

1 behalf of L. Londell McMillan.

2 L. LONDELL MCMILLAN, Attorney-at-Law, appeared for
3 and on behalf of the family heirs.

4 C. WELLS HALL, Attorney-at-Law, appeared for and on
5 behalf of the family heirs as special tax counsel.

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7

8 ALSO PRESENT:

9 Justice James Gilbert, Yvonne Shirk, Sharon Nelson, Norrine
10 Nelson, John Nelson, Tyka Nelson, Breanna Nelson, President
11 Nelson, Charles Spicer, Angela Aycok, Andrea Bruce, Matt
12 Abbott, Johnny Jr., and various observers.

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STENOGRAPHIC COURT REPORTER: [Shelby Brown](#), 970-488-0789

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P R O C E E D I N G S

THE COURT: I'll get started with at least trying to identify who is here today. I have the following appearances noted so far: My staff attorney Yvonne Shirk is with us; Mr. Joseph Cassioppi; Mr. Mark Greiner from the Fredrikson firm; Ms. Andrea Bruce; Ms. Angela Aycock from Comerica.

I have Mr. Magnuson, representing Primary Wave; Alan Silver and Charles Spicer appearing on behalf of Sharon, John, and Norrine Nelson. I have additional family members of Tyka Nelson, Breanna Nelson, and I'm assuming Johnny Jr., is a family member as well; is that correct, sir?

MR. MCMILLAN: That's correct, Your Honor.

THE COURT: Thank you.

MR. MCMILLAN: Let me change my name, sir.

THE COURT: And Mr. Londell McMillan as well for Sharon, John, and Norrine. And I should say Mr. Spicer and Mr. Nelson on their own personal behalf as well. Justice James Gilbert, the court-appointed mediator or moderator is with us as well. I have Wells Hall appearing.

Mr. Hall, what's your connection?

MR. HALL: I'm also representing the individual family heirs with Mr. McMillan, and I'm

1 special tax counsel.

2 THE COURT: Okay. For Sharon, John, and
3 Norrine; is that correct?

4 MR. HALL: That is correct.

5 THE COURT: Good afternoon.

6 And I have Susan Nystrom with us. Your
7 connection?

8 MS. NYSTROM: Yes. I'm Senior Vice
9 President and Divisional General Counsel for Comerica
10 Bank.

11 THE COURT: Thank you. Good afternoon.

12 MS. NYSTROM: Good afternoon, Judge.

13 THE COURT: I have someone with a phone
14 number, area code 651, ending in 385. Can you
15 identify who you are?

16 MS. NELSON: Sharon Nelson.

17 THE COURT: Good afternoon, Ms. Nelson.

18 MS. NELSON: Good afternoon.

19 THE COURT: And I have someone with a phone
20 number -- oh, perhaps it's changed. Oh, they're still
21 in the waiting room. Mr. Matt Abbott is with us.

22 Mr. Abbott, what's your connection?

23 MR. MCMILLAN: Matt, you're on mute.

24 Mr. Abbott is an attorney with me in The
25 NorthStar Group, Mr. Judge Eide.

1 THE COURT: Thank you very much.

2 And we have someone with a phone number,
3 area code 612, ending in 199. Can you tell me who
4 that is? Press pound 6 to unmute -- or is it star 6,
5 I guess.

6 MR. NELSON: President Nelson, Tyka Nelson's
7 son.

8 THE COURT: Thank you, Mr. Nelson.
9 Is there anyone that I have not identified?

10 MR. SILVER: Your Honor, I just wanted to
11 clarify. I think you identified me as counsel for
12 Sharon and Norrine and so forth. I'm counsel for
13 Londe11 McMillan.

14 THE COURT: Thank you.

15 MR. GREINER: And, Your Honor, I believe
16 Karen Steinert may be joining us. She has a
17 (unintelligible) review for 1:30 and may be a little
18 bit late joining. So if she jumps on, that's who
19 would be jumping on a little bit late.

20 THE COURT: Thank you, Mr. Greiner. And
21 with that in mind, if you are speaking, identify
22 yourself for the court reporter. And then with that
23 in mind, if you're not speaking, please mute yourself.

24 All right. We have motions before the Court
25 regarding the protocols that were brought by Sharon,

1 John, and Norrine Nelson, L. Londe11 McMillan, and
2 Charles Spicer. We have motions by the estate, and we
3 have a motion, I believe, to formally consider the
4 estate of John Nelson as a participant or heir in this
5 proceeding.

6 So I know, chronologically, the first
7 motions were filed by Sharon, John, and Norrine;
8 Mr. McMillan; Mr. Spicer. But can I ask the estate to
9 go first with their motions, then I'll ask the other
10 parties to respond to the estate's motions as well as
11 introduce their own motions.

12 The Court has tried to be diligent in
13 reviewing all of the materials that have been filed;
14 so I don't need much background in that regard.

15 Mr. Cassioppi.

16 MR. CASSIOPPI: Thank you, Your Honor. And
17 as Your Honor just indicated, this has been fully
18 briefed; so I'll be very -- I'll be very brief.

19 THE COURT: And, Mr. Spicer -- or
20 Mr. Cassioppi, I'm sorry to interrupt. There were a
21 couple of things that I was going to mention. We were
22 notified that someone from the press may be joining
23 us, but I haven't seen that. If someone is here --
24 or, actually, for anyone, there should be no
25 recordings from this proceeding unless you obtain

1 prior court approval to do so.

