sale or explore the possibility of selling the goodwill and/or equipment, inventory and supplies of the beautician business identified in paragraph 14 of

your Complaint?

**ANSWER:**

No and Yes.

**INTERROGATORY NO. 10:** If the answer to Interrogatory No. 9 is yes, please state when you offered the goodwill and/or other assets for sale or explored that possibility, and identify all persons having knowledge of the offer or effort.

**ANSWER:**

As a sole proprietor, the Plaintiff leased a work station from Nail Elegance. The only tangible assets of her sole proprietorship, beyond herself and her ability to work as a beautician, were the equipment needed to provide the services that a beautician provides (shears, clippers, etc.) as well as retail product used to perform and maintain these services. Other beauticians at Nail Elegance did not use the perms that the Plaintiff had left behind because they all used different solutions and product lines. Plaintiff gave several customers her left over retail and back bar if it was something they would use. Plaintiff did not have much left as far as retail was concerned. If retail sits on the shelf for long periods of time, it is either thrown away or given away. A year ago, Plaintiff gave any retail she could not get rid of to the YWCA in Lewiston. Plaintiff did not have a formal sale because what was left over were things her customers and friends could use. The only retail product that was sold was color line to Betty Kay Kachelmeyer, another beautician at Nail Elegance. This retail product was sold for approximately \$435.

**INTERROGATORY NO. 11:** If the answer to Interrogatory No. 9 is no, please explain why you have not offered them for sale or explored the possibility of a sale?

**ANSWER:**

See Answer to Interrogatory No. 10.

**INTERROGATORY NO. 12:** Please provide an itemization of the business supplies and inventory that you got rid of as a result of defendant's representation and subsequent distribution of funds, as alleged

by paragraph 14 of your Complaint.

**ANSWER:**

See Answer to Interrogatory No. 10.

**REQUEST FOR PRODUCTION NO. 5:** Please provide a copy of the notice of retirement published in the local newspaper that is described in paragraph 14 of your Complaint.

**ANSWER:**

See Exhibit C

**REQUEST FOR PRODUCTION NO. 6:** Please provide any documents that support the allegation of paragraph 14 of your Complaint that you scheduled non-cancelable travel and the cost thereof.

**ANSWER:**

See Exhibit D

**INTERROGATORY NO. 13:** Please provide a chronology of your employment history for the prior twenty (20) years, starting, with respect to each of your employers, the dates of your hire and termination, the full and correct legal name of the employer, the address of the location at which you worked, the name of your direct supervisor and the last known address for the employer's principal place of business.

**ANSWER:**

- 1984-1988: Ball Hair Designs - Otto Witt - deceased, address unknown, Great Falls, Montana.
- 1988-1990: Hair Dimensions- Kathy Flemming, address unknown, Great Falls, Montana.
- 1990-1992: Ball Hair Designs - Otto Witt - deceased, address unknown, Great Falls, Montana.
- 1992-1997: Plaintiff owned Fifth Ave Salon, Great Falls, Montana.
- 1997-2000: Plaintiff moved to Lewiston and took care of her mother.
- 2000-2003: American Hairways- Sue Lockart, 915 8<sup>th</sup> Street, Lewiston, ID 83501.

- 2003-2007: Nail Elegance & Hair Studio - Sherry Lyons, 1049 21<sup>st</sup> Street, Lewiston, ID 83501.
- 2007- : Karen's - Karen Rhodes,

All self employed except 1984-1988 and 1990-1992

**INTERROGATORY NO. 14:** Please identify all business and professional license you have held over the last twenty (20) years, stating, with respect to each license, the exact title of the license and the full name and address of the licensing agency.

**ANSWER:**

Cosmetologist (5/20/1984 to 12/31/2001) - Montana Board of Barbers and Cosmetologists - 301 South Park, 4<sup>th</sup> Floor, Helena, MT 59620-0513.

Registered Cosmetologist (9/10/1997 to present) - Idaho Board of Cosmetology (Idaho Bureau of Occupational Licenses, 1109 Main Street, Suite 220, Boise, ID 83702-5642.

**INTERROGATORY NO. 15:** Please provide an itemization of each cost, expense or other element of damage you claim to have sustained as a result of the acts or omissions of the defendant alleged by your complaint.

**ANSWER:**

- Non-cancelable travel expenses: \$1,542.00
- Lost income: See Exhibit E
- Portfolio withdrawals: \$3,000.00

**INTERROGATORY NO. 16:** Please describe in detail everything you have done, if anything, to mitigate the damages you contend have been caused by the actions or omissions of the defendant alleged by your Complaint.

**ANSWER:**

In July of 2007, the Plaintiff found a place to restart hairdressing, ordered color line, put ads in paper,

sent out cards letting know Plaintiff was back to work, made telephone calls, had business cards made and sent them out in notes, sat at her station with no appointments scheduled hoping for walk ins, and went to hair show in Spokane.

**INTERROGATORY NO. 17:** Please identify any health or mental health professional you have consulted for the stress and anxiety alleged by paragraph 23 of your Complaint.

**ANSWER:**

Valerie Fox, M.D.

**INTERROGATORY NO. 18:** For each individual whom you expect to call as an expert witness at trial, please state:

- (a) The subject matter on which the expert is expected to testify;
- (b) The substance of the facts to which the expert is expected to testify;
- (c) The substance of the opinions to which the expert is expected to testify;
- (d) A summary of the grounds for each such opinion.

**ANSWER:**

No expert witnesses have been consulted at this time. This response may be supplemented.

**REQUEST FOR PRODUCTION NO. 7:** Please produce all documents that reflect or otherwise support the costs, expenses or other items of damage identified by you in response to Interrogatory No. 15.

**RESPONSE:**

See Exhibit E

**REQUEST FOR PRODUCTION NO. 8:** Please produce all documents that touch upon or concern your claim against the defendant.

**RESPONSE:**

See Exhibit F

Dated This 20th day of December 2007.

CLARK and FEENEY

By: s/John C. Mitchell  
John Charles Mitchell  
Attorney for Plaintiff

STATE OF IDAHO )  
County of Nez Perce ) ss.

VIRGINIA R. BEAUDOIN, being first duly sworn on oath, deposes and says:

That she is the Plaintiff above named, that she has read *Plaintiff's Answers to Defendant's First Written Discovery to Plaintiff*, and the contents thereof and the facts stated therein are true to the best of her knowledge, information and belief.

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VIRGINIA R. BEAUDOIN

SUBSCRIBED AND SWORN to before me this 20th day of December, 2007.

Beth  
Public in and for the State of Idaho.  
residing at \_\_\_\_\_, therein.  
My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21st day of December, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Laurel H. Siddoway  
Randall & Danskin, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653

☒ U.S. Mail  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy (FAX)

s/John C. Mitchell  
John Charles Mitchell

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL | DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

Attorneys for Defendant

FILED

2010 FEB 17 AM 11 08

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

REPLY BRIEF IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT

Davidson Trust Co. submits the following reply brief in support of its motion for summary judgment dismissing Virginia Beaudoin's complaint.

**Summary of Reply**

It is undisputed that Davidson Trust employees erroneously assumed for a time that Virginia Beaudoin was entitled to receive the assets held in a trust for Margaret Van Dyke, her sister. But nothing in plaintiff's response to Davidson Trust's motion for summary judgment challenges the following facts, which should be fatal to her claims:

- Mrs. Beaudoin exhausted her own trust with Davidson Trust in 2006 and ceased to be the beneficiary of any trust administered by Davidson Trust, and her sister's death eliminated even the *remote* possibility that she might become a beneficiary.

- Mrs. Beaudoin knew beginning in 1996, and between 1996 and 2000 told her husband and son, that her mother had named Brooks and Briana Beaudoin, not her, as beneficiaries of her sister's trust.
- Mrs. Beaudoin knew at the time of her sister's death that her mother had lacked the capacity to change her will and trust since at least 1999.
- When notified by trust assistant Jan Shelby of her sister's death and that Ms. Shelby believed she was the beneficiary, Mrs. Beaudoin knew or believed that Ms. Shelby was wrong, and that Davidson Trust employees had not read the trust in its entirety.
- Mrs. Beaudoin's son expressed his belief to Mrs. Beaudoin that he was a beneficiary and surprise and disappointment that he was not.
- The means for determining rightful entitlement to the assets of the Margaret Van Dyke Trust were readily available to Mrs. Beaudoin, but she did not take the simple step of contacting her mother's attorney when she believed she might receive the assets in error.

### **Reply to Plaintiff's Introduction and Facts**

Two contentions in the response statement of the facts warrant reply:

First, Virginia Beaudoin's factual recount dwells on a meeting with J. Todd Edmonds, a trust officer for Davidson Trust, and argues that it was at the meeting with Edmonds that "it was agreed . . . that it would be fine for Virginia to retire at the end of the month." Memorandum in Opposition to Motion for Summary Judgment. But all of the evidence - undisputed evidence - establishes that the meeting with Todd Edmonds could not have been a basis for Mrs. Beaudoin's decision to retire, since the meeting with Mr. Edmonds took place well after her decision to retire had been made and acted upon.

The timeline demonstrated by the evidence previously submitted is as follows: Sherry Lyons, the owner of the Nail Elegance salon, placed an advertisement in the Lewiston Tribune announcing Virginia Beaudoin's imminent retirement. The ad ran on April 22 and 24, 2007. Virginia Beaudoin's sworn testimony was that Ms. Lyons placed the ad about a week earlier; in



other words, sometime around April 16. Mrs. Beaudoin's sworn testimony is that she probably told Ms. Lyons about her plan to retire in the second week of April, and Ms. Lyons placed the ad the following week. Deposition of Virginia Beaudoin, Ex. B to Affidavit of Laurel Siddoway, at pp. 8-9.

