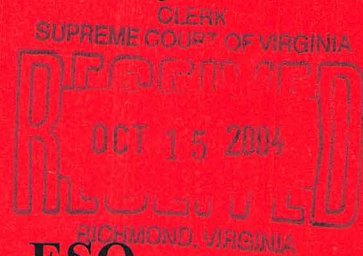


218 15 303

**In The
Supreme Court of Virginia**

RECORD NO. 041308



**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N., C.T.A., AND
SUBSTITUTE TRUSTEE FOR THE ESTATE
OF GERTRUDE PIERCE WORTHINGTON,**

Appellant,

v.

**THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,**

Appellee.

JOINT APPENDIX

**Robert E. Eicher
Monica McCarroll
WILLIAMS MULLEN
A Professional Corporation
Two James Center, 17th Floor
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218
(804) 643-1991 (Telephone)
(804) 783-6507 (Facsimile)**

Counsel for Appellant

**Mark S. Brennan
Renu M. Setaro
Heather M. Kofron
WRIGHT, ROBINSON,
OSTHIMER & TATUM
411 Franklin Street
Suite 400
Richmond, Virginia 23219
(804) 783-1100 (Telephone)
(804) 783-1138 (Facsimile)**

Counsel for Appellee

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Garnishment Summons

Commonwealth of Virginia

City of Richmond Circuit Court
400 N. 9th Street
Richmond, VA 23219

Case No: 01_451_-(Probate)
VA. CODE §§ 8.01-511, 512, 512.3

Judgment Creditor:

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

V

Telephone No.

Judgment Creditor's Attorney:

HEATHER M. KOFRON/WRIGHT, ROBINSON,
OSTHIMER & TATUM/411 E. FRANKLIN ST., 4TH FLOOR
RICHMOND, VA 23219

Telephone No. (804) 782-1811

When Judgment Creditor's Attorney's name, address, and
telephone number appear on this summons, do not include
Creditor's address or telephone number.

10/27/2003 at 09:00AM
Hearing Date and Time

MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

☐ Support

☐ 50% ☐ 55% ☐ 60% ☐ 65%

(if not specified, then 50%)

☐ State taxes, 100%

If none of the above are checked then § 34-29(a) (on reverse) applies.

Judgment Debtor:

BRADFORD N. WORTHINGTON

3230 BLITHEWOOD DRIVE

RICHMOND, VA 23225

Telephone No.

Soc. Sec. No. 226-64-9670

Garnishee: GREER P. JACKSON, ESQUIRE

8550 MAYLAND DRIVE

RICHMOND, VA 23294

Telephone No.

STATEMENT

Judgment Principal \$	134,199.03
Credits \$(0.00)
Interest \$	
Judgment Costs \$	8.80
Attorney's Fee \$	4,696.50
Garnishment Costs \$	99.00

TOTAL BALANCE DUE \$ 139,003.33

The garnishee shall reply on this amount.

06/09/2003

DATE OF JUDGMENT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to serve this summons on the judgment debtor and the garnishee.
TO THE GARNISHEE: You are hereby commanded to (1) file a written answer with this court, or (2) deliver payment to this court,
or (3) appear before this court on the return date and time shown on this summons to answer the Suggestion for Summons in
Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there is a liability as shown in the statement
upon the garnishee.

As garnishee, you shall withhold from the judgment debtor any sums of money to which the judgment debtor is or may be
entitled from you during the period between the date of service of this summons on you and the date for your appearance in
court, subject to the following limitations: (1) The maximum amount which may be garnished is the 'TOTAL BALANCE DUE'
as shown on this summons. (2) If the sums of money being garnished are earnings of the judgment debtor, then the provision
of 'MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT' shall apply.

If a garnishment summons is served on an employer having one thousand or more employees, then money to which the judgment
debtor is or may be entitled from his or her employer shall be considered those wages, salaries, commission, or other
earnings which, following service on the garnishee-employer, are determined and are payable to the judgment debtor under the
garnishee-employer's normal payroll procedure with a reasonable time allowance for making a timely return by mail to this court.

October 7, 2003

Bevill M. Dean

Clerk

DATE OF ISSUANCE OF SUMMONS

by Linda H. Brown
CLERK/DEPUTY CLERK

DATE OF DELIVERY OF FIERI FACIAS TO SHERIFF IF
DIFFERENT FROM DATE OF ISSUANCE OF THIS SUMMONS

Writ of Fieri Facias

TO ANY AUTHORIZED OFFICER: You are commanded to levy upon the personal property of the Defendant(s) and to make from
the tangible personal property and monies of the Defendant(s) the principal, interest, costs and attorney's fees, less credits, as
shown in the Garnishment Summons. You are further commanded to make your return to the clerk's office within 90 days of this
date or within 180 days of this date for a wage garnishment, and to notify the person entitled to receive such money, if such
person is known and if any money is received, as required by law.

Homestead Exemption Waived ☐ YES ☒ NO ☐ CANNOT BE DEMANDED

NOTED

Date

Bevill M. Dean

Clerk

by Linda H. Brown
Clerk/Deputy Clerk

GARNISHEE'S ANSWER

Commonwealth of Virginia

VA. CODE § 8.01-515

TO THE GARNISHEE:**Please do not make checks payable to the Court.**

1. Make checks payable for monies withheld on garnishments to Judgment Creditor (plaintiff)
2. Use this form for your answer/response.
3. Please record the **Case Number** and **Return/Hearing Date** on all checks and answers to be submitted to the Court.
4. Please mail checks or responses to the Court listed on the Garnishment.

☐ Enclosed is a check made payable to the within-named judgment creditor for \$, which is the amount withheld from the judgment debtor.

☐ The garnishee holds no money or other property of the judgment debtor.

☐ The judgment debtor was not employed by the Garnishee during the period from the service of the summons until the return date.

☐ The debtor's "disposable earnings" are less than the amount statutorily exempt from garnishment.

☐ The judgment debtor's correct Social Security number is not shown on the summons, and the judgment debtor's name and address as shown on the garnishment summons do not match the name and current address of any employee as shown on the current payroll records of the garnishee.

☐ The garnishee is currently deducting the maximum amount for an existing summons:

DATED: _____ RETURN DATE: _____ FROM: _____ COURT

☐ The judgment debtor has filed a bankruptcy petition.

DATE

SIGNATURE

(PRINT OR TYPE) NAME AND TITLE OF PERSON SIGNING THIS ANSWER

RETURN DATE

CASE NO.

10/27/2003 9:00 a.m. 01-451
 THE FIDELITY AND DEPOSIT COMPANY
 OF MARYLAND

JUDGMENT CREDITOR

V.

BRADFORD N. WORTHINGTON

JUDGMENT DEBTOR

GREER P. JACKSON, ESQUIRE

GARNISHEE

GARNISHEE'S ANSWER**ATTORNEY FOR GARNISHEE**

REQUEST FOR HEARING —
GARNISHMENT EXEMPTION CLAIM
Commonwealth of Virginia VA. CODE § 8.01-512.4

Case No. 01-451 (Probate)

City of Richmond, John Marshall Courts Bldg., 400 N. 9th St., Richmond, VA2321

CIRCUIT
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND COURT NAME
BRADFORD N., WORTHINGTON
V.
JUDGMENT CREDITOR JUDGMENT DEBTOR
and GREER P. JACKSON, ESQUIRE
GARNISHEE

I claim that the exemption(s) from garnishment which are checked below apply in this case:

Major Exemptions Under Federal and State Law

- 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).
- 2. Veterans' benefits (38 U.S.C. § 3101).
- 3. Federal civil service retirement benefits (5 U.S.C. § 8346)
- 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- 5. Longshore and Harborworkers' Compensation Act (33 U.S.C. § 916).
- 6. Black lung benefits.

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

- 7. Seaman's or master's or fisherman's wages, except for child or spousal support and maintenance (46 U.S.C. § 11109).
- 8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may not be applicable in child support cases (§ 60.2-308, Code of Virginia).
- 9. Amounts in excess of portions of wages subject to garnishment (§ 34-29, Code of Virginia).
- 10. Public assistance payments (§ 63.1-88, Code of Virginia).
- 11. Homestead exemption of \$5,000 in cash (§ 34-4, Code of Virginia). This exemption may not be claimed in certain cases, such as payment of child or spousal support (§ 34-5, Code of Virginia).
- 12. Property of disabled veterans — additional \$2,000 cash (§ 34-4.1, Code of Virginia).
- 13. Worker's Compensation benefits (§ 65.2-531, Code of Virginia).
- 14. Growing crops (§ 8.01-489, Code of Virginia).
- 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).
- 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).
- 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).
- 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).
- 19. Proceeds from funeral trusts (§ 54.1-2823, Code of Virginia).
- 20. Certain retirement benefits (§ 34-34, Code of Virginia).
- 21. Other (describe exemption): \$

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

ADDRESS TELEPHONE NUMBER
The statements made in this request are true to the best of my knowledge and belief.
DATE SIGNATURE OF JUDGMENT DEBTOR

GARNISHEE INFORMATION SHEET

To comply with determining the proper amount to be garnished, the following procedure should be used:

I. Garnishment of monies other than earnings (wages, salaries, commissions):

No limits, but must honor garnishments based on the date shown on the Garnishment Summons as to when the writ of fieri facias was delivered to the Sheriff.

II. Garnishment of earnings for each pay period:

First Step – determine what are the “disposable earnings” by calculating the gross earnings, then deducting from gross earnings those amounts required by law to be withheld, such as federal and state taxes and social security withholdings. In calculating disposable earnings, do not deduct other payroll deductions such as insurance premiums, savings plans or retirement contributions.

Second Step – determine the maximum amount that may be withheld from “disposable earnings.” A description of this calculation is provided on the back of the attached Garnishment Summons. The following is a way to implement this part of the procedure:

On the front of the Garnishment Summons under “Maximum Amount of Disposable Earnings Subject to Garnishment,” see which boxes have been checked to calculate the maximum amount subject to garnishment.

- If Support is checked, then multiply “disposable earnings” by the percentage checked underneath “Support”—if no box is checked, then use 50%.
- If “State Taxes” is checked, then multiply “disposable earnings” by 100%.
- If none of the boxes are checked, **use the table on the reverse side** and, where a percentage is given, multiply “disposable earnings” by the applicable percentage.

Third Step – determine if other deductions for child support or other garnishments apply to the judgment debtor. Virginia law requires that payments for support ordered by a court or by the Division of Child Support Enforcement must be deducted from the maximum amount subject to garnishment as calculated above in the Second Step to determine the amount left for garnishments. (There may be none left.) After honoring child support deductions, garnishments are to be honored on the basis of the date shown on the Garnishment Summons as to when the writ of fieri facias was delivered to the Sheriff.

III. Be sure to file your answer so that the court receives your answer before the return date shown on the Garnishment Summons. The attached Garnishee’s Answer may be used for this purpose.

ROUGH DRAFT OF HEARING OF 1/7/03

From: Donna Ambrose <donnaambrose@i-c.net>

[\[Save address \]](#) [\[Block sender \]](#)

To: bingoblu@operamail.com

Cc:

Subject: rough draft of hearing of 1/7/03

Date: Fri, 17 Jan 2003 17:14:58 -0500

[Previous](#) | [Next](#)

As Attachment



READ



1

(THIS IS A ROUGH DRAFT ONLY.)

THE COURT: This is the matter of the
Estate of Gertrude Pierce Worthington.

Mr. Worthington, if you'll have a seat,
we'll find out what this matter is about.

Ms. Pinchbeck.

MS. PINCHBECK: Your Honor, this is a
matter from December when we were here with
Mr. Lee, Mr. Worthington's attorney. We waited
approximately an hour and a half for
Mr. Worthington to show up, even though I had a
personal phone conversation with him at 8:30
that morning. He indicated that he would be
here that morning. He was waiting on his cab.
We gave him an hour and a half. Mr. Lee had
come in here. I had told you what was going on,
that Mr. Worthington was qualified on his
mother's estate, that we had had an accounting
at that time. There were some concerns with the
funds being used for a patent, and that his
brother had expressed some concerns with the
funds being used in the estate in that manner.

I had prepared a petition with an order
setting this date to ask the Court to have

0

2

(THIS IS A ROUGH DRAFT ONLY.)

And Mr. Worthington, I understand, is not employed. But whether this thing works out or not, I have some real concerns. The money is not his to spend. His brother is to receive 75 percent through the trust which is meant to provide for his care. And from information that's been provided he needs services, and the money is not going to be there if we continue letting money out go out of this estates for this particular investment.

I'm very concerned that this accounting only goes up through April of 2002. We have nine months that we don't know about. We don't know in if the last bank statement showing \$45,000 is even still within the estate.

I'm not prepared, like I said, to determine the amount, if any, of the bond forfeiture, but I do think at a minimum Mr. Worthington needs to be removed immediately and put someone in who is

□

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going to be responsible for administering the estate, pour the funds over into a trust. The individuals who were named in the documents do

(THIS IS A ROUGH DRAFT ONLY.)

Not want to be involved. They were named as executors. They have declined to act. They've been act to act as trustee. They do not want to be involved, two friends of the decedent. We also need to have a trustee appointed at the same time to deal with the trust for Mr. Craig Worthington and Brad Worthington.

THE COURT: Ms. Pinchbeck, thank you very much. The Court is satisfied based on the submission that was made to Ms. Pinchbeck by

Mr. Worthington and based on Mr. Worthington's explanations and statements that Mr. Worthington should no longer act as the fiduciary of this estate.

I'm sorry about that, Mr. Worthington. The Court always likes to have family members serve as fiduciaries where possible, but I just find that you have breached your fiduciary duties.

MR. WORTHINGTON: May I call my witnesses?

□

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THE COURT: No. I let you say everything you wanted to say, at least in the time I allowed you to say it. It's my turn now.

(THIS IS A ROUGH DRAFT ONLY.)

I don't presume to know exactly what it is you're planning to patent. You wouldn't tell me, and I don't fault you when you say that that would somehow compromise the profitability of it. I respect that. However, there are a couple of problems I have. First of all, the Prudent Investors Statute I don't think allows a fiduciary to invest in this type of thing. But beyond that, even more important than that, is the conflict of interest. A fiduciary should never invest in something which the fiduciary has a personal stake, and this is your enterprise. That is your business. This is your patent, and you should not allow the estate to invest in you. That's basically what you've done here.

I hope that this is a very successful thing, and I call it thing because I'm not sure what it is. I hope that it is very self successful. If it is, then we'll all smile a

□

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year from now and say everything turned out all right. In the meantime, you cannot be a

fiduciary, the administrator of this estate.

(THIS IS A ROUGH DRAFT ONLY.)

I'm going to remove you.

Ms. Pinchbeck, if you will prepare an order removing Mr. Worthington.

Mr. Worthington, that order is going to do several things. First of all it's going to tell you that you can no longer spend any money from the estate. I'm telling you now not to spend any money from the estate before you get the order in writing. I'm telling you now not to take any other action on behalf of this estate. It's also going to require you to turn over any funds of the estate to the new administrator.

Ms. Pinchbeck, I ask that you give me a list of names that you recommend and I will choose one. And I also ask that you talk to those people, at least three names of people who are willing to serve in this capacity.

Is there anything else I need to do this morning?

MR. WORTHINGTON: May I make a statement,

□

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sir?

THE COURT: Let me find out if there is anything else I need to do.

(THIS IS A ROUGH DRAFT ONLY.)

MS. PINCHBECK: We'll need to have an accounting, a final accounting.

THE COURT: That will be in the order.

Mr. Worthington, you will have to file a final accounting with as much documentation and as many vouchers as you can get. But even if you can't get them, don't not do the accounting. The accounting should be done 15 days after the entry of the court order.

MR. WORTHINGTON: That's not much time.

THE COURT: You need to start getting that

together right now, Mr. Worthington.

MR. WORTHINGTON: It's going to take 30 days to get the receipts in.

THE COURT: Unless you're willing to rely on what you've already submitted, get the accounting in and then you get receipts and things later. I'm not going to give you 30 days. Fifteen days.

Ms. Pinchbeck, anything else? You said

□

50

something about a trustee. Do we need to appoint a trustee now? Is Mr. Worthington also acting as trustee?

(THIS IS A ROUGH DRAFT ONLY.)

MS. PINCHBECK: No, Your Honor. The trust under the terms of the will has appointed the same two women who declined to qualify as executor. They do not want to qualify, so we need to assign a trustee.

THE COURT: Do we need to have a different person serve as trustee?

MS. PINCHBECK: I think the same person could serve.

THE COURT: Okay. Let me know the people who are willing to serve in both capacities.

Anything else?

MS. PINCHBECK: With regards to the bond forfeiture, we need to review that.

THE COURT: Correct.

Now, Mr. Worthington, anything else you need to tell me?

MR. WORTHINGTON: Yes, sir. I stated at the beginning that I wanted to preserve for appeal, and you told me because I had a court

□

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reporter here, that would be the case.

THE COURT: I would very strongly suggest

that you talk to a lawyer.

(THIS IS A ROUGH DRAFT ONLY.)

You say you can't find a competent lawyer. I turneded on my television on the days in the last couple of weeks that I've spent at home, and I couldn't look at 10 minutes of television that I didn't hear a commercial for a lawyer. And they might be lawyers you want because they're mostly personal injury lawyers, but the Yellow Pages are full of lawyers. You need to talk to a lawyer. I didn't ask Mr. Hopper.

MR. HOPPER: I am with Mr. Lee. Mr. Lee and I left a year ago.

THE COURT: I don't know what happened to Mr. Lee today, why he's not here.

MR. WORTHINGTON: I fired him, sir.

