SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

In re Estate of JAMES ALLEN HENDRIX, Deceased.	**The Honorable Jeffrey M. Ramsdell** NO. 02-4-02569-0 SEA
In re the Matter of: THE REVOCABLE LIVING TRUST OF JAMES ALLEN HENDRIX	**CONSOLIDATED CASES**
LEON HENDRIX, a married man, Plaintiff, v. JANIE HENDRIX, a married person, Defendant.	**MEMORANDUM OPINION**
LEON MORRIS HENDRIX, an individual, Plaintiff, v. ESTATE OF JAMES ALLEN HENDRIX AND JANIE L. HENDRIX, PERSONAL REPRESENTATIVE, Defendants.	

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King County Superior Court
516 Third Avenue
Seattle, WA 98104

FACTUAL BACKGROUND

James Allen Hendrix ("Al") was born June 10, 1919. He met his first wife, Lucille Jeter, in approximately 1941. Al was 22 years old; Lucille was not quite 16. Lucille became pregnant, and they married. On November 27, 1942, Jimi Hendrix was born in Seattle.

Leon Morris Hendrix was born on January 13, 1948. Lucille and Al were married at the time of Leon's conception and birth and are listed as the parents on the birth certificate. Leon was named for Al's deceased brother of the same name. Al Hendrix is Leon's presumed father. A third son, Joseph, was born on December 21, 1948.

Al filed for divorce from Lucille in March of 1950. Al stated in the divorce pleadings that Leon was born to his union with Lucille and Findings of Fact were entered accordingly. After entry of an order of default on December 5, 1951, Al asked for and was granted custody of Jimi, Leon and Joseph. The Decree of Divorce awarding custody was entered on December 17, 1951.

After the divorce, Leon and Jimi lived with Al. Joseph was placed for adoption and Al's parental rights were terminated. Leon was eventually placed in a series of foster homes, but continued to have contact with Al and Jimi.

Al was an imperfect, but loving father. Although he had dreams of being an entertainer and made some money as a dancer, he supported his family through his work as a gardener. Al earned approximately $4,000 to $5,000 a year.

Jimi left home at age 16 to join the army. He was already a talented guitarist. Jimi never lived with Al again and visited and communicated with him only infrequently. Leon and Jimi remained close. After Jimi became famous, he took Leon on tour with him.

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Al married June Jinka in 1966. At that time, Janie Hendrix was five years old; Leon was 18. June's other children by her first husband, Linda Jinka, Willie Jinka, Marsha Lake and Donna Jinka-O'Kert, never lived with Al and June. Al adopted Janie, but not the other Jinka children.

In February 1968, Jimi returned to Seattle to perform at the Center Arena with his band, *The Jimi Hendrix Experience*. Jimi met June and Janie for the first time during this visit. This was one of the few times that Jimi met Janie in person.

Jimi died on September 18, 1970 at the peak of his musical career without a will. His estate was administered in New York State. Under New York laws of intestate succession, Al received one hundred percent of Jimi's estate as Jimi's presumptive father.

Al continued to work as a gardener even after Jimi's death. Work was an important aspect of Al's life, and he respected people who exhibited a strong work ethic. He would frequently use expressions such as "keep your nose to the grindstone."

Al had dropped out of school in the 7th grade because his father had died and he needed to help support the family. As a result, Al's reading comprehension was between a 5th and 7th grade level. During all times pertinent to this lawsuit, Al had difficulty reading and often relied upon others to explain documents to him or to read the documents aloud.

In February of 1974, Leon married Christine Ann Narancic, and they had six children. Leon and Christine have since separated. Leon has not resided with his family since at least 1990. He has not been steadily employed since approximately 1979.

Al was generous with the resources he enjoyed as the recipient of Jimi's estate. He helped family members buy cars, paid the down payment on Janie's house, bought a house for

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Leon and his family, and provided monthly allowances for various family members including Janie and Leon. When additional requests for money were made, Al generally reacted favorably.

Al signed at least three wills during the 70's and 80's, one on February 12, 1973, another on January 4, 1979, and the last on March 31, 1987. All three wills identified Leon as Al's natural child. In all three wills, Al evidenced a desire to bequeath Leon a significant portion of his residuary estate. All three wills also provided portions of Al's residuary estate to a broad cross-section of Al's family members.

From the time of Jimi's death until the early 1990's, Al's business affairs were handled primarily by a California attorney, Leo Branton. For many years, Al and Branton had an arrangement whereby Branton would provide Al with a $50,000 per year stipend. Branton also provided additional funds to Al whenever Al requested them. This included money that Al asked be paid to Leon and Janie. For the better part of twenty years, this arrangement was satisfactory to Al.

Leon told Al on a number of occasions that Al was not receiving the full amount he was entitled to from Leo Branton. Al summarily dismissed these concerns without investigation telling Leon, "Better the devil you know." Leon's frustration with the situation became public in February 1992 in a *Rolling Stone* article in which Leon was quoted as stating that Al "gave the fortune away out of ignorance. My father has a way of making millionaires out of strangers and paupers of his own family." Given his generosity to his family members, Al was undoubtedly hurt and angered by these public comments.

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On October 22, 1992, Branton sent a letter to Janie and Leon on behalf of Al asking to purchase their contingent reversionary copyrights in Jimi's music. In the letter, Branton explained that under federal copyright law, copyrights revert to their original owners after 28 years. Branton informed Leon and Janie that Al originally sold the Hendrix copyrights in exchange for an annuity which had provided him with a steady income.

The letter requested that Leon and Janie sign an agreement wherein each would waive his or her contingent reversionary rights in Jimi's music copyrights in exchange for $300,000 cash and a $700,000 trust to be established by Al "for the education, health and welfare of your respective children."

Branton met with Al in Seattle prior to the time the letters were sent to Leon and Janie. Branton explained reversionary copyrights to Al two or three times. It is doubtful that Al understood Branton's explanation.

Leon signed the reversionary rights agreement at what he believed was the request of his father. Until that point, Branton had handled all of the legal and business affairs relating to the Hendrix Estate. Al led Leon to believe he agreed with Branton's proposal by telling Leon several weeks earlier that "Leo has something for you." Leon testified at trial that at the time the agreement was presented to him he thought Leo was finally going to "make it right."

Unlike Leon, Janie did not immediately sign the reversionary rights agreement. She too had expressed concerns to Al about Branton and the way he was handling Al's business affairs. Because of her skepticism, she retained attorney O. Yale Lewis, Jr. of Hendricks & Lewis to advise her regarding the sale of her contingent reversionary rights to Al. Janie posed

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two questions to Lewis regarding the contingent rights agreement: (1) could she be assured of collecting the full $1 million and (2) was $1 million enough for these rights?

During the course of investigating the value of the contingent rights for Janie, Lewis came to believe that Jimi's estate was extremely valuable. Lewis asked to meet Al, and shared his conclusions with him. Some weeks thereafter, Al retained Lewis to investigate the handling of the Hendrix estate by Branton.