For her part, Sherry Lyons produced her canceled check showing that she *paid* for the Lewiston Tribune ad on April 19, 2007. See Ex. 4 to Deposition of Sherry Lyons, Ex. C to Siddoway Aff. The ad not only reported that Mrs. Beaudoin was leaving the salon, but identified the cosmetologist who would replace her. *Id.* Ms. Lyons' best recollection was that Mrs. Beaudoin – who retired on April 27 - gave her the full 30 days' advance notice required by her station lease, or maybe even more. Deposition of Sherry Lyons at p. 11, Ex. C to Siddoway Aff.

Accordingly, the undisputed testimony of both women is that Mrs. Beaudoin notified Ms. Lyons that she was leaving the salon no later than the second week of April 2007 and that Ms. Lyons had already found a new lessee for Mrs. Beaudoin's hair station and placed an advertisement announcing the change sometime around April 16.

Undisputed evidence shows that the meeting with Todd Edmonds did not take place until April 23, 2007. This is established not only by the Reply Affidavit of Todd Edmonds and its attached exhibits, filed herewith, but also by Mrs. Beaudoin's answer to Davidson Trust's Interrogatory No. 2, included in Exhibit D to the earlier-filed Siddoway Affidavit, at p. 3. And when deposed, Mrs. Beaudoin testified that her meeting with Mr. Edmonds was after her last day of work at Nail Elegance and a couple of weeks after she told Sherry Lyons she was going to retire. Virginia Beaudoin Depo., Ex. A to Affidavit of John C. Mitchell, at p. 54, ll. 14-25.

Second, Virginia Beaudoin's statement of facts cites testimony that she does not recall receiving a copy of the Second Amended Trust from Larry LeMaster in March 2000. Opposition

Memorandum at p. 5. She does not deny receiving a copy, however, and Mr. LeMaster has testified that it was sent to her in 2000. See the earlier-filed Affidavit of Larry LeMaster. In addition, it is undisputed that access to the Second Amended Trust and its actual terms was readily available to Mrs. Beaudoin. As demonstrated by the Reply Declaration of J. Todd Edmonds, filed herewith, when Mr. Edmonds called Mrs. Beaudoin to tell her that it appeared her children, not her, were the beneficiaries, she contacted her mother's attorney and was able to confirm within a day that the Second Amended Trust, leaving the assets to Brooks and Briana, was the operative agreement.

### **Reply Argument**

**I. As a matter of law, Davidson Trust did not stand in a fiduciary relationship at the time of the acts complained of.**

Davidson Trust has demonstrated that Virginia Beaudoin had exhausted her share of the Second Amended Trust by 2006 and that with respect to the only remaining trust assets – Margaret Van Dyke's share, the disposition of which was governed by Article V, Section B of the Trust – the Trust provided that "Upon the death of Margaret Mary Van Dyke her share of this Trust shall terminate and shall be distributed to the surviving issue by right of representation of Virginia Ruth Beaudoin." Second Amended Trust. Accordingly, upon Margaret's death on March 30, 2007, the sole beneficiaries of the Second Amended Trust were Brooks and Briana Beaudoin. Davidson Trust had no trustee/beneficiary relationship with Virginia Beaudoin at the time of Jan Shelby's call; the duty of care owed to her was only the duty that Davidson Trust owes generally to third parties.

Mrs. Beaudoin agrees that whether a fiduciary relationship existed is a question of law that should be decided by this Court. Inexplicably though, plaintiff argues that "Virginia was still a beneficiary of the Trust at the time the acts occurred and Davidson Trust has provided no

legal authority supporting its contention that Virginia was no longer a beneficiary.” Opposition Memorandum at p. 7. Of course she was not a beneficiary. Beneficiary, ‘as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent...’ BLACK’S LAW DICTIONARY 142 (5th ed.1979). Montana law, which governs the meaning and administration of the Trust (as provided at Article XV, p. 13), uses a substantially similar definition in its probate code. M.C.A. 72-1-103(3)(a). The definition does not include, as beneficiaries, “individuals who **formerly** had an interest, vested or contingent....”

Montana law also provides that on acceptance of a trust, “the trustee has a duty to administer the trust according to the trust instrument.” M.C.A. § 72-34-101. Since Davidson Trust’s administration of the trust according to the trust instrument on and after March 30, 2007 would never touch or concern Virginia Beaudoin, Davidson Trust could have no duty, as a trustee, to her. Indeed, to say that it owed a *fiduciary* duty not only to the true beneficiaries but also to third parties making competing claims creates a conflict which would be irreconcilable with Davidson Trust’s duty to administer the Trust “according to the trust instrument.”

Davidson Trust’s opening brief called the Court’s attention to two cases, *County Cove Development, Inc. v. May*, 143 Idaho 595, 602-3, 150 P.3d 288 295-6 (2006) and *Mannos v. Moss*, 143 Idaho 927, 155 P.3d 1166 (2007), which hold that for a breach of fiduciary duty claim to lie, the fiduciary relationship must exist at the time of the conduct complained of, not some other time. Plaintiff dismisses the cases as “not analogous,” but without any explanation why. They are analogous, and compel dismissal of the plaintiff’s claim.

**II. As a matter of law, Idaho’s limitation of liability for negligent misrepresentations compels dismissal of plaintiff’s negligence claim.**

**A. Plaintiff’s claim does not involve misrepresentation by an accountant.**

While Davidson Trust did not owe Virginia Beaudoin a “fiduciary” duty, it is subject to

liability for negligent conduct in accordance with Idaho law. But since the nature of the conduct complained of in this case is a misrepresentation, Mrs. Beaudoin's right to assert a claim is subject to the limitations that Idaho imposes on liability for negligent misrepresentation. As discussed in Davidson Trust's opening brief, a claim for negligence that complains of misrepresentations is a negligent misrepresentation claim. Otherwise, the limitations on recovery for negligent misrepresentation imposed by Idaho courts would be meaningless; a plaintiff would simply sue for negligence.

Were there any doubt about this, Davidson Trust points out that the Idaho Supreme Court treated the negligence claim in *Mannos v. Moss*, *supra*, as subject to the limitations on recovery for negligent misrepresentation. See *Mannos*, 155 P.3d at 1169, which identifies the plaintiff's eleven claims as ones for breach of fiduciary duty, fraud, breach of contract, unjust enrichment, civil conspiracy, **negligence**, racketeering, declaratory relief, violation of the Idaho Securities Act and indemnification (emphasis added) and then, in the course of discussing them (for the most part, serially) analyzes and dismisses the "negligence" claim as a negligent misrepresentation claim subject to Idaho's limitations on recovery for negligent misrepresentation. 155 P.3d at 1174. This Court must likewise recognize Mrs. Beaudoin's negligence claim as a negligent misrepresentation claim. And since it is not a claim against an accountant, she has no viable claim.

**B. Plaintiff's response to undisputed facts showing that she did not justifiably rely is a non sequitur and legally insufficient.**

Davidson Trust's opening brief also demonstrated that a plaintiff asserting negligent misrepresentation must demonstrate justifiable reliance, including that she did not know or have access to the truth. Undisputed facts establish that Virginia Beaudoin was aware of Davidson Trust's probable error and could readily have determined the truth (and ultimately did) by

contacting her mother's attorney. *See* Reply Declaration of J. Todd Edmonds. Plaintiff's response does not counter these undisputed facts. Instead, it simply adverts to the fact that Davidson Trust is a professional trust company and argues "if you can't rely on a professional trust company, who *can* you rely on?"

Case law requiring that a plaintiff must justifiably rely on a negligent misrepresentation does not carve out an exception for a plaintiff receiving information from a professional trust company or, for that matter, from any other professional (*e.g.*, doctor, lawyer, engineer, etc.) on the basis that the plaintiff "*should* be able to rely." Plaintiff's argument is a non sequitur and a plainly insufficient response to Davidson Trust's demonstration of undisputed facts establishing that Virginia Beaudoin did not justifiably rely.

### III. Virginia Beaudoin's equal-or-greater responsibility bars all of her claims.

#### A. Contributory negligence is an affirmative defense to all of her claims.

Plaintiff's opposition states without explanation or citation that "[C]omparative fault is only applicable to the negligence action not the breach of fiduciary duty action." Opposition Memorandum at p. 11. But I.C. § 6-801 is not limited to negligence or contributory negligence. It provides (with emphasis added):

Contributory negligence **or comparative responsibility** shall not bar recovery in an action by any person or his legal representative to recover damages for negligence, gross negligence **or comparative responsibility** resulting in death or in injury to person or property, if such negligence or **comparative responsibility** was not as great as the negligence, gross negligence or **comparative responsibility** of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence or **comparative responsibility** attributable to the person recovering. Nothing contained herein shall create any new legal theory, cause of action, or legal defense.

Of note, the references to "comparative responsibility" were added by amendment in or about 1987, so the legislature obviously intended to expand application of the statute beyond its prior

reference to “action[s] . . . to recover damages for negligence and gross negligence.” And even prior to that *explicit* change – at a time when the statute spoke only of negligence, gross negligence and contributory negligence – the Idaho Supreme Court had agreed with a U.S. district court’s construction that:

Once culpability, blameworthiness or some form of fault is determined by the trier of fact to have occurred, then the labels denoting the ‘quality’ of the act or omission, whether it be strict liability, negligence, negligence per se, etc., becomes unimportant. Thus, the underlying issue in each case is to analyze and compare the causal conduct of each party, regardless of its label.

