

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In re Applications of	)	MM DOCKET NO. 93-135
	)	
THE PETROLEUM V. NASBY CORPORATION	)	File No. BRH-890601VB
	)	
For renewal of Station WSWR(FM)	)	
Shelby, OH	)	DOCKET FILE COPY ORIGINAL
	)	
THE PETROLEUM V. NASBY CORPORATION	)	File No. BTCH-921019HX
	)	File No. BTCH-921019HY
For transfer of control of Station	)	
WSWR(FM), Shelby, OH	)	

To: The Honorable Edward Luton  
Administrative Law Judge

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OFFICE OF SECRETARY

MOTION FOR SUMMARY DECISION AND GRANT OF THE  
RENEWAL AND TRANSFER OF CONTROL APPLICATIONS  
OF  
THE PETROLEUM V. NASBY CORPORATION

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August 2, 1996

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OF  
THE PETROLEUM V. NASBY CORPORATION

Pursuant to § 1.251 of the Commission's Rules and the direction of the Honorable Edward Luton ("Presiding Judge"), The Petroleum V. Nasby Corporation ("Nasby"), by undersigned counsel, hereby moves for summary decision and grant of its application for renewal of the license of Station WSWR(FM) at Shelby, Ohio and its applications for the transfer of control pending in the above-referenced hearing proceeding. As will be demonstrated, there are no genuine issues of material fact warranting a further hearing, and the unconditional grant of the application for license renewal and transfer of control applications, as proposed to be amended herein, is fully supported.

BACKGROUND

1. This proceeding was remanded by the full Commission for further inquiry "concerning the question whether Thomas L. Root will have a continuing influence over Petroleum V. Nasby

Corporation (Nasby) in the event its application for renewal of Station WSWR(FM) in Shelby, Ohio is granted." *Memorandum Opinion and Order*, 11 FCC Rcd. 3494 (released March 20, 1996). The Review Board had previously granted the Nasby renewal application, subject to the condition that members of the immediate family of Thomas L. Root divest their respective ownership in Nasby in light of Thomas L. Root's criminal convictions. See *The Petroleum V. Nasby Corporation*, 10 FCC Rcd. 6029, recon. granted in part, 10 FCC Rcd. 9964 (Rev. Bd. 1995).

2. A prehearing conference was held on April 22, 1996 (*Order*, Mimeo No. 61115, FCC 96M-73, released April 12, 1996) at which time procedural dates governing the hearing on remand were established. By *Order*, Mimeo No. 61651, FCC 96-M 162, released June 26, 1996, following notice to the Presiding Judge by Nasby and the Mass Media Bureau of the Federal Communications Commission ("FCC" or "Commission") that the parties intended to settle the proceeding without further hearing, the Presiding Judge cancelled the previously scheduled hearing pending the submission of motions seeking summary disposition of some or all of the issues.<sup>1</sup>

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<sup>1</sup> The date of July 23, 1996 established in the *Order* as the time by which the submission of such motions should occur, was extended by the Presiding Judge at the request of counsel for Nasby until August 2, 1996. The Mass Media Bureau kindly consented to Nasby's informal extension request.

It is anticipated that the Mass Media Bureau will be filing supporting comments within the time period provided by the Commission's Rules, or as requested to be extended by the Bureau. On this date, undersigned counsel for Nasby is providing the Bureau with copies of documents further relating to the safeguards being taken by Nasby as referenced in the testimony submitted with the instant motion and not otherwise included as appendices to the

FACTS

**Issue:** Potential for Influence and Control  
on Nasby by Thomas L. Root.

3. Kathy G. Root owns 33 shares of Nasby stock in her own name, and is the custodian of 50 shares of Nasby stock for the benefit of two of her minor children born to her and her spouse, Thomas L. Root. PVN Ex. 6, p. 1. Arlene M. Geer, the mother of Kathy G. Root, is the Trustee of three trusts formally established in December, 1987, by Thomas L. and Kathy G. Root, for the benefit of their minor children, Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root. PVN Ex. 7, pp. 1-2. The trusts, however, were not funded with Nasby stock until June 1989. According to Kathy G. Root, the trusts were established as part of estate planning undertaken by her and Thomas L. Root, and the stock transfers were structured so as to permit the transfers without exceeding the \$10,000 per donee gift tax ceiling, considering the fair market value of Nasby stock at the time of \$400 per share. *Id.*

