

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

Merrill B. Light, Merrill U. Barringer as Personal Representative of the
Estate of Paul Brandon Barringer II, J. Randolph Light, Jr., Merrill B. Light
as putative trustee of the Paul B. Barringer II Revocable Trust dated
December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer
Light Revocable Trust, ... Respondents

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

Coastal Forest Resources Company ("CFRC").....Intervenor/Respondent.

RECORD ON APPEAL
VOLUME IX OF XVI

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Certificate of Counsel

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO. 2016-CP-07-1919
IN THE MATTER OF:	)	
ESTATE OF PAUL B. BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	
Plaintiff,	)	CFRC'S
	)	MOTION FOR INTERVENTION AND
	)	PROTECTIVE RELIEF
	)	
vs.	)	
	)	
MERRILL B. LIGHT, MERRILL U.	)	
BARRINGER, as Personal Representative	)	
of the Estate of Paul Brandon Barringer, II,	)	
J. RANDOLPH LIGHT, JR., MERRILL B.	)	
LIGHT as putative trustee of the Paul B.	)	
Barringer, II, Revocable Trust dated	)	
December 4, 1998, and MERRILL B.	)	
LIGHT as Trustee of the Merrill Barringer	)	
Light Revocable Trust,	)	
	)	
Defendants.	)	

Coastal Forest Resources Company ("CFRC"), by and through its undersigned counsel and pursuant to Rule 24, SCRC, submits this Motion for Intervention and Protective Relief. CFRC seeks to intervene for the limited purpose of precluding Hampton Luzak from litigating shareholder derivative claims that belong to CFRC, which contravenes CFRC's bylaws and the law of Virginia, where CFRC is incorporated. Some **\$104 million** of the **\$112 million** in damages she seeks is attributable only to alleged injuries suffered, if at all, by CFRC. This is a familiar tactic for Mrs. Luzak, who repeatedly and unsuccessfully sought to litigate derivative claims for herself in an earlier lawsuit brought in Virginia. The Virginia court granted CFRC's motion for summary judgment, which the Fourth Circuit affirmed. *Luzak v. Light*, No. 115CV501AJTIDD, 2016 WL 3854118 (E.D. Va. July 8, 2016), *aff'd*, 678 F. App'x 180 (4th Cir. 2017).

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Pursuant to Rule 11, SCRCP, the undersigned counsel certifies that consultation with counsel would serve no useful purpose.

CFRC's motion is based on the following, as well as its supporting memoranda of law and any affidavits, memoranda, oral arguments and such further evidence as may be presented:

A. The Court Should Grant CFRC's Request to Intervene.

1. Rule 24(a)(2), SCRCP "permit[s] liberal intervention" as a matter of right. *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). A party seeking intervention as of right need only "(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." *Id.*

2. CFRC's motion is timely. This motion was prompted by Mrs. Luzak's efforts to compel the production of documents from CFRC in July 2020, her depositions of CFRC's employees and former counsel in March and April 2021, and the list of topics she served on May 4, 2021 for Mrs. Luzak's proposed Rule 30(b)(6) deposition of CFRC. These efforts demonstrated Mrs. Luzak's intent to pursue derivative claims in this case. Moreover, no party will suffer prejudice because discovery in this case remains ongoing.

3. CFRC plainly has an interest in claims alleging injuries **to CFRC**. Virginia law applies because CFRC is incorporated in Virginia. S.C. Code § 33-15-105(c); *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649–50, 817 S.E.2d 273, 277–78 (2018). When a shareholder brings a derivative claim "the corporation is a necessary party" and "the real party in interest" because the "proceeds of the action belong to the corporation and it is bound by the result of the

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suit.” *Michael E. Siska Revocable Tr. v. Milestone Dev., LLC*, 282 Va. 169, 181, 715 S.E.2d 21, 27–28 (2011).

4. Denying intervention would impair CFRC’s ability to protect its interests. Virginia enforces the derivative claim rule to protect a corporation’s creditors and other shareholders because “allowing a recovery by one shareholder” would “prejudice the rights of others not a party to the suit.” *Simmons v. Miller*, 261 Va. 561, 574, 544 S.E.2d 666, 674 (2001). Intervention is thus necessary to safeguard CFRC’s interests, as well as those of its other shareholders, directors, officers, employees, and creditors who are not related to the parties in this case.

5. The existing parties cannot adequately protect CFRC’s interests. An intervenor need only “raise certain issues outside the existing pleadings,” “assert certain defenses” that the existing parties “may or may not be able to raise,” or “bring a different perspective or experience to the proceeding that would otherwise be absent.” *Berkeley Elec. Co-op.*, 302 S.C. at 191–92, 394 S.E.2d at 715. Through this motion, CFRC is raising a new and significant issue—the improper assertion of derivative claims in this action—that the existing parties have not raised.

6. An intervenor may also seek permissive intervention under Rule 24(b), SCRCP. As an alternative to intervention as a matter of right, CFRC should be granted permissive intervention for the reasons discussed above.

B. Mrs. Luzak is Attempting to Litigate Derivative Claims that Belong to CFRC.

7. Virginia follows the “overwhelming majority rule” “that an action for injuries to a corporation cannot be maintained by a shareholder on an individual basis.” *Simmons*, 261 Va. at 573, 544 S.E.2d at 674. Claims “for breach of fiduciary duty against officers and directors must be brought derivatively on behalf of the corporation.” *Id.* at 576, 675. “[A] stockholder has no standing to sue in his own right for an injury to the corporation on the ground the injury caused a

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depreciation in the value of his stock.” *Keepe v. Shell Oil Co.*, 220 Va. 587, 591, 260 S.E.2d 722, 724 (1979). To maintain an individual claim, a shareholder must allege an injury that is “unique” to her and not suffered by other shareholders. *Remora Invs., LLC v. Orr*, 277 Va. 316, 673 S.E.2d 845 (2009).

8. Count 19 of the Amended Complaint for civil conspiracy is a classic derivative claim. *See* Am. Compl. ¶¶ 190–93. The Amended Complaint alleges that Merrill and Randy Light, both of whom were CFRC directors, “conspired” with “various agents and representatives of CFRC” to sell “integral portions of the business,” including “three of [CFRC’s] manufacturing facilities in a transaction that closed on June 24, 2016.” *Id.* ¶ 191–92. Mrs. Luzak testified in her deposition that these assets were “owned by the company,” CFRC’s directors decided to sell them, and she received distributions of the resulting profits as a CFRC shareholder. Ex. C (H. Luzak Dep. Tr.) at 63:16–67:1.

9. The vast majority of Mrs. Luzak’s alleged damages in this action are also derivative. Mrs. Luzak’s damages expert, Dr. Charles Alford, identified six categories of damages totaling \$112 million. Ex. I (Alford Amended Supplemental Disclosure) at Luzak-Alford 0011. Of these, four categories of damages totaling \$104 million are actually derivative claims under Virginia law. As Dr. Alford’s report and deposition testimony make clear, for each of those four categories of damages, the alleged injury fell on CFRC, with all shareholders suffering only indirect damages through the loss of value of their stock.

10. In addition, the second category of damages, relating to a 2013 sale of stock to CFRC’s current CEO, J. Travis Bryant, was the subject of Mrs. Luzak’s prior claim in Virginia. The Virginia court expressly held that this claim “constitute[d] a derivative action” involving “an alleged injury common to all shareholders,” which “is deemed to be a corporate injury and one

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that is controlled by the corporation in the first instance as far as how to address that injury.” Ex. D (June 19, 2015 Hearing Tr.) at 44:11–48:3.

11. Mrs. Luzak has also stated her intention to pursue derivative claims that she has not explicitly alleged in her Amended Complaint. In proceedings before the Circuit Court of Gadsden County, Florida in connection with third-party document subpoenas that Mrs. Luzak served on CFRC, Mrs. Luzak alleged that there had been “major misappropriations in company assets” during CFRC’s 2013 and 2014 fiscal years, which “would be a significant element of recovery for Plaintiff in this case.” Ex. K (Luzak Fla. Br.) at 23–24. She also alleged that CFRC improperly paid Mrs. Light’s fees in defending the above-referenced Virginia litigation, which was “an element of Plaintiff’s damages.” *Id.* at 18. The Supreme Court of Virginia has stated explicitly that claims for “misappropriat[ion] by an officer” are derivative. *Cattano v. Bragg*, 283 Va. 638, 648, 727 S.E.2d 625, 629 (2012).

C. Mrs. Luzak Cannot Litigate Derivative Claims in this Action.

12. Derivative claims cannot proceed in this action because Mrs. Luzak lacks standing. Specific statutes govern derivative claims brought on behalf of a Virginia corporation like CFRC. To assert derivative claims under Virginia law, she first make a written demand on CFRC and wait at least 90 days before filing suit. *See* Va. Code § 13.1-672.1(B). That requirement provides the Board of Directors, or a special committee of disinterested directors, the opportunity to determine whether derivative litigation is in the company’s best interests. *See* Va. Code § 13.1-672.4. CFRC followed those requirements when Mrs. Luzak previously asserted a derivative claim, and both the Virginia court and the Fourth Circuit upheld CFRC’s decision-making process. *See Luzak*, 2016 WL 3854118 at *3–8.

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13. In addition, the Court lacks subject matter jurisdiction over derivative claims belonging to CFRC, a foreign corporation. South Carolina's General Assembly "has made clear that this state is 'not authorized' to 'regulate the organization or internal affairs of a foreign corporation.'" *Pertuis*, 423 S.C. at 650, 817 S.E.2d at 278 (quoting S.C. Code § 33-15-105(c)).

14. CFRC's bylaws also prohibit Mrs. Luzak from bringing derivative claims outside of Virginia. Article VIII, Section 7 states that "the United States District Court for the Eastern District of Virginia, Alexandria Division, or in the event that court lacks jurisdiction to hear such action, the Circuit Court of the County of Fairfax, Virginia . . . shall be the sole and exclusive forum" for "any derivative action or proceeding brought on behalf of the Corporation." Ex. S (CFRC By-Laws) art. VII, § 7. Virginia law expressly authorizes such bylaws. Va. Code § 13.1-624(C).

15. The judgment in the Virginia litigation also precludes Mrs. Luzak's damages claim relating to the 2013 stock sale to Mr. Bryant. The Virginia court granted summary judgment as to this exact same claim. *See Luzak*, 2016 WL 3854118 at *3–8.

CFRC therefore respectfully requests that the Court (1) grant its request to intervene in this action for the limited purpose of precluding the litigation of derivative claims in this action, (2) enter a judgment dismissing Mrs. Luzak's cause of action for civil conspiracy for lack of standing and subject matter jurisdiction, (3) strike the first, second, fourth, and sixth categories of damages identified in Dr. Charles Alford's expert report, and (4) enter a judgment declaring that Mrs. Luzak may not litigate any other derivative claims in this action.

ROA 003629

ROA 003630

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Ryan G. Rich

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Counsel for Coastal Forest Resources Company

May 14, 2021
Charlotte, North Carolina

ROA 003630

ROA 003631

EXHIBIT A

Letter H. Luzak to P. Barringer, et al.
July 6, 2012

ROA 003631

ROA 003632

Case 1:15-cv-00501-AJT-IDD Document 372-3 Filed 02/17/16 Page 2 of 6 PageID# 4579

6 July 2012

Mr. Paul B. Barringer, II
14 South Calibogue Cay Rd.
Hilton Head, SC 29928

Mrs. Merrill B. Light
9 Wild Heron Point
Hilton Head, SC 29928

Mr. Michael B. Hagler
Fulcher Hagler LLP
One 10th Street
Augusta, GA 30901

Mr. Kevin M. Luzak
167 East 71st Street
New York, NY 10021

Dear Dad, Merrill, Mike, and Kevin,

I write this letter as a shareholder of Coastal Forest Resources Company ("Coastal") to demand that the board take immediate action to address my father's incapacity due to illness to serve as a Coastal board member or officer, and to remedy the breaches of fiduciary duty which occurred at the June 28, 2012 board meeting. This includes postponing the shareholder's meeting noticed (although deficiently) for July 16, 2012, and taking steps to assure that Coastal has leadership during this period of transition by affirming that Kevin Luzak continues to serve as President and CEO until the board can act on an informed basis to determine whether Coastal's best interests are served by a change.

The past several weeks have been very difficult for my family and, I would imagine, for Coastal. I have been in a nightmare that won't seem to end. I am watching my father's illness progress at a shocking pace, I see my family making terrible decisions with respect to taking care of him, and I see the effect that these misguided decisions are having on Coastal and everyone involved with it. The last thing that I ever wanted to do was write a letter discussing what could and should have been handled as a private family matter. Kevin and I have made every effort to convince my family to confront my father's disease in a way that is best for his health while preserving his dignity and preventing damage to Coastal, but my family appears unable or unwilling to do the right thing here. I am therefore forced to

ROA 003632

Hampton Luzak 000210

ROA 003633

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make this formal demand for action and to lay out the facts which can no longer be ignored.

My father has been undergoing treatment for dementia for quite some time. We recently learned in a meeting that I attended with an MUSC neurologist that my father has been diagnosed as suffering from a form of Alzheimer's Disease. I, my mother, and my sister have been aware of his condition for several months.

As a family, we have had every opportunity to address my father's health, and to make the changes that it necessitates in his everyday life, privately. One of these changes is the need to transition him, with all of the dignity and respect that he deserves, out of his role as a fiduciary for the company that he created and built with such success. A man who is suffering from Alzheimer's Disease is not capable of serving as a fiduciary or officer making decisions that impact the lives of hundreds of employees or the financial the position of and shareholders.

We have, as a family, unfortunately found it impossible to come to grips with the reality of his illness. We have not been able to make a decision that is excruciatingly painful but absolutely and clearly necessary – the decision to confront my father with his disease and to focus his attention away from business and toward taking steps to protect his health and wellbeing.

The results of this failure to act promptly and appropriately are becoming vividly clear. My family voted at the June 28 board meeting to fire Kevin on the basis of a combination of delusion, deep confusion, and ridiculous and unfounded challenges to his character. My family voted down a motion that the board obtain an independent third party to investigate these allegations so the board could make responsible decisions on an informed basis. Worse, my family voted in favor of a motion to install my father, who has Alzheimer's Disease, as President and CEO of the company. The shareholders are now being asked to elect a board designed to ensure that my father, despite his condition, is elected to replace Kevin as President and CEO. These actions constitute serious breaches of fiduciary duty that must be remedied immediately.

I cannot allow my family to jeopardize my father's reputation and his stature by putting him in a position to unknowingly cause extraordinary damage to his life's work and to the people and the institutions that are its stakeholders. Moreover, I cannot permit my sister to assume the extraordinary liability that will rest with her and her husband for any damage that occurs as a result of their electing my father as President and CEO with knowledge of his impaired condition. My parents have placed her in an unimaginably difficult position that is simply not fair.

My husband is an honest and honorable man who has been involved with Coastal for more than 18 years. He has been a strong and loyal partner to my father, and has taken greater and greater responsibility over the past eight years, when he has been president and later CEO of the company. My father has thrown out a laundry list of

ROA 003633

Hampton Luzak 000211

ROA 003634

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delusional and unfounded accusations, starting with an event that never occurred. He believes that Kevin threw him and Merrill out of the April 22 board meeting, and that one of the meeting attendees threw a book at Merrill. This event NEVER OCCURRED. You directors were in the room; you all know that it did not occur.

He has also apparently believes that Kevin was trying to kick him out and sell or take control of the company. He bases this accusation on a pile of papers that he thinks he "discovered" that outlines the plot. The papers that he discovered had actually been given to Merrill by Kevin, and were copies of pages from presentations made at the February 2012 board meeting, which my father chaired, and a March 2011 executive committee meeting that he attended. He has no recollection whatsoever of either meeting, or of ever having seen any of the materials that he "discovered."

My father also objects to the strategy that Kevin has been pursuing (in a fully transparent manner with knowledge of the board) to diversify the company's operations in an effort to grow the business and to generate larger and less risky cash flow. All of us, including Kevin, are willing to honor this objection and to refocus on core operations if that's what the board wants us to do. However, my father has implied that Kevin was pursuing this strategy behind backs of the board and shareholders, which is absolutely untrue. The presentation that he "uncovered" from the March 2011 and February 2012 meetings were only two among many examples of presentations that Kevin has made to the executives, to the board, and to my family outlining his goals and the manner in which he wanted to achieve them (including detailed budgets). We all knew exactly what he was doing, and my father simply forgot about it.

Lastly, my father recently characterized Kevin as the "greediest person he has ever met." He bases this comment on the allegation that Kevin asked for a check for \$1 million at the last board meeting. This request NEVER OCCURRED. My father was also put off by Kevin's request that an independent compensation committee be formed by the board and that this committee work with an independent compensation advisory firm to evaluate Kevin's compensation. Kevin did in fact make this request, and he was motivated by the desire to put in place a process that would give shareholders confidence that his compensation was independently set and was reasonable. I cannot understand how this proposal can in any way be thought of as "greedy."

Kevin has attempted to deal with my father's accusations in a responsible and respectful way. Several weeks ago, following my father's attempt to terminate him as CEO but prior to the recent board attempt to terminate him as president, Kevin asked that the Company retain an independent, qualified third party to examine my father's allegations. The motive behind this request was very clear - he wanted to give us all a chance to gain the facts, which clearly demonstrate that my father is confused, has a severely deteriorated short-term memory, and is suffering from

ROA 003635

Case 1:15-cv-00501-AJT-IDD Document 372-3 Filed 02/17/16 Page 5 of 6 PageID# 4582

delusions. Having done so, it was Kevin's hope that everybody would be able to move on to confront and deal with the illness. This request was refused.

I then made the same request, privately, to my sister and my father. My motivation was the same. I wanted to get the facts on the table so that we would all be able to confront them and make the right decisions. I did not receive an answer from either of them. It is not fair to Kevin or Coastal's shareholders to leave these allegations of wrongdoing unaddressed, or to bury the truth of my father's mental impairment when so much is at stake.

Finally, Kevin called a board meeting on June 28 to formally request that the board authorize an independent investigation into my father's allegations. This board meeting was the first instance in which a person outside of the family, Mike Hagler, was made aware of my father's actions and his intent. Mike responded as any director who is aware of his fiduciary obligation to stakeholders must respond in this situation. He agreed an investigation should take place so that the board could act on an informed basis. In the email he sent to Merrill after the board meeting, he made note of my father's obvious confusion and his inability to distinguish fact, and was uncomfortable about what he thought was a great deal of "coaching" of my father during the board call by my mother and my sister. Mike and Kevin voted for the investigation, my father voted against it. My sister joined my father in voting against Kevin's proposal, which was therefore set aside.

Merrill's vote was extremely upsetting to me because she is very aware of the reality of our situation. She has told me many times, though, that she feels she cannot go against my father's wishes. She has had a great deal of guilt placed on her, and she also feels that it's my father's company to do with as he wants. However, despite my father's enormous past contributions, Coastal is the shareholder's company, not my father's, and Merrill's fiduciary responsibility requires her to act in accordance with the best interests of the company and its shareholders, rather than from a sense of parental loyalty that is misguided even if well intended.

The idea that the family does not want my father's allegations against Kevin to be examined speaks volumes. They will apparently go to any length to hide my father's illness. They will sacrifice my husband despite his unqualified success at building and running CFRC, which just enjoyed what I am told are its highest monthly and highest quarterly earnings ever. They will jeopardize the livelihood and financial condition of all of the company's employees and stakeholders. These actions will place my sister in a position where she will bear liability for any financial damage done to these stakeholders by my father should he gain control of the company. And finally, they will abandon me and my son, throwing us to the curb with Kevin.

And to what end? To keep a secret for a few weeks or months? I cannot not permit this to happen. There is too much at stake for all concerned.

ROA 003635

Hampton Luzak 000213

ROA 003636

Case 1:15-cv-00501-AJT-IDD Document 372-3 Filed 02/17/16 Page 6 of 6 PageID# 4583

I have presented the facts to all of you to consider once more before you move a single step further down this path. My family is making a huge mistake that is literally unbelievable. They must stop and consider what they are doing and they must address my father's health issues rather than try to hide from them. I therefore demand that the board take immediate and appropriate action to remedy the breaches of fiduciary duty which occurred at the June 28 board meeting, and to stop any further breaches of fiduciary duty from occurring. First, the board should take all necessary steps to address my father's incapacity to serve as a Coastal board member or officer. The shareholder meeting deficiently noticed for July 16 should be postponed, and a suitable replacement for my father should be identified to take his place on the board. Until this board transition occurs, the board should affirm that Kevin continues to serve as President and CEO until the board can act on an informed basis to determine whether Coastal's best interests are served by a change. (The vote on Kevin's removal at the June 28 board meeting deadlocked 2-2, and Mr. Herring was not authorized by the board or qualified to render an opinion on Virginia law or to nullify the vote. Further, Mr. Herring has acknowledged in a letter to Mr. Hagler that his opinion nullifying Kevin's vote has no support in the case law, and that his position may be incorrect.) If an independent board acting solely in the best interest of Coastal determines that a leadership change is warranted, Kevin will assist, if requested, in identifying a person suitable to take his place, which he would do as quickly as possible. If the board has any doubt about Kevin's performance based upon my father's allegations, I (and he) would continue to welcome a thorough and independent review of each and every one of these allegations and would ask that you authorize it immediately.

It is time to make the right decision, and to do what is right for my father and his legacy. As a shareholder, I must and will hold the board accountable for their actions as fiduciaries for the Coastal shareholders.

Sincerely,

Hampton

cc: Mr. Bradley J. Herring
Poyner & Spruill LLP
P.O. Box 353
Rocky Mount, NC 27802

Mr. Michael R. Smith
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, GA 30309

ROA 003636

Hampton Luzak 000214

ROA 003637

EXHIBIT B

Letter K. Luzak to B. Herring
July 6, 2012

ROA 003637

ROA 003638

July 6, 2012

Mr. Bradley J. Herring
Poyner & Spruill LLP
P.O. Box 353
Rocky Mount, NC 27802

Dear Brad:

I write to express my concern regarding your role in the leadership and governance crisis currently existing at Coastal Forest Resources Company ("CFRC" or the Company), for which you serve as counsel, and to instruct that you cease participation in the attempt to hold a special shareholders meeting to change the board membership.

As you know, the CFRC Board held a special meeting on June 28, 2012 to address allegations of misconduct made against me by CFRC director Paul Barringer. Several of these allegations related to the April 22, 2012 board meeting which you attended in person. Paul alleges that I threw him and Merrill out of that board meeting, and that someone "threw a book" at Merrill. As a participant in that meeting, you have first hand knowledge that neither of those actions occurred.

At the June 28 board meeting, I made a motion that the board take the responsible action of engaging an independent third party to investigate the allegations of wrongdoing that Paul made against me. Rather than counsel the board regarding its fiduciary responsibility to become fully informed before taking action, or offering your own recollection of the events which transpired at the April 22 board meeting to refute Paul's delusional allegations, you stood by silently as Paul called for a vote on the motion. Further, despite Paul's obvious self-interest in avoiding an independent investigation to determine the validity of the baseless charges he made against me, you offered no opinion on whether Paul was a disinterested director for purposes of the motion to investigate his allegations.

You also stood by silently as Paul used allegations you knew to be unfounded as part of the basis for a motion to remove me from my positions with CFRC and to appoint himself as President and CEO. At this point, without a request or authorization from the board, you volunteered your interpretation of Virginia corporate law regarding who would be considered a "disinterested director" for purposes of Paul's motion. When the motion to remove me from my offices deadlocked at 2-2, you intervened, again without request or authorization from the board, to nullify my vote and unilaterally declare that the motion to remove me carried 2 to 1.

I have since learned that you have acknowledged that your views lack case law support and that you are not qualified to render opinions on Virginia law. In an undated letter you wrote in response to Mr. Hagler's letter to you dated June 28, 2012 questioning your conflict of interest opinions, you acknowledged that you had found "no case law

ROA 003638

LIGHT 001339

ROA 003639

which provided any guidance" related to the director conflict of interest issues on which you opined and apparently based your unauthorized action in purporting to nullify my vote. Even after admitting that your positions have no support in case law, you did not articulate what, if any, other authority does support your determination that the vote of an interested director can or must be disregarded under Virginia law, or that you had the power to nullify my vote. Further, you candidly acknowledged that your position "may be incorrect." I am certainly not aware of any provision of Virginia corporate law or the CFRC By-Laws which precludes a director with interest in a matter under consideration from voting on that matter, or which requires that such vote be disregarded.

I am concerned that you did not disclose this information or otherwise qualify your opinions at the board meeting. I am also concerned that you did not disclose when offering your opinions on Virginia law that you are not a member of the Virginia bar, and that the only jurisdiction in which you are admitted to practice (according to your website) is North Carolina.

Not only did the board not request or authorize you to determine whether any votes at the June 28 meeting should be nullified, the board has never bestowed on you any power or authority to break director voting deadlocks, or serve as arbiter of a dispute among board members regarding whose votes shall be counted under Virginia law or the CFRC By-Laws.

Your actions and determinations at the June 28 board meeting regarding whether my vote counted on the motion to remove me were both unauthorized and legally erroneous, and must therefore be disregarded. For these reasons, I am in agreement with Mr. Hagler's position set forth in his June 28 letter that the motion to remove me from my offices at CFRC failed to pass and that I therefore remain President and CEO of CFRC.

Finally, I am becoming concerned that you have lost sight of your obligation to act on behalf of CFRC rather than on behalf of any particular CFRC board member or shareholder. Hampton recently received from you a Memorandum and a document titled Notice of Special Shareholders' Meeting which purports to call a special shareholders' meeting on July 16, 2012. The Notice is deficient in several respects, and does not identify who is calling the meeting or why they have the right to call a special meeting. You certainly do not have the right to call a special shareholders meeting under the CFRC By-Laws. Further, as calling and noticing a special shareholder meeting in this instance is not an action of the board or CFRC, but can only be individual action by one or more shareholders, you do not have the authorization as counsel for CFRC to act on behalf of one or more shareholders instead of the corporation.

I believe your actions at the June 28 board meeting and in working individually with Paul and/or Merrill (if that is the case) to aid them in attempting to call a special shareholders' meeting demonstrate that you may have a conflict of interest that disables you from representing the corporation or any shareholder in connection with the special meeting.

ROA 003640

As President, CEO, and a director of CFRC, I instruct that you cease all participation in the attempt to hold a special shareholders meeting in connection with the Notice you circulated, and that you cease providing any individual shareholder counsel or assistance in connection with such a meeting.

Finally, as set forth above, you have taken several actions to support Paul and Merrill's attempt to remove me from my offices and from the board and to install Paul as President and CEO of CFRC. You have taken these actions despite having witnessed Paul's erratic and confused behavior beginning with the April 22 board meeting, which continued at the June 28 meeting. You have received notice that Paul has been diagnosed as suffering from a form of Alzheimer's Disease. Should CFRC and its shareholders suffer damages from CFRC board actions which interfere with the performance of my duties as an officer of CFRC, or which result in my removal from, and Paul's election to, the offices of President and CEO of CFRC, you will be held accountable for facilitating these wrongful actions and aiding and abetting breaches of fiduciary duty.

Sincerely,

Kevin M. Luzak

cc: Michael R. Smith
King & Spalding LLP

ROA 003640

ROA 003641

EXHIBIT C

Excerpted

H. Luzak Deposition Transcript, June 12, 2019

ROA 003641

ROA 003642¹

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IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

IN THE MATTER OF:

ESTATE OF PAUL B. BARRINGER, II,
HAMPTON BARRINGER LUZAK,

Plaintiff,
vs.

CASE NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL

U. BARRINGER, AS PERSONAL
REPRESENTATIVE OF THE ESTATE

OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR.,

MERRILL B. LIGHT AS PUTATIVE
TRUSTEE OF THE PAUL B.

BARRINGER, II, REVOCABLE TRUST
DATED DECEMBER 4, 1998 AND

MERRILL B. LIGHT AS TRUSTEE
OF THE MERRILL BARRINGER LIGHT

REVOCABLE TRUST,

Defendants.

DEPONENT: HAMPTON BARRINGER LUZAK

DATE: JUNE 12, 2019

TIME: 9:39 A.M.

LOCATION: ROSEN HAGOOD, LLC
151 MEETING STREET

SUITE 400 HARBOR ROOM
CHARLESTON, SC 29401

REPORTED BY: GLORIA ANZALONE, RPR
CLARK & ASSOCIATES, INC.

P.O. BOX 73129
CHARLESTON, SC 29415

843-762-6294
WWW.CLARK-ASSOCIATES.COM

ROA 003642

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

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(continued)

3
ROA 003644

3

ON BEHALF OF DEFENDANTS:

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And

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kjohnson@twlawfirm.com

ALSO PRESENT:

MERRILL B. LIGHT
MATTHEW STARLING, VIDEOGRAPHER**ROA 003644**

63

1 MR. GILREATH: Yeah, I've got a
2 copy of it. I learned this out in
3 California.

4 MR. TWOMBLEY: I would just ask --
5 and I didn't mean to misrepresent what you
6 said --

7 MR. GILREATH: Read the case.

8 MR. TWOMBLEY: -- but I'm just
9 saying if you don't want her to answer a
10 question and are going to instruct her not
11 to answer, if you would just state that so
12 that we'll know which question it is.

13 MR. GILREATH: I'll try to be clear
14 on that.

15 BY MS. PAYLOR:

16 Q. Okay. We were talking about your
17 testimony in the probate court, that your sister told
18 you that she wanted to sell the company, and you had
19 given me a response that she had. And I ask you that
20 she has owned the majority of the voting stock since
21 2012, and you agreed with me, correct?

22 A. Right.

23 Q. In that nine years, almost nine years,
24 the company has not been sold, has it? I'm sorry,
25 seven years; I'm not good at math anymore. In those

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1 seven years, the company has not been sold, correct?

2 A. No. I mean that's not correct.

3 Q. Oh, okay. It has been sold?

4 A. So in probate court Merrill Light to
5 the judge and in writing said that she would not
6 engage in any selling of the assets. And, in fact,
7 in probate court, she was in the eleventh hour of
8 selling assets.

9 Q. What assets?

10 A. She sold three West Virginia plants,
11 and they were sold one week after my father died.

12 Q. Okay. So you're talking about the
13 board and the company sold some assets, correct?

14 A. Well, the board with Merrill having a
15 controlling stock.

16 Q. The board and CFRC sold some assets,
17 correct?

18 A. Right. But Merrill Light did tell
19 Judge Galvin in court and in writing that she would
20 not engage in selling any assets, and she was in full
21 form during that time because it would take about six
22 to nine months to sell those Virginia plants, and she
23 was in the process of selling them and a month and a
24 half later they were sold, one week after my father
25 passed away. Around then, around then.

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1 Q. That was in 2016 they sold, is that
2 correct?

3 A. Yes. But also two other times, right
4 after I found the Travis stock transaction, roughly a
5 month and a half later they told me as a courtesy
6 they were selling the company immediately. And a
7 Tombstone From Lanigan came out where Travis Bryant
8 worked as an account, the same day they had an
9 emergency board meeting and they were going to sell
10 the company as quickly as possible, and this was
11 immediately after they removed my father as chairman
12 of the board.

13 Q. So that was in 2015?

14 A. It was in March 2015.

15 Q. That the company has not been sold, has
16 it?

17 A. I think there is probably a cast of
18 doubt over the stock register as they said when they
19 sued me in April of 2015.

20 Q. CFRC, no one has bought CFRC, is that
21 correct?

22 A. I don't know.

23 Q. You don't know? Now you're still a
24 shareholder, aren't you?

25 A. Yes.

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ROA 003648

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1 Q. Are you still getting distributions
2 from CFRC?

3 A. Yes.

4 Q. You think you would have gotten
5 distributions if it had been sold?

6 A. Well, there are many assets to the
7 company, so I think I would be getting distributions.

8 Q. Not if the entire company was sold,
9 would you?

10 A. Not if the entire company was sold, but
11 she's piece selling it. So I'm still getting
12 distributions but I'm finding out after the fact that
13 she's selling off assets.

14 Q. The company is selling assets.

15 A. The board of directors is selling the
16 assets.

17 Q. Well, the assets are owned by the
18 company, correct?

19 A. Right, but the board of directors is
20 the ones having the meeting, deciding to sell the
21 assets.

22 Q. And you were offered a seat on the
23 board of directors, weren't you?

24 A. I was.

25 Q. And you turned it down, didn't you?

ROA 003648

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ROA 003649

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1 A. I did.

2 Q. So you could have been participating in
3 these decisions if you sat on the board, correct?

4 A. I could have been participating, I had
5 no idea that they would be selling off these assets
6 because I told my sister I did not want to do that.

7 Q. When did you tell her that?

8 A. When she was telling me she wanted to
9 sell when my husband was working at the company as
10 CEO, I was telling her I do not want to sell the
11 company.

12 Q. But when your husband worked at the
13 company, the company sold assets, didn't it, and
14 bought assets at the same time?

15 A. Um-hum.

16 Q. Did you tell your husband he shouldn't
17 be selling any assets?

18 A. I don't know, we didn't talk about it.

19 Q. CFRC is doing very well, isn't it?

20 A. I'm not a lawyer.

21 Q. I'm not asking you a legal question.
22 Isn't the company making a lot of money?

23 A. Actually, a year ago the company sent
24 out a letter saying they were going to have a bad
25 year this year and to get ready for it, prepare for

ROA 003649

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ROA 003650

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CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

REPORTER'S CERTIFICATE

I, GLORIA ANZALONE, Registered Professional
Reporter in and for the State of South Carolina at
Large, do hereby certify that I correctly reported the
within-entitled matter and that the witness was by me
duly sworn to testify to the truth, the whole truth and
nothing but the truth in the within-entitled cause; and
that the foregoing is a full, true and correct
transcription of my shorthand notes of the testimony
and/or other oral proceedings had in the said matter.

I further certify that I am neither related
to nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
signature this 12th day of June, 2019, at Charleston,
Charleston County, South Carolina.

GLORIA ANZALONE, RPR

My Commission expires
October 25, 2028**ROA 003650**

ROA 003651

EXHIBIT D

Coastal Forest Resources Company, v. Hampton B. Luzak
USDC EDVA Case No. 1:15-cv-00501

Excerpted
06/19/2015 Hearing Transcript – Motion to Stay

ROA 003651

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

COASTAL FOREST RESOURCES	)	Case 1:15-cv-00501
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Alexandria, Virginia
	)	June 19, 2015
HAMPTON B. LUZAK,	)	10:15 A.m.
	)	
Defendant.	)	
	)	Pages 1 - 51

TRANSCRIPT OF PLAINTIFF'S MOTION TO STAY PENDING
COMPLETION OF COMPANY'S INVESTIGATION OF DEFENDANT'S
DERIVATIVE DEMAND AND CLAIMS
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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21 FOR THE SPECIAL LITIGATION COMMITTEE:

22 WILLIAM D. DOLAN, III, ESQUIRE
23 WILLIAM D. DOLAN, III, PC
24 8270 Greensboro Drive, Suite 700
25 Tysons Corner, Virginia 22102
(703) 584-8377

ROBERT R. VIETH, ESQUIRE
LEACH TRAVELL BRITT, PC
8270 Greensboro Drive, Suite 700
Tysons Corner, Virginia 22102
(703) 584-8366

1 can do it in 90 days. But if it takes a month and a
2 half to get the documents and get that organized, I may
3 not be able to do that.

4 THE COURT: All right.

5 MR. DOLAN: I was hoping that you might think
6 about the stay in the same terms that you did in the
7 stock *Star Scientific* case. But I understand we don't
8 sit back until the leaves fall, and then we start again
9 in the spring. I'll move as quickly as I possibly can.

10 THE COURT: All right. Thank you.

11 Let me outline to you where I am on this
12 case. Just for the record, this matter is before the
13 Court on Coastal's motion to stay this case in its
14 entirety pending the review of the special committee
15 following Ms. Luzak's demand for an investigation.

16 By way of background, Ms. Luzak alleges that
17 she first learned in January 2015 that in 2013 the
18 company ordered stock and stock options to its CEO
19 Bryant under an arrangement that was financially
20 inadequate and which had the effect of diluting her
21 shareholder equity and was generally unlawful under
22 applicable corporate law.

23 In January 2015, she made certain demands on
24 the company for information.

25 On April 15, 2015, Coastal filed this action

ROA 003655

1 against her seeking a declaration as to the validity of
2 the stock and stock options that she had challenged or
3 raised questions about.

4 The complaint was not formally served, but I
5 understand a courtesy copy was presumably provided to
6 her ostensibly for the purpose of precipitating
7 discussions within this private, closely held
8 corporation. Instead, it seems to have escalated
9 matters.

10 On April 17, Ms. Luzak initially responded to
11 the complaint by serving a written demand on the board
12 that it conduct an independent investigation of
13 possible breaches of fiduciary duty by Bryant and other
14 board members in connection with the stock sale and
15 option.

16 And on May 5, the board informed Ms. Luzak
17 that it would assemble a special committee to
18 investigate her demand.

19 On May 11, Ms. Luzak, without being served,
20 filed an answer to the complaint and also a mirror
21 image counterclaim seeking a declaration as to the
22 validity of the stock and stock options to Bryant, and
23 she subsequently has served discovery on Coastal, which
24 is pending and which Coastal has resisted.

25 On May 22, Coastal filed this motion to stay

ROA 003655

1 the entire lawsuit pending the investigation of the
2 special committee. For that purpose, it relies on
3 Virginia Code Sections 3.1-672.1(B) and Virginia Code
4 671.1(C).

5 Briefly summarized, 1(B) provides that no
6 shareholder may commence a derivative proceeding until
7 a written demand has been made and 90 days has expired
8 from the date of the demand unless within that 90-day
9 period the demand has been rejected or there's
10 irreparable injury to the corporation by waiting.

11 Section 1(C) provides that once a corporation
12 commences a review and evaluation in the demand, the
13 Court may stay any derivative proceeding for as long as
14 the Court deems appropriate.

15 Here the parties did not appear to contest
16 that Ms. Luzak has standing to commence a derivative
17 proceeding under 13.1-672.1(A). What is at issue is
18 whether the counterclaim constitutes a derivative
19 action for the purposes of Sections 1(B) or 1(C) and,
20 if so, whether Coastal is entitled to a stay under
21 either section after having instituted these
22 proceedings.

23 In that regard, Luzak contends that her
24 counterclaim is not a derivative action but a direct
25 action against the corporation to vindicate her own

1 rights and injuries specific to her. But even if this
2 were a derivative action, the board rejected her demand
3 for an investigation. It appointed a board that was
4 not disinterested or sufficiently independent and that,
5 in any event, Coastal's decision to address this
6 dispute through the filing of a declaratory judgment
7 action in effect overrides any deference that the Court
8 should otherwise give to its special committee.

9 First, the Court, after reviewing this,
10 concludes that the counterclaim is based on a dispute
11 concerning the dilutive effect of the stock and the
12 stock options to Bryant. It's framed as a challenge to
13 the validity of those transactions, but the substance
14 of that claim is the dilutive effect that it has on her
15 stock.

16 But that alleged dilutive effect involves an
17 alleged injury common to all shareholders, and under
18 Virginia corporate law, as under corporate law
19 generally, it constitutes, in the court's judgment for
20 the purposes of this motion -- and there's no final
21 decision here, but the Court has to make these
22 judgments at this point. It does constitute a claim of
23 an injury that is deemed to be a corporate injury and
24 one that is controlled by the corporation in the first
25 instance as far as how to address that injury.

1 Therefore, the Court concludes that the counterclaim
2 does constitute a derivative action, not a direct
3 action.

4 For these reasons, the Court concludes that
5 Luzak's counterclaim falls within the terms of Sections
6 1(B) and 1(C). And if Luzak had initiated these
7 proceedings first, a straightforward application of
8 Section 1(B) would require its dismissal or stay for at
9 least a 90-day period and likely longer under 1(C).

10 What would otherwise be a straightforward
11 application of the statute is complicated by the fact
12 that Coastal initiated these proceedings and in effect
13 chose at that time to resolve its dispute with Luzak
14 not through an internal corporate governance procedure
15 but by submitting the merits of that issue to the Court
16 for a decision.

17 That decision was obviously before Luzak's
18 investigation demand, and the effect of that initial
19 decision by Coastal has to be considered in light of
20 Luzak's subsequent demand for an internal investigation
21 by Coastal, in response to which Coastal has appointed
22 its special committee.

23 Whether that committee is appropriately
24 constituted may affect the consequences that attach to
25 its findings, but it's appointment does not, in the

ROA 003659

1 Court's view, constitute a rejection of Luzak's demand
2 for an investigation as she contends no matter what the
3 special committee's ultimate independence may be deemed
4 to be.

5 The Court has also considered that in effect
6 both sides have proceeded, to a certain extent,
7 inconsistently. On the one hand, Coastal's decision to
8 address this dispute through a special committee is
9 inconsistent both procedurally and substantively with
10 its initial decision to submit to this Court a decision
11 on the merits of the issues raised as to the validity
12 of the stock sale and stock options.

13 Procedurally, the company has made, in
14 effect, two inconsistent choices with respect to the
15 process by which to resolve the merits of the
16 allegations that Luzak has made. The choices that its
17 made are also substantively inconsistent in the sense
18 that the Court's role with respect to the pending
19 declaratory judgment action is very different than the
20 role it would play and any reviewing court would play
21 with respect to the company's decision based on the
22 findings of the special committee.

23 Likewise, Luzak has proceeded somewhat
24 inconsistently. Its decision to file a demand for an
25 internal investigation with knowledge of the lawsuit is

ROA 003659

1 inconsistent with its subsequent decision to file
2 voluntarily an answer in a counterclaim at the point in
3 time when it was precluded by its earlier decision to
4 demand an internal investigation.

5 So where does this leave us? The Court
6 concludes at this point the following:

7 First, because Luzak's counterclaim was filed
8 after it made a demand to address the alleged
9 unlawfulness of the stock sale and stock options,
10 brought the counterclaim within Sections 1(B) and 1(C),
11 the Court is going to stay the counterclaim, the length
12 of which will be subject to subsequent orders.

13 Second, because the complaint itself is
14 inconsistent with the manner in which the company has
15 now chosen to address Luzak's allegations, the Court
16 needs to decide what should be the procedural future of
17 that complaint, whether it should be stayed or whether
18 it should be dismissed or whether -- if the company
19 decides not to dismiss it, whether it should proceed
20 with Luzak having all the rights of a litigant separate
21 and apart from its counterclaim.

22 What I'm going to do is I'm going to stay the
23 matter in its entirety, and I'm going to require that
24 the parties further brief the issue as far as what
25 should happen with the complaint, whether it should be

1 dismissed, whether it should be stayed, or whether the
2 company should be put to a choice whether to dismiss or
3 allow the case to proceed without a stay.

4 I'm going to ask the parties to file their
5 submissions within ten days and then respond to each
6 other's submission within five days.

7 All right. Is everybody clear on what I've
8 ruled?

9 MR. WINGFIELD: Your Honor, we are.

10 THE COURT: All right. Mr. Smith?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: All right. The Court will issue
13 an order, and counsel is excused.

14 We'll stand in recess.

15 -----
Time: 11:21 a.m.

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22 I certify that the foregoing is a true and
23 accurate transcription of my stenographic notes.

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/s/
Rhonda F. Montgomery, CCR, RPR

ROA 003662

EXHIBIT E

Hampton B. Luzak v. J. Travis Bryant, et al.
USDC EDVA Case No.: 1:15-cv-00501

Excerpted
11/18/2015 Hearing Transcript – Relief from Motion to Stay

ROA 003662

ROA 003663

UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

HAMPTON B. LUZAK,) Case 1:15-cv-00501
Plaintiff,)
v.) Alexandria, Virginia
J. TRAVIS BRYANT, MERRILL) November 18, 2015
BARRINGER LIGHT, and J.) 10:00 a.m.
RANDOLPH LIGHT,)
Defendants,)
COASTAL FOREST RESOURCES)
COMPANY,)
Nominal Defendant.) Pages 1 - 62

TRANSCRIPT OF COASTAL FOREST RESOURCES COMPANY'S MOTION
FOR RELIEF FROM STAY AND TO DISMISS
AND
PLAINTIFF'S MOTION TO LIFT STAY, FOR LEAVE TO AMEND,
AND FOR DISCOVERY
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

ROA 003663

1 APPEARANCES:

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8 Washington, D.C. 20006-4707
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LIGHT:

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18
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22 (804) 697-1200

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1 exception.

2 Our claim, our direct claim is not a claim
3 for breach of fiduciary duty. It is a claim to void
4 the interested director transaction under 691. Now, we
5 mention in that claim that, yes, it was a breach of
6 fiduciary duty for -- that Mr. Bryant's actions did
7 constitute a breach of fiduciary duty, but we've got
8 other counts in the complaint that are derivative
9 breach of fiduciary duty claims against him. This is a
10 direct claim to void under 691, which is recognized by
11 *DCG&T* and *Byelick*.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 I have to resist the temptation to take this
15 under advisement and reflect on it further. Because if
16 I did, I would then have to resist the temptation to
17 write at length on these issues, some of which are
18 open-ended, all of which are interesting, and some of
19 which are unsettled. I think it's in the interest of
20 all the parties that the Court deal with these issues
21 today and allow this case to continue to progress even
22 though, if I reflected further on these, I might be
23 able to articulate a little more clearly what I've
24 decided to do in this case.

25 For the record, we are here on two motions,

1 plaintiff's motion to lift stay for leave to amend and
2 for discovery, which is Document Number 194, and
3 defendant's motion for relief from stay and to dismiss
4 pursuant to Virginia Code Section 13.1-672.4, which is
5 Document Number 177.

6 Let me first address plaintiff's motion for
7 leave to file the second amended complaint. The
8 proposed second amended complaint supplements the
9 previously filed amended complaint and demand for jury
10 trial to include allegations specifically directed to
11 the failure of the board and the special litigation
12 committee to meet the requirements of Virginia Code
13 Section 13.1-672.4(a), which mandates that a
14 shareholder derivative proceeding, such as that in
15 plaintiff's amended complaint, shall be dismissed on
16 motion of the corporation under certain circumstances.

17 Ms. Luzak's second amended complaint also
18 seeks to add a new tenth cause of action, which asserts
19 a direct claim, not a derivative claim, against Travis
20 Bryant to void the October 2013 stock sale and option
21 grant that was the subject of the special litigation
22 committee proceedings and as to which Ms. Luzak had
23 previously challenged via her derivative action.

24 In support of that motion, the plaintiff
25 alleges that under the Virginia Stock Corporation Act,

ROA 003667

1 and specifically Section 13.1-691 governing director
2 conflict of interest, she has the legal right as a
3 minority shareholder in a closed corporation to file a
4 direct action with respect to the alleged conflict of
5 interest transactions as between the corporation and
6 Mr. Bryant.

7 She also alleges that she should be permitted
8 to file her second amended complaint since she only
9 recently was provided a redacted copy of the special
10 litigation committee report after she had already filed
11 her first amended complaint and that her supplemental
12 allegations relate to that recently produced report and
13 the company's attempt to dismiss her derivative action
14 on that basis.

15 First, after reviewing the briefs and the
16 case law, the Court must conclude that the plaintiff
17 may not now add a direct action for violations of
18 Virginia Code 13.1-691. That section by its terms does
19 not authorize a direct action by a shareholder,
20 minority or otherwise, and the language itself suggests
21 that any action to set aside a conflict of interest
22 transaction should be taken by the company.

23 The Court reaches this conclusion, as have
24 other courts in this district, based on the Supreme
25 Court's opinion in *Simmons v. Miller*, which follows the

ROA 003667

ROA 003668

1 majority rule that suits for breach of fiduciary duty,
2 however framed, against officers and directors must be
3 brought derivatively on behalf of the corporation and
4 not as individual shareholder claims.

5 Likewise, in *Remora Investments v. Orr*, the
6 Virginia Supreme Court confirmed that shareholders
7 cannot bring individual direct suits against officers
8 or directors for breach of fiduciary duty, but instead,
9 shareholders must seek their remedy derivatively on
10 behalf of the corporation. There is nothing in
11 Section 691 that would suggest that this rule does not
12 apply with respect to conflict of interest
13 transactions. In fact, as I mentioned above, the
14 section refers to the corporation's right to avoid an
15 interested director transaction.

16 The plaintiff attempts to distinguish herself
17 from the claimants in *Simmons* or *Remora* by arguing that
18 there is a distinction between an action to avoid a
19 conflicted interest transaction and one for either
20 damages or for breach of fiduciary duty relying on a
21 footnote in the *Battaglia* case in this district to
22 suggest that she might be able to bring a direct action
23 under Section 691 in a closed corporate setting.

24 The plaintiff's contention, in this Court's
25 view, is based on a misreading or an overreading of the

ROA 003668

1 *Battaglia* decision, which did not rule that a
2 shareholder in a closed corporation could bring a
3 direct action to set aside a conflicted interest
4 transaction.

5 In any event, regardless of how *Battaglia* is
6 read, the Court concludes that plaintiff's asserted
7 tenth cause of action, whether for a breach of
8 fiduciary duty or for a conflicted transaction and
9 whether for damages or simply for the purposes of
10 having that transaction set aside, must be brought
11 derivatively on behalf of the corporation itself.
12 There is, therefore, no legal right on the part of
13 Ms. Luzak to bring a direct action against Mr. Bryant
14 or anyone else based on the stock sale and option grant
15 transaction as alleged in the tenth cause of action.
16 For these reasons, the Court concludes it would be
17 futile for the plaintiff to pursue such a claim.

18 The Court finds, however, that it's
19 appropriate that the second amended complaint be filed
20 and the previous complaint supplemented with the
21 allegations set forth in paragraphs 130 to 154, and
22 plaintiff's motion for leave to file a second amended
23 complaint is granted to that extent. So accordingly,
24 the Court grants Ms. Luzak leave to file a second
25 amended complaint as proposed but without the tenth

ROA 003670

1 cause of action, and she should do that within seven
2 days of this order.

3 The Court will also, as a matter of
4 procedure, deem at least at this point defendant's
5 motion to dismiss as filed and operative as to the
6 second amended complaint as permitted under this order.

7 With respect to the defendant's motion to
8 dismiss, the Court concludes that the merits of
9 plaintiff's derivative claims as set forth in the
10 second amended complaint, as the Court has now allowed,
11 is best considered within the context of a motion for
12 summary judgment. For that reason, the Court will
13 treat the motion to dismiss as a motion for summary
14 judgment but will defer ruling on the motion until such
15 time as plaintiff has had a fair opportunity to pursue
16 the discovery that the Court is about to authorize and
17 outline.

18 Plaintiff seeks discovery based on her
19 allegations that neither the members of the board that
20 appointed the special litigation committee nor the
21 members of the special litigation itself were
22 disinterested. In this regard, the plaintiff alleges
23 that disinterestedness includes a concept of
24 independence separate and apart from the statutory
25 definition of disinterestedness in Virginia Code

ROA 003670

ROA 003671

1 that were provided to the board, did you mean provided
2 to the committee?

3 THE COURT: Yes. Well, in the special
4 litigation committee's report.

5 MR. FUHR: Correct.

6 THE COURT: Right.

7 All right. Anything else?

8 (No response.)

9 THE COURT: All right. I appreciate
10 counsel's fine argument on this.

11 The Court will stand in recess.

12 MR. SMITH: Thank you, Your Honor.

13 -----
14 Time: 11:33 a.m.

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/

Rhonda F. Montgomery, CCR, RPR

ROA 003671

ROA 003672

EXHIBIT F

Hampton B. Luzak v. Merrill B. Light, et al.
USDC EDVA Case No. 1:15-cv-00501
Order Denying Motion to Stay [ECF 401]

ROA 003672

ROA 003673

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

HAMPTON B. LUZAK,

Plaintiff,

v.

MERRILL B. LIGHT, *et al.*,

Defendants.

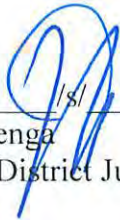
Civil Action No. 1:15cv0501 (AJT/IDD)

ORDER

On Friday, February 19, 2016, the Court heard oral argument on plaintiff Hampton B. Luzak's Motion to Stay Proceedings [Doc. No. 360] (the "Motion"). Upon consideration of the Motion, the memoranda of law in support thereof and in opposition thereto, the arguments of counsel, and for the reasons stated in open court at the February 19, 2016 hearing, it is hereby

ORDERED that plaintiff's Motion [Doc. No. 360] be, and the same hereby is, DENIED without prejudice.

The Clerk is directed to forward a copy of this Order to all counsel of record.



Anthony J. Trenga
United States District Judge

Alexandria, Virginia
February 19, 2016

ROA 003673

ROA 003674

EXHIBIT G

Hampton B. Luzak v. Merrill B. Light, et al.
USDC EDVA Case No. 1:15-cv-00501
Dismissal Order [ECF 432]

ROA 003674

ROA 003675

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

HAMPTON B. LUZAK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:15-cv-501 (AJT/IDD)
	)	
MERRILL B. LIGHT, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

ORDER

On Friday, March 11, 2016, the Court heard oral argument on defendant Merrill B. Light's Motion to Confirm Bench Trial for Breach of Contract Case [Doc. No. 391] (the "Motion to Confirm") and plaintiff Hampton B. Luzak's Motion for Voluntary Dismissal Without Prejudice [Doc. No. 394] (the "Motion to Dismiss" and collectively the "Motions"). Upon consideration of the Motions, the memoranda of law in support thereof and in opposition thereto, the arguments of counsel, and for the reasons stated in open court at the March 11, 2016 hearing, it is hereby

ORDERED that defendant's Motion to Confirm [Doc. No. 391] be, and the same hereby is, GRANTED and the case shall be tried without a jury; and it further

ORDERED that plaintiff's Motion to Dismiss [Doc. No. 394] be, and the same hereby is, GRANTED, but with prejudice, unless plaintiff withdraws the Motion to Dismiss by 5:00 p.m. on Tuesday, March 15, 2016.

The Clerk is directed to forward a copy of this Order to all counsel of record.

ROA 003675

ROA 003676

Alexandria, Virginia
March 11, 2016



Anthony J. Trenga
United States District Judge

ROA 003676

ROA 003677

EXHIBIT H

Supplemental Disclosure of Plaintiff's Expert Witness
Charles L. Alford, Ph.D.
December 23, 2019

ROA 003677

ROA 003678

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer,
As Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph Light,
Jr., Merrill B. Light as putative trustee of the
Paul B. Barringer, II, Revocable Trust dated
December 4, 1998, and Merrill B. Light as
Trustee of the Merrill Barringer Light
Revocable Trust,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

**SUPPLEMENTAL
DISCLOSURE OF
PLAINTIFF'S
EXPERT WITNESS
CHARLES L. ALFORD, Ph.D.**

Paragraph No. 2 of the Amended Scheduling Order by Consent filed on October 23, 2019 in the above-captioned case directs Plaintiff Hampton Barringer Luzak to “file and serve a document identifying by full name, address, telephone number, area of expertise and opinion(s), along with an expert report, each person whom [Plaintiff] expect[s] to call as an expert at trial...” Pursuant to the South Carolina Rules of Civil Procedure, applicable case law, and other controlling legal authority, Plaintiff objects to the requirement that she must produce an expert report from any of her experts in this case. Further, subject to the above-stated objection, and since discovery is still ongoing, each expert has reserved and continues to reserve the right to supplement, amend or change his or her report and/or opinions if and when additional, different or more accurate information becomes available. Subject to the aforesaid objection and reservation incorporated into each of Plaintiff's expert disclosures, including but not limited to the supplemental disclosure of Dr. Charles L. Alford as set forth below, and without waiving nor

ROA 003678

ROA 003679

intending to waive, but rather intending to preserve and so preserving such objection and reservation, Plaintiff hereby discloses and supplements the material of the below-named expert witness in this matter:

A. Charles L. Alford, Ph.D.
Overlook Executive Park
109 Laurens Road
Building 2, Suite C
Greenville, South Carolina 20607
Phone: (864) 233-8593

Dr. Alford holds a Ph.D. in Economics and Business Administration. He will be providing an economic calculation of the damages incurred by Plaintiff as a result of the improper actions of Defendants. His preliminary opinion is shown in the preliminary summary report and supporting schedules previously disclosed on December 10, 2019 in documents Bates numbered Luzak-Alford 0001-0006 along with his letter of December 19, 2019 submitted commensurate with this Supplemental Disclosure and Bates numbered Luzak-Alford 0007-0010.

THE GILREATH LAW FIRM, P.A.

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and

ROA 003679

ROA 003680

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**ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK**

Dated: December 23, 2019
Greenville, South Carolina.

ROA 003680

ROA 003681

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer,
as Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph Light,
Jr., Merrill B. Light as Putative Trustee of the
Paul B. Barringer, II Revocable Trust dated
December 4, 1998, and Merrill B. Light as
Trustee of the Merrill Barringer Light
Revocable Trust,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2016-CP-07-1919

**CERTIFICATE OF
SERVICE**

The undersigned attorney for the Plaintiff Hampton B. Luzak certifies that he served a true copy of the **Supplemental Disclosure of Plaintiff's Expert Witness Charles L. Alford, Ph.D., with documents Bates numbered Luzak – Alford 0007-0010** regarding the above-captioned matter by the following means:

☐ Hand Delivery	☐ Facsimile
☒ United States Mail	☐ Overnight Delivery
☒ Other: <u>Electronic Mail</u>	

with adequate payment or arrangements for payment to insure delivery thereof to the following opposing counsel of record:

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ROA 003681

ROA 003682

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THE GILREATH LAW FIRM, P.A.

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Attorneys for Plaintiff Hampton B. Luzak

Date: December 23, 2019
Greenville, South Carolina.

ROA 003682

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ROA 003683

December 19, 2019

James R. Gilreath
Attorney at Law
Post Office Box 2147
Greenville, SC 29602

Re: Luzak v. Light, *et al*

Dear Mr. Gilreath:

Following are narrative explanations of the damage computations in this matter which I sent to you earlier and which are summarized in Exhibit 1 showing total damages of **\$112,803,254**.

Damage Element #1: Damages from Gain of Control Related to Transfer of Voting Stock (Exhibit 2)

The 2012 transfer of voting stock to Defendant Light resulted in her owning a 51.26% controlling interest in Coastal Forest Resources Company ("CFRC", "The Company"). Prior to that transfer, Plaintiff Luzak and Defendant Light shared control with a combined 54.5% ownership interest. Bennett Thrasher LLP was retained by CFRC and submitted an appraisal of The Company as of November 30, 2018, opining that the 100% fully marketable and controlling equity value of The Company was \$427.5 million. With 20,128,391 shares outstanding, the per share value was computed at \$21.24. Bennett Thrasher concluded that the appropriate premium for control was 25%, resulting in a 20% discount for lack of control. Bennett Thrasher also concluded that the discount for lack of marketability applicable to non-controlling stock was 25%. Total shares held by Plaintiff Luzak, including trusts and children, were 7,266,641, and the discounted value per share was \$12.74. The undiscounted value of the Luzak holdings, based on the Bennett Thrasher appraisal, was \$154,322,333. The discounted value was \$92,593,400. The difference, or \$61,728,933, is the measure of damage from the gain of control (by Defendant Light) related to the transfer of voting stock.

ROA 003683

Luzak - Alford 0007

Damage Element #2: Ownership Dilution (Exhibit 2)

Under Defendant Light's control of The Company, 503,211 shares of stock were issued to Travis Bryant, resulting in a reduction of Plaintiff Luzak's holdings of outstanding shares from 37.03% to 36.10%. The undiscounted value of Plaintiff Luzak's holdings was reduced by \$1,582,797 as a result of the issue to Travis Bryant.

Damage Element #3: Lost Compensation to Kevin Luzak (Exhibit 3)

W-2 Wage and Tax Statements to Travis Bryant, Kevin Luzak's replacement at CFRF, are available for years 2012-2014. I have estimated the gross compensation to Mr. Bryant at \$1 million annually for years 2015-2019. The total compensation to Mr. Bryant, which otherwise would have been made to Mr. Luzak, Plaintiff Luzak's husband, is estimated at \$7,566,972. The total gross compensation to Mr. Bryant is a discoverable value but has not yet been made known to me. In addition to the gross compensation, if Mr. Bryant has received other benefits, such as employer retirement plan matching contributions, this is an additional element of damage.

Damage Element #4: Compensation to Defendant Light's Husband Randy Light (Exhibit 3)

Upon Defendant Light's gaining control of CFRC, her husband Randy Light began receiving compensation in the form of Board compensation in 2012 and wages beginning in 2013. Bates *CFRC_SC-000000529* lists compensation paid to Mr. Light. His W-2 Wage and Tax statements, which are available for years 2014 and 2016-2018, indicate that amounts reported on *CFRC_SC-000000529* understate actual compensation paid to him. In addition to the gross compensation, if Mr. Light has received other benefits, such as employer retirement plan matching contributions, this is an additional element of damage. Plaintiff Luzak's undiluted ownership share of the company (Exhibit 1) would be 37%, and therefore the damage to Plaintiff Luzak is 37% of the payments to Mr. Light.

Damage Element #5: Luzak Out-of-pocket Health Insurance and Health Care Costs (No Exhibit)

Kevin Luzak, husband of Plaintiff Luzak, provided this aggregate amount shown in Exhibit 1. According to Mr. Luzak, CFRC had paid all medical insurance premium costs and all uninsured medical costs which were incurred by the Luzak family.

Damage Element #6: Forgone Returns on Sales of Timberland (Exhibits 4-6)

Kevin Luzak indicates that had he remained as CEO of CFRC, The Company would have followed his recommendation to complete an orderly liquidation of approximately \$100 million of the \$460 million of timberland which it held. Following the transfer of voting shares to Defendant Light and the firing of Kevin Luzak, The Company did not implement that plan for liquidating targeted timberland.

Exhibit 4 shows that timberland which would have been worth \$100 million in 2012 would now be worth \$131.8 million. Assumptions underlying this computation, all of which are provided by Kevin Luzak, are as follows:

- Timberland valuation is comprised of 60% timber and 40% land.
- Annual timber price changes are as shown in the upper portion of Exhibit 4.
- Timber value also appreciates at an average annual rate of 3% yearly due to growth.
- Values of land on which the timber sits have not changed since 2012.

Exhibit 5 shows that if the targeted timberland had been sold, it would have no value now. The forgone timberland sales are based on an orderly liquidation over four years.

Exhibit 6 shows the forgone yields resulting from The Company's failure to sell the targeted timberland. Assumptions underlying this computation, all of which are provided by Kevin Luzak, are as follows:

- Selling costs of timberland sales would have been 2% of gross proceeds.
- Net proceeds of the first two years of timberland sales would have been invested in commercial real estate.
- Commercial real estate returns would have been 25% in each year through 2018 and 30% in 2019.
- All commercial real estate returns as well as the net proceeds from timberland sales in the final two years of the four year liquidation would have been invested in public securities.
- Annual returns on public securities (net of 2% costs) would have been as shown in the lower portion of Exhibit 6.

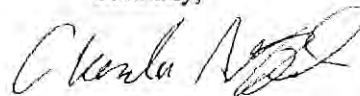
If the \$100 million targeted timberland had been sold over a four-year period, the ending combined balance of commercial real estate values and public securities values would have been \$241.6 million, or 109.8 million higher than the ending value of the targeted timberland without sale. Plaintiff Luzak's undiluted ownership share of the company (Exhibit 1) would be 37%, and therefore the damage to Plaintiff Luzak is 37% of the forgone income from failing to liquidate the targeted timberland.

Mr. Gilreath
December 19, 2019; page 4

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I hope this information is helpful. Please let me know if you have questions.

Cordially,

A handwritten signature in black ink, appearing to read "Charles L. Alford", with a stylized flourish at the end.

Charles L. Alford

CLA/pc
Enclosures

ELECTRONICALLY FILED - 2021 May 14 4:29 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

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Luzak - Alford 0010

ROA 003687

EXHIBIT I

Amended Supplemental Disclosure of Plaintiff's Expert Witness
Charles L. Alford, Ph.D.
December 31, 2019

ROA 003687

ROA 003688

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer,
 As Personal Representative of the Estate of
 Paul Brandon Barringer, II, J. Randolph Light,
 Jr., Merrill B. Light as putative trustee of the
 Paul B. Barringer, II, Revocable Trust dated
 December 4, 1998, and Merrill B. Light as
 Trustee of the Merrill Barringer Light
 Revocable Trust,

Defendants.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

**AMENDED
 SUPPLEMENTAL
 DISCLOSURE OF
 PLAINTIFF'S
 EXPERT WITNESS
 CHARLES L. ALFORD, Ph.D.**

Paragraph No. 2 of the Amended Scheduling Order by Consent filed on October 23, 2019 in the above-captioned case directs Plaintiff Hampton Barringer Luzak to “file and serve a document identifying by full name, address, telephone number, area of expertise and opinion(s), along with an expert report, each person whom [Plaintiff] expect[s] to call as an expert at trial...” Pursuant to the South Carolina Rules of Civil Procedure, applicable case law, and other controlling legal authority, Plaintiff objects to the requirement that she must produce an expert report from any of her experts in this case. Further, subject to the above-stated objection, and since discovery is still ongoing, each expert has reserved and continues to reserve the right to supplement, amend or change his or her report and/or opinions if and when additional, different or more accurate information becomes available. Subject to the aforesaid objection and reservation incorporated into each of Plaintiff’s expert disclosures, including but not limited to the amended supplemental disclosure of Dr. Charles L. Alford as set forth below, and without

ROA 003688

ROA 003689

waiving nor intending to waive, but rather intending to preserve and so preserving such objection and reservation, Plaintiff hereby discloses and amends the material of the below-named expert witness in this matter as set forth below:

A. Charles L. Alford, Ph.D.
Overlook Executive Park
109 Laurens Road
Building 2, Suite C
Greenville, South Carolina 20607
Phone: (864) 233-8593

Dr. Alford holds a Ph.D. in Economics and Business Administration. He will be providing an economic calculation of the damages incurred by Plaintiff as a result of the improper actions of Defendants. His preliminary opinion is shown in the preliminary summary report and supporting schedules previously disclosed on December 10, 2019 in documents Bates numbered Luzak-Alford 0001-0006 along with his letter of December 19, 2019 submitted December 23, 2019 commensurate with the Supplemental Disclosure and Bates numbered Luzak-Alford 0007-0010. Said witness hereby amends his supporting schedules set forth in Exhibits 1 and 3 (originally Bates numbered Luzak-Alford 0001 and 0003) with the amended Exhibits 1 and 3 produced herein and Bates numbered Luzak-Alford 0011 and Luzak-Alford 0012 respectively, which shall supersede the originally produced versions.

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**ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK**

Dated: December 31, 2019
Greenville, South Carolina.

ROA 003690

ROA 003691

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,

Plaintiff,

vs.

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Paul Brandon Barringer, II, J. Randolph Light,
Jr., Merrill B. Light as Putative Trustee of the
Paul B. Barringer, II Revocable Trust dated
December 4, 1998, and Merrill B. Light as
Trustee of the Merrill Barringer Light
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Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2016-CP-07-1919

**CERTIFICATE OF
SERVICE**

The undersigned attorney for the Plaintiff Hampton B. Luzak certifies that he served a true copy of the **Amended Supplemental Disclosure of Plaintiff's Expert Witness Charles L. Alford, Ph.D., with documents Bates numbered Luzak – Alford 0011-0012** regarding the above-captioned matter by the following means:

☐	Hand Delivery	☐	Facsimile
☒	United States Mail	☐	Overnight Delivery
☒	Other: <u>Electronic Mail</u>		

with adequate payment or arrangements for payment to insure delivery thereof to the following opposing counsel of record:

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ROA 003691

ROA 003692

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Attorneys for Plaintiff Hampton B. Luzak

Date: December 31, 2019
Greenville, South Carolina.

ROA 003692

Exhibit 1

Luzak v. Light

Summary of Plaintiff's Damages

Element of Damage	Total Damage	Luzak Share	Luzak Damage	Reference
Damages from Gain of Control Related to Transfer of Voting Stock	\$61,728,933	100.00%	\$ 61,728,933	Exhibit 2
Onwership dilution	1,582,797	100.00%	1,582,797	Exhibit 2
Lost compensation to Kevin Luzak	7,566,972	100.00%	7,566,972	Exhibit 3
Compensation to Randy Light	1,998,577	37.03%	740,016	Exhibit 3
Luzak out-of-pocket health insurance/health care costs	582,399	100.00%	582,399	K. Luzak
Forgone returns on sales of timberland	109,815,633	37.03%	40,661,578	Exhibits 4-6
Total			\$ 112,862,695	

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Luzak-Alford 0011

Exhibit 3

Elements of Damage: Lost Luzak Wages and Payments to Light

	J. Travis Bryant			J. Randy Light				
	W-2 statements			W-2 statements		CFRC_SC-000000529		
	Medicare Wages	SEC 125	Gross	Medicare Wages	SEC 125	Gross	Board Comp	citing W-2 gross
2007								
2008								
2009								
2010								
2011								
2012	612,517	8,389	620,907				7,750	
2013	953,359	3,434	956,793				22,250	160,533
2014	984,283	4,988	989,272	227,850	4,368	232,217		220,211
2015			1,000,000 estimated					372,041
2016			1,000,000 estimated	344,023	4,750	348,773		327,096
2017			1,000,000 estimated	346,426	5,100	351,526		329,364
2018			1,000,000 estimated	375,516	5,400	380,916		362,014
2019			1,000,000 estimated					122,571
			<u>7,566,972</u>	Total, based on available data			1,998,577	
	benefit to Luzak		100%				37.0%	
	Luzak dmg		<u>7,566,972</u>				<u>740,016</u>	

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Luzak-Alford 0012

ROA 003695

EXHIBIT J

Excerpted

Alford Deposition Transcript, September 22, 2020

ROA 003695

ROA 003696



Deposition of:
Charles Alford , PhD

September 22, 2020

In the Matter of:
Luzak, Hampton v. Light, Merrill

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

ROA 003696

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Page 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF ESTATE OF
PAUL BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,

Plaintiff,

vs.

MERRILL B. LIGHT, MERRILL U.
BARRINGER, as Personal
Representative of the ESTATE
OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR., MERRILL
B. LIGHT, AS Putative Trustee of
the PAUL B. BARRINGER, II,
REVOCABLE TRUST DATED DECEMBER 4,
1998, and MERRILL B. LIGHT, as
TRUSTEE OF THE MERRILL BARRINGER
LIGHT REVOCABLE TRUST,

Defendants.

VIDEOTAPED

DEPOSITION OF: CHARLES ALFORD, Ph.D.
DATE: September 22, 2020
TIME: 11:05 a.m.
LOCATION: Gilreath Law Firm, P.a.
110 Lavinia Avenue
Greenville, South Carolina
TAKEN BY: Counsel for the Defendants
REPORTED BY: Mary K. Stepp, Court Reporter

ROA 003697

APPEARANCES OF COUNSEL:

ATTORNEY FOR PLAINTIFFS:

(Appearance in Person)

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Page 72

1 shares; is that correct?

2 A. That's right.

3 Q. So, rules for an expert, you need to have
4 some specialized knowledge that will assist the trier
5 of fact.

6 So it appears like all you need in this
7 case is to be able to multiply; is that right?

8 A. Uhm, yeah. I mean, I'm not going to try
9 to artificially defend what I did. I took the
10 Bennett Thrasher model and I -- based on that model,
11 I determined what Ms. Light had gained by gaining
12 control of the company. That's arithmetic. I'm not
13 going to pretend to you that it's not.

14 Q. Okay. And by the same measure, when you
15 do the multiplication, Mrs. Luzak has the same value
16 before and after for her stock, correct?

17 A. Yes.

18 Q. Okay. Let's go to Damage Element No. 2.
19 And this is ownership dilution. So, did you use a
20 particular economic theory in making these
21 calculations?

22 A. I think it -- I think it is a -- an
23 overstatement to call it an economic theory, frankly.
24 It is simply a computation of what the value would
25 be, but for Travis Bryant's ownership and what the

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1 value would be with his ownership. The difference is
2 the dilution in the value of the stock.

3 Q. And that would dilute the value of every
4 shareholder's stock, correct?

5 A. Of course.

6 Q. Wouldn't that be a claim that the
7 shareholders have against the company, if it were a
8 valid claim?

9 MR. HOGAN: Objection, calls for legal
10 conclusion.

11 THE WITNESS: I haven't considered the
12 claims that any other shareholders might have against
13 the company. I've only considered the claim that
14 Ms. Luzak has. Did I answer that?

15 BY MS. PAYLOR:

16 Q. But you just told me that it would dilute
17 shareholder's holding, correct?

18 A. Sure. Yeah. Sure, I did. It did.

19 Q. Are you familiar with derivative claims?

20 A. No. No. I've heard that term off and on
21 for years, but I wouldn't dare show my ignorance by
22 trying to define it for you.

23 Q. You understand that Mr. Bryant was
24 entitled to buy the stock by virtue of his position
25 as CEO and his negotiations with the board of

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Page 94

1 add up the amounts that were paid to Randy Light and
2 say they shouldn't have been paid to him; is that
3 correct?

4 MR. HOGAN: Object to the form of the
5 question.

6 THE WITNESS: I didn't say they shouldn't
7 have been paid to him. I mean, we're -- I'm afraid
8 I'm arguing semantics and I don't intend to. But I
9 am not going to say to a jury, they should not have
10 paid Randy Light these amounts of money. I'm going
11 to say, if you believe that these were -- these
12 payments were made as a result of Ms. Light's gaining
13 effective control in the operations of the company,
14 and if you believe that that was incorrect, here is a
15 measure of that damage.

16 BY MS. PAYLOR:

17 Q. And why is that a measure of the damage?

18 A. Because those are funds that exited the
19 company that would have remained in the company and
20 would have increased income to Ms. Luzak, as a
21 shareholder in the company.

22 Q. Are you assuming that Randy Light did
23 nothing to earn the compensation that he received?

24 A. I'm not assuming that he did nothing or
25 that he did a lot. I'm assuming that for purposes of

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1 A. I think I recall that, yes.

2 Q. And are you telling the jury that people
3 who perform these extra services are not entitled to
4 be paid?

5 A. No.

6 Q. Well, again, if this was wrongful payments
7 to Randy Light, wouldn't that impact all of the
8 shareholders of the company?

9 A. Yes.

10 Q. So that would be another derivative claim,
11 correct?

12 MR. HOGAN: Objection calls for legal
13 conclusion.

14 THE WITNESS: You asked me about
15 derivative a while ago and I wasn't prepared to
16 answer that.

17 BY MS. PAYLOR:

18 Q. So you don't know whether it would be or
19 would not; is that correct?

20 MR. HOGAN: Same objection.

21 THE WITNESS: I can't define for you a
22 derivative claim. I can tell you that I've computed
23 only the portion of damage to Ms. Light based on her
24 ownership.

25 BY MS. PAYLOR:

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Page 98

1 THE WITNESS: Yes, you did. And no, I
2 don't understand that.

3 BY MS. PAYLOR:

4 Q. And you understand that after June 28,
5 2012, Mr. Luzak no longer worked for CFRC, correct?

6 A. Sure. Yeah. I mean, that goes back to
7 the original question. If -- if there was -- if the
8 jury decides there was nothing wrong with firing him,
9 then there's nothing wrong with it. And he shouldn't
10 have received these benefits.

11 Q. All right. Let's go to Damage Element No.
12 6. This is foregone returns on sales of timber. Did
13 you use a particular economic theory in making these
14 calculations?

15 A. I don't -- again, and I understand why
16 you're continuing to ask me that. I don't know that
17 I would call it an economic theory or not. What I
18 have done is to use basic economic principles to
19 assess under certain assumptions what the resulting
20 value of a business decision would be. Those
21 assumptions have to deal with the initial amount of
22 investment and rates of return.

23 Q. So what basic economic principles did you
24 use?

25 A. What is the initial amount of the

ROA 003703

ROA 003704
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1 a lawyer. But, I mean, you hold yourself out as a
2 damages expert; is that right?

3 A. Well, I don't -- I don't usually choose
4 that term of holding myself out as something. That's
5 the work that I do, though. I do damages --

6 Q. Okay.

7 A. -- analysis in a variety of types of
8 cases.

9 Q. Okay. And, of course, you know that there
10 are compensatory damages and there are punitive
11 damages, right?

12 A. That's correct. Yes.

13 Q. Okay.

14 A. That's correct that I know that. I'm not
15 suggesting that I'm judging you.

16 Q. And the compensatory damages are to
17 compensate somebody for a loss or an injury that they
18 have sustained, right?

19 A. Yes, sir.

20 Q. Now, all these damages -- and I think
21 we've covered this, but I just want to make sure that
22 I understand you correctly. But all of these damages
23 that you have talked about today, you agree that none
24 of those damages are unique and would only apply to
25 Ms. Luzak. You do agree that those would apply to

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1 all of the shareholders. You have simply calculated
2 based on Ms. Luzak's percentage of ownership what --
3 what portion of those damages would be attributable
4 to her; is that correct?

5 A. No, sir, that's not exactly correct.

6 Q. Okay. Clarify.

7 A. If you -- if you look at Exhibit 1 to my
8 report.

9 Q. Right.

10 A. There are a couple of those elements of
11 damage that are proportionate to her ownership share.

12 Q. Which ones are not proportionate to her
13 ownership?

14 A. The damage from the gain by Ms. Light of
15 control of the company.

16 Q. Okay. What else?

17 A. The dilution of Ms. Luzak's ownership
18 value. The lost compensation to Mr. Luzak. And the
19 out-of-pocket health insurance and healthcare costs
20 incurred by the Luzaks.

21 Q. Okay. But the rest of it, you would agree
22 that they are -- that those damages are not unique to
23 Ms. Luzak, correct? All the shareholders would have
24 been damaged. You've just calculated the portion of
25 the damages that you believe are attributable to

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1 Ms. Luzak, based on her percentage of ownership?

2 A. Yes, sir.

3 Q. Okay. All right. Well, let's go through
4 these. I mean, I'm going to skip number one, because
5 I think we'll argue about that one. But are you
6 telling me that her -- that Hampton Luzak's shares of
7 stock got diluted differently than the other
8 shareholders' stock got diluted when Travis Bryant
9 received some shares?

10 A. No, not at all.

11 Q. So you agree that would be a damage that's
12 not unique to Hampton Luzak. That would be a damage
13 that would apply for all the shareholders, they all
14 would lose that, right?

15 A. All the shareholders except for the new
16 shareholder, yes.

17 Q. Okay. All right. But all of the
18 shareholders at the time of the dilution, would have
19 been diluted. And that would apply to everybody, not
20 Ms. Luzak -- not just Ms. Luzak?

21 A. Sure.

22 Q. Okay. So those damages are not unique to
23 her. You just calculated her pro rata share of it?

24 A. Yeah, the 1,583,000 is unique to her. But
25 the total -- the total --

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1 Q. Okay. But that's just her pro rata
2 portion, correct?

3 A. Right. But that's what I was going to
4 say. The total dilution would be greater than that.

5 Q. I understand. The point I just want to
6 make sure we're clear about and that I understand
7 your testimony on, is that you agree that all the
8 shareholders would have been damaged in the same way,
9 and you have just calculated Hampton Luzak's
10 proportion of the damage at 1,583,797?

11 A. Yes, sir.

12 Q. Okay. All right. Now, the compensation
13 to Randy Light, if that compensation should not have
14 been paid, then that money would go back to the
15 corporation, right?

16 A. Yes, sir.

17 Q. Okay. And so would you agree with me that
18 for that element that if the compensation was
19 improperly paid to Randy Light, that would have
20 damaged all the shareholders in the same manner. You
21 just calculated --

22 A. Yes.

23 Q. -- what Ms. Luzak's pro rata share of that
24 damage is, right?

25 A. I agree, yes.

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1 Q. Okay. And, of course, you agree the
2 foregone returns on the sale of timberland, you agree
3 that would have also damaged everybody in the same
4 way?

5 A. That's right.

6 Q. All right. So I guess what we're left
7 with, then, are the damages from the gain of control,
8 the lost compensation to Kevin Luzak and the health
9 insurance, out-of-pocket health care costs, right?