Shortly after Hendricks & Lewis was retained by Janie to represent Al, Lewis contemplated drafting an interim will for Al. Lewis believed that drafting an interim will would be prudent because Branton had drafted Al's prior will and Branton's conduct was in question. After an initial discussion with Al, Lewis recognized that if he drafted the will, there might be a conflict of interest. Hendricks & Lewis then retained attorney Jonathan Whetzel to draft a new will for Al. Whetzel was chosen because of his reputation for integrity and because he was not a personal friend of Lewis. The principal purpose of the new will was to replace a 1987 will which left most of Al's estate to a trust controlled by Branton. Leon, Janie, and June were the principal beneficiaries under the new will signed by Al on January 25, 1993.

The case of Hendrix v. Branton was filed in federal district court on April 6, 1993. The complaint asserted claims against Branton and others for an accounting, breach of fiduciary duty, fraud, misrepresentation, legal malpractice, rescission, securities law violations, RICO, copyright infringement, unfair competition, conversion, and infringement of publicity rights. In essence, the complaint alleged that Branton had taken advantage of Al's trusting nature and naïveté.

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Janie was instrumental in the Branton litigation. She actively participated in all discussions regarding the handling of the litigation and ultimately its settlement. As she herself testified, no one in the family knew more about this litigation than she did.

Janie also reviewed most, if not all, of the documents in the litigation on Al's behalf. Because of Al's admitted difficulty in reading and understanding documents, Janie and others read documents aloud to Al. The contents of the documents were discussed with Al when they were read to him.

On September 2, 1994, Al executed a second will drafted for him by attorney Jonathan Whetzel. The will left 38% of Al's estate to June in a marital trust. Janie also received 38%: 19% outright and the remainder in trust. Leon received 24% in trust which was an increase of four percent from the January 1993 will. Upon June's death, the remainder of the marital trust was to be distributed to June's children, Linda Jinka ($1/7^{th}$), Donna Jinka-O'Kert ($1/7^{th}$), Marsha Lake ($1/7^{th}$), and Willie Jinka ($1/7^{th}$), to Al's niece and nephew, Diane Hendrix ($1/7^{th}$), and Robert Hendrix ($1/7^{th}$), and to Al's sister-in-law, Pearl Brown ($1/14^{th}$) and to his niece, Grace Hatcher ($1/14^{th}$).

The 1994 will contemplated the creation of a family owned company or companies to hold the Hendrix legacy. Each of the beneficiaries was to receive a share in the family owned companies according to their percentage interests. Most of these interests, including the interests of all the marital trust beneficiaries, would be owned outright rather than through trusts. No single heir was to have a controlling interest.

Jonathan Whetzel took pains to meet with Al alone to fully ascertain his testamentary intent. He also sent Al correspondence, carefully summarizing the details of Al's decisions.

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On March 20, 1995, Leon was deposed as part of the Branton litigation. In that deposition, he stated that he had been estranged from Al since he was 17 years old. When asked if he knew what was in his father's will regarding him, Leon responded, "No. Don't care." When asked if he knew that his father's will left all of Jimi's memorabilia to Janie, Leon said, "Thank God," and that he would not have taken care of it if it had been left to him.

In May of 1995, Al Hendrix regained ownership and control of Jimi's music legacy as a result of an out-of-court settlement involving the repurchase of the Hendrix copyrights for $8.5 Million. Originally, the settlement was contingent upon reaching an agreement with MCA.

The proposed deal with MCA would have paid Al $40 million for a 50% ownership interest in the Hendrix music legacy. Ultimately, that deal was rejected in favor of a proposal that enabled the Hendrix family to retain complete ownership of the legacy. Experience Hendrix was created as the business vehicle to manage the legacy. Authentic Hendrix L.L.C. held the rights to Jimi's personality and image and became a wholly-owned subsidiary of Experience Hendrix.

Experience Hendrix was heavily burdened with debt from its inception primarily due to the costs of repurchasing the Hendrix copyrights and the cost of the Branton litigation. The debt exceeded $26 million.

On September 18, 1995, the 25th anniversary of Jimi's death, Janie arranged for Al to co-author a book with writer Jas Obrecht. Janie told Obrecht that a prior book on Jimi, written by a man named Henderson, was sheer fantasy and she wanted to set the record straight. When Obrecht first interviewed Al in Janie's presence, Obrecht asked if Leon was a

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"planned child." This question was not prompted by Janie. Al looked uncomfortable, said, "No," and changed the subject. Although Al would talk about Jimi's birth, he appeared uncomfortable talking about aspects of Leon's life.

The next day, Janie had lunch with Obrecht before Al was interviewed. Janie explained the issue surrounding Leon's paternity and urged Obrecht to pursue the matter with Al. Over the years, Al had told many people that Leon was not his biological son and that an acquaintance named Frank was Leon's biological father. Despite this lack of genetic connection, Al always treated Leon as his own son. During the second or third interview with Obrecht, Al directly addressed the issue of Leon's paternity. Notably, although Obrecht testified that Al never would have cut Leon out of his will, Obrecht never met Leon. In fact, on the one occasion when Obrecht was at Al's house and Leon was parked in front of the house, Obrecht only saw Leon's feet below the open car door. Al made no attempt to even introduce Leon to Obrecht despite their physical proximity.

Al also told Obrecht how he respected Janie's ambition and motivation. In contrast, he expressed disappointment in Leon and stated if Leon wanted it, he could work for it. Al added that there would not be any "gimmes" while he was around.

In September of 1995, Janie retained certified public accountant, Tim Jorstad, to perform estate planning services for Al and to consult regarding the tax liability created by the settlement. Shortly after his retention, Jorstad was informed that Leon was not Al's biological son. This information was apparently provided to Jorstad by Janie during a dinner meeting in California. Janie also expressed concern that Leon would sell reversionary copyrights which did not belong to him and cause problems for the estate in years to come.

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At approximately the same time, Janie told Robert Hendrix that Al was considering writing Leon out of his will. Although Janie denies making this statement to Robert, this court finds Janie's denial is not credible.

In October of 1995, Janie, Robert and Jorstad discussed obtaining a blood sample from Al for DNA testing. Jorstad also recommended that Al prepare a written statement regarding Leon's paternity and that Al visit a doctor to have the doctor affirm that Al had sufficient mental capacity to sign such a statement. Jorstad told Janie that this is done "many times when older people are making substantial revisions to their will to avoid a contest by an heir." These conversations are documented in a series of faxes from Jorstad to Janie. Janie and Robert both deny discussing this issue with Al. However, Al asked his doctors to take a blood sample "for paternity reasons" just two weeks later. It is evident that Jorstad did not provide this direction to Al and it is unlikely that Robert would have. Accordingly, the only logical conduit for this direction was Janie. However, it is also clear from Mr. Jorstad's deposition that the suggestion of DNA testing emanated from Jorstad not Janie. Jorstad recommended that the paternity issue be documented in the event of a will contest by Leon or his family. Jorstad testified that Janie was not particularly engaged in the estate planning issues at the time and was preoccupied with learning the business and sorting out the cash flow problems. Although the blood sample may have been taken primarily with regard to Leon's paternity, the birth of Corvina Pritchett, on April 19, 1995, had also raised paternity issues for Al because Corvina's mother had alleged that Al was Corvina's father. Accordingly, when Al asked for a blood sample "for paternity reasons," his meaning was ambiguous. He could have meant paternity of Leon or Corvina or both. In fact, Dr. Hayashi,

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Al's physician, testified that he had a vague recollection that Al mentioned that the DNA test was recommended to establish that he was the father of Jimi Hendrix. According to Dr. Hayashi, Leon was never mentioned.

