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PURPOSE

JOHN JUNIKER, et al

IN THE DISTRICT COURT

VS.

TARRANT COUNTY, TEXAS

HARRIS HOSPITAL-METHODIST  
a/k/a HARRIS HOSPITAL, INC.  
et al

352ND JUDICIAL DISTRICT

STATEMENT

OF

FACTS

DATE REPORTED: JANUARY 10, 1991

REPORTER: JUDY G. VANAMAN, CCR

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A P P E A R A N C E S

MR. TOM L. PETTIETTE  
ATTORNEY AT LAW  
3229 D'Amico #200  
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MR. T. E. SWATE  
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ATTORNEYS FOR PLAINTIFF

MR. JOHN P. CAMP  
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MR. MICHAEL J. HENRY  
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309 West 7th Street, Suite 1600  
Fort Worth, Texas 76102

ATTORNEY AD LITEM

3 BE IT REMEMBERED that on the 10th day of January,  
4 A.D., 1991, the above styled and numbered cause came on  
5 to be heard before the Honorable Bruce Auld, Judge of the  
6 352nd Judicial District Court, County of Tarrant, State  
7 of Texas.

8 WHEREUPON, the following proceedings were held,  
9 to-wit:

10 \* \* \* \* \*

11 THE COURT: You may proceed.

12 MR. SWATE: This is a motion to  
13 release funds from the registry of the  
14 court.

15 Do you want this on the record? I  
16 don't.

17 THE COURT: Yes, I think it's best.  
18 Plaintiff's Exhibit 1 marked for  
19 identification purposes.

20 MR. HENRY: What is going to be  
21 pending here today for approval is gong to  
22 be an application that Mr. Swate has  
23 basically redone for today. It is an  
24 application to establish a trust. In the  
25 order establishing trust there is a new  
trust document, since those matters were not

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completed the other day, and then this motion and order releasing funds that the court is reviewing at the time --

THE COURT: Yes. Go ahead.

MR. HENRY: -- Prior to the final execution of those documents I think all counsel would like to put on some testimony of the litigants.

THE COURT: Yes. All right. Now, there is an application to establish a trust document. And where is that?

(Instrument produced)

THE COURT: So that the matters that need to be determined are the application to create trust, and then a motion to release the funds.

MR. HENRY: Yes, sir, along with the application, of course, to establish the trust there is an order establishing the trust.

THE COURT: Yes. I see that. Fine. Mrs. Grillo and Mr. Juniker would you please stand and raise your right hands and be sworn.

Do you solomnly swear or affirm the

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testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

MS. GRILLO: I do.

MR. JUNIKER: I do.

THE COURT: All right. Now, Mr. Henry would you like to call a witness?

MR. HENRY: I call Ms. Grillo first.

THE COURT: Ms. Grillo would you come up and have a seat on the witness stand, please, ma'am.

JOSEPHINE GRILLO

the witness, after first being duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified on her oath as follows:

EXAMINATION

BY MR. HENRY:

Q. Ms. Grillo, just for the record, I'm Mike Henry and we met and worked through this for some period of time, have we not?

A. Yes, we have.

Q. I'm Christina's lawyer, appointed by the court as ad litem in this case.

A. Yes, you are.

Q. And through a great deal of work and

1 diligence on everyone's part we are here today for the  
2 final prove-up, and anticipate requesting the court to  
3 approve a trust and other matters to distribute funds in  
4 this case; is that right?

5 A. Yes.

6 Q. I'm going to try to be as brief as  
7 possible, and again I appreciate your patience. I know  
8 we have been through this several times on it, but I'm  
9 going to ask you about what we are doing and your  
10 understanding of it, and ask you if that's what you think  
11 is in Christina's best interest and if that is what you  
12 asked me to do, okay?

13 A. Okay.

14 Q. Now, what we have done and what we are  
15 asking the court here to do today is to establish a --  
16 what is commonly referred to as a 142 trust with Merrill  
17 Lynch Trust Company with \$700,000 of Christina's money;  
18 is that correct?

