

2000

Kurt N. Holbrook and Tracy H. Bigelow v. West N. Holbrook : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KURT N. HOLBROOK, an
individual, and TRACY H.
BIGELOW, an individual,

Plaintiffs and Appellees,

vs.

WEST N. HOLBROOK, an
individual, Trustee of the B. G.
Holbrook Family Trust,

Defendant and Appellant.

Case No. 20000931-CA

Priority No. 15

**OPENING BRIEF OF APPELLANT
WEST N. HOLBROOK**

**APPEAL FROM THE ORDER ON ORDER TO SHOW CAUSE
FINDING APPELLANT IN CONTEMPT**

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INTRODUCTORY MATTERS

Appellant, West N. Holbrook (“West”), respectfully submits his opening brief in support of his appeal of the decision of the Third District Court entered on October 2, 2000.

Statement of Jurisdiction

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3(j) (1996).

Statement of Issues and Standard of Review

The first issue for review is whether the trial court erred in continuing with the hearing for temporary restraining order on March 30, 2000, when: (1) West’s counsel had just withdrawn and; (2) Plaintiffs had not served a notice to appoint successor counsel as required by Utah Code Ann. §78-51-36 and UCJA 4-506, nor asked to shorten the time requirements of UCJA 4-506. This is a question of law generally reviewed for correctness. *Loporto v. Hoegemann*, 982 P.2d 586, 587 (Utah App. 1999). However, because this issue was apparently not raised below, it is reviewed under the manifest injustice or “plain error standard.” That standard requires a showing that “(i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful.” *State v. Adams*, 5 P.3d 642, 648 ¶ 20 (Utah 2000) (citation omitted).

The second issue is whether the Order of March 30, 2000 (the “TRO”) expired on April 9, 2000, and if so, were the trial court’s factual findings sufficient to support a finding of over 100 separate instances of contempt where those findings do not tie into the time

period when the TRO was in effect. These are questions of law, which are reviewed for correctness. *State v. Finlayson*, 994 P.2d 1243 (Utah 2000).

The third issue is whether the evidence supported the factual finding that West's conduct constituted over 100 separate acts in violation of the TRO. Attack on the evidentiary support for court's factual findings is reviewed under a clearly erroneous standard. The party disputing the findings must first marshal all the evidence in support of the finding and then demonstrate that this evidence is insufficient to support that finding, viewing the evidence in a light most favorable to the trial court. *Pasker, Gould, Ames & Weaver, Inc. v. Morse*, 887 P.2d, 872, (Utah App. 1994).

The fourth issue is whether the trial court erred in determining that West's acts in initiating stock transactions were each separate and distinct acts of contempt and, thus, a basis for 13 consecutive sentences. This is a question of law, which is reviewed on a correction of error standard, according no deference to the trial court's conclusions. *State v. Kenison*, 2000 WL 1707780, (Utah App. 2000); *but see State v. Pierson*, 12 P.3d 103, 105, (Utah App. 2000) (sentencing decisions of a trial court reviewed for abuse of discretion).

Determinative Statutes and Rules

Utah Code Ann. § 78-51-36 (1996):

When an attorney dies or is removed or suspended, or ceases to act as such, a party to an action or proceeding for whom he was acting as attorney must before any further proceedings are had against him be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

Utah Code Ann. § 78-32-3 (1996):

When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as prescribed in section 78-32-10 hereof. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators or other judicial officers.

Utah Code Ann. § 78-32-10 (1996):

Upon the answer and evidence taken, the court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both.

Utah R. Civ. P.65A (b) (2):

Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

Utah Code of Judicial Administration 4-506(4):

If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, opposing counsel shall serve a Notice to Appear or Appoint Counsel on the unrepresented client. The Notice to Appear or Appoint Counsel must inform the unrepresented client of the responsibility to appear in court or appoint counsel. A copy of the Notice to Appear or Appoint must be filed with the court. No further proceedings shall be held in the case until 20 days have elapsed from filing of the Notice to Appear or Appoint Counsel unless the client of

the withdrawing attorney waives the time requirement or unless otherwise ordered by the court.

STATEMENT OF THE CASE

Nature of the Case. This appeal stems from the issuance of a temporary restraining order against West and the trial court's later determination that he violated it over 100 times. The case itself involves disputes over a trust that was established for Brigham G. Holbrook ("B.G.") and four of his adult children. B.G., who is over 80 years old, designated West (one of his sons) to act as the sole trustee. Shortly afterwards, disputes arose between West, as trustee, and the Plaintiffs/Appellees, Kurt Holbrook ("Kurt") and Tracy Bigelow ("Tracy") (or collectively, the "Plaintiffs"). Kurt and Tracy were two of B.G.'s other adult children and trust beneficiaries. Their complaint against West alleged he had breached fiduciary duties to them; They sought money damages and to enjoin West from continuing to act as the trustee, but their initial application for a temporary restraining order was denied. Months later, West's attorney withdrew and two days after that Kurt and Tracy again sought a temporary restraining order. The trial court issued that "TRO" and then later found West to have violated it over 100 times, sentencing him to 365 days in jail. West believes the trial court erred because it improperly granted the TRO in the first place and erred again when it found he violated the TRO over 100 times, and used that as a basis for imposing 13 consecutive sentences.

Course of the Proceedings. Kurt and Tracy filed their complaint on January 25, 2000, at which time they also applied for a temporary restraining order. Record on Appeal

(“R.”) 3 -143. That application was denied after hearing on January 27, 2000. R. 144. On March 27, 2000, West’s attorney withdrew. R. 163. No corresponding Notice to Appoint Successor Counsel appears in the record. Two days later, on March 29, 2000, Kurt and Tracy applied for the TRO at issue here. R. 165 -333. The TRO sought *inter alia* to compel West “to cease operating as Trustee of the [Trust], except as to matters in the ordinary course of business.” R. 169 - 170 (portions omitted).

At the TRO hearing on March 30, 2000, West was without counsel. R. 334. The TRO was granted, but its actual issuance was conditioned on a bond undertaking. R. 337; *see* R. 334. The Order itself was then prepared by Plaintiffs’ counsel and the required bond was filed on March 31, 2000. R. 368 -370. The TRO was served on West on April 1, 2000. R. 376.

On August 10, 2000, Kurt and Tracy filed their Motion for Order to Show for [West’s] Failure to Comply With Court’s Orders. R. 910 -912. Hearing on that matter was held on September 8, 2000 (The “Contempt Hearing”). At the Contempt Hearing, the trial court found West had engaged in “in excess of 50 individual transactions,” which were treated as separate violations of the TRO. R. 1120 (the Contempt Hearing Transcript, p. 129).¹ The trial court sentenced West to 360 (or 365) days in jail based on consecutive sentences for activities after March 30, 2000. R. 985 -990; R. 1120 (Tr. 129-130). The trial court then set the matter for a review to allow the parties to address whether the consecutive

¹ Cites to specific pages of the transcript of the September 8, 2000 Contempt Hearing are hereafter cited as “R.1120 (Tr. __)”.

sentences were appropriate and whether any mitigation or stay of sentence was warranted on humanitarian grounds. R. 1120 (Tr. 137).

West briefed those issues, as did Plaintiffs. R. 980 - 984; R. 991-999. On October 2, 2000, the trial court entered its Order, sentencing West to 365 days in Salt Lake County Jail. R. 985 - 990. West filed his Notice of Appeal on October 27, 2000. R. 1002- 1003.

Disposition. At the March 30, 2000 TRO hearing, the trial court granted the TRO, which on its face, was in effect “for a period of ten (10) days or, upon termination of the hearing for preliminary injunction, whichever is sooner.” R. 337. The TRO’s issuance was also conditioned upon Plaintiffs obtaining bond. It restrained West “from acting in any capacity as trustee of the [Trust] or any other [t]rust of which Defendant is a trustee and either Plaintiff is a beneficiary.” R. 337. The TRO further “froze” the assets of the Trust, required a cosigner on Trust checks, and ordered West to provide Trust records and documents to Kurt and Tracy. R. 337. A copy of the TRO is appended as Appendix A.

At the Contempt Hearing on September 8, 2000, the trial court found that West engaged in over 100 trades after March 30, 2000, and that each of these was a separate and distinct act of contempt. A copy of that Order is appended as Appendix B. The trial court sentenced West to 365 days in jail. R. 985 - 990.

Statement of Relevant Facts

1. On November 24, 1994, the B.G. Holbrook Family Trust (the “Trust”) was established, which named Brigham G. Holbrook (“B.G.”) as primary beneficiary. R. 4, 15.

2. The Trust's assets included real property (R.4) and significant other funds. It is those other funds around which this dispute centers. R. 5.

3. The Plaintiffs/Appellees, Kurt N. Holbrook ("Kurt") and Tracy H. Bigelow ("Tracy") are two of B.G.'s adult children and also beneficiaries of the Trust. R. 15.

4. Defendant/Appellant, West N. Holbrook ("West"), was also one of B.G.'s children, but was specifically excluded from any beneficial interest in the Trust. R. 15.

5. On December 27, 1999, B.G. designated West as the Trust's sole trustee. R. 6, 57.

6. On January 25, 2000, Kurt and Tracy filed their complaint against West, seeking damages and an order compelling West to cease acting as trustee and to provide them with various documents and records. R. 3 - 13.

7. At that same time, Kurt and Tracy filed their Application for Temporary Restraining Order to enjoin West from acting as the trustee and ordering him to provide certain documents and records. R. 123 -124.

8. The first application for temporary restraining order was denied on January 27, 2000. R. 144, 151-153.

9. On March 27, 2000, West's counsel, John Anderson, and the law firm of Stoel Rives, withdrew from this case. R. 163 -164.

10. No corresponding Notice to Appoint Successor Counsel appears in the Record on Appeal. *See* R. generally.

11. On March 29, 2000, Kurt and Tracy applied once again for a temporary restraining order against West, by filing their Application for Preliminary Injunction (R. 165 - 168) and Plaintiff's Memorandum in Support of Application for Temporary Restraining Order and Preliminary Injunction. R. 169 - 333.

12. Although not styled as an application for a temporary restraining order, the trial court treated it as such (R. 165 - 168); It heard the matter and granted the temporary restraining order on March 30, 2000 (the "TRO"). R. 334.

13. Although granted on March 30, 2000, the TRO's issuance was conditioned upon posting of a \$10,000.00 bond. R. 334, 337.

14. The bond undertaking was filed with the trial court on March 31, 2000. R. 368 -369.

15. The TRO was served on April 1, 2000. R. 376.

16. The TRO on its face provided that it was effective "for a period of ten (10) days, or upon termination of the hearing for preliminary injunction, whichever is sooner." R. 337.

17. The TRO ordered West to provide records and an accounting of the Trust; it also froze the Trust's assets, enjoined West from disposing of or encumbering those assets, and prohibited West from acting as a trustee of the Trust except as to matters in the ordinary course of business. R. 337.

18. On August 10, 2000, Kurt and Tracy filed against West an order to show cause

why he should not be held in contempt for violating the trial court's orders, including the TRO of March 30, 2000. R. 733 -912.

19. Hearing on that order to show cause was held on September 8, 2000 ("Contempt Hearing"). R. 1120 (Tr.).

20. Although that order to show cause facially addressed other orders of the trial court, the trial court and the parties focused strictly on the TRO and events after March 30, 2000. R. 986; R. 1120 (Tr. p.p. 16 -17, 56-61, 85-86).

21. At the Contempt Hearing the trial court limited its focus to the trading activity within the Trust after March 30th. R. 1120 (Tr. 128 -129).

Additional Facts or Evidence:

Because West contends the evidence does not support the trial court's factual findings, he is required to marshal the evidence in support thereof. That evidence, which is not necessarily fact, is set forth with citation to the record in the Third Argument of this Brief.

SUMMARY OF ARGUMENTS

The trial court committed plain error when it continued with the TRO hearing on March 30, 2000. Utah statute and the Code of Judicial Administration provide that when an attorney withdraws from a case, opposing counsel must serve a "Notice to Appear or Appoint Counsel" on the unrepresented party. Rule prohibits the trial court from holding further proceedings until twenty days after such notice, unless the court shortens that time. West's counsel withdrew and, almost immediately, Plaintiffs sought their TRO. However, they

never served the required Notice, nor did they ask the trial court to shorten the time. The trial court had the withdrawal of counsel and it was precluded from holding further proceedings.²

Nonetheless, the trial court granted the TRO on March 30, 2000. But for any act to be in violation of an order, it must occur during a time when the order is actually in effect. The TRO was granted on March 30, 2000 and, on its face, expired in ten days, or April 9, 2000. When the trial court later found West had violated the TRO over 100 times, it was presented with evidence of events that took place outside the TRO's effective dates. Accordingly, the trial court's findings of fact did not tie the acts to the time the TRO was effective. Thus, the findings of fact cannot support the conclusion that West violated the TRO.

Also the evidence did not support the court's findings. Very little evidence addressed West's actions during the time the TRO was effective. The key evidence introduced was written reports of stock transactions during that time. Those reports, however, did not show West's actions, but rather the stock brokerage's acts as trades were actually made or settled. No evidence correlated those acts of the brokerage to specific acts by West. Thus, the evidence itself was insufficient to support the trial court's factual determination that West violated the TRO over 100 times while it was in effect.