THE COURT: I guarantee you there are lawyers you can find. You need to talk to other people and maybe you can find a lawyer. But you need to talk to a lawyer. Because you're talking about appealing, and there are things that you can do to appeal. I don't know that ou

□

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can appeal What I've just done. I'm not going to tell you whether you can or not. You need to talk to a lawyer about everything that you need.

(THIS IS A ROUGH DRAFT ONLY.)

to do now, because there is a good chance, and I can't give you legal advice, but there is a good chance depending on what happens -- and this is not an evidentiary hearing. This was a hearing to show cause why you should not be removed, and I found that you did not show good cause. But there will be a evidentiary hearing as to whether you need to pay the estate any money, and you may have some personal

liability in this case, so you need to talk to a lawyer to find out what you need to to. If the bonding company has to pay money on your behalf, you can bet the bonding company is going to ask you to pay them back.

MR. WORTHINGTON: I've been looking of an attorney since December 10, and I have a list of the ones that I've approached and have turned me down.

□

53

THE COURT: I can't do anything about that.

MR. WORTHINGTON: I realize that.

(THIS IS A ROUGH DRAFT ONLY.)

THE COURT: I can't recommend a lawyer for you. But I am confident that there are -- and I'm not exaggerating -- there are thousands of lawyers in Richmond. You can find a lawyer. You can look in the Yellow Pages. There is also a lawyer referral service. You can call the Virginia State Bar and ask them what type lawyer you're looking for. They can recommend one for you.

MR. WORTHINGTON: I have documents. It's not an option.

THE COURT: Mr. Worthington, I wish I could solve all of your problems but I can't. The only advice I can give is get a lawyer. Without lawyer you are really at a disadvantage.

MR. WORTHINGTON: May I make a statement?

THE COURT: No, I've already made a ruling. I've already made the ruling.

Ms. Pinchbeck, let me have that order as quickly as you can. Rather than 15 days from

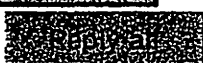
□

54

the entry of the order, let's say 21 days from

(THIS IS A ROUGH DRAFT ONLY.)

□



As Attachment

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

RE: Estate of GERTRUDE PIERCE WORTHINGTON, DECEASED
Case Number 01-451

ORDER

This day came Kimberly A. Pinchbeck, Commissioner of Accounts for the City of Richmond, Virginia, Manchester Division, on her Petition For Forfeiture of Bond of the Administrator, c.t.a., Bradford N. Worthington, who had qualified as such in this Court on April 30, 2001. By Order of December 10, 2002, this matter was set for hearing on January 7, 2003 at 11:30 a.m. The hearing was attended by the Commissioner of Accounts, Bradford N. Worthington, and Heather Kofron, Counsel for Fidelity and Deposit Company of Maryland, as surety on the bond of the Administrator, c.t.a.

Based on the evidence heard, the Court finds that it is in the best interest of the Estate for Bradford N. Worthington to be removed as Administrator, c.t.a.; It further appearing that all parties with an interest in this matter have been notified of this action and have had an opportunity to object or otherwise to be heard, It is ORDERED that Bradford N. Worthington be and he hereby is removed as Administrator, c.t.a.; that he shall immediately turn over any and all funds under his control to the Administrator, d.b.n.c.t.a.; that he shall not pay or expend any further estate funds; and that he file with the Commissioner of Accounts no later than January 28, 2003 his Final Accounting, supported by all appropriate documentation.

It is further ORDERED that Karen Dunbar, Esq. be and hereby is appointed Administrator, d.b.n.c.t.a. and as Substitute Trustee under the Will of Gertrude Pierce Worthington, Deceased, with bond to be set in the amount of \$ 310,000.00 ~~500,000.00~~, with surety

It is further ORDERED that this matter shall be continued to March 3, 2003 to allow for a review of the Final Accounting and to review the Commissioner of Accounts final report to the Court.

The Clerk shall mail an attested copy of this Order to Bradford N. Worthington at 3230 Blithewood Drive, Richmond, Virginia 23225, to Heather M. Kofron, Counsel for Fidelity and


A Copy
Tested: BEVILL M. DEAN, CLERK
by Michelle D. Jones D.C.

Deposit Company of Maryland at Wright, Robinson, Osthimer & Tatum, 411 East Franklin Street, Suite 400, Richmond, Virginia 23219, and to the Commissioner of Accounts. Also a copy should be provided to the newly appointed Administrator, d.b.n.c.t.a.

ENTER: 1/13/2003


Randall G. Johnson, Judge

I ASK FOR THIS:


Kimberly A. Pinchbeck
Commissioner of Accounts
6740 Forest Hill Avenue, Suite 101
Richmond, Virginia 23225
(804) 320-2439 ((804) 560-4043 - FAX)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

RE: ESTATE OF GERTRUDE PIERCE WORTHINGTON, DECEASED
ADMINISTRATOR, C.T.A.: BRADFORD N. WORTHINGTON
CASE NO. 01-451

ORDER

This matter came to be heard on March 31, 2003, upon a Petition by the Commissioner of Accounts for Forfeiture of Bond and Removal of the Administrator, c.t.a.. Present were Kimberly A. Pinchbeck, the Commissioner of Accounts for the Manchester Division of the City of Richmond, and Heather M. Kofron, counsel for Fidelity and Deposit Company of Maryland. By Court Order entered January 13, 2003, the Court removed Bradford Worthington as Administrator, c.t.a. and appointed Karen E. Dunivan, as Administrator, c.b.n.c.t.a. By Court Order entered January 27, 2003, Karen E. Dunivan was removed as Administrator, c.b.n.c.t.a. and Greer P. Jackson, Esquire, was appointed in her place. The matter with regard to bond forfeiture was continued to March 3, 2003, and then subsequently continued to March 31, 2003.

It appearing to the Court from the Administrator, c.t.a.'s First Account for the period April 30, 2001 to April 24, 2002, which was filed with the Clerk's Office on March 14, 2003, along with a Report of the Commissioner of Accounts, that the Administrator, c.t.a. is held accountable for the sum of \$83,042.71, plus any additional shortfalls. The Commissioner of Accounts has not been advised as to any exceptions being filed within the fifteen day period to her filed Report attached to the Administrator, c.t.a.'s first account.

By Court Order entered January 13, 2003, Bradford N. Worthington was directed to file with the Commissioner of Accounts' office a final accounting, supported by all appropriate vouchers and documentation. The Commissioner of Accounts' office has not received a final accounting as of the submission of this Order to the Court for entry. As of April 24, 2002, the termination date of the Administrator, c.t.a.'s first account, the assets on hand which could be verified consisted of cash held in First Union Prime Banking Checking account in the sum of \$42,265.89 and real estate with a value of \$135,500.00 for a total asset value of \$177,765.89. As of April 2, 2003, through confirmation with First Union Private Banking, the estate's checking account value was \$59.45. Mr. Worthington has not provided any vouchers to support the depletion of the estate checking account from \$42,265.89 to \$59.45.

Copy,
Teste: BEVILL M. DEAN, CLERK
Michelle D.C.

Accordingly, it is ORDERED that Bradford N. Worthington turn over to Greer P. Jackson, Esquire, any cash or other assets in his possession immediately and that his bond be forfeited in the sum of One Hundred Twenty-Five Thousand. Three Hundred Eight Dollars and 60-cents (\$125,308.60).

It is further ORDERED, that Fidelity and Deposit Company of Maryland pay to the Commissioner of Accounts, the sum of \$2,500.00, which sum represents the fees due the Commissioner of Accounts for the fees assessed against Bradford N. Worthington, personally, for the summons, show cause hearings and process of service costs.

It is further ORDERED, that Fidelity and Deposit Company of Maryland, upon payment of the said sums be relieved of all further obligations of its bond, and pursuant to Virginia Code Section 49-27 shall recover judgment against Bradford Worthington in the sum of \$127,808.60, together with interest thereon at the judgment rate from the date of this order, plus 5% per centum damages on said amount, and that thereafter the said Fidelity and Deposit Company of Maryland shall be substituted to and become the owner of all rights and remedies of the Estate of Gertrude Pierce Worthington, for the enforcement and collection of the amounts so paid, and shall be named assignee thereof, and the Clerk shall remove this matter from the Court's docket.

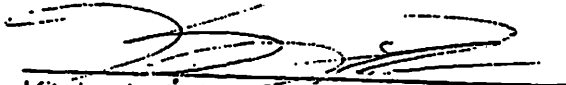
The Clerk is further directed to mail an attested copy of this Order to the former Administrator, c.t.a. Bradford N. Worthington at 3230 Blithewood Drive, Richmond, Virginia 23225, Greer P. Jackson, Jr., Esquire, at Spinella, Owings and Shaia, 8550 Mayland Drive, Richmond, Virginia 23294, and to Heather M. Kofron, Esquire, counsel for Fidelity and Deposit Company of Maryland at 411 East Franklin Street, Suite 400, Richmond, Virginia 23219, and to the Commissioner of Accounts.

ENTER: 6/9/2003



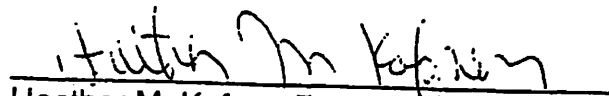
Judge Randall G. Johnson

I ASK FOR THIS.



Kimberly A. Pinchbeck
Commissioner of Accounts
6740 Forest Hill Avenue, Suite 101
Richmond, Virginia 23225
(804) 320-2439

SEEN AND AGREED TO:



Heather M. Kofron, Esquire
Counsel for Fidelity and Deposit Company of Maryland
Wright, Robinson, Osthimer & Tatum
411 East Franklin Street
Suite 400
Richmond, Virginia 23219
(804) 782-1811

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Plaintiff,

v.

File No. 01-451

**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON**

Defendant.

MOTION FOR SHOW CAUSE

COMES NOW The Fidelity and Deposit Company of Maryland ("F&D"), by counsel, and moves for Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a., and Substitute Trustee for the Estate of Gertrude Pierce Worthington to show cause why he has not answered the Summons for Garnishment in the above-styled matter. In support of its motion, F&D states as follows:

1. This action arises out of the forfeiture of the bond F&D executed on behalf of Bradford Worthington ("Worthington"), Administrator, c.t.a., for the Estate of Gertrude Pierce Worthington.
2. On January 13, 2003, this Court removed Worthington as Administrator, c.t.a., for the Estate of Gertrude Pierce Worthington. On January 27, 2003, Greer P. Jackson, Esq. was

appointed Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington.

3. On June 9, 2003, F&D obtained a judgment against Worthington in the amount of \$127,808.60, plus interest and 5% damages for forfeiture of its bond. F&D paid said amount to the Commissioner of Accounts, Kimberley A. Pinchbeck- \$125,308.60 of which was paid to Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington.

4. Pursuant to the terms of Gertrude Pierce Worthington's will, Worthington was to receive 25% of the Estate of Gertrude Pierce Worthington in trust and Craig Worthington was to receive 75% of the Estate of Gertrude Pierce Worthington in trust.

5. F&D issued a Summons for Garnishment and Writ of Fieri Facias on September 24, 2003 on Greer P. Jackson, Esq., in order to prevent any distribution to Worthington before F&D's judgment has been satisfied. The return date was October 27, 2003. To date, Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington, has not filed a response to F&D's Summons for Garnishment.

6. Therefore, F&D moves Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington, to show cause why he has not answered the Summons for Garnishment. F&D further moves for garnishment of the amounts of money identified in its Summons for Garnishment to prevent any distribution to Worthington before F&D's judgment has been satisfied.

WHEREFORE, F&D requests this Court to grant it the relief it requests and any other relief that may appear appropriate and just.

Respectfully submitted,

THE FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

By: Heather M. Kofron
Counsel

Mark S. Brennan, Esq. (VSB No. 25991)
Heather M. Kofron, Esq. (VSB No. 42918)
WRIGHT, ROBINSON, OSTHIMER & TATUM
411 East Main Street, 4th Floor
Richmond, Virginia 23219-2205
TELEPHONE: (804) 783-1137
Facsimile: (804) 783-1138
*Counsel for The Fidelity and Deposit
Company of Maryland*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Show Cause
was sent by U.S. Mail, postage prepaid, on the 30th day of October 2003 to:

Greer P. Jackson, Jr., Esquire
Spinella Owings & Shaia PC
8550 Mayland Drive
Richmond, VA 23294
Counsel for Defendant

Bradford N. Worthington
3230 Blithewood Drive
Richmond, VA 23225

Heather M. Kofron

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building**

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Judgment Creditor,

v.

Case No.: 01-451

Hearing Date: January 6, 2003, 11:30 a.m.

**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON**

Garnishee.

RESPONSE TO MOTION FOR SHOW CAUSE

COMES NOW the Garnishee, GREER P. JACKSON, JR., ESQ., ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON ("Garnishee"), and in response to the Motion for Show Cause of THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, Judgment Creditor ("Judgment Creditor" and "Motion" respectively), offers the following:

1. Garnishee admits the facts as presented by Judgment Creditor in paragraphs number 1-5 of its Motion.
2. Garnishee objects to the allegation that he has not responded to the Garnishment Summons of Judgment Creditor ("Summon") (see attached). In fact, Garnishee responded directly to Ms. Kofron, counsel to Judgment Creditor ("Counsel"). Further, Garnishee appeared pursuant to the Summons at 9:00 a.m. on October 27, 2003 at the Court, but the hearing indicated by the Summons had not been scheduled.
3. In response to the Summons, Garnishee, on or about October 20, 2003, faxed a copy

of the Last Will and Testament of Gertrude Pierce Worthington to Counsel (see attached "Will"). It is the opinion of Garnishee that a spendthrift trust is created by Article IV of the Will and that without an order of this Court, no funds are available to Judgment Creditor in satisfaction of its Summons. Further, it appears that Judgment Creditor wishes to freeze any funds that may come available to Bradford N. Worthington, Judgment Debtor ("Worthington"), which Garnishee believes that, if such relief is available, it can only be granted by the Court.

WHEREFORE, Garnishee respectfully request that this Court (1) address the relief sought in Judgment Creditor's Motion to "prevent any distribution to Worthington before [Judgment Creditor's] judgment has been satisfied", and (2) direct him as the Court deems appropriate in providing the relief therein sought.

**GREER P. JACKSON, JR., ESQ., ADMINISTRATOR,
D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE FOR
THE ESTATE OF GERTRUDE PIERCE
WORTHINGTON**



Greer P. Jackson, Jr., Esquire

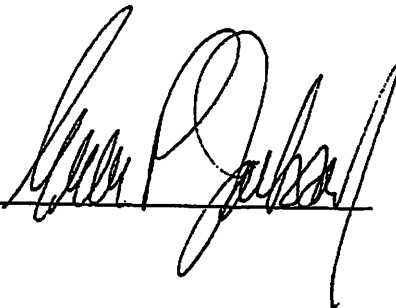
SPINELLA, OWINGS & SHALA, P.C.
A Professional Corporation
8550 Mayland Drive
Richmond, Virginia 23294
(804)747-0920
(804)270-7268 fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Motion for Show Cause was sent by U.S. Mail, postage prepaid, on the 10th day of December 20003 to:

Mark S. Brennan, Esquire
Heather M. Kofron, Esquire
Wright, Robinson, Osthimer & Tatum
411 East Main Street, 4th Floor
Richmond, Virginia 23219

Bradford N. Worthington
3230 Blithewood Drive
Richmond, Virginia 23225.

A handwritten signature in black ink, appearing to read "Bradford N. Worthington", is written over a horizontal line.

Garnishment Summons

Commonwealth of Virginia

City of Richmond Circuit Court
400 N. 9th Street
Richmond, VA 23219

Case No: 01-451-(Probate)
VA. CODE §§ 8.01-511, 512, 512.3

Judgment Creditor:

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

Telephone No.

Judgment Creditor's Attorney:

HEATHER M. KOFRON/WRIGHT, ROBINSON,
OSTHIMER & TATUM/411 E. FRANKLIN ST., 4TH FLOOR
RICHMOND, VA 23219

Telephone No. (804) 782-1811

*When Judgment Creditor's Attorney's name, address, and
telephone number appear on this summons, do not include
Creditor's address or telephone number.

10/27/2003 at 09:00AM
Hearing Date and Time

MAXIMUM PORTION OF DISPOSABLE
EARNINGS SUBJECT TO GARNISHMENT

☐ Support

☐ 50% ☐ 55% ☐ 60% ☐ 65%

(If not specified, then 50%)

☐ State taxes, 100%

If none of the above are checked then § 34-29(a) (on reverse) applies.

Judgment Debtor:

BRADFORD N. WORTHINGTON

3230 BLITHEWOOD DRIVE

RICHMOND, VA 23225

Telephone No.

Soc. Sec. No. 226-64-9670

Garnishee: GREER P. JACKSON, ESQUIRE

8550 MAYLAND DRIVE

RICHMOND, VA 23294

Telephone No.

STATEMENT

Judgment Principal \$	134,199.03
Credits \$(0.00)
Interest \$	
Judgment Costs \$	8.80
Attorney's Fee \$	4,696.50
Garnishment Costs \$	99.00

TOTAL BALANCE DUE \$ 139,003.33

The garnishee shall reply on this amount.

06/09/2003

DATE OF JUDGMENT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to serve this summons on the judgment debtor and the garnishee.
TO THE GARNISHEE: You are hereby commanded to (1) file a written answer with this court, or (2) deliver payment to this court, or (3) appear before this court on the return date and time shown on this summons to answer the Suggestion for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there is a liability as shown in the statement upon the garnishee.

