

**In the Superior Court
Allen County, Indiana
Cause No.. 02D01-0210-PL-499**

WILLIAM G. BERGHOFF)
)
Plaintiff,)
)
vs.)
)
TOWER BANK & TRUST COMPANY,)
<u>et al.</u> ,)
)
Defendants.)

**WILLIAM G. BERGHOFF'S FIRST SET OF
INTERROGATORIES AND PRODUCTION REQUESTS**

Comes now William G. Berghoff, by counsel, and propounds the following Interrogatories and Production Requests upon the Executor, Trustee, defendants and interested parties in the above captioned cases.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply to all Interrogatories and Production Requests:

A. For purposes herein "Plaintiff" means William G. Berghoff, Jr., individually, as special administrator, as trustee, and in any other capacity as an interested person. "Defendant" means TOWER BANK & TRUST COMPANY, as Personal Representative of the Estate of June Berghoff Miller; as Successor Trustee of the Testamentary Trust of Betty Noll Berghoff; as Trustee of The 1989 Irrevocable Living Trust for the Primary Benefit of June Elizabeth Berghoff; as Trustee of the William Miller 1998 Marital Trust; as Trustee of The June Berghoff Miller Revocable Trust of June 1, 1992 (also known as of July 1, 1992, and as restated as of February 9, 2001); as Trustee of the Trust Agreement of June Elizabeth Berghoff dated August 31, 1966; as Trustee of The JBM 1998 Charitable Remainder Annuity Trust; FORT WAYNE NATIONAL BANK; NATIONAL CITY BANK; THE ST. JOSEPH'S COMMUNITY HEALTH FOUNDATION, INC. OF FORT WAYNE, INDIANA; MARTHA RYAN; MARILYN STONEBRAKER; ALY STONEBRAKER; MEGAN RYAN; AUSTIN STONEBRAKER; COLLEEN

CARSTENS; LAURA ANN RYAN; MARY P. TAYLOR; KATHLEEN RYAN (PURLEE); WILLIAM MILLER; and JOHN RYAN; all in their individual and/or in any fiduciary or corporate capacity, including any and all agents, corporations in which any is an employee, officer or director, successors and assigns, and any other person or business affiliated with the foregoing. "Decedent" means June Berghoff Miller.

B. "Document" means any and all documents included in the definition of Trial Rule 34, and including any documents which in any way relate to any allegation in the plaintiff's complaint, any counterclaims, cross claims or third party claims, and whose existence is known to any Defendant, regardless of its location, and includes original and any copy (regardless of its origin), and all drafts of and reference to deeds, mortgages, security interests, assignments, agencies, annuities, insurance policies, financial or estate plans, wills, codicils, powers of attorney, trusts (including amendments thereto), claims, tenancies, correspondence, agreements, contracts, employment manuals, employment policies and procedures, records, tables, charts, graphs, pictures, schedules, illustrations, appointment books and calendars, diaries, reports, memoranda, notes, letters, telegrams, messages (including reports of telephone conversations and conferences), tapes, recordings, transcriptions, studies, analyses, books, magazines, newspapers, printouts or other documents generated by computer or data processing equipment, booklets, circulars, bulletins, notices, instructions, tax returns, financial statements, minutes and other communications, purchase orders, questionnaires, indices, data sheets or data processing cards, surveys, statements, bills, invoices, billings, certificates, and confirmations, and any other written, recorded, printed, typed, transcribed, taped, filmed, or graphic matter or other matter of any kind or nature however produced or reproduced, and each copy of any of the foregoing which is not identical because of marginal notations or otherwise. If any such document was, but no longer is, in your possession or control, state what disposition was made of it and when.

C. "Concern", "concerns", or "concerning" mean related to, pertains to, is related in any fashion to, regarding, respecting, about, connected with, involving, involved in, evidencing, or reflecting.

D. "Identify" or "identification" used in reference to an individual person means to state the full name, present address and telephone number, present or last known position and business affiliation, and position and business affiliations during the period covered by these Interrogatories. When used with respect to a person or entity other than an individual, it means to state the official name or designation and the address of each such person or entity. When used in reference to a document, it means to state date and author, type of document (e.g., letter, memorandum, telegram, chart, etc.), or some other means of identifying it, its present location, and name and address of its custodian. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it and the date of such disposition. "Identify" when used in reference

to an event, means to state the date and place of the event, and circumstances of the occurrence which comprised the event.

E. Unless otherwise indicated, these Interrogatories and Production Requests cover the period of the lifetime of the decedent to the present.

F. The singular form of a noun or pronoun includes the plural form, and vice versa. Use of a masculine form of pronoun includes the feminine form. Use of any tense of a verb includes other tenses. "Each" shall be construed to include the word every and vice versa. "Any" shall be construed to include the word all and vice versa.