10 A. Yes, sir.

11 Q. Let's talk about the damages from the gain
12 of control.

13 I grew up in Dillon, South Carolina. I'm
14 not -- I'm not sophisticated in these economic-type
15 things. But when I saw this report, I tried to do a
16 little research on damages from gain of control.

17 And I went through, you know, like cases
18 and legal periodicals, accounting journals. I even
19 talked to other accountants. And nobody has ever
20 heard of damages from gain of control.

21 Can you identify for me anywhere that I
22 can go study this legal theory that you've come up
23 with or this accounting theory that somebody is
24 damaged because somebody else gained control?

25 A. No. However --

1 owned equal shares, she would be in the same position
2 now that she was in, and that has not happened.

3 Q. Well, she does have the same number of
4 shares, correct?

5 A. She does, yeah.

6 Q. And she was a minority shareholder before
7 and she's a minority shareholder now, right?

8 A. Absolutely. She has the same number of
9 shares. She's still a minority shareholder, but her
10 relative position in that company has changed.

11 Now, if -- I mean, clearly you think it
12 has not, and that's fine. You know, we'll -- y'all
13 are going to be the ones that are going to be arguing
14 about that.

15 Q. But I'm just --

16 A. When one of the owners suddenly gains
17 control, it has to be at the expense of the other
18 owner.

19 Q. Now, and that was my next question, is
20 that if you do hold that opinion, which it sounds
21 like you do, you would agree that that would have
22 been the detriment of all of the shareholders, not
23 just Hampton Luzak, correct?

24 A. That's correct.

25 Q. Okay. So, that would not be unique

1 damages to Hampton Luzak. That would be damages to
2 all the shareholders?

3 A. Well, except that the Konger holdings were
4 quite small relative to the Luzak and the Light
5 holdings. The trust holdings are -- are virtually
6 nonexistent now. Mr. Bryant's holdings are quite
7 small. So in the big scheme of things, the person
8 that has been hurt the most is the person that could
9 have shared in the operation of this company and now
10 cannot.

11 Q. And I understand that she's the biggest
12 shareholder. She might have the most damages under
13 your -- under your theory, but the other shareholders
14 have also been damaged, correct?

15 A. Sure.

16 Q. And, again, this idea of valuing shared
17 control, you said, you know, I disagree with it.
18 Respectfully, I'm just asking if it's anywhere that
19 anybody can go read about this, other than in this
20 expert report?

21 A. No, not that I know of. But I haven't
22 valued the shared control. What I have valued is the
23 gain that Ms. Light has enjoyed by obtaining control
24 of the company. And that gain was at the expense of,
25 primarily, Ms. Luzak.

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1 Q. Well, I didn't want to argue with the
2 numbers with you, but that's not -- that's not true
3 at all. I mean, exactly what you've done is valued
4 her share showing she's got control and then you've
5 valued them without her having control, right?

6 A. That's right. Yeah.

7 Q. And so you said she -- when she was
8 sharing control her shares are worth X and now she
9 doesn't share control, so her shares are worth Y.

10 A. Yes. But it is Ms. Light who has gained
11 control. And her having gained that control means
12 that, essentially, the entire operation of the
13 company is at her disposal.

14 Q. All right. When was Ms. Luzak -- I mean,
15 I don't agree she has got these damages,
16 respectfully. I don't agree with what's in the
17 report. But for the purpose of this line of
18 questioning, I'm just going to assume like you did,
19 I'm going to assume I do agree with some of it.

20 Assuming that Ms. Luzak was damaged, when
21 would she have been damaged?

22 A. Well, the damage began when Ms. Light
23 gained control of the company. The damage has not
24 ended. My computation ended with 2019, but the
25 damage has continued and presumably will still

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1 continue.

2 Q. But are you saying that if this case
3 doesn't get tried until 2025, that you're just going
4 to add six more years of damages?

5 A. Yes.

6 Q. And then if it goes on appeal and then it
7 takes five years to get the appeal determined, you'll
8 just add five more years of damages?

9 A. Yes.

10 Q. And you're -- your opinion is, the damages
11 don't ever end?

12 A. Yes. That, of course, doesn't apply to
13 every element of damage. But it applies to damages
14 that are continuing in nature.

15 Q. Mr. Alford, are you available for other
16 plaintiffs cases in South Carolina?

17 A. Yes.

18 Q. Are you aware that the numbers that you
19 used to calculate your damages, that is, the Bennett
20 Thrasher report, are based on 2018 numbers?

21 A. Yes. And, in fact --

22 Q. Why would you --

23 A. And, in fact, just to clarify that answer,
24 I think if there have been or will be subsequent
25 evaluations of the company, then my computations

1 ought to be adjusted based on those.

2 Q. Did you know that there was a valuation in
3 2013?

4 A. Ask me that again, please. I apologize.

5 Q. Did you know that there was an appraisal
6 and business valuation of the company in 2013?

7 A. I did, of course.

8 Q. Why didn't you use the numbers in that
9 report for years 2012 and 2013?

10 A. Because in computing the value of the gain
11 of control that Ms. Light has, you have to express
12 that in the most current dollars that you can. If
13 the value of the company had declined from 2013
14 to '18, I would still have used 2018. If the -- if
15 there is an appraisal of the company -- if an
16 appraisal of the company has occurred since the
17 Thrasher valuation I used, that's the more
18 appropriate one to use.

19 Because we're trying to say to a jury, if
20 she has been damaged, if you decide what that damage
21 is, and if you think the portion of the value of that
22 damage has to do with the value of the company, it is
23 the value today because presumably, without the
24 transfer of the shares, they would have continued
25 with their proportionate ownership to the present.

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1 Q. Well, under that theory, if the company
2 goes bankrupt, then Ms. Luzak does not sustain any
3 damages, right?

4 A. There you -- well, she would not have
5 incurred injury associated with the value of the
6 company. That does not mean she will not have
7 incurred other sources of damage.

8 Q. So your opinion as to this 60 million
9 dollars in damages from gain of control is subject to
10 whatever happens in the future?

11 A. Absolutely. Sure. And your -- I agree
12 with you 100 percent. If the company goes belly up
13 tomorrow, then she has not lost anything by not
14 having control of that company, in terms of its value
15 now.

16 Now, what she's lost is if there's been
17 any participation of ownership profits up until now
18 and some of those other elements of damage. But in
19 terms of the value, if a company is worthless, it's
20 worthless.

21 Q. Well, how do you know what's going to
22 happen in the future, so you can tell a jury what
23 number they need to apply?

24 A. That's what a valuation is for. When a
25 business appraisal is done, it is not because the

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1 appraiser knows what's going to happen in the future.
2 It's the appraiser's adjustment -- appraiser's
3 judgment based on what they have observed and what
4 they expect that the value of the company is, but it
5 is based on expectation of performance. If a
6 company -- if a company becomes worthless, the
7 expectation of performance is zero.

8 Q. All right. You don't know how the company
9 is going to perform in the future, do you?

10 A. Of course, I don't. Neither did --
11 neither did Bennett Thrasher, when it performed its
12 analysis. But that doesn't mean that the company
13 didn't select to use them as a basis for estimating
14 the value of the company. Nobody knows -- you know,
15 I don't know what's going to happen between here and
16 my ride home.

17 Q. Have you asked Bennett Thrasher about this
18 shared control calculation you did?

19 A. No. No. I've read their report, but
20 that's all.

21 Q. Have you asked or in any way consulted
22 with Bennett Thrasher about using that value in 2018
23 to calculate all these damages?

24 A. No.

25 Q. Do you know if they agree with that?

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1 A. No.

2 Q. Do you know if they disagree with it?

3 A. No.

4 Q. Do you know of anyone, whether it be other
5 experts or other colleagues, other professors,
6 persons, that agree with the analysis that you did in
7 this case?

8 A. No.

9 Q. Do you think it could survive peer-review
10 publication?

11 A. I'm sorry?

12 Q. Do you think it could survive peer-review
13 publication?

14 A. I would be amazed if any damages analysis
15 is subjected to peer-review publication. I think the
16 theory could survive it, but certainly this report
17 would never be submitted for that purpose.

18 Q. So you do not think the report could
19 survive peer-review, correct?

20 A. I do not think the report would be
21 submitted for that. I think the theory would survive
22 it.

23 Q. You think the shared control theory would
24 survive?

25 A. I think the theory that Ms. Light has

1 gained control, and she has gained control at the
2 expense of other shareholders, makes perfect sense.

3 Q. We talked about the notion being that it's
4 pure arithmetic, right?

5 A. Yes.

6 Q. And it's your testimony that you would
7 have used the 2018 valuation of the company versus
8 the 2013, because the dilution damages continue on in
9 perpetuity in the future?

10 A. Dilution doesn't continue on into
11 perpetuity. Dilution occurs at a time, but the value
12 of the dilution changes with the value of shares.

13 Q. Okay. Well, I think that's what I
14 intended to say. I mean, the number is going to
15 change every year, based on whether this company does
16 good or does bad, has a successful year or an
17 unsuccessful year?

18 A. Sure. If you own 60 percent of a company
19 that's doing very well, you have greater value in
20 your ownership than if you own 60 percent of a
21 company that's not doing well.

22 Q. Did you know at all that Travis Bryant had
23 agreed to pay \$2,475,798 for his stock?

24 A. I did not know -- I -- at one time I
25 probably knew the number. I don't recall the number.

1 Can you see this document, Mr. Alford, the
2 Luzak Alford 06432?

3 A. Yes, sir.

4 Q. Okay. Do you see this line right here,
5 "Compensation to Randy Light"?

6 A. I do.

7 Q. \$1,838,044?

8 A. Correct.

9 Q. And that's the damages to the whole
10 company, correct?

11 A. Correct.

12 Q. And you just multiplied that by what
13 Ms. Luzak's share, which was 37.03 percent and you
14 came up with this number, correct?

15 A. Yes, sir.

16 Q. Okay. That's all I've got about that.

17 And I don't want to belabor the point, but
18 I mean, you don't -- you don't have any idea what Mr.
19 Light was doing for the company or -- you don't know
20 how many hours he spent or whether he did a good job
21 or a bad job. You don't know anything about that,
22 right?

23 A. I agree with that.

24 Q. Okay. I mean, you don't know if he should
25 have been paid something. Maybe not what he was

CERTIFICATE OF REPORTER

I, MARY K. STEPP, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of September, 2020, at Campobello, Spartanburg County, South Carolina.



Mary K. Stepp, Notary Public
My Commission Expires:
March 1, 2028

ROA 003720

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

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that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT ROA 003722

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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EXHIBIT K

Hampton B. Luzak v. Merrill B. Light, et al.
Circuit Court Gadsden County, Florida Case No. 19-CA-00342

Memorandum in Support of Plaintiff's Amended Motion to
Compel Production of Documents Against Coastal Forest
Resources Company – May 21, 2020

ROA 003724

IN THE CIRCUIT COURT FOR GADSDEN COUNTY, FLORIDA

HAMPTON B. LUZAK,

Plaintiff,

v.

CASE NO. 19-CA-00342

MERRILL B. LIGHT, MERRILL U. BARRINGER,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT,
AS PUTATIVE TRUSTEE OF THE PAUL B.
BARRINGER, II, REVOCABLE TRUST DATED
DECEMBER 4, 1998, AND MERRILL B. LIGHT
AS TRUSTEE OF THE MERRILL BARRINGER
LIGHT REVOCABLE TRUST,

Defendants.

IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
AGAINST COASTAL FOREST RESOURCES COMPANY**

INTRODUCTION

Plaintiff, Hampton Barringer Luzak ("Plaintiff"), submits this Memorandum in Support of her Amended Motion to Compel Production of Documents against Coastal Forest Resources Company ("CFRC") to produce documents requested in Plaintiff's subpoena of July 21, 2017 (Ex. 1) and this Court's Order of September 26, 2019 ("Order;" see Ex. 2). This is the second time the Plaintiff has been forced to move before this Court to obtain compliance with its 2017 subpoena because of CFRC's continued intransigence and willful disregard of its legal obligations, including this Court's prior Order. This Court's Order required CFRC to produce all documents relating to funds advanced by CFRC on behalf of any obligee of Defendant Randy Light, which includes Defendant Merrill Light, but CFRC has deliberately chosen not to produce

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such records. CFRC should be sanctioned and held in contempt for its willful violation of this Court's standing Order.

As explained in more detail below,¹ Plaintiff has now made six (6) requests to CFRC for accounting records regarding funds paid, advanced or loaned by CFRC to or on behalf of Merrill Light for Merrill Light's defense of a breach of contract claim in prior litigation among the parties in federal court in the Eastern District of Virginia in the case of Coastal Forest Resources Company v. Luzak, Civil Action No. 1:15-CV-501 ("EDVA litigation"). Prior to this Court's Order of September 26, 2019, CFRC gave Plaintiff three false responses and one incomplete response to legally authorized records requests. Subsequent to this Court's September 26, 2019 Order to produce such information, CFRC has given Plaintiff two more false answers, all as outlined below:

- First False Answer: On November 14, 2016, Plaintiff's counsel duly requested from CFRC's counsel "[r]ecords sufficient to show whether CFRC has made advancement... (and if so, the amounts paid) on behalf of Merrill Light for any fees and costs for defense of the breach of contract claim" in the EDVA litigation. On November 22, 2016 CFRC falsely responded: "There are no such records; Ms. Light is responsible for her fees and expenses in connection with the Contract Claim." (emphasis added).
- Second False Answer: On January 25, 2017 Plaintiff's counsel duly requested that CFRC supplement its prior response to provide "accounting, board and other records sufficient to show whether and to what extent the Company provided indemnification or advancement to or on behalf of Merrill B. Light for the contract claims raised in the EDVA litigation." On February 1, 2017, CFRC's counsel answered: "As we informed you on November 22, 2016, CFRC did not indemnify Ms. Light in connection with Ms. Luzak's contract claims in the EDVA litigation," using sleight of hand to ignore Plaintiff's requests for records on "advancements."
- Third False Answer: After CFRC dodged Plaintiff's request for records on "advancements" in its February 1, 2017 response, Plaintiff's counsel asked explicitly on March 1, 2017, "did CFRC provide Ms. Light any advance for expenses...in connection with Ms. Luzak's Contract Claim?" On March 8, 2017, CFRC falsely denied for a third time that "there are no responsive records because the Company has not made 'any loan to an officer or director from 2015 to date.'" (emphasis added).

¹ See Part A, "Plaintiff's subpoena request No. 22 not complied with by CFRC," pages 13-18.

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- Incomplete Response: On March 29, 2019 Plaintiff's counsel submitted a fourth request for records pertaining to funds advanced by CFRC on Merrill Light's behalf for her EDVA defense costs. On March 31, CFRC finally admitted it had advanced litigation costs for Merrill Light stating "the company initially paid all costs billed in connection with both suits. The costs related to the Contract Claim were subsequently reimbursed by Ms. Light through offsets to Ms. Light's shareholder account in due course." (underline added). CFRC, though, provided no details on the amounts advanced or when Merrill Light repaid the advancement, if ever. CFRC also failed to produce any supporting records.
- Fourth False Answer: On July 31, 2017, Plaintiff issued a subpoena in this case to CFRC and asked in paragraph 22 for "all documents²...relating to any loans or other advancements...to any creditor or other obligee of Randy Light." At the hearing in this Court on September 17, 2019, Plaintiff explained this request included advancements made to Merrill Light since recent deposition testimony of the Lights disclosed that Merrill Light was an obligee of Randy Light. This Court ordered CFRC to produce all such responsive records by October 7, 2019. On October 7, CFRC produced certain documents purportedly responsive to all requests. However, in response to Plaintiff's requests No. 22, CFRC in a completely incorrect answer stated: "CFRC is producing nonprivileged documents responsive to this Request." CFRC, however, produced no records responsive to this request in its October 7, 2019 production. Most importantly, it also failed to list the existence of any such documents on its privilege log.
- Fifth False Answer: In post-production correspondences, Plaintiff on December 11, 2019 e-mailed CFRC's counsel informing them that CFRC failed to produce any records regarding the funds advanced for Merrill Light's EDVA contract litigation costs as requested in paragraph 22 of Plaintiff's subpoena.³ By letter of December 13, 2019 CFRC dodged its duty to provide the requested records by replying "CFRC has repeatedly affirmed that the company did not advance those expenses. Rather, those expenses were charged to Mrs. Light's shareholder account for payment..." This response confirms for a second time that CFRC paid Mrs. Light's EDVA litigation costs in advance, and then at a later date allegedly either received a payment from her for the amounts advanced or deducted such amounts from subsequent payments to her.

CFRC admitted it made a charge to Merrill Light's shareholder account, yet the corporation produced no records of this charge nor did it disclose any such records on its privilege log. Such related records could include, but certainly not be limited to: the bills from

² Plaintiff's subpoena includes an extremely broad definition of "documents" that specifies: "The term 'document(s)' as used herein shall mean all...records..." (Ex. 1, Pl.'s Subpoena, Ex. A, pp. 1-2, ¶ D.iii).

³ Plaintiff's counsel wrote CFRC's attorneys: "We have reviewed the records you produced on behalf of CFRC on 10/7/19 and have found no information about the legal fees advanced by CFRC, such as how much CFRC advanced for Merrill Light, whether Mrs. Light has repaid any of it, and if so, when...This issue was raised in our brief filed with the Gadsden County Court and in the court hearing before Judge Frank. He then subsequently granted our request for documents responsive to paragraph 22 as requested...I think it is indisputable CFRC owes us this information under Judge Frank's order."

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Merrill Light's attorneys to her or CFRC for the costs and legal work performed; the payments by CFRC to the law firm including CFRC's checks for such payments; the accounting entry showing when and how much Mrs. Light's shareholder account was being charged; the subsequent payments to Merrill Light where the charge to her shareholder account was actually deducted from the CFRC payments to her; any notes, e-mails, correspondences or other documents or records discussing and memorializing the shareholder account charges and the reimbursements; the IRS form(s) 1099 or other similar forms to the law firm and Merrill Light that captured the payments to the law firm by CFRC on behalf of Merrill Light; and any board minutes discussing and approving the payments for Merrill Light's contract claim defense fees and costs.

CFRC's failure to produce any records regarding the charge to Merrill Light's shareholder account leads to only one of two conclusions – either (1) there are no records (which shows that CFRC is being run for Merrill Light's personal benefit since she took control); or (2) such documents exist, and CFRC is failing to produce what this Court has ordered it to produce.

CFRC is trying to sell Plaintiff and this Court a bill of goods by claiming that a payment of legal fees to Merrill Light's lawyers with a charge to her shareholder account followed by a subsequent reimbursement out of her shareholder distributions is not an advancement of legal fees. Plaintiff is not buying it, and this Court should not either.

CFRC has also refused to produce its financial records regarding significant unexplained accounting discrepancies that would clarify whether or not Defendants Randy and Merrill Light have misappropriated company assets as a result of the Lights' procurement of controlling company stock from Plaintiff's father, even though Plaintiff duly requested such records in her

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amended subpoena requests following this Court's prior hearing. CFRC should be ordered to comply promptly.

NATURE OF THE CASE

This matter arises out of an action pending in the South Carolina Court of Common Pleas which is South Carolina's court of general jurisdiction for civil matters. On July 21, 2017, Plaintiff's attorney issued in South Carolina a subpoena to CFRC for specific documents related to Plaintiff's South Carolina case. The presiding judge issued a commission for an out-of-state subpoena, and the subpoena was domesticated in this Court on September 8, 2017. Enforcement of the July 21, 2017 subpoena is the subject of the action in this Court.

The underlying South Carolina case centers around the undisclosed transfer of controlling stock in CFRC, a privately-held and family-controlled corporation incorporated in Virginia and headquartered in Havana, Florida. The disputed stock transfer involves a purported gift of CFRC voting stock from Paul Barringer, the now-deceased father of Plaintiff and Defendant Merrill Light, at a time when Paul Barringer was suffering from Alzheimer's disease. The purported gift from the ailing Paul Barringer to Merrill Light resulted in Mrs. Light ostensibly owning 51% of the voting stock in CFRC, thereby giving her control over the corporation.

In this action Plaintiff seeks damages from her sister, Defendant Merrill Light, and her sister's husband, Defendant Randy Light,⁴ for the improper transfer of controlling stock and other assets from Paul Barringer's name, a constructive and/or resulting trust over misappropriated property resulting from the stock transfer to Defendant Merrill Light, and rescission of the stock transfer among other related relief. Plaintiff has also asserted claims to set aside amendments to the will and revocable trust of Paul B. Barringer on the grounds of undue

⁴ Randy Light died on March 16, 2020.

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influence committed by Merrill and Randy Light on Paul Barringer, lack of mental capacity of Paul Barringer, and other related causes of action. (See Am. Compl. at Pl.'s Am. Mot. to Compel Production of Docs. filed 2/14/20, Ex. J, pp. 51-72).⁵

FACTUAL BACKGROUND

CFRC is one of the largest privately held companies in the timber and lumber industries in the country. It was founded and developed by the late Paul Barringer. Prior to September 11, 2012, its voting stock was owned 31.2% each by the Plaintiff and her sister defendant Merrill Light through gifts from their father Paul B. Barringer; 20% by their father; and 17.6% by an outside investing family, the Congers. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paul Barringer's gifts of both voting and non-voting stock to his two daughters had been made in equal amounts so that each daughter owned the same number of shares.

Around 2000 Paul Barringer placed Plaintiff's husband Kevin Luzak on the board of directors of CFRC's predecessor company. In 2004, Paul Barringer hired him as the president of CFRC. Then in 2008, Paul Barringer stepped aside as chief executive officer with Kevin Luzak taking his place as CEO.

⁵ Altogether the Amended Complaint contains 19 causes of action for: setting aside the will of Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside *inter vivos* transfers of Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside purported *inter vivos* trust amendments by Paul Barringer for lack of mental capacity, undue influence and mistake; setting aside putative transfers of personal property by Paul Barringer to his *inter vivos* trust; fraud; conversion; quantum meruit /unjust enrichment; constructive trust; resulting trust; breach of fiduciary duty; intentional interference with inheritance and gifts; attorney fees and costs; and civil conspiracy. In a later filed case with a different caption and case number but now consolidated with the underlying action in South Carolina, Plaintiff has asserted similar claims of intentional interference with inheritance, constructive trust, enforcement of a contract not to revoke estate plans, civil conspiracy, and attorney fees and costs against Plaintiff's and Merrill Light's mother Merrill U. Barringer. All further cites to the Amended Complaint ("Am. Compl.") will be to Ex. J attached to Plaintiff's Amended Motion to Compel Production of Documents e-filed 2/14/2020.

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In 2010 the Barringer siblings - Plaintiff Hampton B. Luzak, Defendant Merrill B. Light, and their brother Victor Barringer - entered into a shareholder agreement to grant the company the right to purchase any company stock that was offered for sale by any sibling in the future.

The medical records show that as early as 2010, Paul Barringer began experiencing issues with onset of dementia including progressive memory loss and behavioral changes with brain atrophy. By late 2011, family members and co-workers were e-mailing among each other their concerns about Paul Barringer's mental health. These communications included e-mails from Defendant Randy Light. Before becoming afflicted with Alzheimer's disease, Paul Barringer did not allow Randy Light to work for CFRC as Randy Light had run multiple real estate businesses he owned into bankruptcy, including two Texas-based real estate companies, and was millions of dollars in debt from those failed ventures.

In 2012, Paul Barringer and his wife continued to reside at their long-time residence in Hilton Head Island, South Carolina. Merrill Light and Randy Light also lived in Hilton Head Island, SC. The Luzaks resided in New York City at this time. In February 2012 Merrill Light became co-trustee with Paul Barringer of his 1998 revocable trust pursuant to an amendment drafted by Merrill Light's long-time personal lawyer. Merrill Light did not inform Plaintiff of this change.

From May 2-May 4, 2012 Paul Barringer was hospitalized in Savannah, GA for issues related to mental confusion and urinary tract infection. On May 30, 2012 he was diagnosed with early onset Alzheimer's disease by a leading neurologist at the Medical University of South Carolina.

On May 11, 2012 Paul Barringer executed a stock certificate transferring his voting stock to himself as trustee of his revocable trust. The share certificate was signed by Plaintiff's

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husband Kevin Luzak as president of CFRC, but the share certificate did not disclose to Kevin Luzak that Merrill Light was also a co-trustee of Paul Barringer's revocable trust.

During June of 2012 Paul Barringer suffered from extensive confusion and memory lapses regarding company affairs, such as forgetting he directed the sale of the company jet, forgetting the company made a significant commercial real estate investment in Virginia, and forgetting about important board presentations that company management, including Plaintiff's husband Kevin Luzak, had made to the board. Mr. Barringer also became confused about prior board presentation materials Kevin Luzak had given the board in the past 15 months when Merrill Light re-submitted the materials to her father in June 2012. When Paul Barringer was re-introduced to the prior board presentation materials in June 2012, he accused Kevin Luzak of plotting changes to the company behind his back and of trying to steal company assets, even though Mr. Barringer had been involved in the board presentations the year before and complimented Kevin Luzak on the soundness of the plans at that time.

In June of 2012 as Paul Barringer began experiencing ever-increasing memory lapses and serious confusion, he called a special board meeting for the purpose of firing Kevin Luzak as CEO. The company at the time was on course for a record setting year for profits, increasing over five-fold from the year before.⁶ The CFRC board consisted of four members at that time – the ailing Paul Barringer, Merrill Light, Kevin Luzak, and an independent, non-family board member Michael Hagler who was a well-respected attorney from Augusta, Georgia with ties to the Conger family. Despite confusion by Paul Barringer in how to vote at the specially-called board meeting, Paul Barringer, after coaching from defendants present in the room with him during the telephonic meeting, purportedly voted to fire Kevin Luzak as did Merrill Light. The

⁶ CFRC's fiscal year runs from approximately October 1 to September 30; therefore, CFRC was 9 months into its fiscal year when Kevin Luzak was fired as CEO.

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independent director Mike Hagler voted against Kevin Luzak's removal and in favor of Mr.

Luzak's request for an independent investigation into the allegations against him. Since Kevin Luzak was prohibited by the corporate attorney⁷ from voting due to Mr. Luzak being the subject of the vote, the motion to oust Mr. Luzak carried, and he was removed from all offices of CFRC without any investigation.

After firing Kevin Luzak as CEO, Merrill Light called a special shareholder meeting for August 3, 2012 for the purpose of removing Kevin Luzak from the board of directors. Upon obtaining Paul Barringer's proxy, Merrill Light and her proxies, which consisted of three of her attorneys that she brought to the meeting, voted the majority shares of the company to remove Kevin Luzak from the board and replaced him with her husband, defendant Randy Light. Travis Bryant, the CFO, presided over the meeting and was elevated to CEO while retaining his position as CFO – a highly unusual arrangement for a corporation of this size.

By two documents dated September 11, 2012, an Assignment of Shares and a Stock Power, Paul Barringer as a co-trustee of the Paul B. Barringer Revocable Trust purportedly assigned and transferred all⁸ of his voting shares of CFRC to Merrill Light as trustee of her own Merrill Barringer Light Revocable Trust. (Coastal 5-7). Since Merrill Light already owned 31.2% of the voting stock, Paul Barringer's purported transfer of this 20% block from the Paul Barringer Revocable Trust gave Mrs. Light 51.2% of the voting shares of CFRC. Thus she ostensibly became the controlling shareholder. This transfer from the Paul Barringer Revocable

⁷ Brad Herring, CFRC's corporate attorney on June 28, 2012, resigned on July 9, 2012 as a result of the controversy from this board meeting.

⁸ Paul Barringer actually retained one share out of 190,767 voting shares. The one retained share did not affect the relative voting power of Merrill Light as the ostensible majority shareholder by virtue of the purported transfer of voting shares.

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Trust occurred while Merrill Light was continuing to serve as co-trustee of the trust. Hampton Luzak was not informed of the purported execution of these stock transfer documents.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] At this time the board consisted of Merrill Light, Randy Light, Travis Bryant, and the mentally-infirm Paul Barringer. Merrill and Randy Light did not inform Plaintiff of this lucrative stock transfer to the new CEO who had replaced Plaintiff's husband.

In December 2014 when CFRC issued its annual financial statement for the fiscal year ending September 30, 2014, Plaintiff discovered a note in the 2014 financial statement about a

[REDACTED]

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stock issuance to an undisclosed officer. Hampton Luzak's attorney, pursuant to Plaintiff's statutory shareholder inspection rights,¹⁰ wrote Travis Bryant and CFRC on January 21, 2015 to request, among other items, a copy of the stock transfer books of the corporation showing the stock ownership of the company since June 2012. (Ex. 4, Letter of M. Smith to T. Bryant, Jan. 21, 2015, at KLUZAK_00024604, ¶ 8). CFRC, however, embarked on its often employed tactic of hiding important but prejudicial documents from Plaintiff, this time forcing Plaintiff to make three requests for the stock register which she was legally entitled to receive.

On February 13, 2015, CFRC produced various records to Plaintiff's attorney but omitted a copy of the requested stock register or any reference to it. (Ex. 4, Letter from A. Wingfield to M. Smith, Feb. 13, 2015 at Hampton Luzak 1958-1971). On February 20, 2015, Plaintiff's counsel wrote CFRC a second time and again asked for the stock transfer books of the corporation and pointed out that CFRC omitted the stock transfer records in the prior production. (Ex. 4, Letter from M. Smith to A. Wingfield, Feb. 20, 2015, Hampton Luzak 000621, ¶ 8). On March 3, 2015, CFRC responded a second time with various documents but again omitted the stock transfer register. (Ex. 4, Letter from A. Wingfield to M. Smith, Mar. 3, 2015 at Boisselle 7020-7023). On March 6, 2015, Plaintiff's attorney sent to CFRC's counsel a third request asking for the stock ledger/share register/stock transfer books of the corporation from June 2012 to that date. (Ex. 4, E-mail from M. Smith to A. Wingfield, Mar. 6, 2015, Hampton Luzak 626-27, ¶ 8). Finally on March 13, 2015, CFRC disclosed the stock transfer ledger to Hampton Luzak while falsely claiming in its third response that it had already produced the shareholder list. (Ex. 4, Letter from A. Wingfield to M. Smith, Mar. 3, 2015 at Hampton Luzak 2079-2081 and ¶ 8; and CFRC Stock Register as of Feb. 30, 2014 (*sic*), CFRC 00628). This disclosure of

¹⁰ See Va. Code Ann. §§ 13.1-771 and -772 applicable to CFRC as a Virginia- incorporated entity.

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the stock transfer ledger was the first time Plaintiff learned about the purported stock transfer from Paul Barringer to Merrill Light two and a half years earlier.

As part of her statutory shareholder records requests prior to the EDVA litigation, Plaintiff on February 20, 2015 asked for all accounting records reflecting expenditures in fiscal years 2013 and 2014 exceeding \$100,000 for (a) payments for the purchase of timber and timberland; (b) payments for the purchase of Property, Plant and Equipment; and (c) all accounting records reflecting CFRC's capital expenditures for those fiscal years. Ex.4, Letter from M. Smith to A. Wingfield, Feb. 20, 2015, Hampton Luzak 000623-24, ¶¶ 19 and 26). On March 3, 2015, CFRC through its attorneys at the Troutman Sanders law firm submitted in response [REDACTED]

[REDACTED] (Ex. 5, CFRC 000607-609; also Ex. 4, Letter from A. Wingfield to M. Smith, Mar. 3, 2015 at Boisselle 7020-7023). [REDACTED] (See Ex. 6, Affid. of W. Thomas, CPA of May 15, 2020, ¶¶ 13 and 16.)

During this same time period, Paul Barringer on February 5, 2015, ostensibly amended his revocable trust and will for a final time. [REDACTED]

[REDACTED]

[REDACTED]

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After Randy Light became chairman of the board of directors in February 2015, CFRC, under the full control of Defendant Merrill Light, commenced the EDVA litigation seeking, *inter alia*, declaratory relief regarding Merrill Light's proportional interest in CFRC. (Am. Compl., ¶104(b)). Hampton Luzak filed two counterclaims for (1) a breach of contract against Defendant Merrill Light and CFRC based on the 2010 Shareholders Agreement among Plaintiff, her siblings and CFRC, regarding transfers of CFRC stock for consideration (the "contract claim")¹²; and (2) a separate and unrelated counterclaim asserting shareholder derivative claims against CFRC, Travis Bryant and Defendants Merrill and Randy Light involving the 2013 stock sale and option grant to Mr. Bryant. (*Id.* at ¶ 104(c)). The federal district court ultimately dismissed both of the narrowly drawn claims including the contract claim since the stock transfer to Merrill Light was a gift, not a sale for valuable consideration. The dismissals were upheld by the 4th Circuit Court of Appeals.

On May 30, 2016, Paul Barringer died from Alzheimer's disease. On August 28, 2016, Plaintiff filed the underlying suit in South Carolina for intentional interference with inheritance and other related claims as described in the Nature of the Case above.

A. Plaintiff's subpoena request No. 22 not complied with by CFRC.

After the EDVA litigation had ended and the appeal was pending in the 4th circuit, Plaintiff under her statutory inspection rights asked CFRC for records of any advancement by the company of legal fees for Merrill Light in the EDVA litigation – a company benefit not offered to Plaintiff. On November 14, 2016, Plaintiff's counsel duly requested from CFRC's counsel

¹² After CFRC moved to drop its declaratory petition, the EDVA court re-aligned the parties on August 14, 2015 making Hampton Luzak the named plaintiff and Merrill Light and CFRC the defendants. On August 28, 2015, despite serious questions about his mental capacity, Paul Barringer ostensibly intervened as a defendant in the Contract Claim.

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“[r]ecords sufficient to show whether CFRC has made advancement... (and if so, the amounts paid) on behalf of Merrill Light for any fees and costs for defense of the breach of contract claim” in the EDVA litigation. CFRC initially responded on November 22, 2016 to Plaintiff’s specific request about CFRC’s advancement of personal legal costs of Merrill Light stating: “There are no such records; Ms. Light is responsible for her fees and expenses in connection with the Contract Claim.” (Ex. 7, Letter from M. Boshier to D. Gogal, Nov. 22, 2016, p. 2 at ¶ 2 without enclosures)

On January 25, 2017 Plaintiff’s counsel duly requested that CFRC supplement its prior response to provide “accounting, board and other records sufficient to show whether and to what extent the Company provided indemnification or advancement to or on behalf of Merrill B. Light for the contract claims raised in the EDVA litigation.” On February 1, 2017 CFRC responded a second time, stating: “As we informed you on November 22, 2016, CFRC did not indemnify Mrs. Light in connection with Mrs. Luzak’s contract claims in the EDVA litigation.” (Ex. 8, Letter from M. Boshier to D. Gogal, Feb. 1, 2017, p.4, “Luzak Req. for Supp.” and “CFRC’S Resp.”)

After CFRC dodged Plaintiff’s request for records on “advancements” in its February 1, 2017 response, Plaintiff’s counsel asked explicitly on March 1, 2017, “did CFRC provide Ms. Light any advance for expenses...in connection with Ms. Luzak’s Contract Claim?” (Ex. 9, Letter from D. Gogal to M. Boshier, Mar. 1, 2017, p.3, “Luzak Resp.”). On March 8, 2017, CFRC denied for a third time that “there are no responsive records because the Company has not made ‘any loan to an officer or director from 2015 to date.’” (Ex. 10, M. Boshier ltr., March 8, 2017 without enclosures).

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On March 29, 2019 Plaintiff's counsel submitted a fourth request for records pertaining to funds advanced by CFRC on Merrill Light's behalf for her EDVA defense costs. Finally, after Plaintiff's 4th request for the same records, CFRC's attorney at Hunton Andrews Kurth admitted to Plaintiff's Virginia counsel that CFRC had advanced legal costs for Merrill Light, a creditor and obligee of Randy Light, in connection with Merrill Light's EDVA litigation that CFRC initiated against Plaintiff, by writing:

...as a matter of convenience and efficiency, the company initially paid all costs billed in connection with both suits. The costs related to the Contract Claim were subsequently reimbursed by Ms. Light through offsets to Ms. Light's shareholder account in due course.

Ex. 11, Letter from M. Bosher to D. Gogal, Mar. 31, 2017, p.2, "Req. 2") (emphasis added).

In paragraph 22 of Plaintiff's subpoena to CFRC, Plaintiff sought production of:

Any and all documents, including e-mails and/or other correspondences, reflecting or relating to any loans or other advancement of funds by CFRC to Randy Light or to any creditor or other obligee of Randy Light.

Ex. 1, Pl.'s Subpoena, Ex. A, p.5, ¶ 22.

As a result of Randy Light's failed Texas real estate ventures, Merrill Light secured money for payment on various loans Randy Light could not pay. Randy Light then became indebted to Merrill Light, and continued to be indebted to Merrill Light at the time of both their depositions on August 12-13, 2019 and August 20, 2019. (Ex. 12, Dep. Tr. of Merrill Light at pp. 290-91 and 536-37; Ex. 13, Dep. Tr. of Randy Light at pp. 144-45). Consequently, this indebtedness made Merrill Light a creditor and/or obligee of Randy Light. Plaintiff's subpoena request number 22 therefore encompasses documentation of any loans or advancement of funds by CFRC to Merrill Light.

Request number 22 was among the specific requests Plaintiff's counsel raised at the hearing before this Court on September 17, 2019. During that hearing Plaintiff's counsel

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specifically stated on the record before the Court that the recipient of any loans or other advancement of funds sought in Request No. 22 “would include [Randy Light’s] wife, Merrill, because in his deposition, [Randy Light] testified that he ow[e]s Merrill Light money. . . . So I want not only Randy Light, but his wife, Merrill, because she is an oblig[ee] of Randy.” (Ex. 14, Hr’g Tr. pp. 35:13 – 36:5). Plaintiff’s counsel specifically raised the point to the Court and CFRC that advances to Merrill Light were included in Request No. 22 in order that there be no doubt that Plaintiff’s request for advances included such payments on behalf of Merrill Light.

In response to Plaintiff’s counsel’s statement on the record quoted above, the Court stated: “So we just heard from the Defendants, they agreed to produce [Request Numbers] 22 to 23. So I don’t –maybe you don’t – why don’t you go with that – they will produce it. I mean, is there some distinction between what’s requested and what you’re willing to give?” Counsel for CFRC replied: “No, I’m not aware of a distinction...” (*Id.* at p. 36:9-17) (emphasis added).

In the Order of September 26, 2019, this Court granted Plaintiff’s motion for an order compelling CFRC to produce documents in response to request number 22. (Ex. 2, Order, ¶¶ 2.a.ii and 5).

On October 7, 2019 CFRC responded to Plaintiff’s Request No. 22, by stating, after entering various boilerplate objections, that “CFRC is producing nonprivileged documents responsive to this Request.” (Ex. 15, Nonparty CFRC’s Am. Objections and Resps. to Subpoena at pp. 18-19).

CFRC produced no documents responsive to Plaintiff’s request for documents relating to loans or other advancements of funds by CFRC to Merrill Light, whether as advancement of Merrill Light’s EDVA litigation costs or any other purpose.

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In post-production correspondences regarding compliance with this Court's Order, Plaintiff's attorney on December 11, 2019 e-mailed CFRC's counsel informing them that CFRC failed to produce any records regarding the funds advanced for Merrill Light's EDVA contract litigation costs as requested in paragraph 22 of Plaintiff's subpoena. (Ex. 16, E-mail from W. Hogan to E. Fuhr and J. Schronce, Dec. 11, 2019). On December 13, 2019, CFRC's counsel again admitted in substance that CFRC advanced funds for Merrill Light for her personal litigation costs while facially denying it, stating:

With respect to your client's breach of contract claims, which were also dismissed, CFRC has repeatedly affirmed that the company did not advance those expenses. Rather, those expenses were charged to Mrs. Light's shareholder account for payment...

Ex. 17, Letter from J. Schronce to W. Hogan, Dec. 13, 2019, p.2 (emphasis added).

A distribution of legal fees and costs to Merrill Light's personal attorneys prior to payment of Merrill Light's shareholder distributions is a clear advancement of funds for the personal benefit of Merrill Light, a creditor of Randy Light, and therefore encompassed by Plaintiff's Request No. 22 and this Court's Order. CFRC's letter of March 31, 2017 explicitly stated that CFRC paid Merrill Light's legal costs first, and then Merrill Light "subsequently reimbursed" CFRC for the advance payment. CFRC's tactic of denying it made an advancement and then explaining that "those expenses were charged to Mrs. Light's shareholder account for payment" is just an end-run around this Court's order to produce under subpoena paragraph 22 the records of advancements paid on behalf of Merrill Light.

CFRC provided no information on the amount of the advancement or any proof that Merrill Light actually re-paid CFRC, and thus its shareholders, for the money she was advanced by the company for her litigation costs in the EDVA. CFRC also has provided no rational justification for refusing to do so. Merrill Light's supposed ability to use CFRC's assets to gain

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personal benefits like the advancement of her personal legal fees is a benefit she has enjoyed as the ostensibly controlling shareholder of CFRC. It is possible that the charge to Merrill Light's shareholder account and her reimbursements to the company did not occur until after Plaintiff first starting asking about the advancements on November 14, 2016. Such evidence would demonstrate that Merrill Light would have never reimbursed CFRC had Plaintiff not been diligent in asking for this information. Such self-serving use of the company's assets illustrates a motive for her in wrongfully obtaining the controlling voting stock from her father. The legal fee advancement also is an element of Plaintiff's damages against Merrill Light in her various claims. This Court should order CFRC to produce the details on the advancement of legal fees and costs from the EDVA litigation, including but not limited to the amounts paid and when, if ever, Merrill Light repaid the sums or had such amounts deducted from her dividends or other corporate distributions.

B. Plaintiff's Clarification Requests pursuant to requests Nos. 42 and 43 not complied with by CFRC

As a 36% shareholder in CFRC, Plaintiff annually receives audited financial reports from the company and has continued to receive them to the present. Since Plaintiff's husband was the former CEO of CFRC and reviewed the financial reports with Plaintiff, Plaintiff developed serious concerns about the capital expenditures being reported in the annual reports after her husband was fired and Merrill Light took control of the company. When Plaintiff made her statutory shareholder records requests to CFRC in 2015, she included requests for accounting records for fiscal years 2013 and 2014¹³ on expenditures exceeding \$100,000 for payments for

¹³ In February 2015 when Plaintiff made her initial records request, fiscal year 2014 was the latest fiscal year to have completed records and thus 2014 was the last year requested at that time. To the extent the detailed accounting

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purchases in two specific capital asset categories in the CFRC financial records – “Timber and Timberlands” and “Property, Plant and Equipment.”

On March 3, 2015 CFRC’s then lawyers at Troutman Sanders sent Plaintiff two separate printouts listing summary descriptions of purported “Timber and Timberland” purchases at CFRC 607 and “Property, Plant and Equipment” purchases at CFRC 608-609 (Ex. 5; collectively referred to as the “Troutman Exhibits”). [REDACTED]

[REDACTED] (See Ex. 18, CFRC 000428 for CFRC annual report numbers).

Plaintiff has retained the services of a Certified Financial Forensics expert, W. Ellison Thomas, CPA, to examine the accounting records in this case. As part of his assignment he examined the Property, Plant and Equipment summary provided by Troutman and compared it to the CFRC annual financial report as set forth in pages 5 through 8 of his Affidavit. As shown in the chart at the top of page 8 of the Thomas affidavit, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PP 14-15).

As for purchases of Timber and Timberlands, the corresponding Troutman Exhibit also shows [REDACTED]

[REDACTED]

records being sought herein by Plaintiff show any improper conduct by Defendants Merrill and Randy Light during 2013 and 2014, Plaintiff respectfully reserves the right to seek similar accounting records for subsequent years.

¹⁴ “CapEx” being a financial industry shorthand for “Capital Expenditures.”

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██████████ (See Ex. 19, “Summary of Payments for Purchase of Timber and Timberlands”).

Because the capital expenditure numbers appearing in the annual financial reports were perplexing to the Luzaks, especially when compared to the Troutman Exhibits and to the projected capital expenditures, Plaintiff sought all accounting records reflecting CFRC capital expenditures for fiscal years 2012-2015 and access to the accounting files of CFRC in requests 42 and 43 of her July 2017 subpoena. CFRC objected to the requests and produced no responsive documents. (Ex. 15, Nonparty CFRC's Am. Objections and Resps. to Subpoena at pp. 29-31).

On August 13, 2019 prior to this Court's previous hearing, Merrill Light, a long-time board director and purported majority shareholder, was questioned in her deposition about [REDACTED]

Light Dep. pp. 447:16 – 450:17). [REDACTED] (Ex. 12, M.

On August 21, 2019, eight days after Merrill Light was deposed, Randy Light, CFRC's chairman of the board of directors, was questioned about [REDACTED]

(Ex.13, R. Light Dep. pp. 291:19 – 294:10).

¹⁵ The “Summary of Payments for Purchase of Timber and Timberlands” was generated by the Luzaks and their counsel and totals the expenditures by year for such items shown in the Troutman Exhibit at CFRC 000607 and compares them to the numbers reported in the CFRC annual financial reports. A similar chart was also prepared for the Property, Plant and Equipment purchases. Both charts were used in the depositions of Merrill Light and Randy Light. (Ex. 19).

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Because of the lack of explanation by principals of CFRC as to [REDACTED]

[REDACTED] Plaintiff duly pursued compliance with her subpoena requests numbers 42 and 43 [REDACTED]

On September 26, 2019 this Court entered its written order pursuant to the September 17, 2019 hearing (“Order”) granting 18 of Plaintiff’s requests but sustaining CFRC’s objections as to requests numbers 42 and 43. The Court, however, permitted Plaintiff “to provide CFRC with clarification as to the specific categories and types of documents that Plaintiff is requesting under requests nos. 42 and 43.” (Exhibit 2, Order at ¶ 4).

Following the Court’s Order, Plaintiff sent to CFRC on September 26, 2019 her “Clarification of CFRC Subpoena Paragraphs 42 and 43 Pursuant to Order of September 26, 2019 of the Honorable David Frank.” (“Clarification Request”). Plaintiff’s Clarification Request asked for the following documents and information from CFRC:

For the fiscal years ending September 29, 2013 and September 28, 2014, produce the following Documents of CFRC and its subsidiaries:

(a) the cash disbursements journal or functional equivalent showing expenditures of CFRC and its subsidiaries; (b) the bank statements, with monthly cash reconciliation, of CFRC and its subsidiaries for accounts on which disbursements are drawn covering the above periods to include copies of cancelled checks and any other withdrawal documents that are a part of the bank statements provided by the financial institution(s), or allow access by Plaintiff’s designee to the information in (b); (c) trial balance from CFRC and each subsidiary company; and (d) all form 1099s issued for those periods from CFRC and each subsidiary,

with leave to request additional source documents, to be identified by Plaintiff, related to information referenced in (a) through (d) above after review of (a) through (d) above.

The cash disbursements journal or its functional equivalent, requested in (a) above, should contain the following information at a minimum: date of disbursement, payee, dollar amount, reference number, and CFRC or subsidiary account number to which the expenditure was charged.

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Exhibit 20, Clarification Request.

Instead of showing

CFRC resorted to a generalized disclaimer claiming Plaintiff had “a fundamental misapprehension of the summary data that CFRC provided in 2015.” CFRC did not attempt to provide [REDACTED] (Ex. 21, Letter from E. Fuhr to J. Gilreath, Dec. 11, 2019, at 2nd paragraph). Plaintiff is entitled to all the evidence possessed or controlled by the Defendants and CFRC which supports the allegation that Plaintiff has “a fundamental misapprehension” of the subject matter if, for no other reason, to prepare for its use by CFRC and the Defendants in deposition and/or trial.

CFRC may claim that

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (See Ex. 22, Alford report at Ex. 3)

If there are any major misappropriations in company assets by the controlling managers of a company, the capital expenditure accounts would logically be an area where such wrongdoing would take place. Kevin Luzak as the former CEO of CFRC is an extremely knowledgeable insider about CFRC's finances, and his and his wife's suspicions are not to be taken lightly. [REDACTED]

[REDACTED] (see p. 10, supra, and Ex. 3), Plaintiff is amply justified in seeking a review of the accounting records specified in her Clarification Request in order to get to the bottom [REDACTED]

Plaintiff's Clarification Requests are highly relevant to the dispute between Plaintiff and her sister. Plaintiff alleged in paragraph 93 of her Amended Complaint in 2016 that approximately \$14 million of capital expenditures were unaccounted for. Plaintiff further prayed that "[a] constructive trust [and a resulting trust] be imposed on Merrill Light and/or others for all misappropriated property and any benefit therefrom, including but not limited to ... dividends or other proceeds received by her and/or others since the date of the purported [stock] transfer to Merrill Light." (Am. Compl., ¶¶ 169 and 171). If Merrill and Randy Light have misappropriated company assets as a result of their wrongful taking of the company voting stock from Paul

¹⁷ Produced by CFRC on 10/7/20 at CFRC_SC-000000529.

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Barringer and consequently the Plaintiff, their misappropriated gains would be a significant element of recovery for Plaintiff in this case.

Plaintiff's Clarification Request for the accounting records of 2013-2014 is not unduly burdensome. First, it will be Plaintiff's designee who will be conducting the review, not CFRC personnel. CFRC's counsel in his letter of December 11, 2019 stated that the accounting system used in 2013 and 2014 is no longer used and the records have been archived. (Ex. 21). Plaintiff's analyst will thus be reviewing old, archived records, and not records that are in current use. His examination will not be interfering with CFRC's current operations.

CFRC has now fought for three years a review of the details of its capital expenditures from a 37% shareholder. CFRC has the documents within its control to provide an honest explanation for these serious accounting discrepancies. It refuses to do so, even to a large shareholder married to the former CEO. To allow Plaintiff to resolve her dispute with her sister, this Court should require CFRC to start being transparent with its finances and produce the records requested in Plaintiff's Clarification of CFRC Subpoena Paragraphs 42 and 43.

C. Privilege log items regarding lost share certificate improperly withheld by CFRC

On October 7, 2019, after this Court ordered CFRC to produce responsive documents to 18 specified requests in Plaintiff's Subpoena, CFRC finally produced a privilege log regarding its document production. (Ex. 23, CFRC Priv. Log).¹⁸ The documents described in the last three entries on CFRC's privilege log pertain to [REDACTED]

[REDACTED]

[REDACTED]

¹⁸ CFRC's original Privilege Log contained 17 entries, 14 of which are not pertinent to this Amended Motion; therefore, the Privilege Log as shown in Exhibit P contains only the three entries that are the subject of this Amended Motion.

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[REDACTED] The three documents (collectively the "Withheld Documents") were created during the time that Paul Barringer's stock was being wrongfully transferred at the instigation of the defendants. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CFRC produced an executed [REDACTED]

[REDACTED]

[REDACTED] which e-mail was withheld from production. (Ex. 24, [REDACTED])

[REDACTED] The stock transfer, to which the Paul Barringer Affidavit relates, is the subject of Plaintiff's Tenth Cause of Action (Action to Set Aside Putative Transfer of Personal property to *Inter Vivos* Trust and/or Merrill Light) in her South Carolina Case. (See Am. Compl. ¶¶ 152-54).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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ROA 003749

Under what is commonly known as the testamentary exception to the attorney-client privilege, Florida code § 90.502 provides:

- (4) There is no lawyer-client privilege under this section when: ...
 - (b) A communication is relevant to an issue between parties who claim through the same deceased client.

Fla. Stat. Ann. § 90.502(4)(b) (West 2020).

Thus, after a testator's death, communications concerning the preparation of the decedent's estate documents with the attorney who drafted them are ordinarily not privileged. 24 Fla. Jur 2d Evidence and Witnesses § 717 (citing *In re Marden's Estate*, 355 So. 2d 121 (Fla. 3d DCA 1978); *Seeba v. Bowden*, 86 So. 2d 432 (Fla. 1956)).

The Florida appellate courts have also applied § 90.502 to *inter vivos* transfers. See *Caputo v. Nouskhajian*, 871 So. 2d 266, 270 (Fla. Dist. Ct. App. 2004) (holding §90.502(4)(b) authorizes introduction of an attorney's testimony regarding evidence of decedent's intent in establishing multi-party bank account during decedent's lifetime when two claimants are claiming the same bank account through decedent); see also Fla. Stat. Ann. § 90.502, editors' notes, subsection (4)(a) ("this section denies the [attorney-client] privilege to communications relevant to an inter vivos transaction which is challenged through the estate after the decedent's death.")

Since Paul Barringer's voting stock in CFRC, which is the subject of the three challenged documents on CFRC's privilege log, is being contested by his two daughters, the Plaintiff and Defendant Merrill Light, the testamentary exception in Florida code § 90.502(4)(b) would abrogate any attorney-client privilege surrounding these transactions in this circumstance and allow production of the two e-mails about the voting stock transfer and Paul Barringer's draft affidavit.

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Conclusion

For the reasons stated above, Plaintiff Hampton Barringer Luzak asks this Court to:

- (a) hold CFRC in contempt of court for its willful violation of this Court's Order of September 26, 2019;
- (b) compel CFRC to produce all records showing (i) the amounts CFRC paid to Merrill Light's attorneys for the defense of the Contract Claim litigation in the Eastern District of Virginia federal court; (ii) amounts paid back by Merrill Light; and (iii) when such amounts were paid by CFRC and Merrill Light;
- (c) compel CFRC to provide access, to Plaintiff or her designated examiner, to the CFRC accounting records specified in Plaintiff's "Clarification of CFRC Subpoena Paragraphs 42 and 43 Pursuant to Order of September 26, 2019 of the Honorable David Frank";
- (d) compel CFRC to produce the three documents from CFRC's privilege log which pertain to the CFRC stock transfer at issue in this case; and
- (e) order CFRC to pay costs and attorney fees and other appropriate sanctions for CFRC's failure to timely provide the above items.

/s/ Christian L. Cutillo

Christian L. Cutillo

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ROA 003750

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Counsel for Hampton Barringer Luzak

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the above and foregoing has been furnished electronically via the Florida Courts E-filing Portal, which will send an electronic copy to all counsel of record, on May 21, 2020, and that a stamped copy will subsequently be served on CFRC.

/s/ Christian L. Cutillo

Christian L. Cutillo

Florida Bar No.: 91384

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Counsel for Hampton Barringer Luzak

ROA 003752

ROA 003753

EXHIBIT L

Hampton B. Luzak v. Merrill B. Light, et al.
Circuit Court Gadsden County, Florida Case No. 19-CA-00342

Excerpted
07/23/2020 Hearing Transcript

ROA 003753

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR GADSDEN COUNTY, FLORIDA

CASE NO. 19-CA-00342

HAMPTON B. LUZAK,

Plaintiff,

vs.

MERRILL B. LIGHT, MERRILL U.
BARRINGER, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR.,
MERRILL B. LIGHT, AS PUTATIVE
TRUSTEE OF THE PAUL B. BARRINGER, II,
REVOCABLE TRUST DATED DECEMBER 4, 1998,
AND MERRILL B. LIGHT AS TRUSTEE OF
THE MERRILL BARRINGER LIGHT
REVOCABLE TRUST,

Defendants.

IN THE MATTER OF ESTATE OF PAUL
BRANDON BARRINGER, II

TRANSCRIPT OF ZOOM HEARING PROCEEDINGS

VOLUME 01 (Pages 1 - 80)

DATE TAKEN: Thursday, July 23, 2020

TIME: 1:00 p.m. - 3:00 p.m.

PLACE: Zoom Conference Call

BEFORE: David Frank, Circuit Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:
Christine Wheeler, FPR

Job No. 144705

1

2 APPEARANCES: (All parties appeared via Zoom
3 Conferencing)

4

5 On behalf of the Plaintiff:

6

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16 On behalf of Merrill B. Light and J. Randolph Light,
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20 Representing Merrill Barringer for the Estate of
21 Paul Barringer:

21

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25

1 money -- being us, some of our clients, to pay
2 her legal fees, and that's not right.

3 When a person has got the same amount of
4 equity stock that she has, and she is funding
5 her lawsuit with the company money, and my
6 client is funding her lawsuit with her personal
7 money, that's what we are getting to.

8 So we need to see the whole background of
9 all that. In other words, what's going to
10 happen here is Ms. Light, she hired a lawyer,
11 then she gets a bill from that lawyer and it's
12 in the millions of dollars all added up, and
13 she gives it to the company to pay all of it.

14 And 32 percent or something of the equity
15 stock in that company is owned my client. So
16 my client is effectively getting hit with
17 paying 32 percent of her legal fees, and that's
18 where all this is coming from.

19 THE COURT: Well, Mr. Gilreath, they have
20 acknowledged that. They have told you, yeah,
21 we paid it. You know that.

22 What does this discovery -- how does this
23 discovery move your ball down the field other
24 than that?

25 MR. GILREATH: Well, first of all, we want

1 to see the dates, and we want to see the exact
2 amounts and the dates because that goes to her
3 motive. That is something we want to show the
4 jury that she opened door to the bank in the
5 company and funded her lawsuit with part of my
6 client's money.

7 I mean, she effectively took money out of
8 the corporate til, part of which was
9 effectively if you look through the shield
10 is --

11 THE COURT: Okay. Hold on. Let me pause
12 you. You know, there's -- it's very easy to
13 start wandering off into sort of the more
14 substantive and the legal arguments and motives
15 everything that I don't really need to deal
16 with.

17 Let me just go back to Mr. Schronce. Mr.
18 Schronce, I think what I just heard from the
19 Plaintiff, I think, is that, yes, paragraph 22
20 is about the payment of these fees.

21 Now, instead of them propounding an
22 inartful item number in a subpoena, and instead
23 of you-all finding an artful way to say there
24 are no documents because this wasn't
25 technically an advance, let's just put all the,

1 sort of says instead of just saying give me
2 everything about your business, what it has
3 done is just list everything you could get from
4 a business and say give me this.

5 And so I -- you know, I think -- I fear
6 that we are going to have to have a discussion
7 of relevancy here.

8 But the request now -- the clarification
9 is the cash disbursement journals, the bank
10 statements, everything from reconciliation
11 subsidiary accounts, bank statements that allow
12 a designee to do things, financial
13 institutions, 1099s.

14 I mean, it basically says, give us your
15 books. I mean, am I wrong about this?

16 MR. GILREATH: I don't think it's quite
17 that -- wait a minute -- can you hear me?

18 THE COURT: Yes.

19 MR. GILREATH: We asked for specific
20 things like the trial balance, we asked for
21 1099s because, for instance, if there was
22 somehow, say, a 1099 to Randy Light, and it got
23 charged to capital expenditures, then -- and,
24 I mean, we were able to tell that it came from
25 something, and capital expenditures, that would

1 be something we want to see.

2 My expert tells me that -- and he is very
3 familiar with this kind of business -- that
4 when people are going to commit what I would
5 call corporate hanky panky, or whatever you
6 want to call it, that a lot of it they ran it
7 through the capital expenditure.

8 I mean, what happens is, somebody goes out
9 and decides they are going to get a couple
10 hundred thousand dollars out of the company,
11 and they might write it to some individual or
12 someone else, but then when you look at the
13 company books, it actually got charged to a
14 capital expenditure, but it actually went to
15 Joe Blow or, say, Randy Light, per chance, and
16 then they've probably got to give a 1099.

17 That's what we are looking for.

18 THE COURT: Let me do this, Mr. Gilreath.
19 If you would, let me do this. I should
20 probably do this in the proper sequence.

21 Clearly, this is not vague now. It
22 doesn't suffer the infirmity of paragraph 22.
23 It's very clear what you are asking for.

24 So now this stands as a clarification,
25 paragraphs 42 and 43. And so what we are going

1 a check to Merrill as a gift, and CFRC pay PBB
2 the equivalent, which would be -- the taxes
3 would get into it, which would be bigger --
4 taken into consideration in taxes for services
5 over the last seven years.

6 Now, that is something that here she is,
7 she's got the same amount of stock my client
8 has gotten, her husband is going to get --
9 trying to get down to go to Mr. Barringer in
10 his demented state, and I think you've got a
11 pretty good idea what kind of shape he was
12 in if you read our papers -- and you say you
13 have -- that he was in terrible shape mentally
14 and cognitively.

15 And they were going to get him -- they
16 were going to tell him they would give him
17 5,000 -- \$5 million net after taxes, which
18 would be probably 7.5 million, and then he
19 could give that money to Merrill.

20 Now, that's got nothing to do with a
21 derivative claim. That's showing what Merrill
22 Light and her husband were going to steal from
23 the corporation to the detriment of my client.
24 It's not a derivative claim.

25 It just shows the real thievery that was

1 MS. PAYLOR: No, sir, Your Honor. This
2 is -- their claim is that she took assets from
3 Paul Barringer. There is nothing in here in
4 this whole complaint about her taking anything
5 from CFRC.

6 Mr. Barringer owned that stock and he gave
7 it to her. He gave it to her, and he knew what
8 he was doing, and he was not demented, as his
9 doctor for over a decade testified. He was
10 clearly not demented.

11 THE COURT: Mr. Gilreath, what would the
12 information requested in the clarification, how
13 would that tend to prove that Merrill Light
14 and/or others, you know, pulled a fast one on
15 Mr. Barringer?

16 How would all that business information
17 have any relevance to that?

18 MR. GILREATH: That goes to motive and
19 also shows her propensity to improperly take
20 money from him or from the corporation.

21 I mean, people -- that would be highly
22 relevant to a jury, we believe.

23 And we have got a constructive trust over
24 in the 14th cause of action, and it asks -- for
25 a constructive trust should be opposed on

1 Defendant, Merrill Light and/or others, for all
2 misappropriated property and any benefit
3 therefrom, including, but not limited to the
4 18,000 shares of stock.

5 So I think that is broad enough to cover
6 it. I mean, there is a -- we've got have that
7 email.

8 THE COURT: I can think of -- I can
9 imagine in my head various ways that a daughter
10 can steal stock from a father. None of it has
11 to do with that long list of stuff in the
12 clarification. I don't see the connection.

13 My ruling is that I am sustaining the
14 objection on relevancy grounds regarding the
15 clarification as to causes of action -- the
16 12th and 14th causes of action.

17 What else do you have in this complaint
18 that you think might get you relevancy?

19 MR. GILREATH: Hold on just a minute, Your
20 Honor. We have got a breach of fiduciary duty
21 claim that we are looking for. Let me find
22 that.

23 That is on page 64, 16th cause of action,
24 breach of fiduciary duty, self-dealing,
25 conflict of interest as Defendant, Merrill

1 Light, and aiding and abetting the same by
2 Randy Light.

3 And we think it would also go to proving
4 that because she -- well, she was a director of
5 the corporation, so she had a fiduciary duty to
6 our client, and -- she has got a fiduciary duty
7 to our clients. She ought not to be a party
8 to -- I guess some of the stuff we are looking
9 for would definitely help us in proving a
10 breach of fiduciary duty.

11 It's not a derivative claim. It's going
12 to her motive and her propensity to take stock
13 or take money that is not hers, or take things
14 that are not hers to the detriment of our
15 client, who she owed a fiduciary duty to.

16 MS. PAYLOR: Your Honor, that 16th cause
17 of action relates to her being a -- my client,
18 Merrill Light -- being a co-trustee of her
19 father's revocable trust.

20 It says nothing about anything having
21 to do with CFRC in the 16th cause of action.

22 She did not ever take money or anything
23 else that she was not entitled to. And that
24 has nothing to do with the corporation.

25 MR. GILREATH: We don't agree with that,

1 Your Honor. I mean --

2 MS. PAYLOR: Well, read the cause of
3 action. That's what it says.

4 MR. GILREATH: I wrote it. I know what it
5 says.

6 MS. PAYLOR: It says in paragraph 173,
7 Defendant, Merrill Light, was purportedly a
8 co-trustee of decedent, Paul Barringer's
9 revocable trust. Therefore, she owed a
10 fiduciary duty as a co-trustee.

11 There is no discussion of her owing a
12 fiduciary duty because she's on the board of
13 directors.

14 And if you are on the board of directors,
15 your duty is owed to the corporation, not to a
16 shareholder.

17 MR. GILREATH: I don't disagree with that,
18 but she owes a fiduciary duty to my client.
19 And if she's doing something through the
20 corporation which she improperly got control
21 of, and we can show something in the
22 corporation's books that help prove that,
23 that's where we are coming from.

24 THE COURT: In paragraph 178 the cause of
25 action states, not that Merrill Light owed a

1 fiduciary duty to your client, but that she
2 owed a fiduciary duty to Mr. Barringer.

3 I mean, how do you even have standing to
4 assert that? We don't need to get there on
5 those legal principles.

6 You know, it is not -- my ruling is that I
7 sustain the objection as to relevancy as to
8 this 16th cause of action -- or, yes, the 16th
9 cause of action.

10 What other causes of action are in the
11 current case in South Carolina that you say
12 makes the clarification documents relevant?

13 MR. GILREATH: Okay. Can you give me a
14 minute?

15 THE COURT: Yes.

16 MR. GILREATH: Your Honor, we have a civil
17 conspiracy clause that we think might be --
18 believe would be relevant there.

19 THE COURT: Do you have a page number?

20 MR. GILREATH: Sixty-nine. That's the
21 19th cause of action. We allege that Merrill
22 Light, Randy Light and Robert Schlain
23 (phonetic) and various other agents and
24 representatives of CFRC, including, but not
25 limited to Travis Bryant, conspired among

CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, CHRISTINE WHEELER, Florida Professional
Reporter, certify that I was authorized to and did
stenographically report the Zoom conference hearing
before JUDGE DAVID FRANK, Pages 1 through 79; and
that the transcript is a true and complete record of
my stenographic notes.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the
parties' attorneys or counsel connected with the
action, nor am I financially interested in the
action.

Dated this 26th day of July 2020.


CHRISTINE WHEELER, FPR

ROA 003768

EXHIBIT M

Hampton B. Luzak v. Merrill B. Light, et al.
Circuit Court Gadsden County, Florida Case No. 19-CA-00342

10/14/2020 Order on Motions to Quash Subpoena

ROA 003768

ROA 003769

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

HAMPTON B. LUZAK,

Plaintiff,

Case No.: 19-CA-00342

vs.

MERRILL B. LIGHT, MERRILL U.
BARRINGER, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR., MERRILL B.
LIGHT AS PUTATIVE TRUSTEE OF
THE PAUL B. BARRINGER, II,
REVOCABLE TRUST DATED
DECEMBER 4, 1998, AND MERRILL B.
LIGHT AS TRUSTEE OF THE MERRILL
BARRINGER LIGHT REVOCABLE
TRUST,

Defendants.

IN THE MATTER OF:
ESTATE OF PAUL BRANDON
BARRINGER, II.

**ORDER GRANTING IN PART AND DENYING IN PART NONPARTY COASTAL
FOREST RESOURCES COMPANY'S MOTION TO QUASH AND MERRILL B.
LIGHT'S MOTION TO QUASH THE SUBPOENA OF PLAINTIFF HAMPTON LUZAK**

THIS CAUSE came before the Court on October 13, 2020 on Nonparty Coastal Forest Resources Company's ("CFRC") Motion to Quash the Subpoena of Plaintiff Hampton Luzak and Merrill B. Light's Motion to Quash the Subpoena of Plaintiff Hampton Luzak. The Court having reviewed the file, the motions, and the arguments of the parties and being otherwise fully advised in the premises, it is hereby ORDERED and ADJUDGED as follows:

The objections asserted in CFRC's Motion to Quash the Subpoena of Plaintiff Hampton Luzak and Merrill B. Light's Motion to Quash the Subpoena of Plaintiff Hampton Luzak are SUSTAINED, the motions GRANTED IN PART, and the subpoena QUASHED, in all respects

ROA 003769

ROA 003770

except for three narrow areas. CFRC shall, within 20 days of the date of this Order, complete one of the following two options:

1. Produce documents to Plaintiff Hampton Luzak sufficient to show: when CFRC paid attorneys' fees and/or legal costs on behalf of Merrill Light for defense of the Contract Claim¹ asserted against Merrill Light in the EDVA Litigation²; when CFRC was reimbursed for any such payments by Merrill Light; and how much CFRC was reimbursed for any such payments by Merrill Light (whether by dollar amounts or percentages).
2. Produce an affidavit from a duly authorized agent of CFRC which sets forth: when CFRC paid attorneys' fees and/or legal costs on behalf of Merrill Light for defense of the Contract Claim asserted against Merrill Light in the EDVA Litigation; when CFRC was reimbursed for any such payments by Merrill Light; and how much CFRC was reimbursed for any such payments by Merrill Light (whether by dollar amounts or percentages).

DONE AND ORDERED in Quincy, Gadsden County, Florida.

10/16/2020 15:49:45
19000342CAA
Signed by David Frank in 19000342CAA
on 10/16/2020 15:49:45 x-4qifUL

David Frank, Circuit Judge

Copies furnished to:
All counsel of record

¹ "Contract Claim" is defined as "the breach of contract claim asserted by Hampton B. Luzak against Merrill B. Light individually in the Supplemental Complaint, Docket entry 90, and Amended Supplemental Complaint, Docket entry 198, filed in the 'EDVA' Litigation'."

² "EDVA Litigation" is defined as "the case initially filed and captioned as Coastal Forest Resources Company v. Hampton B. Luzak, C.A. No. 1:15-cv-501 and later re-captioned as Hampton B. Luzak v. Merrill B. Light, et al., C.A. No. 1:15-cz-501 that was conducted in the United States District Court for the Eastern District of Virginia."

ROA 003770



ROA 003771

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FILE NO:

May 14, 2021

Clerk of Court - Court of Common Pleas 14th Judicial District

Re: Civil Action No. 2016-CP-0701919
Intervenor - CFRC Motion for Intervention and Protective Relief

Dear Ms. Johnson:

I will be filing Exhibits N-S herewith. Please add these exhibits to CFRC's Motion for Intervention and Protective Relief which was previously filed.

Sincerely,

Barbara Evers
Senior Litigation Paralegal

Enclosures

ROA 003771

ROA 003772

EXHIBIT N

Hampton B. Luzak v. Merrill B. Light, et al.
Circuit Court Gadsden County, Florida Case No. 19-CA-00342

08/04/2020 Amended Order Denying
Plaintiff's Amended Motion to Compel

ROA 003772

ROA 003773

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR GADSDEN COUNTY, FLORIDA

HAMPTON BARRINGER LUZAK,
Plaintiff,

vs.

Case No. 19-342-CA

MERRILL B. LIGHT, MERRILL U. BARRINGER, as Personal
Representative of the Estate of Paul Brandon Barringer, II,
J. RANDOLPH LIGHT, JR., MERRILL B. LIGHT as
putative trustee of the Paul B. Barringer, II, Revocable Trust
dated December 4, 1998, and MERRILL B. LIGHT as Trustee
of the Merrill Barringer Light Revocable Trust,
Defendants.

IN THE MATTER OF:
ESTATE OF PAUL B. BARRINGER, II

AMENDED ORDER DENYING PLAINTIFF'S AMENDED MOTION TO COMPEL

This cause came before the Court on plaintiff's Amended Motion to Compel Production of Documents, and the Court having reviewed the motion; the subject subpoena; the operative complaint in the underlying action pending in South Carolina; the responses to the motion, and all other materials submitted in support of or in opposition to the motion, heard argument of counsel, and being otherwise fully advised in the premises, finds

Procedural History

Plaintiff has been litigating an internecine family dispute for more than five years in states other than Florida, most recently in South Carolina. As part of the dispute in South Carolina, plaintiff issued a subpoena for documents in August of 2017 to Coastal Forest Resources Company ("CFRC"), a non-party corporate entity located in Gadsden County, Florida.

Because CFRC, the entity in possession of the documents, resides in Florida, the plaintiff was required to follow the uniform law adopted by Florida that covers out of state depositions and document discovery. That operative law was adopted in 2019 -- the Interstate Depositions and Discovery Act, which is set forth in Florida Statute 92.251.

The statute requires the moving or enforcing party to first process the subpoena with the clerk of court in the Florida county where the person or entity being subpoenaed is located, sometimes referred to as "domesticating" the subpoena. Fla. Stat. 92.251(3) - (4) (2019). The subject subpoena apparently was processed with the Gadsden County Clerk of Court on September 8, 2017. There have been no objections to the domestication of the subpoena or service on CFRC by any parties to the litigation.

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On April 18, 2019, plaintiff filed a Motion to Compel Production of Documents in this Court, asserting that CFRC failed to comply with the subpoena.

On September 26, 2019, the Court heard the motion and issued an order granting in part and denying in part. The request to compel production of documents described in paragraph 22 was granted. The ruling on the request to compel production of documents described in paragraphs 42 and 43 reads as follows:

CFRC's objections to Plaintiff's requests nos. 42 and 43 within the Subpoena attached as Exhibit A to the Motion to Compel Production of Documents are SUSTAINED. However, Plaintiff is permitted to provide CFRC with clarification as to the specific categories and types of documents that Plaintiff is requesting under requests nos. 42 and 43. Such clarified requests must be relevant to the sibling dispute in the South Carolina litigation. This Court reserves jurisdiction to address any additional objections to these requests after Plaintiff has provided such clarification to CFRC.

Order on Plaintiff Hampton B. Luzak's Motion to Compel Production of Documents at 2.

On February 14, 2020, plaintiff filed the pending Amended Motion to Compel Production of Documents ("amended motion"). It raises three issues: "(1) the documents requested in paragraph 22 of Plaintiff's subpoena originally issued in South Carolina on July 21, 2017; (2) the documents requested in Plaintiff's 'Clarification of CFRC Subpoena Paragraphs 42 and 43 Pursuant to Order of September 26, 2019 of the Honorable David Frank'; and (3) the last three documents set forth on CFRC's privilege log submitted October 7, 2019 which documents CFRC withheld from production." The parties have resolved by agreement issue #3 regarding documents listed on CFRC's privilege log.

The first hearing on the amended motion was on June 22, 2020. At that hearing the Court did not rule on the matter; it only discussed the appropriate procedure to be followed with counsel. On June 23, 2020 the Court issued its order addressing the procedure to follow pursuant to the interstate uniform law, Florida's Section 92.251. The Court gave the plaintiff the option of pursuing the matter with this Court, the discovery state court, or taking it back to the trial state court in South Carolina.¹

Plaintiff choose to pursue the matter with this Court and set a final hearing for July 23, 2020. At the hearing, all counsel of record were given the time they requested to present evidence and argue their positions. This order follows.

¹ Although not specifically addressed by a Florida court, the comments to the uniform law conference that drafted the Interstate Depositions and Discovery Act give an enforcing party this choice. The comments state, "Nothing in this act limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out-of-state deponent on grounds of relevance, and that motion would be made and ruled on before the deposition subpoena is ever presented to the clerk of court in the discovery state." This Court firmly believes that addressing relevance objections with the trial state court is the better approach.

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Florida Law Applies

When considering a request to enforce an out-of-state subpoena, Florida courts apply Florida law. The controlling statute reads:

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under subsection (3) must comply with the statutes and rules of this state and be submitted to the court in the county in which discovery is to be conducted.

Fla. Stat. 92.251(6) (2019).

The drafters of the uniform law noted more specifically:

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, are best decided in the discovery state under the laws of the discovery state (including its conflict of laws principles).

Comments to the Uniform Interstate Depositions and Discovery Act drafted by The National Conference of Commissioners on Uniform State Laws and by it Approved and Recommended for Enactment in All the States at its Annual Conference Meeting, Pasadena, California, July 27 – August 3, 2007.

Florida law mandates restraint when compelling private or financial information from non-parties, and such discovery is permitted only where the need for the information outweighs the privacy rights of the non-party. *Westco, Inc. v. Scott Lewis' Gardening & Trimming, Inc.*, 26 So.3d 620 (Fla. 4th DCA 2009). In Florida, discovery is limited to those matters relevant to the litigation as framed by the parties' pleadings. *Katz v. Riemer*, No. 3D19-1271, 2020 WL 2176639 (Fla. 3d DCA May 6, 2020); *Diaz–Verson v. Walbridge Aldinger Company*, 54 So.3d 1007 (Fla. 2d DCA 2010) (“Here, the pleadings, i.e., the second amended complaint, do not establish the relevance of any of Diaz–Verson's personal financial information, and the unsworn representations of counsel at a hearing, even if somehow properly considered, cannot create relevance where it does not otherwise exist.”)

Issue #1 – Paragraph 22 of the Subpoena

In paragraph 22, plaintiff requested the following documents from CFRC:

Any and all documents, including emails and/or other correspondence, reflecting or relating to any loans or other advancement of funds by CFRC to Randy Light or to any creditor or other obligee of Randy Light.

Subpoena at 5.

Here, there was no need to consider relevancy or privilege or any of the other myriad boilerplate objections initially asserted by CFRC. Those objections were overruled at the first

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hearing. The response asserted by CFRC at the final hearing was that there were no documents responsive to the request *as worded*.

When plaintiff was asked at the final hearing to expand and specifically describe exactly what she is seeking in paragraph 22, the answer was a very long list of various corporate documents related to the company's payment(s) of Merrill B. Light's attorney's fees incurred during previous litigation in Virginia.

Unfortunately for plaintiff, the many items she seeks regarding these payments are simply not included in the wording of paragraph 22, thus giving CFRC the opportunity to respond with "none."² Hence, there is nothing to compel.

Plaintiff may serve another subpoena, pursuant to Section 92.251 and the Florida Rules of Civil Procedure, and specifically request the documents concerning attorneys' fees in the Virginia litigation that plaintiff's counsel described at the final hearing. Defendants can then assert their objections, if any, also pursuant to the Florida Rules of Civil Procedure. Any disputes that cannot be resolved directly by the parties can be brought back to this Court.

Issue #2 - Paragraphs 42 and 43 of the Subpoena

Plaintiff's Clarification Request (paragraphs 42 and 43) asked for the following documents and information from CFRC:

For the fiscal years ending September 29, 2013 and September 28, 2014, produce the following Documents of CFRC and its subsidiaries:

(a) the cash disbursements journal or functional equivalent showing expenditures of CFRC and its subsidiaries; (b) the bank statements, with monthly cash reconciliation, of CFRC and its subsidiaries for accounts on which disbursements are drawn covering the above periods to include copies of cancelled checks and any other withdrawal documents that are a part of the bank statements provided by the financial institution(s), or allow access by Plaintiff's designee to the information in (b); (c) trial balance from CFRC and each subsidiary company; and (d) all form 1099s issued for those periods from CFRC and each subsidiary, with leave to request additional source documents, to be identified by Plaintiff, related to information referenced in (a) through (d) above after review of (a) through (d) above.

The cash disbursements journal or its functional equivalent, requested in (a) above, should contain the following information at a minimum: date of disbursement, payee, dollar amount, reference number, and CFRC or subsidiary account number to which the expenditure was charged.

Before addressing the inevitable overly broad and burdensome objections, the Court analyzed the relevancy of the information sought in the context of the operative complaint from the underlying South Carolina case. The Court reviewed every count and claim identified by

² Technical objections based on semantics can be a dodge frowned upon by the Court but are not per se improper. The use of the phrase "obligee" of Mr. Light, rather than just asking for information on Ms. Light, was part of the problem. To expedite the matter, the Court asked the parties if they were willing to have the Court rule on the items plaintiff seeks as clarified, but CFRC declined.

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plaintiff at the hearing as her basis for relevancy of the information. For the reasons stated at the hearing, none of the counts or claims in the complaint established the relevancy required to overcome CFRC's right to privacy.

Interestingly, plaintiff also contended that the information sought here is relevant to show Mr. and Ms. Light's history of committing fraud and generally conspiring to do bad things. The idea being if they acted that way in the past, you can surmise that they have acted that way in the present case.

Such evidence is classic bad character or propensity evidence. With very limited exceptions that do not apply here, evidence of a person's character is "patently inadmissible" in Florida to prove that the person acted in conformity with it on a particular occasion. *Cruz-Cedeno v. State*, 294 So.3d 1007 (Fla. 1st DCA 2020).

The relevance objections to paragraphs 42 and 43 are SUSTAINED.

Accordingly, it is

ORDERED and ADJUDGED that the amended motion is DENIED.

DONE in Quincy, Gadsden County, Florida on August 4, 2020.

