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Recording Date - October 18, 2018

Recording Availability – November 16, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	Thursday, October 18, 2018	12:00 PM to 1:15 PM	Views from the Bench on Fiduciary Fees

AGENDA

- 12:00 PM** Introduction
- 12:10 PM** Presentation: ‘Views from the Bench on Fiduciary Fees’, by Judge Ken Schubert and Commissioner Henry Judson, King County Superior Court, ----
- 1:15 PM** Adjourn

SPEAKER BIOGRAPHY

Judge Ken Schubert, King County Superior Court – Ken Schubert is the Chief Civil Judge for King County Superior Court. He has served in the Criminal and Civil Departments for the past five years and presided over the Superior Court Involuntary Treatment Act Court in 2015. Before his election to the bench in 2012 and re-election in 2016, Judge Schubert litigated trust and estate, securities, and general civil claims for more than a dozen years. He clerked for Justice Alexander at the Washington Supreme Court. Judge Schubert graduated from Occidental College and the University of Washington School of Law. He was admitted to the Washington State Bar in 1997.

Commissioner Henry Judson, King County Superior Court – Commissioner Judson was appointed as a Constitutional Commissioner to the King County Superior Court in July 2014. He currently serves in the Ex Parte/Probate Department in the King County Courthouse in Seattle. Prior to his appointment he focused his practice in the areas of Guardianship, Probate, Trusts and Elder Law. He was a certified professional Guardian, and served as a Guardian of the Person and/or Estate of Incapacitated Persons, a Guardian ad Litem, Trustee and Personal Representative of Decedent’s estates upon court appointment. From 2007 through 2009 he served as a Co-Chair of the King County Bar Association’s Title 11 Guardianship GAL Program. Commissioner Judson received his B.A. from Pomona College in 1977 and his J.D. from the Northwestern School of Law of Lewis and Clark College in 1980.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In the Trust of:

NO.

SUPPLEMENTAL REPORT OF TRUSTEE

On June 5, 2018 the Court requested additional explanations with regard to

- (1) the low rate of return in a high market, and
- (2) why the parents are not paying for educational summer camps and dental expenses instead of the Trust?

A copy of the June 5, 2018 Order is attached hereto as **Exhibit A**.

The supplemental explanations of the Trustee are set forth below.

I. RATE OF RETURN

1.1 **Rates of Return between Nine and Ten Percent for Current Period.** The approximate rate of return for the Insurance Trust was 9.40%. The approximate rate of return for the Settlement Trust was 9.57%. The market indices for the period of time corresponding with this Trust reporting period of April 2017 through March 2018 are set forth below:

Name	Trailing 12 Months
Barclays Capital US/Gov Credit 1-3 Year	0.24%
Barclays Capital US Corporate High Yield	3.78%
Barclays Capital US Intermediate Credit	1.10%
Barclays Capital US Long Credit	6.16%
Barclays Capital US Aggregate Bond	1.20%
Dow Jones Industrial Average	19.39%
Dow Jones Moderate	10.28%
Dow Jones Conservative	4.25%

Russell Midcap	12.20%
S&P 500	13.99%
NASDAQ Composite	19.50%
Russell 1000 Growth	21.25%
Russell 1000	13.98%
Russell 1000 Value	6.95%
Russell 2000	11.79%
Russell 2500	12.31%
MSCI EAFE	15.32%
MSCI Emerging Markets	25.37%

After careful review and consideration, it was determined by both the investment advisor for the accounts, Mr. _____ with _____ Financial Services, and the Trustee, that a Balanced Growth focused allocation model is appropriate. In establishing the model, a number of factors were considered including client's age, health, tax status, anticipated income needs, and their ability to withstand short- and intermediate-term variability in the accounts.

The focus of the Balanced Growth model is on capital appreciation with income as a secondary objective intended to reduce volatility over time. The account may experience volatility but is expected to grow in a manner that out paces inflation in the long term.

The benchmark return for the Balanced Growth model for the period from April 1, 2017 to March 31, 2018 was 9.20%. As stated above, the actual investment returns for the Insurance and Settlement Trusts for the same period were 9.40% and 9.57% respectively, net of Mr. _____ asset management fees of 60 basis points (0.60%) annually.

While it is true that some indices for the current period had higher returns than these Trusts, investing to attain such returns would expose these Trusts to a higher degree of risk as measured by the standard deviation of the portfolio. The Trustee believes it is important to own a mix of stocks, bonds and cash, diversified across different market caps and styles. Investing in this manner spreads risk because the Trusts owns a variety of asset types, which may perform differently from one another in any given time period. As an illustration of this principle, **Exhibit B** is a matrix prepared by the Trustee that compares the performance of the Balanced Growth model to the indices listed above for the period from January 1, 2014 through December 31, 2017.