*Vannoy v. Uniroyal Tire Company*, 111 Idaho 536, 541, 726 P.2d 648, 653 (1986), citing *Sun Valley Airlines, Inc. v. Avco-Lycoming Corp.*, 411 F.Supp. 598, 603 (1976) and citing cases from other jurisdictions in which statutes seemingly limited to comparative “negligence” had been construed to apply to comparative “fault,” “causation” or “responsibility” – concepts subsuming negligence, but also other torts. In *Odenwalt v. Zaring*, 102 Idaho 1, 4-5, 624 P.2d 383, 386-87 (1980), the Idaho Supreme Court observed that since the Wisconsin statute on which I.C. § 6-801 was patterned had been construed to extend to strict liability claims even before Idaho’s adoption, an extension of I.C. § 6-801 beyond negligence was probably mandated from inception.

In *Rausch v. Pocatello Lumber Company, Inc.*, 135 Idaho 80, 87, 14 P.3d 1074, 1081 (Idaho App. 2000), the Court of Appeals rejected a plaintiff’s contention that Title 6, Chapter 8 of the Idaho Code does not require allocation of fault to intentional tortfeasors, a position the Court found unsupported by the statute’s reference to parties’ “negligence or comparative responsibility,” thus allowing for apportionment of fault other than that arising from negligence. The Court also noted that subsection (4) defines “joint tortfeasor” as “one (1) of two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not

judgment has been recovered against all or some of them,” a definition not limited to persons who are liable “in *negligence*,” but instead to anyone liable “in *tort*.” It finally noted that in *Holve v. Draper*, 95 Idaho 193, 505 P.2d 1265 (1973), the Idaho Supreme Court addressed a materially similar definition of joint tortfeasor as “exceedingly broad,” and, citing with approval to Harper and James, 1 The Law of Torts §10.2, p. 722 (1956), as including even intentional tortfeasors.

Many cases from other jurisdictions support a defendant’s right to assert comparative fault or contributory negligence as an affirmative defense to a breach of fiduciary duty claim. *See, e.g., Note, Comparative Fault and Contributory Negligence as Defenses in Attorney Breach of Fiduciary Duty Cases*, 21 Geo. J. Legal Ethics 993 (2008). As of the publication of the note, all but one of the states that had considered the issue had accepted the defense of comparative fault and contributory negligence in legal malpractice cases. *Id.* at p. 998, fn. 41, citing RONALD E. MALLIN & JEFFREY M. SMITH, LEGAL MALPRACTICE § 22.2 n.2 (2008) (listing cases for each state).

In short, the language of the statute, prior Idaho decisions and the weight of authority support the availability of contributory negligence as a defense to the breach of fiduciary duty claim.

**B. Undisputed material facts support summary judgment on the basis of Virginia Beaudoin’s equal or greater fault.**

Under Idaho R. Civ. P. 56(c), summary judgment should be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any **material** fact and that the moving party is entitled to a judgment as a matter of law.” [Emphasis added.] If there is no genuine issue of material fact, and only a question of law remains, the Court exercises free review. *Mendenhall v. Aldous*, 146 Idaho 434,

436, 196 P.3d 352, 354 (2008) (emphasis added). The only disputed facts of any note in this case are whether in the March 31, 2007 conversation between Jan Shelby and Mrs. Beaudoin, Mrs. Beaudoin (1) articulated doubt that she was the beneficiary (something Ms. Shelby denies) and/or (2) stated that she did not need a copy of the trust agreement, because she already had one (something Ms. Shelby asserts).

Apart from these disputed issues, the undisputed material facts are themselves sufficient for this Court to determine that no reasonable trier of fact would view Davidson Trust as having been more negligent than Mrs. Beaudoin. In acting on Jan Shelby's report – suspecting an error and without making further inquiry - Virginia Beaudoin **knowingly created a foreseeable risk that each of her own children would be deprived of a \$185,000 inheritance.** She did so knowing that a definitive answer about who was entitled was a phone call away, from her mother's attorney. Yet she failed to take that simple step.

The Court can find as a matter of law that this was negligent conduct and more negligent than Ms. Shelby's mistaken assumption, especially where Davidson Trust caught its error and thereby protected the interests of Brooks and Briana Beaudoin.

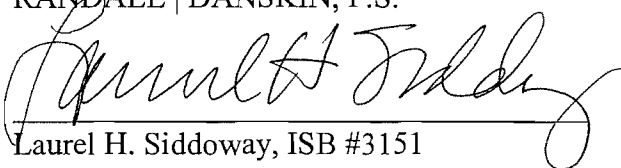
#### IV. Conclusion.

On the basis of this and the earlier briefing and submissions, the Court should grant summary judgment in defendant's favor and dismiss plaintiff's claims.

DATED this 16th day of February, 2010.

RANDALL | DANSKIN, P.S.

By:

  
Laurel H. Siddoway, ISB #3151  
Attorneys for Defendant



**CERTIFICATE OF SERVICE**

I hereby certify that on this 16 day of February, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☒ Via First Class Mail
- ☐ By Hand Delivery
- ☒ Via Facsimile:
- ☐ By E-mail:
- ☐ By Overnight Delivery

Kelly Bergstrom

LAUREL H. SIDDOWAY, ISB #3151  
RANDALL & DANSKIN, P.S.  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201-0653  
Phone: 509/747-2052  
FAX: 509/624-2528

Attorneys for Defendant

**FILED**  
**2010 FEB 17 AM 11 08**

PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
*[Signature]*  
DEPUTY

DISTRICT COURT, SECOND JUDICIAL DISTRICT OF IDAHO  
COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

REPLY AFFIDAVIT OF  
J. TODD EDMONDS IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT

STATE OF WASHINGTON )  
COUNTY OF SPOKANE ) ss.:

I, J. Todd Edmonds, attest as follows under penalty of perjury:

1. I am a Vice President, Trust Officer and Branch Manager of Davidson Trust Co. and previously submitted an affidavit in support of Davidson Trust Co.'s motion for summary judgment. This further affidavit also addresses matters that are personally known to me, as to which I am competent to testify.

REPLY AFFIDAVIT OF  
J. TODD EDMONDS IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT - 1

2. Attached hereto as Exhibit 1 is a true and correct copy of an electronic mail chain reflecting my communications in April 2007 with Scott Baldwin, the Financial Consultant in the Lewiston office of D.A. Davidson & Co. who served and continues to serve as Virginia Beaudoin's broker. As demonstrated by the electronic mail, the first occasion on which I met with Mrs. Beaudoin was on April 23, 2007. I never spoke with her prior to that time.

3. The first distribution to Virginia Beaudoin from the assets being held in the trust for Margaret Van Dyke did not take place until June 15, 2007. A true copy of a statement for the Margaret Van Dyke trust for the period April 1, 2007 through December 31, 2007 is attached hereto as Exhibit 2. Mrs. Beaudoin was notified by me of the error in making distribution to her on June 21, 2007, less than a week after the distribution was made. We reversed the distribution to Mrs. Beaudoin and made the appropriate distribution to her children, as reflected on the attached statement.

4. From review of our records, the following events took place on the following dates:

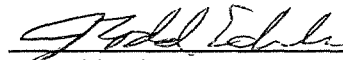
On Wednesday, June 13, 2007, Scott Baldwin, Mrs. Beaudoin's D.A. Davidson broker, contacted me to find out when funds from the Margaret Van Dyke Trust would be deposited into Mrs. Beaudoin's account.

In response, I authorized a partial distribution to be made through a check cut on Friday, June 15, 2007.

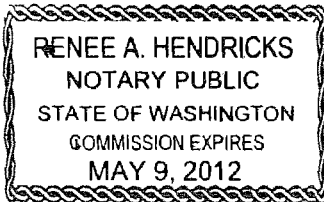
On Monday or Tuesday, June 18 or 19, 2007, I reviewed the Trust file to see what needed to be done to make a final distribution and saw from a copy of the Trust document in the file that Mrs. Beaudoin's children were the proper beneficiaries. I notified her broker of this fact. I also requested a copy of the original Trust document from the company's vault in Great Falls, Montana to see whether it was any different from the document in my file.

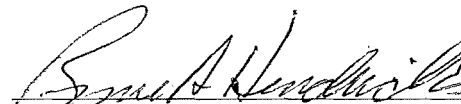
On Thursday, June 21, 2007, I spoke personally with Mrs. Beaudoin and told her that the copy of the Trust document in my file directs distribution of Trust assets to her children. She said she would check with the attorney that drafted the trust and have him check his files.

On Friday morning, June 22, 2007, I spoke with Mrs. Beaudoin again, who told me that she had spoken with her mother's attorney and he had verified that the 1996 Trust agreement in Davidson Trust's files was the last restatement and amendment that he had prepared for Mrs. Schneider.

  
J. Todd Edmonds

SUBSCRIBED AND SWORN to before me this 16 day of February, 2010.



  
NOTARY PUBLIC in and for the State  
of Washington, Residing at Spokane  
My Commission Expires: 5/9/2012

REPLY AFFIDAVIT OF  
J. TODD EDMONDS IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT - 3

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16 day of February, 2010, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- ☒ Via First Class Mail
- ☐ By Hand Delivery
- ☒ Via Facsimile:
- ☐ By E-mail:
- ☐ By Overnight Delivery

Kelly Bergstrom

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REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

**Exhibit 1**

## Todd Edmonds

---

**From:** Scott Baldwin  
**Sent:** Tuesday, April 10, 2007 11:10 AM  
**To:** Todd Edmonds  
**Subject:** RE: Lewiston

I will tell them 1:30. Thank you.

