



of the Moody fortune and the Moody legacy to the detriment of Herz's long-term legal client, Robert L. Moody, Jr. ("Bobby Moody, Jr.")—the oldest son and namesake of Robert L. Moody, Sr. Buddy Herz, aided and abetted by Ross Moody, and with Ross Moody's knowing participation, did so, despite Trustee Herz's fiduciary obligations to Bobby Moody, Jr. as beneficiary of the Trust that controls a substantial portion of the Moody fortune, and despite the fact that Herz, and his firm, were legal counsel to Bobby Moody, Jr.

The law firm Greer, Herz & Adams, LLP ("GHA") simply would not exist, or certainly would not exist in its present form, without Robert L. Moody, Sr. and the sprawling Moody interests as clients.<sup>1</sup> In addition to the Moody legal work, members of GHA are at times appointed to the various boards that manage Moody business interests. Most of the legal counsel provided by GHA is accomplished without a formal fee agreement, without setting out a specific scope of work, and without reference to, or waiver of, the innumerable conflicts of interest inherent in the multiple representations. Herz, sometimes forgetting his limited role as simply agent, counsel or paid appointee to multiple boards created and funded by the Moodys, has at times blatantly stated that he "made the Moodys" or was responsible for the Moodys' success. Likely Robert L. Moody, Sr., if he were able to do so, would disagree.

As stated, Buddy Herz is Trustee to a substantial Trust. Plaintiff Bobby Moody, Jr. is a beneficiary of that Trust and is a former legal client of Buddy Herz. The overwhelming number of conflicts of interest ignored by Trustee Buddy Herz is shocking and legally reprehensible. Such disregard of his fiduciary obligations has made Buddy Herz very rich. To wit: Herz serves as Trustee of a Trust that controls hundreds of millions in cash, real estate and business operations. *At the same*

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<sup>1</sup> The parasitic relationship between Greer, Herz & Adams and the Moody interests has existed for more than thirty-five years. In addition to seeking compensatory damages, attorneys' fees, and punitive damages for wrongful conduct, this case seeks to determine how much Greer, Herz & Adams have financially benefitted from its host, the Moody Interests, so that such fees can be disgorged.

*time*, he is legal counsel to the testator of the Trust, Robert L. Moody, Sr. *At the same time*, he is also legal counsel to multiple beneficiaries of the Trust, even though there is an ongoing conflict between said beneficiaries. *At the same time*, he serves as general counsel to two major competing publicly traded corporate entities controlled, directly or indirectly, by the Trust. *At the same time*, he serves as general counsel to two competing publicly traded corporate entities chaired by a beneficiary of the Trust who is in conflict with a co-beneficiary. *At the same time*, he is legal counsel to every corporate entity within the Trust, and on a daily basis advises these corporate entities. *At the same time*, he serves on the board of at least one major corporate bank asset that is part of the Trust corpus. *At the same time*, he serves as board member of another publicly traded corporation chaired by a beneficiary of the Trust who is in conflict with a co-beneficiary. And, *at the same time*, he and his firm routinely represent in court these corporate entities making up the Trust corpus when one of those entities is sued for alleged wrongdoing.<sup>2</sup> The incestuous nature of Buddy Herz's relationship with the Trust and the various Moody interests has made Herz and his law firm, GHA, millions and millions of dollars.

Through this case, Plaintiff Bobby Moody, Jr. seeks disgorgement of all fees paid to GHA as counsel for any Moody interest, compensatory damages for the multiple fiduciary breaches, as well as punitive damages and attorneys' fees. And, Plaintiff Bobby Moody, Jr. also seeks a full accounting of all fees earned by GHA and Buddy Herz in the last ten years, from which the firm or any of its partners or employees have represented any and all Moody-related entities, to include: trusts, boards, corporations, LLCs, LLPs, other partnerships, as well as foundations, and endowments, whether in their capacity as counsel or as a board member of any Moody-related entity. Further, due to multiple conflicts of interest and egregious self-dealing, GHA should be

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<sup>2</sup> As an example, if Trustee Buddy Herz fails to properly manage one of the corporate assets of the Trust (which has happened), and that asset is sued (which has happened), Herz benefits because it will be his law firm that defends that corporate asset in court (again, which has happened—repeatedly).

enjoined by this Honorable Court from acting as counsel for any Moody entity while at the same time serving as a Trustee or board member of that Moody entity.

**I. DISCOVERY LEVEL**

Plaintiff asserts that a Level 3 Discovery Control Plan should govern this case.

**II. PARTIES**

Plaintiff Robert L. Moody, Jr. (“Bobby Moody, Jr.”) is an individual who resides in Galveston, Texas.

Defendant Greer, Herz & Adams, LLP (“GHA”) is a Texas limited liability partnership with its principal office in Galveston, Texas. GHA can be served by serving its managing partner, Andrew J. Mytelka, One Moody Plaza, 18th Floor Galveston, Texas 77550.

Defendant Irwin “Buddy” Herz, Jr. (“Buddy Herz”) is an individual who has two residences: Four Leaf Towers, Unit 234, Building E, 5100 San Felipe, Houston, Texas 77056 and 2909 Dominique Drive, Galveston, Texas 77551. Buddy Herz is being sued in his individual capacity, as a partner of GHA, and in his capacity as Trustee to the Three R Trust. He can be served at either of the above addresses.

Defendant Ross Rankin Moody is an individual who resides in Austin, Texas at 1710 Cromwell Hill. He is being sued in his individual capacity.<sup>3</sup> He can be served at his residence.

**III. JURISDICTION AND VENUE**

This Court has subject-matter jurisdiction over this matter because the damages in question exceed the minimum jurisdiction of this court. This Court has personal jurisdiction over all Defendants because they reside in Texas.

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<sup>3</sup> Buddy Herz and Ross Moody are both being sued in their individual capacities for wrongful conduct that has benefitted each, individually. It would be egregiously inappropriate, and unlawful, for either to attempt to use Trust assets, or monies from any Moody entity, to defend this case.

Venue is proper here in Harris County because all or a substantial amount of the events at issue took place in Harris County, in that, a substantial amount of Trust assets purported to be managed by Defendant Buddy Herz are located here (to include bank branches, substantial monies, and nursing homes), a substantial portion of Defendant Buddy Herz's wrongful conduct occurred here, substantial Trust assets are being managed or mismanaged here, substantial Trust assets are being damaged here, the wrongful conduct described herein impacted substantial Trust assets here in Harris County, and one of the contingent beneficiaries of the Trust described herein resides in Harris County and is being damaged here. Venue is further proper because one of the Defendants—Buddy Herz—has his residence<sup>4</sup> in Harris County.

#### **IV. BACKGROUND FACTS**

##### **A. GHA's History with the Moodys and the Moody Interests.**

GHA has been in existence for eighty years. Starting with just three lawyers, GHA has now grown to more than thirty-five lawyers. GHA's growth is primarily due to its representation of Robert L. Moody, Sr. and the various Moody interests, from which GHA earns well over \$20 million yearly.

The Moody family of Galveston is one of the most distinguished families of Texas. The Moodys are known for their extensive business and charitable activities. GHA would simply not exist without the Moodys. GHA is known for nothing else other than being counsel for the sprawling Moody interests. For example, GHA is general counsel for American National Insurance

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<sup>4</sup> Defendant Buddy Herz has two residences: one in Harris County and one in Galveston County. Herz has been a resident of Harris County for many years. His home, located in Houston, Texas, is a fixed place of abode within his possession. That Houston residence is occupied, has been occupied for many years, and is intended to be occupied over a substantial period of time. And, that residence is permanent.