G. These Interrogatories and Production Requests shall be deemed to be continuing so as to require the supplementation of responses pursuant to the Trial Rules.

H. Instructions for Answering Interrogatories: The following interrogatories shall be answered separately and fully in writing under oath unless objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person giving them, and any objections are to be signed by the attorney making them. A copy of the answers to the interrogatories shall be served on the plaintiff's attorney within thirty (30) days after the service of this pleading at the offices of Curtis E. Shirley, 156 East Market Street, Suite 600, Indianapolis, Indiana 46204. Pursuant to Trial Rule 26, there is a continuing duty to supplement your responses to these interrogatories.

I. Instructions for Responding to Production Requests: Production can be accomplished by mailing the documents to the undersigned attorney within thirty (30) days after service of this pleading. The documents requested for production include those in possession, custody, or control of the party responding to the requests, or your agents, corporations, representatives or attorneys. Originals or copies of the original documents may be supplied in response to the offices of Curtis E. Shirley, 156 East Market Street, Suite 600, Indianapolis, Indiana 46204. Each request should be responded to separately; however, a document which is responsive to more than one request may, if the relevant portion is so marked or indexed, be produced and referred to in a later response. Each request refers to all documents that are either known by the defendant responding to the request to exist or that can be located or discovered by reasonable diligent efforts by the defendant or her attorneys. There is a continuing duty to supplement the production with documents obtained subsequent to the preparation and filing of a response to each request pursuant to Trial Rule 26.

J. Privileged Matters: If any Interrogatory or Request for Documents is considered to call for the identification or production of privileged or work product material, and such privilege or work product is asserted, provide the following

information: (a) the reasons for withholding the information or document, including but not limited to a statement of the specific privilege claimed and of the basis upon which said privilege is claimed as to each separate document (or portion thereof) withheld; (b) a brief description of the document, including: (i) the date of the document; (ii) the number of pages, attachments, and appendices; (iii) the name of its author, authors, or preparers, and the identification of such person by employment and title; (iv) the name of each person who was sent, shown, or blind or carbon copied the document, together with an identification of each such person; (v) the present custodian of the document; and (vi) the subject matter of the document, and in case of any document relating or referring to a meeting or conversation, identification of such meeting or conversation, identification of such meeting or conversation. Disclose everything except the privileged information.

K. Lost or Destroyed Documents: If any document requested herein was at one time in existence, but has been lost, discarded, or destroyed, identify such document as completely as possible, providing as much of the following information as follows: (a) the type of document; (b) its date; (c) the date it was lost, discarded, or destroyed; (d) the reason for disposing of the document (if discarded or destroyed); (e) the circumstances and manner in which it was lost, discarded, or destroyed; (f) the identity of all persons authorizing or having knowledge of the circumstance surrounding the disposal of the document; (g) the identity of the person(s) who lost, discarded, or destroyed the document; (h) the contents of the document, to the extent known; and (i) the identity of all persons having knowledge of the document's contents.

INTERROGATORIES

INTERROGATORY NO. 1:

List the name and job title and description of each person providing answers or assistance with respect to answers to these Interrogatories, and identify the specific interrogatory answers for which each such person supplied information.

ANSWER:

INTERROGATORY NO. 2:

Identification of Evidence:

A. Identify all witnesses (including experts), whom you may call at any trial or hearing in the above captioned matters. For each witness listed, include his or her name, address and telephone number.

B. Identify the substance of each person's testimony that you intend to offer in this case. For each expert, submit the expert's report pursuant to the Trial Rules.

C. Identify all documents that you have reviewed in this matter and all exhibits which you have considered or intend to offer in any of the above captioned matters at any time, whether at any hearing, to accompany any pleading, or at trial.

ANSWER:

INTERROGATORY NO. 3:

Since 1988, have you ever been a Plaintiff, Defendant, petitioner or respondent in any lawsuit? If so, list the following items:

- A. Type of action.
- B. The name of the court in which the action was filed.
- C. The cause number.
- D. The name of each Plaintiff, Defendant, petitioner and respondent.
- E. The date the action was filed.
- F. The results of the action. If the action is pending, give its current status.

ANSWER:

INTERROGATORY NO. 4:

Since 1988, have you ever been arrested, charged, indicted, or convicted of a misdemeanor or felony? If so, list the following items for each:

- A. The crime you were charged with.
- B. The date you were arrested.
- C. The place you were arrested.