19 A. Yes.

20 Q. And for purposes of the record, Christina  
21 out of a \$2.5 million settlement is to receive \$1 million  
22 of the money is your understanding; is that correct?

23 A. Yes.

24 Q. And out of that million dollars we are  
25 putting \$700,000 of it -- or requesting the court the

1 approval of placing \$700,000 of it in a trust with  
2 Merrill Lynch Trust Company; is that correct?

3 A. Yes.

4 Q. And this is something that is done and  
5 requested with not much -- or with a great deal of  
6 consideration and thought and foresight, isn't it?

7 A. Yes.

8 Q. And through discussions you have weighed,  
9 and I along with you have reviewed the tax consequences  
10 of spending the entire million dollars on an annuity  
11 versus the placing of \$700,000 in a trust and purchasing  
12 \$300,000 worth of annuities, haven't you?

13 A. Yes.

14 Q. In that regard, in placing the entire  
15 million dollars in an annuity your principal concern was  
16 catastrophic health costs, or some other expense which  
17 Christina might undergo, where you would need, if not  
18 immediate, very quick access to the principal; is that  
19 correct?

20 A. Yes.

21 Q. Your concern was that with an annuity  
22 paying you monthly that you would not have sufficient  
23 funds in the case of a catastrophic health or -- health  
24 problem; is that correct?

25 A. That or a new technology, yes.



1 Q. Correct.

2 A. Yes.

3 Q. Something wherein in the best interest of  
4 Christina --

5 A. Exactly.

6 Q. -- you would need access to more than  
7 \$7,000 a month?

8 A. Right.

9 Q. And the trade-off to that is the concern  
10 that the monthly payments may or may not be given the  
11 same tax treatment as annuity payments, but in  
12 consideration of that, you are willing to accept that  
13 because you'd feel and hope that the expenses will be  
14 high enough to off set the monthly interest payments for  
15 the trust; is that correct?

16 A. You are saying that the annuity that you  
17 and Mr. Pettiette had proposed would have had tax  
18 consequences -- or no tax consequences; is that what you  
19 are saying?

20 Q. I'm saying the tax consequences could  
21 have been different.

22 A. Okay. Repeat your question, please.

23 Q. I'm not asking you to agree with me, let  
24 me put it that way.

25 A. It's not that I was going to agree with

1 you. It's that if it was a structured settlement, then  
2 that money would have been non taxed; is that right?

3 Q. Right.

4 A. Okay.

5 THE COURT: I think he is just asking  
6 you if that was your understanding of the  
7 situation.

8 Why don't you just reask the lady the  
9 question.

10 MR. HENRY: Sure.

11 BY MR. HENRY:

12 Q. Now, then again I'm not asking you  
13 necessarily to agree with me, but did you understand that  
14 it is my understanding or position that possibly a  
15 structured annuity or structured pay out would have  
16 better income tax consequences than interest from a  
17 trust?

*is that  
b/y or  
after  
construct.  
receipt*

18 A. Yes.

19 Q. But after consideration, and thoughtful  
20 consideration, you would rather have the access to the  
21 principal with the income from the trust and work and try  
22 to develop expenses to off set the income from the  
23 trust--

24 A. Yes.

25 Q. -- is that correct?

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A. Yes.

Q. And that is something that, after careful, thoughtful consideration, you want to do?

A. Yes.

Q. And as someone who has taken care of Christina, that is something you think that is in Christina's best interest?

A. Yes.

Q. Because of the potential medical problems or new technology?

A. Yes.

Q. And you are asking me to approve that arrangement with \$300,000 for annuities and the other to Merrill Lynch Trust Company as Trustee, with income distribution for Christina's benefit?

A. Yes, I am.

Q. Now, in regard to the other distribution of the money --

MR. HENRY: Is there an order with the exact distribution on it?

MR. SWATE: Yes.

THE COURT: An order releasing funds?

MR. HENRY: Yes, Your Honor.

BY MR. HENRY:

Q. Ms. Grillo, in that regard to the extent

1 that the application for the establishment of a trust, an  
2 order establishing that trust is before the Court today  
3 here, you think that that is in the best interest of  
4 Christina?

