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OPINIONS AND ORDERS

U.S. Court of Appeals for the Tenth Circuit

U.S. District Court for the Western District of Oklahoma

REHEARING ORDER

OPINION, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT (DECEMBER 31, 2024)

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor -Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor.

Nos. 23-6125 and 23-6167

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

Respondents/Garnishees,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

Nos. 23-6126 and 23-6168

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC.

Respondents/Garnishees,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

RYAN T. LEONARD, Esq.,

Receiver.

Nos. 24-6066 and 24-6033

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

Respondents/Garnishees.

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 24-6006

Appeal from the United States District Court
for the Western District of Oklahoma
(D.C. No. 5:14-FJ-00005-HE)

Before: TYMKOVICH, MORITZ, and CARSON,
Circuit Judges.

TYMKOVICH, Circuit Judge

Universitas Education, LLC seeks to recover funds it lost in an elaborate insurance fraud scheme. The underlying litigation occurred in the Southern District of New York, leading to a civil judgment against multiple defendants. Among the corporate entities allegedly used to perpetrate the fraud was Avon Capital, LLC and several of its affiliates located in Oklahoma, Nevada, and Wyoming. In its efforts to collect on the judgment, Universitas sought to garnish a $6.7 million insurance portfolio held by SDM Holdings, which Avon owns, located in Oklahoma. Universitas claimed the portfolio was the fruit of stolen funds and that Avon and its sister subsidiaries were shell companies of the primary defendant.

After registering the judgment in Oklahoma, Universitas sought summary judgment on its entitlement to the funds. The district court entered summary judgment for Universitas and authorized a receivership over Avon and SDM. Avon and SDM appealed, claiming a myriad of procedural defects and disputes on the merits. On appeal, however, this court vacated the summary judgment order on mootness grounds, without discussing the merits of summary judgment. We determined that the district court could not rely on the registered judgment because its five-year effective term expired before the district court had entered its order. *Universitas Educ. LLC v. Avon Cap. LLC* (*Universitas I*), No. 21-6044, 2023 WL 5005654 (10th Cir. Aug. 4, 2023) (unpublished). We remanded for further proceedings.

This appeal is about the district court's jurisdiction and its orders upon remand. After Universitas re-registered the New York judgment, but before the first

appeal was concluded, the district court re-entered summary judgment in its favor, and reauthorized the receivership over Avon and SDM. Avon and SDM challenge that ruling, claiming the district court lost jurisdiction over the claims and that Universitas did not properly revive them as required by Oklahoma law. They claim that the district court's only option was to dismiss the suit and that Universitas was required to file a new lawsuit and re-register the New York judgment.

We affirm. The district court retained jurisdiction during the appeal to preserve the status quo, including the exercise of equitable powers over Avon and SDM. The district court properly re-affirmed its summary judgment and receivership orders after it received our mandate,[1] correctly concluding that Universitas did not need to file a new cause of action.

I. Background

Daniel Carpenter devised and carried out an insurance fraud scheme that, among other wrongdoing, defrauded Universitas of thirty million dollars in life insurance proceeds. Mr. Carpenter's scheme involved acquiring third-party life insurance policies from unsuspecting beneficiaries with the promise to hold them in trust, but withholding the benefits when they became due, and laundering the money through a vast web of interconnected shell companies. This fraud was

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[1] A mandate is both a superior court's instructions to a lower court and a jurisdictional event by which jurisdiction transfers from the superior court back to the lower court. *Infra* (II)(A)(1).

uncovered, and Mr. Carpenter was convicted for his crimes.[2]

In its efforts to recover losses, Universitas filed a civil lawsuit in the Southern District of New York, naming as defendants a group of Mr. Carpenter's corporate entities. One of those entities was Avon Capital, LLC, a Connecticut company. Universitas eventually secured a judgment in that suit for $30.6 million in 2014, of which $6.7 million was against Avon Capital, LLC.

It soon became clear that Avon would be difficult to pin down. As we recounted in *Universitas I*

> Between 2006 and 2007, three Avon [Capital] LLC entities were formed: a Nevada LLC ("Avon-NV") in June 2006, a Connecticut LLC ("Avon-CT") in November 2006, and Avon-WY in May 2007. Each of these Avon entities was ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial—both of which were controlled by Daniel Carpenter.
>
> Universitas was the sole beneficiary of two life insurance policies totaling $30 million. Carpenter dispersed Universitas's $30 million

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[2] Since then, cases involving Mr. Carpenter, his fraudulent activities, and attempts to collect on debts against him have littered the pages of federal reporters. *E.g. Universitas Educ. LLC v. Grist Mill Cap'l LLC*, No. 21-2690, 2023 WL 2170669 (2d Cir. Feb. 23, 2023), *cert. denied*, 114 S. Ct. 184 (2023); *United States v. Bursey*, 801 F. App'x 1 (2d Cir. 2020); *United States v. Carpenter*, 941 F.3d 1 (1st Cir. 2019); *Universitas Educ., LLC v. Nova Grp., Inc.*, 784 F.3d 99 (2d Cir. 2015); *United States v. Carpenter*, 494 F.3d 13 (1st Cir. 2007).

> in life insurance policies among his shell entities via a complex series of transactions. One of these transactions was a $6,710,065.92 transfer from Grist Mill Capital, a shell entity controlled by Carpenter, to Avon-NV's TD Bank account. Although Avon-NV's tax identification number was used to open the TD Bank account, Avon-CT was the entity involved with the . . . transactions.
>
> Meanwhile, Avon-WY acquired a one hundred percent membership interest in SDM. The payments for the acquisition were made from Avon-NV's TD Bank account on behalf of Avon-WY. Although Avon-WY was administratively dissolved for failure to maintain a registered agent during the transactions, Avon-WY was the signatory on the SDM purchase agreement.

2023 WL 5005654, at *2 (internal quotation marks omitted).

Universitas registered the New York judgment in the Western District of Oklahoma on November 7, 2014. It sought to garnish the benefits of Avon and SDM's life insurance portfolio. Avon-WY intervened, arguing that it was not the Avon Capital LLC identified by the New York Judgment. The parties disputed whether the various Avon entities were distinct corporations, or mere alter egos of each other.

The district court referred cross-motions for summary judgment, along with follow-on evidentiary motions, to the magistrate judge, who issued a 73-page Report and Recommendation finding that the entities were "one and the same for purposes of their

liability to Universitas." App., Vol. 8 at 1800. The magistrate judge also determined that, because Avon-WY fraudulently acquired the SDM insurance portfolio using stolen funds (provided by Avon-NV), the insurance portfolio was subject to garnishment.

The district court reviewed the magistrate judge's recommendations and agreed with all of them, granting summary judgment to Universitas over the objections of Avon and SDM. App., Vol. 8 at 1931. The district court traced the fraudulently transferred funds to Avon-WY's acquisition of SDM Holdings life insurance portfolio and pierced Avon-WY's corporate veil to allow Universitas to execute the judgment against the insurance portfolio. In an order issued February 11, 2021, the district court enjoined Avon-WY from transferring or disbursing any of its interests in SDM and placed it into a receivership under Oklahoma law.

The problem is under Oklahoma Statute § 12-735(B), "[a] judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date . . . [t]he last garnishment summons was issued." By the time the district court entered its order, more than five years had passed since Universitas had filed the New York judgment in Oklahoma—the judgment expired in December 2020 and the district court's order issued February 2021. The New York judgment remained valid, but Universitas did not refile it in Oklahoma before the five-year period ended.

On appeal in *Universitas I*, SDM and Avon argued that the district court lost jurisdiction when the judgment expired. We agreed, even though Universitas had refiled its judgment during the appeal, but not until *after* the district court entered summary judgment. The panel found that since Universitas had not

refiled its New York judgment before the summary judgment order was entered, under Oklahoma law the court lost the jurisdictional basis for the claims. App., Vol. 16 at 3887. The panel thus found the appeal was moot because of the jurisdictional defect and vacated the district court's orders.

On the same day as our ruling (July 13, 2023) Universitas renewed its summary judgment and receivership requests based on the *refiled* New York judgment. In the same order the court set a status conference to address the effect of the panel's opinion, but "in the interim," it "preliminarily" readopted its order enjoining Avon. *Id.* It ruled a preliminary injunction was necessary to "freeze the status of all parties and their related interests in SDM, based on the facts and circumstances previously addressed, pending the pretrial conference." *Id.* at 1892 n.1.

At the status conference on August 15, the district court made clear that although the mandate had not yet been returned to the court, it "didn't want to get in a situation where we had the status quo upset until the case was back here" and to "address some of those preliminary matters and to make sure we don't have some untoward developments simply based on actions taken in the gaps between the time that the Court can address them and when the case is returned from the circuit." App., Vol. 17 at 4220–21. After the conference, the court issued an order "effective as of the issuance of the mandate" and "subject to the reacquisition of subject matter jurisdiction," permanently readopting its vacated order, including summary judgment and injunctive relief. *Id.* at 4083–84. The district court also re-appointed the receiver in a later order.

While this was going on, Avon and SDM filed petitions for appellate rehearing in *Universitas I*. On August 4, 2023, we granted in part and denied in part the rehearing petitions and filed an amended opinion without additional briefing or argument. The amended opinion deleted language that confirmed "Universitas's refiling of the expired judgment . . . makes the judgment presently enforceable under [*Taracorp, Ltd. v. Dailey,* 419 P.3d 217 (Okla. 2018)]," and remanded to the district court to conduct "further proceedings." *Id.* The amended opinion did not change the central holding or outcome of the appeal. After we filed our amended opinion, the district court reaffirmed and reentered its previous orders "effective as of the issuance of the mandate." Avon and SDM appealed once the mandate issued and that order became final.

The sequencing of these events can be seen more clearly on a timeline:

II. Analysis

Avon and SDM raise a combined cascade of nineteen issues on appeal that can be sorted into jurisdictional arguments and merits arguments. We address jurisdictional issues first, before proceeding to the merits.

A. Jurisdiction

"A federal court is clothed with power to secure and preserve to parties the fruits and advantages of its judgment or decree." *Berman v. Denver Tramway Corp.*, 197 F.2d 946, 950 (10th Cir. 1952). And in post-judgment collection or garnishment proceedings, a district court properly possesses jurisdiction to enforce a federal judgment. *Peacock v. Thomas*, 516 U.S. 349,

356 (1996) (Ancillary jurisdiction is appropriate in "subsequent proceedings for the exercise of a federal court's inherent power to enforce its judgments."); *see also* 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3523.2 (5th ed. 2024) (Stating that ancillary jurisdiction "include[s] those acts that the federal court must take in order properly to carry out its judgment on a matter as to which it has jurisdiction.").

Federal law establishes some of the steps that a judgment creditor must take to collect in a jurisdiction different from the original action. Under 28 U.S.C. § 1963, "[a] judgment in an action for the recovery of money or property entered in any . . . district court . . . may be registered by filing a certified copy of the judgment in any other district." Once registered in a new district, the judgment "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." *Id.*

But beyond this federally authorized registration process establishing Article III jurisdiction, state procedure takes over. Under Federal Rule of Civil Procedure 69, "[t]he procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located." And Rule 69 "requires only substantial compliance with the procedural provisions of any controlling state statutes or case law." *Bartch v. Barch*, 111 F.4th 1043, 1057 (10th Cir. 2024).

Under Oklahoma law, once registered in Oklahoma a foreign judgment is enforceable for five years. Okla. Stat. § 12-735(B). But so long as the original judgment remains enforceable in its home jurisdiction (here,

New York), § 12-735 allows that judgment to be refiled, starting a new five-year period of enforceability. *Taracorp*, 419 P.3d 217. New York judgments can be registered for up to 20 years.

In sum, the district court's jurisdiction in this case was established by federal law and guided by state procedure. Yet Avon and SDM attack jurisdiction on three grounds based on *Universitas I*: (1) they question the district court's authority to issue orders *during* the prior appeal; (2) they insist the case should have been dismissed in its entirety *after* the mandate issued in *Universitas I*; and (3) they argue jurisdiction could not be *cured* under Oklahoma law by a refiled judgment.

We discuss each argument in turn and ultimately find none persuasive.

1. Jurisdiction Before the Universitas I Mandate

Avon and SDM first argue that once their notices of appeal were filed in *Universitas I*, the district court lacked jurisdiction to enter any orders until this court returned its mandate.

"[T]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Madrid*, 633 F.3d 1222, 1226 (10th Cir. 2011) (internal quotation marks omitted). Jurisdiction is not returned to the district court until the appellate court enters a mandate. A "mandate consists of our instructions to the district court at the conclusion of the opinion, and the entire

opinion that preceded those instructions." *Procter & Gamble Co. v. Haugen*, 317 F.3d 1121, 1126 (10th Cir. 2003). Once entered, the mandate rule "provides that a district court must comply strictly with the mandate rendered by the reviewing court." *Huffman v. Saul Holdings Ltd. P'ship*, 262 F.3d 1128, 1132 (10th Cir. 2001) (internal quotation marks omitted). "[A]n inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Pa. R.R. Co.*, 334 U.S. 304, 306 (1948). This includes all issues "expressly or impliedly disposed of on appeal." *Procter & Gamble Co.*, 317 F.3d at 1126 (internal quotation omitted). The transfer of jurisdiction during an appeal prevents a district court from issuing orders that might conflict with the mandate rule.

But "an effective notice of appeal does not prohibit all later action in the case by the district court." *Id.* "Undoubtedly, after appeal the trial court may, if the purposes of Justice require, preserve the status quo until decision by the appellate court." *Newton v. Consol. Gas Co.*, 258 U.S. 165, 177 (1922); *Madrid*, 633 F.3d at 1227 (citing James Wm. Moore et al., Moore's Federal Practice § 303.32(2)(b) (3d ed. 2010)).[3] The purposes include, for example, the authority to manage ongoing supervisory orders or enter or modify temporary or preliminary injunctions. *Roberts*

[3] This is not the first time this argument has appeared in a case connected to Mr. Carpenter's fraud. *See United States v. Carpenter*, 941 F.3d 1, 5–6 (1st Cir. 2019) (rejecting Mr. Carpenter's argument that the district court could not determine the amount of previously ordered forfeiture during an appeal).

v. Colo. State Bd. of Agric., 998 F.2d 824, 827 (10th Cir. 1993).

Limited residual authority to maintain the status quo during an appeal is deeply rooted in our jurisprudence. *See Hovey v. McDonald*, 109 U.S. 150, 161–62 (1883) (observing that the rules of equity permitted lower courts "to order a continuance of the status quo until a decision should be made by the appellate court"). That authority is also expressed in the Federal Rules of Procedure; allowing district courts to consider and order "suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(c); Fed. R. Civ. P. 62(c)–(d).

After the notices of appeal, but before our opinion issued, the district court continued to manage the receivership and consider motions for sanctions. Those orders are not appealed here. On appeal are the orders entered after we issued our opinion in *Universitas I*, including those entered before the mandate: one preliminarily re-adopting the vacated judgment and injunction and the other continuing that injunction "as of the issuance of the mandate." App., Vol. 17 at 4083–84.

We must consider whether those orders fall within the retained jurisdiction of the district court. While Avon and SDM argue that the lack of a returned mandate renders these orders void and unsupported by jurisdiction, the district court's first pre-mandate order was preliminary, and meant to preserve the status quo until the parties considered the ramifications of the panel's opinion. The second pre-mandate order readopted the judgment and enjoined Avon effective as of the issuance of the mandate. Those

orders fall within the confines of a district court's limited retained authority during an appeal.

First, federal rules of civil and appellate procedure permit district courts to suspend, modify, restore, or grant an injunction while an appeal is pending. *Roberts*, 998 F.2d at 827 ("Fed. R. App. P. 8(a) expressly recognizes this continuing power of a district court as it requires an application for an order 'modifying . . . an injunction during the pendency of an appeal' to be made in the first instance to the district court."). Second, district courts are permitted to enter orders meant to preserve the status quo during an appeal. *Madrid*, 633 F.3d at 1227.

The district court's orders easily fall within the first exception, as it granted or restored its injunction against Avon, an order expressly permitted by the Federal Rules. *See* Fed. R. App. P. 8(a). It did so to ensure that no financial assets in which Universitas might have an interest would be lost or transferred. Again, that is something district courts are expressly empowered to do. Fed. R. Civ. P. 62(c) (The district court may "suspend, modify, restore, or grant an injunction during the pendency of the appeal . . . as it considers proper for the security of the rights of the adverse party.").

As for the second exception, although the district court's equitable powers are not unlimited during an appeal, they can be exercised to preserve the status quo, or as part of a continuing supervisory order. That is what the orders here did. Avon and SDM ignore the context of the orders and the articulated purpose the district court included in its July 13 order:

The court references the adoption as "prelim-

> inary" so as to leave open for discussion at the pretrial conference the nature and impact of the Tenth Circuit's decision on the R&R and other actions taken in the case. In the meantime, however, it is the court's intention to freeze the status of all parties and their related interests in SDM, based on the facts and circumstances previously addressed, pending the pretrial conference.

App., Vol. 16 at 3892 n.1. The district court plainly stated that the purpose of its injunction was to preserve the relative positions of the parties until the results of the appeal could be determined and effected. This order was within the bounds of jurisdiction retained on appeal.

2. Jurisdiction After the Mandate

The district court also concluded the refiled New York judgment permitted it to readopt its orders after the mandate was issued.[4] Avon and SDM argue that because *Universitas I* found the dispute moot, the district court had no choice under the law-of-the-case doctrine but to dismiss. This contention turns on the substance of the opinion's instruction.

Under the "law of the case" doctrine, a court's legal ruling "should continue to govern the same issues in subsequent stages in the same case." *Arizona v.*

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[4] There was no need to treat the appealed order as vacated until the mandate returned from the Tenth Circuit. As shown by the changes in the amended opinion, the effects of an appellate opinion are not finalized until a mandate issues. So Avon and SDM's motions to dismiss for lack of jurisdiction, filed before the mandate issued, were premature as well as meritless.

California, 460 U.S. 605, 618 (1983). "[W]hen a case is appealed and remanded, the decision of the appellate court establishes the law of the case and ordinarily will be followed by both the trial court on remand and the appellate court in any subsequent appeal." *Rohrbaugh v. Celotex Corp.*, 53 F.3d 1181, 1183 (10th Cir. 1995). Under the mandate rule, the law of the case is binding on the district court once the Clerk of Court enters the mandate. *Briggs*, 334 U.S. at 306.

Because Avon and SDM argue that the district court violated our instruction, "we look for specific limitations on the district court's discretion." *United States v. Walker*, 918 F.3d 1134, 1144 (10th Cir. 2019). "[U]nless the district court's discretion is specifically cabined" by our instruction, "it may exercise discretion on what may be heard." *United States v. West*, 646 F.3d 745, 749 (10th Cir. 2011). The primary question here is whether the finding of mootness and our instruction required immediate dismissal of the case.

Typically, when an appellate court finds a case moot, it remands with instructions to dismiss the case. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 n.2 (1950) (collecting cases). But there are exceptions to that rule. *Id.* (collecting exceptions). For example, courts do not follow this typical practice if a case becomes moot because of an intervening change in law. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 482 (1990). Nor do they where a case or controversy is "capable of repetition, yet evading review." *Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *see also United States v. Seminole Nation*, 321 F.3d 939, 943 (10th Cir. 2002) (Exception arises "when: (1) the duration of the challenged action is too short to be fully litigated prior to its cessation or expiration, and (2) there is a reason-

able expectation that the same complaining party . . . [will] be subjected to the same action again." (internal quotation marks omitted)). In other circumstances, the Supreme Court has allowed parties to cure their jurisdictional deficiencies while on appeal, rather than "require the new plaintiffs to start over in the District Court," which "would entail needless waste and runs counter to effective judicial administration." *Mullaney v. Anderson*, 342 U.S. 415 (1952).

None of these cases is a direct analogue to this one, where the jurisdictional defect was due to Universitas's failure to timely renew its judgment. But they demonstrate the discretion that an appellate court has in issuing instructions to the lower court. No rule in law or procedure requires that upon a finding of mootness, an appellate court *must* remand with instructions to dismiss. While that may be the typical practice, it is not an absolute requirement.

Our instruction here did not mandate dismissal. True, *Universitas I* held that "Universitas lacked a legally cognizable interest in the outcome once its judgment expired, . . . the case became moot and the district court lacked Article III jurisdiction to enter its order, rendering the order void." App., Vol. 16 at 4011. This language provides Avon and SDM their strongest argument; that Universitas lacked a personal stake in the litigation during the lapse in the judgment. They cite *Lewis* and cases applying it for the proposition that mootness which deprives plaintiffs of a personal stake in the litigation must also result in dismissal. *See, e.g.*, *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (citing *Lewis*, 494 U.S. at 477–78). But "the Supreme Court's cases are less than clear as to whether and how a jurisdictional defect can be remedied in the

course of litigation." *Schreiber Foods, Inc. v. Beatrice Cheese, Inc.*, 402 F.3d 1198, 1203 (Fed. Cir. 2005). Many courts, including the Supreme Court in *Lewis*, have allowed that a *temporary* lapse in jurisdiction, which renders moot any orders issued during the lapse, can still be cured before the case is dismissed.[5] The thrust of Avon and SDM's argument is that the district court should have dismissed the case, forcing Universitas to file a new cause of action and refile the New York judgment.

Nothing in *Universitas I* cabined the district court's discretion on how to proceed on remand. Charting the next course was within the district court's discretion.[6] *West*, 646 F.3d at 749 ("[U]nless the dis-

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[5] *See e.g.*, *Lewis*, 494 U.S. at 482 (Vacating the judgment and remanding for further proceedings even though "the judgment below [was] vacated on the basis of an event that mooted the controversy."); *Mullaney*, 342 U.S. at 417 (Explaining that where original plaintiffs lacked standing, but substitute plaintiffs were proper, "[t]o dismiss the present petition and require the new plaintiffs to start over in the District Court would entail needless waste and runs counter to effective judicial administration."); *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 73 (1996) (holding that considerations of "finality, efficiency, and economy" overwhelmed concerns about jurisdictional defects that were cured before trial); *Mires v. United States*, 466 F.3d 1208, 1212 (10th Cir. 2006) (refusing to vacate judgment or dismiss when "representative cured the jurisdictional deficiency while his suit was pending").

[6] While the amended opinion rightfully avoided dicta about the refiled judgment, the amendment was not a repudiation of jurisdiction based on the refiling. Instead, the prior panel followed the guidance of *Munsingwear*, by "clear[ing] the path for future relitigation of the issues between the parties and eliminat[ing] a judgment, review of which was prevented through happenstance." 340 U.S. at 40. The amended opinion ultimately left the district court with wider discretion to direct the proceedings than the

trict court's discretion is specifically cabined, it may exercise discretion on what may be heard."). At bottom, the prior panel *did not* mandate that the case be dismissed. *See Walker*, 918 F.3d at 1144 ("In interpreting the scope of a previous mandate, we look for specific limitations on the district court's discretion."). Without such an instruction, the district court was within its discretion to consider the refiled judgment and did not violate the law of the case by declining to immediately dismiss the case.

Recall, however, that foreign-judgment proceedings are governed by both federal and state law. Having determined the former did not require dismissal, we turn to the latter. Oklahoma law establishes that refiling a foreign judgment permits the district court to exercise continuing jurisdiction. As we explained in *Universitas I*, Oklahoma courts permit creditors to refile and collect on expired judgments, so long as the original judgment remains enforceable in its state of origin. *Universitas I*, 2023 WL 5005654, at *3 (citing *Taracorp*, 419 P.3d at 218–23; Okla. Stat. § 12-735).

