

Cause No. DA 24-0678

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IN THE

**Supreme Court of the State of Montana**

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IN THE MATTER OF THE ESTATE OF: IAN RAY ELLIOT, Deceased.

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**BRIEF OF APPELLEE SPECIAL ADMINISTRATOR**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, Hon. Rod Souza, Cause No. DP-22-0034

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## **INTRODUCTION**

The subject of this appeal is much narrower than the Appellants' Brief indicates. Prior to his death, the decedent, Ian Ray Elliot ("Ian") was engaged in litigation related to the assets and care of his mother, Ada E. Elliot ("Ada"), which includes multiple causes of action. Those litigations relate to events occurring prior to and after Ada's death, but prior to Ian's death. The Estate of Ada E. Elliot, deceased ("Ada's Estate") is still being administered and the Estate of Ian Ray Eliot, deceased ("Ian's Estate") remains a beneficiary of Ada's Estate. Appellee has been appointed as the Special Administrator of Ian's Estate.

Appellants' opening brief shows Appellants are attempting to inappropriately relitigate several matters related to Ada and Ian's Estates that have previously been decided. In addition, the Appellants suggest that Ian's Estate has waived its rights to review the ongoing administration of Ada's Estate. In reality, the scope of this appeal relates only to the Special Administrator's decision to settle most (but not all) of the lawsuits filed by Ian prior to his death. The District

Court elected to approve settlement agreements entered into among the Special Administrator and other parties following a lengthy hearing during which any beneficiary of Ian's Estate, including the Appellants, had an opportunity to be heard. Only the District Court's approval of those settlement agreements has been appropriately appealed.

### **STATEMENT OF THE ISSUES**

Appellants include two Statements of the Issues in their Appellants' Brief, however, Appellee believes that the following is a more accurate statement of the sole issue in this case:

Whether the District Court abused its discretion by approving four<sup>1</sup> settlement agreements procured by the Special Administrator of Ian's Estate.

### **STATEMENT OF THE CASE**

#### **I. Nature of the Case**

Fundamentally, this is a dispute in which some beneficiaries of the estate of a deceased person disagree with the power to settle lawsuits exercised by a court appointed fiduciary and the District Court's subsequent approval of that fiduciary's action. Appellants would

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<sup>1</sup> The Elliot Settlement (described herein) includes both Elliot and Womack and one Advisor Settlement (described herein) includes both Usleber and Wuertz.

like this appeal to be about much more than that; preferring to relitigate several aspects of the administration of Ada's Estate previously addressed by other District Court proceedings and by this Court. The Appellants also attempt to argue against the initial appointment of the Special Administrator of Ian's Estate which has been resolved by multiple District Court rulings, by this Court in *In re Estate of Ian Ray Elliot*, DA 23-31, and *Jing et. al v Mont. 13<sup>th</sup> Jud. Dist.*, OP 23-601, as well as Petition for a Writ of Certiori to the United States Supreme Court which was denied. This appeal is not about those matters.

## **II. Course of Proceedings and Disposition Below**

This is an appeal from the District Court's Findings of Fact, Conclusions of Law and Order Granting Petitions to Approve Settlement Agreement and Order on Pending Motions dated June 21, 2024 (the "Settlement Approval Order"). The District Court ruled that the (a) Settlement Agreement and Mutual Release (the "Elliot Settlement") among the Special Administrator (described below) and Elliot (described below) and Womack (described below), (b) the Settlement Agreement and Mutual Release between the Special

Administrator and Jacobs (described below), (c) the Settlement Agreement and Mutual Release among the Special Administrator and Uselber (described below) and Wuertz (described below), and (d) the Settlement Agreement and Mutual Release between the Special Administrator and Seiffert (described below) (collectively, the “Advisor Settlements”) were appropriate and approved the same. The Elliot Settlement and the Advisor Settlements are collectively referred to as the Settlement Agreements.

The Appellants filed a Motion for Rule 59 Motion for a Jury Trial, to Alter or Amend the Judgment; Rule 60 Motion for Relief of the 6/12/24 Order dated July 18, 2024 (the “Motion for Reconsideration”). On October 18, 2024, the District Court denied the Motion for Reconsideration pursuant to its Order Denying Rule 59 and Rule 60 Motion (the “Denial of Motion for Reconsideration”). This appeal followed.