5 A. Yes.

6 Q. And you are asking me to approve that?

7 A. Yes, please.

8 Q. In addition there is before the court  
9 today an order distributing funds; is that correct?

10 A. Yes.

11 Q. And in that regard, we had discussed  
12 previously the purchase of the annuities; is that  
13 correct?

14 A. Yes. Uh-huh.

15 Q. And in that order you are asking the  
16 Court or the district clerk to pay not only the \$700,000  
17 for the establishment of the trust to Merrill Lynch, but  
18 is ordering the district clerk to pay \$300,000 to Merrill  
19 Lynch Trust Company to purchase six annuities at \$50,000  
20 apiece and a ten year term as listed in that that order;  
21 is that correct?

22 A. Yes.

23 Q. And you are asking me to approve that  
24 portion of the order?

25 A. Yes, please.

1 Q. And you think that is in the best  
2 interest of Christina?

3 A. Yes, I do.

4 Q. And one other reason you are spreading it  
5 out among six companies is to decrease the risk of the  
6 insurance or annuity company having problems and its  
7 effect on you?

8 A. Exactly. To protect her principal  
9 \$50,000.

10 Q. Right. And you are further asking that  
11 the court pay \$413,271.05 to you; is that correct?

12 A. Yes.

13 Q. And further asking that the court approve  
14 and pay \$20,000 to John Juniker; is that correct?

15 A. Yes..

16 Q. I'm sorry. I misstated that, not that  
17 the court pay, but that the court order the district  
18 clerk to pay; is that correct?

19 A. Yes.

20 Q. And is it further your understanding that  
21 the payment of \$20,000 to Mr. Juniker is not contingent  
22 upon or conditioned upon the outcome of any other matter?

23 A. Yes.

24 Q. In other words, your request for the  
25 court to pay -- for the court to order the district clerk

1 to pay this money stands on its own two legs and is --

2 A. It is not contingent on the next.

3 Q. Right. Something you think is fair and  
4 equitable, and everything is in the best interest of  
5 Christina?

6 A. Right. Yes.

7 Q. Now, of course, this order does not speak  
8 to the payment of attorneys' fees; is that correct?

9 A. I actually have not seen the order, but I  
10 will take your word for it.

11 Q. Okay.

12 A. Yes.

13 Q. Okay. Is it your understanding that  
14 that, the attorneys' fees of some \$1 million and some  
15 \$70,000 in expenses as requested by Mr. Pettiettte is  
16 going to remain in the registry of the court until  
17 further order of this court?

18 A. Yes.

19 Q. That the distribution and order that you  
20 are requesting here today has only to do with the funding  
21 of the trust, the purchase of the annuities and the  
22 payment of the funds that I have mentioned, to you and to  
23 Mr. Juniker?

24 A. Yes.

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MR. HENRY: That's all I have of this witness. Thank you.

THE COURT: Mr. Swate any questions?

MR. SWATE: No, sir.

THE COURT: Ms. Grillo I just want to make sure I -- I am forgetting Ms. Beebe. Do you have some questions?

MS. BEEBE: I just have one question.

THE COURT: Go ahead.

EXAMINATION

BY MS. BEEBE:

Q. Ms. Grillo you understand that I represent your ex-husband John Juniker in this matter; is that correct?

A. Yes.

Q. And you understand that there is, or there will be a lawsuit that will be filed in the 233rd District Court in Tarrant County, which will be in the nature of a suit affecting the parent-child relationship?

A. Yes.

Q. And you will be filing that lawsuit?

A. Yes.

Q. Do I understand that?

A. Yes.

Q. Okay. And are you representing to the

1 court here today that the outcome of that suit and  
2 whatever the judge of the 233rd District Court, Judge  
3 Brigham, decides with regard to that, it in no way is  
4 contingent or hinges upon anything that happens here  
5 today?