2 I don't think any prior court approval has
3 been granted. If there is something that needs to be
4 addressed that's confidential, we may consider using a
5 breakout room for that, but I don't know that that
6 will be necessary.

7 And, finally, the Court has signed several
8 orders regarding the submissions for all of these
9 motions that permitted their redacting in the public
10 record of certain information. I ask that the parties
11 to this motion follow the court order and not
12 reference that -- those -- redacted information
13 directly, if at all possible.

14 Mr. Cassioppi, back to you.

15 MR. CASSIOPPI: Thank you. On that point,
16 Your Honor, you will see that there's a difference in
17 what monetary figures we redacted on the first issue
18 on our motion in our opening paperwork as compared to
19 our reply. And the reason for that is as we were
20 considering the Court's -- the job the Court is going
21 to have in considering this and issuing an order on
22 this first issue.

23 We didn't see any way that Your Honor would
24 be able to do that without referencing at least this
25 one figure. And so for that reason, I -- I will be

1 referencing the \$5 million figure in my remarks today,
2 understanding that -- that that is available to the
3 public.

4 The first of three issues that is raised by
5 our motion relates to a cash reserve for the estate,
6 and I want to be very clear. Although our opening
7 paperwork did reference various recommendations that
8 have been made to the members of the heir group about
9 what the personal representative believes would be
10 prudent to have on hand at and after closing, this
11 motion is not about that.

12 This motion is solely directed to making
13 sure that the estate does not run on cash. And
14 the -- the figure that we've selected, the \$5 million
15 figure, is a figure that considerable thought has gone
16 into.

17 And we chose that figure based upon the
18 historical finances of the estate, the financial
19 needs and anticipated expenses and revenues going
20 forward over the upcoming months. And what we are
21 asking for, specifically, is not court approval to go
22 out and do anything right now, but in the event that
23 we empty out the estate's bank account by paying all
24 of the estate taxes -- and this estate proceeds --
25 keeps going longer than maybe folks even anticipated

1 just a few weeks ago, in light of what we're going to
2 discuss in the moment -- there's a very real risk that
3 the estate will fall under that \$5 million figure.

4 And what we're asking Your Honor to approve
5 is if we get there, if the cash balance of the estate
6 falls below \$5 million, that we have the ability to go
7 out and seek monetization of the assets of the estate
8 to make sure that there's an adequate cash reserve and
9 we don't have an inability to pay income taxes,
10 expenses of administration, and the like, prior to the
11 point of which we can close the estate.

12 This is really modelled on -- on how, out of
13 necessity, the estate was forced to operate in the
14 very early days of the estate, during the term of the
15 special administrator, where there wasn't sufficient
16 cash to meet the expense needs of the estate. And
17 from time to time Bremer had to come into the court on
18 a fairly expedited basis and ask for permission to
19 monetize the assets of the estate.

20 So that's what we're asking for here. We're
21 asking for a slight modification of the current court
22 protocol to allow for an expedited time period. If we
23 go below \$5 million, we can go out, talk to our
24 existing partners, some potential other partners about
25 monetization activity. We would either need to get

1 the heirs to sign off on that or we would need to come
2 to the court and get court approval.

3 So we're not asking for anything now except
4 for, subject to the Court's availability, the ability,
5 on behalf of the estate, to come in on a more rapid
6 basis than set forth in the current protocols if the
7 need arise, if we get below that \$5 million figure.

8 And we believe it's supported by the probate
9 code. There's a broad authority that's provided to
10 personal representatives to sell or otherwise monetize
11 assets. We'll only use it if we need it. And, again,
12 there's a safeguard built into what we have proposed,
13 which is either the heirs have to sign off or Your
14 Honor will have to approve.

15 For those reasons and those set forth in our
16 paperwork, we ask that the Court approve that slight
17 modification to the currently existing protocol. On
18 this --

19 THE COURT: Mr. Cassioppi.

20 MR. CASSIOPPI: Yes, Your Honor.

21 THE COURT: A few questions. First of all,
22 this -- I know you're not asking for money now, but
23 what you're looking for is cash to be on hand until
24 the final closing and distribution; correct?

25 MR. CASSIOPPI: That's correct, Your Honor.

1 THE COURT: And if that could be done -- not
2 saying it will -- but could be done in the first
3 quarter of 2022, that's all you're looking for.

4 MR. CASSIOPPI: That's correct, Your Honor.

5 THE COURT: In Sharon, John, and Norrine's
6 response, I thought I saw -- unless I misunderstood --
7 some reference to Comerica asking for money upfront to
8 be able to administer the estate for one year.

9 You're not asking for one year. You're just
10 asking until closing; correct?

11 MR. CASSIOPPI: That's absolutely correct.
12 The -- the reference to one year is that we have, for
13 many months now as part of our process of talking
14 about transition activities with the heir group, have
15 said, "For your reference, members of the heir group,
16 there's a certain amount of money that we would
17 recommend that you have on hand at closing because it
18 is the amount that the estate -- that you
19 would -- that we would anticipating you needing to
20 meet the cash needs of what will be the successor
21 entities to the estate following closing."

22 We've made that recommendation. The heir
23 group is free to either agree with it or disagree with
24 it, but that is wholly separate from what we're asking
25 the Court here. What we're asking the Court here is

1 simply this is the -- the \$5 million figure is our
2 line below which we start to get very nervous about
3 any extraordinary expense coming up and us literally
4 running out of cash.