4. Both Kathy G. Root and Arlene M. Geer state that has never been any discussion, agreement or understanding, with Thomas L. Root, that the stock transfers were effectuated in order to facilitate him with the ability to allocate control over Nasby, then, now or in the future. Both further state that there has never been any attempt by Thomas L. Root to exercise or exert control over Nasby by virtue of the Nasby stock held by Kathy G. Root in her own name, or by Kathy G. Root and Arlene M. Geer, as

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testimony.

custodians of Nasby stock held for the benefit of the minor children of Thomas L. and Kathy G. Root. PVN Ex. 6, pp. 2-3; PVN Ex. 7, pp. 1-2.

5. Joanne L. Root, the mother of Thomas L. Root, owns 15 shares of Nasby stock in her own name, and 75.25 shares of Nasby stock, with her spouse, Thomas F. Root. Thomas F. Root individually owns five (5) shares of Nasby stock. Seventy and 25/100th shares of the Nasby stock jointly owned by Joanne L. Root and Thomas F. Root is being transferred, subject to FCC approval, to the law firm of Ginsburg, Feldman & Bress Chartered. Joanne L. Root has also served as a member of the three-person Nasby Board of Directors and as Secretary of Nasby. PVN Ex. 8, p. 1.

6. Joanne L. Root states that she and her spouse purchased 70.25 shares of Nasby stock from their son, Thomas L. Root, for \$28,000, in June 1989. According to Joanne L. Root, Thomas L. Root was experiencing financial difficulties and needed the funds for obligations on his airplane and other obligations. PVN Ex. 8, pp. 2-3. Sometime after Thomas L. Root's airplane crash in July, 1989, Joanne L. Root and her spouse agreed to pledge the 70.25 shares of stock they purchased in June, 1989, to the Ginsburg law firm so that it would continue to provide legal services to Thomas L. Root in connection with matters that Joanne L. Root initially believed to involve her son's representation of clients. When her son was unable to pay fees to the firm, the firm exercised its rights under the Pledge Agreement to seek the pledged stock, which is the subject of the second of the two transfer of control applications

pending in the instant proceeding. PVN Ex. 8, p. 4. At all times, since the pledged stock was purchased in June, 1989, up to and including the present day, the voting rights have been retained by Joanne L. Root and her spouse, free and clear from any potential influence and control by Thomas L. Root for the law firm. *Id.*

CONCLUSIONS

**Issue:** *Potential for Influence and Control on Nasby by Thomas L. Root.*

7. Section 1.251(a)(1) of the Commission's Rules requires that the party filing a motion for summary decision, "show by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of a material fact for determination at the hearing." 47 C.F.R. § 1.251(a)(1). Nasby, the party filing the instant motion, has provided the declarations<sup>2</sup> of Kathy G. Root, Arlene M. Geer, Joanne L. Root and Timothy J. Moore, attached to the motion as PVN Ex Nos. 6 through 9, respectively. The testimony of these individuals, made under penalty of perjury, clearly establishes that there is no genuine issue of a material fact for determination at hearing.

8. The facts reveal that there has never been any attempt by Thomas L. Root to allocate or exert control over Nasby by virtue of his relationship to Nasby principals Kathy G. Root, Arlene M. Geer and Joanne L. Root. In order to bring the instant proceeding to an earlier conclusion and to allay any lingering concerns of the

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<sup>2</sup> Section 1.16 of the Commission's Rules, 47 C.F.R. § 1.16, permits the submission of unsworn declarations made under penalty of perjury in lieu of affidavits. The declarations set forth as PVN Exs. 6 through 9 comply with § 1.16 of the Commission's Rules.