Company (“ANICO”), a diversified insurance and financial services company with over \$22 billion in assets. In one year alone, ANICO paid more than \$12 million in legal fees to GHA, as well as providing GHA with office space, phones, and signage. GHA is also counsel to the Moody Foundation, one of the largest charitable foundations in Texas with assets nearing \$2 billion. The Moody Foundation controls and thus votes almost 25% of the shares of ANICO. GHA is counsel to Moody Gardens, Inc., a non-profit corporation that operates the Moody Gardens complex on Galveston Island, a 242-acre educational and recreational facility. GHA serves as general counsel to National Western Life Insurance Company (“National Western”), a life insurance company based in Austin that provides services globally and has been recognized as one of the largest public companies in Austin. GHA also serves as counsel to American National Life Insurance Company of New York, Farm Family Life Insurance Company,<sup>5</sup> as well as American National Property and Casualty Company. Additionally, GHA serves as counsel to the Moody Endowment, a charitable endowment controlling more than \$500 million in assets, formed by Robert L. Moody, Sr., with the purpose to provide support to organizations committed to the rehabilitation of individuals suffering from head injuries and related charitable, educational and scientific activities. GHA also serves as counsel to the Moody Medical Research Institute, a hospital focused on research and public policy analysis related to health issues. GHA is also counsel to the Moody Neurorehabilitation Institute (formerly known as the “Transitional Learning Center” and referred to as such herein), which operates four locations in the state of Texas.<sup>6</sup> GHA also serves as counsel to Regent Management Services, a multi-million dollar management company that manages multiple nursing homes across Texas, including two in Harris County. GHA is also general counsel to Moody National Bank, a bank with more than fifteen branches—including branches in Harris

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<sup>5</sup> Of which he also serves on the board.

<sup>6</sup> Moody Neuro is in the process of opening a facility in Harris County.

County—and more than \$1 billion in assets. Moody National Bank’s Trust Department is one of the oldest and largest in the State of Texas. GHA serves as counsel to Robert L. Moody, Sr., as well as the Robert L. Moody Interests.

Until October 2017, GHA served for more than thirty years as legal counsel to Plaintiff Bobby Moody, Jr. individually, as well as the companies he owned or controlled.

**B. The Three R Trusts.**

What would eventually become known as the “Three R Trusts” (the “Trust”)<sup>7</sup> was created by Robert L. Moody, Sr. in June of 1960—less than six months after his first child, Plaintiff Bobby Moody, Jr., was born. Defendant Buddy Herz drafted multiple amendments to the trust instrument. At the time the Trust was created, Robert L. Moody, Sr. designated himself as Trustee, and the Trust was initially funded with 4,000 shares of ANICO common stock. The designated beneficiaries of the Trust were “the children of the Donor living at the time of the creation of this Trust or born to the Donor at any time thereafter.” When first established, only Plaintiff Bobby Moody, Jr. was a beneficiary of the Trust.

There are now four beneficiaries to the Trust: Bobby Moody, Jr.; Russell Moody; Defendant Ross Moody; and Frances Moody-Dahlberg. Buddy Herz became Trustee of the Trust in April 1971. As Trustee, Buddy Herz is charged with the management and preservation of the Trust’s assets and has an obligation to treat all beneficiaries of the Trust equally.

Significant assets within the Trust are located in Harris County. Trust assets include the millions of dollars in revenue streams and the millions of dollars in real estate associated with multiple nursing homes, two of which are in Harris County. Trust assets also include almost 100%

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<sup>7</sup> Although the assets of the trust are not segregated, the IRS has held that what is known as “the Three R Trusts” is in fact four separate trusts, with four beneficiaries.

of the shares of the voting stock that controls Moody National Bank, which has four of its branches and associated real estate in Harris County.

Under Herz's direction, Trust assets have been used to build structures in Harris County, such as the Toddler House at 4300, West 34<sup>th</sup> Street in Houston, Texas. At least two brokers in Houston, Texas are used by the Trust to manage the significant cash assets of the Trust. Total assets of the Trust,<sup>8</sup> which Herz is charged to protect and preserve, are valued in the hundreds of millions of dollars.

**C. Defendant Buddy Herz.**

Defendant Buddy Herz is a named partner of GHA. Herz or his firm are intimately involved with all of the Moody entities referenced herein. As an example, Herz oversaw the drafting of the Trust and any amendments, for which he serves as Trustee. As further example, he oversees any amendments to Moody Foundation<sup>9</sup> documents and reviews meeting minutes, for which he serves as legal counsel; Herz oversaw the drafting of the Moody Endowment documents, for which he serves as counsel; Herz oversaw the drafting of the documents setting up the Transitional Learning Center, again, for which he serves as counsel. He and his firm wrote Robert L. Moody, Sr.'s will, and he personally was designated to serve as Executor of Robert L. Moody, Sr.'s Estate.<sup>10</sup>

Herz, and his partners, were for many years personal lawyers to Robert L. Moody, Sr. In 2015, after being diagnosed with Alzheimer's, Robert L. Moody, Sr. executed a power of attorney

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<sup>8</sup> One contingent beneficiary of the Trust resides in Houston, Texas.

<sup>9</sup> Either Herz or a member of his firm attends EVERY board meeting of EVERY Moody entity meeting, and gets paid for doing so. This includes Moody National Bank, Moody Bancshares, ANICO and any of its subsidiaries, National Western and any of its subsidiaries, Regent Care, the Moody Foundation, the Moody Endowment, the Transitional Learning Center, etc. This list is very long; fees earned just to sit through meetings are astronomical.

<sup>10</sup> In that will, Herz was to receive a flat fee for the administration of Robert L. Moody, Sr.'s Estate. After Robert L. Moody, Sr.'s diagnosis with Alzheimer's, and during the process of drafting and negotiating a post-nuptial agreement for Robert L. Moody, Sr.'s wife, Ross Moody, without apparent justification and to the detriment of beneficiaries, advocated for a four-times increase in that already exorbitant flat fee to Buddy Herz. Such efforts ultimately failed, but demonstrate the collaboration of Defendants Ross Moody and Buddy Herz.



giving control of his Moody interests to the Trust Department of Moody National Bank. Herz wrote the power of attorney through which Moody National Bank's Trust Department is now managing Robert L. Moody, Sr.'s assets. In his role as Trustee of the Trust that owns and controls the shares of Moody National Bank, Herz now controls the details of how Robert L. Moody Sr.'s personal assets will be managed, and how the assets of Trust, for which Bobby Moody, Jr. is a beneficiary, will be managed.