6 A. Yes.

7 Q. So you are asking that the court approve  
8 the distribution of the funds as is outlined by Mr.  
9 Henry, and that has nothing to do with the suit affecting  
10 the parent-child relationship; is that correct?

11 A. Yes.

12

13 MS. BEEBE: No further questions, Your  
14 Honor.

15 THE COURT: Thank you. You may step  
16 down.

17 MR. HENRY: Your Honor, just for  
18 purposes of the record, since there has not  
19 been an appearance or an order, I would just  
20 ask Ms. Beebe to recite her appearance today  
21 and who it is on behalf of.

22 MS. BEEBE: Okay. My name is Lisa  
23 Beebe and I am appearing here today in this  
24 cause in representation of Mr. John Juniker,  
25 a Plaintiff in this case.



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THE COURT: All right. Now, Mr.

Henry, do you have other witnesses?

MR. HENRY: Yes, Your Honor, I call

Mr. John Juniker.

THE COURT: Come up, please, Mr.

Juniker.

JOHN JUNIKER, JR.

the witness, after first being duly sworn to tell the truth, the whole truth, and nothing but the truth, so help him God, testified on his oath as follows:

EXAMINATION

BY MR. HENRY:

Q. Not meaning to be trite again, but you and I at pretrial, trial and between trial and now have become acquainted, and you understand that I represent Christina's interest in this case?

A. Yes.

Q. And you are John Juniker, Christina's natural father; is that correct?

A. Yes.

Q. And you were and are a plaintiff in this case; is that correct?

A. Yes.

Q. Now, it is my understanding that because of some concern or questions that arose in the case, that

1 you retained Ms. Lisa Beebe, a practicing licensed  
2 attorney here in the State of Texas and in Tarrant County  
3 to represent you in this matter; is that correct?

4 A. Yes.

5 Q. And in this hearing here today; is that  
6 correct?

7 A. Yes.

8 Q. And you and Ms. Beebe have had the  
9 opportunity to discuss this case and to discuss what  
10 happened and what is happening; is that correct?

11 A. Yes.

12 Q. And that you have had the opportunity to  
13 fully counsel and consider what has gone on in this case  
14 with Ms. Beebe; is that right?

15 A. Yes.

16 Q. Now, you were seated here as I recited  
17 the general terms of the settlement to Ms. Grillo?

18 A. Yes.

19 Q. And again, just for the record, I will  
20 generally recite those to you and ask if that is what you  
21 think is in the best interest of Christina and if that is  
22 what you would request that I do.

23 All right. Now, you understand that out of the  
24 two and-a-half million dollar settlement that \$1 million  
25 was set aside or designated for Christina?

1 A. Yes.

2 Q. You understand that we are asking the  
3 court here today to take \$700,000 of that money and place  
4 it with a Texas Property Code 142 Trust at Merrill Lynch  
5 Trust Company for the benefit of Christina; do you  
6 understand that?

7 A. Yes.

8 Q. And to the terms of that trust that is  
9 here today and attached to the application, that it will  
10 be spent for the benefit of Christina; do you understand  
11 that?

12 A. Yes.

13 Q. Do you understand that the remaining  
14 \$300,000 will be used to purchase through Merrill Lynch  
15 six \$50,000 ten year term annuities with Christina as  
16 beneficiary?

17 A. Yes.

18 Q. And you think that, that particular  
19 placement and arrangement of the money is in the best  
20 interest of Christina?

21 A. Yes, I do.

22 Q. And you are asking me to approve that and  
23 to join you and Ms. Grillo in requesting that the Court  
24 approve that?

25 A. Yes.

1 Q. Additionally you are requesting that I  
2 join with you and Ms. Grillo in requesting the Court to  
3 distribute and pay or to order the district clerk to  
4 distribute and to pay \$413,271.05 to Ms. Grillo?

5 A. Yes.

6 Q. And additionally, along with that payment  
7 and distribution that the court order the district clerk  
8 to pay you \$20,000 to yourself?

9 A. Yes.

10 Q. And is it also your understanding that as  
11 to the attorneys' fees, the \$1 million in attorneys' fees  
12 and some \$70,000 in expenses, that that is to remain in  
13 the registry of the court subject to further order of  
14 this court?