Avon and SDM argue this case is distinguishable from Oklahoma precedent, because Universitas refiled its judgment in the *same* case, rather than refiling the judgment in a new cause of action. They rely on *Yorkshire W. Cap., Inc. v. Rodman*, when the Oklahoma Court of Appeals found an expired judgment could be valid and enforceable after it was "properly filed [] a second time in Oklahoma *under a new case number*." 149 P.3d 1088, 1093 (Okla. Civ. App. 2006) (emphasis added). But nothing suggests that a "new case number"

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original opinion—including rejecting or accepting the refiled the judgment.

is a jurisdictional requirement. When the Oklahoma Supreme Court later addressed the issue in *Taracorp*, it never mentioned any "new case" requirement. 419 P.3d at 218–23.

Even if *Taracorp* had adopted such a requirement, it would still be distinguished by the practical differences between those cases and this one. Both *Yorkshire West Capital* and *Taracorp* involved judgments that had been expired for years, without any active litigation.[7] Universitas was still diligently pursuing its judgment when it expired, and the time between expiration and refiling was much shorter. Nor can Avon and SDM give any reason why this *should* be the rule based on Oklahoma's governing statutory language. *See* Okla. Stat. § 12-735(B).

And even if a new case number might be required under Oklahoma law, "[t]he procedure on execution" under Rule 69, "requires only substantial compliance with the procedural provisions of any controlling state

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[7] We don't agree with Avon and SDM's reading of *Universitas I* as foreclosing this analysis. That panel held "[b]ecause the refiling of the judgment in *Taracorp* was a critical component of the Oklahoma Supreme Court's analysis, we cannot extrapolate its holding to encompass this case without further instruction from the Oklahoma Supreme Court." 2023 WL 5005654, at *4. *Taracorp* could not be properly applied to that appeal because, when Avon and SDM filed their appeal, Universitas had not refiled its judgment. The preceding sentence in *Universitas I* confirms this reading: "neither *Taracorp* nor any of the cases it cites involves an attempt to do what Universitas seeks to do here—enforce a judgment that had previously been filed and expired in a particular state *without re-filing* said judgment in the same state." *Id.* (emphasis added). Universitas no longer seeks to enforce its judgment *without re-filing* said judgment, so *Taracorp* now applies.

statutes or case law." *Bartch*, 111 F.4th at 1057.[8] "Substantial compliance" tolerates some deviation from legal technicalities. *Id.* (Rule 69(a) "is 'not meant to put the judge into a procedural straitjacket' and requires only compliance 'with the spirit of the Rules.'" (quoting *Thomas, Head & Greisen Emps. Tr. v. Buster*, 95 F.3d 1449, 1452 (9th Cir. 1996))). Without a clear requirement from Oklahoma law that refiling must occur via a new suit once the original has expired, Universitas's refiling complies with Rule 69.[9] It was therefore proper for the district court to conclude that the refiled judgment resurrected jurisdiction in this case.

With jurisdictional arguments satisfied, we turn to the merits arguments, and find them to be unpersuasive.

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[8] We have not previously held in a published case that Rule 69(a), or its relaxed substantial-compliance standard, applies to the revival of judgments. We have applied Rule 69(a) to post-judgment collection efforts, but not to revival of judgments specifically. *See Bartch*, 111 F.4th at 1057. But two of our unpublished cases have applied the rule in this context. *Sec. Inv. Prot. Corp. v. Institutional Sec. of Colorado, Inc.*, 37 F. App'x 423, 425 (10th Cir. 2002) ("Authority to revive a federal court judgment is provided by Fed. R. Civ. P. 69(a)."); *McCarthy v. Johnson,* 172 F.3d 63, at *1 (10th Cir. 1999) (unpublished).

[9] That Universitas also filed a new case to be safe does not influence our decision. *See* App., Vol. 17 at 4225. That case is administratively closed.

B. Merits

1. Motions to Strike and for Additional Discovery

Avon and SDM attack two declarations by Universitas's counsel, Mr. Chernow, attached to briefing on summary judgment. The declarations supported the admissibility of documents and filings from previous litigation against Mr. Carpenter. Avon and SDM filed two motions to strike the declarations, or, in the alternative, they requested permission to depose Mr. Chernow.

The district court denied these motions to strike. Evidentiary rulings by the district court at the summary judgment stage are reviewed for abuse of discretion. *Argo v. Blue Cross & Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006). In this deferential posture, there are no grounds to overturn those decisions.

Federal Rule of Civil Procedure 56(e) governs the admissibility of affidavits at the summary judgment stage:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers . . . referred to in an affidavit shall be attached thereto or served therewith.

We have reduced that rule to two requirements: "(1) the *content* of summary judgment evidence must be generally admissible and (2) if that evidence is

presented in the form of an affidavit, the Rules of Civil Procedure specifically require a certain type of admissibility, *i.e.*, the evidence must be based on personal knowledge." *Bryant v. Farmers Ins. Exch.*, 432 F.3d 1114, 1122 (10th Cir. 2005) (emphasis added).

The Chernow Declarations contained a list of exhibits from prior proceedings. Mr. Chernow, an associate at a law firm which represented Universitas, reviewed the exhibits, and so he knew what they contained, but was not "witness" to them. The declarations summarized and authenticated each exhibit. The magistrate judge declined to strike the Chernow Declarations in total and deferred to the district judge's judgment on striking any specific portions found inadmissible. When adopting the magistrate judge's report and recommendation, the district judge made no specific mention of the declarations or the motions to strike.

Avon and SDM argue the Chernow Declarations were inadmissible since they were not based on personal knowledge. Universitas responds that Mr. Chernow's review of the documents was enough to establish personal knowledge, that the content of the documents was admissible even if it were not admissible in this form or from this witness, and that any improperly admitted statements were harmless error.

Bryant vindicates Universitas's first two arguments. In that case, we allowed the declaration of an accountant who reviewed the results of 103 audits she did not personally conduct because her *review* established her personal knowledge. The contents of the audits were admissible. We also agree with Universitas that even assuming the declarations were inadmissible, any reliance on improper statements would have

been harmless error. Avon and SDM point to arguments that Universitas made relying on the Chernow Declarations but do not identify any point at which either the magistrate judge or the district judge relied on their supposedly inadmissible contents. Under these circumstances, it was not an abuse of discretion to deny the motions to strike.

The alternative request, to stay the summary judgment proceedings to depose Mr. Chernow, is also flawed. That request was made in a fleeting passage of the motions to strike. But Rule 56(d) allows district courts to defer consideration of summary judgment and allow time for a party to take discovery only "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Neither Avon nor SDM showed "by affidavit or declaration," that deposing Mr. Chernow would reveal otherwise unavailable facts necessary to justify their opposition to summary judgment. *Id.* This failure to satisfy Rule 56 means the district court did not abuse its discretion. *See Price ex rel. Price v. W. Res., Inc.*, 232 F.3d 779, 783 (10th Cir. 2000).

2. Summary Judgment

Avon and SDM next contend the district court should have granted summary judgment in their favor and denied Universitas's motion for summary judgment. Avon and SDM's arguments diverge here. On the one hand, Avon moved for summary judgment because Universitas never served it with a formal complaint alleging an alter-ego/veil-piercing action. It insists that formal allegation is required in the pleadings as a measure of due process. On the other hand, SDM claims it was never properly served, and that it

did not possess property owed to Avon as a judgment debtor. Both Avon and SDM agree on one thing: it was error for the district court to judicially notice certain facts from prior cases in denying their motions.

As discussed above, "[t]he procedure on execution —and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located." Fed. R. Civ. P. 69. At least two Oklahoma courts have allowed post-judgment proceedings to pierce the corporate veil against alter egos even when alter ego/veil piercing did not appear in the complaint. *See Mattingly Law Firm, P.C. v. Henson*, 466 P.3d 590, 597 (Okla. App. 2019); *Sproles v. Gulfcor, Inc.*, 987 P.2d 454, 457 (Okla. App. 1999).

Avon claims due process requires veil-piercing be alleged in a complaint. But a proceeding that involves notice, an adversarial hearing, an opportunity to cross-examine witnesses, representation by counsel, and appellate review is more than sufficient for federal due process. *See Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 484 (1982). Avon received the process it was due. Setting aside the fact that it intervened after receiving notice, the only cases cited to support Avon's position reject its argument as "much too broad a reading." *Nikols v. Chesnoff*, 435 F.App'x 766, 771 (10th Cir. 2011) (explaining that under Utah law, not all post-judgment proceedings require a new complaint); *Sproles*, 987 P.2d at 457 ("The trial court erred in denying Plaintiff Sproles' motion to execute judgment [and pierce the corporate veil] on the ground that the shareholders' liability must be pursued in a separate suit."). Under Oklahoma law, which controls here, post-judgment collections and veil piercing may pro-

ceed without filing a new complaint. *See Mattingly Law Firm, P.C.*, 466 P.3d at 597; *Sproles*, 987 P.2d at 457.

SDM's arguments also gloss over the less stringent, "substantial compliance" requirement of Rule 69. *Bartch*, 111 F.4th at 1057. Trivial omissions like a failure to attach a request and claim for exemptions, or the failure to use certified mail, are the exact type of technicalities that may be overlooked in the face of substantial compliance. SDM received adequate notice, including a subpoena, writ of general execution, and a garnishment summons—all of which should have alerted it to a potential veil piercing action. [App., Vol. 18 at 4264.] SDM's argument that Universitas abandoned or satisfied the garnishment rests on strained and illogical readings of orders earlier in proceedings which said nothing of the sort. And its argument that it owes no garnishable assets to Avon hinges on a self-serving affidavit that discusses Avon-CT and Avon-NV, but not Avon-WY.

The judicial notice arguments are also meritless. The district court took judicial notice of facts and rulings from prior proceedings. In defense of that decision, Universitas argues Avon was in privity with the parties in those cases, and the facts the court noticed were adjudicative facts, so notice was proper and fair to Avon and SDM. *See St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins.*, 605 F.2d 1169, 1172 (10th Cir. 1979). But the panel need not reach these arguments because Avon and SDM did not preserve their challenge to the judicial notice.

Avon and SDM failed to object to any judicially noticed facts before the district court, so the argument is at least forfeited. *United States v. Carrasco-Salazar*,

494 F.3d 1270, 1272 (10th Cir. 2007) (arguments not raised before the district court are forfeited on appeal). In fact, they actively argued that the district judge should judicially notice facts from the same proceedings it now objects to. *See, e.g.*, App., Vol. 8, at 1823, n.1 (arguing "[p]ursuant to Federal Rule of Evidence 201, the Court may take judicial notice of documents filed in other actions." (quoting *United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009))). If the district court erred, it was an invited error, and errors invited by an appellant are waived on appeal. *United States v. Rodebaugh*, 798 F.3d 1281, 1304 (10th Cir. 2015) ("[I]nvited error precludes a party from arguing against a proposition the party willingly adopted.").

3. Receivership

Finally, Avon and SDM argue that the district court erred by reappointing a receiver over Avon Capital-WY and its interests in SDM Holdings. According to them, Oklahoma law only allows the court to issue a "charging order," which acts as a lien on any transferrable interest in an asset, along with a right of foreclosure against that asset. Okla. Stat. § 54-1-504(a). Separately, they also claim the district court abused its discretion by incorrectly weighing the factors for appointing a receiver.

The appointment of a receiver is reviewed for an abuse of discretion. *SEC v. Scoville*, 913 F.3d 1204, 1213 (10th Cir. 2019). If the appointment of the receiver rests on interpretation of an authorizing statute, the district court's interpretation is reviewed de novo. *Navajo Nation v. Dalley*, 896 F.3d 1196, 1206 (10th Cir. 2018).

Whether Oklahoma law permits the district court to appoint a receiver, rather than merely issue a charging order, turns on which assets that Universitas seeks to collect. Avon and SDM are both LLCs. Under Okla. Stat. § 18-2034, the typical remedy for collecting on membership interest in an LLC is a charging order.

But the charging order limitation applies only to membership interests, meaning the interest that a member of the LLC has in the LLC itself. Those interests are distinct from the LLC's own assets. *See* Okla. Stat. § 18-2032 ("A capital interest is personal property. A member has no interest in specific limited liability company property.").

Universitas is not seeking to collect against an Avon member, but against the LLC itself, by garnishing assets that are in the possession of SDM. The district court agreed, and any error in that decision does not rise to an abuse of discretion under Oklahoma law.[10]

Oklahoma law supports the appointment of receivers only when one of the six circumstances in Okla. Stat. § 12-1551(1)–(6) are met. These circumstances include: when property is shown to be in danger of being lost; to carry a judgment into effect; to dispose of or preserve property subject to a judgment

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[10] In the alternative, Universitas argues that it should be permitted to recover regardless of the statutory limitations because Avon is engaged in fraud, and the statute provides that "the rules of law and equity shall supplement" the remedies available to creditors. *Mattingly Law Firm, P.C.*, 466 P.3d at 595. Equity favors the appointment of a receiver here. *See Oklahoma Co. v. O'Neil*, 440 P.2d 978, 987 (Okla. 1968).

during an appeal; or any circumstance in which Oklahoma courts of equity have appointed receivers.

The district court did not abuse its discretion in weighing the circumstances under Okla. Stat. § 12-1551. Avon and SDM provide little analysis beyond simply disagreeing with the district court's weighing of discretionary factors.[11] Their disagreement rests on the conclusion that Avon-WY is part of a vast network of interrelated entities used to perpetrate fraud—a conclusion that is amply supported by the record and was detailed in the magistrate judge's recommendation. That conclusion naturally led the district court to find that the indebted property was in danger of being lost, removed, or materially injured, that the receivership would assist in the execution of judgment. And prior courts of equity authorized receiverships in similar situations. *See Oklahoma Co. v. O'Neil*, 440 P.2d 978, 987 (Okla. 1968); *Anglo-Am. Royalties Corp. v. Brentall*, 29 P.2d 120, 121 (Okla. 1934).

The district court did not abuse its discretion.

III. Conclusion

It is worth pausing to reflect on this case's broader context: In 2008, Mr. Carpenter stole $30 million worth of life insurance proceeds that were meant for

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[11] Avon and SDM failed to raise these disagreements when the district court reappointed the receiver. And arguments waived in the district court must show plain error to succeed on appeal. *In Re Rumsey Land Co.*, 944 F.3d 1259, 1271 (10th Cir. 2019). But Avon and SDM challenged the district court's weighing of the circumstances when the court first imposed a receiver, prior to *Universitas I*. *See* App., Vol. 10 at 2438–51. *Universitas I* did not reach that argument. Given the circumstances, we find it proper to address it now.

Universitas. Universitas received its arbitration judgment against Mr. Carpenter and his entities, including Avon, in 2012. That judgment is valid for twenty years. Mr. Carpenter has been tried and convicted for his fraudulent business activities—twice. *See generally, United States v. Carpenter*, 405 F. Supp. 2d 85 (D. Mass. Dec. 15, 2005); *United States v. Carpenter*, 190 F. Supp. 3d 260, 274 (D. Conn. June 6, 2016). He has been sentenced and even fully served out those sentences in the years since Universitas first received its judgment. While Mr. Carpenter's debt to society may have been repaid, his entities' debts to Universitas certainly have not.

The district court's orders are **AFFIRMED**.

ORDER AND JUDGMENT, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT (AUGUST 4, 2023)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor -Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

and

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor.

No. 21-6044
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC,

Respondents/Garnishees,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 21-6049
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP,

Respondents/Garnishees,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 21-6133
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

Respondents/Garnishees.

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 21-6134
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

Before: EID, BALDOCK, and CARSON,
Circuit Judges.

ORDER AND JUDGMENT*

Appellee Universitas Education, LLC ("Universitas") seeks to enforce a judgment obtained in New York against Appellant Avon Capital, LLC ("Avon"), and its subsidiary, Appellant SDM Holdings, LLC ("SDM"), in the Western District of Oklahoma. Universitas alleges that it was unable to recover the full judgment amount from Avon in New York, so it seeks to pierce Avon's corporate veil and collect a garnishment from SDM, an Oklahoma LLC that nominally holds legal title to one of Avon's potential assets, an insurance portfolio.

The district court adopted the magistrate judge's ("MJ") Report and Recommendation finding that Avon's Wyoming-based LLC ("Avon-WY") had fraudulently acquired the SDM insurance portfolio using stolen funds, as well as the MJ's conclusion that the insurance portfolio was subject to garnishment because it was beneficially owned by Avon-WY. The district court then granted Universitas summary judgment and placed Avon-WY into a receivership pursuant to Oklahoma Statute ("O.S.") § 12-1551.

Avon-WY and SDM appealed to this Court, and their appeals were consolidated on April 27, 2021. We vacate the district court's February 11, 2021 order for lack of jurisdiction; we find the underlying dispute was moot at the time of decision due to the expiration of Universitas's Western District of Oklahoma judg-

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

ment. We remand the case to the district court to conduct further proceedings.

I.

Between 2006 and 2007, three Avon LLC entities were formed: a Nevada LLC ("Avon-NV") in June 2006, a Connecticut LLC ("Avon-CT") in November 2006, and Avon-WY in May 2007. Each of these Avon entities was ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial—both of which were controlled by Daniel Carpenter.

Universitas was the sole beneficiary of two life insurance policies totaling $30 million. Carpenter dispersed Universitas's $30 million in life insurance policies among his shell entities via a complex series of transactions. One of these transactions was a $6,710,065.92 transfer from Grist Mill Capital, a shell entity controlled by Carpenter, to Avon-NV's TD Bank account. Although Avon-NV's tax identification number was used to open the TD Bank account, "Avon-CT was the entity involved with the . . . transactions." Aplt. App'x Vol. X at 1743.

Meanwhile, Avon-WY acquired a one hundred percent membership interest in SDM. The payments for the acquisition were made from Avon-NV's TD Bank account on behalf of Avon-WY. Although Avon-WY was administratively dissolved for failure to maintain a registered agent during the transactions, Avon-WY was the signatory on the SDM purchase agreement.[1]

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[1] Avon-WY was later reinstated.

When Universitas's benefits came due, its claim to the benefits was denied by the insurer. Universitas obtained a favorable award in arbitration. Although the plan trustee sought to vacate the award in the U.S. District Court for the Southern District of New York, the award was confirmed on August 15, 2014. The Southern District of New York found that Carpenter fraudulently transferred the $30 million in life insurance policies to hundreds of shell entities under his control. Avon was one of these entities. Thus, the Southern District of New York entered judgment for Universitas in the amount of $30,181,880.30. $6,710,065.92 of the judgment was against Avon.

Of Universitas's $6,710,065.92 judgment against Avon, it alleges that it was only able to recover $6 million in funds. Universitas filed the New York judgment in the Western District of Oklahoma on November 7, 2014.[2] The Western District of Oklahoma traced the fraudulently transferred funds to Avon-WY's acquisition of SDM's life insurance portfolio and pierced Avon-WY's corporate veil to allow Universitas to execute the judgment against the insurance portfolio. Universitas then attempted to collect a garnishment from SDM.

The parties disputed whether Avon-NV and Avon-WY were alter egos of Avon-CT, the named debtor in the New York judgment. The district court referred the matter to the MJ, who issued a Report and Recommendation finding that the entities were "one and the same for purposes of their liability to Universitas." *Id.* at 1794. The MJ also determined

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[2] This Order and Judgment uses the terms "register" and "file" interchangeably.

that, because Avon-WY fraudulently acquired the SDM insurance portfolio using stolen funds, the insurance portfolio was subject to garnishment. The district court reviewed the MJ's recommendations de novo and agreed with all of them, granting summary judgment to Universitas on February 11, 2021. The district court subsequently placed Avon-WY into a receivership pursuant to O.S. § 12-1551.

SDM filed a motion to alter the judgment, relying on O.S. § 12-735(B), which states, "[a] judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date . . . [t]he last garnishment summons was issued." The district court denied SDM's motion and upheld the judgment in an order dated April 8, 2021. Avon-WY and SDM appealed to this Court; their appeals were consolidated by the Court on April 27, 2021. Universitas alleges that it re-filed the New York judgment in the Western District of Oklahoma on December 9, 2021. Aple. Supp. App'x Vol. I at 32; Oral Argument, No. 21-6044, at 16:54–17:00 (Sept. 27, 2022).

II.

a.

28 U.S.C. § 1963 instructs the following regarding registration of judgments for enforcement in other districts:

> A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with

> respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

Additionally, Federal Rule of Civil Procedure ("F.R.C.P.") 69(a)(1) states:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

This indicates that the statute of limitations period for a judgment is based on the law of the state where the judgment is filed, not the limitations period of the state where the federal district court that issued the judgment is located. As Universitas is attempting to enforce the judgment in Oklahoma, we must apply Oklahoma law on the registration of judgments.

O.S. § 12-735(B) states the following regarding judgments registered in the state:

> A judgment shall become unenforceable and of no effect if more than five (5) years have

passed from the date of:

1. The last execution on the judgment was filed with the county clerk;
2. The last notice of renewal of judgment was filed with the court clerk;
3. The last garnishment summons was issued; or
4. The sending of a certified copy of a notice of income assignment to a payor of the judgment debtor.

The Oklahoma Supreme Court held in *Taracorp, Ltd. v. Dailey*, 419 P.3d 217 (Okla. 2018), that "when a judgment creditor seeks to enforce a Colorado judgment a second time in Oklahoma, after Oklahoma's limitation period has lapsed on the original judgment, the underlying original Colorado judgment which is enforceable for twenty years may be enforced in Oklahoma." *Id.* at 218. In *Taracorp*, the plaintiffs received a default judgment from the Colorado District Court in 2007 and filed it in Oklahoma District Court three days later. *See id.* at 218–19. Nine years lapsed before they re-filed the judgment in Oklahoma. *See id.* at 219. The defendant filed a Motion to Quash, arguing that it had been more than five years since the Colorado judgment was entered, in violation of § 12-735(B). *See id.* The Oklahoma Supreme Court concluded that "[a]lthough the Act does not address re-filing of sister-state judgments, a judgment creditor may enforce a domesticated judgment in Oklahoma. Enforcement may be done, even if Oklahoma's limitation period for enforcement of judgments has run on the original domesticated foreign judgment." *Id.* at 223.

b.