As garnishee, you shall withhold from the judgment debtor any sums of money to which the judgment debtor is or may be entitled from you during the period between the date of service of this summons on you and the date for your appearance in court, subject to the following limitations: (1) The maximum amount which may be garnished is the 'TOTAL BALANCE DUE' as shown on this summons. (2) If the sums of money being garnished are earnings of the judgment debtor, then the provision of 'MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT' shall apply.

If a garnishment summons is served on an employer having one thousand or more employees, then money to which the judgment debtor is or may be entitled from his or her employer shall be considered those wages, salaries, commission, or other earnings which, following service on the garnishee-employer, are determined and are payable to the judgment debtor under the garnishee-employer's normal payroll procedure with a reasonable time allowance for making a timely return by mail to this court.

October 7, 2003

Bevill M. Dean

Clerk

DATE OF ISSUANCE OF SUMMONS

DATE OF DELIVERY OF FIERI FACIAS TO SHERIFF IF

DIFFERENT FROM DATE OF ISSUANCE OF THIS SUMMONS

Writ of Fieri Facias

TO ANY AUTHORIZED OFFICER: You are commanded to levy upon the personal property of the Defendant(s) and to make from the tangible personal property and monies of the Defendant(s) the principal, interest, costs and attorney's fees, less credits, as shown in the Garnishment Summons. You are further commanded to make your return to the clerk's office within 90 days of this date or within 180 days of this date for a wage garnishment, and to notify the person entitled to receive such money, if such person is known and if any money is received, as required by law.

Homestead Exemption Waived ☐ YES ☒ NO ☐ CANNOT BE DEMANDED

10/14/2003
Date

Bevill M. Dean

Clerk

by Linda H. Brown
Clerk/Deputy Clerk

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01-451 (1)

LAST WILL AND TESTAMENT
OF
GERTRUDE PIERCE WORTHINGTON

I, GERTRUDE PIERCE WORTHINGTON, of Richmond, Virginia, revoke all my prior wills and codicils and make this my will.

I now have two children, BRADFORD N. WORTHINGTON and CRAIG WILLIAM WORTHINGTON.

ARTICLE I
DISTRIBUTION OF ESTATE

A. (1) My Executor shall divide my tangible personal property into two shares.

The first share shall consist of all tangible personal property my Executor may deem appropriate for distribution to my descendants in kind. I give the first share to my children and to the descendants, per stirpes, of any deceased children, to be divided among them as my Executor may deem appropriate in her discretion in as nearly proportionate shares as practicable. Tangible personal property includes stamp or coin collections but does not include other money or stock certificates or other evidences of intangible rights or interests. I direct that my beneficiaries and my Executor shall abide by any memorandum by me directing the disposition of this property or any part thereof. The cost of packing and shipping such property shall be charged against my estate as an expense of administration. The second share shall consist of the balance of my tangible personal property, and my Executor shall sell this share and add the net proceeds to my

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residuary estate.

(2) An adult person with whom a minor resides may receipt for tangible personal property given to the minor.

B. I give the residue of my real and personal estate as follows:

Spouse (1) If Norman William Worthington survives me, I give one-third of the said residue to my Trustee hereinafter named to be held and administered pursuant to Article II of this will. If Norman William Worthington predeceases me, such bequest shall lapse.

Abraham (2) If Craig William Worthington survives me, I give Seventy-Five Percent (75%) of the remainder of the residue of my real and personal estate, to my Trustee hereinafter named to be held and administered pursuant to Article III of my will. If Craig William Worthington predeceases me and is survived by any of his descendants, I give one-half of his share to his descendants, per stirpes, and I give the remaining one-half of his share to my Trustee hereinafter named to be held and administered pursuant to Article IV of this will. If Craig William Worthington predeceases me leaving no descendants, his share shall be distributed pursuant to paragraph B (3) of this Article.

(3) If Bradford N. Worthington survives me, I give the remainder of the residue of my real and personal estate to my Trustee to be held and administered pursuant to Article IV of this will. If Bradford N. Worthington predeceases me, such share shall be distributed to his descendants, per stirpes. If Bradford N. Worthington predeceases me leaving no descendants, his share shall be distributed pursuant to paragraph B (2) of this Article.

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ARTICLE II

NORMAN WILLIAM WORTHINGTON TRUST

A. This trust is created expressly for Norman William Worthington's extra and supplemental care, maintenance, support and education in addition to and over the benefits Norman William Worthington otherwise receives or may receive from any local, state or federal government, or from any other private agencies, any of which provide services or benefits to developmentally disabled, incapacitated or disabled persons. It is the express purpose of this trust that it be used only to supplement but not supplant other benefits received by Norman William Worthington from public assistance benefits of any county, state, federal or governmental agency. In the event my Trustee is requested by any department or agency to release principal or income of the trust to or on behalf of Norman William Worthington to pay for equipment, medication or services that other organizations or agencies are authorized to provide, or in the event my Trustee is requested by any department or agency administering such benefits to petition the court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee shall deny such request and is directed to defend, at the expense of the trust estate, any contest of this trust or any of its provisions. My Trustee shall have complete discretion with regard to the defense of any such claim, including the management of all litigation which may result including to settle, in whole or in part, or otherwise compromise any such claim or litigation.

B. My Trustee may pay to or apply for the benefit of Norman William Worthington such sums out of the income or principal of the trust as my Trustee, in her sole discretion, considers necessary or appropriate for Norman William Worthington's special needs.

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As used herein, "special needs" refers to the requisites for maintaining Norman William Worthington's good health, safety and welfare when, in the discretion of my Trustee, such requisites are not being provided by any public agency, office or department of any state, or of the United States. "Special needs" shall include, but not be limited to, unreimbursed medical and dental expenses, clothing and equipment, programs of training, education and treatment, residential care, transportation and essential dietary needs, spending money (i.e., money to purchase appropriate gifts for relatives and friends), small visual and/or audio equipment for entertainment purposes (i.e., radio, record player, television set), vacations, movies and trips; provided, however, that my Trustee is under no obligation to expend principal or income for such needs.

C. Any net income of the trust not distributed by my Trustee shall be accumulated and added to principal at least annually.

D. Notwithstanding anything to the contrary herein, my Trustee shall not expend any trust income and shall not use the trust principal to pay or reimburse any amounts expended to the federal government, the State of Virginia or to any other state or subdivision of the federal or a state government for any purpose including the care, support, maintenance and education of Norman William Worthington except that such a prohibition will not apply to the payment of any income tax liability incurred by the trust or Norman William Worthington.

E. In making distributions of principal hereunder to or for the benefit of Norman William Worthington, my Trustee shall take into consideration his special needs due to illness or disability, including the need for a friend, advocate and protector of his civil rights to insure that he live a reasonably normal and happy life. These special needs include:

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(1) Insuring that a distribution of the trust principal does not decrease or otherwise adversely affect any benefits Norman William Worthington may be entitled to from any governmental agency, including but not limited to Social Security Administration benefits, Medicaid or medical assistance and Supplemental Security Income (SSI) benefits and any additional, similar or successor programs, unless my Trustee in her sole discretion determines that the adverse effect resulting from the distribution of principal is outweighed by the benefit of the distribution to Norman William Worthington.

(2) To the extent that there is no other individual or entity assisting Norman William Worthington with the benefits discussed in (1) above, my Trustee shall assist him in obtaining these benefits and shall collect, expend and account for all of such governmental benefits and shall keep the account for such amounts separately from the trust assets held hereunder. My Trustee shall insure that Medicare premiums continue to be deducted from Norman William Worthington's Social Security disability benefit.

(3) Insuring Norman William Worthington a place in a suitable residential facility.

F. In addition to the foregoing, my Trustee shall expend the principal of the trust as she in her absolute discretion deems appropriate to provide Norman William Worthington with a personal advocate. It is my desire that my Trustee shall act as a personal advocate for Norman William Worthington or obtain the services of another representative to perform this service.

A personal advocate shall:

(1) Visit Norman William Worthington at least once a month at his

residential facility to insure that the residential facility is well maintained and he is being treated with respect and kindness by the agents and employees of the facility;

(2) Annually review the social and program services, medical services, and work and educational opportunities provided for Norman William Worthington by his residential facility or by all such governmental units and agencies in light of his particular need and desires. Specifically, the annual evaluation should include but not be limited to the following:

- (a) Physical and dental examinations;
- (b) Work opportunities;
- (c) Recreation, leisure time and social needs;
- (d) Appropriateness of existing residential and program services;

and

(e) Review laws and administrative practices relating to various governmental financial assistance and benefit programs to ensure that Norman William Worthington is obtaining the maximum benefits available.

The annual evaluation shall be based upon contracts with the individuals employed by Norman William Worthington's residential facility and his governmental social worker.

G. It is recognized that my Trustee is not licensed nor skilled in the field of social services. My Trustee may seek the counsel and assistance of Norman William Worthington's guardian, conservator or attorney-in-fact, if any, and any state and local agencies that have been established to assist the handicapped or mentally disabled, disabled, and similar resources. My Trustee may use these resources to aid Norman William Worthington's guardian,

conservator or attorney-in-fact, as appropriate, in identifying programs that may be of social, financial, developmental or other assistance to Norman William Worthington. However, my Trustee shall not in any event be liable to Norman William Worthington, the remainder beneficiaries of the trust or any other party for her acts as trustee hereunder so long as she acts reasonably and in good faith. For example, my Trustee as well as Norman William Worthington's guardian, conservator or attorney-in-fact, if any, shall not be liable for the failure to identify each program or resource that might be available to Norman William Worthington because of disabilities.

H. This trust shall terminate on the death of Norman William Worthington and the principal and any accrued or undistributed income of the trust then remaining shall be distributed as follows:

(1) Fifty Percent (50%) shall be distributed to my Trustee to be held and administered pursuant to Article III of this will.

(2) Fifty Percent (50%) shall be distributed to my Trustee to be held and administered pursuant to Article IV of this will.

ARTICLE III

CRAIG WILLIAM WORTHINGTON TRUST

A. This trust is created expressly for Craig William Worthington's extra and supplemental care, maintenance, support and education in addition to and over the benefits Craig William Worthington otherwise receives or may receive from any local, state or federal government, or from any other private agencies, any of which provide services or benefits to

developmentally disabled, incapacitated or disabled persons. It is the express purpose of this trust that it be used only to supplement but not supplant other benefits received by Craig William Worthington from public assistance benefits of any county, state, federal or governmental agency. In the event my Trustee is requested by any department or agency to release principal or income of the trust to or on behalf of Craig William Worthington to pay for equipment, medication or services that other organizations or agencies are authorized to provide, or in the event my Trustee is requested by any department or agency administering such benefits to petition the court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee shall deny such request and is directed to defend, at the expense of the trust estate, any contest of this trust or any of its provisions. My Trustee shall have complete discretion with regard to the defense of any such claim, including the management of all litigation which may result including to settle, in whole or in part, or otherwise compromise any such claim or litigation.

B. My Trustee may pay to or apply for the benefit of Craig William Worthington such sums out of the income or principal of the trust as my Trustee, in her sole discretion, considers necessary or appropriate for Craig William Worthington's special needs. As used herein, "special needs" refers to the requisites for maintaining Craig William Worthington's good health, safety and welfare when, in the discretion of my Trustee, such requisites are not being provided by any public agency, office or department of any state, or of the United States. "Special needs" shall include, but not be limited to, unreimbursed medical and dental expenses, clothing and equipment, programs of training, education and treatment, residential care, transportation and essential dietary needs, spending money (i.e., money to

purchase appropriate gifts for relatives and friends), small visual and/or audio equipment for entertainment purposes (i.e., radio, record player, television set), vacations, movies and trips; provided, however, that my Trustee is under no obligation to expend principal or income for such needs.

C. Any net income of the trust not distributed by my Trustee shall be accumulated and added to principal at least annually.

D. Notwithstanding anything to the contrary herein, my Trustee shall not expend any trust income and shall not use the trust principal to pay or reimburse any amounts expended to the federal government, the State of Virginia or to any other state or subdivision of the federal or a state government for any purpose including the care, support, maintenance and education of Craig William Worthington except that such a prohibition will not apply to the payment of any income tax liability incurred by the trust or Craig William Worthington.

E. In making distributions of principal hereunder to or for the benefit of Craig William Worthington, my Trustee shall take into consideration his special needs due to illness or disability, including the need for a friend, advocate and protector of his civil rights to insure that he live a reasonably normal and happy life. These special needs include:

(1) Insuring that a distribution of the trust principal does not decrease or otherwise adversely affect any benefits Craig William Worthington may be entitled to from any governmental agency, including but not limited to Social Security Administration benefits, Medicaid or medical assistance and Supplemental Security Income (SSI) benefits and any additional, similar or successor programs, unless my Trustee in her sole discretion determines that the adverse effect resulting from the distribution of principal is outweighed by the benefit of the

distribution to Craig William Worthington.

(2) To the extent that there is no other individual or entity assisting Craig William Worthington with the benefits discussed in (1) above, my Trustee shall assist him in obtaining these benefits and shall collect, expend and account for all of such governmental benefits and shall keep the account for such amounts separately from the trust assets held hereunder. My Trustee shall insure that Medicare premiums continue to be deducted from Craig William Worthington's Social Security disability benefit.

(3) Insuring Craig William Worthington a place in a suitable residential facility.

F. In addition to the foregoing, my Trustee shall expend the principal of the trust as she in her absolute discretion deems appropriate to provide Craig William Worthington with a personal advocate. It is my desire that my Trustee shall act as a personal advocate for Craig William Worthington or obtain the services of another representative to perform this service.

A personal advocate shall:

(1) Visit Craig William Worthington at least once a month at his residential facility to insure that the residential facility is well maintained and he is being treated with respect and kindness by the agents and employees of the facility;

(2) Annually review the social and program services, medical services, and work and educational opportunities provided for Craig William Worthington by his residential facility or by all such governmental units and agencies in light of his particular need and desires. Specifically, the annual evaluation should include but not be limited to the following:

- (a) Physical and dental examinations;
- (b) Work opportunities;
- (c) Recreation, leisure time and social needs;
- (d) Appropriateness of existing residential and program services;

and

(e) Review laws and administrative practices relating to various governmental financial assistance and benefit programs to ensure that Craig William Worthington is obtaining the maximum benefits available.

The annual evaluation shall be based upon contracts with the individuals employed by Craig William Worthington's residential facility and his governmental social worker.

G. It is recognized that my Trustee is not licensed nor skilled in the field of social services. My Trustee may seek the counsel and assistance of Craig William Worthington's guardian, conservator or attorney-in-fact, if any, and any state and local agencies that have been established to assist the handicapped or mentally disabled, disabled, and similar resources. My Trustee may use these resources to aid Craig William Worthington's guardian, conservator or attorney-in-fact, as appropriate, in identifying programs that may be of social, financial, developmental or other assistance to Craig William Worthington. However, my Trustee shall not in any event be liable to Craig William Worthington, the remainder beneficiaries of the trust or any other party for her acts as trustee hereunder so long as she acts reasonably and in good faith. For example, my Trustee as well as Craig William Worthington's guardian, conservator or attorney-in-fact, if any, shall not be liable for the failure to identify each program or resource that might be available to Craig William Worthington because of disabilities.

H. This trust shall terminate on the death of Craig William Worthington and the principal and any accrued or undistributed income of the trust then remaining shall be distributed as follows:

(1) Fifty Percent (50%) shall be distributed to the descendants, per stirpes, of Craig William Worthington, but if he dies without leaving any descendants, such share shall be distributed to my Trustee to be held and administered pursuant to Article II of my will.

(2) Fifty Percent (50%) shall be distributed to Bradford N. Worthington and to his descendants, per stirpes, if he is not then living.

ARTICLE IV

BRADFORD N. WORTHINGTON TRUST

A. My Trustee may pay to or for the benefit of Bradford N. Worthington during his lifetime as much of the net income or principal of the Trust as my Trustee may deem appropriate for his support and health. My Trustee may distribute principal in kind while income is accumulated and shall annually add any undistributed income to principal.

B. Upon Bradford N. Worthington reaching the age of sixty (60), my Trustee shall distribute the remaining principal and any accrued or undistributed income of the trust outright to him upon his written request. If Bradford N. Worthington dies before the termination of his separate trust, my Trustee shall distribute the remaining trust estate to his descendants, per stirpes, but if there are none, to my descendants, per stirpes.

ARTICLE V
SHARES VESTING IN INCAPACITATED BENEFICIARIES AND
BENEFICIARIES UNDER AGE TWENTY-ONE

Notwithstanding the foregoing provisions, whenever any interest in my estate vests absolutely in a beneficiary under age 21, or to a beneficiary, other than Norman William Worthington, Craig William Worthington, or Bradford N. Worthington, who in the sole discretion of my Trustee, has become incapable of handling his affairs, my Trustee may retain the interest upon a separate trust and pay to the beneficiary as much of the net income or principal as my Trustee may deem appropriate to provide for the beneficiary's support, other needs or education until the beneficiary reaches age 21, or until such incapacitated beneficiary becomes capable of managing his affairs, when the interest shall go outright to the beneficiary. If the beneficiary dies before reaching age 21, or in the case of an incapacitated beneficiary, dies without ever becoming capable of handling his affairs, the interest shall constitute a part of the beneficiary's estate. Also, while the beneficiary is a minor, any part of the interest may be distributed to a custodian (selected by my Executor or my Trustee) for the beneficiary under the Virginia Uniform Transfers to Minors Act (21). My Executor or my Trustee may distribute any interest vesting in a beneficiary under physical or mental impairment, other than Norman William Worthington, Craig William Worthington, or Bradford N. Worthington, to a custodian under the Virginia Uniform Custodial Trust Act. These are powers only and do not prevent absolute vesting of the interest in the beneficiary and if any interest is held pursuant to this Article on the date that is twenty years after the death of the last to die of my descendants living at my death, it shall

immediately be distributed outright to the beneficiary.