15 A. Yes.

16 Q. Have you had the opportunity to review  
17 the expenses as advanced by Mr. Pettiette in this case?

18 A. No.

19 Q. You are going to school in Mississippi,  
20 aren't you, sir?

21 A. Yes.

22 Q. And just for purposes of the record, I'm  
23 trying to find out if you, so you will not have to be  
24 summoned again from Mississippi, to find if you have any  
25 objection to the payment of the \$1 million in attorneys'

1 fees and the some \$70,000 in expenses?

2 A. I don't have any objection.

3 Q. To either the expenses or the fees?

4 A. Right.

5 THE COURT: Do you have any intention,  
6 as far as you know, without benefit of being  
7 able to talk to your lawyer about it, do you  
8 have any intention of participating in that  
9 process?

10 THE WITNESS: No.

11 THE COURT: No. Great.

12 MR. HENRY: That's all I have of Mr.  
13 Juniker, Your Honor.

14 THE COURT: Mr. Swate.

15 EXAMINATION

16 BY MR. SWATE:

17 Q. Mr. Juniker in regards to attorneys' fees  
18 and any expenses, is it my understanding that you are  
19 going to allow Ms. Grillo to make a decision about what  
20 should be done with the attorneys' fees and expenses; is  
21 that correct?

22 A. Yes.

23 Q. And it is my understanding that you would  
24 allow Ms. Grillo to use whatever funds that might be  
25 recovered in excess of what is being distributed here

1 today in Court, that you would allow Ms. Grillo to use  
2 that in the best interest of Christina?

3 A. Yes.

4 Q. And you would agree that if there is some  
5 funds that are recovered, that Ms. Grillo be allowed to  
6 use those as she sees fit for the best interest of  
7 Christina?

8 A. Yes.

9  
10 MR. SWATE: That's all I have, Your  
11 Honor.

12 EXAMINATION

13 BY MS. BEEBE:

14 Q. Mr. Juniker have you had an opportunity  
15 to review the trust documents?

16 A. Yes.

17 Q. In my office?

18 A. Yes.

19 Q. And did you also have an opportunity  
20 to review both the order releasing the funds and the order  
21 establishing the trust?

22 A. Yes.

23 Q. Have you signed all of those documents,  
24 after careful review of them and consultation with me?

25 A. Yes.

1 Q. And are you asking that the court enter  
2 both the order releasing the funds as well as the order  
3 establishing the trust here today?

4 A. Yes.

5 Q. I'm going to ask you the same questions I  
6 asked Ms. Grillo with regard to the lawsuit that is  
7 pending. It is my understanding that there will be a  
8 lawsuit affecting the parent-child relationship that will  
9 e filed in the 233rd District Court either today or very  
10 soon with regard to the child that is the subject matter  
11 of this case, Christina; do you understand that?

12 A. Yes.

13 Q. And do you understand that this matter  
14 here today and the distribution of the funds and the  
15 signing of this order by the court is in no way  
16 contingent upon what happens with regard to the case that  
17 will be filed in the 233rd District Court?

18 A. Yes.

19 Q. And yet you are still asking that the  
20 court here today sign the orders, regardless of what  
21 happens over there in the 233rd?

22 A. Yes.

23  
24 MS. BEEBE: I have no further  
25 questions, Your Honor.

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THE COURT: Anything further of this witness?

MR. SWATE: No, sir.

THE COURT: All right. Thank you. You may step down, Mr. Juniker.

Anything else that needs to be presented?

MS. BEEBE: I have nothing, Your Honor.

MR. HENRY: Your Honor, I would just like for the record to ask that just for observation purposes just to be given notice of any motions on the attorneys' fees or distribution of the attorneys' fees to attend that hearing, whoever is going to be setting that.

MR. SWATE: Certainly we will agree to any motions in that regard. We will give Mr. Henry notice and also opportunity to attend any hearing.