The MJ and the district court found that Universitas was entitled to enforce the judgment in Oklahoma under 28 U.S.C. § 1963. But they incorrectly failed to consider Oklahoma state procedural rules on the subject, as required by F.R.C.P. 69(a). Under O.S. § 12-735(B), a judgment becomes unenforceable after five years unless one of the subsequent actions specified in the statute is taken. Universitas's last relevant act was the issuance of a writ of garnishment to SDM on December 3, 2015. This means that Universitas's Oklahoma judgment expired five years later, on December 3, 2020. Contrary to the district court's statement in its order denying SDM's motions to alter and amend the judgment, Universitas's active attempts to enforce the judgment in Oklahoma were insufficient to render the judgment enforceable under § 12-735(B). There is no specified exception for active attempts at enforcement anywhere in the text of § 12-735(B), and this Court declines to read one in.[3]

Universitas cites *Taracorp* for the proposition that it may enforce the judgment in Oklahoma anyway because the judgment has not yet expired in New York. However, the critical distinction between *Taracorp*

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[3] Universitas invokes *Wishon v. Sanders*, 467 P.3d 721 (Okla. Civ. App. 2020), to argue that "active attempts at enforcement[] of a judgment" are sufficient to satisfy the requirements of § 12-735(B). *Id.* at 724. However, the next sentence of the opinion specifies that "[a] party must execute on his judgment, obtain a garnishment summons, send a certified copy of an income assignment, or file a renewal of judgment within five years of the judgment." *Id.* This explanation makes clear that the *Wishon* court intended to limit "active attempts at enforcement" to one of the four methods specified in § 12-735(B).

and this case is that in *Taracorp*, the expired judgment was re-filed in Oklahoma prior to the attempt at enforcement. *See Taracorp*, 419 P.3d at 218 ("We retained this cause to address the dispositive issue of whether a Colorado judgment, which is enforceable in Colorado for twenty years after the judgment is entered, is also enforceable in Oklahoma when the first attempt is abandoned and it is *re-filed* after Oklahoma's five year limitation period lapsed." (emphasis added)). The *Taracorp* court explained that "[t]he filing of a foreign judgment creates a new local judgment which is governed by the local statute of limitations." *Id.* at 221. This language suggests that even though the Oklahoma Supreme Court permitted Taracorp to enforce its expired judgment after it had been re-filed, the court would not have allowed Taracorp to enforce its expired judgment without first utilizing one of the four methods specified in O.S. § 12-735(B). Moreover, neither *Taracorp* nor any of the cases it cites involves an attempt to do what Universitas seeks to do here—enforce a judgment that had previously been filed and expired in a particular state without re-filing said judgment in the same state. Because the re-filing of the judgment in *Taracorp* was a critical component of the Oklahoma Supreme Court's analysis, we cannot extrapolate its holding to encompass this case without further instruction from the Oklahoma Supreme Court.

The district court attempted to circumvent Universitas's failure to re-file by stating that:

> [T]o the extent that plaintiff wishes to refile its judgment as a protective matter and views leave of court as necessary to do so, leave is granted. . . . In the event of such re-

> refiling, all prior orders of this court addressing the substantive issues in this case will be deemed re-entered *instanter* as to the renewed filing.

Aplt. App'x Vol. XI at 2098–99. However, this blanket statement claiming that the order would extend to Universitas's potential future re-filing rendered the district court's judgment a legally impermissible advisory order. Though the district court initially had jurisdiction over this case, Universitas did not re-file its expired judgment before the district court entered its February 11, 2021 order. For the reasons explained above, that failure to re-file was fatal—there was no longer a judgment in existence for the district court to enforce at the time it entered the order. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). As the issue in this case was no longer live and Universitas lacked a legally cognizable interest in the outcome once its judgment expired in December 2020, the case became moot and the district court lacked Article III jurisdiction to enter its order, rendering the order void.[4]

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[4] This Court is obligated to consider questions of Article III jurisdiction sua sponte. *See Tandy v. City of Wichita*, 380 F.3d 1277, 1290 n.15 (10th Cir. 2004) ("[T]his court has an affirmative obligation to consider th[e] question [of Article III mootness] sua sponte."); *see also Frias v. Chris the Crazy Trader, Inc.*, 604 F. App'x 638, 641 (10th Cir. 2015) (unpublished) (" We are obligated to raise and resolve [] questions of Article III jurisdiction sua sponte."). Thus, it is of no consequence whether Universitas is

We therefore vacate the district court's February 11, 2021 judgment because the district court did not have jurisdiction to enter its order.[5] And we remand the case to the district court to conduct further proceedings.

III.

For the foregoing reasons, we find that Universitas's expired judgment was unenforceable and the case was moot at the time the district court entered its order. Thus, we VACATE the district court's February 11, 2021 order for lack of jurisdiction due to mootness and REMAND the case to the district court to conduct further proceedings.

Entered for the Court

/s/ Allison H. Eid
Circuit Judge

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correct that SDM lacks standing to appeal the district court's judgment on jurisdictional grounds.

[5] For this reason, we also DENY SDM's March 17, 2022 Motion for Leave to File a Second Supplemental Appendix as moot.

ORDER AND JUDGMENT, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT (JULY 13, 2023)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor -Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

and

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor.

No. 21-6044
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC,

Respondents/Garnishees,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 21-6049
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP,

Respondents/Garnishees,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 21-6133
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

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AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

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ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

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No. 21-6134
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Respondent/Garnishee - Appellant,

and

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor.

No. 22-6038
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

Before: EID, BALDOCK, and CARSON,
Circuit Judges.

ORDER AND JUDGMENT*

Appellee Universitas Education, LLC ("Universitas") seeks to enforce a judgment obtained in New York

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

against Appellant Avon Capital, LLC ("Avon"), and its subsidiary, Appellant SDM Holdings, LLC ("SDM"), in the Western District of Oklahoma. Universitas alleges that it was unable to recover the full judgment amount from Avon in New York, so it seeks to pierce Avon's corporate veil and collect a garnishment from SDM, an Oklahoma LLC that nominally holds legal title to one of Avon's potential assets, an insurance portfolio.

The district court adopted the magistrate judge's ("MJ") Report and Recommendation finding that Avon's Wyoming-based LLC ("Avon-WY") had fraudulently acquired the SDM insurance portfolio using stolen funds, as well as the MJ's conclusion that the insurance portfolio was subject to garnishment because it was beneficially owned by Avon-WY. The district court then granted Universitas summary judgment and placed Avon-WY into a receivership pursuant to Oklahoma Statute ("O.S.") § 12-1551.

Avon-WY and SDM appealed to this Court, and their appeals were consolidated on April 27, 2021. We vacate the district court's February 11, 2021 order for lack of jurisdiction; we find the underlying dispute was moot at the time of decision due to the expiration of Universitas's Western District of Oklahoma judgment. However, we remand the case to the district court to conduct further proceedings, now that Universitas has re-filed the judgment in the Western District of Oklahoma.

I.

Between 2006 and 2007, three Avon LLC entities were formed: a Nevada LLC ("Avon-NV") in June 2006, a Connecticut LLC ("Avon-CT") in November 2006, and Avon-WY in May 2007. Each of these Avon entities

was ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial—both of which were controlled by Daniel Carpenter.

Universitas was the sole beneficiary of two life insurance policies totaling $30 million. Carpenter dispersed Universitas's $30 million in life insurance policies among his shell entities via a complex series of transactions. One of these transactions was a $6,710,065.92 transfer from Grist Mill Capital, a shell entity controlled by Carpenter, to Avon-NV's TD Bank account. Although Avon-NV's tax identification number was used to open the TD Bank account, "Avon-CT was the entity involved with the . . . transactions." Aplt. App'x Vol. X at 1743.

Meanwhile, Avon-WY acquired a one hundred percent membership interest in SDM. The payments for the acquisition were made from Avon-NV's TD Bank account on behalf of Avon-WY. Although Avon-WY was administratively dissolved for failure to maintain a registered agent during the transactions, Avon-WY was the signatory on the SDM purchase agreement.[1]

When Universitas's benefits came due, its claim to the benefits was denied by the insurer. Universitas obtained a favorable award in arbitration. Although the plan trustee sought to vacate the award in the U.S. District Court for the Southern District of New York, the award was confirmed on August 15, 2014. The Southern District of New York found that Carpenter fraudulently transferred the $30 million in life insurance policies to hundreds of shell entities

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[1] Avon-WY was later reinstated.

under his control. Avon was one of these entities. Thus, the Southern District of New York entered judgment for Universitas in the amount of $30,181,880.30. $6,710,065.92 of the judgment was against Avon.

Of Universitas's $6,710,065.92 judgment against Avon, it alleges that it was only able to recover $6 million in funds. Universitas filed the New York judgment in the Western District of Oklahoma on November 7, 2014.[2] The Western District of Oklahoma traced the fraudulently transferred funds to Avon-WY's acquisition of SDM's life insurance portfolio and pierced Avon-WY's corporate veil to allow Universitas to execute the judgment against the insurance portfolio. Universitas then attempted to collect a garnishment from SDM.

The parties disputed whether Avon-NV and Avon-WY were alter egos of Avon-CT, the named debtor in the New York judgment. The district court referred the matter to the MJ, who issued a Report and Recommendation finding that the entities were "one and the same for purposes of their liability to Universitas." *Id.* at 1794. The MJ also determined that, because Avon-WY fraudulently acquired the SDM insurance portfolio using stolen funds, the insurance portfolio was subject to garnishment. The district court reviewed the MJ's recommendations de novo and agreed with all of them, granting summary judgment to Universitas on February 11, 2021. The district court subsequently placed Avon-WY into a receivership pursuant to O.S. § 12-1551.

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[2] This Order and Judgment uses the terms "register" and "file" interchangeably.

SDM filed a motion to alter the judgment, relying on O.S. § 12-735(B), which states, "[a] judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date . . . [t]he last garnishment summons was issued." The district court denied SDM's motion and upheld the judgment in an order dated April 8, 2021. Avon-WY and SDM appealed to this Court; their appeals were consolidated by the Court on April 27, 2021. Universitas re-filed the New York judgment in the Western District of Oklahoma on December 9, 2021. Aple. Supp. App'x Vol. I at 32; Oral Argument, No. 21-6044, at 16:54–17:00 (Sept. 27, 2022).

II.

a.

28 U.S.C. § 1963 instructs the following regarding registration of judgments for enforcement in other districts:

> A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment

> so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

Additionally, Federal Rule of Civil Procedure ("F.R.C.P.") 69(a)(1) states:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

This indicates that the statute of limitations period for a judgment is based on the law of the state where the judgment is filed, not the limitations period of the state where the federal district court that issued the judgment is located. As Universitas is attempting to enforce the judgment in Oklahoma, we must apply Oklahoma law on the registration of judgments.

O.S. § 12-735(B) states the following regarding judgments registered in the state:

> A judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date of:
>
> 1. The last execution on the judgment was filed with the county clerk;
> 2. The last notice of renewal of judgment was filed with the court clerk;

3. The last garnishment summons was issued; or

4. The sending of a certified copy of a notice of income assignment to a payor of the judgment debtor.

The Oklahoma Supreme Court held in *Taracorp, Ltd. v. Dailey*, 419 P.3d 217 (Okla. 2018), that "when a judgment creditor seeks to enforce a Colorado judgment a second time in Oklahoma, after Oklahoma's limitation period has lapsed on the original judgment, the underlying original Colorado judgment which is enforceable for twenty years may be enforced in Oklahoma." *Id.* at 218. In *Taracorp*, the plaintiffs received a default judgment from the Colorado District Court in 2007 and filed it in Oklahoma District Court three days later. *See id.* at 218–19. Nine years lapsed before they re-filed the judgment in Oklahoma. *See id.* at 219. The defendant filed a Motion to Quash, arguing that it had been more than five years since the Colorado judgment was entered, in violation of § 12-735(B). *See id.* The Oklahoma Supreme Court concluded that "[a]lthough the Act does not address re-filing of sister-state judgments, a judgment creditor may enforce a domesticated judgment in Oklahoma. Enforcement may be done, even if Oklahoma's limitation period for enforcement of judgments has run on the original domesticated foreign judgment." *Id.* at 223.

b.

The MJ and the district court found that Universitas was entitled to enforce the judgment in Oklahoma under 28 U.S.C. § 1963. But they incorrectly failed to consider Oklahoma state procedural rules on

the subject, as required by F.R.C.P. 69(a). Under O.S. § 12-735(B), a judgment becomes unenforceable after five years unless one of the subsequent actions specified in the statute is taken. Universitas's last relevant act was the issuance of a writ of garnishment to SDM on December 3, 2015. This means that Universitas's Oklahoma judgment expired five years later, on December 3, 2020. Contrary to the district court's statement in its order denying SDM's motions to alter and amend the judgment, Universitas's active attempts to enforce the judgment in Oklahoma were insufficient to render the judgment enforceable under § 12-735(B). There is no specified exception for active attempts at enforcement anywhere in the text of § 12-735(B), and this Court declines to read one in.[3]

Universitas cites *Taracorp* for the proposition that it may enforce the judgment in Oklahoma anyway because the judgment has not yet expired in New York. However, the critical distinction between *Taracorp* and this case is that in *Taracorp*, the expired judgment was re-filed in Oklahoma prior to the attempt at enforcement. *See Taracorp*, 419 P.3d at 218 ("We retained this cause to address the dispositive issue of whether a Colorado judgment, which is enforceable in Colorado for twenty years after the judgment is

[3] Universitas invokes *Wishon v. Sanders*, 467 P.3d 721 (Okla. Civ. App. 2020), to argue that "active attempts at enforcement[] of a judgment" are sufficient to satisfy the requirements of § 12-735(B). *Id.* at 724. However, the next sentence of the opinion specifies that "[a] party must execute on his judgment, obtain a garnishment summons, send a certified copy of an income assignment, or file a renewal of judgment within five years of the judgment." *Id.* This explanation makes clear that the *Wishon* court intended to limit "active attempts at enforcement" to one of the four methods specified in § 12-735(B).

entered, is also enforceable in Oklahoma when the first attempt is abandoned and it is *re-filed* after Oklahoma's five year limitation period lapsed." (emphasis added)). The *Taracorp* court explained that "[t]he filing of a foreign judgment creates a new local judgment which is governed by the local statute of limitations." *Id.* at 221. This language suggests that even though the Oklahoma Supreme Court permitted Taracorp to enforce its expired judgment after it had been re-filed, the court would not have allowed Taracorp to enforce its expired judgment without first utilizing one of the four methods specified in O.S. § 12-735(B). Moreover, neither *Taracorp* nor any of the cases it cites involves an attempt to do what Universitas seeks to do here—enforce a judgment that had previously been filed and expired in a particular state without re-filing said judgment in the same state. Because the re-filing of the judgment in *Taracorp* was a critical component of the Oklahoma Supreme Court's analysis, we cannot extrapolate its holding to encompass this case without further instruction from the Oklahoma Supreme Court.

The district court attempted to circumvent Universitas's failure to re-file by stating that:

> [T]o the extent that plaintiff wishes to refile its judgment as a protective matter and views leave of court as necessary to do so, leave is granted. . . . In the event of such re-refiling, all prior orders of this court addressing the substantive issues in this case will be deemed re-entered *instanter* as to the renewed filing.

Aplt. App'x Vol. XI at 2098–99. However, this blanket statement claiming that the order would extend to

Universitas's potential future re-filing rendered the district court's judgment a legally impermissible advisory order. Though the district court initially had jurisdiction over this case, Universitas did not re-file its expired judgment before the district court entered its February 11, 2021 order. For the reasons explained above, that failure to re-file was fatal—there was no longer a judgment in existence for the district court to enforce at the time it entered the order. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). As the issue in this case was no longer live and Universitas lacked a legally cognizable interest in the outcome once its judgment expired in December 2020, the case became moot and the district court lacked Article III jurisdiction to enter its order, rendering the order void.[4]

However, Universitas's re-filing of the expired judgment in the Western District of Oklahoma on December 9, 2021 makes the judgment presently enforceable under *Taracorp*. We therefore vacate the district court's February 11, 2021 judgment because

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[4] This Court is obligated to consider questions of Article III jurisdiction sua sponte. *See Tandy v. City of Wichita*, 380 F.3d 1277, 1290 n.15 (10th Cir. 2004) ("[T]his court has an affirmative obligation to consider th[e] question [of Article III mootness] sua sponte."); *see also Frias v. Chris the Crazy Trader, Inc.*, 604 F. App'x 638, 641 (10th Cir. 2015) (unpublished) (" We are obligated to raise and resolve [] questions of Article III jurisdiction sua sponte."). Thus, it is of no consequence whether Universitas is correct that SDM lacks standing to appeal the district court's judgment on jurisdictional grounds.

the district court did not have jurisdiction to enter its order until Universitas re-filed its New York judgment in the Western District of Oklahoma.[5] And we remand the case to the district court to conduct further proceedings, now that Universitas has re-filed the judgment.

III.

For the foregoing reasons, we find that Universitas's expired judgment was unenforceable and the case was moot at the time the district court entered its order. But Universitas has since re-filed the judgment, vesting the Western District of Oklahoma with jurisdiction once again. Thus, we VACATE the district court's February 11, 2021 order for lack of jurisdiction due to mootness and REMAND the case to the district court to conduct further proceedings, now that Universitas has re-filed the judgment in the Western District of Oklahoma.

Entered for the Court

/s/ Allison H. Eid
Circuit Judge

[5] For this reason, we also DENY SDM's March 17, 2022 Motion for Leave to File a Second Supplemental Appendix as moot.

ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA (AUGUST 15, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNIVERSITAS EDUCATION, LLC,

Petitioner,

v.

AVON CAPITAL, LLC, ET AL.,

Respondents.

No. 14-FJ-0005-HE

Before: JOE HEATON, U.S. District Judge.

ORDER

The court held a pretrial conference on August 15, 2023, to address issues or potential issues arising from the Tenth Circuit's vacation of this court's order of February 11, 2021, and the remand of the case for further proceedings. The court heard argument from all parties and "interested parties" as to the impact of the decision. In particular, the court heard argument as to and considered the procedural posture of the case against the backdrop of the underlying dispute involving allegedly "stolen assets," assets being transferred to avoid the legitimate claims of creditors and the like. The court did so mindful of the fact that the mandate

has not yet issued from the Court of Appeals and any substantive decision reached now is necessarily contingent on, and effective as of, the issuance of the mandate by the Court of Appeals as to its August 4, 2023, Order and Judgment.

For the reasons stated more fully at the conclusion of the pretrial conference, the court **ORDERS** as follows:

1. Effective as of the issuance of the mandate, the pending motions to dismiss [Doc. Nos. 513 and 516] are **DENIED**. The court concludes it reacquired subject matter jurisdiction upon the re-filing of the foreign judgment in this case on August 7, 2023 — prior to the issuance of the Court of Appeal's mandate — and that neither the remand order of the Court of Appeals nor the law generally requires dismissal of the case in the particular circumstances existing here. The court further concludes that Oklahoma law does not require, for the validity of a re-filed foreign judgment, that it be filed in a different case or under a different case number from that of any earlier filing.

2. Effective as of the issuance of the mandate, this court's order of February 11, 2021, is **READOPTED**. Subject to the reacquisition of subject matter jurisdiction, which the court concludes has occurred, and in the absence of any other material change of circumstances, there is no reason to revisit or belabor the earlier determinations. Accordingly, the alter ego determinations as to Avon Capital, LLC (Wyoming), Avon Capital, LLC (Connecticut), and Avon Capital, LLC (Nevada) are re-adopted and made the findings/conclusions of the court. Further, the February 11, 2021, order's injunction to Avon Capital LLC (Wyoming) against the transfer or encumbrance of

its ownership or other interest in SDM Holdings, LLC is re-adopted.

3. Within twenty-one (21) days from issuance of the mandate, the parties are directed to file any appropriate motions as to any reappointment of a receiver or of other matters related to the past receivership as impacted by the Tenth Circuit's order.

4. The responses of Avon Capital LLC (Wyoming) and Phoenix Charitable Trust to plaintiff's motion for imposition of a constructive trust [Doc. #506] are due within **twenty-one (21) days** from issuance of the mandate.

5. Within **twenty-one (21) days** from issuance of the mandate, the parties and/or interested persons are granted leave to file a supplemental brief addressing the impact of the Court of Appeals decision, if any, on the pending motions for sanctions [Doc. Nos. 236, 273, & 275].

6. Within **seven (7) days** from issuance of the mandate, Universitas is directed to take whatever formal post-judgment collection steps it relies on in its efforts to collect the judgment at issue (issuance of writ of execution or garnishment, order for hearing on assets, etc.).

IT IS SO ORDERED.

Dated this 15th day of August, 2023.

/s/ Joe Heaton
U.S. District Judge

ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA (AUGUST 7, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNIVERSITAS EDUCATION, LLC,

Petitioner,

v.

AVON CAPITAL, LLC, ET AL.,

Respondents.

No. 14-FJ-0005-HE

Before: JOE HEATON, U.S. District Judge.

ORDER

The court's order entered July 13, 2023, [Doc. #500] is reaffirmed and considered reentered as of the date of this order.

IT IS SO ORDERED.

Dated this 7th day of August, 2023.

/s/ Joe Heaton
U.S. District Judge

ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA (JULY 13, 2023)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNIVERSITAS EDUCATION, LLC,

Petitioner,

v.

AVON CAPITAL, LLC, ET AL.,

Respondents.

No. 14-FJ-0005-HE

Before: JOE HEATON, U.S. District Judge.

ORDER

Per its decision entered this date, the Court of Appeals vacated the court's prior order of February 11, 2021 [Doc. #228] based on mootness and a resulting lack of subject matter jurisdiction but remanded the case for further proceedings in light of the court's reacquisition of jurisdiction based on petitioner's refiling of the foreign judgment. In order to address the impact of the Court of Appeals' order on prior actions and to determine the course of further proceedings, this case is set for pretrial conference on **August 15, 2023, at 1:30 p.m**., in Courtroom No. 501, with the expectation that the parties may assert their respective positions

by appropriate motions in the meantime. In the interim, pending the conference, the court preliminarily readopts, *instanter*, the Report and Recommendation [Doc. #218] previously adopted and, based on the conclusions reached there, **ORDERS AND ENJOINS** Avon Capital LLC-Wyoming from transferring, alienating, concealing, or encumbering its ownership or other interest in SDM Holdings, LLC, or authorizing or permitting SDM Holdings, LLC, to dispose of its assets, pending further order of the court.[1]

IT IS SO ORDERED.

Dated this 13th day of July, 2023.

/s/ Joe Heaton
U.S. District Judge

[1] *The court references the adoption as "preliminary" so as to leave open for discussion at the pretrial conference the nature and impact of the Tenth Circuit's decision on the R&R and other actions taken in the case. In the meantime, however, it is the court's intention to freeze the status of all parties and their related interests in SDM, based on the facts and circumstances previously addressed, pending the pretrial conference.*

ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA (FEBRUARY 11, 2021)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNIVERSITAS EDUCATION, LLC,

Petitioner,

v.

AVON CAPITAL, LLC,

Respondent/Garnishee,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

SDM HOLDINGS, LLC,

Respondent/Garnishee,

and

AVON CAPITAL, LLC,
a Wyoming Limited Liability Company,

Intervenor.

No. 14-FJ-0005-HE

Before: JOE HEATON, U.S. District Judge.

ORDER

This case involves the efforts of petitioner Universitas Education LLC to collect a judgment for $6,710,065.92 entered in its favor in the United States District Court for the Southern District of New York. The judgment was later registered in this district and efforts here have centered on petitioner's attempt to establish that Avon Capital LLC, a Wyoming limited liability company ("Avon Capital LLC – Wyoming"), is one and the same as the judgment debtors against whom the original judgment was entered.[1] Avon Capital LLC – Wyoming is the nominal owner of SDM Holdings LLC, an Oklahoma limited liability company. Petitioner seeks to collect its judgment, via attachment, garnishment, or otherwise, from SDM Holdings and/or its assets.

The court referred all post-judgment collection matters to U. S. Magistrate Judge Suzanne Mitchell for further proceedings. Judge Mitchell has now issued a Report and Recommendation (the "Report") recommending various dispositions of the pending motions. Avon Capital LLC – Wyoming and SDM Holdings LLC have objected to the Report, which triggers *de novo* review of the matters to which objection has been made.

