

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): -Marc B. Hankin, Esq., Law Offices of Marc B. Hankin, Inc. SBN 09645 Post Office Box 3668, Beverly Hills, CA 90212 Tel. 310-552-3005 Fax: 310-382-2416 marc@marchankin.com -Nisan Steinberg, Esq., Law Offices of Nisan Steinberg, SBN 198227 PO Box 35388, Los Angeles, CA 90035 Tel. (310) 866-7817 Fax: (310) 943-3172 nisan@nisansteinberg.com ATTORNEY FOR (Name): Michelle Frenkel	FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles NOV 20 2015 Sherri R. Carter, Executive Officer/Clerk By: William Adamo, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles 90212 BRANCH NAME: Central	CASE NUMBER: BP168417
TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel <div style="text-align: right;">CONSERVATEE</div>	HEARING DATE: 11/30/15 DEPT.: 9 TIME: 10:30 AM
PETITION FOR APPOINTMENT OF TEMPORARY CONSERVATOR <div style="display: flex; justify-content: space-between; align-items: center;"> <div> <input type="checkbox"/> Person <input type="checkbox"/> Estate <input checked="" type="checkbox"/> Person and Estate </div> </div>	

1. Petitioner (name each):

Michelle Frenkel

- a. (Name): See Attachment 1, incorporated herein by reference
 (Address and telephone number):

be appointed temporary conservator of the PERSON of the proposed conservatee and Letters issue upon qualification.

- b. (Name): See Attachment 1, incorporated herein by reference
 (Address and telephone number):

be appointed temporary conservator of the ESTATE of the proposed conservatee and Letters issue upon qualification.

- c. (1) ☐ bond not be required because petition is for a temporary conservatorship of the person only.
 (2) ☐ bond not be required for the reasons stated in attachment 1c.
 (3) ☒ \$ 10,000.00 bond be fixed. It will be furnished by an admitted surety insurer or as otherwise provided by law.
 (Specify reasons in attachment 1c if the amount is different from maximum required by Probate Code section 2320 and Cal. Rules of Court, rule 7.207(c).)
 (4) ☐ \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location):

- d. ☐ a request for an exception to notice of the hearing on this petition for good cause is filed with this petition.
 e. ☐ the powers specified in Attachment 1e be granted in addition to the powers provided by law.
 f. ☒ other orders be granted (specify in attachment 1f).

2. The proposed conservatee is (name): Ellen Frenkel

Current address:

179 Comanche, Topanga, CA 90290 (home of dtr, Miriam Fehring)

Current telephone no.:

Miriam's tel: (818) 884-6686

3. The proposed conservatee requires a temporary conservator to ☒ provide for temporary care, maintenance, and support
☒ protect property from loss or injury because (facts are ☒ specified in attachment 3 ☐ as follows):

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel CONSERVATEE	CASE NUMBER:
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4. **Temporary conservatorship is required**

- a. ☒ pending the hearing on the petition for appointment of a general conservator.
 b. ☐ pending the appeal under Probate Code section 1301.
 c. ☐ during the suspension of powers of the conservator.

5. ☒ **Character and estimated value of the property of the estate** (complete if a temporary conservatorship of the estate or the person and estate is requested):

- a. Personal property: \$ No idea.
 b. Annual gross income from all sources, including real and personal property, wages, pensions, and public benefits: \$ 0
 c. Additional amount for cost of recovery on the bond, calculated as required under Cal. Rules of Court, rule 7.207(c): \$ 0
 d. **Total:** \$ 0

6. ☒ **Petitioner requests authority to change the proposed conservatee's residence during the temporary conservatorship**

- a. ☒ Petitioner proposes to change the residence of the proposed conservatee to (address):
 Ellen Frenkel's home: 47 Deakin Street, East Bentleigh Vic 3165 Australia

The proposed conservatee will suffer irreparable harm if his or her residence is not changed as requested and no means less restrictive of the proposed conservatee's liberty will suffice to prevent the harm because (reasons are

☐ specified in attachment 6a ☒ as follows):

- b. ☐ The proposed conservatee must be removed from the State of California to permit the performance of the following nonpsychiatric medical treatment essential to the proposed conservatee's physical survival. The proposed conservatee consents to this medical treatment. (Facts and place of treatment are ☐ specified in attachment 6b ☐ as follows):

7. ☐ **Petitioner is a professional fiduciary**

- a. Petitioner holds license no. (specify): from the Professional Fiduciaries Bureau of the Department of Consumer Affairs issued or last renewed on (specify later date of initial issuance or renewal):
 b. Petitioner was requested to file this petition by (name):
 c. The circumstances leading to petitioner's engagement to file this petition are described in attachment 7c.
 d. Petitioner had: (1) ☐ No relationship to the proposed conservatee, his or her family, or his or her friends before engagement to file this petition.
 (2) ☐ A relationship to the proposed conservatee, his or her family, or his or her friends before engagement to file this petition. That relationship is described in ☐ attachment 7d. ☐ the Petition for Appointment of Probate Conservator (form GC-310) filed with this petition or an attachment to that petition (specify attachment to general petition):

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel CONSERVATEE	CASE NUMBER:
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8. Petitioner's contact with persons named in *Petition for Appointment of Probate Conservator*

- a. ☐ Petitioner is the proposed conservatee. (If this item is selected, go to item 9.)
- b. ☒ Petitioner is not the proposed conservatee. All persons other than the proposed conservatee named in the *Petition for Appointment of Probate Conservator* filed with this petition:
- (1) ☒ Have been found and contacted. All will be given notice of the hearing on this petition.
- (2) ☐ Have not been found or have not been contacted. Efforts to find the persons who have not been found and the reasons why any person cannot be contacted are described in one or more declarations under penalty of perjury attached to this petition as attachment 8b. (Attachment 8b is not a request for a good cause exception to notice. See Prob. Code, § 2250(e) and rule 7.1062 of the Cal. Rules of Court.)
- c. ☒ Petitioner is not the proposed conservatee. Facts showing the preferences of the proposed conservatee concerning the appointment of any temporary conservator, and the appointment of the temporary conservator proposed in this petition, or why it was not feasible to ascertain those preferences, are specified in one or more declarations attached to this petition as attachment 8c.

9. Petitioner is informed and believes that the proposed conservatee

- a. ☐ will attend the hearing.
- b. ☒ is able but unwilling to attend the hearing, does not wish to contest the establishment of a conservatorship, does not object to the proposed conservator, and does not prefer that another person act as conservator.
- c. ☐ is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as attachment 9c.
- d. ☐ is not the petitioner, is out of state, and will not attend the hearing.
10. ☒ Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).
11. All attachments to this form are incorporated by this reference as though placed here in this form. There are _____ pages attached to this form.

Date: November 18, 2015

* (Signature of all petitioners also required (Prob. Code, § 1020).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 18, 2015

Michelle Frenkel

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY*)

(SIGNATURE OF PETITIONER)

(SIGNATURE OF PETITIONER)

GC-111

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel	CASE NUMBER:
CONSERVATEE	

8. Petitioner's contact with persons named in *Petition for Appointment of Probate Conservator*

- a. ☐ Petitioner is the proposed conservatee. (If this item is selected, go to item 9.)
- b. ☒ Petitioner is not the proposed conservatee. All persons other than the proposed conservatee named in the *Petition for Appointment of Probate Conservator* filed with this petition:
- (1) ☒ Have been found and contacted. All will be given notice of the hearing on this petition.
- (2) ☐ Have not been found or have not been contacted. Efforts to find the persons who have not been found and the reasons why any person cannot be contacted are described in one or more declarations under penalty of perjury attached to this petition as attachment 8b. (Attachment 8b is not a request for a good cause exception to notice. See Prob. Code, § 2250(e) and rule 7.1062 of the Cal. Rules of Court.)
- c. ☒ Petitioner is not the proposed conservatee. Facts showing the preferences of the proposed conservatee concerning the appointment of any temporary conservator, and the appointment of the temporary conservator proposed in this petition, or why it was not feasible to ascertain those preferences, are specified in one or more declarations attached to this petition as attachment 8c.

9. Petitioner is informed and believes that the proposed conservatee

- a. ☐ will attend the hearing.
- b. ☒ is able but unwilling to attend the hearing, does not wish to contest the establishment of a conservatorship, does not object to the proposed conservator, and does not prefer that another person act as conservator.
- c. ☐ is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as attachment 9c.
- d. ☐ is not the petitioner, is out of state, and will not attend the hearing.

10. ☒ Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

11. All attachments to this form are incorporated by this reference as though placed here in this form. There are _____ pages attached to this form.

Date: November 18, 2015

* (Signature of all petitioners also required (Prob. Code, § 1020).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

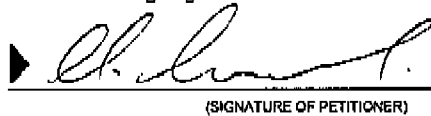
Date: November 18, 2015

Michelle Frenkel

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF ATTORNEY*)

► 
(SIGNATURE OF PETITIONER)

► _____
(SIGNATURE OF PETITIONER)



GC-210(A-PF)/GC-310(A-PF)

GUARDIANSHIP OR CONSERVATORSHIP OF (Name):

Ellen Frenkel

CASE NUMBER:

MINOR OR CONSERVATEE

**PROFESSIONAL FIDUCIARY ATTACHMENT TO
PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR**

(A professional fiduciary petitioning for appointment or proposed for appointment on the petition of another must complete page 1 of this form, and the form must be attached to (1) a Petition for Appointment of Guardian of Minor (form GC-210) if the professional is proposed for appointment as guardian of a minor (see paragraph 4d of form GC-210); or (2) a Petition for Appointment of Probate Conservator (form GC-310) if the professional is proposed for appointment as conservator (see paragraph 3c(7) of form GC-310). If the professional fiduciary is licensed and is petitioning for appointment as conservator, he or she must also complete page 2 of this form (see paragraph 3d of form GC-310). The professional fiduciary must date and sign this form on page 2 in all cases.)

