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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE 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 X OF XVI

Desa Ballard (S.C. Bar No. 498)
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com

James R. Gilreath (S.C. Bar No. 02133)
William M. Hogan (S.C. Bar No. 65272)
THE GILREATH LAW FIRM, PA
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Fax: 843.521.1379
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM ROGERS & TRAXLER, PA
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:

Alice Paylor, Esquire
Bijan Ghom, Esquire
SAXTON & STUMP, LLC
151 Meeting Street
Charleston, South Carolina 29401
afp@saxtonstump.com

bkg@saxtonstump.com
Attorneys for Respondents, Merrill B. Light, 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

C. Mitchell Brown, Esquire
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
P.O. Box 11070 (29211-1070)
Columbia, South Carolina 29201
mitch.brown@nelsonmullins.com
Attorneys for Respondents, Merrill B. Light, 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

Robert H. Brunson, Esquire
Merritt G. Abney, Esquire
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/Sixth Floor
P.O. Box 1806 (29402-1806)
Charleston, South Carolina 29402
robert.brunson@nelsonmullins.com
merritt.abney@nelsonmullins.com
Attorneys for Respondents, Merrill B. Light, 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

Charles B. Molster, III, Esquire
THE LAW OFFICES OF CHARLES B. MOLSTER, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
cmolster@molsterlaw.com
Attorney admitted *pro hac vice* for Respondents, Merrill B. Light, 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

J. Ashley Twombley, Esquire
Kevin Johnson, Esquire
Lee Anne Walters, Esquire
TWENGE + TWOMBLEY LAW FIRM
311 Carteret Street
Beaufort, South Carolina 29902
Twombley@twlawfirm.com
kjohnson@twlawfirm.com
lwalters@rosenhagood.com
Attorneys for Respondent Merrill U. Barringer, individually and Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II

Harley D. Ruff, Esquire
Joy France, Esquire
RUFF & RUFF, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
hruff@ruffllc.com
jfrance@ruffllc.com
Attorneys for Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Barringer, II

Ryan G. Rich
One South at the Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 29280-0008
Telephone 704.378.4700
rrich@huntonAK.com
Attorney for Respondent Coastal Forest Resource Company

Edward J. Fuhr (admitted *pro hac vice)*
Johnathon E. Schronce (admitted *pro hac vice)*
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone 804.788.8201
Facsimile 804.788.8218
efuhr@huntonAK.com
jschronce@huntonAK.com
Attorneys for Respondent Coastal Forest Resource Company

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Certificate of Counsel

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II HAMPTON BARRINGER LUZAK, Plaintiff, v. MERRILL U. BARRINGER, Defendant	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S SECOND CAUSE OF ACTION**

This litigation began in South Carolina in 2016 as a will contest over the estate of Paul B. Barringer, II (decedent/Mr. Barringer). Hampton Luzak, Paul and Merrill Barringer's youngest child, has now sued her 89-year-old mother and is asking the Court to order her mother not to make a new will. Hampton Luzak's new legal theory is that her parents had a side agreement about their wills: if Mr. Barringer died first, Mrs. Barringer could ***not*** and would ***not*** decide, in her own will, who would receive what was left in Mr. Barringer's estate upon the death of Mrs. Barringer — even though the estate planning documents that Mr. Barringer executed over a 16-year period all expressly gave Mrs. Barringer the right to do just that.

Because South Carolina has a statute that requires agreements regarding wills to be at least referenced in a written document, Ms. Luzak reframes her claim as one for constructive/resulting trust, although her argument is — in substance — that Mr. and Mrs. Barringer had an oral

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agreement about their estate plans. Mrs. Barringer now moves for summary judgment in her favor as to Plaintiff's second cause of action on the basis that 1) S.C. Code Section 62-2-701 bars Plaintiff's second cause of action for constructive trust/injunction; and 2) the undisputed facts, in the light most favorable to Ms. Luzak, do not support the claim.