The background of this dispute is set forth in detail in the Report, in prior orders of the court, and in decisions of the U. S. District Court for the Southern District of New York and will not be repeated here.

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[1] *All the Avon entities are named Avon Capital LLC, but are organized under different state's laws. Here, the court identifies the particular entities by addition of the name of the state of formation.*

Suffice it to say that multiple enforcement efforts and proceedings have resulted from the fraudulent conduct of Daniel Carpenter and the transfers of assets initiated by him, at his direction, or through other entities controlled by him.

The central conclusion and recommendation in the Report is that Avon Capital LLC – Wyoming is the alter ego of Avon Capital entities organized in Nevada and Connecticut and that petitioner may enforce its judgment against any of those Avon entities. The Report reached that conclusion applying the summary judgment standard, concluding that a reasonable jury, even viewing the evidence in the light most favorable to Avon Capital LLC – Wyoming could not reach any conclusion other than that Avon Capital LLC – Wyoming, Avon Capital LLC – Connecticut, and Avon Capital LLC – Nevada, were, and were operated as, alter egos.

The Report makes a detailed and thorough analysis of the history of the various entities, the evidence as to the shifting of funds through multiple entities controlled by Mr. Carpenter and his associates, and, in particular, the evidence as to the shifting of funds through those entities to Avon Capital LLC – Wyoming and its acquisition of SDM Holdings. The court has carefully reviewed that evidence in light of the Avon and SDM objections and readily concludes, like Judge Mitchell, that no jury could plausibly conclude that Avon Capital LLC – Wyoming is other than the alter ego of the other Avon entities. The objections now offered — such as SDM Holdings' complaint that, after three years of litigation on the subject, no one filed a formal pleading seeking an alter ego determination, or Avon Capital LLC – Wyoming's argument

that none of the fraudulent actors had an ownership interest in Avon Capital LLC – Wyoming (ignoring the undisputed evidence as to control and beneficial ownership) — are thoroughly unpersuasive. SDM Holdings also contends that the court lacks ancillary jurisdiction over the alter ego claims. The court agrees with the Report, however, that even if ancillary jurisdiction is lacking the court has diversity jurisdiction to resolve this case. Universitas, a citizen of New York,[2] is completely diverse from all Avon Capital entities and SDM Holdings.

In light of these conclusions and substantially for the reasons stated in the Report, the Report [Doc. # 218] is **ADOPTED**. Consistent with the Report's recommendation, the court **ORDERS** as follows:

1. Avon Capital LLC – Wyoming's motions to strike [Doc. Nos. 193 and 213] are **DENIED**;
2. SDM's motion [Doc. # 196] to join in Avon Capital LLC – Wyoming's motion to strike is **GRANTED**;
3. Petitioner's motion for summary judgment [Doc. #186] is GRANTED. Avon Capital LLC – Wyoming is deemed to be the alter ego of Avon Capital LLC – Connecticut and Avon Capital LLC – Nevada and petitioner is entitled to enforce the registered judgment [Doc. #1] against any of the three;[3]

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[2] *The court takes judicial notice of the pleadings in Case No. 11-CV-1590, U.S. District Court for the Southern District of New York.*

[3] *The judgment was initially entered against "Nova Group Inc." but later legal proceedings established "Avon Capital LLC", among others, was an alter ego of the nominal judgment debtor.*

4. Avon Capital LLC – Wyoming's motion for summary judgment [Doc. #194] is **DENIED**;

5. SDM's motion to quash [Doc. #191] is **DENIED**;

6. SDM's motion for partial summary judgment [Doc. #192] is **DENIED**;

7. Petitioner's motion to strike the SDM motion to strike [Doc. #208] is **DENIED**;

8. Avon Capital LLC – Wyoming is **ENJOINED** from transferring, alienating, concealing, or encumbering its ownership or other interest in SDM;

9. Avon Capital LLC – Wyoming, Avon Capital LLC – Connecticut, and Avon Capital LLC – Nevada are **ENJOINED** from transferring, alienating, concealing, or encumbering any non-exempt property so long as the registered judgment remains unpaid.

The parties are directed to confer and advise the court, by a joint filing within 14 days, of their view(s) as to whether, in light of the above disposition, other issues remain for resolution in this proceeding and, if so, what.

IT IS SO ORDERED.

Dated this 11th day of February, 2021.

/s/ Joe Heaton
U.S. District Judge

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE (OCTOBER 20, 2020)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

SDM HOLDINGS, LLC,

Respondent/Garnishee,

and

AVON CAPITAL, LLC,
a Wyoming Limited Liability Company,

Intervenor.

Case No. 14-FJ-05-HE

Before: SUZANNE MITCHELL, U.S. Magistrate Judge.

REPORT AND RECOMMENDATION

I. Introduction.

Petitioner Universitas Education, LLC seeks enforcement of a $6,710,065.92 judgment entered in its favor on August 12, 2014 by the United States District Court for the Southern District of New York ("*Nova SDNY Litig*[*ation*]."). *See* Doc. 1.[1] The Judgment was against Daniel E. Carpenter and his various entities, including "Avon Capital, LLC." *Id.* United States District Judge Joe Heaton referred all post-judgment collection matters to the undersigned Magistrate Judge consistent with 28 U.S.C. § 636(b)(3). Doc. 8.

In November 2014, the Southern District of New York permitted Universitas to register the $6,710,065.92 judgment in this district. Doc. 1, Att. 2. After doing so, Universitas sought an examination hearing regarding Judgment Debtor Avon Capital's potential ownership interests in Garnishee SDM Holdings, LLC (SDM). Intervenor Avon Capital, LLC, a Wyoming LLC (Avon-WY), sought a permanent injunction to prohibit Universitas from enforcing the judgment against SDM or any of Avon-WY's other assets. Doc. 73. This Court denied that injunction. Doc. 92. Instead, the Court allowed limited discovery "to locate and identify Avon Capital, LLC's assets," to "determine the relationship between three allegedly distinct Avon

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[1] Citations to a court document are to its electronic case filing designation and pagination. Deposition testimony deviates from this practice by instead using the deposition page number. Except for capitalization, quotations are verbatim unless otherwise indicated.

Capital, LLC entities," and SDM, "in aid of execution" of the judgment. Doc. 158, at 2 (affirming Doc. 150).

Before the Court, now, are:

(1) Avon-WY's motions to strike two declarations, Docs. 193, 213, and SDM's motion to join Avon-WY's first motion to strike, Doc. 196;

(2) Universitas's motion for summary judgment to impose alter-ego liability on Avon-WY for the full amount of the judgment against Avon Capital LLC, Doc. 186;

(3) Avon-WY's motion for summary judgment dismissing Universitas's claims seeking to pierce the corporate veil, Doc. 194;

(4) SDM's motions to quash garnishment and for partial summary judgment, Docs. 191, 192; and

(5) Universitas's motion to strike SDM's motion to quash, Doc. 208.

In its first motion, Universitas argues that Avon-WY is an alter ego of the two other Avon Capital, LLC entities, and that all three "were operated as a singular Avon Capital, LLC," which is a named judgment debtor. Doc. 187, at 18. Universitas asserts Avon-WY's alter-ego status should compel the Court to pierce the corporate veil and reach Avon-WY's assets (namely, SDM) to satisfy the judgment. *Id.* at 24. Universitas asks this Court to transfer Avon-WY's ownership of SDM to Universitas to satisfy the judgment, *id.* at 32, and, if the Court declines to do so, to "enjoin Avon-WY from transferring ownership of SDM elsewhere." Doc. 201, at 10.

Avon-WY argues it is not a judgment debtor and that Universitas lacks evidence to establish that Avon-WY is "an alter ego of any judgment debtor." Docs. 195, 204. In support of that contention, Avon-WY filed motions to strike two declarations by Benjamin Chernow, which Universitas included in its Motion for Summary Judgment, Doc. 187, Att. 1, and its Response to Avon-WY's Motion for Summary Judgment, Doc. 205, Att. 1. *See* Docs. 193, 213.

SDM, in turn, seeks partial summary judgment. Doc. 192. It argues that SDM was "never properly served with the garnishment summons," that no claims remain against SDM, and that SDM is neither indebted to nor holds assets of the judgment debtor. *Id.* at 5-10. SDM seeks to join Avon-WY's motion to strike the first Chernow declaration, Doc. 196, and moves to quash the garnishment summons. Doc. 191. In response, Universitas has moved to strike SDM's motion to quash—in addition to seeking sanctions against SDM, accusing SDM of "improper motion practice." Doc. 208, at 1. Specifically, Universitas alleges that SDM's purpose in "filing the same argument three times [is] . . . 'to harass, delay, or increase the cost of litigation.'" *Id.* at 2.

Having reviewed the parties' extensive submissions, the undersigned recommends the Court (1) DENY Avon-WY's motions to strike, (2) GRANT SDM's motion to join, (3) GRANT Universitas's motion for summary judgment and find that Avon-WY is the alter ego of the two other Avon Capital, LLC entities involved here, (4) DENY Avon-WY's motion for summary judgment, (5) DENY SDM's motions to quash and (6) for partial summary judgment, and (7) DENY Universitas's motion to quash and its request for

sanctions against SDM. The undersigned recommends the Court (8) ENJOIN Avon-WY from transferring, alienating, and/or concealing or encumbering its ownership of any interest in SDM; and (9) ENJOIN Avon-WY, Avon-CT, and Avon-NV from transferring, alienating, and/or concealing or encumbering any non-exempt property.

II. Background.

A. Universitas was the sole beneficiary to certain life insurance proceeds.

Judge Heaton has provided helpful background in this matter:

> Universitas was the sole beneficiary of several life insurance policies totaling $30 million in proceeds. *Universitas Educ., LLC v. Nova Grp., Inc.*, 784 F.3d 99, 100-01 (2d Cir. 2015). When the death benefits came due, however, Universitas's claim to those benefits was denied. *Id.* Universitas participated in binding arbitration with the trustee of the benefit plan, and obtained a favorable award. *Id.* The plan trustee sought to vacate the award in the U.S. District Court for the Southern District of New York, but the award was confirmed and judgment was entered for $30,181,880.30. *Id.*

Doc. 92, at 2.

B. Universitas did not receive those proceeds.

The Southern District of New York turnover proceeding, referenced above, found that Daniel

Carpenter fraudulently transferred $30 million of life insurance policy proceeds from the Charter Oak Trust, of which Universitas was the sole beneficiary.[2] *See Universitas Educ., LLC v. Nova Grp., Inc.*, 2014

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[2] A court may "take judicial notice of its own files and records, as well as facts which are a matter of public record." *Van Woudenberg ex rel. Foor v. Gibson*, 211 F.3d 560, 568 (10th Cir. 2000), *abrogated on other grounds by McGregor v. Gibson*, 248 F.3d 946, 955 (10th Cir. 2001). The Court will not consider these documents for the truth of the matters asserted in them. *See Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) (noting that judicially noticed "documents may only be considered to show their contents, not to prove the truth of matters asserted therein").

Under Rule 201, a court may take judicial notice of adjudicative facts not subject to reasonable dispute at any point in the proceedings. An adjudicative fact is a fact "concerning the immediate parties-who did what, where, when, how, and with what motive or intent." Fed. R. Evid. 201 advisory committee's note (quoting 2 Kenneth C. Davis, *Administrative Law Treatise* at 353 (1958)). Adjudicative facts must, by definition, be relevant. 21 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5104 at 483-84 (1977).

The Court takes judicial notice from this proceeding and from two cases intertwined with the current action. First, the Court relies on the turnover action (*Nova SDNY Litig.*) between Universitas and judgment-debtor Nova Group, Inc. *See Universitas Educ., LLC v. Nova Grp., Inc.*, No. CIV-11-1590-LTS-HBP, 2012 WL 2045942 (S.D.N.Y. Jun. 5, 2012). Second, the Court cites the criminal action against Carpenter, which the Second Circuit affirmed. *See United States v. Carpenter*, 190 F. Supp. 3d 260 (D. Conn. 2016), *aff'd sub nom., United States v. Bursey*, 801 F. App'x 1 (2d Cir. 2020). Both offer adjudicative facts involving the immediate parties and who did what, when, where, how, and with what motive or intent. Universitas and Avon-WY have also relied on courts' findings, depositions, and other materials from these proceedings. *See e.g.*, Doc. 195, at 4 n.1 & Att. 5; Doc. 187, Att. 21.

WL 3883371, at *2 (S.D.N.Y. Aug. 7, 2014) [hereinafter *Aug. 2014 Nova*]. These "fraudulent transfers" were made to a number of shell entities that were under Carpenter's control at all relevant times. *Id.* In fact, Carpenter controlled "hundreds of . . . entities" that he used "to hide assets from [Universitas]." *Id.* From May 2009 to October 2010, some of those entities were: Nova Group, Inc. (Nova); Charter Oak Trust; Grist Mill Capital, LLC (Grist Mill Capital); Grist Mill Trust Welfare Benefit Plan (Grist Mill Trust); Grist Mills Holdings, LLC (Grist Mill Holdings); Phoenix Capital Management, LLC (Phoenix); Caroline Financial Group, Inc. (Caroline Financial); Avon Capital, LLC; and Carpenter Financial Group (Carpenter Financial). *Id.* at *2. Of these, Nova, Grist Mill Capital, Grist Mill Trust, Grist Mill Holdings, Phoenix, Avon, and Carpenter Financial[3] are all either judgment debtors or alter egos of judgment debtors. Doc. 147, Att. 29, at 2-3.

The *August 2014 Nova* court also identified Wayne Bursey (President of Nova and Trustee of Charter Oak Trust) as "Mr. Carpenter's confederate in the fraudulent transfers." 2014 WL 3883371, at *2. And Bursey "was the only signatory on the Charter Oak Trust accounts." *Universitas Educ., LLC v. Nova Grp., Inc.*, 2013 WL 6123104, at *2 (S.D.N.Y. Nov. 20, 2013) [hereinafter *Nov. 2013 Nova*].

The *August 2014 Nova* court stated that "Avon was controlled by its managing member, Grist Mill [Capital], which is wholly owned by its members Grist Mill Holdings and Caroline Financial []both of which

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[3] Carpenter Financial Group, LLC is also an alter ego of a judgment debtor. Doc. 147, Att. 29, at 2.

were wholly owned by Mr. Carpenter." 2014 WL 3883371, at *3. Carpenter is Chairman of Caroline Financial. *Id.* Caroline Financial served as a member of both Grist Mill Capital and Grist Mill Holdings.[4] Doc. 205, Att. 2, ¶¶ 1, 25. And, as noted, Grist Mill Holdings also was a member of Grist Mill Capital. *August 2014 Nova*, 2014 WL 3883371, at *3. In his testimony, Carpenter admitted Grist Mill Holdings is his "alter ego for collecting commissions." *Id.*

During Carpenter's criminal trial, the trial court stated "[t]he evidence establishe[d] beyond a reasonable doubt that [Carpenter] conspired with . . . Don Trudeau, among others" to commit life insurance fraud.[5] *Carpenter*, 190 F. Supp. 3d at 299.

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[4] The *Nov. 2013 Nova* court stated Grist Mill Capital's members were Caroline Financial Group, and Grist Mills Holdings, and that Bursey was a manager. 2013 WL 6123104, at *3. Grist Mill Capital's Articles of Organization list Jack Robinson and Bursey as its managers. Doc. 147, Att. 13. Robinson is an attorney and manager of Grist Mill Capital, and is affiliated with several of Carpenter's entities and served as general counsel of Benistar Admin Services (Benistar or BASI) "for a period of time." Doc. 187, Att. 6, at 42; *id.* Att. 12; *see also* Doc. 147, Att. 31. Robinson is also Nova's former attorney. *Nov. 2013 Nova*, 2013 WL 6123104, at *2.

BASI is one of the entities the *Carpenter* court found Carpenter controlled. 190 F. Supp. 3d. at 273. BASI provided administrative services to other Carpenter-controlled entities, and their employees "received their paychecks from BASI." *Id.*

[5] Trudeau is one of Carpenter's affiliates and served in different roles in Carpenter's enterprises. *See, e.g.*, Doc. 147, Att. 31 (listing him as director of BASI). "Don Trudeau was the President of BASI, and [Carpenter]'s wife, Molly Carpenter, was its Chairman." *Carpenter*, 190 F. Supp. 3d at 273.

C. The creation of the three Avon Capital, LLC entities.

On June 6, 2006, Avon Capital, LLC filed articles of organization with the Nevada Secretary of State, forming a Nevada limited liability company (Avon-NV). Doc. 57, Att. 1, at 3-4. Avon-NV's managing member was Grist Mill Capital. *Id.* at 3. Trudeau testified he did not have "any involvement" with Avon-NV. Doc. 187, Att. 6, at 23, ln. 19.

On November 21, 2006, Bursey, as the organizer, filed articles of organization on behalf of Avon Capital, LLC with the Connecticut Secretary of State, forming a Connecticut limited liability company (Avon-CT). Doc. 57, Att. 2, at 1. At the time of incorporation, Bursey and Robinson were listed as its managers. Doc. 147, Att. 17; Doc. 195, Att. 2. Trudeau testified that he, Bursey, and Robinson served as managers of Avon-CT around November 2006. Doc. 187, Att. 6, at 41, lns. 14-21.

On May 18, 2007, Avon Capital, LLC filed articles of organization with the Wyoming Secretary of State, forming a Wyoming limited liability company (Avon-WY). Doc. 147, Att. 6. Avon-WY was administratively dissolved in June 2009 for failure to maintain a registered agent, and Trudeau, acting as principal, applied to reinstate it on November 15, 2010. *See id.* Att. 9; Doc. 57, Att. 6, at 3. Avon-WY was again administratively dissolved in July 10, 2011 for tax reasons, and Trudeau reinstated it on November 28, 2011. Doc. 57, Att. 6, at 2-3.

At the time of incorporation in 2007, and after its reinstatements, Caroline Financial was Avon-WY's

manager.[6] Doc. 147, Att. 6; Doc. 57, Att. 6. Counsel for Avon-WY has stated that Trudeau served as a member and officer of Avon-WY before its 2010 reinstatement. Doc. 187, Att. 11; *see also* Doc. 171, Att. 4, at 2, lns. 2-3; Doc. 58. Trudeau testified he was "the managing member" after reinstating Avon-WY. Doc. 187, Att. 6, at 17-18. Caroline Financial also continued to serve as managing member after Avon-WY's reinstatement. *Id.* Att. 11; Doc. 147, Att. 8. Trudeau was the only authorized signatory for Avon-WY. Doc. 187, Att. 10, at 232, lns. 22-24.

Avon-WY was ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial. Doc. 171, Att. 4, at 2, lns. 17-25. Avon-CT was also ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial. Doc. 187, Att. 4, at 2, lns. 18-28. In 2010, Avon-NV was also ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial. *Id.* Att. 5. Avon-WY, Avon-CT, and Avon-NV each had its principal address at 100 Grist Mill Road, Simsbury, CT 06070. *See* Doc. 92, at 5; Doc. 147, Atts. 6, 13; Doc. 57, Att. 1.[7] Carpenter controlled both Caroline Financial and Carpenter Financial. *August 2014 Nova*, *Aug. 2014 Nova*, 2014 WL 3883371, at *3. Bursey listed the same Grist Mill address as his business and residential address. Doc. 147, Att. 17. Grist Mill Capital (managing member of Avon-NV), Grist

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[6] Trudeau also stated that Caroline Financial was Avon-WY's managing member in July, 2010. Doc. 171, Att. 4, at 2, ln. 23.

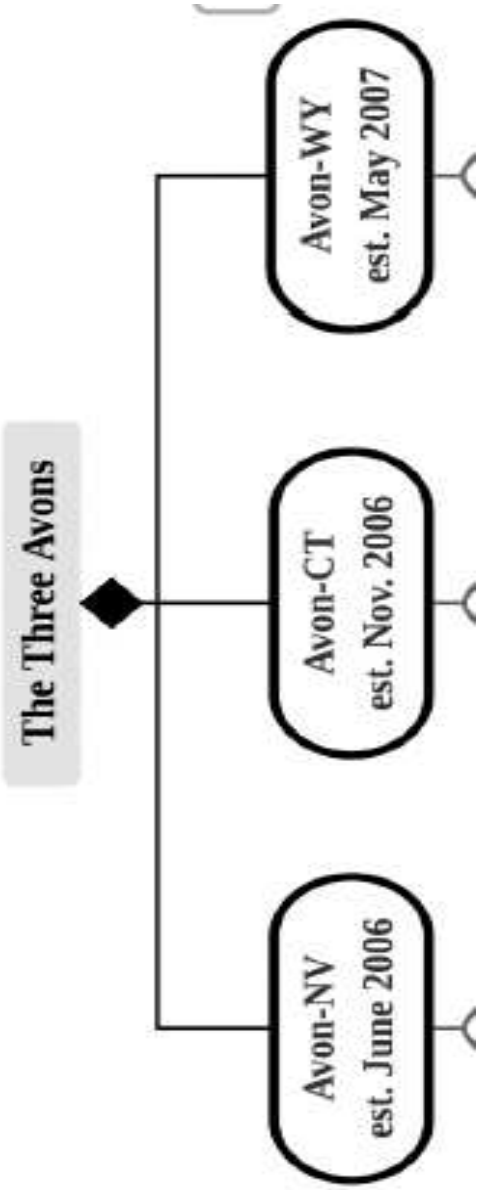
[7] On November 28, 2011, Avon-WY updated its principal address to 300 1st Stamford Place, Suite 201, Stamford, CT 06902, but retained its mailing address in Simsbury. Doc. 57, Att. 6, at 2.

Mill Trust, and Grist Mill Holdings also have the same address. Doc. 92, at 5 n.4. Trudeau testified Benistar has its offices at the same address. Doc. 195, Att. 5, at 14, lns. 9-11.

In November 2013, Carpenter averred he served as chairman of Caroline Financial, which in turn served as the managing member of Avon-WY. Doc. 147, Att. 8; Doc. 205, Att. 2, ¶ 1. The *Nova* courts identified Caroline Financial as one of Carpenter's wholly owned and controlled "shell companies," one of the shell entities he used to hide assets from Universitas. *Nov. 2013 Nova*, 2013 WL 6123104, at *5, *8; *Aug. 2014 Nova*, 2014 WL 3883371, at *2, *5, *8.

Carpenter testified he was "privy" to each of the three Avon Capital entities. Doc. 147, Att. 5, at 144, lns. 12-16. He "definitely knew about [Avon-CT]." *Id.* lns. 15-16. According to Carpenter, unlike Avon-WY, Avon-NV did not engage in any life settlement transactions. *Id.* at 146, lns. 3-6. He also asserted it never had any employees or office space. *Id.* lns. 10-16.

Carpenter testified because Wyoming had few prohibitions or regulations for life settlement transactions, he thought "it would be best" to have a Wyoming LLC as opposed to a Nevada or Delaware LLC for those transactions. *Id.* at 147, lns. 2-16. Trudeau similarly testified. Doc. 187, Att. 6, at 18-20. "Carpenter is listed as the signatory on both of Avon Capital's bank accounts." *Carpenter*, 190 F. Supp. 3d at 273.