Janie corresponded with Jorstad from August of 1995 until approximately April of 1996 regarding Al Hendrix's estate planning. During that time, Jorstad only met with Al Hendrix once, on January 27, 1997. When questioned about Jorstad during a deposition approximately one year later on February 10, 1998, Al could not remember who Jorstad was.

Tim Jorstad communicated many of his estate planning ideas to Jonathan Whetzel including his suggestions that Al document Leon's paternity and that Al's estate be distributed via a revocable living trust. Jonathan Whetzel began meeting again with Al in February of 1996 to prepare a new will. Mr. Whetzel spoke to Reed Wasson, the attorney for Experience Hendrix, regarding Al's planning and Jorstad's suggestions. Whetzel stated his desire that all discussions be with Al alone to "avoid the conflict issue with Janie as a major beneficiary."

In approximately May of 1996, Reed Wasson retained the law firm of Stoel Rives to assist in the preparation of Al's estate plan. Shortly thereafter, Stoel Rives was retained by Experience Hendrix and Al, Janie, Troy, and Robert to file suit against Hendricks & Lewis over the fees Hendricks and Lewis were demanding for the firm's work on the Branton litigation. Although Stoel Rives represented multiple clients on different matters, no conflicts analysis was ever done, no conflicts letters were ever sent out, and no waivers were signed. The fee litigation with Hendricks and Lewis was ultimately settled without a trial.

In the summer of 1996, Leon's children, Tina and Alex, were charged with felony criminal offenses. Alex's charge involved a shooting and Tina's arose from custodial

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interference. Henry Lewis of Inland Bonding Company was a friend of the family and purportedly served as the family's bondsman. Tina and Alex's combined bail was approximately $260,000. Inland Bonding required $70,000 to cover the bonds: $35,100 in cash and $34,900 in collateral. On July 4, 1996, Leon executed a document entitled "Assignment of Heir's Distribution Share" which purportedly assigned to Inland Bonding Company $70,000 from the proceeds of Leon's share as the heir of the Estate of Jimi Hendrix. Although the caption and content of the document erroneously refer to the non-existent "Estate of Jimi Hendrix," the willingness of Leon Hendrix to assign his rights in Jimi's legacy for a fee is self-evident.

In August of 1996, George Steers, a specialist in wealth management from the firm of Stoel Rives, met with Al, Janie, Robert, Reed Wasson, and Jonathan Whetzel to discuss his ideas for a revised estate plan for Al. The plan included the formation of a family owned limited partnership to which a minority interest in Experience Hendrix would be gifted during Al's lifetime. This would allow Al to value both the gift and his remaining interest at deep discounts for tax purposes. It would also transfer control of his holding to the corporate general partner of the limited partnership.

In November of 1996, Al executed a third will drafted by attorney Jonathan Whetzel. This will was similar to Al's 1994 will except that it recognized the recent formation of Experience Hendrix and its related companies and the birth of a child, Corvina Pritchett, whom Al believed to be his daughter. This will was intended to serve as an interim will while a new, more comprehensive estate plan was being crafted.

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In late November of 1996, Janie and Robert met again with Al, Reed Wasson, and George Steers to discuss Al's estate planning. At the meeting, it was agreed that the Stoel Rives plan outlined in August would be put into effect. Although Jonathan Whetzel attended the August meeting, he was not asked to attend the November meeting and was not engaged in any additional estate planning for Al after that. There is no evidence that Whetzel ever expressed disapproval of the August plan or counseled Al against it.

The Stoel Rives estate plan originally discussed in August differed from the terms of Al's previous wills. It did away with the concept of a family owned and run company and in essence gave complete control of the Hendrix companies to Janie and Robert. In the early versions of this plan, including those explained to Janie in 1996, Leon and his children were to have a 24% interest held in trust.

During the same time that the Stoel Rives plan was being discussed, Leon hired Oscar Desper to represent him in an effort to renegotiate his reversionary rights contract with Al. Leon alleged that Al had breached the original contract by failing to timely fund the $700,000 trust for the children. Leon and Desper threatened to go to the media and MCA if their demands were not met. Leon was aware that sensitive discussions with MCA were occurring at the time and that the discussions could be affected by adverse publicity. In October, 1996, Leon offered to settle the dispute over the validity of the reversionary rights agreement for $3 million. On November 11, 1996, Al responded to Leon's demands in a letter written by Reed Wasson. The letter stated in pertinent part:

"After careful consideration, Al Hendrix has decided to reject this proposal, for several reasons. First, as explained at the meeting, Al Hendrix's only substantial asset is his interest in Experience Hendrix, the family music company, and this company is currently so burdened with debt and tax obligations that there is minimal cash available for distribution to

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the owners. What Leon is requesting exceeds the entire surplus cash currently projected by the company for the rest of this decade.

Second, we believe that the 1994 Assignment Agreement remains valid and binding, as explained in my previous letter. Thus, from a business and legal standpoint, there is insufficient justification for the requested transfer. We understand that you assert a different position on this issue, but we are confident that our position would be upheld in court.

Third, Al Hendrix does not believe that giving more money to Leon and certain of his children will improve their lives, given their current lifestyles, arrest records and drug history. If more money simply results in more drugs, this will be counter productive. Al feels that he has given Leon hundreds of thousands of dollars over the past twenty years, but this has simply encouraged Leon to live an idle life rather than develop a work ethic. Al gave Leon the money to buy his house, and then spent more money to pay off mortgages which Leon put on the house to borrow money for other purposes. Yet as you pointed out at the meeting, the house has been treated and maintained so badly that it is no longer livable.

Al Hendrix offers the following counterproposal: if Leon demonstrates that he has fully rehabilitated himself from habitual drug use and that he is ready to relate to the other members of his family in a positive rather than hostile manner, Al will cause Experience Hendrix to employ him, at a fair market compensation, for projects to be mutually agreed and determined. Such projects might include art projects or literary projects. In order to demonstrate independence from drugs to Al's satisfaction, Leon would be required to participate successfully for one year in a drug rehabilitation program at a facility to be selected by Al, and to report directly to Al."

Leon responded the following day in a letter written by Oscar Desper. It stated:

"[I]t is both insulting and absurd to put in writing that $3 million dollars exceeds the surplus cash of the company for the rest of the decade. This is simply a falsehood.

Nevertheless, once again we take the position that the 1994 Assignment Agreement is not valid or binding. Further, my client disputes that Janie made payments of $79,554.79. Obviously, we would like to see an accounting as well as all cancelled checks.

Personally, I understand Al Hendrix's feelings about Leon's lifestyle, but that is not the primary issue. We too would like to see Leon rehabilitated and able to interact with other family members in a positive manner.

My client does not want to be employed by Experience Hendrix. That offer is rejected.