---

**From:** Todd Edmonds  
**Sent:** Tuesday, April 10, 2007 11:01 AM  
**To:** Scott Baldwin  
**Subject:** RE: Lewiston

How about 1:00 or 1:30? I have a couple of meeting in Moscow so that should work for me.

Thanks, Todd

J. Todd Edmonds  
Davidson Trust Co.  
Vice President, Trust Officer  
(509) 456-8323  
(800) 676-8323  
(509) 462-6359 Fax  
tedmonds@dadco.com

---

**From:** Scott Baldwin  
**Sent:** Monday, April 09, 2007 5:03 PM  
**To:** Todd Edmonds  
**Subject:** RE: Lewiston

They said that will work, do you have a time in mind?

---

**From:** Todd Edmonds  
**Sent:** Monday, April 09, 2007 10:04 AM  
**To:** Scott Baldwin  
**Cc:** Jan Shelby  
**Subject:** RE: Lewiston

Hi Scott:

The 23rd is good for me. Would it be possible to meet in the afternoon with your client. I have another meeting in Moscow in the morning.

Thanks, Todd  
REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

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J. Todd Edmonds  
Davidson Trust Co.  
Vice President, Trust Officer  
(509) 456-8323  
(800) 676-8323  
(509) 462-6359 Fax  
tedmonds@dadco.com

---

**From:** Scott Baldwin  
**Sent:** Monday, April 09, 2007 9:49 AM  
**To:** Todd Edmonds  
**Subject:** RE: Lewiston

They would like to meet on the 23<sup>rd</sup> if possible, around 9:00 if possible, but I told them I will have to see what works. Let me know what you think.

Thanks,  
Scott

---

**From:** Todd Edmonds  
**Sent:** Tuesday, April 03, 2007 11:27 AM  
**To:** Scott Baldwin  
**Cc:** Jan Shelby  
**Subject:** RE: Lewiston

Scott the week of April 23 is good for me. I have a couple of meetings in Moscow that I would like to fit in also. Would an afternoon meeting work for your client? Let me know what day is good and I will put it on my schedule.

Thanks, Todd

J. Todd Edmonds  
Davidson Trust Co.  
Vice President, Trust Officer  
(509) 456-8323  
(800) 676-8323  
(509) 462-6359 Fax  
tedmonds@dadco.com

---

**From:** Scott Baldwin  
**Sent:** Tuesday, April 03, 2007 10:58 AM  
**To:** Todd Edmonds  
**Subject:** Lewiston

Do you have a trip to Lewiston Planned in the future? I have client with questions, but I don't want you to make a special trip down. If you aren't coming down, I might be able to set up a conference call with all of us and you.

REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT  
Thanks

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Scott

Scott Baldwin  
Associate Vice President  
Financial Consultant  
D.A. Davidson & Co  
208-743-0818  
800-237-2814  
Fax: 208-798-0626

REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

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REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

**Exhibit 2**

## Account Summary Statement

STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007



DAVIDSON TRUST COMPANY  
8 3RD ST N STE 301  
GREAT FALLS, MT 59401

ACCOUNT NAME: GERALDINE M. SCHNEIDER IRR TR  
FBO MARGARET MARY VANDYKE

ACCOUNT NUMBER: 3015099668

ADMINISTRATIVE OFFICER: J. TODD EDMONDS  
509-456-8323/800-676-8323  
TEDMONDS@DADCO.COM

### INVESTMENT PORTFOLIO SUMMARY

MARKET VALUE AS OF	04/01/2007	12/31/2007	% OF ACCOUNT
CASH AND CASH EQUIVALENTS	15,105.79	0.00	0.0%
EQUITY / STOCKS	211,234.73	0.00	0.0%
FIXED INCOME - TAXABLE	133,920.18	0.00	0.0%
MISCELLANEOUS	100,000.00	0.00	0.0%
Total	460,260.70	0.00	0.0%

### ACCOUNT ACTIVITY SUMMARY

	THIS PERIOD	YEAR TO DATE	REALIZED CAPITAL GAINS / LOSSES		
				THIS PERIOD	YEAR TO DATE
BEGINNING MARKET VALUE	460,260.70	459,614.06			
DIVIDEND INCOME	0.00	284.97			
TAXABLE INCOME	3,702.29	5,649.33	LONG TERM	43,754.64	44,527.19
ST CAPITAL GAIN DISTRIBUTIONS	166.44	556.65	SHORT TERM	3,798.87	4,189.08
OTHER INCOME	1,895.60	2,668.15	TOTAL GAINS / LOSSES	47,553.51	48,716.27
CASH DEPOSITS	360,342.00	360,733.27			
PYMTS TO/FOR BENEFICIARIES	0.00	1,878.72			
DAVIDSON TRUST CO FEES	911.35	1,811.41			
WITHDRAWALS AND DISTRIBUTIONS	738,155.17	740,500.17			
TAXES AND OTHER EXPENSES	0.00	2,024.00			
SALES	357,854.40	357,854.40			
MISCELLANEOUS	15,105.79	18,467.53			
CHANGE IN MARKET VALUE	460,260.70	459,614.06			

ENDING MARKET VALUE 0.00  
 AFFIDAVIT OF J. TODD EDMONDS  
 IN SUPPORT OF MOTION FOR SUMMARY  
 JUDGMENT

# Account Summary Statement

PAGE 2

STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## PRINCIPAL PORTFOLIO STATEMENT

DESCRIPTION	MARKET VALUE/ TAX COST	MARKET PRICE/ COST PRICE	ESTIMATED ANNUAL INCOME	CURRENT YIELD
<b>CASH AND CASH EQUIVALENTS</b>				
PRINCIPAL CASH	535.61 535.61			
TOTAL CASH AND CASH EQUIVALENTS	535.61 535.61		0.00	0.00
TOTAL PRINCIPAL ASSETS	535.61 535.61		0.00	0.00

## INCOME PORTFOLIO STATEMENT

DESCRIPTION	MARKET VALUE/ TAX COST	MARKET PRICE/ COST PRICE	ESTIMATED ANNUAL INCOME	CURRENT YIELD
<b>CASH AND CASH EQUIVALENTS</b>				
INCOME CASH	535.61 - 535.61 -			
TOTAL CASH AND CASH EQUIVALENTS	535.61 - 535.61 -		0.00	0.00
TOTAL INCOME ASSETS	535.61 - 535.61 -		0.00	0.00

## TRANSACTION STATEMENT

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
	BEGINNING BALANCE	2,911.17	2,911.17 -	427,468.72	
	TAXABLE INCOME				
04/02/07	INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 04/01/2007		69.38		
04/02/07	DISTRIBUTION FROM 13,312.15 UNITS DTC FIXED INCOME CTF EFFECTIVE 03/31/2007		484.87		
04/02/07	DISTRIBUTION FROM 5,726.75 UNITS DTC EQUITY INCOME CTF EFFECTIVE 03/31/2007		103.20		
04/02/07	DISTRIBUTION FROM 8,329.45 UNITS DTC LARGE CAP GROWTH CTF EFFECTIVE 03/31/2007		50.66		

REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

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# Account Summary Statement

PAGE 3

STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## TRANSACTION STATEMENT ( CONTINUED )

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
04/02/07	DISTRIBUTION FROM 3,560.35 UNITS DTC SMALL/MID CTF EFFECTIVE 03/31/2007		26.66		
05/01/07	INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 05/01/2007		66.43		
05/01/07	DISTRIBUTION FROM 13,312.15 UNITS DTC FIXED INCOME CTF EFFECTIVE 04/30/2007		477.19		
05/01/07	DISTRIBUTION FROM 5,726.75 UNITS DTC EQUITY INCOME CTF EFFECTIVE 04/30/2007		40.58		
05/01/07	DISTRIBUTION FROM 8,329.45 UNITS DTC LARGE CAP GROWTH CTF EFFECTIVE 04/30/2007		49.49		
05/01/07	DISTRIBUTION FROM 3,560.35 UNITS DTC SMALL/MID CTF EFFECTIVE 04/30/2007		11.65-		
06/01/07	INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 06/01/2007		53.02		
06/01/07	DISTRIBUTION FROM 13,312.15 UNITS DTC FIXED INCOME CTF EFFECTIVE 05/31/2007		481.81		
06/01/07	DISTRIBUTION FROM 5,726.75 UNITS DTC EQUITY INCOME CTF EFFECTIVE 05/31/2007		158.69		
06/01/07	DISTRIBUTION FROM 8,329.45 UNITS DTC LARGE CAP GROWTH CTF EFFECTIVE 05/31/2007		30.39		
06/01/07	DISTRIBUTION FROM 3,560.35 UNITS DTC SMALL/MID CTF EFFECTIVE 05/31/2007		2.74-		
07/02/07	INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 07/01/2007		758.63		
07/20/07	AMENDMENT TO TRANSACTION # 3 OF 02/01/2007 [TAX CODE] CHANGED FROM '25' TO '2' TRANSACTION NOW SHOWS: INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 02/01/2007				

REPLY AFFIDAVIT OF J. TODD EDMONDS  
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# Account Summary Statement