THE COURT: Now, I'll ask you to go ahead and give Mr. Juniker notice of any hearing through Ms. Beebe since she has entered her appearance for all purposes in this case.



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MR. SWATE: Certainly.

THE COURT: I do note that there has not been any formal orders substituting counsel, so as far as the docket sheet and file itself is concerned, Mr. Swate and Mr. Pettiette are still carried as attorneys for Mr. Juniker, and so have not altered those duties and responsibilities, but I will now order that the parties give Ms. Beebe notice on his behalf of any hearings that we have.

MR. SWATE: Certainly, Your Honor. I will take that upon myself to make sure that any hearings or any motions or any further activities in this case, that she will receive a copy or receive notice.

THE COURT: And I'm sure you will afford her the same courtesy that you afford the others as to telephone notice --

MR. SWATE: Yes.

THE COURT: -- in case there is short time on some of these things. I would, of course, since you have entered your appearance, be glad to hear from you by telephone as I have with some of the other lawyers, if you can't make a hearing or

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something we need to reschedule.

MS BEEBE: Thank you, Your Honor.

THE COURT: So, you are in the case for all purposes, as far as I'm concerned.

Now, what else is there, Mr. Henry?

MR. HENRY: Based on that testimony, Your Honor, I'm ready to sign the documents.

THE COURT: Let me ask you then to execute the documents.

On the order creating trust, Mr. Swate, I need you to date your signature.

MR. SWATE: Yes.

THE COURT: The order creating the trust has a signature line, I guess Merrill Lynch Trust Company -- Trust Company of Texas as Trustee. Is Carol Meredith here?

UNISWNRIDIWS PERSON: He just stepped across the street. We can get him, if needed.

THE COURT: Well, what is his title? It just says on here, Board of Directors, and I think that is incomplete. Is he a director?

UNIDENTIFIED PERSON: He is a director

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of the trust department -- of the trust company of Texas.

THE COURT: Is everybody satisfied that he has the authority to accept the trust? You know, a director of the corporation does not necessarily have.

MR. HENRY: It might be better if we got him and found out.

THE COURT: You say his office is downtown?

UNIDENTIFIED PERSON: Yes, sir.

THE COURT: Can we have him over here for a minute? I need his testimony for a little bit.

UNIDENTIFIED PERSON: Okay.

THE COURT: Why don't you go ahead and call him and use Bill's telephone.

First of all the application to create a trust and the motion to release funds is granted, except to the extent that we will need Mr. Meredith's testimony to make sure that his capacity to sign the instrument is sufficient.

I want to mention one other thing. This is really in regard to the motion to

1 release funds. The judgment was signed, I  
2 show that I signed it January 2nd, 1991.  
3 Now, the funds were paid in when, that same  
4 day?

5 MR. SWATE: That same day, yes, Your  
6 Honor.

7 THE COURT: By what sort of  
8 instruments were they paid?

9 MR. SWATE: Check.

10 MR. HENRY: Draft payable on NCNB in  
11 Dallas.

12 THE COURT: Has this paid, do you  
13 know?

14 MR. SWATE: I don't know. It takes  
15 three days, supposedly. So, we are  
16 assuming.

17 THE COURT: Well, you can't assume  
18 anything when it comes to a draft certainly.

19 MR. SWATE: All right.

20 THE COURT: Well, you are going to  
21 need to investigate whether the District  
22 Clerk has got the money, and what has become  
23 of it.

24 And there is two considerations.  
25 First of all, the District Clerk won't let

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you have the money, unless it has got the money. And that is probably not as easy as just a phone call.

Secondly, the District Clerk normally will not write a check on these sorts of accounts until the order is 30 days old. Now, that is because I have jurisdiction over these orders for 30 days.

Now, this is a situation where I will order -- I will consider ordering payment without the necessity of waiting -- they will do it if I order it -- without the necessity of waiting 30 days. I'm concerned, however, about the finality of the judgment and whatever jurisdiction is, I have ultimate control over it, obviously, so I'm -- you know, and so I can say, I can say. But since I've got jurisdiction over this judgment for 30 days, you get into the problem where if the District Clerk has gone and written checks for a million and-a-half dollars, and then somebody files a motion for a new trial for some reason that winds up getting granted for whatever reason, and that is the problem that the District Clerk

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had been caught in before. And that is why I want to avoid that.