Commission concerning any potential influence by Thomas L. Root over Nasby in the future, Nasby, in voluntary cooperation with the Mass Media Bureau, has taken further safeguards to assure that Nasby will not be subject to any potential influence or control by Thomas L. Root in the future. These safeguards include, *inter alia*, the transfer of Nasby shares, subject to your Honor's approval, from Kathy G. Root and Arlene M. Geer, Trustee of the trusts established for the benefit of the Root minor children, to Thomas J. Stoll, Esquire, Trustee, an independent individual, pursuant to The Root Family Irrevocable Trust.<sup>3</sup> In particular, Section Eighth of the The Root Family Irrevocable Trust prohibits any Beneficiary (*i.e.*, Kathy G. Root or any of the Root minor children) from directing the Trustee in the discharge of his duties, vesting all voting rights for any stock deposited in the Root Family Irrevocable Trust, in the Trustee, Mr. Stoll. The Trustee is further prohibited from selling or otherwise conveying any Nasby stock to any Beneficiary, any Settlor (*i.e.*, Kathy G. Root or Arlene M. Geer), to Thomas L. Root, or any member of the immediate family of any of the foregoing. See PVN Ex. 6, p. 4;

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<sup>3</sup> The Root Family Irrevocable Trust attached as Appendix D to the Testimony of Kathy G. Root (PVN Ex. 6) has been signed by Kathy G. Root and Arlene M. Geer. As directed by the Presiding Judge before or after he acts on the instant motion, it is anticipated that Nasby will submit a minor amendment to the Nasby transfer of control application assigned File No. BTCH-921019HX, for acceptance by the Presiding Judge. The amendment will provide the requisite transferee qualifications information required by FCC Form 315 relative to Thomas J. Stoll, will include a copy of the fully executed Root Family Irrevocable Trust, and will be signed by an officer of Nasby, by Thomas J. Stoll, Esquire, Trustee as transferee, and if required, Kathy G. Root and Arlene M. Geer.

Appendix D, pp. 6-7 ; PVN Ex. 7, pp. 3-4. Restrictive legends on the Nasby shares of stock to be held by The Root Family Irrevocable Trust will also be imposed by Nasby prohibiting the transfer or conveyance to Thomas L. Root. See PVN Ex. 9, Appendix A, p. 2.

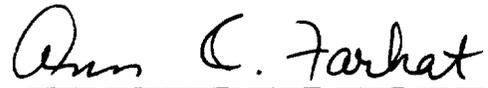
9. Moreover, the Last Will and Testament of Joanne L. Root and Thomas F. Root, the parents of Thomas L. Root and grandparents of the offspring of Thomas L. and Kathy G. Root, have been amended to prohibit the any transfer or conveyance of any stock they own individually or jointly, to Thomas L. Root, or any member of his immediate family upon the death of either Joanne L. Root or Thomas F. Root. See PVN Ex. 8, p. 6; PVN Ex. 9, pp. 1-2 and Appendix A, p. 1 thereto. A corresponding restrictive stock legend, prohibiting the transfer or conveyance of Nasby stock they own (25 shares collectively) or later acquire, to Thomas L. Root or any members of his immediate family, has also been agreed to by Joanne L. Root and Thomas F. Root with Nasby. See PVN Ex. 9, pp. 1-2 and Appendix A, pp. 1-2 thereto. Joanne L. Root has also voluntarily resigned her positions as a director and Secretary of Nasby effective July 2, 1996, notwithstanding the fact that she has acted properly and responsibly in carrying out her fiduciary duties to Nasby and its shareholders. See PVN Ex. 8, p. 5.

#### ULTIMATE CONCLUSIONS

Accordingly, for the foregoing reasons, the Presiding Judge is respectfully requested to issue a Summary Decision in favor of The Petroleum V. Nasby Corporation, resulting in the unconditional grant of the application of The Petroleum V. Nasby Corporation for

renewal of the license of Station WSWR(FM) at Shelby, Ohio for a full license term, the unconditional grant of the applications for transfer of control, as proposed to be amended to permit the substitution of Thomas J. Stoll, Esquire, as Trustee of the Root Family Irrevocable Trust as transferee of certain Nasby stock, and the termination of the hearing proceeding.