(Name of professional fiduciary): Monique Cain

Attachment to form (GC-210 or GC-310): GC-310

1. ☒ I am a proposed ☐ guardian ☒ conservator in this matter. I am a professional fiduciary, as defined in Business and Professions Code section 6501(f). I am:
- a. ☒ Licensed by the Professional Fiduciaries Bureau, license no. (specify): 451, issued or last renewed on (specify later date of issuance or last renewal): 3-31-15
- b. ☐ Exempt from the license requirements of the Professional Fiduciaries Act as an attorney licensed under the State Bar Act, State Bar number (specify):
- c. ☐ Exempt from the license requirements of the Professional Fiduciaries Act while acting within the scope of practice of my profession as:
- (1) ☐ A Certified Public Accountant licensed by the California State Board of Accountancy, license no. (specify): _____ current expiration date (specify): _____
- (2) ☐ An enrolled agent authorized to practice before the Internal Revenue Service under federal regulations (31 C.F.R. § 10), expiration date of current enrollment period (specify): _____
- (3) My actions as guardian or conservator would be within the scope of practice of my profession by reason of the following facts (explain):

☐ The explanation cannot be completed in this space. It is contained in _____ attached pages.

Page 1 of 2

GC-210(A-PF)/GC-310(A-PF)

GUARDIANSHIP OR CONSERVATORSHIP OF (Name): Ellen Frenkel	CASE NUMBER:
MINOR OR CONSERVATEE	

**PROFESSIONAL FIDUCIARY ATTACHMENT TO
PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR**

Attachment to form GC-310

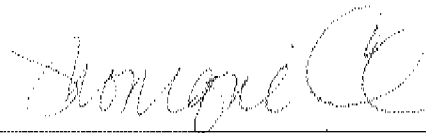
2. ☐ I am a petitioner for the appointment of a conservator in this matter. (Select a. or b.):
- a. ☐ I was engaged to petition for this appointment by (name): Marc B. Hankin, Esq., atty for Michelle Frenkel
- b. ☐ The circumstances and manner of my engagement to file the petition for appointment of a conservator are (specify):
- c. Before my engagement in this matter, I had ☒ no prior relationship ☐ the prior relationship described below with the proposed conservatee, his or her family, or his or her friends (describe):

I declare under of penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date: November 18, 2015

Monica Cain

(NAME OF PROFESSIONAL FIDUCIARY)



(SIGNATURE OF PROFESSIONAL FIDUCIARY)

Attachment 1: Proposed Conservator

Petitioner, Michelle Frenkel, requests that Michelle Frenkel (the proposed conservatee's granddaughter, who resides in Australia) be appointed as the temporary and probate conservator of the proposed conservatee's person and estate.

In the alternative, if the Court declines to appoint Michelle Frenkel as the temporary and probate conservator of the proposed conservatee's person and estate, then petitioner requests that Monique Cain be appointed as temporary conservator and as probate conservator of the proposed conservatee's person and estate.

Michelle Frenkel's address and telephone number are as follows: Michelle Lisa Frenkel, 75 Waranga Drive Kialla Vic 3631 Australia. 602-918-6232

Monique Cain's address and telephone number are as follows: Monique Cain, Cain Fiduciary Services, 4429 E. Village Rd., #209 Long Beach, CA 90808 310-500-7937

Attachment 11 – Persons Entitled To Notice (Service List)

Proposed Conservatee:

Ellen Frenkel, 47 Deakin Street, East Bentleigh Vic 3165 Australia
Currently located at in Miriam's home: 179 Comanche, Topanga, CA 90290

Children:

David Immanuel Frenkel, 155 Grapevine Road Wenham MA 01984
Miriam Erica Claire Frenkel-Fehring, Aka Miriam Claire Aka Miriam Stuart/Stewart Aka
Miriam Frenkel, 179 Comanche, Topanga, CA 90290

Grandchildren:

Michelle Lisa Frenkel, 75 Waranga Drive Kialla Vic 3631 Australia
Benjamin Adam Frenkel, 550 Moreland Way #4316, Santa Clara, CA 95054
Ruth Ann Frenkel, 8 Vernon Street Apt 4, Waltham MA 02453
Lucas Henry Julius Fehring, 179 Comanche, Topanga, CA 90290

Attachment 1f
Additional Orders
(Petition for the Appointment of a Temporary Conservator)
And
Attachment 1L to Petition to Appoint Probate Conservator

Petitioner requests the following orders:

1. **An order pursuant to Probate Code § 2616 et seq.** directing the clerk of the court to issue a **citation directing Miriam Fehring**, (“Miriam”) to appear in this court at 8:30 AM on a **date soon** after this hearing, and **convenient** to the court and counsel: (1) to **answer questions under oath** pertaining to Miriam’s and other persons’ disposition of The Proposed Conservatee’s assets since January 1, 2011, (2) to **produce** at that hearing (subject to such orders that the Court may make under Probate Code § 2586 to safeguard The Proposed Conservatee’s right to confidentiality) **any and all records in Miriam’s possession or control reflecting or mentioning the Proposed Conservatee’s assets** or any portion thereof, including but not limited to The Proposed Conservatee’s own records, and/or any **estate plan documents** including but not limited to any durable powers of attorney, advance health care directives, living trusts, testamentary trusts, wills and/or codicils, deeds, checks, and emails and video recordings (e.g., video recordings of Miriam training the proposed conservatee to say to mental health experts in Australia and to Australian health care providers that she (the Proposed Conservatee) wanted to move to the USA to live with Miriam, and (3) **to produce at that hearing any of The Proposed Conservatee’s medical records** subject to the possession or control of Miriam; and
2. **An order pursuant to Probate Code § 2616** authorizing Petitioner to **videocam the examinee and all attorneys and/or any other persons attending** the oral examination to reduce the likelihood of any disputes about disruptive behavior at the examination by any party or the party’s attorney;
3. **An order appointing an independent forensic medical expert (“IME”) to examine**

The Proposed Conservatee and The Proposed Conservatee's medical records, and to acquire such collateral source information (e.g., oral statements or written statements from caregivers, friends, relatives, etc.) as the IME may deem appropriate, consistent with generally accepted medical protocols for the assessment of a geriatric patient who has dementia, and to render a report to the court about The Proposed Conservatee's competence and susceptibility to the exercise of undue influence during the five (5) years preceding the filing of this petition, and reporting on The Proposed Conservatee's competence during the past year to execute any agreement(s), deed(s) and/or estate planning documents including but not limited to a will and/or trust).

4. **An order (i) directing Miriam to allow the Proposed Conservatee to meet with her son, David Frenkel and granddaughter Michelle Frenkel, outside of Miriam's home and outside of the presence of Miriam and/or her son or husband, November 28 2015** (afternoon: 3pm meeting through 5pm), and (ii) to address Miriam's anticipated specious objections to the visit by appointing Monique as a "monitor" of the visit, to ensure that David and Michelle do not harm Ellen (which is what Miriam will probably claim they would do if unsupervised).
- 5.
6. **An order authorizing Petitioner and/or a temporary conservator, to request that the proposed conservatee's Australian attorney produce all of The Proposed Conservatee's financial documents** and all of The Proposed Conservatee's property to the PVP attorney, to the temporary conservator, and to the Court's confidential conservatorship file, for in camera review with counsel, subject to an order to not reveal anything to anyone, except as the Court may direct. This would include durable powers of attorney, advance health care directives, living documents, testamentary instruments (i.e., Wills and codicils), regardless whether superseded or revoked or not, and would include any notes, drafts, correspondence, and would include any document acquired

directly or indirectly from The Proposed Conservatee. The term document would have the same meaning as the term “writing” as employed in Evidence Code §250.

7. **An order, inter alia, pursuant to Probate Code §§ 2580 et seq. authorizing the Temporary Conservator to execute a new living trust having the same terms as the terms of The Proposed Conservatee’s Will as last amended before lack of capacity and the exercise of undue influence.** In other words, the Temporary Conservator and/or Probate Conservator would execute a Will having the same terms as last Will of The Proposed Conservatee when she had the capacity to execute a Will and did so free of undue influence;
8. **An order at a future hearing to be set on calendar, inter alia pursuant to Probate Code § 1873, ordering that The Proposed Conservatee lacks the capacity to sign a testamentary instrument and/or a living trust, and/or to exercise any power of appointment,** so that no person will have any incentive hereafter to importune upon The Proposed Conservatee for financial gain.
9. **A Temporary Restraining Order (“TRO”)** prohibiting Miriam Frenkel and/or any person acting in concert with Miriam, from alienating or hypothecating any item of real or personal property (tangible or otherwise) in which The Proposed Conservatee has any interest, and any property which is the fruit (in whole or in part) of property in which The Proposed Conservatee had an interest within the six (6) years preceding the filing of this petition;
10. **An order suspending all (durable or non-durable) power of attorney** appointing Miriam;
11. **An order suspending any health care power of attorney (a.k.a. Advance Health Care Directive)** appointing Miriam;

12. **An order instructing all interested persons (i.e., people identified in Attachment 11 to the petition for appointment of conservator, and all of The Proposed Conservatee’s caregivers, and any neighbors who visit with The Proposed Conservatee, to the extent that such persons are subject to this Court’s jurisdiction) to not disparage** other interested persons or any aspect of the conservatorship proceedings in The Proposed Conservatee’s presence, directly or indirectly; and an order directing that the conservator make arrangements so that any person visiting with The Proposed Conservatee is given a copy of this order before visiting with The Proposed Conservatee, and is asked to read it;

13. **An order at a future hearing to be set on calendar, determining that the Proposed Conservatee lacked the capacity, and at all times relevant lacked the capacity to move to the United States.** When The Proposed Conservatee was moved to the United States on July 12, 2015, her MMSE was probably **lower** than the 17/30 that Dr. Sutcliffe recorded during a May 20, 2014 examination, because Alzheimer’s disease is a progressive disease. Hence, neuroscience tells us that it is highly unlikely that The Proposed Conservatee had the requisite mental function integrity to be competent to decide to change her place of residence. Petitioner believes that, under United States law, The Proposed Conservatee lacked and lacks the legal mental capacity to change her residence to the United States. [Mitchell v. United States, 88 U.S. 350, 352-353](#); Whart. Conflict of Laws, 55, and authorities cited; [Sheehan v. Scott, 145 Cal. 684, 690-691](#).