Two large assets previously owned or controlled, directly or indirectly, by Robert L. Moody, Sr. are the controlling shares of National Western Life Insurance Company and ANICO. Despite the multiple conflicts of interest, Herz has now, through the power of attorney that he drafted, stepped into the shoes of Robert L. Moody, Sr. Indeed, due to his role as Trustee of the Trust, and given the fact that the largest Trust asset is the shares of Moody National Bank, and given that Moody National Bank's Trust Department now controls those assets owned and controlled by Robert L. Moody, Sr., Herz now has the ability to vote stock that controls the Board of National Western and ANICO. As general counsel for both of these two competing entities, Herz and GHA earn more than \$15 million yearly, just from the legal work they perform for National Western and ANICO. Further, specifically with regard to ANICO, since taking control of the Moody assets, Herz installed Ross Moody as a board member (November 2016) and later Chairman of the Board (April 2017).<sup>11</sup> Later, Herz had himself elected a full director of ANICO in July 2018, while at the same time orchestrating the removal of Plaintiff Bobby Moody, Jr. from the Board that he has served on for eighteen years.

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<sup>11</sup> Ross Moody chairs two publicly traded entities, in two different cities, both of which compete for the same business. Buddy Herz and his firm are now general counsel to both of these entities.

As the sole Trustee of the Trust, Herz controls hundreds of millions of dollars in assets and owes fiduciary duties to the four beneficiaries of the Trust, including Plaintiff Bobby Moody, Jr. The assets of the Trust include the controlling shares of Moody National Bank. Herz as Trustee controls the voting shares of Moody National Bank,<sup>12</sup> meaning he ultimately controls the bank itself. Now that Robert L. Moody, Sr. has given control of his personal assets to Moody National Bank's Trust Department, Herz had himself installed<sup>13</sup> on the Moody National Bank Board as an Advisory Director, with full director fees,<sup>14</sup> while he continues to earn significant monies by performing the bank's legal work as well as legal work for the trust department. Herz later engineered the election of his law partner, Greg Garrison, to the board of Moody Bancshares and Herz ensured that Garrison was placed on the Hometown Bank Board as well. Thereafter, because Ross Moody, a new board member, was unhappy with Moody National Bank's Trust Department, Ross Moody, with the assistance of Buddy Herz, demoted the senior trust officer of the Bank, and replaced him with an individual of their mutual choosing.<sup>15</sup> This removal and substitution was done without the knowledge of Bobby Moody, Jr., even though in the past Bobby Moody, Jr., as

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<sup>12</sup> The Moody Bank Holding Company, which is wholly owned by Moody Bancshares, Inc., owns 98% of the common stock of Moody National Bank. The Trust owns 100% of Moody Bancshares' Class B stock, which elects a majority of Bancshares' directors and 50.3% of Bancshares' Class A stock. Thus, the Trust, and more specifically the Trust's Trustee, Buddy Herz, controls Moody Bank. Herz and his law firm are counsel to all three.

<sup>13</sup> To install himself on the Moody National Bank Board Buddy Herz merely had to tell the Chairman to put him on the board. It was literally that simple, and such demonstrates the power that Herz had over the Bank. Such also demonstrates why Herz should be immediately removed from any association with the bank as long as he remains Trustee of the Trust.

<sup>14</sup> Herz only became an Advisory Director after Robert L. Moody, Sr. executed the Power of Attorney essentially ceding control of all of Robert L. Moody, Sr.'s affairs to the Moody National Bank Trust Department, which is essentially controlled by the Trustee of the Trust—Buddy Herz.

<sup>15</sup> The Trust Department of the Moody National Bank is supposed to be neutral and independent of the bank, and is operated apart from the operations of the Bank. However, with regard to the Moody assets and management, Buddy Herz and Ross Moody demoted the current head of the Trust department, while at the same time they interviewed and hired a new head of the department that was more friendly to their interests. This action was absolutely contrary to the required independence of the trust department, and allows Ross Moody and Buddy Herz to control Moody assets that should be controlled by the trust department of the bank.

a long-time Moody National Bank board member and as the oldest son of Robert L. Moody, Sr., had always been included in such decisions that impacted the management of the bank.

Other significant assets of the Trust are multiple nursing homes owned and operated by various companies. Herz not only controls those valuable assets as Trustee of the Trust, he and his law firm performed the legal work to establish those companies, and continue to perform the legal work associated with their operation.<sup>16</sup>

**D. Defendant Ross Moody.**

Defendant Ross Moody is the Chief Executive Officer and Chairman of the Board of National Western Life Insurance Company, one of the largest publicly traded companies based in Austin, Texas. When Robert L. Moody, Sr. relinquished his duties with respect to the Moody interests due to health issues, Ross Moody had himself appointed not only Chief Executive Officer, but also Chairman of the Board of National Western. The first year that Ross Moody served as Chief Executive Officer, his total compensation package was approximately \$2.6 million. By 2019, his total compensation package was almost \$10 million yearly. Ross Moody currently earns from National Western more than twice what his father, Robert L. Moody, Sr. ever earned in the same positions at National Western.<sup>17</sup> Ross Moody has now even obtained what is called in the business a “golden parachute” in the event he is ever terminated from his position. The makeup of the Board of National Western, and compensation packages for executives, are approved by a

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<sup>16</sup> Herz is charged as Trustee with managing the nursing homes owned by the Trust. When those nursing homes have been accused of wrongdoing and have been sued, Herz’s firm represents them. Thus, Herz actually profits by failing to do his job as Trustee. This is just one example of the many conflicts that Trustee Buddy Herz ignores and profits from.

<sup>17</sup> Ross Moody’s compensation package far exceeds that of the Chief Executive Officer of ANICO, a much larger company.

majority vote of the shareholders. Ultimately, Buddy Herz, as general counsel and Trustee of the Trust, controls the makeup of the board and salary compensation of National Western.

With the help of Buddy Herz, Ross Moody was elected to the Board of ANICO in November 2016, even though he never had served on such board. In April 2017, Ross Moody became Chairman of the Board of ANICO—a company in direct competition with the other company he is chair of, National Western. Again, with the help of Buddy Herz, Ross Moody became a member of the Board of Moody National Bank in 2018, even though he had previously never served on such board.

Ross Moody, along with his half sister, Frances Moody-Dahlberg, and his daughter, Elizabeth L. Moody, are the only three directors of the Moody Foundation. The Moody Foundation controls almost 25% of ANICO's stock. Ross Moody is also a member of the board of the Moody Endowment. With the assistance of Buddy Herz, Ross Moody has grown and stacked the board of the Moody Endowment such that, now, Ross Moody controls the Moody Endowment. Similarly, with the assistance of Buddy Herz, and without disclosing such to Bobby Moody, Jr., Buddy Herz orchestrated putting Ross Moody and Frances Moody-Dahlberg on the board of the Robert L. Moody Foundation. This foundation chooses the next Trustee of the Trust, meaning that Ross Moody will choose the successor Trustee of the Trust when Buddy Herz's term ends.

**E. Plaintiff Robert “Bobby” L. Moody, Jr.**

Plaintiff Bobby Moody, Jr. is the oldest son of Robert L. Moody, Sr. Bobby Moody, Jr. is the President and Director of Moody Insurance Group, Inc., which he founded in 1986. Bobby

Moody, Jr. is also owner and chairman of three Urgent Care clinics, and is active in real estate investments.<sup>18</sup>

Bobby Moody, Jr. serves as an Advisory Board Member and Director of Moody National Bank, HomeTown Bank, the Mary Moody Northern Foundation, and the Moody Endowment. Bobby Moody, Jr. previously held a position on the Board of ANICO for eighteen years. In July 2017, Bobby Moody, Jr. was removed due to the efforts of Buddy Herz and Ross Moody. Most directors of ANICO are voted upon at the annual meeting; yet, Buddy Herz and Ross Moody took the unusual action to remove Bobby Moody, Jr. in the middle of the year. Bobby Moody, Jr. previously served as Chairman of Moody Bancshares. Due to the efforts of Buddy Herz and Ross Moody, Bobby Moody, Jr. was removed from such position in July of 2018.