ARTICLE VI

DEBTS, TAXES AND OTHER CHARGES

A. My Executor shall pay or provide for the payment of my legally enforceable debts, the cost of the administration of my estate including but not limited to attorney fees, court costs, probate tax, fees owing to the Commissioner of Accounts, and similar expenses and costs, my charitable pledges and the expenses of my funeral and burial (including the cost of a monument or marker). My Executor shall not seek contribution from my beneficiaries on our joint debts. However, if my beneficiaries wish to retain any residence or other real property subject to a mortgage or similar indebtedness and so advises my Executor within six months after my death, my Executor may elect not to pay the indebtedness.

B. My Executor shall pay or provide for the payment of all estate, inheritance and similar taxes payable by reason of my death, including taxes on assets not passing under this will and interest on taxes. In addition, my Executor shall pay or provide for the payment of any generation-skipping transfer taxes incurred at my death with respect to property passing under this will. All such taxes and interest shall be paid as a cost of administering my estate and without apportionment. However, my Executor shall seek recovery of the taxes and interest paid by my Executor and attributable to any qualified terminable interest property included in my estate from the person receiving the property.

ARTICLE VII

EXECUTOR AND TRUSTEE

A. I nominate and appoint MARIE BURNS WILSON as Executor and Trustee of this my last will and testament. If Marie Burns Wilson fails to qualify or ceases to act as Executor and/or Trustee hereunder, I nominate and appoint JOANNE STRUMB as my Executor and/or Trustee in her stead. In the event that there is no Executor and/or Trustee nominated hereunder that is a resident of Virginia at the time of such qualification, my non-resident fiduciary shall have the right to appoint a Virginia resident to serve as an Executor and/or a Trustee with such non-resident fiduciary. I direct that no security be required on the bond of any Executor and/or Trustee designated herein or appointed by my non-resident fiduciary. I hereby direct that my Trustee shall not be required to file annual accounts with a court as otherwise required by the law of the Commonwealth of Virginia or any other law.

B. Any individual serving as Executor and/or Trustee hereunder shall be entitled to receive reasonable compensation for fiduciary services rendered.

C. In addition to the powers granted by law, I grant my Executor and my Trustee the powers set forth in Section 64.1-57 of the Code of Virginia, and I incorporate that Code Section in my will by this reference. I direct, authorize and empower my Executor and my Trustee to sell any or all real estate, regardless of the necessity to sell, which may at any time become part of my estate or any trust created herein, if my fiduciary deems such sale appropriate in the sole discretion of my fiduciary. No devisee of such real estate shall be able to challenge or question any decision made by my fiduciary to sell such real estate. The purchaser of such real estate shall not be obligated in any way to see to the application of the purchase money or

other consideration passing in connection therewith. If any asset held by me at my death does not meet the requirements of the prudent man standard set forth in Section 26-45.1 of such Code, my Executor and my Trustee may nevertheless retain the asset for so long as it may deem appropriate. My Executor and my Trustee may borrow money for any purpose deemed in the best interests of my estate or any trust, and secure such borrowings with any assets of my estate or the trust.

D. My Executor may make tax elections without making adjustments to income or principal, or may make equitable adjustments between income and principal as it may deem appropriate.

E. My Trustee may merge or consolidate for administrative purposes any trust under my will with any other trust made by me having the same Trustee and substantially the same dispositive provisions.

F. If at any time the size of any trust under my will, except the Norman William Worthington Trust, the Craig William Worthington Trust and the Bradford N. Worthington Trust, is so small that, in the opinion of my Trustee, the trust is uneconomical to administer, my Trustee may terminate the trust and distribute the assets to the person then authorized to receive trust income, or if more than one person is authorized to receive trust income, to the one or ones of them my Trustee may deem appropriate and in such shares as it may deem appropriate.

G. Assets allocated to one trust or share may be of different character or have different income tax bases than assets allocated to another trust or share.

H. The powers and discretion granted to my Executor and my Trustee are exercisable only in a fiduciary capacity and may not be used to enlarge or shift any beneficial

interest except as an incidental consequence of the discharge of fiduciary duties.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

A. To the extent permitted by law, the principal and income of any trust shall not be liable for the debts of any beneficiary or subject to alienation or anticipation by a beneficiary, except as otherwise provided. Neither Norman William Worthington, Craig William Worthington, or any other beneficiary of any other trust under this agreement shall have the right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate nor shall any part of the trust estate including income, be liable for the debts or obligations of any kind of the Beneficiary or be subject to attachment, garnishment, execution, creditor's bill or other legal or equitable process. No part of the corpus thereof, neither principal or undistributed income, shall be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department or agency of any state, or of the United States.

B. A person related by or through adoption shall take under my will as if the person were related by or through birth, except that a person adopted after reaching age twenty-one and descendants of such person shall not so take.

C. Where appropriate to the context, pronouns or other terms expressed in one number and gender shall be deemed to include the other number and genders.

D. Each item passing to a beneficiary of my estate under this will shall be deemed to be the separate property of such beneficiary and shall not be deemed to be a part of

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the augmented estate of such beneficiary.

E. Any person who is not established by clear and convincing evidence to have survived my death by 120 hours shall be deemed to have predeceased me.

IN TESTIMONY WHEREOF, I have set my hand and seal to this my last will and testament consisting of eighteen (18) typewritten pages this 8th day of November, 1996.

Gertrude P. Worthington (Seal)
GERTRUDE PIERCE WORTHINGTON

Signed, sealed, published and declared for and as her last will and testament by the testator in our presence, we all being present at the same time; and we, in her presence and at her request and in the presence of each other, have subscribed our names as witnesses whereof, all on the date last above written.

Paul L. Reader

Richmond, Virginia

Emily A. Bradstreet


Richmond, Virginia

STATE OF VIRGINIA, AT LARGE

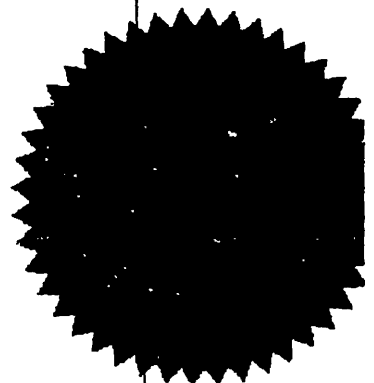
COUNTY OF HENRICO, to-wit:

Before me, the undersigned authority, on this day personally appeared GERTRUDE PIERCE WORTHINGTON, PAULA L. PEADEN, and EMILY A. GOODYKOONTZ, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, GERTRUDE PIERCE WORTHINGTON, the testator, declared to me and to the witnesses in my presence that said instrument is her last will and testament and that she had willingly signed or directed another to sign the same for her, and executed it in the presence of said witnesses as her free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as her last will and testament in the presence of said witnesses who, in her presence and at her request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of eighteen (18) years and of sound and disposing mind and memory.

Sworn and acknowledged before me by GERTRUDE PIERCE WORTHINGTON, the testator, and PAULA L. PEADEN and EMILY A. GOODYKOONTZ, witnesses, this 8th day of November, 1996.


Notary Public

My commission expires: January 31, 1999



VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE
CITY OF RICHMOND, JOHN MARSHALL COURTS BUILDING, THE
30TH DAY OF APRIL, 2001.

Re: GERTRUDE PIERCE WORTHINGTON,
Deceased.

Probate of Will and Qualification of Administrator, c.t.a.

A paper writing dated November 8, 1996, purporting to be the last will and testament of Gertrude Pierce Worthington, who died on August 6, 2000 and was, at the time of her death, a resident of the City of Richmond, within the jurisdiction of this Court, was presented to the Clerk and offered for probate.

Due execution of the paper writing was proven by the affidavit of the attesting witnesses attached thereto, all in keeping with the provisions of Section 64.1-87.2, Code of Virginia.

It being represented to the Clerk that Marie Burns Wilson, the Executor named in the will, and Joanne Strumb, the alternate Executor and Trustee, declined to qualify as such in writing and Bradford N. Worthington and Craig W. Worthington, children and beneficiaries of the will, nominating Bradford N. Worthington, in writing and in person as Administrator, with the will annexed, of the estate of Gertrude Pierce Worthington, deceased; on the motion of Bradford N. Worthington, it is ordered that the paper writing dated November 8, 1996, consisting of Nineteen typewritten pages, be admitted to probate as and for the true last will and testament of Gertrude Pierce Worthington, deceased; and it is ordered to be recorded as such.

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On further motion of Bradford N. Worthington, he is hereby appointed as Administrator, with the will annexed, of the estate of Gertrude Pierce Worthington, deceased, and duly qualified as such by taking oath that he will faithfully perform the duties of his office to the best of his ability, and together with Fidelity and Deposit Company of Maryland, his surety, by Tammy W. Brown, its duly authorized attorney in fact, which first justified upon the oath of its said attorney in fact as to its sufficiency, entered into and acknowledged a bond in the penalty of Two Hundred Ninety Six Thousand Dollars, payable and conditioned according to law; which bond is ordered to be recorded.

And certificate is granted the Administrator, with the will annexed, for obtaining a probate of the will of Gertrude Pierce Worthington, deceased, in due form.

 , Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Plaintiff,

v.

File No. 01-451

**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON**

Defendant.

**REPLY BY FIDELITY AND DEPOSIT COMPANY OF MARYLAND TO TRUSTEE'S
RESPONSE TO MOTION FOR SHOW CAUSE**

COMES NOW The Fidelity and Deposit Company of Maryland ("F&D"), by counsel, and replies as follows to the Response by Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a., and Substitute Trustee for the Estate of Gertrude Pierce Worthington, to F&D's Motion for Show Cause:

1. As previously alleged, this action arises out of the forfeiture of the bond F&D executed on behalf of Bradford Worthington ("Worthington"), Administrator, c.t.a., for the Estate of Gertrude Pierce Worthington. On January 13, 2003, this Court removed Worthington as Administrator, c.t.a., for the Estate of Gertrude Pierce Worthington. On January 27, 2003, Greer P. Jackson, Esq. was appointed Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington. On June 9, 2003, F&D obtained a judgment against

Worthington in the amount of \$127,808.60, plus interest and 5% damages for forfeiture of its bond. F&D paid said amount to the Commissioner of Accounts, Kimberley A. Pinchbeck- \$125,308.60 of which was paid to Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a. and Substitute Trustee for the Estate of Gertrude Pierce Worthington. The \$125,308.60 paid by F&D (F&D's "claim proceeds") replaced the trust corpus. Pursuant to the terms of Gertrude Pierce Worthington's will, Worthington was to receive 25% of the Estate of Gertrude Pierce Worthington in trust and Craig Worthington was to receive 75% of the Estate of Gertrude Pierce Worthington in trust. F&D issued a Summons for Garnishment and Writ of Fieri Facias on September 24, 2003 on Greer P. Jackson, Esq., in order to prevent any distribution of its claim proceeds to Worthington before F&D's judgment has been satisfied. The return date was October 27, 2003. On or about December 10, 2003, Greer P. Jackson filed a written response to the Motion for Show Cause asserting that Article IV of the Last Will and Testament of Gertrude Pierce Worthington ("Will") creates a spendthrift trust, and that no claim proceeds are available to F&D absent an Order of the Court. Mr. Jackson does not take the position that the F&D is not entitled to its claim proceeds or that the garnishment is inappropriate; rather, he asks the Court to direct him as to the appropriate relief, believing that the Court must order him to "freeze" the claim proceeds instead of paying them to Worthington. (See Response to Motion for Show Cause).

2. Although unclear, the language of the Article IV of the Will appears to create a discretionary trust, not a spendthrift trust. A discretionary trust allows the trustee wide latitude to pay as much or as little of the trust assets¹ to the beneficiaries as the trustee deems appropriate. A spendthrift trust is distinguishable from a discretionary trust in that it typically

allows a trustee to pay money to third parties for the benefit of the beneficiary rather than the beneficiary him/herself or to withhold all payments if appropriate. Here, Article IV, Section A provides as follows:

“My Trustee may pay to or for the benefit of Bradford N. Worthington during his lifetime as much of the net income or principal of the Trust as my Trustee may deem appropriate for his support and health. My Trustee may distribute principal in kind while income is accumulated and shall annually add any undistributed income to principal.”

(See Will, Exhibit to Trustee’s Response). The above language allows the trustee wide latitude to pay as much or little as he deems appropriate and therefore more closely mirrors the discretionary trust.

3. Assuming arguendo that a spendthrift trust, or any trust which hinders creditors’ ability to reach the funds, is created by the language, F&D should be allowed to reach such its claim proceeds either by way of the instant garnishment proceedings or through the broad reach of this Court’s equitable powers. The usual proscriptions applicable with respect to a spendthrift trust which operate in favor of the beneficiary and to the detriment of a third party creditor do not apply in the instance. Rather, Worthington stands in the shoes of the settlor, Mrs. Worthington, as he has caused F&D to fund the trust with claim proceeds because of his acts. Where a beneficiary is the settlor, the spendthrift trust is void and may be dissolved and reached by creditors. The restriction that a trust cannot “operate to the prejudice of any existing creditor of the creator of such trust” is the self-settled rule and has been consistently interpreted to prevent a self-settled trust from being exempt from the settlor-beneficiary’s creditors; a spendthrift trust cannot be created by the beneficiary to shield his own assets from claims of his own creditors. *In re Bissell*, 255 Bankr. 402, 2000 Bankr. LEXIS 1407 (Bankr. E.D. Va. 2000).

¹ Here the trust assets have been replaced with F&D’s claim proceeds, as set forth herein.

Here, the same logic and policy underlying the dictate that a settlor cannot be created by the beneficiary to shield his own assets should extend to prevent Worthington from collecting the claim proceeds, funds placed in the Trust by F&D because of Worthington's acts.

4. Alternatively, F&D stands in the shoes of the settlor, Mrs. Worthington, as F&D has funded the Trust due with the claim proceeds to Mr. Worthington's acts. F&D is therefore distinguishable from the usual "third party creditor" as the beneficiary created the debt that F&D is seeking to have repaid. Thus, at a minimum, equitably F&D stands in the shoes of the beneficiary, Worthington, as F&D funded the Trust at issue with claim proceeds because of Worthington's acts. "When a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded." Va. Code § 55-19C. Here the trust is funded by the claim proceeds because of the acts of the beneficiary. Thus, the trust shall not operate to prejudice F&D the settlor/existing creditor of the trust. See Va. Code § 55-19B. In the interest of equity and justice, Mr. Worthington should not be allowed to benefit from his wrongdoing, which he will do if he is allowed to collect the claim proceeds before F&D is repaid.

5. The remedy provided at Va. Code § 55-19D(2), although not specifically applicable (applies where a federal or state statute makes the beneficiary liable for reimbursement to the Commonwealth or any agency) is instructive and allows the Court to order the Trustee to satisfy all or part of the liability out of all or part of the future payments, if any, that the trustee chooses to make for the benefit of the beneficiary in the exercise of discretion under the Trust. Similarly, here, for the reasons set forth herein and the special

circumstances of this case, F&D respectfully submits that the Court order the Trustee to make any payments intended for Worthington to F&D to the extent necessary to satisfy its debt.

5. A garnishee may be described as a mere stakeholder or custodian of the garnished debt or property. *Lynch v. Johnson*, 196 Va. 516, 84 S.E.2d 419 (1954). Under Virginia law, a garnishee may escape all garnishment liability by surrendering funds to court for proper disposition. *U.S. v. Harkins Builders, Inc.*, 45 F.3d 830, 833 (4th Cir. 1995). *See In re Lamm*, 47 B.R. 364, 368 (E.D.Va.1984). F&D therefore respectfully requests that an alternative solution to this matter may be to require Mr. Jackson to deposit the claim proceeds in the Court to prevent their distribution to Mr. Worthington.

WHEREFORE, F&D moves for garnishment of the amounts of money identified in its Summons for Garnishment to prevent any distribution of claim proceeds to Worthington before F&D's judgment has been satisfied. In the event that this Court determines that F&D may not garnish its claim proceeds, F&D asks this Court to employ its equitable powers to protect F&D's interest and to ensure that Mr. Bradford Worthington not collect its claim proceeds.

F&D further requests this Court to grant it the relief it requests and any other relief that may appear appropriate and just.

Respectfully submitted,

THE FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

By: Renu M. Sethi / CEN
Counsel

Mark S. Brennan, Esq. (VSB No. 25991)
Heather M. Kofron, Esq. (VSB No. 42918)
Renu M. Setaro, Esq. (VSB No. 44529)
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TELEPHONE: (804) 783-1137
Facsimile: (804) 783-1138
*Counsel for The Fidelity and Deposit
Company of Maryland*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Trustee's
Response to Motion for Show Cause was sent by U.S. Mail, postage prepaid, on the 31st day of
December 2003 to:

Greer P. Jackson, Jr., Esquire
Spinella Owings & Shaia PC
8550 Mayland Drive
Richmond, VA 23294
Counsel for Defendant

Bradford N. Worthington
3230 Blithewood Drive
Richmond, VA 23225

Renu M. Setaro
CER

1 VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF
2 RICHMOND
3 JOHN MARSHALL COURTS BUILDING

4 THE FIDELITY & DEPOSIT
5 COMPANY OF MARYLAND,

6 Plaintiff,

v.