Under California law, to change one’s residence, a person must be “mentally alert” and have “sufficient understanding and mental capacity to make an intelligent choice” of residence. [Estate of Phillips \(1969\) 269 Cal. App. 2d 656, 665](#). Any psychiatrist who is board-certified in geriatric psychiatry will inform the Court that, to a **medical certainty**, a person whose May 20, 2014 MMSE score was 17/30 (but almost certainly lower in July and August 2015) cannot have “sufficient understanding and mental capacity to

1 make an **intelligent** choice” of residence.

2
3 The Proposed Conservatee has been adjudicated by an Australian court to be
4 incompetent to make any financial commitments. Therefore, she lacks the legal capacity
5 to make any of the financial commitments that are required by U.S. immigration
6 applications. Mrs. Fehring’s authority to act as The Proposed Conservatee’s agent under
7 a power of attorney has been revoked by an Australian court order. Hence, Mrs. Fehring
8 does not have the authority to on behalf of The Proposed Conservatee in executing any
9 legal instrument, e.g., a financial commitment.

10
11 Both Mrs. Fehring and her husband Richard Henry Fehring are currently undischarged
12 Chapter 13 bankrupts, and are currently in financial distress. Therefore, neither of them
13 has the financial wherewithal for a financial commitment to provide support for The
14 Proposed Conservatee, as may be required for immigration purposes.

15
16 Mrs. Fehring is keeping The Proposed Conservatee in her home, without health care
17 coverage, and is preventing The Proposed Conservatee from communicating freely with
18 her family in the United States and Australia. Mrs. Fehring insists on monitoring all
19 family telephone contact, and has terminated The Proposed Conservatee’s calls
20 whenever the discussion addressed The Proposed Conservatee’s wishes regarding where
21 to live. For example, Mrs. Fehring abruptly cut off The Proposed Conservatee’s July 26,
22 2015 telephone call with her son **when The Proposed Conservatee said that she**
23 **wanted to return home to Melbourne, Australia.** A copy of the digital recording will
24 be provided upon request.

- 25
26 14. **An order appointing an attorney from the court’s Probate Volunteer Panel (“PVP**
27 **attorney”)** to represent The Proposed Conservatee.

15. **An order instructing the PVP attorney that the PVP attorney’s duty to provide effective assistance of counsel in the probate court includes a duty similar to a criminal defense attorney’s duty under Penal Code §1367 et seq.** (to act in Mary’s best interests, and not as a “zealous advocate” or “blind advocate”) such that:

a. **IF** the PVP attorney comes into possession of knowledge that would lead a reasonable attorney to firmly believe that it is more likely than not that:

- i. The Proposed Conservatee is in serious and substantial danger; and
- ii. The Proposed Conservatee lacks the ability:

1. Under the circumstances (which may include stressors such as undue influence, which can impair mental functioning in a situation specific context)
2. To understand and appreciate the probable consequences of decisions relevant to (i) The Proposed Conservatee’s estate planning documents and/or gifts, and (ii) relating to the establishment of the conservatorship, and the risks, benefits and reasonable alternatives pertaining thereto; and
3. To plan, organize and carry out reasonable actions in The Proposed Conservatee’s own interest under the circumstances; . . .

THEN...

- b. The PVP attorney should document in his or her records the observations/facts which support the PVP attorney’s beliefs about:
- i. The incapacity of the Proposed Conservatee, and
 - ii. The decisions or beliefs which the PVP attorney suspects are the product of undue influence¹, fraud, menace or duress; and

¹ Undue influence may reasonably be viewed as a decision-specific incapacity (to understand and appreciate...), wherein external stressors impair the influenced person’s (1) ability to understand and appreciate relevant information, and (2) executive functioning (i.e., the ability to plan, organize and carry out actions in one’s own rational self-interest).

c. The PVP attorney should inform the court that the PVP attorney has substantial questions about his or her client's capacity to instruct the PVP attorney and/or to enter into any settlement agreement concerning a conservatorship.

16. **An order directing the conservator to make reasonable efforts keep The Proposed Conservatee's family involved in The Proposed Conservatee's life** to the extent that the Conservator can facilitate the family's involvement, without violating any fiduciary duties;

17. **An order directing the conservator to honor the Conservatee's wishes** unless and to the extent that doing so, in the Conservator's opinion, would violate the Conservator's fiduciary duties, or be impractical and unduly burdensome for the conservator; and

18. An order granting such other relief as the court may deem proper.

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Attachment 3
(Petition for Appointment of Temporary Conservator)

Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) reported on May 26, 2014 that The Proposed Conservatee suffers from a dementia “probably of the Alzheimer type.” Dr. Sutcliffe also stated on May 26 that during a May 20, 2014 examination, The Proposed Conservatee’s Mini-Mental State Examination (“MMSE”) score was 17/30. An MMSE score of [17/30 is severe dementia](#). [← hyperlinked text]

It is common knowledge of that Alzheimer’s disease is a progressive disease. Hence, The Proposed Conservatee’s MMSE score **must** be **lower** today, November 20, 2015, than her MMSE score on May 20, 2014.

Miriam Fehring (“Miriam”), who had sought bankruptcy protection here in the United States, went to Australia in 2011 ostensibly to assist the proposed conservatee whose dementia and a urinary tract infection had caused a brief hospitalization.

Miriam hid her most recent bankruptcy from only sibling, David Frenkel, and the family in Australia, claiming that she (Miriam) had come solely out of altruistic motives, to help the proposed conservatee.

Petitioner claims that Miriam came to Australia to take possession of the Proposed Conservatee and to get for herself (Miriam) as much of the proposed conservatee’s estate is possible, and to move the proposed conservatee to the United States where Miriam could partially support herself on money from the proposed conservatee’s Australian estate, provided extensively for Miriam as a caregiver for the proposed conservatee. Miriam also tried to get the proposed conservatee to change her will, which previously left her estate equally to her 2 children, Miriam and David Frenkel. An earlier will of the Proposed Conservatee left a 3rd of her estate to petitioner Michelle Frenkel. But the proposed conservatee told Michelle when she, the proposed conservatee was changing the will to leave one half to each child, that she (the Proposed Conservatee) was doing the change because she thought it was the right thing to do,

1 even though she loved Michelle as a daughter --- since the proposed conservatee had helped
 2 raise Michelle after David Frenkel obtained a divorce from his Australian wife, and moved to
 3 the United States,

4 After arriving in Australia 2011 Miriam proceeded:

- 5 1. To become the Proposed Conservatee's sole caregiver.
- 6 2. To become the proposed conservatee's sole money manager.
- 7 3. To isolate the proposed conservatee from her son, David Frenkel, and petitioner, and the
 8 rest of the proposed conservatee's family and friends in Australia — no longer allowing
 9 anyone to visit with the proposed conservatee unless Miriam was present to supervise all
 10 contact and limit conversation about anything that might possibly reveal Miriam's
 11 neglect of the proposed conservatee's medical care causing a hospitalization in
 12 Australia, financial thefts and embezzlement from the Proposed Conservatee exceeding
 13 hundred and AU\$120,000, and whether the Proposed Conservatee really wanted to move
 14 to the USA — where Miriam will be able to siphon money from the Proposed
 15 Conservatee by getting money from the Australian state trustee that was appointed in
 16 2015 because of Miriam's embezzlements.
- 17 4. To train the proposed conservatee to say that she wanted to move to the United States to
 18 live with Miriam. Petitioner is informed and believes and thereon alleges that Miriam
 19 conducted secret training sessions, before having the Proposed Conservatee was
 20 examined by friendly mental health experts (whom Miriam hired to), who were
 21 supposed to provide an independent medical determination whether the Proposed
 22 Conservatee really wanted to move to the United States, and had the capacity to make
 23 that decision. Petitioner is informed and believes and thereon alleges that Miriam video
 24 recorded those training sessions, and that Miriam should be required to produce those
 25 training sessions, which show that Miriam conducted a premeditated fraud on the mental
 26 health experts whom she hired to produce the expert reports that supported Miriam's
 27
 28

1 position that the proposed conservatee had the capacity to decide to move to the United
2 States despite having an MMSE score of only 17/30, severe dementia.

- 3 5. To prevent the proposed conservatee's family from having any further access to the
4 proposed conservatee's health care providers and or any medical records, despite the
5 Proposed Conservatee's previous pattern of allowing her granddaughter, petitioner
6 Michelle Frenkel, to get information from health care providers freely.

7
8 David Frenkel, the proposed conservatee's son, initiated proceedings in Australia analogous to
9 conservatorship proceedings here in the United States (hereinafter "VCAT proceedings"),
10 except that the Australian VCAT proceedings do not provide anything similar to what we
11 consider due process here in the United States.

12 David was lucky enough to get VCAT to suspend Miriam's and during power of attorney
13 (analogous to a durable power of attorney).

14 Ellen had appointed Miriam, David Frenkel and Ellen's nephew, Peter Felder, as joint
15 powerholder is, each with the authority to act on his or her own.

16 Due to his legal naïveté, David Frenkel asked the VCAT Tribunal to suspend his powers and
17 Peter Felder's powers, since they were unable to control Miriam. The tribunal went ahead and
18 suspended David's and Peter's powers.

19 David also succeeded in getting VCAT to appoint to the Victorian State Trustee, which is
20 ostensibly supposed to act in a manner similar to a California conservatorship.

21 A true and correct copy of the State Trustee's report to VCAT about Miriam's embezzlements
22 is attached hereto as Exhibit 1.

23 VCAT issued an order (in excess of its jurisdiction under Australian law) determining that the
24 Proposed Conservatee lacked testamentary capacity — but somehow did have the capacity to
25 make an "intelligent" decision to move to the USA to live with Miriam, who embezzled large
26 amounts of money and who had isolated the Proposed Conservatee from everyone the Proposed
27 Conservatee knew.