1 The Trustee maintains an Investment Policy Statement (IPS) for the Trusts. A copy of the
2 Investment Policy Statement as last updated on March 13, 2018 is included in the Annual Report
3 for the current period and has already been filed with the Court.

4 The purpose of the IPS is to assist the Trustee and Mr. [redacted] in effectively supervising,
5 monitoring, and evaluating the investments held in the Trust's portfolio. It describes the prudent
6 investment process that the Trustee and Mr. [redacted] deem appropriate, establishes allocation
7 model guidelines, and a benchmark for measuring the investment performance.

8 As noted in the IPS, Modern Portfolio Theory, as recognized by the 1990 Nobel Prize, is
9 the philosophical foundation for how the portfolio is structured and how subsequent decisions are
10 made. The underlying concepts of Modern Portfolio Theory include:

- 11 • Investors are risk averse. The only acceptable risk is that which is adequately
12 compensated by potential portfolio returns.
- 13 • Markets are efficient. It is virtually impossible to anticipate the future direction of the
14 market as a whole or of any individual security. It is, therefore, unlikely that any
15 portfolio will succeed consistently in "beating the market".
- 16 • The design of the portfolio as a whole is more important than the selection of any
17 particular security within the portfolio. The appropriate allocation of capital among
18 asset classes (stocks, bonds, cash, etc.) will have far more influence on long-term
19 portfolio results than the selection of individual securities.
- 20 • For a given risk level, an optimal combination of assets will maximize returns.
21 Diversification helps reduce investment volatility. The proportional mix of asset classes
22 determines the long-term risk and return characteristics of the portfolio as a whole.
- 23 • Portfolio risk can be decreased by increasing diversification of the portfolio and by
24 lowering the correlation of market behavior among the asset classes selected.

25 When consideration is given to compliance with the Uniform Prudent Investors Act and
26 the objectives set forth in the Investment Policy Statement specifically developed for these two
Trusts, it is respectfully submitted that current period 9.40% rate of return for the Insurance Trust
and 9.57% rate of for the Settlement Trust are well within the range of reasonableness .

1 **1.2 Since Initial Funding in 2013 Both Trusts have Increased in Value Even After**
 2 **Allowing for Disbursements and Expenses.**

3 **1.2.1 Insurance Trust Net Growth.** The Insurance Trust was initially funded
 4 on _____ 2013 with a deposit of \$501,058.82 and again on _____ 2013 with an additional
 5 deposit of \$5,000.00 for a total of \$506,058.82. The balance on _____, 2018, the end of the
 6 current reporting period, was \$608,824.10.

7 **1.2.2 Settlement Trust Net Growth.** The Settlement Trust was initially funded
 8 with \$300,000.00. The beginning balance on April 19, 2013 shows the \$300,000.00 deposit. The
 9 balance on _____, 2018, the end of the current reporting period, was \$392,214.53.

10 **1.2.3 Net Growth of Both Trusts When Combined.** When the beginning
 11 balances of both Trusts are combined there is a combined beginning balance of \$806,058.82 and a
 12 combined ending balance of \$1,001,038.63. The net increase from the spring of 2013 through
 13 _____, 2018, even after distributions and expenses, is \$194,979.81.

14 **1.2.4 Acceptable Rates of Return Since Inception.**

15 The rates of return for the two trusts is set forth below for historical perspective.

Insurance Trust		Settlement Trust	
Rates of Return Since Inception		Rates of Return Since Inception	
Reporting Period:	Rate of Return:	Reporting Period:	Rate of Return:
April 19, 2013 to March 31, 2014	7.44%	April 19, 2013 to March 31, 2014	4.80%
April 1, 2014 to March 31, 2015	6.48%	April 1, 2014 to March 31, 2015	6.98%
April 1, 2015 to March 31, 2016	-1.54%	April 1, 2015 to March 31, 2016	-1.62%
April 1, 2016 to March 31, 2017	12.32%	April 1, 2016 to March 31, 2017	12.63%
April 1, 2017 to March 31, 2018	9.40%	April 1, 2017 to March 31, 2018	9.57%
Average ROR	6.82%	Average ROR	6.47%

16 **1.2.5 Investment Time Horizons.**

17 **1.2.5.1 Insurance Trust Investment Time Horizon.** The beneficiary of
 18 these two Trusts is currently 14 years old. Absent the need to convert the Insurance Trust to a
 19 Special Needs Trust, it is slated to terminate when _____ attains the age of 25 years of age
 20 in _____ of 2028. It is respectfully submitted that the investment time horizon for the Insurance
 21 Trust is appropriate. A copy of the Insurance Trust was filed with this Court on _____, 2013.