Respectfully submitted,



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V. Nasby Corporation

August 2, 1996

PVN Ex. 6

TESTIMONY OF KATHY G. ROOT

1. My name is Kathy G. Root and I reside in Norwalk, Ohio. I am a shareholder of The Petroleum V. Nasby Corporation ("Nasby"), licensee of Station WSWR(FM) ("WSWR(FM)"), Shelby, Ohio. I own 33 shares of Nasby stock in my own name and I am the custodian of 50 shares of Nasby stock for the benefit of two of my minor children, Thomas P. J. Root and Leslie J. L. Root. My spouse, Thomas L. Root, and I, are the parents of Thomas P. J. Root (age 14), Leslie J. L. Root (age 11) and Travis S.C. Root (age 8).

2. I have reviewed my testimony previously received into the record in this proceeding as PVN Ex. 4. The substance of the testimony given remains true and correct to the best of my knowledge. In the course of reviewing personal files in my home, which files were located in the past three months and which were not located or reviewed by me at the time of my previous testimony in this proceeding in November 1993, I found copies of The Thomas P. J. Root Trust, The Leslie J. R. Root Trust and The Travis S.C. Root Trust (copies attached hereto as Appendices A-C). According to the first page of each trust document, the trusts were made on December 31, 1987. I previously testified that The Thomas P. J. Root and The Leslie J. R. Root Trusts were established in December 1986 and that The Travis S.C. Root Trust was established in 1988. While my spouse and I had initially commenced the establishment of trusts for the two oldest children in December 1986, the actual trust documents were not formalized until December 31, 1987, shortly after the birth of our third child earlier in the month.

The actual funding of The Travis S.C. Root Trust with 50 shares of Nasby stock and the funding of 25 shares each to The Thomas P. J. Root and Leslie J. R. Root Trusts did not occur until June 1989.

3. As I previously testified, the trusts for my children were established as part of our estate planning and the transfers of stock, to afford each minor child beneficial ownership of 50 shares of Nasby stock, were structured so as to permit the stock transfers without exceeding the \$10,000 per donee per annum gift tax ceiling, considering the fair market value of Nasby stock at the time of \$400 per share. I did not focus on the possibility nor was I aware that the stock transactions could result in the need to secure prior approval of the Federal Communications Commission ("FCC") as I understood that the redistribution of the stock would not result in any of my family holding a majority interest. Consequently, I never discussed with my spouse the potential need to file an application with the FCC. Since my spouse was the station's communications counsel at the time, I also assumed that he would handle whatever paperwork was necessary to effectuate the transfers. At no time, then or since, was there any discussion, agreement or understanding with my spouse, that the stock transfers were effectuated in order to facilitate him with the ability to allocate control over Nasby, then, now or in the future. Moreover, there has been no such attempt by my spouse to exercise or exert control over the Nasby stock held by me individually or the custodial stock I hold on behalf of my minor children from the time the stock was transferred in May/June 1989, from before, during and

after the period of his incarceration (June 1992 to late November 1994), up to and including the present day.

4. My own involvement with Nasby as an individual shareholder and as a custodian on behalf of two of my minor children has been extremely limited. Since May 1989, I attended, in person, only one annual shareholders meeting (in May 1992). My recollection of that meeting was that the only matter that was considered was the election of directors to serve for the next year. Other than receiving the shareholder notices and proxy forms each year from Timothy J. Moore, President of Nasby and the Station's General Manager, which proxy forms I have been able to confirm were executed by me in 1990, 1993, 1994, 1995 and 1996, appointing Timothy J. Moore as proxy, or being contacted by Timothy J. Moore and/or current communications counsel for Nasby during the course of this proceeding relating to matters which have been the subject of this hearing proceeding, I have not been involved in the affairs of Nasby nor have I been involved in any way in the day-to-day operations and management of Station WSWR(FM).

5. Notwithstanding the foregoing, in an effort to bring to an earlier conclusion the instant hearing proceeding and to allay any lingering concerns of the FCC concerning any potential influence by Thomas L. Root on Nasby's affairs by virtue of the Nasby stock at issue, I have agreed to assign the Nasby stock I hold individually and as a custodian on behalf of my minor children to The Root Family Irrevocable Trust ("Root Irrevocable Trust"), subject to the approval of the FCC. A copy of the Root Irrevocable Trust is

attached hereto as Appendix D. The Root Irrevocable Trust shall be managed by Thomas J. Stoll, Esquire, an independent individual with whom no member of my immediate family is related nor has had any business relationship.