The condition under which I will order payment of this without waiting 30 days is if all of those remedies are cut off. In other words, there is going to be no motions for new trial, everybody is going to be -- we have got to insure the finality of this case before I'm going to order it; otherwise, it is just going to have to sit there until these orders become 30 days old.

MR. SWATE: Judge, I think I can represent based on -- for the Plaintiffs that there will be no order for a new trial, or no motions for a new trial.

THE COURT: Now, since the one -- what I'm really concerned about here is the minor, Christina, what is your feeling on the subject? You may have to sleep on that. I don't know. But it --

MR. HENRY: Your Honor, once again, standing here before the Court today, I don't anticipate that one will, but many times something of that nature, something that arises or probably most often something

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that we would not be anticipating here today. Nothing crosses my mind that would cause me to, but I would hate to commit to the court absolutely 100 percent that there will be no filing of a motion for new trial or to modify or to reform. I don't anticipate that, but --

THE COURT: My guess is that the parties and lawyers -- that some of the parties and lawyers were not anticipating having to wait for the 30 days before this money becomes available. And I'm sure Ms. Grillo was not.

MR. SWATE: The baby is losing money on a daily basis. Mr. Juniker is going to go to school and he needs money for school. Certainly Ms. Grillo needs the money to take care of the baby. So it is a financial hardship if the money is not distributed as soon as practicable. Based on the case and the -- the Plaintiffs are not going to file a motion for a new trial against these particular Defendants.

THE COURT: Have releases of judgment been signed? As opposed to your releasing

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the cause of action, has the judgment itself been released, do you know -- in the terms of the Compromised Settlement Agreement?

MR. SWATE: I don't know the contents of it.

THE COURT: The judgment is really just a judgment approving the compromised settlement. But I'll tell you what I'm going to do. If you, Mr. Swate, will tender to me -- I don't think the District Clerk will pay money without that order, and if not, if you will tender to me an order with words to the effect that the District Clerk of Tarrant County is ordered to pay \$700,000 to the Merrill Lynch Trust Company of Texas, -- I'm sorry, \$1 million for two different purposes.

MR. SWATE: Yes, sir.

THE COURT: And \$413,271.05 to Josephine Grillo and the address, and \$20,000 to John Juniker and the address, all as set forth in the court's order of January 10, 1991, the court order releasing funds from the registry of the court without necessity of waiting 30 days from either



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that order or the judgment in this cause --  
I'm going to get Judy to type that language  
for you -- and the District Clerk is ordered  
to made those payments forthwith.

Now -- and then it is my understanding  
that we will have at least an order, an  
agreed order come thorough on the  
distribution of the remainder.

Now, there is one final issue in that  
regard. During the time that all of this  
has been sitting and waiting on the court to  
rule will have earned some number of  
dollars. As I understand the agreement, the  
attorneys' fee agreement, if it is to be  
approved the way it has been represented to  
me, a sum certain is to be paid to you and  
Mr. Pettiette.

MR. SWATE: Yes, sir.

THE COURT: Now, though that is a part  
of the two and-a-half million dollar  
settlement which has been gathering  
interest, after that sum certain has been  
paid what will result is the iterest that  
has accumulated for a month, or however long  
it has been in the registry of the court,

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and my suggestion or my -- my suggestion is that it be paid into the trust.

MR. SWATE: Yes, Your Honor. I don't think we --

THE COURT: Now, one other exception. I am going to make a further award of attorneys' fees in the case to Mr. Henry for post judgment attorney fee time. I suspect that the sums that have been accumulated on the \$2.5 million would dramatically increase any amount of money I would award. I don't know what interest for a month on \$2.5 million is, but it's a lot. And so I have every expectation there will be plenty of money to make that expenditure, but the balance of it, I would think the best place for it would be back into the trust. And so you will need an order to that effect.