## **STATEMENT OF THE FACTS**

### **I. The Parties**

The parties to this appeal and other interested parties in this matter are as follows:

1. Andrew T. Billstein, in his capacity as Special Administrator of the Ian’s Estate (the “Special Administrator”).
2. Jenny Jing, Alice Carpenter and Mike Bolenbaugh (collectively, the “Appellants”) are three of eight or nine<sup>2</sup> beneficiaries of Ian’s Estate.
3. Joseph Womack (“Womack”), in his capacity as Special Administrator of Ada’s Estate and Liquidating Partner of Starfire Partnership, LP, a Montana limited partnership (“Starfire”)<sup>3</sup> in the Montana Thirteenth Judicial District Court, Estate of Ada E. Elliot, deceased, Probate No. DP 17-0036 (“Ada’s Estate”), and the Defendant in the Montana Thirteenth Judicial District Court, Cause No. DV-21-811, Hon. Ashley Harada presiding (“Ian V. Womack II). Similar litigation filed by Ian against Womack in Montana Thirteenth Judicial District Court, Cause No. DV-20-244, was dismissed by the Hon. Mary Jane Knisely, presiding.

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<sup>2</sup> The Last Will and Testament of Ian Ray Elliot dated October 13, 2020 (“Ian’s Will”) includes a devise to the “Ray Ecton & Ian Elliot Trust.” Ian’s Will has not yet been formally admitted to probate and the District Court has not yet been asked to determine whether the devise to the Ray Ecton & Ian Elliot Trust is a valid testamentary devise.

<sup>3</sup> Starfire was originally registered with the Montana Secretary of State in 2005. The Appellants continue to contest the validity of the initial formation and funding of Starfire.

4. Cindy Elliot (“Cindy”) is Ian’s sister, Ada’s daughter and, along with Ian, an equal beneficiary of Ada’s Estate. Cindy is the Defendant in Ian R. Elliot v. Cindy M. Elliot and Elliot and Associates, United States District Court for the District of Montana, Billings Division, Case No. CV-15-107-BLG-SPW-C50 (the “Federal Lawsuit”).

5. Bruce Jacobs and Jacobs Law Offices (collectively, “Jacobs”), Joyce Wuertz (“Wuertz”), Terry Seiffert (“Seiffert”), Michael Usleber and Usleber Law Firm (collectively “Usleber”), Glen Pike and Glen Pike CPA & Associates (collectively “Pike”), were an independent Conservator appointed for Ada and advisors retained to represent Starfire or persons acting on Ada’s behalf and are the Defendants in Montana Thirteenth Judicial District Court, Cause No. DV-18-536, Hon. Ashley Harada presiding (the “Ada Advisor Lawsuits”).

## **II. The Settlement Agreements and Approval**

Ian Ray Elliot (“Ian”) died on December 19, 2021. On May 23, 2022, the Special Administrator was appointed to administer Ian’s Estate pursuant to Findings of Fact, Conclusions of Law and Order

Granting Petition for Supervised Administration that Interested Person Joined and Appointing Special Administrator dated May 23, 2020 (the “Appointment Order”). The District Court noted the expectation that the Special Administrator would administer Ian’s Estate in an orderly fashion designed to maximize the assets of Ian’s Estate for all the beneficiaries of Ian’s Estate. *Appointment Order, Conclusions of Law*, ¶21. The District Court further noted that the Special Administrator would need to work with Womack to that end. *Id.* The District Court did not direct the Special Administrator to dismiss or settle any particular claims or reach a particular result in fulfilling the fiduciary duties of a special administrator. *Denial of Motion for Reconsideration*, at Pg. 5.

After his appointment, the Special Administrator began researching litigation related to Ian and his family as far back as *Starfire v. Ian Elliot*, DV 2014-928 in Montana’s Eighteenth Judicial District Court, Hon. Holly Brown presiding (the “Bozeman Starfire Litigation”). The Federal Lawsuit and Ian v. Womack II are, in many respects, successors to the Bozeman Starfire Litigation. The Special Administrator also reviewed *In re the Estate of Ada H. Elliot*, Probate

No. DG 2014-132, Hon. Ingrid Gustafson presiding, and *In re the Estate of A.H.E.*, 2016 MT 315N (the “Ada Conservatorship Litigation”). The Ada Advisor Lawsuits are, in many respects, successors to the Ada Conservatorship Litigation.