6. Moreover, ¶ EIGHTH of the Root Irrevocable Trust prohibits (1) any Beneficiary from directing the Trustee in the discharge of his duties, vesting all voting rights for any stock deposited in the Root Irrevocable Trust in the Trustee; prohibits (2) the Trustee from selling or otherwise conveying any Broadcast Stock held by the Root Irrevocable Trust to any Beneficiary, to any Settlor, to Thomas L. Root, or to any member of the immediate family of any of the foregoing; and prohibits (3) the Trustee from providing any information relating to any Broadcast Stock held in the Root Irrevocable Trust to any Beneficiary or Settlor, other than to confirm the number of any shares of such stock held by the Trust, or disclosing any information to any Settlor or Beneficiary which the Trustee may obtain relative to the operation, management or financial condition of any corporation for which the Root Irrevocable Trust holds Broadcast Stock. Upon execution of the Root Irrevocable Trust by the Trustee, subject to the approval of the FCC, my spouse, my mother, Arlene M. Geer, the current trustee of my minor children's trusts, as well as my minor children, will be prohibited from exercising any influence or control over any Broadcast Stock held by the Root Irrevocable Trust.

DECLARATION OF KATHY G. ROOT

The foregoing testimony is made under penalty of perjury and is true and correct to the best of my knowledge.

*Kathy G. Root*

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Kathy G. Root

Dated: July 30, 1996

Appendix A

THE THOMAS P. J. ROOT TRUST

TRUST AGREEMENT made this 31st day of December, 1987, by and between THOMAS L. ROOT of Alexandria, Virginia, (hereinafter called the "settlor"), and ARLENE T. GEER (hereinafter called the "trustee"). The settlor hereby transfers property listed in Schedule "A" annexed hereto to the trustee, to be held IN TRUST upon the following terms and conditions:

FIRST: This irrevocable trust is established for the benefit of the settlor's son THOMAS P. J. ROOT (hereinafter called the "beneficiary"), and shall be known as "THE THOMAS P. J. ROOT TRUST." The settlor hereby relinquishes any and all rights to alter, amend, revoke or terminate this Agreement.

SECOND: The trust shall terminate when the beneficiary attains the age of thirty (30) years or dies, whichever shall first occur, unless it is sooner terminated by the payment to, or for the benefit of, the beneficiary by the trustee of all the trust property pursuant to the discretion hereinafter given to the trustee.

THIRD: The trustee is directed as follows:

1. In each year of a transfer of property to this trust (whether it is the initial transfer of property establishing this trust or additional transfers to this trust) the beneficiary shall have the non-cumulative right to withdraw cash or any other trust property in an amount equal to the lesser of (i) the amount of the annual transfer or (ii) the amount of the annual exclusion from taxable gifts available to the settlor under Section 2503(b) of the Internal Revenue Code of 1986, as amended, which amount shall be doubled if the settlor is married at the time of transfer. After acceptance of each transfer to this trust, the trustee shall immediately notify the beneficiary of his right of withdrawal. Such right of withdrawal shall be exercised by submission of a written demand to the trustee within thirty (30) days after notification of the transfer. In the event that the beneficiary is a minor or otherwise incompetent to exercise the right of withdrawal, his right of withdrawal shall be exercised by his legal guardian.

2. Until the beneficiary attains the age of twenty-one (21) years, the trustee may at any time and from time to time pay so much or all of the principal of the trust and the net income therefrom to or for the benefit of the beneficiary as the trustee in her sole discretion determines for the health, education, support and maintenance of the beneficiary; provided, however, no part of the principal or income shall be used or applied to satisfy any legal obligations of the beneficiary's parents to or for the beneficiary. Any net income not distributed shall be accumulated and shall be deemed added to principal.

3. If the beneficiary lives to attain the age of twenty-one (21) years, the trustee shall distribute currently all of the net income to such beneficiary at such time or times as the trustee in her sole discretion shall determine, but no less frequently than annually.

4. During the term of the trust after the beneficiary attains the age of twenty-one (21) years, the trustee may at any time and from time to time pay so much or all of the principal of the trust to or for the benefit of the beneficiary as the trustee in her sole discretion determines for the health, education, support and maintenance of the beneficiary.