1 **1.2.5.2 Settlement Trust Investment Time Horizon.** Absent the need to
2 convert the Settlement Trust to a Special Needs Trust, it is slated to terminate when
3 attains 25 years of age in of 2028. It is respectfully submitted that the investment time
4 horizon for the Settlement Trust is appropriate. A copy of the Settlement Trust was filed with this
5 Court on 2013.

6 **1.3 Conclusion.** Investment theory and historical capital market return data suggest
7 that, over long periods of time, there is a relationship between the level of risk assumed and the
8 level of return that can be expected. In general, in order to attain higher returns one must accept
9 higher risk. The Trust beneficiary is currently 14 years old and is being raised by a single mother.
10 It is submitted that the Balanced Growth allocation is entirely appropriate because of relatively
11 short term of the Trust and because of the need for liquidity for emergencies and possible funding
12 for college-in-four years. ~~Subjecting the Trusts to higher-risk investments when funds might be~~
13 needed in four years for college would not be prudent. The Trustee does not want to be put into a
14 position where it may need to liquidate assets at a loss in the event major funding events are
15 required.

16 **II. EXPENDITURES FOR EDUCATIONAL SUMMER CAMP AND DENTAL WORK**

17 **2.1 Trust Established as a Result of Father's Death.** The Insurance Trust and the
18 Settlement Trust were established for the minor as a result of the death of his father. is
19 being raised solely by his mother, who is single. She receives SSA Survivor Benefits on behalf of
20 from his father's work record. An examination of the General Ledgers for the Insurance
21 Trust and the Settlement Trust from inception to the end of the reporting period show the Trustee
22 has very rarely had to step in and assist Ms. with regard to wellbeing. Copies of the
23 General Ledgers are filed as a component of each Annual Report of Trustee.

24 **2.2 Neither Trust is to be Used to Excuse or as a Substitute for an Obligation of a**
25 **Parent.** It is stated in both the Insurance Trust and the Settlement Trust that neither the corpus or
26 income from the Trusts are to be used to excuse or substitute an obligation of the beneficiaries
mother to provide for the Beneficiary's health, education, maintenance, and support while he is a
minor. Case law also supports that proposition. The Trustee is very well aware of this.

1 **2.3 Insurance Trust Payments Budgeted the Next Reporting Period Ending**
2 **March 31, 2019 in the Amounts of \$3,600 for Educational Camps and \$1,800 for Dental.**

3 The budget included with the Insurance Trust annual report included two line items: \$3,600 for
4 education camps and \$1,800 for dental. The Trust Agreement provides the Trustee with full
5 discretion to provide supplemental funds for health, education, maintenance and support. While
6 these budget line items are fully within the discretion afforded by the Trust Agreement, the
7 Trustee understands the Court's reluctance to approve these budget items. Therefore, the Trustee
8 respectfully submits as **Exhibit C** a revised budget for the Insurance Trust removing these two
9 line items.

10 **2.4 Insurance Trust Payment of \$4,610.00 during the Current Reporting Period**
11 **as being Necessary and in Daniel's Best Interest.** A copy of the

12 Orthodontic Group invoice for dental services is attached as **Exhibit D**, the contents of which are
13 incorporated herein by this reference. After a deduction of \$2,275 for discounts and insurance the
14 bill was reduced to \$4,610.00. This sum was paid by the Trustee from the Insurance Trust and is
15 referenced in the schedule of receipts and disbursements. The Trustee had discretion to pay this
16 expense if it felt that it the expenditure of funds was not as a substitute for a parental obligation.
17 There is no known obligation for a parent to provide braces. The Trustee properly exercised its
18 discretion in assisting in the payment of the dental bill.

19 **2.5 Conclusion.** Payment of the Trustee's current period expenditure of \$4,610.00 are
20 proper exercises of the Trustee's discretion. Such payments are not being made in substitution of
21 a parental obligation. Orthodontia are not "obligations" of any parent, especially a widowed
22 mother. If the over one million dollars in the Trusts created as a result of the death of
23 father cannot be used for modest expenditures for the benefit *in terms of health and
24 education one of their essential purposes will be defeated.

25 CERTIFIED under penalty of perjury this ____ day of , 2018 in Seattle,
26 Washington.