File No. 01-451

7 GREER P. JACKSON, JR., ESQUIRE,
8 Administrator, D.B.N.C.T.A.,
9 and Substitute Trustee for the
Estate of GERTRUDE PIERCE
WORTHINGTON,

10 Defendants.

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14 HEARING

15 Before: HONORABLE RANDALL G. JOHNSON, JUDGE
16
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18

19
20 January 6, 2004

21 Richmond, Virginia
22

23 HALASZ REPORTING

P.O. Box 1644

24 Richmond, Virginia 23218-1644

(804) 741-5215

25 Reported by: Marion G. Whitlow

1 **Appearances:**

2 **WRIGHT, ROBINSON, OSTMIMER & TATUM**
3 **By: RENU M. SETARO, ESQ.**
4 **attorney, of counsel for Plaintiff**

5 **SPINELLA, OWINGS & SHAIA**
6 **By: GREER P. JACKSON, JR., ESQ.**
7 **attorney, of counsel for Defendant**

8 **BRADFORD WORTHINGTON**

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Halasz Reporting

I N D E X

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Argument by Mr. Jackson	11
Argument by Mr. Worthington	15
Response by Ms. Setaro	20

Halasz Reporting

1 (The hearing commenced at 11:38 a.m.)

2 THE COURT: The Estate of Gertrude
3 Worthington.

4 Good morning.

5 MS. SETARO: Good morning, Your Honor.

6 THE COURT: Mr. Worthington?

7 MS. SETARO: Sir, could I get an
8 opportunity to testify under oath during this process?

9 THE COURT: I'm not sure why we're here.
10 I need somebody to tell me why we're here.

11 MS. SETARO: We're here on my motion,
12 Your Honor. I'm Renu Setaro for F&D. Would you like
13 me to approach?

14 THE COURT: If you would.

15 Mr. Worthington, why don't you have a
16 seat and let me find out why we're here and then I'll
17 be glad to tell you what you might be able to do.

18 MS. SETARO: Your Honor, we're here
19 today, my client F&D has brought an order to show
20 cause. What we are trying to do is we had an order to
21 show cause as to -- we had issued a garnishment in
22 this case. And we had requested that Mr. Jackson, who
23 is the substitute trustee in this case, not distribute
24 any funds under the trust to Mr. Worthington.

25 And if I could give a little bit of
Halasz Reporting

1 background just to refresh the Court. This action
2 arises out of the forfeiture of a bond that F&D
3 executed on behalf of Bradford Worthington,
4 administrator for the estate of Gertrude Worthington.
5 Last year, about exactly one year ago on January 13th
6 this Court removed Mr. Worthington as the
7 administrator for her estate. On January 27th
8 Mr. Jackson was appointed as the administrator and
9 substitute trustee of the estate. In June, F&D
10 obtained a judgment against Mr. Worthington and it
11 paid the amount of about \$127,000 to the Commissioner
12 of Accounts. That amount was then substituted, the
13 claim proceeds were then substituted for the trust
14 corpus and given to Mr. Jackson.

15 In September, F&D brought a garnishment
16 proceeding trying to prevent the distribution of any
17 funds in the trust to Mr. Worthington. He's a
18 25-percent beneficiary. And Craig Worthington is a
19 75-percent beneficiary. And F&D's position is that
20 Mr. Worthington should not be allowed to profit from
21 his wrongdoing. He should not be allowed to recover
22 any amounts under the trust, receive any distribution,
23 until F&D's claim is satisfied.

24 So, we issued an OSC and Mr. Jackson
25 responded to this Court saying -- I don't want to

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1 misstate anything and certainly he's here to
2 represent, but I read his response to state, Your
3 Honor, this Court needs to direct its -- F&D wants us
4 to freeze the funds. If we are going to freeze the
5 funds, we need an order of the Court saying that we
6 should do so before just freezing those funds. F&D's
7 position is -- and it appeared to me based on the
8 response that one of the reasons for the inquiry and
9 the belief that he cannot freeze the funds is a belief
10 that a spendthrift trust was created in the will of
11 Mrs. Worthington. And for whatever its worth, we read
12 the trust to create a discretionary trust, not a
13 spendthrift trust. And I elaborated on that on in my
14 reply. I don't know if you've had a chance to read
15 that or not.

16 THE COURT: I have not.

17 MS. SETARO: I filed it on --

18 THE COURT: Maybe they put it in a
19 different file, but I don't have anything.

20 MS. SETARO: I've written some notes on
21 it, but if I could -- if you want to just skim that
22 before I go into it.

23 THE COURT: But, I take it since this is
24 a reply, there must have been something that was
25 written.

Halasz Reporting

1 MS. SETARO: His response was what I just
2 stated, I believe, and I have a copy of that as well,
3 if you'd like to see it.

4 THE COURT: This might be something I
5 need to take under advisement because I have not --
6 the only thing I got was the file with the last thing
7 happening in April of last year.

8 MS. SETARO: Well, Your Honor, may I
9 approach? This is his response. This is
10 Mr. Jackson's response.

11 THE COURT: The Clerk's Office must have
12 opened a new file or something. Okay.

13 MS. SETARO: Should I go on?

14 THE COURT: Yes.

15 MS. SETARO: Well, basically, the
16 position is, Your Honor, that we read the trust to
17 create a discretionary trust, not a spendthrift trust.
18 Because the language in it more closely mirrors --
19 there's broad grant of discretion created to allow the
20 trustee to distribute the funds. And could I see that
21 reply just for a second, Your Honor?

22 THE COURT: Why don't you hold on to
23 those, because I can't read them while you're talking.
24 I'm just trying to see if maybe they're in here and I
25 missed them. But, no, I don't see them in here.

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1 MS. SETARO: The language that I was
2 referring to is Article 4 of the will. And just very
3 briefly, a discretionary trust allows the trustee wide
4 latitude to pay as much or as little of the trust
5 assets to the beneficiaries as the trustee deems
6 appropriate. A spendthrift trust is distinguishable
7 from a discretionary trust in that it typically allows
8 a trustee to pay money to third parties for the
9 benefit of the beneficiary, rather than the
10 beneficiary, him or herself, or to withhold all
11 payments if appropriate. Here Article 4 Section 8
12 provides that, "My trustee may pay to or for the
13 benefit of Bradford N. Worthington during his lifetime
14 as much of the net income or principal of the trust as
15 my trustee may deem appropriate for his support and
16 health. My trustee may distribute principal in kind
17 while income is accumulated and shall annually add any
18 undistributed income to the principal."

19 I believe this language allows the
20 trustee wide latitude to pay as much or as little as
21 he deems appropriate and more closely mirrors the
22 discretionary trust. But, assuming, Your Honor,
23 arguendo that a spendthrift trust was created, I still
24 believe that it is appropriate and justified in this
25 situation to freeze the funds to prevent their

Halasz Reporting

1 distribution to Mr. Worthington. The reason is I
2 believe that the prescriptions against -- in a
3 spendthrift trust is usually to prevent the
4 distribution of any funds to third-party creditors,
5 don't apply here. Because here Mr. Worthington stands
6 in the shoes -- there are a couple of different
7 arguments, but one is Mr. Worthington stands in the
8 shoes of the settlor. Because he caused F&D to fund
9 the trust with its claimed proceeds because of his
10 acts. And where a beneficiary is the settlor, the
11 spendthrift trust is void and can be dissolved and
12 reached by creditors. That's one argument. The
13 argument being that the spendthrift trust can't be
14 created by the beneficiary to shield his assets
15 against his creditors.

16 Another argument is that F&D stands in
17 the shoes of the settlor because F&D has funded the
18 trust with its claimed proceeds due to
19 Mr. Worthington's acts. And F&D is, therefore,
20 distinguishable from the usual third-party creditors
21 because the beneficiary created the debt that F&D is
22 seeking to have repaid.

23 Your Honor, Virginia Code Section
24 55-19(C) provides that when a trust is funded by
25 amounts attributable to any claim possessed by a

Halasz Reporting

1 beneficiary, whether paid pursuant to a structured
2 settlement or otherwise, the beneficiary shall be
3 considered a creator of the trust to the extent so
4 funded. Here, arguably, the trust is funded by the
5 claimed proceeds because of Mr. Worthington's acts.
6 Because of the acts of the beneficiary. Thus, the
7 trust will not operate to prejudice F&D, the settlor,
8 an existing creditor of the trust.

9 There's also a section of the Code,
10 Section 55-19(D)(2). It's instructive in this
11 instance. It's not directly applicable. That section
12 allows the Court to order the trustee to satisfy all
13 or part of the liability out of all or part of the
14 future payments, if any, that the trustee chooses to
15 make for the benefit of the beneficiary in the
16 exercise of discretion under the trust. Again, that
17 section applies where a federal or state statute makes
18 the beneficiary liable for reimbursement to the
19 Commonwealth. It doesn't directly apply here. But, I
20 would argue that the policy and the rationale under
21 that should apply here. And F&D submits that the
22 Court order the trustee to make any payments intended
23 for Worthington to F&D or to freeze the proceeds so
24 that Mr. Worthington cannot collect under it for the
25 reasons that I set forth.

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1 Finally, a garnishee such as Mr. Jackson
2 here, may be described as a mere stakeholder or
3 custodian of the garnished debt or property. Under
4 Virginia law, a garnishee can escape all garnishment
5 liability by surrendering funds to the Court for the
6 proper distribution. This may be an alternative means
7 for resolving the dispute. In short, Your Honor,
8 whether by way of garnishment or whether -- you know,
9 F&D simply implores the Court to use its equitable
10 powers, this is not the usual spendthrift trust
11 scenario. And in the interest of justice in this
12 situation, Mr. Worthington should not be allowed to
13 collect the claimed proceeds F&D had to put into this
14 trust because of his acts.

15 THE COURT: Thank you very much. Why
16 don't you hold on to those and I'll figure out what
17 I'm going to do after I hear from Mr. Greer and
18 possibly Mr. Worthington.

19 Mr. Greer, do you wish to be heard?

20 I'm sorry, not Mr. Greer. Mr. Jackson.
21 Excuse me.

22 MR. JACKSON: That's okay. It happens
23 all the time, Your Honor.

24 Your Honor, we are here today on the
25 show cause of the garnishment that originally called

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1 for me to answer or appear on October 27th. Well, I
2 appeared. There was nothing on the docket. And when
3 I checked with the Clerk downstairs, she said, well,
4 we never schedule these things on the docket. So,
5 that's why the bonding company has issued the show
6 cause. Even though I was here, I have no report to
7 give to the Court at this time.

8 Your Honor, I think that I have
9 qualified as the administrator, DBNCTA, and substitute
10 trustee in this estate. And as such, I'm personally
11 responsible to manage the funds in accordance with the
12 law and in accordance with the will. And I've sworn
13 an oath to do that. And I must follow not only the
14 law of the State of Virginia, but also what the
15 directions of the will provide. On Page 17 of the
16 will are the spendthrift trust language that states as
17 follows. "To the extent permitted by law, the
18 principal and income of any trust shall not be liable
19 for the debts of any beneficiary or subject to
20 alienation or anticipation by a beneficiary, except as
21 otherwise provided." And it goes further. Your
22 Honor, if you would like to --

23 THE COURT: I have it.

24 MR. JACKSON: It's on Page 17. Neither
25 Norman William Worthington, Craig William Worthington,
Halasz Reporting

1 or any other beneficiary of any other trust under this
2 agreement," which includes Bradford Worthington,
3 "shall have the right to anticipate, sell, assign,
4 mortgage, pledge, or otherwise dispose of or encumber
5 any part of the trust estate," et cetera, "be liable
6 for the debts or obligations of any kind of the
7 beneficiary or be subject to attachment, garnishment,
8 execution, creditor's bill, or other legal equitable
9 process."

10 Your Honor, what I think the bonding
11 company is trying to do here is to somehow issue an
12 attachment or garnishment against funds that I'm
13 holding in trust for the benefit of these two
14 beneficiaries. And while it's an unusual
15 circumstance, I must admit, that Bradford Worthington
16 was allowed to qualify under this will, which
17 certainly seems in hindsight to be unusual in and of
18 itself, the trust is not only for his benefit, but for
19 his brother Craig. Craig is the ultimate beneficiary
20 of these trust funds should something happen to
21 Bradford in the meantime. So, I'm here to tell the
22 Court that I must protect these assets for the benefit
23 of Craig Worthington as well as Bradford Worthington.

24 Their mother Mrs. Worthington, who is
25 the testator in this case, obviously knew what she was

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1 doing when she set these two trusts up. She had a
2 plan. That all the funds that were available in her
3 estate would not be subject to squandering or
4 alienation or pledging or hypothecating, whatever that
5 is. Her assets, but they would be used for the
6 benefit of her two sons. She knew her two sons. This
7 was her plan. The fact that her plan was thwarted
8 because Bradford Worthington was allowed to qualify as
9 her fiduciary under this estate, the bonding company
10 went on that bond, Your Honor. They had certainly
11 ample opportunities to provide safeguards or any other
12 stopgap measures, as often happens. Co-signatures on
13 checks, whatever. But, they're the ones that took the
14 risk on this thing. And I'm not disparaging them in
15 any way. I'm just telling you that they're not, I
16 don't want to say an innocent party in this thing, but
17 they were not caught unawares. They made their deal
18 on the bond, to go on the bond with this gentleman.
19 The fact that they've had to pay on it is certainly
20 not the fault of Mrs. Worthington, the testator, nor
21 Craig Worthington.

22 But, all that's hindsight stuff. We
23 have to deal with what's happening today. I have to
24 deal with what's happening today. And I'm the
25 fiduciary in this estate. Your Honor, the bonding

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1 company is merely a creditor. They're merely a
2 judgment creditor against one of the beneficiaries in
3 this estate. They can't rise any higher than that.
4 And, as such, funds that I'm holding in trust are not
5 subject to garnishment by them because they are merely
6 a creditor of one of the beneficiaries. That's all I
7 have on that.

8 THE COURT: Mr. Jackson, thank you.

9 MR. JACKSON: I think as far as the
10 garnishment is concerned, we -- one other thing. I
11 have not -- I'm still in the administration portion of
12 this estate. I have not gone into the trust
13 administration phase. So, I don't know what Brad
14 Worthington is entitled to nor if he's entitled to
15 anything at this point.

16 THE COURT: All right.

17 MR. JACKSON: That's my report under the
18 garnishment.

19 THE COURT: Mr. Worthington, you wanted
20 to be heard. Sir, do you want to come to the podium
21 and tell me what you want to say?

22 MR. WORTHINGTON: Your Honor, there were
23 three hearings in this whole affair. December 10th,
24 2002; January 7, 2003; and March 31st, 2003. On
25 December 10th I was represented by a local attorney

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1 Mr. Robert Lee. Robert E. Lee. And Mr. Lee was down
2 here and I was late getting down here because I had
3 gone by the Commissioner's Office to leave the
4 accounting that I had.

5 THE COURT: If you're going to make an
6 argument -- listen to me. If you're going to make an
7 argument about why the Court should not have forfeited
8 your bond, I really am not going to hear that because
9 the Court has already made that decision.

10 MR. WORTHINGTON: Yes, sir.

11 THE COURT: The only question today is
12 whether the Court should prevent Mr. Jackson, as
13 substitute trustee, to distribute money to you.
14 That's the only question today.

15 MR. WORTHINGTON: In that regard, before
16 the March 31st hearing I went to the insurance
17 company, to their local counsel company, and I told
18 her that I had documents that had not -- I had not had
19 an opportunity to present on January the 7th. Because
20 the document that I received, the attested
21 court-ordered document, had been altered. And there
22 was confusion --

23 THE COURT: It sounds like you're still
24 trying to convince me that I should not have forfeited
25 the bond.

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1 MR. WORTHINGTON: No, sir. My point
2 is --

3 THE COURT: Do you have anything you want
4 to tell me as to what the law in Virginia is with
5 regard to whether -- what your -- this is your mother?

6 MR. WORTHINGTON: Yes, sir. I mean --

7 THE COURT: What she provided for in her
8 will is or is not a spendthrift trust. I think I know
9 the answer to that, but I'll be glad to hear what
10 you're going to tell me. And if it is a spendthrift
11 trust, whether the Court can prevent or should prevent
12 a distribution of that trust to you in light of the
13 fact that the Court has found -- and you don't agree
14 with it, but the Court has found that it was your
15 fault that the bond had to be forfeited.

16 MR. WORTHINGTON: The insurance company
17 refused to defend us on March 31st and now they're
18 coming back and trying to hold me accountable for it.
19 I told them that I had documents to fight the
20 forfeiture, and Ms. Cochran(phonetic) was not
21 interested. And I was really shocked by that, so I
22 spoke to another person at their lawfirm. It may have
23 been Mr. Brennan(phonetic), I'm not certain. I
24 couldn't find a name. But, I'm in the process of
25 trying to verify that. And I spoke to Mr. Brennan for

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1 about 30 minutes making arguments. I told him I had a
2 document from my brother, or my brother agreed to
3 this, and I brought that document with me today. He
4 agreed to this investment. And numerous other things.
5 And his -- and I got no response from this gentleman.
6 And at the end of the con -- And I was sort of
7 baffled. Why doesn't he care? He's supposed to be
8 defending Zurich NA, the parent company. They're
9 supposed to be zealously representing their client.
10 If they do that, then it's to my benefit even though
11 they're not representing me. But, they were just
12 sitting on their hands. And the final statement he
13 made, sir, and I'll -- get a Bible, I'll swear to
14 this. He said, and this is almost an exact quote,
15 that, "We're just going to have to wait and see what
16 the Judge decides." They were not interested in
17 fighting it. So, I find it incredulous that they come
18 here today trying to take the money out of this
19 estate, where 75-percent of it is for my brother,
20 who's got schizophrenia. And it's illogical and
21 dishonest.