ARGUMENT

Hampton's second claim is that Mrs. Barringer, ***through her silence***, somehow promised her husband that [if he left her his estate at his death] and if he died first, she would never use the powers of appointment he gave her, which are indisputably contained in all of his estate planning documents from 1998 to 2015. According to Hampton, (Plaintiff's "second cause of action", *see* Compl. ¶¶ 135-39), Mrs. Barringer "made ***an express or implied promise*** not to exercise her testamentary power of appointment in a manner that would direct the subject property in a manner other than set forth in the default provisions of Decedent Paul Barringer's estate plan" and "Decedent Paul Barringer relied on Mrs. Barringer's ***express or implied promise*** not to exercise the testamentary power of appointment given her." *Id.* ¶ 137-138. (emphasis added). Mrs. Luzak asks for an equitable remedy, not money damages, including injunction and a constructive trust, alleging that she "is entitled to an order from this Court directing Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise the testamentary power of appointment given her and to impose a constructive trust for the benefit of Hampton Luzak in the subject property with respect to the intended equal treatment of Plaintiff Hampton Luzak."

I. S.C. Code Section 62-2-701 bars Plaintiff's second cause of action.

Plaintiff's second claim is just another version of her claim to enforce the alleged "contract not to revoke" between Mr. and Mrs. Barringer (alleged as her third cause of action[1]), which cannot

[1] Defendant has filed a separate motion addressing Plaintiff's third cause of action.

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be proven without a signed writing, and Plaintiff should not be allowed to circumvent the terms of the unambiguous South Carolina statute, which is directly on point. In her third cause of action, Plaintiff alleges that Mr. and Mrs. Barringer entered into a binding contract that means Mrs. Barringer cannot revoke her will. In her second cause of action, Plaintiff alleges that Mrs. Barringer made an "express or implied promise" to Mr. Barringer and that Mr. Barringer made his estate plan in reliance on her promise. Both claims are based on an alleged secret agreement between Mr. and Mrs. Barringer.

Plaintiff should not be allowed to pursue either cause of action unless she can present written evidence that satisfies S.C. Code 62-2-701. Section 62-2-701 of the South Carolina Code governs contracts regarding wills (succession) executed after July 1, 1987, allowing a person to prove a contract to make a will or devise (or not to revoke one) ***only*** when (1) provisions of the decedent's will state the material provisions of the contract, (2) the decedent's will contains an express reference to the contract and extrinsic evidence proves the terms of the contract, or (3) when the decedent signed a writing that evidences the contract.[2] The alleged agreement between Mr. and Mrs. Barringer does not meet any of these requirements. Like many other states, South

[2] This statute specifically addresses contracts concerning succession—including contracts not to revoke a will—and provides that such a contract can be established *only* by way of a signed writing:

> A contract to make a will or devise, or to revoke a will or devise, ***or not to revoke a will or devise***, or to die intestate, if executed after [July 1, 1987], can be established ***only by*** (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

S.C. Code § 62-2-701 (emphasis added).

Carolina enacted the statute based on Section 2-701 of the Uniform Probate Code, which was drafted in an effort to "tighten the methods" for proving oral agreements about wills:

> It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

See Unif. Probate Code § 2-701, Comment.

Plaintiff argues that even if she cannot prove the agreement she alleges by any of the three ***only*** means set forth in the statute, she should still be allowed to ask the Court to order Mrs. Barringer to comply with it. Essentially, she says, this was not a will contract; rather it was a promise relied on by Mr. Barringer, the promisee, which Plaintiff is somehow entitled to enforce through equitable remedies.

Ultimately, the promise that Mrs. Barringer allegedly made to her husband would have been an agreement not to revoke her then current will and make another one (the only way she could use or "exercise" the *testamentary* power of appointment) —in essence, a will contract. Plaintiff's argument otherwise completely disregards the clear intent of S.C. Code § 62-2-701 – to require proof by a writing and thereby reduce the number of lawsuits based on alleged oral agreements related to wills. S.C. Code § 62-2-701 expressly limits the methods of proving a contract concerning succession, and Plaintiff's allegation of an oral agreement — *and obviously her allegations that Mrs. Barringer's silence amounted to an implied promise as part of that agreement* — are insufficient to surmount this statutory barrier.