08/05/20 10:03:45
DAVID FRANK
CIRCUIT JUDGE

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EXHIBIT O

Excerpted

Stephanie Chapman Deposition Transcript, March 18, 2021

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Deposition of:
Stephanie Chapman

March 18, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) CASE NO.: 2016-CP-07-1919
3 IN THE MATTER OF:
4 ESTATE OF PAUL BRANDON
5 BARRINGER, II
6 HAMPTON B. LUZAK,
7 Plaintiff(s),
8 -vs-
9 MERRILL B. LIGHT, MERRILL U.
10 BARRINGER, AS PERSONAL
11 REPRESENTATIVE OF THE ESTATE OF
12 PAUL BRANDON BARRINGER, II,
13 J. RANDOLPH LIGHT, JR.,
14 MERRILL B. LIGHT AS PUTATIVE
15 TRUSTEE OF THE PAUL B.
16 BARRINGER, II REVOCABLE TRUST
17 DATED DECEMBER 4, 1998, AND
18 MERRILL B. LIGHT AS TRUSTEE OF
19 THE MERRILL BARRINGER LIGHT
20 REVOCABLE TRUST,
21
22 Defendant(s).

23 CAPTION CONTINUED NEXT PAGE

24 VIDEO

25 Deposition of: Stephanie Chapman
Date Taken: Thursday, March 18, 2021
Time Taken: 10:02 a.m.
Location: All Remote VTC
Reported By: Judy W. Galuppo, Court Reporter

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Page 2		Page 4	
1	STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS	1	APPEARANCES CONTINUED
2	COUNTY OF BEAUFORT) CASE NO.: 2019-CP-07-1294	2	Appearances for Merrill U. Barringer, as Personal
3	IN THE MATTER OF:		Representative of the Estate of Paul Brandon Barringer,
	ESTATE OF PAUL B. BARRINGER, II	3	II
4	HAMPTON B. LUZAK,	4	By: J. Ashley Twombly, Esquire
	Plaintiff(s),		By: Lee Anne Walters, Esquire
6	-vs-	5	TWENG & TWOMBLY LAW FIRM
	MERRILL U. BARRINGER,		311 Carteret Street
	Defendant(s).	6	Beaufort, South Carolina 29202
			Email: twombly@twlafirm.com
		7	Email: lwalters@twlafirm.com
		8	Appearances for Stephanie Chapman and Coastal Forest
			Resources Company, Inc.
		9	
		10	By: Johnathan Schronce, Esquire
			By: Edward J. Fuhr, Esquire
		11	HUNTON ANDREWS KURTH, LLP
			Riverfront Plaza, East Tower
		12	951 East Byrd Street
			Richmond, Virginia 23219-4074
		13	Email: jschronce@huntonak.com
			Email: efuhr@huntonak.com
		14	
		15	Appearances for Admitted Pro Hac Vice for Defendants
			Merrill B. Light, J. Randolph Light, Jr., Merrill B.
		16	Light as Putative Trustee of the Paul B. Barringer, II
			Revocable Trust dated December 4, 1998, and Merrill B.
		17	Light as Trustee of the Merrill Barringer Light
			Revocable Trust
		18	
		19	By: Charles B. Molster, Esquire
			THE LAW OFFICES OF
		20	Charles B. Molster, III, PLLC
			2141 Wisconsin Avenue, N.W., Suite
		21	Washington, D.C. 20007
			Email: cmolster@molsterlaw.com
		22	
		23	Also Present
		24	Ashley Bowler, Videographer
			Ellie Thomas, CPA for Plaintiff.
		25	Hampton Luzak, Plaintiff

Page 3		Page 5	
1	A-P-P-E-A-R-A-N-C-E-S	1	(Plaintiff's Exhibit 1, Exhibit Binder with
2	Appearances for the Plaintiff	2	tabs, is marked for identification.)
3	By: William M. Hogan, Esquire	3	(Videotape record begins by reading the
	By: James R. Gilreath, Esquire	4	caption and introduction of parties.)
4	THE GILREATH LAW FIRM, P.A.	5	
	110 Lavinia Avenue	6	
5	Greenville, South Carolina 29202	7	
	Phone: 864.242.4727	8	
6	Email: bhogan@gilreathlaw.com	9	
	Email: jgilreath@gilreathlaw.com	10	
7		11	
8	and	12	
9	By: Charles B. "Mike" Macloskie, Esquire	13	
	MACKLOSKIE LAW FIRM	14	
10	P.O. Box 280	15	
	1506 Prince Street	16	
11	Beaufort, South Carolina 29901	17	
12	Appearances for Merrill B. Light, J. Randolph Light,	18	
	Jr., Merrill B. Light as Putative Trustee of the Paul B.	19	
13	Barringer, II Revocable Trust dated December 4, 1998,	20	
	and Merrill B. Light as Trustee of the Merrill Barringer	21	
14	Light Revocable Trust	22	
15	By: Alice Paylor, Esquire	23	
	By: Bijan Ghom, Esquire	24	
16	ROSEN ROSEN & HAGOOD, LLC	25	
	151 Meeting Street, Suite 400		
17	Charleston, South Carolina 29401		
	Phone: 843.577.6726		
18	Email: apaylor@rosenhagood.com		
	Email: bghom@rosenhagood.com		
19			
20			
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22			
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25			

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2 (Pages 2 - 5)

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1 current time that his title is president of CFRC? 2 A Yes. Today, yes. 3 Q Okay. Have you ever communicated directly 4 with Hampton Luzak, the plaintiff in this case? 5 A Yes. 6 Q Have you ever met her in person? 7 A No. 8 Q When you said you have communicated directly 9 with her, how would you have communicated in various 10 ways? Would it be by writing? By phone? By email? 11 All the above? 12 A I have communicated mostly through emails. 13 I have mailed her documents to her address on file. I 14 believe I have spoken to her on the phone maybe once. 15 Q Okay. Do you recall when that was? 16 A I believe approximately a year ago. 17 Q And who called who, do you remember? 18 A Actually, I think she called me. It was in 19 regards to a loan that the company was doing. I believe 20 she left a voicemail. I don't think I actually spoke to 21 her, but I can't recall that. 22 Q Have you actually talked to her on the 23 phone? 24 A I don't believe so. 25 Q Okay. All right. So would it be correct to	ROA 003782 1 turn over to that, page 42. I'm over at page 42. And 2 it references 503,210 shares of non-voting common stock 3 that was issued. Would those be the shares that were 4 issued to Travis Wright? 5 A Yes. 6 Q In that Note 14, the last paragraph in 7 there, the fourth paragraph, it says, "During December 8 2015, the stock option was amended. The previous option 9 was due to expire 10 years after issuance. The updated 10 option will expire on the earlier of December 31, 2018, 11 or the date of a change in control in the Company." 12 It's referring to a stock option for 2.5 percent of the 13 shares. Do you know if Travis Bryant ever exercised 14 that option? 15 A I do. 16 Q And did he, in fact, exercise it? 17 A He did not. 18 Q He did not, okay. Do you know if that 19 option is still open or whether the exercise period has 20 closed? 21 A I believe it has expired. 22 Q Okay. Do you know why he did not exercise 23 the option? 24 MR. SCHRONCE: Bill, I'm going to object to 25 this, to the extent you're getting into transactions
Page 15	Page 17
1 say that your direct communications with her have 2 usually been by email or by letter? 3 A Yes. 4 Q Let me start looking at some of these 5 documents you have in front of you. I want to start off 6 going to page 36, which is tab 4 in the notebook. 7 Actually it's page 38. Excuse me. Page 38, tab 4. Are 8 you there? If you can see, looking at the beginning of 9 that document, page 23, it's a Consolidated Financial 10 Statement, CFRC, through October 22, 2016. Are you 11 familiar with these financial statements? 12 A I am familiar with them, although some of 13 the information on here looks to be written, but yes. 14 (There is an off-the-record conversation.) 15 Q Looking at page 38, and I'm looking at note 16 6, and it has in there, "Related Party Note Receivable", 17 and "Officer." And it references, "As explained in Note 18 14: Stock Issuance, the Company has a full recourse 19 promissory note bearing interest at 3.5 percent due from 20 an officer." Do you know what officer that note would 21 be from? 22 A Yes. 23 Q And who would that be? 24 A Travis Bryant. 25 Q And then references a Note 14, if you can	1 between the company and Travis Bryant, and that's not at 2 issue in this case. You guys litigated that issue in 3 Virginia, and that litigation resolved against your 4 client. And so I am going to object to this entire line 5 of questioning on the basis of relevance. It is not 6 relevant to the case that is pending in South Carolina. 7 MR. HOGAN: Are you instructing her not to 8 answer or stating an objection for the record? 9 MR. SCHRONCE: I am stating an objection for 10 the record. 11 BY MR. HOGAN: 12 Q All right. Ms. Chapman, you can proceed 13 with answering the question. 14 A I'm sorry. Can you repeat your question? 15 Q Question was, do you know why Travis Bryant 16 did not exercise stock option? 17 A I do not know why. 18 Q Now, are you aware that Travis Bryant 19 purchased some shares in the company, 2.5 percent shares 20 in the company, as reported in the financial statement, 21 were you aware of that? 22 A I'm aware he purchased shares. I don't know 23 about the percentage. But the shares are stated there, 24 yes. 25 Q Okay. Were you aware of any involvement by ROA 003782

Page 18 1 Paul Barringer with the stock issuance to Travis Bryant? 2 A I am not. 3 Q Did you ever have much communication 4 directly with Paul Barringer? 5 A Yes. 6 Q Okay. I may ask you about that later down 7 the road. Are you aware that Paul Barringer's loading 8 stock that he owned prior to 2012 was transferred to a 9 trust for Merrill Light's benefit? 10 A Yes. 11 Q When did you first learn about the transfer 12 of the stock, the recorded transfer from Paul Barringer 13 to Merrill Light's trust? 14 A I don't recall a date. 15 Q Okay. There was some documents sent out 16 yesterday, I don't know if you got those or not. Do you 17 have a document that goes through page 111, looking at 18 the page numbers at the top? 19 A I do, and I do have the ones from last 20 night, although I have not really reviewed him. 21 Q Okay. That's fine. Looking at page 111, 22 there's an email dated January 24, 2013, 4:36 p.m., to 23 Travis Bryant. "Subject: CFRC Stock Certificates. 24 "Mr. Bryant, Please see attached." 25 From Becki, Rebecca L. Bostic, Assistant to	Page 20 ROA 003783 1 to me. 2 Q Okay. Let's turn to pages 53 to 56, Tab 7? 3 A Okay. 4 Q Starting on page 53, in the middle there's 5 an email from you, and it says to Randy, and it has an 6 address. And it says, "We received confirmation for the 7 transfer of Mr. Barringer's shares to you. I show you 8 transferred 38,271 shares." 9 So obviously you knew about the transfer by 10 that date; is that correct? 11 A Yes. 12 Q Okay. Do you know what prompted this 13 particular email? 14 A Yes. It was time to do the second quarter 15 shareholders distributions, and I needed to confirm the 16 wiring instructions or whether it was to be paid by 17 check. 18 Q Okay. Was it customary to receive 19 information from Randy Light regarding confirmation on 20 distribution for Merrill Light's shares? 21 A Yes. 22 Q Turning a couple pages over to page 55. 23 You're emailing John Jolley. Do you know who John 24 Jolley is? 25 A Yes.
Page 19 1 John Jolley. 2 Did you learn about the stock certificates 3 and possible transfer on that date? 4 A I don't remember, but that's possible. 5 Q Okay. If you'll turn three pages over to 6 page 114. There's a letter that same date, January 24, 7 2013, from McNair Law Firm, signed by John Jolley to 8 Travis Bryant. Stating, "Dear Travis: 9 "With further reference to the above 10 enclosed please find the following stock certificates." 11 Stock certificate 15 and stock certificate 16 to Paul 12 and Merrill Barringer Light." Would you have received a 13 copy of that letter from Travis Bryant? 14 A Yes. 15 Q Do you know if you received that letter or 16 when you would have seen a copy of that letter? Would 17 it have been right away? Or do you -- 18 MR. SCHRONCE: Object to the form. She can 19 answer. 20 BY MR. HOGAN: 21 Q Let me rephrase that. It's kind of vague. 22 Do you know how many days or how soon you 23 would have received, seen a copy of that letter if you 24 had seen it? 25 A I don't recall when he would have given that	Page 21 ROA 003783 1 Q And would I be correct to say that at this 2 point in time he was the attorney for CFRC? 3 A I don't recall, but he was at one point, 4 yes. 5 Q Okay. Were you aware that he was also the 6 personal attorney for Paul Barringer? 7 A I don't know if I knew that or not. I mean, 8 I know he was involved in conversations. 9 Q Okay. Were you aware of whether or not he 10 was the personal attorney for Merrill Light? 11 A I don't recall. 12 Q Anyway, you sent an email to him on April 16 13 saying, "I have updated our shareholder listing to 14 reflect the recent gifting of shares by Mr. Paul 15 Barringer. I would like to have you verify that all the 16 information is correct for all shareholders." 17 Does that refresh your memory or help you 18 recall when you first may have learned about the stock 19 transfer? 20 A No, I still don't know when I learned about 21 it. 22 Q Do you recall how you learned about it? 23 A I don't. 24 Q Did Paul Barringer call you to inform you 25 about it; do you recall hearing from him?

Page 46 1 A Travis Bryant. 2 Q And did he state why Kevin Luzak was 3 terminated? 4 A I don't recall a reason. 5 Q Do you recall when he told you that? 6 A I don't know a specific date, but it would 7 have been shortly after it happened. 8 Q Okay. Do you know why Trish Yon (ph) left 9 CFRC? 10 A She was terminated. 11 Q Why was she terminated? 12 A I don't know the reason why. I just know 13 she was terminated. 14 Q Did you ever hear a reason from anyone? 15 A Maybe, but I don't recall what that was. 16 Q I understand she used to be in human 17 resources; is that correct? 18 A Yes. 19 Q Do you know why Jim Batillo (ph) left? 20 A Yes. 21 Q And why did he leave? 22 A He retired. 23 Q Do you remember when he retired? 24 A Not a specific date, but a few years ago. 25 Q Did CFRC ever pay or advance any legal fees	ROA 003784 Page 48 1 distribution and then a January 8, 2013 distribution. 2 After those checks were sent out, did you ever get any 3 contact from Merrill Light asking where her check was on 4 any additional shares? 5 A I don't recall getting that communication. 6 Q Did you get any communication from Randy 7 Light asking if distribution should have been made to 8 Merrill Light? 9 A I don't recall that. 10 MR. SCHRONCE: Excuse me. Are we back on 11 the record? 12 MR. HOGAN: Yes. 13 MR. SCHRONCE: Okay. I was not back. This 14 is John Schronce from Coastal. Let's back up. Where 15 were we? 16 (There is an off-the-record conversation.) 17 BY MR. HOGAN: 18 Q I'll start the questions back over, it was 19 only a couple of questions. 20 Ms. Chapman, going back to the distribution 21 checks from October 26, 2012, November 17, 2012, 22 January 8, 2013, to Paul Barringer for the 38,272 23 shares, did you ever get any communication from Merrill 24 Light asking whether these distributions should be sent 25 to her?
Page 47 1 for Paul Barringer regarding his involvement in a 2 lawsuit in Federal Court in Virginia in 2015 and 2016? 3 MR. SCHRONCE: Object to the form. 4 MS. PAYLOR: Object to the form. 5 MR. TWOMBLEY: John, I think -- I'd like to 6 talk to John Schronce about that question, see whether 7 or not there might be any privilege associated with 8 that. If you'll let us stand down for a minute and try 9 me try to get him on the horn. 10 MR. HOGAN: All right. 11 MS. PAYLOR: Why don't we take a break. 12 It's been an hour-and-a-half. 13 MR. HOGAN: Let's take a five-minute break 14 if that's okay. 15 MR. TWOMBLEY: Sounds good. 11:25 a.m. 16 (There is a brief break in the deposition. 17 from 11:25 a.m. to 11:42 a.m.) 18 MR. TWOMBLEY: Bill, I'm going to object to 19 the form of that last question, but I'm not instructing 20 her not to answer. 21 BY MR. TWOMBLEY: 22 Q All right. Let me just circle back on that 23 topic, what I asked you about earlier on the 24 distribution checks. We went through three, the 25 October 26, 2012 distribution check, November 17, 2012	Page 49 1 A I did not. I don't recall that. 2 Q Did you ever get any communication from 3 Randy Light saying distribution should have been sent to 4 Merrill Light? 5 A I don't recall that. 6 Q Did you get any communication from John 7 Dallas saying the distribution should have gone 8 elsewhere other than to Paul Barringer? 9 A I don't recall that. 10 Q And I believe you stated earlier that Paul 11 Barringer did not call you and say the checks should not 12 come to me; is that correct? 13 A Yeah, I don't recall that. 14 Q Okay. And wasn't that important to you, 15 about whether the checks for those checks should have 16 gone to Paul Barringer? 17 MR. SCHRONCE: Object to the form. And to 18 the extent you are calling for communications with 19 company counsel or advice sought from counsel, 20 Stephanie, I instruct you not to answer that. To the 21 extent it doesn't implicate privileged information, you 22 can answer. 23 A I think on advice of counsel I can't answer 24 that. 25 Q So are you -- is it clear in your mind ROA 003784

Page 50 1 though, that both of those checks were sent to and 2 cashed by Paul Barringer for those three distributions? 3 A Could you restate that? 4 Q Is it clear in your mind or do you have any 5 doubt as to whether or not those checks were sent to 6 Paul Barringer for those distributions for the 7 October 26, 2012, November 17, 2012, January 8, 2013? 8 A I believe they were mailed to him. 9 Q And who would have approved those checks 10 going out to Paul Barringer at that time? Would 11 anybody, a supervisor of yours have looked at that? 12 A The board having approved the distribution, 13 that would have been approval for me. I would have 14 completed a check request and signed those checks, or 15 any other signer for that bank account. 16 Q And at that time, you're saying Travis 17 Bryant was your immediate supervisor? 18 A That's correct. 19 Q And now you said Bryan Bates is your 20 supervisor; did I understand that correctly? 21 A That's correct. 22 Q Where did he come from, do you now? 23 MS. PAYLOR: Object to the form. 24 Q Do you know where he was employed before he 25 came to CFRC?	Page 52 ROA 003785 1 Company, Paul B. Barringer Advance Account, April 25, 2 2016." Who prepared that document? 3 A I would have prepared this document. Excuse 4 me. I would have prepared this document. 5 Q Okay. Is that document kept as part of 6 CFRC's accounting system? Or is it a standalone kind of 7 document? 8 A It is an excel spreadsheet. 9 Q Okay. Excel spreadsheet. Now, it mentions 10 on there -- well, just kind of going through it. First 11 I notice it has in there multiple places where it's, 12 "Payment 2nd quarter distribution." Second line down 13 4/15/2013, they have negative 22-cents. Is that 14 regarding Paul Barringer's remaining one share of the 15 stock? 16 A Yes. 17 Q Okay. And that's for negative 22-cents. So 18 is that therefore a credit against the amount that he 19 owes on this advance account? 20 A That's correct. 21 Q And it says multiple times through here, I 22 guess I'd be correct to assume that credit was done in 23 lieu of writing a 22-cent check to him, it was a more 24 efficient way of doing the distribution? 25 A That is correct.
Page 51 1 A Yes. 2 Q And where was that? 3 A With Georgia-Pacific in Virginia. 4 Q All right. Let me go back to what I was 5 asking about earlier when we took a break. I was 6 asking, were you aware of whether CFRC advanced any 7 legal fees for Paul Barringer for the litigation in 8 Federal Court in Virginia in 2015 and 2016? 9 MR. SCHRONCE: Bill, I'm going to object to 10 that, to the form of that question. There has been a 11 lot of litigation over the term "advanced." So if you 12 can specify what you're referencing with that term. 13 BY MR. HOGAN: 14 Q Ms. Chapman, are you aware of whether or not 15 CFRC made any payments to attorneys who represented Paul 16 Barringer in the federal litigation in Virginia in 2015 17 and 2016, payment of any kind? 18 A Yes. 19 Q Okay. Let me turn to Tab 5, page 47, I 20 believe it is. 21 A Okay. 22 Q With me? Are you familiar with this 23 document? 24 A Yes. 25 Q And it says, "Coastal Forest Resources	Page 53 1 Q Okay. Going down to page 4 near the bottom. 2 MS. PAYLOR: What page are you on? 3 MR. HOGAN: Page 47. 4 Q Entry says, "Stites Invoice 1237670, a date 5 of 10/12/2015, \$34,616.23." Do you see that entry? 6 A Yes. 7 Q Okay. Was that amount that CFRC paid to 8 Stites Law Firm? 9 A Yes. 10 Q Okay. Do you know what that invoice is for? 11 A It would have been for legal fees that 12 Mr. Barringer incurred. 13 Q Who told you to make that payment? 14 A I'm not -- I don't recall at the moment who 15 told me to do that. 16 Q Okay. Do you recall if Mr. Barringer told 17 you to make that payment? 18 A I don't recall who instructed me at the 19 time. 20 Q Could it have been Mr. Barringer who told 21 you to make the payment? 22 MR. TWOMBLEY: Object to the form of the 23 question. 24 BY MR. HOGAN: 25 Q Proceed. You can answer ROA 003785

Page 54 1 A Yes, it could have been. 2 Q Do you remember having any conversation with 3 Paul Barringer about paying his legal bills to Stites 4 Law Firm? 5 MR. TWOMBLEY: Object to the form. 6 A I can't recall a specific conversation, but 7 I can't say that that didn't happen. 8 Q Do you recall anyone else who may have told 9 you to make that payment? 10 MR. TWOMBLEY: Object to the form. Asked 11 and answered. 12 Q You can answer. 13 A Can you restate that? 14 Q Do you recall whether anyone else instructed 15 you to make that payment to Stites Law Firm? 16 MR. SCHRONCE: And I would object to the 17 extent you are calling for communications with counsel. 18 To the extent that you are not asking for that or for 19 privileged information, Stephanie, you can answer. 20 A I can't recall who instructed me to pay that 21 invoice. 22 Q Would there have been any written 23 instruction to you before you made that payment? 24 A That's possible. I don't recall that. 25 Q What was CFRC's policy around 2015, 2016 for	Page 56 ROA 003786 1 A I don't recall specifically from Stites. 2 Q Okay. There's two more invoices on there a 3 few lines down that don't have a date. It just has the 4 dollar amounts. Do you see those two entries? 5 A Yes. 6 Q Do you know why there's no date for those 7 two invoices? 8 A I just literally back then did not date 9 reference every line that was on there. 10 Q Now, I'm looking at this, it has a subtotal 11 at the bottom under \$1,063.91. Do you see that line at 12 the bottom? 13 A Yes. 14 Q Would there have been any other page to that 15 that would have paid any additional amounts? This is 16 the only page we had in our record. 17 A I believe this statement was specifically to 18 what it was about in that account for Mr. Barringer at 19 that point in time. The date at the top being May 29, 20 2016, that would have been his balance at that point in 21 time. 22 Q Okay. Now, when those payments were made, 23 specifically start off with the Stites invoice, 24 October 12, 2015, for \$34,616.22, how would that have 25 been entered on the CFRC's accounts at that time
Page 55 1 making shareholder advances? 2 MR. SCHRONCE: And I'm going to object again 3 regarding the term "advance." Bill, if you could 4 clarify. 5 BY MR. HOGAN: 6 Q Was there any policy that CFRC had regarding 7 them making payments on behalf of shareholders to third 8 parties that was not corporate business? 9 A I would not say there was a policy, a 10 written policy, or anything like that, in regards to who 11 could -- where Christy could make payments for an 12 advance account. I'm not sure. There was not a policy 13 today. There is still not a policy today. 14 Q Was this just a case-by-case basis. 15 A Yes. 16 Q Again, would the same answers apply to the 17 next entry on there that says, "Stites Invoice 18 11/12/2015, for 30,823.49"? Would the same answer you 19 just gave me for the prior invoice apply to that 20 invoice? 21 A Yes. 22 Q Okay. Do you recall where you got the 23 invoice from, the Stites invoice that you paid? Were 24 they mailed to you? Emailed to you? Or how you 25 received it?	Page 57 1 initially? In other words, what categories would it be 2 posted to? 3 MR. SCHRONCE: I'll object to the form. 4 Stephanie, you can answer if you understand the 5 question. 6 A When we paid this invoice, it was charged to 7 a receivable account on Coastal Forest Resources ledger. 8 Q I assume, was it a debit to a cash account 9 and it was a credit to accounts receivable, or accounts 10 receivable was set up for that? 11 A It was a debit -- there was a debit to this 12 receivable account and then a credit to payable to cash. 13 Q Payable to cash? 14 A Uh-huh? 15 Q Do you know who made a decision to post it 16 to an accounts receivable account initially? 17 A I would not have authorized the invoicing 18 paid, but I would have made the decision to put it into 19 that account, to that receivable account. 20 Q Okay. You don't recall who made the 21 decision for you to make that payment? 22 MR. TWOMBLEY: Object to the form. 23 MS. PAYLOR: Object to the form. 24 MR. SCHRONCE: And asked and answered. 25 ROA 003786

Page 58 1 BY MR. HOGAN: 2 Q If you could turn to -- before I go there, 3 all right, I want to ask you a couple of things on here. 4 There's an entry right above the Stites 5 invoicing, first two, it has two entries for jet 6 flights. Have you seen those? First one says jet 7 flight HH, Jacksonville HH and a date and 1.0 hours. 8 A Yes. 9 Q What would that have been issued for? 10 A That would have been for Mr. Barringer using 11 our company jet for personal use, for non-company use, 12 and I would charge that flight to his receivable 13 account. 14 Q Okay. Same thing for the next entry below 15 that? 16 A That's correct. 17 Q Come down a little further right near the 18 bottom of the page, second and third to last entries, it 19 has, "Jet flight-BGE-CHO-AEX (VCB)." Do you see that 20 entry? 21 A Yes. 22 Q Okay. It looks like there's -- the first 23 three set of initials reference airports. Do you know 24 what the VCB in parenthesis is referring to? 25 A Yes. So the first three sets of parenthesis	ROA 003787 Page 60 1 his flights, when he was on there. Again, I don't know 2 if Victor was the only person that was on that flight. 3 I'm not sure who authorized this specific one. 4 Q Do you know who would have been the pilot 5 back then? 6 A We have had a couple; I'm not sure who it 7 was in 2015. 8 Q Who keeps those flight logs? 9 A Our pilot. 10 Q Do you know who the pilot may have been? I 11 know you said you were uncertain who it was back then. 12 MS. PAYLOR: Object to the form. 13 Q Do you have any idea who it could have been? 14 A I don't recall. I mean, I don't know who 15 was the pilot in 2016. Again, I don't know when they 16 changed. 17 Q Are there flight logs kept of any person 18 associated with CFRC, any CFRC employee or assistant? 19 A Yes. I have a spreadsheet that keeps track 20 of the flight log in Excel; I can get a copy as well. 21 Q Okay. Do you know why that flight was not 22 charged to any of the shareholder accounts related to 23 Victor Barringer? 24 A Yes. 25 Q Why is that?
Page 59 1 would have been airport codes. And the VCB stands for 2 Victor Barringer. 3 Q So why would there be a reference made to 4 Victor Barringer on there? 5 A It was just a note that he was one of the 6 passengers on the plane. 7 Q Okay. And then the entry right below that, 8 the second entry has VCB in parenthesis at the end; the 9 same thing applies to that charge? 10 A That's correct. Victor would have been one 11 of the passengers on the plane. 12 Q Was that the company plane? 13 A Yes. 14 Q Okay. Do you know if Paul Barringer was on 15 that flight with him, or whether it was just 16 Victor Barringer? 17 A I don't know if he was on this from this 18 page, I can't tell that. 19 Q Who decided to charge Victor Barringer's 20 flight, the flight that he was on, to Paul Barringer's 21 shareholder account? 22 MR. SCHRONCE: Object to the form. 23 MR. TWOMBLEY: Same objection. 24 Q You can answer. 25 A Our company pilots will keep a flight log of	Page 61 1 A Victor Barringer does not have stock in 2 Coastal Forest Resources Company, and therefore, he does 3 not have an advanced receivable account to charge to. 4 Q Okay. Again, I'll just ask you -- I may 5 have asked you this already. But who was it that told 6 you to put the VCB designation after those two flights? 7 MR. TWOMBLEY: Objection to the form. 8 MR. SCHRONCE: Object to the form. 9 MS. PAYLOR: Object to the form. 10 BY MR. HOGAN: 11 Q You can answer. 12 A I don't think anybody probably told me to do 13 that. I noted that myself on this schedule. 14 Q Do you recall if you ever talked to 15 Mr. Barringer about the charge for that flight with the 16 VCB designation on there? 17 A I don't recall. 18 Q You may want to keep your finger or 19 something on that page. I want to turn to another page 20 in here. Let's start off with page 19, Tab 3. 21 A Okay. 22 Q All right. Do you see a letter from the 23 Beaufort County Probate Court? 24 A Yes. 25 Q If you turn a couple of pages over to ROA 003787 16 (Pages 58 - 61)

Page 62 1 page 21, see a document that says, "Statement of 2 Creditor's Claim"? It was in the Probate Court, 3 Statement of Creditor's Claim? 4 A Yes. 5 Q And then at the bottom, is that your 6 signature? 7 A Yes. 8 Q On behalf of CFRC, did you submit a 9 creditor's claim to Probate Court in Beaufort County 10 South Carolina regarding Paul Barringer's estate? 11 A Yes. 12 Q And is that a copy of a claim you filed? 13 A Yes. 14 Q It says on there, has an amount, a claim 15 amount due about the middle of the page, \$180,375.46. 16 Do you see that? 17 A Yes. 18 Q That amount differs from the advance sheet 19 we looked at earlier that had a subtotal of \$101,063.91; 20 do you recall that? 21 A Yes. 22 Q Do you know why the difference is in the two 23 amounts that are shown on those two documents? 24 A Yes. 25 Q Are there also additional charges that	Page 64 ROA 003788 1 BY MR. HOGAN: 2 Q You can answer. 3 A The majority of that difference would have 4 been additional Stites invoices. 5 Q Okay. Do you what the amounts of those 6 additional Stites invoices would be? 7 MR. TWOMBLEY: Object to the form. 8 A I don't recall the amounts, but there was 9 multiple, I believe. 10 Q Okay. That's roughly a \$79,000 difference. 11 I understand you said you believe a majority of that was 12 due to the additional Stites invoices? 13 MR. TWOMBLEY: Object to the form. 14 A That is correct. 15 Q Do you still have those invoices? 16 A They have been paid. But we do have copies 17 of those, yes. 18 Q Okay. 19 MR. HOGAN: Jonathan, I need to get with you 20 about getting the documentation on the amounts of those 21 additional invoices that we don't have on this sheet. 22 We need a more complete update on that. 23 MR. SCHRONCE: What's that, Bill? 24 MR. HOGAN: I will need to get with you 25 about getting the additional amounts specified that are
Page 63 1 aren't listed on this advance account on page 47? 2 MR. SCHRONCE: Again, I'm going to object to 3 the extent that there is disagreement or ambiguity about 4 the term "advance" still. 5 BY MR. HOGAN: 6 Q All right. And I'll just repeat the 7 question. 8 Do you know why there's a difference in the 9 subtotal on the document page 47 titled, "Advance 10 Account," and the creditor's claim filed with Probate 11 Court, page 41, for 180,375, do you know why there's a 12 difference in those two amounts? 13 A Yes. 14 Q And what is the reason for that difference? 15 A The amount on page 47, the 101,000 was the 16 balance in his receivable account as of May 29, 2016. 17 The probate claim that I did on page 21 was as of a much 18 later date, around January 2017 when I actually did the 19 probate, and then there had been additional charges, 20 payments made that were charged in his receivable 21 account. 22 Q Do you know what those additional payments 23 were for? 24 MR. TWOMBLEY: Object to the form of the 25 question.	Page 65 1 remitted from this sheet on page 47 with copies of 2 invoices so we can see the complete amount for the 3 probate claim, we would ask for those records. 4 MR. SCHRONCE: You know where to find us. 5 And I'm sure the other folks will have something to say 6 on that as well. 7 MR. HOGAN: Okay. 8 (Mr. Hogan requests updated list of Stites 9 Law Firm invoices.) 10 BY MR. HOGAN: 11 Q Okay. Now, I was going back to page 21, the 12 creditor's claim, it looks like the date below your 13 signature is January 11, 2017. And the date of 14 decedent's death which has at the top of document 15 May 23, 2016. Do you know why -- I guess that's roughly 16 seven-and-a-half months between those two dates. Do you 17 know why you filed that claim in January 2017, as 18 opposed to earlier after his death? 19 A Yes. I think we had a window for the -- I 20 think you could file it in 14 months, approximately. 21 And so I just didn't do it immediately after he passed 22 away. 23 Q Did you ever send an invoice to Paul 24 Barringer's trustee of his revocable trust who had been 25 Merrill Light at that time to get paid before you sent ROA 003788

Page 66 1 it to Probate Court? 2 MR. TWOMBLEY: Object to the form of the 3 question. 4 A I don't recall doing that, no. 5 Q Did you try to get any payment from anyone 6 on behalf of Paul Barringer before you filed a probate 7 claim? 8 A No, I don't recall that. 9 Q Did you ever talk to Merrill Light about the 10 advance amount, the document that says advance account, 11 about the payment of that? 12 MR. SCHRONCE: Again, Bill, I'm going to 13 object to the extent that you're using the term 14 "advance." I'll need you to clarify that, please. 15 BY MR. HOGAN: 16 Q I'll just restate that question. 17 Did you ever talk with Merrill Light about 18 the payment of the amounts other than the document that 19 says, "Paul B. Barringer Advance Account"? 20 A I don't recall speaking to Merrill about 21 that. 22 Q Okay. If you would turn to the page right 23 before that, page 46. Did you ever talk with Cindy 24 Sprouse with Wells Fargo Bank about the payment? 25 A I don't recall having a conversation with	ROA 003789⁶⁸ 1 do with this. 2 Q Okay. All right. Do you recall CFRC making 3 any payments for Merrill Light's legal bills for the 4 litigation in Virginia in 2015 and 2016? 5 A Yes. 6 Q Let's turn to -- well, tell us about it. 7 Start off with who initially instructed you to make 8 payments regarding Merrill Light's legal bills in 9 Virginia? 10 MR. SCHRONCE: I'm going to object to the 11 form of the question. I'm also going to object on the 12 grounds of relevance, Bill. This issue was litigated in 13 front of Judge Frank. You all requested I believe in 14 Mr. Gilreath's words, "Every scrap of paper relating to 15 the payments of Merrill Light's legal fees in the 16 Virginia litigation." The court limited discovery on 17 the basis of relevance to the affidavit that Ms. Chapman 18 provided. So to the extent you are asking for 19 information beyond the dates of those payments and the 20 percentages that were paid, I would instruct the witness 21 not to go any further. 22 MR. HOGAN: I am also going to ask about the 23 amount. Because in one of the affidavits you state the 24 amount. The judge's Order stated that CFRC had an 25 option to either allow the affidavit or provide the
Page 67 1 her. Obviously there are communications, but I don't 2 recall that conversation. 3 Q Did anyone indicate to you that they weren't 4 going to pay that advance account before you filed the 5 probate claim? 6 A I'm not sure I knew who I was going to get 7 that money from, or any way of getting that. I do 8 recall talking to corporate counsel at that time. 9 MR. SCHRONCE: Stephanie, to the extent that 10 you're getting into any conversation with counsel and 11 confidential communications there, I will instruct you 12 not to answer that. 13 THE WITNESS: Okay. 14 BY MR. HOGAN: 15 Q Did anyone instruct you to send in the 16 creditor's claim to Probate Court? 17 MR. SCHRONCE: Again, Stephanie, same 18 instruction, to the extent that the request is for 19 communication with corporate counsel or seeking legal 20 advice, I'll instruct you not to answer that. To the 21 extent you can answer without getting into that, you 22 can. 23 BY MR. HOGAN: 24 Q Go ahead. 25 A I mean, I did seek legal advice on what to	Page 69 1 paperwork showing the amounts paid. So the court did 2 authorize as far as the amounts paid, they could be 3 disclosed. 4 MR. SCHRONCE: The court said the amounts 5 paid or percentage. If you would like a chance to 6 review the order, we can find that. 7 MR. HOGAN: Right. The amounts paid on -- 8 MR. SCHRONCE: And that information is 9 provided in the affidavit. 10 BY MR. HOGAN: 11 Q Well, let's turn to that affidavit. Turn to 12 page 4. All right. Turning to page 4, over to page 5, 13 is that your affidavit from November 5, 2020? 14 A Yes. 15 Q Okay. And starting at paragraph 3, says 16 here, CFRC paid certain legal that Merrill Light 17 incurred in defense of breach of contract claims 18 asserted in litigation before the United States District 19 Court." So forth. 20 Onto the next page, and it provides various 21 dates of payments that had been made. Do you see that? 22 A Yes. 23 Q Okay. It says, "CFRC charged those expenses 24 to Ms. Light's shareholder account before making the 25 payments." When you say "shareholders account," again,

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Page 70 1 what account specifically was it charged to? 2 A This is the same receivable account. It's 3 one -- it's the consolidated receivable account. 4 Q Okay. The next paragraph says, "Ms. Light 5 reimbursed CFRC 100 percent of those expenses through 6 payments May 1, 2016 and June 6, 2016. So are you 7 saying that Ms. Light reimbursed those amounts in full? 8 MR. TWOMBLEY: Object to the form of the 9 question. 10 A Yes. 11 Q Do you recall, though, what percentage she 12 paid back on May 1, 2016, and what percentage she paid 13 back on June 6, 2016? 14 MS. PAYLOR: Object. 15 MR. SCHRONCE: I'm going to object and 16 instruct the witness not to answer that, it's outside 17 the scope of discovery authorized under Judge Frank's 18 order. 19 MR. HOGAN: He said percentages or the 20 amounts. 21 MR. SCHRONCE: And percentage is provided. 22 MR. HOGAN: I don't have a breakdown on May 23 1st or June 6th. 24 MR. SCHRONCE: The order says what it says, 25 and the affidavit responded to that order. If you got	Page 71 1 another question, I'd move on to that. 2 BY MR. HOGAN: 3 Q Ms. Chapman, what the amount of the legal 4 bills that were paid on behalf of those contracts, Ms. 5 Light's contract claim that (inaudible) litigation? 6 MR. SCHRONCE: Bill, I'm going to object 7 again and make the same instructions to the witness 8 again that question's outside the scope of the discovery 9 authorized under Judge Frank's order. 10 BY MR. HOGAN: 11 Q I'll just put a question on the record 12 anyway. 13 The payment that was made May 1, 2016, do 14 you know how much that payment was for? 15 MR. SCHRONCE: Again, I'm going to object 16 and instruct the witness again not to answer the 17 question, it's beyond the scope of discovery authorized 18 under Judge Frank's order. 19 BY MR. HOGAN: 20 Q And do you know how much the payment was for 21 the June 6, 2016 payment? 22 MR. SCHRONCE: And Bill, I'm going to object 23 again and make the same instruction. 24 BY MR. HOGAN: 25 Q Okay. If you could turn over to page 12.	ROA 003790⁷² 1 I guess before I ask you specifically about 2 that paragraph, is this an affidavit of yours that you 3 also submitted back on June 16, 2020? 4 A Yes. 5 Q Okay. Going to paragraph 14 in this 6 affidavit -- I won't read the whole thing. But the last 7 sentence of that is regarding Merrill Light's legal 8 expenses. It says, "Ms. Light paid the latter expenses 9 through quarterly offsets from distributions that she 10 received in her capacity as a CFRC shareholder." It 11 says, "As well as cancellation of debt that CFRC owed to 12 her." 13 What debt did CFRC owe Ms. Light? 14 MS. PAYLOR: I object on the grounds of 15 privilege. 16 MR. SCHRONCE: Yeah, I believe this question 17 is answered in the affidavit. And then the additional 18 information that the court allowed for you is provided 19 in the November affidavit that we just referenced, Bill. 20 MR. HOGAN: That document was produced to us 21 with that language in there. I don't see how that would 22 be privilege? 23 MR. TWOMBLEY: We litigated all this down in 24 Florida and the judge said exactly what y'all could get 25 and what you couldn't get. I mean, we've already spent	Page 73 1 about a year going through all this rigmarole. 2 MR. HOGAN: The order speaks for itself? 3 MR. TWOMBLEY: Yeah, but y'all are trying to 4 go around it. 5 MR. HOGAN: But the order says we -- 6 MR. TWOMBLEY: I know that the order speaks 7 for itself, but y'all are trying to subvert the order, 8 is what it sounds like. 9 MR. HOGAN: The order has not prohibited us 10 from learning the amounts. 11 MS. PAYLOR: Or the percentage. Or the 12 percentage. And you have got the percentage. She 13 reimbursed 100 percent. 14 MR. HOGAN: I was asking what the amount is. 15 BY MR. HOGAN: 16 Q I'll ask you, was your affidavit accurate 17 and true at the time you signed that? 18 A Yes. 19 Q Let me talk briefly about one issue we 20 talked about earlier, back on page 47 under Tab 5, 21 Advance Account Sheet. 22 A Yes. 23 Q Has references to four Stites invoices. And 24 you said there were some additional ones that came in 25 later. Were those invoices sent directly to CFRC from

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Page 74 1 Stites Law Firm? Or how did CFRC receive them? 2 A I don't recall if they came to us directly 3 or indirectly. 4 Q Who would know that? Would that be 5 something you would know, just don't recall? Or would 6 somebody else be the one who received the invoices? 7 A I mean, I don't recall how I received them. 8 Q Okay. Did Randy Light have an advance 9 account ledger similar to the one you had set up here 10 for Paul Barringer? 11 MR. SCHRONCE: I'm going to object again on 12 the use of the term "advance," Bill. If you could 13 clarify that. 14 BY MR. HOGAN: 15 Q Just like the word on that page 47, was 16 there a similar one that had the name Randolph J. Light 17 Advance Account? 18 A He did not have a receivable account. 19 Q Okay. How about Merrill Light, did she have 20 a similar account? 21 A Merrill did have a receivable account. 22 Q Do you have a similar account for Hampton 23 Luzak? 24 A Hampton Luzak did have a receivable account. 25 Q And when is the last time you had an entry	ROA 003791 Page 76 1 guessing an hour, maybe two hours. 2 MR. TWOMBLEY: Why won't you let him tell 3 me, Jim? Why did you tell him not to tell us? 4 MR. GILREATH: That's none of your business. 5 MR. TWOMBLEY: That is my business. I mean, 6 are you -- I mean that is just insane that you won't let 7 us know how much longer you might have. Nobody's trying 8 to hold you to it. It's the about the rudest and most 9 unprofessional thing I think I've seen in my career, 10 that you don't have any care or respect for anybody 11 else's schedule except your own. And now you are 12 instructing Bill Hogan not to tell us how much longer 13 you might have. It's just, I mean, you know, it's just 14 insane. 15 Thank you, Bill, for letting us know. 16 MR. GILREATH: I'm not going to respond to 17 that. 18 MR. HOGAN: I know you're not because you 19 don't have any good response, is why you're not. It's 20 just rude and a bully tactic is what it is. 21 MR. MOLSTER: You said your point, let's 22 move on. 23 MR. TWOMBLEY: Thank you, Bill. But now is 24 a good time for a quick break, if that's okay with you? 25 MR. HOGAN: Yeah, we'll stop for lunch for
Page 75 1 on her receivable account? 2 A I don't know the exact year, but it's been 3 several years ago. 4 Q Have there been any entries put on that 5 account since 2012? 6 A I don't recall. 7 Q Going back to your affidavit, let's turn to 8 page 7, Tab 2. Going through that over to page -- or I 9 guess paragraph 11, this on page 11 also. 10 A Okay. 11 MR. SCHRONCE: Hey, Bill, are you switching 12 topics? 13 MR. HOGAN: Yeah. 14 MR. SCHRONCE: I'm just wondering if now 15 makes -- well, I guess depending on how much longer you 16 have, whether it now make sense for a break or for 17 lunch, or something along those lines. 18 MR. HOGAN: Yeah, we can do that. 19 MR. SCHRONCE: Want to just take a quick 20 break and see where we are? 21 MR. HOGAN: Yeah. 22 MR. TWOMBLEY: Any idea how much longer you 23 have, Bill? I'm not holding you to it. 24 MR. HOGAN: I don't think I'll be a whole 25 lot longer. I'm saying maybe another, I don't know, I'm	Page 77 1 about 30 minutes. 2 (There is an off-the-record conversation.) 3 (There is a brief break in the deposition 4 from 12:32 p.m. to 1:15 p.m.) 5 BY MR. HOGAN: 6 Q Ms. Chapman, did you speak with anybody 7 about your testimony during break? 8 A No. 9 Q Okay. All right. On the topic of the 10 payments that were made to Merrill Light on her attorney 11 fees in the EDVA litigation, I'm going to ask you a 12 similar question about Paul Barringer, but not Merrill 13 Light's, how was that initially entered into the books 14 of CFRC, what accounts did it go in? 15 MR. SCHRONCE: Bill, I'm going to object 16 that the scope of discovery here is already determined 17 in Judge Frank's order and this question is outside of 18 it, so I will instruct the witness not to answer it. 19 BY MR. HOGAN: 20 Q All right. Turn to the financial statement 21 I had in the record from the exhibits, turning to 22 page 23. 23 MR. GHOM: Bill, sorry. Can you hold on a 24 second. Alice got kicked out and she's trying to 25 rejoin. ROA 003791

Page 74 1 Stites Law Firm? Or how did CFRC receive them? 2 A I don't recall if they came to us directly 3 or indirectly. 4 Q Who would know that? Would that be 5 something you would know, just don't recall? Or would 6 somebody else be the one who received the invoices? 7 A I mean, I don't recall how I received them. 8 Q Okay. Did Randy Light have an advance 9 account ledger similar to the one you had set up here 10 for Paul Barringer? 11 MR. SCHRONCE: I'm going to object again on 12 the use of the term "advance," Bill. If you could 13 clarify that. 14 BY MR. HOGAN: 15 Q Just like the word on that page 47, was 16 there a similar one that had the name Randolph J. Light 17 Advance Account? 18 A He did not have a receivable account. 19 Q Okay. How about Merrill Light, did she have 20 a similar account? 21 A Merrill did have a receivable account. 22 Q Do you have a similar account for Hampton 23 Luzak? 24 A Hampton Luzak did have a receivable account. 25 Q And when is the last time you had an entry	Page 76 ROA 003792 1 guessing an hour, maybe two hours. 2 MR. TWOMBLEY: Why won't you let him tell 3 me, Jim? Why did you tell him not to tell us? 4 MR. GILREATH: That's none of your business. 5 MR. TWOMBLEY: That is my business. I mean, 6 are you -- I mean that is just insane that you won't let 7 us know how much longer you might have. Nobody's trying 8 to hold you to it. It's the about the rudest and most 9 unprofessional thing I think I've seen in my career, 10 that you don't have any care or respect for anybody 11 else's schedule except your own. And now you are 12 instructing Bill Hogan not to tell us how much longer 13 you might have. It's just, I mean, you know, it's just 14 insane. 15 Thank you, Bill, for letting us know. 16 MR. GILREATH: I'm not going to respond to 17 that. 18 MR. HOGAN: I know you're not because you 19 don't have any good response, is why you're not. It's 20 just rude and a bully tactic is what it is. 21 MR. MOLSTER: You said your point, let's 22 move on. 23 MR. TWOMBLEY: Thank you, Bill. But now is 24 a good time for a quick break, if that's okay with you? 25 MR. HOGAN: Yeah, we'll stop for lunch for
Page 75 1 on her receivable account? 2 A I don't know the exact year, but it's been 3 several years ago. 4 Q Have there been any entries put on that 5 account since 2012? 6 A I don't recall. 7 Q Going back to your affidavit, let's turn to 8 page 7, Tab 2. Going through that over to page -- or I 9 guess paragraph 11, this on page 11 also. 10 A Okay. 11 MR. SCHRONCE: Hey, Bill, are you switching 12 topics? 13 MR. HOGAN: Yeah. 14 MR. SCHRONCE: I'm just wondering if now 15 makes -- well, I guess depending on how much longer you 16 have, whether it now make sense for a break or for 17 lunch, or something along those lines. 18 MR. HOGAN: Yeah, we can do that. 19 MR. SCHRONCE: Want to just take a quick 20 break and see where we are? 21 MR. HOGAN: Yeah. 22 MR. TWOMBLEY: Any idea how much longer you 23 have, Bill? I'm not holding you to it. 24 MR. HOGAN: I don't think I'll be a whole 25 lot longer. I'm saying maybe another, I don't know, I'm	Page 77 1 about 30 minutes. 2 (There is an off-the-record conversation.) 3 (There is a brief break in the deposition 4 from 12:32 p.m. to 1:15 p.m.) 5 BY MR. HOGAN: 6 Q Ms. Chapman, did you speak with anybody 7 about your testimony during break? 8 A No. 9 Q Okay. All right. On the topic of the 10 payments that were made to Merrill Light on her attorney 11 fees in the EDVA litigation, I'm going to ask you a 12 similar question about Paul Barringer, but not Merrill 13 Light's, how was that initially entered into the books 14 of CFRC, what accounts did it go in? 15 MR. SCHRONCE: Bill, I'm going to object 16 that the scope of discovery here is already determined 17 in Judge Frank's order and this question is outside of 18 it, so I will instruct the witness not to answer it. 19 BY MR. HOGAN: 20 Q All right. Turn to the financial statement 21 I had in the record from the exhibits, turning to 22 page 23. 23 MR. GHOM: Bill, sorry. Can you hold on a 24 second. Alice got kicked out and she's trying to 25 rejoin. ROA 003792

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1 (There is an off-the-record conversation.) 2 MS. PAYLOR: I'm back. I'm sorry. 3 MR. HOGAN: Alice, the witness turned to the 4 financial statement that's in the exhibits, turning to 5 page 33. 6 MS. PAYLOR: Okay. 7 BY MR. HOGAN: 8 Q You mentioned earlier when you first started 9 the deposition that this was a financial statement of 10 CFRC, but you mentioned that there was something 11 missing, it was not a complete statement. Do you recall 12 what you were referring to, as far as what was missing? 13 A Yes. I do think it is a complete statement. 14 But once you get to the financials, there's some numbers 15 not filled in on the 2016 column, and then like page 27, 16 or on page 27. 17 Q Hold on one second. Where it says, "total 18 assets"? 19 A Total assets, and the very top line, "cash" 20 and "cash equivalent," those fields should have numbers 21 filled in. 22 Q Is there a subsequent version of this that 23 has those numbers filled in that you know of, or is it 24 just kept like that? 25 A I've never seen this version I have with	1 answer it. 2 BY MR. HOGAN: 3 Q Go ahead. 4 A Can you restate that, then? 5 Q Yeah. It mentions various amounts with 6 legal costs incurred by the company related to the 7 litigation. Earlier we looked at Paul Barringer's -- it 8 was a statement that was called "Advance Account" for 9 him, and had litigation invoices on there. Was there 10 any allocation made between invoices regarding the 11 contract claimed in the litigation versus the 12 shareholder derivative claim in the litigation, or were 13 they all just lumped together? 14 MR. SCHRONCE: Stephanie, you can answer on 15 a yes or no basis. But to the extent he's asking for 16 any communication you may have had with counsel, then I 17 would instruct you not to get into that. 18 MR. TWOMBLEY: And I object just because I 19 don't think this has got anything to do with this 20 lawsuit and it's a complete waste of everybody's time. 21 MS. PAYLOR: Same objection. 22 Q All right. Go ahead. 23 A I don't think I understand your question to 24 be able to answer yes or no. Can you state it again? 25 Q All right. There were amounts allocated,
Page 79	Page 81
1 numbers missing. I have never sent out financials like 2 this. 3 Q Okay. Also, turn to page 42 of that 4 financial statement. 5 A Okay. 6 Q And down at Note 15 it mentions 7 "Contingencies", "Litigation." Do you see that? 8 A Yes. 9 Q And then it continues on to the next page, 10 two more paragraphs? 11 A Yes. 12 Q When the amounts for Paul Barringer's 13 advance account related to EDVA litigation came in, was 14 there any allocation regards whether any amounts were 15 related to the contract claim versus the shareholder 16 derivative claim? 17 MR. SCHRONCE: I'm going to object to the 18 form because you're using the term "advance" again. I'd 19 ask you to clarify that. I separately object on the 20 basis or to the extent that you're calling for 21 privileged communications with counsel on this subject. 22 Stephanie, if you can answer either yes or no or to the 23 extent that there is not separate information, you can 24 offer, that's fine. But to the extent you are seeking 25 privileged information, I would instruct her not to	1 invoices paid on legal costs for Paul Barringer in the 2 EDVA litigation. Was there any distinction made between 3 those invoices related to the contract claims in the 4 litigation versus the shareholder derivative claim in 5 the litigation. 6 MR. SCHRONCE: Stephanie, again, I think you 7 can answer yes or no, but do not divulge any 8 communication you may have had with counsel? 9 MR. TWOMBLEY: Same objection I made before. 10 MR. SCHRONCE: And, Stephanie, that's if you 11 understand the question. 12 A I don't know that I understand that 13 question. 14 Q Let me take you to your affidavit starting 15 back at page 7, this is in Tab 2? 16 A Okay. 17 Q First off, did you prepare this affidavit? 18 Or who prepared the affidavit for you? 19 MR. SCHRONCE: I am going to object to the 20 extent that you are calling for information on the 21 preparation of the affidavit. I am going to object and 22 instruct the witness not to answer on the basis of 23 privilege. 24 BY MR. HOGAN: 25 Q Well, if you go to page 12 at the top, Ms.

Page 82 1 Chapman, deposition (sic) page 12. 2 A Okay. 3 Q Paragraph 14? 4 A Yes. 5 Q Okay. I'm going to the second sentence, it 6 says, "As authorized under CRFC articles of 7 incorporation and bylaws, the company advanced 8 Ms. Light's legal expenses incurred in defending Ms. 9 Light's (sic) derivative, but not expenses incurred in 10 defending Ms. Luzak's breach of contract claims." 11 Was there some distinction made or 12 allocation between the contract claims and the 13 derivative claims as referred to in that sentence? 14 MS. PAYLOR: Object to the form. 15 MR. MOLSTER: We also object to protect any 16 privilege implicated here from Merrill Light. 17 MR. SCHRONCE: Stephanie, I think you can 18 answer yes or not, but beyond that, do not get into any 19 communication you had with your counsel on behalf of the 20 company. 21 A Yes. 22 Q Who made that decision as to how to make 23 that allocation? 24 MR. SCHRONCE: Again, I'm going to object. 25 MR. MOLSTER: Same objections.	Page 84 ROA 003794 1 approximately \$16.1-million between CRFC audited 2 financial statements and a summary of property, plant 3 and equipment expenditures exceeding \$100,000 for 2013 4 and 2014 fiscal years, which CFRC prepared in response 5 in a shareholder inspection request from Ms. Luzak in 6 2015." 7 Then you go on to give an explanation about 8 that. 9 In your last sentence you state, the 10 remaining 2400 invoices were all for expenses of 11 \$100,000 or less totaling \$16.1 million. 12 Did you look at those 2400 invoices that 13 you're saying made up the difference of the 14 \$16.1 million discrepancy? 15 MR. TWOMBLEY: Bill, I just want to go on 16 the record that I just think this is so far afield from 17 the matters at issue in this case. It is just 18 borderline, you know, I think almost harassing the 19 witness. It doesn't have anything to do with the issues 20 that we're litigating and this is an unnecessary waste 21 of time. 22 MS. PAYLOR: Same objection. This is so 23 irrelevant. Far afield, just like Judge Frank ruled. 24 MR. TWOMBLEY: This is not a derivative 25 case. I mean this litigation is over. Hampton lost it.
Page 83 1 MR. SCHRONCE: Yeah, I am going to object on 2 the basis of relevance and privilege on that one, Bill. 3 MR. TWOMBLEY: Same objections and protect 4 privilege as well. 5 BY MR. HOGAN: 6 Q This may be a similar kind of question to 7 it, but I'll put it on the record. Who is the person 8 that made that allocation between the derivative claims 9 and the contract claim expenses? 10 MR. SCHRONCE: And I'm going to object and 11 make the same instruction, Bill. You're getting into 12 how and why and by what means the company is allocating 13 expenses beyond what is provided in this affidavit and 14 Stephanie's yes or no answer. That's only not relevant, 15 but also you're getting into the company's privilege 16 here, so I will instruct her not to answer. 17 MS. PAYLOR: And I object on the basis of 18 Merrill Light's privilege as well, you're getting into 19 that. 20 BY MR. HOGAN: 21 Q Turn back to page 11. Yeah, page 11 which 22 is also paragraph 11. 23 A Okay. 24 Q Starts off first sentence, "I understand 25 that Ms. Luzak claims there is a discrepancy of	Page 85 1 I don't know if you're trying to impress her in some way 2 by making her feel better or embarrassing the company in 3 some way. I don't know what the motivation here is. 4 But it just seems so far completely unrelated to the 5 matters at issue in this case which deal with whether or 6 not Paul Barringer, you know, had testamentary capacity 7 to execute wills and trust. And now we're talking about 8 how the company booked some type of expense years ago, 9 and some invoice that the controller looked at and how 10 she did that. You know, it's just -- we've already been 11 down to Florida about three times over this. The judge 12 has limited y'all. And now we're sitting through 13 another day of depositions that y'all can ask questions 14 about. I just feel like at some point, you know, you 15 got to talk about the issues in the case and not all 16 these other things. That's my objection. 17 MR. HOGAN: All right. You got your 18 objection. 19 MS. PAYLOR: And I concur. 20 MR. SCHRONCE: All right. Bill, I'm not 21 going to pile on here. But what I will say is, I am 22 looking at Judge Frank's order from August of 2020, this 23 is the second of I think three in Florida. And he again 24 made the distinction between general corporate 25 operations and the matters that are relevant, at issue. ROA 003794

Page 86 1 in this case. So specifically on this issue that you're 2 getting into, I'm happy to let you ask her some 3 questions about this affidavit that she supplied in 4 terms or addressing the burden of that production that 5 was requested. But we're not going to let this get too 6 far afield. The judge has already ruled on relevance 7 here. 8 BY MR. HOGAN: 9 Q Well, it's certainly relevant so I'm going 10 to go forward. 11 Of those 2400 invoices, were there any 12 invoices in there related to any creditors of Randy 13 Light, if you recall? 14 A No. 15 Q Were there any invoices in there related to 16 payments to Randy white? 17 A No. 18 MR. TWOMBLEY: I'm lodging the same 19 objection that I did before. 20 MR. SCHRONCE: And I'll make my objection 21 applicable to this entire line of questioning. But 22 Stephanie, you can answer. 23 MR. HOGAN: Well, it certainly goes to 24 motive. 25 MR. MOLSTER: We have got those objections	Page 88 ROA 003795 1 That's just my opinion. 2 MR. HOGAN: All right. I disagree. 3 BY MR. HOGAN: 4 Q Ms. Chapman, same question from earlier. Of 5 those 2400 invoices that you reference in your 6 affidavit, were any of those related to any creditors of 7 Mr. Barringer? 8 A No. 9 Q Were any of them related to any company 10 owned or controlled by Victor Barringer that you know 11 of? 12 A No. 13 Q Same question, were any of those invoices 14 related to companies owned or controlled by Randy Light? 15 A No. 16 Q Same question, were any of those related to 17 any creditor or involving Merrill Light? 18 MR. MOLSTER: Same objection. Protect the 19 privileges to the maximum extent allowable by law with 20 respect to Merrill Light. 21 MR. SCHRONCE: Again, I believe this is 22 asked and answered as well. 23 BY MR. HOGAN: 24 Q All right. Go ahead. 25 THE WITNESS: John, can I answer that?
Page 87 1 as well on behalf of Merrill Light. 2 MR. TWOMBLEY: Motive for what? 3 MS. PAYLOR: Motive is not an element. 4 MR. HOGAN: Motive to get them to stop that 5 he could control the corporation -- motive logic. 6 MS. PAYLOR: Motive is not an element of any 7 of your causes of action. 8 MR. HOGAN: Well, it's always relevant. 9 It's the first in Rule 404(B). 10 MR. SCHRONCE: Bill, I don't want to hold 11 you up or disrupt your flow here. But y'all make that 12 argument to Judge Frank, and he rejected it in that 13 August order. 14 MR. TWOMBLEY: I think you then couched it 15 as propensity evidence, or something like that. And Jim 16 said, therefore, he was empowered to get every shred of 17 paper in the whole world. And Judge Frank said, no, he 18 was not. 19 So now instead of y'all getting the paper, 20 we having 10 lawyers sit through a deposition on it so 21 you can ask questions about it. I just respectfully 22 think that you need to start asking this witness about 23 her interactions with Mr. Barringer and if she knows 24 anything about these wills and trusts that he executed, 25 because I think this is just getting way too far afield.	Page 89 1 MR. SCHRONCE: What was the question again, 2 Bill? 3 MR. HOGAN: Beyond any of those 2400 4 invoices that were referenced in her affidavit, were any 5 of those related to payments to Merrill Light or are any 6 of these controlled by Merrill Light? 7 MR. MOLSTER: Same objection. Same 8 statement, protecting to the maximum extent allowable by 9 law Merrill Light privileges. 10 MR. SCHRONCE: Same continuing objection on 11 relevance. 12 MR. HOGAN: Are you instructing her not to 13 answer? 14 MR. SCHRONCE: I am not. You're talking 15 about payments from the company to Merrill Light? 16 MR. HOGAN: Yes. 17 MR. SCHRONCE: Other than the issues we have 18 already covered repeatedly in her affidavit relating to 19 the EDVA. 20 MR. HOGAN: Right. 21 MS. PAYLOR: I think she already answered. 22 MR. SCHRONCE: She can answer that. 23 THE WITNESS: No. 24 BY MR. HOGAN: 25 Q All right. How often did you see Paul ROA 003795

Page 90 1 Barringer? Let me break that down and be more specific. 2 Do you recall when Kevin Luzak became president of CFRC, 3 do you remember that time period, were you there then? 4 A I'm not sure exactly when the date was. But 5 it was early on in the company, shortly after the split, 6 I believe. 7 Q We'll take the time period between 2004, the 8 split, through you say 2008. Did Paul Barringer come to 9 the office, where your office was on a regular basis? 10 A Yes. He did visit the Havana site, yes. 11 Q About how often would he be there that you 12 observed? 13 A I would say he came every other month or so, 14 he would come and visit -- not exactly the site, but I 15 know he would come. 16 Q Did you speak with him when he came on those 17 occasions? 18 A On some of those occasions, yes. 19 Q So during that time period, about how many 20 times a year would you say that was? 21 A I would say probably 15. I'm just guessing, 22 but... 23 Q That's fine. Did you ever -- did you sit 24 down and talk with him? Or did you ever have any 25 conversations with him?	ROA 003796 Page 92 1 any knowledge of when that was. 2 Q The last time you saw him, do you remember 3 what you discussed with him or what y'all talked about? 4 A I do not. I don't remember specifically, 5 no. 6 Q Do you recall whether he had any change in 7 his cognitive abilities, say, between 2011 and the last 8 time you saw him? 9 A I don't. I mean, the last he came in, he 10 knew what he was talking about, he knew the subject we 11 were discussing. 12 Q But you don't remember when that last time 13 was? 14 A I do not. I don't know. 15 Q Okay. Turn to page 92, Tab 17. Looks like 16 it's an email to you from Randy Light dated March 3, 17 2015; does that look familiar? 18 MR. TWOMBLEY: What's the page, Bill? 19 MR. HOGAN: Page 92. 20 MR. TWOMBLEY: Thank you. 21 A It looks like an email from Merrill to me. 22 Q It says, "Stephanie, Paul signed a check to 23 Davis & Co. and is being mailed in the morning." And so 24 far forth. And down at the bottom, "Thanks, Randy." Do 25 you recall getting emails from Randy using Merrill
Page 91 1 A Yes. On some of those visits, yes. 2 Q After Kevin Luzak became president and CEO, 3 until the time he was terminated in 2012, did Paul 4 Barringer's frequency coming to the Havana office stay 5 the same? Or did it change? 6 A I did know he would come to visit. I'm not 7 sure if it was about the same or any less. But I do 8 know I saw him during that period of time, yes. 9 Q Would you still continue to speak with him 10 on those occasions? 11 A Yes. 12 Q After Kevin Luzak was terminated in 13 June 2012, did Paul Barringer's appearances at the 14 office increase or decrease or stay the same? 15 A I can't speak to the frequency. But I do 16 know I saw him after that point in time, yes. 17 Q About how often would you see him? 18 A I can't recall. 19 Q When was the last time you saw him? 20 A I can't recall a specific date. I don't 21 know. 22 Q I think the record shows he passed away on 23 or about May 30, 2016. Do you recall what length of 24 time it was prior to his death that you last saw him? 25 A I do not. I don't have any -- I don't have	Page 93 1 Light's email address? 2 A I'm not sure. I mean, I don't recall. But 3 I see this. 4 Q What I'm getting at, it's referencing a 5 credit card there, it says, "Both mine and Merrill's 6 CFRC Visa." It says, "mine and Merrill's." It was 7 signed Randy. I was wondering if that indicated to you 8 that was an email from Randy Light? 9 A Yes, it's signed Randy. 10 Q Did Randy Light have a credit card, a CFRC 11 credit card? 12 A I don't recall that, but it's possible. 13 Q Did all the board members have a CFRC credit 14 card? 15 A No. But I believe Randy was an employee at 16 this point. 17 Q Okay. Earlier I asked you about shareholder 18 distributions, percentage went from 42 percent 19 initially, and you went through about how it changed in 20 later years after Merrill Light gave the stock to Paul 21 Barringer. Do you recall the shareholder distributions 22 ever going above 50 percent after September 2012? 23 MR. TWOMBLEY: Object to the form of the 24 question. 25 A They've never been above 50 percent. ROA 003796

Page 94 1 Q They've never been above 50 percent. That 2 calculation is based on book income; is that correct? 3 MR. TWOMBLEY: Object to the form of the 4 question. 5 Q Would they make a percentage of the income? 6 A Yes. 7 Q That's not taxable income, it's book income, 8 correct? 9 A That's correct. 10 Q Going back to the financial statement that 11 was in there, I want to go to page 38. 12 A I'm there. 13 MS. PAYLOR: What page was it, Bill? I 14 missed that. 15 MR. HOGAN: Thirty-eight. 16 MS. PAYLOR: Thank you. 17 BY MR. HOGAN: 18 Q Going to Note 6, "Related Party 19 Transactions." First one talks about, "The Company has 20 a note receivable from a related party. Interest is 21 accrued at a rate of 5.5 percent and is payable on a 22 monthly basis." Do you know who that related party is 23 that the statement is referring to? 24 A I can't be certain at the moment. I would 25 have to look that up.	ROA 003797 ^{Page 96} 1 MR. TWOMBLEY: So you think that gives you 2 the right to go into a loan he had and what the interest 3 rate was and who decided to -- 4 MR. HOGAN: Yes, absolutely. 5 MR. GILREATH: Surely does. 6 MR. TWOMBLEY: Okay. Well, you are probably 7 going to have to take that up with the judge. I mean, 8 under that logic, you know, everything in the free world 9 that ever had happened. So anyway, we'll see what your 10 next question is. I haven't instructed her not to 11 answer. But I do think that this is just getting a 12 little bit ridiculous. But go ahead. 13 BY MR. HOGAN: 14 Q All right. Do you need me to repeat the 15 question? 16 A Yes, please. 17 Q Okay. Do you know if the interest rate on 18 the loan the company made to Victor Barringer was 19 subsequently lowered after it was initially made to him? 20 A I can't recall if that had changed since 21 initially, I'm not certain about that. 22 Q Okay. I may be getting near the end. Can I 23 break for about five minutes? 24 MR. SCHRONCE: That's fine with me, Bill. 25 (There is a brief break in the deposition
Page 95 1 Q Would you know if it related to Victor 2 Barringer? 3 A I can't be certain unless I look that up. 4 Q Okay. Do you know anything about the 5 interest rate that was charged to Victor Barringer on 6 his -- any loan he may have had from the company? 7 A I don't recall the percentage. But I do 8 know we had an interest rate, yes. 9 Q Do you know whether that rate was adjusted 10 subsequently, after the loan was made. 11 MS. PAYLOR: I'm going to object. This has 12 nothing to do with our case, totally irrelevant. 13 MR. TWOMBLEY: And I am happy -- I don't 14 want to be accused of making a speaking objection. I'm 15 happy to excuse the witness if you don't want us to talk 16 about this in front of her. But I just think this is so 17 far afield that at some point, you know, we're just 18 going to have to get the judge to tell us whether or not 19 y'all can take deposition after deposition on all these 20 corporate issues and transactions and stuff that just 21 don't have, in our opinion, anything to do with the 22 merits of this case. 23 MR. HOGAN: Y'all listed Victor Barringer as 24 a witness, so any benefit that he gained from the 25 company, that affects his credibility.	Page 97 1 from 1:48 p.m. to 1:57 p.m.) 2 BY MR. HOGAN: 3 Q Ms. Chapman, just one other issue and I'll 4 be done for the moment. I just want to take you back to 5 the financial statement that we had in the exhibit, take 6 you back to page 42. 7 A Okay. 8 Q And Note 15, "Contingencies." This says, 9 "Litigation." And there's one paragraph on page 42 and 10 two more paragraphs on page 43, if you can kind of look 11 at that a minute and just see, is that based on 12 information that came from CFRC? 13 MR. TWOMBLEY: Object to the form. 14 MS. PAYLOR: Object to the form. 15 MR. SCHRONCE: And I'll object to the extent 16 it's calling for communication with counsel. Stephanie, 17 if you can answer without getting into that, you can. 18 A Can you restate your question or repeat the 19 question? 20 Q Yeah, the information that's contained in 21 those three paragraphs under Note 15, would that have 22 been based on information that would have come from CFRC 23 in its ordinary course of business? 24 MR. TWOMBLEY: Same objection to the form of 25 the question. ROA 003797

Page 98 1MS. PAYLOR: Object. 2MR. SCHRONCE: Stephanie, you can answer so 3long as you don't get into privileged information. 4A Yes. 5Q As far as you can tell, that information 6appears to be accurate? 7MR. TWOMBLEY: Object to the form. 8A Yes. 9Q I have no other questions. The other 10attorneys may or may not have questions. 11MR. TWOMBLEY: This is Ashley. I have none? 12MS. PAYLOR: On behalf of Merrill Light, we 13have none. 14MR. SCHRONCE: On we half of the witness, we 15have none. 16MR. HOGAN: All right. Well, then we are 17finished with this deposition. 18(The deposition is concluded at 1:59 p.m.) 19(The witness waives reading and signing.) 20 21 22 23 24 25	ROA 003798100 1INDEX 2EXAMINATION 3By Mr. Hogan5 4CERTIFICATION OF REPORTER99 5INDEX TO REQUESTED INFORMATION 6Information RequestedPage 7Mr. Hogan requests updated list of Stites Law 8firm invoices.65 9 10EXHIBITS 11Plaintiff(s) 12 13 14 15 16 17 18 19 20 21 22 23 24 25 <table><tr><th>No.</th><th>Description</th><th>Page</th></tr><tr><td>11</td><td>Exhibit 1 Exhibit Binder with tabs</td><td>5</td></tr></table>	No.	Description	Page	11	Exhibit 1 Exhibit Binder with tabs	5
No.	Description	Page					
11	Exhibit 1 Exhibit Binder with tabs	5					
Page 99 1CERTIFICATE OF REPORTER 2I, Judy W. Galuppo, Court Reporter and 3Notary Public for the State of South Carolina at 4Large, do hereby certify: 5I further certify that I am neither related 6to nor counsel for any party to the cause pending or 7interested in the events thereof. 8Witness my hand, I have hereunto affixed my 9official seal this 23rd day of March, 2021, at 10Charleston County, South Carolina. 11 12 13 14 15 16Judy W. Galuppo, Reporter and 17Notary Public for South Carolina 18My Commission Expires: 19March 23, 2023 20 21 22 23 24 25	ROA 003798 (Pages 98 - 100)						

ROA 003799

EXHIBIT P

11/08/2012 Letter H. Luzak to CFRC Board of Directors

ROA 003799

November 8, 2012

Board of Directors
Coastal Forest Resources Company
8007 Florida-Georgia Highway
Havana, FL 32333

I am distressed by recent developments at CFRC and, with no other outlet to express my views as a shareholder I am submitting my views to the directors who have a fiduciary duty to protect my interests.

I requested, and received, the minutes of the meetings of the board of directors that have taken place since Merrill Light removed my husband, Kevin Luzak, from the board and replaced him with her husband, Randy Light. You will recall that she effected this change by voting her shares and my father's shares through the power of attorney that he assigned to her.

I understand through the minutes of the board meeting that was held on August 29, 2012 that the directors maintain that they have elected Travis Bryant, the current CEO, President, and CFO of CFRC, to the board. I find it incredible that I have to point out to the directors that shareholders, not directors, elect the members of the board. Please refer to Article II Section 3 of the Coastal Forest Resources Company By-Laws as Revised to February 14, 2005 to confirm that this is indeed the case with CFRC. **Directors have a fiduciary obligation to represent the interests of shareholders, not their own interests as directors.** Your brazen attempt to usurp so basic a shareholder right as the election of directors lies beyond comprehension.

I recently received a very large distribution from CFRC that was described in an accompanying email as a "special dividend". Although unprecedented and several million dollars in aggregate, this distribution came with no explanation or rationale. My father was consistently focused on reinvestment and growth while he was running the Company and would never have supported such a distribution. I am extremely distressed that among the very first decisions of the newly constituted board, acting in part through the power of attorney that he has granted to Merrill Light, is the approval of a distribution of this magnitude.

Finally, I understand that CFRC has appointed John Jolley to act as counsel for the company. I understand that Mr. Jolley has acted and may at present act as a representative of the personal interests of certain shareholders and directors. These dual roles present a clear conflict of interest and I demand that Mr. Jolley be replaced immediately.

ROA 003801

No individual owns more stock in CFRC than I do. I demand that my interests be considered and protected by the directors of this company. I am very concerned by the path that you have chosen to follow since Merrill Light took control of the board. I remind you of your fiduciary obligations to me and all of the shareholders and insist that you honor them without fail.

Sincerely,

Hampton Luzak

ELECTRONICALLY FILED - 2021 May 14 4:56 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

ROA 003801

LIGHT 000170

ROA 003802

EXHIBIT Q

04/17/2015 Letter M. Smith (King & Spalding) to A. Wingfield
(Troutman Sanders) re: Shareholder Demand Pursuant to
Virginia Code § 13.1-672.1

ROA 003802

ROA 003803

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April 17, 2015

BY EMAIL AND U.S. MAIL

Board of Directors
Coastal Forest Resources Company
c/o Alan D. Wingfield, Esq.
Troutman Sanders LLP
1001 Haxall Point
P.O. Box 1122 (23218-1122)
Richmond, Virginia 23219

Re: Shareholder Demand Pursuant to Virginia Code § 13.1-672.1

Dear Members of the Board:

This firm represents Anne Hampton Barringer Luzak, individually and as Trustee of the Anne Hampton Barringer Luzak 2008 Irrevocable Trust under an agreement dated December 17, 2008 ("Ms. Luzak" or the "Shareholder") who owns or controls 7,266,641 shares of common stock of Coastal Forest Resources Company ("CFRC" or the "Company"). I write on behalf of the Shareholder to demand that the Company's Board of Directors (the "Board") take action to investigate and remedy breaches of fiduciary duties and unjust enrichment involving the Company's President and Chief Executive Officer, J. Travis Bryant.

Specifically, for the reasons set forth herein, the Shareholder demands that the Board take all necessary legal action to cancel, rescind, void and/or terminate the December 15, 2013 purported sale of 503,211 shares of CFRC stock to Mr. Bryant (the "Stock Sale") and the December 31, 2013 grant of an option for the purchase of 2.5% of the Company's non-voting common stock ("Option Grant"). Further, Shareholder demands that the Board undertake an independent investigation of possible breaches of fiduciary duties by Mr. Bryant and certain CFRC Board members and take appropriate remedial actions.

Background Regarding Shareholder Inspection Requests

In early January 2015, Shareholder received the audited consolidated financial statements of CFRC for the fiscal year ending September 28, 2014 (despite the fact that the audit opinion accompanying the statements is dated November 18, 2014). Note 14 to the financial statements contains a reference to a December 15, 2013 issuance of stock and a stock option to an unidentified "officer of the Company." Until this cryptic reference in the financial statements (which appears to have been forced on the Company by its outside auditor), Mr. Bryant and the

ROA 003803

CFRC Board had concealed the dilutive Stock Sale and Option Grant from the Shareholder for over a year.

The revelation of a stock sale was shocking given that this was the first time the Company had sold shares or issued stock options since the initial investments made in connection with the purchase of the Company from Mr. Barringer's father more than 50 years ago, and followed a concerted multi-year effort by Mr. Barringer to direct the Company purchase stock from non-Barringer shareholders, which included the 2010 redemption of Steven Conger's shares, and multiple attempts in recent years to purchase Robert Conger's shares.

Following review of the financial statements, Shareholder engaged this firm to pursue shareholder inspection rights provided under Virginia law to learn more facts regarding the Stock Sale and Option Grant transactions. Beginning on January 21, 2015, the Shareholder made several records inspection requests pursuant to Sections 13.1-771 and 772 of the Virginia Code for information related to these transactions. The facts alleged in this demand come primarily from the Company's production of documents in response to these inspection requests, and from a factual narrative regarding the Stock Sale and Option Grant provided in a letter from the Company's counsel dated February 13, 2015.

Value of CFRC Stock in Late 2013

As shown in this letter, the CFRC Board set the sales price and strike price for the December 2013 Stock Sale and Option Grant without taking steps to become adequately informed regarding the fair market value of the Company or its stock and following a horribly flawed process raising serious issues of possible fraud and/or bad faith. To put into context the Board's outrageous giveaway of 5% of Company stock to a fellow Board member, it is important to understand the fair value of the Company's shares in the fall of 2013. As shown below, that value was ***at least \$22.00/share*** based on the conservative assumptions discussed below.

Equival 2013 Appraisal

In May of 2013, the Lights directed CFRC to obtain and pay for an appraisal for tax purposes of CFRC's shares by appraisal firm Equival, Inc. in connection with transfers of CFRC stock between Light family trusts. *See* CFRC 0582; 0535. Obviously, tax driven appraisals are conservative by nature, and are typically designed to produce the *lowest* defensible valuation that can be used to minimize future tax liabilities. Such appraisals are not used or relied on for purposes of selling the Company or its shares, as recognized in Equival's express disclaimer that "[a] future sale of the Company or its equity could well result in a sales price significantly different than the value concluded herein." CFRC 0303.

In July of 2013, Equival delivered its opinion of the Company's fair market value as of June 30, 2013. CFRC 0291. Like its prior appraisals of the Company in 2008 and 2012, Equival applied two valuation methods to value the Company's equity, (1) the market comparable method, and (2) the capitalization of cash flow method. These methods used the Company's EBITDA and free cash flow from operations to derive valuations of the Company.

Equival's 2013 appraisal found a value of \$14.67/share based on the market comparable method, and \$5.78/share based on the capitalization of cash flow method. CFRC 0297, 0300. In Equival's 2008 and 2012 appraisals, it averaged the values derived from the two methods to come up with a valuation before discounts. CFRC 0238, 0274. An average of the valuations from the two methods in the 2013 appraisals would produce a value of \$10.23/share. However, for unexplained reasons, Equival changed its valuation approach in its 2013 appraisal, and determined to place *twice* the amount of weight on the cash flow method than on the market comparable method, to lower the valuation to \$8.75 share before discounts. *See* CFRC 0300-01.

After coming up with the \$8.75 value, Equival applied a 25% lack of marketability discount, referring back to assumptions stated in its 2008 appraisal. CFRC 0301. The basis for the discount included the critical assumption that "management has no plans to undertake a sale" of the Company, and therefore an owner of a minority interest "will be locked into his investment indefinitely." CFRC 0249-50. After applying the 25% lack of marketability discount, Equival opined that the fair market value of the common stock of CFRC on a privately held, minority interest basis was \$6.56/share as of June 30, 2013. CFRC 0301.