5. If the beneficiary lives to attain the age of twenty-five (25) years, the trustee shall pay one-half (1/2) of the trust principal to the beneficiary.

6. Upon the termination of the trust, if the beneficiary is living, the trustee shall pay the entire remaining trust property (including undistributed income) to the beneficiary, outright and free of trust.

7. Should the beneficiary die before attaining the age of thirty (30) years, this trust shall terminate, and the entire trust property then remaining shall be paid over and distributed in such manner as the beneficiary shall appoint by his will, and such appointment may be exercised in favor of himself, his estate, his creditors and creditors of his estate. Should he fail to exercise such general power of appointment, the trustee shall pay over and distribute the entire trust property then remaining to the estate of the beneficiary.

FOURTH: The trustee is further directed as follows:

1. The interest of the beneficiary in the income or principal of this trust shall be free from the control or interference of any creditor of a beneficiary or of any spouse of a married beneficiary and shall not be subject to attachment or execution or susceptible of anticipation or alienation.

2. Any provision in this trust to the contrary notwithstanding, if after the settlor's death, the net value of the trust created under this Agreement is less than Fifteen Thousand Dollars (\$15,000) and the trustee, in her discretion, shall determine that the size of such trust does not warrant the cost of continuing the same in trust or if its administration would be otherwise impractical, the trustee, in full discharge of her duties and without formal court accounting, may pay the then remaining principal and income of such trust to the person then entitled or permitted to receive the income or principal therefrom, or, if such person be legally incapable of receiving such principal and income, the trustee may pay the same to the estate, committee, trustee, guardian, parent or other person having custody of such beneficiary, or may deposit the same in an income-bearing account or accounts in a bank or other financial institution in the name of such beneficiary, if such beneficiary is a minor, payable to such minor upon his attaining the age of twenty-one (21) years, providing such account or accounts shall

reasonably balance the conflicting goals of maximum return of interest and full economic security and stability. Upon any such payment, application, or deposit under the provisions of this Section 2, the interest of all succeeding beneficiaries, whether vested or contingent, shall be terminated, and the trustee shall be relieved of all duties in connection with such trust and shall not be required to account therefor in any court.

3. Whenever used herein, words importing the singular shall include the plural and words importing the masculine shall include the feminine and the neuter, and vice versa, unless the context requires otherwise.

FIFTH: This trust is a Virginia trust and is to be governed and construed and administered according to its laws and shall continue to be so governed and construed and administered even though administered elsewhere within the United States or abroad.

SIXTH: In extension and not in limitation of the powers given her by law or other provisions of this instrument, the trustee hereunder shall have the following powers with respect to this trust and its property, in each case to be exercised from time to time in her discretion and without order or license of court:

1. To retain indefinitely any investments and to invest and reinvest in and to exercise any option or options to purchase stocks, shares and obligations of corporations, in unincorporated associations, in partnerships (both general and limited) or in trusts and investment companies or in a common trust fund without giving notice to any beneficiary, or in any other kind of personal or real property, notwithstanding the fact that any or all of the investments made or retained are of a character or size which but for this express authority would not be considered proper for a trustee;

2. To continue any unincorporated business of the settlor indefinitely without the approval of any court and to incorporate such business at any time the trustee deems it appropriate;

3. To sell, to exchange, to lease, to mortgage, and to make contracts concerning real or personal property for such consideration and upon such terms as to credit or otherwise as the trustee may determine, which leases and contracts may extend beyond the term of this trust; to give options therefor; to execute deeds, transfers, leases and other instruments of any kind;

4. To hold bonds, shares or other securities and any and all kinds of real or personal property in bearer form or in the name of the trustee or in the name of a nominee, without indication of any fiduciary capacity; to deposit cash in a checking or savings account in a bank or other financial institution, without indication of any fiduciary capacity;

5. To give general or special proxies or powers of attorney for voting or acting in respect of shares or securities, which may be discretionary and with power of substitution; to deposit shares or securities with, or transfer them to, protective committees or similar bodies; to join in any reorganization and to pay assessments or subscriptions called for in connection with shares or securities held by the trustee;