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STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## TRANSACTION STATEMENT ( CONTINUED )

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
07/20/07	AMENDMENT TO TRANSACTION # 3 OF 03/01/2007 [TAX CODE] CHANGED FROM '25' TO '2' TRANSACTION NOW SHOWS: INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 03/01/2007				
08/01/07	INTEREST ON GOLDMAN SACHS PRIME OBLIGATIONS FUND PAYABLE 07/31/2007		865.68		
TOTAL TAXABLE INCOME		0.00	3,702.29	0.00	0.00
ST CAP GAIN DISTR.					
04/03/07	SHORT TERM CAPITAL GAINS DIVIDEND ON 8,329.454 UNITS DTC LARGE CAP GROWTH CTF AT .018329 PER SHARE PAYABLE 03/31/2007 EFFECTIVE 03/31/2007		152.67		152.67
04/03/07	SHORT TERM CAPITAL GAINS DIVIDEND ON 3,560.346 UNITS DTC SMALL/MID CTF AT .003869 PER SHARE PAYABLE 03/31/2007 EFFECTIVE 03/31/2007		13.77		13.77
TOTAL ST CAP GAIN DISTR.		0.00	166.44	0.00	166.44
OTHER INCOME					
04/03/07	LONG TERM CAP GAINS DIVIDEND - PRE 5/6/2003 ON 13,312.145 UNITS DTC FIXED INCOME CTF AT .000913 PER SHARE PAYABLE 03/31/2007 EFFECTIVE 03/31/2007	12.15			12.15
04/03/07	LONG TERM CAP GAINS DIVIDEND - PRE 5/6/2003 ON 5,726.749 UNITS DTC EQUITY INCOME CTF AT .106467 PER SHARE PAYABLE 03/31/2007 EFFECTIVE 03/31/2007	609.71			609.71
04/03/07	LONG TERM CAP GAINS DIVIDEND - PRE 5/6/2003 ON 3,560.346 UNITS DTC SMALL/MID CTF AT .357757 PER SHARE PAYABLE 03/31/2007 EFFECTIVE 03/31/2007	1,273.74			1,273.74
TOTAL OTHER INCOME		1,895.60	0.00	0.00	1,895.60

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# Account Summary Statement

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STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## TRANSACTION STATEMENT ( CONTINUED )

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
<b>CASH DEPOSITS</b>					
05/02/07	RECEIVED FROM STATE OF IDAHO TAX REFUND STATE OF IDAHO 2006	127.00			
06/14/07	RECEIVED FROM BISHOP REALTY & MANAGEMENT RETURN OF SECURITY DEPOSIT FOR 1816 S. ST. PAUL ST, DENVER, CO	215.00			
07/09/07	RECEIVED FROM DA DAVIDSON REVERSAL OF 6/15 DISTRIBUTION TO VIRGINA BEAUDOIN DAD ACCT CHECK #647314	360,000.00			
<b>TOTAL CASH DEPOSITS</b>		<b>360,342.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>DAVIDSON TRUST FEES</b>					
04/06/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 03/31/2007	150.11-			
04/06/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 03/31/2007		150.11-		
05/07/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 04/30/2007	151.62-			
05/07/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 04/30/2007		151.61-		
06/07/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 05/31/2007	153.95-			
06/07/07	TRUSTEE FEE TO DAVIDSON TRUST CO. FOR THE PERIOD ENDING 05/31/2007		153.95-		
<b>TOTAL DAVIDSON TRUST FEES</b>		<b>455.68-</b>	<b>455.67-</b>	<b>0.00</b>	<b>0.00</b>
<b>TRANSFERS</b>					
10/30/07	DELIVERED 100,000 P LOCKWOOD AND MARGARET VANDYKE SAFEKEEPING ONLY PER LETTER FROM TRUSTOR DATED SEPTEMBER 18, 1997 7% 04/01/1996 TRADE DATE 10/30/2007			100,000.00-	
<b>TOTAL TRANSFERS</b>		<b>0.00</b>	<b>0.00</b>	<b>100,000.00-</b>	<b>0.00</b>

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IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

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# Account Summary Statement

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STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## TRANSACTION STATEMENT ( CONTINUED )

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
WITHDR AND DISTRIB.					
04/02/07	PAID TO HOWARD BISHOP & COMPANY LEASE PYMT - MARGARET VAN DYKE 1816 SOUTH ST. PAUL STREET		700.00-		
04/04/07	HAMILTON MISFELDT & CO. TAX PREPARATION FOR 2006	150.00-			
04/04/07	HAMILTON MISFELDT & CO. TAX PREPARATION FOR 2006		150.00-		
04/13/07	HAMILTON MISFELDT & CO. FINAL TAX PREPARATION ON SCHNEIDER FBO MEG VANDYKE	187.50-			
04/13/07	HAMILTON MISFELDT & CO. FINAL TAX PREPARATION ON SCHNEIDER FBO MEG VANDYKE		187.50-		
04/24/07	PORTER ADVENTIST HOSPITAL EMERGENCY HOSPITAL CHARGES DOS 3/30/2007 ACCT# 0527438300001 DISC OFFER	3,045.91-			
04/30/07	XCEL ENERGY FINAL BILL FOR UTILITY SERVICES	304.80-			
05/07/07	VIRGINIA BEAUDOIN REIMBURSEMENT FOR CREMATION SOCIETY OF COLORADO	845.87-			
05/08/07	EMERGENCY PHYSICIANS AT PORTER PHYSICIAN SERVICES FOR EMERGENCY CARE	844.85-			
06/15/07	D.A. DAVIDSON ACCOUNT 11700302 PARTIAL DISTRIBUTION TO VIRGINIA BEAUDOIN	360,000.00-			
07/25/07	D.A. DAVIDSON ACCOUNT 11710297 PARTIAL DISTRIBUTION TO BRIANNA BEAUDOIN	180,436.53-			
07/25/07	D.A. DAVIDSON ACCOUNT 11710301 PARTIAL DISTRIBUTION TO BROOKS BEAUDOIN	180,436.53-			
08/01/07	D.A. DAVIDSON ACCOUNT #11710297 FINAL DISTRIBUTION TO BRIANNA BEAUDOIN	5,432.84-			
08/01/07	D.A. DAVIDSON ACCOUNT 11710301 FINAL DISTRIBUTION TO BROOKS BEAUDOIN	5,432.84-			
TOTAL WITHDR AND DISTRIB.		737,117.67-	1,037.50-	0.00	0.00

REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
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# Account Summary Statement

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STATEMENT PERIOD: APR 01, 2007 THROUGH DEC 31, 2007

## TRANSACTION STATEMENT ( CONTINUED )

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
SALES					
06/01/07	SOLD 504.374 SHS DODGE & COX FUNDS INTERNATIONAL STOCK FUND #1048 ON 05/31/2007 AT 48.85 THRU ASSENT LLC HARD DOLLAR COMMISSION	24,638.67		17,905.27-	6,733.40
06/01/07	SOLD 744.145 SHS THORNBURG INTERNATIONAL VALUE FUND I ON 05/31/2007 AT 32.85 THRU ASSENT LLC HARD DOLLAR COMMISSION	24,445.16		17,770.17-	6,674.99
06/01/07	SOLD 13,312.145 UNITS DTC FIXED INCOME CTF ON 05/31/2007 AT 9.98	132,855.21		140,685.14-	7,829.93-
06/01/07	SOLD 5,726.749 UNITS DTC EQUITY INCOME CTF ON 05/31/2007 AT 10.19	58,355.57		50,982.64-	7,372.93
06/01/07	SOLD 8,329.454 UNITS DTC LARGE CAP GROWTH CTF ON 05/31/2007 AT 8.51	70,883.65		56,252.12-	14,631.53
06/01/07	SOLD 3,560.346 UNITS DTC SMALL/MID CTF ON 05/31/2007 AT 13.11	46,676.14		28,767.59-	17,908.55
TOTAL SALES		357,854.40	0.00	312,362.93-	45,491.47
	NET WITHDRAWAL GOLDMAN SACHS PRIME OBLIGATIONS FUND	15,105.79		15,105.79-	
TOTAL		15,105.79	0.00	15,105.79-	0.00
ENDING BALANCE		535.61	535.61-	0.00	47,553.51

REPLY AFFIDAVIT OF J. TODD EDMONDS  
IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

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FILED

2010 MAY 7 PM 12 18

PATTY O. WEEKS  
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

CASE NO. CV 07-02364

MEMORANDUM OPINION  
AND ORDER ON  
DEFENDANT'S MOTION  
FOR SUMMARY  
JUDGMENT

This matter came before the Court on the Defendant's Motion for Summary Judgment.<sup>1</sup> The Plaintiff was represented by John Mitchell, of the firm Clark & Feeney. The Defendant was represented by Laurel Siddoway, of the firm Randall & Danskin. The Court heard oral argument March 23, 2010. The Court, having heard the argument of counsel and being fully advised in the matter, hereby renders its decision.

<sup>1</sup> In addition to briefs filed in conjunction with the motion for summary judgment, the Plaintiff filed a motion to strike the *Reply Affidavit of J. Todd Edmonds in Support of Motion for Summary Judgment*. The Plaintiff's motion to strike is denied.

## BACKGROUND

Virginia Beaudoin instituted this action against Davidson Trust Company (hereinafter “Davidson Trust”) in order to recover damages resulting from claims of negligent misrepresentation, infliction of emotional distress, and breach of fiduciary duty. *Complaint*, at 1. Davidson Trust is a full service trust company. *Id.* at 2. At the heart of this lawsuit is the Geraldine M. Schneider Revocable Living Trust<sup>2</sup> (hereinafter “Schneider Trust”), which was established by Ms. Beaudoin’s mother,<sup>3</sup> and administered by Davidson Trust.