In passing Section 62-2-701, the South Carolina legislature prescribed the "only" manner of establishing a contract concerning succession, including a contract not to revoke a will. Allowing the Plaintiff to circumvent Section 62-2-701 by merely repackaging her "breach of

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contract not to revoke" claim as a constructive trust/promise claim would make the statute meaningless and violate the well-settled maxim that "equity follows the law."

While no South Carolina appellate court has addressed whether a Plaintiff should be allowed to pursue a constructive trust or other equitable claim following the legislature's passage of South Carolina Code Section 62-2-701, numerous other jurisdictions that have adopted substantively identical statutes have specifically held that a plaintiff may not circumvent the "signed writing" requirement of the statute by reframing the agreement under a promise theory or pursuing an equitable remedy. *See, e.g., Pool v. Diana*, No. 03-08-00363-CV, 2010 WL 1170234, at *8 (Tex. App. Mar. 24, 2010) ("Although Leslie attempts to avoid summary judgment by specifically describing her claim as one for constructive/resulting trust, her argument is—in substance—that there was an oral agreement to devise the property. However, she may describe the claim, Leslie's pleadings show that her claim is simply this: Donn made an oral promise to devise the 15–acres to her and to Danae. As a matter of law, an oral agreement to devise property otherwise disposed of in a will is unenforceable."); *Est. of Gilbert*, 513 S.W.3d 767, 772 (Tex. App. 2017) ("Having reviewed the statute and the relevant case law, we conclude the legislature intended to foreclose a claim relating to a promise to make a will or devise or not to revoke a will or devise if that promise is not in writing… We hold that section 254.004 bars a claim for promissory estoppel on an oral promise to devise property that is disposed of in a will."); *Matter of Estate of Cosman*, 475 A.2d 659, 661–62 (N.J. App. Div. 1984) ("The Legislature has seen fit to prescribe the 'only' way such a contract may be legally established. The statute's clear language leaves no room for judicial construction. This oral agreement is not enforceable. The principles of equitable fraud and promissory estoppel urged by respondents are unavailing in the face of the unequivocal legislative declaration. **Were we to enforce such principles we would nullify the**

clear purpose of the statute.") (emphasis added); *Stanley v. Hendershot*, No. 1089 MDA 2017, 2018 WL 2275789, at *12-13 (Pa. Super. Ct. May 18, 2018) ("Thus, as a matter of law, any unjust enrichment claim, raised in the alternative to a breach of contract claim, must fail as legally insufficient when the breach of contract claim requires compliance with Section 2701. To hold otherwise simply renders Section 2701 meaningless."); *In re Est. of Shain*, No. 1 CA-CV 09-0252, 2010 WL 569843, at *1–2 (Ariz. Ct. App. Feb. 18, 2010) ("As a matter of law, Wauneita's alleged oral promise to include Appellant in her will was a promise to make a testamentary disposition. Section 14-2514(A) and public policy preclude such oral promises and therefore the trial court did not err in dismissing Appellant's claim."); *In re McKim Est.,* 238 Mich. App. 453, 459, 606 N.W.2d 30, 33 (1999) ("The clear language of the statute . . . evidences the Legislature's intent to bar agreements to make a will or devise absent a writing . . .. Accordingly, the trial court correctly rejected petitioner's claim for recovery under a contract implied in fact theory.*"); Matter of Est. of Hatten*, 440 P.3d 256, 258 (Alaska 2019) (In a case involving a man who died intestate following 20 year cohabitation, the court applied the statute substantially similar to South Carolina's and held: "And to the extent Toland argues Hatten orally promised or assured her after January 1, 1997 that he would give her the house or other property upon his death, we note AS 13.12.514(a) renders such oral agreements unenforceable."