22 THE COURT: All right. Mr. Worthington,
23 I appreciate very much your comments.

24 MR. WORTHINGTON: One other fact, sir,
25 I'd like to point out.

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1 THE COURT: If you can do it very
2 quickly.

3 MR. WORTHINGTON: On January 7th, 2003,
4 Ms. Pinchbeck asserted in this Court that I was not
5 using a CPA. And I asserted that I was. That CPA,
6 Rita Lane, Lane & Associates, was referred to me by
7 her office, and her office before that hearing date
8 had FAXed documents over there so that Ms. Lane could
9 help me finish the accounting, which was incomplete.
10 And for Ms. Pinchbeck to come in here and assert that
11 I wasn't using an accountant, which was the whole
12 basis for everything this Court did from that point
13 on, is just an out and out lie, Your Honor.

14 THE COURT: All right. Thank you, Mr.
15 Worthington, I appreciate that very much. Of course,
16 you would like for Mr. Jackson, if he determines that
17 you are entitled to a distribution, you would like for
18 him to be able to distribute the money to you, I'm
19 sure?

20 MR. WORTHINGTON: Yes, sir.

21 THE COURT: You can go back and have a
22 seat.

23 MS. SETARO: May I just respond very
24 briefly?

25 THE COURT: Yes.

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1 You can have a seat.

2 MR. WORTHINGTON: If she responds to me,
3 can I respond to her?

4 THE COURT: You can have a seat, sir.
5 Thank you.

6 MS. SETARO: Your Honor, just very
7 briefly. We're not asking this Court to prevent
8 distribution to Craig Worthington or to thwart the
9 intent of the testator. We're merely asking the Court
10 to freeze the funds with respect to Mr. Bradford
11 Worthington. I know you understand. One other thing,
12 Mr. Jackson has said we can rise no higher --

13 THE COURT: But, you want the Court to do
14 more than freeze them. You want the Court to pay
15 money over to --

16 MS. SETARO: Well, we want -- no, Your
17 Honor, and I may have his misspoken. F&D seeks to
18 have this Court freeze those funds to prevent any
19 distribution to Mr. Bradford Worthington until its
20 judgment is satisfied. It's not necessarily saying
21 that the money should go over to F&D instead. It just
22 says --

23 THE COURT: What's going to happen to
24 that money?

25 MS. SETARO: Well --

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1 THE COURT: It's going to be paid over to
2 F&D.

3 MS. SETARO: Perhaps. But, certainly at
4 a minimum it should be --

5 THE COURT: The money doesn't do any good
6 just sitting in Mr. Jackson's trust account or in this
7 Court's account. I mean, you want that money to be
8 paid over to you to help satisfy your judgment. I
9 don't know why you don't want to admit that.

10 MS. SETARO: Well, if there are other
11 means of satisfying the judgment --

12 THE COURT: Then we don't need to keep
13 this money.

14 MS. SETARO: It shouldn't go to him
15 before it comes to F&D, I guess.

16 One other thing, about the statement
17 that F&D can rise no higher than a regular third-party
18 creditor, I think I set forth in my initial statement,
19 but I do think in this situation F&D does rise higher
20 than a third-party creditor because it has funded the
21 trust with its claimed proceeds. One other -- two
22 things very quickly. The time for any appeal, I've
23 received something with respect to the issue that
24 Mr. Worthington was addressing, has expired. And we
25 received notice of that. Thank you, Your Honor.

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1 THE COURT: I'm going to ask counsel if
2 you-all will do me a favor. Again, I don't have any
3 of the papers that you filed and I don't know why
4 because in looking at the papers, it looks like the
5 correct case number was on the papers and those papers
6 should have been put in the file. But, I don't have
7 them. Can I ask you-all to go down to the Clerk's
8 Office and tell them what you have filed and see if
9 they can find those papers? If they cannot, I guess
10 I'd have to ask y'all to refile them but without all
11 of the notes and writing that you have on yours. If
12 y'all can do that before you leave the building, I
13 would appreciate it. And then if they find them, just
14 ask them to put them in the file and make sure the
15 file is sent right back up to me. And I'm going to
16 take this matter under advisement and give you a
17 decision as quickly as I can.

18 MS. SETARO: Thank you, Your Honor.

19 THE COURT: Thank y'all very much.
20 Mr. Worthington, thank you, sir.

21 (The hearing was concluded at 12:00 p.m.)
22
23
24
25

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1 REPORTER'S CERTIFICATE

2 I do hereby certify that the foregoing is a true and
3 correct transcript of my shorthand notes taken in this
4 matter.

5
6
7 Marion G. Whitlow - Notary Public
Commonwealth of Virginia at Large

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25
Halasz Reporting

Circuit Court
OF THE
City of Richmond
John Marshall Courts Building

RANDALL G. JOHNSON
JUDGE

400 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-1999

January 29, 2004

Renu M. Setaro, Esquire
Wright, Robinson, Osthimer & Tatum, P.C.
411 East Franklin Street, 4th Floor
Richmond, VA 23219-2205.

Greer P. Jackson, Jr., Esquire
Spinella, Owens & Shaia, P.C.
8550 Mayland Drive
Richmond, VA 23294

Re: Case No. 01-451

In Re: The Estate of Gertrude Pierce Worthington

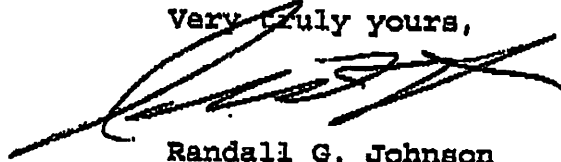
Dear Counsel:

Although this case is before the court on a motion to show cause, it is the court's understanding that the sole issue before it is whether the Administrator, d.b.n.c.t.a., and Substitute Trustee of the Estate of Gertrude Pierce Worthington; deceased, should be required to refrain from distributing any assets of the estate to Bradford N. Worthington prior to Fidelity and Deposit Company of Maryland's receiving satisfaction for its judgment against Mr. Worthington. After reviewing the arguments contained in the parties' memoranda and at oral argument, the court finds that Article IV of the testator's will does not create a spendthrift trust that puts the trust's assets out of the reach of Mr. Worthington's creditors, and that any property he is entitled to receive from the estate is subject to garnishment and other collection process. Accordingly, the court will require that Mr. Jackson not distribute any money to Mr. Worthington without the permission of Fidelity or this court.

Renu M. Setaro, Esquire
Greer P. Jackson, Jr., Esquire
Page 2
January 29, 2004

I ask that Ms. Setaro prepare an appropriate order and submit it to Mr. Jackson for his endorsement and objection, and that he then submit it to the court.

Very truly yours,



Randall G. Johnson

cc: Mr. Bradford N. Worthington

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

Plaintiff,

v.

GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N., C.T.A., AND
SUBSTITUTE TRUSTEE FOR THE ESTATE
OF GERTRUDE PIERCE WORTHINGTON,

Defendant.

File No. 01-451

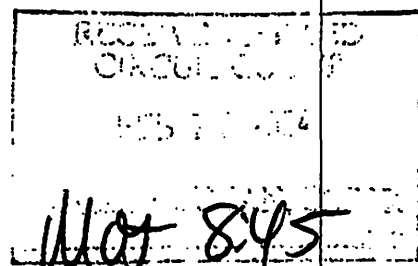
**MOTION OF ADMINISTRATOR, d.b.n., c.t.a.,
AND SUBSTITUTE TRUSTEE FOR RECONSIDERATION**

Greer P. Jackson, Jr., as administrator, d.b.n., c.t.a., and substitute trustee of the estate of Gertrude Pierce Worthington, deceased, by counsel, moves the Court for reconsideration of its ruling of January 29, 2004, and presents the accompanying memorandum in support of his motion.

GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, d.b.n., c.t.a. AND
SUBSTITUTE TRUSTEE FOR THE ESTATE
OF GERTRUDE PIERCE WORTHINGTON

By Robert E. Eicher
Of Counsel

Robert E. Eicher
Williams Mullen
A Professional Corporation
Two James Center, 17th Floor
1021 East Cary Street
Post Office Box 1320
Richmond, Virginia 23218-1320
804.643.1991
(FAX) 804.783.6507



CERTIFICATE

I hereby certify that on this 17th day of February, 2004, I served a copy of the foregoing Motion of Administrator, d.b.n., c.t.a., and Substitute Trustee for Reconsideration by first-class mail, postage prepaid, to the following.

Mark S. Brennan, Esq.
Heather M. Kofron, Esq.
Renu M. Setaro, Esq.
Wright, Robinson, Osthimer & Tatum
411 East Franklin Street, Suite 400
Richmond, Virginia 23219

Mr. Bradford N. Worthington
3230 Blithewood Drive
Richmond, Virginia 23235

_____

1007373.01

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

Plaintiff,

v.

GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N., C.T.A., AND
SUBSTITUTE TRUSTEE FOR THE ESTATE
OF GERTRUDE PIERCE WORTHINGTON,

Defendant.

File No. 01-451

**MEMORANDUM OF ADMINISTRATOR, d.b.n., c.t.a.,
AND SUBSTITUTE TRUSTEE
IN SUPPORT OF MOTION FOR RECONSIDERATION**

Greer P. Jackson, Jr., as administrator, d.b.n., c.t.a., and substitute trustee of the estate of Gertrude Pierce Worthington, deceased (the "Trustee"), by counsel, presents this memorandum in support of his motion for reconsideration of the Court's ruling on January 29, 2004.

I. The Ruling

By letter to counsel for Fidelity and Deposit Company of Maryland and to the Trustee, dated January 29, 2004, the Court found that "Article IV of the testator's will does not create a spendthrift trust that puts the trust's assets out of the reach of Mr. Worthington's creditor" Hence, the Court ruled, the Trustee was not permitted to make any distribution to Mr. Worthington without the permission of Fidelity or of the Court.

MAJ-8.4

II. Grounds for Reconsideration

The Court correctly found that Article IV of the will did not create a spendthrift trust. Article IV, standing alone, creates only a discretionary trust and not, standing alone, a spendthrift trust. Judge Lamb ably discussed the distinction in George E. Haw, etc. v. R. W. Haw, et al., 1 Ops. B. Lamb 138 (1955).

Article IV does not stand alone, however. It has to be read in conjunction with paragraph A of Article VIII since a will is to be read by its four corners, giving meaning to every word, to ascertain the testator's intention.

Paragraph A of Article VIII is a common spendthrift provision which, by its literal terms, encompasses any trust under the will and every trust beneficiary, as follows:

To the extent permitted by law, the principal and income of any trust shall not be liable for the debts of any beneficiary, except as otherwise provided. Neither Norman William Worthington, Craig William Worthington, or any other beneficiary of any other trust under this agreement shall have the right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate nor shall any part of the trust estate including income, be liable for the debts or obligations of any kind of the Beneficiary or be subject to attachment, garnishment, execution, creditor's bill or other legal or equitable process.

(italics supplied.)

The testator's spendthrift provision is valid and enforceable pursuant to Code of Virginia § 55-19B as in effect at the testator's death on August 6, 2000, as follows:

Any trust estate not exceeding one million dollars in actual value¹ may be held in trust upon condition that the trust corpus and income, or either of them, shall in the case of a simple trust or, in the case of a complex trust, may in the discretion of the fiduciary

¹ Section 55-19 was amended in 2001 to eliminate the ceiling on the amount that may be held in a spendthrift trust. Acts 2001, ch. 81.

be paid to or applied by the trustee for the benefit of the beneficiaries without being subject to their liabilities or to alienation by them. However, no such trust shall operate to the prejudice of any existing creditor of the creator of such trust. . . .

The spendthrift statute, as originally enacted in § 5157 of the Code of 1919, reversed an earlier codification of English common law in § 2428 of the Code of 1887. The spendthrift statute is remedial and is to be interpreted consistent with the dramatic change made in 1919. Sheridan v. Krause, 161 Va. 873, 895, 172 S.E. 508, 515 (1934). It is to be liberally construed. Allen v. Wilson, 3 B. R. 439 (Bankr. W.D. Va. 1980).

Hence, like Rountree v. Lane, 155 F.2d 471 (4th Cir. 1946) (applying Virginia law), and Sheridan v. Krause, *supra*, the Trustee is permitted to make distributions directly to the beneficiary notwithstanding Fidelity's summons in garnishment and notice of lien of *fiери facias* because the testator's spendthrift provision expressly exonerates principal and income from creditors' claims. Fidelity's remedy is to attach the distributions in the beneficiary's hands. *See* Restatement (Second) of Trusts § 152, com. j (1959). Professor Bogert, citing numerous cases, states the rule applicable to spendthrift trusts, as follows:

Where by statute or the trust terms it is provided that the interest of a beneficiary is not to be available to his creditors, . . . obviously creditors have no rights or remedies as far as the trust property and the beneficiary's interest in it or the income thereof are concerned. They are limited to collection from sums after payment to the beneficiary, and to the products of such payments and to nontrust property.

G. Bogert, The Law of Trusts & Trustees § 227 at 499 (rev. 2nd ed. 1992) (footnote omitted).

Professor Scott states the same rule:

To the extent to which the interest of the beneficiary is subject to a valid restraint on alienation, whether by the terms of the trust or by statute, his assignee or creditor cannot reach it. If

they cannot reach his interest where the trustee is under a duty to pay the income to the beneficiary, clearly they cannot reach it where the trustee has discretion whether to pay the income to him or not, although the trustee in fact pays the income to him. . . .

IIA A. Scott, The Law of Trusts, § 155.1 at 159 (4th ed. 1987).

The testator's spendthrift provision insulates principal and income of the trust against liability to a beneficiary's creditors. Thus, the Trustee's distributions to Mr. Worthington do not deprive Fidelity of any right to the distributions. Fidelity's rights are not violated by a distribution of property which the spendthrift provision exempts from its claim. See Oliver v. Givens, 204 Va. 123, 127, 129 S.E.2d 661, 664 (1963).

Fidelity argues that Mr. Worthington "stands in the shoes of" the testator because his acts caused Fidelity to fund the trust with the bond proceeds. Hence, Fidelity continues, Mr. Worthington is a settlor of the trust whose interest may be reached by Fidelity.

Fidelity is wrong. Section 55-19C states that "[i]f the creator of a trust is also a beneficiary," then a spendthrift provision is "invalid against creditors and transferees of the creator" (emphasis added.) By no stretch of the imagination is Mr. Worthington a creator of the trust. The trust was created by the testator in her will.

Fidelity also argues that Fidelity "stands in the shoes of" Mr. Worthington because his acts caused Fidelity to pay the bond proceeds. Fidelity quotes Section 55-19C to support its argument: "when a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded." (emphasis added.)

Fidelity is wrong again. Fidelity's payment was not made because of a claim possessed

by Mr. Worthington. He did not possess a claim. Fidelity paid because of a failure in the condition of its bond.

III. Conclusion

The relief that Fidelity seeks can only come from an amendment of Code of Virginia § 55-19. To be sure, this court has broad equitable powers, yet they are constrained by the testator's unequivocal intention expressed in the spendthrift provision in her will and by the remedial construction accorded spendthrift provisions by Section 55-19B.

GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, d.b.n., c.t.a. AND
SUBSTITUTE TRUSTEE FOR THE ESTATE
OF GERTRUDE PIERCE WORTHINGTON

By 
Of Counsel

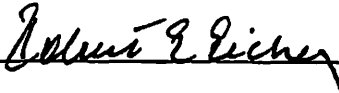
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Post Office Box 1320
Richmond, Virginia 23218-1320
804.643.1991
(FAX) 804.783.6507

CERTIFICATE

I hereby certify that on this 17th day of February, 2004, I served a copy of the foregoing Memorandum of Administrator, d.b.n., c.t.a., and Substitute Trustee in Support of Motion for Reconsideration by first-class mail, postage prepaid, to the following.

Mark S. Brennan, Esq.
Heather M. Kofron, Esq.
Renu M. Setaro, Esq.
Wright, Robinson, Osthimer & Tatum
411 East Franklin Street, Suite 400
Richmond, Virginia 23219

Mr. Bradford N. Worthington
3230 Blithewood Drive
Richmond, Virginia 23235



1007252.01

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Plaintiff,

v.

File No. 01-451

**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON**

Defendant.

**ORDER PROHIBITING DISTRIBUTION OF FUNDS FROM
THE ESTATE AND TRUST OF GERTRUDE PIERCE WORTHINGTON
TO BRADFORD WORTHINGTON WITHOUT THE PERMISSION OF
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND OR THIS COURT**

On January 6, 2004, The Fidelity and Deposit Company of Maryland ("F&D"), appeared by counsel, and Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a., and Substitute Trustee for the Estate of Gertrude Pierce Worthington, and Bradford Worthington appeared in person to proceed on F&D's Motion for Show Cause and to Garnish the amounts of money identified in F&D's Summons for Garnishment and to prevent any distribution to Bradford Worthington before F&D's judgment of June 9, 2003, in the amount of \$127,808.60, plus interest and 5% damages for forfeiture of its bond, has been satisfied.

Having considered written and oral arguments and for the reasons stated on the record and in the ~~attached~~ letter dated January 29, 2004, it is the ruling of this Court that Article IV of


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the Last Will and Testament of Gertrude Pierce Worthington does not create a spendthrift trust that puts the trust's assets out of the reach of Mr. Bradford Worthington's creditors, including F&D. Accordingly, it is Ordered that any property Mr. Bradford Worthington is entitled to receive from the Estate and Trust of Gertrude Pierce Worthington is subject to garnishment and other collection process. It is further Ordered that Mr. Greer Jackson not distribute any money to Mr. Bradford Worthington without the permission of F&D or this Court.