5 THE COURT: Okay. And the -- what I thought
6 you just proposed now was that if the estate needed to
7 monetize assets, that you would try to get consent of
8 the heirs. Or, alternatively, you would ask for
9 expedited review from the court. I believe the
10 current protocol requires approval of the court for
11 monetization only above a certain level.

12 Would that protocol remain in effect, and
13 anything below that level would not require court
14 approval? You could just go ahead and do it? Or are
15 we amending that protocol?

16 MR. CASSIOPPI: We are not amending that
17 protocol. This is designed at -- designed completely
18 to address transactions that would be subject to that
19 protocol, so items that would be \$2 million or more in
20 assets.

21 And we -- we really wouldn't -- we really
22 wouldn't, I don't think, go out and seek an
23 opportunity unless it -- it exceeded that amount.
24 Because, again, we would be trying to arrange for a
25 situation where we didn't have to come back a month

1 later or two months later and ask for the same thing.

2 So this is only designed to move from -- I
3 believe it's 14 days under the current protocol to 5
4 days under the new proposed protocol for transactions
5 that would be subject to that current protocol, i.e.,
6 \$2 million or more in anticipated revenues.

7 THE COURT: Thank you. Those are my
8 questions. You may proceed.

9 MR. CASSIOPPI: Very briefly on the two
10 other items referenced in our motion. The first is
11 that we ask that the Court set a deadline to submit --
12 for the members of the heir group to submit either a
13 joint distribution plan or any competing distribution
14 plan.

15 As we mentioned in our reply, we are
16 completely on board with the heir group if they come
17 to Your Honor today and say, yes -- yes we believe
18 there should a deadline, but the deadline proposed by
19 Comerica is too aggressive. We need two more weeks or
20 three more weeks to kind of get all of our analysis
21 done.

22 What I think is important that we set today
23 is just a deadline of some kind. Because, if not, I'm
24 afraid that this is just going to continue to get
25 pushed on and on and on. And I think everybody on

1 this Zoom hearing right now shares the same interest
2 of getting this teed up for approval by the Court as
3 soon as possible.

4 And so with -- with reasonable guide rails,
5 I -- I think we will defer to the heir group on what
6 they believe is feasible as far as a deadline for
7 submissions and ultimately a deadline for hearing if
8 they don't believe that what we proposed in the motion
9 paper is sufficient.

10 The final topic addressed in our motion is
11 more of a -- a preview more than anything else.
12 Ultimately, if the parties can't resolve it through
13 continuing mediation with Justice Gilbert, we are
14 going to need to -- to schedule a -- a hearing on a
15 petition to discharge Comerica and to approve its
16 final accounting.

17 That -- I think to do that now would be
18 premature because we don't know what process
19 distribution is going to take place at this point or
20 how long it's going to take or even what needs to be
21 done in order for that to be effectuated.

22 But the purpose of raising it in the motion
23 was so that everyone, all the interested parties and
24 the Court, could anticipate here's -- kind of once we
25 get a distribution plan set and we start effectuating

1 that, this will be the natural next step, the next
2 thing that we need to do before we either close or
3 transition the estate.

4 And so when we put that in as a proposal,
5 really what we would be anticipating is that the Court
6 would address the timing associated with that as part
7 of its order approving a distribution plan.

8 THE COURT: Is that it?

9 MR. CASSIOPPI: That's it, Your Honor.

10 THE COURT: Okay. Mr. Magnuson, would you
11 respond on behalf of Primary Wave and any other
12 motions that you think the Court needs to address?

13 MR. MAGNUSON: Thank you, Your Honor. Yes,
14 I will. I'll be very brief. As often happens when
15 you come into court, the process of the parties
16 briefing this and exchanging their ideas has clarified
17 and, I think, simplified some of the issues.

18 As long as the heir group gets notice of the
19 proposals that Mr. Cassioppi discussed, we really
20 don't have a problem with that. Initially, I think
21 all the members of the heir group thought that they
22 were being asked to -- they were asking for permission
23 to fund the operation of the businesses after the
24 estate is closed. That's clarified. Not the issue.
25 We don't have a problem with the requested relief.

1 The schedule for distribution plan
2 submissions is a somewhat more nuanced issue. We
3 agree deadlines are good. People work to them. And
4 the proposed deadline here is something that has
5 spurred a lot of action by the parties. We have some
6 significant internal tax issues that we may have to go
7 into more detail when we make the submissions.

8 But to address those, we're asking for a
9 great deal of information from Comerica. And I want
10 to say that I think Comerica has been prompt and
11 thorough in their responses. We've been very
12 cooperative in how we're addressing it. It's just
13 there's a lot of stuff to go through.

14 And so we don't have an objection to the
15 proposed submission date that you've got, with the
16 understanding that, in our view, what we will likely
17 be able to give the Court by then would be a
18 high-level, somewhat provisional, distribution plan
19 because of the exact mechanics of how it will work.

20 For example, what entities get created to
21 receive the assets will depend, in large part, on
22 completing the tax analysis. If you look at item -- I
23 think it is Roman 2 of the protocol checklist that was
24 Exhibit 8 of Mr. Cassioppi's January 7th
25 declaration -- it's kind of the checklist of things

1 that need to be done.

2 Item 2 -- Items 1 through 5 are really, kind
3 of, what we're working on now as part of the
4 submission. And so with the understanding that
5 everybody wants to get this done, that we're working
6 hard, that we're working cooperatively so far, it's
7 still unlikely you're going to get one plan from the
8 different members of the heir group that we agreed to,
9 although that's our goal.

10 But I don't see any of that happening by the
11 21st; so if you're comfortable getting a provisional
12 plan, the deadline might as well stay there so we at
13 least start making people commit to things and then
14 working them out.

15 Finally, on the third point, you know, I
16 understand that Mr. Cassioppi is simply giving us a
17 heads-up on once the distribution plan is approved,
18 here are the things that will need to be done to
19 implement it, and we have no problem with that.

20 So I'm not sure that the Court even needs to
21 issue an order on that because if Mr. Cassioppi says
22 it's premature, and we think it's premature, if
23 Mr. Silver agrees, then at least we are simply
24 forewarned. That's all I have, Your Honor. Thank
25 you.

1 THE COURT: With respect to the deadline,
2 what is your understanding of what the deadline is
3 right now? Is it January 21st?

4 MR. MAGNUSON: My understanding, and what
5 we're working for, is that the members of the heir
6 group, either collectively with an agreed plan --
7 which I don't see happening -- or individually with
8 their own proposals, submit something for the Court's
9 consideration on the 21st. And that the parties then
10 have a week to respond to that.

11 And, frankly, Your Honor, I'd be really
12 surprised if you felt you were in a position to
13 actually order a distribution plan after that. There
14 are simply too many unresolved issues. Now, you may
15 hear a somewhat different perspective from Mr. Silver,
16 but we're ready to make our submission on the 21st.

17 We just don't want you to look at it and say
18 well, this isn't the final proposal. Because I'm
19 telling you right now, to make a final proposal, we
20 need more information. And we're working to get it,
21 and Comerica is being very cooperative in providing
22 it, but there's still a lot to do.

23 THE COURT: So that leads me to where I was
24 going with that first question. For the parties to
25 agree, or for the Court to review the -- the competing

1 proposals and select one, it sounds like you need more
2 information. You need to get more tax consulting.
3 You need to develop what entities need to be created.

4 Does it make more sense to put the deadline
5 out and make it a meaningful deadline where this
6 information can be available to the parties and to the
7 Court? And, if so, when would that be?

8 MR. MAGNUSON: I -- I knew you were going to
9 ask me when, and I've been trying to get the tax
10 consultants we're working with to give me a number,
11 and they say, "Well, we don't know yet." I -- I
12 think, actually, an interim deadline might be helpful
13 so that the -- you know, it narrows -- it narrows what
14 the parties are talking about. If we have to commit
15 to something, at least we've -- we've committed to it,
16 you know.

17 (Technical difficulties.)

18 MR. MCMILLAN: Eric, you're on mute.

19 MR. MAGNUSON: I'm sorry. Let me try it
20 again. It was so good what I said.

21 (The court reporter read back to clarify the
22 record.)

23 MR. MAGNUSON: Right. Your Honor, I
24 appreciate that -- I told my tax folks that I'm going
25 to be asked how much time do you need, and they said,

1 "We don't really know," which isn't very helpful. But
2 I think that an interim deadline to at least set the
3 parameters of what the parties are thinking about,
4 frankly, may be helpful.

5 Would I like more than a week? Sure. But I
6 can't guarantee that I'll have in two weeks or
7 three weeks anything more definitive. Now, maybe once
8 we get the next round of information and Mr. Silver
9 and his clients and I and my clients have a chance to
10 talk, we would have a better idea. So maybe you give
11 us until the 21st to keep working on this and then
12 submit a proposed deadline to you, but I can't do it
13 now.

14 THE COURT: Thank you. All right.
15 Mr. Silver, are you intending to respond on behalf of
16 Mr. McMillan, Mr. Spicer, as well as Sharon, John, and
17 Norrine, or are there multiple people there will be
18 speaking?

19 MR. SILVER: Your Honor, as I indicated a
20 little bit earlier, I represent only Mr. McMillan, but
21 his interests and the interests of the other SNJLC
22 clients are -- are identical with respect to these
23 issues. But I -- I can start, and I think that we
24 will weigh in. And then Wells Hall, who is our tax
25 advisor, is on this call and may -- may want to

1 correct anything that I perhaps misstate since I'm not
2 a tax lawyer or a tax expert.

3 Let me respond to a couple of points that
4 were made by the other parties, and I think it's
5 important to address all these motions that are before
6 you in the context of the timeline that you set in
7 response to a call I think we had in December, where
8 we set today as -- as a date for you to resolve any
9 motions and then February 4th to be a hearing to
10 approve final distribution, if we could get to that
11 point.

12 And I think it's fair to say that the
13 parties, through the mediation process and through
14 other discussions, have resolved most of the issues.
15 And if it were not for a couple of tax concerns, we
16 would be ready for final distribution. And it's even
17 possible we will be able to get there by February 4th.

18 But, if not, the issues that will remain
19 will be pretty narrow. And without getting into any
20 confidential material, the issue is simply that
21 there's a couple of the entities there were created
22 that are S corporations. And if those assets are
23 distributed, that will create some potential loss of
24 the S status and serious tax implications.

25 There is not a problem with the other assets

1 of the estate. And so the -- the issue here is what
2 really needs to be resolved between now and
3 February 4th, and can we go forward on February 4th
4 with a hearing that not only addresses a final
5 distribution, but if we can't get there, then a
6 partial distribution.