1 Despite Miriam's embezzlements, the State Trustee naïvely believed that Miriam was providing
2 good care to the proposed conservatee, despite Miriam's isolation of the proposed conservatee
3 from the proposed conservatee's entire family and social network, and despite a hospitalization
4 that was caused by Miriam's neglect.

5 Petitioner is informed and believes and thereon alleges that the Victorian State Trustee has been
6 providing funds liberally to Miriam, as the proposed conservatee's caregiver, without
7 requesting receipts.

8 A true and correct copy of David Frenkel's September 12, 2015 letter to the Victorian State
9 Trustee, objecting to the State Trustee's breach of the State Trustee's fiduciary duties, is
10 attached hereto as Exhibit 2.

11 Those funds, once they come into California, belong to the proposed conservatee's California
12 conservatorship estate.

13 Petitioner is informed and believes and thereon alleges that the VCAT Tribunal expects that
14 conservatorship proceedings will be initiated in the United States by the Frenkel family, and
15 that once a California conservator of the person and estate is appointed, VCAT would transfer
16 the control of the conservatee's estate to the California proceeding.

17 Petitioner is informed and believes and thereon alleges that Miriam is providing poor care to
18 the Proposed Conservatee.

19 Petitioner is informed and believes and thereon alleges that the proposed conservatee does not
20 have medical insurance here in the United States.

21 Petitioner is informed and believes and thereon alleges that Miriam procured a traveler's
22 insurance policy for emergency medical care for the Proposed Conservatee, when Miriam
23 moved the proposed conservatee to the United States in July, 2015, by perpetrating a fraud on
24 the insurance company, and that the insurance company will stop providing any care when and
25 if it learns of the fraud.

26 Miriam perpetrated a fraud on the VCAT proceeding, which rendered a ruling, over the
27 objections of Michelle Frenkel, David Frenkel and others, that the Proposed Conservatee had
28

1 the capacity to decide to move to the United States, despite having an MMSE score of [17/30](#),
2 [severe dementia](#).

3 In the VCAT proceeding, the tribunal deprived David of due process as we know it here in the
4 United States inter alia by depriving the David of any medical discovery, and by prohibiting
5 him from effectively contesting the hearsay declarations that Miriam submitted, some of which
6 were submitted at the last minute.

7 All her life, the proposed conservatee has said that she wanted to spend the rest of her life in
8 Australia and did not want to come to the United States, nor to be dependent on Miriam whom
9 the Proposed Conservatee believed to be living a profligate lifestyle, beyond Miriam's needs.
10 Miriam is isolating the proposed conservatee from the rest of the family, not allowing them
11 telephone access unless Miriam supervises each telephone call, nor to meet with the proposed
12 conservatee, unless Miriam is physically present to interrupt the visit (just as she interrupts
13 telephone calls) if the conversation does not please Miriam.

14
15 The Proposed Conservatee is suffering from Alzheimer's disease, fatty liver, hypothyroidism,
16 hearing loss, morbid obesity, back problems and diverticulitis.

17 The Proposed Conservatee's orientation is erratically/often impaired with respect to
18 time, place, person and situation.

19 For example, the Proposed Conservatee is often, if not generally, unaware of where the
20 Proposed Conservatee is.

21 The Proposed Conservatee's memory is erratically/often impaired, as demonstrated by the fact
22 that the Proposed Conservatee erratically/often does not recognize people whom the Proposed
23 Conservatee has known quite well.

24 The Proposed Conservatee erratically/often cannot recall having met someone earlier in the
25 day, or within the last week.

26 The Proposed Conservatee erratically/often is very confused.

27 The Proposed Conservatee is unable to find, purchase or otherwise acquire or prepare food.

28

1 The Proposed Conservatee is unable to clothe herself or to care for the Proposed Conservatee's
2 clothing.

3 The Proposed Conservatee erratically/often is incontinent and unable to care for the Proposed
4 Conservatee's hygiene or other acts of daily living without help. She needs someone to make
5 sure that she is clean after bowel movements. Otherwise, she will have feces on her clothing,
6 etc.

7 The Proposed Conservatee lives with her daughter, Miriam Frenkel in Los Angeles County, and
8 requires full time custodial care for health and safety,

9 The Proposed Conservatee needs a wheelchair for outings.

11 Miriam Fehring ("Miriam"), who had sought bankruptcy protection here in the United States,
12 went to Australia in 2011 ostensibly to assist the proposed conservatee whose dementia and a
13 urinary tract infection had caused a brief hospitalization.

14 Miriam hid her most recent bankruptcy from only sibling, David Frenkel, and the family in
15 Australia, claiming that she (Miriam) had come solely out of altruistic motives, to help the
16 proposed conservatee.

17 Miriam proceeded thereupon:

- 18 1. To become the Proposed Conservatee's sole caregiver.
- 19 2. To become the proposed conservatee's sole money manager.
- 20 3. To isolate the proposed conservatee from her son, David Frenkel, and petitioner, and the
21 rest of the proposed conservatee's family and friends in Australia — no longer allowing
22 anyone to visit with the proposed conservatee unless Miriam was present to supervise all
23 contact and limit conversation about anything that might possibly reveal Miriam's
24 neglect of the proposed conservatee's medical care causing a hospitalization in
25 Australia, financial thefts and embezzlement from the Proposed Conservatee exceeding
26 hundred and AU\$120,000, and whether the Proposed Conservatee really wanted to move
27 to the USA — where Miriam will be able to siphon money from the Proposed
28

Conservatee by getting money from the Australian state trustee that was appointed in 2015 because of Miriam's embezzlements.

4. To train the proposed conservatee to say that she wanted to move to the United States to live with Miriam. Petitioner is informed and believes and thereon alleges that Miriam conducted secret training sessions before having the Proposed Conservatee was examined by friendly mental health experts (whom Miriam hired to), who were supposed to provide an independent medical determination whether the Proposed Conservatee really wanted to move to the United States, and had the capacity to make that decision.

The Proposed Conservatee cannot reason logically.

The Proposed Conservatee is incapable of understanding simple money matters now, due to the Alzheimer's disease.

The Proposed Conservatee gives no sign of being aware any longer of what money, bills or property are.

The Proposed Conservatee seems generally unaware of the nature or extent of the Proposed Conservatee's bounty.

The Proposed Conservatee's short term memory is very spotty and unreliable.

The Proposed Conservatee suffers from paranoid delusions concerning property.

The Proposed Conservatee tends to hallucinate or remember events that did not occur.

The Proposed Conservatee tends to forget important recent events that did occur.

The Proposed Conservatee could easily be deceived by someone and made to sign documents transferring away property.

The Proposed Conservatee is being financially abused by her daughter, Miriam Frenkel

//

The Registrar
V.C.A.T Guardianship List
5th Level William Cooper Justice Centre
223 William St
MELBOURNE VIC 3000

4709047-542-YO USSM
YOUR REFERENCE

G71783/1 CONTACT

Melissa Youssef TELEPHONE

9667 6879 DATE

20 February 2015

Section 61 Report

Hearing date & time	26 February, 2015, 10:30am
Hearing Venue	William Cooper Justice Centre, 223 William Street, Melbourne
Name Of Client	Ellen Frenkel
Date of Birth	18 October, 1926
Date of STL Authority	6 November, 2014
Current Residential Address	47 Deakin St BENTLEIGH EAST VIC 3165
Contact Phone Number	9579 3932
Type Of Accommodation	Owner Occupied
Marital Status	Widow
Has client made a Will	Yes
Contact with Represented Person	State Trustees met with Ellen and her daughter, Miriam Frenkel-Fehring on 19/11/2014 at Ellen's home. We have had frequent contact via telephone and email with Miriam and Ellen's son, David Frenkel since our appointment.
Comment on Financial Independence	Participation in the Financial Independence Program is not recommended.
Financial Plan	Should State Trustees be reappointed, a Financial Plan will be implemented for Ellen.
Comment on statement	The attached statement dated to 19/02/2015 shows a negative balance of \$859.24 (debit) in Ellen's State Trustees Cash Common Fund.

State Trustees have confirmed four Westpac accounts in Ellen's name.

To date we have redeemed \$3,191.61 from one account and have requested a further redemption of \$10,000.00 from another Westpac account in order to cover Ellen's expenses.

Should we be reappointed, we will redeem the balance of the funds.

Ellen is in receipt of the War Widows pension from DVA, she receives \$868.00 fortnightly. State Trustees have received \$2,604.00 to date.

Please note that our statement will not reflect the following sources of income, as these have not yet been receipted into State Trustees:

1. Foreign pension - from Austria – between \$1,300.00 and \$1,800.00 paid quarterly
2. AMP - \$11,772.98 – paid every 6 months

We have instructed AMP to send next payment (due approx 29/04/2015) into State Trustees.

The foreign pension has not been redirected yet due to this rehearing and the difficulty in reversing the request should we be revoked.

To date, State Trustees have paid the following accounts for Ellen:

1. Motor vehicle insurance and service
2. Home help and personal care
3. Council rates
4. Medical and chemist accounts
5. Solicitors account
6. Title search fees

Comment on Budget

The budget provided with this report is based on current income and expenditure as it is today.

Contact/Communication with client or other interested parties

State Trustees have had frequent contact with Miriam via telephone and email. Contact has mainly been regarding reimbursement of expenses payment to Miriam and access to funds.

It was agreed at the initial meeting with Ellen and Miriam to continue the arrangement that was in place prior to our appointment whereby Ellen would receive \$500.00 per week for Ellen's living expenses. A further \$500.00 per monthly was agreed to be paid to meet any additional personal expenses.

Prior to our appointment, \$500.00 weekly was transferred from one of Ellen's accounts to an account which Miriam had access to.

State Trustees liaised with Westpac and ensured this transfer continued until we began to receive income for Ellen, we then began making weekly payments directly into the account that Miriam can access.

In addition to the \$500.00 weekly transfer, State Trustees allowed Miriam to withdraw funds for the following expenses:

1. \$380.00 for Motor vehicle registration;
2. \$1,000.00 for cost of extending Miriam's airfare back to USA and purchase of shoes for Ellen;
3. \$3,000.00 for airfare for Miriam's son to visit Australia;
4. \$400.00 for television purchase;

State Trustees liaised with Qantas to receive a credit of \$894.17 that was due back to Ellen.