In addition to reviewing pleadings and other documents, the Special Administrator sought to retain litigation counsel on either a contingency fee or hourly basis, with limited success<sup>4</sup>. *Approval Order, Findings of Fact* at ¶21.

On September 16, 2022, the Special Administrator participated in a judicial mediation that lasted approximately 8 hours before the Hon. Michael Moses<sup>5</sup>. At the conclusion of the judicial mediation, the Hon. Michael Moses submitted a mediator’s recommendation that the parties agreed to accept. *Approval Order, Findings of Fact* at ¶14. Judge Moses’ recommendation was formalized into the Elliot Settlement Agreement.

Contrary to the impression given by the Appellants, the Elliot Settlement Agreement was not simply a dismissal of claims against

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<sup>4</sup> Though not addressed in the Approval Order, the Special Administrator was able to retain Joe Cook, Esq., of Heenan & Cook PLLC, in a limited scope representation solely to assist the Special Administrator at the mediation.

<sup>5</sup> The Honorable Michael Moses is now retired but was, at the time of the judicial mediation, a sitting judge in the Montana Thirteenth Judicial District.

Cindy or Womack with little to no consideration. Rather, the Special Administrator secured a lump sum payment of the first \$100,000.00 of distributions from Ada's Estate to Ian's Estate (to the exclusion of Cindy). In addition, while Cindy's position had been that Womack was obligated to sell the entirety of the so-called Ecton ranch to provide the maximum benefit to the beneficiaries of Ada's Estate, Cindy and Womack agreed to the distribution of a parcel of the so-called Ecton ranch to Ian's Estate, in-kind, rather than demanding that all real estate assets of Ada's Estate be sold. Some beneficiaries of Ian's Estate have expressed a strong desire to receive land, in-kind, rather than cash proceeds from the sale of land. In addition, Cindy and Womack agreed to the settlement, without any payment to either of them, of wage claims which Cindy purported to possess against Starfire and purported counterclaims that Cindy and Womack are alleged to have against Ian based upon Ian's prior litigation tactics.

Similarly, most, but not all, of the Advisor Settlements resulted in a prior fiduciary for Ada or previous advisors for Ada and related parties agreeing to compromise and reduce amounts that each claimed to be owed to them by Ada's Estate or Ian's Estate. Finally, the Special

Administrator did not agree to settle a case against defendant Glen Pike, believing that Ian's Estate had actionable claims against Mr. Pike. Mr. Pike subsequently passed away limiting the ability to prosecute those claims.

While the Special Administrator could have simply settled and dismissed claims pursuant to Mont. Code Ann. § 72-3-613(22) and (26), each of the Settlement Agreements is contingent upon court approval in Ada's Estate and Ian's Estate. Pursuant to an Order Granting Petition to Approve Settlement Agreement and Authorize Proposed Action dated November 21, 2022, the Hon. Mary Jane Knisely approved the Settlement Agreements in Ada's Estate. The Special Administrator invoked the jurisdiction of the District Court in Ian's Estate pursuant to Mont. Code Ann. § 72-3-605 to allow for a thorough judicial review of the Settlement Agreements with input from the beneficiaries.

The District Court conducted a lengthy evidentiary hearing concerning the Settlement Agreements and the Special Administrator testified extensively. To avoid prejudicing Ian's claims if the Settlement Agreements were not approved, the Special Administrator testified in general terms regarding the motivations in entering the Settlement

Agreements. Those motivations included the time and expense of pursuing claims with limited available resources<sup>6</sup>, potential statute of limitations, estoppel (collateral and equitable) and res judicata defenses and counterclaims alleged by several defendants.