For more than thirty years, Buddy Herz and GHA had been legal counsel to Bobby Moody, Jr. individually and the companies he owned and controlled. In October 2017, GHA and Herz abruptly terminated the relationship. At a Moody National Bank board meeting several months later, Herz stated to Moody emphatically, “I will ruin you and make your life miserable.” When Bobby Moody, Jr. sent a certified letter asking that Herz not speak to him in that manner in the future, Herz failed to respond. Shortly thereafter, Herz was appointed to the full Board of ANICO and was retained by Ross Moody as General Counsel for National Western. As is demonstrated by the more than \$12 million GHA earned in 2019 as General Counsel for ANICO, being “chosen” to be General Counsel to National Western is very lucrative to Buddy Herz and his firm, GHA. It is no coincidence that—after GHA was selected to be General Counsel for National Western—Herz then engineered the placement of Ross Moody on the board of Moody National Bank.

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<sup>18</sup> Bobby Moody, Jr. is the only Moody child of Robert L. Moody, Sr. who started and runs his own businesses.

**F. Fiduciary Duties owed by GHA and Buddy Herz to Bobby Moody, Jr. by Virtue of GHA and Herz Being Legal Counsel to Bobby Moody, Jr.**

GHA and Buddy Herz were counsel to Bobby Moody, Jr. for more than thirty years. Bobby Moody, Jr. owns Moody Insurance Group. It was GHA and Buddy Herz who provided the legal counsel and the necessary legal work to create Moody Insurance Group. GHA and Buddy Herz also provided ongoing legal representation for any issues that would arise during the operation of that entity. Bobby Moody, Jr. also owns three Urgent Care clinics. GHA and Herz performed all the necessary legal work to create those clinics. GHA and Herz periodically provided human resource advice and other ongoing legal advice related to those clinics. Bobby Moody, Jr. routinely purchases and sells real estate. GHA and Herz were routinely used as legal counsel by Bobby Moody, Jr. to form limited partnerships to purchase real estate, and deal with any legal issues that would arise in Bobby Moody, Jr.'s real estate endeavors. Up and until October 2017, any time Bobby Moody, Jr. needed legal assistance, it was GHA and/or Buddy Herz who provided it. Many times such advice was provided informally, by phone; other times, that advice was more formal, where a file would be kept by GHA and formal bills would be sent to Bobby Moody, Jr. During the course of their lengthy representation of Bobby Moody, Jr., GHA and Buddy Herz acquired both confidential and non-confidential information about Bobby Moody, Jr. and his various business interests and financial condition.

As legal counsel for Bobby Moody, Jr., GHA and Buddy Herz owed Bobby Moody, Jr. a fiduciary duty. The term "fiduciary" refers to someone who occupies a position of peculiar confidence towards another. To owe another a fiduciary duty refers to integrity and fidelity, and contemplates fair dealing and good faith.

Subsumed within the fiduciary duty owed by GHA and Buddy Herz is the duty of loyalty and the duty to make full disclosure. The duty of loyalty owed by GHA and Buddy Herz to Bobby Moody, Jr. is fundamental to the fiduciary relationship. Specifically, GHA/Herz had a duty to: (1) ensure that any transactions they were involved in were fair and equitable to Bobby Moody, Jr.; (2) demonstrate that they acted in the utmost good faith and exercised the most scrupulous honesty towards Bobby Moody, Jr.; (3) demonstrate that they placed the interests of Bobby Moody, Jr. before their own, (4) demonstrate that they did not gain any benefit for themselves at the expense of Bobby Moody, Jr.; (5) demonstrate that they did not place themselves in any position where their self-interest might conflict with their obligations as a fiduciary; and (6) ensure that they fully and fairly disclosed all important information to Bobby Moody, Jr., concerning any transaction that may impact their client, Bobby Moody, Jr.

As part of GHA and Buddy Herz's fiduciary duty owed to Bobby Moody, Jr., GHA and Buddy Herz had the obligation to make clear the scope of their representation, avoid conflicts, and disclose and eliminate any conflicts that arise. GHA and Buddy Herz utterly failed in this regard.

The rules in Texas that govern lawyers are very clear about the obligations owed by GHA/Herz to Bobby Moody, Jr. Indeed, according to the Texas Disciplinary Rules of Professional Conduct, a lawyer "shall not" represent a person if the representation of that person "reasonably appears to be or becomes adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person *or by the lawyer's or law firm's own interests.*" Further, a lawyer who "has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute arising out of the matter, unless prior consent is obtained . . ." Moreover, a lawyer, without prior consent, who personally has formally represented a client, shall not represent a person or

entity in a matter adverse to a former client, if such representation uses confidential client information.

**G. Fiduciary Duties Owed to Bobby Moody, Jr. by GHA and Buddy Herz as Legal Counsel to Various Organizations where Bobby Moody, Jr. Served as Board Member.**

In addition to representing Bobby Moody, Jr. individually, and representing the companies that he owned and controlled, GHA and Buddy Herz also represented Moody National Bank, Moody National Bank Trust Department, the board of the bank, and at times purported to represent the individual directors of the bank. As such, GHA and Buddy Herz owed fiduciary duties to Moody National Bank, its board, and its individual board members. According to the ethical rules that govern, when representing an organization and a conflict arises between the organization and its directors or officers, attorneys have an obligation to make clear who they represent, to whom they owe obligations, and must explain the identity of the client to all concerned.

In addition to representing Bobby Moody, Jr. individually and the companies that he owned and controlled, GHA and Buddy Herz also represented ANICO, the board of ANICO, and at times purported to represent the individual directors. As such, GHA and Buddy Herz owed fiduciary duties to ANICO, its board, and its individual board members.<sup>19</sup> According to the ethical rules that govern, when representing an organization and a conflict arises between the organization and its directors or officers, attorneys have an obligation to make clear who they represent, to whom they owe obligations, and must explain the identity of the client to all concerned.

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<sup>19</sup> GHA and Herz routinely reviewed and approved the financial and other disclosures required by board members. GHA routinely responded to legal questions posed by board members, even those pertaining to said members in their individual capacities.



In addition to representing Bobby Moody, Jr. individually, and representing the companies that he owned and controlled, GHA and Buddy Herz also represented the Moody Endowment, its board, and purported to represent the individual board members. Indeed, it was Bobby Moody, Jr. who worked with GHA and Buddy Herz to set up and create the Moody Endowment, and such was named by Bobby Moody, Jr. According to the ethical rules that govern, when representing an organization and a conflict arises between the organization and its directors or officers, attorneys have an obligation to make clear who they represent, to whom they owe obligations, and must explain the identity of the client to all concerned.

In addition to representing Bobby Moody, Jr. individually and the companies that he owned and controlled, GHA and Buddy Herz also represented The Transitional Learning Center, its board, and purported to represent the individual board members. According to the ethical rules that govern, when representing an organization and a conflict arises between the organization and its directors or officers, attorneys have an obligation to make clear who they represent, to whom they owe obligations, and must explain the identity of the client to all concerned.