Miriam has requested to be reimbursed for the following expenses she has advised she incurred prior to State Trustees appointment:

1. \$5,181.00 for various personal expenses
2. \$100.00 for private carers Miriam paid cash to
3. \$269.00 for her son Lucas - unclear what this is for
4. \$180.00 for Miriam to see an orthopaedist for an injury she sustained whilst on an outing with Ellen (this request was during our appointment)

Decision to pay reimbursement(s) to Miriam has been suspended at this point in time, pending outcome of investigation into allegations of misappropriation.

Miriam has also advised approximately \$4,000.00-6,000.00 is required for property repairs.

State Trustees have approved for repairs to toilet only at this stage (approximately \$250.00) and requested plumber to forward account to us. Should we be reappointed, we will review Miriam's request for property repairs.

**Update on matters from
previous VCAT review.
Issues resolved
& positive outcomes**

State Trustees have investigated Ellen's current finances in order to determine if she can afford to move overseas to the USA to reside in the home of her daughter Miriam.

Current Cash Common Fund balance - \$859.24 (in debit)

Current Westpac accounts balance - \$78,338.22

Current balance of debts -

CBA credit card \$4,901.81

BOM credit card \$11,553.58

ANZ credit card \$11,393.64

Reimbursement to Miriam \$5,181.00

TOTAL of Current Debts = \$33,030.03

Ellen's total cash holdings after current debts had been paid in full will be \$44,448.95.

All debts may not have been confirmed to date due to the short administration period, we would allow for a further \$5,000.00 in debts.

State Trustees engaged our panel agent to provide an estimate of what Ellen's property would sell and rent for in the current market.

It was their opinion the property would sell for (in the range of) \$850,000.00 to \$900,00.00

It was their opinion the property would rent for (in the range of) \$420.00 to \$450.00 per week.

Ellen would continue to receive the following income streams if she moved to the USA:

1. DVA War Widows pension \$853.80 per fortnight.
(She will not be eligible to receive the Energy Supplement of \$14.20 if she moves overseas).
2. AMP annuity of \$11,772.98 every 6 months.
(This is payable for Ellen's Lifetime)
3. Foreign pension every quarter of approximately \$1,300.00-
\$1,800.00.
4. **Gross rental income of \$420.00 weekly.
5. Total fortnightly income would be \$2,836.00.

**Current matters of
interest/concern**

****please note rental income quoted is gross only, expenses such as rental agent commission, insurance, rates & property maintenance expenses have not been deducted from this figure.**

Miriam has provided a Budget of projected expenses totalling \$69,308.00 yearly / \$2,665.69 fortnightly based on the circumstance of Ellen renting out her property here in Australia and moving to the USA to live with her daughter Miriam.

As noted earlier, Ellen's cash holding after current known debts are paid would be approximately \$44,448.98.

These savings are all the client would have to cover any future costs such as emergency care needs for Ellen, or property related expenses.

As the Tribunal is aware, at the time of State Trustees' appointment numerous allegations have been raised regarding Miriam's management of her mother's funds.

It appeared that these allegations dated back to when Miriam relocated to Australia in December 2011.

All of the allegations raised against Miriam have come from her brother David who has provided comprehensive details (itemised lists including dates and amounts) which we understand the Tribunal also has copies of. The volume of material provided is significant.

We preface the following observations by stating that as the Administration Order made 06 November 2014 was to be reassessed by no later than 28 February 2015, State Trustees' investigations, while thorough, have not advanced beyond an investigative stage to the point of taking any action on what has been uncovered to date.

While the investigation and work undertaken by David was helpful, State Trustees took steps to substantiate the allegations. We requested bank statements from the various financial institutions Ellen held account at between December 2011 (when Miriam commenced living in Australia) and the date of State Trustees' appointment in 28 February 2015.

Bank statements were received from NAB and CBA. Westpac requested a fee of \$180 for the reproduction of bank statements, which State Trustees opted to not pay considering the NAB & CBA statements provided sufficient evidence to substantiate some of David's allegations against Miriam.

The bank statements clearly demonstrate that the accounts have been used for expenses that do not belong to Ellen. For the purpose of this report, we do not propose to outline these expenses, but do confirm these charges (from what we have uncovered to date) go into many tens-of-thousands of dollars.

State Trustees has spoken with Miriam on various occasions about these expenses. Miriam does not deny having accessed her mother's funds, while operating under Power of Attorney, for her own benefit (and for the benefit of her immediate family). Miriam freely acknowledged using her mother's funds for her own benefit and justified this by stating it was always her mother's wish to financially support Miriam (and Miriam's extended family) and that there was a clear and well documented history of this financial support that pre-dates her mother's loss of capacity. We refer to Jane Kempler's written submission to the Tribunal for the hearing on 6 & 7 November 2014 which includes a schedule of payments titled "SUPPORTIVE FUNDS TO MIRIAM & THEN ALSO TO LUCAS PRE POA – FROM 1978 TO 26/10/2012".

It was pointed out by State Trustees that by Miriam gifting herself funds while operating as an Attorney under Power would be legally construed as a breach of her fiduciary obligations at. Miriam explained she was unaware of this and was advised otherwise. Furthermore, and despite being requested to cease accessing her mother's funds, Miriam appears to have continued to apply her mother's funds for her own benefit since State Trustees' appointment on 06 November 2014. As Miriam is the carer for her mother and to some degree is responsible for the daily day-to-day expenses of the household, State Trustees is unable to limit or observe Miriam's use of the funds deposited by State Trustees into the Westpac account which is used to pay for general household and day to day expenses for Ellen (by Miriam).

The following expenses were identified on Ellen's Westpac bank account. We wrote to Miriam and requested clarification on the expenses. Various receipts have been provided but State Trustees are not satisfied with the explanations provided as there is a strong suggestion some of the purchases made were for people other than Ellen:

11 November 2014:	\$110.89	EFTPOS transaction-
Leopold Salon Armadale		
02 December 2014:	\$41.96	Debit Card Purchase-
Post Office, Bentleigh East		
02 December 2014:	\$66.60	Debit Card Purchase-
Post Office, Bentleigh East		

09 December 2014:	\$72.46	Debit Card Purchase-
Post Office, Bentleigh East		
15 December 2014:	\$16.14	Debit Card Purchase-
Post Office, Bentleigh East		
15 December 2014:	\$28.30	Debit Card Purchase-
Post Office, Bentleigh East		
05 January 2015:	\$145.73	JB HiFi Brighton
05 January 2015:	\$79.99	ABC Shop
20 January 2015:	\$24.48	Debit Card Purchase-
Tullamarine Airport		
20 January 2015:	\$58.00	Debit Card Purchase-
National Gallery of Victoria		
20 January 2015:	\$69.80	Debit Card Purchase-
National Gallery of Victoria		
20 January 2015:	\$84.98	EFTPOS transaction-
Abu Nahain- Tullamarine Airport		
21 January 2015:	\$90.40	EFTPOS transaction-
Newslink- Tullamarine Airport		
21 January 2015:	\$14.50	EFTPOS transaction-
Airport Retail- Tullamarine Airport		

SPEEDING FINES

David brought it to State Trustees' attention that he had initiated an investigation with the Victoria Police relating to three speeding fines incurred by Miriam, in the name of her mother.

We obtained the details of the Detective who was investigating David's allegations. The following text is the Detective's written response to David's allegations. It is important to note that these allegations and investigations were raised by David to Victoria Police and State Trustees has no involvement as it is not State Trustees' practice to involve Police in such matters as this is generally outside the scope of the responsibilities as an administrator.

"I attended the Traffic Camera Office today and viewed the images of the traffic offences. Your mother is pictured clearly as a passenger in 3 of the photos; however your sister is not clear as the driver except I'm sure she was. The problem is this:-

*No **false** nomination forms have been submitted by your sister stating that she **wasn't** the driver. The fines are being paid with your mother's funds as being the actual driver. Although unethical it is not criminal.*

I will attempt to have the fines and points reversed onto your sister's licence through the driver licensing area given that your mother's licence was cancelled in May 2012.

Is your mother capable of providing a statement to the effect that she wasn't the driver and your sister was ?

In any event I will ensure your sister is made to understand that the police are aware of her driving and the accumulated fines and demerit points being incurred by her mother".

We wrote to the Detective to ask that he clarify the scope of their investigation. The Detective asked whether or not State Trustees intended to seek punitive damages from Miriam relating to these fines. We explained that we would not seek punitive damages and instead asked that Victoria Police keep State Trustees updated regarding their proposal to reverse the fines as if not successful, we would seek that Miriam compensates her mother for the amount of the fines.

POLICE INVOLVEMENT (FRAUD)

David also initiated a fraud allegation with Victoria Police against Miriam. This matter seems to hinge on Miriam operating under a Power of Attorney while a bankrupt in America.

It is unclear as to whether David seeks to pursue criminal charges against Miriam, or whether the fraud claim was required as part of David's attempts to have financial institutions either assign debts in Ellen's name to Miriam, or wholly forgive the debts. These debts arose from credit cards opened by Miriam in her mother's name while operating as Power of Attorney.

We have not become involved with the Police regarding this matter, however we note that David provided State Trustees with unsigned correspondence dated 14 January 2015 from ANZ which notes the following:

"ANZ has concluded our investigation of your case of ID Theft in relation to the disputed account. This case has now been finalised with the below action:

ANZ has requested the removal of the ANZ enquiry dated 25/07/2013 from your VEDA Credit Report on 14/01/2015, and instructed the removal of the Credit default listing associated with this account. ANZ has also ceased all collections/Agent activity relating to this account and have confirmed the debt as fraud".

MIRIAM AS A BANKRUPT

It has been reported (by David) that Miriam is subject to bankruptcy proceedings in the United States of America and documents have been provided (again, by David) which purport to confirm this. State Trustees has not taken steps to confirm with the relevant authorities as there is the question of judicial, and time, limitations.