The final revision of the Schneider Trust<sup>4</sup> established that upon the death of Mrs. Schneider, the assets of the Schneider Trust were to be divided into two equal shares for Mrs. Schneider’s daughters—the Plaintiff and her older sister Margaret Mary Van Dyke (hereinafter “Margaret”). *Affidavit of Laurel Siddoway*, Exhibit A. The trust document placed no restrictions on the Plaintiff’s share of the trust assets; however, Margaret was only entitled to receive income from the principal of her share. *Id.* The Schneider Trust stated that upon the death of Margaret, her share was to pass to the Plaintiff’s children, Brooks and Brianna. If no children were surviving at the time of Margaret’s death, then the Plaintiff was to receive Margaret’s share. *Id.*

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<sup>2</sup> Mrs. Schneider established the trust in 1982, and amended the trust documents twice. The trust document in effect for purposes of this lawsuit is the Second Amended and Restated Geraldine M. Schneider Revocable Living Trust, which was executed in 1996.

<sup>3</sup> Mrs. Schneider adopted two daughters, Virginia and her older sister Margaret.

<sup>4</sup> In 1994, the Plaintiff was assisting in her mother’s care, and given a durable power of attorney. *Affidavit of Laurel Siddoway*, Exhibit B, *Deposition of Virginia Beaudoin*, at 20. When the Second Amended Trust was executed in 1996, the Plaintiff was appointed Advisor to the Trustee, a co-fiduciary role. *Affidavit of Laurel Siddoway*, Exhibit A, at Article XIII. The Plaintiff was aware of the provision which established that Margaret’s share of the trust would pass on to the Plaintiff’s children, Brooks and Brianna. The Plaintiff informed both her husband, and her son Brooks that Margaret’s share would pass to Brooks and Brianna. *Affidavit of Laurel Siddoway*, Exhibit D, *Response to Defendant’s Interrogatory No. 2*; Exhibit B, *Deposition of Virginia Beaudoin*, at 11-12.

Margaret passed away on March 30, 2007. At this time, the beneficiaries of the Schneider Trust were fixed and determinable as Brooks and Brianna. Margaret's husband reported her death to Jan Shelby, a trust assistant for Davidson Trust. *Affidavit of Jan Shelby*. Margaret's husband asked Ms. Shelby to inform the Plaintiff of Margaret's death because the two sisters had been estranged. *Id.* Ms. Shelby was under the mistaken belief that upon Margaret's death, the trust funds were to pass to the Plaintiff—not to her children. *Id.* As a result, when Ms. Shelby contacted the Plaintiff to inform her of her sister's death, Ms. Shelby stated her mistaken belief that Beaudoin would be receiving Margaret's shares of the Schneider trust. *Id.*

Following Margaret's death in March, the Plaintiff elected to retire from her employment as a cosmetologist. *Complaint*, at 3. The Plaintiff informed her employer of this decision in early to mid-April. *Affidavit of Sherry Lyons*. The Plaintiff also consulted her financial advisor, Scott Baldwin, of D.A. Davidson & Co. *Deposition of Virginia Beaudoin*, at 11. Mr. Baldwin arranged a meeting between himself, the Plaintiff and her husband, and J. Todd Edmonds. Mr. Edmonds is the Vice President, Trust Officer and Branch Manager of Davidson Trust. *Affidavit of J. Todd Edmonds*. The group met during the last week of April.

A partial distribution of Margaret's share from the Schneider Trust was deposited in the Plaintiff's account on June 15, 2007. *Reply Affidavit of J. Todd Edmonds in Support of Motion for Summary Judgment*, at 2. Approximately three or four days later, Edmonds reviewed the trust document and discovered that the Plaintiff's children were the proper beneficiaries. *Id.* On Thursday, June 21, 2007, Edmonds spoke with the Plaintiff to inform her of the error. *Id.* As of July 9, 2007, the funds were removed from

the Plaintiff's account. By the end of July, 2007, the funds were properly distributed to the Plaintiff's children. *Id.*

Currently before the Court is the Defendant's motion for summary judgment, which is seeking dismissal of the Plaintiff's claims of breach of fiduciary duty, negligent misrepresentation, and infliction of emotional distress.

### SUMMARY JUDGMENT STANDARD

Summary judgment should be granted where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether summary judgment is appropriate, the court must construe the pleadings, depositions, admissions, and affidavits in a light most favorable to the nonmoving party. *Conway v. Sonntag*, 141 Idaho 144, 146, 106 P.3d 470, 472 (2005), citing *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

When a motion for summary judgment is "supported by a particularized affidavit, the opposing party may not rest upon bare allegations or denials in his pleadings," but must set forth "specific facts" showing a genuine issue. I.R.C.P. 56(e); *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct. App. 1984). A "mere scintilla" of evidence or only a "slight doubt" as to the facts is insufficient to withstand summary judgment. *Corbridge v. Clark Equipment Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986), citing *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787 (Ct. App. 1984); see also *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 238, 108 P.3d 380, 385 (2005).

Finally, the initial burden of establishing the absence of a genuine issue of material fact is on the moving party, and once this burden is met, it is incumbent upon the non-moving party to establish an issue of fact regarding that element. *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 923 P.2d 416 (1996).

### ANALYSIS

The Plaintiff has asserted three claims against the Defendant as a result of the Defendant's error of informing the Plaintiff she was the beneficiary of Margaret's remaining shares from the Schneider Trust. The Defendant argues each claim should be summarily dismissed. Each issue will be addressed individually.

**1. No fiduciary relationship existed between Beaudoin and Davidson Trust, for purposes of the Schneider Trust, at the time of Margaret's death.**

Davidson Trust argues that Beaudoin has no claim for breach of fiduciary duty because at the time of Margaret's death, Davidson Trust owed no fiduciary duty to Beaudoin. Beaudoin contends that Davidson Trust continued to treat her as a beneficiary after her sister's death by communicating to Beaudoin that she was to receive her sister's share and by subsequently proceeding to transfer the amount of the share into Beaudoin's account.

"To establish a claim for breach of fiduciary duty, plaintiff must establish that defendants owed plaintiff a fiduciary duty and that the fiduciary duty was breached." *Sorensen v. Saint Alphonsus Reg'l Med. Ctr., Inc.*, 141 Idaho 754, 760, 118 P.3d 86, 92 (2005) (quoting *Tolley v. THI Co.*, 140 Idaho 253, 261, 92 P.3d 503, 511 (2004)).

Whether a fiduciary relationship exists is a question of law. *Hayden Lake Protection*

*Dist. v. Alcorn*, 141 Idaho 388, 401, 111 P.3d 73, 86 (2005). “Before a fiduciary duty can be breached, there must exist a fiduciary relationship. A fiduciary relation exists between two parties when one is under a duty to act or to give advice for the benefit of the other upon a matter within the scope of the relation.” *Podolan v. Idaho Legal Aid Services, Inc.*, 123 Idaho 937, 946, 854 P.2d 280, 289 (Ct. App. 1993) *citing* RESTATEMENT (SECOND) OF TORTS § 874 comment a (1979).

Beaudoin has failed to establish that a fiduciary relation existed between herself and Davidson Trust with regard to the Schneider Trust upon the event of Margaret’s death. Prior to Margaret’s death, Beaudoin had exhausted her share of the Schneider Trust in 2006, thus, her status as a beneficiary ended at that time. Further, any remote contingent interest she may have held in Margaret’s share ceased upon Margaret’s death, when Brooks and Brianna’s status as beneficiaries became fixed.

Beaudoin argues that Davidson Trust owed a fiduciary duty because Davidson Trust continued to treat Beaudoin as a beneficiary when they erringly informed her she was to receive her sister’s share and transferred the share into Beaudoin’s account. Beaudoin relies upon *Baccus v. Ameripride Services, Inc.*, 145 Idaho 346, 179 P.3d 309 (2008) in support of her argument that Davidson Trust voluntarily undertook the role of fiduciary with regard to Beaudoin. This Court finds Beaudoin’s reliance on *Baccus* unpersuasive.

In *Baccus*, an injured employee brought action against the Defendant contractor who provided floor mats to Baccus’s employer. Baccus slipped and fell on the floor where a mat had not been placed. *Id.* *Baccus* makes no reference to a cause of action

resulting from a fiduciary relationship.<sup>5</sup> The facts giving rise to the claims in *Baccus*, and the issues addressed in that case are wholly distinguishable from the case at hand.

Whether a fiduciary relationship existed is a question of law; based upon the record before this Court, there is no evidence that Davidson Trust and Beaudoin maintained a fiduciary relationship with regards to the Schneider Trust after Beaudoin exhausted her share of the trust. Further, while Beaudoin may have had a remote contingent interest in Margaret's remaining share, this interest was extinguished upon the death of Margaret, where the Schneider Trust clearly vested any remaining share with Brooks and Brianna. Thus, the Defendant's motion for summary judgment on this claim is granted.

**2. Claims of negligent misrepresentation are not recognized in Idaho, with the exception of public accountants.**

The Plaintiff claims that Davidson Trust negligently misinterpreted the provisions of the Schneider Trust and misrepresented to the Plaintiff that she was entitled to receive a distribution from the Trust. *See Complaint*, at 4. Davidson Trust contends that summary judgment is appropriate on this claim because the tort of negligent

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<sup>5</sup> *Baccus* explains that a legal duty may arise for purposes of a negligence action if one voluntarily undertakes to perform an act.