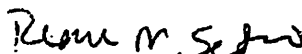
Let the Clerk send an attested copy of this Order to all counsel of records and parties appearing *pro se* or otherwise not represented by attorneys.

IT IS SO ORDERED.

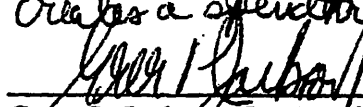
ENTERED: 2/19/2004


The Honorable Randall Johnson, Judge
Circuit Court for the City of Richmond

SEEN and AGREED:



Mark S. Brennan, Esq. (VSB No. 25991)
Heather M. Kofron, Esq. (VSB No. 42918)
Renu M. Setaro, Esq. (VSB No. 44529)
Wright, Robinson, Osthimer & Tatum
411 East Franklin Street, Suite 400
Richmond, Virginia 23219
T: (804) 783-1100
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SEEN and *Objected to because: Paragraph A of Article VIII of the Will creates a spendthrift trust pursuant to § 55-19(B) of the Code of Virginia*


Greer P. Jackson, Jr., Esquire
Spinella Owings & Shaia PC
8550 Mayland Drive
Richmond, VA 23294

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Plaintiff,

v.

File No. 01-451

**GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON**

Defendant.

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND'S
OPPOSITION TO TRUSTEE'S MOTION FOR RECONSIDERATION**

COMES NOW The Fidelity and Deposit Company of Maryland ("F&D"), by counsel, and replies as follows to the Motion for Reconsideration by Greer P. Jackson, Esq., Administrator, d.b.n.c.t.a., and Substitute Trustee for the Estate of Gertrude Pierce Worthington:

1. The Trustee requests that this Court reconsider its previous ruling subjecting any property to which Mr. Bradford Worthington ("Worthington") is entitled from the Estate and Trust of Gertrude Pierce Worthington ("Estate") to garnishment and other collection process. The Trustee further requests reconsideration of the Order that he not distribute any money to Worthington without the permission of F&D or this Court. The Trustee does not dispute, however, the equitable underpinnings of F&D's argument, nor does the Trustee dispute that Article IV of the will creates a discretionary trust. Rather, it is the Trustee's position that the will, when viewed in its entirety, creates a spendthrift trust, which exonerates principal and income from creditors' claims. (See Motion for Reconsideration, pp. 2-3). The key, according to the Trustee, is to effectuate the testator's intent. The Trustee, however, fails to acknowledge that Worthington's acts, not F&D's, abrogated the testator's intent and breached the trust. To allow Worthington to recover

{R0078724.1}

funds which this Court previously held Worthington misspent would effectively allow Worthington to enjoy the benefit of such funds twice and does not serve either the testator's intent or the ends of justice. Indeed such a ruling would allow Worthington to reap a benefit that the testator was unable to provide.

2. F&D does not agree that the trust is a spendthrift trust, however, even assuming that a spendthrift trust exists, principles of justice and equity support this Court's Order. None of the cases cited by the Trustee in support of his Motion are analogous to the case *sub judice*. In the matter at bar, the beneficiary whom the testator sought to protect from his improvidence by creating a trust became the administrator of the Estate and the Trustee of the trust, thus terminating the trust in which he was the beneficiary. A central purpose of a valid spendthrift trust is to prevent the beneficiary from alienating the trust proceeds and to protect the beneficiary from his own improvidence. Where the beneficiary becomes the administrator of the Estate and obtains control of the funds, the trust ceases to exist. Worthington's control and dissipation of the trust corpus abrogated the testator's intent and effectively terminated the trust. Once the trust is terminated, creditors may reach the trust. Thus, even assuming that a spendthrift trust at one time existed as to Worthington, his actions terminated this trust, and F&D may recover its claim proceeds which replaced the trust res to recover its Judgment. As is further discussed herein, the public policy, which prohibits debtors from being allowed access to their funds to the detriment of creditors, resonates in the instant matter. See *Creasy v. Coleman Furn. Corp.*, 83 B.R. 404 (W.D.Va. 1988), *rev'd on other grounds*, in which the Court stated as follows:

"This court believes the control test is applicable under Virginia law to determine how much power a beneficiary can exercise over a spendthrift trust before a court will invalidate it. Although there are no Virginia cases on point, as a matter of trust theory, it seems inconsistent that a beneficiary can revoke at will his own spendthrift trust. After all, a spendthrift trust is designed not only to protect the beneficiary from his creditors but from himself. See *In Re Wilson*, 3 B.R. 439, 444 (W.D. Va. 1980). Furthermore, this doctrine is a matter of public policy. *McLean*, 762 F.2d at 1207; *O'Brien*, 50 B.R. at 74. The Virginia

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Supreme Court was very much concerned with public policy when it interpreted the spendthrift statute in *Sheridan v. Krause*, 161 Va. 873, 172 S.E. 508 (1934). Public policy demands that debtors not be allowed access to their funds to the detriment of creditors in appropriate cases. 50 B.R. at 74.

Id. at 408.

3. The Trustee's arguments are without merit. As set forth in, *Sheridan v. Krause*, 161 Va. 873, 172 S.E. 508 (1934), the intent of the testator determines whether a spendthrift trust exists, and where a valid spendthrift trust exists, the trust res is beyond the reach of creditors, "unless it violates a rule of law." *Id.* at 885, 511. Assuming arguendo that the trust at issue is a spendthrift trust, Worthington has already received the trust res. It did not go to creditors. To allow Worthington to recover the trust res as well as F&D's claim proceeds which replaced the trust res because of Worthington's acts would indeed violate fundamental notions of justice and equity.

4. Each of the equitable arguments previously raised by F&D applies and serves as a basis for the Court's previous ruling. As previously alleged and as is not disputed, this action arises out of the forfeiture of the bond F&D executed on behalf of Worthington. On January 13, 2003, this Court removed Worthington as Administrator. On January 27, 2003, Greer P. Jackson, Esq. was appointed Administrator, d.b.n.c.t.a. and Substitute Trustee. On June 9, 2003, F&D obtained a judgment against Worthington in the amount of \$127,808.60, plus interest and 5% damages for forfeiture of its bond. The Court thus ruled against Worthington and required surcharge of the bond. F&D paid said amount to the Commissioner of Accounts, Kimberley A. Pinchbeck- \$125,308.60 of which was paid to the Trustee. The \$125,308.60 paid by F&D (F&D's "claim proceeds") replaced the trust corpus. Pursuant to the terms of Gertrude Pierce Worthington's will, Worthington was to receive 25% of the Estate of Gertrude Pierce Worthington in trust, and Craig Worthington was to receive 75% of the Estate of Gertrude Pierce Worthington in trust.

5. The Trustee does not dispute that the usual proscriptions applicable with respect to

{R0078724.1}3

a spendthrift trust which operate in favor of the beneficiary and to the detriment of a third party creditor do not apply in the instance. Because of the particular equities in this situation, Worthington stands in the shoes of the settlor, Mrs. Worthington, as he has caused F&D to fund the trust with claim proceeds because of his acts. Where a beneficiary is the settlor, the spendthrift trust is void and may be dissolved and reached by creditors. The restriction that a trust cannot "operate to the prejudice of any existing creditor of the creator of such trust" is the self-settled rule and has been consistently interpreted to prevent a self-settled trust from being exempt from the settlor-beneficiary's creditors; a spendthrift trust cannot be created by the beneficiary to shield his own assets from claims of his own creditors. *In re Bissell*, 255 Bankr. 402, 2000 Bankr. LEXIS 1407 (Bankr. E.D. Va. 2000). Here, the same logic and policy underlying the dictate that a trust cannot be created by the beneficiary to shield his own assets should extend to prevent Worthington from collecting the claim proceeds, funds placed in the Trust by F&D because of Worthington's acts. The Trustee argues that this argument is unavailing because Worthington cannot be the creator of the trust; rather, the "creator" can only be the testator. F&D disagrees. In this unique situation, Worthington has caused F&D to fund the Trust, as he spent or otherwise used the initial Trust proceeds of the original creator, Mrs. Worthington. Once Worthington expended or caused such funds to be expended, there was no trust corpus. F&D then replaced the trust corpus because of Worthington's acts, causing Worthington to stand in the testator's shoes. This argument is further bolstered by the policy reasons underlying the rule that a spendthrift provision is invalid against the creditors of a creator. Certainly, there can be no dispute that the creditor which funds the trust should not be prevented from reaching the trust corpus to repay its debt before allowing the beneficiary which mismanaged the funds to then recover such funds twice.

6. Alternatively, F&D stands in the shoes of the settlor, Mrs. Worthington, as F&D has funded the Trust with the claim proceeds due to Mr. Worthington's acts. F&D is therefore

{R0078724.1}4

distinguishable from the usual "third party creditor" as the beneficiary created the debt that F&D is seeking to have repaid. Thus, at a minimum, equitably F&D stands in the shoes of the beneficiary, Worthington, as F&D funded the Trust at issue with claim proceeds because of Worthington's acts. "When a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded." Va. Code § 55-19C. ~~Here the trust is funded by the claim~~ proceeds because of the acts of the beneficiary. Thus, the trust shall not operate to prejudice F&D the settlor/existing creditor of the trust. See Va. Code § 55-19B. The Trustee argues that this argument is invalid because its payment was not made because of a claim by Worthington but because of its bond obligations. In this unusual instance, however, the "creator" is Worthington who caused F&D to fund the Trust because of his acts. In the interest of equity and justice, Mr. Worthington should not be allowed to benefit from his wrongdoing, which he will do if he is allowed to collect the claim proceeds before F&D is repaid.

7. The remedy provided at Va. Code § 55-19D(2), although not specifically applicable (applies where a federal or state statute makes the beneficiary liable for reimbursement to the Commonwealth or any agency) is instructive and allows the Court to order the Trustee to satisfy all or part of the liability out of all or part of the future payments, if any, that the Trustee chooses to make for the benefit of the beneficiary in the exercise of discretion under the Trust. Similarly, here, for the reasons set forth herein and the special circumstances of this case, the Trustee should be ordered to make any payments intended for Worthington to F&D to the extent necessary to satisfy its debt.

WHEREFORE, F&D respectfully requests that this Court deny the Trustee's Motion for Reconsideration of its Ruling of January 29, 2004, and Order of February 19, 2004. F&D further requests this Court to grant any other relief that may appear appropriate and just.

{R0078724.1}5

Respectfully submitted,

THE FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

By: Remu M. Setaro

Counsel

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*Counsel for The Fidelity and Deposit
Company of Maryland*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, on the 3rd day of March, 2004 to:

Robert E. Eicher, Esquire
William Mullen
Two James Center, 17th Floor
1021 E. Cary Street
P.O. Box 1320
Richmond, VA 23218-1320
Counsel for Trustee
(also sent by fax to Trustee's counsel)

Bradford N. Worthington
3230 Blithewood Drive
Richmond, VA 23225

Rose

{R0078724.1}6

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

3 -----
4 THE FIDELITY AND DEPOSIT COMPANY
5 OF MARYLAND,

6 Plaintiff,

7 v.

Case No. CH01-451

8 GREER P. JACKSON, JR., ESQ.,
9 ADMINISTRATOR, D.B.N., C.T.A.,
10 AND SUBSTITUTE TRUSTEE FOR THE
ESTATE OF GERTRUDE PIERCE WORTHINGTON,

11 Defendant.
12 -----

13
14 HEARING PROCEEDINGS

15
16 BEFORE: THE HONORABLE RANDALL P. JOHNSON, JUDGE

17
18 March 5, 2004

19 Richmond, Virginia

20
21
22
23 HALASZ REPORTING & VIDEO
24 P. O. Box 1644
Richmond, VA 23218-1644
(804) 741-5215

25 Reported by: Mary L. Rosser, RPR

HALASZ REPORTING & VIDEO

COPY

1
2 **APPEARANCES:**

3 **WRIGHT, ROBINSON**

4 **BY: HEATHER M. KOFRON, ESQ.**

5 **RENU M. SETARO, ESQ.**

6 **attorneys, of counsel for the plaintiff**

7 **WILLIAMS, MULLEN**

8 **BY: ROBERT E. EICHER, ESQ.**

9 **MONICA MCCARROLL, ESQ.**

10 **attorneys, of counsel for the defendant**

1 THE COURT: Good morning. All right.

2 Mr. Eicher, tell me how bad I messed up.

3 MR. EICHER: Well, I don't know that I'd put
4 it exactly that way, Your Honor.

5 THE COURT: Well, you're more polite than I
6 am.

7 MR. EICHER: This is on Mr. Jackson's motion
8 for reconsideration. And I've had some experience
9 with motions for reconsideration, so I know how they
10 often go. On the Disciplinary Board, we don't even
11 allow them. But we're here on that, and the
12 reason we're here --

13 THE COURT: I'd rather correct my own
14 mistakes rather than have them corrected by somebody
15 else.

16 MR. EICHER: But Mr. Jackson, as the Court
17 can appreciate, has a fiduciary obligation to the
18 beneficiary of this trust to defend the trust, and so
19 we thought it was appropriate to file a motion for
20 reconsideration.

21 And the starting point is the order that the
22 Court entered, which says that the last will and
23 testament does not create a spendthrift trust, and it
24 refers to Article 4. It goes on to say, It does not
25 create a spendthrift trust that puts the trust's

1 assets out of the reach of Mr. Bradford Worthington's
2 creditors, including F&D. And then it goes on to say
3 that Mr. Bradford Worthington is entitled to receive
4 from the estate -- any property Mr. Bradford
5 Worthington is entitled to receive from the estate and
6 trust is subject to garnishment and other collection
7 process and froze the trust's assets in Mr. Greer
8 Jackson's hands.

9 And as we said in the memorandum we filed,
10 Article 4 certainly does not create a spendthrift
11 trust. Article 4 creates a discretionary trust. What
12 it says is income and principal during his life until
13 he reaches age 60. Then it's all distributed to him.
14 But if he dies before age 60, then it goes to his
15 decedents, per stirpes.

16 And, instead, it's Article 8, paragraph A,
17 which is -- I had occasion to look at a couple of
18 forms which the bank has, and the clause that's in
19 Article 8, paragraph A is sort of a classic
20 spendthrift clause. And by its terms, it applies to
21 all the trust under the will and also applies to any
22 beneficiary. And so we think that it is a spendthrift
23 trust.

24 And F&D has said that, you know, it's unfair
25 that it should not be able to reach the assets of the

1 trust that belong to Mr. Bradford Worthington, and,
2 you know, I can't argue that. It is unfair, but
3 that's why 55-19B was enacted in 1919. The same
4 arguments were made then.

5 Before 1919, as the Court knows, Virginia
6 had the English rule, which is, whatever was in trust
7 for a beneficiary, the creditors could reach. So in
8 1919, it was a 180-degree turn to permit spendthrift
9 trusts. The focus of a spendthrift trust is not on
10 protection of the beneficiary as such. The focus of a
11 spendthrift trust is carrying out the trust agreement
12 that the testator or the settlor has made, giving
13 effect to it. And if giving effect to it derivatively
14 means that Mr. Worthington, for example --

15 THE COURT: Are there any circumstances
16 though under which -- and let's assume just for the
17 sake of this discussion that I change my mind and say
18 that it is a spendthrift trust. Are there any
19 circumstances under which the beneficiary of that
20 trust can forfeit his or her right to that spending
21 just by intentional misconduct?

22 MR. EICHER: I don't know that it can be
23 forfeited by intentional misconduct. It certainly can
24 be an affirmatives disclaimer by the beneficiary.

25 THE COURT: But the ultimate goal is to

1 ensure that the testator or the trustor's intentions
2 is carried out.

3 MR. EICHER: And so what we want to do is
4 find out what that was. And if you look at the
5 spendthrift clause here, what is protected against --

6 THE COURT: But the spendthrift of the trust
7 is just one part of the trust.

8 MR. EICHER: That's correct, and that
9 qualifies the -- that created the trust that's
10 established under Article 4. And, essentially, it
11 exonerates the assets in that trust from claims of
12 creditors. What creditors? Well, Article 8,
13 paragraph A says debts or obligations of any kind of
14 the beneficiary. 55-19(B) refers to --

15 THE COURT: Even if the obligations are
16 established in that document?

17 MR. EICHER: I'm not sure that I understand
18 your question, Your Honor. The obligation for payment
19 of a debt?

20 THE COURT: Well, obligations.

21 MR. EICHER: There is no obligations
22 established in the will itself of payment of any
23 debts. In fact, the spendthrift --

24 THE COURT: Well, payments to other
25 beneficiaries.

1 MR. EICHER: Right. There are other
2 beneficiaries. In this case, Bradford Worthington has
3 a 25 percent interest in the trust, and his brother
4 has a separate trust for 75 percent.

5 THE COURT: I guess my question is, if there
6 is an obligation created in the whatever -- in this
7 case, in the will that creates the trust, if there's
8 an obligation for the spendthrift trust beneficiary --

9 MR. EICHER: Correct.

10 THE COURT: -- to do something, to pay
11 somebody else some money, and that obligation is
12 established in this trust and the beneficiary does not
13 do that --

14 MR. EICHER: Correct.

15 THE COURT: -- and instead takes the money
16 for himself --

17 MR. EICHER: And that's the case of --

18 THE COURT: -- there's no law that says that
19 he has somehow forfeited his right to allowing the
20 spendthrift trust, at least to the extent that he has
21 intentionally taken the money?

22 MR. EICHER: I know of none to the contrary.
23 There's a Supreme Judicial Court of Massachusetts case
24 in 1939 that goes just the opposite. If I can hand
25 this up, and I sent a copy to counsel this morning.