For the purpose of this report, and considering Miriam's own free admission made to State Trustees, we consider Miriam to be a personal bankrupt in the United States of America.

The question then becomes whether or not Miriam's bankruptcy in the United States of America extends to define Miriam as a bankrupt pursuant to Australian law.

We have been provided with copy of correspondence from Michael Sharp Legal to Miriam Fehring dated 16 May 2014. Michael Sharp Legal were engaged by "...David Frenkel and Peter Felder as attorney for Mrs Ellen Frenkel.". The correspondence states:

"We advise you that the Instrument Act 1958 (Vic) provides at section 1250 that:

"[i]f an attorney under an enduring power of attorney becomes insolvent, the power of attorney is revoked to the extent that it confers power on the attorney"

The meaning of the word "insolvent" contained in section 1250, set out above, is defined in section 114 of the same act as meaning "insolvent under administration".

Furthermore "insolvent under administration" is defined in the Interpretation of Legislation Act 1984 (Vic) as including a person who is an undischarged bankrupt within the meaning of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction".

Whilst we have not engaged solicitors on behalf of Ellen at this point, we consider Michael Sharp Law's interpretation of the relevant legislation to be accurate and, as such, Miriam's Powers pursuant to the Power of Attorney were void.

As to whether any compensatory or pecuniary action could, or even should, arise from Miriam's conduct is not yet clear.

Placing aside the possibility that Miriam's capacity as Attorney under Power, technically, may have been invalidated on account of her bankruptcy in America, consideration needs to be applied towards Ellen's wishes and former conduct which could be argued are

evidenced in the funds alleged to have been provided to Miriam and her family as far back as 1978.

Further complicating the matter of whether or not any steps out to be taken against Miriam is the fact that she is a bankrupt. Any successful action would be hollow as recovery of funds does not appear possible. Importantly, consideration also needs to be applied towards the relationship between Miriam and her mother, which could become fractured if any action was taken by State Trustees.

Recommendation

If the Tribunal sees fit, State Trustees would be pleased to continue the management of the affairs of Ellen Frenkel.

Attendance

Consultant Melissa Youssef and Senior Consultant Justin Molik will be in attendance at the hearing.



Melissa Youssef
Personal Financial Consultant

Ellen Frenkel (Plenary) - 4709047
Asset and Liability Statement as at 19 February 2015

DETAILS	VALUATION DATE	UNITS	LIABILITIES	ASSETS	BALANCE
INTEREST BEARING HOLDING					
Bank Account Holding					
WBC 033-034 **5528				26.85	
	22-DEC-14				
WBC 033-034 **0379				77,748.87	
	22-DEC-14				
WBC 733-126 **9242				512.50	
	22-DEC-14				
WBC 733-305 **8707				50.00	78,338.22
	03-FEB-15				
REALTY					
House and Land Holding					
47 Deakin St BENTLEIGH EAST VIC 3165				705,000.00	705,000.00
	10-DEC-14				
STATE TRUSTEES - COMMON FUNDS					
Cash Common Fund Total					
Common Fund			859.24		859.24Dr
	19-FEB-15				
Totals			\$859.24	\$783,338.22	\$782,478.98



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Melbourne, VIC 3001

T 03 9667 6444
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Ellen Frenkel (Plenary) - 4709047
Statement of Account for the period 06 November 2014 to 19 February 2015

DETAILS	DEBITS	CREDITS	BALANCE
RECEIPTS			
Interest On Common Fund No 2		.86	.86
Pension - Department Veteran's Affairs		2,604.00	2,604.00
Totals		\$2,604.86	\$2,604.86
CAPITAL RECEIPTS			
Refund of Overpaid Account		894.17	894.17
Bank Accounts (Cheque & Savings etc.) WBC 733-305 **8707 09/02/15		3,191.61	3,191.61
Totals		\$6,690.64	\$6,690.64
EXPENSES			
Insurance - Motor Vehicle	801.67		801.67
Repairs And Maintenance - Motor Vehicle	983.95		983.95
Running Costs - Motor Vehicle	18.98		18.98
State Trustees Income Commission	78.17		78.17
State Trustees Capital Commission	204.29		204.29
State Trustees Management Fee	.34		.34
Legal Fees - External	514.25		514.25
Chemist (Medical)	1,017.79		1,017.79
Medical Fees - Non Deductable	372.00		372.00
Living Expenses	2,000.00		2,000.00
Home Help/Meals On Wheels Expenses	943.20		943.20
Infringement Notices	28.14		28.14
Council Rates	522.15		522.15
Title Search Fees	36.68		36.68
GST Expense on STL Fees	28.27		28.27



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Ellen Frenkel (Plenary) - 4709047
Statement of Account for the period 06 November 2014 to 19 February 2015

DETAILS	DEBITS	CREDITS	BALANCE
EXPENSES			
Totals	\$7,549.88	\$6,690.64	\$859.24Dr

Proposed Client Budget - As at 23 February 2015

Client Name: Ellen Frenkel

Reference No: 4709047

INCOME

Pension, Annuities, Allowances	
Pension - Department Veteran's Affairs	\$868.00
Investment Income	
Cash Common Fund 2	-\$0.50
Other Income	
AMP Annuity	\$902.51

EXPENSES

Personal Expenses	
Chemist (Medical)	\$150.00
Living Expenses	\$1,230.77
Home Help/meals On wheels Expenses	\$140.00
Property Expenses	
Council Rates	\$35.00
Property insurance	\$40.00
Water expenses	\$20.00
Electricity expenses	\$45.00
Telephone expenses	\$80.00
Other Expense	
Insurance - Motor Vehicle	\$30.00
Repairs And Maintenance - Motor Vehicle	\$30.00
Registration - Motor vehicle	\$15.00
Fees and Commissions	
VCAT Annual Administration Fee	\$4.58
State Trustees Income Commission	\$14.03
State Trustees Management Fee	\$0.05
GST Expense on STL Fees	\$4.15

Total fortnightly income **\$1,770.21**

Total fortnightly expense **\$1,838.58**

Income VS Expenses: -\$68.37

Funds decreasing by: \$68.37 per fortnight

Notes:

Ellen receives \$868.00 fortnightly from DVA.

AMP Annuity \$11,772.98 is received every 6 months - next payment due 29/4/15

Foreign pension of \$1300-1800 quarterly has not been redirected as yet.

State Trustees send Ellen \$500.00 weekly and an extra \$500.00 once per month.

*Please note once foreign pension is redirected, budget will not be in deficit.

LAW OFFICES OF
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September 12, 2015

VIA EMAIL (David.Straughair@StateTrustees.com.au)

David Straughair
Personal Financial Consultant
State Trustees Limited
1 McNab Avenue
Footscray VIC 3011

Re: Refusal of State Trustees, Ltd. to answer any questions about the
Administration of the estate of Ellen Frenkel; VCAT Ref no: G71783/03

Dear Mr. Straughair:

On August 29 2015, my client, David Frenkel, sent an email to Anthony Hughes, Client Concerns Manager in the office of the State Trustees Ltd ("STL"). David's email posed a few simple questions so that David would know that his mother, Mrs. Ellen Frenkel is safe.

Mr. Hughes' reply by email on September 1 2015 did not answer a single one of the questions David posed in his August 29, 2015 email to Mr. Hughes. Instead Mr. Hughes' announced:

[W]e have assured ourselves that the travel, visa and insurance plans that are in place are appropriate.

Appropriate disclosures have been made in relation to existing conditions, and there are plans in place should these arise. * * *

Your mothers (sic) safety is important to us ...

[W]e will act within our authority to assist as we can

Mr. Hughes' self-serving claim that STL is doing a bang-up job, and is devoted to protecting Mrs. Frenkel's safety is not persuasive or helpful in any respect.

In the balance of this letter, I will attempt to demonstrate that David has more than a reasonable basis for posing questions to Mr. Hughes. At the conclusion of this letter, I will restate for your convenience the questions David posed to Mr. Hughes so that you may answer them.

Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) reported on May 26, 2014 that Mrs. Frenkel suffers from a dementia "probably of the Alzheimer type." Dr. Sutcliffe also stated on

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May 26 that during a May 20, 2014 examination, Mrs. Frenkel's Mini-Mental State Examination ("MMSE") score was 17/30. An MMSE score of [17/30 is severe dementia](#). [← hyperlinked text] As you know, Alzheimer's disease is a progressive disease. Hence, Mrs. Frenkel's MMSE score **must** be lower today, September 2, 2015, than her MMSE score on May 20, 2014.

Deputy President Nihil's June 25, 2015 order included the following text, which indicates that Deputy President Nihil was cognizant of the progressive nature of Alzheimer's disease, and the fact that Mrs. Frenkel was destined to lose the capacity to make decisions about (i) where to live, (ii) with whom to live, and (iii) whether the quality of the care she is getting has become neglectful and abusive.

78 Ms Frenkel-Fehring gave evidence that the ticket to the USA will be a return ticket, that she intends to **ensure that the place at Emmy Monash will remain available** to Mrs Frenkel if she wishes to return or needs to return to Melbourne, and that Mrs Frenkel's care needs can be amply met in the USA. State Trustees Limited, Mrs Frenkel's administrator, considers that Mrs Frenkel's financial needs can be met. While acknowledging that there may be some potential communication difficulties, State Trustees Limited indicated willingness and ability to manage Mrs Frenkel's financial affairs from Victoria, for the time that she is living in the USA, if that is what occurs. According to her administrator, Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home. ...

79 ... The decision for the Tribunal can only be as already set out, that is - am I satisfied that now, at this time, Mrs Frenkel lacks the capacity to make a reasonable judgement about where she lives and with whom? I am not.

82 There will sometimes be circumstances in which a person who has a disability, and because of that disability is unable to make reasonable judgements about their affairs, is able to express his or her wishes in a clearly ascertainable way. These wishes may be contrary to their best interests. S4(2) of the Act requires the Tribunal to consider the person's best interests as well as their wishes. In the present case, if I were satisfied "that Mrs Frenkel lacked capacity at this time" to make the decision about where to live and with whom, I would need to consider her wishes, and her best interests, and the least restrictive means by which her interests could be supported.