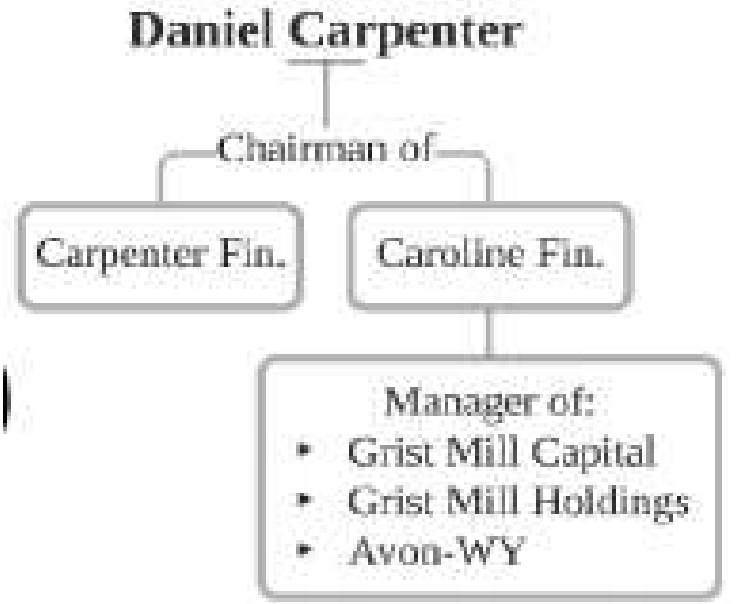

The Three Avons
Avon-NV
est. June 2006
Avon-CT
est. Nov. 2006
Avon-WY
est. May 2007

Owned:
99% Carpenter Fin.
1% Caroline Fin.

Owned:
99% Carpenter Fin.
1% Caroline Fin.

Owned:
99% Carpenter Fin.
1% Caroline Fin.

Managing member(s):
Caroline Fin.
Trudeau (after
reinstatement)
Manager(s):
Trudeau
Robinson
Bursey
Managing member(s):
Grist Mill Capital
Wholly owned by
Member(s):
Caroline Fin. (also
managing member)
Grist Mill Holdings
Manager:
Robinson


Daniel Carpenter
Chairman of
Carpenter Fin.
Caroline Fin.
Manager of:
• Grist Mill Capital
• Grist Mill Holdings
• Avon-WY

D. The trail of Avon proceeds.

Among the fraudulent transfers the *August 2014 Nova* court identified, was a November 11, 2009 $6,710,065.92 transfer from Grist Mill Capital to Avon Capital, LLC. 2014 WL 3883371, at *3. The Avon Capital, LLC account was held at TD Bank, with an account number ending in 4689 (Avon-NV TD bank account).[8] Doc. 56, at 4; Doc. 57, Att. 1, at 1.

That transfer, like the others the *August 2014 Nova* court outlined, "were without documentation or consideration, a clear sign of fraud." 2014 WL 3883371, at *3. "Nova and Mr. Carpenter resisted all discovery efforts to determine the whereabouts of [proceeds] after the transfers, and such secrecy further indicates a fraudulent intent."[9] *Id.* The court assessed a judgment

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[8] Carpenter opened that bank account (one of the two "Avon Capital, LLC' accounts maintained in 2009-2010) on May 20, 2009. Doc. 147, Att. 13; *Carpenter*, 190 F. Supp. 3d. at 273 ("Mr. Carpenter is listed as the signatory on both of Avon Capital's bank accounts."). Carpenter opened this not long after an unsuccessful attempt to open a Charter Oak Trust account at Bank of America. *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 2, at 64 (S.D.N.Y. Oct. 21, 2013) (May 14, 2009 email from Carpenter to Jeffrey Roman at U.S. Trust, Bank of America, complaining "that I was not allowed to do wires any more at [Bank of America] on Avon Capital which is a Company that I created and which has control over millions of dollars of assets in several trust accounts").

[9] The SDNY sanctioned Nova for its "dilatory conduct during the course of post-judgment discovery," "efforts to frustrate Universitas' enforcement of the judgment," noting the Second Circuit encouraged a sanction aimed at deterring Nova's "persistent and abusive litigation conduct." *Universitas Educ., LLC v. Nova Grp., Inc.*, No. CIV-11-1590-LTS-HBP, 2016 WL

of that same amount ($6,710,065.92) against Avon Capital, LLC. *Id.* at *13.

During the month of December 2009, the Avon-NV TD bank account had large-sum withdrawals and deposits to and from bank accounts also controlled by Carpenter. *See* Doc. 147, Att. 22. After the November 11, 2009 $6,710,065.92 deposit from Grist Mill Capital, the Avon-NV TD bank account had a November 30, 2009 balance of $6,745,794.16. *Id.* at 1. On December 30, 2009, the balance was $938,454.59; and on December 31, 2009, the balance was $160,683.29. *Id.* at 1, 3. Some of the transfers in the month included a December 3, 2009 $6.5 million transfer to a TD bank account ending in 7136 (Grist Mill Holdings TD bank account),[10] two deposits late in the month (totaling $1,292,469.36) from a bank account ending in 4697 (Carpenter Financial TD bank account), and wire transfers to H. Thomas Moran. *Id.* at 1, 3; *see also Carpenter*, No. CR-13-226-RNC, Doc. 207, at 22 (Government Exhibit List) (identifying Grist Mill Holdings and Carpenter Financial TD bank accounts).

2944646, at *3-5 (S.D.N.Y. Mar. 31, 2016), *adopted*, Doc. 598 (S.D.N.Y. May 16, 2016).

[10] Doc. 171, Att. 8 (Grist Mill Holdings' TD bank account statement for November 2009 showing the last four digits of 7136 as the account number); *Carpenter*, 190 F. Supp. 3d at 295 (identifying TD bank account ending in 7136 as belonging to Grist Mill Holdings).

E. Avon-CT's transactions.

1. The Ridgewood credit facility agreement.

Trudeau testified Avon-CT was "originally formed with specific capitalization and transaction structures in mind." Doc. 187, Att. 6, at 10, lns. 4-6. "[I]t was part of a joint facility with Grist Mill Capital, a $35 million facility." *Id.* lns. 13-14. He testified he thought "Ridgewood[11] was the actual issuing entity." *Id.* lns. 20-21. "And so all of the assets and activities basically that were conducted in [Avon-CT] were subject to that pledge and credit agreement." *Id.* at 10-11; *see Carpenter*, 190 F Supp. 3d at 279 (outlining Ridgewood credit facility agreement). That agreement, signed by Carpenter as "Chairman of [the] Managing Member" of Avon-Capital LLC, stated the financing was "for the purpose of funding AVON CAPITAL LLC's underlying loan to AVON INSURANCE TRUST on financing premium of a Life Insurance Policy." Doc. 187, Att. 9, at 3, 1; *Universitas Educ., LLC v. Nova Grp., Inc.*, 2013 WL 3328746, at *2 (S.D.N.Y. July 2, 2013) ("Grist Mill [Capital], Avon Capital, Charter Oak Trust and Avon Insurance Trust are entities that are closely related to Nova Group. As collateral for this loan, Ridgewood Finance, Inc. took a security interest in the life insurance policies held by Charter Oak Trust and Avon Insurance Trust.").

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11 "Ridgewood [Finance Inc.] was a portfolio company" that was "set up as a speciality finance lender. In this capacity, Ridgewood made loans to other finance companies, often at high rates of interest." *Carpenter*, 190 F. Supp. 3d at 278-79.

"The parties agreed that Christiana Corporate Services, Inc. . . . would act as the [document custodian] and insurance trustee." *Carpenter*, 190 F. Supp. 3d. at 279. "If Ridgewood decided to fund the policy, it would issue a commitment letter to Bursey, who acted as the trustee of [Charter Oak Trust] and Kathy Kehoe, a Benistar employee."[12] *Id.* If Ridgewood authorized the funding, it "would then direct Christiana to transfer the funds to an account in [Charter Oak Trust]'s name at PNC Bank. . . . " *Id.* at 280.

Trudeau testified that one of the Ridgewood facility's insureds was Rella Waldman, and that Trudeau was involved in that transaction. *See* Doc. 187, Att. 3, at 56; Att. 9. Trudeau further testified he was aware Avon-CT provided support services for Avon Insurance Trust. *Id.* Att. 3, at 57, lns. 14-16.

In a December 2006 letter from Robinson as Grist Mill Capital manager to Christiana, Robinson requested the creation of a custody account for Avon Capital, LLC. *Id.* Att. 12. Even though Avon-CT was the entity involved with the Christiana and Ridgewood transactions, Robinson used Avon-NV's tax identification number which ends in 6827, when opening the bank account. *Id.*; Doc. 57, Att. 1.[13]

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[12] Kathy Kehoe served as the Manager of the Trust Department of Benistar, since 2003. *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 337, Att. 3, at 1 (S.D.N.Y. Nov. 20, 2013). She was also Assistant Secretary of Nova. *Id.* She currently serves as SDM's manager. Doc. 192, Att. 1, at 3; *see also* Doc. 187, Att. 19, at 64, lns. 7-9.

[13] In its motion for summary judgment, Avon-WY erroneously states this tax identification number belongs to Avon-CT. Doc. 195, at 4, ¶ 2.

The Avon-NV TD bank account records also show wire transfers toward the Waldman life insurance policy. *See* Doc. 187, Att. 13, at 1, 7-8 (reflecting a $44,150.00 outgoing wire to PNC Bank and fee for Waldman policy on Aug. 19, 2009); *id.* at 4, 9 (reflecting a $44,150.00 outgoing wire (including the wire transfer fee) to PNC Bank for the Waldman policy on Oct. 5, 2009).[14]

2. The Ridgewood facility's funding of Charter Oak Trust policies and their resale.

As noted above, this action hinges on the fraudulent transfer from the Charter Oak Trust policies. These policies were stranger-oriented life insurances (STOLI) policies. The *Carpenter* court explained the nature of STOLI policies, life insurance providers' opposition to these policies, and Carpenter's creation of the Charter Oak Trust to serve "as a vehicle for obtaining [these] policies." 190 F. Supp. 3d at 273. Charter Oak Trust planned to "[re]sell life insurance

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[14] What Universitas identifies as Avon-NV's general ledger also reflects holding investment accounts for "R. Waldman" (Account IDs. 1320 and 1322) in the amounts of $1,002,475.00 and $626,300.00. Doc. 187, Att. 14, at 1, 8-9. Although the Avon Capital, LLC general ledger does not specifically state that it is Avon-NV's, the Court can reasonably infer so from the fact that the transactions listed on it reflect transactions that match those from Avon-NV's two bank accounts. *Compare* Doc. 187, Att. 14, at 2-4, *with* Doc. 147, Att. 22 (Avon-NV's TD bank account), at 4-6, *and id.* Atts. 15-16 (Avon-NV's People's bank account, *see infra* § II.G.). Avon-WY and SDM dispute the admissibility of this document, as it has not been authenticated and amounts to hearsay. Doc. 193, at 5-6; Doc. 197, at 15-17. The Court determines the ledger to be supplemental only for purposes of its findings herein.

policies on the secondary market, after [the lapse of] a contestability period."[15] *Id.* at 276.

Insured Sash Spencer obtained two policies totaling $30 million, the first two policies ever to be placed in Charter Oak Trust. *Id.* at 292. Ridgewood funded both policies. *Id.* at 293. Spencer died in June 2008, within the contestability period. *Id.* Although the insurance provider investigated, the provider "was unable to determine that the two policies were procured for sale on the secondary market" and issued two checks to Charter Oak totaling $30,677,276.75 (the policies' proceeds plus interest), at Bursey's behest. *Id.* ("Mr. Bursey had admonished [the provider] that the trust had a 'fiduciary duty to pay death benefits to the Participant's designated beneficiary.'"). When Bursey told Carpenter about the checks, Carpenter wrote "Big day for all of us . . . check mail and speak only to me . . . only to me. . . . May you be in heaven before the Devil knows you're dead." *Id.*

15

> To induce people to participate in [Charter Oak Trust] as straw insureds, the agents used a sales pitch learned from discussions at the 100 Grist Mill Road offices. The prospective insureds were promised free life insurance for two years. They were told that if they died during the two-year period, the policy proceeds would be disbursed to their beneficiaries. After two years, the policy would be sold and the insured could potentially profit from the sale. No effort was made to attract people with an interest in buying long-term life insurance coverage then or later.

Carpenter, 190 F. Supp. 3d at 280-81. "[Charter Oak Trust] was not widely marketed in order to reduce the risk that the true nature of the trust would be revealed." *Id.* at 280.

The *Carpenter* court reviewed a "complex web of corporate entities, bank accounts, and numerous money transfers" to "determin[e] how the defendant and his co-conspirators used the $30 million in policy proceeds." *Id.* at 295. For example, on May 18, 2009, Bursey deposited the two checks from the insurance provider into a TD account in Charter Oak Trust's name, the "account ending in 4548" (Charter Oak TD bank account). *Id.* This account "had been set up by Mr. Bursey six days earlier." *Id.* Then, on May 21, 2009, Bursey transferred $8,677,276.75 from the Charter Oak TD bank account to a TD account belonging to Grist Mill Capital, the "account ending in 4712" (Grist Mill Capital TD bank account). *Id.* "Prior to this transfer, the [Grist Mill Capital TD bank account] was empty." *Id.* Then, on May 26, 2009, Bursey transferred another $2,186,566 from the Charter Oak TD bank account to the Grist Mill Capital TD bank account. *Id.* "After these two transfers, which were the only ones into the [Grist Mill Capital TD bank account] at the relevant time, the [Charter Oak TD bank account] contained just over $19.8 million." *Id.*

At the same time, the "$19.8 million remaining from the proceeds of the Spencer policies was kept in the [Charter Oak TD bank account], where the entire death benefit had originally been deposited." *Id.* at 296. On October 2, 2009, Bursey denied Universitas's claim to the proceeds. *Id.* at 294. On October 27, 2009, Bursey transferred $19,800,000 from the [Charter Oak TD bank account] to the [Grist Mill Capital TD bank account]." *Id.* Then, just "one day later, $19,000,000 was transferred to the Grist Mill Holdings account ending in 7136." *Id.*

Grist Mill Capital's appointed agent, Peter A. Goldman, testified he had been retained to try to "determine what happened to the $30 million." *Nov. 2013 Nova*, 2013 WL 6123104, at *7. He confirmed there had been $31 million transferred from the Charter Oak Trust, but he could not explain why any transfers had been made to Grist Mill Capital. *Id.* He also reported Grist Mill Capital's general ledger recorded the $19.8 million as an "unknown deposit." *Id.*

Less than a month later, on November 11, 2009, Avon-NV managing member Grist Mill Capital transferred $6,710,065.92 to "Avon Capital, LLC,"[16] which was deposited to the Avon-NV TD bank account. *See* Doc. 56, at 4; Doc. 92, at 5. The *Carpenter* court also detailed a variety of transactions involving the balance of the Spencer policies, including the funding of additional life insurance policy premiums and the purchasing of real estate in Rhode Island. 190 F. Supp. 3d at 295-96.

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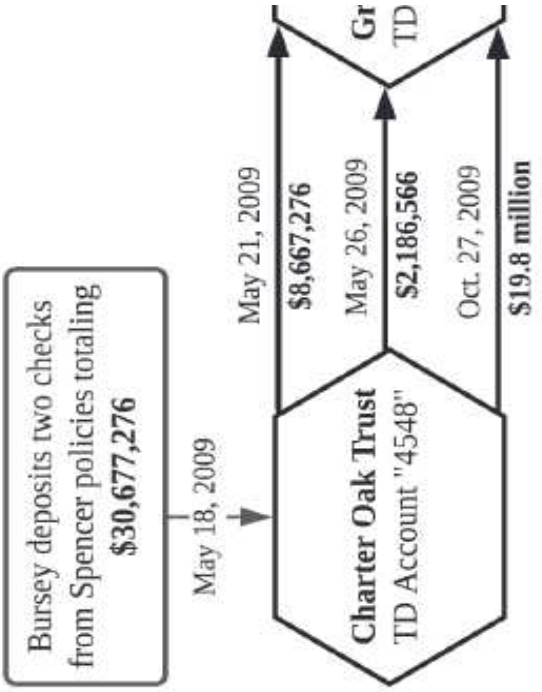
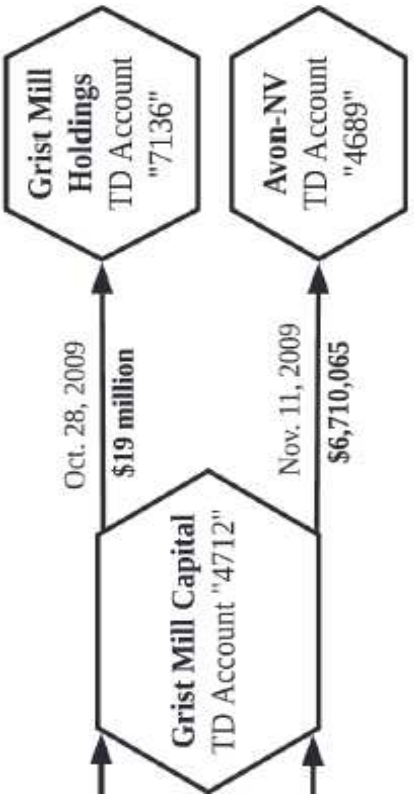
[16] "Grist Mill Capital . . . and Avon Capital were financing companies that loaned money to other" Carpenter controlled entities, including "Benistar Admin Services, TPG Group, Grist Mill Trust, Grist Mill Capital, Avon Capital, and the Charter Oak Trust." *Carpenter*, 190 F. Supp. 3d at 273. "Mr. Carpenter acknowledged at trial that he controlled [Grist Mill Capital], and documents admitted into evidence show that he signed on its behalf as 'Chairman of Managing Member.' The structure of Avon Capital is less clear. Many of the documents bear Mr. Trudeau's signature. However, Mr. Carpenter is listed as the signatory on both of Avon Capital's bank accounts." *Id.*

Spencer Policies Money Flow




Grist Mill Holdings
TD Account "7136"
Avon-NV
TD Account "4689"
Oct. 28, 2009
$19 million
Nov. 11, 2009
$6,710,065
Grist Mill Capital
TD Account "4712"

F. Avon-WY's transactions.

Much transpired between the first time Avon-WY was administratively dissolved, on June 17, 2009, and when Trudeau applied to reinstate it on November 15, 2010. *See* Doc. 147, Att. 9; Doc. 57, Att. 6, at 3.

1. The SDM purchase.

On December 30, 2009—while administratively inactive—Avon-WY closed on the acquisition of one hundred percent of the membership interest in SDM. Doc. 147, Atts. 20-21. The total purchase price was $4,395,502.60. *Id.* Att. 19, at 2. The assignors were Jane M. Moran and H. Thomas Moran, II. *Id.* Att. 21. Trudeau served as the authorized signatory for Avon-WY on the Assignment of Membership Interest document and on the Membership Purchase Agreement. *See id.* Atts. 20-21. Trudeau testified that Carpenter "authorized [him] to enter the transaction . . . and make this investment on behalf of Avon Capital, LLC." *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 487, Att. 1, at 280, lns. 11-16 (S.D.N.Y. Sept. 25, 2014).

The purchase agreement required payment of $2,197,751.30 by December 30, 2009, and the balance by January 30, 2010. Doc. 147, Att. 20, at 1, ¶ 1(a)-(b). It also required Avon-WY to pay a pre-existing debt Thomas Moran owed to Kirkpatrick Bank. *Id.* at 2, ¶ 2; *id.* at 4, ¶ 5.6(b). The agreement bound Avon-WY to a pre-existing servicing contract with Asset Servicing Group (ASG). *Id.* at 3, ¶ 4.5; *id.* at 14, ¶ 8.2.2. And, it identified Heritage Group Agency, Inc. and

ASG as Thomas Moran's affiliates.[17] *Id.* at 4, ¶ 5.6; *id.* at 14, ¶ 8.2.2(d).

Although Avon-WY was the signatory to the purchase agreement, a series of payments to Moran came from the Avon-NV TD bank account. *See also* Doc. 147, Att. 22, at 3-4. Carpenter and Amanda Rossi[18] served as the authorized signatories on the Avon-NV TD bank account. *Id.* Att. 14.

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[17] Carpenter testified Avon-WY was involved in acquiring "a block of business known as SDM." Doc. 147, Att. 5, at 148, lns. 7-9. According to Carpenter, Trudeau introduced him to Thomas Moran, who was the signatory for the purchase agreement on behalf of SDM. *Id.* lns. 20-21; *Id.* Att. 20, at 25. And Trudeau testified he signed the agreement at Carpenter's behest. *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 487, Att. 1, at 280, lns. 11-16 (S.D.N.Y. Sept. 25, 2014).

[18] Amanda Rossi is Secretary of Nova. Doc. 147, Att. 14; *see also Universitas Educ., LLC v. Nova Grp., Inc.*, 2013 WL 57892, at *6 (S.D.N.Y Jan. 4, 2013). Also, the *Carpenter* court identified Ms. Rossi as a Benistar employee. 190 F. Supp. 3d at 294.

> [Ms.] Rossi [was] listed as a "Trustee" of Charter Oak Trust in a TD Bank account statement from December 2009 . . . [She was also] listed as a signatory . . . on several bank accounts to which Universitas alleges that Nova Group improperly transferred the insurance proceeds at issue here. It appears, however, that Mr. Bursey—not Ms. Rossi—authorized the deposits to these accounts. At her deposition, Ms. Rossi testified that she was employed only by Benistar . . . , Carpenter Financial [,] USB Group, Inc. She further testified that she performed office-manager work for these three entities, and that she worked as an executive assistant to Mr. and Mrs. Carpenter.

Universitas Educ., LLC v. Nova Grp., Inc., 2013 WL 3487350, at *5 (S.D.N.Y. July 12, 2013) (citations omitted), *subsequently vacated on other grounds*, 784 F.3d 99 (2d Cir. 2015). In part be-

Related payments from the Avon-NV TD bank account include:

- Two December 31, 2009 payments of $777, 741.30 and $514,469.36 to Thomas Moran, Doc. 147, Att. 22, at 3 (A March 30, 2010 email identifies the $514,469.36 as "received" by Kirkpatrick Bank, *id.* Att. 23 (per SDM Purchase Agreement, *id.* Att. 20, ¶¶ 2, 5.6));
- A January 4, 2010 payment of $25,000.00 to The Heritage Group, *id.* Att. 22, at 4;
- A January 5, 2010 payment of $175,334.85 to ASG, *id.*;
- A January 5, 2010 payment of $332,766.30 to "Hme, Llc," *id.* (A March 30, 2010 email from an ASG address to Trudeau and Andrew Terrell, cc'ing Thomas Moran, identifies this as a portion of the purchase price, *id.* Att. 23); and
- A January 7, 2010 payment of $373,033.83 to Thomas Moran, *id.* Att. 22, at 4.