The Special Administrator asked the District Court to, in some respects, view the beneficiaries of Ian's Estate as analogous to a class in a class action. The District Court applied most of the factors described in *Pallister v. Blue Cross & Blue Shield of Mont, Inc.*, 366 Mont. 175, 285 P.3d 562, 2012 MT 198, ¶37, in evaluating the reasonableness of the Settlement Agreements. *Approval Order, Conclusions of Law*, at ¶8. The factors that the District Court found to be relevant to evaluation of the Settlement Agreements entered into by the Special Administrator included (1) the strength of the case, (2) the risk, expense, complexity and likely duration of further litigation, (3) the amount offered in settlement, (4) the extent of discovery completed and the stage of the proceedings, (5) the experience and views of counsel, and (6) the

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<sup>6</sup> Amongst other issues, the Appellants suggest that the Special Administrator should pursue claims while opposing the sale of any real estate, the only likely source of further liquidity in Ada's Estate.

reaction of the class members of the proposed settlement. The District Court evaluated those factors as follows:

A. Strength of the Case.

The Special Administrator testified in general terms regarding procedural issues that could result in zero recovery for Ian's Estate and potentially successful counterclaims or fee awards against Ian's Estate. The Special Administrator expressed concerns that courts had previously ruled against Ian in similar proceedings and Ian's Estate might be estopped making some arguments such as those relating to the validity of the formation of Starfire when Ian had acted as a partner of Starfire. The District Court agreed with these concerns expressed by the Special Administrator. *Approval Order, Findings of Fact* ¶¶8-12.

B. Risk, Expense, Complexity and Duration.

The Special Administrator testified that the litigation filed by Ian was very complex, involving partnership law, fiduciary duties, general business law, and torts. The District Court agreed with the Special Administrator's testimony. *Id.* at ¶¶ 18-19. The Special Administrator also testified that the litigation could be very expensive, last an extended period of time, and subject Ian's Estate to counterclaims. The

District Court also agreed with the Special Administrator's testimony in that regard. *Id.* at ¶ 24.

C. Amount Offered in Settlement.

The Special Administrator testified that the settlements stemmed from a judicial mediator's recommendation and that payment from Elliot to Ian's Estate, securing a parcel of land in-kind from Ada's Estate, securing a reduction in the amounts owed to third parties, avoiding significant litigation expense and time, and settling potential counterclaims without any payment were important to the Special Administrator. The District Court agreed with the Special Administrator's consideration given to the mediator's recommendation and the reasonableness of the consideration to Ian's Estate secured by the Special Administrator. *Approval Order, Findings of Fact* at ¶ 14, *Conclusions of Law* at ¶ 10.

D. Stage of Proceedings.

The Special Administrator testified that some of Ian's litigation was still in its infancy. In addition, the Special Administrator would need to conduct extensive discovery to move litigation forward. The

District Court agreed with the Special Administrator. *Id. Findings of Fact* at ¶20, *Conclusions of Law* at ¶ 9.

E. Experience and Views of Counsel.

The Special Administrator is an attorney who has practiced law for approximately 20 years. The undersigned, counsel for the Special Administrator, has practiced law for approximately 10 years. The Special Administrator testified that he contacted A.J. Miller, Esq., Paul Adam, Esq<sup>7</sup>., Michelle Sullivan, Esq., John Heenan, Esq. and Joe Cook, Esq. and none of these attorneys were willing to accept an engagement or even review litigation materials on a contingency fee basis, subject to the limited scope representation of Heenan & Cook PLLC at the mediation. The Special Administrator expressed his concern that he would not have sufficient funds to prosecute Ian's claims with counsel hired on an hourly basis. The District Court agreed with the Special Administrator's reliance on skepticism expressed by experienced counsel regarding the strength of Ian's litigation. *Approval Order, Findings of Fact*, at ¶¶21-23.

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<sup>7</sup> The Special Administrator incorrectly stated Paul Warren during his testimony and had intended to reference Paul Adam, Esq. of Gerstner Adam Law.

### G. Reaction of the Class Members.

Appellants argue that the beneficiaries opinions should be considered to disapprove of the Settlement Agreements because the beneficiaries feelings should be weighed based upon their percentage interest in Ian's Estate, as opposed to a "one beneficiary one vote" approach. *Appellee's Brief* at Pgs. 25-26. Regardless of which approach is more appropriate, the District Court noted that in any event, it "gave no weight" to this factor in reaching its decision. *Approval Order, Conclusions of Law* ¶9.

Based upon the foregoing, the District Court completed a detailed review of the Settlement Agreements and approved them.