The Equival Appraisal Grossly Understated the True Fair Value of CFRC's Stock

The valuations in the Equival appraisals are based on earnings from the Company's operations (EBITDA for the market comparable method, and free cash flow for the capitalization of cash flow method). However, the Company's timberland holdings were predominantly passive investments which contributed very little income from operations. As a result, Equival's income-based approach to determining value ignores all but a small fraction of the value of the Company's timber assets, and therefore grossly understated the value of the Company's stock.

Provided below are simple adjustments to the Equival appraisal showing that the actual fair value of the Company's shares in late 2013 exceeded \$22/share.

1. Valuing Timberland Holdings

Over the three-year period referenced in Equival's analysis the Company's timberland holdings only generated average annual EBITDA of approximately \$2.8 million¹. When valued using Equival's methodologies, these assets contributed only \$1.17/share of the total \$8.75/share aggregate equity value. This \$1.17 per share valuation equates to \$77 per acre of the Company's holdings.

¹ Segment results for CFRC's timberland activities have been calculated for the three years ended June 2013 using (i) monthly operating results presented in Coastal Forest Resource Company Executive Report Books from June 2010 to June 2013; and (ii) methodology indicated in Equival's presentation of income statement results (which excludes Other Income from EBITDA) for the nine-month period ended June 2015. CFRC 0307. We believe that there are errors in Equival's methodology and calculations that result in a significant understatement of EBITDA and Operating Cash Flow but Equival fails to provide any detail behind its results.

In reality, the timberland holdings were worth significantly more than \$1.17 per share or \$77 per acre. The Company's timber management group produced an internal evaluation of its timberland holdings in June 2012 showing a total value of \$460 million, which equates to approximately \$1,600 per acre, which is over \$23 per share. RISI, a leading information provider for the forest products industry and the standard market reference for timberland investment, maintains a database of all reported institutional timberland sales in the US. During 2013, RISI reported 14 timberland transactions in states in which CFRC owns timberland. These transactions in aggregate involved 786,000 acres for a total value of \$1.3 billion, or \$1,650 per acre. In addition, Travis Bryant reported to the Board at the October 24, 2013 board meeting that CFRC had purchased 5,161 acres of timberland during fiscal 2013 for \$10,793,000, or \$2,090 per acre. CFRC 0129.

Based on a blended per acre value of \$1,000, which heavily discounts the Company's valuation and is extremely conservative in the context of the market survey value of \$1,650 per acre and the Company's recent purchases averaging \$2,090 per acre, the Company's timber holdings were easily worth more than \$15.00/share as of late 2013 [Approximately 300,000 acres * \$1,000/acre = \$300 million ÷ 19,625,180/shares = \$15.29/share].

2. Eliminating Lack of Marketability Discount

As noted above, Equival's substantial 25% lack of marketability discount proceeded from an assumption that "management has no plans to undertake a sale" of the Company, and therefore an owner of a minority interest "will be locked into his investment indefinitely. CFRC 0249-50. This assumption was not valid. In late 2013, the Lights had made clear their strong desire to put the Company up for sale as soon as reasonably practicable, and definitely within a two year timeframe. This desire to sell the Company culminated in the Board's resolution dated March 16, 2015 authorizing Mr. Bryant to immediately commence the process of selling the Company, which shows that the lack of marketability discount was unwarranted.

3. Fair Value of CFRC Stock in Late 2013 Was Over \$22.00/share

When the tax-driven Equival valuation figure is adjusted for (1) the actual fair value of the Company's timberland holdings, and (2) to eliminate the lack of marketability discount, it is clear that the true fair value of the Company's shares as of late 2013 exceeded **\$22.00/share**, as follows:

Undiscounted Equival 6.30.13 valuation:	\$8.75
Deduction of valuation attributable to timberland income from operations:	(\$1.17)
<u>Addition of timberland value at \$1,000/acre</u>	<u>\$15.00</u>
Total Value per Share	\$22.58

While determining actual fair value of the Company's shares would require detailed financial and market analysis by investment banking and/or other financial experts, it is clear that even based on the conservative Equival tax-appraisals, when adjusted for realistic timberland value, the Stock Sale and Option grant were transacted at prices roughly 75% *below* fair value.

Background of Stock Sale and Option Grant Transactions

In 2012, the CFRC Board members were Paul Barringer (chairman), Kevin Luzak, Merrill Light, and Michael Hagler. In June 2012, Mr. Barringer made several unfounded allegations of wrongdoing against CFRC's long-time President, CEO and Board member Kevin Luzak, Ms. Luzak's husband. Both Mr. Luzak and Mr. Hagler, as members of the Board, supported a motion made at the June 28, 2012 Board meeting to conduct an independent investigation into the allegations so that the Board could take appropriate action on a fully informed basis. Ms. Light and Mr. Barringer refused to approve investigation of the allegations, and instead, Ms. Light and Mr. Barringer attempted at this meeting to remove Mr. Luzak as the Company's President and CEO, and instill Mr. Barringer as the new President and CEO. Although the Board vote deadlocked 2-2, Ms. Light and Mr. Barringer obtained an opinion from a North Carolina firm, Poyner Spruill LLP, that their combined vote was sufficient under Virginia law to remove Mr. Luzak and replace him with Mr. Barringer. Following questions and objections by Mr. Hagler and Mr. Luzak about Poyner Spruill's judgments and role, Poyner Spruill immediately resigned as Company counsel.

In a June 28, 2012 letter regarding the Board meeting of that date, the Company's sole independent director, Michael Hagler, voiced strong objections regarding the conduct of the meeting and the validity of action purportedly taken at the meeting. Mr. Hagler followed up his June 28, 2012 letter with a formal demand letter to the Board dated July 12, 2012 requesting that the Board conduct an independent investigation regarding the allegations leveled against Mr. Luzak by Mr. Barringer and Ms. Light, as well concerns about Board conduct raised by Mr. Hagler. In response, Ms. Light called a special meeting of CFRC shareholders which was held on August 3, 2012. At this meeting, Ms. Light voted her shares, and exercised a power of attorney she had obtained to vote Mr. Barringer's shares, to remove Mr. Luzak from the Board and instill her husband Randy Light on the Board, over the objections or abstention of the other shareholders.

At an August 3, 2012 Board meeting following the shareholder meeting, Mr. and Ms. Light appointed Travis Bryant, the Company's CFO, to the additional positions of President and CEO. In an August 23, 2012 letter, Mr. Hagler resigned from the Board, complaining that the above-described actions were procedurally and substantively improper. Thereafter, on August 29, 2012, Ms. Light, Mr. Light, and Mr. Barringer voted to appoint Mr. Bryant to the Board of Directors.

According to the Company's narrative, beginning as early as July 2012, Mr. Bryant embarked on a quest to secure an employment agreement with the Company that would provide him, among other things, severance benefits if terminated without cause. Various drafts of a proposed agreement were exchanged between Mr. Bryant and the Company over the ensuing

months which included a provision providing for approximately 24 months of base salary as severance for termination without cause. *See, e.g.*, draft Employment Agreement produced at CFRC 078-99. Mr. Bryant's annual base salary was \$225,000 (CFRC 017), so the amount of requested severance totaled \$450,000.

At the October 25, 2012 Board meeting, the Board discussed and approved the Employment Agreement for Mr. Bryant which contained the severance provision, with an effective date of August 2, 2012. *See* October 25, 2012 CFRC Board Minutes and Board Resolutions, CFRC 0669-74; *see also* CFRC 070-74; Employment Agreement, CFRC 078-99.

Notwithstanding the Board's formal approval of the Bryant Employment Agreement at the October 25, 2012 Board meeting, one of the Board members unilaterally decided to re-open negotiations regarding the agreement because of his opposition to exposing the Company to a potential severance obligation of \$450,000. Wingfield 2.13.15 letter, p. 5. There is no record of Board action rescinding or cancelling its approval of the Bryant Employment Agreement. The Company's narrative states that as of April 2013, the Company was unable "to come to terms with Mr. Bryant and Mr. Evans on an employment agreement owing to [a Board member's] objections to severance."

By October 2013, Mr. Bryant had initiated discussions with Mr. Light regarding what he termed a "big ask of the Company": that the Company provide financing for Mr. Bryant's proposed purchase of 5% of the Company's stock then held by Robert Conger as a solution to the employment agreement stalemate. T. Bryant 10.19.13 email, CFRC 0114. These discussions apparently hinged on "the ability to compel the Congers to sell their stock." *Id.* On Saturday October 19, 2013, just days before a previously scheduled Board meeting on October 24, 2013, Mr. Bryant proposed in an email that "in the event that I am unsuccessful at compelling the [*sic*] Bob Conger to sell," that Mr. Light consider selling Mr. Bryant up to 2.5% of the Company's treasury shares for \$6.00 per share. CFRC 0114. Mr. Bryant stated that "[i]n this scenario, the Company would issue 500,000 shares in exchange for \$3,000,000," *id.*, and that "[a]ll shares would be non-voting." CFRC 0515. Mr. Bryant also proposed that the Company finance most of this share purchase with a five-year note, at a 5% interest rate (the Company's current rate on long term debt), with regular payments of principal and interest. *Id.* Mr. Bryant stated that he would make a "significant" down payment at the time of purchase of "effectively all the cash that I have." *Id.* He also offered to provide the Company a "call option" giving the Company the right "at any point in the future" to purchase the stock for book value. *Id.*

Mr. Bryant made this proposal over a year after he had approached Mr. Conger in August of 2012 to propose that the Company purchase Mr. Conger's shares at a price in excess of book value. Bryant 8.6.12 email, CFRC 0534. Mr. Conger rebuffed Mr. Bryant's overture, causing Mr. Bryant to comment "...this is discouraging as we had hoped that he would see this as an opportunity to "cash in" at a price higher than book value. I don't believe that he will consider selling for any price that we would be willing to pay." *Id.* Thus, Mr. Bryant already knew the Congers would not sell their shares, and that any arm's length transaction for even a small block of shares would involve prices much higher than book value.

The Company's narrative states that the potential stock purchase was "extensively discussed and negotiated" at a Board meeting on October 24, 2013 with Mr. Barringer, Ms. Light, Mr. Light, and Mr. Jolley of the McNair firm representing the Company's interests and Mr. Bryant representing his own personal interests. Mr. Bryant represented at that meeting that "he did not have the personal resources to make a 10 percent down payment for 5 percent of the Company's stock." Wingfield 2.13.15 letter, p. 7. A member of the Board allegedly expressed concern whether a 2.5 percent stake would create an adequate alignment of interests between Mr. Bryant and the Company, implying that he would prefer that Mr. Bryant assumed more risk on the downside if the Company were to perform poorly and had exposure to more reward if the Company performed well. Company counsel suggested as a solution a stock option grant as a way to potentially increase Mr. Bryant's stake in the Company to as much as 5 percent *without any additional cost to Mr. Bryant*. Thus, as opposed to addressing the concerns allegedly raised by the Board, Company counsel simply suggested awarding additional benefit to Mr. Bryant without creating the alignment of interests that the Board sought. According to the Company's narrative, the Board approved the Stock Sale and Option Grant at the October 24, 2013 Board meeting, *id.*, although Company counsel reports that "neither 'minutes' nor notes reflecting discussions of the Stock Sale and Option at the October 24, 2013 meeting have been located." Wingfield 3.13.15 letter, p. 1.

The missing October 24 Board minutes and notes are critical, as there is total confusion over what stock sale and option grant terms the Board was presented with, discussed and approved at the October 24, 2013 meeting. Just days before the October 24 Board meeting Mr. Bryant proposed in his October 19, 2013 email to pay \$3,000,000 for 500,000 shares (or \$6.00 per share) for nonvoting shares (even though a presentation reviewed at the meeting showed that \$6.00 was well under the appraised value of the shares, even on a 25% minority discount basis – *see* CFRC 0122, referencing a discounted appraised value from an Equival appraisal as of 6.30.13, CFRC 0291), with 90% of the purchase price to be financed by the Company under a note amortizing over five years with a 5% interest rate, with the Company retaining a call option over the shares at book value. However, the morning after the Board meeting, Mr. Bryant sent Company counsel a draft "Consent Resolution" reflecting changes to a number of key terms in his favor: Mr. Bryant's draft resolution set the purchase price at \$4.92/share – a price well under Mr. Bryant's \$6.00 per share proposal, the \$5.92 book value, and the over \$22 per share fair value of the shares – changed the terms of the note to a ten-year "interest only" note with a below-market interest rate of just 3.5%, and included voting, as well as nonvoting shares in the purchase. CFRC 0516-17. In addition, Mr. Bryant also deleted the call option feature.

Over the following few days, Mr. Bryant continued to further sweeten the terms and conditions of his stock purchase and option grant. Even though the "Consent Resolution" provided that the stock option "will expire 12/31/2018," or in five years, the ensuing draft of the Stock Option Agreement suddenly extended the expiration term of the option to *ten* years. *Cf.* CFRC 0517 with CFRC 0524.

Within a week of the October 24 Board meeting, in light of the confusion over what the Board discussed and approved at the meeting and the significant changes of those terms in Mr. Bryant's favor, Mr. Bryant and Mr. Jolley appear to have decided that in lieu of documenting the

Board's purported approval of the transactions by resolutions included in the minutes of the October 24, 2013 Board meeting, they would instead document the Board's approval of the transaction by a unanimous written consent of the Board.

What followed was a sloppy and ultimately ineffective attempt to document Board approval of the Stock Sale and Option Grant resulting in an ambiguous and incomplete record. The Company has produced not one, but *two* unanimous written consents, both dated October 31, 2013 ("Written Consents"). CFRC 012-14 and CFRC 630-32. The Company initially produced only the "first" Written Consent, CFRC 012-14, on February 13, 2015. A month later, the Company produced a "revised" Written Consent at CFRC 0630-32, explaining that the first Written Consent was "an outdated version" of the "final version," which was produced "due to an inadvertent error in [the Company's] original production." Wingfield 3.13.15 letter. The Company has provided no record of any Board action revoking or rescinding the first Written Consent, which is not mentioned in the second Written Consent.

The principal change between the first and second Written Consents appears to be the insertion in the second consent of language approving the sale and issuance of voting stock as well as nonvoting stock. *Cf.* CFRC 012-14 and CFRC 630-32. However, although both the share count and share classes of the shares sold were changed between the first and second Written Consents, the price approved in both consents remains the same: \$2,475,798. The Company has produced no record of whether the Board discussed and agreed to lower the price per share of all shares sold, or simply gave Mr. Bryant for no consideration a share of voting stock.

Compounding the confusion regarding the two Written Consents is that both versions reference two exhibits, Exhibit A and Exhibit B, which are said to provide the terms of the promissory note and option agreement the Board purports to approve in the Written Consents. However, neither version of the Written Consents has any exhibits attached. *See* CFRC 012-14 and CFRC 0630-32. Moreover, the draft (CFRC 0145) and executed Stock Pledge Agreement (CFRC 001) accompanying the note only reference the 503,210 shares of nonvoting stock and do not mention voting stock, another anomaly that further raises questions regarding the validity of the second consent.

In any event, both versions of the Written Consents expressly state that the sale and issuance of stock to Mr. Bryant is "approved *on the condition that* Mr. Bryant shall become a party to the Amended S Corporation Shareholder Agreement dated as of October 3, 1999 by and between the Corporation and its shareholders." CFRC 012-14 and CFRC 0630-32. The Company has provided no evidence that either Mr. Bryant or the Company satisfied this condition precedent, either before or after the Company proceeded to issue Mr. Bryant his share certificates in December 2013; indeed, it appears that Mr. Bryant has never become, or even attempted to become, a party to that agreement.

After Ms. Luzak sought to inspect records related to this condition precedent in February 2015, the Company produced a one-page document dated March 2, 2015 titled "Consent to Amended S Corporation Shareholder Agreement" which is signed by Mr. Bryant alone. CFRC 0610. Neither the Company nor any other shareholder is a party to this Consent. Not only is this document dated well over a year *after* the stock was issued and sold to Mr. Bryant, but even had

it been timely, it clearly would not have satisfied the express condition precedent in the Written Consents – that Mr. Bryant “shall become a party to the Amended S Corporation Shareholder Agreement.”

Notwithstanding the Board’s lack of effective approval of the Stock Sale and Option Grant, and the failure to satisfy the express condition precedent, in December of 2013 Mr. Bryant proceeded to cause the Company to effect the Stock Sale and Option Grant. On December 13, 2013 Mr. Bryant received certificates for 503,210 shares of nonvoting stock, and 1 share of voting stock. CFRC 0159-61. Mr. Bryant allegedly paid for the stock with a \$250,000 check plus an interest only, ten-year promissory note at 3.5% in the principal amount of \$2,225,798. CFRC 006. In addition, Mr. Bryant caused the Company to execute a Stock Option Agreement granting him a ten-year option to purchase 2.5% of the Company’s outstanding shares of nonvoting common stock at book value. CFRC 007-11.

Demand That the Stock Sale and Option Grant Be Voided and Rescinded

For the reasons set forth below, the Shareholder demands that the Company take all necessary action to cancel, rescind, void and/or terminate the Stock Sale and Option Grant.

The Stock Sale and Option Grant Were Not Validly Approved by the Board

Any issuance of shares must be authorized by the board of directors. Virginia Code § 13.1-643. Strict compliance with all legal and statutory formalities is required to effect a valid stock issuance. “The issuance of corporate stock is an act of fundamental legal significance having a direct bearing upon questions of corporate governance, control and the capital structure of the enterprise. The law properly requires certainty in such matters.” *Staar Surgical Co. v. Waggoner*, 588 A.2d 1130, 1136 (Del. 1991). The facts recited above establish that there was no valid and effective approval by the Board of either transaction.

According to the Company’s narrative, the Stock Sale and Option Grant were “extensively discussed and negotiated” and approved at a Board meeting on October 24, 2013. However, despite the mandate of Virginia Code § 13.1-770 that the Company “keep as permanent records minutes of all meetings of its shareholders and board of directors,” the Company has no minutes or other record of what the Board discussed and approved at this meeting.

Nor do either of the two conflicting Written Consents reflect valid and effective approval of the Stock Sale and Option Grant by the Board. First, there are two purported Written Consents. The second consent, which the Company now says is the “final” version after initially producing and standing on the first consent, neither mentions the first consent, nor purports to revoke or supersede it. There is no record of any Board action purporting to revoke or cancel the first consent and replace it with the second. Second, both Written Consents refer to exhibits providing material terms of the Stock Sale and Option Grant, yet neither of the Written Consents has the attached exhibits, further rendering any purported approval unclear, incomplete, and ineffective. Third, there is the curiosity that the price approved for the Stock Sale is *the same* in both the first and second consents, despite the fact that the consents address different share

counts and different share classes. The Company has produced no record of whether the Board discussed and agreed to lower the price per share of all shares sold, or whether the Board simply gave away a share of voting stock for no additional consideration.

Fourth, the existence of two Written Consents regarding the same transaction raises serious questions regarding the dates of the execution of the consents by all the directors and whether execution was completed prior to the issuance and sale of stock in December of 2013. In addition, the differences between Mr. Barringer's and Mr. Light's signatures on the first consent and the second (compare CFRC 014 with CFRC 0632) raise questions regarding whether Mr. Barringer and Mr. Light in fact personally signed both consents. There are other questions regarding the validity of the consents and whether they were unanimous, including but not limited to Mr. Bryant's failure to abstain from approval of a transaction transferring millions of dollars of value to him.

The Condition Precedent to the Approval of the Stock Sale Was Never Satisfied

As discussed above, both versions of the Written Consents expressly state that the sale and issuance of stock to Mr. Bryant is "approved *on the condition that* Mr. Bryant shall become a party to the Amended S Corporation Shareholder Agreement dated as of October 3, 1999 by and between the Corporation and its shareholders." It is undisputed that neither Mr. Bryant nor the Company satisfied this condition precedent, either before or after the Company proceeded to issue Mr. Bryant his share certificates in December 2013.

The one-page document dated March 2, 2015 titled "Consent to Amended S Corporation Shareholder Agreement" unilaterally signed by Mr. Bryant (CFRC 0610) after Ms. Luzak began raising questions regarding the transaction clearly does not satisfy the condition precedent to the Board's approval. Not only is this document dated well over a year *after* the stock was issued and sold to Mr. Bryant, but even had it been timely, it clearly would not have satisfied the express condition precedent that Mr. Bryant "*become a party to*" the shareholder agreement, rather than simply *consent* to that agreement. In addition, the Consent document is a unilateral consent signed by Mr. Bryant, to which neither the Company nor any other shareholder is a party, and which lacks any consideration, is unenforceable, and can just as easily be unilaterally withdrawn by Mr. Bryant as it was signed and offered by him in the first place.

Because the Stock Sale and Option Grant were never properly approved by the Board, and because a condition precedent to the Stock Sale was never satisfied, the transactions were null and void, and of no effect. The transactions should be voided, rescinded, cancelled, and/or terminated for this reason and the further reasons set forth below.

The Stock Sale and Option Grant Are Conflicted Director Transactions Which Should Be Voided for Mr. Bryant's Failure to Disclose Material Facts

Virginia Code § 13.1-691 defines a conflicted director transaction as "a transaction with the corporation in which a director of the corporation has an interest that precludes the director from being a disinterested director." Va. Code § 13.1-691(A). Mr. Bryant's below market value stock purchase and option grant are clearly conflicted director transactions. The Virginia

Supreme Court has held that “when a conflict of interest as defined in § 13.1-691 exists . . . the burden shifts to the directors to show that their actions complied with the requirements of that section.” *Izadpanah v. Boeing Joint Venture*, 243 Va. 81, 83 (1992); *see also Giannotti v. Hamway*, 239 Va. 14, 24 (1990). In addition, if material facts regarding a conflicted director transaction were not disclosed, the transaction becomes voidable. *See Dunford Roofing, Inc. v. Earls*, 2001 WL 396869, at *8 (W.D. Va. April 12, 2001), citing Va. Code § 13.1-691.

In seeking the Board’s approval of the conflicted director Stock Sale and Option Grant, Mr. Bryant appears to have failed to disclose and/or misrepresented the following material facts, rendering any Board approval of the transactions voidable:

1. Failure to Disclose the Fair Value of CFRC Stock

The Board purportedly approved the sale of stock to Mr. Bryant for just \$4.92/share. Mr. Bryant appears to have failed to disclose the following material facts regarding the fair value of CFRC stock:

- That \$4.92/share was more than 75% below the fair value of the stock;
- That the accounting “book value” of the Company’s shares is not equal to the fair market value of the shares; instead, book value was significantly below the fair market value of the shares;
- That Equival had provided an extremely conservative appraisal for tax purposes of the Company’s shares of \$8.75/share as of 6.30.13 before applying a 25% lack of marketability discount;
- That Mr. Bryant and the Lights had held discussions regarding the Lights’ desire and willingness to approve a sale of the Company as soon as practicable (which were followed by the Board’s March 16, 2015 resolution authorizing Mr. Bryant to immediately commence the process of selling the Company), rendering lack of marketability discounts inapplicable and irrelevant;
- That Equival’s conservative tax-driven appraisal was exclusively based on the Company’s EBITDA and free cash flow from operations, which had the effect of placing an extremely low value (\$1.17 per share, or \$77 per acre) on the Company’s extensive timberland holdings, which at just \$1,000/acre would be worth at least \$15.00 per share;
- That the fair value of CFRC’s stock adjusting the Equival analysis to include the true value of the timberland would have been over \$22.00 per share;

- That Mr. Bryant, Mr. Evans, and others at the Company had conducted their own valuations of the Company showing value to be significantly in excess of book value;
- That Mr. Bryant had held discussions with Brad Jackson and/or other representatives of Lanigan & Associates, and others regarding valuations of the Company significantly in excess of book value; and
- That Mr. Bryant had offered to purchase Robert Conger's shares in August 2012 at prices higher than the book value of the shares. *See* CFRC 0534.

2. Misrepresentations and Omissions Regarding Bryant's Available Cash Resources

Mr. Bryant persuaded the Board to finance 90% of his stock purchase (in reality, 100% as discussed further below) through the following material misrepresentations and/or failures to disclose:

- That \$250,000 was "effectively all the cash that I have" and that Mr. Bryant "did not have the personal resources to make a 10 percent down payment for 5 percent of the Company's stock."

These statements were false and/or misleading because of the failure to disclose the following material facts:

- Mr. Bryant had personal liquid assets significantly in excess of \$250,000 accumulated through savings from income earned in his working career, including at Lanigan & Associates, and at CFRC since 2008;
- Mr. Bryant's 2012 W-2 reflected earned income of almost \$600,000;
- Mr. Bryant's 2013 W-2 reflected earned income of \$935,000; and
- Mr. Bryant knew, but failed to disclose, that his earned bonus for fiscal year 2013 (ending September 29, 2013) payable on or about December 1, 2013, would exceed \$600,000.

3. Failure to Disclose Mr. Bryant's Willingness to Purchase Stock on Terms Much More Favorable to the Company

Mr. Bryant further failed to disclose to the Board that less than a week before the October 24, 2013 Board meeting, he had proposed purchasing stock from the Company on terms much more favorable to the Company (although still below fair value) than what he ultimately had written into the Written Consents, including:

- That he was willing to pay at least \$6.00 per share, instead of \$4.92/share;

- That he was willing to agree to a five-year promissory note bearing 5% interest with regular payments of principal and interest, instead of the ten-year interest only note at the reduced rate of 3.5%;
- That he was willing to give the Company a call option giving the Company the right to purchase all shares sold at book value, exercisable at any time;
- That the term of the stock option would be five years instead of ten years; and
- That he was willing to accept nonvoting stock only instead of the voting and nonvoting stock he received.

4. Failure to Disclose That the Note Was a Sham Because Payments Would Be Funded by Dividend Payments

Mr. Bryant also appears to have failed to disclose that under the favorable terms of the Stock Sale, he would receive 2.5% of the Company for a net payment by Mr. Bryant of *zero* when factoring in dividend payments.

CFRC pays four quarterly dividends equal to 49% of the Company's net quarterly profits to shareholders to fund shareholders' payment of their pro rata share of state and local taxes on Sub S taxable income. CFRC has also been paying a "special" dividend over and above these regular dividends in each of the years following Ms. Light's assumption of control of the Company in 2012. In the 16 month period from January 2014 through April 2015, Mr. Bryant has been paid dividends of \$971,835.16. *See* Wingfield April 14, 2015 letter at 2 (erroneously totaling dividends as \$971,833.23). These dividends include a "special" dividend of \$150,000 paid in November 2014. They also include a regular quarterly distribution of almost \$111,000 paid within three weeks of his "purchase" of the shares in late 2013.

Because he owned the shares (and therefore generated taxable income) for only 15 days in 2013, Mr. Bryant alone among the shareholders effectively received a second "special" distribution of approximately \$91,300 (out of the \$111,000 paid in January 2014) which was, moreover, **financed by the other shareholders**. Since Mr. Bryant's "special" dividends have thus totaled \$241,300, and because his blended state and federal tax rate on capital gains and ordinary income is less than the other dividends paid, in his first year and four months of alleged stock ownership, Mr. Bryant has already received back more than the entire \$250,000 down payment, plus the \$83,000 in interest payments he has made under the Note.

Thus while Mr. Bryant designed the Stock Sale transaction to give the appearance that he was "paying" over \$2 million for the stock, in reality the down payment and Note were a sham, 100% funded by dividend payments to be received as a CFRC shareholder. Therefore, under the Stock Sale, Bryant took CFRC stock worth over \$11 million of dollars for *essentially nothing* in return.

5. Failure to Disclose the Accounting and Tax Impacts of the Transactions

Mr. Bryant also appears to have failed to disclose that under proper GAAP accounting for the Stock Sale and Option Grant, the Company was required to recognize as additional compensation expense in 2014 the difference between the price paid for his shares and the true fair value of the shares, plus the benefit received for the below market interest rate on the Note and the below market strike price for the Option Grant. See FASB Accounting Standards Codification Topic 718, *Compensation-Stock Compensation* ("ASC 718").

In our estimation, exclusive of the effects of the Option Grant, the difference between the Stock Sale price and the fair value of the Company's shares sold to the employee would result in at least **\$8.6 million** more in 2014 compensation expense for the Company. If recorded on the Company's books, this additional compensation expense would significantly diminish the Company's net income and EBITDA, reduce dividend income to shareholders, and also make the Company significantly less valuable in the eyes of potential purchasers.

Mr. Bryant also appears to have failed to disclose his apparent intention to avoid properly accounting for the transactions under ASC 718 so that he could avoid payment of additional income tax in calendar 2013 at ordinary income rates on at least \$8.6 million dollars in additional compensation imputed to him, and instead pay lower capital gain rates on his gain in 2015 when he expected the Company would be sold. Mr. Bryant also does not appear to have disclosed that the effect of his plan to avoid proper accounting and tax treatment of the below fair value Stock Sale and Option Grant was to overstate the Company's true net income in fiscal 2014 and 2015, and to force the Company's shareholders to pay greater 2013, 2014, and 2015 taxes than they would have been obligated to pay had the transactions been properly accounted for (assuming they were validly approved, which they were not).² He also appears to have failed to disclose that the inappropriate accounting, which had the effect of inflating the Company's net income, would also inflate and overstate Mr. Bryant's yearly bonuses based on net income.

Because the exercise price for the Option Grant was less than the fair market value of the Company's stock on the grant date, the option is considered to be "deferred compensation" and is subject to IRC Code Section 409A and the rules that apply thereunder. There is no indication that the Company has applied these rules. There is also no indication that the Company's payroll tax accounting correctly reflects the below market Stock Sale and Option Grant, further exposing the Company to potential payroll tax deposit penalties. The correct financial and tax accounting for these transactions would also be expected to have flow through consequences on other incentive based payments made to other employees.

* * *

For the reasons set forth above, Shareholder demands that that the Board take all necessary action to cancel, rescind, void and/or terminate the Stock Sale and Option Grant. The

² At a blended marginal ordinary income tax rate of 46%, Mr. Bryant transferred a cash tax liability from himself to CFRC shareholders of approximately \$4 million based on the Stock Sale alone.

parties should be restored to their respective positions prior to December 2013, and the \$971,835.16 in dividends paid to Mr. Bryant should be re-allocated and distributed to the other shareholders of record on a per share basis. Further, the Company's audited financial statements for fiscal 2014 should be restated to reflect cancellation and rescission of these transactions.

Demand That the Board Conduct an Independent Investigation of Possible Breaches of Fiduciary Duties and Implement Appropriate Remedial Actions

The factual record set forth above based on records produced by the Company raises serious and troubling questions regarding potential breaches of fiduciary duties by Mr. Bryant and the members of the Board who purported to approve the Stock Sale and Option Grant. Shareholder demands that the Board conduct a thorough independent investigation regarding the issues described below. The investigation must be independent of Mr. Bryant and the members of the Board whose conduct is at issue.

Whether Travis Bryant Has Breached His Fiduciary Duties and Should Be Removed from his Positions

1. Failures to Disclose

As set forth above, Mr. Bryant failed to disclose to the Board material facts regarding the Stock Sale and Option Grant in a conflicted director transaction between him and the Company. The investigation should determine whether Mr. Bryant's failures to disclose were intentional, and whether they involved dishonesty, gross misconduct, fraud, bad faith, and/or a breach of his fiduciary duties to CFRC and its shareholders such that he should be removed from the CFRC Board and terminated as a CFRC employee.

2. Accounting Improprieties

The Company has acknowledged that the Stock Sale and Option Grant were done "in lieu of entering into an employment agreement" and that these transactions represented share-based payments in exchange for Mr. Bryant's services. Wingfield 2.13.15 letter. As such, the accounting for the Stock Sale and Option Grant are governed by ASC 718.

There can be no dispute that both the Stock Sale and Option Grant were done at prices below the fair value of CFRC's shares. The Stock Sale was done at \$4.92/share, a price that was even below Mr. Bryant's initial offer price of \$6.00 per share; below the book value of \$5.92; and below the "higher than book value" price which Mr. Bryant had offered to Mr. Conger in 2012. Even the ultra-conservative, tax-driven appraisal commissioned by the Lights in 2013 posited a valuation of \$8.75/share before applying a 25% lack of marketability discount. That appraisal was driven by the Company's EBITDA and free cash flow, which caused it to ascribe unrealistically low value to the Company's significant timberland holdings because of their negligible contribution to earnings. At a conservative price of \$1,000 per acre, the Company's timberland holdings are conservatively estimated to be worth at least \$15.00 per share. Therefore, the true fair value of the Company's shares in December 2013 was over \$22 per share, even using the other conservative assumptions from the Equival 2013 appraisal.

The accounting and tax ramifications of the more than \$17 per share difference between the stated sales price of the Stock Sale at \$4.92/sh (totaling \$2,475,798 for 503,211 shares) and fair value at \$22/sh (totaling \$11,070,642) are staggering.³ Mr. Bryant was allowed to purchase 2.5% of the Company for at least **\$8.6 million** less than its fair value. In addition, Mr. Bryant was granted a stock option for 2.5% of the Company's shares with a built in gain on the date of grant of at least **\$8.1 million** based on a \$22/sh fair value and a strike price of the book value of \$5.92/sh. Conservatively valued, the Stock Sale and Option Grant resulted in a total unrealized gain to Mr. Bryant of at least **\$16.7 million dollars** as of December 2013, a figure which has only grown since that time.

For the Stock Sale, FASB ASC 718 requires that the Company recognize as additional compensation expense the \$8.6 million difference between fair value and the amount he paid for the shares. In addition, for the Option Grant, because the "book value" strike price was below fair value, ASC 718 requires that the Company recognize additional compensation expense, although the precise calculations are more complex. Further charges would be required for the below market interest rate on the Note.

Although Mr. Bryant is a CPA and is the Company's Chief Financial Officer responsible for the preparation of the Company's financial statements, he did not correctly account for the Stock Sale and Option Grant in the Company's fiscal 2014 financial statements in accordance with ASC 718. If the Stock Sale and Option Grant had been accounted for correctly, not only would the Company have been required to recognize well over \$8.6 million in additional compensation expense for fiscal 2014, but it would have been required to reflect this additional expense as additional income to Mr. Bryant on his calendar year 2013 form W-2. Had the sale been properly recorded in the Company's accounting records and tax forms, Mr. Bryant would likely have incurred additional tax liabilities for calendar 2013 of approximately \$4,000,000, and all other CFRC shareholders' income tax liability would have been reduced by a like amount. The Board's independent investigation must determine why the Stock Sale and Option Grant were not accounted for correctly, and determine whether Mr. Bryant's interest in avoiding this additional personal income tax liability were motivations behind his actions.

The Board's investigation should also examine the role of the Company's independent accounting firm, Lanigan & Associates, P.C., in reviewing the accounting for the Stock Sale and Option Grant. This should specifically include examination of what information Lanigan had regarding the fair value of the Company's shares in connection with the audit of the Company's fiscal 2014 financial statements, including the Equival appraisal the Company obtained in mid-2013, and Lanigan's role in the Light family trust transactions associated with that appraisal. See CFRC 0582. The investigation should determine whether there are any actual or potential

³ The "stated" sales price of \$2,475,798 treats the Promissory Note amount of \$2,225,798 as part of the "payment." As discussed above, the Note was a sham transaction designed to be self-funded by dividend payments received for the acquired stock. The economic substance of the transaction was an outright gift of 2.5% of the stock of the Company to Mr. Bryant for nothing in return.

conflicts of interest that call into question Lanigan's suitability to continue to serve as the Company's independent audit firm, including examination of Lanigan's work for any directors and officers of the Company, any interest Lanigan has expressed in assisting in the possible marketing and sale of the Company, and Mr. Bryant's prior employment at Lanigan.

Whether the Other Members of the CFRC Board Breached Their
Fiduciary Duties

The members of the CFRC Board have fiduciary duties under Virginia law to, among other things:

- manage, conduct, supervise and direct the business affairs of CFRC in accordance with all applicable law;
- remain informed as to the status of CFRC's operations, the value of its assets, and the value of its shares;
- prudently protect the Company's assets, including its treasury shares;
- maintain and implement an adequate, functioning system of internal legal, financial and accounting controls, such that CFRC's financial statements – including its accounting for expenses, stock sales, option grants and other financial information – comply with generally accepted accounting principles; and
- maintain minutes of all meetings of its shareholders and Board, and a record of all actions taken by the shareholders or board of directors without a meeting.

The facts set forth above raise serious questions regarding whether the CFRC Board members have complied with their fiduciary duties to manage and govern the affairs of CFRC in good faith and in the best interests of all CFRC's shareholders. Va. Code § 13.1-690. The independent Board investigation should determine whether the following actions constitute breaches of fiduciary duty under Virginia law, and implement appropriate remedial measures.

Approval of Stock Sale and Option Grant

The facts set forth above show an appalling disregard of the Board's fiduciary responsibilities regarding the Stock Sale and Option Grant that rise to the level of conscious disregard and/or bad faith.

First, in light of the abrupt and capricious termination of the Company's long-time President and CEO, it was not unreasonable for Mr. Bryant to seek an employment agreement from the Company providing him reasonable severance in the event that his tenure, too came to a sudden end. The Company acknowledges that in October 2012, the Board approved an agreement with Mr. Bryant which provided, among other things, severance equal to two years of his then base pay, totaling \$450,000.

Notwithstanding this Board approval, the Board apparently allowed one member to unilaterally reverse the Board's decision, and subsequently engaged in several months more of distracting employment agreement negotiations which took executives' focus off running the Company for the benefit of the shareholders. Further, Mr. and Ms. Light directed that the Company's Board minutes be falsified to omit reference to the approval which occurred at the October 24, 2012 meeting, in violation of the requirements of Virginia Code § 13.1-770 that the corporation keep accurate minutes of meetings of the Board of directors. *See* CFRC 0104.

The process and documentation of the Board's purported approval of the Stock Sale and Option Grant as a "solution" to the Board's resistance to a potential severance payment was truly a legal and fiduciary train wreck of enormous proportions. To begin with, although the terms of the Stock Sale and Option Grant were "extensively discussed and negotiated" and approved at a Board meeting on October 24, 2013, the possible sale and award of over \$22 million dollars of CFRC stock does not appear on the Board agenda for that meeting (CFRC 0115), nor is mentioned anywhere in the Board presentation deck for that meeting (CFRC 0116-142).

There is simply no record that the Board made any effort to become adequately informed regarding the value of the Company's shares being "sold" (i.e., given away) either at the October 24, 2013 meeting or thereafter. For example, there is no evidence that the Board consulted with investment bankers or other financial experts regarding the fair market value of the Company or its stock. There is no record to establish that the Board knew, understood, or inquired whether there was a difference between "book value" and fair market value of the shares. There is no explanation of how the Board arrived at a price of \$4.92 per share for the Stock Sale, while simultaneously choosing the higher book value number for the strike price in the Option Grant. There is no indication that the Board discussed why the Company should *sell* stock at prices below book value, when it had apparently offered to *buy* Mr. Conger's stock at prices above book value in August 2012. *See* CFRC 0534.

Further, there is no record of the Board consulting with any compensation experts, or doing any market check regarding management incentive and retention programs for comparably sized companies. There is no evidence of any discussion by the Board regarding the imposition of vesting and performance conditions on the Stock Sale and Option Grant to meet the Board's stated objectives of "maintaining stability in management" and assuring that "Mr. Bryant's financial success would be wholly aligned with that of the shareholders." Wingfield 2.13.15 letter, p. 7. Instead of adopting standard three to five-year vesting conditions to promote management continuity and stability, and structuring performance targets that would only award stock upon achieving certain metrics reflecting added value to the Company and its shareholders, the Board simply bestowed the stock and option on Mr. Bryant with no apparent thought or consideration of such conditions.

During the negotiations, Mr. Bryant reportedly made a plea of poverty, claiming "he did not have the personal resources to make a 10 percent down payment" for 5 percent of the Company's stock. Wingfield 2.13.15 letter p. 7. There is no record of the Board requesting verification of Mr. Bryant's financial condition, or undertaking an examination of his creditworthiness and ability to repay a loan of over \$2 million dollars, although as noted below, that loan was a fiction, designed to be paid by dividends from the stock "purchased." Had the

Board been paying the slightest attention to the Company's affairs, it would have realized that *for 2013 alone* Mr. Bryant earned over \$935,000 at CFRC (including a bonus of over \$600,000), and that for 2012 he earned almost \$600,000 at CFRC. Mr. Bryant's claim that \$250,000 was "effectively all the cash that I had" is belied by his 2012 and 2013 income alone, without considering the other savings and investments he had accumulated over the rest of his working career as a CPA and at CFRC.

Although it was apparently important to the Board to have Mr. Bryant "invest his own money and subject himself to a large liability on the Note," *id.*, there is no record that the Board understood that Mr. Bryant ingeniously designed the Note so that he would recoup *the entire \$250,000 down payment, plus all quarterly interest payments* from dividend payments he later received as a CFRC shareholder. In fact, since "purchasing" the stock in December 2013, Mr. Bryant has already received almost \$1 million in dividend payments.

The Board's utter disregard of its fiduciary duties is further illustrated by the curious changes in terms of the stock sale transaction from the first proposal by Mr. Bryant on October 19, 2013 in a private email to Mr. Light. Although Mr. Bryant offered to pay \$6.00 per share for the shares—itsself an outrageously low price—the Board inexplicably approved his purchase at a price well almost 20% under his initial offer price. The terms of the promissory note were also changed to lower the interest rate from 5% to 3.5% and to make it interest only, instead of requiring any repayment of principal. The lowering of the interest rate is particularly troubling, given that the Company itself was paying 5% on its long term debt, despite being a significantly more creditworthy borrower than Mr. Bryant. Also, the call option Mr. Bryant proposed to give the Company so it could purchase the shares back "at any time in the future" mysteriously disappeared. Finally, the term of the Promissory Note and Option Grant were both surreptitiously extended from the original five year term to a ten year term. There is no record of the Board's discussion and approval of these changes, or receipt of any concessions in exchange for them.

The Option Grant appears to have received even less thought and consideration by the Board than the Stock Sale, although it seems hardly possible. According to the Company's narrative, the Option Grant arose almost as an afterthought, upon the suggestion of Company counsel as a "solution" to the Board's apparent concern that a mere 2.5% ownership of the Company (worth over \$11 million) would not be sufficient inducement to spur Mr. Bryant's future performance. Without any recorded further thought and deliberation, the Board readily agreed to throw a stock option into Mr. Bryant's package worth at least another \$8.1 million, with no vesting period or performance condition.

Thus, while Mr. Bryant and the Board spent "an extended 17 month period" assessing and negotiating a severance provision exposing the Company to the *potential* of \$450,000 of liability, in a single brief Board meeting, with no advance notice or discussion, the Board approved the Stock Sale and Option Grant involving a giveaway of Company stock worth *over \$22 million dollars*. This presents a textbook case of director breach of fiduciary duty. *See Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985) (finding that directors were grossly negligent and breached their fiduciary duty of care by approving merger transaction at a single meeting without consultation of experts or evidence regarding the intrinsic value of the company's shares).

Finally, the lack of documentation of the purported Board approval and execution of these transactions is further indication of a breach of fiduciary duty, although aided and abetted by Company counsel and CFRC Assistant Secretary John Jolley. As discussed, there are no minutes or notes of the critical October 24, 2013 Board meeting in existence, itself a violation of the requirements of Virginia Code § 13.1-770. There are not one, but two versions of Written Consents purporting to approve the Stock Sale and Option Grant, neither of which attaches critical referenced exhibits showing what the Board approved. The second consent does not mention or purport to revoke or supersede the first "outdated" consent. And despite the share count and share class changing from the first consent to the second, the total price paid for the shares remains unchanged, begging the question whether the Board understood that in making the change, it was lowering the share price further, or simply giving away a share of voting stock. There are other serious questions regarding the validity of the consents, including the oddities regarding the signatures on the two consents, Mr. Bryant's participation in approving a transaction benefitting him by over \$16 million, and other issues.

There are numerous other documentation deficiencies and shortcomings. The Stock Pledge Agreement accompanying the Note (CFRC 001-5) leaves blank the certificate number evidencing the shares. Moreover, the executed Stock Pledge Agreement only references the 503,210 shares of nonvoting stock acquired, and says nothing of the alleged accompanying sale of one share of voting stock, raising further questions regarding whether and how the stock sale transaction was approved and whether the second Written Consent is valid. The Company has also failed to produce the stock power covering the pledged shares which is referenced in the Stock Pledge Agreement.

Finally, despite both Written Consents provision of an express condition precedent to the approval of issuance and sale of the stock to Mr. Bryant, the Board members consciously disregarded their fiduciary responsibilities by allowing the stock to be issued and sold without the condition having been satisfied. As noted, Mr. Bryant has never become a party to the Amended S Corporation Shareholder Agreement, and the condition precedent to the Board's approval remains to this day unsatisfied.

In light of the above, the Board's independent investigation must also assess the fitness of Mr. Jolley and his firm to continue to serve as Company Counsel and CFRC Assistant Secretary. This should include a careful assessment of Mr. Jolley's role in negotiating and documenting changes to the terms of the Stock Sale and Option Grant that went in Mr. Bryant's favor, his role in the attempted "fix" of the failure of the condition precedent by a unilateral "Consent" document, the board minutes and record keeping deficiencies described above, and examination of whether Mr. Jolley's dual representation of the Company and controlling stockholders and Board Members (and perhaps even Mr. Bryant) gives rise to a conflict of interest. Although the Company has refused to disclose what law firm engineered the unilateral "Consent" document, to the extent that Mr. Jolley's firm or any other firm purporting to act as Company counsel participated in drafting, reviewing, or approving the Consent, that would be a serious conflict of interest warranting immediate termination as Company counsel.

* * *

For the reasons set forth above, the Board's fiduciary duties require it to cancel, rescind, void and/or terminate the Stock Sale and Option Grant. Further, Shareholder demands that the Board undertake an independent investigation of the possible breaches of fiduciary duties by Mr. Bryant and certain CFRC Board members and take appropriate remedial actions. Any such investigation must be conducted by an independent and disinterested member or members of the Board and should not include any member of the Board who served on the Board at the time of the Stock Sale and Option Grant and participated in the wrongs alleged herein given their own potential liability for failing to comply with their own fiduciary duties. The failure to cause the Company to unwind the Stock Sale and Option Grant, and to investigate and remedy the potential breaches of fiduciary duties detailed herein, would be flatly inconsistent with the Board's fiduciary duties and would expose the Board to further liability.

In making the demands set forth herein, Shareholder does not acknowledge that a majority of the Board is independent or otherwise capable of dealing with the demands set forth above objectively and in the best interests of the Company and its shareholders, and in fact expressly denies so in light of the conflicts described above involving the Lights and Mr. Bryant.

Pursuant to Virginia law, if within a reasonable time after receipt of this letter the Board has not taken the action demanded herein, the Shareholder will commence a shareholder's derivative action on behalf of the Company seeking appropriate relief. The Shareholder reserves all rights to also pursue any individual, direct claims she may have as a CFRC shareholder.

Ms. Luzak reserves all rights under the law and in equity.

Sincerely,



Michael R. Smith

cc: Hampton B. Luzak
William N. Withrow, Jr., Esq.

ROA 003824

EXHIBIT R

Proposed Plaintiff's Notice of Video Deposition of Coastal
Forest Resources Co. Pursuant to Rule 30(b)(6) of the South
Carolina Rules of Civil Procedure

ROA 003824

ROA 003825

ATTACHMENT A

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, as
 Personal Representative of the Estate of Paul
 Brandon Barringer, II, J. Randolph Light, Jr.,
 Merrill B. Light as putative trustee of the Paul
 B. Barringer, II Revocable Trust dated
 December 4, 1998, and Merrill B. Light as
 Trustee of the Merrill Barringer Light
 Revocable Trust,

Defendants.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-07-1919

**PLAINTIFF'S NOTICE OF
 VIDEO DEPOSITION OF
 COASTAL FOREST RESOURCES CO.
 PURSUANT TO RULE 30(b)(6)
 OF THE SOUTH CAROLINA
 RULES OF CIVIL PROCEDURE**

**TO: Coastal Forest Resources Co.
 c/o J. Travis Bryant
 8007 Florida Georgia Highway, Havana, FL 32333**

PLEASE TAKE NOTICE that pursuant to South Carolina Rules of Civil Procedure ("SCRCP"), Rule 30(b)(6), the stenographic video deposition of Coastal Forest Resources Co. (hereafter "CFRC") will be taken before a qualified Notary Public at **Coastal Forest Resources Co., at 8007 Florida Georgia Highway, Havana, FL 32333** on _____, 2021, at _____ **A.M.** and thereafter by adjournment until the same shall be completed.

Pursuant to Rule 30(b)(6), SCRCP, CFRC is required to designate and fully prepare one or more officers, agents, partners, directors, managing agents or other persons with the most knowledge concerning the following designated matters; or other persons who consent to testify on its behalf of CFRC all of whom CFRC will fully prepare to testify regarding the following

ROA 003825

ROA 003826

designated matters and as to such information that is known or reasonably available to CFRC. In response to this notice, the definitions set forth on the attached Schedule "A" shall apply.

DESIGNATION OF MATTERS

1. All of the facts, events, and circumstances of CFRC's dismissal or termination of Kevin Luzak as an officer, director, and employee of CFRC, including but not limited to the reasons for dismissal from each position, the participants in the decisions to terminate him, and all communications between CFRC and all shareholders and directors pertaining to his termination.
2. All of the facts, events, and circumstances of Kevin Luzak allegedly kicking out Paul Barringer and/or Merrill Light from any meeting of the CFRC's Board of Directors.
3. All of the facts, events, and circumstances of Kevin Luzak allegedly throwing a book or papers at Paul Barringer and/or Merrill Light at any meeting of the CFRC's Board of Directors.
4. Any awareness, knowledge or notice by CFRC of any impaired mental capacity or diminished cognitive ability of Paul Barringer in each year starting in 2010 and through his death in 2016.
5. All discussions, decisions, and steps taken by CFRC from 2010 to the date of Paul Barringer's death with respect to the competency of Paul Barringer to run CFRC or to serve as an officer or director of CFRC.
6. All of the facts, events, and circumstances pertaining to any persons, including but not limited to persons from New York trying to steal CFRC at any time between 2010 and 2012.
7. Any evidence of any alleged criminal or fraudulent activity by Kevin Luzak while he was CEO or a director of CFRC and all of the facts, events, and circumstances pertaining thereto.
8. All communications, discussions, decisions, and steps taken by CFRC in response or reaction to matters and issues raised in Michael B. Hagler's letter dated July 12, 2012 (Exhibit A).
9. All communications, discussions, decisions, and steps taken by CFRC in response or reaction to matters and issues raised in Michael B. Hagler's email of August 3, 2012 (Exhibit B).
10. All facts, events, and circumstances pertaining to Kevin Luzak's request for independent investigation in 2012 of his performance as an employee, officer or director of CFRC. (See Exhibit C)

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11. All communications, discussions, decisions, and steps taken by CFRC in response or reaction to matters and issues raised in Hampton Luzak's letter dated July 6, 2012 (Exhibit D).
12. All information pertaining to the use of any airplane owned or leased by CFRC from July 15, 2012 – July 21, 2012, including but not limited to all trips made, passengers on each trip, the destination(s) of each trip, and the purpose for the flight to each destination.
13. All fees paid to John Jolley for each year after 2010.
14. All of the facts, events, and circumstances pertaining to the election of James Randolph Light, Jr. as an officer and director of CFRC, including but not limited to any due diligence undertaken by or for CFRC of his qualifications to serve in each capacity.
15. All of the facts, events, and circumstances relating to Paul Barringer transferring his voting shares into his Revocable Trust on or about May 11, 2012.
16. All of the facts, events, and circumstances relating to the transfer by Paul Barringer's Revocable Trust to the Revocable Trust of Merrill Light of Paul Barringer's voting shares in CFRC allegedly on or about on or about September 11, 2012 or at any time thereafter. This will include but not be limited to any and all knowledge that CFRC had of such transfer, as well as all efforts undertaken to transfer those shares of voting stock on the corporate records of CFRC, and it will also include but not be limited to all communications between CFRC and Paul Barringer, Merrill Light, John Jolley, Lanigan & Associates, P.C.
17. All of the facts, events, and circumstances pertaining to the election of John Jolley as assistant secretary and hired as legal counsel of CFRC in 2012.
18. All facts, events and circumstance pertaining to Issuance of stock or stock options to Travis Bryant, including tax reporting of the same as well as valuation of the same.
19. All of the facts, events, and circumstances pertaining to the September 20, 2012 email from James Randolph Light, Jr. to John Jolley and Travis Bryant regarding a possible gifting procedure to Merrill Light and any responses, reactions or actions taken by CFRC pertaining to the matters raised therein.
20. All of the facts, events, and circumstances pertaining to personal expense accounts of Paul Barringer, Merrill Barringer, Merrill Light, James Randolph Light, Jr., Hampton Luzak, and Kevin Luzak for the years 2010-present.
21. All communications between Merrill Light or James Randolph Light, Jr., on the one hand, and CFRC on the other hand, in 2012.
22. All notes of all Board meetings 2011-present.

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23. All of the facts, events, and circumstances pertaining to the distributions made to Paul Barringer individually or as trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998 from September 11, 2012 through September 2013.
24. All fees paid to the McNair law firm from January 1, 2011 to present.
25. For each year starting in 1998, Paul Barringer's and Merrill Barringer's plans for the future ownership of CFRC upon their death of each of them.
26. All discussions, offers, and proposals to sell CFRC after 2010 or any portion of CFRC other than in the ordinary course of the business operations of CFRC.
27. All debts CFRC owed Merrill Light for each year starting in 2012.
28. The note receivable from a related party as reported in Note 7 of the CFRC annual Consolidated Financial Statements for September 27, 2009 and October 3, 2010 and in Note 6 of the Consolidated *Financial* Statements of October 2, 2011 and thereafter, including but not limited to the identity of the related party who gave the note, payment history on the note and all changes in the interest rate on the related party debt from the inception of the debt to the present and the reasons for such interest rate changes.
29. Total compensation for services rendered, including but not limited to salary and bonuses, paid for each year from 2012 to the present for each of the following:
 - a. Merrill Light
 - b. James Randolph Light, Jr.
 - c. Travis Bryant
30. All payments made by CFRC or any of its subsidiaries for or on behalf of any entity owned, controlled by or affiliated with James Randolph Light, Jr. or to any creditor of such entity(ies) since 2012.
31. All other benefits and/or privileges extended by CFRC or any of its subsidiaries to James Randolph Light, Jr. not covered in the two preceding paragraphs.
32. Ownership interest held by James Randolph Light, Jr. in Magnolia Plant Hunting Preserve, LLC.
33. All of the facts, events, and circumstances pertaining to any loans by CFRC to or from any shareholders of CFRC, including but not limited to all payments, debits or credits toward repayment of any such loans from January 1, 2010 to the present time.
34. All advance accounts or other similar compilations of offsets, advances or other expense payments made by CFRC, and the repayments to CFRC for such payments, to or for any of the following between January 1, 2011 and the present:
 - a. Paul Barringer

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- b. Merrill Barringer
- c. Merrill Light
- d. James Randolph Light, Jr.
- e. Travis Bryant
- f. Any trust created by or for Victor C. Barringer or his descendants.

The deposition will be recorded by stenographic means or otherwise, by utilizing digital audio equipment or any other alternative method of capture, in the State of South Carolina, and deposition exhibits will be presented and exchanged electronically. The testimony will be recorded by an official authorized to administer oaths.

NOTICE IS FURTHER GIVEN that this deposition will be conducted utilizing the web-based deposition services offered by Veritext Legal Solutions (“Veritext Virtual”) to provide remote access for those parties wishing to participate in the deposition via the internet. Please contact the noticing attorney at least five (5) calendar days prior to the deposition to advise that it is your desire to appear remotely so that the necessary credentials and testing can be provided to you prior to the proceedings.

NOTICE IS FURTHER GIVEN that we reserve the right to conduct this deposition utilizing a paperless exhibit display process called Exhibit Share provided and supported by Veritext Legal Solutions. Please contact the noticing attorney at least five (5) calendar days prior to the deposition to advise that it is your desire to be set up for Exhibit Share access so that the necessary credentials, testing and information, if necessary, can be provided to you prior to the proceedings. For information and available tutorial videos demonstrating Exhibit Share, please utilize this link to access additional information: <https://www.veritext.com/services/exhibitshare/>.

Said deposition is to be taken upon oral examination for the purpose of discovery and/or use as evidence in the above-captioned action pursuant to the South Carolina Rules of Civil Procedure, administered either by remote communication technology or in person by a notary

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public or before some other officer authorized by law to take depositions. Said deposition is to continue from day to day until completed. You are notified to appear and take such part in the examination as is fit and proper.

THE GILREATH LAW FIRM, P.A.

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**ATTORNEYS FOR PLAINTIFF
HAMPTON B. LUZAK**

May 4, 2021
Greenville, South Carolina.

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SCHEDULE A
DEFINITIONS APPLICABLE TO PARAGRAPHS IN
DESIGNATION OF MATTERS

1. The term “CFRC” is defined to mean Coastal Forest Resources Company, including as may be applicable, its predecessor, Coastal Lumber Company.
2. The term “All of the facts, events, and circumstances” is defined to also include, but not be limited, to all communications that CFRC was a party to or otherwise aware of.

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EXHIBIT S

Coastal Forest Resources Company By-Laws
as amended through December 15, 2016

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COASTAL FOREST RESOURCES COMPANY

BY-LAWS

(as amended through December 15, 2016)

ARTICLE IMeetings of Stockholders

Section 1. Places of Meetings: All meetings of the stockholders shall be held at the principal office of the Corporation or at such other place as may be stated in the notice or waiver of notice of any such meeting.

Section 2. Annual Meetings: The annual meeting of the stockholders of the Corporation shall be held in each year on a date in January or February fixed annually by the Board.

Section 3. Special Meetings: Special meetings of the stockholders may be called by the President, the Board of Directors, or the holders of not less than one-tenth of all the shares entitled to vote at the meeting.

Section 4. Notice of Meetings: Written notice stating the place, day and hour of every of the stockholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than fifty (50) days previous thereto, either personally or by mail, by or at the direction of the President, the Secretary, or by the persons calling the meeting, to each stockholder of record entitled to vote at the meeting. Meetings may be held without notice if all the stockholders entitled to vote are present in person or by proxy or if notice is waived by those not present, either before or after such meeting.

Section 5. Action Without a Meeting: Any action which is required or which may be taken at a meeting of the stockholders may be taken without a meeting if consent in writing

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setting forth the action so taken shall be signed by all of the stockholders entitled to vote with respect to the subject matter thereof.

Section 6. Quorum: Any number of stockholders together holding a majority of the stock of the Corporation entitled to vote, who shall be present in person or represented by proxy at any meeting, shall constitute a quorum for the transaction of business. If less than a quorum shall be present or represented by proxy at the time for which a meeting shall have been called, the meeting may be adjourned from time to time by a majority of the stockholders present or represented by proxy, without notice other than by announcement at the meeting, until a quorum shall be present or represented by proxy.

Section 7. Voting: At any meeting of the stockholders, each stockholder entitled to vote shall have one vote, in person or by proxy, for each share of stock owned by him.

Section 8. Telephonic Meetings: Stockholders may participate in a stockholders' meeting by telephone or similar communications equipment provided all stockholders participating in the meeting can hear one another, and participating by such means shall constitute presence in person at the meeting. A written record must memorialize the actions the stockholders take at such meetings.

ARTICLE II

Directors

Section 1. General Provisions: The business and affairs of the Corporation shall be managed by the Board of Directors, and, except as otherwise expressly provided by law or by the Articles of Incorporation, or by these By-Laws, all of the powers of the Corporation shall be vested in said Board.

Section 2. Number and Qualifications: The Board of Directors shall be a minimum of three (3) and a maximum of six (6) in number. Directors need not be stockholders or residents of the State of Virginia. A majority of the directors actually elected and serving at the time of any given meeting shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

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Section 3. Election of Directors: The directors shall be elected at the annual meeting of stockholders and shall hold their offices until the next annual meeting or until their successors are elected. Vacancies in the Board of Directors may be filled by a majority of the remaining directors, though less than a quorum, including vacancies arising by an increase of not more than two in the number of directors. Vacancies in the Board of Directors arising by removal of a director only may be filled by the stockholders having voting power to elect directors.

Section 4. Meetings of Directors: Meetings of the Board of Directors shall be held at places within or without the State of Virginia. Immediately following the annual meeting of the stockholders, an annual meeting of the Board of Directors shall be held for which no notice, beyond announcement at said stockholders' meeting, shall be required. Other meetings of the Board of Directors shall be held at times fixed by resolution of the Board, or upon the call of the President or of any two directors. The Secretary, or officer performing his duties, shall give at least 24 hours' notice by telegraph, letter or telephone of all meetings of the Directors other than the Annual Meeting; provided, that notice need not be given of regular meetings held at times and places fixed by resolution of the Board. Meetings may be held at any time without notice if all the Directors are present, or if those not present waive notice either before or after the meeting.

Members of the Board of Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting. When such a meeting is conducted by means of a conference telephone or similar communications equipment, a written record shall be made of the action taken at such meeting.

Section 5. Action Without a Meeting: Any action which is required or which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before such action by all of the directors, or all of the members of the committee, as the case may be.

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ARTICLE III

Executive Committee

Section 1. Designation of Committee: The Board of Directors, whenever it sees fit, by a resolution adopted by a majority of the number of directors fixed by these By-Laws, may designate an Executive Committee which shall consist of not less than two directors, one of whom shall be President.

Section 2. General Powers: The Executive Committee, when the Board of Directors is not in session and except as prohibited by law, shall have all powers vested in the Board of Directors by law or by these By-Laws; provided, that the Executive Committee shall report at the next regular or special meeting of the Board of Directors all action which the Executive Committee may have taken since the last regular or special meeting of the Board of Directors.

ARTICLE IV

Advisory Boards

Section 1. Creation and Purpose: The board of directors may create such advisory boards, committees or groups as it may deem appropriate or desirable. The purpose of each such board, committee or group (herein called an "advisory board") shall be to advise and to consult with any or all of the directors, officers, employees and agents of the Corporation upon or with respect to such matters as the board of directors may deem appropriate or desirable.

Section 2. Effect of Advice: Any advice, recommendation or position given made or taken by an advisory board or with respect to any matter shall be given such consideration as the individual or individuals receiving the same may deem appropriate but shall not be binding upon such individual or individuals or the Corporation. No advisory board shall have any authority or power to direct or to participate in the management of the business and affairs of the Corporation.

Section 3. Members: Each advisory board shall consist of two or more individuals. Members of the advisory boards shall be appointed by, and shall service at the pleasure of, the board of directors. Members of advisory boards shall possess such qualifications for their service as such as the board of directors may deem appropriate.

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Section 4. Compensation: Members of advisory boards shall be entitled to receive such compensation for services rendered and reimbursement for expenses incurred by them as such as the board of directors may deem appropriate.

Section 5. Independent Contractors: Members of advisory boards shall be deemed to be independent contractors with and agents of the Corporation and not officers or employees of the Corporation.

Section 6. Meetings: Meetings of advisory boards may be called at any time by the President or the board of directors. Meetings of advisory boards may be held at the registered office or the principal office of the Corporation or at such other place, within or without the State of North Carolina as the individual or individuals calling the same may designate. Notice of the date, time and place of meetings shall be given to members of advisory boards in such manner and at such time as the individual or individuals calling the same may deem appropriate. The President or a director shall attend and act as chairman of meetings of advisory boards. The procedure at meetings of advisory boards shall be determined by the chairman.

ARTICLE V

Officers

Section 1. Election: The officers of the Corporation shall consist of a President, a Secretary and a Treasurer, and persons elected to such other offices as may be established from time to time by the Board of Directors. All officers shall be elected by the Board of Directors, and shall hold office until their successors are elected and qualify. Vacancies may be filled at any meeting of the Board of Directors. Any two offices may be combined in the same person as the Board of Directors may determine, except that the President and Secretary may not be the same person.

Section 2. Removal of Officers: Any officer of the Corporation may be removed summarily with or without cause, at any time by the Board of Directors.

Section 3. Duties: The officers of the Corporation shall have such duties as generally pertain to their offices, as well as such powers and duties as from time to time shall be conferred upon them by the Board of Directors.

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ARTICLE VICapital Stock

Section 1. Issue of Certificates of Stock: Certificates of capital stock shall be in such form as may be prescribed by the Board of Directors and may (but need not) bear the seal of the Corporation or a facsimile thereof. All certificates shall be signed by the President or a Vice President, and by the Secretary or an Assistant Secretary or any other officer by these By-Laws or a resolution of the Board of Directors.

Section 2. Transfer of Stock: The stock of the Corporation shall be transferable or assignable on the books of the Corporation by the holders in person or by attorney on surrender of the certificate or certificates for such shares duly endorsed, and, if sought to be transferred by attorney, accompanied by a written power of attorney to have the same transferred on the books of the Corporation.

Section 3. Lost, Destroyed and Mutilated Certificates: The holder of stock of the Corporation shall immediately notify the Corporation of any loss, destruction, or mutilation of the certificate therefore, and the Board of Directors may in its discretion cause one or more new certificates for the same number of shares in the aggregate to be issued to such stockholder upon the surrender of the mutilated certificate, or upon satisfactory proof of such loss or destruction accompanied by the deposit of a bond in such form and amount and with such surety as the Board of Directors may require.

Section 4. Transfer Books: For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. In lieu of closing the stock transfer books, the Board of Directors, may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than fifty days prior to the date on which the particular action, requiring such determination of stockholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders,

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or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

ARTICLE VII

Indemnification and Elimination of Liability

Section 1. Indemnification of Directors and Officers: Except as provided in Section 2 of this Article, the Corporation shall indemnify every individual made a party to a proceeding because he is or was a director or officer against liability incurred in the proceeding if: (i) he conducted himself in good faith; and (ii) he believed, in the case of conduct in his official capacity with the Corporation, that his conduct was in its best interests and, in all other cases, that his conduct was at least not opposed to its best interests (or in the case of conduct with respect to an employee benefit plan, that his conduct was for a purpose he believed to be in the interests of the participants of and beneficiaries of the plan); and (iii) he had no reasonable cause to believe, in the case of any criminal proceeding, that his conduct was unlawful.

Section 2. Indemnification Not Permitted: The Corporation shall not indemnify any individual against his willful misconduct or a knowing violation of the criminal law or against any liability incurred by him in any proceeding charging improper personal benefit to him, whether or not by or in the right of the Corporation or involving action in his official capacity, in which he was adjudged liable by a court of competent jurisdiction of the basis that personal benefit was improperly received by him.

Section 3. Effect of Judgment or Conviction: The termination of a proceeding by judgment, order, settlement or conviction is not, of itself, determinative that an individual did not meet the standard of conduct set forth in Section 1 of this Article or that the conduct of such individual constituted willful misconduct or a knowing violation of the criminal law.

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Section 4. Determination and Authorization: Unless ordered by a court of competent jurisdiction, any indemnification under Section 1 of this Article shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the individual is permissible in the circumstances because: (i) he met the standard of conduct set forth in Section 1 of this Article and, with respect to a proceeding by or in the right of the Corporation in which such individual was adjudged liable to the Corporation, he is fairly and reasonably entitled to indemnification in view of all of the relevant circumstances even though he was adjudged liable; and (ii) the conduct of such individual did not constitute willful misconduct or a knowing violation of the criminal law.

Except as hereafter provided, such determination shall be made: (i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or (ii) if such a quorum cannot be obtained, by a majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; or (iii) by special legal counsel selected by the board of directors or its committee in the manner heretofore provided or, if such a quorum of the board of directors or its committee in the manner heretofore provided or, if such a quorum of the board of directors cannot be obtained and such a committee cannot be designated, selected by a majority vote of the board of directors (in which selection directors who are parties may participate); or (iv) by the shareholders, but shares owned by or voted under the control of individuals who are at the time parties to the proceeding may not be voted on the determination. Notwithstanding the foregoing, if a majority of the board of directors at the time consists of individuals who were not directors before the conduct resulting in the proceeding, such determination shall be made by special legal counsel selected: (i) by the individual who is a party to the proceeding and by the board of directors or its committee in the manner heretofore provided or, if such a quorum of the board of directors cannot be obtained and such a committee cannot be designated, a majority vote of the board of directors (in which selection directors who are parties may participate); or (ii) if the individual who is a party to the proceeding and the board of directors or its committee shall fail or be unable to make such selection, by independent legal counsel to the individual who is a party to the proceeding and by independent legal counsel to the Corporation.

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Authorization of indemnification, evaluation as to reasonableness of expenses and determination and authorization of advancements for expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those selecting such counsel.

Section 5. Advance for Expenses: The Corporation may pay for or reimburse the reasonable expenses incurred by any individual who is a party to a proceeding in advance of final disposition of the proceeding if (i) he furnished the Corporation a written statement of his good faith belief that he has met the standard of conduct described in Section 1 of this Article and a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that indemnification of such individual in the specific case is not permissible; and (ii) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. An undertaking furnished to the Corporation in accordance with the provisions of this Section shall be an unlimited general obligation of the individual furnishing the same but need not be secured and may be accepted by the Corporation without reference to financial ability to make repayment.

Section 6. Indemnification of Employees and Agents: The Corporation shall indemnify and advance expenses to members of advisory committees to the same extent provided in this Article with respect to directors and officers. The Corporation may, but shall not be required to, indemnify and advance expenses to employees and to agents, other than members of advisory committees, to the same extent as provided in this Article with respect to directors and officers.

Section 7. Elimination of Liability of Directors and Officers: Except as provided in Section 8 of this Article, in any proceeding brought by or in the right of the Corporation or brought by or on behalf of shareholders of the Corporation, a director or officer of the Corporation shall not be liable in any monetary amount for damages arising out of or resulting from a single transaction, occurrence or course of conduct.

Section 8. Liability of Directors and Officers Not Eliminated: The liability of a director or officer shall not be eliminated in accordance with the provisions of Section 7 of this

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Article if the director or officer engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

Section 9. Definitions: In this Article:

“Director” and “officer” mean an individual who is or was a director or officer of the Corporation, as the case may be, or who, while a director or officer of the Corporation is or was serving at the Corporation’s request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director or officer shall be considered to be serving an employee benefit plan at the Corporation’s request if his duties to the Corporation also impose duties on, or otherwise involves services by, him to the plan or to participants in or beneficiaries of the plan.

“Individual” includes, unless the context requires otherwise, the estate, heirs, executors, personal representatives and administrators of an individual.

“Corporation” means the Corporation and any domestic or foreign predecessor entity of the Corporation in a merger or other transaction in which the predecessor’s existence ceased upon the consummation of the transaction.

“Expenses” includes but is not limited to counsel fees.

“Liability” means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

“Official capacity” means: (i) when used with respect to a director, the office of the director in the Corporation; (ii) when used with respect to an officer, the office in the Corporation held by him; or (iii) when used with respect to an employee or agent, including a member of an advisory committee, the employment or agency relationship undertaken by him on behalf of the Corporation. “Official capacity” does not include service for any foreign or domestic corporation or other partnership, joint venture, trust, employee benefit plan or other enterprise.

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“Party” includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

“Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

Section 10. Provisions Not Exclusive: As authorized by the Virginia Stock Corporation Act, the provisions of this Article are in addition to and not in limitation of the specific powers of a corporation to indemnify directors and officers set forth therein. If any provision of this Article shall be adjudicated invalid or unenforceable by a court of competent jurisdiction, such adjudication shall not be deemed to invalidate or otherwise affect any other provision hereof or any power of indemnify which the Corporation may have under the Virginia Stock Corporation Act or other laws of the Commonwealth of Virginia.

ARTICLE VIII

Miscellaneous Provisions

Section 1. Seal: The seal of the Corporation shall contain the name of the Corporation and shall be in such form as shall be approved by the Board of Directors.

Section 2. Fiscal Year: The fiscal year of the Corporation shall be as established by the Board of Directors.

Section 3. Examination of Books: The Board of Directors shall, subject to the laws of the State of Virginia, have power to determine from time to time whether and to what extent and under what conditions and limitations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders.

Section 4. Contracts, Checks, Notes and Drafts: All contracts, checks, notes, drafts, and other orders for the payment of money shall be signed by such persons as the Board of Directors from time to time may authorize.

Section 5. Voting of Stock Held: Unless otherwise provided by resolution of the Board of Directors, the President, the Vice President, the Secretary or the Treasurer may from time to time appoint an attorney or attorneys as agent or agents of the corporation to cast in the

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name of the corporation the votes which the corporation may be entitled to cast as a stockholder or otherwise in any other corporation, any of whose stock or securities of such other corporations, or to consent in writing to any action by any such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed on behalf of the corporation and under its corporate seal, or otherwise, such written proxies, consents, waivers, or other instruments as may be necessary or proper in the premises; or the President, the Vice President, the Secretary or the Treasurer may himself attend any meeting of the holders of stock or other securities of any such other corporation and thereat vote or exercise any or all other powers of the corporation as the holder of such stock or other securities of such other corporation.

Section 6. Amendment of By-Laws: These By-Laws may be amended, altered, or repealed by the Board of Directors at any meeting. The stockholders shall have the power to rescind, alter, amend, or repeal any By-Laws and to enact By-Laws which, if so expressed by the stockholders, may not be rescinded, altered, amended, or repealed by the Board of Directors.

Section 7. Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action for breach of duty to the Corporation or the Corporation's shareholders by any current or former officer or other employee or agent or director of the Corporation, (iii) any action against the Corporation or any current or former officer or other employee or agent or director of the Corporation arising pursuant to any provision of the Virginia Stock Corporation Act (as it may be amended from time to time) or the Articles of Incorporation or these Bylaws (as either may be amended from time to time), or (iv) any action against the Corporation or any current or former officer or other employee or agent or director of the Corporation governed by the internal affairs doctrine shall be the United States District Court for the Eastern District of Virginia, Richmond Division, or in the event that court lacks jurisdiction to hear such action, the Circuit Court for the County of Henrico, Virginia unless neither court has personal jurisdiction over an indispensable party named as a defendant. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance to enforce the foregoing provisions. Any person or entity

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purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article VIII, Section 7. If any action the subject matter of which is within the scope of this Article VIII, Section 7 is filed in a court other than a court located within the Commonwealth of Virginia (a “Foreign Action”) by or in the name of any shareholder, such shareholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the Commonwealth of Virginia in connection with any action brought in any such court to enforce the provisions of this Article VIII, Section 7 and (ii) have service of process made upon such shareholder in any such action by service upon such shareholder’s counsel in the Foreign Action as agent for such shareholder.

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE MATTER OF:)
ESTATE OF PAUL B. BARRINGER, II)
HAMPTON BARRINGER LUZAK,)
Plaintiff,)
v.)
MERRILL B. LIGHT, MERRILL U.)
BARRINGER, as Personal Representative)
of the Estate of Paul Brandon Barringer, II)
J. RANDOLPH LIGHT, JR.,)
MERRILL B. LIGHT as putative trustee)
of the Paul B. Barringer, II, Revocable)
Trust dated December 4, 1998, and)
Merrill B. Light as Trustee of the)
Merrill Barringer Light Revocable Trust,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2016-CP-07-1919

**DEFENDANT MERRILL LIGHT'S
MOTION AND MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT
AS TO FEBRUARY 28, 2012 WILL AND
AMENDMENT TO THE PAUL B.
BARRINGER, II REVOCABLE TRUST**

Defendant Merrill Light hereby moves pursuant to South Carolina Rules of Civil Procedure 56 for summary judgment as to the validity of the will and trust executed by Paul B. Barringer, II, on February 28, 2012. There is no question of fact as to any material issue, and Defendants are entitled to judgment as a matter of law.¹ This motion seeks summary judgment as to the Seventh, Eighth, and Ninth Causes of action as they apply to the February 28, 2012, will and trust executed by Paul B. Barringer, II.

¹ Defendant Light previously moved for summary judgment as to all causes of action. Based on new deposition testimony, she submits this motion for summary judgment as to only the February 28, 2012, will and trust amendment.

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UNDISPUTED FACTS²

In 2011, Mr. Barringer and his wife, Defendant Merrill Barringer, began working with attorney John Jolley, an estate planning lawyer who worked near their home in Hilton Head, to update their estate plan—which consisted of prior wills and trusts dated December 4, 1998.

At Christmas in 2011, Paul Barringer “was having trouble with his memory and he was having trouble speaking.” HL Deposition, p. 169. Plaintiff Hampton Luzak attended a family meeting on February 18, 2012, with her father, Paul Barringer, her sister, Merrill Light, and her husband, Kevin Luzak. HL Depo., p. 182. At that meeting, Mr. Barringer was not upset with Kevin about the direction of CFRC. HL Deposition, p. 37. Neither Plaintiff nor her husband were present when Paul Barringer executed his estate planning documents on February 28, 2012, and July 20, 2012. HL Deposition, p. 222. Plaintiff testified that she did not know whether any of Defendants did anything wrong prior to Mr. Barringer’s execution of these testamentary documents in February of 2012. HL Depo., pp. 241-42.

In Para. 12 of his Affidavit, Kevin Luzak, stated that, starting in early 2011, Mr. Barringer needed help with numbers and that his memory started to deteriorate, while his behavior became erratic.

Tom Evans, COO for Coastal Forest Resources Company, sent an email on September 9, 2011, that Mr. Barringer was very confused and not himself. In an email in February of 2011, Randy Light expressed concern that Mr. Barringer was “experienc[ing] different health issues that

² These facts are accepted as true for the purpose of this motion only.

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effect [sic] his judgement regarding everyday decisions personally and business wise.”³ In January of 2012, Mr. Light emailed that Mr. Barringer was exhibiting “irrational behavior.”⁴

Mr. Barringer executed a Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998, on February 28, 2012. Lawyer Jolley met with Mr. and Mrs. Barringer, and their insurance and wealth management agent, Robert Slane, during late 2011 and early 2012. Mr. Jolley met extensively with Mr. Barringer on multiple occasions and had no reservations that Mr. Barringer was being unduly influenced or lacked capacity to execute the testamentary documents on February 28, 2012. Jolley Deposition, pp. 47-48. Mr. Slane participated in a number of those discussions and had no concerns about Mr. Barringer’s capacity or being unduly influenced. He testified that Merrill Light was present at one meeting, because she brought her father from a doctor’s appointment. When asked what role she played, he replied, “None.” Slane Deposition, pp. 120-124. Rebecca Bostick, Mr. Jolley’s long-time paralegal met with Mr. Barringer on February 28, 2012, and witnessed his execution of the testamentary documents. She saw no evidence of confusion or lack of cognition. Bostick Deposition, pp. 46-47.

The medical evidence concerning events prior to February 28, 2012 include the medical records and testimony of Mr. Barringer’s internal medicine doctor, Paul Long. His testimony and his medical records reflect that Mr. Barringer first complained of memory problems or cognitive dysfunction to Dr. Long at an office on November 23, 2011. Long Deposition, pp. 22-23 and Defendant’s Exhibit at tab 6. In a medical record, Dr. Long stated that, based on tests conducted

³ When asked what he was referring to in this email, Mr. Light testified that the combination of Mr. Barringer’s diagnosis with prostate cancer and the failure of his son Victor’s business placed stress on Mr. Barringer. Deposition of Randy Light, Day 2, pp. 174-175.

⁴ Mr. Light testified that the 2012 email referred to the same issues, Mr. Barringer’s prostate cancer and concerns about his son. Randy Light Depo., Day 2, pp. 185-186.

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by the Mind Center, Mr. Barringer had a prediction that he had significant dementia in the 60 percent range. In his testimony, Dr. Long explained that the test he used at the time, which he no longer uses today, was not an effective measure to determine dementia. It merely existed to give the percentage of chance that a person *might* have dementia. Dr. Long testified that he gave very little weight to this test. Long Deposition, pp. 23-30.

Dr. Long had a letter, dated December 27, 2011, from Dr. William Garret, a neurologist to whom he had referred Mr. Barringer. Dr. Long interpreted Dr. Garret's findings as Mr. Barringer had some difficulty with abstract reasoning but he did not "have any significant dementia." Long Deposition, pp. 32-34; Defendant's Exhibit Tab 7A.