²Five months after West's Notice of Appeal was filed, Appellee's Counsel made the representation that the trial court extended the TRO at West's request during the TRO hearing on March 30, 2000, so he could get new counsel. Until that representation was made, West's counsel were unaware of this and accordingly, no transcript of that hearing was ordered. Plaintiffs, however have not requested that transcript either. At this juncture counsel realizes there may be a need to supplement the record.

Finally, Plaintiff's order to show cause only outlined a course of conduct with respect to the stock transactions. But for the trial court to find numerous specific instances of conduct, Plaintiffs had to allege them. Although trial court believed West's course of conduct to be contemptuous, that is not what it ultimately found. While the evidence may have indicated a course of conduct, it did not establish a specific number of violations of the TRO. Thus, the trial court erred when it sentenced West to consecutive 30 day jail terms based on 13 specific instances, because those specific instances were neither alleged nor established.

ARGUMENT

I. The Trial Court Committed Plain Error in Proceeding with the TRO Hearing on March 30, 2000.

West's attorney, John Anderson, withdrew on March 27, 2000. R. 163 - 164. Under those circumstances, Utah rules and statute set the procedure to be followed by the trial court and counsel. The Code of Judicial Administration provides follows:

If an attorney withdraws . . . opposing counsel shall serve a Notice to Appear or Appoint Counsel on the unrepresented client. The Notice to Appear or Appoint Counsel must inform the unrepresented client of the responsibility to appear in court or appoint counsel. A copy of the Notice to Appear or Appoint must be filed with the court. *No further proceedings shall be held in the case until 20 days have elapsed from filing of the Notice to Appear or Appoint Counsel* unless the client of the withdrawing attorney waives the time requirement or unless otherwise ordered by the court.

UCJA 4-506 (emphasis added).

Thus, the rules generally preclude the trial court from holding further proceedings

until opposing counsel has provided notice to the unrepresented party. Utah statute, in turn, places a duty on counsel to not pursue further proceedings until after notice has been given. “When an attorney . . . ceases to act as such, a party to an action or proceeding for whom he was acting as attorney must before any further proceedings are had against him be required by the adverse party, by written notice, to appoint another attorney or to appear in person.” Utah Code Ann. § 78-51-36 (1996).

The statute “appears to have been enacted to safeguard a litigant who finds himself without counsel and prevents further proceedings until he again has counsel or chooses to proceed pro se.” *Utah Oil Co. v. Harris*, 565 P.2d 1135, 1136 (Utah 1977). It prevents an attorney from taking advantage of an opponent who finds himself unrepresented in the midst of a case. The Rule is similar. It protects such parties by precluding the trial court from taking action unless or until the requirements of both the statute and rule are met.

When his counsel withdrew in March, West was squarely within the protection of the statute and the rule. At that stage, it became Plaintiffs’ responsibility to serve the required notice or, perhaps alternatively, move for relief under 4-506 to shorten its time. *See* Utah R. Civ. P. 7(b)(1) (applications for relief generally should be by written motion). Plaintiffs, however, did neither, but instead immediately applied for a temporary restraining order. R. 165 -333. West, being unrepresented, could not know that Plaintiffs’ application was improper.

The trial court, however, should have known this was improper because the

withdrawal of counsel was filed with the court. R. 163. The case of *Sperry v. Smith*, 684 P.2d 581 (Utah 1984) is analogous. In *Sperry*, the defendants' attorney withdrew by filing a notice of withdrawal four days before a scheduled hearing on a summary judgment motion. The plaintiff's attorney, however, did not receive the notice and proceeded with the hearing.³ On appeal, the Utah Supreme Court noted the trial court had the withdrawal in its file and, therefore, erred in proceeding with the hearing at all:

[T]he trial judge should have required plaintiff's attorney to then give notice to [defendants] in accordance with Rule 2.5 before proceeding to hear the motion Since the judgment was entered after the failure of the court to follow one of its own rules, we conclude the trial court abused its discretion in refusing to set aside the summary judgment when the error was brought to its attention.

Sperry, 694 P.2d at 582 (Utah 1984).

Sperry was decided under Rule 2.5 of the old Rules of Practice, which is virtually identical to Utah Code Ann. § 78-51-36 in its restrictions on counsel. But the language of Rule 4-506 is even more explicit, it “unambiguously restricts both opposing counsel and the trial court.” *Loporto v. Hoegemann*, 982 P.2d 586, 588 ¶ 9 (Utah App.1999). It plainly “directs the trial court that ‘no further proceedings shall be held in the matter until 20 days have elapsed from the date of filing of [the notice].’” *Loporto*, ¶ 9 (*quoting*

³ Plaintiffs cannot claim they did not have notice of Mr. Anderson's withdrawal, for they sent those pleadings directly to West, as their mailing certificates show. R. 168, 197.

UCJA 4-506; brackets included).⁴ As in *Sperry*, and *Loporto*, the trial court here “should have required the plaintiffs' attorney to comply with Rule 4-506 ‘before proceeding to hear and grant the motion.’” *Loporto*, ¶ 11 (*quoting Sperry*, 694 P.2d at 583). In the alternative, the trial court should have required some showing why the Rule’s time period should be shortened or waived and entered an order accordingly. That was not done for the record does not show any order waiving or shortening that rule’s time requirement.

The record does not indicate, at this point, that this issue was raised before the trial court. “As a general rule, claims not raised before the trial court may not be raised on appeal.” *State v. Holgate*, 10 P.3d 346, 350 ¶ 11 (Utah 2000) (citation omitted). Matters not raised below, however may be raised on appeal in the case of plain error.

To demonstrate plain error, a defendant must establish that "(i) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phrased differently, our confidence in the verdict is undermined."

State v. Holgate, 10 P.3d 346, 350 ¶ 13 (Utah 2000); *see Ong International. (U.S.A.) Inc. v. 11th Ave. Corp.*, 850 P.2d 447, 459 (Utah 1993) (citation omitted) (to be plain error an error should be “obvious to the trial court, and also harmful”); *see also State v. Archambeau*, 820 P.2d 920, 930 n. 4 (Utah App. 1991) (error is plain if it should have been obvious to the trial court that it was committing error).

As shown above, this error should have been obvious. The rule has been invoked

⁴Rule 4-506(4) was amended after *Loporto*, to provide for waiver by the client or other orders of the court.

numerous time to challenge further proceedings. *Loporto*, 982 P.2d at 588 (Utah App.1999) (citing *Sperry*, (*supra*); *Promax Dev. Corp. v. Mattson*, 943 P.2d 247 (Utah App. 1997); *Hartford Leasing Corp. v. State*, 888 P.2d 694 (Utah App. 1994)).

Moreover, in *Loporto*, this Court noted that the language of UCJA 4-506 was plain and precluded a *party* from filing a motion without following its requirements. That reasoning applies with no less force to the trial court. Thus, it should have been obvious to the trial court that in proceeding further it was committing an error.

Furthermore, it was harmful because it affected West's substantial rights. Prior to the hearing on March 30, 2000, West had full powers with respect to the trust. After the hearing though, he was subject to court order and his rights to act were restricted. As a result of the hearing, his substantial rights to act without being subject to criminal sanctions was taken away. He also had procedural rights, not the least of which was the right to be represented by or have the benefit of the advice of counsel. Thus, the error was harmful and the trial court committed plain error.

II. The Trial Court's Factual Findings do not Support its Conclusion That Over 100 Acts of Contempt Were Committed, Because Those Findings Address Events That Occurred When the TRO was not in Effect.

It is axiomatic that for any particular act to be in violation of a court order, that act must occur when the order is in effect. That is all the more true for temporary restraining orders, which generally have short finite lives. Utah R. Civ. P. 65A(b)(2). Acts committed before a restraining order is in effect, or after it has expired, cannot be in

violation of that order; otherwise issuance and expiration dates would be meaningless.

Here, the TRO was actually in effect for nine days. It was granted on March 30, 2000, at 1:59 PM. R. 335. Its actual issuance, however, was specifically conditioned upon the bond undertaking, which occurred on March 31, 2000. R. 368. Such orders are limited in time by rule:

The order shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

Utah R. Civ. P. 65A(b)(2). Consistent with that rule, the TRO stated unambiguously that it was effective “for a period of ten (10) days or, upon termination the hearing for preliminary injunction, *whichever is sooner*.” R. 337 (emphasis added). Thus, the TRO was effective from March 31, 2000, until it expired, by its own terms, on April 9, 2000 at 2:00 PM. *See Park City Utah Corp. v. Ensign, Co.*, 586 P.2d 446, 450 (Utah 1978) (“[i]f the language of a judgment [is] clear and unambiguous, it must be enforced as it speaks”).

In a contempt proceeding, the trial court is required to issue specific findings that “should recite the specific facts, and not mere conclusions.” *State v. Bartholomew*, 85 Utah 94, 38 P.2d 753, 756 (Utah 1934). Those findings “should be sufficiently stated either in a separate statement or in the judgment itself, so that the record, thus made, would reveal the factual basis upon which the judgment of contempt was founded.” *Id.*

Therefore, to support the conclusion that West violated the TRO, the trial court’s

findings must establish that West's acts occurred between March 31, and April 9, 2000. They do not. At the Contempt Hearing on September 8, 2000, the trial court focused on the assets in the Trust's Fidelity stock portfolio. R. 986; R. 1120 (Tr. 128). The trial court found that West engaged in trading with respect to eight individual stocks, and that there were "in excess of 50 individual transactions within that eight-stock block." R. 1120 (Tr. 129). At no time during the hearing, however, did the trial court determine factually that any of those transactions occurred *between* March 31 and April 9, 2000. See R.1120 (Tr.) generally. Thus, its oral findings do not support a finding of contempt.

The written findings contained in the Order from the Contempt Hearing itself are equally deficient. R. 985 - 988. That Order finds that the TRO was entered on March 30, 2000, and that all the Trust's assets were frozen. R. 986 (Order ¶ 1). It did not, however, make any finding that the TRO was extended in any way beyond April 9, 2000. The trial court found that the Trust portfolio balance was \$505,462.50 on April 1, 2000 (*Id.* ¶ 7) and further that "from March 30, 2000 until on or about May 31, 2000, Defendant initiated over 100 separate transactions, trades or transfers in or from the [Trust] Account, resulting in a balance on May 31, 2000 of \$0.00." *Id.* ¶ 8.⁵

The March 30th to May 31, 2000 time period used by the trial court encompasses 62 days in all. The fact that transactions occurred during that time period, however, is not

⁵The trial court also found as fact that "each of the over 100 trades were separate and distinct acts of contempt." R. 985 - 988 (Order ¶12). Despite its label, however, that is more properly characterized as a legal conclusion.

a finding that any transactions whatsoever occurred in the nine days between March 31, 2000, and April 9, 2000. Indeed, the time period used by the trial court includes one day before the TRO was effective and 51 days after it had expired on its face. Thus, the findings of fact do not support the legal conclusion that West was in contempt.

III. The Evidence Presented at the Contempt Hearing was Insufficient to Support the Trial Court's Factual Findings that West Acted 100 Times in Violation of the TRO.

West does not dispute that the relevant evidence, properly analyzed, may show a course of conduct or some other significantly lesser number of violations. But the evidence cannot, without more, support the "over 100" violations found by the trial court. The evidence presented at the Contempt Hearing on September 8, 2000, suffers from much the same defect as the Findings of Fact. Indeed, the deficiencies in the Findings largely flow from the defects in the evidence. Much of the evidence related to activities outside the TRO's scope and effective dates, which was properly disregarded by the trial court. *E.g.* R. 770 - 789.; *see* R. 1120 Tr. 128 (trial court limits focus "just to the trading activity within the B.G. Holbrook Family Trust").

Relevant documentary evidence showed that settlements of stock transactions by the brokerage took place. But no evidence connected those settlements to any acts by West. Thus, the evidence is insufficient to support a factual finding that West violated the TRO over 100 times. Nor does any evidence show acts by West during the TRO's effective dates.

To attack the factual findings for insufficient evidence, West first must marshal the evidence supporting the findings and then demonstrate it to be insufficient to sustain those findings. *Pasker, Gould, Ames & Weaver, Inc. v. Morse*, 887 P.2d 872 (Utah App. 1994). The supporting evidence here consists of two types. First there were documents in the form of the reports of the Trust's Fidelity stock trading account- the "Fidelity Reports." The second type is West's testimony. R. 1120 (Tr. 25 - 102).⁶ It is marshaled in that order.

The Fidelity Records

At the Contempt Hearing, the court received Plaintiffs' Exhibit 1, which contained the Fidelity Reports. Exhibit 1 was the same as the Bates-numbered documents attached as Exhibit E to the Plaintiff's Memorandum in Support of Motion to Show Cause for Failure to Comply with the Court's Orders. R. 733 - 912. Both sides referred to it as such. *See* R.1120 (Tr. 27) ("I'm going to hand you what has been moved - - attached to our memo to support, and I'll mark now as evidence?"). For ease of reference, citation regarding the Fidelity Records is to that part of the record, which is located at R. 766 - 901. The Fidelity Records for March and April 2000 are appended as Appendix C.

The Fidelity Report for March 2000 is contained at R.789 through 798. It shows a

⁶Given that the Contempt Hearing was criminal in nature, one must question the wisdom of not invoking 5th amendment rights against self incrimination. It should be noted that the standard of review involving plain error is much the same as the standard for ineffective assistance of counsel, but it is not the trial court's burden to correct oversights or missteps of defense counsel at trial.

beginning “market value” as of March 1, 2000, in the account of \$599,513.79 and an ending market value of \$505,462.50 as of March 31, 2000. R.790. That was based on the month end portfolio of four stocks. *Id.* Although not revealed in any testimony and apparently ignored, that market value was subject to a reduction of \$167,646.37 for the account’s “debit balance.” *Id.* March had two days that were possibly subject to the TRO, the 30th and 31st. On March 30, 2000, no trades are reflected. There are, however, two *settlements* of prior trades involving the purchase of stock of National Semiconductor. R.797. The document does not show the trade dates that resulted in those settlements.

Likewise, March 31, 2000, shows five settlements involving the stock of Vasomedical, Inc. These settlements relate to the purchase of four blocks of that stock and one sale, but the actual trade dates resulting in the settlements are undisclosed. R.797. The report does indicate, however, four trades on March 31, 2000, the day before the TRO was served, which involved two stocks. One block of National Semiconductor stock was sold and Sensar Corp. stock was sold in three blocks. R. 797, 798.

The Fidelity Report for April 2000 is contained at R. 799 through 812. It shows a beginning value of \$505,462.50 and an ending value of \$65.52 as of April 30, 2000, which was in cash. R.799. It shows no activity until April 5, 2000, when there were four settlements. R.800. Those four settlements related to two stocks that had actually been sold on March 31, 2000 and which were reported in March’s Report - National

Semiconductor and Sensar. These were settled up in two blocks each on April 5th.

Compare R.800 to R. 797, 798. On April 6, 2000, the report shows twelve settlements involving three stocks: (1)American Intl Pete, (2) Sensar and (3) Speedus.com, Inc.

American Intl Pete had been sold in two blocks, Sensar had been bought in four blocks and Speedus.com had been bought in six blocks. The actual transaction date, however, is undisclosed. R.800 -801.

On April 7, 2000, the report shows settlements involving six stocks, with 31 settlements in all. R. 801 - 803. Allstate Corp. had been both bought (in four blocks) and sold (in three blocks); there was a "Put" on National Semiconductor; PMC-Sierra had been both bought (in two blocks) and sold (in two blocks); Sensar had been sold (in 14 blocks); Speedus.com had been sold (in one block), and; Vasomedical had been sold (in three blocks). R. 801 - 803. The actual trade dates for these settlements is undisclosed.

There is no activity reported for April 8, 2000 or April 9, 2000. The report also details numerous settlements for April 10 through April 28, 2000, many of which were "Puts" and "Calls," but it does not show the trade dates for those. Finally, the report shows a \$74,361.51 addition on April 5, 2000, a subtraction of the same amount on April 6, 2000, a \$241,012.72 cash addition on April 7, 2000 and a subtraction of that same amount on April 10, 2000. R. 812.

West's Testimony

At the Contempt Hearing, West testified regarding the Fidelity account activity and other matters. Before the giving his formal testimony under oath, West indicated or stipulated that he had engaged in 150 transactions after March 30, 2000. R. 1120 (Tr. 23). Later in response to an objection, Plaintiffs' Counsel opined that there was no stipulation, stating "I mean, that was if we were stipulating as to contempt of court with respect to the B.G. Holbrook Family Trust and we didn't do that." R. 1120 (Tr. p. 34). Thus, the record is somewhat unclear as to how the trial court and the parties treated West's admission and it appears to have been disregarded except to the extent he admitted to engaging in some conduct after March 30, 2000. *E.g.* R. 1120 (Tr. 13).⁷

After being sworn, West testified that the Trust paid out \$481 in interest on the Trust's margin account in April and that there was a cost to the account for transaction costs. R. 1120 (Tr. 47). He also testified that, by letter of March 3, 2000, \$36,000 was transferred out of the Trust to another trust account at Fidelity. R. 1120 (Tr 47-48, referring to R. 799). He also testified that the Fidelity Report for April 2000 (R.799) showed a \$293,000 loss in April 2000. R.1120 (Tr. 48).

⁷West's counsel states "[y]our Honor, our stipulation again is that we are not disputing [West] caused these transactions to be made at Fidelity. And reserving the issue as to whether it constitutes 150 separate acts of contempt, that that's a legal issue, then I don't think there would be a factual stipulation."

The most precise relevant testimony though occurs towards the end of West's testimony as follows:

Q. (by Zachary Wiseman) If we look at B.G. Holbrook Family Trust, let's look at Page 29 [R. 797]. Do you see 29?

A. Yes.

Q. It says there that there were transaction dates on March 29th, through March 31st; do you see those dates?

A. Yes.

Q. Okay you look in April, you start on Page 32 [R. 800], just glance, if you will, quickly, page 32.

A. Okay.

Q. Those are all trades occurring on April 5th and 6th, correct.

A. Correct.

Q. And if you keep turning slowly to 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 [R. 801 - 811], all of those pages contain transactions, investments that occurred in the month of April after March 30th, correct?

A. Correct.

R. 1120 (Tr. 67-68).

The above evidence is insufficient.

The evidence marshaled above related to, and trial court focused on, "trades that occurred from the B.G. Holbrook Family Trust after March 30th." R. 1120 (Tr. 128).

This evidence, however, was insufficient to establish the "over 100 transactions" the Court eventually relied on when it found West in contempt and sentenced him to 365 days, with no credit for good behavior.

It is West's acts that must form the basis for any finding of contempt. An order is the act by which a brokerage account holder directs the broker to buy or sell. There was very little testimony from West regarding exactly what he did after March 30, 2000, and

no testimony by anyone about the placement of any orders with the brokerage. Most of Plaintiffs' examination of West about stock transactions, and West's testimony focused on the Fidelity Reports. *Supra*.

The trial court focused on those reports too, but it misconstrued them. It erroneously treated the *settlements* shown in the reports as synonymous with orders to buy or sell. But they are not the same. A "settlement" is a process by which funds or stock are transferred in or out of a particular account once a trade has finally been completed. The settlement of a trade is not an act by the account holder and the settlements in the reports do not show any acts by West.

Furthermore, there is no necessary relationship between the time any order is placed and the time a trade is actually made or settlement is achieved. Thus, more evidence would be needed to correlate the timing of any orders with the settlements shown in the reports. No such evidence was adduced. Also, there is no particular relationship between the number of orders and the number of settlements that result. Indeed, once an order is placed, there may never be a settlement if a buyer or seller is not found. Conversely, a single order could result in numerous settlements, especially if it involves a large number of shares.

For example, an order to buy at or below a certain price may be filled by the broker through several purchases. And orders to sell at a certain price or higher may well result in numerous sales to different buyers. The larger the amount of stock to be traded, the

more likely it is to involve several transactions and settlements before it is all traded. Thus, the fact that numerous settlements occur on a given day is not evidence that the same number of orders were made. Moreover, an order could involve more than one company's stock. So there is simply no relationship that can be inferred between the number and timing of the settlements and the number and timing of orders by West - except that if there was one or more settlements, there must have been at least one order first. But even that is misleading. The question of whether that one order was made by West or by Fidelity as a result of automatic margin transfers remains unanswered.

Of the evidence presented, none showed that West made any orders on any particular day, even his pretestimonial admission that he had engaged in activities. Nor did any of the evidence show how many times he placed orders when the TRO was in effect. In fact, none of the evidence, including West's rather self-damning testimony, related the settlements to specific acts by West. Moreover, there is no way to deduce that information from the evidence that was presented. One cannot conclude in that West engaged in a specific number of criminal acts because the Fidelity Reports showed that number of settlements. Indeed, there was no evidence from which the trial court could conclude there was any specific relationship between the number of settlements and the number of TRO violations by West. Therefore, the evidence does not and cannot support a finding that West engaged any particular number of transactions.

April 7, 2000, as shown on the Fidelity Reports is illustrative. See R. 801-803. It

shows 14 settlements involving the sale of just one stock, Sensor Corp. Sensor was traded at some undisclosed time, at various prices in progressively decreasing quantities. The first settlement was for 1,400 shares at \$35.00; the second for 1,000 shares at \$36.625; the third for 1,050 shares at \$34.50; the fourth for 800 shares at \$35.0625, the fifth for 500 shares at \$34.375, and so on, through to the fourteenth settlement. The last six settlements were only 100 shares each. R. 802 -803.

No evidence, however, showed what date these Sensor trades were actually made or, more importantly, when they were ordered. No evidence showed what act by West precipitated those 14 settlements. No evidence showed that West placed an order to sell Sensor at any time, much less within the time the TRO was effective. Moreover, no evidence showed that he placed 14 separate sell orders on Sensor, nor is it even reasonable to infer that he would do so.

Yet that is precisely what the trial court did. It looked at the sheer number of settlements listed in the Fidelity Reports, concluded they were separate and distinct violations of the TRO or somehow allowed it to glean a number of separate violations (R. 1120 (Tr. 129) and determined that West had “initiated over 100 separate transactions, trades or transfers.” The evidence, however, does not support that finding.

IV. The Trial Court Erred in Sentencing West to Consecutive Sentences for Separate Transactions.

Although the evidence did not show when or how many acts by West were involved, the trial court determined that the over 100 violations were separate acts of

contempt and sentenced him to 365 days in jail, based on consecutive sentencing for the multiple acts under Utah Code Ann. § 78-32-10 (1996). R. 987. West had objected that what he did involved a course of conduct, not separate acts, and that consecutive sentences were inappropriate. Both parties briefed the court, citing principally to *Department of Registration v. Stone*, 587 P.2d 137 (Utah 1978), which Plaintiffs agree sets the standard in Utah. R.980-984; R.991-999.

In *Stone*, a defendant was found in contempt of an order restraining him from engaging in acts related to making dentures. The district court found he violated the order 120 times by making 120 sets of dentures and sentenced him to 60 days in jail and a fine of \$12,000.00. On appeal, the Utah Supreme Court agreed that the contempt was flagrant, but reversed, ruling that the Court could not find separate instances of contempt, because the order to show cause only charged a course of conduct. *Stone*, 587 P.2d at 139 (Utah 1978).

Under the majority opinion in *Stone*, if a party alleges only a course of conduct as violating a restraining order, the court cannot find separate individual violations to impose multiple sentences. *Id.* This is in accord with Utah statute, which requires that “an affidavit shall be presented to the court or judge of the facts constituting the contempt.” Utah Code Ann. § 78-32-3 (1996). Arguably it is that statutorily-required affidavit that must set forth the separate acts to support a finding of separate instances of contempt. Plaintiffs here filed the affidavit of their attorney. R.750 - 757. That affidavit

however does not set forth specific allegations, but rather alleges generalities. Under *Stone*, it is insufficient.

Plaintiffs, however, argued below that they had enumerated the necessary specific instances of conduct in their Memorandum in Support of Plaintiff's Motion for Order to Show Cause, which they imply suffices as the "charge" under *Stone*. Thus, Plaintiffs reasoned, *Stone* applied and supported the finding of multiple contempts and consecutive sentences. R. 994. Plaintiffs asserted that their Memorandum:

enumerated . . . 154 instances of contempt specifically involving the [Trust] account at Fidelity Investments. These instances were individually set forth in the Memorandum in Support and the hearing and documented by the account statements from Fidelity Investments that were attached to Plaintiffs' moving papers and entered into evidence at the hearing.

R. 994 (referring to R. 733 -915).

But Plaintiffs' assertion is incorrect and the trial court erred in finding multiple instances of contempt. Virtually all the individual instances Plaintiffs refer to above are not individual instances of West's conduct at all. Thus, under *Stone*, their "charging document" is insufficient to support the 100 instances found by the trial court. Moreover, the fact such "instances were individually set forth . . . at the hearing" is not just irrelevant, it is wrong. *See* Argument III, *supra*; *Stone*, 587 P.2d at 139 (the charge is the formal document served).

Much of their Memorandum deals with issues that were not addressed by the trial court, *e.g.* transactions in other trusts. *See* R. 741. With respect to the Trust's Fidelity

account, that Memorandum's asserted "specific instances of conduct" are set forth at several places, the first of which is in its paragraph 7a of its facts. R.735. That paragraph refers to Exhibit E (the Fidelity Reports) and merely sets forth general information, *i.e.* when the account was opened, pre TRO transfers and the fact that the account had gone to a zero balance by June 30, 2000. R. 735. Paragraph 7a sets forth no instance of specific conduct.

At the next paragraph of the Memorandum (paragraph 8), Plaintiffs allege "numerous incidents" again by citing to the Fidelity Reports. R. 736 (citing to R. 769 - 901). As already shown, however, those reports do not reveal any specific orders or instances of conduct initiated by West. They show specific activity by Fidelity. Plaintiffs cannot rely on the Fidelity Reports as alleging specific instances of West's conduct, because it simply isn't there. Therefore, paragraph 8 of Plaintiffs' Memorandum does not allege the specific instances to support the "over 100" instances of conduct.

At page 8 of their Memorandum, paragraph 2, Plaintiffs set forth more, alleging that "[b]eginning on March 31, 2000 . . . and continuing until at least June 30, 2000, the Defendant engaged in numerous, unauthorized trades and transfers in each of the four accounts, resulting in the loss of substantially all of the liquid assets of the Trust." R. 740. That is classic course of conduct language, which alleges no specific instances of conduct.

Finally, Paragraph 2a of Plaintiffs' Memorandum appears to allege specific

instances of conduct of stock transactions. But it really does not. That paragraph also cites the Fidelity reports as a basis and states, “[o]n March 31, 2000 the Defendant initiated ten transactions” and “[i]n April, the Defendant continued his reckless and unauthorized trading practices, initiating 154 separate transactions and a transfer of \$36,056.11.” R. 740. This alleges the initiation of a number of transactions, but does not allege specific instances of conduct by West. As has already been demonstrated, the Fidelity Reports do not delineate specific instances of West’s initiation of stock transactions; those reports show the brokerage’s individualized conduct. Accordingly, citing to it cannot bootstrap Plaintiff’s charging document into alleging specific instances of conduct by West. *Stone*, 587 P.2d at 137 (Utah 1978) (“the ‘charge’ must be regarded as the content of the formal documents served on the person accused of contempt”). Thus, at best, Plaintiffs allege a course of conduct in initiating transactions on March 31, 2000, a course of conduct by initiating transactions in April and another specific instance of conduct with regards to the transfer (which was initiated before the TRO was effective, R. 1120 (Tr. 82)).

A review of Plaintiff’s charging document shows that they have not alleged the specific transactions necessary to sustain the trial court’s determination that there were over 100 violations. With respect to the stock trades, which was the ultimate issue, Plaintiffs never alleged the separate individual acts necessary under *Stone*. Accordingly, the trial court “improperly imposed sentence in excess of the punishment statutorily

permitted” for number of instances of conduct it did allege. *Stone*, 587 P.2d 137,139 (Utah 1978).

CONCLUSION


The trial Court committed plain error when it continued with the TRO hearing on March 30, 2000. West’s counsel had just withdrawn and further proceedings were not permitted unless the court and Plaintiffs complied with Rule 4-506. No order evidences such compliance. But even if the TRO was properly issued, the evidence presented to the trial court did not support its factual finding that West had violated the TRO over 100 times. The trial court focused on the brokerage reports, which detailed its settlements or activities of stock. However, there was no evidence to correlate the broker’s activities with any specific acts by West that would violate the TRO.

Moreover, the factual findings entered by the trial court do not support its conclusion that West’s acts constituted separate acts of contempt, subjecting him to consecutive sentences for those violations. The TRO expired by its terms on April 9, 2000. The findings, however, failed to establish that the acts alleged took place when the TRO was in effect. Finally, the trial court was precluded from imposing sentences for separate acts of contempt where Plaintiff’s failed to allege the specific instances of conduct when they brought their order to show cause.

THEREFORE, Appellant West N. Holbrook respectfully requests this Court to reverse the trial court’s decisions of March 30, 2000 and September 8, 2000, and remand

to the trial court for further proceedings consistent with this Court's decision.

Respectfully submitted this 7th day of May, 2001.
McINTYRE & GOLDEN, L.C.

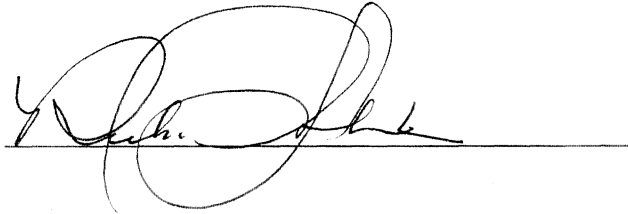


Richard R. Golden,
Attorney for Defendant and Appellant,
West N. Holbrook

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CERTIFICATE OF MAILING

I hereby certify that I mailed, postage pre-paid, a true and correct copy of the foregoing Opening Brief of Appellant to the following on this 7th day of April, 2001.

A handwritten signature in cursive script, appearing to read "James S. Jardine", written over a horizontal line.

James S. Jardine
D. Zachary Wiseman
Ray, Quinney & Nebeker
79 South Main Street #900
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Tab A

779854
FILED DISTRICT COURT
Third Judicial District

JAMES S. JARDINE (A1647)
THOMAS A. MECHAM (A6612)
D. ZACHARY WISEMAN (A8316)
RAY, QUINNEY & NEBEKER
79 South Main Street
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

APR 07 2000

By _____ SALT LAKE COUNTY

Deputy Clerk

DATE 7 April 00 TIME 08:55

B/B 108001 88705

UPON PE Box
CONSTABLE REITZ, SALT LAKE COUNTY, UTAH

WIKI Ken Allen

DEK-5468

Attorneys for Plaintiff Beneficiaries Kurt N. Holbrook and Tracy H. Bigelow

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

KURT N. HOLBROOK, an individual, and
TRACY H. BIGELOW, an individual,

Plaintiffs,

v.

WEST N. HOLBROOK, an individual,
Trustee of the B. G. Holbrook Family Trust,

Defendant.

1080 W 88705 W.J.

ORDER

Civil No. 000900641

Judge: Tyrone E. Medley

This matter came for hearing before the Court on Plaintiffs' Application for Temporary Restraining Order on March 28, 2000 at 10:00 a.m. Counsel James S. Jardine and D. Zachary Wiseman of the law firm of Ray, Quinney & Nebeker represented Plaintiff. Defendant was not represented and William A. Meaders and Eric C. Olsen appeared on behalf of B. G. Holbrook. By that Application, Plaintiffs sought to have Defendant removed as trustee of the B. G. Holbrook Family Trust and for an accounting and for production of any trust agreements of which Defendant was a trustee and Plaintiffs were beneficiaries.

Based on the pleadings and affidavits filed in this action and the representations of counsel at the hearing on this matter, the Court makes the following findings:

1. In a letter dated January 17, 2000, West N. Holbrook purportedly terminated Plaintiff Tracy H. Bigelow's status as a beneficiary of the B. G. Holbrook Family Trust. In the same letter, West N. Holbrook stated his refusal, as Trustee, to turn over books and records of the Trust to Plaintiff beneficiary Tracy H. Bigelow.

2. Despite an Order from this Court, issued March 1, 2000, West N. Holbrook has refused to provide Plaintiffs with Trust documents and records.

3. Plaintiffs have made a showing that Defendant West N. Holbrook made at least two transfers in an amount in excess of \$200,000 to B. G. Holbrook, the individual who appointed Defendant as Trustee. These transfers appear, at this stage, to be contrary to the terms of the Trust.

4. Defendant West N. Holbrook has breached his fiduciary duty of loyalty to the Plaintiffs by diluting their beneficial interest in the original Trust and transferring interest to B. G. Holbrook.

5. The acts of Defendant have caused and are likely to continue to cause irreparable injury, loss, and/or damage to Plaintiffs.

6. Furthermore, Plaintiffs are powerless to prevent Defendant from engaging in such conduct except by seeking relief in this Court. Specifically, Plaintiffs' beneficial interest in the Trust will be diluted or diminished entirely and the value of the Trust assets will be compromised.

7. The Plaintiffs notified Defendant of these proceedings.

THE COURT HEREBY ORDERS that, for a period of ten (10) days or, upon termination of the hearing for preliminary injunction, whichever is sooner:

1. Defendant is restrained and enjoined from acting in any capacity as trustee of the B. G. Holbrook Family Trust or any other Trust of which Defendant is trustee and either Plaintiff is a beneficiary, except for the purposes of holding legal title to trust property, complying with the orders of this Court, and as to matters conducted in the ordinary course of business. Ordinary course of business is intended to limit Defendant's activity solely to the issuance of checks for the purpose of paying operating expenses.

2. The assets of the Trust are to be frozen and Defendant is enjoined from disposing of or encumbering any Trust assets.

3. Defendant is to immediately provide Plaintiffs' counsel with all Trust records and documents.

4. Defendant is to provide, as soon as is reasonably possible, an accounting of Trust assets from the time Defendant assumed responsibility as trustee until the date of this order.

5. All checks issued by the Trust are to be co-signed by Bard N. Holbrook.

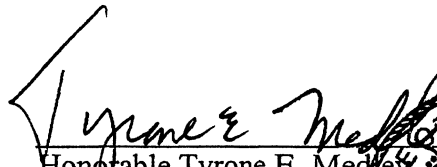
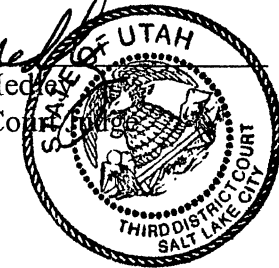
THE COURT ALSO ORDERS that:

Issuance of this Order is conditioned upon the giving of security by Plaintiffs in the amount of ten thousand dollars (\$10,000). Furthermore, a hearing shall be held on the Plaintiffs' Motion for Preliminary Injunction on the 25th day of April, 2000, at 8:00 a.m., before Judge Tyrone E. Medley at 450 South State Street, Salt Lake City, Utah 84111.

ENTERED BY THE COURT this 30 day of March 2000 at 1:59 p

a.m./p.m.

BY THE COURT:


Honorable Tyrone E. Medley
Third Judicial District Court


515873.v7

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER** was both served
via facsimile and mailed, postage prepaid, on this 30th day of March, 2000 to the
following:

West N. Holbrook
1080 West 8870 South
West Jordan, Utah 84088

William A. Meaders
Eric C. Olson
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Post Box 45120
Salt Lake City, Utah 84111

A large, stylized handwritten signature in black ink, appearing to be 'William A. Meaders', written over a horizontal line.

515873.v7

I, **KENNETH E. WILSON**

being first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

ORDER

& UNDERTAKING ON

TEMPORARY RESTRAINING ORDER PRELIMINARY INJUNCTION
INJUNCTION

FILED DISTRICT COURT
Third Judicial District

APR 07 2000

SALT LAKE COUNTY

on **March 30, 2000** and served the same upon
WEST N. HOLBROOK

By _____
Deputy Clerk

I within named Defendant in said article(s) by serving a true copy of said article(s) for the defendant with

WEST N. HOLBROOK (PERSONALLY)

person of suitable age and discretion there residing at

1080 W 8870 S, WEST JORDAN

is/her usual place of ABODE,

on **April 01, 2000**

further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto.

on **April 01, 2000**

Ken Wilson

Deputy

SL848

ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE County
7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-5468

TIME:	10.00
SPECIAL RUN:	15.00
MILEAGE CHARGE:	15.00
SERVICE CHARGES:	6.00
TOTAL CHARGES:	\$46.00

NOTES

I, **KENNETH E. WILSON**

being first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

**ORDER
& UNDERTAKING ON
TEMPORARY RESTRAINING ORDER PRELIMINARY INJUNCTION
INJUNCTION**

on **March 30, 2000**, and served the same upon
WEST N. HOLBROOK

within named Defendant in said article(s) by serving a true copy of said article(s) for the defendant with

WEST N. HOLBROOK (PERSONALLY)

person of suitable age and discretion there residing at

1080 W 8870 S, WEST JORDAN

is/her usual place of ABODE,

on **April 01, 2000**

further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto.

on **April 01, 2000**

Ken Wilson

Deputy

SL848

ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE County
7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-5468

TIME:	10.00
SPECIAL RUN:	15.00
MILEAGE CHARGE:	15.00
SERVICE CHARGES:	6.00
TOTAL CHARGES:	<u>\$46.00</u>

NOTES

Continental Casualty Company

IN THE THIRD JUDICIAL DISTRICT COURT OF THE
STATE OF UTAH FOR THE
COUNTY OF SALT LAKE

FILED
COURT
COMPT 31 PM 3:29
BOND NO. 929122748
CIVIL NO. 000900641

Plaintiff(s)

KURT N. HOLBROOK, an individual, and
TRACY H. BIGELOW, an individual

FILED DISTRICT COURT
Third Judicial District

APR 07 2000

vs.

By SALT LAKE COUNTY
Deputy Clerk

WEST N. HOLBROOK, an individual,
Trustee of the B.G. Holbrook Family Trust

Defendant(s)

UNDERTAKING ON
☒ Temporary Restraining Order
Preliminary Injunction
Injunction

WHEREAS, by an Order of the above entitled Court made on the 28th day of March, 2000, Plaintiff is required to file an undertaking in the sum of ***Ten Thousand and no/100 Dollars*** (\$10,000.00), as a condition for a Temporary Restraining Order of certain acts as more fully set forth on said order.

NOW, THEREFORE, we KURT N. HOLBROOK and TRACY H. BIGELOW, AS Principal, and CONTINENTAL CASUALTY COMPANY, a corporation, organized and existing under the laws of the State of Illinois as Surety, in consideration of the premises and issuance of said Temporary Restraining Order do hereby jointly and severally undertake to pay all costs and disbursements that may be decreed to the Defendant and such damages not exceeding the amount of ***Ten Thousand and no/100*** (\$10,000.00) as Defendant may sustain by reason of said Temporary Restraining Order if the same be wrongful and without sufficient cause.

IN WITNESS WHEREOF, we have set our hands this 31st day of March, 2000

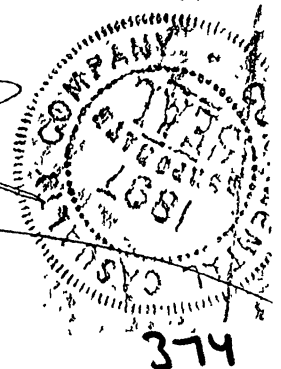
PLAINTIFF

By: Tracy H. Bigelow
Tracy H. Bigelow

PLAINTIFF(S)

By: Kurt N. Holbrook
Kurt N. Holbrook
CONTINENTAL CASUALTY COMPANY

By: Gayle Wood
Gayle Wood Attorney-in-fact



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That CONTINENTAL CASUALTY COMPANY, an Illinois corporation, NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, a Connecticut corporation, AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA, a Pennsylvania corporation (herein collectively called "the CCC Surety Companies"), are duly organized and existing corporations having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signature and seals herein affixed hereby make, constitute and appoint
Craig B. Hurst, Marie L. Christensen, Gayle Wood, Individually

of Salt Lake City, Utah

their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their corporations and all the acts of said Attorney, pursuant to the authority hereby given are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Laws and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the corporations.

In Witness Whereof, the CCC Surety Companies have caused these presents to be signed by their Group Vice President and their corporate seals to be hereto affixed on this 8th day of March, 1999.



CONTINENTAL CASUALTY COMPANY
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA

Marvin J. Cashion

Marvin J. Cashion

Group Vice President

State of Illinois, County of Cook, ss:

On this 8th day of March, 1999, before me personally came Marvin J. Cashion, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Chicago, State of Illinois; that he is a Group Vice President of CONTINENTAL CASUALTY COMPANY, NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, and AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA described in and which executed the above instrument; that he knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



My Commission Expires March 6, 2000

Mary Jo Abel

Mary Jo Abel

Notary Public

CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of CONTINENTAL CASUALTY COMPANY, NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, and AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of each corporation printed on the reverse hereof are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seals of the said corporations this 31st day of March, 2000.



CONTINENTAL CASUALTY COMPANY
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA

Mary A. Ribikawskis

Mary A. Ribikawskis

Assistant Secretary

Tab B

FILED DISTRICT COURT
Third Judicial District

OCT 02 2000

SALT LAKE COUNTY

By Deputy Clerk

JAMES S. JARDINE (A1647)
D. ZACHARY WISEMAN (A8316)
RAY, QUINNEY & NEBEKER
79 South Main Street
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

Attorneys for Plaintiff Beneficiaries Kurt N. Holbrook and Tracy H. Bigelow

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

KURT N. HOLBROOK, an individual, and
TRACY H. BIGELOW, an individual,

Plaintiffs,

v.

WEST N. HOLBROOK, an individual,
Trustee of the B.G. Holbrook Family Trust,

Defendant.

ORDER

Civil No. 000900641

Judge: Tyrone E. Medley

On September 8, 2000, the Court heard Plaintiffs' Motion for Order to Show Cause. D. Zachary Wiseman of the law firm of Ray, Quinney & Nebeker represented Plaintiffs Tracy H. Bigelow and Kurt N. Holbrook. John Russell represented Defendant West N. Holbrook, and John A. Beckstead of the law firm of Callister, Nebeker & McCullough appeared on behalf of the B.G. Holbrook Family Trust. During the hearing, counsel stipulated as to the admissibility of certain bank records from Fidelity Investments. In addition, the Court heard live testimony from West N. Holbrook and entered several exhibits in evidence.

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Based on the pleadings and memoranda filed in this action, stipulated proffers of evidence presented by counsel, the testimony of West N. Holbrook, and other exhibits entered in evidence, the Court makes the following findings:

1. On March 30, 2000 this Court entered a Temporary Restraining Order (the "Order") requiring, among other things, that Defendant cease acting as Trustee of the B.G. Holbrook Family Trust (the "Trust") and that all Trust assets be frozen.

2. For the purposes of this Order, the Court considered only the Trust assets contained in the B.G. Holbrook Family Trust account, as of March 30, 2000.

3. The sole purpose of the Order was to protect the assets of the Trust.

4. The Defendant was present when the Court issued the Order and received the benefit of additional time when the Court explained the meaning and effect of the Order to the Defendant.

5. The Defendant had sufficient knowledge of the Order.

6. The Defendant also had the ability to comply with the Order.

7. On April 1, 2000 the Trust account had a market value of \$505,462.50.

8. From March 30, 2000 until on or about May 31, 2000, the Defendant initiated over 100 separate transactions, trades or transfers in or from the B.G. Holbrook Family Trust Account, resulting in a balance on May 31, 2000 of \$0.00.

9. The Court is persuaded, beyond a reasonable doubt, that Defendants' actions with respect to the B.G. Holbrook Family Trust Account constituted a willful and intentional violation of the Court's Order of March 30, 2000.

10. The Defendant's credibility as a witness was seriously lacking. The Defendant was untrustworthy, evasive, elusive, and his testimony was not worthy of belief.

11. Defendant's actions were egregious and each of the over 100 transactions in approximately eight different stocks, undertaken subsequent to the Order, caused substantial and actual harm to the Trust assets or placed Trust assets in risk of substantial and actual harm.

12. The Court finds that each of the over 100 trades were separate and distinct acts of contempt.

WHEREFORE, the Court hereby orders:

1. That Defendant, West N. Holbrook, serve 365 consecutive days in the Salt Lake County Jail;

2. That Defendant, West N. Holbrook, serve each and every day of the 365 day sentence, receiving no credit for time served or good behavior;

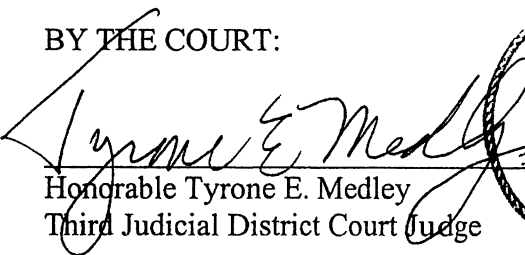
3. That Defendant, West N. Holbrook, pay the attorney's fees and costs incurred by the Plaintiffs in bringing this action;

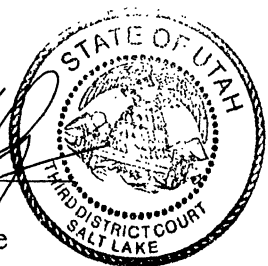
4. That Defendant, West N. Holbrook, provide the Plaintiffs with a full accounting of his administration as Trustee of the Trust and his actions subsequent to his removal therefrom;

5. That, after an accounting, an Order of Restitution be entered against the Defendant for the value of all of the assets lost by the Defendant in violation of the Order of March 30, 2000.

DATED this 2 day of Oct, 2000.

BY THE COURT:


Honorable Tyrone E. Medley
Third Judicial District Court Judge



Approved as to Form:

John D. Russell


John D. Russell

Attorneys for West N. Holbrook

533416.7

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER** was mailed,
postage prepaid, on this _____ day of September, 2000 to the following:

William A. Meaders
Eric C. Olson
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Post Box 45120
Salt Lake City, Utah 84111

Stephen K. Christiansen
Gerald H. Suniville
Kevin M. Sheff
VAN COTT, BAGLEY, CORNWALL & McCARTHY
50 South Main, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340

533416.v7

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER** was mailed,
postage prepaid, on this _____ day of _____, 2000 to the following:

James S. Jardine
Thomas A. Mecham
D. Zachary Wiseman
RAY, QUINNEY & NEBEKER
400 Deseret Plaza
79 South Main Street
Post Office Box 45385
Salt Lake City, Utah 84145-0385

William A. Meaders
Eric C. Olson
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Post Box 45120
Salt Lake City, Utah 84111

Stephen K. Christiansen
Gerald H. Suniville
Kevin M. Sheff
VAN COTT, BAGLEY, CORNWALL & McCARTHY
50 South Main, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340

BY THE COURT:

Tab C

B000021

#BWNFRKS

ENV# 137057968

WEST N HOLBROOK
B G HOLBROOK FAMILY TRUST
1080 W 8870 S
WEST JORDAN UT 84088-9066

Investment Report

March 1, 2000 - March 31, 2000

Customer Service

TouchTone Xpress

800-544-5555

Brokerage Services

800-544-8666

Visit us online at www.fidelity.com

Messages:

Stay informed. On Line. On time. And on demand. Receive statements, trade confirms, annual reports and prospectuses online. It's easy to enroll. Log on to www.fidelity.com/goto/statements today.

789

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Congratulations. You've earned lower commissions based on your annual trading activity. Your account pricing has been upgraded and will receive deeper discounts on most stock and option trades. The enclosed commission schedule details the new pricing that you will start receiving immediately. Thank you for your continued business.

Account Summary

Beginning market value as of Mar 1	\$599,513.79
Additions	45.00
Withdrawals	-60,000.00
Transaction costs, loads and fees	-9,377.47
Net adjustments	-30.00
Margin interest paid	-953.56
Transfers between Fidelity accounts	0.01
Change in investment value	-191,381.64
Change in debit balance	167,646.37
Ending market value as of Mar 31	505,462.50

Debit balance	-167,646.37
Ending Net Value	\$337,816.13

Your commission schedule	Active Trader
Minimal annual trade requirement	36
Eligible trades from Apr 1999 - Mar 2000	48

Current rate on debit balance	8.30%
Additional amount you can borrow	\$100,811.51

Income Summary

	This Period	Year to Date
Taxable		
Dividends	\$0.00	\$87.30
Interest	97.25	175.81
Total	\$97.25	\$263.11

Realized Gain/Loss from Fund Sales

	This Period	Year to Date
Short-term gain	\$165,995.72	\$215,002.79

Holdings (Symbol) as of March 31, 2000

Stocks 100% of holdings

	Quantity March 31, 2000	Price per Unit March 31, 2000	Total Value March 1, 2000	Total Value March 31, 2000
M AMER INTL PETE CORP COM PAR \$0.08 NEW (AIPN)	122,000.0000	\$1.00000		\$122,000.00
M NATL SEMICONDUCTOR (NSM)	3,200.0000	60.75000		194,400.00
M SENSAR CORP (SCII)	1,500.0000	37.87500		56,812.50
M VASOMEDICAL INC (VASO)	23,000.0000	5.75000		132,250.00

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE					
Holdings	(Symbol) as of March 31, 2000	Quantity March 31, 2000	Price per Unit March 31, 2000	Total Value March 1, 2000	Total Value March 31, 2000
Total Market Value					505,462.50
Debit balance				0.00	-167,646.37
Total Net Value					\$337,816.13

All positions held in margin account unless indicated otherwise.

Transaction Details (for holdings with activity this period)

Core Account - Cash

Description	Amount	Balance	Description	Amount	Balance
Beginning		\$12,284.08	Subtotal of Investment Activity	- \$119,930.45	
<i>Investment Activity</i>			<i>Cash Management Activity</i>		
Securities bought	-\$2,338,799.36		Deposits	45.00	
Securities sold	2,219,755.21		Other withdrawals	-60,000.00	
Exchanges in	0.01		Account fees and charges	-45.00	
Other disbursements	-30.00		Subtotal of Cash Management Activity	- \$60,000.00	
Core account income	97.25		Ending		-\$167,646.37
Margin interest	-953.56				

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 02	VS X29-132187 RESIDUAL TFR	Transferred from				\$0.01
3/ 02	BIOMIRA INC	You bought Transaction cost: -\$206.38	7,700.0000	\$13.12500		-101,268.88
3/ 02	SPEEDUS.COM INC	You bought Transaction cost: -\$107.25	1,000.0000	8.62500		-8,732.25
3/ 02	SPEEDUS.COM INC	You bought Transaction cost: -\$22.75	2,000.0000	8.71875		-17,460.25
3/ 02	SPEEDUS.COM INC	You bought Transaction cost: -\$113.75	7,000.0000	8.75000		-61,363.75

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 03	BIOSITE DIAGNOSTICS INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought	100.0000	39.12500		-3,912.50
3/ 03	BIOSITE DIAGNOSTICS INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought	100.0000	39.25000		-3,925.00
3/ 03	BIOSITE DIAGNOSTICS INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$14.95	100.0000	39.37500		-3,952.45
3/ 03	BIOSITE DIAGNOSTICS INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$14.95	300.0000	39.00000		-11,714.95
3/ 03	BIOMIRA INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$20.00	1,000.0000	13.50000		-13,520.00
3/ 03	BIOMIRA INC CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$74.95	4,000.0000	13.56250		-54,324.95
3/ 03	SPEEDUS.COM INC	You sold Transaction cost: -\$131.95	-3,000.0000	19.43750		58,180.55
3/ 03	TEXAS BIOTECHNOLOGY CORP CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$14.95	450.0000	23.00000		-10,364.95
3/ 03	TEXAS BIOTECHNOLOGY CORP CORR ACCOUNT TYPE CORRECTED CONFIRM	You bought Transaction cost: -\$16.95	1,100.0000	22.93750		-25,248.20
3/ 07	AMER INTL PETE CORP COM PAR \$0.08 NEW 1	You bought Transaction cost: -\$487.50	25,000.0000	1.06250		-27,050.00