Deputy President Nihil appointed State Trustees Limited ("STL") as administrator, and delegated various fiduciary duties to STL because Mrs. Frenkel had a 17/30 MMSE level of mental function integrity and Alzheimer's disease, and because STL reported to VCAT that Mrs. Miriam Fehring was self-dealing in violation of her duties as Mrs. Frenkel's attorney-in-fact under a financial Enduring Power of Attorney.

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Among STL's duties as administrator is the duty to ensure that the funds STL transmits to Miriam Fehring ("Miriam") are being used for Mrs. Frenkel's best interests, i.e., that STL is getting fair market value for those funds.

David's unease was exacerbated by Mr. Hughes' claim that the "the quality of services delivered [by Miriam] are lifestyle considerations" for Mrs. Frenkel" to evaluate. Mrs. Frenkel, who had an MMSE score of 17/30 due to Alzheimer's disease almost a year and a half ago¹, has a very low level of overall mental function integrity, and is ipso facto incapable of assuming the responsibility of evaluating the quality of Miriam's "services", as STL should know. Mr. Hughes' assertion that STL will continue to pay Miriam for her "services" without monitoring the quality of those services indicates an abdication of STL's duty as administrator to ensure that Mrs. Frenkel's funds are being spent for her benefit, and the duty to not waste Mrs. Frenkel's funds by subsidizing neglectful or otherwise abusive care.

We believe STL has these two duties:

1. A duty to take reasonable steps **to know whether Mrs. Frenkel has lost the capacity to evaluate the quality** of the care she gets.
2. If Mrs. Frenkel has lost that capacity, STL has a duty to take reasonable steps to ensure that **STL is not subsidizing neglectful and abusive care**, instead of using Mrs. Frenkel's funds for her benefit. Consider the following hypothetical scenario. Assume, merely for the purposes of discussion, a hypothetical scenario in which Miriam is providing neglectful custodial care, depriving Mrs. Frenkel of appropriate medical care, and preventing Mrs. Frenkel from communicating her wishes freely to her non-California based family and friends. Would STL be within its rights to idly ignore Mrs. Frenkel's plight and to continue subsidizing Miriam's abuse of Mrs. Frenkel? Obviously not.

Mr. Hughes' claim that the "the quality of services delivered [by Miriam] are lifestyle considerations for Mrs. Frenkel" (a severely demented woman) to evaluate, is evidence strongly suggesting that STL is not even **attempting** to fulfill either of the foregoing two duties.

My client and I believe that STL also has another legal duty, to wit, the duty to take reasonable steps (from time to time) to ascertain whether Mrs. Frenkel "wishes to return or needs to return to Melbourne,"² as Judge Davis indicated. Deputy President Nihil determined on June 25 2015 that Mrs. Frenkel still had the capacity to make those decisions.

Mr. Hughes' September 1, 2015 email conveyed the message that STL does not have a duty to ascertain and spend Mrs. Frenkel's money to implement Mrs. Frenkel's current life-style choice.

¹ Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) recorded a 17/30 MMSE score during a May 20, 2014 examination he performed.

² Quotation from Paragraph 78 of Deputy President Nihil's June 25, 2015 order.

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Mr. Hughes did not explain why STL may ignore and flout Mrs. Frenkel's current "wishes to return or needs to return to Melbourne." On August 13 2015, David sent an email to Mr. Hughes telling Mr. Hughes that he (David) had had a telephone conversation on July 26 2015 with his mother, Mrs. Frenkel, in which Mrs. Frenkel said she wanted to return right away to Australia. David substantiated his assertion by attaching to his email: (i) a digital recording of the conversation (in Apple Mac format), and (ii) a transcript of the July 26 conversation (in Microsoft Word format). The transcript includes the following text:

DAVID FRENKEL: But I spoke to [Mich?] this morning -- she still sounded a bit upset that she didn't get to say goodbye before you left. I -- she was really kind of in tears and having a rough time of it.

ELLEN FRENKEL: Ohh.

DAVID FRENKEL: Yeah.

ELLEN FRENKEL: Well, give her hugs and kisses from me.

DAVID FRENKEL: I will.

ELLEN FRENKEL: And tell her I love her like mad. And [stammering] and I don't know how that happened.

DAVID FRENKEL: No. No, I'm not sure how it happened either, love. But here you are. You know, do -- what are your thoughts about coming back eventually to 47 Deacon (sic) Street, to your home? What --

ELLEN FRENKEL: Oh, well, that's, that's -- that [would be?] good. That would, would be, would be very good.

DAVID FRENKEL: Yeah. Any time you want to you can, you know. I, I would fly over and happily fly you back to Melbourne, when -- when you want to. Only when you want to.

ELLEN FRENKEL: **Oh, David, can, can you come now?**

DAVID FRENKEL: (laughter) Would you like me to **come right now?**

ELLEN FRENKEL: **Yes.**

On August 24, 2015, Mr. Hughes (STL's Client Concerns Manager) sent David a short email indicating that:

1. **Mr. Hughes could not open the** "attached ... recording of a FaceTime call with Mum on July 26th" David sent on August 21, in which **Mrs. Frenkel "express[ed her] wish to return to her home** of this past 60 years" — even though David's August 21 email had explained: "You can play it most easily on an Apple iPad, as it is an Apple format."
2. Mr. Hughes **could not be bothered** either to get access to some Apple device to hear Mrs. Frenkel's wishes on July 26, nor even to tell David which audio file formats he (Mr. Hughes) could open, and ask David to send the recording again in one of those formats.
3. Mr. Hughes either:

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- a. Elected to **ignore the request** in David's email asking Mr. Hughes **to read** the attached Microsoft Word **transcript** of the July 26 telephone call, in which Mrs. Frenkel expressed the wish to return to Australia "right now"; or
 - b. Read the transcript, and then elected to **ignore Mrs. Frenkel's wishes**, which are reflected **unambiguously** in the transcript.
4. Mr. Hughes **rebuked David** for asking STL to pay for repatriating his mother to Australia, as per **his mother's request** on July 26 to return "right now", which is **unambiguously** reflected in the transcript.
5. Mr. Hughes then proceeded to instruct David that:
 - a. "Whether or not your mother chooses to return to Australia is correctly a life-style choice."
[Fascinating, but useless information.]
 - b. "A legally appointed Administrator is precluded by legislation from **imposing** life-style choices upon a person."
[David's email asked STL to implement the life-style **choice Mrs. Frenkel unambiguously expressed** on July 26, and did **not** ask STL to "impose" a life-style choice on Mrs. Frenkel.]
 - c. "All we can do is comment on whether or not your mother can afford to travel back to Australia – we cannot comment on the wisdom or otherwise of such choice."
[David did not ask, and does not need STL to comment on:
 - i. Whether or not his mother can afford to travel back to Australia, nor
 - ii. The wisdom the choice Mrs. Frenkel unambiguously expressed on July 26, as reflected in the transcript.]

It is difficult to reconcile Mr. Hughes' refusal to consider Mrs. Frenkel's unambiguous July 26 expression of her wish to return home to Australia with Mr. Hughes' numerous pious pronouncements affirming Mrs. Frenkel's right to self-determination and her right to make "lifestyle choices", including her right to decide where she lives. Indeed Mr. Hughes' seemingly willful blindness and feigned ignorance of Mrs. Frenkel's unambiguous July 26 expression of her wish/choice to return to Australia (reflected in the telephone call transcript text quoted above) conveys the impression that Mr. Hughes intended to flout Mrs. Frenkel's wish/choice.

On August 25, 2015, shortly before 1:56:28 pm AEST, Ellen's granddaughter Michelle Frenkel spoke on the telephone with Melanie Smith, **Team Leader**, in the New Client Team of STL's office. Michelle reports the following exchange occurred during the August 25 telephone call:

Melanie Smith of STL said to Michelle "that Ellen has travel insurance and, if she becomes unwell, she could come home."

Michelle "asked how we would know whether Ellen was unwell and/or whether Ellen wanted to come home."

Melanie "replied saying that Ellen could call or email her and tell her."

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Michelle “reminded [Melanie Smith] that Ellen can no longer make calls or emails, due to her Alzheimer’s dementia.”

Melanie “said then that Miriam would have to tell STL that Ellen wants to come back to Australia.”

Michelle “said are you joking!?”

Melanie Smith did not reply.

Melanie Smith’s August 25 statements on behalf of STL in the foregoing Kafkaesque colloquy indicate that STL is relying upon Miriam to spontaneously provide truthful reports to STL so that STL may know:

1. Whether Ellen is ill and whether Ellen needs medical care that conceivably is not covered by any lawfully acquired insurance health care policy; and
2. Whether Ellen wants to go back to Australia.

The foregoing August 25 colloquy between Michelle and Melanie Smith seems Kafkaesque because STL’s own report of 20 February 2015 to VCAT provided (i) ample reason to have strong doubts about Miriam’s honesty and (ii) ample reason to doubt that Miriam would ever endanger her income from Ellen by reporting to STL that Ellen wants to go home.

STL’s report of 20 February 2015 to VCAT included, among other things, the following statements by STL:

It was pointed out by STL that by Miriam gifting herself funds while operating as an Attorney under [Ellen’s Enduring] Power would be legally construed as a **breach of her fiduciary obligations** at.(sic) Miriam explained she was unaware of this and was advised otherwise. Furthermore, and **despite being requested to cease accessing her mother’s funds, Miriam appears to have continued to apply her mother’s funds for her own benefit since State Trustees’ appointment on 06 November 2014.** As Miriam is the carer for her mother and to some degree is responsible for the daily day-to-day expenses of the household, **State Trustees is unable to limit or observe Miriam’s use of the funds** deposited by State Trustees into the Westpac account which is used to pay for general household and day to day expenses for Ellen (by Miriam).