On January 3, 2012, Mr. Barringer again visited Dr. Long complaining of "short term memory loss." Dr. Long testified that he performed another version of the test used by the Mind Center and the prediction was that Mr. Barringer had a 37% change of having significant dementia. He further testified that, because he gave him the Mini Mental Examination and Mr. Barringer scored a perfect score, he was not concerned about his cognition. Long Deposition, pp. 31-32; Defendant's Exhibit Tab 7.

On January 26, 2012, Dr. Long testified that Mr. Barringer's cognition was improved and that Dr. Garrett had sent him a letter in which he said that he did not believe that Mr. Barringer had Alzheimers Disease, and that he (Dr. Long) agreed with that assessment. Long Deposition, pp. 35-36; Defendant's Exhibit Tab 8. On February 16, 2012, Mr. Barringer visited Dr. Long again expressing concerns about his heavy urination. There is no mention of dementia or cognitive issues. Long Deposition, pp. 36-37; Defendant's Exhibit Tab 9. On February 27, 2012, Mr. Barringer returned because of his urinary issues, and the only mention on the medical record is Dr. Long's note that says "he has dementia but it is mild according to the test that we give." Long

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Deposition, pp. 37-38; Defendant's Exhibit Tab 10. On the following day, Mr. Barringer executed his First Amended Will and First Trust Amendment, both of which are claimed to be invalid in this action.

Prior to February 28, 2012, Merrill Light held no fiduciary positions with regard to her father. Plaintiff presented no evidence of undue influence in her opposition to Mrs. Light's first motion for summary judgment but simply bundled together circumstances that occurred after February 28, 2012. Similarly, Plaintiff presented no evidence of mistake with regard to the execution of the February 28, 2012 will and trust.

The February 28, 2012, Will and Trust Amendment treated all three Barringer children, including the Plaintiff, Hampton Luzak exactly the same. If Mr. Barringer predeceased Mrs. Barringer, all of his assets went to Mrs. Barringer, and, on Mrs. Barringer's death, if she failed to exercise the power of appointment given to her by Mr. Barringer to treat the children unequally, each child, including Plaintiff, was to receive one-third of Mr. Barringer's remaining assets.⁵

LEGAL ARGUMENTS

I. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER LACKED TESTAMENTARY CAPACITY ON FEBRUARY 28, 2012, WHEN HE EXECUTED HIS WILL AND TRUST AMENDMENT.

Plaintiff has claimed in her Seventh Cause of Action that "Decedent Paul Barringer was mentally incompetent and suffering from Alzheimer's disease and/or other dementia and lacked the requisite mental capacity to make valid amendments to his Revocable Trust" on February 28, 2012.⁶ Plaintiff's only evidence is her testimony that Mr. Barringer was confused when she saw him on February 18, 2012, and Plaintiff's husband's vague statements that Mr. Barringer had told

⁵ See February 28, 2012 Will and Trust Amendment attached hereto as Exhibits A and B respectively.

⁶ Plaintiff has no claim that the February 28, 2012 Will was invalid, but Defendant's arguments apply to both the Will and the Trust Amendment and are asking that the Court find that Decedent had testamentary capacity to execute each of them.

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him that he was having trouble with numbers and his memory.⁷ The only medical evidence prior to February 28, 2012, is that Mr. Barringer reported to Dr. Paul Long that he was having cognitive issues and that Dr. Long sent him to the Mind Center, a center focused on cognitive issues, and then to Dr. William Garrett, who, after examining Mr. Barringer, informed Dr. Long that he did not believe that Mr. Barringer had Alzheimer's disease. Dr. Garrett also told Dr. Long that he did not recommend any treatment for Mr. Barringer at that time. Plaintiff presented no evidence that Mr. Barringer did not know his children, his assets, or the persons to whom he wanted to leave his estate. Plaintiff has no witness at the time of the testamentary act supporting her position. Defendant, as demonstrated above, has several witnesses that have attested to Mr. Barringer's capacity at the time of the testamentary act.

In Hairston v. McMillan, 387 S.C. 439, 445-446, 692 S.E.2d 549 (Ct. App. 2010), the Court stated:

"[T]he party alleging incompetence bears the burden of proving incapacity **at the time of the transaction** by a preponderance of the evidence." In re Thames, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct. App. 2001) (emphasis added). The test of whether a testator had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. In re Estate of Weeks, 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997). "[T]he legal test for determining whether or not a person has sufficient mental capacity to dispose of his property by will does not include the proviso that he must have a reasonable basis on which to found his like or dislike of the natural objects of his bounty." Id. "Further, the capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." Id.

"A person may execute a valid will, even if he or she is not competent to transact ordinary, everyday affairs." Speegle v. Oswald, 774 So.2d 595, 597 (Ala. Civ. App. 2000). "Ability to transact important business, or even ordinary business, is not the legal standard of testamentary capacity, though it seems to be quite generally but mistakenly supposed, outside the ranks of the legal profession, that a capacity to transact important business is the criterion of fitness to make a valid will." In re Nelson's Estate, 227 Cal. App. 2d 42, 38 Cal. Rptr. 459, 466-67 (1964). [Emphasis added.]

⁷ Mr. Luzak's vague and self-serving statements are likely barred by the Dead Man's Statute, but for purposes of this motion, Defendant accepts them as true.

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That Court also referenced “the somewhat limited requirements for testamentary capacity” in upholding the lower court’s determination that the Decedent has legal capacity to execute his Will. 387 S.C. at 446.

As set forth hereinabove, the burden is on the Plaintiff to prove that Paul Barringer lacked testamentary capacity “at the time of the transaction.” She has deposed all the witnesses to the February 28, 2012 testamentary acts, and all of them confirm that Mr. Barringer possessed testamentary capacity “at the time of the transaction” and at all other times when they dealt with him.

In her memorandum opposing Defendant’s prior motion for summary judgment as to all of Mr. Barringer’s wills and trusts from 2012 through 2015, Plaintiff stated:

Mental capacity is determined based on the circumstances and evidence around the time of execution of donative documents. Testimony of doctors and others, along with evidence of the behavior of the testator or settlor/donor, can be relevant in showing the existence or lack of mental capacity. The examination of mental capacity is not determined only by examining evidence at the execution of the document, but rather on facts and circumstances surrounding execution, both before and after the actual execution. The case law is replete with circumstances where the court examined relevant evidence of capacity both before and after the execution of the document...

However, none of the cases cited by Plaintiff in her memorandum support her position. She cited Gaddy v. Douglas, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004) (testamentary capacity not raised in the trial court so was not discussed in the decision); Macauley v. Wachovia Bank, 351 S.C. 287, 569 S.E.2d 371 (Ct. App. 2002) (Court discussed contractual capacity and not testamentary capacity but held “[t]he party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence” and reversed the Probate Court’s finding of no contractual capacity.); Lee v. Lee’s Heirs, 4 McCord 183 (S.C. 1827) (Court held that eccentricity, however great, is not the same as insanity and thus is insufficient to invalidate a

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will.); Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993) (“First, the contestant argues that the testator did not understand his will and for this reason lacked capacity. The test of capacity necessary to make a will is whether the testator knew his estate, the objects of his affections and to whom he wished to give his property.... Moreover, the presumption arises upon proof of due execution of the will that the testator knew its contents, and this is sufficient to establish testator’s knowledge thereof....”).

Plaintiff has failed to present any evidence that Paul Barringer did not know his children, his assets, or the persons to whom he wanted to leave his property on February 28, 2012, or at any time relevant to the testamentary actions in this case. Despite the many doctors, colleagues, and family members around Mr. Barringer at or near the time of execution, Plaintiff and her husband are the *only* people that do not believe Mr. Barringer had testamentary capacity at this time.

Because Plaintiff has not even a scintilla of evidence to support her claim that the Decedent lacked testamentary capacity at the time that he executed his Will and Trust Amendment on February 28, 2012, Defendants are entitled to summary judgment as to the Seventh Cause of Action as it relates to these testamentary transactions.

II. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER WAS UNDULY INFLUENCED BY DEFENDANT MERRILL LIGHT OR ANY OTHER PERSON TO EXECUTE THE FEBRUARY 28, 2012 WILL AND TRUST AMENDMENT.

In Hembree v. Estate of Hembree, 311 S.C. 192, 196-197 (Ct. App. 1993), the Court held:

The mere existence of influence is not enough to void a will as all influences are not unlawful. Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946). For influence to vitiate a will, it must destroy free agency and amount to force and coercion. Todd v. Woodard, 297 S.C. 264, 376 S.E.2d 276 (1989); Calhoun, 277 S.C. at 532, 290 S.E.2d at 418; Smith, 209 S.C. at 83, 39 S.E.2d at 129. Circumstances **must unmistakably and convincingly** point to the substitution of

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another's will for that of the testator. Calhoun, 277 S.C. at 530, 290 S.E.2d at 417 (emphasis added). In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution. See Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948); Byrd v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983).

However, even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion. Calhoun, 277 S.C. at 532, 290 S.E.2d at 419. The court's directing of a verdict in that instance is proper. Id.

In Swiger v. Smith, 426 S.C. 408, 415, 827 S.E.2d 200, 203 (Ct. App. 2019), the Court of Appeals affirmed the grant of summary judgment in an action attempting to set aside a will for undue influence and explained the burden of proof with regards to Rule 56: “Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.” See, also, Russell v. Wachovia Bank, N.A., 353 S.C. 108, 218, 578 S.E.2d 329, 334 (2003). As Swiger further held, “In order for the will to be void due to undue influence, ‘[a] contestant must show that the influence was brought directly to bear upon the testamentary act.’” Swiger, supra. See, also, Russell, supra.

Plaintiff has presented no evidence, much less than more than a scintilla of evidence, of any influence (undue or otherwise) brought to bear on Paul Barringer’s execution of the February 28, 2012, Will and Trust Amendment.⁸ There is no evidence of threats or force wielded against Mr. Barringer by anyone, at any time. There is no evidence that Mr. Barringer’s visitation and/or communications were restricted in any way prior to February 28, 2012. Indeed, Merrill Light did not become a co-trustee of Mr. Barringer’s Revocable Trust until he executed the Trust Amendment on February 28, 2012, so she had no fiduciary relationship to even create an inference

⁸ In Plaintiff’s Memorandum in Opposition of Merrill Light’s Motion for Summary Judgment as to all causes of action, she fails to mention any evidence of alleged undue influence that preceded the February 28, 2012 testamentary actions. See Memo, pp. 22-35.

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of undue influence. Even if she did, Mr. Barringer had many unhampered opportunities to change his will and trust after February 28, 2012, and actually took advantage of those opportunities by amending his trust three times thereafter. As the case law concludes, that unhampered opportunity vitiates any undue influence that might have occurred in February of 2012. See Russell v. Wachovia Bank, N.A., 353 S.C. at 220, 578 S.E.2d at 335 (2003) (affirmed the grant of summary judgment as to no undue influence); Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946).

Robert Slane, John Jolley, and Rebecca Bostick, who met with, discussed, and witnessed the execution of the February 28, 2012, will and trust amendment with Mr. Barringer, have all testified that Mr. Barringer's February 28, 2012, testamentary actions were what Mr. Barringer determined and wanted to do at that time and that no one exerted any influence, undue or otherwise, over Mr. Barringer to force him to execute these documents.

South Carolina law is clear that the "contestant must show that the influence was brought directly to bear upon the testamentary act," and Plaintiff has no evidence of this. Defendants are clearly entitled to summary judgment as to the Eighth Cause of Action as it applies to the February 28, 2012, Will and Trust Amendment.

III. PLAINTIFF HAS PRESENTED NO EVIDENCE THAT PAUL BARRINGER WAS MISTAKEN WHEN HE EXECUTED THE FEBRUARY 28, 2012, WILL AND TRUST AMENDMENT.

Plaintiff's Memorandum in Opposition to Defendant Merrill Light's Motion for Summary Judgment as to all causes of action stated, with regard to its Ninth Cause of Action alleging that Mr. Barringer and Plaintiff were victims of mistake that should vitiate the February 28, 2012, Will and Trust Amendment:

If a testator or settlor/donor suffers from mistake, the part of the will resulting from mistake is invalid. South Carolina Probate Code section 62-2-601(B) authorizes the reformation of a will that results from mistake; South

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Carolina Trust Code section 62-7-415 authorizes the reformation of a trust that results from mistake.⁹

When Plaintiff's Memorandum gets to the "Facts Supporting Mistake," it sets forth no specific facts regarding any of the wills or trust amendments at issue in this matter.¹⁰ There is no allegation of any "mistake" with regard to the February 28, 2012 testamentary documents, and there could not be, because those documents left all assets in equal shares to the Barringers' three children, including the Plaintiff.

Defendants are clearly entitled to summary judgment as to the Tenth Cause of Action as it applies to the February 28, 2012 Will and Trust Amendment of Paul Barringer.

CONCLUSION

Plaintiff brought this action nearly (5) years ago based "upon information and belief." During these many years, Plaintiff has been unable to present even a scintilla of competent evidence to support her claims that the will and trust amendment executed by Paul B. Barringer, II, on February 28, 2012, are invalid. Because Plaintiff has not, and cannot, meet her burden with respect to the February 28, 2012, documents, Defendant Merrill Light is entitled to summary judgment as to the Seventh, Eighth, and Ninth Causes of action as they relate to the validity of these documents.

[SIGNATURE ON FOLLOWING PAGE]

⁹ Memo, p. 8.
¹⁰ Memo, p. 36.

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Respectfully submitted,

s/ Alice F. Paylor

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**Attorneys for Defendant Merrill B.
Light, individually and as Trustee**

Charleston, South Carolina
May 14, 2021

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EXHIBITS A & B TO BE FILED UNDER SEAL

February 28, 2012 Will and Trust Amendment

1 IN THE COURT OF COMMON PLEAS **ROA 003860**
2 FOR THE FOURTEENTH JUDICIAL CIRCUIT
3 FOR THE STATE OF SOUTH CAROLINA
4 BEAUFORT COUNTY

5 IN THE MATTER OF:

6 ESTATE OF PAUL B. BARRINGER, II,

7 HAMPTON BARRINGER LUZAK,

8 Plaintiff,

9 vs.

CASE NO. 2016-CP-07-1919

10 MERRILL B. LIGHT, MERRILL

11 U. BARRINGER, AS PERSONAL

12 REPRESENTATIVE OF THE ESTATE

13 OF PAUL BRANDON BARRINGER, II,

14 J. RANDOLPH LIGHT, JR.,

15 MERRILL B. LIGHT AS PUTATIVE

16 TRUSTEE OF THE PAUL B.

17 BARRINGER, II, REVOCABLE TRUST

18 DATED DECEMBER 4, 1998 AND

19 MERRILL B. LIGHT AS TRUSTEE

20 OF THE MERRILL BARRINGER LIGHT

21 REVOCABLE TRUST,

22 Defendants.

23 DEPONENT: HAMPTON BARRINGER LUZAK

24 DATE: JUNE 12, 2019

25 TIME: 9:39 A.M.

 LOCATION: ROSEN HAGOOD, LLC
 151 MEETING STREET
 SUITE 400 HARBOR ROOM
 CHARLESTON, SC 29401

 REPORTED BY: GLORIA ANZALONE, RPR
 CLARK & ASSOCIATES, INC.
 P.O. BOX 73129
 CHARLESTON, SC 29415
 843-762-6294
 WWW.CLARK-ASSOCIATES.COM

ROA 003860

1 A. Yes, ma'am. **ROA 003861**

2 Q. And you testified in the next line that
3 neither Merrill, Randy nor your mother ever said
4 anything about disagreeing with your husband's
5 direction for the company, correct?

6 A. Yes. Kevin had a family meeting in
7 February, he talked about the direction of the
8 company in great detail. Merrill, my father, my
9 mother, no one ever disagreed, and they gave him the
10 go to start moving in that direction. This is in
11 February of 2012. Then there were board meetings.
12 Kevin also talked about the direction of the company
13 and everyone was fine about that. There was also a
14 letter from my dad talking about how he was excited
15 about the direction in real estate and it was a great
16 new path, something like that, for the company to go
17 in.

18 Q. But it was your father who got upset
19 with Kevin, your husband, correct?

20 A. My father and --

21 MR. GILREATH: Object to the form
22 of that question. Go ahead.

23 THE WITNESS: My father in 2011,
24 2012 was not upset with Kevin about the
25 direction, it was when he was be **ROA 003861**

1 Kevin. And he mentioned in the spring when ROA 003862
2 all on the beach together he wanted Kevin to take
3 over responsibility for the family and the company.

4 Q. And you're saying that was in 2012, is
5 that right?

6 A. That was when we were on the beach in
7 March of 2012, all of us.

8 Q. So did you personally observe your
9 father having erratic behavior and losing his memory
10 in 2011?

11 A. Yes.

12 Q. Tell me what you saw.

13 A. It was at Christmas and he was having
14 trouble with his memory and he was having trouble
15 speaking. And I asked my mother, you know, what
16 should we be doing? You know, he was unusually
17 quiet, and that's when she said the comment about
18 Victor and how it crushed my father. Victor had no
19 remorse with what happened with Coastal Lumber.

20 Q. Do you recall when your father was
21 diagnosed with prostate cancer?

22 A. I know it was in the year 2011.

23 Q. And was he having issues with that at
24 the same time?

25 A. He was having an issue with r ROA 003862

1 Kevin Luzak prepared regarding the February **ROA,003863**
2 family discussion about a possible long-term strategy
3 for CFRC and Kevin Luzak's compensation. Were you
4 present at that discussion?

5 A. At these family strategy meeting. But
6 with discussions about Kevin's compensation, he was
7 just trying to get references on what he should be
8 paid for. This \$1 million salary thing is made up
9 because Kevin did not ask for the million dollars,
10 it's Travis Bryant's salary that he's getting, so I
11 don't know why that keeps coming up about Kevin
12 asking for a million dollars and getting greedy.

13 Q. I did not ask you anything about Kevin
14 asking for a million dollars.

15 (More than one person spoke at the same time.)

16 BY MS. PAYLOR:

17 Q. My question to you was were you present
18 at the February 18, 2012 family discussion?

19 A. Right.

20 Q. You were present?

21 A. Right.

22 Q. And what was discussed about the
23 long-term strategy for CFRC?

24 A. Kevin had a strategy for going into
25 real estate, also for tax purposes with the **ROA,003863**

1 have hurt you or your stock value? **ROA 003864**

2 A. Diluting me by 5 percent and hiding it
3 from me.

4 Q. How did she dilute you by 5 percent?

5 A. She gave Travis Bryant 5 percent with a
6 loan from the company, so it was basically for free.
7 And she, Travis and Randy hid the transaction for
8 over a year from the shareholders.

9 Q. And just to be clear, when your father
10 executed his estate planning documents in 2012 and
11 thereafter, you were not present when he signed those
12 documents, correct?

13 A. The July 20th?

14 Q. All of his documents, all of his estate
15 planning documents that he executed after 2012, you
16 were not present when he executed them, correct?

17 A. Correct.

18 Q. And your husband wasn't there when he
19 executed them, correct?

20 A. Correct.

21 Q. And you did not see him or have any
22 contact with him on the days that he signed those
23 documents, correct?

24 A. Correct. I believe my mother under
25 oath said that Merrill and Randy Light were involved. **ROA 003864**

1 lawyer, King & Spalding, writing a letter saying ROA-003865
2 there was going to be a suit, a lawsuit, if he didn't
3 get the information he wanted?

4 A. Michael Smith was hired to be special
5 counsel for an investigation into the allegations of
6 my husband and he was hired in the summer of 2012.
7 So I don't know what you're talking about; I don't
8 know.

9 Q. So that doesn't refresh your memory?

10 A. No.

11 Q. Did you allege that anybody did
12 anything improper prior to February of 2012?

13 A. Before February --

14 Q. And I'm not trying to trick you, I'm
15 just saying February of 2012 is when your father made
16 an amendment to his trust and I believe executed a
17 new will, he appointed Merrill as co-trustee, and I'm
18 talking prior to that do you believe that anybody did
19 anything wrong?

20 A. I don't know.

21 Q. Well, are you contenting in this
22 lawsuit, are you making any factual allegation at
23 trial that anybody did anything wrong prior to that
24 time?

25 A. I'm sorry, can you be specific ROA-003865

1 the question?

ROA 003866

2 Q. I understand you don't know, but I'm
3 trying to find out what's going to be the basis of
4 your claims at, you know, at trial. So I'm trying to
5 find out if you contend, do you believe, do you
6 assert that anybody did anything wrong prior to
7 February of 2012?

8 A. I don't know.

9 Q. Do you know of any evidence? Do you
10 know of any evidence that anybody did anything wrong?

11 MR. GILREATH: Object to form, that
12 calls for a legal conclusion. Send us an
13 interrogatory.

14 THE WITNESS: I don't know the
15 answer to that. My sister has 19 actions
16 against her, not one was dismissed. I
17 think they speak for themselves.

18 BY MR. TWOMBLEY:

19 Q. I'm trying to talk about facts to
20 support the allegations, not just the allegations.
21 Can you tell us anything today that you believe that
22 anyone did wrong prior to February of 2012?

23 MR. GILREATH: Object to the form
24 of that --

25 THE WITNESS: I don't know

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**DEPOSITION EXCERPTS OF JOHN JOLLEY
TO BE FILED UNDER SEAL**

ROA 003867

STATE OF SOUTH CAROLINA IN THE COURT OF
COUNTY OF BEAUFORT COMMON PLEAS, FOURTEENTH
JUDICIAL CIRCUIT

IN THE MATTER OF:

Estate of Paul Brandon
Barringer, II,

Case No. 2016-CP-07-1919

Hampton B. Luzak,

Plaintiff,

vs.

MERRILL B. LIGHT, et al.,

Defendants.

VIDEOTAPED

DEPOSITION OF:

ROBERT CLARK SLANE AND
30(B)(6) DEPOSITION OF
THE WEALTH TRANSFER GROUP, INC.

DATE:

FRIDAY, NOVEMBER 15, 2019

TIME:

9:50 A.M. - 4:20 P.M.

PLACE:

180 PARK AVENUE NORTH, SUITE 2A
WINTER PARK, FLORIDA 32789

STENOGRAPHICALLY

REPORTED BY:

ANEESHA WILLIAMS, RPR

1 what Mr. Jolley -- the work Mr. Jolley did?

2 A. No.

3 Q. Did you ever tell anybody that you had any
4 concern about Mr. Jolley?

5 A. No.

6 Q. Did you ever express to Mr. Barringer that he
7 should use a different attorney other than Mr. Jolley?

8 A. No.

9 Q. If you had thought that Mr. Barringer needed to
10 use a different attorney or if there was a problem with
11 Mr. Jolley, would you have communicated that to
12 Mr. Barringer?

13 A. Yes.

14 Q. Were you surprised that Mr. Barringer no longer
15 wanted to use Mr. McBryde and was using a different
16 attorney?

17 A. No.

18 Q. Is that pretty common in your work, that a
19 client will, you know, have one lawyer for one period of
20 time, and then at a later point in life they'll have a
21 different lawyer, and then at a later point, perhaps,
22 even a different lawyer?

23 A. It is common.

24 Q. You were asked about these meetings that you
25 had with Mr. Barringer. And correct me if I'm wrong, but

1 it was my understanding that although you could not
2 remember which one, you do recall that one of the four
3 meetings Merrill Light was present; is that correct?

4 A. Yes.

5 Q. Okay. And so even though you can't remember
6 which one, that wouldn't necessarily mean that at the
7 other three meetings she was not present?

8 A. I know -- I know she was not present at the
9 July 2011 meeting --

10 Q. Okay.

11 A. -- in Linville, North Carolina.

12 Q. But you only have a memory of her being at one
13 meeting?

14 A. I have a memory of her being at least at the
15 February or April meeting.

16 Q. Okay.

17 A. Because she brought Mr. Barringer to
18 Mr. Jolley's office, is what I remember.

19 Q. While she was present at whichever meeting it
20 was, what role did she play in the meeting, if any?

21 A. None.

22 Q. During the time period -- and I'll just --
23 let's just say 2011 and 2012, which is pretty active
24 involvement -- your involvement with Mr. Barringer, did
25 you talk to Mr. Barringer on -- you know, on the phone

1 and in person about his financial affairs and his estate
2 planning?

3 A. I'm sure I did.

4 Q. And did you talk about some of the tax concepts
5 and issues that you -- you thought should be implemented
6 or might be considered?

7 A. Yes.

8 Q. Did you ask Mr. Barringer questions?

9 A. Yes.

10 Q. Did he ask you questions?

11 A. Yes.

12 Q. Was he able to respond to your questions?

13 A. Yes.

14 Q. Did he ask appropriate questions?

15 A. Yes.

16 Q. Was there anything at all about any of your
17 interactions or involvement with him in 2011 and 2012
18 that caused you concern about whether or not he was in
19 the position to sign estate planning documents?

20 A. Nothing that caused me concern.

21 Q. Did you ever have concern that someone was
22 influencing him to do something with respect to his
23 estate plan that he did not want to do?

24 A. No.

25 Q. Was he able to have private conversations with

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Page 123

1 you?

2 A. Yes.

3 Q. Did anyone restrict his ability, to the best of
4 your knowledge, to talk with you and to ask you
5 questions?

6 A. No.

7 Q. If you would have thought, or if you would have
8 had some concern that Mr. Barringer was not acting freely
9 and voluntarily, that he was being forced to do something
10 that he really did not want to do, what would you have
11 done?

12 A. I can only address that in what has happened in
13 prior circumstances with other clients; and in a
14 circumstance, I alerted the children in a hospital that I
15 thought the attorney was doing something inappropriate.

16 Q. Another way to say that might be, you would
17 have reached out to other people in the person's family
18 and expressed your concern to them?

19 MR. GILREATH: Object to the form of that question.

20 THE WITNESS: At least that and, perhaps, advising
21 any other advisors or friends.

22 BY MR. TWOMBLEY:

23 Q. I'm sorry, "advising any advisors" --

24 A. Advisors or friends.

25 Q. Okay. All right. Did you have a specific

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1 discussion with Mr. Barringer about his decision to make
2 Merrill Light a co-trustee of his trust?

3 A. I'm sure I did.

4 Q. Do you know why he chose her as opposed to
5 the -- the other children, other than the fact that her
6 physical -- Merrill Light's physical proximity was closer
7 to Mr. Barringer? Is there any other reasons?

8 A. Closest, local, qualified person; just a local
9 person.

10 Q. You told us about when you talked to Mr. Luzak
11 in 2012, I believe, July, and he told you that he thought
12 Paul had lost his mind.

13 Was he being -- Was that a serious comment, or
14 was he -- said it in jest, or how did you interpret it?

15 A. I interpreted it as serious. I understand when
16 he called me, it was very early Hawaii time. I was on
17 vacation with my family, and he informed me he had been
18 fired; and his statement was, "I think Paul has lost his
19 mind," and so I was shocked.

20 Q. Did you have any interaction with Mr. Barringer
21 after that call? I guess you did. You talked about the
22 golf course presentation.

23 A. I know I spoke to him at The Floridian in
24 Stuart; and, again, I don't remember if that was '13 or
25 '15. I think it was '15. I can't recall any other

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITIN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II.

HAMPTON B. LUZAK,

Plaintiff,

vs.

CASE NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U. BARRINGER, AS
PERSONAL REPRESENTATIVE OF THE ESTATE OF PAUL
BRANDON BARRINGER, II, J. RANDOLPH LIGHT, JR.,

(Case caption continued on Page 2.)

VOLUME II

VIDEO

DEPOSITION OF: JAMES RANDOLPH LIGHT, JR.

DATE: August 21, 2019

TIME: 9:33 AM

LOCATION: Home2 Suites by Hilton
3658 Trask Parkway
Beaufort, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: KELLY B. BAEKELANDT, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 different health issues that affect his judgment
2 regarding everyday decisions personally and
3 business-wise. It appears that this makes it
4 harder for you to exercise your authority as
5 president of CFRC if he will not listen. Merrill
6 and I have absolutely no say in the operations of
7 CFRC which PBB has made clear on many occasions.
8 Merrill and I have total confidence in your ability
9 to guide the company in the direction that will
10 benefit the stockholders the most. Our fee is --
11 our fear is PBB is going to attempt some irrational
12 move that will harm the profitability of the
13 company simply to satisfy his desire to underwrite
14 Victor or keep the stockholders graveling.

15 Is that an e-mail that you sent on
16 February 21st?

17 A. I did.

18 Q. Okay. Now, tell me a little bit about
19 what you're talking about there about the health
20 issues that affect Mr. Barringer's judgment on --
21 regarding everyday decision -- decisions.

22 A. He had been diagnosed with prostate
23 cancer in the fall of -- or late fall of 2010, so
24 he was having to deal with that. He also at the
25 same time his son Victor Barringer was experiencing

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1 financial difficulty within his company. He was
2 very stressed on that. He had made reference on
3 several occasions that -- not only to myself but to
4 Merrill, Travis Bryant, Tom Evans, and I don't know
5 who else, that the company should take over
6 Victor's debt, which I understand was sizable, and
7 put him back into the -- make him an officer of the
8 company. As far -- and -- and Merrill discussed
9 this with Hampton and I can't say that she
10 discussed it with Kevin, I'm not -- I don't -- I
11 don't know that one way or the other, but they were
12 not in favor of Victor -- or -- or, first of all,
13 the company taking on debt, having Victor come back
14 in the company. And one of Paul's phrases was when
15 he would follow up on this, he never followed
16 through on it, was it's my company and I'll do
17 what -- I'll do what I want with it.

18 The combination of the diagnosis of
19 prostate cancer, his son whose business was in --
20 not doing well at all, and I basic -- probably
21 misworded that, I -- I wouldn't choose those words
22 today because it -- no, he was under stress based
23 on those two things.

24 As far as my statement about the
25 operations, Merrill had been on the board for I

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1 (Counsel conferring off the record.)

2 BY MR. GILREATH:

3 Q. I don't -- I don't need to go to that
4 one. Excuse me, that's the wrong one. I want to
5 go to Tab 85. I got mixed up there. So you can
6 close it.

7 MR. TWOMBLEY: Did you say 85, Jim?

8 MR. GILREATH: 85, yeah.

9 BY MR. GILREATH:

10 Q. This is an e-mail from you to Robert
11 Slane on January the 3rd, 2012, and -- regarding
12 the Barringer trust. And you say: Robert, Merrill
13 was asking me if Barringers are considering her
14 with power of attorney for them in the near future.
15 She is concerned that PBB, being Mr. Barringer, is
16 starting to show more irrational behavior on
17 certain family issues which is distributing to all
18 siblings. And then you make some comment about
19 close friend.

20 Tell -- tell me what you're talking
21 about there about this irrational behavior.

22 A. Well, first of all, I don't -- I don't
23 remember sending the e-mail.

24 Q. But that is -- that is an e-mail
25 address you used, Randy at Merrill -- Merrill --

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1 A. Yeah. Yes.

2 Q. -- Merrillg@aol.com [sic]?

3 A. It was, yeah.

4 Q. Okay.

5 A. I -- I'm sure it related to the same
6 situation as I mentioned before, Paul had been
7 diagnosed with prostate cancer in 2011. He had an
8 operation that did not go as well as planned in
9 twenty --

10 (Counsel conferring off the record.)

11 THE WITNESS: -- no, 2010 is when he
12 was diagnosed. 2011 was when he was -- had the
13 operation. He had complications from that --

14 (Counsel conferring off the record.)

15 THE WITNESS: -- and he was still very
16 concerned about his son Victor who evidently his
17 business wasn't going as well as he had -- and --
18 and Paul was still had -- still making the comments
19 that the company should take over Victor's debt and
20 bring him into the company. That's the only --
21 only thing I can think of of why I would have
22 written that.

23 BY MR. GILREATH:

24 Q. Okay. Now, I believe you just
25 testified a few minutes ago that Mr. Barringer was

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1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT
3 IN THE MATTER OF:
ESTATE OF PAUL BRANDON BARRINGER, II

4 HAMPTON B. LUZAK,

5 Plaintiff,

6 vs. C/A NO. 2016-CP-07-1919

7
8 MERRILL B. LIGHT, MERRILL U. BARRINGER,
AS PERSONAL REPRESENTATIVE OF THE ESTATE
9 OF PAUL BRANDON BARRINGER, II, J. RANDOLPH
LIGHT, JR., MERRILL B. LIGHT AS PUTATIVE
10 TRUSTEE OF THE PAUL B. BARRINGER, II
REVOCABLE TRUST DATED DECEMBER 4, 1998,
11 AND MERRILL B. LIGHT AS TRUSTEE OF THE
MERRILL BARRINGER LIGHT REVOCABLE TRUST,
12 Defendants.

13
14 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
15 COUNTY OF BEAUFORT

16 IN THE MATTER OF:
17 ESTATE OF PAUL B. BARRINGER, II
HAMPTON B. LUZAK,

18 Plaintiff,

19 vs. C/A NO. 2019-CP-07-01253
and 2019-CP-07-01254

20 MERRILL U. BARRINGER,
21 Defendants.

22 VIDEO
23 DEPOSITION OF: REBECCA L. BOSTICK

24 DATE/TIME: December 3, 2020 at 2:30 PM

25 (TITLE PAGE CONTINUED ON NEXT PAGE)

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1 BY MR. GILREATH:

2 Q. Is that the time frame --

3 MR. TWOMBLEY: Same objection.

4 BY MR. GILREATH:

5 Q. -- bracket when you saw him and last
6 time you met him?

7 MS. KIRK: You can answer.

8 THE WITNESS: Mr. Barringer was a long-
9 time client of the firm. It is hard for me to
10 determine when exactly I met him.

11 BY MR. GILREATH:

12 Q. Do you have any recollection of the
13 last time you saw him?

14 A. Approximately five years ago. I'm not
15 sure of the exact date ever.

16 Q. According to the record in this case
17 Mr. Jolley I believe prepared a first, second,
18 third and fourth amendment to his revocable trust.
19 Do you remember working on those?

20 A. Yes, sir.

21 Q. And the first amendment was in February
22 of 2012 and the fourth amendment was in February of
23 2015. So that kind of brackets a three-year
24 period.

25 During that time especially towards the

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1 end of it which would have been in February of 2015
2 did you notice any change in Mr. Barringer?

3 A. As far as --

4 Q. Just the way he handled himself, how he
5 remembered things, those kinds of things.

6 A. No. He was a very engaging gentleman.

7 Q. What?

8 A. He was a very engaging gentleman.

9 There was -- there was no issue there.

10 Q. A very engaging gentleman?

11 A. Yes.

12 Q. Tell me exactly what you mean by that.

13 A. That means that he and John had lengthy
14 conversations. There was no doubt that there
15 was -- he was fully competent and had no issues
16 whatsoever from my standpoint.

17 Q. That he was fully competent and had
18 what?

19 A. And that he -- he could certainly make
20 decisions.

21 Q. Okay. Are you -- were you around
22 or have anything to do with a certificate
23 of competency that Mr. Jolley prepared for
24 Mr. Barringer to sign?

25 MS. KIRK: Object to the form.

ROA 003881

HAMPTON B. LUZAK vs MERRILL B. LIGHT and MERRILL U. BARRINGER
2016-CP-07-1919 - PAUL LONG, M.D.

1 IN THE COURT OF COMMON PLEAS
2 STATE OF SOUTH CAROLINA
3 COUNTY OF BEAUFORT

4 IN THE MATTER OF ESTATE OF PAUL
5 BRANDON BARRINGER, II,
6 HAMPTON BARRINGER LUZAK,
7 Plaintiff,

8 vs. CIVIL ACTION NUMBER
9 2016-CP-07-1919

10 MERRILL B. LIGHT, MERRILL U. BARRINGER, AS
11 PERSONAL REPRESENTATIVE OF THE ESTATE OF
12 PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT,
13 JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE
14 PAUL B. BARRINGER, II REVOCABLE TRUST DATED
15 DECEMBER 4, 1998, AND MERRILL B. LIGHT AS
16 TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE
17 TRUST,
18 Defendants.
19 -----/

20 IN THE MATTER OF ESTATE OF PAUL
21 BRANDON BARRINGER, II,
22 HAMPTON BARRINGER LUZAK,
23 Plaintiff,
24 vs. CIVIL ACTION NUMBER
25 2019-CP-07-01253
 2019-CP-07-01294

26 MERRILL U. BARRINGER,
27 Defendant.
28 -----/

29 VIDEO DEPOSITION OF
30 PAUL M. LONG, M.D.
31 JANUARY 13, 2021



1 A Which is a complication of all the
2 types.

3 Q Okay. It also says he has trouble
4 urinating sometimes and it is somewhat
5 debilitating.

6 Why would trouble urinating have a
7 debilitating effect on someone?

8 A Well, it depends on the trouble you're
9 having. I had prostate surgery five weeks ago
10 and I urinate basically every hour around the
11 clock, that's a complication of that. It
12 happens to a lot of different people. What
13 happens is they urinate in small amounts and
14 they have to do it all the time. They get
15 urgency incontinence, and I'm not sure what I
16 was referring to in that statement, but that is
17 not a uncommon complication.

18 Q Okay. He's clearly having some type of
19 problem with his urinary function?

20 A Yes, mm-hmm.

21 Q Okay. All right. If we turn to the
22 next record on Tab 6, this is the November 23rd,
23 2011 record. Now, in this record, I -- this is
24 the first reference I saw to dementia or any
25 type of cognitive dysfunction.



1 Do you have any memory Mr. Barringer
2 having any type of memory problem or cognitive
3 dysfunction prior to November 23, 2011?

4 A No. I don't have any memory of that.
5 Prior to this?

6 Q Correct.

7 A No.

8 Q Okay. All right. Now, it says, number
9 one, dementia.

10 Tell me what it means or what you meant
11 when you wrote dementia here?

12 A Well, dementia is a spectrum, and you
13 can use a scale of 1 to 10. Some people leave
14 their keys in the car and can't remember
15 people's names, that's very common. 50 percent
16 of people over the age of 85 have some dementia.
17 Maybe two and a half percent of the population
18 gets dementia at an early age. It can go up to
19 number ten, they can't remember anything, they
20 don't time, place, and person, they don't know
21 anybody around them. So it is spectrum.

22 Q Okay.

23 A And, you know, back at this time, it
24 was more like leaving the keys in the car and
25 not remembering somebody's name at a cocktail



1 party.

2 Q Okay.

3 A You know, that kind of deal. So I
4 would classify that back here -- I mean, it -- I
5 didn't think it was critical back here.

6 Q Okay. It says here next that you sent
7 him down to the mind center, briefly tell us
8 what -- what is the mind center and why did you
9 send Mr. Barringer there?

10 A We had -- we were getting very busy at
11 this particular time in our office and so we set
12 up a clinic just to have our patients that had
13 dementia, and we treated a lot of patients with
14 dementia, and we had a -- you know, consults
15 with neurologists if we needed it. And just to
16 handle their medication and explain to the
17 family what's going on.

18 Q Okay.

19 A We also had a spot where people that
20 were obese, that we would send them and talk
21 about diets and things.

22 Q Okay. What age -- would a urinary
23 problem or inability to urinate, could that
24 affect someone's cognition?

25 A Absolutely.



1 Q Okay. Why is that and how is that?

2 A If somebody comes into my office and
3 they are, let's say, 80, and they have become
4 demented in some form, the first thing you do is
5 a urinalysis.

6 Q And why is that?

7 A Because urine infections in elderly
8 people cause dementia.

9 Q Okay.

10 A It's a -- we see that -- I mean, I bet
11 I see it five, six, eight times a week.

12 Q Okay.

13 A People coming in from a nursing home or
14 from the home and they're demented, we treat the
15 urinary infection and the dementia goes away.

16 Q Okay. On November 23rd of 2011, did
17 you know exactly why Mr. Barringer was
18 exhibiting these signs of dementia?

19 A No.

20 Q Okay. And let's go back to the note.
21 The note says you sent him to the mind center
22 and they inscribed 31 percentile, 30th
23 percentile, and a 55th percentile and a 15th
24 percentile. This gives him a prediction that he
25 has significant dementia in the 60 percent



1 range.

2 I've been trying to do this math for a
3 while, can you tell me what you mean by or how
4 you came up with that 50 percent number?

5 A That is a good question. I don't have
6 a clue. That was in vogue at this time to do a
7 test called CANS-MCI, computer -- C-A-N --
8 assisted neurological testing something, mild
9 cognitive impairment, and that -- it didn't tell
10 you if you had dementia. A mini medical exam
11 tells if have you dementia, but this gives it
12 the percentage of chance that you might have
13 dementia.

14 Q Okay.

15 A That's why it fell out of vogue.

16 Q Okay.

17 A I didn't -- I don't put much weight in
18 it.

19 Q Okay.

20 A It was done, it was in vogue to do it.
21 Came out of the state of Washington and
22 everybody did it, but I'm not sure anybody does
23 it now. I don't know.

24 Q Okay. Thank you for clarifying that.

25 The note says, this gives him a prediction that



1 he had significant dementia in a 60 percent
2 range.

3 Do you know how you came up with the
4 60 percent number?

5 A Yeah. Basically, I did a
6 miscalculation there. He's got -- there are
7 three things that checks executive function and
8 two others, and one was 30 and the other was 30
9 and I think I added them together. Well, you
10 can't do that.

11 Q Okay.

12 A It is 30 percent for executive function
13 and 30 percent for cognitive. What are the
14 percentage chance that an individual has
15 dementia? It's 30 for executive function and
16 30 percent for cognitive. I'd have to look at
17 the test again, but that is my rec -- remember.

18 Q Okay. So if I heard you correctly --
19 do you need to take that?

20 A Can I get this?

21 Q Sure. We'll go off the record.

22 THE VIDEOGRAPHER: Off the video.

23 (Whereupon, a break was taken at
24 4:10 p.m.)

25 THE VIDEOGRAPHER: Back on video.



1 (Back on the record at 4:10 p.m.)

2 BY MR. TWOMBLEY:

3 Q Okay. So if I understood you
4 correctly, the 60 percent number is a
5 miscalculation?

6 A It has to be because it wasn't -- as I
7 recall, and what it says here, it's 30 percent.

8 Q Okay. All right.

9 A As I recall. Do you have a copy of
10 that test?

11 Q No. That was going to be my next
12 question to you. We --

13 A A year ago, whenever the -- we were
14 looking at this, I tried my best to find it and
15 I -- we don't have it.

16 Q Okay. All right. Well, let me just
17 ask you based on your memory and your -- you
18 know, the time you spent evaluating
19 Mr. Barringer in November of 2011, did
20 Mr. Barringer have significant dementia, in your
21 opinion, by any criteria?

22 A I don't think he had significant
23 dementia, he clearly had Swiss cheese, being
24 great for a while and occasionally, like I said,
25 he forgot things, he forgot people's names on



1 occasion. They call that swiss cheese because
2 it comes and goes.

3 Q Okay. All right. It says here under
4 the -- under the -- under the P for soap, I told
5 him, since he really cannot calculate or do
6 anything with short-term memory, we will start
7 him on Aricept or Namenda. He is to see Will
8 Garret, who is a neurologist.

9 What did you mean by he was not able to
10 calculate?

11 A Well, generally, we ask people to count
12 backwards from 100 by sixes or sevens or fives
13 or whatever, and, you know, he had a difficult
14 time doing that.

15 Q Okay. Other than that, were you able
16 to have an intelligent conversation with
17 Mr. Barringer?

18 A I had many. I mean, the guy was a
19 genius. He was one of the brightest people I've
20 ever talked to. We had long talks about
21 airplanes and airplane engines. As a
22 licensed -- I have an airplane. And we spent a
23 lot of time talking about aviation. You know,
24 he -- he had a very deep understanding of a lot
25 of very complicated things.



1 Q Okay.

2 A Excuse me.

3 Q And would you describe -- I mean, do
4 you remember having those conversations --

5 A I do.

6 Q -- with Mr. Barringer during this
7 period of time?

8 A I can take ten patients over the last
9 40 years that I remember having discussions
10 with, and these are people that are out of the
11 mainstream, they are like Paul. He was amazing.

12 Q Okay.

13 A I do remember talking with him.

14 Q It says, down at the bottom, that you
15 prescribed him Cipro.

16 What was the Cipro for?

17 A Urinary tract.

18 Q Okay. And did you believe he may have
19 had a urinary tract infection?

20 A That's why I gave it to him.

21 Q Okay.

22 A I thought that may have been the case.

23 Q Okay. And that --

24 A Because he -- can I go back?

25 Q Sure.



1 A Says he had to urinate all the time,
2 six to ten times a night. So that means he's
3 not getting much sleep, he's sleep deprived.
4 His urinary tract was a mess. It was a mess.

5 Q Okay. Okay. Let's turn to the next
6 tab, Tab No. 7. This is the first note I was
7 able to find in 2012. It says at the top,
8 you'll note, it says second note.

9 Do you know why it says second note?

10 A I don't have any idea.

11 Q Okay. If you -- if you read this note
12 for a moment, down about three quarters of the
13 way down, now you say that he scored a 37
14 percentile above the dementia scale.

15 What does that mean? Says we checked
16 three different scales and this took us about an
17 hour.

18 A Yeah. This was another CANS-MCI thing,
19 test, and basically, I can imagine that this is
20 37 percent chance of having significant
21 dementia.

22 Q Okay. All right. Down at the bottom,
23 it says, he can now pass a mini mental with a
24 perfect score of 30 so I do not see where we
25 need to do anything more than what we are doing.



1 Do you remember administering the mini
2 mental to Mr. Barringer during this time period?

3 A I can't put myself that day and what
4 chair, but I did mini mental exams and I was
5 surprised that he had a perfect score of 30.

6 Q Okay. All right. But you wouldn't
7 have put this in your record unless you had
8 actually performed the test and he scored a 30?

9 A Absolutely would not have done that.

10 Q Okay.

11 MR. GILREATH: Objection to the
12 form of the question.

13 THE COURT REPORTER: Who was that?

14 MR. TWOMBLEY: That was Jim
15 Gilreath.

16 BY MR. TWOMBLEY:

17 Q Why did you put in your record that he
18 can pass a mini mental with a perfect of 30?

19 A It says -- because we did it.

20 Q Okay.

21 A I wouldn't have put it in there.

22 Q Okay. Okay. All right. That's great.

23 A I don't know where that is.

24 Q Okay. If you'll turn to the -- turn to
25 the next document, it's 7-A, and do you have the



1 7-A there?

2 A I've got something that says A.

3 Q Okay. Are --

4 A December 27th?

5 Q Yeah. This is the December 27th, 2011
6 letter from Dr. William Garret to you about Paul
7 Barringer.

8 Previously, we saw that you referred
9 Mr. Barringer to Dr. Garret; is that right?

10 A That's right.

11 Q Okay. And do you remember receiving
12 this letter from Dr. Garret?

13 A Apparently I did. I don't remember
14 that, but --

15 Q Okay.

16 A -- apparently I sent it to him.

17 Q Okay.

18 A Yeah.

19 Q On the third page under the impression
20 section, Dr. Garret says he does have some
21 difficulty with abstract reasoning, which is a
22 documented on his neurological exam, but
23 overall, he has excellently preserved short-term
24 memory and visual spacial difficulty, which
25 would make the diagnosis a primary degenerative



1 dementia unlikely.

2 What did that mean to you?

3 A Well, it means that -- like I said,
4 there is -- dementia is not one disease, it is a
5 spectrum. It means that, you know, he had some
6 little bits -- small amount of difficulty, but
7 he could pass a mini mental exam. He doesn't
8 have any significant dementia.

9 Q Okay. And is that consistent with your
10 memory of Mr. Barringer during this time?

11 A Yes, it is.

12 Q Okay. If you turn to the next record,
13 this is a January 26, 2012 medical record of you
14 for Mr. Barringer. It says here that he is
15 markedly improved, he had a dementia study which
16 was very abnormal. We treated him and he is
17 markedly improved.

18 A Where are we now?

19 Q This is number eight.

20 A Oh, yeah. 1/26/12?

21 Q Yes. 1/26/12.

22 A Okay.

23 Q How had Mr. Barringer improved in
24 between the time you saw him -- the last time
25 you saw him and this visit on January --



1 A I must have been referring to the
2 CANS-MCI test when I said abnormal, because that
3 was abnormal.

4 Q Okay.

5 A Improved, I mean, I can only think of
6 what I was thinking about back then and I -- you
7 know, when you're improved, your short-term
8 memory is improved and he -- you know, he can
9 score a perfect 30. If you have any significant
10 dementia, nobody can score a perfect 30.

11 Q Gotcha. Down at the bottom, it says, I
12 probably spent one hour and thirty minutes with
13 him and his doctors on the telephone today.

14 Was that a significant period of the
15 time for you to spend with one of your patients?

16 A Not to spend with this gentleman.

17 Q Okay.

18 A I mean, I hate to keep saying this, but
19 this is not the ordinary citizen.

20 Q I gotcha. It says, about halfway down,
21 Dr. Will Garret -- it says that we sent him to
22 Dr. Will Garret who felt that he did not have
23 Alzheimer's disease.

24 A Correct.

25 Q Did you agree with that in January --



1 A Yes, I did. Absolutely.

2 Q Okay. All right. If we'll turn to the
3 next document, which is Tab No. 9, and I would
4 ask you to briefly review the record. And I
5 don't see any mention or reference during this
6 visit, which is February 16th of 2012, of any
7 type of the dementia or any type of memory or
8 cognitive problem.

9 Do you see anything?

10 A Yeah, I just read that. I didn't
11 mention anything.

12 Q Okay. If he was having cognitive
13 problems or memory disorder on February 16,
14 2012, is that something you would have recorded?

15 A Probably.

16 Q Okay. It says here you put him back on
17 Cipro, 500 milligrams, is that for the same
18 urinary --

19 A Yes. Yes.

20 Q Okay. And it says he -- at the top,
21 the patient had been urinating heavily all
22 night.

23 Where did you get that information?

24 A I don't remember. It could have been
25 his wife.



1 Q Okay.

2 A It was probably from Paul.

3 Q Okay. The note says, at the top, Paul
4 comes in for care.

5 A Right.

6 Q I notice some say Paul comes in with
7 his wife.

8 Would you have noted who the patient
9 came in with?

10 A Not necessarily.

11 Q Okay.

12 A I mean, I might -- it might have been
13 one or ten people and I didn't put it down.

14 Q Okay. Let's turn to the next record,
15 which is February the 27th of 2012. Take a
16 moment and review this record. The only
17 reference I see is at the end of the last --
18 first paragraph, it says, he has dementia but it
19 is mild according to the test that we give.

20 Do you see anything else dealing with
21 any memory problem?

22 A There's nothing on the note that I --
23 except for that.

24 Q Okay. If there had been anything else
25 other than a mild problem, would you have



1 recorded that in your record?

2 A Almost certainly.

3 Q On the next record behind Tab 11 is a
4 visit from March 15th of 2012.

5 Do you see that?

6 A Yes, 3/15/12?

7 Q Yes, sir.

8 A Yep.

9 Q On March the 15th of 2012, did you
10 notice any type of cognitive problems with
11 Mr. Barringer?

12 A I didn't put anything down, so I
13 didn't.

14 Q Okay. And that's my next question, if
15 you had noticed any type of cognitive problem,
16 is that something you would have recorded in
17 your record?

18 A I would think I would.

19 Q Okay. All right. Now, Dr. Long, I
20 want to go out of order in the exhibits for a
21 moment and I want to ask you to turn to page 35
22 or to Tab 35.

23 A Thirty-five.

24 MR. MOLSTER: Is there a page
25 number for that, Ashley?



ROA 003900

ROA 003900

ROA 003901

BARRINGER, PAUL

11/23/11

Paul comes in with multiple problems. He is 81 years old.

1. Dementia.

S: He has dementia.

O: We sent him down to The Mind Center and they inscribed a 31st percentile, a 30th percentile, and a 55th percentile, and a 15% percentile.

A: This gives him a prediction that he has significant dementia in a 60% range. He is not depressed.

P: I told him since he really cannot calculate or do anything much with short-term memory that we are going to start him on Aricept 5 mg a day and Namenda 5 mg twice a day. He is to see Dr. Wil Garrett, who is a neurologist and we will start him on a diet and I am going to meet with him and his wife.

2. Frequency of urination.

S: He had seed implants for cancer of the prostate. He now has to urinate all the time, six to ten times a night but it is getting better.

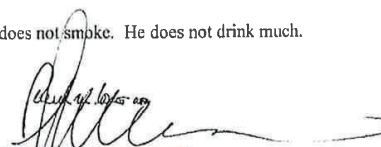
O: The left testicle is tender. The rectal examination shows a small prostate.

A: Epididymitis.

P: We are going to give him Cipro 500 mg b.i.d. for eight days and an anti-inflammatory medication. Dr. DeLisio from Richmond, Virginia is the urologist.

This patient has chronic Coumadin because he has Factor V Leiden deficiency, which is a major problem but we will keep him on the Coumadin.

He does not smoke. He does not drink much.


Paul M. Long, M. D.

PML:ksc

D: 11/27/11 T: 11/30/11

Job # 11120

ROA 003901

ROA 003902

7

ROA 003902

ROA 003903

BARRINGER, PAUL

01/03/12 (second note)

Paul comes in for care.

1. Cancer of the prostate.

S: As above. He had seed implants after being found to have cancer of the prostate. Details are in the chart.

O: As above. Rectal examination shows prostate is flat. Testicles are not tender.

A: Marked frequency of urination following seed implants.

P: I talked to Dr. DeLisio at the University of Virginia, who considers himself the patient's urologist. He says he wants to see him and he will see him on January 19, 2012 and, in the meantime, he does not want him to do anything. We did a urinalysis and it was normal.

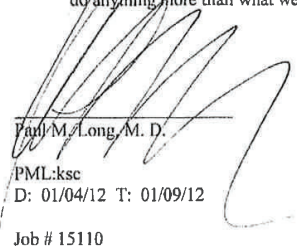
I spent 15 minutes on the telephone with Dr. DeLisio. I spent 1 hour face-to-face with Mr. Barringer.

2. Dementia.

S: He scored a 37th percentile above the dementia scale. We checked three different scales.

This took us about 1 hour.

P: We put him on Namenda 5 mg twice a day, Aricept 10 mg. He is on a fairly special diet that takes away inflammatory foods. I went over all of this again. He now can pass a Mini Mental Examination with a perfect score of 30. So, I do not see where we need to do anything more than what we are doing.


Paul M. Long, M.D.

PML:ksc

D: 01/04/12 T: 01/09/12

Job # 15110

ROA 003903

ROA 003904

A

ROA 003904

ROA 003905



REYNOLDS STREET:
 Thomas M. Stanley, MD, F.A.A.N., F.A.C.P.
 J. Michael Hemphill, MD, F.A.A.N.
 Joel A. Greenberg, MD, F.A.A.N.
 Eric M. Pasternak, MD, PhD
 Katherine Moratz, MD
 Jessica F. Carlier, MD
 Angie Mayo, NP

WATERS AVENUE:
 Herbert F. Sanders, MD
 Julie L. Mikoli, MD
 Richard A. Bodziner, MD
 E. Frank Lafranchina, MD
 William T. Garrett, MD
 Wallette G. Wisener, NP
 Wendy Holland, NP

December 27, 2011

NAME: Paul Barringer
 DOB:

Paul M Long, MD
 PO Box 21743
 Hilton Head, SC 29925

Dear Dr. Long:

I had the pleasure of seeing your patient in neurological consultation today for evaluation of his cognitive impairment.

As you know, he is a very pleasant 81-year-old right-handed white male who has a very interesting family history. A lot of his family members were physicians' including his dad who was Dr. Barringer who donated the Barringer Wing at the University of Virginia. This wing is where the neurology department and clinic are housed and so I spent many of my formative years in his father's building.

In any event, Mr. Paul also shares several friends in common with me from Augusta including Mr. Edo Douglas.

Mr. Paul states that he has noted some difficulty with his cognition for the last one to two years. He primarily notes difficulty remembering people's names as well as having some word finding difficulty. He does feel that these symptoms have progressed slightly. He also may lose his train of thought on occasion and overall states that he does not feel that his mind works as well as it once did. He states that his gait has not changed appreciably and he denies any significant abnormal movements. He has not developed any hallucinations and there is no significant incontinence.

He apparently has already undergone an MRI scan of the brain, however this study is not available for review today.

Additional historical information is contained in the body of his chart and reviewed and documented on his worksheet dated 12/27/2011.

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Luzak - Wm. Garrett MD 0148

ROA 003905

ROA 003906

On examination, he is very well developed and well nourished in no acute distress. Cardiovascular exam is regular rate and rhythm. There are no carotid bruits.

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Luzak - Wm. Garrett MD 0149

ROA 003906

ROA 003907

12/27/2011
Paul Barringer
Page 2

Detailed testing of his cognition demonstrates him to be oriented x3 including date, day and time. He is able to name the president. He recalls a tsunami in Japan in the spring without difficulty. He is able to describe the similarity between a bicycle and a train without difficulty, but has more difficulty with a complex similarity such as a watch and a ruler. He does however remember 3/3 objects after five minutes and is able to complete his clock drawing without difficulty showing no visual spatial difficulty.

NEUROLOGIC EXAMINATION:

Mental Status: Alert and oriented. Speech is fluent. Normal language function. No signs of neglect or apraxia.

Cranial Nerves: Discs are sharp bilaterally. Pupils are equal, round, and reactive to light. Visual fields are full to confrontation. Extraocular movements are intact. Face is symmetrical with normal sensation. Hearing is intact bilaterally. Tongue, uvula, and palate are in midline. Sternocleidomastoid and trapezius strength is full.

Motor: Strength is 5/5 in all four extremities with normal bulk and normal tone.

Sensory: Sensation is intact to temperature and vibration in all four extremities.

Reflexes: Symmetrical and 2+. Plantar responses are flexor bilaterally.

Coordination: Fine finger movements, rapid alternating movements, and finger to nose are all done well bilaterally. Gait is normal.

IMPRESSION: Overall, Mr. Paul is complaining of cognitive dysfunction that would be associated with mild cognitive impairment and age related memory loss. He does have some difficulty with abstract reasoning, which is documented on his neurological examination, but overall has excellently preserved short-term memory and visual spatial difficulty, which would make the diagnosis of a primary degenerative dementia unlikely.

However, based on his cognitive complaints, I believe additional diagnostic workup is indicated including an EEG and laboratory assessment for treatable causes of cognitive impairment including a comprehensive metabolic profile, B12, folate, and thyroid function tests.

He states he has already undergone his MRI scan and I will need to review this report as well as to study myself.

He is to return after his EEG is completed for further evaluation and treatment.

Sincerely,

William T. Garrett, MD
Dictated but not read unless signed

SUD

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Luzak - Wm. Garrett MD 0150

ROA 003907

ROA 003908

ROA 003908

ROA 003909

BARRINGER, PAUL

01/26/12

Paul comes in for care. The patient is here to discuss medication. Basically, he looks and feels well but he has certain problems.

1. Dementia.

S: He is on Cerefolin, Namenda 5 mg twice a day, Aricept 5 mg daily. He is markedly improved.

O: He had a dementia study which was very abnormal. We treated him and he is markedly improved.

A: Dementia, stable.

P: None. Incidentally, we sent him to Dr. Wil Garrett who felt that he did not have Alzheimer's disease.

2. Difficulty urinating.

S: He had brachytherapy with seed implants at Richland Urology in Richmond, Virginia and he is not doing very well. He has to urinate every 15 minutes. He saw his urologist, Dr. Bradford at the Stony Point Clinic, Virginia Urology, Richmond, Virginia who did a culture. I called Virginia and talked to his nurse who told me it was E. coli, sensitive to everything including Cipro. He was given ten days of Cipro.

O: His urine today is normal.

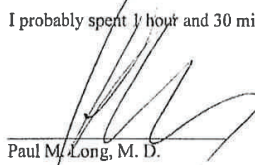
A: He still has problems. He might be on the tail end of the problem. He might be getting better.

P: I am going to call back to Dr. Bradford and discuss this with him. His PSA was down to 1.8. It was around 10 before.

3. Factor V Leiden deficiency, S&C.

S: He is on Coumadin. His Prottime was done and we will keep treating him with Coumadin, which he will need for life.

I probably spent 1 hour and 30 minutes with him and his doctors on the telephone today.



Paul M. Long, M.D.

PML:ksc

D: 01/27/12 T: 01/30/12

Job #17940

ROA 003909

ROA 003910

ROA 003910

ROA 003911

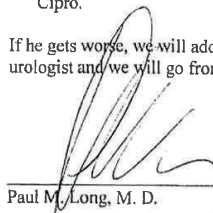
BARRINGER, PAUL

02/16/12

Paul comes in for care. The patient has been urinating heavily all night. He has some pain, but this is the way it is all time after he had his seed implant. He developed a fever of 101.6 last night and he has got some aching. We are in the middle of an epidemic of viral illness but with his urine propensity for developing urinary sepsis, I am worried about that. We did a urinalysis today and I could not do a urine stick because it is overshadowed with all the particulate matter from the other medications he is taking, so we are going to do a culture. We know he can take Cipro and we know the bugs that he had before. I believe it was E. coli that was sensitive to the Cipro. I worry about his Coumadin. Cipro will raise the Protime artificially. So, we decided to do the following things:

1. We are going to give him Cipro 500 mg b.i.d.
2. He is to get a urine culture before the Cipro and we are doing that now.
3. He is to get a Protime in three days and then again in seven days. So, three days from today and then seven days from today to make sure his Protimes remains stable. We did a Protime today and it is 3.5 with the INR, so we are going to hold it for two days while we get him the Cipro.

If he gets worse, we will address that at the time. I am going to send a copy of this to his urologist and we will go from there.


Paul M. Long, M. D.

cc: Timothy Bradford, M. D.

PML/ksc

D: 02/16/12 T: 02/20/12

20569

ROA 003911

ROA 003912

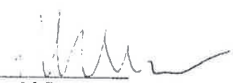
BARRINGER, PAUL

02/16/12

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If he gets worse, we will address that at the time. I am going to send a copy of this to his urologist and we will go from there.


Paul M. Long, M. D.

cc: Timothy Bradford, M. D.

PML:ksc

D: 02/16/12 T: 02/20/12

20569

ROA 003912

ROA 003913

ROA 003913

ROA 003914

12345678

11:51:55 a.m. 03-18-2016 86 / 141

BARRINGER, PAUL

02/27/12

Paul has had a problem. Since he had his brachytherapy for cancer of the prostate with seed implants in Richmond, Virginia, he has been weak and debilitated, urinates every hour and has discomfort in his pelvis, but mainly weak and debilitated. He has dementia but it is mild according to the test that we give.

Now, he is terribly weak all the time with nocturia. He has been on Coumadin. We gave him Cipro. It did not change the symptoms, but he did have E. coli greater than 100,000 colonies, which was sensitive to Cipro, but his symptoms are the same. He has knee pain but it does not bother him a great deal. He does not smoke. He does not drink. He keeps active.

PHYSICAL EXAMINATION

Blood pressure is 108/78. Heart rate is 70. Weight is 199 pounds. Height is 6'4" tall. HEENT is negative. Oropharynx is normal. Neck is supple, no bruits. He has decreased range of motion of the neck. Lungs are clear. Cardiothoracic examination is normal. Abdomen is soft and nontender. No organomegaly. Extremities are negative. Neurologically symmetrically weak, but cranial nerves II through XII are normal.

ASSESSMENT

As above.

PLAN

The general plan is to do the following:

1. Complete set of laboratory studies.
2. Stress Cardiolute study.
3. Echocardiogram.
4. Total body CT scan.
5. I have told him that his urologists are in Richmond, Virginia and although he has a private jet, he needs to have a urologist here. He probably has radiation toxicity and hyperbaric oxygen should be obtained.
6. I have told him to see Dr. John Coursey who I think is a very formidable urologist in this area. He has agreed and we are getting him an appointment.
7. We will see him back in a week to go over his results.

Paul M. Long, M. D.

cc: John Coursey, M. D.

PM L:ksc

D: 02/28/12 T: 02/29/12

21754

ROA 003914

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer,
as Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph Light,
Jr., Merrill B. Light as Putative Trustee of the
Paul B. Barringer, II Revocable Trust dated
December 4, 1998, and Merrill B. Light as
Trustee of the Merrill Barringer Light
Revocable Trust,
Defendants.

ROA 003915
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2016-CP-07-1919

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT
MERRILL B. LIGHT'S MOTION FOR
SUMMARY JUDGMENT AS TO THE
PLAINTIFF'S SEVENTH, EIGHTH, AND
NINTH CAUSES OF ACTION**

I. Introduction

*A. The Court Has Previously Denied Defendants' Motion for Summary Judgment on
This Issue (Among Others).*

Pursuant to Rule 56, the Light Defendants previously moved for summary judgment on
“all claims asserted against them in the Amended Complaint.” (Defendant Merrill Light's
Motion for Summary Judgment filed September 10, 2020).¹ Judge Mullen conducted a hearing
that stretched over three days: November 17-19, 2020. On December 30, 2020, Judge Mullen

¹ In an attempt to reduce replication, Plaintiff asks the Court to take judicial notice of the filings and/or documents provided to the Court in this case. Moreover, Plaintiff incorporates by reference its memoranda and exhibits filed and/or provided to the Court in this case, including but not limited to those related to Defendants' prior motion for summary judgment, denied by Judge Mullen. A list of exhibits from the previous summary judgment motion is attached hereto as Exhibit 1. Those previous summary judgment exhibits, totaling 1572 pages, are not attached as exhibits hereto but are instead incorporated by reference. With the exception of Exhibits 1 – 6 hereto, references in this memorandum are to the exhibits filed in the previous summary judgment motion, as indicated by letters on the exhibit list attached hereto as Exhibit 1. The Hampton Luzak and Kevin Luzak affidavits can be found both at Exhibits B and C from the prior summary judgment motion and at Exhibits 2 and 3 attached hereto.

ROA 003916

issued and filed an order denying in its entirety Defendants' motion for summary judgment. The Light Defendants did not previously move to alter or amend the judgment.

The Light Defendants now ask this Court, again pursuant to Rule 56, to grant their summary judgment motion that the February 28, 2012 will and trust are valid as to capacity, undue influence, and mistake ("Seventh, Eighth, and Ninth Causes of Action").² Such a ruling would contradict and overturn Judge Mullen's denial of Defendants' previous summary judgment motion as to these documents (and others), issued and filed on December 30, 2020 because Plaintiff's Amended Complaint asserts that the February 28, 2012 will and trust, inter alia, are invalid. Defendants now improperly seek a second bite of the apple, in effect seeking a reconsideration of Judge Mullen's December 30, 2020 Order as to the February 28, 2012 will and trust.

Defendants assert the specious proposition that "new deposition testimony" justifies this second bite of the apple, referring to the deposition of John Jolley, who drafted the February 28, 2012 will and trust, and who represented the Light Defendants, Defendant Merrill Barringer, Mr. Barringer, and eventually the legacy company and the Estate of Randy Light. Defendants refer to a portion of the transcript from that deposition, citing Mr. Jolley's testimony essentially stating that he believed Mr. Barringer was competent and not subject to undue influence or mistake.³ This is hardly new evidence. The Light Defendants were and continue to be represented by Mr. Jolley. They have had and continue to have ready access to him. He of course takes the position that he did not draft and supervise the execution of documents he prepared for clients who lack mental capacity or are unduly influenced or mistaken. In addition,

² Defendant's memorandum filed May 14, 2021 refers to the "Tenth Cause of Action" on page 11, but presumably that is a typo and is intended to refer to the Ninth Cause of Action.

³ As discussed below, Mr. Jolley's deposition has already rendered information that would impeach his credibility as a witness.

ROA 003916

ROA 003917

he has taken that position by representing the Estate of Randy Light in its denial of Plaintiff's claim against his Estate. The only new evidence that could have arisen at his deposition about his beliefs regarding Mr. Barringer's capacity, etc., would have been an astounding admission by him, as drafting attorney, that he thought Mr. Barringer was not competent or was subject to undue influence or mistake. Defendants' assertion that Mr. Jolley's deposition testimony that he believed that Mr. Barringer was competent, etc., is "new evidence" is akin to having someone file an affidavit that the sun rose on the day of execution and claiming that was new evidence justifying a second bite of the summary judgment apple.

Even if the Jolley deposition justified a reconsideration of the prior summary judgment order, that deposition is not completed. (See Plaintiff's memorandum regarding the motions for protective order regarding the Jolley deposition). Before arguing this summary judgment motion, Plaintiff should first be given a fair opportunity to complete the deposition.

B. Defendants Are Estopped from Asserting the February 28, 2012 Will and Trust Are Valid for Purposes of this Summary Judgment Motion: They Ask this Court to Validate the February 28, 2012 Will and Trust While Inconsistently Asserting the Validity of Subsequent Wills and Trusts That Would Revoke the February 28, 2012 Will and Trust.

Just as Defendants have done in their argument to bifurcate, they have asked the Court to find that cherry-picked documents (in this case, the February 28, 2012 will and trust) are valid, while at the same time asserting the validity of subsequent documents, which if valid revoke the earlier documents (in this case, the February 28, 2012 documents) Defendants are asking the Court to find valid — a complete non sequitur. Subsequent to the February 28, 2012 documents, Mr. Barringer executed documents on July 20, 2012, on June 12, 2014, and on February 5, 2015.

ROA 003917

ROA 003918

Although Plaintiff asserts that each of these documents lacks validity, Defendants assert that all of these documents are valid. Thus, according to Defendants' position that the subsequent documents are themselves valid, the February 28, 2012 will and trust would have no meaning or validity because the subsequent documents effectively revoked them. For example, if the June 12, 2014 documents are eventually determined to be valid, as Defendants continue to assert, those documents would revoke and render invalid the very February 28, 2012 documents Defendants ask this Court to find valid in this summary judgment. Defendants are asking this Court to waste its time ruling on the validity of documents from February 28, 2012, which according to Defendants would be revoked by the subsequent documents they contend are also valid.⁴ Plaintiff continues to extend her offer to Defendants that they stipulate that the subsequent documents are not valid, but so far Defendants have declined to accept that offer.

Thus, Defendants are taking inconsistent legal positions and should be estopped from wasting any more of this Court's time on their current summary judgment motion, which is really a motion to alter or amend.

C. Defendants Are Estopped from Asserting the February 28, 2012 Will and Trust Are Valid for Purposes of this Summary Judgment Motion: They Ask this Court to Validate the February 28, 2012 Will and Trust While Inconsistently Asserting the Validity of a Prior 1998 Will and Trust That Would Be Revoked by the February 28, 2012 Will and Trust.

Similarly, Defendants are taking inconsistent legal positions concerning the will and trust documents executed by Mr. Barringer in 1998 ("the 1998 documents"). In their Joint Motion to Bifurcate Trial filed October 23, 2020, Defendants moved to have the Court hold a separate trial

⁴ As discussed below, this is the same inconsistent and illogical argument that Defendants assert as to the 1998

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solely on the issue of the “1998 Contract Claims.” Defendants’ motion sought the bifurcation and separate trial to examine *only* the 1998 documents. Again, they take inconsistent legal positions. They convinced Judge Mullen that the second and third causes of action --- more accurately stated as the power of appointment issues⁵ rather than the 1998 Contract Claims --- in consolidated case number 2016-CP-07-1919 could be resolved by examining *only* the 1998 documents, which necessarily would have to be valid for the bifurcated trial to do what Defendants proposed that trial could do. Of course, if the February 28, 2012 will and trust are valid, then those documents would supersede the 1998 documents. Thus, Defendants want this Court to waste its time by holding a separate bifurcated trial of the 1998 documents, which by their own position in this summary judgment motion --- that the February 28, 2012 documents are valid --- renders the separate trial of the 1998 documents completely moot, worthless, and a waste of time.

D. Either Way, Defendants Should Be Estopped from Wasting this Court’s Time.

Defendants obviously do not mind taking inconsistent legal positions or wasting this Court’s time. (1) They ask for a summary judgment determination that the February 28, 2012 documents are valid, which would render the bifurcated trial examining the 1998 documents completely moot because the 1998 documents would be revoked and superseded by the February

documents and their bifurcation argument. They ask the Court to determine and construe documents that, by their own position, have been revoked and are meaningless.

⁵ As demonstrated at the summary judgment hearing and briefly reiterated in her previous memoranda, which Plaintiff incorporates herein, Plaintiff’s arguments about the power of appointment are not limited to a contract claim, although she has a compelling argument on that issue. Plaintiff also argues (1) that Mr. Barringer did not intend to give Mrs. Barringer a power of appointment over the voting stock; (2) that Mrs. Barringer had a confidential and fiduciary duty based on an express promise; (3) that Mrs. Barringer had a confidential and fiduciary duty based on an implied promise, which under the law can be determined even from silence; and (4) that Mrs. Barringer had a duty that can be asserted through equitable estoppel, which again can be determined even from silence. Nowhere has Plaintiff limited these arguments to only the 1998 documents.

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28, 2012 documents. (2) Again inconsistently and wasteful of this Court's time, they ask for a summary judgment determination the February 2012 will and trust are valid while elsewhere asserting that subsequent documents --- executed in July 2012, June 2014, and February 2015 --- are valid, each of which would revoke the earlier documents and, in any event, the February 28, 2012 documents they assert out the other side of their mouths are valid.

(Defendants' designation of the issue as the 1998 Contract Claims was only one fallacious part of Defendants' overall fallacious argument seeking bifurcation made to the Court. Defendants' Joint Motion to Bifurcate sold the Court a bill of goods, claiming that the power of appointment issues could be resolved by examining *only* the 1998 documents. Defendants' assertion is simply not true. Plaintiff's second and third causes of action do not in any way limit their position to only the 1998 documents, or for that matter, only a contract not to revoke. Plaintiff contends that Mrs. Barringer entered into a contract *and/or* a promise not to exercise any power of appointment that Mr. Barringer may have given her. If a power of appointment was given by Mr. Barringer in the 1998 documents, and it turns out that those are the only valid estate planning documents, then yes, the focus would be on the power of appointment allegedly given in the 1998 documents. What Defendants evade telling this Court is that Plaintiff's pleadings are not limited only to the 1998 documents in case any subsequent documents are valid, thereby superseding the 1998 documents. Plaintiff's position as pleaded in the second and third causes of action covers *any* valid document that may allegedly give Mrs. Barringer a power of appointment – whether it eventually be determined that the February 2015, June 2014, July 2012, February 2012, or 1998 documents are the last valid estate planning documents executed by Mr. Barringer. Plaintiff's position is that whichever of the latest of those documents is determined to be valid --- each purports to give Mrs. Barringer a power of appointment --- the

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latest valid document is the document that is subject to a contract and/or promise not to exercise the power. Defendants furthered this evasion in their motion to bifurcate and accompanying memoranda by asserting that Plaintiff's answer to interrogatories limited the examination to only the 1998 documents because Plaintiff answered that the earliest that a contract would have been entered into was by the time the 1998 documents were executed. Plaintiff's answer in no way limited any examination of a contract and/or promise that may have existed with respect to subsequent documents, nor does the applicable law do so. Plaintiff's bifurcation argument is a pile of non sequiturs.

II. Summary Judgment Standard

For the reasons set forth hereinbelow, the burden is on the Defendants, even though in the usual case the summary judgment burden would be on the Plaintiff, who would have to show a mere scintilla of evidence to prevail.

The standard for a summary judgment typically follows the scintilla of evidence rule, with the evidence and all reasonable inferences viewed in light of the non-moving party.⁶

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted). Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860 (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766 (S.C. 2011).

⁶ The scintilla rule typically applies if the burden is on the non-moving party.

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Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C.1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.⁷ 10AWright & Miller, *Federal Practice and Procedure* Â§ 2741, p. 543 (1983); 6 Moore's *Federal Practice* p 56.02, p. 56-39 (2d ed. 1990); see, e.g., *First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375 (D.C.Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So.2d 951 (Ala.1988); *Gangadean v. Leumi Fin. Corp.*, 13 ArizApp. 534, 478 P.2d 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So.2d 564 (Fla.Dist.CtApp.1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W.Va. 140, 267 S.E.2d 440 (1980); cf. Rule 56(f), S.C.RC.P.

Baughman v. American Tel. and Tel. Co., 306 S.C. 101,410 S.E.2d 537 (S.C. 1990).

"Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App.2001); *320 *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct.App.2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (S.C. App. 2003).

The scintilla of evidence rule for summary judgment clearly applies to Plaintiff in this case to the extent the burden of proof would rest with Plaintiff; however, as to the issues of this summary judgment motion, the burden is actually on Defendant, not Plaintiff.⁸

⁷ Almost a year after Plaintiff listed her experts and provided reports, Defendants began deposing Plaintiff's experts during the week of September 17, 2020 and have yet to provide a list of their own experts, let alone provide reports. Because of Defendants' delay, Plaintiff obviously has not had an opportunity to complete discovery as to their experts and other critical witnesses. As to Jolley, a critical witness, see Plaintiff's memorandum regarding the motions for order of protection. See Traxler affidavit, Exhibit 6.

⁸ See, e.g., *Salerno v. Inman ex rel. Estate of Wilbur*, No. 2011-UP-423 (Ct. App. 2011); *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997) (noting 1987 special testamentary power of appointment used for flexibility for tax purposes); *Matter of Estate of Smith*, 419 S.C. 111, 796 S.E.2d 158 (Ct. App. 2012); *Langley v. Lynch*, No. 2015-

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Despite Defendant's assertion to the contrary, Defendant was in a confidential/fiduciary relationship with Mr. Barringer as of February 28, 2012 because, *inter alia*, she was the director in a company in which he was a shareholder and was his partner in a family partnership. Moreover, he reposed trust and confidence in her, which creates a confidential or fiduciary relationship.⁹ Because of that confidential/fiduciary relationship, South Carolina law places a presumption against the validity of a revocable instrument, such as a will or revocable trust, and requires the proponent of a revocable instrument to rebut the presumption.¹⁰ Thus, the burden is on Defendant.¹¹ Similarly, when a testator suffers from chronic incapacity, the burden is on the proponent to prove that the will was executed during a lucid interval. Voluminous medical and other evidence demonstrate that the testator was suffering from chronic incapacity beginning no later than November 2011 and perhaps as far back as 2010.¹² Thus, in addition to the confidential relationship issue, the burden is on Defendant as to capacity.¹³

III. Statement of the Applicable Law

A. Capacity

Mental capacity is determined based on the circumstances and evidence around the time of execution of donative documents.¹⁴ Testimony of doctors and others, along with evidence of

001941 (S.C. Ct. App. 2017); *Gregory v. Estate of Broughton*, No. 2015-UP-302 (Ct. App. 2015) (mere scintilla for capacity); *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 827 S.E.2d 200 (Ct. App. 2019) (citing *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (S.C. 2003)).

⁹ See, e.g., *Chapman v. Citizens & Southern National Bank*, 302 S.C. 469, 395 S.E.2d 446 (S.C. App. 1990).

¹⁰ See *Swiger, supra* (citing *Hairston v. McMillan*, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010); *Howard v. Nasser*, 364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005)); *In re Estate of Cumbee*, 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999); *Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d 788 (1983). If the presumption is rebutted in a will contest, then the ultimate burden of proof falls on the contestant.

¹¹ The same is true for fraud. See *Brock v. Brock*, 218 S.C. 174, 61 S.E.2d 885 (S.C. 1950); *Devlin v. Devlin*, 89 S.C. 268, 71 S.E. 966 (S.C. 1911); *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330 (S.C. 1920).

¹² See *IVA, infra*

¹³ See *Wright v. Lewis*, 5 Rich. 212, 39 S.C.L. 212, 1851 WL 2638, 55 Am.Dec. 714; *Lee v. Lee's Heirs*, 4 McCord 183 (S.C. App. 1827); *Keely v. Moore*, 196 U.S. 38 (1904); *Haghart v. Cooley*, 278 Ala. 354, 178 So.2d 226 (Ala. 1965).