On June 9, 2010, the Avon-NV TD bank account was closed and its balance of $953,238.84, minus the twenty-five dollar wire transfer fee, was deposited into the only other Avon Capital, LLC bank account of record at this time: a People's United Bank account ending in 3286 (Avon-NV People's bank account). Doc. 147, Atts. 15-16. People's United Bank sent that

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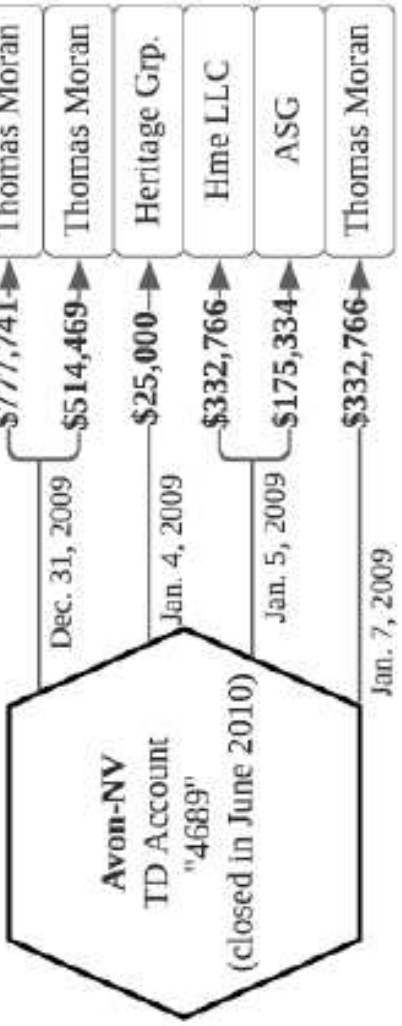
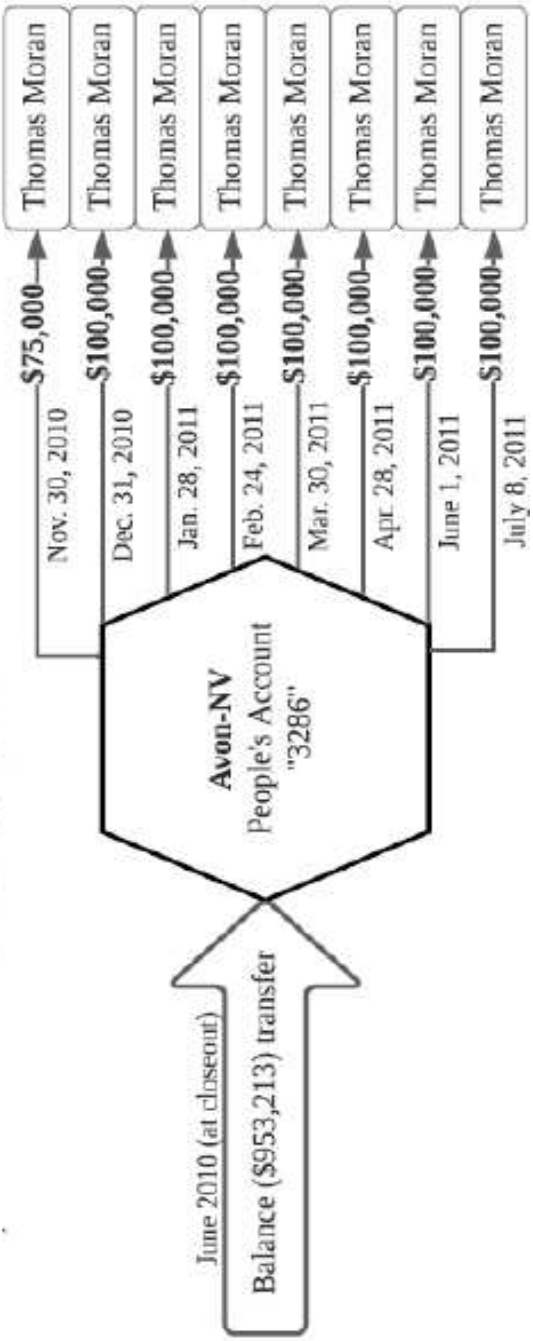
cause Bursey signed the deposit slips and endorsed the checks that Nova improperly deposited, the S.D.N.Y. determined Rossi was not "a controlling officer of Nova" because "she did not actually participate in one of the central transactions at issue." *Id.* at *10.

account's statements to Daniel Carpenter at the Grist Mill address; and Carpenter signed a check to ASG from this account at least once. *Id.* Atts. 15-16; *id.* Att. 27, at 17.

Litigation ensued over the balance due under the Purchase Agreement, and the parties settled. *See* Doc. 187, Att. 19, at 63, lns. 4-6; Doc. 147, Att. 19; *Moran v. Avon Capital, LLC*, No. CIV-10-393-HE, Doc. 58 (W.D. Okla. Feb. 17, 2011) (Stipulation of Dismissal). Payments to Moran, presumably in satisfaction of the SDM Purchase Agreement, continued to come from the Avon-NV People's bank account, of which Carpenter was the signatory. Doc. 147, Att. 25 (including the $75,000.00 Nov. 30, 2010 payment to Thomas Moran and near-monthly $100,000.00 payments thereafter until July 2011).

Avon-NV payments (on behalf of Avon-WY) for SDM Purchase




June 2010 (at closeout)
Balance ($953,213) transfer
Avon-NV
People's Account
"3286"
$75,000
Nov. 30, 2010
$100,000
Dec. 31, 2010
$100,000
Jan. 28, 2011
$100,000
Feb. 24, 2011
$100,000
Mar. 30, 2011
$100,000
Apr. 28, 2011
$100,000
June 1, 2011
$100,000
July 8, 2011
Thomas Moran
Thomas Moran
Thomas Moran
Thomas Moran
Thomas Moran
Thomas Moran
Thomas Moran
Thomas Moran

ASG sent Avon-WY monthly invoices. *See* Doc. 147, Att. 27, at 1, 5-6, 10-11, 18-19. ASG sent these invoices to Avon Capital, LLC, at 2187 Atlantic Street, Stamford, CT. *Id*. This is the address Avon-WY listed in the Purchase Agreement. *Id.* Att. 20, at 20, ¶ 10.1. No other Avon Capital, LLC entity used this address for its mailing or principal address. And at least one invoice identified Don Trudeau as the contact. *Id.* Att. 27, at 15.

Regular payments to ASG came from the Avon-NV TD bank account until its closure. *Id.* at 7, 14. After the closure of the Avon-NV TD bank account, payments continued, coming instead from the Avon-NV People's bank account. *See, e.g., id.* at 20-21. Carpenter signed a check dated December 9, 2010 from "Avon Capital, LLC" to ASG. *Id.* at 17.

Most of the above transactions occurred while Avon-WY was "Inactive-Administratively Dissolved." *Id*. Att. 8. And these transactions continued after Trudeau reinstated Avon-WY in November 2010. *See, e.g.*, *id.* Att. 27, at 15-17.

2. Andrew Terrell consults for Avon-WY.

Trudeau also testified that Andrew Terrell, principal of Clermont Capital, provided consulting services for Avon-WY. Doc. 187, Att. 19, at 41, lns. 15-22; *id.* at 42, ln. 2.[19] Trudeau did not know how Terrell received compensation for his services but he did not think the compensation came from Avon-WY. *Id*. Att. 19, at 42, lns. 21-23. Terrell testified that in 2010 he had a

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[19] *See also* Doc. 187, Att. 14, at 1, lns. 14-15 (Avon-NV's general ledger showing $359,270.00 owed to Clermont Capital).

consulting contract with Avon, "but sometimes [he] was paid by a different entity." *Id.* Att. 18, Ex. 17, at 11, lns. 5-8 (sealed). Avon-NV's bank records shows Avon-NV made several payments to Terrell during the time he consulted for Avon-WY, and to Clermont Capital. *See, e.g.*, *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 610, Att. 9, at 13, 17 (S.D.N.Y. Nov. 18, 2016) (showing two $15,000.00 wires on March 18, 2010 and May 28, 2010 to "Andrew G. and Maria G. Terrell").[20]

3. Avon-WY's 2010 "unloading" of Avon-CT's life insurance policies.

The *Carpenter* court outlined other transactions involving Avon-CT and Avon-WY. After the 2008 financial crisis, the market for selling Charter Oak Trust policies dried up. *Carpenter*, 190 F. Supp. 3d at 289. Trudeau had served as the point person in selling these policies on the secondary market. *Id.* at 290. After an unsuccessful year of trying to find buyers, on March 16, 2010, Trudeau wrote Carpenter asking whether he wanted to "unload" two of Charter Oak Trust insureds' policies. *Id.* at 291. Carpenter replied, "we want to unload everything" and followed up ten days later, telling Trudeau to "please figure out if we have buyers or not." *Id.*

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[20] *See also* Doc. 187, Att. 14, at 2, 4-5, 23 (showing Avon-NV's general ledger, which includes three $15,000.00 payments for "Consulting Fees" to Andrew Terrell from the TD bank account in February, March, and May of 2010, and from the Avon-NV People's bank account in June 2010); *id.* at 2-3, 14-15 (showing in Avon-NV's general ledger a credit to Clermont Capital for $100,000.00 in July 2010, $50,000.00 in November 2010, and a total of $100,100.00 in December 2010).

Ultimately, Carpenter and his associates devised a way to sell some of the Charter Oak Trust policies to an entity called Life Insurance Fund Elite (Life Elite). *Id.* The transactions were accomplished in the following way. First, Charter Oak Trust "transferred ownership of the policy to an entity known as Yates Worldwide Holdings Ltd." *Id.* Bursey signed these agreements on behalf of Charter Oak Trust, while Trudeau signed on behalf of Yates Worldwide.[21] "Next, Yates Worldwide transferred the policy to Tranen Capital Alternative Investment Fund, Ltd. [and] Mr. Trudeau signed these agreements on behalf of Yates Worldwide, [while] Ken Landgaard[22] signed on behalf of Tranen." *Id.*; Doc. 187, at 15. Then Tranen transferred the policy to Avon-WY. *Carpenter*, 190 F. Supp. 3d at 291; Doc. 187, at 15. Landgaard signed these agreements on behalf of Tranen, while Trudeau signed on behalf of Avon-WY. *Carpenter*, 190 F. Supp. 3d at 291; Doc. 187, at 15. "Finally, the policies were transferred from Avon[-WY] to Life [Elite]." *Carpenter*, 190 F. Supp. 3d at 291. The *Carpenter* court did not find Carpenter's testimony attempting "to distance himself" from these transactions credible, finding "[i]t is apparent that [Carpenter] knew of and was involved in the transfer of policies to Life [Elite]." *Id.* at 292.

The Government's Exhibit List from the *Carpenter* criminal action shows the Tranen-to-Avon purchase

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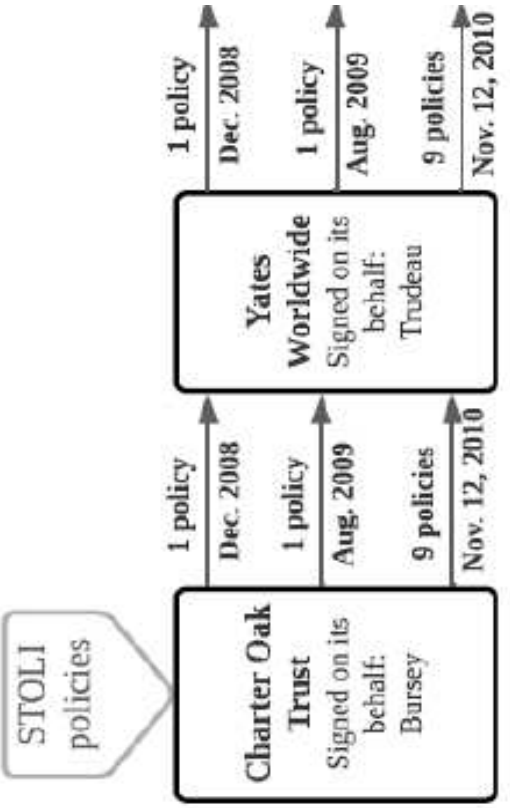
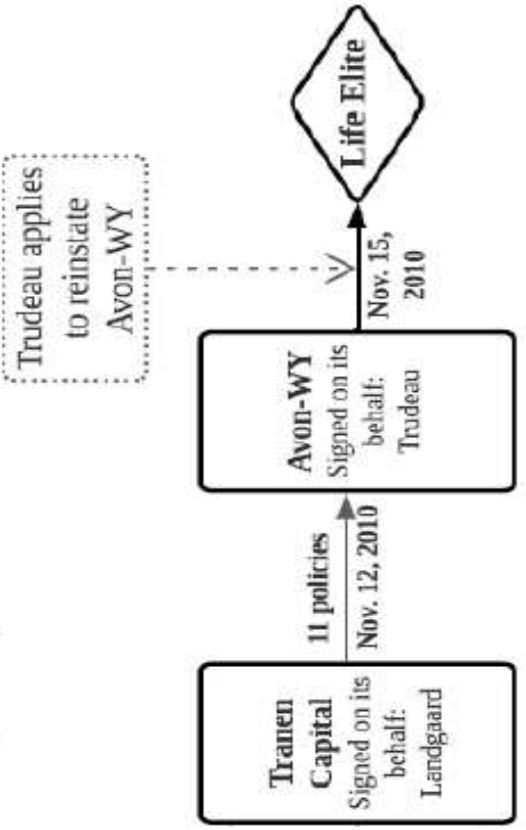
[21] Yates was registered in the British Virgin Islands, and Avon Capital, LLC owned 50,000 shares. Doc. 187, Att. 24.

[22] Ken Landgaard, who operated Tranen Capital Alternative Investment Fund, served as one of several straw insureds recruited to participate in Charter Oak Trust. *Carpenter*, 190 F. Supp. 3d at 280.

and sale agreements were dated November 12, 2010. *Carpenter*, No. CR-13-226-RNC, Doc. 207, at 20 (listed as "Life Insurance Purchase and Sale Agreement . . . from Tranen to Avon" for each of the eleven policies). At least nine Charter Oak Trust-to-Yates-to-Tranen transactions took place on November 12, 2010. *See id.* at 20-21 (listing "Life Insurance Purchase and Sale Agreement[s]" between Charter Oak Trust (listed as COT) and Yates, Yates and Tranen, and Tranen and Avon). Trudeau transferred the policies to Life Elite on November 15, 2010—the very day he first sought to reinstate Avon-WY. *Carpenter*, 190 F. Supp. 3d at 291; *see id.* Doc. 207, at 20 (listing Transfer Agreement and Life Settlements Purchase & Sales Agreements between Avon Capital and Life Elite); Doc. 147, Att. 9; Doc. 187, at 14-15.

Chain of events for Avon-WY's unloading of Avon-CT's policies (Nov. 12-15, 2010)




Trudeau applies to reinstate Avon-WY
Life Elite
Nov. 15, 2010
Avon-WY
Signed on its behalf: Trudeau
11 policies
Nov. 12, 2010
Tranen Capital
Signed on its behalf: Landgaard

That same day, Trudeau also emailed Carpenter "describing the structure of a sale" to Life Elite. *Carpenter*, 190 F. Supp. 3d at 291. And less than an hour later, he emailed Carpenter a flow chart describing the entities involved in the transaction. *Id.* The *Carpenter* court noted Carpenter requested the "ELITe [sic] portfolio ASAP" in response to Trudeau's email regarding the sale of policies to Life Elite on January 11, 2011; Carpenter knew of the transfer of these policies; and that these transfers involved the Ridgewood facility, except for two policies that never belonged to Ridgewood. *Id.* at 292. In fact, Carpenter was "more than just a willing participant in this conspiracy; he oversaw its development and execution." *Id.* at 299. The evidence established that Carpenter "intend[ed] to defraud life insurance providers by using misrepresentations to induce them to issue STOLI policies." *Id.* In doing so, he relied upon Avon-CT's Ridgewood facility,[23] and used Avon-WY as a conduit. *Id.* at 291-92. Carpenter did not challenge the district court's findings as to these transactions on appeal. *See Bursey*, 801 F. App'x 1.

III. This court Has Subject Matter Jurisdiction.

"[A] federal court must, sua sponte, satisfy itself of its power to adjudicate in every case and at every stage of the proceeding." *State Farm Mut. Auto. Ins. Co. v. Narvaez,* 149 F.3d 1269, 1270-71 (10th Cir. 1998) (quotation omitted); *see also Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 94-95 (1998) (holding that a federal court must always satisfy itself first that it

[23] "[I]t appears that Ridgewood did not know about [Charter Oak Trust]'s transfer of the policies." *Carpenter*, 190 F. Supp. 3d at 292.

does in fact have subject matter jurisdiction before proceeding in any case, and that there is no such thing as "hypothetical jurisdiction"); *Gold v. Local 7 United Food & Comm'l Workers Union,* 159 F.3d 1307, 1309-10 (10th Cir. 1998) ("*Steel* requires that a federal court satisfy itself of subject matter jurisdiction before proceeding to the merits of a claim—even when the question of the merits is the easier one. . . . "), *abrogation on other grounds recognized by Styskal v. Weld Cty. Comm'rs*, 365 F.3d 855 (10th Cir. 2004). Further, "the burden of proving jurisdiction is on the party asserting it. . . . " *State Farm Mut. Auto. Ins. Co.*, 149 F.3d at 1271 (internal citation and quotation marks omitted).

The doctrine of ancillary jurisdiction "recognizes federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). Federal courts typically exercise ancillary jurisdiction

> for two separate, though sometimes related, purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent . . . and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.

Id. (internal citations omitted).

This case arguably "involves the second, less common purpose—ancillary jurisdiction over collateral proceedings." *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 966 (9th Cir. 2014). Ancillary jurisdiction is reserved to "subsequent proceedings for the exercise

of a federal court's inherent power to enforce its judgments." *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) ("[W]e have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments—including attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances.").

Ancillary jurisdiction's reach does not extend "beyond attempts to execute, or to guarantee eventual executability of, a federal judgment." *Id.* at 357. And *Peacock* "cautioned against the exercise of jurisdiction over proceedings that are 'entirely new and original' . . . or where 'the relief sought is of a different kind or on a different principle' than that of the prior decree." *Id.* at 358 (internal citations omitted).

Peacock involved new allegations of fraudulent transfer that the plaintiff attempted to raise under ERISA. *Id.* at 358-59. The alleged wrongdoing occurred after the entry of the ERISA judgment. *Id.* The Court held that the district court lacked jurisdiction of this "new action based on theories of relief that did not exist, and could not have existed, at the time the court entered judgment in the ERISA case." *Id.* at 359.

"[W]hen postjudgment proceedings seek to hold nonparties liable for a judgment on a theory that requires proof on facts and theories significantly different from those underlying the judgment, an independent basis for federal jurisdiction must exist." *Sandlin v. Corp. Interiors Inc.,* 972 F.2d 1212, 1217 (10th Cir. 1992). Here, Universitas asserts an alter-ego theory. "The cause of action based upon the alter ego theory is a closer case because in theory the court is merely trying to identify the true debtor on the judgment." *Id.*

"Alter ego in its accurate sense involves sometimes complex factual findings of gross undercapitalization or of owners' failure to observe separate corporate existence." *Id.*

"[A]n attempt to hold directors liable for a corporate judgment 'already obtained' is not within the ancillary jurisdiction of the court." *Id.* at 1218 (quoting *H. C. Cook Co. v. Beecher*, 217 U.S. 497, 498-99 (1910)). To be sure, this Court recognizes Universitas is "attempt[ing] to execute, or to guarantee eventual executability of, a federal judgment." *Peacock*, 516 U.S. at 357. And the Court acknowledges the facts underlying Universitas's contentions are not significantly different from those underlying the *Nova SDNY Litigation*, and the relief sought is not of a different kind than in that turnover action. But this Court recognizes the limitation on ancillary jurisdiction that *Sandlin* and *Peacock* set forth.

Avon-WY argues *Peacock* precludes this Court's exercise of ancillary jurisdiction. Doc. 204, at 19. Universitas argues "in any judgment-enforcement action otherwise governed by *Peacock* there may in fact be an independent basis for federal jurisdiction." *Shaw v. AAA Eng'g & Drafting Inc.*, 138 F. App'x 62, 68 (10th Cir. 2005) (quoting *Ellis v. All Steel Const., Inc.*, 389 F.3d 1031, 1033-34 (10th Cir. 2004)); *see* Doc. 201, at 7-8. And here, that independent basis for subject matter jurisdiction over Universitas's alter-ego claim is diversity of citizenship. Doc. 201, at 8 ("This is a dispute between parties from different states with a matter in controversy exceeding $6 million, and thus this Court has subject matter jurisdiction over this proceeding."); *see also United States v. Vitek Supply Corp.*, 151 F.3d 580, 585-86 (7th Cir. 1998) (rejecting

judgment debtor's argument that "federal courts cannot collect debts by piercing the corporate veils of judgment debtors" where an independent basis for jurisdiction exists); *C.F. Tr., Inc. v. First Flight Ltd. P'ship*, 306 F.3d 126, 133 (4th Cir. 2002) ("[The *Peacock*] Court held only that federal jurisdiction over claims leading to an underlying judgment provides no *ancillary* federal jurisdiction over a subsequent, post-judgment alter ego claim.") (citation omitted). Even assuming without deciding this Court cannot proceed exercising ancillary jurisdiction, this Court agrees—and Avon-WY does not argue otherwise—that diversity of citizenship provides an independent basis for this Court's jurisdiction. *See also* 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3523 at 89 (2d ed. 1984) (stating that ancillary jurisdiction "include[s] those acts that the federal court must take in order properly to carry out its judgment on a matter as to which it has jurisdiction").

IV. The Effect of the Registration of the Judgment.

Under 28 U.S.C. § 1963, a judgment creditor may register one district court's judgment in an action for money damages by filing a certified copy of the judgment in any other district court, thereby giving the registered judgment "the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." 28 U.S.C. § 1963. The act of registration serves not merely as a procedural device for the collection of the foreign judgment—registration creates an altogether "new judgment" to be given the same effect as any other judgment entered by the registering court. *Condaire, Inc. v.*

Allied Piping, Inc., 286 F.3d 353, 357 (6th Cir. 2002) (citing *Stanford v. Utley*, 341 F.2d 265, 270 (8th Cir. 1965)). Section 1963 grants by implication "inherent powers to the registering court to enforce those judgments." *Id.*; *see also Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 235 n.8 (1998) ("Congress has provided for the interdistrict registration of federal-court judgments for the recovery of money or property.").

V. The Court Denies the Motions to Strike the Chernow Declarations.

The Court addresses Avon-WY's challenges (the first, sought to be joined by SDM) to Chernow's declarations. Docs. 193, 196, 213. Universitas submitted these declarations in support of its motion for summary judgment, and in support of its response to Avon-WY's motion for summary judgment. *See* Doc. 187, Att. 1; Doc. 205, Att. 1.

Avon-WY argues that the Chernow declarations are not based on Chernow's personal knowledge. Doc. 193, at 2-4; Doc. 213, at 3-4. A "declaration used to support or oppose a motion" for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the . . . declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4).

Universitas responds that Chernow demonstrated his first-hand knowledge based on his review of the documents he introduces in the declarations. Doc. 209, at 7; Doc. 205, Att. 1, at 1-2 (averring "personal knowledge"). It is not unusual for an attorney to make such declarations, and such declarations should come as no surprise to Avon-WY. Indeed, Chernow submitted similar declarations in this matter in April and Octo-

ber of 2019. Doc. 147, Att. 1; Doc. 171, Att. 1. As Judge Heaton observed, neither Avon-WY nor SDM disputed Universitas's April 2019 allegations, which relied on Chernow's similar declarations. Doc. 150, at 9 (citing Doc. 149). And neither objected to Chernow's October 2019 declaration on this basis.