6. To improve or develop real estate; to construct, alter or repair buildings or structures on real estate; to settle boundary lines and easements and other rights with respect to real estate; to partition and to join with co-owners and others in dealing with real estate in any way;

7. To borrow money for any purposes connected with the protection, preservation, or improvement of this trust whenever such action is deemed advisable;

8. To pay, compromise, compound, extend, modify, renew, adjust, submit to arbitration, sell or release any claims or demands of this trust against others or of others against this trust, and to make payments in connection therewith;

9. To advance money for the protection of this trust, and for all expenses, losses, and liabilities incurred in or about the execution or protection of this trust or because of the holding or ownership of any property subject hereto, for which advances the trustee shall have a lien on the trust property, and the trustee may reimburse herself with interest thereon out of the trust property;

10. To make loans to, or to guarantee or endorse loans made by others to, the beneficiary of this trust for such consideration and upon such terms as to interest, security, or otherwise as the trustee may determine, and the trustee shall not be liable for loss to the trust hereunder or to the beneficiary for the default or failure of any borrower to repay any such loan or loans;

11. To employ investment counsel, custodians of trust property, brokers, agents, accountants, attorneys, consultants and expert witnesses;

12. To receive additions to this trust by gift and to hold and administer the same under the provisions hereof;

13. To pay as income the whole of the interest, dividends, rent or similar receipts from property, whether wasting or not and although bought or taken at a value above par, but if she sees fit, when property is bought or taken at a value above par, she may retain a portion of the income to offset such loss to the principal; to treat as income or principal or to apportion between them stock dividends, extra dividends and rights to take stock or securities, except that all so-called capital gains dividends from regulated investment companies and from real estate investment trusts shall be allocated to principal; to charge to income or principal or to apportion between them any expense of making and changing investments,

investment counsels' compensation, custodians' compensation, brokers' commissions, agents' compensation, attorneys' and accountants' fees, the fees of consultants and expert witnesses, insurance premiums, repairs or improvements, taxes, depreciation charges and trustee's compensation; and generally to determine all questions as between income and principal and to credit or charge to income or principal or to apportion between them any receipt or gain and any charge, disbursement or loss as is deemed advisable in the circumstances of each case as it arises;

14. To make any payment of principal or income wholly or partly in kind by allotting and transferring specific securities or other personal or real property or undivided interests therein as a part or the whole of any one or more shares or payments, at current values;

15. To keep any or all of the trust property at any place or places in the Commonwealth of Virginia or elsewhere within the United States or abroad or with a depository or custodian at such place or places;

16. If there is expressed in any provision of this trust the settlor's intention to obtain an advantage or benefit conferred by a Federal estate, income, generation-skipping or gift tax law applicable to the trust created hereunder, the trustee may construe such provision of this trust, or apply to any court having jurisdiction over this trust for construction of this trust, in accordance with the pertinent Federal estate, income, generation-skipping or gift tax regulations and rulings issued pursuant to such law in order to secure the intended tax advantage or benefit;

17. No powers enumerated herein or accorded to the trustee generally pursuant to law shall be construed to enable the settlor, or the trustee or any other persons to purchase, exchange, or otherwise deal with or dispose of all or any part of the principal or income of the trust for less than an adequate consideration in money or money's worth, or to enable the settlor to borrow all or any part of the principal or income of the trust, directly or indirectly without adequate interest or security. No person, other than the trustee, shall have or exercise the power to vote or direct the voting of any shares or other securities of the trust, to control the investment of the trust either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of the trust by substituting other property of an equivalent value. The trustee shall not use the income or principal of the trust to pay premiums on insurance on the lives of the settlor or his wife.

SEVENTH The following shall apply to the appointment and service of the trustee:

1. If there is a vacancy in the office of trustee, the settlor shall appoint a successor trustee; provided, however, that the settlor may not appoint himself nor his wife successor trustee. If the settlor is not living, the named trustee and each successor trustee shall designate a successor trustee to

serve after their death, resignation, or disqualification. If no trustee is so designated, the beneficiary or his legal guardian shall designate a successor trustee.