Once again, the 1994 Assignment Agreement is invalid and my client refuses to have the trust administered by anyone connected with Experience Hendrix. Al Hendrix has been generous towards Leon and his children. It is not our desire to litigate. We may or may not prevail. We do not want intra-family litigation. However, we will do what we believe is in our client's best interest.

Finally, Mr. Hendrix's counterproposal is rejected in its entirety. However, we are willing to compromise our initial request of $3 million dollars. Please call me so we can work out an acceptable resolution for all parties."

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On November 14, 1996, Mr. Desper wrote a follow-up letter to Reed Wasson and proposed an alternative settlement restructuring the original one million dollar agreement provided that the matter be resolved within five days. Absent that, the letter threatened to "file suit for breach of the 1994 Assignment Agreement and we'll go to the media. At that point, it will obviously be a public war."

Fortunately, public war was averted and an agreement was reached. One provision of the agreement required Leon to commence a 90-day in-patient drug treatment program on or about January 1, 1997. Reed Wasson expressed enthusiasm for the agreement to Al Hendrix. Wasson suggested to Al that maybe Leon was on the road to recovery. Al responded, "Leon ain't never gonna change." Consistent with this prophetic remark, shortly after Leon arrived in the treatment program, he attempted to renegotiate his length of stay at the in-patient treatment center and shorten it from 90 to 45 days. After Al declined to reduce the length of the stay, Leon was dismissed from the program due to a problem with a counselor. Leon had spent less than one month in the program.

In February of 1997, Al met with Steers and Wasson to discuss his estate plan. Al told Wasson and Steers that he did not want to gift interests in the companies to Leon or his children. Instead, Al was leaning toward leaving Leon a monetary bequest. On March 18, 1997, Al again met with Steers and Wasson and the issue of a specific bequest to Leon was revisited. Al stated that nothing would be given to Leon until further notice. Reed Wasson asked about Leon's children, and Al said the same thing, albeit less forcefully.

On or about March 21, 1997, 49.4% of Al's interest in Experience Hendrix L.L.C. and Authentic Hendrix L.L.C.—essentially half of his net worth—was transferred to Bodacious Hendrix L.P., a newly formed Washington family limited partnership. Bodacious was created to serve as the vehicle for sharing beneficial interests in the legacy during Al's lifetime.

On March 25, 1997, a series of irrevocable trusts were created for Janie, Robert, and the trust beneficiaries. Al transferred to each of the separate trusts a specific percentage

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interest in Bodacious. Janie and Robert were named as trustees of their own trusts and as co-trustees for all remaining trusts.

Janie was shown a draft of her trust documents prior to execution by Al. Janie also attended at least two meetings in late March with Wasson and/or Stoel Rives regarding Al's estate plan.

On March 28, 1997, Al transferred his entire interest in Bodacious Hendrix L.P. to the 1997 Trusts. Janie consented in writing to each of the transfers.

On or about March 28, 1997, Stoel Rives began drafting a codicil to Al's November 1996 Will. In pertinent part, the draft codicil did not provide a bequest for Leon or his children.

On April 16, 1997, Al signed the first codicil to the 1996 will. The codicil (1) bequeathed all of Al's stock in Axis, Inc. to Janie; (2) increased Corvina's share from 5% to 10% of the estate if she was proven to be his child; (3) increased the marital trust's share to 50% of the remaining estate; (4) bequeathed the contingent reversionary rights Al had purchased from Leon to Janie; (5) and bequeathed a single gold record to Leon and nothing more.

Between the inter vivos gifts of March of 1997, and the changes to the 1996 will in the First Codicil, Janie's share of Al's estate increased from her original 38% to 47.72%. Robert's share increased from 5.43% to 17.17% and Leon's share dropped from 24% to zero.

Immediately following the execution of Al's First Codicil, Stoel Rives began preparation to reconstitute Al's estate plan so that his estate would be administered and distributed through a revocable living trust. On February 12, 1998, Al signed his Living Trust and an accompanying "pour over" will was executed. Al was named as the trustee, with Janie and Robert as the successor trustees. Under the will, all assets which were in Al's name at the time of his death were left to the trust. All the testamentary dispositions were included in the trust instrument. The signing of the documents was videotaped. Al acknowledged

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understanding that no provision was being made for Leon and said he was "very satisfied" with the documents. Prior to videotaping the signing, Steers reviewed the documents with Al and also discussed Al's concerns about Leon. Steers described the discussion as a father to father talk that was very painful for Al. Al stated that Leon had had his chances.

On July 20, 1998 Al transferred his remaining interests in Experience Hendrix L.L.C. and Authentic Hendrix L.L.C. to the living trust. Janie Hendrix consented to the transfer on behalf of Axis, Inc. and Bodacious L.P., the majority member.

On July 28, 1998, Al executed another will identical to the February 12, 1998 will to correct a technical defect. There were no substantive discussions with Al regarding the will at the time of signing.

On August 6, 1998, Stoel Rives prepared and Al signed assignments of his interest in Axis, Inc., Purple Haze, Inc., Hendrix Records, Inc., and Stay Experienced, Inc. to the living trust. Although Al remained as the trustee of his living trust, all trust administration was handled by Janie, Robert, or Reed Wasson at Experience Hendrix.

On September 21, 2001, Al executed a durable power of attorney naming Janie as his Attorney in Fact. Janie used the durable power to handle certain personal matters for Al, including the transfer of three properties in Al's name into the Living Trust.

On April 17, 2002, Al Hendrix died after a long illness. It is undisputed that no distributions have yet been made to the trust beneficiaries. It is against this factual backdrop that the Court must consider each of the legal issues presented.

FINDINGS AND CONCLUSIONS ON LEGAL ISSUES PRESENTED

TESTAMENTARY CAPACITY

First, Leon Hendrix contends that Al Hendrix lacked testamentary capacity to enter into his post-1996 estate plan. A person is deemed to have testamentary capacity if at the time the estate plan was executed the person had sufficient mind and memory to understand

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the transaction in which he was engaged, to comprehend generally the nature and extent of the property constituting the estate, and to recollect the objects of his bounty. The party contesting testamentary capacity bears the burden of proving by clear, cogent, and convincing evidence the absence of testamentary capacity. This is a much higher standard of proof than the mere preponderance standard that applies to many issues in the civil arena. Accordingly, the absence of testamentary capacity must be established at a level higher than the typical "more likely than not" standard.

Leon contends that when Al executed his post-1996 estate plan, he did not understand the nature and the extent of his estate. Leon points to the fact that Al was provided various estimates of the value of the legacy and exhibited confusion with regard to some of the gifting provisions.