- D. The name of the court in which the prosecution was filed.
- E. The cause number.
- F. The name of each Plaintiff, Defendant, petitioner and respondent.
- G. The date the indictment or information was filed.
- H. The results of the prosecution. If the prosecution is pending, give its current status.

ANSWER:

INTERROGATORY NO. 5:

Identify the following documents concerning the Decedent, known to you concerning the Decedent (whether as Settlor, beneficiary or holder of any power of appointment), including all originals, copies of originals, both executed and unexecuted copies of: deeds, agreements, wills, codicils, trusts, trust amendments, powers of attorney, health care representative forms, antenuptial agreements, bank accounts, investment accounts, retirement plans, stock certificates, life insurance, death benefits plans, including all beneficiary forms and change in beneficiary forms, and any and all amendments thereto. For each such document, state:

- A. its title;
- B. the date and time it was signed;
- C. the place where it was signed;
- D. the name, address, telephone number, occupation and relationship to the Decedent of each person present when it was signed; and
- E. what was said by each person present when it was signed.

ANSWER:

INTERROGATORY NO. 6:

Identify each and every document concerning the Decedent that in any way concerns any estate plans, retirement plans, testamentary objectives, non-testamentary objectives, plans or goals and lifetime transfers whether by way of gift or otherwise.

ANSWER:

INTERROGATORY NO. 7:

Identify each and every document concerning the Decedent that in any way concerns her relationship with her family within the fourth degree of kinship, or any person related thereto by marriage, all by whole or half-blood, each beneficiary or legatee under any of the Decedent's Wills or Trusts or Amendments thereto, her trustee, executor, attorney in fact, and every person who received any property or interest therein by lifetime transfer or by reason of the Decedent's death.

ANSWER:

INTERROGATORY NO. 8:

State the name, address, and specialty of each physician, osteopath, psychologist, health care provider, nurse, nurse's aide, social worker, physical therapist, medical provider, medical facility, attorney, accountant, financial advisor, financial planner, trustee, priest, preacher, minister, Church member, or religious institution of any kind or description who assisted, treated, consulted, advised or met the Decedent within the last ten (10) years of her life.

ANSWER:

INTERROGATORY NO. 9:

Did the Decedent ever request you or your agent's advice in connection with any of her financial matters, charitable giving or concerns, taxation matters, estate

plans, trusts, business interests, or any other matter raised in any allegation of the plaintiff's complaint? If so, state:

- A. the date, time and place the decedent made such a request;
- B. the name, address, telephone number, occupation and relationship to the Decedent of each person present when she made such a request;
- C. what was said by each person present; and
- D. the advice given.

ANSWER:

INTERROGATORY NO. 10:

During the last ten (10) years of her life, did the Decedent make reference, favorable or otherwise, concerning any of her natural heirs or beneficiaries under the terms of her Will or Trust or Amendments thereto, or to any beneficiaries identified on her retirement or death benefits, owners on any of her bank or credit union accounts, or concerning any agreement made with any such person? If so, for each reference, state:

- A. the date, time and place the decedent made such a reference;
- B. the name, address, telephone number, occupation and relationship to the Decedent of each person present when she made such a request; and
- C. what was said by each person present.

ANSWER:

INTERROGATORY NO. 11:

From the Decedent or any of her trusts did you or any member of your family receive any property, amount or thing of value during the last ten (10) years of her

life? If so, state:

- A. a description of the property or amount transferred;
- B. the date, time and place the decedent transferred any property or amount;
- C. the name, address, telephone number, occupation and relationship to the Decedent of each person present when she made such a transfer;
- D. what was said by each person present.
- E. if personal or real property, the current location of any asset transferred.

ANSWER:

INTERROGATORY NO. 12:

List any and all value that you deposited or caused to be deposited into any account that included the Decedent's name or the name of any trust or business in which she had an interest. State the date of deposit, the amount, and how you acquired the funds.

ANSWER:

INTERROGATORY NO. 13:

Describe all assets and liabilities concerning the decedent during her lifetime, including the amount and location of any and all property, real and personal, liquid, invested or otherwise, including all statements, checks, deposit slips, withdrawal slips, and any other financial records.

ANSWER:

INTERROGATORY NO. 14:

Describe the disposition and current location of all real and personal property the decedent had an interest in during her lifetime.

ANSWER:

INTERROGATORY NO. 15:

Describe your relationship with the decedent, any of her trusts, and the other defendants. Concerning each person and trust, state:

A. The dates you represented the person or trust or the dates you were employed by any of them;

B. The services you performed;

C. A description of any fees charged;

D. A list of all documents drafted or prepared for any such person, trust or business;

E. A list of any assets, liabilities, loan payables or loan receivables or other property in any other manner that you transferred on behalf of or received from the decedent or her trusts; and

F. Other than as identified above, a complete description of your relationship.

ANSWER:

INTERROGATORY NO. 16:

Describe any and all services performed for the Decedent, the date of service, and any amounts received because of such service.