Should the Court agree with Avon-WY that the Chernow declarations contain "speculation," this Court is prepared to disregard its analysis of certain parts of those declarations, without needing to strike entire declarations. *See United States v. TDC Mgmt. Corp., Inc.*, 827 F.3d 1127, 1134 (D.C. Cir. 2016) (deferring to the district court's evaluation of the admissibility of portions of a declaration, upon which it relied for "some factual analyses" and disregarded "legal conclusions and other deficiencies") (internal quotation marks omitted); *Servaas Inc. v. Republic of Iraq*, 686 F. Supp. 2d 346, 353 (S.D.N.Y. 2010) ("[A court] need not 'conduct a line-by-line analysis' [of a declaration] and, instead, may 'simply disregard any material that does not comply with' the Federal Rules of Civil Procedure and/or Federal Rules of Evidence." (citation omitted)), *aff'd,* 653 F. App'x 22 (2d Cir. 2011), *as amended* (Feb. 16, 2011); *see, e.g.*, Doc. 193, at 7 (claiming the "declaration is wrought with speculation").

Avon-WY further argues that the declarations contain impermissible hearsay and conclusory statements. Doc. 193, at 4-6; Doc. 213, at 2-5. The Court will make its own conclusions based on the admissible evidence presented. *See Servaas*, 686 F. Supp. 2d at 353 ("[T]he Court will not make the suggested inferences simply because [Declarant] has suggested them," instead, the court will look at the evidence and "draw

its own conclusions based on that evidence." (citations omitted)).

VI. The Court Considers Universitas's and Avon-Wy's Motions for Summary Judgment.

A. Standard of review.

Parties may seek summary judgment in post-judgment proceedings. *See Env't Cleanup, Inc. v. Ruiz Transp., LLC*, 2017 WL 2080270 (W.D. Okla. May 12, 2017) (ruling on cross motions for summary judgment filed in post-judgment garnishment proceeding). "Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Evans v. Sandy City*, 944 F.3d 847, 852 (10th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A fact is material if, under the governing law, it could have an effect on the outcome of the lawsuit. A dispute over a material fact is genuine if a rational jury could find in favor of the nonmoving party on the evidence presented." *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015) (internal quotation marks and citation omitted).

The Court views "facts in the light most favorable to the non-moving party and "draw[s] all reasonable inferences in [its] favor." *Dewitt v. Sw. Bell Tel. Co.*, 845 F.3d 1299, 1306 (10th Cir. 2017) (citations and alternations omitted). "Even so, the non-movant . . . must marshal sufficient evidence requiring submission to the jury to avoid summary judgment." *Id.* (brackets and internal quotation marks omitted).

The Court treats cross-motions for summary judgment "separately[—]the denial of one does not require

the grant of another." *Buell Cabinet Co. v. Sudduth*, 608 F.2d 431, 433 (10th Cir. 1979). In evaluating the parties' cross-motions for summary judgment the Court looks beyond the pleadings and assesses the proof to determine whether there is a genuine need for trial. *See Matsushita Elec. Indus. Co., v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-53 (1986).

Universitas argues that Avon-WY is an alter ego of Avon-CT and Avon-NV, and that this Court should pierce the corporate veil of all three Avon Capital, LLC entities to satisfy the judgment. Doc. 187, at 17-32. Universitas asks for an alter-ego determination based on Avon Capital's fraudulent conduct, inadequate capitalization of both Avon-WY and Avon-CT, intermingling among all three Avon Capital entities, and the three entities' failure to keep corporate formalities. *Id.*

Avon-WY also seeks summary judgment, arguing that Avon-WY is not a judgment debtor named in the *Nova SDNY Litigation* judgment, that Universitas lacks admissible evidence to prove its alter-ego claim, and that Avon-WY is not an alter ego of any judgment debtor. *See* Doc. 195.

For the reasons stated in the following alter-ego determination, the Court grants Universitas's motion for summary judgment and denies Avon-WY's motion for summary judgment.

B. The Court grants Universitas's motion for summary judgment: Avon-WY and Avon-NV are alter egos of Avon-CT, the named judgment debtor.

Universitas argues that Avon-WY is the alter ego of Avon-CT and Avon-NV. Because Avon-WY is an LLC formed in Wyoming, Wyoming law applies. *See Clemmer v. D.C. Grp.*, 2014 WL 1509274, *3 (W.D. Okla. Apr. 16, 2014) ("[T]he Oklahoma Supreme Court would most likely . . . look to the Restatement (Second) of Conflicts of Law to decide what substantive law to apply" to resolve the veil-piercing issue, which "provides that [t]he local law of the state of incorporation will be applied. . . . ") (internal quotation marks and citations omitted).

Wyoming law requires the presence of certain "exceptional circumstances" to pierce an LLC's corporate veil. *See GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc.*, 337 P.3d 454, 462 (Wyo. 2014) (reaffirming the "essence" of the Wyoming Supreme Court's veil-piercing analysis). Wyoming law, in determining "whether the limited liability company has been operated as a separate entity, or whether the member has instead misused the entity in an inequitable manner to injure the plaintiff," applies a "fact-driven and flexible" two-prong test. *Id.* at 463.

This two-prong test pierces the corporate veil:

> (1) the limited liability company is not only owned, influenced and governed by its members, but the required separateness has ceased to exist due to misuse of the limited liability company; and (2) the facts are such that an adherence to the fiction of its separate exis-

> tence would, under the particular circumstances, lead to injustice, fundamental unfairness, or inequity.

Mantle v. N. Star Energy & Constr. LLC, 437 P.3d 758, 799 (Wyo. 2019) (quoting *GreenHunter*, 337 P.3d at 462); *see also id.* at 800 *(*"[V]eil-piercing is a fact-intensive inquiry generally not suited for summary judgment.") (quoting *Atlas Constr. Co. v. Slater*, 746 P.2d 352, 355 (Wyo. 1987) (citation omitted)).

"[T]he existence of one or more elements tending to support a showing of legitimacy[, however,] does not always preclude summary judgment." *Terrapin Leasing, Ltd. v. United States*, 1981 WL 15490, at *3 (10th Cir. Apr. 6, 1981) (affirming a veil-piercing summary judgment when "as a whole and in context, the undisputed facts about the operation of this corporation show that it was such a sham that a jury would not be permitted to find it a legitimate shelter against tax claims against its owner and manipulator"); *Oren v. United States*, 1992 WL 79110, at *2 (W.D. Mich. Jan. 7, 1992) ("Taking the facts as a whole in the light most favorable to the plaintiff," the court granted summary judgment to the defendant finding that "[a]lthough some individual facts do favor plaintiff's position, the facts taken as a whole are overwhelming and leave no question of material fact for a jury that the corporation was the [plaintiff's] alter ego.").

In applying the *GreenHunter* test, the Court considers:

1. the existence of fraud,
2. the adequacy of capitalization,

3. "the degree to which the business and finances of the company and the member are intermingled," *Mantle*, 437 P.3d at 799, and

4. whether there has been an "injustice or unfairness." *GreenHunter*, 337 P.3d at 464.

The Wyoming Supreme Court has further enumerated a litany of factors relevant to "justifying a disregard of the corporate entity." *Daniels v. Kerr McGee,* 841 F. Supp. 1133, 1136 (D. Wyo. 1993) (citing *AMFAC Mech. Supply Co. v. Federer,* 645 P.2d 73, 77-78 (Wyo. 1982) (citation omitted), *abrogated on other grounds by Texas West Oil & Gas Corp. v. First Interstate Bank of Casper,* 743 P.2d 857, 859 (Wyo.1987)). These factors include: whether a corporation is truly a separate entity; commingling of funds and other assets; failure to segregate funds of the separate entities; failure to adequately capitalize a corporation; the absence of corporate assets and undercapitalization; the use of a corporation as a mere shell, instrumentality or conduit of an individual or another corporation; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; and the use of the corporate entity to procure labor, services or merchandise for another person or entity. *Kloefkorn-Ballard v. N. Big Horn Hosp. Dist.,* 683 P.2d 656, 661 (Wyo. 1984). And if the party making an alter-ego claim is "the victim of some basically unfair device" where the separate existence of the entity is "used to achieve an inequitable result," a court will also disregard that entity under Wyoming law. *AMFAC,* 645 P.2d at 81 (listing, as an example, paying "off a controlling shareholder" with the assets of an insolvent corporation "in preference to a general creditor").

1. Fraud confirms this.

Fraud is the only *GreenHunter* factor that by itself can justify piercing the veil. 337 P.3d at 463. Fraud can be actual or constructive. *Id.* Constructive fraud "consist[s] of all acts, omissions, and concealments involving breaches of a legal or equitable duty resulting in damages to another. . . . " *Id.* The party seeking to pierce the veil, however, must prove fraudulent intent. *Mantle*, 437 P.3d at 800. As Avon-WY argues, "[a]ctual fraud must be proven by clear and convincing evidence" while "[c]onstructive fraud must be proven by a preponderance of the evidence." Doc. 204, at 30 (citing *Mantle*, 437 P.3d at 786-89). "Clear and convincing evidence is 'proof which would persuade a trier of fact that the truth of the contention is highly probable.'" *Mantle*, 437 P.3d at 784 (citations omitted).

Among the other "badges of fraud" the Court can rely on to establish fraudulent intent are:

a. "[L]ack or inadequacy of consideration";

b. "close familial relationship or friendship among the parties";

c. "retention of possession or benefit of the property transferred";

d. "the financial condition of the transferor both before and after the transfer";

e. "the chronology of events surrounding the transfer";

f. occurrence of transfer during "threat of litigation"; and

g. "hurried or secret transactions."

Mantle, 437 P.3d at 789 (citation omitted).

Universitas argues that the Avon entities satisfy "every single badge of fraud." Doc. 187, at 24. It argues that "Avon Capital's actual fraud can be inferred through its fraudulent intent," which was already established from "the initial [fraudulent] transfers of insurance proceeds." *Id.* "[B]ecause of the virtual impossibility of proving actual fraudulent intent[,] . . . this court and [others] have come to rely on inferences and presumptions drawn from the surrounding circumstances." *Mantle*, 437 P.3d at 789 (internal quotation marks and citation omitted); *see also Universitas Educ., LLC v. Nova Grp., Inc.*, 2016 WL 1178773, at *3 (S.D.N.Y. Mar. 23, 2016) ("Judge Swain has noted that during discovery, [Nova and] Carpenter 'resisted all discovery efforts to determine the whereabouts of the Insurance Proceeds after the transfers, and such secrecy further indicates a fraudulent intent.'" (quoting *Aug. 2014 Nova*, 2014 WL 3883371, at *3)).

a. Lack or inadequacy of consideration.

Universitas argues Carpenter "fraudulently transferred the insurance proceeds to Avon-NV" to then fund Avon-WY's SDM acquisition, so the payments were "a continuation of a fraudulent transfer." Doc. 187, at 22. The *November 2013 Nova* court outlined the fraudulent conveyances that underlie Universitas's claim here. 2013 WL 6123104, at *8 ("[T]he evidence demonstrates that each entity that received Life Insurance Proceeds was controlled by Mr. Carpenter."). And these transactions stemmed from "a single purpose, to remove a portion of the Life Insurance Proceeds from the Charter Oak Trust . . . insulated from the reach of Mr. Carpenter's creditors (and of course, from [Universitas's] claim)." *Id.*

Avon-NV received no apparent consideration for its multiple payments on behalf of Avon-WY or Avon-CT. Avon-WY did not have a bank account until Trudeau opened one in 2012.[24] Avon-NV had no employees and appeared to receive no consideration for its payment of Avon-WY's obligations. *See* Doc. 147, Att. 5, at 146, lns. 10-12. This factor weighs in favor of a finding of fraud.

b. Close familial relationship or friendship among the parties.

Universitas argues that the three Avon entities are part of the several Carpenter-operated entities whose business objectives furthered Carpenter's fraudulent scheme relating to insurance payments. Doc. 187, at 23-26. Carpenter testified that Nova is a shell corporation.[25] Counsel for Nova stated Universitas's money was transferred first to Grist Mill Capital, and then to Grist Mill Holdings, Avon Capital, Carpenter Financial Group, Phoenix Capital Management,[26] and then to Grist Mill Trust. *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 5, at 90-92. Each of these is a judgment debtor. And the *August 2014*

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[24] Avon-WY maintains it has more than one bank account, but cites only to the one Trudeau opened in 2012. Doc. 195, at 5 (citing *id.* Att. 3 and Doc. 187, Att. 8 (sealed exhibit 7)).

[25] *See Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 5, at 47, dep. pg. 76, lns. 3-4. Doc. 310, Att. 5, contains multiple depositions within one attachment, so for clarity the Court will refer to both the ECF page number and the accompanying deposition page number.

[26] Carpenter testified he was Phoenix's sole officer and director. *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 5, at 42, dep. pg. 34, lns. 19-24.

Nova court found Carpenter also controlled Nova, Charter Oak Trust, Caroline Financial, and "hundreds of other related entities."[27] 2014 WL 3883371, at *2.

As to Bursey, who acted under Carpenter's "direction and on his behalf," the two "had a particularly close relationship. . . . " *Carpenter*, 190 F. Supp.3d at 299, 301. Regarding Grist Mill Trust, Carpenter, and Bursey served as trustees, and Carpenter's wife, Molly, as signer. *Nov. 2013 Nova*, 2013 WL 6123104, at *4. And the *August 2014 Nova* court found Carpenter also controlled Grist Mill Trust. 2014 WL 3883371, at *2. These familial, and otherwise close, relationships point toward fraudulent intent. *See Mantle*, 437 P.3d at 789 (citation omitted).

Universitas also argues that "Carpenter owns all three Avon entities" and controls each of their respective managers. Doc. 187, at 24. Carpenter Financial, for which Carpenter serves as Chairman, owns 99% of each of the three Avon entities. Carpenter's dominance over all of the entities involved also weighs in Universitas's favor as to a finding of fraud.[28]

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[27] *See also Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 5, at 37, dep. pg. 16, lns. 15-23 (The number of entities for which Caroline is the managing member and tax matters partner was "too numerous to mention.").

[28] Also of note, through no fault of its own, the *August 2014 Nova* court misstated the identity of the Avon Capital entities, using them interchangeably. 2014 WL 3883371, at *3 ("Avon was controlled by its managing member, Grist Mill [Capital], which is wholly owned by its members Grist Mill Holdings and Caroline Financial Group, Inc., both of which were wholly owned by Mr. Carpenter."). Of the three Avon entities, Grist Mill Capital managed only Avon-NV. Doc. 57, Att. 1, at 3.

c. Retention of possession or benefit of the property transferred.

The October 2009 transfer of $19.8 million to Grist Mill Capital was classified as an "unknown deposit." *Aug. 2014 Nova*, 2014 WL 3883371, at *5. The subsequent transfers from the Avon-NV bank accounts also lack credible explanations. *Id.* at *10. After this flurry of transfers, Carpenter, through his control of Avon-WY's managing member Caroline Financial, retained the property (*i.e.* SDM). And Carpenter controlled Avon-NV and served as a signatory on its two bank accounts. This factor weighs in favor of a finding of fraud.

d. Change in financial condition of transferor in relation to the transfer.

Carpenter controlled the financial affairs of his entities. *Id.* at *2. No one disputes that Carpenter opened the May 2009 Avon-NV TD bank account, which had a November 30, 2009 balance of $6,745, 794.16, a December 30, 2009 balance of $938,454.59, and a December 31, 2009 balance of $160,683.29. He was a signatory on Avon-NV's two bank accounts. Those accounts received funds from the Charter Oak Trust bank account, and then were used to satisfy the obligations of Avon-WY and related Avon-CT/Ridgewood transactions. Avon-NV's change in its financial condition to satisfy Avon-WY's obligations weighs in favor of a finding of fraud.

e. Chronology of events surrounding the transfer.

Avon-WY argues Universitas's position is "specious" because it cannot show a chain of custody

linking Avon-WY to the judgment. Doc. 204, at 30-31. And because the fraud claim is based "on the actions of non-member and non-manager Carpenter." *Id.* at 30. As Judge Heaton noted, Avon-WY did not challenge Universitas's allegations that Avon-NV used Universitas's judgment funds to purchase SDM for Avon-WY. Doc. 150, at 9 (citing Doc. 149). The Avon-NV TD bank account received the funds in November 2009 from the Grist Mill Capital TD bank account, which had previously received the funds from the Charter Oak Trust TD bank account.[29] Charter Oak Trust held the Avon-CT/Ridgewood life insurance policies. *Universitas*, 2013 WL 3328746, at *2. And Carpenter controlled each of these entities. Despite others holding titular authority, Carpenter made all significant corporate decisions; he "exercised ultimate authority over" the Avon entities' operations. *Carpenter*, 190 F. Supp. 3d at 286. In fact, "the formal corporate structure of the various Benistar Entities had little meaning for the people involved." *Id.* at 274.

Less than two months after receiving the November 2009 deposit, the Avon-NV TD bank account began a series of transfers of funds to Moran and his related entities to satisfy the Avon-WY/SDM purchase agreement. Doc. 147, Att. 22, at 3. Also within weeks, monies from that account were transferred to the Grist Mill Trust, a Carpenter-controlled entity. *Id.*

Avon-WY's argument that Universitas must trace the entirety of the purchase price to the Charter Oak Trust/Spencer funds "is illogical." *Nov. 2013 Nova*, 2013 WL 6123104, at *12. The *November 2013 Nova*

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[29] *Carpenter*, 190 F. Supp. 3d at 296; *see also Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 310, Att. 4, at 21.

court "decline[d] to presume that fraudulently conveyed funds, mixed with potentially legitimate funds, are traceable first to the legitimate funds." *Id.* This would "permit[] Carpenter and his affiliates to perpetuate their evasion of the legal obligation to pay the Life Insurance Proceeds to [Universitas] through manipulation of money transfers," resulting in inequity. *Id.* (citing *United States v. Henshaw,* 388 F.3d 738, 741 (10th Cir. 2004) ("[C]ourts exercise case-specific judgment to select the [tracing] method best suited to achieve a fair and equitable result on the facts before them.")).

Avon-WY also misstates Trudeau's involvement: it states "Trudeau had no involvement with Avon-WY prior to his reinstatement of it in 2011." Doc. 205, at 18, ¶ 92. However, before the 2011 reinstatement, Trudeau had reinstated Avon-WY in November 2010, and served as an officer and member of Avon-WY even before its reinstatement. Avon-WY's counsel previously told this to the Court. Doc. 187, Att. 11. This unusual chronology of events, involving Avon-WY's SDM purchase, funded by Avon-NV, and Avon-WY's 2010 transactions related to unloading the Charter Oak Trust Avon-CT/Ridgewood policies, weighs in favor of a finding of fraud.

Avon-WY also argues Universitas never asserted any cause of action against it in the turnover action. Doc. 204, at 24. When the Southern District of New York granted Universitas's motion to register the judgment here, it noted no opposition was filed to Universitas's motion. Doc. 1, Att. 2. That court granted the motion "for substantially the reasons stated in Universitas' memorandum in support of its motion." Doc. 1, Att. 2, at 1. Universitas's motion in turn relied upon Trudeau's February 2013 deposition testimony,

where he stated that Avon Capital, LLC had an "indirect interest" in the SDM policies, and "own[s] a portion of the death benefits." *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP, Doc. 487, Att. 1, at 275, lns. 14-20 (S.D.N.Y. Sept. 25, 2014); *id.* at 276, lns. 19-25; *id.* at 277, lns. 2-3. Universitas cited the correct standard for registering a judgment in another district. *Id.* Docs. 485-87. As outlined above, Trudeau and Carpenter used the Avon entities near interchangeably. Because of the intentionally opaque and interchangeable structure of Avon Capital, LLC, Universitas reasonably relied upon Trudeau's testimony that Avon Capital, LLC owned at least a portion of SDM's policies. *See also Carpenter*, 190 F. Supp. at 273 (noting in 2016, that "[t]he structure of Avon Capital [was] less clear").

Avon-WY again challenges the Chernow declarations, which the Court addressed above. Doc. 204, at 5-6. In making its findings, the Court has taken judicial notice of the turnover action, the criminal trial, and various documents from the Southern District of New York and the District of Connecticut actions. Similarly, the parties have relied upon various documents and testimony in arguing their positions.

f. Transfer takes place during the pendency or threat of litigation.

Universitas contends that "[e]very Avon Capital transaction occurred during the pendency of litigation," with Carpenter being "aware of pending litigation over the insurance proceeds when he initially fraudulently transferred them from [Charter Oak Trust]." Doc. 187, at 25. "[Universitas] had made claim to the [life insurance] funds in June 2008, well before they were transferred out of the Charter Oak Trust account"

and "Bursey, on behalf of Nova, acknowledged Nova's legal and fiduciary duty to pay to [Universitas] the [funds] prior to the arbitration." *Nov. 2013 Nova*, 2013 WL 6123104, at *11. The *November 2013 Nova* court found these facts indicated "that Nova knew of the possibility of a law suit to collect the Life Insurance Proceeds[and] Nova must therefore have believed that it be unable to pay the benefit plan obligation to [Universitas] when it drained its bank account by transferring the Life Insurance Proceeds to Grist Mill [Capital]." *Id.* Additionally, "there was clearly a close association between the entities involved in this transfer, with Mr. Bursey moving the funds to an entity controlled by his brother-in-law, Mr. Carpenter." *Id.* The transfers occurred after Charter Oak Trust had wrongly denied Universitas's claim, and the awareness that it violated a legal and fiduciary duty, weigh in favor of a finding of fraud with respect to this factor.

g. Hurried or secret transactions.

The transactions underlying the SDM purchase and the 2010 unloading of Charter Oak policies were both hurried and secreted. In its defense, Avon-WY first maintains it was "dormant" from June 17, 2009 to November 11, 2011. Doc. 195, at 4-5, ¶¶ 4-5; Doc. 204, at 20, ¶¶ 4-5.[30] Universitas argues "Trudeau re-instated Avon-WY the day before Avon-WY sold [the] fraudulently obtained" Charter Oak policies that re-

[30] In its reply brief, Avon-WY acknowledges "that Avon Capital-WY incurred the obligation to purchase SDM after Avon Capital-WY was administratively dissolved" and that Trudeau was the only signatory for the purchase. Doc. 214, at 12.

quired the Charter Oak Trust-Tranen-Yates transactions. Doc. 187, at 32.

Avon-WY was *not* dormant after its administrative dissolution in June 2009. Far from it. Less than two months after receiving the fraudulent November 11, 2009 transfer, on December 30, 2009, Avon-WY executed the Purchase Agreement for SDM Holdings. Doc. 195, Att. 3, at 3-6. Trudeau, who served as Avon-WY's signatory to that agreement, did so at Carpenter's direction. The use of the Avon-NV account, rather than one of a party to the transaction, suggests an intent to conceal or hide the source of funds. And when Trudeau did reinstate Avon-WY in 2010, it was during a flurry of transactions related to unloading a series of Avon-CT/Charter Oak Trust-related policies in November 2010.

These hurried and concealed transactions also tip the scales toward fraudulent intent. *See Mantle*, 437 P.3d at 789.

h. Conclusion.

The Avon Capital, LLC trifecta (CT, NV, WY) earns *Mantle*'s badges of fraud, supported by clear and convincing evidence. The close relationship of the involved parties, including both family (Bursey was Carpenter's brother-in-law[31]) and apparent friends is not in dispute. Just as before, "[t]his was an inside transaction involving closely related entities." *Nov. 2013 Nova*, 2013 WL 6123104, at *9. Only Avon-NV held the purse strings for all of Avon-WY's transactions.

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[31] *Carpenter*, 190 F. Supp. 3d at 273.