### **III. Appellants' Objection to the Settlement Agreements**

Following the District Court's entry of the Approval Order and the Court's subsequent entry of the Denial of Motion for Reconsideration, the Appellants filed this appeal. The Appellants advance several arguments disputing the District Court's approval of the Settlement Agreements as follows: 1) the approval of the Settlement Agreements cannot be effective because the Settlement Agreements, themselves, are unenforceable based upon illegality, mistake of law and mistake of fact,

Appellants' Brief at Pgs, 15-18; 2) the Settlement Agreements cannot be approved by the District Court because the District Court was inconsistent regarding the limited jurisdiction of the probate court, Appellants' Brief at Pgs, 19-20; (3) the First and Fourteenth Amendment Constitutional Rights of the Appellants were violated, Appellants' Brief at Pgs. 20-23; (4) the Special Administrator improperly waived the right to future accountings in Ada's Estate, Appellants' Brief at Pgs. 23-25; (5) the Special Administrator agreed to accept the incorrect tract of land in the Elliot Settlement Agreement, Appellants' Brief at Pgs. 25-28; and (6) Womack's conduct and the Special Administrator's appointment were not properly reviewed by the Honorable Judge Knisely and the Honorable Judge Souza; Appellants' Brief at Pgs. 28-42. None of those arguments are supported by the record or law, and Appellants' appeal should be denied.

### **STANDARD OF REVIEW**

The approval of a settlement agreement is reviewed for abuse of discretion. *In re Marriage of Gorton and Robbins*, 342 Mont. 537 (2008), 182 P.3<sup>rd</sup> 746, 2009 MT 123, ¶20. While specific rules apply to a class action settlement that are not applicable in this case, the approval of a

class action settlement is also reviewed for abuse of discretion. *In re Blue Cross and Blue Shield of Montana, Inc.*, 383 Mont. 404, 372 P.3d 457, 2016 MT 121, ¶12. To establish an abuse of discretion, the Appellants must demonstrate that the District Court acted arbitrarily without conscientious judgment or exceeded the bounds of reason. *In re Estate of M.A.C.*, 2025 MT 23, ¶15.

### **SUMMARY OF THE ARGUMENT**

The District Court did not act arbitrarily or without conscientious judgment correctly concluded that the Settlements should be approved. At the very least, the District Court did not “exceed the bounds of reason” in reaching that conclusion.

### **ARGUMENT**

#### **I. The Special Administrator was Properly Appointed and has the Authority to Settle Claims.**

During much of the Appellants’ Brief, the Appellants’ attempt to relitigate the appointment of the Special Administrator. However, notwithstanding a motion for reconsideration and two prior appeals to this Court, the appointment of the Special Administrator is final.

The Special Administrator has the power to prosecute, defend, satisfy and settle claims. Mont. Code Ann. § 72-3-613(22)(26). Since

the question of the Special Administrator's appointment has been previously resolved, there is no question whether the Special Administrator had the power to enter into the Settlement Agreements.

## **II. The Special Administrator has Duties to All Beneficiaries.**

The Appellants do not dispute that the Special Administrator has the duty to administer Ian's Estate as expeditiously and efficiently as possible. Mont. Code Ann. § 72-3-610. The Special Administrator's exercise of those powers is subject to his general duties to observe the standards of care applicable to trustees. *Id.* One such duty is the duty to act impartially among the beneficiaries. Mont. Code Ann. § 72-38-803.

The Appellants have clearly expressed their desire, as Ian's partner and close friends, to continue Ian's litigation seemingly at any cost. However, other beneficiaries have expressed a desire for the administration of the Estate to move forward with approval of the Settlement Agreements. The Appellants have also expressed a desire to receive land, in-kind. Other beneficiaries have expressed a desire to receive cash.

The Settlement Agreements are the best compromise of those competing objectives. Most defendants are making a payment to Ian's Estate or receiving less than the amounts that they claim to be owed from Ada's Estate or Ian's Estate. No party is receiving any payment pursuant to purported counterclaims against Ian's Estate. In addition, Ian's Estate will receive both cash liquidity and a parcel of real estate for potential distribution in-kind and liquidity.