The following expenses were identified on Ellen’s Westpac bank account. **We wrote to Miriam and requested clarification** on the expenses. Various receipts have been provided **but State Trustees are not satisfied with the explanations provided** as there is a strong suggestion some of the purchases made were for people other than Ellen:

[List omitted]

We think it is obvious that STL should **not** trust and rely on Miriam, in light of the fact that Miriam:

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- 1) Opened three credit cards in **Mrs. Frenkel's** name and ran up tens of thousands of dollars of debt spending the funds on **Miriam's** US family and not for **Mrs. Frenkel's** benefit.
- 2) Sent the credit card statement to a secret post office box to hide their presence from the **other two "attorneys-in-fact" appointed by Mrs. Frenkel under her Enduring Power of Attorney.**
- 3) **Secretly** tried to rent the house and take Mrs. Frenkel to Los Angeles early 2014 without telling any other family member. (VCAT blocked that.)
- 4) **Spent** around \$100,000 of **Mrs. Frenkel's funds**, much of it in America on **Miriam's own** US expenses, taking those funds from **Mrs. Frenkel's** bank account and credit cards:
 - a) Paying for rental property in Los Angeles
 - b) Paying for various insurance fees
 - c) Paying for mold remediation in Los Angeles
 - d) Paying for eye ware, and
 - e) Paying for many other unexplained amounts
- 5) **Hid** payments to keep the cards current by taking out bulk cash and stating that these were for cash payments of current expenses related to Melbourne living expenses. This was untrue, as the amounts were taken to the credit cards banks to pay down the balances.
- 6) **Misrepresented** her speeding fines as **Mrs. Frenkel's** vehicle expenses, until caught at it.
- 7) **Misrepresented** her own medical bills as her mothers, paid for them with **Mrs. Frenkel's** funds and then pocketed the Medicare rebates into her own account.
- 8) **Paid** for expensive supplements from **Mrs. Frenkel's** funds, represented them as **Mrs. Frenkel's** expenses, yet consumed them herself and gave them to her own family
- 9) **Attempted** (only a few months ago) **to conceal** that Mrs. Frenkel had a serious fall in her Melbourne driveway on the way to the car with Miriam, resulting in an ambulance and ER admission, with severe hematomas to Mrs. Frenkel's face and a fractured wrist. Three days after the hospitalization, Miriam admitted the incident when David called her.
- 10) **Is a U.S. Chapter 13 bankrupt**, and has been in bankruptcy proceedings since November 2011 and is not likely to give up her income from Mrs. Frenkel voluntarily, as it may lead to Miriam's bankruptcy being dismissed. Therefore all Miriam's statements regarding Mrs. Frenkel's wishes and welfare are suspect, at best. Without the money Miriam self-dealt (i.e., embezzled) from Mrs. Frenkel's funds, Miriam could not have maintained, and still could not maintain, her US home, household and

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family expenses, AND the Chapter 13 bankruptcy repayment requirements. Miriam needs to be Mrs. Frenkel's paid caregiver to survive financially. The current caregiver setup could reasonably be regarded as having everything to do with Miriam's welfare, and nothing to do with Mrs. Frenkel's welfare.

- 11) **Terminated** the July 26 **telephone connection abruptly** after she heard Mrs. Frenkel say to David that she (Mrs. Frenkel) wanted to return to Australia. Before terminating the call, Miriam may be heard saying "no."
- 12) Steadfastly maintains a rule that no family member or friend may talk with Mrs. Frenkel unless Miriam is present to monitor the call, according to a Wednesday, August 16 2015 6:15 pm text message to David from Miriam's son:
"Mom says that you're welcome to speak to Oma only if she is present to make sure you keep the conversation light and civil. I can't guarantee privacy."
- 13) **Etc.**

In light of the foregoing list, in addition to the text quoted above from STL's own report to VCAT, you can readily understand why it seems Kafkaesque to us that STL now steadfastly trusts Miriam to be forthcoming with all the truthful information STL needs (i) to ensure that STL is applying Ellen's funds in the furtherance of Ellen's best interests, and (ii) to know whether Ellen wants to return to Australia --- and thereby cut off a substantial amount of funds Miriam is now getting from STL.

One additional fact supporting the reasonableness of David's concern is the fact that Deputy President Nihil's June 25, 2015 order explicitly based itself upon an assertion by STL that "Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home."³

We believe that STL's statement was and remains **inaccurate or untrue** in light of (1) the likely cost of health care for Mrs. Frenkel in the United State, (2) the paucity of coverage provided by the travel insurance Mrs. Fehring purchased, (3) the low probability that Mrs. Frenkel will be able to lawfully obtain full health care insurance coverage in the United States. We believe that STL had a duty to Mrs. Frenkel to give accurate and truthful information to VCAT, a duty which was not excused. We maintain that Mrs. Frenkel suffered harm as a result.

In the August 10, 2015 hearing, Judge Davis stated quite clearly that she expected STL to provide information to David so that David will know that STL is doing its job of protecting his mother's best interests. Judge Davis said, for example:

³ Quotation from Paragraph 78 of Deputy President Nihil's June 25, 2015 order.

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Mr Frenkel, as the other son, and is no doubt keen to have information and I'm sure **State Trustees** understand that situation and **will** be able to **make him aware of situations or issues or even how it's going about its business** in a way that you, Ms Frenkel-Fehring, may not be able to be prepared to do, because you don't get on.

I appreciate that. It's all about your **mother's best interests, and making sure that State Trustees does its job.**

Transcript of August 10, 2015 hearing, page 57, lines 12-21. (Bolding added for emphasis.)

STL's responses to David's inquiries seem to suggest that STL maintains that Judge Davis did not mean what she said. STL has refused to answer reasonable questions from David, and thereby prevented David from "making sure that STL does its job." STL has refused to answer a single one of David's reasonable questions. Instead, all we get are STL's assurances that STL is doing a fine job and that STL can't do things David would like STL to do.

I have composed a short list of questions which I hope you will answer, in order (i) to keep David "aware of situations or issues" relevant to his mother's safety, (ii) to enable David to protect his "mother's best interests, and mak[e] sure that State Trustees does its job", and (iii) to avoid forcing us to file:

1. An application to VCAT seeking an order compelling STL to provide information, and
2. An application to VCAT seeking an order for STL to be removed from its position as administrator without any compensation for STL's services.

We do not know whom the Los Angeles Superior Court will appoint as the conservator of Mrs. Frenkel's person and estate. Hence, I cannot predict whether the conservator will file a separate lawsuit against STL in the Victorian civil court for the harm Mrs. Frenkel suffered due to (i) STL's act of misinforming VCAT by asserting that "Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home", and (ii) STL's failure to execute its duties: (a) to take reasonable steps to know whether Mrs. Frenkel has lost the capacity to evaluate the quality of the care she gets, and if she has lost that capacity, and (b) to take reasonable steps to ensure that STL is not subsidizing neglectful and abusive care, instead of applying Mrs. Frenkel's funds for Mrs. Frenkel's benefit.

Let's stop arguing about what you can do and can't do, and what we will do, if you persist in disregarding Judge Davis' suggestion that STL keep David informed. You need not reply to my comments above, responding to Mr. Hughes' rebukes of David.

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I trust that the foregoing account of disquieting behavior by STL demonstrates that David has a very reasonable basis for being concerned about whether STL is properly executing it's duties to Mrs. Frenkel.

Instead of making accusations and counter-accusations, let us move forward in collaboration for Mrs. Frenkel's best interests.

The following are the questions David and I request you answer on behalf of STL:

1. What is Ellen's current immigration status, and how do you know what it is? Or do you not know what her immigration status is?
2. What health insurance coverage does Ellen have in the U.S.?
3. Does Ellen's health insurance policy in the U.S. cover her specific pre-existing conditions (e.g., Alzheimer's disease)?
4. Does Ellen's health insurance policy cover her if she intends to apply for permanent residency or citizenship in the U.S. (or has applied for for permanent residency or citizenship in the U.S.)?
5. What evidence is there which supports your answers to the foregoing four questions? Are your answers based on statements that Miriam made to you? If so, when did she make those statements, and to whom in STL did she make those statements?
6. What were the three criteria for funding the \$13,000 that STL gave Miriam, to which Miriam referred in the August 10, 2015 VCAT hearing before Judge Davis?
7. Will STLs be requiring evidence of the use these funds (e.g., proofs of purchase such as receipts) to ensure Ellen's funds were spent for Ellen's benefit, given the history of misappropriation by Miriam? If yes, in what way will you implement these requirements?
8. Will STLs be paying Miriam for her services as caregiver? If yes, at what rate does STL intend to pay Miriam (e.g., hourly or monthly payment)? And in what currency was this commitment made, given the rapid decline of the Australian dollar versus the US dollar.
9. Does STL intend to monitor the quality of the caregiving services that Miriam is rendering to Ellen? If yes, how does STL intend to accomplish that?

We hope you do not consider it inappropriate to expect your answer to those 9 questions, within the next five business days. If you think you need more time to answer the foregoing 9 questions, please let me know how much time you need.

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Lastly, I must repeat and emphasize that there is no need for you to respond to anything in this letter except for the foregoing 9 questions (appearing on pages 9 and 10 of this letter). We can agree to disagree about various things. But David and I must insist on your answering the foregoing 9 simple questions. The only reason why I included the foregoing recitation of some of the reasons for our dissatisfaction with STL's conduct is Mr. Hughes' unambiguous insinuation that David was not justified in politely demanding answers to the reasonable questions posed (again) above.

As Judge Davis said:

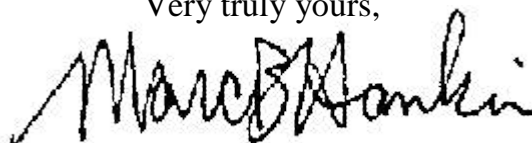
It's all about your **mother's best interests, and making sure that State Trustees does its job.**

Transcript of August 10, 2015 hearing, page 57, lines 12-21. (Bolding added for emphasis.)

Thank you in advance for your anticipated kind cooperation.

Kindest regards.

Very truly yours,

A handwritten signature in black ink that reads "Marc B. Hankin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Marc B. Hankin
Attorney at Law

MBH /se

Cc: Anthony Hughes, STL Client Concerns Manager
Craig Dent, CEO of STL
Agata Jarbin, Executive General Manager, Legal & Compliance and Company Secretary
David Frenkel