¹⁴ The law allows evidence, including circumstantial evidence, both before and after the time of execution, to determine whether the testator had capacity at the time of execution. See, e.g., *Macaulay, infra*; *Swiger, Cumbee*,

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the behavior of the testator or settlor/donor, can be relevant in showing the existence or lack of mental capacity. The examination of mental capacity is not determined only by examining evidence at the execution of the document, but rather on the facts and circumstances surrounding execution, both before and after the actual execution. The case law is replete with circumstances where the court examined relevant evidence of capacity both before and after the execution of the document.¹⁵ In fact, the cases cited by Defendant in her memorandum do so.¹⁶ The case law is also replete with circumstances when the court examined relevant evidence of medical testimony both before and after the execution of the document.¹⁷

The case of *Gaddy v. Douglass*¹⁸ provides a clear illustration of the South Carolina treatment of a chronic incapacity, such as dementia or Alzheimer's disease. The contestant's neurologist offered a diagnosis of moderate Alzheimer's, based on such observations as aphasia.¹⁹ Because a chronic incapacity places the burden on a proponent, the court inquired about a lucid interval, to which the neurologist replied:

No ... [a] lucid moment is ... a term that doesn't fit well with ... Alzheimer's Disease." He then distinguished a psychiatric disease from Alzheimer's disease, noting the former involves treatable chemical defects while the latter involves the "progressive death of brain cells." [The neurologist] further observed that dementia results in a "faulty rational process" or an "intellectual process that is impaired." He stated that dementia sufferers do

and Byrd, *supra*.

¹⁵ See, e.g., *Gaddy v. Douglass*, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004); *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 569 S.E.2d 371 (Ct. App. 2002). Evidence of prior or subsequent condition is admissible. Execution under the South Carolina Probate Code does not necessarily occur at one moment. There is no time limit as to when the witness must observe one of the three observable events required nor is there a time limit for when a witness must attest. SCPC section 62-2-502. Defendants assert that the cases cited by Plaintiff do not stand as authority for a court to examine evidence before and after execution, but Defendants either misunderstand or misstate Plaintiff's assertion. The cited cases do involve courts examining evidence both before and after execution of donative documents. Defendants appear to confuse the ultimate result in these cases with the assertion about what evidence may be examined to reach an ultimate result.

¹⁶ See, e.g., *Lee, supra*, Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993); *Hairston v. McMillan*, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010) (cases cited by Defendant dealing with capacity).

¹⁷ See, e.g., *Gaddy, supra*; *Estate of Hicks*, 284 S.C. 462, 327 S.E.2d 345 (1985); *Vereen v. Hardee*, 285 S.C. 206, 328 S.E.2d 666 (Ct. App. 1985); *Garbade v. Garbade*, 260 S.C. 58, 194 S.E.2d 186 (S.C. 1973).

¹⁸ 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004).

¹⁹ The Court discounted the conflicting testimony of an internal medicine doctor because she was not a neurologist.

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not “fully understand the nature of what they [are] doing and they [do] not fully understand the ramifications of what [is] there.”

The Court recognized evidence concerning mental condition before and after the purported execution of the document. The neurologist testified that the patient lacked the capacity to make a will and the capacity to contract. The Court also observed that the proponents failed to tell the drafting attorney about the dementia.

As discussed more fully below, the evidence clearly demonstrates that Mr. Barringer lacked requisite mental capacity.

B. Undue Influence

Undue influence occurs when the testator or settlor/donor is coerced into making a will, trust, or transfer that the testator or settlor/donor did not want to do but was influenced into doing so.²⁰ The evidence is necessarily circumstantial because it is not typically openly exercised.²¹ When the influence was practiced by someone in a confidential or fiduciary relationship with a testator, it is presumed that undue influence occurred, and the proponent has to rebut that presumption.²² (When the influence was practiced by someone in a confidential or fiduciary relationship with the settlor/donor of an irrevocable lifetime transfer, it is presumed that undue influence occurred, and the proponent has the ultimate burden of proof.²³)

Although every fact pattern is unique, common factors in undue influence cases involve, inter alia, (1) the susceptibility of the testator or settlor/donor to being influenced, such as being of weakened mental capacity; (2) the opportunity of the perpetrator to practice the influence; (3)

²⁰ See, e.g., Cumbee, *supra*.

²¹ See e.g., Macaulay, Swiger, Cumbee, Byrd, *supra*.

²² See, e.g., Hairston, Swiger, Salerno, *supra*.

²³ See, e.g., Brooks v. Kay, 339 S.C. 479, 530 S.E.2d 120 (S.C. 2000); Bullard v. Crawley, 294 S.C. 276, 363 S.E.2d 897 (S.C. 1987); Hudson v. Leopold, 288 S.C. 194, S.E.2d 137 (S.C. 1986).

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the motive of the perpetrator; (4) the disposition or the propensity of the perpetrator to practice undue influence; (5) a change in the pattern of the dispositive plan; and (6) secrecy.²⁴

As discussed more fully below, the evidence clearly demonstrates that Mr. Barringer was the victim of undue influence.

C. Mistake

If a testator or settlor/donor suffers from mistake, the part of the will resulting from mistake is invalid.²⁵ South Carolina Probate Code section 62-2-601(B) authorizes the reformation of a will that results from mistake; similarly, South Carolina Trust Code section 62-7-415 authorizes the reformation of a trust that results from mistake. As discussed more fully below, the evidence clearly demonstrates that Mr. Barringer and Plaintiff were the victims of mistake.

IV. Facts Supporting Plaintiff's Causes of Action

A. Lack of Capacity

Plaintiff's assertion that Paul Barringer did not execute any valid estate planning or donative transfer document after 2011 is founded on powerful evidence. He was suffering from mental deficiencies as early as 2011 and perhaps 2010. This is demonstrated by overwhelming evidence:

The medical evidence is compelling.²⁶ This evidence is taken from Mr. Barringer's doctors' reports, not from Plaintiff's expert. For example, according to medical reports:

²⁴ See, e.g., Russell, *supra*; Matter of Ferrill, 97 N.M. 383, 640 P.2d 489 (N.M.C.A. 1981); Exhibit AA - RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3, cmt h.

²⁵ See Hanahan, *supra*, citing Ex parte King, 132 S.C. 63, 128 S.E. 850 (1925) ("Where a testator is mistaken as to the contents of his will, the will may be invalidated in part").

²⁶ The medical and other cited evidence belie the sworn deposition testimony of Defendants. For example, Defendant Merrill Light testified that her father never made a decision when he did not know what he was doing; "My father was capable of making decisions that he made. I never saw at any point that he made a decision that he was not capable of making at the time he made it."; Dad was completely competent as to what he wanted to do with the voting share stock."; "He knew exactly what he wanted to do. He always made up his own minds [sic], he made

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- On November 23, 2011, he was diagnosed with dementia in 60% range.²⁷
- On December 2, 2011, he presented with a history of dementia.²⁸
- On December 27, 2011, the reason for his visit was “difficulty with cognition for the last one to two years.”²⁹
- On January 24, 2012, the reason for his visit was short term memory loss.³⁰
- On March 30, 2012, he called the neurologist’s office but couldn’t remember why he called.³¹
- On April 3, 2012, he is diagnosed as suffering from dementia, with significant problems when tested.³²
- On April 30, 2012, he has had a dramatic decline in memory in the last several weeks.³³
- On May 2 - May 4, 2012, he has an altered mental status and confusion, secondary to evolving semantic dementia, with brain activity most compatible with Alzheimers. Immediate Memory: Severe 25-49% accurate; Short Term: Severe 25-49% accurate. He was restrained at the hospital. On May 3, days before he attempted to transfer his voting stock into, first, an irrevocable trust, and second, a revocable trust with Merrill Light as co-trustee, *he has difficulty following commands to touch his right hand to his left ear and to show two fingers.*³⁴ He is aphasic. The medical notes indicate that Defendant denied Mr. Barringer’s dementia, despite the numerous diagnoses and reasons for medical visits and the fact that he was on Aricept, a dementia/Alzheimer’s medication.³⁵

his own decisions.”; “he would not have signed something if he was not competent of understanding this document when he signed it”; she responded yes to the question of whether he was competent when he intervened in the Virginia lawsuit. See Exhibit I, pp. 235-238. Defendant Merrill Barringer testified that “absolutely he was” competent when he transferred the voting stock. See Exhibit J, pp. 33:24 – 34:4. Defendant Randy Light answered “yes” to questions about Mr. Barringer’s capacity.

²⁷ See Exhibit G, Attachment 1.

²⁸ See Exhibit G, Attachment 2.

²⁹ See Exhibit G, Attachment 3.

³⁰ See Exhibit G, Attachment 4.

³¹ See Exhibit G, Attachment 5. This is a classic example of dementia — Mr. Barringer knew he needed to call a doctor but could not remember why.

³² See Exhibit G, Attachment 6.

³³ See Exhibit G, Attachment 7.

³⁴ See Exhibit G, Attachment 8.

³⁵ See Exhibit G, Attachment 9. Defendants argue that Mr. Barringer’s dementia resulted from a urinary tract infection. However, the medical reports diagnose dementia as a separate issue, both before and after any bout with any urinary tract infection. For example, Dr. Long diagnosed Mr. Barringer with dementia before he diagnosed him with any infection. As Dr. Long admitted in his deposition, if a patient has a urinary tract infection and also has a continuing diagnosis of dementia, the dementia remains as an issue. Dr. Long deposition, Exhibit 5 at p. 162.

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- On May 8, 2012, he was diagnosed with dementia.³⁶
- On May 10, 2012, he was referred for memory loss.³⁷
- In May 2012, he was diagnosed with dementia and likely Alzheimer's by an expert in that field.³⁸
- On May 29-30, 2012, he is reported as having trouble forming words starting around 2 years prior.³⁹
- On June 27, 2012, the Defendant called to cancel an appointment with the Alzheimer's specialist scheduled for June 28, 2012, for a family emergency. The family emergency was apparently to attend the board meeting to fire Plaintiff's husband. The appointment was re-scheduled for September 19, 2012, after the purported stock transfer on September 11, 2012.⁴⁰
- On August 29, 2012, his short-term memory is "bad." He once again is diagnosed with dementia. (See Exhibit G, Attachment 15).
- On September 19, 2012, he has a "pattern of deficits very concerning for mild Alzheimer's disease," and a pattern of atrophy on an MRI that is "also concerning."⁴¹
- On October 4, 2012, Defendant Merrill Barringer called the Alzheimer's specialist, whose appointment for June 28 she cancelled, "anxious to get test results."⁴²
- On August 1, 2013, he is diagnosed with dementia.⁴³
- On January 3, 2014, six months before purportedly amending his estate plan to completely disinherit Plaintiff, he scored a 13 on the mini mental exam, showing severe cognitive defects. He could not name the year. Defendant stated that he was a "little worse."⁴⁴
- On January 23, 2014, the neurologist reports that "once again [Mrs. Barringer] is confused" about her husband's Alzheimer medications.⁴⁵
- On December 3, 2014, he has "had an obvious decline in his cognitive ability."⁴⁶

³⁶ See Exhibit G, Attachment 10.

³⁷ See Exhibit G, Attachment 11.

³⁸ See Exhibit G, Attachment 12. See Dr. Amy Sanders report, Exhibit K.

³⁹ See G, Attachment 13. He scored a 24 out of 30 on the MMSE, which is below standard for someone of his intelligence. See Dr. Amy Sanders report, Exhibit K.

⁴⁰ See Exhibit G, Attachment 14.

⁴¹ See Exhibit G, Attachment 16 at Luzak-MUSC 150.

⁴² See Exhibit G, Attachment 17.

⁴³ See Exhibit G, Attachment 18.

⁴⁴ See Exhibit G, Attachment 19.

⁴⁵ See Exhibit G, Attachment 20.

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- On June 12, 2015, he could not answer a *single question* on the mini-mental exam, effectively scoring a zero. Four months earlier, in February 2015, he purportedly amended his estate plan to completely disinherit his teenage grandson Wade, the son of Hampton and Kevin Luzak, in addition to disinheriting Plaintiff.⁴⁷
- On September 10, 2015, he scored a 4 on the mini-mental exam.⁴⁸
- On October 19, 2015,⁴⁹ he scored a 10 on the mini-mental exam and his neurologist said he was too incompetent to testify.⁵⁰
- On April 22, 2016, he scored a 1 on the mini-mental exam.⁵¹

Yet, despite the medical diagnoses that he was compromised as early as 2010, he purportedly executed amendments to his 1998 estate plan in February 2012,⁵² July 2012 (purportedly leaving all of his voting stock at his death to Defendant Merrill Light),⁵³ June 2014 (purportedly eliminating Plaintiff as beneficiary and substituting her son as beneficiary for her share),⁵⁴ and February 2015 (eliminating Plaintiff's teenage son as beneficiary).⁵⁵

The medical evidence is corroborated by the testimony of other witnesses, including Defendants:

Kevin Luzak,⁵⁶ who was constantly with Paul Barringer over many years as they ran the company together, has testified, inter alia, that starting in early 2011, Mr. Barringer needed help

⁴⁶ See Exhibit G, Attachment 21.

⁴⁷ See Exhibit G, Attachment 22.

⁴⁸ See Exhibit G, Attachment 23. According to Defendants, he was competent when he "chose" to sue Plaintiff in the Virginia litigation in August 2015, between scoring a zero shortly before and a four shortly after on mini-mental exams.

⁴⁹ See Exhibit G, Attachment 24. That same month, he was placed in a "secure" adult day care center. See Exhibit K.

⁵⁰ See Exhibit G, Attachment 25. In February 2016, his lawyers in the Virginia case filed an affidavit from that neurologist affirming that he was not competent to testify, yet on the same day filed an affidavit purportedly signed by Paul Barringer.

⁵¹ See Exhibit G, Attachment 26. Yet he purportedly signed a complex income tax return days before, along with Defendant, who by that very act was affirming his capacity. Exhibit L.

⁵² When he had difficulty communicating at a board meeting. See Exhibit B, F.

⁵³ See Exhibit A, Attachment 13.

⁵⁴ See Exhibit A, Attachments 14, 15.

⁵⁵ See Exhibit A, Attachments 18, 19.

⁵⁶ See e.g., Exhibit B.

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with numbers and that his memory started to deteriorate, while his behavior became erratic; that Mr. Barringer had difficulty following the bidding at an auction in February 2012; that Mr. Barringer had trouble communicating and forming words at a family meeting on February 18, 2012; that Mr. Barringer could not remember around June 7, 2012 that he ordered the sale of the company airplane; that Mr. Barringer thought he owned “double the company voting stock” than anyone in the family when he owned far less; that he could not remember board presentations from previous board meetings which, when those presentations were given to him by Defendant, confused him into thinking Kevin Luzak was “trying to steal the company,” even though he had previously commented favorably on the presentations;⁵⁷ that beginning in February 2012 Mr. Barringer made the unfounded accusation that Kevin Luzak was trying to “steal the company;” that in the spring of 2012 Mr. Barringer talked about restructuring the company and ultimately giving his share to Kevin, who thought the proposal was irrational and who talked to Plaintiff and Defendant about the proposal and his concern about Mr. Barringer’s compromised reasoning; that in February 2012 Mr. Barringer was having trouble communicating and forming words; that Mr. Barringer was confused and incoherent at the February 2012 board meeting; that beginning in late 2011 Mr. Barringer did not have the capacity to make a will or trust; that beginning in 2012 the Light Defendants were unduly influencing Mr. Barringer; that the Light Defendants had constant access to Mr. Barringer; that, while Mr. Barringer was in a weakened mental state, the Light Defendants deceived him into thinking that Kevin Luzak was trying to “steal” the company, including confusing him by providing old presentations that he had once

⁵⁷ See Exhibit B, ¶ 16 and Exhibit A, Attachments 9 and 10. It is a sad irony of the case that the proposals were at least in part based on Defendant’s constant complaints about lack of distributions: Mr. Barringer was very conservative in that regard. Defendant used the very proposal papers created by Kevin Luzak, in part to attempt to help Defendant, to betray Plaintiff and her husband. That Mr. Barringer, when competent and free from undue influence, was agreeable to some of the proposals for diversification is demonstrated by his participation in the purchase of a \$ multimillion apartment building in Virginia. Exhibit N - Hampton Luzak 1078 and Light 13.

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complimented but could not at the time remember those presentations; that the Light Defendants failed to tell Mr. Barringer about Randy Light's failed business ventures and bankruptcies; that the Light Defendants shared the same estate planning counsel with Mr. Barringer, who was directed to him by the Lights; that Merrill Light was present during estate planning discussions with Mr. Barringer and his counsel; that Randy Light had conversations with Mr. Barringer's counsel about Mr. Barringer's estate planning; that around the time that the Light Defendants began their improper influence of Mr. Barringer's estate, Randy Light was already in the throes of two bankruptcies with approximately \$25 million in debt; that Mr. Barringer was confused and incoherent at the April board meeting, shortly after which he falsely accused Kevin Luzak of throwing a book at Merrill Light and throwing Merrill Light and Mr. Barringer out of the meeting; that in June 2012 Mr. Barringer denied having attended the family meeting in February 2012, which he had attended; that at that time Mr. Barringer could not remember recent significant events and was unable to distinguish between real and imagined events; that around the week of June 4, 2012, Kevin Luzak spoke with Defendant, who said she was aware of Mrs. Barringer's mental problems; that on June 11, 2012 Mr. Barringer could not remember presentation materials presented several times at board and monthly meetings over the previous year; was extremely delusional and did not have command of his mental faculties; that Merrill Light admitted that she had given Mr. Barringer the presentation materials, which upset Mr. Barringer; and that Merrill Light and Merrill Barringer were in the room having to coach Paul Barringer at the board meeting on June 28, 2012, when Kevin was fired.

Hampton Luzak,⁵⁸ who had regular interactions with her father, has testified, inter alia, that her father first exhibited clear signs of cognitive problems in 2011, when he began having

⁵⁸ See, e.g., Exhibit C.

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speech and processing problems; that her father had trouble communicating and forming words at the family meeting on February 18, 2012; that Defendant Light told her that Mr. Barringer was confused and incoherent at the February board meeting; that beginning in February 2012 Mr. Barringer made unfounded accusations that Kevin Luzak was trying to steal the company; that Mr. Barringer discussed his speech problems at a family meeting in 2011; that beginning in late 2011 Mr. Barringer did not have the capacity to make a will or trust; that beginning in 2012 the Light Defendants were unduly influencing Mr. Barringer; that the Light Defendants had constant access to Mr. Barringer; that, while he was in a weakened mental state, the Light Defendants deceived him into thinking that Kevin Luzak was trying to "steal" the company, including confusing him by providing old presentations that he had once complimented but could not at the time remember those presentations; that the Light Defendants failed to tell Mr. Barringer about Randy Light's failed business ventures and bankruptcies; that the Light Defendants shared the same estate planning counsel with Mr. Barringer, who was directed to him by the Lights; that Merrill Light was present during estate planning discussions with Mr. Barringer and his counsel; that Randy Light had conversations with Mr. Barringer's counsel about Mr. Barringer's estate planning; that around the time that the Light Defendants began their improper influence of Mr. Barringer's estate, Randy Light was already in the throes of two bankruptcies with approximately \$25 million in debt; that at the conclusion of the May 2012 examination of Mr. Barringer at MUSC, Dr. David Bachman told Mr. Barringer he had Alzheimer's, while Hampton and Mrs. Barringer were in the room; that in May 2012 her father could not remember recent significant events and was unable to distinguish between real and imagined events; that Hampton and Defendant discussed their father's mental issues on numerous occasions prior to June 2012; that around this time Defendant Merrill Light told Hampton that Defendant Randy Light had lost

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everything and had nothing to give their children; that during the June 28, 2012 board meeting, Paul Barringer made a number of delusional accusations against Kevin Luzak which were supported by Merrill Light who helped to coach Paul Barringer in his motion to have Kevin Luzak removed as president and CEO of the company.⁵⁹

Defendant Randy Light, in emails, expressed concern in February 2011 that Paul Barringer was “experienc[ing] different health issues that effect [sic] his judgement [sic] regarding every day decisions personally and business wise;” in January 2012 expressed that Paul Barringer was exhibiting “irrational behavior;” and in May 2012 that “[h]e is progressively getting worse as to where he is and what is going on.”⁶⁰

On June 15 2012, Brad Herring, company general counsel, noted there could be a capacity issue as to voting (regarding the June 2012 meeting in which Defendants conspired to have Kevin Luzak fired and had to coach him to do their bidding at the meeting).⁶¹ The day after that board meeting, Herring wrote independent director Michael Hagler: “Your concerns about Paul’s mental state and confusion is something that needs to be ultimately considered by the courts.”⁶²

Tom Evans, a senior company officer, emailed on September 9, 2011 that Mr. Barringer was very confused and not himself.⁶³

Perhaps most eloquently and compellingly, Michael Hagler, the *independent* director of CFRC and well-respected attorney, wrote numerous communications to Merrill Light and to the

⁵⁹ See also Hampton Luzak’s letter to the board of directors on July 6, 2012. (Exhibit O - Hampton Luzak 210-14)

⁶⁰ See Exhibit D. Defendants cite Randy Light’s deposition for his excuse that the first two emails referred to Mr. Barringer’s concern about his prostate diagnosis. When examined in full, these emails clearly are not referring only to concerns about a prostate diagnosis. In any event, for capacity purposes, whatever is causing the irrational judgment is impacting capacity and susceptibility to undue influence and mistake.

⁶¹ See Exhibit P - Hampton Luzak 925.

⁶² See Exhibit Q, ¶ 2 (Light 92-93).

⁶³ See Exhibit E.

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board questioning Mr. Barringer's capacity.⁶⁴ Referring to board meetings as early as April 2012, Mr. Hagler asserted problematic statements about Mr. Barringer's mental health. After the June 28th, 2012 meeting adjourned, Mr. Hagler immediately wrote corporate counsel Bradley Herring that he was "concerned about Paul's mental state. If Paul is voting and acting based on facts that exist in his mind but nowhere else, is his vote valid? Can the directors and the company act when a fellow director appears to be confused? On more than one occasion during the meeting Paul actually cast his vote in the opposite way he meant to cast the vote until he was corrected and coached by whoever was in the room with him."⁶⁵ On July 1, 2012, Mr. Hagler emailed Merrill Light, then-corporate counsel Brad Herring, and Kevin Luzak conveying his objection to the CFRC board vote removing Kevin Luzak from his officer positions. The letter was principally addressed to Merrill Light. Mr. Hagler characterized Paul Barringer's actions at the June 28, 2012 meeting as totally inconsistent with the Paul Barringer he had previously known. Mr. Hagler stated that the person who attended the April 2012 board meeting and the June 28, 2012 board meeting "was not Paul. He is in Paul's body, but he seems to be ill and not thinking or acting rationally." Mr. Hagler implored Merrill Light to not follow her father blindly down the destructive path he was going. He also implored her to conduct an investigation of Paul Barringer's accusations and his current status stating he could not understand why that should not be done. He then asked: "Do you know something about the situation that has not been discussed or disclosed to me? Is there something I do not understand?" Mr. Hagler reiterated: "From my observations, your father does not seem to be acting rationally." Mr. Hagler concluded by stating: "Merrill, I urge you to reconsider what is best for your father, your family and the company." On July 12, 2012, Mr. Hagler wrote Paul Barringer, Merrill Light,

⁶⁴ See Exhibit F.

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and Kevin Luzak about the ostensible firing of Kevin Luzak at the prior board meeting. Mr.

Hagler opined that Kevin Luzak should not have been removed from the board. Mr. Hagler emphasized he was against appointing Paul Barringer as a replacement for Kevin Luzak as CEO “without investigating [Paul Barringer’s] current mental state.” Mr. Hagler further stated that he had “personally observed behavior in at least two board meetings and in my call with Paul [Barringer] two weeks ago which suggests that there are issues with his mental capacity.” On August 3, 2012 prior to the shareholder and board of director meetings that day, Mr. Hagler emailed Merrill Light, Paul Barringer, and attorney John Jolley and others about the resolutions proposed for those meetings. Mr. Hagler reiterated that in his opinion, “Paul Barringer is ill, and his judgment is impaired. I personally experienced this at the last regular director’s meeting held in Charleston. I heard it in the telephonic meeting held in June. I believe Merrill and her husband, Randy, are exercising poor judgment.”⁶⁶ Mr. Hagler resigned over Defendant’s refusal to address the obvious issue of Mr. Barringer’s mental condition; having gotten what she schemed to obtain, she did not even bother to respond to her fellow board member. General counsel Herring also resigned. (Exhibit E).

These company-related communications and observations about Mr. Barringer’s compromised mental condition followed the June 28, 2012 board meeting where Kevin Luzak was fired, with Defendant helping to coach Mr. Barringer to vote in the way she wanted. Significantly, the board meeting and those communications that followed, especially from Mr. Hagler, occurred concurrently with Mr. Barringer purportedly executing an amendment to his revocable trust on July 20 2012, when for the first time he purportedly gave his voting stock, and company control, to Merrill Light, effectively at his death.

⁶⁵ Defendant and Merrill Barringer were in the room with him.

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Even John Jolley, who, represented the Barringers⁶⁷ for estate planning purposes beginning with the documents purportedly executed in 2012, indicated in a conversation with Mr. Hagler in June 2012 that sometimes Mr. Barringer was “not there” when he met with him and thought it necessary to email Merrill Light in August 2012 to attempt to get a certification of competency signed, presumably in anticipation of the purported voting stock transfer on September 11, 2012.⁶⁸ Jolley sent that certification of competency form to Defendant Merrill Light to be executed by a psychiatrist; his transmittal email told Defendant Merrill Light “it would be great” if it could be signed.⁶⁹ The certificate was never signed by a psychiatrist, yet the stock transfer proceeded ahead. Defendant Light testified that she knew nothing about the certification of competency sent by her lawyer to her email address, yet recently a copy purportedly signed by Mr. Barringer’s family physician -- but undated -- was produced by Defendant Barringer, who continues to resist, despite this Court’s order, answering the interrogatory questions about to whom that document was given and when.⁷⁰ Mr. Barringer signed a “2012 Tax Organizer” in March 2013, in which he apparently did not know or forgot that he gave away control of his legacy company a few months before -- that date ranging from September 11, 2012 to December 31, 2012 to January 24, 2013, according to varying evidence produced by Defendants. (Exhibit EEE).

⁶⁶ See Exhibit F at Hampton Luzak 241 (Hagler emails, etc.).

⁶⁷ Plaintiff is informed and believes that Jolley had represented the Lights for years and that the Lights directed the Barringers to him for estate planning. Jolley also served as general counsel and corporate secretary for CFRC, among his ties to the Lights. See Exhibit R, M. Barringer Answer ¶ 30; Exhibit S, J. Jolley Aff. ¶ 5; Exhibit T, R. Light Affid. ¶ 3; Exhibit U, R. Light Depo. pp. 77-79. Jolley’s ability to assess capacity is impeached by his statement that Mr. Barringer’s mental capacity “never changed” from 2011 through 2015 (Jolley deposition, Exhibit 4 at pp. 192-196); to the contrary, the overwhelming medical and other evidence show that Mr. Barringer’s mental capacity did change over that time. Mr. Jolley also admitted to an egregiously improper act by admitting that he arbitrarily chose a date to indicate when the alleged stock transfer from Mr. Barringer to Defendant occurred --- a date that Mr. Jolley knew had no relationship to reality and that was used under penalties of perjury in Mr. Barringer’s gift tax return. Jolley deposition, Exhibit 4 at pp. 70-72, 254-268, 273-274.

⁶⁸ See Exhibit H.

⁶⁹ Exhibit H.

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Defendant continues her argument that, even after Mr. Barringer purportedly amended his revocable trust on July 20, 2012, he transferred his voting control stock outright to her on September 11, 2012.⁷¹ Her argument is that Mr. Barringer did so to ensure that Kevin Luzak never became involved with the company again. That makes no sense. Without transferring that stock outright, while Mr. Barringer was alive he had the power to control the vote along with Defendant; thus, while he was alive, he and Defendant could ensure that Kevin Luzak never became involved with the company again. Assuming, as Defendant asserts, that his July 20, 2012 revocable trust was valid, then when he died, his controlling voting shares passed to Defendant, who then by herself could ensure that Kevin Light would never become involved with the company again. So without the purported September 11, 2012 outright stock transfer, Mr. Barringer already had in place the plan to prevent Kevin Luzak from ever becoming involved in the company again, both while Mr. Barringer was alive and after his death. The reason offered by Defendant for the purported September 11, 2012 stock transfer is nonsense. Why would this man, in such control when he was competent, give up control of his legacy company while he was still alive and have to live the rest of his life subject to the control of Defendants? Why would this man give control to Defendants by taking the risk that, if Merrill Light had predeceased Randy Light, she could have given Randy Light the controlling stock, which he could then have given to his family, such as a new wife? In that latter event, Mr. Barringer and his legacy company would be controlled by a stranger.⁷² This merely shows that,

⁷⁰ One of numerous examples in Merrill Light's deposition testimony raising serious concerns about her veracity.

⁷¹ Actually, the transfer was purportedly from his revocable trust, for which she was purportedly a co-trustee, to her revocable trust – again implicating Defendant's self-dealing under the law.

⁷² It does not even make sense that Mr. Barringer, if competent, would have amended his revocable trust in July 2012 to give Defendants control of his legacy company even after he died. If Defendants survived him and then Merrill Light had predeceased Randy Light, she could have given the stock to Randy Light and, eventually, he could have then given control to say, his new wife. If avoiding Kevin Luzak's return to the company was the primary reason, then a competent estate planner would have simply recommended a trust for the stock.

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if he thought he needed to give away control of his legacy company while he was alive, then he did not have the capacity to understand his estate plan or his purported outright transfer of stock.

According to Mrs. Barringer, Mr. Barringer did not love his young grandson, demonstrating an inability to know the natural objects of his bounty.

The above overwhelming evidence, along with other similar evidence, is hardly the “no evidence” that Defendant asserts. Moreover, the above evidence impeaches the credibility of Defendants, who testified at their depositions that Mr. Barringer always knew what he was doing.⁷³

B. Facts Supporting Undue Influence

Even if Paul Barringer, with his compromised mental capacity, had the requisite legal mental capacity to make a will, revocable trust, or lifetime transfer (which requires a much higher standard of capacity), powerful evidence exists that Paul Barringer was improperly influenced; his susceptibility to improper influence was exacerbated by his weakened mental state, as demonstrated in IV.A above: a weakened mental state is a factor to consider when determining the susceptibility of a testator or settlor/donor to undue influence.

⁷³ The medical and other evidence belie the sworn deposition testimony of Defendants. See footnote 26, *supra*. Their witness, Dr. Paul Long, also has suspect testimonial accuracy. Defendant cites his testimony in the conservatorship hearing as saying that Mr. Barringer was fine with his decision-making until the fall of 2015. Although Plaintiff does not agree that his testimony was exactly as Defendant portrays it, Dr. Long’s own records and reports indicate to the contrary: for example, in May 2012, Dr. Long had access to Dr. Carter’s neurological report indicating that Mr. Barringer could not even follow the direction to touch his hand to his ear or to show two fingers. Exhibit G, Attachment 8. Moreover, Dr. Long’s records and deposition testimony demonstrate that he believed to a significant percentage that Mr. Barringer had dementia or Alzheimer’s. His deposition testimony, while clearly attempting to shore up Defendant’s position, contains inconsistencies. He argues that Alzheimer’s cannot be diagnosed during lifetime yet he and other doctors diagnosed Alzheimer’s during lifetime. He argued against the validity of his own testing. He attempts to blame mental capacity issues on a urinary tract infection, even though these mental diagnoses also occurred before and after any infection issues. He is inconsistent about his ability to rely on other’s medical notes and tests. Importantly, he observes that mental state can fluctuate, which explains why courts examine evidence before and after execution of donative documents. Despite his deposition protestations, he had started Mr. Barringer on Alzheimer’s medications in 2011 and increased dosage in January 2012. See Dr. Long deposition Ex. 5, at pp. 87-88, 130-172.

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In addition to the evidence of Mr. Barringer's compromised mental state as demonstrated in IV.A above, evidence showing undue influence abounds.

For example, in her deposition, Merrill Barringer demonstrated great animus against Plaintiff and her husband Kevin Luzak as well as their son, her grandson.⁷⁴ She further testified that she attended the board meeting at which Kevin Luzak was fired because she wanted to make sure Paul Barringer did not forget anything and she needed to correct him.⁷⁵ Defendant and Mrs. Barringer were present at the June 28, 2012 telephonic board meeting along with Mr. Barringer, at John Jolley's office, the long-time attorney for Defendant. Since February 2012, Defendant was purportedly serving as the co-trustee of Mr. Barringer's revocable trust at all times when he thereafter amended his revocable trust to purportedly give Defendant his voting stock at his death. Consequently, she was present at the execution of these documents.⁷⁶ John Jolley was Defendants' lawyer for years, and presumably Defendants connected him with the Barringers and Mr. Barringer's company, where Defendants also installed him as general counsel and corporate officer. Jolley was also trustee of numerous trusts for the Light Defendants.⁷⁷ Further, he served as Defendant's proxy at the August 3, 2012 CFRC special shareholder meeting for part of Defendant's shares and voted to fire Kevin Luzak from the board of directors.

Defendant Merrill Light gave Paul Barringer documents from presentations made in his presence starting in the prior year, which he could not remember, and caused him to misconstrue

⁷⁴ See Exhibit M. She testified that Plaintiff was greedy and cowardly, that Plaintiff had married the wrong man, that Kevin Luzak was greedy, and that Mr. Barringer did not love his young grandson Wade.

⁷⁵ Demonstrating that Defendants were quite aware of his mental issues.

⁷⁶ One possible exception is the July 20, 2012 revocable trust amendment, when the amendment was purportedly signed by Mr. Barringer and Defendant in Jolley's office. However, flight records indicate that on that date Mr. Barringer may have been in Alabama, accompanied by Randy Light, who took the documents to him. Either way, a Defendant was present at execution. Randy Light communicated with Jolley about Mr. Barringer's estate plan, but Merrill Light denied any knowledge of that. Exhibit I - Merrill Light dep. pp. 530-32.

⁷⁷ Exhibit V, R. Light email 10/25/11 Hampton Luzak 774; Exhibit W, M. Light Depo. p. 397, lns. 4-22;

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those documents into intense anger at Kevin Luzak.⁷⁸ Defendant Merrill Light also testified that neither she nor Defendant Randy Light ever told Paul Barringer about Defendant Randy Light's two bankruptcies and inappropriate business dealings,⁷⁹ the knowledge of which would surely have precluded Paul Barringer, if was capable of competent decision-making at that time, from adding Defendant Randy Light to the board and eventually allowing him to become Chairman, or from making an inter vivos transfer placing control of his legacy company in Randy Light's -- or his creditors' --- hands. Defendant and her husband lived near the Barringers and were in constant contact. Randy Light testified that he was in constant contact with Mr. Barringer. He also admitted he "communicated with Mr. Jolley regarding general matters regarding Mr. and Mrs. Barringer's estate planning..."⁸⁰ The post-2011 estate planning documents were prepared by John Jolley, whose billing record show little contact with Mr. Barringer before the two most critical changes in his estate plan: the purported July 20, 2012 revocable trust amendment leaving his voting stock to Defendant at his death and the purported stock transfer of September 11, 2012, yet he has a billing entry showing he had a telephone conference with Randy Light while he was preparing the trust amendment document.⁸¹

Plaintiff is unaware that Defendant ever did anything to dissuade or correct Mr. Barringer in his confusion and anger over the old presentation papers she gave him. Defendant never responded to the legitimate concerns about Mr. Barringer expressed by Mr. Hagler or by Plaintiff.⁸²

⁷⁸ See Exhibit B, C.

⁷⁹ See Exhibit I, Merrill Light dep. pp. 533-535.

⁸⁰ See Exhibit X, R. Light dep. p. 270 and Exhibit Y, R. Light Resp. to Pl. Req. To Admit, ¶ 10.

⁸¹ It will be interesting to discover whether Jolley, as Mr. Barringer's estate planning attorney, advised him he needed to file a gift tax return in 2013 for the purported 2012 gift. Relevant emails show that Randy Light and John Jolley did not discuss gift tax returns until 2015, after Defendant claimed in the Virginia litigation that the stock was a gift to avoid the operation of the shareholders' agreement. Not having filed a gift tax return belied her claim.

⁸² Defendant continues to assert that Plaintiff was offered a seat on the board in the fall of 2012, asserting essentially

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Defendant took great pains to hide the changes in Mr. Barringer's estate plan and his purported outright stock transfer on September 11, 2012 – or whatever date Defendants recognize is the date. The stock certificate presented to Kevin Luzak to sign as CEO in May 2012 did not show Merrill Light as co-trustee of Mr. Barringer's revocable trust, although she had purportedly been appointed in February 2012. The certificate listed Mr. Barringer as trustee, not co-trustee, and the stock register reflects similarly.⁸³ Defendant announced at the August 3, 2012 shareholder meeting that she was voting Mr. Barringer's shares on his behalf, but did not indicate she was a co-trustee. The minutes from that meeting indicate in fine print in a chart that Defendant voted as co-trustee, but those minutes were not given to Plaintiff until April 14, 2015. Defendant asserts that she had no duty to tell Plaintiff about the purported stock transfer, but she did have a duty: Defendant was a director on the company board and Plaintiff owned the same amount of non-voting shares as Defendant – each had more than any other shareholder – and Defendant was Plaintiff's partner via their voting agreement and shareholder purchase agreement. Defendant blames Plaintiff for telling Defendant she did not want to communicate with her after Defendant tricked their father into firing Plaintiff's husband and helped coach him at the board meeting; the firing was effective only because Defendant voted to fire him as well, yet Defendant wants to blame Plaintiff for being upset about that. When Plaintiff in 2015 discovered hidden in a footnote in the company's financial report that stock had essentially been given to the CEO/CFO (described by Mr. Hagler as a puppet of Defendants),⁸⁴ Plaintiff began seeking information in accordance with her rights as a shareholder. The company, controlled by

that, if she had accepted that offer, she would have learned about the deception sooner. Although Defendant essentially is saying that, if Plaintiff had accepted the offer, she would have caught Defendant sooner, it is not Plaintiff's responsibility to accept a board position, and her refusal to do so is hardly a defense to Defendant's subterfuge. Even if Plaintiff had accepted, it is questionable whether she would have discovered the subterfuge any sooner. In any event, the purported stock transfer had already occurred when the invitation was made.

⁸³ See Exhibit Z, (CFRC_SC 862-63)(CFRC_SC 4-5).

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Defendant, continued to stonewall disclosure of that information, and eventually sued Plaintiff in Virginia. These are not the acts of accidental nondisclosure. Even if Defendant took Plaintiff at her word that she did not want to communicate with Defendant, Defendant had the means, through her control of the company, to communicate the necessary information to Plaintiff. Rather, this is the deliberate secrecy that often accompanies undue influence.⁸⁵

Defendant continues her argument that, even after Mr. Barringer purportedly amended his revocable trust on July 20, 2012, he transferred his voting control stock outright to her on September 11, 2012.⁸⁶ Her argument is that Mr. Barringer had to do so to ensure that Kevin Luzak never became involved with the company again. That makes no sense. Without transferring that stock outright, while Mr. Barringer was alive he had the power to control the vote along with Defendant; thus, while he was alive, he and Defendant could ensure that Kevin Luzak never became involved with the company again. Assuming, as Defendant asserts, that his July 20, 2012 revocable trust was valid, then when he died, his controlling voting shares passed to Defendant, who then could by herself ensure that Kevin Light would never become involved with the company again. So without the purported September 11, 2012 outright stock transfer, Mr. Barringer already had in place the plan to prevent Kevin Luzak from ever becoming involved in the company again, both while Mr. Barringer was alive and after his death. The reason offered by Defendant for the purported September 11, 2012 stock transfer is nonsense. Why would this man, in such control when he was competent, give up control of his legacy

⁸⁴ See Exhibit F at Hampton Luzak 241.

⁸⁵ Exhibit AA - See RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3, cmt h. The secrecy included no mention at the shareholder's meeting conference call that Mr. Barringer was being removed as a board director and as Chairman, nor that Randy Light was being elevated to Chairman; the minutes, sent to Plaintiff a year later, also kept this secret. Ex. CCC. Defendants not only conspired to fire Kevin Luzak, but they later conspired to fire Mr. Barringer, who obviously was unable to comprehend at that time in his mental devolution. This is additional evidence of Defendants' disposition to take something belonging to someone else.

⁸⁶ Actually, the transfer was purportedly from his revocable trust, for which she was purportedly a co-trustee, to her

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company while he was still alive and would have to live the rest of his life subject to the control of Defendants or to Randy Light's creditors? This simply shows that he was unduly influenced by Defendants, with his weakened mental capacity.

Defendant Randy Light was undergoing two bankruptcies in Texas. These bankruptcies showed him owing as much as \$25 million. He was seriously underwater in early 2012, and he had to borrow money from Defendant to help with the payments. (Exhibit FFF – M. Light dep. 290-91, 536-37; R. Light dep. 144-45). Thus, at the time of the firing of Kevin Luzak as CEO on June 28, 2012, the purported amendment to Mr. Barringer's revocable trust on July 20, 2012, the August 3, 2012 shareholders' meeting at which Kevin Luzak was dismissed from the board and replaced by Randy Light, and the purported transfer of stock on September 11, 2012, Randy Light was in dire financial straits, which served as a motive for Defendants' undue influence. By controlling the company, and paying Randy Light substantial amounts, Defendants had the opportunity to attempt to dig him from his financial hole.

Defendants were also motivated by the opportunity to use the company as their personal purse. For example, 9 days after the purported transfer of the voting stock on September 11, 2012, Randy Light sent an email to Travis Bryant, who replaced Kevin Luzak as CEO, suggesting that they defraud the company by conjuring up a way to distribute to Mr. Barringer \$5 million net from the company, so that Mr. Barringer could then turn around and gift \$5 million to Defendants -- \$5 million at that time being the exemption amount from federal gift taxation. Tellingly, Randy Light did not copy Mr. Barringer on the email.⁸⁷ There is good reason why Defendants fought long and hard to keep this email secret. It shows the motivation for the undue influence to take control of the company to use as Defendants' personal purse. It

revocable trust – again implicating Defendant's self-dealing under the law.

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also shows the disposition and propensity of Defendants to take other people's assets over which they have a fiduciary responsibility.

This same motivation, along with the disposition and propensity of Defendants to take other people's assets, is demonstrated by the payment of Defendant's personal legal fees in the Virginia litigation with company funds. Defendant resisted in Florida the disclosure of such advances and whether she actually repaid it, but the advance itself is an improper use of the other shareholders' assets.⁸⁸ However, affidavits of the company comptroller admit the advance of these substantial legal fees, with the repayment of such fees only after Plaintiff commenced a conservatorship proceeding for her father.⁸⁹

Importantly, Defendant testified that Defendants never told Mr. Barringer about Randy Light's bankruptcies and business failures.⁹⁰ This was an intentional omission and part of the undue influence and deception: if Mr. Barringer had known about Randy Light's business failures, it is unlikely that he would have allowed him to become a member of the board, and eventually Chairman of the Board, or given up control. Business failures and bankruptcies are not the resume items a legacy company like Mr. Barringer's looks for in a Chairman of the Board, nor is it the resume of someone that Mr. Barringer would want to take voting control of his company. Again, this material omission shows motivation as well as disposition and propensity.

⁸⁷ See Exhibit D, 9-22-17 McNair Privilege Log 6.

⁸⁸ One thing has become apparent in this litigation: when Defendants vehemently resist discovery, they are withholding damning evidence. In addition to the Florida subpoena, the most recent example is Mrs. Barringer's continued attempt to resist disclosing of basic information, as witnessed by her recent filing of a motion for protection.

⁸⁹ The Florida court issued an order requiring the company, controlled by Defendant, to finally produce the relevant information.

⁹⁰ See Exhibit I, pp. 533-535.

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The donative documents purportedly executed by Mr. Barringer starting in July 20, 2012

indicate a serious change in his pattern of keeping equal control in the company between the daughters, consistent with the plan set forth in his 1998 estate plan: the voting stock was to be divided equally, thereby denying any one child the ability to control the company.⁹¹ He also demonstrated this intent through family voting and shareholder agreements;⁹² gift tax returns joined in by Merrill Barringer;⁹³ corporate documents demonstrating Mr. Barringer's intent to keep voting control equal;⁹⁴ communications among the family and with advisors;⁹⁵ and

⁹¹ The Paul B. Barringer, II Revocable Trust dated December 4, 1998 (Exhibit A, Attachment 1); Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 (Exhibit A, Attachment 2); The Merrill U. Barringer, II Revocable Trust dated December 4, 1998 (Exhibit A, Attachment 3); Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998 (Exhibit A, Attachment 4); The Paul B. Barringer Family Trust under Agreement dated December 22, 1998 as modified by the Beaufort County Probate Court in case no. 2006-GC-07-00040 (Exhibit A, Attachment 5); The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998 (Exhibit A, Attachment 6); First Amendment and Restatement of Trust Agreement of Paul B. Barringer dated February 28, 2012 (Exhibit A, Attachment 9); Last Will and Testament of Paul B. Barringer, II dated February 28, 2012 (Exhibit A, Attachment 10); First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012 (Exhibit A, Attachment 11); Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (Exhibit A, Attachment 12); Second Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated July 20, 2012 (Exhibit A, Attachment 13); Third Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated June 12, 2014 (Exhibit A, Attachment 14); Last Will and Testament of Paul B. Barringer, II dated June 12, 2014 (Exhibit A, Attachment 15); Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (Exhibit A, Attachment 16); Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (Exhibit A, Attachment 17); Fourth Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 5, 2015 (Exhibit A, Attachment 18); Last Will and Testament of Paul B. Barringer, II dated February 5, 2015 (Exhibit A, Attachment 19); Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (Exhibit A, Attachment 20); Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (Exhibit A, Attachment 21); Will of Merrill U. Barringer dated September 15, 2016 (Exhibit A, Attachment 31); The Merrill U. Barringer Revocable Trust dated December 4, 1998 -Restatement dated September 15, 2016 (Exhibit A, Attachment 32); Will of Merrill U. Barringer dated March 2, 2017 (Exhibit A, Attachment 33); Will of Merrill U. Barringer dated February 22, 2018 (Exhibit A, Attachment 34); The Merrill U. Barringer Revocable Trust dated December 4, 1998 - Restatement dated February 22, 2018 (Exhibit A, Attachment 35); Will of Merrill U. Barringer dated May 30, 2019 (Exhibit A, Attachment 36); The Merrill U. Barringer Revocable Trust dated December 4, 1998 -Restatement dated May 30, 2019 (Exhibit A, Attachment 37).

⁹² Barringer Family Voting Agreement of September 21, 1998, as amended on or about September 30, 2004 (Exhibit A, Attachment 7); Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company entered February 1, 2010 among Merrill Light, Hampton Luzak, Victor Barringer, and CFRC (Exhibit A, Attachment 8).

⁹³ Gift tax returns of Paul and Merrill Barringer (Exhibit A, Attachment 39).

⁹⁴ Equal gifts of nonvoting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflected in the CFRC stock register of nonvoting stock (Exhibit A, Attachment 22); Equal gifts of voting stock in CFRC and its predecessors made by Paul Barringer to Plaintiff and Merrill Light prior to 2012 as reflecting in the CFRC stock register of voting stock (Exhibit A, Attachment 23); certificate related to the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012 (Exhibit A, Attachment 40).

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numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even commented upon, by Defendant.⁹⁶

Defendant was in a confidential and fiduciary relationship with Mr. Barringer: not only was she a family member living in close proximity with frequent contact, she acted as his co-trustee and agent under a power of attorney, as a director of his legacy company, and his business partner (in family partnerships).⁹⁷ She undertook to “help him with his estate planning.” He reposed trust and confidence in her.

According to the testimony of Mr. Barringer’s longtime CPA, Mr. Barringer told him in March of 2013 that Randy Light was taking over his tax matters,⁹⁸ although Randy Light claimed he was unaware of this.⁹⁹

Even more evidence supports the undue influence cause of action:

- On July 3, 2012, Jolley sent an email to Defendant about company ownership issues, but does not copy Mr. Barringer.¹⁰⁰
- According to his billing records, on July 18, 2012, Jolley had a telephone conference with Randy Light while preparing the first revocable trust amendment purporting to give Defendant Mr. Barringer’s voting stock at his death, but Jolley’s records show no communication with Paul Barringer.¹⁰¹

⁹⁵ Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001 (Exhibit A, Attachment 24); Letter of Paul and Merrill Barringer “[t]o our children” dated December 24, 1998 (Exhibit A, Attachment 38); E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Exhibit A, Attachment 25); J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (Exhibit A, Attachment 26); Various estate planning documents and diagrams from Robert Slane (Exhibit A, Attachment 27 - 30).

⁹⁶ See Exhibits B, C.

⁹⁷ SCPC § 62-8-102(1) provides that an attorney-in-fact (agent) is a fiduciary.

⁹⁸ See Exhibit JJJ, Bobby Davis dep. p. 35, also stating that he received Barringer tax information from Randy Light for tax years 2013, 2014, and 2015.

⁹⁹ Exhibit U, R. Light dep. pp. 332-336; see also Exhibit Y, Randy Light’s Response #1 to Plaintiff’s First Request to Admit contradicting his testimony.

¹⁰⁰ See Exhibit BB.

¹⁰¹ See Exhibit CC,

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- On August 1, 2012, Defendant procured a proxy purportedly signed by Mr. Barringer for the shareholder meeting, which was faxed from Jolley's office.¹⁰²
- Mr. Barringer did not attend the August 3, 2012 shareholder meeting and board meeting immediately following at which all relationships between the company and Kevin Luzak were terminated. Defendant had his proxy, but obscured at the meeting the authority by which she was voting his stock for him (which she could do as co-trustee).¹⁰³ Jolley appeared as Defendant's personal proxy and voted her stock to fire Kevin Luzak at the meeting;¹⁰⁴ according to the affidavit of Travis Bryant, Jolley became corporate counsel on or about August 1, 2012.¹⁰⁵
- With respect to the purported stock transfer by Mr. Barringer on September 11, 2012, Jolley drafted the stock power form naming himself as attorney in fact to transfer the shares on the books of CFRC; yet as corporate counsel he did not notify Plaintiff of the transfer.¹⁰⁶
- On December 17, 2012, Jolley's office sent board minutes to the Light Defendants and Travis Bryant but not to Mr. Barringer; Randy Light emailed Jolley and told him not to include the Travis Bryant employment approval in the minutes.¹⁰⁷
- Bryant, Jolley, and Randy Light emailed among themselves about the status of Mr. Barringer's purported stock transfer, but did not copy him.¹⁰⁸

¹⁰² See Exhibit DD,

¹⁰³ See Exhibit EE. If Mr. Barringer were competent and so intent on getting rid of Kevin Luzak that he disinherited Plaintiff, one would think he would be at both the shareholder and board of directors special meetings, just as he was at the June 28, 2012 board meeting.

¹⁰⁴ Id.

¹⁰⁵ See Exhibit FF at ¶ 8.

¹⁰⁶ See Exhibit GG, B&F-Luzak/Light_001 and Hampton Luzak 639/Davis 031.

¹⁰⁷ See Exhibit HH,

¹⁰⁸ See Exhibit II. On January 10, 2013, Jolley emails Mr. Barringer asking about the transfer of voting shares.

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- On June 16, 2013, Mr. Barringer sent a note to Plaintiff thanking her for her Father's Day card. (Exhibit GGG).
- On November 12, 2013, Plaintiff's assistant emails Mr. Barringer's company assistant noting that Plaintiff had tried to call her mother's cell number but could not get through, asking if she had a new number. The company assistant responded without answering the question.¹⁰⁹
- On February 13, 2014, Mr. Barringer posted several pictures of Plaintiff, Wade, and Kevin on his Facebook page.¹¹⁰ These pictures were the only photographs of family members posted on his Facebook page and the pictures were mysteriously removed after his death, but Mrs. Barringer, the personal representative, denied knowing anything about it.¹¹¹
- On March 8, 2014, Mr. Barringer sent a note to Hampton hoping she had a great birthday and to give Wade a hug and a handshake from him.¹¹²
- On May 12, 2014, Randy Light emailed Jolley asking him to forward to him the new estate planning documents the Barringers would be executing and that Jolley discussed with Randy Light the previous week. (Exhibit HHH – 9-22-17 McNair Subp. Resp. 14).
- On June 12, 2014, only a few months after wishing Plaintiff a happy birthday and a couple of months before Mrs. Barringer sends a note to Plaintiff thanking her for her birthday gift to Mr. Barringer and the poem Wade wrote for him, Mr. Barringer

¹⁰⁹ See Exhibit JJ.

¹¹⁰ See Exhibit KK.

¹¹¹ See Exhibit J at pp. 178-80.

¹¹² See Exhibit LL.

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purportedly executed another revocable trust amendment completely disinheriting Plaintiff.¹¹³

- On December 26, 2014, Mrs. Barringer writes Plaintiff telling her that “Daddy and I were so pleased” with the present she had sent.¹¹⁴
- On February 3, 2015, Victor Barringer emails Merrill Light asking when the documents were signed; Merrill Light responds that John Jolley is still working on them.¹¹⁵ Two days later, Mr. Barringer purportedly executed the revocable trust amendment disinheriting his grandson Wade.¹¹⁶
- On February 3, two days before the purported amendment of the revocable trust agreement disinheriting Wade, trust officer Cindy Sprouse writes Randy Light asking whether Mr. Barringer should resign as co-trustee of his revocable trust.¹¹⁷
- On February 5, 2015, Mr. Barringer purportedly executed a power of attorney naming Defendant as agent and Randy Light as alternate, effectively giving them total control of his assets.¹¹⁸
- On February 15, 2015, Mrs. Barringer purportedly writes Plaintiff accusing her of bringing legal action against the company (which was not true); Plaintiff does not recall receiving that letter but Defendant (Merrill Light) produced a copy during discovery. (Exhibit KKK – Light 0002). Mrs. Barringer testified that Defendant told her that Plaintiff was going to sue the company.¹¹⁹

¹¹³ See Exhibit LLL (March 2014 birthday note) and Exhibit A, Attachment 14 (3rd Am. Rev. Trust).

¹¹⁴ See Exhibit MM,

¹¹⁵ See Exhibit NN,

¹¹⁶ See Exhibit A, Attachment 18.

¹¹⁷ See Exhibit D, 9-22-17 McNair Privilege Log 9

¹¹⁸ See Exhibit OO, Hampton Luzak 295-304

¹¹⁹ See Exhibit J, Merrill Barringer depo pp. 45-46.

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- On February 26, 2015, Defendant sends to Mr. Barringer's company assistant a draft of a cruel letter to Plaintiff purportedly from Mr. Barringer, telling her to put the draft on Mr. Barringer's letterhead. (Exhibit III – CFRC Harrell 129-30 and Hampton Luzak 308).
- Defendant testified that she was present when Mr. Barringer discussed his estate plan with counsel.¹²⁰

C. Facts Supporting Mistake

As discussed above, if a testator or settlor/donor suffers from mistake, the part of the will resulting from mistake is invalid. South Carolina Probate Code section 62-2-601(B) authorizes the reformation of a will that results from mistake; South Carolina Trust Code section 62-7-415 authorizes the reformation of a trust that results from mistake. If the February 8, 2012 will and trust do not accurately reflect Mr. Barringer's intent, even if he had capacity and was free from undue influence, the mistake can be reformed. As discussed above, the evidence clearly demonstrates that Mr. Barringer and Plaintiff were the victims of mistake. Defendants contend that there can be no mistake because he left his estate in equal shares to his children. Although that general division is consistent with his long-standing intentions, that does not mean he made no mistake. For example, the February 28, 2012 documents effected a critical change to his prior estate plan by naming Defendant Merrill Light as co-trustee with the independent power to act.

VI. Conclusion

Substantial evidence exists, through the pleadings, depositions, affidavits, and discovery on file, to show there is a genuine issue of material fact such that Plaintiff must prevail, especially when all the evidence and all reasonable inferences must be viewed in the light most

¹²⁰ See Exhibit I, Merrill Light depo pp. 394-95, 408-09, 489.

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favorable to Plaintiff. Plaintiff respectfully prays that this Court deny Defendant's motion for summary judgment.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK**

Dated: May 24, 2021
Greenville, South Carolina.

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EXHIBIT 1

ROA 003953

ROA 003954

Ex	Description
A	PBB and MUB Estate Planning Documents (<i>See the attached "Listing for Exhibit A Attachments 1-40" for index</i>)
B	Affidavit of Kevin Luzak
C	Affidavit of Hampton Luzak
D	Randy Light's e-mails
E	Herring and Evans e-mails
F	Michael Hagler correspondences
G	Medical Records (<i>See the attached "Index to Exhibit G - Attachments 1-26"</i>)
H	John Jolley Physician's Certification and statement to Mike Hagler
I	Excerpts from Merrill Light deposition transcript
J	Excerpts from Merrill U. Barringer deposition transcript #2
K	Amy E. Sanders, MD, MS, FAAN, supplemental report
L	2015 tax return signature page
M	Excerpts from Merrill U. Barringer deposition transcript #1
N	Hampton Luzak 1078 and Light 13 / Paul Barringer e-mails with Kevin Luzak re: Board Meetings
O	July 6, 2012 Hampton Letter to PBB, Merrill Light, Mike Hagler and Kevin Luzak - Hampton Luzak 210-214
P	Brad Herring e-mail of 6/15/12 to K. Luzak
Q	June 29, 2012 - Herring ltr to Hagler - Light 92-93
R	M. Barringer Answer ¶ 30
S	J. Jolley Affidavit
T	R. Light Affidavit
U	R. Light deposition transcript excerpt, pp 77-79
V	R. Light e-mail 10/25/11
W	M. Light Deposition Excerpt, P. 397, Ins. 4-22
X	R. Light deposition excerpt p. 270
Y	R. Light Response to Plaintiff's Request to Admit, ¶¶ 1 and 10
Z	CFRC Stock Register with Certificate 14 (CFRC_SC 862-63 and CFRC_SC 4-5)
AA	Restatement (Third) of Prop: Wills & Donative Transfers § 8.3, cmt h.
BB	M. Light Privilege Log
CC	John Jolley Billing Records / 9-22-17 McNair Subpoena Response 235
DD	Merrill Light Proxy / Light 122
EE	CFRC Shareholder Meeting minutes of August 3, 2012 (CFRC 676-682)
FF	Affidavit of Travis Bryant
GG	McNair CFRC invoice and Stock Power (B&F-Luzak/Light 1 - Stock Power) ROA 003954

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Ex	Description	ROA 003955
HH	12/18/12 Randy Light email to John Jolley (CRFC 104)	
II	Stock Transfer E-mails January 2013	
JJ	Merrill Barringer Phone Number Update Request	
KK	FaceBook pictures + picture of Wade (Hampton Luzak 2068, 2069, 2217)	
LL	3/8/14 - Birthday note from PBB and MUB to "Hamp" - (Hampton Luzak 290)	
MM	Note from MUB to Hampton thanking Hampton for wooden bowl (Hampton Luzak 291-292)	
NN	2/3/2015 - Email to Victor Barringer - Thurs am papers will be signed being drawn up now (Victor Barringer 9)	
OO	03/16/2015-Durable Power of Attorney for PBB (Hampton Luzak 295-304)	
PP	June 28, 2012 CFRC BOD meeting transcript Hampton Luzak 706-709	
QQ	06/26/2020 - special meeting of directors attendance e-mail (Light 1374)	
RR	<i>Omitted</i>	
SS	<i>Omitted</i>	
TT	<i>Omitted</i>	
UU	January 24, 203 E-mail to Travis Bryant from Rebecca Bostick sending John Jolley's January 24, 2013 letter sending Stock Certificates #15, #16, and #14; Stock Power and Assignment of Shares (Coastal 63-71)	
VV	Defendants Lights Answer to Plaintiff's Amended Complaint ¶¶ 13 and 65	
WW	June 28, 2012 Board Minutes	
XX	Deposition Excerpts of Paul Barringer Light	
YY	Edward Fuhr letter of 11/16/2016 regarding Randy Light compensation	
ZZ	03/16/2015 CFRC BOD minutes (Light 49-50)	
AAA	10/02/2016 and 07/04/2016 CFRC consolidated financial statements on sale of Treated Plants division	
BBB	November 2007 Board Meeting Minutes	
CCC	2015 Shareholder Minutes	
DDD	Expert Report of Charles Alford, Ph.D.	
EEE	2012 Tax Organizer	
FFF	M. Light dep. 290-91, 536-37; R. Light dep. 144-45	
GGG	Hampton Luzak 277 - Paul Barringer Thank You Note to Hampton Luzak	
HHH	Randy Light E-mail to John Jolley 5/12/14	
III	CFRC Harrell 129-30 and Hampton Luzak 308 / Paul Barringer letter of 2/26/2015	
JJJ	Bobby Davis dep. p. 35	

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Ex	Description	ROA 003956
KKK	Light 002 - Merrill U. Barringer letter to Hampton Barringer 2/15/2015	
LLL	Hampton Luzak 335-336 - March 2014 Birthday Note	

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Listing for Exhibit A Attachments 1-40

ROA 003957

Plaintiff's Response in Opposition to Merrill B. Light's Motion for Summary Judgment

1. The PBB, II Rev. Trust dated Dec. 4, 1998 (Bates numbered MUB's 1st Document Production 1-49) **Attachment 1**;
2. Last Will and Testament of PBB, II dated Dec. 4, 1998 (Bates numbered MUB's 1st Document Production 172-184) **Attachment 2**;
3. The MUB, II Rev. Trust dated Dec. 4, 1998 (MUB's Estate Planning Documents 14-62) **Attachment 3**;
4. Last Will and Testament of MUB, II dated Dec. 4, 1998 (MUB's Estate Planning Documents 1-13) **Attachment 4**;
5. The PBB Family Trust under Agreement dated Dec. 22, 1998 as modified by the Beaufort County Probate Court in case no. 2006-GC-07-00040 (MUB's 1st Document Production 245-260; Hampton Luzak 3-37, 43-70, 400-455) **Attachment 5**;
6. The PBB, II and MUB Irrev. Trust dated Dec. 22, 1998 (MUB's 1st Document Production 261-300) **Attachment 6**;
7. Barringer Family Voting Agreement of September 21, 1998, as amended on or about September 30, 20004 (Bates numbered Hampton Luzak 926-934) **Attachment 7**;
8. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company entered February 1, 2010 among MBL, Hampton Luzak, Victor Barringer, and CFRC (Hampton Luzak 76-81) **Attachment 8**;
9. First Amendment and Restatement of Trust Agreement of PBB, II dated February 28, 2012. (MUB's 1st Document Production 50-79) **Attachment 9**;
10. Last Will and Testament of PBB, II dated February 28, 2012 (MUB's 1st Document Production 185-192) **Attachment 10**;
11. First Amendment and Restatement of Trust Agreement of MUB dated February 28, 2012. (MUB's Estate Planning Documents 135-164) **Attachment 11**;
12. Last Will and Testament of MUB dated February 28, 2012 (MUB's Estate Planning Documents 127-134) **Attachment 12**;
13. Second Amendment and Restatement of Trust Agreement of PBB, II dated July 20, 2012. (MUB's 1st Document Production 80-108) **Attachment 13**;
14. Third Amendment and Restatement of Trust Agreement of PBB, II dated June 12, 2014 (MUB's 1st Document Production 109-140) **Attachment 14**;
15. Last Will and Testament of PBB, II dated June 12, 2014 (MUB's 1st Document Production 193-200) **Attachment 15**;

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Listing for Exhibit A Attachments 1-40
Plaintiff's Response in Opposition to Merrill B. Light's Motion for Summary Judgment

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16. Second Amendment and Restatement of Trust Agreement of MUB dated June 12, 2014 (MUB's Estate Planning Documents 173-203) **Attachment 16;**
17. Last Will and Testament of MUB dated June 12, 2014 (MUB's Estate Planning Documents 165-172) **Attachment 17;**
18. Fourth Amendment and Restatement of Trust Agreement of PBB, II dated February 5, 2015 (MUB's 1st Document Production 141-171) **Attachment 18;**
19. Last Will and Testament of PBB, II dated February 5, 2015 (MUB's 1st Document Production 201-209) **Attachment 19;**
20. Third Amendment and Restatement of Trust Agreement of MUB dated February 5, 2015 (MUB's Estate Planning Documents 213-264) **Attachment 20;**
21. Last Will and Testament of MUB dated February 5, 2015 (MUB's Estate Planning Documents 204-246) **Attachment 21;**
22. Equal gifts of nonvoting stock in CFRC and its predecessors made by Paul Barringer reflecting the CFRC stock register of nonvoting stock to Plaintiff and MBL prior to 2012 (see CFRC 629). **Attachment 22;**
23. Equal gifts of voting stock in CFRC and its predecessors made by Paul Barringer reflecting the CFRC stock register of voting stock to Plaintiff and MBL prior to 2012 (see CFRC_SC_000000004-6) **Attachment 23;**
24. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001 (Hampton Luzak 1081-1082) **Attachment 24;**
25. E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Hampton 1-2) **Attachment 25;**
26. J. Jolley letter to Paul Barringer dated Dec. 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765) **Attachment 26;**
27. 2011-2012 estate planning documents and diagrams from Robert Slane, including but not limited to those documents located at: (i)12-19-17 Slane Subpoena Response 43-44, 628-642, 1627-1641, 1797-1816, and 2301-2302; **Attachment 27;**
28. 2006 and 2011 estate planning diagrams of Robert Slane. **Attachment 28;**
29. December 2011 estate planning diagrams of Robert Slane. **Attachment 29;**
30. 2001 estate planning letter and charts of Robert Slane. **Attachment 30;**

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Listing for Exhibit A Attachments 1-40
Plaintiff's Response in Opposition to Merrill B. Light's Motion for Summary Judgment

ROA 003959

31. Will of MUB dated September 15, 2016 (MUB's Estate Planning Documents 257-267) **Attachment 31**;
32. The MUB Rev. Trust dated Dec. 4, 1998 -Restatement dated September 15, 2016 (MUB's Estate Planning Documents 375-462) **Attachment 32**;
33. Will of MUB dated March 2, 2017 (MUB's Estate Planning Documents 353-363) **Attachment 33**;
34. Will of MUB dated February 22, 2018 (MUB's Estate Planning Documents 364-374) **Attachment 34**;
35. The MUB Rev. Trust dated Dec. 4, 1998 - Restatement dated February 22, 2018 (MUB's Estate Planning Documents 268-352) **Attachment 35**;
36. Will of MUB dated May 30, 2019 (MUB's Estate Planning Documents 549-558) **Attachment 36**;
37. The MUB Rev. Trust dated Dec. 4, 1998 -Restatement dated May 30, 2019 (MUB's Estate Planning Documents 559-640) **Attachment 37**;
38. Letter of Paul and Merrill Barringer "[t]o our children" dated Dec. 24, 1998 (MUB's Supplement to 1st Doc Production 682-683) **Attachment 38**;
39. All gift tax returns of Paul and Merrill Barringer (9-14-17 Davis Subpoena Response 53-72, 85-264) **Attachment 39**; and
40. Stock certificate stub #13 for the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012. **Attachment 40**.

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Index to Exhibit G - Attachments 1-26
Plaintiff's Response in Opposition to MBL's Motion for Summary Judgment

Tab	Date	Description	Bates No. ROA 003960
G1	2011.11.23	Long report	Luzak - Wm. Garrett, MD 153
G2	2011.12.20	Atlantic Radiology MRI	Luzak-Sanders 1140
G3	2011.12.27	Garrett-Long letter	Luzak-Wm. Garrett, MD 148-150
G4	2012.01.24	Garrett EEG	Luzak-Wm. Garrett, MD 21-22
G5	2012.04.02	Garrett record	Luzak-Wm. Garrett, MD 24
G6	2012.04.03	Long medical note	Light 52; Luzak-Paul Long, MD 105
G7	2012.04.30	Garrett medical note	Luzak-Wm. Garrett, MD 31
G8	2012.05.02	Carter report	Luzak-St. Joseph 280; 171; 69
G9	2012.05.03	Garrett EEG ; St Joseph Medical Note	Luzak-Wm. Garrett, MD 285-288; Luzak-St. Joseph 258
G10	2012.05.08	Long medical note MUB denies DX	MUB Suppl Doc Prod 216
G11	2012.03.29	PBB-Garrett appt	Luzak-Wm. Garrett, MD 25
G12	2012.12.05	MUSC notes	Luzak-MUSC 20
G13	2012.05.30	MUSC notes - Alzheimer's diagnosis	Luzak-MUSC 18-19
G14	2012.06.12	MUB cancellation	Luzak-MUSC 115
G15	2012.08.29	Long medical note	MUB Suppl Doc Prod 214
G16	2012.09.19	MUSC notes	Luzak-MUSC 143-152
G17	2012.10.04	MUB call	Luzak-MUSC 171
G18	2013.08.01	Long medical notes	Luzak-Paul Long, MD 60-62
G19	2014.01.03	Garrett MMSE	Luzak-Wm Garrett, MD 56-65
G20	2014.01.23	Garrett medical note	Luzak-Wm Garrett, MD 66
G21	2014.12.03	Garrett medical note	Luzak-Wm. Garrett, MD 77
G22	2015.06.12	MacGregor MMSE report	Luzak-Wm. Garrett, MD 98
G23	2015.09.10	Long medical notes	Luzak-Paul Long, MD 30-31
G24	2015.10.19	Mazzeo MMSE	Luzak-Coastal Neurology 31
G25	2016.01.20	Mazzeo Affidavit	Hampton Luzak 764-766
G26	2016.04.22	Long medical notes	Luzak-Paul Long, MD 11-14

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ROA 003961

EXHIBIT 2

ROA 003961

ROA 003962

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

C/A Case No.: 2016-CP-07-1919

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, as
Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph
Light, Jr., Merrill B. Light as putative
trustee of the Paul B. Barringer, II,
Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the
Merrill Barringer Light Revocable Trust,
Defendants.

AFFIDAVIT

I, Hampton Luzak, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. I have personal knowledge of the matters stated herein. Being duly sworn, I hereby state the following:

1. Throughout his years of estate planning, my father Paul Barringer always treated his two daughters equally, particularly in respect to Coastal Forest Resources Company, Inc. ("CFRC"). By consenting to the restructuring of Coastal Lumber Company, which occurred at the request of my brother Victor Barringer, my father made other asset arrangements for my brother outside of CFRC. My father's intentions about his ownership plan for CFRC and his overall estate plan were discussed regularly at family gatherings I attended over a number of years. Based on those meetings, other discussions I had with him, and relevant documents, I understand that it was my father's long-held intent to keep CFRC in his family with equal control between his daughters. I never heard my father say otherwise.

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2. Consistent with his intent to maintain equal voting power between his daughters, on August 21, 1996, my father entered into a Stock Purchase Agreement with myself, my brother, my sister, and other shareholders in the predecessor company of CFRC. The purpose and effect of the agreement was to place certain restrictions on the transferability of the corporation's stock held by any of the Barringers so as to afford the corporation and each of the Barringers an equal right to acquire any stock of the corporation which a shareholder may desire to transfer to any outside person or entity.

3. Based on recurring family meetings and discussions, I understand that we children continued to recognize our father's central goals of his estate plan which were to keep the ownership of the shares in CFRC equal between my sister and me and to maintain the proportional ownership as my father had established. On September 21, 1998, my father, individually and as co-trustee of his mother's testamentary trust, along with myself, my sister, and my brother, entered into a Barringer Family Voting Agreement under my father's direction. The Barringer Family Voting Agreement shows that we children each held an equal number of shares of common stock (59,521 shares) in CFRC's predecessor company Coastal Lumber and that no one else held more shares than any one of us. As referenced above, my brother at his own request later surrendered his voting stock (and a majority of his ownership) in exchange for interests in other entities upon the restructuring.

4. On December 4, 1998 my father, as settlor, executed the Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("Revocable Trust") with my father serving as trustee.

5. Consistent with his frequently stated intention to treat his daughters equally in respect to CFRC ownership, on December 22, 1998, my father created the Paul B. Barringer, II Family Trust ("the Family Trust") under agreement dated December 22, 1998, which was an

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irrevocable trust. Under the terms of the Family Trust as originally created on December 22, 1998 and as existed on October 3, 2004, during the lifetime of my mother and father, the assets of the Family Trust were available to be used for the health, education, support and maintenance of my father's descendants at the trustee's discretion. After the death of my father and mother, the Family Trust was then to be divided into three separate and equal shares for the benefit of each of my father's children then living and a share for any predeceased child. In connection with the restructuring, my father placed 2,295,528 non-voting shares of CFRC stock into the Family Trust on October 3, 2004.

6. In keeping with my father's long-term estate planning arrangements of treating his daughters equally in respect to CFRC, on October 3, 2004 CFRC, under my father's control, issued to both my sister and me 6,428,058 shares each of non-voting stock in CFRC as part of the Restructuring. This issuance of equal stock to his two daughters occurred at the same time my father conveyed the 2,295,528 non-voting shares to the Family Trust.

7. Also on or about October 3, 2004, CFRC, at my father's direction, issued approximately 31% of the voting shares in CFRC to my sister, consisting of 59,521 CFRC shares, and an equal 31%, consisting of 59,521 shares, to me. My father retained approximately 20% of the CFRC voting stock consisting of 38,272 shares. The family of Stephen H. Conger, who was unrelated and otherwise unaffiliated with the Barringers, owned the remaining 18% of the CFRC voting stock comprising 33,452 shares.

8. On or about September 22, 2006, my father filed a petition in Beaufort County Probate Court to modify the irrevocable Family Trust to provide that the trust assets would be divided immediately into equal, separate shares for my father's three children instead of at the death of my mother and father. This petition for modification to create immediately vested

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separate and equal shares for my father's children was approved by the probate court and carried out by a First Amendment to Trust dated October 16, 2006. On or about October 31, 2007 the 2,295,528 shares of non-voting stock held in the Family Trust were re-certificated into three separate and equal tranches of 765,176 shares for each of my father's three children. According to the CFRC Nonvoting Stock Register as of May 7, 2012, the three newly-created Family Trust shares were denominated as "Paul B. Barringer, II Irrevocable Family Trust fbo Victor Barringer, II", "Paul B. Barringer, II Irrevocable Family Trust fbo Merrill Barringer Light", and "Paul B. Barringer, II Irrevocable Family Trust fbo Hampton Barringer Luzak." The modified terms of the Family Trust continue to define the operation of the three newly-created shares for each of us children.

9. In further recognition of the importance my father placed on maintaining the existing proportionate ownership in my father's forest products business, including an equal ownership between my sister and me, we three siblings entered into an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010 (2010 Shareholders Agreement). In the Agreement the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between my sister and me by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder. CFRC was also a party to the 2010 Shareholders Agreement, but my father was not a party.

10. The first clear signs of my father's cognitive problems came to light to me when he began having speech and processing problems, and he became unusually quiet, beginning in 2011.

11. On February 18, 2012, members of the Barringer family met to discuss planning.

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Included in the meeting were my father and my mother, my sister, my husband Kevin Luzak, at that time the CEO of CFRC, and me. The discussion centered on my husband's recommendations on future strategy to the shareholders, which were focused on (i) actions that would both increase the cash flow generated by the Company's existing operating businesses; (ii) adding new business lines that would both diversify risk and generate tax and operating expense efficiencies for shareholders; and (iii) financing this diversification through the sale of a small portion of Company timberlands that had been deemed by management as no longer capable of generating acceptable returns to the shareholders. My father and my husband had worked together on the acquisition of commercial real estate properties in Alexandria Virginia during 2011 that created a useful example of the type of diversifying activity that he was recommending that the shareholders consider. At the meeting, however, my father was having trouble communicating and forming words due to his mental ailments.

12. During this time in early 2012 the mental afflictions of my father continued to worsen. During the CFRC board of director's meeting in February 2012, I understand that my father was completely confused and incoherent and had tremendous difficulty speaking. Merrill Light told me that he was confused and incoherent at that meeting.

13. Prior to the summer of 2012 my father and my husband had enjoyed a close personal and business relationship for more than 20 years during our marriage. For at least three years prior to this time, I observed my husband working on presentations and discussions of ideas for the board of directors and its committees for a new long-term strategic plan for CFRC (which would be subject to board approval), and my father had participated in all the meetings and discussions. Following the February 2012 board of directors presentation, my father, as a

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result of the worsening of dementia, made completely unfounded accusations that my husband was trying in effect to steal the company.

14. On or about April 25, 2012, the board of directors of CFRC held a regular meeting in Charleston. Present at the meeting were the four board members: my sister, my father, Michael Hagler, and my husband. Mr. Hagler, an attorney in Augusta, GA with Fulcher Hagler, LLP, was the sole independent member of the board of directors with no affiliation with any of the Barringers other than his role as a CFRC board member. Also present were corporate attorney Brad Herring, advisors Mark Sanford and Tom Rockwood, guest advisor Steve Jones, and CFRC officers Tom Evans and Travis Bryant. I understand that the meetings were uneventful as the company's operations and financial performance were discussed and an update on the strategic plan was presented. My father, however, again seemed very confused and was having trouble communicating and forming words as he did in the February 2012 meeting.

15. In the several days following the meeting, my father had an extremely negative reaction to the meeting and accused the "four people from New York" of trying to steal the company. He also falsely accused my husband of throwing my sister and him out of the meeting and of physically throwing a book at my sister during the meeting.

16. To my knowledge, at no time following the April 25, 2012 board meeting did my father contact my husband to discuss any of the matters that apparently agitated him, even though my husband was CFRC's CEO and a member of the board of directors.

17. The accusations by my father described above temporarily ended when he was hospitalized on May 2, 2012 at St. Joseph's Hospital in Savannah, Georgia. My father was diagnosed with dementia.

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18. During his stay at St. Joseph, he was diagnosed by neurologist Jessica Carter, who stated in her report that he had difficulty following commands to touch his ear with his hand and to show two fingers.

19. On May 4, 2012, my father was discharged home with prescriptions for Aricept and Seroquel “as needed for confusional state”. The discharge papers concluded as the primary ailment “confusion, secondary to evolving semantic dementia.” The discharge summary further stated one of my father’s treating doctors opined that “[t]he patient had evolving semantic dementia and noted that at times Aricept might not be of very much help.” The discharge papers further provided that the treating physicians concluded my father had semantic dementia.

20. After my father was discharged on Friday, May 4, 2012 from the hospitalization related to the progression of his previously diagnosed dementia, the CFRC stock register shows that, on the following business day, Monday May 7, 2012, my father allegedly transferred the 38,272 voting shares certificated in his name on CFRC share certificate number one to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998. According to the CFRC Stock Register, CFRC cancelled share certificate number one and re-certificated those shares to share certificate number 13 on May 7, 2012.

21. According to Dr. Long’s medical records, on May 8, 2012, the day following the purported transfer of my father’s voting shares to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998, Dr. Paul Long of Hilton Head examined my father. As part of the examination, Dr. Long also talked to three doctors at St. Joseph’s Hospital where my father was hospitalized the previous week. Dr. Long noted that my father “is still confused and still has a poor memory.” He assessed my father as having dementia. He further noted that

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my father's medical plans were to seek further treatment at the Medical University of South Carolina and the Cleveland Clinic.

22. During this time period in May of 2012, my father's relationship with my husband and with me was on good terms as it had always been. My husband was on the Board of Directors at the Medical University of South Carolina Foundation (MUSC) and helped my father obtain medical assistance at MUSC where my father spent a couple of days seeking medical help and observation.

23. After my father had been discharged from St. Joseph's Hospital, my sister asked me to fly down to Hilton Head from New York City to help my father with his follow-up care and medical appointments including making arrangements for medical evaluations with MUSC. She told me she was not comfortable handling any of my parents' medical problems. I complied without hesitation. Later that month, after my father's May 8 appointment with Dr. Long, my father was examined and tested by Dr. David Bachman, a neurologist and Alzheimer's expert at MUSC. During the several days he was examined at MUSC, my father resided with my husband and me at our home in Charleston. While my mother and I were in the room with my father at MUSC, Dr. Bachman informed my father he was suffering from Alzheimer's disease:. Dr. Bachman showed the MRI scans on the wall and pointed to and used those scans to discuss the Alzheimer's.

24. I understand that, while my father was undergoing treatment and examinations during this time, my father's voting stock in CFRC was moved into my father's Revocable Trust for which my sister, unbeknownst to me, purportedly had become a co-trustee. On May 7, 2012, my father apparently tried to move his voting stock into his irrevocable trust, as evidenced by Certificate #13, but the transfer was purportedly rescinded. CFRC continues to refuse to

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produce Certificate #13 and claims not to have it or any lost share affidavit, yet the CFRC stock register book shows that Certificate #13 was cancelled on May 11, 2012.