This court has reviewed carefully the evidence regarding Al's understanding of the Hendrix legacy that he regained in the Branton litigation. What is abundantly clear is that Al knew that MCA was willing to pay $40 million for 50% of the legacy. He also knew that in deciding to retain sole ownership of the legacy, the family was taking a gamble. If the family was successful in managing the legacy, its potential worth was enormous as evidenced by MCA's offer of $40 million for half of the legacy. However, given the debt burden facing Experience Hendrix, there was also the potential of a disastrous outcome. This was a risk Al was willing to take because he cared deeply about maintaining control over the legacy at all costs. To the extent that Al was provided varying discounted values for purposes of discussing the value of a minority interest in the closely-held companies, that alone does not convince this court that Al did not understand or appreciate the potential value of the legacy. Even plaintiff's own witness, Troy Wright, testified persuasively that he believed that Al understood the value of the estate to be somewhere between $35-$100 million depending on several variables including Experience Hendrix's ability to locate and obtain lost tapes. Likewise, James Williams testified that in discussions with Al following the Branton

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settlement, Al indicated that he thought the settlement might be worth well over $100 million dollars. There is simply no persuasive evidence, much less evidence rising to the level of clear, cogent, and convincing, that Al did not appreciate the value of the legacy he fought so hard to regain. Furthermore, to the extent that Leon relies on isolated statements of Al to establish that Al did not understand the gifts he was making, I am persuaded that viewing the record as a whole, Al understood the gifts he was making, even if he had trouble with the legal terminology. Accordingly, the court finds that plaintiff has failed to establish that Al Hendrix lacked testamentary capacity to enter into his post-1996 estate plan.

UNDUE INFLUENCE

Even though this court is satisfied that Al Hendrix had testamentary capacity, the court must still consider whether the post-1996 estate plan should be set aside due to undue influence. Leon argues that the evidence establishes that Al was not acting of his own volition when he failed to provide for Leon or his children in the estate plan. He contends that during the Branton litigation, Al became increasingly reliant upon Janie. As a result of her position of trust, Janie was able to exert pressure on Al to eliminate Leon and his children from the will. Leon alleges that Janie's tactics ranged from the subtle to the coercive including threatening to have no further involvement in Experience Hendrix if Al left anything to Leon.

Although a will may be set aside upon a showing that a beneficiary exercised undue influence over the testator, the undue influence must be something more than mere influence. The influence must be such that it "controlled the volition of the testator, interfered with his free will, and prevented an exercise of judgment and choice" at the time of the testamentary act. In re Estate of Bottger, 14 Wn. 2d 676, 700 (1942). The influence must be "tantamount to force or fear which destroys the testator's free agency and constrains him to do what is against his will. " Bottger, 14 Wn. 2d at 700. The evidence necessary to establish undue

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influence must be clear, cogent, and convincing. In re Estate of Lint, 135 Wn. 2d 518, 535 (1998).

Despite this rather formidable burden placed on will contestants, a presumption of undue influence may be raised under certain facts and circumstances. In Dean v. Jordan, 194 Wash. 661 (1938), the court set forth several factors which may give rise to a presumption of undue influence. The facts and circumstances bearing upon the execution of a will which may give rise to a presumption of fraud or undue influence are (1) the beneficiary occupied a fiduciary or confidential relation to the testator, (2) the beneficiary actively participated in the preparation or procurement of the will and (3) the beneficiary received an unusually or unnaturally large part of the estate. The court may also consider the age, the health and mental vigor of the testator, the nature or degree of relationship between the testator and the beneficiary, the opportunity for exerting undue influence, and the naturalness or unnaturalness of the will. The weight of any of these facts will vary according to the specific circumstances of the case. However, any one of them may cause the court to proceed with caution and carefully scrutinize the evidence offered in support of the will.

The first step in our legal analysis requires application of the Dean factors to the case before us. It is indisputable that Janie and Al had a close relationship. Al trusted and relied upon Janie to provide him with good advice and counsel. Janie was instrumental in handling the Branton litigation and proved herself to be a loyal and zealous advocate for Al and the return of the legacy. Although Janie did not reside with Al, she was a resource with whom Al would consult frequently. Based upon the testimony I have heard, this court finds that a confidential relationship existed between Al and Janie. The court is not persuaded, however, that a confidential relationship existed between Al and Robert.

The next question is whether Janie actively participated in the preparation or procurement of the will. The answer to this question is less clear. Unlike most cases involving a will contest, this case involves not only a will but an overarching and complex

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estate plan that was drafted with the advice of several specialists over many months. Accordingly, one must be cognizant of the fact that involvement in the overall estate planning process is not the functional equivalent of participating in the designation of specific beneficiaries and bequests. Theoretically, at least, an individual could participate in the creation of an elaborate estate plan designed to accomplish several goals including the reduction of estate tax consequences without knowing who the ultimate beneficiaries of the plan would be. It is clear from the evidence presented that Janie Hendrix, and to a lesser extent, Robert Hendrix, were involved in the discussions surrounding Al's general estate plan. Additional persuasive evidence supports a finding that Janie expressed interest in and curiosity about Al's will. Timothy Jorstad indicated in his deposition on March 26, 2004 that in 1995, Janie had expressed some concerns about potential claims against the estate because it was her understanding that she was going to be the executrix or trustee for Al's living trust or will. Janie was also instrumental in locating and retaining some of the specialists involved in drafting Al's estate plan and will. Therefore, this court finds that Janie was involved in the preparation and procurement of Al's estate plan.

The third Dean factor for consideration is whether Janie received an unusually or unnaturally large part of the estate. According to In re Estate of Reilly, 28 Wn. 2d 648 (1970), in determining what is unjust or unnatural, the court must consider the history of the testator's family and the moral equities and obligations arising there from. A will is unnatural when it is contrary to what the testator, from his known views, feelings and intentions would have been expected to make. If the will is in accordance with such views, it is not unnatural, however much it may differ from ordinary actions of individuals in similar circumstances.

Had Al passed away intestate, Janie would have received 50% of Al's estate. So, as compared to that benchmark, the bequest given to Janie would not be unnatural. However, the rule requires that the court look further and review family history and gifting patterns.

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When viewed in light of that standard, the court concludes that the bequest received by Janie was unnaturally large.

Regarding Al's age, health and mental vigor at the time of execution of the estate planning documents, the court finds that Al's physical condition was typical of an average 77 year-old-male. Although his vigor and stamina were on the decline, he was still self-sufficient and mobile. The evidence indicated that he took care of himself and his home, he drove his car, kept his own appointment calendar, and socialized with friends.

While not overwhelming, this court believes that the evidence presented in support of the Dean v. Jordan factors is sufficient to raise the presumption of undue influence. Accordingly, the burden shifts to the proponent of the will to come forward with evidence sufficient to at least balance the scales and restore the equilibrium of evidence. The case law does not require the proponent to produce clear, cogent, and convincing evidence in response, or require Janie to prove the lack of undue influence. It merely requires that the proponent come forward with sufficient evidence to restore equilibrium. It appears to this court that the defendants have met that burden. As set forth in this court's preceding findings of fact, ample countervailing justifications exist for Al not to have provided for Leon in his will.

Leon's attempt to assign his interest in the Jimi Hendrix legacy to Inland Bonding Company confirmed that he could not be trusted with an interest in the business. His prior failures to manage the monetary resources given to him indicated that a financial bequest given outright would be squandered. Money held in trust for the children's education was instead being used to post bail. When Al could not fund the children's trust in a timely fashion because of lack of available resources, Leon hired an attorney to exploit the situation to his own advantage without regard to the consequences. Lastly, Leon's unwillingness or inability to complete the 90-day in-patient treatment program disappointed Al and graphically verified Al's belief that Leon "ain't never gonna change." Accordingly, this court finds that

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the evidence presented is sufficient to restore equilibrium in response to the presumption of undue influence.