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Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 07	AMER INTL PETE CORP	You bought	150,000.0000	1.06250		
3/ 13	COM PAR \$0.08 NEW	Transaction cost: -\$2,518.75				-161,893.75
	FIDELITY SELECT	You sold	-1,175.3640	134.66000	\$119,722.58	158,267.02
	ELECTRONICS	Transaction cost: -\$7.50				
	LT RED FEE 7.50					
3/ 14	FIDELITY SELECT	Short-term gain: \$38,544.44				
	DEVELOP COMMUNICATNS	You sold	-710.3960	86.90000	42,439.08	61,725.91
	LT RED FEE 7.50	Transaction cost: -\$7.50				
3/ 14	FIDELITY SELECT	Short-term gain: \$19,286.83				
	ELECTRONICS	You sold	-2,060.9470	131.57000	209,924.76	269,125.12
	ST RED FEE 2,033.68	Transaction cost: -\$2,033.68				
3/ 15	BIOSITE DIAGNOSTICS	Short-term gain: \$59,200.36				
	INC	You sold	-600.0000	34.50000		20,684.36
3/ 15	FIDELITY SELECT	Transaction cost: -\$15.64				
	TECHNOLOGY	You sold	-692.5690	215.10000	100,000.00	148,964.09
	LT RED FEE 7.50	Transaction cost: -\$7.50				
3/ 15	TEXAS BIOTECHNOLOGY	Short-term gain: \$48,964.09				
	CORP	You sold	-1,550.0000	19.18750		29,713.68
3/ 16	RAMBUS INC	Transaction cost: -\$26.95				
		You bought	100.0000	446.93750		-44,708.70
3/ 16	RAMBUS INC	Transaction cost: -\$14.95				
		You bought	200.0000	449.81250		-89,977.45
3/ 17	SENSAR CORP	Transaction cost: -\$14.95				
3/ 17	SENSAR CORP	You bought	200.0000	87.87500		-17,575.00
3/ 17	SENSAR CORP	You bought	200.0000	88.00000		-17,600.00
		You bought	300.0000	87.62500		-26,302.45
3/ 17	SENSAR CORP	Transaction cost: -\$14.95				
		You bought	500.0000	86.87500		-43,452.45
		Transaction cost: -\$14.95				

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 17	SENSAR CORP	You bought	800.0000	88.50000		-70,810.00
		Transaction cost: -\$10.00				
3/ 21	AMER INTL PETE CORP	You sold	-50,000.0000	1.18750		58,479.26
	COM PAR \$0.08 NEW	Transaction cost: -\$895.74				
3/ 21	AMER INTL PETE CORP	You sold	-3,000.0000	1.21875		3,596.15
	COM PAR \$0.08 NEW	Transaction cost: -\$60.10				
3/ 21	BIOMIRA INC	You sold	-7,000.0000	11.62500		81,232.28
		Transaction cost: -\$142.72				
3/ 21	BIOMIRA INC	You sold	-2,000.0000	11.75000		23,454.25
		Transaction cost: -\$45.75				
3/ 21	BIOMIRA INC	You sold	-2,000.0000	11.56250		23,084.22
		Transaction cost: -\$40.78				
3/ 21	BIOMIRA INC	You sold	-1,200.0000	11.68750		14,000.53
		Transaction cost: -\$24.47				
3/ 21	BIOMIRA INC	You sold	-500.0000	11.81250		5,906.05
		Transaction cost: -\$0.20				
3/ 21	HARTFORD FINL SVCS GROUP INC	You bought	500.0000	40.18750		-20,093.75
3/ 21	HARTFORD FINL SVCS GROUP INC	You bought	1,500.0000	40.12500		-60,222.45
		Transaction cost: -\$34.95				
3/ 21	SENSAR CORP	You sold	-500.0000	71.25000		35,608.86
		Transaction cost: -\$16.14				
3/ 21	SPEEDUS.COM INC	You sold	-3,800.0000	12.87500		48,847.34
		Transaction cost: -\$77.66				
3/ 21	SPEEDUS.COM INC	You sold	-2,100.0000	13.00000		27,257.08
		Transaction cost: -\$42.92				
3/ 21	SPEEDUS.COM INC	You sold	-1,100.0000	12.93750		14,213.81
		Transaction cost: -\$17.44				
3/ 22	OSI SYSTEMS INC	You bought	100.0000	24.68750		-2,468.75
3/ 22	OSI SYSTEMS INC	You bought	100.0000	24.81250		-2,481.25
3/ 22	OSI SYSTEMS INC	You bought	100.0000	25.06250		-2,508.25
		Transaction cost: -\$2.00				

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$14.95	200.0000	24.62500		-4,939.95
3/ 22	OSI SYSTEMS INC	You bought	200.0000	24.87500		-4,975.00
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$4.00	200.0000	25.37500		-5,079.00
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$4.00	200.0000	25.81250		-5,166.50
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$12.00	600.0000	25.25000		-15,162.00
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$16.00	800.0000	25.50000		-20,416.00
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$16.00	1,200.0000	25.00000		-30,016.00
3/ 22	OSI SYSTEMS INC	You bought Transaction cost: -\$26.00	1,300.0000	25.43750		-33,094.75
3/ 23	CHCK FEE 12902104	Journalled				-30.00
3/ 23	HARTFORD FINL SVCS GROUP INC	You sold Transaction cost: -\$37.35	-2,000.0000	36.00000		71,962.65
3/ 23	MICRON TECHNOLOGY EXEC. CINN STK EXCH	You bought Transaction cost: -\$14.95	1,000.0000	136.87500		-136,889.95
3/ 23	OSI SYSTEMS INC	You sold Transaction cost: -\$98.29	-5,000.0000	20.00000		99,901.71
3/ 23	RAMBUS INC	You bought Transaction cost: -\$14.95	300.0000	386.00000		-115,814.95
3/ 23	SENSAR CORP	You sold Transaction cost: -\$16.82	-1,000.0000	56.00000		55,983.18
3/ 23	SENSAR CORP	You sold Transaction cost: -\$10.92	-500.0000	55.06250		27,520.33
3/ 24	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You bought Transaction cost: -\$24.95	1,500.0000	60.93750		-91,431.20
3/ 24	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You bought Transaction cost: -\$24.95	1,500.0000	61.00000		-91,524.95

B000027

795

Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 24	RAMBUS INC	You sold	-300.0000	279.00000		83,697.21
	RECORD DATE 05/24/00	Transaction cost: -\$2.79				
	PAYABLE DTE 06/14/00					
3/ 24	RAMBUS INC	You sold	-300.0000	278.00000		83,382.27
	RECORD DATE 05/24/00	Transaction cost: -\$17.73				
	PAYABLE DTE 06/14/00					
3/ 27	ALTERA CORP	You bought	2,000.0000	87.56250		-175,159.95
		Transaction cost: -\$34.95				
3/ 27	ALTERA CORP	You sold	-1,500.0000	88.62500		132,913.06
		Transaction cost: -\$24.44				
3/ 27	ALTERA CORP	You sold	-500.0000	88.75000		44,358.57
		Transaction cost: -\$16.43				
3/ 27	MICRON TECHNOLOGY	You sold	-1,000.0000	135.93750		135,918.01
	EXEC. CINN STK EXCH	Transaction cost: -\$19.49				
3/ 27	NATL SEMICONDUCTOR	You sold	-1,700.0000	66.37500		112,804.78
	EXEC. CINN STK EXCH	Transaction cost: -\$32.72				
3/ 27	NATL SEMICONDUCTOR	You sold	-1,300.0000	66.31250		86,177.37
	EXEC. CINN STK EXCH	Transaction cost: -\$28.88				
3/ 27	SPEEDUS.COM INC	You bought	500.0000	11.18750		-5,608.70
		Transaction cost: -\$14.95				
3/ 27	SPEEDUS.COM INC	You bought	500.0000	11.25000		-5,625.00
3/ 27	SPEEDUS.COM INC	You bought	1,000.0000	11.43750		-11,457.50
		Transaction cost: -\$20.00				
3/ 27	SPEEDUS.COM INC	You bought	2,000.0000	11.18750		-22,409.95
		Transaction cost: -\$34.95				
3/ 28	SPEEDUS.COM INC	You sold	-4,000.0000	12.18750		48,673.42
		Transaction cost: -\$76.58				
3/ 28	VASOMEDICAL INC	You bought	1,000.0000	8.43750		-8,452.45
		Transaction cost: -\$14.95				
3/ 28	VASOMEDICAL INC	You bought	7,500.0000	8.50000		-63,900.00
		Transaction cost: -\$150.00				
3/ 28	VASOMEDICAL INC	You bought	14,500.0000	8.53125		-123,988.08
		Transaction cost: -\$284.95				

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Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per unit	Avg. Cost Basis of fund Sale	Transaction amount
3/ 29	SENSAR CORP	You bought	1,500.0000	64.31250		-96,493.70
		Transaction cost: -\$24.95				
3/ 30	NATL SEMICONDUCTOR	You bought	200.0000	62.43750		-12,502.45
	EXEC. CINN STK EXCH	Transaction cost: -\$14.95				
3/ 30	NATL SEMICONDUCTOR	You bought	3,000.0000	61.75000		-185,304.95
	EXEC. CINN STK EXCH	Transaction cost: -\$54.95				
3/ 31	CASH	Interest earned				97.25
3/ 31	VASOMEDICAL INC	You bought	1,000.0000	7.12500		-7,139.95
		Transaction cost: -\$14.95				
3/ 31	VASOMEDICAL INC	You bought	1,200.0000	7.37500		-8,869.20
		Transaction cost: -\$19.20				
3/ 31	VASOMEDICAL INC	You bought	5,000.0000	7.31250		-36,646.50
		Transaction cost: -\$84.00				
3/ 31	VASOMEDICAL INC	You bought	15,800.0000	7.43750		-117,798.35
		Transaction cost: -\$285.85				
3/ 31	VASOMEDICAL INC	You sold	-23,000.0000	6.71875		154,122.09
		Transaction cost: -\$409.16				

Margin Activity as of March 31, 2000

Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid	Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid
02/22-03/20	56,213	8.050%	266,522	-\$953.56	Total year to date				-\$953.56
Total this period				-\$953.56					

Trades Pending Settlement on March 31, 2000

Trade Date	Settlement Date	Security	Description	Quantity	Price per Unit	Settlement Amount
3/ 31	4/ 05	NATL SEMICONDUCTOR	Sold	-3,200.0000	\$57.06250	\$182,484.91
		EXEC. CINN STK EXCH				
		REF/DFG/SCTS (NSM)				
3/ 31	4/ 05	SENSAR CORP	Sold	-100.0000	40.00000	3,955.61
		REF/DFG/SCTS (SCII)				
3/ 31	4/ 05	SENSAR CORP	Sold	-900.0000	39.62500	35,643.31
		REF/DFG/SCTS (SCII)				

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Investment Report

March 1, 2000 - March 31, 2000

Ultra Service Account X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE
Transaction Details
Trades Pending Settlement on March 31, 2000

Trade Date	Settlement Date	Security	Description	Quantity	Price per Unit	Settlement Amount
3/ 31	4/ 05	SENSAR CORP REF/DFG/SCTS (SCII)	Sold	-500.0000	39.87500	19,924.05

Cash Management Activity**Deposits (1)**

Date	Description	Amount	Date	Description	Amount	Date	Description	Amount
3/ 07	COMMISSION CREDIT	\$45.00	Total		\$45.00			

Other Withdrawals

Trans. Date	Reference	Description	Amount	Trans. Date	Reference	Description	Amount
3/ 23		CHECK ISSUED	-\$60,000.00	Total			-\$60,000.00

Fees and Charges

Date	Description	Amount	Date	Description	Amount	Date	Description	Amount
3/ 06	Late settlmnts (3) I	-\$45.00	Total		-\$45.00			

Daily Additions and Subtractions (the following is provided to you in accordance with industry regulations)

Date	Amount	Balance	Date	Amount	Balance	Date	Amount	Balance
3/ 02	-\$12,284.08	\$0.00	3/ 16	-2,063.06	71,456.91	3/ 24	-14,522.48	0.00
3/ 08	45.00	45.00	3/ 17	-71,456.91	0.00	3/ 27	97,195.69	97,195.69
3/ 09	-45.00	0.00	3/ 21	199,150.52	199,150.52	3/ 28	-80,207.60	16,988.09
3/ 14	54,850.81	54,850.81	3/ 22	-127,261.01	71,889.51	3/ 29	-16,988.09	0.00
3/ 15	18,669.16	73,519.97	3/ 23	-57,367.03	14,522.48			

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Investment Report

April 1, 2000 - April 30, 2000

#BWNFRKS

ENV# 137059709

Online
FAST(sm)-Automated Telephone
Customer Service

www.fidelity.com
800-544-5555
800-544-6666

WEST N HOLBROOK
B G HOLBROOK FAMILY TRUST
1080 W 8870 S
WEST JORDAN UT 84088-9066

Ultra Service Account X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

► *Congratulations. You've earned lower commissions based on your annual trading activity. Your account pricing has been upgraded and will receive deeper discounts on most stock and option trades. The enclosed commission schedule details the new pricing that you will start receiving immediately. Thank you for your continued business.*

Account Summary

Beginning value as of Apr 1	\$505,462.50
Transaction costs, loads and fees	-7,493.90
Margin interest paid	-481.61
Transfers between Fidelity accounts	-36,056.11
Change in investment value	-293,718.99
Change in debit balance	-167,646.37
Ending value as of Apr 30	\$65.52

Your commission schedule

Gold Circle

Minimal annual trade requirement	72
Eligible trades from May 1999 - Apr 2000	134

Income Summary

	This Period	Year to Date
Taxable		
Dividends	\$0.00	\$87.30
Interest	65.39	241.20
Total	\$65.39	\$328.50

Realized Gain/Loss from Fund Sales

	This Period	Year to Date
Short-term gain	\$0.00	\$215,002.79

Holdings (Symbol) as of April 30, 2000**Core Account 100% of holdings**

	Quantity April 30, 2000	Price per Unit April 30, 2000	Total Value April 1, 2000	Total Value April 30, 2000
CASH	65.5200	\$1.00000		\$65.52

For balances below \$1,000.00, the current interest rate is 00.70%.