2. A trustee may resign at any time by an instrument in writing delivered to the settlor, or if he is not then living, to the beneficiary (or to such beneficiary's legal guardian).

3. References in this instrument to the "trustee" shall be deemed to include not only the original trustee but also any successor trustee, and all powers and discretions vested in the trustee shall be vested in and exercisable by any such successor trustee. A successor trustee shall not be liable for any action taken by the trustee prior to the time such successor becomes a trustee.

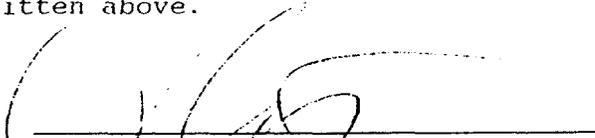
4. No bond shall be required of the original trustee hereunder or of any successor trustee, or if a bond is required by law, no surety on such bond shall be required.

5. No one dealing with the trustee need inquire concerning the validity of anything she purports to do, or need see to the application of any money paid or any property transferred to or upon the order of the trustee.

6. Each trustee shall be responsible only for her acts or omissions in bad faith. A successor trustee shall not be liable for any action taken by the trustee prior to the time such successor becomes a trustee.

EIGHTH: This Trust Agreement may be executed in counterparts. Anyone may rely upon a copy certified by a trustee and acknowledged before a notary public to be a counterpart of this Agreement (and of the writings, if any, endorsed thereon or attached thereto). Anyone may rely upon any statement of fact certified by anyone who appears from the original document or a certified copy to be a trustee hereunder.

IN WITNESS WHEREOF, THOMAS L. ROOT, the settlor, has hereunto set his hand, and ARLENE T. GEER, in token of her acceptance of the trust hereby created, has set her hand hereto, all as of the date first written above.

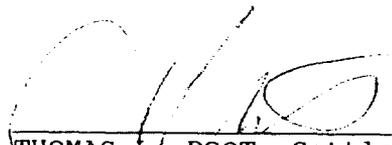
  
\_\_\_\_\_  
THOMAS L. ROOT, Settlor

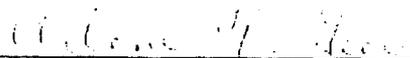
  
\_\_\_\_\_  
ARLENE T. GEER, Trustee

THE THOMAS P. J. ROOT TRUST

Schedule A

THOMAS L. ROOT, as settlor, hereby transfers the following described property to ARLENE T. GEER, her successor or successors, as trustee, to be held in trust in accordance with the terms of THE THOMAS P. J. ROOT TRUST created by agreement of even date herewith:

  
\_\_\_\_\_  
THOMAS L. ROOT, Settlor

  
\_\_\_\_\_  
ARLENE T. GEER, Trustee

lkp/4902/trus.001/12.28.7

DEED OF GIFT

DEED OF GIFT made this 31st day of December, 1987, by THOMAS L. ROOT, as settlor, to ARLENE T. GEER, as trustee of THE THOMAS P. J. ROOT TRUST, created by agreement of even date herewith,

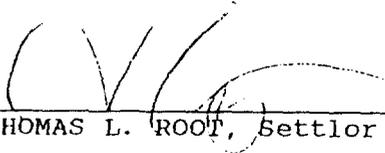
WITNESSETH:

THAT the said settlor in consideration of the love and affection that he has for his son THOMAS P. J. ROOT does hereby give, grant, assign and convey to the above-named trustee, her successor or successors, as trustee under the aforesaid trust instrument, to be held pursuant to the terms of that trust, the following property:

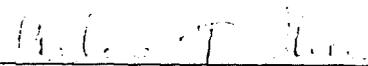
\$1.00

25 shares of fully-issued and nonassessable voting common shares in The Petroleum V. Nasby Corporation, an Ohio corporation

IN WITNESS WHEREOF, the said settlor has hereunto set his hand the day and year first above written.

  
\_\_\_\_\_  
THOMAS L. ROOT, Settlor

ARLENE T. GEER, as trustee of THE THOMAS P. J. ROOT TRUST created by agreement of even date herewith, hereby acknowledges receipt of the above property.

  
\_\_\_\_\_  
ARLENE T. GEER, Trustee

Appendix B