As will be shown in detail below, GHA and Buddy Herz, in their role as counsel for Bobby Moody, Jr., breached their fiduciary duties, breached each of the articulated obligations inherent within the common law regarding that important duty, and also breached those duties imposed by the Texas Professional Responsibility rules that govern lawyers.

**H. Fiduciary Duty Owed by Buddy Herz to Bobby Moody, Jr. by Virtue of Herz's Role as Trustee of the Trust.**

As Trustee of the Trust, Buddy Herz owes a fiduciary duty to Bobby Moody, Jr., one of four beneficiaries of the Trust. Inherent in that duty are the duties of **loyalty** and the duty of **full disclosure**. The duty of loyalty is breached when a trustee takes advantage of his position to enrich

himself, his businesses, or his friends and family. The duty of loyalty is also breached when a trustee takes advantage of his position to advance himself, his businesses, or his friends and family. Self-dealing in particular is a breach of the duty of loyalty owed by a trustee. The trustee's duty of fidelity forbids the trustee from placing himself in a situation where there is or could be a conflict between his self-interest and his duty to trust beneficiaries.

Further, with regard to the duty of full disclosure, a trustee's fiduciary duty to beneficiaries is much more than the traditional obligation not to make any material misrepresentations to beneficiaries; rather, the trustee has an **affirmative** duty to make full and accurate confessions of all his fiduciary activities, transactions, **profits**, and mistakes. Under Texas law, the failure to make full disclosure by a fiduciary is equivalent to fraudulent concealment, and upon such a showing, liability attaches even in the absence of damage to the trust or beneficiaries.

The law imposes multiple additional duties inherent in a trustee's fiduciary duty. A trustee has a duty of confidentiality, a duty to keep beneficiaries informed and to account to them, a duty to keep accurate records and books, and a duty not to delegate trustee responsibilities. Furthermore, as part of these important duties, the trustee is simply forbidden from taking certain actions. For example, it is prohibited, and such would be a breach of his fiduciary duty, if a trustee secures incidental benefits for himself or his family while engaged in trust business.<sup>20</sup> A trustee is also prohibited from voting for himself as director or officer of a corporation that is part of the trust corpus. And, a trustee is prohibited from acting for the trust while at the same time acting for a third person that deals with the trust, or trust assets. Importantly, a trustee must deal with all

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<sup>20</sup> Buddy Herz, as Trustee, and thus with the influence he has had over other Moody interests, has put his grandson to work at Moody Foundation, and had his daughter's firm redecorate Moody Gardens and the offices of the Moody Foundation. Using his influence as Trustee, and the ability to vote the shares of Moody National Bank stock, Herz was able to place one of his partners on the board of Hometown Bank and Moody National Bancshares. Texas Trust law prohibits such incidental benefits.

beneficiaries equally, and cannot assist in furthering the interests of one beneficiary over that of another, even outside of his role as trustee. Further, a trustee cannot employ himself or his firm to perform specialized work for the trust, or its assets. And, finally, a trustee simply cannot exercise his fiduciary duties when the trustee expresses hostility toward a beneficiary such that it impacts the trustee's performance. Herz, as Trustee, literally violated each of the listed obligations of trustee under Texas law, and, blatantly acted contrary to each of listed actions prohibited under Texas law.

## V. CAUSES OF ACTION

### A. Breach of Fiduciary Duty Owed to Bobby Moody, Jr. as His Legal Counsel—Buddy Herz and GHA.

Plaintiff incorporates the previous allegations.

Plaintiff Bobby Moody, Jr. was a legal client of Buddy Herz and GHA. As Bobby Moody, Jr.'s counsel, Buddy Herz and GHA each owed Bobby Moody, Jr. a fiduciary duty. Buddy Herz and GHA breached this duty in multiple ways, including, but not limited to:

- Buddy Herz repeatedly lied to Bobby Moody, Jr., to include, but not limited to: lying about whether there would be a meeting of Moody Foundation to choose a new board member; lying about whether there would be a meeting of the Robert L. Moody Foundation to choose new board members; pretending that he did not know that Ross Moody would be put on the ANICO board, and stating that, once he learned of such, he could not reach Bobby Moody, Jr. by phone; pretending that he did not know that Ross Moody would be made chairman of ANICO; lying that he did not know that Bobby Moody, Jr. would be removed from the ANICO Board; lying that he had no idea that he, Buddy Herz, would be made a full director of ANICO; lying when he told Bobby Moody, Jr. he did not know that Ross Moody would be made board member of Moody National Bank and Moody Bancshares; lying by stating that Herz was Bobby

Moody, Jr.'s best advocate and best friend; and lying by stating that they were "looking out" for Bobby Moody, Jr.'s interests, but instead were advancing their personal interests and the interests of their larger client, Ross Moody and National Western.

- Repeatedly placed the interests of other clients, or individuals in leadership positions of other clients, including ANICO, Moody National Bank, and National Western Life Insurance above the interests of their client, Bobby Moody, Jr.;
- Repeatedly placed their own personal financial interests and their desire to make more money over the interests of Bobby Moody, Jr., specifically *the ten to twenty millions in fees* earned from the various Moody interests yearly over the relatively small fees earned yearly from Bobby Moody, Jr. and his business interests;
- Repeatedly placed their own personal interests to be appointed board members of the various Moody interests over the interests of their client, Bobby Moody, Jr.;
- Worked, schemed and succeeded, using information they gleaned from their representation of Bobby Moody, Jr., in having their client Bobby Moody, Jr. removed as a board member of ANICO;
- Worked, schemed and succeed in having Defendant Ross Moody placed on the Moody National Bank Board and Moody Bancshares;
- Worked, schemed and succeeded, using information they gleaned from their representation of Bobby Moody, Jr., in preventing their client Bobby Moody, Jr. from being named Chairman of Moody National Bank;
- Worked, schemed and succeeded, using information they gleaned from their representation of Bobby Moody, Jr., in removing the ability of Bobby Moody, Jr. to vote Moody Bancshares' interest in Hometown Bank's stock;

- Worked, schemed, and succeeded, using information they gleaned from the representation of Bobby Moody, Jr., in removing Bobby Moody, Jr. from the chairmanship of Moody Bancshares;
- When Robert L. Moody, Sr. stepped down, worked secretly with Ross Moody, to place Elizabeth Moody, an inexperienced twenty-four year old college student and daughter of Ross Moody, on the Moody Foundation, rather than Robert L. Moody, Sr.'s oldest son, Bobby Moody, Jr.;
- Worked, schemed, and succeeded, using information they gleaned from the representation of Bobby Moody, Jr., in ending a significant line of insurance business Bobby Moody, Jr. had with Regent Care;
- Secretly conspired to prevent Bobby Moody, Jr. from being placed on the board of the Robert L. Moody Foundation—the foundation that ultimately chooses a successor Trustee to the Trust of which Bobby Moody, Jr. is a beneficiary (Bobby Moody, Jr. is the only Trust beneficiary of the four not on such board);
- Failed to disclose to Bobby Moody, Jr. the board meeting wherein the current members of the Robert L. Moody Foundation were chosen;
- Repeatedly failed to deal fairly and in good faith with Bobby Moody, Jr.;
- Failed to treat beneficiaries of the Trust equally, and actively worked to advance the interests of Ross Moody over those of Bobby Moody, Jr.
- Repeatedly failed to disclose the multiple conflicts of interest inherent in their attempts to adequately represent all Moody interests to which they were counsel, and from which they were earning millions of dollars, to include the multiple conflicts of interest arising with their attempts to represent Bobby Moody, Jr. and ANICO at the same time; their

attempts to represent Bobby Moody, Jr. and Regent Care at the same time; or their attempts to represent Bobby Moody, Jr. and National Western and its leadership, Ross Moody, at the same time;

- Conspired with Ross Moody to put Ross Moody on the board of ANICO, and ultimately make Ross Moody Chairman of the Board of ANICO, while at the same time removing Bobby Moody, Jr. from the Board and making Buddy Herz a full board member;
- Conspired with Ross Moody to place Ross Moody on the Board of Moody National Bank (and a future plan to make Ross Moody Chairman of Moody National Bank and Moody Bancshares), and in return GHA and Buddy Herz were named General Counsel of National Western—another Moody company Ross Moody chairs;
- Worked to remove Bobby Moody, Jr. as agent of record for Transitional Learning Center, using information they gleaned through their representation of Bobby Moody, Jr.;
- Wrote the marketing agreement between Bobby Moody, Jr. and ANICO as counsel to both Bobby Moody, Jr. and ANICO, and then assisted and conspired, using information they gleaned through their representation of Bobby Moody, Jr., to cancel that agreement;
- Wrote the consulting agreement between Bobby Moody, Jr. and ANICO as counsel to both Bobby Moody, Jr. and ANICO, and then, using information they gleaned through their representation of Bobby Moody, Jr., assisted and conspired to cancel that agreement;

- Worked to reduce and ultimately eliminate Bobby Moody, Jr.'s commissions earned as a result of his work with Regent Care, using information they gleaned through their representation of Bobby Moody, Jr.;
- Although Herz could not remove Bobby Moody, Jr. from his board seat on the Moody Endowment, worked with Ross Moody to eliminate Bobby Moody, Jr.'s board fees;
- Attempted to evict their client Bobby Moody, Jr. from his office that he has had for more than thirty three years, while at the same time GHA and Buddy Herz receive free rent, signage and phones;
- Once Buddy Herz gained control, GHA and Herz's legal fees charged to all Moody entities, and specifically those entities within the Trust, increased exponentially;
- Herz stated to Bobby Moody, Jr. that he would "ruin you financially and make your life miserable.";
- Failed to address the multiple conflicts of interest as a result of their representation of Bobby Moody, Jr. and various Moody entities that they also represented, and used information gleaned from their representation of Bobby Moody, Jr. against him while representing other Moody interests;
- Through their more than thirty years of representing Bobby Moody, Jr., GHA and Buddy Herz acquired both confidential and non-confidential information about Bobby Moody, Jr. and his various business interests and financial condition. After such representation was summarily terminated by GHA and Herz, Herz and GHA disclosed that information to Ross Moody, and worked together with Ross Moody to use such information against Bobby Moody, Jr., to Bobby Moody, Jr.'s detriment. Specifically, Buddy Herz and GHA are well aware of Bobby Moody, Jr.'s various contracts and

agreements with Regent Care, ANICO, the Transitional Learning Center, and other Moody interests of which Buddy Herz and GHA are also counsel. Herz and GHA shared this information, which included Bobby Moody, Jr.'s financial information and information about his assets to others, to include Ross Moody, and worked to end all such relationships to hurt Bobby Moody, Jr. financially;

- Along with Ross Moody, demoted the head of the trust department at Moody Bank and thereafter interviewed and hired someone of their choosing; this was done without Bobby Moody, Jr.'s input or knowledge and allows Herz and Ross Moody to have more influence over the Moody National Bank Trust Department, which has power of attorney over Robert L. Moody, Sr.'s interests;
- Failed to disclose and eliminate the inherent conflicts of interest in attempting to represent two competing publicly traded insurance companies, multiple beneficiaries of the same trust, trustee and beneficiaries of the trust, and representing entities within a trust when they are sued for wrongdoing while at the same time serving as trustee;
- Using financial information about Bobby Moody, Jr. acquired over more than thirty years of legal representation, Herz and GHA, in concert with Ross Moody, worked to hurt Bobby Moody, Jr. financially with the end goal assisting Ross Moody to gain control and leadership of all Moody interests, business and charitable, while Herz and GHA could increase their fees and Bobby Moody, Jr. would no longer be able to question them; and
- Conspired with Ross Moody in an effort to eliminate Bobby Moody, Jr. from all Moody board positions, and to end all contracts Bobby Moody, Jr. or any entity he owns had with any Moody interest. In return, GHA and Buddy Herz received SUBSTANTIAL



LEGAL FEES, board positions for their partners, and board fees; and Ross Moody obtained control of the Moody Foundation, ANICO, and National Western, and is in line to gain control of Moody National Bank. As a result of their joint efforts, Ross Moody now is able to choose a successor Trustee of the Trust, once Buddy Herz ultimately steps down. Ross Moody also now receives an exorbitant salary and golden parachute from National Western<sup>21</sup> and stands to receive a salary from ANICO and Moody National Bank as well.

**Fraudulent Concealment/Discovery Rule:**<sup>22</sup> Buddy Herz and GHA fraudulently concealed the wrongful actions described above, for the purpose of allowing them to continue to earn substantial attorneys' fees and ensure that Buddy Herz and Ross Moody would ultimately control the Moody interests. In addition to financially benefitting GHA and Herz by making GHA General Counsel of National Western, Ross Moody now has sufficient control to allow Herz and GHA to continue to increase their fees charged to the other Moody interests. Herz and GHA had knowledge of the wrongs described above, but either remained silent about such wrongs, or made misrepresentations that concealed such wrongs. Bobby Moody, Jr. relied upon such silence and misrepresentations. Further, many of the actions described, and specifically the ways in which GHA and Buddy Herz benefitted from such actions, simply were not inherently discoverable but would have been objectively verifiable. Indeed, it was not until Buddy Herz screamed at Bobby Moody, Jr. and told him he would ruin him financially and make his life miserable that Bobby Moody, Jr. realized that GHA and Buddy

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<sup>21</sup> Defendant Ross Moody's compensation package at National Western has almost quadrupled since his father stepped down and Ross Moody was made chairman. In that same time frame, GHA was selected by Ross Moody as General Counsel for National Western, even though GHA had not done work for National Western for almost twenty years. What is more shocking is that Ross Moody, with GHA's help, has now become chairman of two publicly traded entities that compete with one another—it is no coincidence that Herz and GHA are general counsel to both.

<sup>22</sup> Plaintiff also alleges and will prove that he has been damaged by repetitive wrongful acts that have not yet ceased; thus, the statute of limitations has not yet accrued.

Herz simply were not protecting his interests, but were instead placing the interests of other clients ahead of his own, and had the intention to harm him financially and otherwise. As such, to the extent any particular act complained of herein occurred outside of the applicable limitations period, such period is extended due to GHA and Herz's fraudulent concealment, or operation of the discovery rule.

As a proximate result of Buddy Herz and GHA's acts and omissions, Plaintiff Bobby Moody, Jr. has been damaged, as set forth below.

**B. Breach of Fiduciary Duty—Trustee Buddy Herz, in His Individual Capacity.**<sup>23</sup>

Plaintiff incorporates the previous allegations.

As Trustee of the Trust, Buddy Herz owed and still owes, a fiduciary duty to Bobby Moody, Jr., one of four beneficiaries of the Trust. Bobby Moody, Jr. brings these claims in his individual capacity as beneficiary of the Trust against Trustee Buddy Herz in Herz's individual capacity.

Trustee Buddy Herz repeatedly breached his fiduciary duties, in at least the following ways:

- Repeatedly lied to Bobby Moody, Jr., or failed to disclose to him important information that he had a duty to disclose, including lying about whether there would be a meeting of the Moody Foundation to choose a new board member, while at the same time taking actions instrumental to making such occur; lying about whether there would be a meeting of the Robert L. Moody Foundation to choose new board members, which would ultimately determine who had the power to choose the successor Trustee of the Trust, while at the same time taking actions instrumental to making such occur; concealed, and when asked, pretended that he did not know that Ross Moody would be put on the ANICO board, while at the same time taking actions instrumental to making

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<sup>23</sup> The wrongful actions described herein damaged the Trust corpus and enriched Buddy Herz individually. He is thus being sued in his individual capacity.

such occur, and stating that once he learned of such that he could not reach Bobby Moody, Jr. by phone; concealing, and then later pretending that he did not know that Ross Moody would be made chairman of ANICO, while at the same time taking actions instrumental to making such occur; lying by stating that he did not know that Bobby Moody, Jr. would be removed from the ANICO board, while at the same time taking actions instrumental to making such occur; lying by stating that he had no idea that he, Buddy Herz, would be made a full director of ANICO, while at the same time taking actions instrumental to making such occur; failing to tell Bobby Moody, Jr. that Bobby Moody, Jr. would be removed from his Chairmanship of Moody Bancshares; when Bobby Moody, Jr. ultimately found out that Buddy Herz would remove Bobby Moody, Jr. as Chairman of Moody Bancshares, Buddy Herz lied and said that he was taking such action because he needed to be fair to all beneficiaries of the Trust; failing to tell Bobby Moody, Jr. that Ross Moody would be put on the Board of Moody National Bank and Moody Bancshares; lying about making Bobby Moody, Jr. Chairman of Moody National Bank when he had no intention of doing so, even though he had the ability to do so; lying by telling Bobby Moody, Jr. that several family members were concerned about Bobby Moody, Jr.'s ability to serve as chairman of Moody National Bank, when such was not true, and instead Buddy Herz was using such lies as justification to prevent Bobby Moody, Jr. from serving as chair; lying by telling Bobby Moody, Jr. that several bank officers were concerned about Bobby Moody, Jr.'s ability to serve as chairman of Moody National Bank, when such was not true, and instead Buddy Herz was using such lies as justification to prevent Bobby Moody, Jr. from serving as chair; more recently, lying by stating that he was "a friend" or was "an

advocate for” or he was “Uncle Buddy” (or similar silliness) to Bobby Moody, Jr., while at the same time Herz was trying to gain information to use against Bobby Moody, Jr.; and even more recently, attempting to get Bobby Moody, Jr., his former legal client, and beneficiary to the Trust, to state that Buddy Herz had done “a good job” and to encourage Bobby Moody, Jr. to state that he “was happy” with Herz’s work as his lawyer Trustee, and stating to the extent he was not, it Ross Moody’s fault;

- For many years, completely and utterly failed to make productive millions of dollars in Trust cash, costing the Trust millions of dollars in interest income, dividends, and higher equity values (only recently has Herz engaged Houston brokers to invest significant cash assets within the Trust);
- Took advantage of his position as Trustee to enrich himself personally through placement of himself on the ANICO board;
- Took advantage of his position as Trustee to enrich himself personally by placing himself on the Moody National Bank Board;
- Took advantage of his position as Trustee to place partner Greg Garrison on the Hometown Bank Board;
- Took advantage of his position as Trustee to place his partner Greg Garrison on the Board of Moody National Bancshares;
- Took advantage of his position as Trustee to perform legal services for significant Trust assets, including Regent Care, Moody National Bank, and Moody National Bancshares. Such services earned him personally millions of dollars yearly—such fees for his services increased dramatically once Herz prepared, and Robert L. Moody, Sr. signed, the power of attorney ceding control of many of the significant Moody interests to

Moody National Bank Trust Department, which Hertz controls via his position as Trustee; such self-dealing in equity should result in disgorgement of any fees wrongly earned, whether from the Trust or otherwise;

- Violated the duty of full disclosure in that he has never disclosed to the beneficiaries of the Trust how much monies he earns as counsel for the many assets contained in the Trust;
- Placed himself in a conflict of interest position by earning significant income from Trust assets while at the same time he had an obligation to preserve and maximize such assets;
- Delegated his authority to preserve and protect Trust assets to third parties;
- Failed to properly and accurately account for Trust expenses, for how he was paid by the Trust or Trust assets;
- Secured incidental benefits for members of his family, and charitable interests he personally supports, by virtue of his position as Trustee of the Trust, which virtually allows him to control most Moody Interests and boards of such interests;<sup>24</sup>
- Voted himself onto the board of ANICO by virtue of his control of Moody National Bank;
- Conspired with Ross Moody to put Ross Moody on the Board of ANICO, during the month of November, when typically such placements are done at the annual meeting in the month of May;
- Conspired with Ross Moody to make Ross Moody Chairman of ANICO;

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<sup>24</sup> There are multiple examples of Herz routinely exerting his influence such that he is able to steer grants from the various Moody charitable interests to charities of Herz's choice, to benefit Herz, his partners, and his spouse.

- Conspired with Ross Moody to make Ross Moody Chairman of National Western;
- Conspired with Ross Moody to remove Bobby Moody, Jr. from the Board of ANICO;
- Conspired with Ross Moody to keep Bobby Moody, Jr. from being Chairman of Moody National Bank;
- Treated beneficiaries of the Trust differently, taking actions to benefit Ross Moody and other actions to harm Bobby Moody, Jr.;
- Told Bobby Moody, Jr. he would “financially ruin him and make his life miserable” while, as Trustee, Herz literally controls a substantial portion of Bobby Moody, Jr.’s inheritance intended by Robert L. Moody, Sr. to go to his oldest son and namesake;
- Conspired with Ross Moody to keep Bobby Moody, Jr. off the Moody Foundation Board;
- Conspired with Ross Moody to eliminate Bobby Moody, Jr.’s board fees from the Moody Endowment;
- Conspired with Ross Moody to remove Bobby Moody, Jr. from the Transitional Learning Center board;
- Along with Ross Moody, demoted the head of the trust department at Moody Bank and thereafter interviewed and hired someone of their choosing; this was done without Bobby Moody, Jr.’s input or knowledge and allows Herz and Ross Moody to have more influence over the trust department, which has power of attorney over Robert L. Moody’s interests;
- Assisted Ross Moody in his efforts to control various Moody entities, and in exchange, Ross Moody chose Buddy Herz’s firm as General Counsel for National Western, a position that earns Herz and his firm many millions yearly;

- Conspired with Ross Moody to cancel Bobby Moody, Jr.'s consulting agreement with ANICO;
- Conspired with Ross Moody to cancel Bobby Moody, Jr.'s marketing agreement with ANICO;
- Conspired with Ross Moody to cancel Bobby Moody, Jr.'s health insurance, and purposely did not send Bobby Moody, Jr. the required COBRA letter;
- Conspired with Ross Moody to remove Bobby Moody, Jr. as agent of record for the Transitional Learning Center;
- Conspired with Ross Moody for National Western to cancel Bobby Moody, Jr.'s car, and removed him as agent of record for National Western for dental, disability, health, and accidental death insurance;
- Purposely mismanaged and failed to oversee one of the entities within the Trust, and then when that entity was sued represented such entity, and earned hundreds of thousands in legal fees doing so; and
- Conspired with Ross Moody to remove Bobby Moody, Jr. as agent of record for Regent Care.

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As set forth above, and described herein, the overwhelming number of conflicts of interest ignored by Trustee Buddy Herz is shocking and legally reprehensible. Such disregard of his fiduciary obligations has made him very rich. Herz serves as Trustee of a Trust that controls hundreds of millions in cash, real estate and business operations. *At the same time*, he is legal counsel to the testator of the Trust. *At the same time*, he is also legal counsel to multiple beneficiaries of the Trust, even though there is an ongoing conflict between said beneficiaries. *At the same time*, he serves as

general counsel to two major corporate entities directly or indirectly controlled by the Trust. *At the same time*, he serves as general counsel to two competing corporate entities chaired by a beneficiary of the Trust who is in conflict with a co-beneficiary. *At the same time*, he is legal counsel to every corporate entity within the Trust, and on a daily basis advises these corporate entities. *At the same time*, he serves on the board of at least one major corporate asset that is part of the Trust corpus. *At the same time*, he serves as board member of another publicly traded corporation chaired by a beneficiary of the Trust who is in conflict with a co-beneficiary. And, *at the same time*, he represents in court these corporate entities making up the Trust corpus when one of them gets sued for alleged wrongdoing.<sup>25</sup> The incestuous nature of Buddy Herz's relationship with the Trust and the various Moody interests has made him millions and millions of dollars.

As a proximate result of Buddy Herz's acts and omissions in his individual capacity, Plaintiff Bobby Moody, Jr. has been damaged, as set forth below.

**Fraudulent Concealment/Discovery Rule:**<sup>26</sup> The wrongful actions described above were fraudulently concealed by Buddy Herz for the purpose of allowing him to continue to earn substantial attorneys' fees and ensure that Ross Moody would ultimately control the Moody interests. Herz had knowledge of the wrongs described above, but either remained silent about such wrongs, or made misrepresentations that concealed such wrongs. Bobby Moody, Jr. relied upon such silence and misrepresentations. Further, many of the actions described, and specifically the ways in which Buddy Herz benefited from such actions, simply were not inherently discoverable but would have been

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<sup>25</sup> As an example, if Trustee Buddy Herz fails to properly manage one of the corporate assets of the Trust, and that asset is sued, Herz benefits because it will be his law firm that defends that corporate asset in court. This example is not a hypothetical. Regent Care, one of the significant assets of the Trust, has been repeatedly sued and has been accused of mismanagement. Buddy Herz and his firm have earned hundreds of thousands of dollars in defending such suits.

<sup>26</sup> Plaintiff also alleges and will prove that he has been damaged by repetitive wrongful acts that have not yet ceased; thus, the statute of limitations has not yet accrued.



objectively verifiable. Indeed, it was not until Buddy Herz screamed at Bobby Moody, Jr. and told him he would “ruin him” that he realized that Buddy Herz simply was not protecting his interests, was in fact placing his personal interests and the interests of Ross Moody above that of Bobby Moody, Jr., and, worse, that Buddy Herz had the intention to harm him financially and otherwise. As such, to the extent any particular act occurred outside of the applicable limitations period, such period is extended due to Herz’s fraudulent concealment, or operation of the discovery rule.

**C. Aiding and Abetting/Knowing Participation in Breach of Fiduciary Duties—Defendant Ross Moody.**

Plaintiff incorporates the previous allegations.

As explained in detail above, as his legal counsel and as Trustee of the Trust, Buddy Herz owed Plaintiff Bobby Moody, Jr. a fiduciary duty. Ross Moody knew that Buddy Herz owed fiduciary duties to Bobby Moody, Jr. And, as shown in detail above, Ross Moody also knew that he was benefitting in, participating in, and providing assistance to Buddy Herz in the course of breaching his fiduciary duties to Bobby Moody, Jr. As a result of Ross Moody’s aiding and abetting and knowing participation, Bobby Moody, Jr. suffered damages, as set forth below.

**D. Conspiracy to Commit Breaches of Fiduciary Duty—Buddy Herz, GHA, and Ross Moody.**

Plaintiff incorporates the previous allegations.

Plaintiff would show that Buddy Herz and GHA, together, conspired with Ross Moody in the multiple breaches of the fiduciary duties owed to Bobby Moody, Jr. The purpose of the conspiracy was for Ross Moody to gain control of the complex and varied Moody interests and for Buddy Herz and GHA to personally enrich themselves in return. Herz, GHA, and Ross Moody had a meeting of the minds on this objective and, as shown in detail above, together, took multiple

unlawful and overt acts towards this objective and continue to do so. As a result of this conspiracy, Plaintiff Bobby Moody, Jr. suffered damages.

## **VI. JOINT AND SEVERAL LIABILITY**

Plaintiff incorporates the previous allegations.

Buddy Herz, GHA, and Ross Moody, the conspirators as referenced above, are jointly and severally liable as members of a conspiracy. As a knowing participant to multiple breaches of Buddy Herz's fiduciary duties owed by him as Trustee, and breaches of GHA and Buddy Herz's breaches of fiduciary duties owed by them as legal counsel, GHA, Buddy Herz, and Ross Moody are jointly and severally liable for Bobby Moody, Jr.'s damages.

## **VII. DAMAGES**

Plaintiff incorporates the previous allegations.

The conduct described above proximately caused Bobby Moody, Jr. damages. Not only is he entitled to compensatory damages, but also he is also entitled as a beneficiary to the value of his portion of the Trust corpus that has been reduced. Further, because GHA and Buddy Herz breached their fiduciary duties as lawyers, Bobby Moody, Jr. is entitled to disgorgement of all legal fees received as a result of such breaches, and the imposition of a constructive trust over such. And, because Buddy Herz enriched himself and his firm as Trustee of the Trust, such monies, again, should be disgorged, and a constructive trust imposed over such monies. Further, because the damages suffered by Bobby Moody, Jr. flow from Buddy Herz's actions taken as Trustee of the Trust, Bobby Moody, Jr. is also entitled to reasonable and necessary attorneys' fees. Finally, because the conduct described herein is malicious and egregious, Bobby Moody, Jr. also seeks punitive damages against all Defendants.

**PRAYER**

WHEREFORE Plaintiff Robert L. Moody, Jr. prays for judgment against Defendants Greer, Herz & Adams, LLP, Irwin “Buddy” Herz, Jr. and Ross Rankin Moody, jointly and severally, for actual compensatory damages in an amount not less than \$100 million, disgorgement of attorneys’ fee wrongfully earned, attorneys’ fees, a Court order as described herein, punitive damages, pre-and post-judgment interest, all costs of court, and all such other and further relief, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**THE BUZBEE LAW FIRM**

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