7 Now, to address the specific issues and the
8 timeline that were presented by the Court.

9 Mr. Magnuson, I think, was correct when he said that
10 sometimes the briefing process helps to narrow the
11 issues. Because I think where we disagree with
12 respect to the first motion, the one to allow
13 monetizing assets or keeping a reserve of \$5 million,
14 I think Comerica's position is either shifted or, at
15 least, the way we read their brief, it seems to have
16 shifted.

17 The idea that -- our response to the motion
18 was that it was premature because we don't know how
19 much -- how much will actually be required in order to
20 fund the estate. And Mr. Cassioppi at the beginning
21 of his argument said that he's not asking the Court to
22 do anything now, which I think supports the idea that
23 the motion is premature.

24 But then he sort of modified that in the
25 course of his presentation to say that what he really

1 is looking for is a modification of the deadline so
2 that something could be brought to the Court on an
3 expedited basis.

4 I don't think you necessarily have to do
5 anything right now to change that. If they -- if
6 there comes a point where they want to approach the
7 Court and seek to enter into a deal, it seems to me at
8 that point they can bring a motion to do that on an
9 expedited basis. But that's really the only dispute I
10 think we have over that issue at this point. Because
11 I think they've backed away from the idea that they
12 need to have authority right now to raise enough money
13 to fund the estate post-distribution.

14 As we originally read the motion, we thought
15 that's what they were doing, and we thought it was
16 premature. We also thought that it's really not
17 Comerica's job to decide if there's enough money
18 post-distribution. I think they've backed away from
19 all that, and so the issue right now is just simply
20 that narrow issue of how much time they need, how much
21 notice we get.

22 And then I think the other part of it is
23 what the role is of the beneficiary group. Because
24 we're so close to distribution, we're not quarreling
25 with the basic proposition that a personal

1 representative has the authority to sell assets or to
2 even invest the estate assets. But when you get very
3 close to distribution, certainly the personal
4 representative ought to take into account the
5 beneficiary group's wishes and should not enter
6 any -- any deals that either create severe tax
7 consequences or create long-term commitments without
8 the beneficiary group's involvement.

9 And when I say "involvement," I don't mean
10 just that we get notice and the right to object on,
11 you know, five days' notice. I'm talking about since
12 we're this close to distribution, that the heir group
13 ought to be involved in connection with negotiating
14 any of those kinds of deals.

15 We're not trying to become the PR until we
16 actually take over the -- the role or take the assets,
17 but -- but we should be heavily consulted. And so I
18 think the issue on that is really just the simply
19 narrow issue of how much notice they should give
20 and -- and what involvement we should have in any
21 deals that they make.

22 On the issue of timeline, I think -- I think
23 all three parties that -- the PR, the Primary Wave
24 group, and the SNLJC group are willing to stick with a
25 January 21st timeline to make a proposal to you.

1 That's just a week from today. The only thing I think
2 we differ in is what the scope is of that proposal.

3 Comerica says that parties should either
4 submit a joint proposal or separate proposals for the
5 Court to rule on. And Mr. Magnuson calls that a -- I
6 think he used the term "provisional proposal." In our
7 view, the tax people, I think, are already scheduled
8 or are trying to schedule a meeting early this week to
9 see if we can resolve the tax issues.

10 If we can, then there might be a possibility
11 of a joint proposal one week from today. If they
12 cannot, then whether you want to call it a provisional
13 proposal, a status report, or a plan as to how the
14 February 4th hearing should go, we're prepared to
15 submit something to the Court that would give our view
16 on that. And, hopefully, it's a joint proposal by the
17 beneficiary group.

18 But if it's not, each side would submit to
19 the Court where we think we are. I think the one area
20 where we perhaps differ from Primary Wave is that our
21 view -- because the only issue is with respect to
22 these S corp assets. If that issue weren't on the
23 table, we would be presenting you with a plan for
24 final distribution on -- on February 4th.

25 Because it's only these -- these two

1 entities that are creating the issue, in our view,
2 there could be a partial distribution on February 4th
3 while all the other assets other than the S
4 corporation assets could, in fact, be distributed to
5 the heirs.

6 They've been waiting six years -- or almost
7 six years -- to get these assets; so we definitely
8 don't want to tie this up. Because there could be
9 some period of time required before the tax issue can
10 be fully resolved, particularly if it requires some
11 kind of reorganization or creation of different
12 entities.

13 And so the -- the delay, that should not
14 cause a delay in distribution of other assets that
15 have nothing to do with any of these tax issues. And
16 in our papers we also suggested that if in fact the
17 majority of the estate is distributed in the first
18 quarter of this year, if the Court approves that on
19 February 4th, then in our view, Comerica is really no
20 longer needed, if that's just the limited role of
21 dealing with the assets that cannot be distributed.

22 And our proposal would be that each of the
23 two heir groups be able to nominate their own
24 successor or personal representatives that could just
25 handle those assets. So, in essence, in the absence

1 of the tax issue, we'd be ready for a final
2 distribution to the two beneficiary groups.

3 In our view, there's no reason why the tax
4 issue should prevent distributing to those two groups.
5 The majority of the assets, outright, and perhaps some
6 of the assets in a fiduciary capacity where they would
7 either act as or appoint their choice of personal
8 representative to do that.

9 You don't necessarily have to decide that
10 issue today, Your Honor. I'm just giving you a little
11 bit of an idea of our thinking and what we're likely
12 to propose to you in a week if we keep this January
13 21st schedule, which we believe we should.

14 So that, I think, summarizes our view as to
15 where we are at the moment, Your Honor. And
16 Mr. McMillan may want to add to what I've said or
17 perhaps Mr. Hall, if there's something I've said
18 that's wrong on the tax issue.