Even when an affirmative duty generally is not present, a legal duty may arise if "one voluntarily undertakes to perform an act, having no prior duty to do so." *Id.* at 400, 987 P.2d at 312 (quoting *Featherston v. Allstate Ins. Co.*, 125 Idaho 840, 843, 875 P.2d 937, 940 (1994)). In such case, the duty is to perform the voluntarily-undertaken act in a non-negligent manner. *Id.* But, "[w]hen a party assumes a duty by voluntarily performing an act that the party had no duty to perform, the duty that arises is limited to the duty actually assumed." *Martin v. Twin Falls School Dist. No. 411*, 138 Idaho 146, 150, 59 P.3d 317, 321 (2002). So, "[l]iability for an assumed duty ... can only come into being to the extent that there is in fact an undertaking." *Udy v. Custer County*, 136 Idaho 386, 389, 34 P.3d 1069, 1072-73 (2001) (voluntarily removing rocks from the highway on one occasion does not result in a duty to do it on future occasions, because such a holding "would be tantamount to holding that ... a permanent duty to remove obstructions from the highway [existed]"). Moreover, "past voluntary acts do not entitle the benefited party to expect assistance on future occasions, at least in the absence of an express promise that future assistance will be forthcoming." *Id.* at 390, 34 P.3d at 1073.

*Id.* at 350, 179 P.3d at 313.



misrepresentation is limited in the State of Idaho to actions against public accountants.

*See Duffin v. Idaho Crop Imp. Ass'n*, 126 Idaho 1002, 1010, 895 P.2d 1195, 1203 (1995).

Further, Idaho Courts have declined to extend this cause of action to other professional relationships.

However, even if a special relationship was recognized between a purchaser and a real estate agent employed only by the seller, summary judgment on the Graefes' claim of negligent misrepresentation claim was appropriate. *Duffin* explicitly stated that a cause of action for negligent misrepresentation exists in Idaho only where there is a "professional relationship involving an accountant." *Duffin*, 126 Idaho at 1010, 895 P.2d at 1203. Thus, even if a special relationship existed between the Graefes and Brawley, it is of no import to the determination of whether the Graefes could recover their purely economic damages under the theory of *negligent misrepresentation* because Brawley was a real estate broker, not an accountant. The district court did not, as the Graefes contend, extend the *Duffin* rationale "well beyond the law established in that opinion."

*Graefe v. Vaughn*, 132 Idaho 349, 351, 972 P.2d 317, 319 (Ct. App. 1999). Similar to the determination in *Graefe*, a claim of negligent misrepresentation cannot be made against the Defendant in the case at hand.

The Plaintiff attempts to avoid this limitation by simply arguing the case is one of negligence. However, it is the Plaintiff's claim that Davidson Trust "negligently misinterpreted the provisions of the Trust and misrepresented to the Plaintiff that she was entitled to receive a distribution from the Trust." *Complaint*, at 4. This Court will not circumvent the well-settled case law in Idaho that limits negligent misrepresentation claims only to cases which involve public accountants. Therefore, the Defendant's motion for summary judgment is granted on this claim.

**3. The record does not support a claim for infliction of emotional distress.**

The last claim set forth by Beaudoin alleges infliction of emotional distress. *See Complaint*, at 4. The Defendant contends that as a matter of law, Beaudoin has no claim

for intentional or negligent infliction of emotional distress, and thus, this claim should be summarily dismissed. Within the Complaint, the Plaintiff does not set forth whether she is seeking a claim of intentional infliction of emotional distress, or a claim of negligent infliction of emotional distress. For purposes of the pending motion, both options will be considered.

The elements of intentional infliction of emotional distress are set forth in *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 801 P.2d 37 (1990).

[T]he tort of intentional infliction of emotional distress is well established in Idaho. *Gill v. Brown*, 107 Idaho 1137, 695 P.2d 1276 (Ct.App.1985); *Rasmuson v. Walker Bank & Trust Co.*, 102 Idaho 95, 625 P.2d 1098 (1981); *Hatfield v. Max Rouse & Sons Northwest*, 100 Idaho 840, 606 P.2d 944 (1980). In order to recover for the intentional infliction of emotional distress the plaintiff must prove that the defendant's conduct was extreme and outrageous which either intentionally or recklessly causes severe emotional distress. *Gill v. Brown*, 107 Idaho 1137, 695 P.2d 1276 (Ct.App.1985); *Rasmuson v. Walker Bank & Trust Co.*, 102 Idaho 95, 625 P.2d 1098 (1981); *Hatfield v. Max Rouse & Sons Northwest*, 100 Idaho 840, 606 P.2d 944 (1980).

*Id.* at 834, 801 P.2d at 41. The undisputed facts in the case do not give rise to a claim for intentional infliction of emotional distress. There is no allegation or evidence of extreme and outrageous conduct on the part of the Defendant.

Negligent infliction of emotional distress is a category of the tort of negligence. *Johnson v. McPhee*, 147 Idaho 455, 466, 210 P.3d 563, 574 (Ct. App. 2009). The elements of negligent infliction of emotional distress are those found in a negligence action. *Id.*

These elements are: (1) a duty recognized by law requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the conduct and the plaintiff's injury; and (4) actual loss or damage. *Brooks v. Logan*, 127 Idaho 484, 489, 903 P.2d 73, 78 (1995); *Black Canyon Racquetball Club, Inc.*, 119 Idaho at 175-76, 804 P.2d at 904-05; *Nation*, 144 Idaho at 189, 158 P.3d at 965. In addition to

these elements, for a claim of negligent infliction of emotional distress to lie, there must be some physical manifestation of the plaintiff's emotional injury.

*Id.*

There is no support in the record for a claim of negligent infliction of emotional distress. Even if the Plaintiff were able to establish the elements of negligence, nothing in the record before this Court indicates the Plaintiff has suffered a physical manifestation of the alleged emotional injury. The Plaintiff alleges she has suffered high levels of stress and anxiety. *Complaint*, at 4.

The physical injury requirement for a claim of negligent infliction of emotion distress was discussed by the Idaho Supreme Court in *Czaplicki v. Gooding Joint School Dist. No. 231*, 116 Idaho 326, 775 P.2d 640 (1989).

It is beyond dispute that in Idaho no cause of action for negligent infliction of emotional distress will arise where there is no physical injury to the plaintiff. *Hathaway v. Krumery*, 110 Idaho 515, 716 P.2d 1287 (1986); *Hatfield v. Max Rouse & Sons Northwest*, 100 Idaho 840, 606 P.2d 944 (1980). The "physical injury" requirement is designed to provide some guarantee of the genuineness of the claim in the face of the danger that claims of mental harm will be falsified or imagined. *Hatfield*, 100 Idaho at 849, 606 P.2d 944. Physical manifestations of the emotional injury enable a plaintiff to posit a claim for negligent infliction of emotional distress. *Hatfield* at 851, 606 P.2d 944. The Czaplickis' complaint alleges that defendants' actions have proximately caused "severe emotion and result in physical pain and injury to the plaintiff, Rose Czaplicki," and have "caused severe emotion and commensurate physical injury to plaintiff Russell Czaplicki." The Czaplickis describe various emotional injuries that have manifested themselves in physical symptoms such as severe headaches, occasional suicidal thoughts, sleep disorders, reduced libido, fatigue, stomach pains and loss of appetite.

*Id.* at 332, 775 P.2d at 646. The Plaintiff's assertion she has suffered high levels of stress and anxiety have not been further clarified to establish that she has suffered a physical manifestation of these emotional injuries. Without evidence of a physical injury, the Plaintiff cannot establish a claim for negligent infliction of emotional distress.

As a matter of law, the Plaintiff has no claim for intentional infliction of emotional distress, or negligent infliction of emotional distress. As a result, the Defendant's motion for summary judgment is granted.

### CONCLUSION

The Plaintiff sets forth three causes of action in the lawsuit at hand: breach of fiduciary duty, negligent misrepresentation, and infliction of emotional distress. Based upon the foregoing analysis, the Defendant's motion for summary judgment is granted on each of the claims.

### ORDER

The Defendant's Motion for Summary Judgment is hereby GRANTED.  
IT IS SO ORDERED.

Dated this 7<sup>th</sup> day of May 2010.

  
CARL B. KERRICK – District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing MEMORANDUM OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was:

\_\_\_\_\_ faxed this \_\_\_\_\_ day of May, 2010, or

1 hand delivered via court basket this 7<sup>th</sup> day of May, 2010, or

1 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 7<sup>th</sup> day of May, 2010, to:

John C. Mitchell  
CLARK and FEENEY  
P.O. Drawer 285  
Lewiston, ID 83501

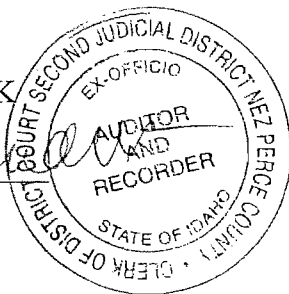
Laurel H. Siddoway  
RANDALL DANSKIN P.S.  
601 West Riverside Avenue, Ste. 1500  
Spokane, WA 99201-0653

*mailed*

PATTY O. WEEKS, CLERK

By: *[Signature]*

Deputy



RANDALL | DANSKIN  
Keith D. Brown, ISBA #3635  
601 W. Riverside Ave., Suite 1500  
Spokane, Washington 99201  
(509) 747-2052 (telephone)  
(509) 624-2528 (facsimile)

Attorneys for Defendants

FILED

2010 MAY 19 PM 2 19

PAUL J. WICKS  
CLERK OF DISTRICT COURT  
*Paul J. Wicks*  
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

FINAL JUDGMENT FOR DEFENDANT  
DAVIDSON TRUST COMPANY

The above Court duly made and filed its Memorandum Opinion and Order on Defendant's Motion for Summary Judgment in this action on May 7, 2010 directing that summary judgment be entered in favor of defendant Davidson Trust Company and against plaintiff Virginia R. Beaudoin.