25. On Friday, May 11, 2012, share certificate # 13, issued in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Irrevocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares in CFRC, was purportedly cancelled according to the CFRC Stock Register. In the place of certificate # 13, CFRC issued on May 11, 2012 a new share certificate #14 in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Revocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares.

26. The 38,272 shares of CFRC voting stock, represented on CFRC share certificate number one, had been held by my father since October 3, 2004. These shares, which comprised approximately 20% of the voting shares of CFRC, effectively represented control of the company since the voting shares held by his two daughters (with each of us holding approximately 31% of the CFRC voting stock) were not sufficient to control the company without the 38,272 voting shares held by my father. Prior to this time, my father had fastidiously kept ownership of all stock in CFRC equal between his two daughters so that each of us owned equal shares of voting and non-voting stock. Without the block of voting shares held by my father, neither of us had voting control of the company.

27. When the purported transfer of my father's voting shares was made on May 11, 2012 to share certificate # 14 in the name of Paul B. Barringer, as Trustee of the Paul B. Barringer Revocable Trust (the Revocable Trust), the share certificate was signed by my husband as the chief executive officer of CFRC. At that time, though, my sister was a co-trustee of the Revocable Trust. I was never told that my sister was co-trustee at that time, and no mention is made on share certificate # 14 that she was a co-trustee of my father's Revocable Trust.

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28. At this same time, my father was confused about a memorandum that my husband prepared regarding the February 18, 2012 family discussion I attended about a possible long-term strategy for CFRC. My father denied participating in the meeting and denied receiving the memorandum summarizing the discussion that took place during the meeting. At this point in time, my father could not remember very recent and significant discussions and was unable to manage a mental timeline or distinguish between imagined and actual events.

29. On a number of occasions prior to June 2012, my sister and I discussed my father's mental issues.

30. On a phone call with me before the board meeting of June 28, 2012, Merrill Light later admitted to me that she had given my father the PowerPoint presentations from the February 2012 board meetings and earlier management meetings which confused and upset my father, given his mental infirmities at that time. On that call, she also admitted that her husband Randy had lost everything and had nothing left to give their children.

31. On June 28, 2012, a special meeting of the board of directors of CFRC was called. The meeting was held by telephone conference in which all four directors participated – Michael Hagler, my sister, my father, and my husband. Also on the conference call was Bradley Herring, the company's legal counsel along with his law partner Samuel Johnson. My mother testified in a deposition that, before the June 28, 2012 board meeting, she and my father discussed the decision to fire my husband and they agreed he should be fired. Moreover, she testified that she attended the June 28, 2012 board meeting "to correct him in any manner" and "to hear how he was doing" in the meeting and "maybe to indicate to him something he should say that he may have forgotten."

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32. During the June 28, 2012 board meeting, my father made a number of delusional accusations against my husband which were supported by my sister who joined in with, and helped coach my father in his motion to have my husband removed as president and CEO of the company. My father also moved that my husband be removed from all other offices with CFRC immediately and that my father should be appointed as president and CEO. The corporate minutes state that my father wanted my husband removed because he (falsely) claimed he and my sister had been thrown out of a recent meeting of the board of directors held in Charleston on April 24 and 25, 2012. He also claimed that he had found PowerPoint slides of various plans which he contended had been withheld from him by my husband. My father also claimed that my husband had requested a million dollar check from him and stated that he was the greediest person he knew and he should be dismissed due to his alleged greed. My husband responded that my father and my sister had not been thrown out of the preceding board meeting and that he had never requested a million dollar check from my father. Because of the outlandish and completely unfounded allegations my father was making, my husband made a motion that the company retain an independent person to investigate the allegations and to report these findings to the board. Michael Hagler, a respected attorney who was the independent and non-affiliated member of the board, voted for an independent investigator as did my husband, according to the board minutes. However, my sister and my father, with coaching from those in the room, voted against it so the motion failed. My mother, who attended the meeting to "correct him in any manner," "to hear how he was doing" and "maybe to indicate to him something he should say that he may have forgotten," was also present with my father at the time my father was instructed to change his vote.

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33. After voting down the motion for an independent investigation, the board of directors at the same June 28, 2012 meeting voted on my father's motion to remove my husband from all positions with CFRC. My sister supported and seconded my father's attacks and motions against my husband. Mr. Hagler indicated he needed more information about the accusations my father leveled against my husband and voted against firing him. My sister and my father, with coaching from those in the room, voted in favor of the motion to remove my husband. My mother was present and involved in the meeting. The company counsel stated that my husband had a conflict of interest in the vote since he was the subject of the motions and therefore could not vote as a member of the board of directors. As a result, my father and my sister's votes to remove my husband outnumbered Mr. Hagler's opposition.

34. During the votes in the June 28, 2012 special board meeting, my father was confused about which way he should vote. My mother and sister were present together in the room at their attorney's office and knew he was suffering from Alzheimer's disease. My father was coached as to how to vote. Initially he voted in favor of an independent investigation of my husband's activities as CEO but then changed his vote after being coached by those in the room. In the end my father and my sister voted to oust my husband. As soon as the third vote was taken, that being on a motion to appoint my father as president and CEO which was not approved, my mother (who has never been a member of the board) quickly interjected that the meeting should be adjourned before any extended discussion could occur about my father's health and other related issues. My mother's initial request for an adjournment was not approved by the board. Some discussions then occurred among the board members about the problems with my father's mental health and his having been coached during the votes taken during the meeting. After about ten minutes of discussion, my mother again instructed my father and my

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sister to adjourn the meeting and told everyone at the meeting that the meeting was adjourned.

My mother, sister, and father attended the board meeting by telephone from a room at attorney John Jolley's office.

35. After the June 28th meeting adjourned, Michael Hagler, the sole independent member of the board of directors of CFRC, immediately wrote corporate counsel Bradley Herring that he was "concerned about my father's mental state. If my father is voting and acting based on facts that exist in his mind but nowhere else, is his vote valid? Can the directors and the company act when a fellow director appears to be confused? On more than one occasion during the meeting Paul actually cast his vote in the opposite way he meant to cast the vote until he was corrected and coached by whoever was in the room with him." My mother and my sister were present in the room and alone with my father at their attorney's office and involved in the meeting. Mr. Hagler disagreed that the vote to remove my husband was legitimate.

36. On July 1, 2012, Mr. Hagler emailed my sister, then- corporate counsel Brad Herring, and my husband conveying his objection to the CFRC board vote removing him from his officer positions. The letter was principally addressed to my sister. Mr. Hagler characterized my father's actions at the June 28, 2012 meeting as totally inconsistent with the man he had previously known. Mr. Hagler stated that the person who attended the April 2012 board meeting and the June 28, 2012 board meeting "was not Paul. He is in Paul's body, but he seems to be ill and not thinking or acting rationally." Mr. Hagler implored my sister to not follow her father blindly down the destructive path he was going. He also implored her to conduct an investigation of my father's accusations and his current status stating he could not understand why that should not be done. He then asked: "Do you know something about the situation that has not been discussed or disclosed to me? Is there something I do not understand?" Mr. Hagler

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reiterated: "From my observations, your father does not seem to be acting rationally." Mr. Hagler concluded by stating: "Merrill, I urge you to reconsider what is best for your father, your family and the company." To my knowledge, my sister never responded. On July 3, 2012, John Jolley communicated with the Light Defendants to discuss CFRC ownership issues, outside my father's presence.

37. On July 12, 2012, independent board member Michael Hagler wrote my father, my sister and my husband about the ostensible firing of my husband at the prior board meeting. Mr. Hagler opined that my husband should not have been removed from the board. Michael Hagler emphasized he was against appointing my father as a replacement for my husband as CEO "without investigating [Paul Barringer's] current mental state." Mr. Hagler further stated that he had "personally observed behavior in at least two board meetings and in my call with Paul [Barringer] two weeks ago which suggests that there are issues with his mental capacity." To my knowledge, my sister never responded.

38. While my father was in a state of confusion and exhibiting irrational and erratic behavior, he, as grantor and as co-trustee with my sister, purportedly executed a second amendment and restatement of his Revocable Trust on or about July 20, 2012.

39. On August 3, 2012 prior to the shareholder and board of director meetings that day, Michael Hagler emailed my sister, my father, and attorney John Jolley and others about the resolutions proposed for those meetings. Mr. Hagler reiterated that in his opinion, "Paul Barringer is ill, and his judgment is impaired. I personally experienced this at the last regular director's meeting held in Charleston. I heard it in the telephonic meeting held in June. I believe Merrill and her husband, Randy, are exercising poor judgment." On that day, Jolley was representing Merrill Light personally; in his affidavit of July 16, 2018, Travis Bryant testified

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that Jolley became the company's general counsel on or about August 1, 2012. Merrill Light obscured the authority by which she voted on behalf of my father, even though she was the putative co-trustee of my father's revocable trust holding the stock.

40. Prior to September 11, 2012, my father controlled 20% of the CFRC voting shares and my sister and I each owned 31% of the CFRC voting shares through equal gifts from my father. On September 11, 2012 essentially all of my father's voting shares were purportedly transferred from my father's Revocable Trust to my sister as trustee of her own revocable trust. This purported transfer of 20% of the voting stock of CFRC would give her voting control of the company through ownership of 51% of the voting stock. Although Jolley was purportedly serving as my father's attorney-in-fact for this stock transfer and was the company's general counsel, he did not notify me about the purported transfer.

41. My mother testified in a deposition that my father changed his estate plan in June of 2014. This would have been at least the third change to his estate plan of December 4, 1998. In that change, my father removed me as a beneficiary. My mother further testified that my father cut me out as a beneficiary because I had alienated him and he thought I was greedy. During this time period from July 2012 to June of 2014, I set up visits between my family and my parents only to have all of them cancelled by my mother. Also my mother instructed me to always call her on her mobile number and not to call the land-line number at the home where my father lived and had access to the phone.

42. On February 5, 2015, my father purportedly executed, amended, and restated for at least the fourth time the Paul B. Barringer Revocable Trust originally dated December 4, 1998. On that same day, he purportedly executed a Last Will and Testament. He disinherited his grandson Wade.

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43. On April 15, 2015, CFRC, under the control of my sister, filed suit against me in a declaratory action in the Federal Court for the Eastern District of Virginia (“Virginia Federal Litigation”) seeking, *inter alia*, declaratory relief regarding ownership interests in CFRC.

44. On August 28, 2015, my father ostensibly moved to intervene in that portion of the Virginia Federal Litigation addressing the 2010 Shareholders Agreement. My father’s intervention on August 28, 2015 occurred 78 days after he was unable to answer a single question on the Mini-Mental State Exam (MMSE), 13 days before he scored a 4, and 52 days before he scored a 10.

45. According to the sworn Declaration of Dr. Paul Mazzeo, a neurologist in Port Royal, South Carolina, Dr. Mazzeo examined my father on October 19, 2015 due to my father’s history of memory loss. Dr. Mazzeo administered a MMSE on October 19, 2015. My father scored a 10 out of 30 points on the MMSE which represented severe cognitive impairment. Dr. Mazzeo diagnosed my father with “severe senile dementia, Alzheimer’s type.” Dr. Mazzeo stated my father “exhibited severe memory loss and expressive aphasia (the inability to use language to express thoughts).” Dr. Mazzeo further stated that my father’s “memory loss and expressive aphasia make it practically impossible for him to recall past events with accuracy and then find the words to express whatever recollection he may have, without his wife’s assistance.” Dr. Mazzeo’s declaration was filed in the Virginia Federal Litigation by attorneys acting in the name of my father but not until January 20, 2016.

46. On January 20, 2016, the same date that Dr. Mazzeo’s declaration was filed, Paul Barringer’s attorneys filed in the Virginia Federal Litigation a sworn declaration signed by my father affirming under the penalties of perjury the contents of answers to interrogatories. On April 22, 2016, only two months after my father’s ostensible February 17, 2016 court filings in

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the Virginia Federal Litigation, my father was examined by Dr. Paul Long and provided a Mini Mental State Exam. On this exam, my father scored a 1 out of 30.

47. In her deposition of March 14, 2019, my mother testified under oath that she was the only person who could influence my father and that it was easy to influence him.

48. In her deposition, my mother testified under oath that she and my father had discussed the removal of my husband as president and CEO of CFRC before the June 28 board meeting and had agreed to remove him.

49. In that deposition, my mother testified under oath that she attended the June 28, 2012 board meeting “to correct him in any manner” and “to hear how he was doing” in the meeting and “maybe to indicate to him something he should say that he may have forgotten.”

50. In that deposition, my mother displayed her animus towards my husband and me -- e.g., by stating under oath that I had married the wrong man and that I was greedy, an agitator, irresponsible, and a coward. She also refused to acknowledge that she and my father had ever loved my son Wade. My mother called me greedy even though I was the only shareholder who objected to what I thought my father would have considered excessive CFRC distributions had he been competent and aware.

51. I understand that my father intended, until his lack of capacity and the undue influence and tortious interference practiced on him, as described above, to treat his daughters equally with respect to the CFRC voting stock, as well as his other assets. This intention can be evidenced, inter alia, by family gatherings; the stock purchase agreement discussed above at paragraph 2; the Barringer Family Voting Agreement discussed above at paragraph 3; the irrevocable Paul B. Barringer, II Family Trust discussed above at paragraphs 5 and 8; the issuance by CFRC on October 3, 2004 to both my sister and me of 6,428,058 shares each of non-

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voting stock in CFRC as part of the restructuring as discussed above at paragraphs 6; the issuance by CFRC, also on or about October 3, 2004, at my father's direction, of approximately 31% of the voting shares in CFRC to my sister, consisting of 59,521 shares, and an equal 31%, consisting of 59,521 shares, to me, with my father retaining approximately 20% of the CFRC voting stock consisting of 38,272 shares, as discussed above at paragraph 7; and the execution of an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010, wherein the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between my sister and me by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder (CFRC was also a party to the 2010 Shareholders Agreement, but my father was not a party), as discussed above at paragraph 9.

52. The family often met annually over the holidays to discuss family assets. These conversations involved the performance of the company and various elements of the Barringers' estate plan. It was clear from these discussions that my father intended for certain of his assets to be distributed equally to his children and other of his assets (primarily financial assets) to go to various charitable causes. Among the assets that were to be distributed equally to his children was the stock that he held in the company. These discussions were often accompanied by a comment by my father about the fact that the children would have to work together to make decisions about the company after he was gone. I understand that he repeated this comment to my husband on numerous occasions during conversations that they had away from these family meetings. My father told me the same thing privately. My brother did not attend many of those family meetings; he typically had not come home for Christmas, Thanksgiving, or any other holiday for about 18 years. During one of those meetings in

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December 2011, my father discussed his speech issues with me and the Light Defendants and told us he was looking into his medical problem.

53. I do not recall my mother ever making a comment during any of these meetings other than to point out on a few occasions that she had or would put stickers on pieces of furniture to indicate which of her children was to inherit it. I also recall her discussing the allocation of various pieces of silver.

54. My father and I discussed the family business regularly and on numerous occasions. These discussions included countless discussions at dinners at his homes in Hilton Head SC and Weldon NC that were attended by other family members including my mother. I do not recall a single comment made by my mother in any of these dinners, which numbered in the many dozens and possibly more, that dealt with any aspect of company business or estate planning.

55. I do not recall my mother participating in a single business discussion. I cannot identify a single instance when she was engaged in any activity related to any type of business whatsoever.

56. Merrill Light told me on a number of occasions that she wanted increased distributions from the company, but my father always had a conservative approach to company distributions.

57. Merrill Light told me on numerous occasions that she wanted to sell the company. In the spring of 2012, she told me she wanted to sell the company once my father could not understand what was going on; I objected to this because I knew that would be contrary to my father's wishes. In 2015, the board of directors of the company, controlled by Merrill and Randy Light, held a special meeting to discuss interviewing financial advisors to discuss strategic

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alternatives including the sale of the company; the company accounting firm sent me a Tombstone letter, a precursor to the sale of a company.

58. I do not believe my father had the mental capacity to make a will or a lifetime transfer, beginning in late 2011 and early 2012.

59. On a number of occasions after my husband was fired from the company, during the most profitable month in company history, I made contact with my parents. I sent gifts and received warm thank-you notes. My mother and I talked often by phone. However, my mother prevented contact with my father by instructing me not to call on their landline but to use her cell phone. On a number of occasions, my mother canceled planned visits and trips with my son Wade. My father also sent several written notes and cards to our son Wade.

60. Beginning in 2012, my father's estate planning decision-making, which included his company, was improperly influenced by Merrill Light and Randy Light. They had constant access to him. While he was in a weakened mental state, they deceived him into thinking that my husband was trying to "steal" the company, including confusing him by providing old presentations that he had once complimented but could not at the time remember those presentations. Ironically, those presentations and proposals were initially floated partly in response to Merrill Light's pleas for additional distributions, yet she used them to deceive my father and sabotage his relationship with my husband. They failed to tell him about Randy Light's failed business ventures and bankruptcies. Merrill Light and Randy Light shared the same estate planning counsel with my father, whom I believe was directed to him by the Lights. Merrill Light was present during estate planning discussions with my father and his counsel. Randy Light had conversations with my father's counsel about my father's estate planning. Around the time that the Light Defendants began their improper influence of my father's estate

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planning, Randy Light was in the throes of two bankruptcies with approximately \$25 million in debt.

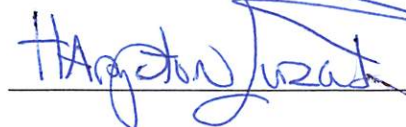
61. I understand that my sister produced a copy of a purported letter from my mother to me dated February 15, 2015, claiming that I brought a legal action against the company, which is not true, but I do not recall ever receiving the original of that letter.

62. I did not receive a copy of the August 3, 2012, shareholder minutes until CFRC's attorney sent them on April 14, 2015, pursuant to my statutory shareholder information requests.

63. On February 13, 2014, my father posted a picture of Wade, Kevin, and me on his Facebook page. That picture was removed from his Facebook page after his death.

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AND FURTHER THE AFFIANT SAYETH NOT.



Hampton Luzak

SWORN TO BEFORE ME this 6 day of November, 2020



Notary Public for South Carolina

My commission expires: 06/01/2026



DeAnna M. Phillips
Notary Public, State of South Carolina
My Commission Expires 06/01/2026

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[Handwritten signature]
J. J. [unclear]
[unclear]

[Faint handwritten text, possibly a date or reference number]



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EXHIBIT 3

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

C/A Case No.: 2016-CP-07-1919

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, as
Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph
Light, Jr., Merrill B. Light as putative
trustee of the Paul B. Barringer, II,
Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the
Merrill Barringer Light Revocable Trust,
Defendants.

AFFIDAVIT

I, Kevin Luzak, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. I have personal knowledge of the matters stated herein. Being duly sworn, I hereby state the following:

1. Around 1989, Paul Barringer transferred an equal number of voting shares in Coastal Lumber Company, a predecessor to Coastal Forest Resources Company, Inc., to his children Hampton Luzak, Merrill Light, and Victor Barringer.

2. Following our marriage in 1992, Hampton Luzak continued a close association with her father and his businesses. Paul Barringer invited me to join the board of directors of CFRC's predecessor, Coastal Lumber Company, in 1993. My involvement with the company increased over time, and I became the president following the restructuring of Coastal Lumber Company ("Restructuring"), in which Coastal Lumber Company spun off certain assets to a separate entity controlled by Victor Barringer in exchange for Victor Barringer's surrender of the

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remaining business was recapitalized in 2004 and was henceforth known as Coastal Forest Resources Company, Inc. ("CFRC"). I eventually became the chief executive officer of CFRC.

3. I understand that, throughout his years of estate planning, Paul Barringer always treated his two daughters equally, particularly in respect to CFRC. By consenting to the restructuring of Coastal Lumber Company, which occurred at the request of Victor Barringer, Paul Barringer made other asset arrangements for Victor Barringer outside of CFRC. Paul Barringer's intentions about his ownership plan for CFRC and his overall estate plan were discussed regularly at family gatherings I attended over a number of years. Based on those meetings, other discussions I had with him, and relevant documents, I understand that it was Paul Barringer's long-held intent to keep CFRC in his family with equal control between his daughters. From the time I became involved with the Company, I never heard Paul Barringer say otherwise.

4. Consistent with his intent to maintain equal voting power between his daughters, on August 21, 1996, Paul Barringer entered into a Stock Purchase Agreement with Hampton Luzak, Merrill Light, and other shareholders in the predecessor company of CFRC. The purpose and effect of the agreement was to place certain restrictions on the transferability of the corporation's stock held by any of the Barringers so as to afford the corporation and each of the Barringers an equal right to acquire any stock of the corporation which a shareholder may desire to transfer to any outside person or entity.

5. Based on recurring family meetings and discussions, I understand that the children of Paul Barringer continued to recognize their father's central goals of his estate plan which were to keep the ownership of the shares in CFRC equal between Paul Barringer's daughters and to maintain the proportional ownership as Paul Barringer had established. On

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September 21, 1998, Paul Barringer, individually and as co-trustee of his mother's testamentary trust, along with Merrill Light, Hampton Luzak, and Victor Barringer, entered into a Barringer Family Voting Agreement under Paul Barringer's direction. The Barringer Family Voting Agreement shows that Hampton Luzak, Merrill Light and their brother Victor Barringer each held an equal number of shares of common stock (59,521 shares) in CFRC's predecessor company Coastal Lumber and that no one else held more shares than any one of them. As noted above, Victor Barringer at his own request later surrendered his voting stock (and a majority of his ownership) in exchange for interests in other entities upon the restructuring. After this spinout, Mr. Barringer said on numerous occasions that in the future his girls would need to agree and work together as owners of CFRC.

6. On December 4, 1998 Paul Barringer, as settlor, executed the Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("Revocable Trust") with Paul Barringer serving as trustee.

7. Consistent with his frequently stated intention to treat his daughters equally in respect to CFRC ownership, on December 22, 1998, Paul Barringer created the Paul B. Barringer, II Family Trust ("the Family Trust") under agreement dated December 22, 1998, which was an irrevocable trust. Under the terms of the Family Trust as originally created on December 22, 1998 and as existed on October 3, 2004, during the lifetime of Paul Barringer and Mrs. Barringer, the assets of the Family Trust were available to be used for the health, education, support and maintenance of Paul Barringer's descendants at the trustee's discretion. After the death of Paul Barringer and Mrs. Barringer, the Family Trust was then to be divided into three separate and equal shares for the benefit of each of Paul Barringer's children then living and a

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share for any predeceased child. In connection with the restructuring, Paul Barringer placed 2,295,528 non-voting shares of CFRC stock into the Family Trust on October 3, 2004.

8. In keeping with Paul Barringer's long-term estate planning arrangements of treating his daughters equally in respect to CFRC, on October 3, 2004 CFRC issued to both Merrill Light and Hampton Luzak 6,428,058 shares each of non-voting stock in CFRC as part of the Restructuring. This issuance of equal stock to Hampton Luzak and Merrill Light occurred at the same time Paul Barringer conveyed the 2,295,528 non-voting shares to the Family Trust.

9. Also on or about October 3, 2004, CFRC, at Paul Barringer's direction, issued approximately 31% of the voting shares in CFRC to Merrill Light, consisting of 59,521 CFRC shares, and an equal 31%, consisting of 59,521 shares, to Hampton Luzak. Paul Barringer retained approximately 20% of the CFRC voting stock consisting of 38,272 shares. The family of Stephen H. Conger, who was unrelated and otherwise unaffiliated with the Barringers, owned the remaining 18% of the CFRC voting stock comprising 33,452 shares.

10. On or about September 22, 2006, Paul Barringer filed a petition in Beaufort County Probate Court to modify the irrevocable Family Trust to provide that the trust assets would be divided immediately into equal, separate shares for Paul Barringer's three children instead of at the death of Paul Barringer and Mrs. Barringer. This petition for modification to create immediately vested separate and equal shares for Paul Barringer's children was approved by the probate court and carried out by a First Amendment to Trust dated October 16, 2006. On or about October 31, 2007 the 2,295,528 shares of non-voting stock held in the Family Trust were re-certificated into three separate and equal tranches of 765,176 shares for each of Paul Barringer's three children. According to the CFRC Nonvoting Stock Register as of May 7, 2012, the three newly-created Family Trust shares were denominated as "Paul B. Barringer, II

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Irrevocable Family Trust fbo Victor Barringer, II”, “Paul B. Barringer, II Irrevocable Family Trust fbo Merrill Barringer Light”, and “Paul B. Barringer, II Irrevocable Family Trust fbo Hampton Barringer Luzak.” The modified terms of the Family Trust continue to define the operation of the three newly-created shares for each of Paul Barringer’s children.

11. In further recognition of the importance Paul Barringer placed on maintaining the existing proportionate ownership in Paul Barringer’s forest products business, including an equal ownership between Merrill Light and Hampton Luzak, the three siblings – Hampton Luzak and Merrill Light and Victor Barringer – entered into an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010 (2010 Shareholders Agreement). In the Agreement the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between Hampton Luzak and Merrill Light by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder. CFRC was also a party to the 2010 Shareholders Agreement, but Paul Barringer was not a party.

12. The first clear signs of Paul Barringer’s cognitive problems came to light to me in early 2011, when Paul Barringer admitted to me that he needed my help understanding numbers related to the business and to various negotiations that were then taking place. Paul Barringer’s memory also began to deteriorate during that period of time and his behavior became erratic.

13. For example, prior to the board meeting in February 2012, Paul Barringer and I attended an on-site auction of property formerly owned by Coastal Lumber Company in West Virginia and located across a road from property owned by CFRC. Two other bidders, including the county, were present. Paul was the active participant in the process, but looked to me at each point in the bidding to determine whether the then-current bid was below our agreed upon ceiling. We ultimately lost the bid to the county, which wanted the property to construct a

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job training facility. We had no planned use for the property and the CFRC property across the road was not generating income at that time. Paul reacted violently, though, to the loss and expressed this reaction in both actions and words, which was very uncharacteristic.

14. Later in the spring of 2012, Paul and Merrill Barringer were in Charleston to attend an event honoring one of Paul's cousins (Bishop Allison). Paul Barringer and I were standing in the stair hall of our house discussing business generally when he told me that he was working on a restructuring of the company going forward. He proposed that he and I set up a holding company and share ownership 50/50. We would then transfer 100% of the stock of CFRC to the holding company. At some point in the future, he would gift his ownership to me. I was taken aback by this proposal. First, it was impossible to effect for numerous reasons and therefore revealed that he no longer had his very sophisticated understanding of corporate structuring. Second, it would repatriate a significant asset into his estate and thereby undo a series of transactions that created great tax efficiency by getting assets out of his estate at a low value. After the discussion, I contacted both Merrill Light and Hampton Luzak to review it with them. I expressed my concern that Paul's ability to reason was compromised and that he was working through scenarios and concepts that could possibly hurt shareholders if not governed properly.

15. On February 18, 2012, members of the Barringer family met to discuss planning. Included in the meeting were Paul Barringer and Merrill Barringer, Merrill Light, Hampton Luzak, and me, at that time the CEO of CFRC. The discussion centered on my recommendations on future strategy to the shareholders, which were focused on (i) actions that would both increase the cash flow generated by the Company's existing operating businesses; (ii) adding new business lines that would both diversify risk and generate tax and operating

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expense efficiencies for shareholders; and (iii) financing this diversification through the sale of a small portion of Company timberlands that had been deemed by management as no longer capable of generating acceptable returns to the shareholders. Paul Barringer and I had worked together on the acquisition of commercial real estate properties in Alexandria Virginia during 2011 that created a useful example of the type of diversifying activity that I was recommending that the shareholders consider. At the meeting, however, Paul Barringer was having trouble communicating and forming words due to his mental ailments.

16. During this time in early 2012 the mental afflictions of Paul Barringer continued to worsen. During the CFRC board of director's meeting in February 2012, Paul Barringer was completely confused and incoherent and had tremendous difficulty speaking.

17. Prior to the summer of 2012 Paul Barringer and I had enjoyed a close personal and business relationship for the more than 20 years during my marriage to Hampton Luzak. For at least three years prior to this time, I had been presenting and discussing with the board of directors and its committees ideas for a new long-term strategic plan for CFRC (which would be subject to board approval), and Paul Barringer had participated in all the meetings and discussions. Following the February 2012 board of directors presentation, Paul Barringer, as a result of the worsening of dementia, made completely unfounded accusations that I was trying in effect to steal the company.

18. On or about April 25, 2012, the board of directors of CFRC held a regular meeting in Charleston. Present at the meeting were the four board members: Merrill Light, Paul Barringer, Michael Hagler, and me. Mr. Hagler, an attorney in Augusta, GA with Fulcher Hagler, LLP, was the sole independent member of the board of directors with no affiliation with any of the Barringers other than his role as a CFRC board member. Also present were corporate

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attorney Brad Herring, advisors Mark Sanford and Tom Rockwood, guest advisor Steve Jones, and CFRC officers Tom Evans and Travis Bryant. The meetings were uneventful as the company's operations and financial performance were discussed and an update on the strategic plan was presented. Paul Barringer, however, again seemed very confused and was having trouble communicating and forming words as he did in the February 2012 meeting. Merrill Light drove Mr. Barringer to and from the meeting.

19. In the several days following the meeting, Paul Barringer had an extremely negative reaction to the meeting and accused the "four people from New York" of trying to steal the company. He also falsely accused me of throwing Merrill Light and him out of the meeting and of physically throwing a book at Merrill Light during the meeting.

20. At no time through the month following the April 25, 2012 board meeting did Paul Barringer contact me to discuss any of the matters that apparently agitated him, even though I was CFRC's CEO and a member of the board of directors.

21. The accusations by Paul Barringer described above temporarily ended when he was hospitalized on May 2, 2012 at St. Joseph's Hospital in Savannah, Georgia. Paul Barringer was diagnosed with dementia.

22. During his stay at St. Joseph, he was diagnosed by neurologist Jessica Carter, who stated in her report that he had difficulty following commands to touch his ear with his hand and to show two fingers.

23. On May 4, 2012, Paul Barringer was discharged home with prescriptions for Aricept and Seroquel "as needed for confusional state." The discharge papers concluded as the primary ailment "confusion, secondary to evolving semantic dementia." The discharge summary further stated one of Paul Barringer's treating doctors opined that "[t]he patient had evolving

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semantic dementia and noted that at times Aricept might not be of very much help.” The discharge papers further provided that the treating physicians concluded Paul Barringer had semantic dementia.

24. After Paul Barringer was discharged on Friday, May 4, 2012 from the hospitalization related to the progression of his previously diagnosed dementia, the CFRC stock register shows that, on the following business day, Monday May 7, 2012, Paul Barringer allegedly transferred the 38,272 voting shares certificated in his name on CFRC share certificate number one to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998. According to the CFRC Stock Register, CFRC cancelled share certificate number one and re-certificated those shares to share certificate number 13 on May 7, 2012.

25. According to Dr. Long’s medical records, on May 8, 2012, the day following the purported transfer of Paul Barringer’s voting shares to himself as trustee of the Paul B. Barringer Irrevocable Trust dated December 4, 1998, Dr. Paul Long of Hilton Head examined Paul Barringer. As part of the examination, Dr. Long also talked to three doctors at St. Joseph’s Hospital where Paul Barringer was hospitalized the previous week. Dr. Long noted that Paul Barringer “is still confused and still has a poor memory.” He assessed Paul Barringer as having dementia. He further noted that Paul Barringer’s medical plans were to seek further treatment at the Medical University of South Carolina and the Cleveland Clinic. I was assisting in arranging the Cleveland Clinic visit and intended to accompany him. He could not arrange the visit because of scheduling conflicts.

26. During this time period in May of 2012, Paul Barringer’s relationship with Hampton Luzak and with me was on good terms as it had always been. I was on the Board of Directors at the Medical University of South Carolina Foundation (MUSC) and helped Paul

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Barringer obtain medical assistance at MUSC where Paul Barringer spent a couple of days seeking medical help and observation.

27. After Paul Barringer had been discharged from St. Joseph's Hospital, Merrill Light asked Hampton Luzak to fly down to Hilton Head from New York City to help Paul Barringer with his follow-up care and medical appointments including making arrangements for medical evaluations with MUSC. Hampton complied without hesitation. Later that month, after Paul Barringer's May 8 appointment with Dr. Long, Paul was examined and tested by Dr. David Bachman, a neurologist and Alzheimer's expert at MUSC. During the several days he was examined at MUSC, Paul resided with Hampton and me at our home in Charleston. I understand that, while Hampton and her mother Merrill Barringer were in the room with Paul Barringer at MUSC, Dr. Bachman informed Paul he was suffering from Alzheimer's disease.

28. I understand that, while Paul was undergoing treatment and examinations during this time, Merrill Light, unbeknownst to Hampton, was involved in moving Paul's voting stock in CFRC into Paul Barringer's Revocable Trust for which Merrill Light purportedly had become a co-trustee.

29. On Friday, May 11, 2012, share certificate # 13, issued in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Irrevocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares in CFRC, was purportedly cancelled according to the CFRC Stock Register. In the place of certificate # 13, CFRC issued on May 11, 2012 a new share certificate #14 in the name of Paul B. Barringer, Trustee of the Paul B. Barringer Revocable Trust under Agreement dated December 4, 1998 for 38,272 voting shares.

30. The 38,272 shares of CFRC voting stock, represented on CFRC share certificate number one, had been held by Paul Barringer since October 3, 2004. These shares, which

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comprised approximately 20% of the voting shares of CFRC, effectively represented control of the company since the voting shares held by his two daughters (with each daughter holding approximately 31% of the CFRC voting stock) were not sufficient to control the company without the 38,272 voting shares held by Paul Barringer. Prior to this time, Paul Barringer had fastidiously kept ownership of all stock in CFRC equal between his two daughters so that each daughter owned equal shares of voting and non-voting stock. Without the block of voting shares held by Paul Barringer, neither of his two daughters had voting control of the company.

31. When the purported transfer of Paul Barringer's voting shares was made on May 11, 2012 to share certificate # 14 in the name of Paul B. Barringer, as Trustee of the Paul B. Barringer Revocable Trust (the Revocable Trust), the share certificate was signed by me as the chief executive officer of CFRC. At that time, though, Merrill Light was a co-trustee of the Revocable Trust. I was never told that Merrill Light was co-trustee at that time, and no mention is made on share certificate # 14 that Merrill Light was a co-trustee of Paul Barringer's Revocable Trust.

32. Paul Barringer instructed me to sell CFRC's airplane and purchase a larger plane. Based on Paul Barringer's instructions, I entered into a contract to sell the company airplane in early June 2012. On or about June 7, 2012, Paul Barringer contacted me about using the company airplane to visit some corporate facilities. I commented to Paul Barringer to enjoy the airplane ride since it would be the last trip on the company airplane before the sale was closed. Paul Barringer then exploded at me and began swearing at me for selling the airplane, as he did not remember that he instructed me to sell the airplane. Paul Barringer then ordered me to rescind the deal to sell the airplane. Following my termination, CFRC did in fact sell the

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airplane and purchase a larger airplane, consistent with Paul Barringer's earlier instructions and against his confused demands of June 7, 2012.

33. At this same time, Paul Barringer was confused about a memorandum that I prepared regarding the February 18, 2012 family discussion I attended about a possible long-term strategy for CFRC. Paul Barringer denied participating in the meeting and denied receiving the memorandum summarizing the discussion that took place during the meeting. At this point in time, Paul Barringer could not remember very recent and significant discussions and was unable to manage a mental timeline or distinguish between imagined and actual events.

34. Around the week of June 4, 2012, I talked with Merrill Light regarding Paul Barringer's mental problems, and she stated she was aware of her father's mental problems, including his resumption of aggressive behavior. She stated that the previous evening Paul Barringer was irate with the advisors from New York whom he referred to with extremely derogatory language, which was uncharacteristic of him.

35. Around this same time, I also talked with Paul Barringer's wife, Merrill Barringer, who said that Paul Barringer was very upset at me. She stated that Paul Barringer believed I was trying to sell 65% of the timberland and move the timberland management team to New York and that the people in New York would own 80% of the investments in the company. None of these descriptions of my proposed long-term plans for CFRC were true or ever contemplated. Mrs. Barringer also stated that Paul Barringer was upset about supposedly being excluded from the last board meeting in April 2012, which was completely untrue. In fact, Paul Barringer presided over the meeting without incident, though he had trouble communicating and forming words at that time. After the meeting, Merrill Light thanked me for allowing Mr.

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Barringer to chair the meeting despite his difficulties and for handling the situation so respectfully.

36. On June 11, 2012, Paul Barringer sent me a package with PowerPoint presentation documents that he said someone sent to him “just recently.” Paul Barringer claimed that the PowerPoint slides “appear[ed] to be someone’s calculation as to how CFRC could be purchased with various ways to obtain our timberland and other assets which could be marketed to outside parties.” Paul Barringer’s description of the business plan contained in the PowerPoint documents was incorrect. Further, Paul Barringer had already seen all of these materials. They were the materials presented at the March 15 and 16, 2011 executive management committee meetings and the February 22, 2012 board of directors meeting, all of which Paul Barringer attended. Because of his dementia in June of 2012, Paul Barringer was unable to remember in June 2012 seeing the PowerPoint documents in March 2011 and February 2012 and was under the false impression the management and board presentation documents had been prepared and distributed behind his back as suggested by his statement, “I have just recently received possession” of them. When I explained the origin of the materials to him, Paul Barringer then acknowledged being at the board and management meetings and having seen the materials, then later questioned whether he was there, and then denied having ever seen the material. He subsequently reversed himself and said he may have seen them, which was symptomatic of his confusion. In a conversation following my discussion with Paul in his office, I told Merrill Light that we needed to step in and help him to understand the reality of the events that had confused him. I told her that it was clear that he was extremely delusional and did not have command of his mental faculties at that point. She responded by saying that he seemed fine to her and that she wanted to let him take control and wanted him to have a chance to demonstrate the validity

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of his claims against me. Merrill Light and I had numerous conversations about CFRC, many in person, every week during which I was involved as an officer at the company and quite frequently before that. I do not believe that she could not have had any doubt about the delusional nature of Paul's claims.

37. Merrill Light later admitted to me that she had given Paul Barringer the PowerPoint presentations from the February 2012 board meetings and earlier management meetings which confused and upset Paul, given his mental infirmities at that time.

38. On June 20, 2012, I emailed Paul Barringer asking whether he would like to have an outside independent person come in and perform a complete evaluation of my conduct, decisions, and actions that Paul Barringer recently complained about. I concluded the letter stating that, "If I have done anything wrong, I want to know about it more than anybody." That same day Paul Barringer responded with an angry email to me, copied only to Merrill Light, stating that he did not want some outside lawyer coming in and making decisions regarding his company. He also accused me of "trying to depose me for almost a year from my company." Paul Barringer's idea that I was trying to depose him was another delusion of Paul Barringer. He further claimed: "We understand that your actions were trying to drive me away from [CFRC]...", to my mind revealing that Merrill Light was helping him form this misbelief. In the same email, Paul Barringer claimed that, "I have double the company voting stock of any person, or groups, do you think I'm dumb?" Paul Barringer, in fact, had less voting stock than either Hampton Luzak or Merrill Light.

39. On June 28, 2012, a special meeting of the board of directors of CFRC was called. The meeting was held by telephone conference in which all four directors participated – Michael Hagler, Merrill Light, Paul Barringer, and me. Also on the conference call was Bradley Herring,

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the company's legal counsel, along with his law partner Samuel Johnson. Mrs. Barringer testified in a deposition that, before the June 28, 2012 board meeting, she and Paul Barringer discussed the decision to fire me and they agreed that I should be fired. Moreover, she testified that she attended the June 28, 2012 board meeting "to correct him in any manner" and "to hear how he was doing" in the meeting and "maybe to indicate to him something he should say that he may have forgotten."

40. During the June 28, 2012 board meeting, Paul Barringer made a number of delusional accusations against me which were supported by Merrill Light who helped to coach Paul Barringer in his motion to have me removed as president and CEO of the company. Paul Barringer also moved that I be removed from all other offices with CFRC immediately and that Paul should be appointed as president and CEO. The corporate minutes state that Paul Barringer wanted me removed because he (falsely) claimed he and Merrill Light had been thrown out of a recent meeting of the board of directors held in Charleston on April 24 and 25, 2012. He also claimed that he had found PowerPoint slides of various plans which he contended had been withheld from him by me. Paul Barringer also claimed that I had requested a million dollar check from him and stated that I was the greediest person he knew and I should be dismissed due to my alleged greed. I responded that Paul Barringer and Merrill Light had not been thrown out of the preceding board meeting and that I had never requested a million dollar check from Paul Barringer. Because of the outlandish and completely unfounded allegations Paul was making, I made a motion that the company retain an independent person to investigate the allegations and to report these findings to the board. Michael Hagler, a respected attorney who was the independent and non-affiliated member of the board, voted for an independent investigator as did I, as shown in the board minutes. However, Merrill Light and Paul Barringer, with coaching by

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those in the room, voted against it so the motion failed. Mrs. Barringer, who attended the meeting to “correct him in any manner,” “to hear how he was doing” and “maybe to indicate to him something he should say that he may have forgotten,” was also present with Paul Barringer at the time Paul was instructed to change his vote. Those three were in attorney John Jolley’s office and participating by telephone.

41. After voting down the motion for an independent investigation, the board of directors at the same June 28, 2012 meeting voted on Paul Barringer’s motion to remove me from all positions with CFRC. Merrill Light supported and seconded Paul Barringer’s attacks and motions against me. Mr. Hagler indicated he needed more information about the accusations Paul leveled against me and voted against firing me. Merrill Light and Paul Barringer, with coaching from those in the room, voted in favor of the motion to remove me. Mrs. Barringer was present and involved in the meeting. The company counsel stated that I had a conflict of interest in the vote since I was the subject of the motions and therefore could not vote as a member of the board of directors. As a result, Paul Barringer and Merrill Light’s votes to remove me outnumbered Mr. Hagler’s opposition.

42. During the votes in the June 28, 2012 special board meeting, Paul Barringer was confused about which way he should vote. Merrill Light and Mrs. Barringer were present and knew he was suffering from Alzheimer’s disease. Paul Barringer was coached as to how to vote. Initially he voted in favor of an independent investigation of my activities as CEO but then changed his vote after being coached by those in the room. In the end Paul Barringer and Merrill Light voted to oust me. As soon as the third vote was taken, that being on a motion to appoint Paul Barringer as president and CEO which was not approved, Mrs. Barringer (who was never a member of the board) quickly interjected that the meeting should be adjourned before any

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extended discussion could occur about Paul Barringer's health and other related issues. Mrs.

Barringer's initial request for an adjournment was not approved by the board. Some discussions then occurred among the board members about the problems with Paul Barringer's mental health and his having been coached during the votes taken during the meeting. After about ten minutes of discussion, Mrs. Barringer again instructed Paul Barringer and Merrill Light to adjourn the meeting and told everyone at the meeting that the meeting was adjourned. Merrill Barringer, Merrill Light, and Mr. Barringer attended the board meeting by telephone from a room at attorney John Jolley's office.

43. After the June 28th meeting adjourned, Michael Hagler, the sole independent member of the board of directors of CFRC, immediately wrote corporate counsel Bradley Herring that he was "concerned about Paul's mental state. If Paul is voting and acting based on facts that exist in his mind but nowhere else, is his vote valid? Can the directors and the company act when a fellow director appears to be confused? On more than one occasion during the meeting Paul actually cast his vote in the opposite way he meant to cast the vote until he was corrected and coached by whoever was in the room with him." Merrill Light and Mrs. Barringer were present in the room and involved in the meeting. Mr. Hagler disagreed that the vote to remove me was legitimate.

44. On July 1, 2012, Michael Hagler emailed Merrill Light, then- corporate counsel Brad Herring, and me conveying his objection to the CFRC board vote removing me from his officer positions. The letter was principally addressed to Merrill Light. Michael Hagler characterized Paul Barringer's actions at the June 28, 2012 meeting as totally inconsistent with the Paul Barringer he had previously known. Mr. Hagler stated that the person who attended the April 2012 board meeting and the June 28, 2012 board meeting "was not Paul. He is in Paul's

ROA 004002

ROA 004003

body, but he seems to be ill and not thinking or acting rationally.” Mr. Hagler implored Merrill Light to not follow her father blindly down the destructive path he was going. He also implored her to conduct an investigation of Paul Barringer’s accusations and his current status stating he could not understand why that should not be done. He then asked: “Do you know something about the situation that has not been discussed or disclosed to me? Is there something I do not understand?” Mr. Hagler reiterated: “From my observations, your father does not seem to be acting rationally.” Mr. Hagler concluded by stating: “Merrill, I urge you to reconsider what is best for your father, your family and the company.” To my knowledge, Merrill Light never responded. On July 12, 2012, independent board member Michael Hagler wrote Paul Barringer, Merrill Light and me about the ostensible firing of me at the prior board meeting. Mr. Hagler opined that I should not have been removed from the board. Michael Hagler emphasized he was against appointing Paul Barringer as a replacement for me as CEO “without investigating [Paul Barringer’s] current mental state.” Mr. Hagler further stated that he had “personally observed behavior in at least two board meetings and in my call with Paul [Barringer] two weeks ago which suggests that there are issues with his mental capacity.”

45. While Paul Barringer was in a state of confusion and exhibiting irrational and erratic behavior, he, as grantor and as co-trustee with Merrill Light, purportedly executed a second amendment and restatement of his Revocable Trust on or about July 20, 2012, which purported to leave her his voting stock upon his death.

46. On August 3, 2012 prior to the shareholder and board of director meetings that day, Michael Hagler emailed Merrill Light, Paul Barringer, and attorney John Jolley and others about the resolutions proposed for those meetings. Mr. Hagler reiterated that in his opinion, “Paul Barringer is ill, and his judgment is impaired. I personally experienced this at the last regular

ROA 004003

ROA 004004

director's meeting held in Charleston. I heard it in the telephonic meeting held in June. I believe Merrill and her husband, Randy, are exercising poor judgment."

47. Prior to September 11, 2012, Paul Barringer controlled 20% of the CFRC voting shares and Hampton Luzak and Merrill Light each owned 31% of the CFRC voting shares through equal gifts from Paul Barringer. On September 11, 2012 essentially all of Paul Barringer's voting shares were purportedly transferred from Paul Barringer's Revocable Trust to Merrill Light as trustee of her own revocable trust. This purported transfer of 20% of the voting stock of CFRC would give Merrill Light voting control of the company through ownership of 51% of the voting stock.

48. Mrs. Barringer testified in a deposition that Paul Barringer changed his estate plan in June of 2014. This would have been at least the third change to his estate plan of December 4, 1998. In that change, Paul Barringer removed Hampton as a beneficiary. Mrs. Barringer further testified that Paul Barringer cut out Hampton as a beneficiary because she had alienated him and he thought she was greedy. During this time period from July 2012 to June of 2014, Hampton set up visits between her family and her parents only to have all of them cancelled by Mrs. Barringer. Also Mrs. Barringer instructed her to always call her on her mobile number and not to call the land-line number at the home where Paul Barringer lived and had access to the phone.

49. On February 5, 2015, Paul Barringer purportedly executed, amended, and restated for at least the fourth time the Paul B. Barringer Revocable Trust originally dated December 4, 1998. On that same day, he purportedly executed a Last Will and Testament. He disinherited his grandson Wade.

50. On April 15, 2015, CFRC, under the control of Merrill Light, filed suit against

ROA 004004

ROA 004005

Hampton Luzak in a declaratory action in the Federal Court for the Eastern District of Virginia (“Virginia Federal Litigation”) seeking, *inter alia*, declaratory relief regarding ownership interests in CFRC. On August 28, 2015, Paul Barringer ostensibly moved to intervene in that portion of the Virginia Federal Litigation addressing the 2010 Shareholders Agreement. Paul Barringer’s intervention on August 28, 2015 occurred 78 days after he was unable to answer a single question on the mini-mental exam, 13 days before he scored a 4, and 52 days before he scored a 10.

51. According to the sworn Declaration of Dr. Paul Mazzeo, a neurologist in Port Royal, South Carolina, Dr. Mazzeo examined Paul Barringer on October 19, 2015 due to Paul Barringer’s history of memory loss. Dr. Mazzeo administered a Mini Mental State Exam (“MMSE”) on October 19, 2015. Paul Barringer scored a 10 out of 30 points on the MMSE which represented severe cognitive impairment. Dr. Mazzeo diagnosed Paul Barringer with “severe senile dementia, Alzheimer’s type.” Dr. Mazzeo stated Paul Barringer “exhibited severe memory loss and expressive aphasia (the inability to use language to express thoughts).” Dr. Mazzeo further stated that Paul Barringer’s “memory loss and expressive aphasia make it practically impossible for him to recall past events with accuracy and then find the words to express whatever recollection he may have, without his wife’s assistance.” Dr. Mazzeo’s declaration was filed in the Virginia Federal Litigation by attorneys acting in the name of Paul Barringer but not until January 20, 2016.

52. On January 20, 2016, the same date that Dr. Mazzeo’s declaration was filed, Paul Barringer’s attorneys filed in the Virginia Federal Litigation a sworn declaration signed by Paul Barringer affirming under the penalties of perjury the contents of answers to interrogatories. On April 22, 2016, only two months after Paul Barringer’s ostensible February 17, 2016 court filings

ROA 004005

ROA 004006

in the Virginia Federal Litigation, Paul Barringer was examined by Dr. Paul Long and provided a Mini Mental State Exam. On this exam, Paul Barringer scored a 1 out of 30.

53. In her deposition of March 14, 2019, Mrs. Barringer testified under oath that she was the only person who could influence Paul Barringer.

54. In her deposition, Mrs. Barringer testified under oath that she and Paul Barringer had discussed the removal of me as president and CEO of CFRC before the June 28 board meeting and had agreed to remove me.

55. In that deposition, Mrs. Barringer testified under oath that she attended the June 28, 2012 board meeting “to correct him in any manner” and “to hear how he was doing” in the meeting and “maybe to indicate to him something he should say that he may have forgotten.”

56. In that deposition, Mrs. Barringer displayed her animus towards Hampton Luzak and me --- e.g., by stating under oath that Hampton Luzak had married the wrong man and that Hampton Luzak was greedy, an agitator, irresponsible, and a coward.

57. I understand that Paul Barringer intended, until his lack of capacity and the undue influence and tortious interference practiced on him, as described above, to treat his daughters equally with respect to the CFRC voting stock, as well as his other assets. This intention can be evidenced, inter alia, by family gatherings; the stock purchase agreement discussed above at paragraph 4; the Barringer Family Voting Agreement discussed above at paragraph 5; the irrevocable Paul B. Barringer, II Family Trust discussed above at paragraphs 7 and 10; the issuance by CFRC on October 3, 2004 to both Merrill Light and Hampton Luzak 6,428,058 shares each of non-voting stock in CFRC as part of the restructuring as discussed above at paragraph 8; the issuance by CFRC, also on or about October 3, 2004, at Paul Barringer’s direction, of approximately 31% of the voting shares in CFRC to Merrill Light, consisting of

ROA 004006

ROA 004007

59,521 shares, and an equal 31%, consisting of 59,521 shares, to Hampton Luzak, with Paul Barringer retaining approximately 20% of the CFRC voting stock consisting of 38,272 shares, as discussed above at paragraph 5; and the execution of an Agreement Regarding Right to Purchase Shares of CFRC on February 1, 2010, wherein the Barringer children agreed to keep the proportionate ownership of the CFRC stock equal between Hampton Luzak and Merrill Light by providing that CFRC has the right to purchase any shares that are offered for sale by, purchased, or otherwise acquired from, another CFRC shareholder (CFRC was also a party to the 2010 Shareholders Agreement, but Paul Barringer was not a party), as discussed above at paragraph 11.

58. I interacted with the Barringer family from 1992 through June of 2012.

59. The family often met annually over the holidays to discuss family assets.

These conversations involved the performance of the company and various elements of the Barringers' estate plan. It was clear from these discussions that Paul intended for certain of his assets to be distributed equally to his children and other of his assets (primarily financial assets) to go to various charitable causes. Among the assets that were to be distributed equally to his children was the stock, and control, that he held in the company. I recall that these discussions were often accompanied by a comment by Paul about the fact that the children would have to work together to make decisions about the company after he was gone. He repeated this comment to me on numerous occasions during conversations that we had away from these family meetings.

60. I do not recall Merrill Barringer ever making a comment during any of these

ROA 004007

ROA 004008

meetings other than to point out on a few occasions that she had or would put stickers on pieces of furniture to indicate which of her children was to inherit it. I also recall her discussing the allocation of various pieces of silver.

61. Paul and I discussed company business almost every time we were together over a twenty-year period. These discussions included countless discussions at dinners at his homes in Hilton Head SC and Weldon NC that were attended by other family members including Merrill Barringer. I do not recall a single comment made by Merrill Barringer in any of these dinners, which numbered in the many dozens and possibly more, that dealt with any aspect of company business or estate planning.

62. During the period when I was a member of the company board, company events included quarterly board events that were held at a company facility near the Barringer home in Weldon, at a corporate retreat outside of Richmond, VA, and at a law office in Charleston SC. These events included a dinner followed by a day of business discussion. I vaguely recall Merrill Barringer attending one board dinner at the Richmond facility and she attended one dinner in Charleston in 2012, when Paul was suffering from Alzheimer's. I do not recall her participating in a single business discussion at either of these dinners; her role appeared to be limited to spouse.

63. The Company also held informal annual holiday events for employees. I recall Mrs. Barringer accompanying Paul to one of these events at the company's Weldon facility and one at the Havana FL facility. I do not recall her attending any others. I do not recall her engaging in any business discussions during these events.

64. In the 20 years of my interaction with Merrill Barringer, I cannot identify a single

ROA 004009

instance when she was engaged in any activity related to any type of business whatsoever. Other than managing the various Barringer households, the only organizational activity of any kind that I was familiar with was her participation as a co-host of a local Hilton Head charity event benefiting breast cancer awareness, which was prior to 1992.

65. Merrill Light told me on a number of occasions that she wanted increased distributions from the company, but Paul always had a conservative approach to company distributions.

66. Merrill Light told me on numerous occasions that she wanted to sell the company. In 2015, the board of directors of the company, controlled by Merrill and Randy Light, held a special meeting to discuss interviewing financial advisors to discuss strategic alternatives including the sale of the company. Soon thereafter, the company accounting firm sent Hampton a Tombstone letter, a precursor to the sale of a company.

67. I do not believe Paul Barringer had the mental capacity to make a will or a lifetime transfer, beginning in late 2011 and early 2012.

68. On a number of occasions after I was fired from the company, Hampton made contact with her parents. She and Wade sent gifts and received warm thank-you notes. She and her mother talked often by phone. However, her mother prevented contact with her father by instructing her not to call on their landline but to use her mother's cell phone. On a number of occasions, her mother canceled planned visits and trips with Hampton and my son Wade.

69.. Beginning in 2012, Paul's estate planning decision-making, which included his company, was improperly influenced by Merrill Light and Randy Light. They had constant access to him. They lived in close proximity to him. While he was in a weakened mental state, they deceived him into thinking that I was trying to "steal" the company, including confusing

ROA 004010

him by providing old presentations that he had once complimented but could not at the time remember those presentations. Ironically, those presentations and proposals were initially floated partly in response to Merrill Light's pleas for additional distributions, yet she used them to deceive Paul and sabotage his relationship with me. They failed to tell him about Randy Light's failed business ventures and bankruptcies. Merrill Light and Randy Light shared the same estate planning counsel with Paul, whom I believe was directed to him by the Lights. Merrill Light was present during estate planning discussions with my Paul and his counsel. Randy Light had conversations with Paul's counsel about Paul's estate planning. Around the time that the Light Defendants began their improper influence of Paul's estate planning, Randy Light was in the throes of two bankruptcies with approximately \$25 million in debt.

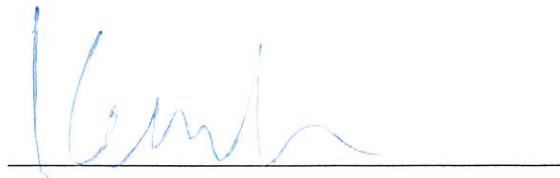
70. I understand that Merrill Light produced a copy of a purported letter from her mother to Hampton dated February 15, 2015, claiming that Hampton brought a legal action against the company, which is not true, but I do not recall her ever receiving the original of that letter.

71. Hampton did not receive a copy of the August 3, 2012, shareholder minutes until CFRC's attorney sent them on April 14, 2015, pursuant to Hampton's statutory shareholder inspection requests.

ROA 004010

ROA 004011

AND FURTHER THE AFFIANT SAYETH NOT.



Kevin Luzak

SWORN TO BEFORE ME this 6 day of November, 2020


Notary Public for South Carolina

My commission expires: 06/01/2026



DeAnna M. Phillips
Notary Public, State of South Carolina
My Commission Expires 06/01/2026

ROA 004011

ROA 004012

10/1/21

ROA 004012



ROA 004013

EXHIBIT 4

ROA 004013

1 page of 0666?

2 A. That's what it appears to be.

3 Q. Okay. And then what are 668, 669, and
4 670?

5 A. These are copies of those transfer
6 documents that Mr. -- that -- transfer documents
7 where Mr. Barringer transferred his shares to
8 Merrill Light --

9 Q. Okay.

10 A. -- as trustee of her trust.

11 Q. Now, if we go back to the two unsigned
12 share certificates, I note here that both of these
13 share certificates have the date typed in them of
14 December 31, 2012. Do you see that?

15 A. This is 0664 and 0665?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Why did you put the date of
19 December 31, 2012 on these share certificates?

20 A. It was my perception that Mr. Barringer
21 had delivered the transfer documents to the
22 company -- that is, to me, to have the transfer
23 formalized by being recorded on the books. And in
24 December when I got to that process, what, the
25 document -- we chose to use the 12/31 date as a date

ROA 004015
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1 so that we would -- the gift that, I think, had
2 happened in 2012 when Mr. Barringer had signed the
3 transfer documents, that was reflected on the books
4 as of 12/31/2012.

5 Q. Okay. Did you discuss with Mr. Barringer
6 the fact that you had failed to have the shares
7 recorded back in September when he signed the
8 transfer documents?

9 MR. KIRBY: Object to form.

10 BY MR. TWOMBLEY:

11 Q. Go ahead.

12 A. I discussed with Mr. Barringer that the
13 documents for transfer had been signed in September
14 and that the -- that transfer hadn't been recorded on
15 the books in September.

16 Q. Okay. Let me just repeat the question.
17 What, if any, conversations did you have with
18 Mr. Barringer about the fact that the transfer
19 documents had not been sent to the company to be
20 formally recorded in September of 2012?

21 MR. TRAXLER: Tom Traxler. Same
22 objection.

23 THE WITNESS: I spoke with Paul about
24 the transfer of the shares. My recollection is that
25 Paul didn't consider this to be a big deal and didn't

ROA 004015

1 want to have it being an accounting problem or an
2 issue for Travis Bryant to have to adjust. And,
3 therefore, Mr. Barringer agreed that we should treat
4 that transfer on the books as having occurred on
5 12/31.

6 BY MR. TWOMBLEY:

7 Q. Okay. At any point in time did
8 Mr. Barringer express any regret in making the
9 transfer in September?

10 A. Mr. Barringer never expressed any regret
11 for making the transfer. That is, to me.

12 Q. Are you aware of him expressing regret to
13 anyone else?

14 A. I'm unaware of Mr. Barringer expressing
15 any regret about the transfer of the voting shares to
16 Merrill Light.

17 Q. Okay. I'd now like to turn to tab 15,
18 please. It would appear --

19 MS. PAYLOR: What's the Bates number,
20 please?

21 MR. TWOMBLEY: Yeah. As soon as we
22 get there. It's 0387. It's the start -- let me find
23 the exact one I'm looking at. It's 396 -- hold on
24 one moment, Alice. Yes. It's 396 to 402. Let me
25 just confirm that based on the way they've got them

1 MS. KIRK: Object to the form.

2 THE WITNESS: I think it depends.

3 BY MR. TRAXLER:

4 Q. On what?

5 A. On to what extent they're suffering from
6 dementia.

7 Q. All right. Let's talk about full-blown
8 Alzheimer's. Is that person more susceptible to
9 undue influence?

10 MS. KIRK: Object to the form.

11 THE WITNESS: I think to the extent
12 that someone is fully incapacitated, then, yes,
13 they're more susceptible to undue influence.

14 Q. All right. We're going to come back to
15 this later. But with regard to this question, did
16 you ever see a change yourself from 2011 until
17 Paul Barringer's death of his cognitive abilities?

18 A. Of his cognitive abilities?

19 Q. Yes, sir.

20 MR. MOLSTER: Object to the form.

21 THE WITNESS: I did -- from 2011
22 through 2015?

23 BY MR. TRAXLER:

24 Q. Yes.

25 A. I did not.

1 Q. So he was -- his cognitive abilities
2 remained static, unchanged, from your work with him
3 in 2011 until he died; is that correct?

4 MS. KIRK: Object to the form.
5 That's asked and answered.

6 MR. TWOMBLEY: Same objection.

7 BY MR. TRAXLER:

8 Q. Go ahead.

9 A. Do you want -- am I supposed to answer
10 that question again?

11 Q. Yes, sir. Answer the question.

12 A. I didn't see a change in Mr. Barringer's
13 cognitive ability during that time period.

14 Q. Did you see any change in any of his
15 mental capacities during that time period, whether we
16 call it cognitive abilities or otherwise?

17 MR. TWOMBLEY: Object to the form.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I'm sorry. You said
20 not cognitive ability -- cognitive impairment, but
21 you said mental abilities? Is that what this
22 question is?

23 BY MR. TRAXLER:

24 Q. I'll rephrase it. You answered the
25 question with regard to his cognitive abilities.

1 A. Yes.

2 Q. I'm trying to figure out whether or not
3 you attach a particular meaning to the term
4 "cognitive abilities." So my question is: Did you
5 observe any change in his mental capacity from 2011
6 until he died?

7 MR. MOLSTER: Object to the form.

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: Same objection.

10 THE WITNESS: I think throughout that
11 time period, Mr. Barringer's mental capacity well
12 exceeded the capacity necessary.

13 BY MR. TRAXLER:

14 Q. All right. But that's not my question.
15 Did you see any change to that capacity starting late
16 2011 through his death?

17 MR. MOLSTER: Same objection.

18 MR. TWOMBLEY: Same objection.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- I didn't see
21 Mr. Barringer having mental impairment throughout
22 that time period.

23 BY MR. TRAXLER:

24 Q. That's not my question, Mr. Jolley. My
25 question very simply is: Did you see any change, one

1 way or the other, in his mental capacity from late
2 2011 until he died?

3 MS. KIRK: Object to the form. And
4 he's asked and answered.

5 MR. TWOMBLEY: Same objection.

6 THE WITNESS: I didn't see a
7 difference in his cognitive abilities during that
8 time period.

9 BY MR. TRAXLER:

10 Q. All right. In your mind, are cognitive
11 abilities the same and synonymous with mental
12 capacity?

13 MR. MOLSTER: Object to the form.

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: You're asking me if I
17 think cognitive ability is the same as capacity?

18 BY MR. TRAXLER:

19 Q. I'm sorry. We've got some background
20 noise, Mr. Jolley. You broke up on me. Can you
21 answer that question again?

22 A. Yeah. I need -- I'm sorry. I need you to
23 repeat the question for me, Mr. Traxler.

24 Q. Did you make any distinction in your mind
25 between the term "cognitive abilities" and "mental

1 capacity?"

2 MR. TWOMBLEY: Object to the form.

3 MS. KIRK: Object to form.

4 THE WITNESS: Cognitive abilities
5 and -- and -- I don't think I draw a distinction
6 between cognitive ability and mental capacity
7 generally.

8 BY MR. TRAXLER:

9 Q. So it would not be incorrect for me to say
10 that you believe that you did not see any change in
11 his mental capacity from late 2011 until he died; is
12 that correct?

13 MR. TWOMBLEY: Object to the form.

14 MR. MOLSTER: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: Yes.

17 MR. TRAXLER: Anybody need a break?

18 MR. TWOMBLEY: No.

19 THE VIDEOGRAPHER: We do have about
20 15 minutes.

21 MR. TRAXLER: Oh, you're getting
22 ready to run out of tape, aren't you, Madam Court
23 Reporter?

24 MS. KIRK: She said she's got 15
25 minutes.

1 Schronce. You know, we're now in a period of time
2 where Mr. Jolley is serving as corporate counsel. So
3 I think probably what makes sense to do here, if it's
4 okay with you, is to proceed question by question if
5 we have your agreement that there is not a subject
6 matter waiver when we allow him to answer a question.

7 MR. TRAXLER: That's fine.

8 MR. MOLSTER: And, John -- Tom, can I
9 just clarify? Are you talking about September 11 --

10 MR. TRAXLER: Yes.

11 MR. MOLSTER: -- 2012. I think you
12 may have said July. Go it.

13 MR. TRAXLER: Okay. Whenever I said,
14 I'm talking about stock transfer on September 11,
15 2012.

16 MR. MOLSTER: I'm familiar with it.

17 MR. TRAXLER: We all are.

18 BY MR. TRAXLER:

19 Q. Mr. Jolley, what was your involvement in
20 that?

21 A. Pursuant to Mr. Barringer's -- Paul
22 Barringer's request, we prepared the transfer
23 documents for Mr. Barringer's signature.

24 Q. All right. And I believe -- if I could
25 get you to go to tab 18, page 616.

1 MR. TRAXLER: Ariail, can you hear
2 me?

3 MS. KIRK: I think so. What's tab?

4 MR. TWOMBLEY: 18, 616.

5 THE WITNESS: 616.

6 MR. MOLSTER: What's the number? 6
7 what?

8 MS. KIRK: 616.

9 MR. MOLSTER: Thank you.

10 BY MR. TRAXLER:

11 Q. And I believe this is the stock power that
12 you prepared. And if you look at the next page, 669
13 and 670, you also prepared those; is that correct?

14 A. I'm sorry, Mr. Traxler. Hang on one
15 second. Okay. So J. Jolley Dep 668. Yes. I think
16 we -- we prepared this stock power for Mr. Barringer.

17 Q. All right. And along with the assignment
18 of shares that follows starting on page 669; is that
19 correct?

20 A. That is correct.

21 Q. All right. Why did Mr. -- strike that.
22 Who did you represent with regard to this
23 transfer?

24 A. I think --

25 MR. MOLSTER: Now, if I let him

1 answer that question with respect to Merrill Light
2 and/or Randy Light, you'll agree it's not a subject
3 matter waiver?

4 MR. TRAXLER: Yeah. I'll agree to
5 that to all -- all of you.

6 BY MR. TRAXLER:

7 Q. Who did you represent, Mr. Jolley?

8 A. I represented Paul B. Barringer with
9 respect to this.

10 Q. Did you represent anyone else?

11 A. I don't believe I represented anybody
12 else -- well, with respect to the preparation of the
13 stock power or with respect to the assignment of
14 shares.

15 Q. Did you discuss this transfer with Merrill
16 Light before September 11, 2012?

17 MR. MOLSTER: Same agreement?

18 MR. TRAXLER: Yeah.

19 THE WITNESS: I discussed this --

20 MR. MOLSTER: Let me -- let me be
21 careful here, John.

22 THE WITNESS: Yeah. Sure.

23 MR. MOLSTER: So I understood -- I
24 understand your answer with respect to the stock
25 power and the assignment of shares. But if you had a

1 conversation with Merrill in your capacity as her
2 lawyer either for as her estate planning lawyer or
3 any other capacity if you had an attorney-client
4 relationship, then I instruct you not to answer. If
5 you had a -- if you had a conversation with her
6 solely in your -- in your role as counsel for Paul
7 Barringer, then I think subject to the agreement with
8 Tom, I'm inclined to let you answer that question. I
9 defer to Ashley a little bit on that as well. But do
10 you understand my instruction and are you able to
11 make that -- that discernment, if you will? It's
12 probably a conversation I shouldn't be having in
13 front of Mr. Traxler, but I'm going to do it anyway
14 in the interest of expediency unless we need to take
15 a break.

16 MR. TRAXLER: I've only got till 4:00
17 according to Ms. Kirk.

18 THE WITNESS: Yeah. I mean, I think
19 I can -- I think I can answer that, Chip. I think I
20 understand that -- I think I understand that
21 instruction.

22 MR. MOLSTER: Thank you.

23 THE WITNESS: And so --

24 BY MR. TRAXLER:

25 Q. Go ahead and answer it.

1 A. Mr. Traxler, if you would repeat the
2 question, I'll try to.

3 Q. Did you discuss this stock transfer with
4 Merrill Light prior to September 11, 2012?

5 A. The answer is yes.

6 Q. And what did you tell her?

7 MR. MOLSTER: Continued agreement?

8 MR. TRAXLER: Yeah.

9 THE WITNESS: I think my interaction
10 or my communication with Ms. Light with respect to
11 this transfer was limited to communicating to her
12 what her father's wishes were and that he was
13 proceeding with the transfer.

14 BY MR. TRAXLER:

15 Q. What did she say to you?

16 A. I mean, beyond -- I believe Ms. Light said
17 that, of course, it was up to her dad.

18 Q. Did you have any other conversations with
19 her?

20 A. Not that I can recall.

21 Q. All right. Did you have any conversations
22 with Hampton Luzak about it?

23 A. I didn't. I did not.

24 Q. All right. And I know you've been into
25 this somewhat before in other instances, but the

1 document says it was for good and valuable
2 consideration by looking at the assignment of shares
3 on page 669, correct?

4 A. The assignment of shares does, in fact,
5 quote, "Now, therefore, for good and valuable
6 consideration."

7 Q. And there was not any good or valuable
8 consideration; is that correct?

9 MS. KIRK: Object to the form.

10 THE WITNESS: I don't believe that
11 Ms. Light provided -- no. I mean, I guess I don't --
12 I don't think she provided any -- I mean, she didn't
13 pay anything for the shares, if that's what you're
14 asking.

15 BY MR. TRAXLER:

16 Q. All right. Do you know of anything she
17 gave up or anything she gave up in exchange for the
18 shares?

19 MS. KIRK: Object to the form.

20 BY MR. TRAXLER:

21 Q. The bottom line, Mr. Jolley, this was a
22 gift, wasn't it?

23 A. This was a gift.

24 Q. Okay. And so a gift means that there was
25 nothing given in exchange for it, right?

1 A. Yes, Mr. Traxler.

2 Q. Okay. And nobody -- you never discussed
3 this or anybody discuss it with Hampton, correct?

4 MS. KIRK: Object to the form.

5 THE WITNESS: It is correct that I
6 didn't discuss this gift with Ms. Luzak.

7 BY MR. TRAXLER:

8 Q. Was the assignment of shares and the stock
9 power form executed on September 11, 2012 as shown?

10 A. That's certainly my recollection.

11 Q. All right. And after -- was Merrill Light
12 there when it was signed?

13 A. I am not sure who was present when
14 Mr. Barringer signed this document -- these
15 documents.

16 Q. And were you still doing legal work for
17 Merrill Light at the time?

18 A. At the time, I represented Ms. Light in
19 her estate planning.

20 Q. Got it. And also Randy Light?

21 A. I'm not sure if I represented Randy Light
22 with respect to estate planning at that time.

23 Q. All right. After the stock power and the
24 assignment of shares were executed by Mr. Barringer
25 and the assignment of shares by Merrill Light as

1 trustee, what did you do with them?

2 A. What did I do with these two documents,
3 that is, the stock power and the assignment of
4 shares?

5 Q. Yes.

6 A. I believe they were in the file that I
7 maintained for CFRC.

8 Q. Did you consider them to have been
9 delivered to Merrill Light by doing that?

10 MR. TWOMBLEY: Object to the form of
11 the question. It calls for a legal conclusion.

12 MS. KIRK: Same objection.

13 THE WITNESS: I believe that the --
14 Ms. Light signing as assignee certainly constituted
15 delivery.

16 BY MR. TRAXLER:

17 Q. Okay. And after these documents were
18 signed by Mr. Barringer and Ms. Light on
19 September 11, 2012, who owned that stock?

20 MR. TWOMBLEY: Object to the form.
21 Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 THE WITNESS: I believe that
24 Mr. Barringer signed all the documents necessary to
25 effectuate the transfer.

1 BY MR. TRAXLER:

2 Q. So was Merrill Light the owner of that
3 stock after the documents were executed on
4 September 11?

5 A. At the time, I believe --

6 Q. Go ahead.

7 A. At the time, I believe that we had to --
8 that the document -- the corporate records would have
9 to be reflected. But, yes, the transfer had occurred
10 to Ms. Light.

11 Q. All right. This was done the fiscal year
12 of CFRC is September 30, is it not?

13 A. I don't remember that, Mr. Traxler.

14 Q. Was the date or the timing of this
15 transfer in any way related to the end of the fiscal
16 year of CFRC?

17 A. I don't believe so.

18 Q. All right. So when did, in your opinion,
19 did Merrill Light become the owner of this stock?

20 MR. TWOMBLEY: Object to the form of
21 the question. Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: I think Mr. Barringer
25 completed his part of the transaction when he signed

1 this -- these documents.

2 BY MR. TRAXLER:

3 Q. All right. And if a shareholder's meeting
4 had been held the next day, who would have had the
5 right the next day to vote those shares?

6 MS. PAYLOR: Object to the form.

7 MS. KIRK: Object to the form of the
8 question.

9 THE WITNESS: I think the stock
10 record book would -- would be determinative for that.

11 BY MR. TRAXLER:

12 Q. All right. Do you consider a transfer of
13 stock to be effective upon assignment and delivery or
14 upon recording on the corporate books or at some
15 other time?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 MS. PAYLOR: Object to form.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- your question is
21 do I believe that the transfer was effective as of
22 the recording of the books or the signing of the
23 transfer documents? Is that what the question is?

24 BY MR. TRAXLER:

25 Q. Or if you are of the opinion it was some

1 other date, whatever date you think.

2 A. I believe Mr. Barringer certainly
3 completed his -- his part of the transfer when he
4 signed those documents, and I think it has to be
5 perfected by being recorded on the record -- in the
6 stock record.

7 Q. Well, that didn't occur until 2013,
8 correct?

9 MS. KIRK: Object to form.

10 THE WITNESS: I think the record was
11 updated to reflect 12/31, but the share certificates
12 reflected the January '13 as you indicate.

13 BY MR. TRAXLER:

14 Q. Well, Mr. Barringer also represented to
15 the IRS that it happened on December 31, 2012, didn't
16 he?

17 MS. KIRK: Object to the form.

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: In the -- I'm sorry.

20 BY MR. TRAXLER:

21 Q. (Inaudible) tax returns.

22 A. I would expect that Mr. Barringer did, in
23 fact, on his gift tax return that the transfer was
24 reflected as of 12/31/2012.

25 Q. Okay. Again, your -- is it your -- I want

1 to make sure I'm right about this. When do you think
2 that Merrill Light became the owner of those shares
3 of voting stock?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Same objection.

6 MS. PAYLOR: Object to the form.

7 THE WITNESS: I believe that Merrill
8 Light became the owner once those shares were
9 registered in the stock record.

10 BY MR. TRAXLER:

11 Q. Okay. Up until that point in time, is it
12 your opinion that Mr. Paul Barringer was the owner of
13 those shares?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I think Mr. Barringer
17 had given up his -- didn't have the ability to take
18 the shares back at the signing -- signed those
19 transfer documents.

20 BY MR. TRAXLER:

21 Q. My question was: Do you think that he was
22 the owner of those shares until they were recorded on
23 the corporate books?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I think with respect to

1 the company, he was treated as the owner until it was
2 registered on the books.

3 BY MR. TRAXLER:

4 Q. Okay. But you do -- you do corporate work
5 some, don't you?

6 A. I do corporate work --

7 MS. KIRK: Object to the form.

8 THE WITNESS: I do corporate work
9 some.

10 BY MR. TRAXLER:

11 Q. I'm not asking you what the corporation
12 thought. I am asking you, in your opinion, did the
13 stock transfer to Merrill Light upon the execution of
14 these documents or upon reporting on the corporate
15 records?

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: I really viewed this as
19 a completed gift with respect to Mr. Barringer at the
20 time he signed the transfer documents subject to
21 recording on the books.

22 BY MR. TRAXLER:

23 Q. All right. And if Merrill Light had paid
24 him money for the stock on September 11th and had
25 taken the assignment on September 11th, would your

1 answer still be the same?

2 MS. KIRK: Object to the form.

3 MS. PAYLOR: Object to the form.

4 MR. TWOMBLEY: Same objection. And I
5 would also note there's already been a whole entire
6 lawsuit about this issue. Not only a deposition, but
7 an entire lawsuit.

8 BY MR. TRAXLER:

9 Q. Okay. What's the answer, Mr. Jolley?

10 A. So Mr. -- you're going to have to repeat
11 the question, Mr. Traxler.

12 Q. Sure. If Merrill Light had paid money to
13 Paul Barringer on September 11, 2012 for that stock
14 as opposed to it being a gift, would that change your
15 answer as to her becoming the owner of the stock upon
16 recording on the corporate records?

17 MR. TWOMBLEY: Object to the form of
18 the question.

19 MS. KIRK: Same objection.

20 MS. PAYLOR: Object to form.

21 THE WITNESS: I think --

22 MR. TWOMBLEY: Hypothetical.

23 THE WITNESS: I think to the extent
24 that Ms. Barringer had purchased the shares --

25 MR. TWOMBLEY: Ms. Light.

1 THE WITNESS: Sorry. I do -- I think
2 to the extent that Ms. Light had purchased the shares
3 versus having the shares gifted to her, then I think
4 that the transfer would still have been made at the
5 time of the exchange subject to the company's books
6 being updated to reflect the transfer.

7 MR. TRAXLER:

8 Q. Okay. Well, Ms. Kirk has said that you
9 are leaving in about ten minutes, so there's
10 something I really just kind of wanted to ask you out
11 of sequence and then we'll come back. How about go
12 back to tab one, page 109.

13 A. I see J. Jolley Dep 109.

14 Q. Yes, sir. You want to read those e-mails
15 and I have a couple of questions for you.

16 A. I'm sorry. You want me to read this --
17 the -- the e-mail?

18 Q. Yes. The two e-mails that are on there,
19 if you would read them to yourself. Then I'll ask
20 you questions about them.

21 A. Okay.

22 MR. MOLSTER: So, Tom, we previously
23 asserted privilege objections to these e-mails. We
24 understand that Judge Noland didn't agree with us,
25 but we would have a standing objection to questions

1 regarding these e-mails. Can we -- may we just
2 continue to have a standing objection as opposed to
3 having to make it every time you ask a question?

4 MR. TRAXLER: Sure. That's fine.

5 MR. SCHRONCE: If we can agree to
6 make that objection standing for everybody.

7 MR. TRAXLER: Yeah. I'll agree to
8 that.

9 BY MR. TRAXLER:

10 Q. All right. Mr. Jolley, have you had a
11 chance to read them?

12 A. I have.

13 Q. Do you remember these e-mails or this
14 e-mail -- e-mails?

15 A. Yeah, yeah. I'm sorry, I do.

16 Q. In the bottom e-mail, the original one
17 that Randy Light asked if PBB, Paul Barringer, could
18 give away \$5 million this year, if he has not
19 already, how about PBB writing a check to Merrill as
20 a gift and CFRC paying PP -- PBB equivalent taking
21 into consideration any taxes or, quote -- excuse me,
22 any taxes, quote, for services over the last,
23 question mark, couple of years, close quote. Read
24 out loud what your response was.

25 A. I said, "Sorry, Randy. I now see what PBB

1 record real quick?

2 BY MR. TRAXLER:

3 Q. Mr. Jolley, let's go back and pick up
4 where we were. And I'm talking about the
5 September 11 transfer of voting stock of Paul
6 Barringer's revocable trust to Merrill Light's
7 revocable trust. Did you not state in your affidavit
8 given in the -- this litigation that the stock
9 transfer occurred on September 11 as opposed --

10 A. Mr. Traxler, you broke up again.

11 Q. Okay. I'm sorry. Let me get you to go to
12 tab six, page 286.

13 A. I'm sorry. I'm on page 286.

14 Q. Okay. Read -- this is your affidavit that
15 you signed on July 16, 2018, correct?

16 A. It is my affidavit, and I did sign it on
17 July 16, 2018.

18 Q. Okay. Did you not state in paragraph 11
19 that the stock transfer occurred to Merrill Light on
20 September 11, 2012?