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Holdings (Symbol) as of April 30, 2000

Quantity April 30, 2000	Price per Unit April 30, 2000	Total Value April 1, 2000	Total Value April 30, 2000
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Debit balance

- 167,646.37

0.00

Transaction Details

(for holdings with activity this period)

Core Account - Cash

Description	Amount	Balance	Description	Amount	Balance
Beginning		-\$167,646.37	Exchanges out	-2,412.85	
Investment Activity			Core account income	65.39	
Securities bought	-\$2,114,789.68		Margin interest	-481.61	
Securities sold	2,284,848.90		Subtotal of Investment Activity	\$167,711.89	
Exchanges in	481.74		Ending		\$65.52

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 05	NATL SEMICONDUCTOR	You sold	-3,200.0000	\$57.06250	\$182,484.91
	EXEC. CINN STK EXCH	Transaction cost: -\$115.09			
	REF/DFG/SCTS				
4/ 05	SENSAR CORP	You sold	-900.0000	39.62500	35,643.31
	REF/DFG/SCTS	Transaction cost: -\$19.19			
4/ 05	SENSAR CORP	You sold	-500.0000	39.87500	19,924.05
	REF/DFG/SCTS	Transaction cost: -\$13.45			
4/ 05	SENSAR CORP	You sold	-100.0000	40.00000	3,955.61
	REF/DFG/SCTS	Transaction cost: -\$44.39			
4/ 06	AMER INTL PETE CORP	You sold	-80,000.0000	0.93750	73,717.49
	COM PAR \$0.08 NEW	Transaction cost: -\$1,282.51			
4/ 06	AMER INTL PETE CORP	You sold	-42,000.0000	0.96875	39,978.13
	COM PAR \$0.08 NEW	Transaction cost: -\$709.37			
4/ 06	SENSAR CORP	You bought	100.0000	42.56250	-4,271.20
		Transaction cost: -\$14.95			
4/ 06	SENSAR CORP	You bought	550.0000	40.56250	-22,324.33
		Transaction cost: -\$14.95			

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account
Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 06	SENSAR CORP	You bought	900.0000	42.00000	-37,800.00
4/ 06	SENSAR CORP	You bought	4,500.0000	43.00000	-193,584.95
		Transaction cost: -\$84.95			
4/ 06	SPEEDUS.COM INC	You bought	500.0000	8.87500	-4,457.45
		Transaction cost: -\$19.95			
4/ 06	SPEEDUS.COM INC	You bought	500.0000	9.43750	-4,728.75
		Transaction cost: -\$10.00			
4/ 06	SPEEDUS.COM INC	You bought	500.0000	9.62500	-4,822.50
		Transaction cost: -\$10.00			
4/ 06	SPEEDUS.COM INC	You bought	1,000.0000	9.00000	-9,014.95
		Transaction cost: -\$14.95			
4/ 06	SPEEDUS.COM INC	You bought	1,000.0000	9.00000	-9,019.95
		Transaction cost: -\$19.95			
4/ 06	SPEEDUS.COM INC	You bought	1,000.0000	9.25000	-9,264.95
		Transaction cost: -\$14.95			
4/ 07	ALLSTATE CORP	You bought	200.0000	23.43750	-4,702.45
	EXEC. CINN STK EXCH	Transaction cost: -\$14.95			
4/ 07	ALLSTATE CORP	You bought	4,300.0000	23.50000	-101,136.00
	EXEC. CINN STK EXCH	Transaction cost: -\$86.00			
4/ 07	ALLSTATE CORP	You bought	5,500.0000	23.75000	-130,719.00
	EXEC. CINN STK EXCH	Transaction cost: -\$94.00			
4/ 07	ALLSTATE CORP	You bought	10,000.0000	24.87500	-248,944.95
	EXEC. CINN STK EXCH	Transaction cost: -\$194.95			
4/ 07	ALLSTATE CORP	You sold	-10,000.0000	23.75000	237,297.13
	EXEC. CINN STK EXCH	Transaction cost: -\$202.87			
4/ 07	ALLSTATE CORP	You sold	-8,100.0000	23.50000	190,186.70
	EXEC. CINN STK EXCH	Transaction cost: -\$163.30			
4/ 07	ALLSTATE CORP	You sold	-1,900.0000	23.62500	44,848.00
	EXEC. CINN STK EXCH	Transaction cost: -\$39.50			
4/ 07	PUT	You bought	1.0000	1.81250	-208.25
	NATL SEMICONDUCTOR	Transaction cost: -\$27.00			
	APR 55 OPENING				
	TRANSACTION				

Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account
Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 07	PMC-SIERRA INC	You bought Transaction cost: -\$14.95	400.0000	174.00000	-69,614.95
4/ 07	PMC-SIERRA INC	You bought Transaction cost: -\$14.95	500.0000	141.06250	-70,546.20
4/ 07	PMC-SIERRA INC	You sold Transaction cost: -\$17.48	-500.0000	151.75000	75,857.52
4/ 07	PMC-SIERRA INC	You sold Transaction cost: -\$17.12	-400.0000	162.06250	64,807.88
4/ 07	SENSAR CORP	You sold Transaction cost: -\$29.65	-1,400.0000	35.00000	48,970.35
4/ 07	SENSAR CORP	You sold Transaction cost: -\$5.23	-1,000.0000	36.62500	36,619.77
4/ 07	SENSAR CORP	You sold Transaction cost: -\$22.22	-1,050.0000	34.50000	36,202.78
4/ 07	SENSAR CORP	You sold Transaction cost: -\$16.95	-800.0000	35.06250	28,033.05
4/ 07	SENSAR CORP	You sold Transaction cost: -\$10.59	-500.0000	34.37500	17,176.91
4/ 07	SENSAR CORP	You sold Transaction cost: -\$6.36	-300.0000	35.50000	10,643.64
4/ 07	SENSAR CORP	You sold Transaction cost: -\$4.26	-200.0000	36.50000	7,295.74
4/ 07	SENSAR CORP	You sold Transaction cost: -\$4.25	-200.0000	36.06250	7,208.25
4/ 07	SENSAR CORP	You sold Transaction cost: -\$0.13	-100.0000	37.43750	3,743.62
4/ 07	SENSAR CORP	You sold Transaction cost: -\$15.08	-100.0000	37.00000	3,684.92
4/ 07	SENSAR CORP	You sold Transaction cost: -\$2.13	-100.0000	36.75000	3,672.87
4/ 07	SENSAR CORP	You sold Transaction cost: -\$2.12	-100.0000	36.00000	3,597.88

Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account
Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 07	SENSAR CORP	You sold	-100.0000	34.81250	3,479.13
		Transaction cost: -\$2.12			
4/ 07	SENSAR CORP	You sold	-100.0000	34.68750	3,466.63
		Transaction cost: -\$2.12			
4/ 07	SPEEDUS.COM INC	You sold	-4,500.0000	8.06250	36,145.03
	REF/DQL/CCTS	Transaction cost: -\$136.22			
4/ 07	VASOMEDICAL INC	You sold	-16,000.0000	5.00000	79,677.33
		Transaction cost: -\$322.67			
4/ 07	VASOMEDICAL INC	You sold	-4,000.0000	5.06250	20,169.32
		Transaction cost: -\$80.68			
4/ 07	VASOMEDICAL INC	You sold	-2,000.0000	5.12500	10,209.65
		Transaction cost: -\$40.35			
4/ 07	VASOMEDICAL INC	You sold	-1,000.0000	5.18750	5,122.32
		Transaction cost: -\$65.18			
4/ 10	PUT	You sold	-1.0000	0.62500	35.49
	NATL SEMICONDUCTOR	Transaction cost: -\$27.01			
	APR 55 CLOSING				
	TRANSACTION				
4/ 10	SENSAR CORP	You bought	100.0000	34.00000	-3,402.00
		Transaction cost: -\$2.00			
4/ 10	SENSAR CORP	You bought	100.0000	35.75000	-3,577.00
		Transaction cost: -\$2.00			
4/ 10	SENSAR CORP	You bought	100.0000	35.93750	-3,595.75
		Transaction cost: -\$2.00			
4/ 10	SENSAR CORP	You bought	200.0000	35.00000	-7,004.00
		Transaction cost: -\$4.00			
4/ 10	SENSAR CORP	You bought	200.0000	35.25000	-7,054.00
		Transaction cost: -\$4.00			
4/ 10	SENSAR CORP	You bought	300.0000	33.43750	-10,031.25
4/ 10	SENSAR CORP	You bought	300.0000	34.75000	-10,431.00
		Transaction cost: -\$6.00			
4/ 10	SENSAR CORP	You bought	500.0000	34.37500	-17,197.50
		Transaction cost: -\$10.00			

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account **X29-137200** **B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE**
Transaction Details
Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 10	SENSAR CORP	You bought	700.0000	35.50000	-24,864.00
		Transaction cost: -\$14.00			
4/ 10	SENSAR CORP	You bought	1,700.0000	33.50000	-56,984.95
		Transaction cost: -\$34.95			
4/ 10	SENSAR CORP	You bought	3,800.0000	35.87500	-136,401.00
		Transaction cost: -\$76.00			
4/ 11	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You bought	1,000.0000	66.37500	-66,389.95
		Transaction cost: -\$14.95			
4/ 11	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You bought	3,000.0000	64.56250	-193,742.45
		Transaction cost: -\$54.95			
4/ 11	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You sold	-3,000.0000	64.56250	193,626.09
		Transaction cost: -\$61.41			
4/ 11	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You sold	-1,000.0000	65.62500	65,607.86
		Transaction cost: -\$17.14			
4/ 11	SENSAR CORP	You sold	-6,300.0000	35.00000	220,366.64
		Transaction cost: -\$133.36			
4/ 11	SENSAR CORP	You sold	-1,000.0000	36.50000	36,478.83
		Transaction cost: -\$21.17			
4/ 11	SENSAR CORP	You sold	-500.0000	35.37500	17,676.91
		Transaction cost: -\$10.59			
4/ 11	SENSAR CORP	You sold	-100.0000	36.00000	3,597.88
		Transaction cost: -\$2.12			
4/ 11	SENSAR CORP	You sold	-100.0000	35.25000	3,522.88
		Transaction cost: -\$2.12			
4/ 12	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You bought	1,000.0000	66.87500	-66,889.95
		Transaction cost: -\$14.95			
4/ 12	NATL SEMICONDUCTOR EXEC. CINN STK EXCH	You sold	-1,000.0000	68.25000	68,232.77
		Transaction cost: -\$17.23			
4/ 12	SENSAR CORP	You bought	300.0000	41.25000	-12,389.95
		Transaction cost: -\$14.95			
4/ 12	SENSAR CORP	You bought	300.0000	43.00000	-12,914.95
		Transaction cost: -\$14.95			

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Investment Report

April 1, 2000 - April 30, 2000

**Ultra Service Account
Transaction Details**

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 12	SENSAR CORP	You bought	500.0000	41.25000	-20,639.95
		Transaction cost: -\$14.95			
4/ 12	SENSAR CORP	You bought	500.0000	41.37500	-20,702.45
		Transaction cost: -\$14.95			
4/ 12	SENSAR CORP	You bought	700.0000	41.62500	-29,152.45
		Transaction cost: -\$14.95			
4/ 12	SPEEDUS.COM INC	You bought	500.0000	9.68750	-4,858.70
		Transaction cost: -\$14.95			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	9.18750	-9,202.45
		Transaction cost: -\$14.95			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	9.50000	-9,520.00
		Transaction cost: -\$20.00			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	9.56250	-9,582.50
		Transaction cost: -\$20.00			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	9.75000	-9,764.95
		Transaction cost: -\$14.95			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	9.93750	-9,952.45
		Transaction cost: -\$14.95			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	10.00000	-10,020.00
		Transaction cost: -\$20.00			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	10.25000	-10,270.00
		Transaction cost: -\$20.00			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	10.50000	-10,517.05
		Transaction cost: -\$17.05			
4/ 12	SPEEDUS.COM INC	You bought	1,000.0000	10.62500	-10,641.00
		Transaction cost: -\$16.00			
4/ 12	SPEEDUS.COM INC	You bought	1,500.0000	9.43750	-14,186.25
		Transaction cost: -\$30.00			
4/ 12	SPEEDUS.COM INC	You bought	1,500.0000	9.87500	-14,842.50
		Transaction cost: -\$30.00			
4/ 12	SPEEDUS.COM INC	You bought	2,000.0000	9.75000	-19,540.00
		Transaction cost: -\$40.00			

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account
Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 12	SPEEDUS.COM INC	You bought Transaction cost: -\$34.95	2,000.0000	9.81250	-19,659.95
4/ 12	SPEEDUS.COM INC	You bought Transaction cost: -\$48.00	3,000.0000	10.68750	-32,110.50
4/ 12	SPEEDUS.COM INC	You bought Transaction cost: -\$60.00	3,500.0000	9.93750	-34,841.25
4/ 12	VASOMEDICAL INC	You bought Transaction cost: -\$34.95	2,000.0000	6.96875	-13,972.45
4/ 12	VASOMEDICAL INC	You bought Transaction cost: -\$80.00	4,000.0000	7.00000	-28,080.00
4/ 12	VASOMEDICAL INC	You bought Transaction cost: -\$161.05	9,000.0000	7.06250	-63,723.55
4/ 17	SENSAR CORP	You sold Transaction cost: -\$15.91	-1,000.0000	28.75000	28,734.09
4/ 17	SENSAR CORP	You sold Transaction cost: -\$15.33	-400.0000	28.50000	11,384.67
4/ 17	SENSAR CORP	You sold Transaction cost: -\$0.39	-400.0000	28.25000	11,299.61
4/ 17	SENSAR CORP	You sold Transaction cost: -\$15.24	-300.0000	28.75000	8,609.76
4/ 17	SENSAR CORP	You sold Transaction cost: -\$0.10	-100.0000	28.87500	2,887.40
4/ 17	SENSAR CORP	You sold Transaction cost: -\$0.10	-100.0000	28.00000	2,799.90
4/ 17	SPEEDUS.COM INC	You sold Transaction cost: -\$40.56	-2,500.0000	6.62500	16,521.94
4/ 17	SPEEDUS.COM INC	You sold Transaction cost: -\$35.42	-2,000.0000	6.93750	13,839.58
4/ 17	SPEEDUS.COM INC	You sold Transaction cost: -\$35.42	-2,000.0000	6.90625	13,777.08
4/ 17	SPEEDUS.COM INC	You sold Transaction cost: -\$35.42	-2,000.0000	6.90625	13,777.08

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 17	SPEEDUS.COM INC	You sold	-2,000.0000	6.68750	13,339.60
		Transaction cost: -\$35.40			
4/ 17	SPEEDUS.COM INC	You sold	-2,000.0000	6.56250	13,089.61
		Transaction cost: -\$35.39			
4/ 17	SPEEDUS.COM INC	You sold	-2,000.0000	6.56250	13,089.61
		Transaction cost: -\$35.39			
4/ 17	SPEEDUS.COM INC	You sold	-1,500.0000	6.93750	10,385.90
		Transaction cost: -\$20.35			
4/ 17	SPEEDUS.COM INC	You sold	-1,500.0000	6.87500	10,292.15
		Transaction cost: -\$20.35			
4/ 17	SPEEDUS.COM INC	You sold	-1,100.0000	7.00000	7,682.78
		Transaction cost: -\$17.22			
4/ 17	SPEEDUS.COM INC	You sold	-1,000.0000	6.96875	6,953.56
		Transaction cost: -\$15.19			
4/ 17	SPEEDUS.COM INC	You sold	-1,000.0000	6.90625	6,886.01
		Transaction cost: -\$20.24			
4/ 17	SPEEDUS.COM INC	You sold	-900.0000	6.56250	5,891.10
		Transaction cost: -\$15.15			
4/ 17	SPEEDUS.COM INC	You sold	-500.0000	7.00000	3,484.93
		Transaction cost: -\$15.07			
4/ 17	SPEEDUS.COM INC	You sold	-500.0000	6.93750	3,453.68
		Transaction cost: -\$15.07			
4/ 17	SPEEDUS.COM INC	You sold	-500.0000	6.75000	3,359.93
		Transaction cost: -\$15.07			
4/ 17	VASOMEDICAL INC	You sold	-4,000.0000	5.06250	20,174.37
		Transaction cost: -\$75.63			
4/ 17	VASOMEDICAL INC	You sold	-4,000.0000	5.03125	20,049.37
		Transaction cost: -\$75.63			
4/ 17	VASOMEDICAL INC	You sold	-3,000.0000	5.06250	15,132.04
		Transaction cost: -\$55.46			
4/ 17	VASOMEDICAL INC	You sold	-3,000.0000	5.03125	15,038.29
		Transaction cost: -\$55.46			

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Investment Report

April 1, 2000 - April 30, 2000

**Ultra Service Account
Transaction Details**

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 17	VASOMEDICAL INC	You sold Transaction cost: -\$15.12	-1,000.0000	5.03125	5,016.13
4/ 18	PUT ALTERA CORP APR 75 OPENING TRANSACTION	You bought Transaction cost: -\$28.75	5.0000	3.50000	-1,778.75
4/ 18	PUT ALTERA CORP APR 75 OPENING TRANSACTION	You bought Transaction cost: -\$55.00	20.0000	3.50000	-7,055.00
4/ 18	PUT ALTERA CORP APR 75 OPENING TRANSACTION	You bought Transaction cost: -\$90.00	40.0000	2.87500	-11,590.00
4/ 18	PUT ALTERA CORP APR 75 CLOSING TRANSACTION	You sold Transaction cost: -\$58.59	-25.0000	1.00000	2,441.41
4/ 18	PUT ALTERA CORP APR 75 CLOSING TRANSACTION	You sold Transaction cost: -\$52.02	-20.0000	1.18750	2,322.98
4/ 18	PUT ALTERA CORP APR 75 CLOSING TRANSACTION	You sold Transaction cost: -\$52.02	-20.0000	1.18750	2,322.98
4/ 18	PUT ALTERA CORP APR 80 OPENING TRANSACTION	You bought Transaction cost: -\$37.50	10.0000	5.12500	-5,162.50

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Investment Report

April 1, 2000 - April 30, 2000

**Ultra Service Account
Transaction Details**

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 18	PUT	You bought	10.0000	6.50000	-6,537.50
	ALTERA CORP	Transaction cost: -\$37.50			
	APR 80 OPENING				
	TRANSACTION				
4/ 18	PUT	You bought	20.0000	6.12500	-12,305.00
	ALTERA CORP	Transaction cost: -\$55.00			
	APR 80 OPENING				
	TRANSACTION				
4/ 18	PUT	You bought	20.0000	6.25000	-12,555.00
	ALTERA CORP	Transaction cost: -\$55.00			
	APR 80 OPENING				
	TRANSACTION				
4/ 18	PUT	You bought	40.0000	5.62500	-22,590.00
	ALTERA CORP	Transaction cost: -\$90.00			
	APR 80 OPENING				
	TRANSACTION				
4/ 18	PUT	You sold	-20.0000	2.75000	5,444.81
	ALTERA CORP	Transaction cost: -\$55.19			
	APR 80 CLOSING				
	TRANSACTION				
4/ 18	PUT	You sold	-20.0000	2.56250	5,069.82
	ALTERA CORP	Transaction cost: -\$55.18			
	APR 80 CLOSING				
	TRANSACTION				
4/ 18	PUT	You sold	-20.0000	2.50000	4,944.81
	ALTERA CORP	Transaction cost: -\$55.19			
	APR 80 CLOSING				
	TRANSACTION				
4/ 18	PUT	You sold	-20.0000	2.25000	4,444.82
	ALTERA CORP	Transaction cost: -\$55.18			
	APR 80 CLOSING				
	TRANSACTION				

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account Transaction Details

X29-137200

B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 18	PUT	You sold	-20.0000	2.06250	4,069.82
	ALTERA CORP	Transaction cost: -\$55.18			
	APR 80 CLOSING TRANSACTION				
4/ 18	PUT	You bought	50.0000	4.75000	-23,857.50
	NATL SEMICONDUCTOR	Transaction cost: -\$107.50			
	APR 55 OPENING TRANSACTION				
4/ 18	PUT	You sold	-30.0000	2.75000	8,177.21
	NATL SEMICONDUCTOR	Transaction cost: -\$72.79			
	APR 55 CLOSING TRANSACTION				
4/ 18	PUT	You sold	-20.0000	2.87500	5,694.80
	NATL SEMICONDUCTOR	Transaction cost: -\$55.20			
	APR 55 CLOSING TRANSACTION				
4/ 19	CALL	You bought	10.0000	5.00000	-5,037.50
	ALTERA CORP	Transaction cost: -\$37.50			
	MAY 105 OPENING TRANSACTION				
4/ 19	CALL	You bought	10.0000	5.00000	-5,037.50
	ALTERA CORP	Transaction cost: -\$37.50			
	MAY 105 OPENING TRANSACTION				
4/ 19	CALL	You bought	10.0000	5.00000	-5,037.50
	ALTERA CORP	Transaction cost: -\$37.50			
	MAY 105 OPENING TRANSACTION				
4/ 19	CALL	You bought	20.0000	4.62500	-9,305.00
	ALTERA CORP	Transaction cost: -\$55.00			
	MAY 105 OPENING TRANSACTION				

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Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account Transaction Details

X29-137200 B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE

Investment Activity

Settlement Date	Security	Description	Quantity	Price per Unit	Transaction Amount
4/ 19	CALL	You bought	10.0000	8.50000	-8,537.50
	NATL SEMICONDUCTOR	Transaction cost: -\$37.50			
	APR 50 OPENING				
	TRANSACTION				
4/ 19	CALL	You bought	10.0000	6.75000	-6,787.50
	NATL SEMICONDUCTOR	Transaction cost: -\$37.50			
	MAY 60 OPENING				
	TRANSACTION				
4/ 19	CALL	You bought	20.0000	3.87500	-7,805.00
	NATL SEMICONDUCTOR	Transaction cost: -\$55.00			
	MAY 70 OPENING				
	TRANSACTION				
4/ 20	VS X29-138347-1	Transferred to			-2,412.85
4/ 20	CALL	Transferred to	-50.0000	3.75000	0.00
	ALTERA CORP MAY 105 VS				
	X29-138347-2 VALUE OF				
	TRANSACTION \$18,750.00-				
4/ 20	CALL	Transferred to	-10.0000	5.87500	0.00
	NATL SEMICONDUCTOR APR				
	50 VS X29-138347-2 VALUE OF				
	TRANSACTION \$5,875.00-				
4/ 20	CALL	Transferred to	-10.0000	5.00000	0.00
	NATL SEMICONDUCTOR MAY				
	60 VS X29-138347-2 VALUE OF				
	TRANSACTION \$5,000.00-				
4/ 20	CALL	Transferred to	-20.0000	2.25000	0.00
	NATL SEMICONDUCTOR MAY				
	70 VS X29-138347-2 VALUE OF				
	TRANSACTION \$4,500.00-				
4/ 25	VS X29-138347-1	Transferred from			481.74
4/ 28	CASH	Interest earned			65.39

Investment Report

April 1, 2000 - April 30, 2000

Ultra Service Account **X29-137200** **B G HOLBROOK FAMILY TRUST U/A 11/24/94 WEST N HOLBROOK TRUSTEE**

Margin Activity as of April 30, 2000

Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid	Period	Period Balance	Interest Rate	Average Daily Balance	Interest Paid
03/21-03/27	0	10.050%	1,254	-\$1.40	Total this period				-\$481.61
03/28-04/23	0	8.300%	160,217	-480.21	Total year to date				-\$1,435.17

Daily Additions and Subtractions Cash @ \$1 per share (the following is provided to you in accordance with industry regulations)

Date	Amount	Balance	Date	Amount	Balance	Date	Amount	Balance
4/ 05	\$74,361.51	\$74,361.51	4/ 17	108,458.14	108,458.14	4/ 25	0.13	0.13
4/ 06	-74,361.51	0.00	4/ 18	-58,497.79	49,960.35	4/ 28	65.39	65.52
4/ 07	241,012.72	241,012.72	4/ 19	-47,547.50	2,412.85			
4/ 10	-241,012.72	0.00	4/ 20	-2,412.85	0.00			