All right. And now we are just waiting on Mr. Meredith.

(Short break taken, after which the proceedings continued as follows)

THE COURT: Mr. Henry would you like to ask the witness some questions?

1 MR. HENRY: Yes, Your Honor. If we  
2 could attach as an Exhibit a copy of this  
3 Trust Agreement as Plaintiff Exhibit No. 1.

4 CARROLL MEREDITH

5 the witness, after first being duly sworn to tell the  
6 truth, the whole truth, and nothing but the truth, so  
7 help him God, testified on his oath as follows:

8 EXAMINATION

9 BY MR. HENRY:

10 Q. Would you please state your name for the  
11 record?

12 A. Yes. Carroll Meredith.

13 Q. You were here today at this hearing, and  
14 you sat and listened to part of it. Do you understand  
15 that this is a special hearing setting up a certain trust  
16 and benefits for a minor child; is that correct?

17 A. Yes, that's correct.

18 Q. Part of it is commonly referred to as a  
19 142 Trust. But in any event, it is establishing a trust  
20 in which Merrill Lynch Trust Company of Texas is going to  
21 be Trustee for certain funds in which Christina Juniker  
22 is going to be a beneficiary. Do you understand that,  
23 sir?

24 A. That's correct.

25 Q. You have executed an original and several

1 copies of what I have marked as Plaintiff's Exhibit No.  
2 1, which is entitled Trust Agreement Under Section  
3 142.005 of the Texas Property Code; is that correct?

4 A. That's correct.

5 Q. You have executed this on behalf of  
6 Merrill Lynch Trust Company of Texas; is that correct?

7 A. That's correct.

8 Q. You have executed this as a member of the  
9 board of directors of Merrill Lynch Trust Company of  
10 Texas?

11 A. That's correct.

12 Q. Now, in doing that are you representing  
13 to the court and folks here today that you have the  
14 authority to bind Merrill Lynch Trust Company of Texas to  
15 the terms of that trust?

16 A. Yes.

17 Q. You have authority from the Merrill Lynch  
18 Trust Company of Texas?

19 A. Merrill Lynch Trust Company of Texas,  
20 that's correct.

21 Q. And therefore to bind them to this trust?

22 A. That's correct.

23 Q. And in signing that it was your intent to  
24 bind Merrill Lynch Trust Company of Texas to this trust  
25 agreement?

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A. That's correct.

Q. You further understand this is going to be \$700,000 to be held in trust?

A. And invested primarily in government securities for the benefit of the child.

Q. And through Merrill Lynch Trust Company of Texas you are going to be paid \$300,000 in which six \$50,000 annuities are to be purchased by you for that purpose, not paid to you but given to you for that purpose; is that correct?

A. That's correct.

Q. And you fully intend that will be carried out for these purposes?

A. That's correct.

MR. HENRY: No other questions.

MR. SWATE: No further questions.

MS BEEBE: No questions.

THE COURT: Thank you Mr. Meredith.

The reason we had to have you over here is to clarify your signature and authority on behalf of Merrill Lynch Trust Company of Texas to execute the instruments, and I thank you very much. You are excused.

(Hearing concluded)

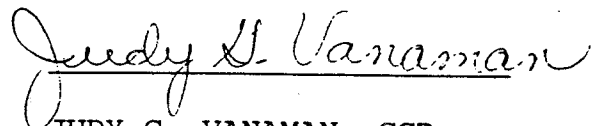
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THE STATE OF TEXAS \*

COUNTY OF TARRANT \*

I, Judy G. Vanaman, Official Court Reporter for the  
352nd Judicial District Court and Certified Shorthand  
Reporter in the State of Texas, do hereby certify that  
the foregoing pages constitute a true and correct  
transcript of the proceedings heard on January 10, 1991,  
in the aforementioned cause.

WITNESS MY OFFICIAL SIGNATURE on this the 16<sup>th</sup> day  
of February, A.D., 1994.



JUDY G. VANAMAN, CCR

Certification No. 114

Expiration Date: 12/31/94