19 THE COURT: Before we move on to other
20 parties, there were motions filed last August by the
21 heir group of Sharon, John, and Norrine and then, of
22 course, Mr. McMillan and Mr. Spicer as well.

23 Do you want to comment on any of those?

24 MR. SILVER: I think I'm going to defer to
25 Mr. McMillan on that issue, Your Honor.

1 THE COURT: Thank you. Mr. McMillan.

2 MR. MCMILLAN: Your Honor, how are you?
3 Good afternoon.

4 THE COURT: Good. Thank you.

5 MR. MCMILLAN: Good. With respect to your
6 last inquiry, the parties agree to somewhat punt and
7 push some of those issues to mediation to see if we
8 could resolve them. Numerous of those issues are
9 coupled in the overall closure, including the issue
10 that Mr. Cassioppi raised as his third point, which
11 I'm happy to say, Your Honor, we all agree on
12 something, which is we should set a date for
13 resolution of that matter.

14 From our point of view, Your Honor, that
15 matter will be resolved easier if we can close or come
16 to a final distribution plan, obviously, because we'll
17 know exactly what we're releasing and waiving in that
18 discharge. As Mr. Magnuson mentioned earlier, we
19 believe -- because he doesn't have his tax team on the
20 line, he's not a tax lawyer, in my view -- and I can't
21 speak for him -- but he's punting.

22 He's punting because he's not a tax guy.
23 I've got my tax guy on the line. I'll have him speak.
24 We are prepared to make our decisions now. It's been
25 six long years, Your Honor. As you know, two of the

1 remaining three heirs that exist are in their 80's.
2 We would like to close. We have a plan. We believe
3 the plan will be a plan that this Court will
4 appreciate, respect, and accept. So with respect to
5 the third issue from Mr. Cassioppi, we agree that we
6 should set a timing for the discharge.

7 In terms of the second issue, which
8 Mr. Silver kind of outlined, that distribution is, in
9 fact, tied to the tax issue. And for numerous of
10 these hearings you've asked us if we had a tax
11 attorney, someone who could explain it in very simple
12 terms. I'm going to punt that to Mr. Wells to
13 explain, maybe in three sentences, where we are
14 because we believe it's that simple. And then, of
15 course, at the end, I don't think that we're going to
16 argue and fight with Mr. Cassioppi's and Comerica's
17 either revision or perhaps clarifying what we thought
18 they were requesting.

19 But I will say, before I punt it to
20 Mr. Wells, is that this estate is almost in what we
21 call recoupable debt in the amount of \$50 million.
22 There are a number of deals that are coming -- coming
23 to their end date to either be renewed or extended.
24 Those deals, depending on how they're negotiating,
25 will either put us in a deeper debt situation, or

1 allow us to recharacterize the prior deal and the
2 prior debt.

3 We believe that the heirs and interested
4 parties should have the opportunity to negotiate
5 those -- those new deals, particularly if they have a
6 debt-based component to those deals. That's different
7 than a transactional deal like a license for using
8 music or something else that's being managed and
9 operated by some of the music and entertainment
10 partners.

11 But any deal that really obligates the heirs
12 and interested parties to a debt obligation or could
13 potentially adversely impact the tax consequences and
14 the tax basis and liability of the -- of the parties,
15 we would like for them to have to seek either our
16 approval or the Court's approval.

17 So with that said, Mr. Wells, if you can
18 summarize, very briefly, the tax issue, as I think
19 Alan did mostly. And then we can close out, and then
20 Judge Eide can ask if he has any additional questions.

21 THE COURT: Thank you, Mr. McMillan.

22 MR. HALL: With the Court's permission, very
23 simple, Your Honor, I think I can boil this down as
24 Mr. McMillan suggested. There are two assets in the
25 estate; Paisley Park Enterprises; MTB Records, Inc,

1 which are S corporations. They've been S corporations
2 for their duration. An S corporation is, of course, a
3 pass-through entity, but it's limited in the types and
4 number of shareholders that can own it -- an S
5 corporation.

6 We have beneficiaries or assignees who have
7 beneficial interests in the estate who are not
8 eligible S corporation shareholders. So to distribute
9 the stock in these two S corporations immediately, or
10 at any time, would cause the termination of the S
11 election.

12 Now, tax advisors can figure out ways around
13 this issue. And if -- if we find ourselves having to
14 terminate the S election, the preference would be,
15 rather than giving up pass-through status, would be to
16 convert the two S corporations into limited liability
17 companies.

18 That's permitted under state law. However,
19 it causes a liquidation of both of the corporations.
20 These two corporations, in the aggregate, were valued
21 by the Internal Revenue Service in the adjusted
22 audit -- the adjusted values pursuant to the IRS
23 audit -- at \$42 million, \$42,250,379, to be exact.

24 That's a substantial but not majority of the
25 assets of the estate. Most of the assets are -- are

1 not tied up in a pass-through entity. They're
2 actually held in LLCs or in sole proprietorships,
3 outright, and can easily be distributed. The S corps
4 require, however, a little more thought and analysis.
5 To the extent there's been an increase in the value of
6 these S corporations since the date of death, which
7 would mean to the extent they are valued in excess of
8 \$42 million, then there might be -- there would be
9 gain recognized through the process of liquidating the
10 corporations.