ANSWER:

INTERROGATORY NO. 17:

Other than as identified above, describe any and all payments or property

you received from the Decedent or her trustee (directly or indirectly), the occasion or reason for receiving such amount, and the date received.

ANSWER:

INTERROGATORY NO. 18:

List all persons that had access to any file or reviewed any information in your file concerning the Decedent. For each such person list his or her name, current address, current telephone number, and the time period involved.

ANSWER:

INTERROGATORY NO. 19:

Describe in detail each and every conversation with the plaintiff that you had, heard, overheard, or heard about, including naming the persons involved, the substance of what was said by everyone present, who was present, when it occurred, and what if any action resulted from the conversation.

ANSWER:

INTERROGATORY NO. 20:

Describe in detail each and every conversation with the decedent that you had, heard, overheard, or heard about, including naming the persons involved, the substance of what was said by everyone present, who was present, when it occurred, and what if any action resulted from the conversation.

ANSWER:

PRODUCTION REQUESTS

PRODUCTION REQUEST NO. 1:

Produce all documents reviewed or relied upon in answering any of the foregoing Interrogatories.

RESPONSE:

PRODUCTION REQUEST NO. 2:

Produce all documents identified in any of the foregoing Interrogatories.

RESPONSE:

PRODUCTION REQUEST NO. 3:

All files and documents concerning the decedent and any trust or business in which she had an interest.

RESPONSE:

PRODUCTION REQUEST NO. 4:

All billing records and any other records kept in the ordinary course of business concerning the decedent, her trusts, or her estate.

RESPONSE:

PRODUCTION REQUEST NO. 5:

For each expert identified in your answers to the Interrogatories propounded herewith, all fact sheets, list of credentials, resumes or curriculum vitae and all other documents outlining such experts qualifications.

RESPONSE:

PRODUCTION REQUEST NO. 6:

Copies of papers, theses, reports, studies and books written by each expert

witness whom you may call at any hearing or at trial, or who might sign any affidavit for use in any of the above captioned cases.

RESPONSE:

PRODUCTION REQUEST NO. 7:

With the exception of the defendant financial institutions, each of the defendant's state and federal income tax (and fiduciary) returns for the tax years 1992 to the present.

RESPONSE:

PRODUCTION REQUEST NO. 8:

All documents concerning the decedent's bank accounts, bank records, credit card accounts, and records of any and all businesses wherein she had an interest from 1992 to the present.

RESPONSE:

PRODUCTION REQUEST NO. 9:

All documents showing the decedent's assets and liabilities during her lifetime.

RESPONSE:

PRODUCTION REQUEST NO. 10:

All documents sent to or received from the decedent.

RESPONSE:

PRODUCTION REQUEST NO. 11:

All documents sent to or received from any other defendant.

RESPONSE:

PRODUCTION REQUEST NO. 12:

All documents sent to or received from the plaintiff.

RESPONSE:

PRODUCTION REQUEST NO. 13:

All documents in any of your files concerning or mentioning the plaintiff or the decedent.

RESPONSE:

PRODUCTION REQUEST NO. 14:

All documents sent to or received from third parties pursuant to discovery requests, subpoena, or informally concerning this case.

RESPONSE:

PRODUCTION REQUEST NO. 15:

All documents which support, weaken, or otherwise concern any allegation in the Plaintiff's complaint, any counterclaim, any cross claim or third party complaint.

RESPONSE:

PRODUCTION REQUEST NO. 16:

All documents reviewed by any attorney for any defendant concerning any allegation raised in the Plaintiff's complaint, any counterclaim, any cross claim or

third party complaint.

RESPONSE:

PRODUCTION REQUEST NO. 17:

Concerning the decedent, any address books, telephone lists, funeral service directory, diary, calendar, logbook, appointment book, day planner or any other similar document, and any documents listing the decedent's family, friends, acquaintances, loved ones, and her schedule or activities in the past ten (10) years.

RESPONSE:

PRODUCTION REQUEST NO. 18:

With the exception of the defendant financial institutions, each defendant should produce any address books, telephone lists, diary, calendar, logbook, appointment book, day planner or any other similar document, and any documents listing your family, friends, acquaintances, loved ones, and your schedule or activities in the past ten (10) years.

RESPONSE:

PRODUCTION REQUEST NO. 19:

Concerning the defendant financial institutions, your entire file concerning the decedent or any of the trusts in which she had an interest or power of appointment, including any files composed or held by any of your attorneys.

RESPONSE: