

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

HARTFORD LIFE & ACCIDENT
INSURANCE COMPANY,

Plaintiff,

v.

MURRAY NEBERGALL AND
LESLEY NEBERGALL,

Defendants.

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Case No. 6:21-cv-1184

CONSENT JUDGMENT

CONSIDERING that the remaining parties Defendant in Interpleader and Plaintiff in Cross-Claim, Murray Nebergall (“Murray”), Defendant in Interpleader and Defendant in Cross-Claim, Lesley Nebergall (“Lesley”), and the minor, B.E.N, through her guardian ad litem (“GAL”), have agreed and consented to the following amicable distribution of the Funds from the registry of the Court, the defendants have consented to accept said amounts as full and complete payment from Plaintiff, Hartford Life & Accident Insurance Company, have consented to release said insurer and each other from any and all further liability in this matter, and that the settlement is in the best interests of the minor child, the Joint Motion for Approval of Minor’s Settlement and for Entry of a Consent Judgment Creating Trust, Disbursing Registry Funds, and for Dismissal is hereby GRANTED.

IT IS ORDERED that a trust to receive a portion of the proceeds is hereby created for the benefit of the Insured, Rory Nebergall’s minor child, namely B.E.N. The terms of the trust shall be as follows:

- (1) Name: This trust shall be known as the RORY NEBERGALL TRUST FOR THE BENEFIT OF HIS MINOR CHILD, B.E.N.”
- (2) Beneficiary: The beneficiary of this trust shall be B.E.N. B.E.N. shall be the sole income beneficiary and sole principal beneficiary of this trust.
- (3) Trustee(s): The Initial Trustee of this trust shall be MURRAY NEBERGALL, and shall be hereinafter referred to as “Trustee”.

Should the Initial Trustee be unwilling or unable to act as Trustee for any reason, including, but not limited to, unavailability, incapacity or death, then any Successor Trustee shall be appointed by MURRAY NEBERGALL or a court of competent jurisdiction to act as trustee.

The Trustee, or any successor trustee, may resign by delivery via certified mail of thirty (30) days written notice of resignation submitted to the beneficiary or any court ordered guardian.

The successor trustee serving under this trust agreement, whether corporate or individual, shall have all of the title, rights, powers, and privileges granted to the initial Trustees named herein. In addition, the successor trustee shall be subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Trustees named herein. No successor trustee is obligated to audit, examine or investigate the accounts, records or administration of any previous Trustee. Nor shall any successor trustee be in any way or manner responsible for any acts or omissions of any prior Trustee.

No trustee shall be required to furnish security for the performance of his/her duties. The Trustee is relieved from liability to the full extent permitted by the Kansas Uniform Trust Code and Kansas law.

- (4) Purpose: The intent and purpose of this trust is to protect the inheritance of the minor child and provide a source of funds for the health, education, maintenance, welfare and support of the minor child until she attains the age of 25 years. All actions of the Trustee shall be directed toward carrying out this intent and purpose. Neither the beneficiary nor the beneficiary’s legal representative shall be considered to have access to income and/or principal of the trust and shall have no power to revoke this trust and/or to direct the Trustee to make distributions of income and/or principal.
- (5) Trust Funding: This trust will be funded with the beneficiary’s receipt of funds from this lawsuit. Others may convey money or property to the Trustee on the same terms set forth herein, with the initial conveyance of trust principal to be known as the initial trust estate. The Trustee hereby agrees to hold that property and any other trust property on the terms set forth in this instrument. All property

held by the Trustee, and all investments and reinvestment thereof, shall constitute the “Trust Estate.” No public assistance benefits received by or for the beneficiary shall be commingled with or become part of the Trust Estate.

- (6) Additions to Trust: With the Trustee’s consent, any person may at any time or from time to time, whether by Court order, assignment, gift, transfer, beneficiary designation, deed, will, or otherwise, provide income or add to the principal of the Trust Estate, and any property so added shall be held, administered, and distributed under the terms of this Trust. The Trustee shall execute documents the Trustee may deem necessary to accept additional contributions to the Trust Estate and shall designate the additions on the business and accounting records of the Trust. At the end of a calendar year, the Trustee shall designate any accumulated and undistributed income as principal, and may so designate such additions on amended schedules to this Trust.
- (7) Distributions: The Trustee may, in the Trustee’s sole and absolute discretion, distribute so much of the income, principal or both from the trust for the sole and exclusive benefit of the beneficiary in order to provide for reasonable expenditures for the health, education, maintenance, welfare and support of the minor child (as hereinafter defined) of the beneficiary. Any and all discretionary distributions shall be based primarily upon the beneficiary’s best interest. The Trustee is prohibited from making distributions for the benefit of the beneficiary for basic support, maintenance, welfare and medical purposes provided under governmental assistance programs being received by the Beneficiary and/or to which the Beneficiary may be entitled. The Trustee’s discretion in making distributions is limited to considering all other funds available to meet the beneficiary’s needs, including governmental assistance. Although the intent of this trust is to preserve the beneficiary’s eligibility for public benefits, the overriding goal of the trust is to ensure the beneficiary’s good health, safety, and welfare.

In the Trustee’s discretion, the Trustee may make distributions of trust assets to or for the benefit of the beneficiary to meet any need not fully met by public or private benefit programs. In its sole discretion, the Trustee may pay to or for the beneficiary’s benefit any amount that does not exceed the state or federal regulations for maximum supplemental income. In the Trustee’s sole discretion, the Trustee also may repay any part or all of any amounts owed to the Social Security Administration if an overpayment of benefits to the beneficiary has been made, either prior to or subsequent to establishment of this trust, to prevent a loss of SSI or other related government assistance by the beneficiary.

- (8) Examples of “health, education, maintenance, welfare and support”: The disbursements of income or principal that are appropriate for the Trustee to make from the trust, for the benefit of the beneficiary, to provide “health, education, maintenance, welfare and support” shall include, but not be limited to, the following:

- (a) Medical, dental and diagnostic work, and treatment for which there are no private or public funds otherwise available;
- (b) Medical procedures and devices that are desirable for the beneficiary's well-being in the Trustee's discretion, even though they may not be necessary or lifesaving;
- (c) Expenditures for computers and assistive technologies;
- (d) The term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to the following:
 - (1) Enrollment at private elementary, junior and senior high school including boarding school;
 - (2) Undergraduate and graduate study in any field at a college or university;
 - (3) Specialized, vocational or professional training or instruction at any institution, including private instruction; and
 - (4) Any other curriculum or activity that the Trustee may deem useful for developing the abilities and interests of a beneficiary, including, but not limited to, athletic training, musical instruction, theatrical training, the arts and travel.

The term "education" shall also include distributions made by the Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring and transportation and a reasonable allowance for living expenses.

- (e) Psychological, diagnostic or other therapeutic counseling care or treatment;
 - (f) Reasonable travel and related expenses, as well as for care or personal items which may be appropriate for the beneficiary; and
 - (g) A modest vehicle.
- (9) Distribution Guidelines: In making any distribution, the Trustee shall (1) consider any other income or resources of the beneficiary known to the Trustee to be reasonably available; (2) consider the beneficiary's entitlement to benefits from any government agency, such as federal SSDI, SSI, food stamps, Medicare, Medicaid, welfare, and any other special purpose benefits for which the beneficiary may be or become eligible; (3) consider resource and income

limitations of any such assistance program; (4) consider making expenditures so that the standard of living of the beneficiary will be comfortable and enjoyable; (5) not be obligated or compelled to make such payments; and (6) not be liable for any loss of benefits that may occur as a result of the Trustee's good faith actions in the administration of this trust.

- (10) Prohibited Distributions of Trust Funds: The Trustee is prohibited from making any distribution to any governmental entity to replace or reimburse or supplant any public assistance benefit of any county, state, federal or other governmental agency which has the legal responsibility to serve persons with disabilities which are the same or similar to the impairments of the beneficiary, and shall not distribute trust assets or income to or for the benefits of the beneficiary for such needs as will be provided for in the absence of this trust by governmental financial assistance and/or benefits and/or by any provider of services. The Trustee is prohibited from expending any of the trust principal or income for any property, services, benefits or medical expenditures where funds are otherwise available to the beneficiary from any governmental source or from any insurance carrier required to cover the beneficiary. In no event shall trust income or corpus be distributed in such a manner that any governmental financial assistance, which would be available to the beneficiary if this trust did not exist, in any way is reduced, diminished, altered, or denied. All terms of this trust, wherever they may appear, shall be interpreted to confirm this primary goal, mainly that governmental financial assistance which would otherwise be available to the beneficiary, if this trust did not exist, will in no way be reduced, diminished, altered, or denied.
- (11) Spendthrift Trust Provisions: This trust is declared to be a spendthrift trust and the beneficiary's interest in this trust shall be subject to the maximum spendthrift restraints permitted by Kansas law. The beneficiary shall have no legal authority to revoke or terminate the trust or to direct the use of the trust assets for his/her own support and maintenance.
- (12) Irrevocability: This trust is and shall be irrevocable except that the trust may be amended or revoked, in whole or in part, by order of any court of competent jurisdiction over the trust for the limited purposes of maintaining an effective trustee and allowing the trust to continue to accomplish its stated purposes in the event that a change in the law, policy, interpretation of the law, or other circumstance will frustrate the trust process.
- (13) Termination: This trust shall terminate upon the beneficiary attaining the age of twenty-five (25) years, or upon the death of the beneficiary, whichever occurs first, unless, in the sole and absolute discretion of the Trustee, the trust should be terminated earlier and distributed outright to the beneficiary because the cost does not justify maintaining the corpus in trust.

- (14) Fees and Expenses Chargeable to the Trust: All reasonable expenses in maintaining, administering, and defending this trust, including but not limited to reasonable attorney's fees, Trustee's fees, and costs shall be a proper charge to the trust.
- (15) Applicable Law: The validity of this trust shall be determined by the laws, including valid regulations, of the United States and the State of Kansas.
- (16) Court Approval: Distributions may be made from the trust estate without prior court approval.
- (17) Powers of Trustee: Except as otherwise provided herein, and subject to the terms, conditions, and limitations contained in this trust agreement, the Trustee may exercise all the powers granted under the Kansas Uniform Trust Code, as amended.
- (18) Compensation: Any Trustee acting under the terms of this instrument shall be entitled to reasonable compensation for services provided in the handling and administration of the trust. The Trustee shall also be entitled to reimbursement for all expenses and costs incurred in the performance of the duties and responsibilities associated with the administration of the Trust in accordance with the terms herein.
- (19) Prohibitions on Donation of Trust Property: No power enumerated in this instrument shall be construed to enable any person to purchase, exchange or otherwise deal with or dispose of the principal or income of this trust, for less than adequate and full consideration in money or monies' worth.

IT IS FURTHER ORDERED that a fee in the amount of \$750 is approved for Bethany J. Roberts for her work as guardian ad litem for the minor, B.E.N.

IT IS FURTHER ORDERED that the Funds shall be disbursed to the following persons, as payees for the respective parties and affected persons, at the following addresses, and in the following amounts:

- 1) The Law Offices of Barber Emerson, L.C. Trust Account (Payee)
c/o Bethany J. Roberts
The Law Offices of Barber Emerson, L.C.
1211 Massachusetts Street
Lawrence, Kansas 66044

Seven-Hundred Fifty Dollars (\$750)
- 2) Penner Lowe Law Group, L.L.C. Trust Account (Payee)

c/o Candice Y. Farha (Attorney for Lesley Nebergall)
Penner Lowe Law Group, L.L.C.
245 N. Waco, Suite 125
Wichita, Kansas 67202

One-Hundred Thirty-Two Thousand Seven-Hundred Seventy-Three and Seventy-Three Cents (\$132,773.73) plus one-third of any accrued interest.

- 3) Interpleader Law, LLC IOLTA (Payee)
c/o William Perry (Attorney for Murray Nebergall)
Interpleader Law, LLC
5800 One Perkins Place Dr., Suite 2A
Baton Rouge, Louisiana 70808

One-Hundred Thirty-Two Thousand Seven-Hundred Seventy-Three and Seventy-Three Cents (\$132,773.73) plus one-third of any accrued interest.

- 4) Murray Nebergall, Trustee
Rory Nebergall Trust for the Benefit of his Minor Child, B.E.N. (Payee)
c/o William Perry (Attorney for Murray Nebergall, Trustee)
Interpleader Law, LLC
5800 One Perkins Place Dr., Suite 2A
Baton Rouge, Louisiana 70808

One-Hundred Thirty-Two Thousand Seven-Hundred Seventy-Three and Seventy-Four Cents (\$132,773.74) plus one-third of any accrued interest.

IT IS FURTHER ORDERED that Rory Nebergall, Lesley Nebergall, and the minor, B.E.N, through her GAL, shall accept the aforesaid settlement in full and complete acquittance, release, and discharge of Hartford from any and all claims and liability, past, present and future, which defendants have or may have had against said insurer related to the insurance policy which is the subject of this matter. Accordingly, Hartford is hereby discharged from any and all liability relating to the subject policy.

IT IS FURTHER ORDERED that the terms of the settlement between the parties as set forth in this motion are in best interests of the minor, B.E.N. and Bethany J. Roberts is discharged as guardian ad litem for the minor, B.E.N.

IT IS FURTHER ORDERED that, upon payment and distribution of the amounts specified hereinabove, this matter shall be dismissed, with prejudice.

Dated: February 9, 2022

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

MURRAY NEBERGALL, Defendant
LESLEY NEBERGALL, Defendant
Attorney and Guardian Ad Litem for Minor, B.E.N.

/s/ William J. Perry

William J. Perry (Attorney in Charge)
Kansas Federal Bar No. 78657
Interpleader Law, LLC
5800 One Perkins Place Drive, Suite 2A
Baton Rouge, Louisiana 70808
(225) 246-8706
william.perry@interpleaderlaw.com
Attorney for Defendant Murray Nebergall

/s/ Candice Y. Farha

Candice Y. Farha, #26852
Penner Lowe Law Group, L.L.C.
245 N. Waco, Suite 125
Wichita, Kansas 67202
(316) 847-8847
cfarha@pennerlowe.com
Attorney for Defendant Lesley Nebergall

/s/ Bethany J. Roberts

Bethany J. Roberts, #21240
The Law Offices of Barber Emerson, L.C.
1211 Massachusetts Street
Lawrence, Kansas 66044
(785) 843-6600
BRoberts@barberemerson.com
Attorney and Guardian Ad Litem for Minor, B.E.N.