11 We think that this is manageable, and it may
12 very well be that we will be able to liquidate the S
13 corporations without substantial adverse tax
14 consequences, but we need to get our arms around it.
15 And Primary Wave agrees with the individual
16 beneficiaries that this needs to be analyzed, and our
17 tax advisors are analyzing it at this time.

18 The other alternative, as Mr. Silver
19 suggested, would be that since an estate is a
20 permitted S corporation shareholder -- that's why the
21 S election has been permitted for six years now -- we
22 keep the estate alive solely for the purpose of
23 holding these two assets until we decide how -- how to
24 liquidate them or otherwise dispose of them.

25 So that's the tax issue, Your Honor, and if

1 there are any other questions, I'd certainly be happy
2 to address them.

3 THE COURT: I'm not going to ask questions
4 at this point.

5 Mr. Cassioppi, or anyone else with Comerica,
6 any response to any of the comments?

7 MR. CASSIOPPI: Yes, Your Honor. I'll
8 start, and then if Mr. Greiner or Ms. Steinert would
9 like to jump in, they certainly can. I want to start
10 just with a correction. There was a reference by
11 counsel that -- that we have somehow shifted our
12 position with respect to the \$5 million reserve.

13 I would just refer the Court to page 5 of
14 our December 21st opening memorandum. What we are
15 asking for, the last paragraph of this section -- what
16 we are asking for today is the exact same thing we
17 asked for the day we filed the motion. And so
18 I -- I'm not sure what the source of the confusion is,
19 but I'd refer the Court to that paragraph. That's
20 exactly the relief we've requested in the proposed
21 order submitted to the Court.

22 There were a couple comments made by
23 Mr. Silver and Mr. McMillan about -- along these lines
24 that the heir group should be able to participate in
25 the negotiation of these deals because we are this

1 close or we're so close to distribution. And while we
2 are all hopeful that that is the case, that we will be
3 able to distribute the estate soon, I think the Court,
4 just based on the comments that were made by counsel
5 today, can appreciate that there's some work to do
6 between here and there.

7 We are highly, highly reticent to change the
8 way we've been doing this for the last five years
9 and -- and have the heir group actually participate in
10 negotiations with our partners. Because -- because of
11 the additional difficulties that would be associated
12 with that and the fact that the estate, as long as it
13 has a PR, needs to speak through the PR.

14 Now, that is different than
15 consulting -- the personal representative consulting
16 with the members of the heir group, the personal
17 representative keeping the members of the heir group
18 advised about its plans, what its communications are.
19 All of that is encompassed by the existing protocols,
20 and we were not asking for any change to those. The
21 sole change, as set forth in our opening memorandum,
22 the reply, and the proposed order is the shortening of
23 the time period, the notice time period, ultimately
24 between when we reach preliminary agreement with a
25 partner and when we can come to the Court for approval

1 if there are any objections.

2 The -- the other suggestion by Mr. Silver,
3 Mr. McMillan, and Mr. Hall of a partial distribution
4 doesn't work for a lot of reasons, including because
5 of ongoing discussions that are occurring about what
6 assets are where, and whether they should be where
7 they're at and whether they need to be moved.

8 I don't think you could do a partial
9 distribution without a discharge associated with that.
10 The Court will see -- and all of this is publicly
11 available and was filed publicly this morning. At
12 some point today it will hit the Carver County website
13 that we are seeking court approval of settlement
14 agreements with the IRS and Minnesota Department of
15 Revenue with consents by all members of the heir
16 group -- and that's all a public filing.

17 But those estate taxes, the exact amount,
18 are going to depend on some expense calculations that
19 are still being worked on with the taxing authorities,
20 and that won't be done by February 4th. And so the
21 suggestion by Mr. Silver and others that, well, we can
22 distribute out most of the estate and -- and we do
23 that in a couple weeks, I think that's definitely
24 putting the cart before the horse.

25 I'm happy to address that more in formal

1 briefing, if need be. And there are a number of
2 reasons, I'm sure, from a tax and fiduciary standpoint
3 that I don't even have in my mind right now but that
4 we would want to put before the Court before the Court
5 would ever consider that type of a scenario.

6 Big picture, though, despite what may seem
7 like some disagreements between the parties today --
8 and there certainly are disagreements -- I'll say that
9 from Comerica's standpoint, we're very pleased at
10 where we're at to this point. The fact that we were
11 able to get the tax estate disputes resolved and that
12 everybody is on board really removes a giant obstacle
13 to us closing this down pretty quickly.

14 We've got some speed bumps between here and
15 there, but we're all rolling in the same direction.
16 We're all working together collaboratively, as
17 collaboratively as possible, and we intend to continue
18 doing so and continuing to do so as -- as any
19 fiduciary would under the circumstances. That is all
20 I have unless Mr. Greiner or Ms. Steinert want to jump
21 in with anything else.

22 MR. GREINER: Your Honor, if I may just make
23 a couple of quick comments. I think it's important to
24 note that the -- the tax issues that are being
25 discussed right now have not changed. They remain the

1 same tax issues that we have been discussing with
2 heirs and interested parties since Primary Wave first
3 became an interested party. And the issue, I think,
4 that we're really talking about is whether the heirs
5 and interested parties could come to an agreement upon
6 what the proper allocation of the tax costs are.

7 To be clear, Comerica is completely
8 indifferent and agnostic regarding how the
9 distribution occurs, as long as they can complete
10 their proper administration of the estate. In
11 liquidation, conversion of the S corps will entail
12 additional time and costs to the estate simply because
13 the valuations we're going to have to incur in
14 connection with those liquidations.