### **III. Approval of the Settlement Agreements Benefits Ian's Estate.**

The Special Administrator was appointed on May 23, 2022. Nearly three years later, the Special Administrator has been unable to take many actions to move the administration of Ian's Estate closer to conclusion due to ongoing litigation with Appellants. For example, the Special Administrator has been unable to even arrange for the distribution of Ian's personal property items.

Mont. Code Ann. § 72-3-605 allows the Special Administrator to invoke the jurisdiction of the Court when necessary. In addition, as Ian's Estate is subject to supervised administration, Mont. Code Ann. § 72-3-405 references the District Court's ability to grant interim relief at any time.

The Court has the power to review the Settlement Agreements and did not abuse its discretion in approving the Settlement Agreements.

#### **IV. Enforceability of the Settlement Agreement.**

The record does not reflect an illegal contract or a mistake of law or fact. The record reveals that the Special Administrator seriously reviewed and prosecuted Ian's claims within reason which the Special Administrator submitted to the District Court as a partial vindication of Ian. The record also reveals that the Special Administrator entered into the Settlement Agreements based upon a realistic view of what could be proven in a court of law, rather than the Appellants' determination that any allegation they wish to make can be proven without procedural hurdle or undue expense. The Settlement Agreements were not the product of illegality or a mistake of law or fact.

#### **V. Probate Court Jurisdiction.**

The District Court correctly noted that it was not the proper venue to adjudicate Ian's claims. However, the District Court is the proper venue to determine whether the Special Administrator properly

exercised his powers to settle most (but not all) of the claims filed by Ian during his lifetime. The District Court was not inconsistent in exercising its jurisdiction regarding Ian's Estate.

## **VI. Violation of Constitutional Rights.**

The Appellants argue that the District Court improperly prevented the Appellants from exercising their constitutional rights to be heard. The District Court record documents the numerous bites at the proverbial apple which have been offered to the Appellants at the District Court and at this Court, as well as the ample opportunities provided to Ian before his death. The Appellants' constitutional rights have not been violated.

## **VII. Waiver of Future Accounting Rights.**

Contrary to the Appellants' assertion, nothing in the Elliot Settlement Agreement waives the ongoing rights of Ian's Estate to review Womack's administration of Ada's Estate and to receive a fiduciary accounting regarding the exercise of his powers therein. The Elliot Settlement Agreement releases Womack from the claims made against Womack by Ian only. The Appellants are incorrect regarding their representation of the Elliot Settlement Agreement to this Court.

### **VIII. Parcel of Ecton Ranch.**

The Appellants informed the Special Administrator of the importance that Ian's Estate receive a parcel of land, in-kind. Accordingly, the Special Administrator fought for the receipt of a parcel of land, in-kind. The Appellants object to the particular parcel that will be received by Ian's Estate. As with other aspects of the Settlement Agreements, the agreement to receive Tract 6 of the so-called Ecton Ranch represented a balance of competing interests and the District Court did not abuse its discretion in approving the efforts of the Special Administrator in that regard.

### **IX. General Objections to Womack's Conduct and the Special Administrator's Appointment.**

The District Court documents the Appellants' continued allegations with respect to Womack and the Appellants' continuing disagreement with the appointment of the Special Administrator. The District Court carefully documents the prior determinations with respect to those issues and the District Court's unwillingness to consider those issues further. *Denial of Motion for Reconsideration* Pgs 1-2. The District Court did not abuse its discretion in refusing to reconsider those issues.

## **CONCLUSION**

For the foregoing reasons, Appellee, the Special Administrator of Ian's Estate, respectfully requests this Court affirm the District Court's Order Approving the Settlement Agreements. If the Special Administrator is directed to do so, he will pursue Ian's claims to the best of his ability, but the Special Administrator believes that the Settlement Agreements are in the best interest of Ian's Estate and the District Court did not abuse its discretion in agreeing and approving the Settlement Agreements.

Dated this 26<sup>th</sup> day of February, 2025.

*/s/ Adrianna Potts*

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## **CERTIFICATE OF COMPLIANCE**

I certify that, pursuant to Mont. R. App. P. 11(4), this response brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points and contains 3,871 words, as determined by the undersigned's word processing program, excluding Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

*/s/ Adrianna Potts*

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