1 And what the Court will see in that case is that a
2 trustee was charged with liability for some \$32,000,
3 and the surety on the bond had to pay that, took an
4 assignment of claims against her that the estate had.
5 And the question there is the same that one this Court
6 has put. The trustee was held liable for dereliction
7 in the performance of duty, and the bonding company
8 paid. And then the bonding company goes to that trust
9 of which that beneficiary is to receive benefits and
10 says, Pay what I had to pay because of the dereliction
11 of duty on the part of the trustee. It contained a
12 spendthrift provision. What the court said is that
13 the surety relies on the principle stated in the
14 Restatement of Trusts, Section 257, which I'm going to
15 hand up in a moment.

16 If a trustee who is also one of the
17 beneficiaries commits a breach of trust, the other
18 beneficiaries are entitled to a charge upon his
19 beneficial interest to secure their claims against him
20 for the breach. That's actually a partial quote, as
21 the Court will see when it looks at the Restatement.

22 But, anyway, the Supreme Court of
23 Massachusetts says, The quoted statement of principle,
24 we think, has application only where the interest of
25 the trustee as beneficiary is in its nature liable to

1 be reached by creditors. In a case like the present
2 the trust estate is only a creditor. In this case the
3 spendthrift provision in the will of the testator
4 precluded creditors from reaching the interest of the
5 trustee. We think that the interest of the trustee in
6 the income of the trust estate cannot be taken to make
7 good her default as trustee. This conclusion is
8 supported by authority elsewhere, and it cites an old
9 Pennsylvania case and a Delaware chancery case.

10 THE COURT: I noticed though it cites that
11 there are other jurisdictions which apparently have
12 taken a contrary view. I take it Virginia has not
13 weighed in on that yet.

14 MR. EICHER: Unfortunately, there's nothing
15 in Virginia that I'm aware of, which is not much of a
16 surprise; strangely, how many areas of the law that
17 you don't find anything in Virginia.

18 Since that case refers to the Restatement of
19 Trusts, 257, what it says is that, If the trustee who
20 is also one of the beneficiaries commits a breach of
21 trust, the other beneficiaries are entitled to a
22 charge upon his beneficial interest to secure their
23 claims against him for the breach of trust, unless the
24 settlor manifested a different intention.

25 And it says in the comments that the rule

1 applies to spendthrift trusts, but then goes on to say
2 in terms of liability where there's a spendthrift, The
3 question, whether the trustee beneficiary is liable,
4 the question is whether in view of all the
5 circumstances the settlor would have desired to
6 protect the trustee-beneficiary, not only as against
7 The claims of ordinary creditors, but also against the
8 claims of the other beneficiaries for breach of trust.

9 And so the emphasis here is, as I said,
10 looking at what the will itself says. And what the
11 will itself says is that the beneficiaries are not
12 responsible for debts or obligations of any kind.
13 This is simply one kind. In fact, the obligation here
14 that the bonding company is asserting is that we had
15 to make good on the bond that we receive a premium
16 for.

17 The obligation is one of indemnification
18 because when you get a surety on your bond, as the
19 Court well knows in qualification, the principal on
20 the bond agrees to indemnify the surety. So what we
21 have here really is a contract claim from Fidelity's
22 perspective. And the relief Fidelity seeks, really,
23 it betrays the direction in the will, which is that
24 the beneficiaries are not liable for debts or
25 obligations of any kind.

1 Much is said about the equities in the
2 bonding company's reply. This bonding company was
3 paid a premium. It issued the following underwriting
4 of the risk in determining it, and I don't know if --
5 I wasn't here for the other hearing in this matter, so
6 I don't know if it's in evidence or not, but in
7 practice, in my experience, the bonding company also
8 gets a copy of the will because it's bonding the
9 executor under the will. But the bonding company, in
10 fact, got a copy of the will here and saw the
11 spendthrift clause in there and had the opportunity to
12 say, Wait a minute, a spendthrift clause, we're not
13 going to write a policy for this, and it did so. So I
14 think it was informed at the outset.

15 Overall, the reason we're here is that there
16 is a spendthrift, that the language of the will is
17 clear and unequivocal that the beneficiaries shall not
18 be liable for the debts or obligations of any kind or
19 be subject to attachment, garnishment, execution,
20 creditor's bill or other legal or equitable process.
21 And we think that, again, the order should recite that
22 there is a spendthrift clause, and pursuant to the
23 spendthrift clause, the assets in the 25 percent trust
24 for Bradford Worthington have been exonerated from
25 liability to the bonding company, which is just

1 another creditor. Thank you, sir.

2 THE COURT: Mr. Eicher, thank you very much,
3 sir. Ms. Setaro.

4 MS. SETARO: Good afternoon, Your Honor. I
5 would like to respond a little bit. I just got the
6 case that was handed up at 10:30 today, so I just had
7 the opportunity to read it quickly. I didn't have a
8 chance to analyze it.

9 THE COURT: Well, assume that it says what
10 Mr. Eicher says, but that there are other
11 jurisdictions which disagree with that. Tell me why I
12 should follow one or the other of those two.

13 MS. SETARO: Okay. Well, first of all, Your
14 Honor, I believe that the key -- I don't concede that
15 the trust before the Court is a spendthrift trust, but
16 I'm going to assume for the sake of argument that it
17 is a spendthrift trust.

18 THE COURT: Because if I find that it's not,
19 then we don't need to get to anything else.

20 MS. SETARO: Right. But the key it seems
21 with a spendthrift trust is a desire to effectuate the
22 testator's intent. And here, I believe the person who
23 abrogated the testator's intent is Mr. Worthington
24 when he became the trust -- or the trustee, and I
25 believe the trust was effectually terminated. And

1 once the trust is terminated, the creditors may reach
2 the assets of the trust. There are also -- his
3 control and dissipation of the trust corpus abrogated
4 the testator's intent and effectively terminated the
5 trust. Once the trust is terminated, creditors may
6 reach the trust.

7 I also cited some authority in my brief,
8 Creasy versus Coleman Furniture Corporation, which
9 talked about public policy demanding that debtors not
10 be allowed access to their funds to the detriment of
11 creditors in appropriate cases. And the case cited by
12 the trustee, Sheridan versus Krause, regarding the
13 rule on spendthrifts, states that, The intent of the
14 testator determines whether a spendthrift trust
15 exists, and where a valid spendthrift trust exists,
16 the trust res is beyond the reach of creditors, unless
17 it violates a rule of law.

18 I have made arguments in my brief, you know,
19 at length that it would violate equity here for
20 Worthington to receive the funds before F&D received
21 the funds. And to clarify, Your Honor --

22 THE COURT: But if you make that argument,
23 that's true with just about any creditor. Any
24 creditor can say that it violates equity. The
25 beneficiary can't -- it's just not equitable for the

1 beneficiary to get away with it.

2 MS. SETARO: Well, I think here equity
3 stands a stronger position than a usual creditor
4 because it funded the trust. The trust res is the
5 initial trust that was put in by the testator. I
6 mean, the trust res has been replenished with F&D's
7 claim proceeds. And F&D is not arguing that it stands
8 before the other beneficiaries. It's saying it's
9 second to the other beneficiaries, but it stands in
10 the shoes of Mr. Worthington and it gets those
11 funds -- and this was argued last time -- before
12 Mr. Worthington should get those funds. The rest of
13 my arguments still remain that -- I made some
14 arguments that we would be analogous either to the
15 settlor here or -- and, therefore, some of the rules
16 and the law talking about a spendthrift trust not
17 applying where the beneficiaries and settlor would
18 apply in the case.

19 The fact is, there are no cases directly on
20 point to this situation in Virginia, and the trustee
21 hasn't cited any cases directly on point. The case
22 that the trustee cited, the Massachusetts case, Your
23 Honor pointed out states that there are other
24 jurisdictions and the American Law Restatement, which
25 holds the other --

1 THE COURT: Excuse me one second.

2 (Off the record.)

3 THE COURT: I'm sorry.

4 MS. SETARO: That's okay, Your Honor. As
5 you stated, within the text of the case cited by the
6 trustee, the Massachusetts case, it states, One of
7 those encroachments is that the interest of a
8 beneficiary under a spendthrift trust may be taken to
9 make good his liability for a breach of trust in his
10 capacity as trustee. And there is support for that.
11 There is Matter of Burr's Estate, 143 Misc. 877, and
12 Raynes versus Raynes, 54 N.H. 201. So as you
13 recognized, there are cases that hold the other way.

14 I very quickly this morning found some
15 authority. One is -- I'll hand it up to the Court.
16 It's Section 147 of a trust treatise, which states, In
17 some jurisdictions, the rule that the interest in a
18 trust of a beneficiary of a trust who is also trustee
19 is subject to liability for debts owing to other
20 beneficiaries is applicable to spendthrift --

21 THE COURT: Is that from the American Law
22 Institute Restatement?

23 MS. SETARO: American Jurisprudence, 2nd
24 Edition.

25 THE COURT: American Jurisprudence. Okay.

1 MS. SETARO: In other words, a spendthrift
2 trust does not operate to protect a trustee
3 beneficiary against such liability. Other courts take
4 the position that the spendthrift trust is protective
5 of the interest of the beneficiary against his
6 liability to other beneficiaries. And I think by
7 extension that argument could be made that F&D could
8 reach the spendthrift trust in this situation.

9 There simply isn't anything on point that I
10 found, but I believe that these arguments do support
11 F&D's position in this unique situation.

12 Another quote I found from Bogert's Trust &
13 Trustees, Chapter 11, A beneficiary who is also a
14 trustee of the same trust holds his beneficial
15 interest subject to reduction for sums lost to the
16 trust by reason of his defaults before any payment
17 from that interest is made to him out of trust funds.

18 Another one, Where the beneficiary as a
19 trustee has breached his trust, the income may be
20 withheld. And there are cites in support of that as
21 well.

22 THE COURT: All right. Ms. Setaro, thank
23 you very much. You're with Ms. Setaro?

24 MS. KOFRON: Yes, Your Honor.

25 THE COURT: Nobody else represents a

1 separate party. Mr. Eicher?

2 MR. EICHER: Briefly, counsel has referred
3 to Mr. Bradford Worthington being a trustee
4 beneficiary. Mr. Worthington never qualified as
5 trustee. On April 30th, 2001, there was a probate and
6 his qualifications as administrator, c.t.a. There was
7 no appointment of a trustee until January 13, 2003
8 when this Court removed Mr. Worthington as
9 administrator, c.t.a. and appointed Karen Dunivan as
10 administrator, c.t.a.d.b.n., and substitute trustee.
11 So to the extent we're talking about the trustee
12 beneficiary rules, Mr. Worthington was never a
13 trustee.

14 And I think the Court is entirely correct
15 that the argument that this violates a rule of law
16 because it violates equity is the argument that was
17 made in opposition to changing the law in 1919 and why
18 the English rule is just the opposite of the American
19 rule. And the statement that Fidelity stands in the
20 shoes of Mr. Worthington, Fidelity stands in the shoes
21 of Greer Jackson, incumbent administrator trustee. He
22 was the beneficiary of the payment, and that's the
23 point of Section 49-27.

24 By and large, what Fidelity is asking the
25 Court to do is insert a provided "however clause" in

1 55-19B. Because it says that any trust not exceeding
2 a million dollars and limits now been removed -- so
3 now it's an unlimited; that was done in 2001 -- any
4 trust estate may be held in trust upon condition that
5 the trust corpus and income, or either, shall in the
6 case of a simple trust -- that's one that's required
7 to distribute income currently -- or, in the case of a
8 complex trust -- one where you have discretion to
9 withhold distribution of income currently -- may in
10 the discretion of the fiduciary be paid to or applied
11 by the fiduciary for the benefit of the beneficiaries
12 without being subject to their liabilities. And the
13 statute says without being subject to their
14 liabilities. Is this a liability of Mr. Worthington?
15 Yes, it is. Fidelity & Deposit is saying the statute
16 should be read without being subject to their
17 liabilities, except where the liability arises from
18 the conduct of the beneficiary.

19 This is simply an indemnification claim that
20 Fidelity has. It paid pursuant to its contract, the
21 surety bond, and it's no different than any other
22 creditor. And the assets in the trust are sheltered
23 by the spendthrift provision as well, which is blessed
24 by 55-19B, and they are not reachable. They are
25 exonerated from liability -- for the liabilities or,

1 as the will says, for debts or obligations of any
2 kind. Thank you.

3 THE COURT: Mr. Eicher, thank you very much.
4 I think it is a close question. I think the closeness
5 of the question is borne out by the fact that you do
6 have this split authority among jurisdictions. I'm
7 going to give this matter some more thought. I'm
8 going to take your motion to reconsider under
9 advisement.

10 This case is always open because we're
11 talking about a trust. I don't think we have to worry
12 about the 21 days from the previous order. I'm going
13 to try to give you a decision next week. But in case
14 I don't, I don't want you-all to worry about the 21
15 days. I will certainly give you a decision within the
16 next 14 days.

17 MR. EICHER: Thank you, Your Honor.

18 MS. SETARO: Thank you, Your Honor.

19 THE COURT: Thank you-all very much.

20 (Hearing adjourned.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Mary L. Rosser, shorthand reporter, do
certify that the foregoing 19 pages is a full, true
and correct transcript of my stenographic notes taken
on March 5, 2004, in the Circuit Court of the
City of Richmond, in the matter captioned The Fidelity
and Deposit Company of Maryland versus Greer P.
Jackson, Jr., Esq., etc.

Given under my hand this 4th of April, 2004.

Mary L. Rosser
Shorthand Reporter

Circuit Court
OF THE
City of Richmond
John Marshall Courts Building

RANDALL G. JOHNSON
JUDGE

March 9, 2004

400 NORTH NINTH STREET
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Richmond, VA 23294

Re: Case No. 01-451
The Fidelity and Deposit Company of Maryland
v.
Greer P. Jackson, Jr. Esq.,
Administrator, d.b.n.c.t.a., etc.

Dear Counsel:

After considering counsel's written submissions and oral arguments on the administrator, d.b.n.c.t.a.'s ("administrator") motion for reconsideration, the court agrees with the administrator that a spendthrift trust was created for Bradford N. Worthington. Nevertheless, the court's previous order will stand.

Article VIII of the testator's will contains the spendthrift trust provision. Interestingly, while that article provides that no beneficiary of a trust created by the will shall have the right to "anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate," etc., only Norman William Worthington and Craig Worthington are mentioned as beneficiaries by name.

Renu M. Setaro, Esquire
Robert E. Eicher, Esquire
Greer P. Jackson, Esquire
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Bradford Worthington is not mentioned by name. The court believes that this is a fairly strong indication that the testator wanted the assets of Norman Worthington and Craig Worthington to have more protection than the assets of Bradford Worthington. Even if the previous statement can be disputed, it cannot be disputed that the testator wanted the assets of Norman Worthington and Craig Worthington to have at least the same protection as the assets of Bradford Worthington. Shielding Bradford Worthington's assets from garnishment would not do that.

As was recognized in *Blakemore v. Jones*, 303 Mass. 557, 22 N.E.2d 112 (1939), which is cited by the administrator in support of reconsideration:

It is true that in some jurisdictions encroachments have been made upon the doctrine that a testator or settlor, by a spendthrift trust, can protect from the claim of creditors the equitable interest given to furnish a secure living for a beneficiary. One of those encroachments is that the interest of a beneficiary under a spendthrift trust may be taken to make good his liability for a breach of trust in his capacity as trustee.

303 Mass. At 560.

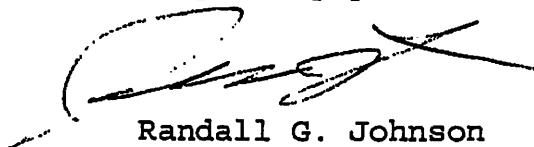
In the absence of a decision by Virginia's Supreme Court on the issue, this court adopts the view of the "some jurisdictions" referred to in *Blakemore*. Where, as here, a testator has shown an unmistakable intent to treat all trust beneficiaries equally, it would be the utter antithesis of that intent to allow one beneficiary, through his or her misconduct, to deprive other beneficiaries of their entitlements. Moreover, the fact that a bonding company, and not a beneficiary, is making the claim on the wrongdoer's assets makes no difference. The bonding company has merely stepped into the shoes of the innocent beneficiary. Whatever rights that beneficiary had, the

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Robert E. Eicher, Esquire
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bonding company now has. The order of February 19 will not be disturbed.

A copy of an order is enclosed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. G. Johnson", with a long horizontal flourish extending to the right.

Randall G. Johnson

VIRGINIA:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

Plaintiff,

v.

01-451

GREER P. JACKSON, JR., ESQ.,
ADMINISTRATOR, D.B.N.C.T.A., AND SUBSTITUTE TRUSTEE
FOR THE ESTATE OF GERTRUDE PIERCE WORTHINGTON,

Defendant.

O R D E R


This cause came on March 5, 2004, on the motion of the administrator, d.b.n.c.t.a., of the Estate of Gertrude Pierce Worthington to reconsider the order entered on February 19, 2004, and was argued by counsel.

Upon consideration whereof, and for the reasons stated in the letter opinion dated this date, it is --

ORDERED that the motion to reconsider is denied, the administrator, d.b.n.c.t.a.'s objection being noted.

A copy of this order was mailed this day to counsel of record.

ENTER 3/9/2004


Randall G. Johnson, Judge

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN ORDERING THAT WORTHINGTON'S INTEREST IN A SPENDTHRIFT TRUST FOR HIS BENEFIT WAS SUBJECT TO FIDELITY'S GARNISHMENT AND OTHER COLLECTION PROCESS AND COULD NOT BE DISTRIBUTED TO HIM WITHOUT PRIOR PERMISSION FROM FIDELITY OR THE TRIAL COURT.