15 Certainly, eminently doable and would not
16 necessarily preclude a distribution of the assets, but
17 it would keep open the estate perhaps for a period of
18 time even after distribution simply to complete those
19 tasks. And we would want to be -- work
20 collaboratively with the heirs and interested parties
21 to make sure we can get those tax returns and those
22 valuations done.

23 One other thing I ought to mention is that
24 it is not possible to simply keep S corporations
25 stocked in a fully administered estate. You will

1 eventually lose your S election. You cannot keep an
2 estate open solely for the purposes of holding a
3 stock. There's a period of time. It's not set in
4 stone. But if we've got a fully administered estate,
5 and it's sitting on S corporation stock, that in and
6 of itself can cause a termination of the S election.

7 And so as long as Comerica were a -- the
8 personal representative, that would be an issue that
9 we would have concern about. And that's all I have.

10 THE COURT: All right. Mr. Magnuson, any
11 response to Mr. Silver, Mr. McMillan, and Mr. Hall's
12 comments?

13 MR. MAGNUSON: Thank you, Your Honor. I
14 didn't think I was punting. I was aware of everything
15 that Mr. Hall said. We've been talking about that for
16 quite some time. What I have said, and what has been
17 confirmed by Comerica, is these are complex issues
18 that require some additional discussion.

19 We have a -- a distribution plan that we
20 have provided to Comerica and to Mr. McMillan's group.
21 We have from them a description of what they would
22 like to do. In addition to the tax issues and the
23 inability to hold the S corp assets in a fully
24 administered plan, we don't have any details on what
25 the impact would be on the business operations if the

1 assets are divided on a partial basis.

2 Those are the things we're trying to work
3 out. We're not punting. We are trying to move down
4 the field in an agreeable and collaborative way.
5 Thank you.

6 THE COURT: Thank you. All right. Thank
7 you all for your presentations today. We'll leave
8 the -- obviously the February 4th calendar date on the
9 calendar. And how we proceed at that time, what that
10 hearing looks like, may depend a little bit on the
11 court order from today's hearing and the continued tax
12 consultation, negotiation, between the heir groups.
13 So I'll look forward to seeing you on February 4th.
14 Thank you all for your presentations today.

15 MR. MCMILLAN: Your Honor.

16 THE COURT: Mr. McMillan.

17 MR. MCMILLAN: I believe we have another
18 issue before you, and that is the issue to acknowledge
19 the trustees and beneficiaries of the John R. Nelson
20 trust. And I'd like to make sure we confirm that that
21 is in place, as that was one of the issues, unless
22 that is going to take place at a different time, which
23 I hope we can do that now.

24 THE COURT: And I invited all of you to -- I
25 think I specifically spoke when Mr. Silver was

1 speaking to ask him if he wanted to respond or comment
2 on any of the motions that have been brought.

3 So, Mr. Cassioppi, any objection to the
4 estate regarding the formal recognition of the estate
5 of John Nelson?

6 MR. CASSIOPPI: None, Your Honor. And,
7 actually, we would request that before the Court
8 adjudicates the motion we filed today -- which is the
9 motion seeking the approval of the tax settlement --
10 that the Court first adjudicate that motion.

11 And the reason I say that is Comerica
12 obviously wants to make sure that 100 percent of the
13 holders of the expectancy interests of the estate,
14 which would include, if the Court grants the motion,
15 the John Nelson revocable trust, that 100 percent
16 holders of the expectancy interest have signed off on
17 that motion.

18 And for belt and suspenders purposes, having
19 that order from the Court, assuming there's no
20 objections or other issues, and -- and recognition by
21 the Court that that revocable trust holds the
22 expectancy interests held by Mr. Nelson during his
23 lifetime would tie off that issue for her.

24 THE COURT: Mr. Magnuson, any comments?

25 MR. MAGNUSON: No, Your Honor. We didn't

1 object. We think it's the same motion that we brought
2 when our clients succeeded to interests, and we think
3 you should grant it.

4 THE COURT: Okay. Mr. McMillan, any other
5 comments regarding that motion?

6 MR. MCMILLAN: Your Honor, we concur with
7 Mr. Cassioppi, and I would add, as he mentioned
8 before, the -- the co-trustees and beneficiaries have
9 worked quickly to help and resolve, and they have
10 signed off already. So we agree with Mr. Cassioppi's
11 request.

12 THE COURT: Thank you very much. Anything
13 else you felt you needed to address?

14 MR. MCMILLAN: No, sir. Thank you.

15 THE COURT: All right. Okay. Sorry if you
16 felt I was cutting you off earlier. I didn't mean to.

17 MR. MCMILLAN: I didn't. We had a lot to
18 talk about, and I thank you for your time. Thank you
19 for everyone else, and I pass it back to you to close
20 this out, Your Honor.

21 THE COURT: All right. Then the court is in
22 recess. Thank you all.

23 (Hearing was concluded at 1:58 p.m.)

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STATE OF MINNESOTA)
COUNTY OF CARVER) ss.

REPORTER'S CERTIFICATE

Be it known that the foregoing proceedings were taken by Shelby L. Brown, on the 14th day of January, 2022, via videoconference;

That the testimony was recorded in stenotype by myself and transcribed into writing by computer-aided transcription, and that the transcript is a true record of the testimony given to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

WITNESS MY HAND AND SEAL this 16th day of January, 2022.



Shelby Brown

Shelby L. Brown
Official Court Reporter and Notary Public