Now, therefore, in accordance with the Memorandum Opinion and Order on Defendant's Motion for Summary Judgment of this Court,

IT IS ORDERED, ADJUDGED, AND DECREED that final judgment be, and is, entered in favor of the defendant Davidson Trust Company, and that plaintiff Virginia R. Beaudoin shall have and recover nothing against defendant Davidson Trust Company by her suit in this

FINAL JUDGMENT FOR  
DEFENDANT DAVIDSON TRUST COMPANY - 1

action. Defendant Davidson Trust Company is the prevailing party in this action. Pursuant to IRCP 54(d), defendants shall have 14 days from the entry of this final judgment to serve and file its Memorandum of Costs and request for attorney fees for the court's consideration. It is further ordered, adjudged and decreed that Case No. CV 2007-02364 is hereby dismissed.

DATED this 19<sup>th</sup> day of May, 2010.



HONORABLE CARL B. KERRICK  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

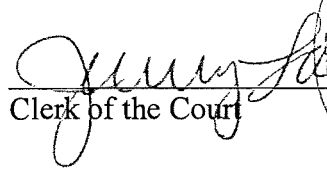
I hereby certify that on the 19<sup>th</sup> day of May, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

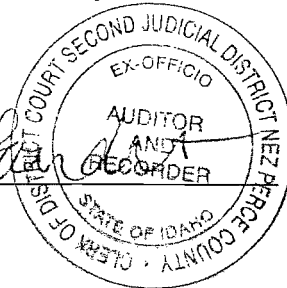
John Charles Mitchell  
Clark and Fenney  
PO Drawer 285  
Lewiston, ID 83501  
*Attorneys for Plaintiffs*

- |                                     |                       |
|-------------------------------------|-----------------------|
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| <input type="checkbox"/>            | By Hand Delivery      |
| <input type="checkbox"/>            | Via Facsimile         |
| <input type="checkbox"/>            | By E-mail             |
| <input type="checkbox"/>            | By Overnight Delivery |

Keith D. Brown  
Randall | Danskin  
601 W. Riverside Ave., Suite 1500  
Spokane, WA 99201  
*Attorneys for Defendant*

- |                                     |                       |
|-------------------------------------|-----------------------|
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| <input type="checkbox"/>            | By Hand Delivery      |
| <input type="checkbox"/>            | Via Facsimile         |
| <input type="checkbox"/>            | By E-mail             |
| <input type="checkbox"/>            | By Overnight Delivery |

  
Clerk of the Court



28082\Beaudoin\FINAL JUDGMENT;dl

FINAL JUDGMENT FOR  
DEFENDANT DAVIDSON TRUST COMPANY - 2

FILED

2010 JUN 23 PM 4 19

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

JOHN CHARLES MITCHELL  
CLARK and FEENEY  
The Train Station  
P.O. Drawer 285  
Lewiston, Idaho 83501  
Telephone: (208) 743-9516  
Facsimile: (208) 746-9160  
Idaho State Bar No. 7159

Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

VIRGINIA R. BEAUDOIN,

Plaintiff,

v.

DAVIDSON TRUST COMPANY,

Defendant.

NO. CV 2007-02364

NOTICE OF APPEAL

Fee Category: L.4

Fee Amount: \$101.00

TO: DAVIDSON TRUST COMPANY and to its attorney, Keith D. Brown, Randall | Danskin,  
and THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

NOTICE OF APPEAL

-1-

LAW OFFICES OF  
CLARK AND FEENEY  
LEWISTON, IDAHO 83501

217



1           1.       The above named Appellant, Virginia R. Beaudoin, appeals to the Idaho Supreme  
2 Court from the Final Judgment for Defendant Davidson Trust Company entered the 19<sup>th</sup> day of May,  
3 2010, by the Honorable Carl B. Kerrick.

4           2.       That Appellant has a right to appeal to the Idaho Supreme Court. The Final Judgment  
5 described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1).  
6

7           3.       A preliminary state of the issue on appeal which the Appellants intend to assert in the  
8 appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting  
9 other issues on appeal:

10           a.       Whether the District Court erred in holding that as a matter of law that a  
11 fiduciary duty did not exist between Ms. Beaudoin and Davidson Trust.  
12

13           b.       Whether the District Court erred in holding that as a matter of law Davidson Trust  
14 did not assume a fiduciary duty towards Ms. Beaudoin based on its conduct and  
15 actons.

16           4.       Has an order been entered sealing all or any portion of the record? If so, what  
17 portion? N/A  
18

19           5.       (a)     Is a reporter's transcript requested? Yes.

20           6.       The Appellant requests the following documents to be included in the clerk's record  
21 in addition to those automatically included under Rule 28, I.A.R.:

<u>Date</u>	<u>Document</u>
01/25/2010	Defendant's Motion for Summary Judgment

1 01/25/2010 Defendant's Brief in Support of Motion for Summary Judgment  
2 01/25/2010 Affidavit of Laurel Siddoway  
3 01/25/2010 Affidavit of J. Todd Edmonds  
4 01/25/2010 Affidavit of Jan Shelby  
5 01/25/2010 Affidavit of Larry Lemaster  
6 01/26/2010 Affidavit of Larry Lemaster  
7  
8 02/11/2010 Plaintiff's Memorandum in Opposition to Motion for Summary Judgment  
9 02/11/2010 Affidavit of John C. Mitchell  
10 02/17/2010 Reply Brief in Support of Motion for Summary Judgment  
11 02/17/2010 Reply Affidavit of J. Todd Edmonds in Support of Motion for Summary  
12 Judgment  
13

14 7. The Appellants request the following documents, charts, or pictures offered or  
15 admitted as exhibits to be copied and sent to the Supreme Court: N/A

16 8. I certify:

17 (a) That a copy of this notice of appeal has been served on each reporter of whom a  
18 transcript has been requested as named below at the address set out below:  
19

20 Linda Carlton  
21 425 Warner Ave.  
22 Lewiston, ID 83501

23 (b) That the clerk of the district court has been paid the estimated fee for preparation of  
24 the reporter's transcript.  
25

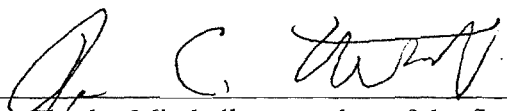
26 NOTICE OF APPEAL

-3-

- 1 (c) That the estimated fee for preparation of the clerk's record has been paid.  
2 (d) That the appellate filing fee has been paid.  
3 (e) That service has been made upon all parties required to be served pursuant to Rule  
4 20.  
5

6 DATED this 23 day of June, 2010.

7 CLARK AND FEENEY

8 By:   
9 John Charles Mitchell, a member of the firm.  
10 Attorneys for Petitioner/Appellant

11 **CERTIFICATE OF SERVICE**


12 I hereby certify that on the 23<sup>rd</sup> day of June, 2010, I caused to be served a true and correct  
13 copy of the foregoing by the method indicated below, and addressed to the following:

14 Keith D. Brown  
15 Randall | Danskin  
16 601 W. Riverside Ave., Suite 1500  
17 Spokane, WA 99201  
18 Attorneys for Defendant

- ☒ Via First Class Mail  
☐ By Hand Delivery  
☐ Via Facsimile  
☐ By E-mail  
☐ By Overnight Delivery

17 Linda Carlton  
18 Certified Court Reporter  
19 425 Warner Ave.  
20 Lewiston, ID 83501

- ☒ Via First Class Mail  
☐ By Hand Delivery  
☐ Via Facsimile  
☐ By E-mail  
☐ By Overnight Delivery

21  
22   
23 John C. Mitchell,  
24 Attorney for the Plaintiff/Appellant  
25

26 NOTICE OF APPEAL

-4-

LAW OFFICES OF  
CLARK AND FEENEY  
LEWISTON, IDAHO 83501

220

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 37828-2010
	)	
v.	)	CLERK'S CERTIFICATE
	)	
DAVIDSON TRUST COMPANY,	)	
	)	
Defendant-Respondent.	)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 13 day of Sept, 2010.

PATTY O. WEEKS, Clerk

By **DEANNA P. GRIMM**  
Deputy Clerk

CLERK'S CERTIFICATE

221

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

VIRGINIA R. BEAUDOIN,	)	
	)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 37828-2010
	)	
v.	)	CLERTIFICATE OF SERVICE
	)	
DAVIDSON TRUST COMPANY,	)	
	)	
Defendant-Respondent.	)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record and Reporter's Transcript were placed in the United States mail and addressed to Keith D. Brown, 601 W Riverside Ave, Suite 1500, Spokane, WA 99201 and hand-delivered to John C. Mitchell, P O Drawer 285, Lewiston, ID 83501 by Valley Messenger service this 13 day of Sept 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 13 day of Sept 2010.

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT

By DEANNA P. GRIMM  
Deputy Clerk