21 A. No. 11 does in fact say that the
22 September 20, 2012 e-mail did not relate to the
23 September 11, 2012 transfer of the stock from Paul
24 Barringer to Merrill Light which had occurred on
25 September 11, 2012.

1 Q. The expected transfer was September 11,
2 2012, not when it was recorded on the corporate
3 books, correct?

4 A. That is correct.

5 MS. KIRK: Object to the form.

6 BY MR. TRAXLER:

7 Q. What was your involvement with respect to
8 gift tax return? Did you advise Mr. Barringer he
9 needed to do one?

10 MS. PAYLOR: Object to the form.

11 MS. KIRK: Object to the form. And,
12 Tom -- Tom, are you close to wrapping up or are we
13 going to be breaking -- or ending it anyway?

14 MR. TRAXLER: I've got -- I've got
15 several more hours, Ariail.

16 MS. KIRK: Okay.

17 BY MR. TRAXLER:

18 Q. So y'all didn't need to advise
19 Mr. Barringer that he needed to file a gift tax
20 return?

21 A. I don't recall whether I specifically
22 advised Mr. Barringer whether he had to file a gift
23 tax return. Those...

24 MS. KIRK: All right. Mr. Traxler, I
25 think we're going to go ahead and stop the

ROA 004040

EXHIBIT 5

ROA 004040

1 through 2014?

2 A I would think so, yeah.

3 Q Okay. Would he have the mental
4 capacity -- would he have the mental capacity to
5 know who his loved ones are?

6 A Yes.

7 Q Okay.

8 MR. GILREATH: Object to the form
9 of that question.

10 BY MR. TWOMBLEY:

11 Q And about the mental capacity to decide
12 who he wanted to receive his property at his
13 death?

14 A I would think so.

15 Q Okay. Do you have --

16 MR. GILREATH: Object to the form.

17 BY MR. TWOMBLEY:

18 Q Do you have any reservations about his
19 cognitive --

20 A In 2014, none.

21 Q Okay. Now, obviously, we know
22 Mr. Barringer's condition got worse and I
23 believe you previously testified that he -- I
24 think you said, started to fall off of a cliff
25 in the later part of 2015.



1 Do you remember that?

2 A I'd have to review my notes, but I do
3 remember.

4 Q Okay. And tell us what you -- what you
5 mean by falling off a cliff?

6 A I don't know what I was referring to,
7 but obviously, he's getting worse at that point.

8 Q Okay.

9 THE VIDEOGRAPHER: Off the video.

10 (Whereupon, a break was taken at
11 5:57 p.m.)

12 THE VIDEOGRAPHER: Back on video.

13 (Back on the record at 6:08 p.m.)

14 BY MR. TWOMBLEY:

15 Q Dr. Long, we are back after the short
16 break.

17 Going to move on to 2015, but let me
18 just ask you about 2014. Do you recall
19 regularly talking to Paul on the phone when you
20 needed to in 2014?

21 A Yeah, I'm -- I don't recall that, but
22 I'm sure I did because I do remember talking to
23 him. But just the timing of it, I'm not sure
24 about.

25 Q Okay. Do you ever recall having to get



1 Would that have been in your records? I didn't
2 see it anywhere, I don't believe.

3 A Not necessarily. I mean, if somebody
4 called me and said, how's dad, and I would have
5 told her, I wouldn't necessarily put that in the
6 record.

7 Q There's an e-mail in the record, I
8 don't think we got it in our book and just --
9 I'm going to just read it to you. It's a
10 February 21st, 2011 e-mail that, I think, Randy
11 wrote on Merrill Light's e-mail where he says, I
12 feel that it would be advantageous for the four
13 of us to discuss the future plans, present, and
14 future with CFRC, and that's Mr. Barringer's
15 company. It is evident to Merrill and I -- this
16 is Randy talking -- PVB, being Mr. Barringer, is
17 starting to experience different health issues
18 that affect his judgment regarding everyday
19 decisions personally and business wise. It
20 appears that it makes it harder for you -- and
21 he addresses, I think, to Kevin Luzak to
22 exercise your authority of president of CFRC if
23 he will not listen.

24 Did -- it says -- then he closes with
25 saying, our fear is PVB, Paul Barringer, is



1 going to attempt some irrational move that will
2 harm the profitability of the company simply to
3 satisfy his desire to underwrite Victor or keep
4 the stockholders grueling.

5 Did Merrill Light or her husband,
6 Randy, or Ms. Merrill Barringer ever express
7 those concerns to you?

8 MR. TWOMBLEY: Object to the form
9 of the question.

10 MS. PAYLOR: Object to the form.

11 THE WITNESS: I have no
12 recollection of that.

13 BY MR. GILREATH:

14 Q If they had done that, would it more
15 likely than not that there would be something in
16 your records about that?

17 MR. TWOMBLEY: Object to the form
18 of the question.

19 MS. PAYLOR: Object to form.

20 THE WITNESS: Maybe not. You
21 know, if I had seen that, and I don't
22 recall seeing it, I probably wouldn't
23 have put anything in the record. I
24 mean, I would -- if I recall -- if I
25 had recalled that and if Randy or



1 Merrill had said, we want to meet, I
2 would meet, but I don't recall that. I
3 don't recall. I mean, I might have met
4 with them, but I just don't recall
5 that.

6 MR. TWOMBLEY: Object to the form
7 of the question.

8 MS. PAYLOR: Object to the form.
9 He thinks the meeting was with him,
10 Jim.

11 MR. TWOMBLEY: That's not what he
12 is talking about.

13 MR. GILREATH: Y'all need to just
14 make an objection, please.

15 MS. PAYLOR: Well, you need to
16 make your questions clear so that he
17 understands them because your question
18 made no sense.

19 MR. GILREATH: That's your
20 opinion.

21 MS. PAYLOR: It is my opinion.

22 MR. TWOMBLEY: It's mine too.
23 It's mine too.

24 MR. GILREATH: Okay. Sorry nobody
25 liked my question.



1 MR. MACLOSKIE: I did.

2 BY MR. GILREATH:

3 Q So would I be correct to assume that as
4 you sit here today, you have no recollection of
5 anybody in Paul Barringer's immediate family,
6 being his wife and daughters, Merrill, talking
7 about him -- or talking about their concern that
8 he is maybe starting to show more irrational
9 behavior on certain family issues --

10 MS. PAYLOR: Object to the form.

11 BY MR. GILREATH:

12 Q -- no recollection of that; correct?

13 A That's correct.

14 Q All right. Look over at tab -- let's
15 see, what's this? Tab 13.

16 A All right.

17 MS. PAYLOR: In your book, Jim?

18 MR. GILREATH: In my book, yep.

19 This thing got a cover on it?

20 MS. PAYLOR: We don't have covers.

21 THE WITNESS: Okay.

22 BY MR. GILREATH:

23 Q All right. That is the -- some amended
24 responses and objections that were filed on
25 Mr. Barringer's behalf in litigation up in the



1 Eastern District of Virginia, and I would ask
2 you to look at the -- well, wait a minute.
3 Yeah, look at the very last page right before
4 Tab 14 and you see -- and that's a filing in
5 Document 315-2 in that litigation.

6 And that is an affirmation that
7 Mr. Barringer signed, on the 14th day of
8 January, 2016, and he said, I do solemnly
9 declare and affirm under the penalties of
10 perjury that the contents of the forgoing
11 answers to interrogatories are truly and
12 pertinent, to the best of my knowledge,
13 information, and belief.

14 And my question to you, Dr. Long, is:
15 On January 14th of 2016, after you've gone
16 through these records and looked at them and
17 hopefully got your memory refreshed, do you
18 believe that Paul Barringer would have known
19 what he was signing there and had the mental
20 capacity understand it?

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: Object to the form.

23 THE WITNESS: On that date, I
24 can't say because I don't know the
25 circumstances of what was going on in



1 the rest of his life and his body at
2 that time.

3 BY MR. GILREATH:

4 Q Well, can you find -- let me see, hold
5 on a minute. All right. Let's go talk about
6 the mini mental scores to help you get that in
7 context. Hold on a minute. Go to Tab 8.

8 A Tab 8?

9 Q In my book, yeah.

10 A Okay.

11 MR. TWOMBLEY: The court reporter
12 is asking to take a five-minute break,
13 so we will stand down for five or ten
14 minutes. Let's take a five or
15 ten-minute break.

16 MR. GILREATH: Okay.

17 THE VIDEOGRAPHER: Off the record.

18 (Whereupon, a break was taken at
19 7:21 p.m.)

20 THE VIDEOGRAPHER: Back on video.

21 (Back on the record at 7:31 p.m.)

22 BY MR. GILREATH:

23 Q All right. I want you to look at, in
24 my book, at Tab 8.

25 A Okay.



1 Q Page -- this will be at the top, Tab 8,
2 page 365 through 367.

3 MS. PAYLOR: Do you know what
4 total page this is because I'm having a
5 hard time getting around, Jim?

6 MR. GILREATH: Well, those pages
7 are Bates numbered up at the top
8 right-hand corner.

9 MS. PAYLOR: Okay. So what page
10 are you on?

11 MR. GILREATH: We're looking at --
12 we're going to be looking -- on 351.

13 MR. TWOMBLEY: 351, Alice.

14 MS. PAYLOR: 351. Okay. Thank
15 you.

16 MR. GILREATH: We're going to be
17 looking at 365.

18 MR. TWOMBLEY: I thought it was
19 Tab 8. Tab 8 starts at 351.

20 BY MR. GILREATH:

21 Q Tab 8 at 365 and he -- can -- do you
22 see that?

23 A Yes.

24 Q And isn't it true that on that day, he
25 scored a zero on the mini mental exam; correct?



1 MR. TWOMBLEY: Object to the form
2 of the question.

3 THE WITNESS: Is this 365?

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Yeah, that's it.

6 MR. GILREATH: Do what?

7 THE WITNESS: 365?

8 BY MR. GILREATH:

9 Q 365 through 367. If you look at those
10 pages under Tab 8, isn't it true that he scored
11 a -- well, actually, on the one 365, it says he
12 scored 24 on May 2014, he couldn't participate
13 in a mini mental at all today, and that's on --
14 he couldn't answer any of the questions and that
15 is on June 12th.

16 Do you see that?

17 MR. TWOMBLEY: Object to the form.

18 MS. PAYLOR: Ask a question. What
19 question have you got?

20 THE WITNESS: Yeah, I don't know
21 what the question is.

22 BY MR. GILREATH:

23 Q Do you agree with me, and look at pages
24 in my notebook from 0365, 66, and 67, would you
25 agree with me that based on those, he scored a



1 zero on those dates, right?

2 MR. TWOMBLEY: Object to the form
3 of the question.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: Well, the mini
6 mental exam, on my end, is blurred out.
7 All I see on the right-hand side of the
8 page is five zeros.

9 BY MR. GILREATH:

10 Q Are you in my notebook?

11 A They didn't finish the test. It looks
12 like they didn't do the test.

13 Q Right. You see, it says down there in
14 the middle of the page, his wife says he is
15 doing worse cognitively, his memory is worse, no
16 hallucinations, he doesn't drive, he does get
17 assistance with ADL. I guess that's something
18 about -- what is that called? Activities of
19 daily living from his wife. He scored a 24 in
20 May of 2014. He couldn't participate in the
21 mini mental at all today. He couldn't answer
22 any of the questions.

23 My question is: On that day, would he
24 have been able to have known what he was signing
25 in the federal litigation up in Virginia with



1 these interrogatory answers --

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: This is somebody
4 else's note. I can't interpret his
5 note.

6 (Crosstalk.)

7 MR. GILREATH: Can I get through
8 with my question, please.

9 MS. PAYLOR: I don't know.

10 BY MR. GILREATH:

11 Q -- that are at tab -- that are at
12 tab --

13 A Wasn't he in the hospital at this time?

14 Q -- Tab 13.

15 A Wasn't he in the hospital at this time?

16 Q I don't know. He could have been, but
17 my question is --

18 A He's a hospital neurologist, so --

19 Q -- these lawyers --

20 A -- they would -- nobody would ask him a
21 question if he was in the throws of urinary
22 sepsis. I mean, it's a question, I think, if
23 you'll excuse the phrase, hypothetical.

24 Q Look at Tab 13, look at the last page.

25 MS. PAYLOR: What page are you on?



1 MR. GILREATH: I'm on Tab 13.

2 THE WITNESS: I've got -- you're
3 talking about the one from --
4 you're not talking about 4/22/16?

5 BY MR. GILREATH:

6 Q I'm talking about January the 14th of
7 2016. Look at --

8 MS. PAYLOR: What page are you on,
9 Jim?

10 MR. GILREATH: It's under Dr. Long
11 depo, 0463.

12 MS. PAYLOR: Okay.

13 MR. GILREATH: It's the last --
14 it's right before -- it's right before
15 Tab 14.

16 BY MR. GILREATH:

17 Q And my question to you, Dr. Long, is:
18 On January the 14th of 2016, somebody had
19 Mr. Barringer sign under penalties of perjury
20 and tell the federal court up in Alexandria,
21 Virginia that he had solemnly declared and
22 affirmed under the penalties of perjury that the
23 contents of his answers in the previous 19 pages
24 were true and correct to best of his knowledge
25 and belief. Now -- and he signed that on



1 January the 14th of 2016.

2 Did you believe that when he signed
3 that, and those lawyers had him sign it, that he
4 had any idea of what he was doing?

5 MR. TWOMBLEY: Object to the form.

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: Misstates the
8 testimony. Mistakes the record. And
9 also it's already been asked and
10 answered.

11 THE WITNESS: I wasn't there, I
12 can't possibly answer that. I don't
13 know the circumstances of what that was
14 about. And if somebody else,
15 Mr. Barringer signed it, I mean, I
16 can't answer that question. I wasn't
17 there. I don't know.

18 BY MR. GILREATH:

19 Q This is not a hospital -- this is a
20 doctor's office record.

21 A No, I see that now. I was looking a
22 the prior hospital records. It is my record?

23 MS. PAYLOR: No. Object to the
24 form.

25 THE WITNESS: I mean, I can't



1 answer somebody else's record.

2 BY MR. GILREATH:

3 Q Doctor -- I believe it's Dr. Robert
4 McGregor and he --

5 MS. PAYLOR: Object to the form.

6 MR. GILREATH: I'm trying to
7 explain it to him if you'll let me do
8 it.

9 THE WITNESS: Are you asking me to
10 comment on it?

11 MS. PAYLOR: He's already said
12 it's not his record, he can't testify
13 about it.

14 MR. MACLOSKIE: Can y'all please
15 have the courtesy of letting him finish
16 his question and then you can object
17 without testifying?

18 MR. GILREATH: Amen.

19 THE WITNESS: Well, that's the
20 answer. I can't comment on it.

21 (Crosstalk.)

22 MR. TWOMBLEY: I haven't heard a
23 question, but go ahead.

24 BY MR. GILREATH:

25 Q Would you look at was is -- at Tab 8,



1 and it says Dr. Long depo, 0365, record from Dr.
2 Robert McGregor, and it says, his wife says he
3 is doing worse cognitively, his mood is worse,
4 no hallucinations, he doesn't drive, he does get
5 assistance with ADLs from his wife. He scored
6 24 on the MMSE in 2014. He couldn't participate
7 in MMSE at all today. He couldn't answer any of
8 the questions.

9 Now, my question --

10 MR. TWOMBLEY: Jim, you just asked
11 him about all this.

12 MR. GILREATH: Please let me
13 answer -- ask my question.

14 BY MR. GILREATH:

15 Q My question to you, based on that, is:
16 Was he capable of signing when he signed this
17 thing on January the 14th of 2016? Do you think
18 he knew what he was doing?

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form.

21 Asked and answered.

22 BY MR. GILREATH:

23 Q Can you answer it, Dr. Long?

24 A Yeah. I wasn't there, I can't
25 answer -- I can't interpret that. I don't know



1 what -- what was going on at that particular
2 time. I mean, I -- I mean, I just wasn't there
3 when he signed it? And I don't see -- you're
4 talking about my note or somebody else's?

5 Q I'm not talking about you being there
6 when he signed it, I'm talking about this other
7 doctor's notes, and I'm telling you that he
8 signed something on January 14th of 2016, and
9 that he affirmed, under penalties of perjury,
10 the answers he was signing to.

11 And what I want to know is did he have
12 the mental capacity, on that date based on what
13 you're reading in Dr. McGregor's records or
14 anything else you've got in your records about
15 that time that you believe that he knew what was
16 going on then?

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Object to the form.

19 Asked and answered. Misstate the
20 testimony.

21 THE WITNESS: I wasn't -- I
22 can't -- first of all, I can't -- I
23 can't comment on other people's
24 records. And second of all, I don't
25 know, on that particular day, what was



1 going on that with him. He could have
2 had a lucid moment, maybe he didn't, I
3 just don't know.

4 BY MR. GILREATH:

5 Q All right. Let's go look at some of
6 your records.

7 A All right.

8 Q We're going to look at Tab 8 at page
9 368.

10 A Right. 368?

11 Q Well, it's up at the top, it says Dr.
12 Long dep, 0368.

13 A Yeah. I got it.

14 Q Getting -- it says, notes, getting
15 worse, mini mental exam, four out of 30. Now
16 that's in your records.

17 A Okay.

18 Q And that's on -- and that's on -- let
19 me get that date. That's on 9 -- September the
20 10th of 2015, and he's signing this thing on
21 January the 14th --

22 MS. PAYLOR: Object to the form.

23 BY MR. GILREATH:

24 Q -- 2016.

25 Do you believe, based on that mini



1 mental exam that was taken a few months before
2 that, that he would have known what he was doing
3 when he signed this on January the 14th of 2016?

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Object to the form.

6 BY MR. GILREATH:

7 Q Can you answer the question, Dr. Long.

8 A Yeah, I'm looking. It's -- the mini
9 mental exam, it says, unable to complete.

10 MR. TWOMBLEY: No.

11 THE WITNESS: Is that the one?

12 BY MR. GILREATH:

13 Q No. We're looking at the one that's on
14 0368.

15 A Yeah, I've got that right here.

16 Q It says, under dementia, notes, getting
17 worse, mini mental exam, four out 30 and --

18 MS. PAYLOR: That he orders the
19 will.

20 BY MR. GILREATH:

21 Q -- the date that's associated with that
22 record is -- wait a minute.

23 A Let's see.

24 Q On the 10th of 2015.

25 MS. PAYLOR: Object to the form.



1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: I'm reading it.

3 Hold on. Here's a mini mental from
4 10/11. Let's see here, 10/30, what
5 year is that mini mental exam, this one
6 here?

7 MR. TWOMBLEY: I don't know.

8 THE WITNESS: All right. It says
9 here -- let's see if I got the right
10 one. Is that the one with all zeros?

11 MR. TWOMBLEY: I'm not sure what
12 he's asking about.

13 THE WITNESS: Okay. Show me, is
14 this on page 0368, and it says -- let
15 me look at the date here. Where is the
16 date on this? Oh, yeah, 9/10, so it
17 says --

18 BY MR. GILREATH:

19 Q 0368.

20 A -- additional reports, four out of 30,
21 right?

22 Q Right.

23 A He had four out of 30, that doesn't
24 jive with everything around it, all the notes
25 around it. He may be having, you know, other



1 issues, but I can't explain that. I don't know
2 why he is four out of 30. I mean, you have to
3 be -- and he was not -- he did not have deep
4 dementia in 2015. I mean, he might have been,
5 you know, disturbed for other reasons, just
6 didn't concentrate or something, but I can't
7 explain that. I don't know the answer to that.

8 Q You gave him the test; correct?

9 MS. PAYLOR: Object to the form.

10 MR. TWOMBLEY: Object to the form.

11 MS. PAYLOR: He did not give him
12 the test.

13 THE WITNESS: I don't know if I
14 gave him the test or not. It is my
15 note, it could have come from somebody
16 else, but it probably was me, I gave
17 him a lot of them. See, the one that
18 I'm looking at, which is probably the
19 one, was right next to it and he
20 couldn't fill anything out.

21 BY MR. GILREATH:

22 Q Right.

23 A He was unable to complete it, so --

24 Q What's the date on that one?

25 A -- that's probably the one we're



1 talking about. It's not dated, it's right
2 before it. I mean, yeah, that's -- so.

3 Q Is that -- the one you're looking at,
4 is that on page 0367 where it says date, 6/12,
5 and it's got all zeros over there?

6 A Yes.

7 Q Okay.

8 A I don't know if that's the one I was
9 referring to or misquoted it, but I do know from
10 2013 through 2015, he was competent to do --
11 competent to do this. This could have been a
12 misread or a miswrite or something, but I just
13 can't believe that he descended to a four and
14 then came out of it and tested 28 unless he was
15 being consumed by some other illness at the
16 time. I don't know. I can't answer it.

17 Q Let's go over to -- let's go over
18 to the next -- couple pages more over, it's
19 Bates 0370, it's number 31 out of 69 on these
20 notes, urology records --

21 A I see that.

22 Q -- and it says -- shows he scored ten
23 out of 30.

24 A Right.

25 Q On -- what day is that? On October the



1 14th -- that's October 19th, excuse me. October
2 19th of 2015, he scored ten out of 30.

3 A I'm looking at the --

4 Q Do you see that?

5 A Yeah, I didn't do that test, somebody
6 else did.

7 Q But -- but if that's the test that he
8 had done by one of his doctors, tell the jury
9 how bad of shape you're in when you can only
10 score a ten out of 30.

11 MR. TWOMBLEY: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: Well, if you have
14 ten out of 30, you have moderate
15 dementia. And, you know, like I was
16 saying earlier, if the patient looks
17 different than the paper says he is,
18 you always treat the patient. And, you
19 know, you admit the paper to the
20 hospital and treat the patient. So I
21 see a ten, and that's a significant
22 decrease from what he was, but I don't
23 think it lasted because if you go --

24 BY MR. GILREATH:

25 Q Let's go look at page --



1 MS. PAYLOR: Let him finish his
2 answer.

3 THE WITNESS: If you look down the
4 stream, I think there is reference to
5 the fact that he -- so he's better some
6 days and other days he isn't. And I
7 don't know on this particular day, what
8 was going on in his life, but
9 everything depends. If you're upset,
10 you can probably score -- you and me
11 probably could, at any given time,
12 could score a ten or 15 or five, if
13 you're upset or depressed or sick from
14 anything, and then you could -- the
15 next week, score a 28. So I don't
16 know. I can't remember if there was
17 anything significant on that day, but
18 that's my answer.

19 BY MR. GILREATH:

20 Q Okay. Let me refer you to Tab 10 in my
21 book.

22 A Okay.

23 Q At page 0397 is a copy of the portions
24 of the transcript where you testified in front
25 of the probate judge back in April of 2016.



1 Do you remember testifying over there,
2 don't you?

3 A I do, yes, sir.

4 Q And I believe this is Mr. Twombly
5 that's asking you, and you said -- at the top of
6 the page, he said when did Mr. Barringer's
7 condition begin to deteriorate such that you
8 would have placed limitations on what he could
9 do and he could not do. And then read that
10 answer there and that's what you said under oath
11 that day in court.

12 A What is the page? Can you give me the
13 page?

14 Q Yeah. It's up at the top, 0397.

15 A Okay.

16 Q Read your answer there and tell me if
17 it is --

18 A 0397, I got it, just a second.

19 (Crosstalk.)

20 BY MR. GILREATH:

21 Q And tell me if you still believe that
22 answer here today.

23 A Okay. Let's see.

24 (Crosstalk.)

25 BY MR. GILREATH:



1 Q -- through line 23.

2 A 23, it says --

3 Q It actually goes over to page 85.

4 A Says I would guess sometime in mid
5 2015, but certainly in the fall of 2015, and I
6 don't know exactly what month, September,
7 October, December, he took -- he was in the
8 descending certainly, I don't know what that
9 means with his illness. Descending certainly, I
10 don't know what I meant by that.

11 But prior to that time, you had not
12 placed any restrictions? Hadn't, no. So the
13 question is: What does that mean? That means
14 that sometime toward the end of '15 -- it could
15 have been early '16, I didn't know the exact
16 date, but he was in his efflorescence of his
17 disease. His transformation, but I don't know
18 exactly.

19 Q Explain what you mean by that,
20 efflorescence of his disease.

21 A What's that?

22 Q Explain to the jury what you mean by
23 that.

24 A That basically -- efflorescence is --
25 the first diagnosis is -- bricklayers leave a



1 little sandy material on the brick, the second
2 diagnosis explains a caterpillar turning into a
3 butterfly, and it's described as efflorescence.
4 So some writers, TS Elliot could be one, have
5 used that on a transformation of anything. Like
6 a pupa to a butterfly or the reverse.

7 Q And look up there -- I'm referring now
8 to the court reporter's transcript, page 84.

9 A Page 84. I got it.

10 Q It's on the transcript page, it's Dr.
11 Long depo, page 0397 at Tab 10 of our exhibits.

12 MS. PAYLOR: That's what he just
13 read.

14 THE WITNESS: No, I didn't read
15 it. I was just answering. I guess I
16 answered it the exact way.

17 BY MR. GILREATH:

18 Q I want you to read that answer starting
19 on page -- the question was starting up at
20 page -- line 5, and I believe Mr. Twombly
21 asked, when did Mr. Barringer's condition begin
22 to deteriorate such that you would have placed
23 limitations on what he could do and what he
24 could not do? And then you started explaining
25 that on line 9, and your answer goes on over to



1 line 6 on 85 of the transcript, which is at 0398
2 in the notebook.

3 My question to you is: Were you
4 telling the truth that day when you said that
5 and do you still agree with that today as you
6 sit here and read it again?

7 A Let me -- can I read it again?

8 MS. PAYLOR: Object to the form.

9 MR. TWOMBLEY: Same objection.

10 (Crosstalk.)

11 THE WITNESS: (Witness reading
12 from document.)

13 Most people follow some sort of a
14 similar path. They start out to where
15 they might leave their keys in the car,
16 they might miss a word or two, and they
17 end up relating -- not relating to the
18 world around them. They have lost
19 brain tissue so there is a spectrum.
20 He has gone through the complete
21 spectrum. When did he -- when did
22 the -- did he fall off the cliff, so to
23 speak?

24 I don't like the term cliff, but
25 did he metamorph or morph into somebody



1 that couldn't relate to the outside
2 world? Is that what you're asking me?
3 Yes. I would guess sometime -- it says
4 here, in the mid 2015. All right,
5 that's certainly in the fall of 2015,
6 and I don't know exactly what month,
7 September, October, December. He was
8 in the descending certainly with his
9 illness. But prior to that time, you
10 had not placed any restrictions on
11 Mr. Barringer? I hadn't, no. Okay.
12 No further questions, Your Honor.

13 So I didn't know exactly when I
14 answered that question when he -- and I
15 said that I didn't know when he fell
16 off the cliff, but he was certainly in
17 transition. And somewhere at the end
18 of '15, middle of '16, he did
19 transition.

20 BY MR. GILREATH:

21 Q Okay. Now turn over to Tab 13 in my
22 book, last page, it's the page right before Tab
23 14, and you see --

24 MS. PAYLOR: What page, Jim, the
25 page at the top?



1 MR. GILREATH: The page at the top
2 is 0463.

3 THE WITNESS: Yeah. I got it.

4 BY MR. GILREATH:

5 Q It says, I do solemnly -- I'll
6 represent to you, this is a signature page that
7 he signed apparently on December the 14th, 2016
8 with -- through some lawyers up in Virginia
9 somewhere, I understand, and he said on January
10 the 14th of 2016, I do solemnly declare and
11 affirm under the penalties of perjury that the
12 contents of the foregoing answers to
13 interrogatories are true and correct to the best
14 of my knowledge and belief.

15 And if you will go back and look, on
16 that page forward to the first of Tab 13, you
17 will see that he is signing and affirming his
18 answers to 20-something pages of interrogatory
19 answers under penalties of perjury.

20 And my question to you is: Based on
21 what we been talking about and what you said up
22 there under oath in the probate court, isn't it
23 true that he really didn't know what he was
24 doing on January the 14th of 2016 and was not --

25 MR. TWOMBLEY: Object to the form.



1 MS. PAYLOR: Object to the form.

2 MR. GILREATH: Let me get through
3 with my question, please.

4 MS. PAYLOR: I thought you were
5 through.

6 MR. TWOMBLEY: I was hoping you
7 were through.

8 THE WITNESS: So I made the
9 statement or are you saying that on
10 January the 14th, he was seriously
11 demented?

12 BY MR. GILREATH:

13 Q Yes.

14 A Okay. I didn't sign the form, Paul
15 Barringer did. He signed it, that it's his
16 belief that this is -- everything was fine. I
17 can't answer to that question. I don't know.

18 Q So if one of those lawyers in Virginia
19 had come to you and said, doctor -- Dr. Long, we
20 got this form here on this 20 pages of
21 interrogatories and we need Mr. Barringer to
22 sign it, we got to go file it under penalties of
23 perjury in a federal courthouse up in Alexandra,
24 Virginia, do you believe that it is appropriate
25 for us to do that and that he will know what he



1 is signing? Please tell us yes or no, what
2 would you have told him?

3 MR. TWOMBLEY: Object to the form
4 of the question.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: It's a hypothetical,
7 I can't answer that. It is
8 hypothetical.

9 BY MR. GILREATH:

10 Q Okay. The truth, Dr. Long, is that
11 Paul Barringer was totally out of his mind on
12 January 14th and nobody wants to admit it; is
13 that correct?

14 MR. TWOMBLEY: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: You know, I'm just
17 one guy practicing medicine, I can't go
18 with everybody. I don't know who they
19 are.

20 BY MR. GILREATH:

21 Q Okay. So you're telling me you --

22 A I was not part -- I'll tell you what, I
23 was not part of the conspiracy. I don't even
24 know what this was all about at the time, and I
25 still don't, but I can only testify to what I



1 know. I never talked to anybody in Virginia, to
2 my knowledge. I just go to work and go home.

3 Q Well, go look at page 34 under Tab 13,
4 these amended answers that he signed. I want
5 you to just thumb through those, and these are
6 typed up answers and they're questions and he's
7 answering them, and -- and then he's affirming,
8 under penalties of perjury, that his answer is
9 true and correct.

10 Do you believe it was proper for these
11 lawyers to go to him and get him to sign this
12 when they knew or should have known that he
13 didn't know what he was signing?

14 MR. TWOMBLEY: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I am not an
17 attorney, I have no idea what is proper
18 and legally. I don't do legal, I just
19 don't know that.

20 BY MR. GILREATH:

21 Q Okay. All right. I think I beaten
22 that horse, I'll move on.

23 MS. PAYLOR: Thank you.

24 BY MR. GILREATH:

25 Q Let's see. Let me get back into my



1 questions here. Where are we?

2 Is it true that a person that has
3 Alzheimer's and a urinary tract infection, and
4 then gets over the urinary tract infection, that
5 the person still has Alzheimer's?

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: Same objection.

8 THE WITNESS: What's the -- I'm
9 sorry, I missed the question.

10 BY MR. GILREATH:

11 Q Isn't it true -- I'm talking about the
12 fact that he's got Alzheimer's and a urinary
13 tract infection, which we have been talking
14 about some, and then he gets over the urinary
15 tract infection because of the antibiotics or
16 whatever, that he still has Alzheimer's; isn't
17 that correct?

18 MR. TWOMBLEY: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: As I stated earlier,
21 nobody on the planet can tell him if he
22 had Alzheimer's, that is a postmortem
23 diagnosis.

24 BY MR. GILREATH:

25 Q I understand that.



1 A Okay. So I can't -- I wouldn't -- a
2 lot of people, and I probably was at the time,
3 using Alzheimer's as a generic word, it --
4 really, dementia is what I should have put in
5 there.

6 Q Well, let's change that, then, for my
7 question and say that once he got over the
8 urinary tract infection, then does he still have
9 dementia?

10 MR. TWOMBLEY: Object to the form.

11 THE WITNESS: Yes.

12 MS. PAYLOR: Object to the form.

13 BY MR. GILREATH:

14 Q Not Alzheimer's, but dementia?

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. GILREATH:

18 Q Okay. How would you, based on these
19 records we've looked at, and we've looked at a
20 lot of them today, how would you classify his
21 dementia on -- what's the date of this thing?

22 How would you classify his dementia on
23 January the 14th of 2016?

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Can you refer me to



1 a note in the chart or I can try to
2 find it?

3 BY MR. GILREATH:

4 Q Wait a minute. Look at the last page,
5 Tab 13.

6 A Okay.

7 Q And you see -- wait a minute.
8 Look at the last tab of 463, which is
9 the declaration that he signed on January the
10 14th of 2016.

11 A Right. I'm looking at it.

12 Q You see that?

13 A Yeah.

14 Q Based on what we've talked about here
15 today and these records you've looked at, would
16 you agree with me that when he signed that on
17 January the 14th of 2016, that he still had
18 dementia?

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form.

21 MS. PAYLOR: Asked and answered a
22 million times.

23 THE WITNESS: Yeah. He had
24 dementia, it's just -- I don't know
25 what -- where he is on the scale. He's



1 had some form of dementia for years,
2 but most of the time, it's functional
3 dementia. So I can't answer that on
4 that particular day. Yes, he had
5 dementia.

6 BY MR. GILREATH:

7 Q Okay. Good. Do you know Dr. Paul
8 Mazzeo?

9 A Very well.

10 Q And look at Tab 12.

11 A All right.

12 Q And there is a -- it's Dr. Long depo,
13 page 437 through 439.

14 A Yep.

15 Q And there is a conclusion by Dr. Mazzeo
16 that he said -- in paragraph 11, it is my
17 professional medical opinion that
18 Dr. Barringer -- Mr. Barringer currently lack
19 testimonial capacity, and he signed that on
20 January 20th of --

21 A Right.

22 Q -- 2016. Do you have any -- would you
23 agree with Dr. Mazzeo's conclusion there?

24 MR. TWOMBLEY: Object to the form
25 of the question.



1 MS. PAYLOR: Object to the form.

2 THE WITNESS: I don't know what he
3 is basing it on. You know, I'm -- he
4 is a neurologist, I'm an internist. I
5 treat a lot of the people with
6 Alzheimer's, but I don't know what he
7 is basing that on. But he thinks that
8 that's the case because that is what he
9 wrote, but I can't comment on it, it's
10 his opinion.

11 BY MR. GILREATH:

12 Q He's a pretty good doctor, isn't he?

13 MR. TWOMBLEY: Object to the form.

14 MS. PAYLOR: Object to the form.

15 BY MR. GILREATH:

16 Q He's still --

17 A He is a board certified excellent
18 neurologist and --

19 Q Okay.

20 A -- he specialized in neurology.

21 Q Do you know of any reason why I
22 shouldn't take, as viable proof, what he signed
23 in this declaration --

24 A I don't have any --

25 Q -- January the 20th of 2016?



1 MR. TWOMBLEY: Object to the form.

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: I mean, I just can't
4 answer that. This is not my note, and
5 you have to decide that for yourself,
6 to whether you take this at its own
7 merit or think there was something else
8 going on.

9 BY MR. GILREATH:

10 Q Well, I'm showing you a copy of it. If
11 you want time to read it, you're welcome to read
12 it, but I want to know whether you know of any
13 good reason why I should not believe that what
14 Dr. Mazzeo said under penalties of perjury is
15 true and correct?

16 MR. TWOMBLEY: Object to the form.

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Asked and answered
19 repeatedly. He's --

20 THE WITNESS: He is a good doctor.

21 MR. TWOMBLEY: Let me finish my
22 objection.

23 THE WITNESS: Oh, I'm sorry.

24 MR. TWOMBLEY: He's answered that
25 question directly. This is repetitive



1 and it is unnecessary. Please move on
2 to the next question.

3 MS. PAYLOR: And it's harassing.

4 MR. GILREATH: Only if he will
5 answer the question.

6 MS. PAYLOR: He did answer it.

7 MR. TWOMBLEY: If you want to ask
8 the same question --

9 THE WITNESS: I don't know it's
10 based on.

11 MR. TWOMBLEY: Let me finish,
12 please.

13 If you want to ask all your
14 questions twice, you're welcome to do
15 that. But I'm asking you to please
16 move on. You have asked him this
17 question, he just said he read it, and
18 he's given -- he's testified to your
19 questions.

20 MR. GILREATH: He hasn't answered
21 the question, but that's --

22 MS. PAYLOR: Yes, he did.

23 MR. GILREATH: That's your
24 interpretation of it. Anyway, I'll
25 take what I got. He speaks very highly



1 of Dr. Mazzeo, appears to me from his
2 sworn testimony. All right.

3 MR. TWOMBLEY: Then move on to the
4 next question, please.

5 MR. GILREATH: I'm about to move
6 on.

7 MR. MACLOSKIE: Let him, Allen
8 [sic]. Great day, why don't y'all let
9 him move on.

10 BY MR. GILREATH:

11 Q Let me ask you this: Did you have any
12 involvement with Mr. Barringer being admitted to
13 Memory Matters?

14 A No.

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Same objection.

17 BY MR. GILREATH:

18 Q Did you -- are you -- do -- you know
19 what Memory Matters is, don't you?

20 A I do, indeed.

21 Q Do they require a doctor certification?

22 A No --

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: -- anybody can go to
25 Memory Matters. They can self refer.



1 BY MR. GILREATH:

2 Q Say what now?

3 A Anybody can just walk in and sign up
4 for Memory Matters.

5 Q So you don't have to have a doctor's
6 certification?

7 A No.

8 Q Okay.

9 MR. TWOMBLEY: Object to the form
10 of the last question. Asked and
11 answered.

12 BY MR. GILREATH:

13 Q So you -- you say you didn't have
14 anything to do with it?

15 A I didn't say that.

16 MR. TWOMBLEY: Object to the form
17 of the question.

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: I didn't say that.

20 I said -- you asked me the question, if
21 you -- if I have a patient. I've got a
22 lot of patients that come into my
23 office and say, I sent my husband to
24 Memory Matters, and I didn't have
25 anything to do with it. That was the



1 question. I'm not saying I sent him or
2 I didn't send him, I just don't if it
3 was -- I was involved in that back
4 then.

5 BY MR. GILREATH:

6 Q Did you say you were involved in it or
7 you don't know?

8 MR. TWOMBLEY: Object to the form.

9 THE WITNESS: I don't know whether
10 I was or not.

11 BY MR. GILREATH:

12 Q Okay.

13 A Could have been that he came in -- I
14 don't -- you know, I don't send a lot -- just
15 between you and I, I don't send a lot of
16 patients to Memory Matters.

17 Q Okay.

18 A And the reasons are not that critical.

19 Q Okay.

20 A So probably, I would say, somebody else
21 did, but I can't answer that for sure because I
22 don't remember.

23 Q Do you remember when you found out he
24 was over there?

25 A What's that?



1 Q Do you remember when you found that he
2 was over there?

3 A I don't remember that.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: I don't remember
6 that.

7 (Crosstalk.)

8 BY MR. GILREATH:

9 Q I need you to look at my book at Tab 1
10 at page 0034, paragraph 3, and this is part of
11 your records back in 2015. And it says,
12 dementia associated with another disease,
13 getting worse, probably secondary to general
14 anesthesia. Should affect where -- something,
15 something, something -- worse sudden confusion,
16 saw a neurologist, 9/10/2015, performed mini
17 mental exam, four out of 30. Also filled out H
18 & P -- I don't know what that stands for -- for
19 Memory Matters.

20 That indicates to me that in your
21 records that you filled out whatever H & P is
22 for Memory Matters. Do you have any knowledge
23 about that?

24 A A lot of people go to Memory Matters --

25 MS. PAYLOR: Objection to the



1 form.

2 MR. TWOMBLEY: Same objection.

3 THE WITNESS: A lot of people go
4 to Memory Matters and they call me and
5 say, we need some records.

6 BY MR. GILREATH:

7 Q Do you know what H & P from memory
8 Matters would be? It is in your records.

9 A You mean what does H & P stand for?

10 Q Yeah?

11 A History --

12 Q History and something?

13 A History and physical exam.

14 Q So it appears --

15 MS. PAYLOR: What page are you on?

16 MR. GILREATH: I'm on page 0034.

17 MS. PAYLOR: Where on that page,
18 please? I don't see that.

19 MR. GILREATH: Dementia associated
20 with another disease, performed a mini
21 mental exam on 9/10/2015.

22 MS. PAYLOR: Okay.

23 BY MR. GILREATH:

24 Q Four out of 30. Also filled out
25 history and physical for Memory Matters. So it



1 appears to me, from looking at your records,
2 that you filled out something for Memory
3 Matters.

4 Would you agree with me?

5 A I could have very well, yes.

6 Q Okay. All right. But you don't -- as
7 we sit here today, you don't have any memory of
8 that?

9 A You know, I don't.

10 MR. TWOMBLEY: Object to the form.

11 Asked and answered.

12 MS. PAYLOR: Same objection.

13 BY MR. GILREATH:

14 Q All right. Did you ever use the
15 Barringer's house up in Linfield? Did they ever
16 make that available to you?

17 A They did.

18 Q And how much did you pay them for it,
19 if anything?

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: Nothing.

22 MR. TWOMBLEY: Same objection.

23 THE WITNESS: I paid nothing.

24 BY MR. GILREATH:

25 Q Okay. And how many times would you go



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EXHIBIT 6

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ROA 004088

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	C.A. No.: 2016-CP-07-1919
IN THE MATTER OF:	)	
Estate of Paul Brandon Barringer, II	)	
	)	
Hampton B. Luzak,	)	
	)	
Plaintiff,	)	PLAINTIFF'S SCRCP NO. 56(f)
	)	AFFIDAVIT
vs.	)	
	)	
Merrill B. Light, Merrill U. Barringer, as	)	
Personal Representative of the Estate of Paul	)	
Brandon Barringer, II, J. Randolph Light, Jr.,	)	
Merrill B. Light as putative trustee of the	)	
Paul B. Barringer, II, Revocable Trust dated	)	
December 4, 1998, And Merrill B. Light as	)	
Trustee of the Merrill Barringer Light	)	
Revocable Trust,	)	
Defendants,	)	

Personally, appeared before me, Thomas W. Traxler, who being first sworn deposes and says:

I am one of the counsel for the Plaintiff and submit this Affidavit on behalf of the Plaintiff pursuant to Rule No. 56(f) of the *South Carolina Rules of Civil Procedure (SCRCP)* because discovery is not complete, and that incomplete discovery will likely yield additional evidence relevant to the issues raised in the Motion for Summary Judgment.

The Defendant Merrill Light has filed her Motion for Summary Judgment dated May 14, 2021 seeking Summary Judgment from this Court as to the alleged validity of the will and trust of Paul B. Barringer dated February 28, 2012.

The Plaintiff cannot present by affidavits facts essential to justify her opposition to the Motion for Summary Judgment because productive discovery essential to the issues raised by the

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Motion for Summary Judgment is ongoing that will likely uncover further additional relevant evidence, and this evidence is essential for the Plaintiff to defend against the Motion for Summary Judgment. Further, productive discovery is ongoing that is also likely to lead to other admissible evidence.

That discovery includes, but is not limited to, the continuing deposition of John M. Jolley, Esquire, along with the depositions of other witnesses such as Travis Bryant and Tom Evans, along with various document discovery disputes that are pending before the Court.

Merrill Light's Motion for Summary Judgment seeks a ruling from this Court as a matter of law that a will and trust executed by Mr. Barringer on February 28, 2012 are valid. She asserts this despite a diagnosis in 2011 that Mr. Barringer suffered from dementia starting at least in 2011 if not before.

The record and discovery in this matter establish that Mr. Jolley was the attorney for Mr. Barringer, Mrs. Barringer, Merrill Light, Randy Light and CFRC in 2012, with his representation of CFRC starting officially in the summer of 2012. In the time leading up to the execution Mr. Barringer's will and trust on February 28, 2012, Mr. Jolley was representing Merrill Light and Randy Light, and he took on also the representation of Mr. and Mrs. Barringer. Mr. Jolley was the lawyer responsible for advising Mr. and Mrs. Barringer on their estate plan that was set forth in the February 28, 2012 will and trust, and one of the changes that occurred in Mr. Barringer's estate documents on February 28, 2012 was the appointment of Mr. Jolley's client, Merrill Light, as a co-trustee of Mr. Barringer's revocable trust. Mr. Jolley represented Merrill Light during the time she was written into that trust.

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The Plaintiff has started the deposition of Mr. Jolley, but Mr. Jolley's lawyer shut down the deposition and refused to allow him to answer any more questions or to set a date for resumption of the deposition. Mr. Jolley has made a Motion for a Protective Order to terminate the deposition. The other Defendants have filed Motions to prevent inquiry into issues they consider to be privileged.

I will not burden this Affidavit with all of the arguments' pertaining to that deposition, but I refer the Court to the Plaintiff's Return to the various Motions for Protective Order with regard to Mr. Jolley's deposition, and the arguments and facts set forth therein are incorporated herein by reference. In short, Mr. Jolley's deposition has not been completed, and there are significant substantive factual issues to examine Mr. Jolley about and, and, in any event, there are significant privilege issues where Mr. Jolley was instructed not to answer questions. He was even instructed not to answer foundational questions surrounding the assertion of a privilege. Therefore, Plaintiff's counsel has not finished asking Mr. Jolley questions, and there are issues about whether privilege was properly asserted and whether he can be compelled to answer those questions. Those issues remain unresolved.

Further, the deposition of Travis Bryant has not been taken. In the time frame leading up to and surrounding the February 28, 2012 execution of Mr. Barringer's estate documents, Mr., Bryant worked integrally with Mr. Barringer as CFO of CFRC, the family business.

The deposition of Tom Evans has not been taken. He also worked for CFRC and worked closely with Mr. Barringer in the relevant time frame.

The Plaintiff identified both of these witnesses in her Answers to Interrogatories and stated them both to have impressions, memory and belief about Mr. Barringer and the actions and

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knowledge of Merrill Light and Randy Light and the events surrounding this lawsuit. They both worked with Mr. Barringer in the time surrounding the February 28, 2012 execution of the estate planning documents and possess relevant information related to the issues raised by the Motion for Summary Judgment.

There are also issues pertaining to discovery pending before this Court that will likely uncover additional relevant evidence. The Plaintiff refers the Court to the pending discovery issues before the Court.

SCRCP No. 56(f) states: “**(f) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.”

Merrill Light has taken advantage of the unilateral shut down of Mr. Jolley’s deposition and of incomplete discovery to file her Motion for Summary, hoping to secure Summary Judgment before additional relevant evidence can be discovered.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

/s Thomas W. Traxler
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**ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK**

Dated: May 24, 2021
Greenville, South Carolina.

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ROA 004093

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, IIHampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer, as
Personal Representative of the Estate of Paul
Brandon Barringer, II, J. Randolph Light, Jr.,
Merrill B. Light as putative trustee of the Paul
B. Barringer, II Revocable Trust dated
December 4, 1998, and Merrill B. Light as
Trustee of the Merrill Barringer Light
Revocable Trust,
Defendants.IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-07-1919

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO CFRC'S
MOTION FOR
INTERVENTION AND
PROTECTIVE RELIEF****TO: ALL COUNSEL OF RECORD AND RYAN G. RICH, EDWARD J. FUHR AND
JOHNATHON E. SCHRONCE, AS COUNSEL FOR CFRC:**

Plaintiff Hampton Barringer Luzak, through her undersigned counsel, hereby submits this Memorandum in Opposition to CFRC's Motion for Intervention and Protective Relief. Plaintiff hereby opposes Coastal Forest Resources Company's ("CFRC's") belated and untimely attempt to intervene in this probate case. Plaintiff's lawsuit does not affect any corporate interest of CFRC. CFRC does not meet any of the elements for intervention as of right under Rule 24(a)(2), SCRCP, much less all of the elements. Nor does the motion meet the criteria for permissive intervention under Rule 24(b). CFRC's motion to intervene fails on all the elements for intervention under Rule 24.

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A. Intervention as of right under Rule 24(a)(2).

Pursuant to the South Carolina Supreme Court, a party seeking to intervene as of right must meet the following four factors:

(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E. 2d 712, 714 (1990).

“[F]ailure to satisfy any one of the four requirements precludes intervention.” Ex Parte Reichlyn, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

1. Timeliness of application.

Rule 24(a)(2) requires timely application to intervene as set forth by a four factor test by the South Carolina Supreme Court: (1) the time since the intervener knew or should have known of the interest; (2) the reason for the delay; (3) the stage of the litigation; and (4) the prejudice to the original parties if intervention is granted, and to the applicant if intervention is denied. Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991); James F. Flanagan, South Carolina Civil Procedure, 286-287 (4th ed. 2020).

CFRC cited two factors in its motion supporting intervention. First, CFRC contends Mrs. Luzak’s conspiracy cause of action in Count 19 of the Amended Complaint is “a classic derivative claim,” citing the Amended Complaint and Mrs. Luzak’s deposition testimony. (See CFRC Mot. for Intervention and Protective Relief, p. 4 at ¶ 8). CFRC also bases its intervention on the expert damage report of Dr. Charles Alford by claiming that the vast majority of Mrs. Luzak’s damages against Merrill Light are somehow derivative claims. Id. at ¶¶ 9-10.

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a. Plaintiff's conspiracy claim has been long-disclosed to CFRC.

Mrs. Luzak filed her original complaint in the Beaufort County probate court on August 26, 2016 and has been litigating the same claims ever since. Mrs. Luzak's original Complaint included her cause of action for civil conspiracy in Count 19. CFRC has been well aware of Plaintiff's civil conspiracy claim for years. CFRC and its counsel Matthew Boshier at Hunton & Williams, (now Hunton Andrews Kurth), CFRC's current law firm representing it in this motion and throughout this case, was present for the hearing on the motions to dismiss heard by this Court on March 16, 2017. Plaintiff served in September 2016 the pleadings containing Count 19 for civil conspiracy on Defendant Randy Light, who was chairman of the board of CFRC, and on Defendant Merrill Light who is the purported majority and controlling shareholder and member of the board of directors of CFRC. Moreover, the Amended Complaint containing the same civil conspiracy cause of action was served on CFRC's counsel at Hunton & Williams in September 2019 as part of the proceedings in Gadsden County, Florida Circuit Court to enforce Plaintiff's document subpoena against CFRC. CFRC's Motion to Intervene filed over four and a half years after the assertion of the claim of civil conspiracy is untimely.

b. Plaintiff disclosed her damage claims over a year and a half ago.

Plaintiff produced on all the parties the expert report of Dr. Charles Alford pursuant to this Court's Third Amended Scheduling Order on December 10, 2019, wherein Dr. Alford set forth all the categories of damages incurred by Mrs. Luzak as a result of Merrill Light's intentional interference with her inheritance and related causes of action. Dr. Alford's report was produced to Randy Light, then chairman of the board of CFRC, and to Merrill Light, member of the board of directors and the purported controlling shareholder of CFRC. It is

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undeniable that CFRC received Dr. Alford's report as they attached it to their motion to intervene as exhibits H and I.

The year and a half delay after Plaintiff's production of Dr. Alford's damage report is another example of the untimeliness of CFRC's motion. CFRC has offered no reason for the delay.

This case has been ongoing for four and a half years and is approaching time for trial. In fact, Defendant Merrill Barringer has moved this Court asking for a trial date in August. If CFRC is allowed to intervene at this stage, new discovery will have to be conducted, further delaying this case. Rule 40(b) provides that "no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action. . ."

Plaintiff will be greatly prejudiced by having to relitigate four and a half years of discovery related to her civil conspiracy cause of action against Randy Light, Merrill Light and Merrill Barringer. Plaintiff would be further prejudiced by having to relitigate a year and a half of discovery regarding her damage claims against the Lights and Mrs. Barringer for intentional interference with inheritance set forth in Dr. Alford's report.

In contrast, CFRC suffers no prejudice by denial of its intervention since it has no interest at stake in this action as set forth in part 2 below.

CFRC's motion to intervene is unfair and prejudicial to Plaintiff because Plaintiff in 2019 offered to CFRC to have discovery disputes with the company resolved by this Court; however, CFRC rejected the proposal causing Plaintiff significant cost and time in additional litigation.

When Plaintiff served a document subpoena on CFRC in July 2017, CFRC objected and refused to comply for two years. Plaintiff then was forced to hire counsel in Florida, where

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CFRC is headquartered, and institute subpoena enforcement proceedings in that state. Plaintiff had to bear the time and costs of four separate hearings in Gadsden County, Florida.

In the first hearing in Gadsden County, Florida Circuit Court on September 17, 2019, the presiding judge asked at the outset:

Why did you have to come here to litigate this motion to compel rather than in [Beaufort]?”

Exhibit 1, Trans. 9/17/2019, p. 16, lns. 23-24.

Counsel for CFRC responded as follows:

Let me first begin with sort of the jurisdictional questions that Your Honor had about why you, why we're here. The company is not located in South Carolina. And so the court there does not have jurisdiction to compel the company to do anything, because we're not subject to the power there.

Id. at 23:21 – 24:1.

Following the first hearing in Florida, CFRC broached the idea on December 11, 2019 that discovery disputes between Plaintiff and the company be heard in this Court. (Exhibit 2 – E. Fuhr letter to J. Gilreath, 12/11/19, p.2). Plaintiff's counsel quickly agreed on December 17, 2019 and pointed out the obvious stipulation that this Court would have the authority to enforce its rulings on the subject including the fact that Full Faith and Credit should be given to this Court's orders. (Exhibit 3 – J. Gilreath letter to E. Fuhr, 12/17/2019, p. 2, last ¶). In a head-scratching response, CFRC rejected the proposal it initiated stating “we do not understand the conditions you have proposed and accordingly will not agree to waive jurisdiction.” (Exhibit 4 – E. Fuhr letter to J. Gilreath, 12/19/19).

Thereafter Plaintiff had to proceed with three more hearings in Florida and incur the expense of retaining Florida counsel to do so. Now CFRC wants to come to South Carolina and intervene at this late stage when it is purely convenient for CFRC and Defendant Merrill Light.

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2. CFRC has no interest in the property or transaction at stake in this lawsuit.

The second factor identified by the South Carolina Supreme Court in Berkeley Elec. Co-op., Inc. is whether the intervener has an interest relating to the property or transaction which is the subject of the action. In this case, Plaintiff has made no claim against CFRC for any damages or against any property in which it has an interest. Moreover, no defendant has made a third party claim or claim of indemnification against CFRC for any damages resulting from a verdict for the Plaintiff on any of her causes of action.

The applicant must have a direct, substantial and legally protectable interest affected by the litigation to support intervention. Ex Parte Reichlyn, 310 S.C. at 499, 427 S.E.2d at 664. Mrs. Luzak's claims against her sister, her late brother-in-law and her mother would be paid by those Defendants individually from their own assets. Any judgment for Plaintiff would not affect other shareholders of CFRC or CFRC's assets in any way.

This action was filed by Plaintiff originally in the Probate Court for Beaufort County and subsequently removed to this Court under Probate Code § 62-1-302(d). This matter is and always has been a probate-related matter pertaining to the Estate of Paul Barringer and the Barringer family. It is not a claim against the corporation for any of its assets or interests.

CFRC cites the Virginia case of Simmons v. Miller, 261 Va. 561, 544 S.E.2d 666 (2001), but the facts and underlying legal principles are not applicable here. The Simmons case was a classic usurpation of a corporate opportunity wherein a majority shareholder used corporate assets to set up another entity and then diverted corporate business opportunities to the new entity. That was a quintessential derivative matter. The Virginia Supreme Court pointed out that the minority shareholder's breach of fiduciary duty claim against the majority shareholder was for an injury to the corporation. In contrast, in our case Mrs. Luzak did not sue

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Merrill Light and Randy Light in their capacities as officers and directors of CFRC. Instead she sued Merrill Light for breach of her fiduciary duties as co-trustee of the Paul Barringer Revocable Trust and Randy Light for aiding and abetting Merrill Light's breach of her co-trustee duties. This case is an intentional interference with inheritance case with related causes of action for undue influence, lack of capacity, mistake, conspiracy and others. Plaintiff's breach of fiduciary duty claims involve non-corporate acts of the Defendants. Moreover, Defendant Merrill Barringer has never been a shareholder or director of CFRC, yet this case involves the same claims against her for intentional interference with inheritance and civil conspiracy. The fact that others associated with CFRC were involved in the conspiracy with the Barringer family defendants does not make the crux of Mrs. Luzak's claim a corporate derivative claim. If instead of being co-shareholders in a corporation, Merrill Light, Paul Barringer and Mrs. Luzak had been tenants in common in a real estate venture where Merrill Light took advantage of her vulnerable father with dementia to cause him to deed his interest in the real estate over to her, Mrs. Luzak would have the exact same claims she has asserted in this case even though no corporate entity would have been involved.

The South Carolina Supreme Court denied a motion for intervention by a corporate creditor and former officer in a suit by DHEC against the corporation where the judgment creditor/former officer asserted that the DHEC judgment would detrimentally affect the assets of the corporation and the former officer's judgment against the corporation. The Court held that interest in preserving the assets of the corporation to satisfy the former officer's debt was insufficient to justify intervention. See Ex Parte Reichlyn, supra.

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Here CFRC's interest is much less than in Ex Parte Reichlyn since Mrs. Luzak has no claim whatsoever against the assets of CFRC. Her judgment against the Lights and Mrs. Barringer would not have any impact on CFRC in any manner.

CFRC claims that Plaintiff's civil conspiracy cause of action Count 19 is a "classic derivative claim" by referencing Plaintiff's factual allegations that the Lights effected a sale of portions of CFRC's business. These allegations however were merely evidentiary allegations that showed evidence of special damages required for a civil conspiracy claim at the time the Complaint was filed in 2016. However, special damages are no longer required in South Carolina pursuant to the Supreme Court's ruling in Paradis v. Charleston County Sch. Dist., Op. No. 28030 (S.C. Sup. Ct., 05/19/2021)(Shearouse Adv. Sh. No. 17 at 18). The allegations cited by CFRC are not necessary for Plaintiff's civil conspiracy cause of action.

In short, Plaintiff is not seeking damages against the corporation, but rather against only the individual defendants. Thus, any damages will be paid by the individual defendants and not from the corporation.

3. Disposition of this action will not impair or impede CFRC's ability to protect any interest.

Since CFRC has no direct, substantial or legally protectable interest affected by this litigation as stated above, CFRC has no interest to protect by intervening. Mrs. Luzak's damages are those she has suffered as a result of the actions of Merrill Light in her individual capacity as Mrs. Luzak's sister and Mrs. Light's role as co-trustee of their father's trust. Those actions had a direct effect on Mrs. Luzak's inheritance and expectancy of gifts from her father. The harm from Merrill Light's actions, aided and abetted by Randy Light, were inflicted against Mrs. Luzak, and Mrs. Luzak was the only other person whose inheritance was impacted by the

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Defendants' actions. No other shareholder of CFRC can claim such expectancy of inheritance; thus, the losses incurred by Mrs. Luzak are not losses to the corporation or other shareholders.

As stated above, this matter is a probate-related action regarding the Estate of Paul Barringer filed in probate court, and in this Court to protect the Court's jurisdiction, and removed to this Court. No right of CFRC will be impaired or impeded by the result of this case.

4. CFRC's interests are adequately represented by the current Defendants.

It would take an ultra-sensitive light detector to find any daylight between the positions of Merrill Light, CFRC's ostensibly controlling shareholder, and CFRC in the litigation between Mrs. Luzak and her family. CFRC does not need to intervene to protect its interest if any, nor does Merrill Light need CFRC's intervention to protect CFRC's interest. Merrill Light is acting as the controlling shareholder of CFRC, ostensibly holding 51% of the voting stock of the corporation and controlling the election of all directors to the board. She has concurred in every position taken by CFRC throughout all forums of litigation between the parties.

The motion itself shows the extremely close coordination between CFRC and Merrill Light. Included with CFRC's filings are the reports and exhibits of Plaintiff's expert Dr. Alford. Plaintiff did not serve these expert reports directly on CFRC but only on Merrill and Randy Light and Mrs. Barringer. CFRC therefore had to receive its copies of the reports from one of those three. CFRC was also not present at the deposition of Dr. Alford. Therefore, its possession of the transcript excerpts of Dr. Alford's deposition attached to its motion could have only come from the Lights or Mrs. Barringer since the Plaintiff did not produce Dr. Alford's deposition to CFRC, nor did CFRC participate in the deposition.

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This close coordination has existed since the initial filing of this case in 2016. In Merrill Light's first document production on July 18, 2017, she included documents that were exclusively in the possession of CFRC. For instance, she included e-mails of April and May 2012 regarding the transfer of Paul Barringer's voting stock to his trusts in which the only parties to the e-mails were CFRC's current CEO Travis Bryant and CFRC's then corporate counsel Brad Herring. The Lights were not a party on the e-mails, yet the Lights were able to produce those documents that were in the exclusive possession of CFRC when the documents were deemed to be advantageous to Mrs. Light and CFRC. (See Exhibit 5, Light 62-64).

During the Florida proceedings when Plaintiff asked for communications among CFRC, Merrill Light and her Virginia attorneys regarding attorney fees the corporation was paying on behalf of Merrill Light to fight the Plaintiff in the Eastern District of Virginia federal court, both Merrill Light and CFRC asserted the common defense doctrine to claim such communications were attorney-client privileged. Counsel for Merrill Light stated to the Gadsden County, Florida circuit court: "There was certainly a common defense agreement, whether formal or informal . . . and we at no point in time intended to waive that." (Exhibit 6, Transcript, 07/23/2020, p. 27, lns. 13-14, 20-21). Mrs. Light asserted in the Florida proceedings that the sharing of legal information between CFRC and Merrill Light did not result in a waiver of the attorney-client privilege. Whether it did or not, the central point for this intervention motion is the admission that CFRC and Merrill Light coordinated their legal positions and communicated their legal strategies.

Merrill Light has advanced CFRC's derivative claim defense in her own defense. In the letter of Merrill Light's counsel to Judge Mullen on August 7, 2020, as part of the Defendant's

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Lights first summary judgment motion, Merrill Light's counsel asserted that Plaintiff's damages were derivative. (Exhibit 7, Paylor letter of 08/07/2020, 4th para.).

Mrs. Light's attorney in Florida also advanced the derivative defense argument to the Gadsden County Florida Circuit Court stating: "As I understand it, any action that is challenging the company's accounting practices or anything else would need to be brought as a derivative action in Virginia." (Exhibit 8, Trans., 06/22/2020, p. 29, lns. 22-25).

Since Merrill Light is acting as the controlling shareholder of CFRC and serves on its board of directors, she has and can continue to coordinate and advance any argument of CFRC in this litigation.

The South Carolina Supreme Court set forth a three-factor test to determine whether the intervener's representation is adequate: (1) whether existing parties will undoubtedly make all the intervener's arguments; (2) whether the existing parties are capable and willing to make the arguments; and (3) whether the intervener offers different knowledge, experience, or perspective that would otherwise not be available. Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. at 191, 394 S.C.2d at 715; Flanagan, South Carolina Civil Procedure, at 290.

In this case, Merrill Light has already advanced CFRC's derivative claim argument in two different forums in this litigation. Further, she has moved this Court to amend her pleadings to add a defense that Plaintiff's damages are allegedly derivative.¹

Given the seamless coordination between Merrill Light and CFRC, which corporation Merrill Light is exercising control over at this time, Mrs. Light is capable and has been willing to make the arguments CFRC is seeking to duplicate in its intervention. The relief that CFRC requested in its motion – *i.e.*, preclusion of allegedly derivative claims, Plaintiff's civil

¹ This motion is currently before this Court pursuant to Defendant Light's motion to amend her answer filed October 16, 2020.

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conspiracy cause of action and four categories of Plaintiff's damages - are all forms of relief that the Defendants have previously asserted in their motions to dismiss and for summary judgment.

Given that CFRC is currently under the control of Merrill Light as its majority shareholder and member of the board of directors, it has offered no knowledge, experience or perspective that is any different from that advanced by Mrs. Light.

It is clear CFRC's interest, if any, is adequately represented by the existing parties to this litigation.

B. CFRC has no compelling grounds for permissive intervention.

CFRC's request for permissive intervention under Rule 24(b) also fails. Rule 24(b) begins with the same phrase from Rule 24(a) "Upon timely application..." As stated in part 1 of Section A above, this motion is far from timely.

Even if the application were timely, Rule 24(b) allows permissive intervention when authorized by statute, executive order or when "the applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b)(2), SCRPC. A party seeking permissive intervention because the defenses have a common question of law or fact must be able to assert a claim or defense if joined. Flanagan, South Carolina Civil Procedure, at 292. CFRC has no independent defense because there is no claim or right of CFRC being affected by this litigation. See S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1988). Further, if there were some point of view that CFRC claims was not being properly presented, it could file an *amicus curiae* brief without causing the prejudicial effects that adding another party to this action would impose. See Flanagan, South Carolina Civil Procedure, at 293.

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Lastly, the express language of Rule 24(b) conditions permissive intervention in the court's discretion upon considering "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." As set forth above, CFRC's intervention will cause undue delay and prejudice the rights of Plaintiff as an original party to this action by requiring her to relitigate the same defenses already raised by the current defendants. Further, adding an additional party to this already complex litigation will further increase the complexity of the litigation creating undue prejudice at this late stage. See Flanagan, South Carolina Civil Procedure, at 292.

CONCLUSION

CFRC has failed to meet any of the factors necessary to support intervention as of right under Rule 24(a)(2). Moreover, permitting CFRC to intervene at this stage in the case will result in undue delay and prejudice. For these reasons, CFRC's Motion to Intervene should be denied.

Respectfully submitted,

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ROA 004105

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**ATTORNEYS FOR PLAINTIFF
HAMPTON B. LUZAK**

May 25, 2021
Greenville, South Carolina.

ROA 004106

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II.

Hampton B. Luzak,
Plaintiff,

vs.

Merrill B. Light, Merrill U. Barringer,
As Personal Representative of the Estate of
Paul Brandon Barringer, II, J. Randolph
Light, Jr., Merrill B. Light as putative
trustee of the Paul B. Barringer, II,
Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the
Merrill Barringer Light Revocable Trust,
Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

ROA 004107
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-07-1919

**PLAINTIFF'S RESPONSE
TO DEFENDANT MERRILL U.
BARRINGER'S MOTION
TO SET TRIAL DATE**

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
and 2019-CP-07-01294

**PLAINTIFF'S RESPONSE
TO DEFENDANT MERRILL U.
BARRINGER'S MOTION
TO SET TRIAL DATE**

I. Introduction

Defendant Merrill U. Barringer seeks to have this Court set a trial date for the bifurcated

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second and third causes of action set forth in civil actions 2019-CP-07-01253 and 2019-CP-07-01294, as ordered to be bifurcated by Judge Mullen on December 30, 2021.

Defendant makes several assertions in the letter to this Court dated May 5, 2021, and in her motion to set a trial date that should first be corrected and/or refined. Defendant Barringer continues to assert that Judge Mullen “previously indicated we would try [the bifurcated] claims in March of 2021.” That is not accurate. As this Court is aware, Judge Mullen never issued an updated scheduling order that she stated she intended to do at an appropriate time and she never set a trial date. Defendant attempts to hoist the quoted language to the effect of an order, when in fact Judge Mullen was merely ruminating about when a trial might take place during an informal status discussion and more than two months before she even issued her bifurcation order.¹ More recently, this Court stated in our last status conference on April 15, 2021 that, if the Court of Appeals determines that the bifurcation issue was not appealable and Judge Mullen’s order stands, the Court would set a trial “fairly quickly, probably in December.”²

Defendant assumes that, because the Court of Appeals dismissed Plaintiff’s appeal of Judge Mullen’s bifurcation order, the order is not immediately appealable.³ From the Plaintiff’s perspective, that statement is premature. Plaintiff has filed a motion to reconsider the Court of Appeals’ order and is awaiting the response thereto. Moreover, if the Court of Appeals dismisses Plaintiff’s motion, Plaintiff intends to seek the involvement of the South Carolina Supreme Court. Thus, from Plaintiff’s perspective, the issue of immediate appealability is not finally resolved. Plaintiff’s rights are significantly and adversely impacted by Judge Mullen’s

¹ See Exhibit A. Judge Mullen’s ruminations occurred on October 15, 2020, during the hearing of Defendant’s summary judgment motion, which Judge Mullen denied. Defendants did not even file their joint motion to bifurcate trial until October 23, 2020. Judge Mullen filed her order granting the bifurcation motion on December 30, 2020.

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order and consequently she intends to pursue all appropriate avenues to obtain justice.

Assuming that the trial court retains jurisdiction in the meantime, as asserted by Defendant, Plaintiff seeks this Court's understanding that a premature scheduling and conduct of a bifurcated trial could constitute a severe waste of time and judicial resources, as well as for the parties. For example, if a trial is conducted before the appellate process concludes, and it turns out that an appellate court overturns the bifurcation order, then the trial --- which will be quite lengthy despite Defendants' assertions to the contrary --- will have been a complete waste of time and resources and moot. Therefore, assuming that this Court does retain jurisdiction, the Plaintiff respectfully submits that prudence would dictate not scheduling a trial sooner than the appellate process concludes.

As discussed more fully below, Defendant continues to assert the canards that (1) Plaintiff's claim as to the second and third causes of action are limited only to the will and trust documents executed by Mr. Barringer in 1998, and (2) that the bifurcated trial need only to examine the 1998 documents and evidence that existed up until the time of execution. Neither assertion is correct.

As to (1), Plaintiff's second and third causes of action essentially seek to restrain Defendant from exercising any power of appointment she may have over voting stock in Mr. Barringer's legacy company, regardless of when that power of appointment may have been created. Apparently, every revocable trust document executed by Mr. Barringer beginning in 1998⁴ contained some type of power of appointment, if he intended to provide one and to the

² See Exhibit B.

³ As noted before, Plaintiff believes she has to appeal that order or it will be argued that she waived that right.

⁴ Mr. Barringer apparently executed four subsequent revocable trust documents, from 2012 to 2015. Plaintiff disputes their validity, and Defendants assert their validity.

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extent he intended to provide one. Whichever trust document is the most recent valid document will control on that issue: if the 1998 trust document has been revoked by *any* subsequent document, then the 1998 trust document will be meaningless as to the power of appointment issue.

As to (2), not only may the document that is controlling on the power of appointment issue be a document other than the 1998 trust, but applicable law allows evidence of a contract not to revoke and/or a promise other than pursuant to a contract (either will suffice to preclude the exercise of any power of appointment), regardless of when the controlling document is executed.⁵ Thus, Defendant's premise that the bifurcated trial will be limited to only the 1998 documents and evidence up until their execution is completely fallacious.

Because the bifurcated trial will be lengthy and involve many witnesses running a time span and continuum of documents from 1998 until now, significant discovery remains. Despite Defendants' erroneous assertion at other times that Plaintiff somehow has unduly delayed the completion of discovery, the opposite is the case. In any event, additional discovery is necessary to fairly conduct a complex and lengthy trial.⁶

Thus, even if a bifurcated trial is held, Plaintiff requests that this Court recognize the practical timing issues. Plaintiff requests that the trial not be scheduled until after the appellate process is completed and after a fair chance to complete necessary discovery and prepare for trial, with the recognition that the bifurcated trial will be quite lengthy.

⁵ Defendants have consistently perverted the language and the context of one of Plaintiff's answers to an interrogatory that somehow she painted herself into a corner, thereby limiting herself to only the 1998 documents and evidence up until their execution. Again, this is simply not true.

⁶ Before the motion to bifurcate was even filed, Judge Mullen ruminated that the bifurcated trial will take a week or so. This was despite her misapprehension about the realities of such a trial. Defendants themselves assert that the trial of the remaining issues could take weeks, and Plaintiff does not disagree. Problematically, the bifurcated trial will take a similar period of time because most of the same issues, witnesses, and documents will need to be

ROA 004110

II. Defendants' Position on the Subsequent Estate Planning Documents Render the Bifurcated Trial Meaningless

Again, Defendants contend that only the 1998 documents need be examined to deal with the power of appointment issues in the second and third causes of action. At the same time, they contend that wills and trusts executed by Mr. Barringer in February 2012, June 2012, June 2014, and February 2015 were all valid when executed. If any of those trust documents was valid, then the 1998 document was revoked. Consequently, any trial dealing with the power of appointment issue stemming from the 1998 trust document would be rendered meaningless and a total waste of time. For example, what if the bifurcated trial determined that the 1998 trust did give Mrs. Barringer a power of appointment over voting stock and then it is later determined that one of the later trusts was valid, thereby revoking the 1998 trust with its power of appointment. The power of appointment issues as to the 1998 document would be limited to the construction of only that document; whatever Defendants might wish for, any determination about a power of appointment created in a revoked document would not be res judicata as to any valid subsequent documents and subsequent powers of appointment. Each document, and each power of appointment, would have to be construed in its own setting.

Moreover, even if it is determined that in 1998 Mr. Barringer gave Mrs. Barringer a valid power of appointment over voting stock, the bifurcated trial would have to consider whether she was precluded from exercising it because of an enforceable contract and/or an enforceable promise not to exercise the power. Plaintiff's arguments about the power of appointment are not limited to a contract claim, although she has a compelling argument on that issue. Plaintiff also argues (1) that Mrs. Barringer had a confidential and fiduciary duty based on an express promise;

addressed for both trials.

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(2) that Mrs. Barringer had a confidential and fiduciary duty based on an implied promise, which under the law can be determined even from silence; and (3) that Mrs. Barringer had a duty that can be asserted through equitable estoppel, which again can be determined even from silence. Nowhere has Plaintiff limited these arguments to only the 1998 documents. Thus, even if the trial resulted in the 1998 trust document power of appointment being valid and intended, and even if Mrs. Barringer is not precluded from exercising that power by either a contract or a promise, those determinations would not be res judicata as to any subsequently-created power of appointment and any contract and/or promise not to exercise that subsequently-created power of appointment. Any contract and/or promise not to exercise would have to be construed in the setting of each document and each power of appointment. Again, a trial on the 1998 power of appointment is completely meaningless if *any* of the subsequent trust documents is determined to be valid. The Court would get to start all over again.

Of course, if the Defendants want to stipulate that all of the post-1998 documents are invalid, then the trial about only the 1998 documents would not be meaningless. So far, Defendants have declined to make that stipulation.

III. Defendants' Proposed Scheduling Order Demonstrates Their Single Purpose: To Try as Soon as Possible a Case Despite It Being Meaningless According to Their Contrary Positions and Despite a Fair Opportunity for Discovery and Preparation

Defendant's proposed scheduling simply sets a proposed trial date. It does not deal with timelines for completion of discovery, the naming of experts (which they have yet to do), the reporting of experts, the deposing of experts, and the schedule for dispositive motions. Defendants have previously sold the Court a bill of goods that the bifurcated trial will deal only with the 1998 documents and the evidence existing only up until their execution, and that it will

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dispose of the need for a lengthy second trial, if one is even needed. These are all fallacies.

The failure to even consider such issues as fair discovery and the making of dispositive motions show their singularly but incorrectly focused mission. They want to shoot first and ask questions later (if at all).

Plaintiff continues to diligently conduct discovery and depositions. The conduct of discovery for the bifurcated case is not as simple as Defendants disingenuously propose. The power of appointment issue, even if limited to the 1998 documents, must consider evidence through today's date, including asking witnesses up until today whether Mr. Barringer and/or Mrs. Barringer ever discussed any power of appointment and, if so, what did they say about it (remembering that in South Carolina a promise not to exercise can be inferred from silence). Most of the witnesses will be needed for both trials, so the ongoing discovery process can be simultaneously effected, but not if the process is cut unfairly short by scheduling a bifurcated trial before fairness and justice would allow.

IV. Conclusion

Defendants should not be rewarded for their misstatement of the issues and their contrary positions that would render the conduct of the bifurcation trial meaningless. Plaintiff is entitled to a fair opportunity to complete discovery and prepare for trial.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK**

Dated: May 26, 2021
Greenville, South Carolina.

ROA 004114

ROA 004115

EXHIBIT A

ROA 004115

ROA 004116

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS NONJURY

3
4 IN THE MATTER OF:)

5 ESTATE OF PAUL B. BARRINGER, II)

6 HAMPTON BARRINGER LUZAK,)

7 PLAINTIFF,)

8 VS.)

9 MERRILL B. LIGHT, MERRILL U. BARRINGER,)
AS PERSONAL REPRESENTATIVE OF THE ESTATE)
OF PAUL BRANDON BARRINGER, II, J.)

10 RANDOLPH LIGHT, JR., MERRILL B. LIGHT)
AS PUTATIVE TRUSTEE OF THE PAUL B.)

11 BARRINGER, II, REVOCABLE TRUST DATED)
DECEMBER 4, 1998, AND MERRILL B. LIGHT)
12 AS TRUSTEE OF THE MERRILL BARRINGER)
LIGHT REVOCABLE TRUST,)

13 DEFENDANTS.)
14

TRANSCRIPT

OF

RECORD

2016-CP-07-1919

2019-CP-07-1253

2019-CP-07-1294

15
16 October 15th, 2020
17 Beaufort, South Carolina
18

19
20 B E F O R E:

21 THE HONORABLE CARMEN T. MULLEN, Judge.
22
23
24
25

ROA 004116

ROA 004117

1 MR. MEDLIN: ---beginning we may confer---

2 THE COURT: Okay.

3 MR. MEDLIN: ---cause we haven't honestly talked about
4 this at all---

5 THE COURT: Okay.

6 MR. MEDLIN: ---and come back---

7 THE COURT: Okay.

8 MR. MEDLIN: ---and, and ask that you do that. We
9 just -- I can't say what our position is, and, again, I'm
10 just a---

11 THE COURT: Okay.

12 MR. MEDLIN: ---one who argues---

13 THE COURT: Okay.

14 MR. MEDLIN: ---probate.

15 THE COURT: Okay. Well, I want you guys to think
16 about, number one.

17 I will tell you something as far as this motion
18 tomorrow. I'll email everybody. But I want you-all to talk
19 about potentially trying this case, like I said, Merrill
20 Barringer's case, on the 15th of March.

21 Okay. I mean as far as I'm concerned, there's probably
22 pretty limited other than McBryde's deposition. I'm trying
23 to think of who else's needs to be taken before then. So, I
24 don't know how much more you've got to go along. I'm sure
25 there's more. But, at this point, you know, at some point

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ROA 004118

EXHIBIT B

ROA 004118

Thursday, April 15, 2021

Courtroom No. 1
Beaufort County
Fourteenth Judicial Circuit
102 Ribaut Road
Beaufort, South Carolina

The Honorable Bentley D. Price

S. Alan Medlin, Esquire
Thomas W. Traxler, Esquire
James R. Gilreath, Esquire
William Mitchell Hogan, Esquire
Charles B. Macloskie, Esquire

James Ashley Twombly, Esquire
Alice F. Paylor, Esquire
Lee Anne Walters, Esquire
Bijan Ghom, Esquire
Charles B. Molster III, Esquire (via Webex)

Official Circuit Court Reporter

1 months. The only thing I know about the Court of Appeals is
2 where it is.

3 So we're just going to have to, unfortunately, allow y'all
4 to continue to move forward. But once that comes down, then I'm
5 going to, at that point in time, I'll make all the decisions.
6 And then, as I've indicated, I'm probably going to, depending
7 upon what the Court of Appeals does, I will make the scheduling
8 order at that time.

9 And if they do come back and say it's not appealable and
10 Judge Mullen orders stands as being bifurcated, I'm going to set
11 the other one for trial. And it will be fairly quickly, probably
12 in December. All right.

13 MS. PAYLOR: Thank you, Your Honor.

14 THE COURT: For the record, Charles Molster participated in
15 the trial, as well. He just wasn't able to be here. But he
16 could hear everything we did the Webex. But he wanted to be
17 accounted for the record.

18 (WHEREUPON, proceedings terminated at 12:20 p.m.)

19 (End of Transcript of Record)
20
21
22
23
24
25