Avon-WY made the SDM purchase after a series of hurried and complex transactions revolving around Charter Oak Trust's October 2009 receipt of the Spencer insurance proceeds. *See Mantle*, 437 P.3d at 789. And Carpenter reaped the benefits of all the transactions. The Avon-NV TD bank account received the fraudulent transfer in October 2009. Less than two months later, the inactive Avon-WY signed the SDM deal. The transactions "were hasty" and "not in the ordinary course of business." *Nov. 2013 Nova*, 2013 WL 6123104, at *10. Carpenter used the Avon-NV TD bank account to satisfy Avon-WY's obligations, suggesting an intent to conceal the sources of funds. The next year, Carpenter and Trudeau schemed to use Avon-WY to act on Avon-CT's behalf to unload various Charter Oak Trust policies, duping Ridgewood in the process. *Carpenter*, 190 F. Supp. 3d at 291-92. The Avon entities' actions, taken together, amount to fraud—and could alone support piercing the veil of the three entities and persuade a trier of fact that the truth of the contention is highly probable. *Mantle*, 437 P.3d at 784; *see GreenHunter*, 337 P.3d at 469.

2. Undercapitalization confirms this.

In analyzing undercapitalization, the Court considers "the degree of undercapitalization and the reason for it," such as whether the undercapitalization was by choice or a result of external forces. *Mantle*, 437 P.3d at 799. Inadequate capitalization is determined by "compar[ing] the amount of capital to the amount of business to be conducted and the obligations which must be satisfied." *GreenHunter,* 337 P.3d at 463 (citation omitted).

Universitas argues neither Avon-WY nor Avon-CT had "the capital necessary to fulfill its business obligations," each having "entered into transactions requiring" substantial payments without having bank accounts or assets. Doc. 187, at 27. Avon-WY rebuffs this argument by dismissing Universitas's focus on pre-2010 operations. Doc. 204, at 31-32. And Avon-WY later states that it was adequately capitalized when Trudeau reinstated it, and incorrectly states Universitas does not dispute this. Doc. 214, at 11. Avon-WY did not have a bank account upon reinstatement in 2010 and Avon-NV was making Avon-WY's SDM payments under the purchase agreement at that time.

Avon-WY argues the Court should focus on "the time period following its reinstatement." Doc. 204, at 32. It contends that Universitas wrongly relies on relating to Avon-WY's operations prior to 2010 *before* it was "administratively restarted for an existence and purpose separate and distinct from prior operations." *Id.*

This is not so. Trudeau, an Avon-WY member in May 2010, reinstated Avon-WY in November 2010, in order to unload the Avon-CT/Charter Oak Trust policies. After reinstatement, Avon-WY still had the same financial obligations to SDM under the purchase agreement it entered into on December 2009, signed by Trudeau. Again, Avon-WY did not even have a bank account until Trudeau opened one in 2012. Yet, before that account was opened, Avon-WY satisfied a host of obligations through the two Avon-NV bank accounts, including the SDM-purchase payments to Moran and consulting fees to Terrell. And Avon-WY facilitated the unloading of the Charter Oak policies in 2010, which involved only Avon-CT and the Ridge-

wood facility. Neither Avon-WY nor Avon-CT have produced any bank account records for the 2009-2010 period. These factors also weigh in favor of piercing the corporate veil. *See also Kloefkorn-Ballard*, 683 P.2d at 661.

3. Intermingling confirms this.

Intermingling looks at business operations, assets, and finances, and requires an analysis of various aspects of the LLC, including commingled assets (such as using the LLC's property as the member's personal property) and separate bank accounts and business records. *GreenHunter,* 337 P.3d at 464; *see also Mantle*, 437 P.3d at 800 (relying on the following factors to support a finding of intermingling: using the same accounting department, having the same business addresses, having consolidated tax returns, lacking separate sources of revenue from the member, failing to have any independent employees from the member, and "the member manipulated the assets and liabilities such that the member reaped all benefits of the LLC's activities while the LLC was saddled with all losses and liabilities") (citation omitted).

Universitas argues "Avon Capital is a singular integrated entity." Doc. 187, at 28. Avon-WY calls this assertion "outlandish (and unsupported)." Doc. 204, at 32. It is not. As this Court has already found, there is plentiful intermingling among the three entities, each of which Carpenter controlled. Doc. 92, at 5-6.[32] In

[32] Trudeau testified that his "interest lied in the operating business." Doc. 187, Att. 6, at 94, lns. 9-10. By "operating business," he meant "Avon Capital in its entirety, whether it's [Avon-CT] or [Avon-WY] or whatever, dealt with the assets of the one part of

2009-2010, all three entities listed the principal and/or mailing address as 100 Grist Mill Road in Simsbury, CT. Maintaining the same addresses is "highly probative" evidence. *See Nov. 2013 Nova*, 2013 WL 6123104, at *9 (noting, in addition, that Carpenter "admits to having established and controlled hundreds of entities" sharing this office). In April 2016, Carpenter testified he was "privy" to each of the three entities. Doc. 147, Att. 5, at 144, lns. 14-16. He testified Avon-NV had no employees or office space. *Id.* at 146, lns. 10-16. The Southern District of New York has already adjudged Benistar to be an alter ego of the Judgment Debtors. Doc. 147, Att. 29, at 2. Avon-NV was set up by an individual who worked for Benistar. *Id.* Att. 5, at 144, lns. 19-25. Though that person was involved in the secondary market for life insurance, Avon-NV did not engage in any life-settlement transactions. *Id.* at 146, lns. 1-6.

Carpenter testified Avon-WY was formed because "Wyoming has the best laws in the country for doing life settlement transactions." *Id.* at 147, lns. 2-6. Carpenter stated he was unaware of who the members of Avon-NV were and that he could not recall if any of his entities were members of Avon-WY. *Id.* at lns. 17-22. He knew Avon-WY was involved in the acquisition of SDM, because Trudeau had introduced him to the previous owner of SDM, Moran. *Id.* at 148, lns. 4-23. The Southern District of New York found Carpenter's testimony about his denial of having a relationship with Nova incredible, as well as most of his testimony for other matters in that case, including his explanations for the purpose of the 2009-2010 transfers of the Charter Oak Trust insurance proceeds. *See Nov. 2013*

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that." *Id.* lns. 13-15. This suggests Trudeau also treated the Avon entities interchangeably for operational purposes.

Nova, 2013 WL 6123104, at *2-5; *Aug. 2014 Nova*, 2014 WL 3883371, at *3. Carpenter, as the signatory on the Avon-NV People's bank account, also signed at least one check to ASG to satisfy a payment Avon-WY owed.

Although Avon-WY vehemently argues it is a separate and distinct entity from Avon-CT and Avon-NV, the facts do not support this contention. Carpenter and Trudeau undertook an elaborate and complex series of actions. They orchestrated transactions among the three Avon entities that ignored legal formalities, which suggests the confusion and overlap was by design, at least in part to continue to hide assets from Universitas. For example, from 2009-2010, two bank accounts that Carpenter opened using Avon-NV, serviced all three entities. And Carpenter used the Avon entities interchangeably to suit his needs: Avon-CT was set up for transactions related to the Ridgewood facility and the Charter Oak Trust, Avon-WY for life settlements, and Avon-NV served as the account holder for each. Carpenter manipulated the assets and liabilities of the only Avon LLC with an account, Avon-NV.

Carpenter also identified himself as "Chairman of [the] Managing Member of Avon Capital, LLC" in signing the Ridgewood facility agreement, which pertained to Avon-CT. Doc. 187, Att. 9, at 3. But Avon-CT's managers were Trudeau, Robinson, and Bursey, while Avon-WY's managing member was Caroline Financial, for which Carpenter served as Chairman. The interchangeable use of the Avon entities caused confusion and deception.

This confusion caused the *August 2014 Nova* court to identify all the judgment debtors as Connecticut or Delaware entities in the turnover action involving

Avon Capital, LLC. 2014 WL 3883371, at *7. But, in the same action, Carpenter referred to himself as serving as Chairman of Caroline Financial, which in turn served as the managing member of Avon Capital. Doc. 205, Att. 2, ¶ 1. And again, that is true for Avon-WY—but *not* for Avon-CT. Similarly, the *August 2014 Nova* court identified the judgment debtor's managing member as Grist Mill Capital. 2014 WL 3883371, at *3. And that is true for Avon-NV—*not* for Avon-CT.

Avon-WY argues that it "kept its bank accounts and financial records entirely separate from those of its members" so it is not intermingled with Judgment Debtors. Doc. 204, at 32. This is untrue, at least to the extent that funds from Avon-NV's bank accounts satisfied Avon-WY's payment obligations to Moran for the SDM purchase agreement and satisfied Avon-CT's obligations on the Charter Oak Trust Waldman policy, as Universitas argues. Doc. 187, at 23. And Avon-WY fails to point to any bank account it maintained before 2012.

Avon-CT, Avon-NV, and Avon-WY are "not only owned, influenced and governed by its members, but the required separateness has ceased to exist due to misuse of the limited liability compan[ies]." *Mantle*, 437 P.3d at 799 (quotation omitted); *see also Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 390-91 (4th Cir. 2018) (finding three distinct LLCs that operated as a "single economic entity" with funds "transferred freely among the LLCs" without explanation, including payment of expenses of one LLC by another, were alter egos of a sole member who "utterly dominated and controlled" them); *Dudley v. Smith*, 504 F.2d 979, 982 (5th Cir. 1974) ("The effect of applying the alter ego doctrine . . . is that the corporation and the

person who dominates it are treated as one person, so that any act committed by one is attributed to both, and if either is bound, by contract, judgment, or otherwise, both are equally bound. . . . ") (quoting *Shamrock Oil & Gas Co. v. Ethridge*, 159 F. Supp. 693, 697 (D. Colo. 1958)). When looking at the undisputed facts of the three Avon's operations, as a whole, no rational juror could find otherwise. *See Terrapin*, 1981 WL 15490, at *3; *Oren*, 1992 WL 79110, at *2; *see also Kloefkorn-Ballard*, 683 P.2d at 661.

4. Injustice confirms this.

Universitas argues that the Avon entities are "judgment-proof shells" that benefited from Carpenter's fraudulent transfers intended to hide money from Universitas, so affording them veil-piercing protection would result in injustice. Doc. 187, at 21. Before the *November 2013 Nova* court, and continuing through this and other related litigation, Universitas "has engaged in wide-ranging discovery efforts in aid of execution of the Judgment, which have been met with vigorous opposition by Nova and its affiliates." 2013 WL 6123104, at *2. As to whether an injustice would result in this case if the Court did not apply the alter-ego doctrine, depriving Universitas of the fruits of its judgment against Avon would result in an injustice. "When, as here, the corporation is a mere dummy and the alter ego of a judgment debtor with no real existence apart from [that judgment debtor], the fiction of the corporation as a separate legal entity [cannot] be used to defeat the rights of the judgment creditor." *Shamrock Oil & Gas Co.*, 159 F. Supp. at 698. Undoubtedly, "the facts are such that an adherence to the fiction of its separate existence would, under the particular circumstances, lead to injustice, fundamen-

tal unfairness, or inequity." *Mantle*, 437 P.3d at 799 (quotation omitted); *see also AMFAC,* 645 P.2d at 81(holding that when the party making an alter-ego claim is "the victim of some basically unfair device" where the separate existence of the entity is "used to achieve an inequitable result," a court will disregard that entity under Wyoming law); *Kloefkorn-Ballard*, 683 P.2d at 661.

5. Conclusion.

A reasonable jury viewing the evidence in the light most favorable to Avon-WY, and drawing all reasonable inferences in its favor, could not find Avon-WY, Avon-CT, and Avon-NV operated as anything but alter egos. The Court grants summary judgment in favor of Universitas. *Dewitt*, 845 F.3d at 1306.

C. The Court denies Avon-WY's motion for summary judgment.

Avon-WY's arguments against an alter-ego determination stress the separateness of the three Avon entities. Doc. 195, at 14-18. Avon-WY argues Universitas presents only "generalized claims" and fails to meet its burden to present "specific facts showing a genuine issue for trial." *Id.* at 10-11; Doc. 214, at 8-14. Avon-WY maintains Universitas presents no clear and convincing evidence supporting fraud, apart from relying on the bad acts of others. Doc. 195, at 16-17; Doc. 214, at 5.

Avon-WY argues it must be treated as distinct from its previous iteration.[33] Doc. 195, at 14. Avon-

[33] Avon-WY's use of the two reinstatement dates in its briefs only adds to the confusion. Avon-WY sometimes argues it was

WY argues that Carpenter's involvement with Avon-WY was before it became "dormant" when it was administratively dissolved in June 2009. *Id.* It argues its current active state was "restarted" by Trudeau for "an existence and purpose separate and distinct from any event . . . prior to 2009." *Id.* But, Avon-WY cannot discount the probative evidence of alter-ego liability, most notably the purchase of SDM with funds from the Avon-NV TD bank account.

Avon-WY offers as undisputed facts: Trudeau "had no involvement with [Avon-WY] prior to his reinstatement of it in 2011"; Avon-WY "had no liabilities when Don Trudeau administratively reinstated [it]"; and Trudeau reinstated it "for business operations with a purpose separate and distinct from the prior business operations that used the entity." *Id.* at 5 ¶¶ 6, 8-9; *id.* at 14. In making these allegations, Avon-WY cites Trudeau's 2013 testimony, which does not support these assertions. *See id.* Att. 5.

Next, in its reply brief, Avon-WY backtracks and acknowledges that Trudeau held ownership interests in Avon-WY after its first administrative dissolution in 2009, contrary to its prior insistence that he was not involved with Avon-WY before reinstatement. Doc. 214, at 11. Avon-WY also admits it "had an obligation to purchase SDM," and that Trudeau served as the signatory (seemingly admitting Avon-WY was not

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dissolved in 2009 at which time it became dormant until being reinstated in 2011, leaving out the first reinstatement and second dissolution. *See* Doc. 195, at 4-5; Doc. 204, at 20. And other times, Avon-WY uses the 2010 reinstatement as the point in time when its activities became "separate and distinct" from prior operations. *See* Doc. 195, at 4-5, 14, 17, 18; Doc. 204, at 21.

dormant after this dissolution and again conflicting with its previously stated undisputed facts). *Id.* at 12.

Avon-WY's arguments fail for the reasons outlined above. First, Universitas disputes the argument that Avon-WY became dormant in the period after its administrative dissolution and before it was reinstated by Trudeau for a "different purpose." *See* Doc. 205, at 21. As shown, Avon-WY was in fact very active in the period between dissolution and reinstatement. The relevant period involves the transfers of $30 million of Avon-CT-related Charter Oak Trust life insurance proceeds to various entities, including to Avon-NV's bank account. Also included is the December 2009 SDM acquisition, which Avon-NV funded on Avon-WY's behalf. The Charter Oak Trust-Tranen-Yates transactions took place on November 12, 2010. The transfer from Avon-WY to Life Elite were completed November 15, 2010, the day Trudeau applied to reinstate Avon-WY.

Try as it might, Avon-WY cannot refute Carpenter's control of each of the Avon entities; Trudeau's involvement with Avon-WY (beyond bold factual misstatements that he was not involved until either 2010 or 2011); Trudeau's signing the SDM deal on Avon-WY's behalf in 2009 after the receipt of the Charter Oak Trust monies; the rapid reinstatement of Avon-WY and transactions in the latter half of 2010 timed in tandem with the Charter Oak Trust transactions; Avon-NV's payment of various SDM/ASG-related fees and payments to the Morans and related entities; and Avon-NV's payments to Avon-WY's consultant Terrell. Avon-NV also funded at least some of Avon-CT's activities, as the Avon-NV TD bank account shows. *See* Doc. 187, Att. 13, at 1, 4, 7-9 (reflecting two $44,150.00

Waldman policy payments in August and October 2009).

Viewing the factual record and making all reasonable inferences in favor on Universitas, the Court denies Avon-WY's motion for summary judgment. The evidence not only weighs in Universitas's favor, but is so one-sided that only Universitas can prevail as a matter of law. *See Anderson*, 477 U.S. at 252.

VII. The Court Denies SDM's Motion to Quash the Garnishment and Motion for Partial Summary Judgment.

Because SDM's motion for partial summary judgment contains substantially similar language to its motion to quash garnishment, the Court will address the motions together. *See* Docs. 191-92.

SDM seeks to quash Universitas's writ of garnishment, arguing in part it "[d]oes not believe any further relief is sought against SDM." Doc. 191, at 2. SDM also argues it "was not properly served with all of the required documents." *Id.* at 5. Universitas responds that SDM has previously "entered an appearance in this proceeding identifying itself as a 'Garnishee'" so even if it was improperly served, it is "properly before the Court as a garnishee." Doc. 206, at 6. Universitas also argues "voluntary appearance is equivalent to service" and it "can occur at any point in the proceeding. . . . " *Id.* (citing *Wagoner v. Saunier*, 627 P.2d 428, 431 n.4 (Okla. 1981)).

SDM argues that its counsel's appearances were for *Respondent* SDM, primarily to respond to a motion for contempt and a motion to compel. Doc. 211, at 2, 8; Doc. 212, at 4-5. SDM waived service by its appearance,

producing documents, corresponding with Universitas's counsel, participating in a status conference, filing a joint status report, and winning relief in the form of sanctions. *See, e.g.*, Docs. 113, 115, 134, 137, 142, 148; *Hopper v. Wyant*, 502 F. App'x 790, 792 (10th Cir. 2012) ("'[A]n individual may submit to the jurisdiction of the court by appearance,' and voluntary use of certain court procedures may constitute constructive consent to the personal jurisdiction of the court." (quoting *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 703-04 (1982))).

In addition to the arguments regarding lack of relief sought and service included in the motion to quash, SDM alternatively argues in its motion for summary judgment that SDM is not liable as a garnishee because it is not indebted to and does not possess assets belonging to the Judgment Debtor. Doc. 192, at 9-10. SDM makes "the claim of exception on the part of the judgment debtor(s) . . . [that SDM] is neither owned by nor indebted to the actual judgment debtor(s): [Avon-CT] and/or [Avon-NV]." *Id.* at 10 (quoting *id.* Att. 1). In determining the Avon entities are alter egos, the Court finds they are one and the same for purposes of their liability to Universitas. *Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 143 (2d Cir. 1991) (stating that once alter-ego status is established, "the previous judgment is then . . . enforced against entities who were, in essence, parties to the underlying dispute[and] the *alter egos* are treated as one entity"). Because Avon-WY owns one hundred percent of the membership interests in SDM,[34] SDM possesses assets of a judg-

[34] *See* Doc. 57, Att. 3, at 2, ¶ 7.

ment debtor. *Id.* The undersigned finds Universitas does seek relief against SDM, as SDM serves as Avon-WY's "most notable asset." Doc. 92, at 4 n.2. Viewing the factual record and making all reasonable inferences in favor of the nonmovant, the Court denies SDM's motion for partial summary judgment.

VIII. The Court Denies Universitas's Motion to Strike SDM's Motion to Quash and Its Request for Sanctions Against SDM.

In seeking to strike SDM's motion, Universitas argues that every issue in the motion to quash is "also addressed in SDM's Motion for Summary Judgment and SDM's Opposition to Petitioner's Motion for Summary Judgment." Doc. 208, at 1. What else could SDM "hope to accomplish by filing the same argument three times, other than 'to harass, cause unnecessary delay, or increase the cost of litigation'"? *Id.* at 2. In fact, "Mr. Carpenter and his associates have a demonstrable history of filing motions solely to 'harass, cause unnecessary delay, or increase the cost of litigation.'" *Id.* (citing *Nova SDNY Litig.*, No. CIV-11-1590-LTS-HBP; *Universitas Educ., LLC v. Nova Grp., Inc.,* 2013 U.S. Dist. LEXIS 142481, at *11 (S.D.N.Y. Sept. 30, 2013) (indicating that Nova's "re-filing of the motion to dismiss was in bad faith and with a motive to delay, harass, or needlessly increase the cost of litigation")). Finally, Universitas notes SDM is run by Kehoe, a Benistar employee. *Id.*

Despite the demonstrable history of filing motions to harass and delay on the part of a multitude of Carpenter-controlled entities, the Court notes SDM's counsel states it is acting in good faith and out of an abundance of caution. Doc. 191, at 1; Doc. 192, at 2.

SDM's counsel was uninvolved in the turnover proceedings or any other apparent litigation in this matter. As such, the Court finds the denial of Universitas's motion to quash to be appropriate.

IX. Conclusion.

Avon-WY and Avon-NV are alter egos of Avon-CT. Given this, Universitas may enforce the judgment it registered here against any of the three Avon entities. 28 U.S.C. § 1963 (A judgment has "the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."); *Wm. Passalacqua Builders, Inc.*, 933 F.2d at 143; *see also Condaire*, 286 F.3d at 357 (noting that registration under § 1963 equates to a "new judgment" and recognizing § 1963's grant of "inherent powers . . . to enforce [such] judgments"); *Sys. Div., Inc. v. Teknek Elecs., Ltd.,* 253 F. App'x 31, 37 (Fed. Cir. 2007) ("The exercise of [personal] jurisdiction over an alter ego is compatible with due process because a corporation and its alter ego are the *same entity*. . . . "); *Misik v. D'Arco*, 197 Cal. App. 4th 1065, 1072 (2011) ("[A]mending a judgment to add an alter ego does not add a new defendant but instead inserts the correct name of the real defendant."). So, the Court may enjoin each of these entities from transferring, alienating, and/or concealing or encumbering any non-exempt property.

X. Recommendations and Notice of Right to Object.

For the reasons discussed above, the undersigned recommends:

1. The Court DENY Avon-WY's motions to strike, Docs. 193, 213.

2. The Court GRANT SDM's motion to join Avon-WY's first motion to strike, Doc. 196.

3. The Court GRANT Universitas's motion for summary judgment and find that Avon-WY and Avon-NV are alter egos of Avon-CT, the named judgment debtor, Doc. 186.

4. The Court DENY Avon-WY's motion for summary judgment, Doc. 194.

5. The Court DENY SDM's motion to quash, Doc. 191.

6. The Court DENY SDM's motion for partial summary judgment, Doc. 192.

7. The Court DENY Universitas's motion to strike SDM's motion to quash, Doc. 208.

8. The Court ENJOIN Avon-WY from transferring, alienating, and/or concealing or encumbering its ownership of any interest in SDM.

9. The Court ENJOIN Avon-WY, Avon-CT, and Avon-NV from transferring, alienating, and/or concealing or encumbering any non-exempt property.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court on or before November 3, 2020, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The parties are further advised that failure to make a timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned in the captioned matter.

ENTERED this 20th day of October, 2020.

Suzanne Mitchell
U.S. Magistrate Judge

ORDER DENYING PETITION FOR PANEL REHEARING EN BANC, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT (JANUARY 27, 2025)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor -Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor.

Nos. 23-6125 and 23-6167

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

Respondents/Garnishees,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

Nos. 23-6126 and 23-6168

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC.

Respondents/Garnishees,

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

RYAN T. LEONARD, Esq.,

Receiver.

Nos. 24-6066 and 24-6033

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor–Appellee,

v.

AVON CAPITAL, LLC,
a Connecticut limited liability company,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, LLC;
SDM HOLDINGS, LLC,

Respondents/Garnishees.

AVON CAPITAL, LLC,
a Wyoming limited liability company,

Intervenor – Appellant.

No. 24-6006

Before: TYMKOVICH, MORITZ, and CARSON, Circuit Judges.

Appellants Avon Capital, LLC and SDM Holdings, LLC's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge

in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Christopher M. Wolpert
Clerk