It is perhaps appropriate at this time to note that it is seldom that a will is held void because of a presumption of undue influence. Our Supreme Court in In re Estate of Reilly, 78 Wn. 2d 623 (1970) reviewed the cases in which the court held a will void due to the presumption of undue influence. The cases shared four common elements: (1) The testator had little or no mental capacity; (2) the testator was greatly impaired physically; (3) the testator disinherited one near and dear to him; and (4) the estate or a major portion thereof, was devised or bequeathed to one with whom the testator had no close ties. Id. at 663-664. Obviously, the facts in the case at bar do not satisfy these requirements.

To the extent that it has been argued that because of her confidential relationship with Al, Janie must prove by clear, cogent, and convincing evidence that Al intended to exclude Leon and his children from the 1997 gifts to the *inter vivos* trust, that argument fails. The case relied upon for that proposition, McCutcheon v. Brownfield, 2 Wn. App. 348 (1970), does not support it. Instead, McCutcheon holds that if a donee of a gift has a confidential relationship with the donor, the donee must establish by clear, cogent, and convincing evidence that the gift to him or her was made freely, voluntarily, and with a full understanding of the facts. It should also be noted that in McCutcheon the dispute arose because the donor of the gift testified in a deposition that she did not intend to make the gift and was not aware that she had done so. McCutcheon, 2 Wn. App. at 353. It is abundantly apparent that Al understood the *inter vivos* gifts he was making to Janie and did so freely and voluntarily. The focus in this case is rather the absence of a bequest to Leon and his children.

Although Leon cannot prevail under the presumption of undue influence analysis, he may still prevail if he can prove by clear, cogent, and convincing evidence that Al's exercise of free will was overborne by Janie's undue influence. It is seldom that undue influence is proven by direct evidence. The evidence is typically circumstantial and based upon motive,

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opportunity, a disposition contrary to the testator's prior intent and the execution of the will when the testator is in a weakened condition. The evidence supporting the allegation of undue influence in this case falls into three distinct categories.

CONFLICT OF INTEREST

The assertion of conflict of interest boils down to a contention that the attorneys creating Al's estate plan were not acting in Al's best interest. Having painstakingly reviewed the evidence presented, I am unable to find that this assertion is supported by the evidence. Even Leon's own expert, Evan Thomas, describes George Steers as technically "very competent" and the estate and gift tax plan "brilliant." His primary concerns appear to be that the estate plan vests too much power and control in Janie and Robert and the purported conflict may have prevented Steers from (1) giving Al truly independent advice, (2) following up on Al's desire to pay off Leon after the 1997 gifts were made, and (3) revisiting whether Al wanted to reconsider his decision to leave nothing to Leon and his children.

The first concern appears to be theoretical at best. It is amply evident that after the Branton litigation, Al wanted to vest control in family members he trusted. It is undeniable that Janie was the family member whom Al trusted most and he undoubtedly intended to afford her significant power. There is simply no persuasive evidence that Steers was unable to ascertain Al's true desires without the interference of outside influences. George Steers testified candidly, and I believe truthfully, that outside influences did not affect his representation of Al. While it is regrettable that more attention was not paid to potential conflicts of interest, I am not persuaded that the failure in that regard had any material effect. Furthermore, the evidence presented in the form of meeting notes and tearsheets indicates that the concept of a buy-out of Leon was repeatedly revisited and discussed. Steers' tearsheets illustrate a painstaking effort to explain to Al his options and their consequences. In short, the contention that the attorneys working on Al's estate plan were not acting independently and in Al's best interest does not withstand scrutiny.

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JANIE'S EFFORTS TO ISOLATE AL

Consistent with Leon's contention, this court finds that Janie instructed the charge nurse at Virginia Mason Medical Center on July 18, 2001, to restrict Leon's access to Al. However, the court finds that the other instances of alleged efforts to isolate Al cited by Leon are insignificant or inconsequential. Unlike other reported cases, there is no evidence of an overarching plan to isolate Al from friends and family by restricting access. It is evident from the testimony that at the very least, Al had unrestricted telephone access to anyone he wished. In addition, this court has been provided Al's daily calendar from 1992 through 1997. Even a cursory review of that calendar illustrates that Al had a rich and varied social life. Tina Hendrix's testimony regarding the Bumbershoot event was offered to support the theory of isolation, but her testimony regarding the event is not credible. She describes trying to join family members on the stage, only to be pushed aside by Janie and told, "This is not for you." She then purportedly huddled to the side with Alex. However, a photo of the event depicts Tina and Alex on stage standing next to Al. The allegation that Janie isolated Al is not supported.

THIRD PARTY TESTIMONY REGARDING PRESSURE ON AL

The third category of evidence is comprised of testimony of third parties who relate statements made by Al to the effect that Janie was pressuring him to leave nothing to Leon. The first witness in this regard was Delores Hall-Hamm. She testified that she recalled Al saying he would always take care of Leon and his kids. She related that Al was committed to insuring that the kids had a place to live and were safe. She specifically recalled Al saying that he was going to put money in a trust fund for the kids and mentioned the sum of $50,000 each. While there does not appear to be any reason to question Ms. Hall-Hamm's credibility, her testimony adds little to the undue influence analysis in light of the fact that Al did indeed provide a house for Leon's children and a trust fund of $700,000.

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The next witness regarding pressure on Al was John Ficarelli. He testified that he met Al at Jimi's funeral in 1970 and visited Al almost every weekend in the 1980's to the mid-90's. He thought of Al as a father figure and believed his own father's birthday of April 25, 1920 was the same as Al's. Unbeknownst to Mr. Ficarelli, Al's birthday was actually June 10, 1919. Mr. Ficarelli testified that although he hadn't seen Al in a while, he fortuitously stopped by in January 1997 to wish Al a happy new year. Al was upset about the fact that someone had broken into his house and stolen some gold records. Al said that Janie was blaming Leon and his kids. He also purportedly told Ficarelli that Janie said that if Al took care of Leon, then Janie would not take care of Al.

I find Mr. Ficarelli's testimony not credible for several reasons. He portrayed himself as a true friend of Al's – one who didn't want anything from him. Yet in an effort to obtain the rights to produce a movie about Jimi's life, he showed up at Al's doorstep contract in hand to propose the project for the first time. Notably, Al refused the proposition. Mr. Ficarelli also received a broken mirror in 1990 as a 40th birthday present from Al. The mirror was reputed to have been broken by Jimi. For some unknown reason, Mr. Ficarelli decided to get a certificate of authenticity from Leon thirteen years later on November 23, 2003. The broken mirror complete with certificate of authenticity miraculously appeared on e-Bay on February 26, 2004 with a suggested value of $125,000. Mr. Ficarelli claims no knowledge of the mirror being listed on e-Bay and states that it must have been done without his knowledge by his agent, Don Prociw, whose name appears on the listing. The timing of these events render Mr. Ficarelli's denials suspect.

Furthermore, police reports indicate that the theft of the gold records occurred in the 1980's not 1997. Although Al kept notes of visits, phone calls and significant events on his daily calendar, no mention of stolen records or the visits by Mr. Ficarelli can be found on the calendar entries for December 1996 or January 1997. Finally, despite Ficarelli's assertions

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that he visited Al frequently up through the mid-1990's, his name does not appear on Al's daily calendar at all. Mr. Ficarelli's testimony simply lacks credibility in every regard.

Gail Davis testified that if Al wanted to do anything with money, he would consult with Janie first and then decide what to do. She stated that Al would not do anything without discussing it with Janie. Although Davis expressed frustration with Al because she felt he relied too much on Janie's advice, she also told of instances in which Al acted contrary to Janie's desires. For example, Leon and his children attended a Thanksgiving dinner hosted by Davis apparently contrary to Janie's desires. In fact, Gail and Al continued their own relationship despite Janie's purported disapproval. Notably, she indicated that Al looked to Janie for assistance in dealing with Leon. Later, she testified that in 1995, she asked Al about Leon and Al simply said that Leon was just "being Leon" and the grandchildren were doing "okay, considering."

Ms. Davis's testimony provides scant evidence of over-whelming control by Janie. Janie certainly had influence, but Al would not always comply with Janie's suggestions or desires. Ms. Davis's testimony does, however, provide some indication of Al's frustration with Leon and his knowledge and concern about his grandchildren.

The last witness bearing on the question of pressure exerted upon Al was Barbara Thomas. She testified that in November 1996, she received an invitation to attend the celebration of Jimi's birthday at the Crocodile Café. Originally, she had not planned to attend but was persuaded to go by an unnamed co-worker who wanted to accompany her. Although they arrived together, Thomas and her co-worker split up. Ms. Thomas saw Al and they began talking. Because they were having trouble conversing at the party, Al suggested that they go for a drive so that he could show her his car. During the ride, Al reportedly told Thomas that Janie wanted him to cut Leon out of the will. He purportedly added, "She's got me," and, "I'm too old and can't do it anymore." He also spoke of leaving money to the grandchildren for their education. At the conclusion of the conversation, Al noted that Leon

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and Janie "are going to duke it out in court anyway." When Al and Ms. Thomas pulled up in front of the Crocodile Café, Thomas's co-worker was outside acting agitated. She yelled, "Where the hell have you been?" They immediately left without the co-worker ever having met Al.

Ms. Thomas reports that she also attended Al's 80th birthday party in 1999. Although she attended by herself, she did not have an opportunity for a private conversation with Al. However, several months later, Al called her at dinner time and asked if she had heard that he had cut Leon out of the will. She said, "No, but you do what you have to do. I'll love you anyway." The conversation was cut short because Thomas was getting dinner ready. She did not talk to Al again after that.

I am skeptical of Ms. Thomas' testimony for several reasons. First, she testified that she only went to the Crocodile Café at the insistence of a co-worker. Presumably, the co-worker was intrigued at the prospect of being in the company of some of Jimi's relatives, yet she left the event in an unexplained, angered state without even meeting Al. This seems rather odd. It also seems odd that Al would leave during such an event to go on a drive with Thomas. Lastly, it seems implausible that a man like Al who generally kept his personal life to himself as evidenced by his persistent refusal to talk about Branton even to his closest family members would call Thomas out of the blue to ask if she had heard that Leon was cut out of the will.

Nonetheless, even accepting Thomas's testimony at face value, it does not provide clear, cogent and convincing proof of undue influence. At most, the 1996 exchange indicates that Janie wanted Leon left out of the will. Other evidence from the same time period indicates that Al had not yet made a decision on the issue and was contemplating buying Leon out. Furthermore, to the extent that he mentioned leaving money to the grandchildren for their education, he had already done that through the $700,000 trust fund. While Thomas's

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testimony provides some evidence of an attempt by Janie to influence Al, it does not provide proof of coercion sufficient to destroy free agency.

Given all the evidence that has been presented, this court is satisfied that Janie Hendrix did not want Leon to be involved in the family business, that she did not like Leon, and she disapproved of his lifestyle. She warned Al that if Leon was involved with the business, he would cause trouble. She also raised concerns that if Leon had an interest in the business, that interest could be lost to an outsider. Unfortunately for Leon, during the time that Al was considering these concerns and arguments, Leon was embarked on a self-destructive journey to prove Janie correct.

In July 1996, Leon attempted to assign to Inland Bonding his rights as an heir to the Jimi Hendrix estate. In October, 1996, he hired a lawyer and attempted to renegotiate his reversionary rights agreement with Al and threatened a public war if his demands were not met. This behavior is particularly noteworthy in light of Leon's testimony that he sold his reversionary rights because he thought that was what Al wanted. When he later learned that Al had misgivings, Leon testified that it was too late to do anything about it. One has to ask why, in the face of an alleged breach, would Leon seek to renegotiate the same agreement with greater benefit rather than seeing the alleged breach as an opportunity to free himself of the agreement and thereby restore the status quo? Also, Leon declined an offer to work at Experience Hendrix, attempted to shorten his stay in the in-patient drug rehabilitation program and ultimately left in less than 30 days. Al was seeing that Leon was indeed not going to change.

Al also knew that in deciding to own 100% of the legacy, the family was taking a gamble. If the legacy was managed well, there could be great benefit. If not, the result could be a financial disaster. Al fully understood that if the business failed, the beneficiaries would secure nothing, and even if the business was successful, the trust beneficiaries would not see any benefit for several years. In the meantime, Leon's children received a $700,000 trust

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fund sufficient for their educational needs. Leon had received $300,000 from the reversionary rights agreement. As Al told Jas Obrecht, there would be no gimmes while he was around. If Leon wanted it, he'd have to work for it, and he clearly didn't want to. Gail Davis testified that Al would eventually give Leon the money he asked for, but would give a lecture first. The record is consistent with Al having decided that the lectures were over because "Leon had his chances." Leon Hendrix and his children have failed to prove the existence of undue influence by the high standard of clear, cogent, and convincing evidence. Therefore, their request for relief is denied.

BREACH OF FIDUCIARY DUTY

The question remaining is whether Janie Hendrix and Robert Hendrix should be removed as trustees of the Diane Hendrix-Teitel Trust, the Linda Jinka Trust, and the Hatcher Family Trust. These beneficiaries contend that Janie and Robert have breached their duties in a number of ways including mismanaging the legacy, self-dealing, receiving exorbitant salaries and bonuses, commingling assets, and failing to make any distributions to the trust beneficiaries.

Janie and Robert respond that they acted within the scope of their authority and discretion, their compensation was reasonable when compared to industry standards, that any errors they made in managing the company are subject to the business judgment rule, and to the extent they have made errors as trustees they relied upon the advice of attorneys and accountants as permitted under the terms of the 1997 Gift Trust and the 1998 Revocable Living Trust.

It is important to note at the outset that this issue cannot turn on a post hoc assessment of the business decisions made by Janie and Robert. The evidence is clear that at least some of their endeavors proved to be unprofitable at best and disastrous at worst. For example, Hendrix Records was a financial disaster losing several million dollars. However, Hendrix Records was created before the trusts in question even existed. Predicating a breach of duty

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as a trustee based on that business decision is not only inappropriate but also unfair. Likewise, I find that the Red House Tour, Distinktiv, and Noah Productions constituted business decisions, albeit unprofitable ones, that cannot sustain a finding of breach of fiduciary duty.

Nonetheless, Janie and Robert have admitted shortcomings in the management of Experience Hendrix. Improper personal expenses have been charged to the company by Janie. She has explained that the improper charges were based on recommendations of Experience Hendrix's accountants Ernst and Young. She added that when Abrahamson and Pendergast became Experience Hendrix's accountants, she received different advice and has since endeavored to pay back the improperly billed expenses with interest. Likewise, the home loans that Janie, Robert, and Amanda Howell took from Experience Hendrix are either already paid back or, in Robert's case, being paid back.

Janie and Robert also concede that their salaries and bonuses were not determined by application of any objective guidelines or formula. Despite the absence of objective guidelines, they maintain that their salaries and bonuses over the years have been reasonable in light of industry standards. Furthermore, they have recently created a compensation committee that will assess the propriety of salaries and bonuses paid so as to obviate this issue in the future.

Lastly, regarding the absence of distributions to the beneficiaries, Janie and Robert lament this fact but explain that it has been unavoidable. They maintain that they have the authority to determine if a distribution will be made and they are merely fulfilling Al's directive that Experience Hendrix's debts be paid before any distributions are made.

Both the gift trust and the revocable trust at issue provide that the trustee shall not be liable for any loss, or be held responsible for any action or inaction, so long as such individual trustee shall have acted in good faith and with honest judgment in both their actions and inaction as trustees.

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Robert Hendrix testified candidly and forthrightly when he admitted in his testimony that he did not understand his obligations as a trustee. He testified that he asked Stoel Rives for guidance and received 20 to 30 pages worth of responsibilities that he did not understand. He added that in order to be a trustee, "you need to know what you are doing," and "we didn't." This admission is well-taken. However, the question remains whether they acted in good faith and with honest judgment.

Regarding the improper personal charges, Janie contends that she relied upon the recommendations of Ernst and Young. She was not aware of the impropriety until she received different advice from Abrahamson and Pendergast. Notably, Abrahamson and Pendergast were hired as accountants for Experience Hendrix in 2001. Also notably, Janie did not commence repaying any of her personal expenses until after the commencement of this lawsuit in 2002. Accordingly, it is reasonable to conclude that Janie did not take immediate remedial action. The diversion of Experience Hendrix's funds for personal use was clearly a breach of fiduciary duty. Furthermore, this breach cannot be fully remedied due to the lack of adequate bookkeeping necessary to recapture every personal transaction to insure repayment.

The records also indicate that while some money loaned to Jane, Robert, and Amanda bore a modest interest rate of 4.5% to 5.1%, some of the loans were interest free. To the extent that the loans at a modest interest were arguably beneficial to Experience Hendrix, the same cannot be said of the no interest loans.

Regarding the reasonableness of Janie, Robert, and Amanda's salaries, the evidence presented supports the proposition that although Janie and Robert are undeniably being well-compensated, the compensation is not excessive in light of industry standards. However, this court finds that Amanda Howell's salary exceeds that which is reasonable given her qualifications and actual job responsibilities. Edward Speidel's evaluation of her salary was predicated on the presumption that Amanda was serving as a controller for Experience

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Hendrix. This determination was based upon Speidel's interviews with Janie and Robert. Speidel apparently did not interview Amanda. It is evident from the testimony that Amada does not serve in the role of controller and currently lacks the expertise to serve in that position.

The court acknowledges that efforts have recently been undertaken to address these deficiencies ranging from the creation of a compensation committee, the appointment of Washington Trust Bank as a co-trustee, and the submission to the scrutiny of an independent investigation. All of these actions are laudable and appropriate. Assuming these decisions were made upon the advice of counsel, the advice was wise and commendable.

Even assuming, however, the aforementioned transgressions were the result of sheer ignorance of their duties, one unavoidable problem remains. Throughout this litigation a recurrent theme has been heard. The theme has been that no distributions can be made to the trust beneficiaries until Experience Hendrix's debt was "paid off" or "paid down." No one seems to know exactly what either phrase means. This is particularly troublesome in light of the fact that a business such as Experience Hendrix will typically operate with at least some on-going debt. Theoretically, then, no distributions will ever be made from the coffers of Experience Hendrix. Nonetheless, Janie and Robert persist in asserting this standard because that is the directive they received from Al. However, an almost incidental comment made by Robert Hendrix in his trial testimony speaks volumes on this issue.

In his trial testimony, Robert recounted approaching Al in 1999 with regard to a request for trust disbursement from Gracie Hatcher's family for burial expenses. Notably, Al's first response was not, "No disbursements until Experience Hendrix is out of debt;" rather, his response was simply, "What will it cost?" Robert testified that they calculated that in order to make a $10,000 disbursement to the Hatcher family, the total trust disbursement to all the beneficiaries would be approximately $1 million. After receiving that information, Al purportedly said no to any disbursement until the debt was paid down.

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Obviously, Al was not taking the position that no distributions could be made until Experience Hendrix was debt-free; he took a more measured and moderate approach weighing the total cost of the disbursement against the financial circumstances of Experience Hendrix. In 1999, he apparently believed that a $1 million disbursement was too great given the then existing debt of the company.

Despite the financial improprieties that have occurred over the years, Experience Hendrix is currently far more debt-free than it was in 1999, yet no distributions have been made or even considered. In short, Janie and Robert appear to have been relying on the mantra "Experience Hendrix must be debt-free" to justify their failure to exercise any discretion over distributions to the trusts. This abdication of their duty as trustees is not justified by reference to any directive from Al and is telling evidence of the difficulty inherent in serving the interest of the beneficiaries while also serving the interests of Experience Hendrix. As Robert candidly admitted, his obligation was to make the legacy survive, not to disburse funds. Rather than serving two masters, Janie and Robert have chosen one--Experience Hendrix.

Accordingly, this court orders that Janie and Robert Hendrix be removed as trustees of the Diane Hendrix-Teitel, Linda Jinka, and the Hatcher Family trusts. The court also orders that Janie and Robert are obligated to pay the attorney fees of the aforementioned beneficiaries, the costs associated with the investigation by special counsel, and the costs arising from Washington Trust Bank's role as co-trustee. These costs were necessitated by Janie and Robert's breach of fiduciary duty and therefore should be borne by them. Payment of these obligations will be deducted from trust distributions made to Janie and Robert. Consistent with their relative trust benefits, 75% of the total monetary obligation will be assessed against Janie's distribution and 25% against Robert's. The monetary obligations assessed will bear the statutory interest rate commencing at the time of entry of judgment until the time of payment. The request to remove Janie as the personal representative of Al's will

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is denied without prejudice. This court is not satisfied that adequate justification exists at this time to remove her from that position. However, the court will retain jurisdiction to revisit that issue should future circumstances warrant reconsideration. Janie and Robert are also ordered to continue to cooperate in efforts to identify personal expenses and loans that should rightfully be repaid to Experience Hendrix. An accounting of those efforts including a detailed summary of the identified expenses, when they were incurred, and a prepayment plan must be provided to all counsel involved in this matter and the court no later than November 19, 2004. All other requests for additional relief are denied.

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