Further, for well over a hundred years, the South Carolina Supreme Court has enforced the maxim that "equity follows the law." *See, e.g., Quail Hill, LLC v. Cty. Of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) ("Simply stated, equity follows the law."); *Kershaw Cty. V. Richland Cty*., 61 S.C. 75, 39 S.E. 263, 264 (1901) ("Equity follows the law."). Allowing Plaintiff to pursue the equitable claim of constructive trust based on the same theory that is barred by Section 62-2-701 — absent a signed writing — would turn this maxim on its head and allow

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Plaintiff to circumvent the law. Mrs. Barringer's alleged "promise" not to exercise her power of appointment is an alleged agreement not to revoke her will. The alleged agreement that Mrs. Barringer would not change her will and exercise the power of appointment can "only" be proven in the ways prescribed by the statute. As explained in the cases cited above, there is no reason why the legislature cannot establish rules for the manner of proving a contract not to revoke a will, which the South Carolina legislature did in fact establish in 1986.

II. Chapman v. Citizens & S. Nat Bank of S.C. should not prevent dismissal of Plaintiff's second cause of action.

Plaintiff's expected reliance on *Chapman v. Citizens & S. Nat. Bank of S.C.*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990), a Court of Appeals decision issued more than 30 years ago, should not prevent the court from disposing of Plaintiff's second cause of action. The case is simply not applicable because 1) it addresses events that took place before Section 62-2-701 became effective, and 2) because it includes written evidence as proof of the agreement.

First, *Chapman* is inapplicable because although the case was decided in 1990 after the 1986 passage of Section 62-2-701, the Court of Appeals did not address the statute because the wills at issue were executed—and Mr. and Mrs. Chapman both died—prior to the statute's effective date. *See* 395 S.E.2d at 449-50 (discussing the wills executed by Mr. and Mrs. Chapman, all of which were executed between 1949 and 1977, and stating Mr. Chapman died in 1975 and Mrs. Chapman died in 1986); S.C. Code § 62-2-701, Reporter's Comment (providing that the statute, which was passed in 1986, "is meant to apply only prospectively, leaving the prior South Carolina law in effect retrospectively). *Chapman*'s holding was that a constructive trust was appropriate on those facts at that time. After the passage of Section 62-2-701, for all of the reasons explained in the cases above, including that the statute uses the plain and unambiguous term *only*

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before describing the three methods of proof, a constructive trust remedy would not be appropriate unless there was compliance with the statute.

Second, even if *Chapman* remained applicable, it is easily distinguishable from this case. In *Chapman*, a husband (Mr. Chapman) and wife (Mrs. Chapman) were both widowers who had children from prior marriages. *Id*. at 448. Mrs. Chapman signed "numerous letters of record" wherein Mrs. Chapman "promised Mr. Chapman that, upon Mr. Chapman's death and the probate of his will, Mrs. Chapman would either during her lifetime make gifts of the subject property to Mr. Chapman's children or die without exercising the power of appointment contained in Mr. Chapman's will." *Id*. at 450. The Court found that there was "undisputed evidence that Mrs. Chapman agreed to either give the subject property to Mr. Chapman's children during her lifetime or, in the alternative, not exercise the power of appointment." *Id*. at 452.

Here, by contrast, no written document evidences an agreement that states that if Mr. Barringer died first, Mrs. Barringer would not make a new will and exercise her power of appointment. In fact, the undisputed facts in the record refute such an agreement.

III. The factual record does not support Plaintiff's second cause of action.

For Plaintiff to avoid summary judgment, she must come forward with more than a scintilla of evidence to support her allegations for a constructive trust.[3]

As noted above, Plaintiff's second cause of action alleges Mrs. Barringer promised Mr. Barringer she would not exercise the power of appointment expressly granted to Mrs. Barringer by Mr. Barringer's 1998 revocable trust and subsequent amendments to it in 2012, 2014 and 2015. In support of this claim, Plaintiff executed and submitted an affidavit stating that her father

[3] The burden is on the Plaintiff to establish a constructive trust by clear and convincing evidence. *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). "In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

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intended for his assets to be distributed equally to his three children, that he intended voting stock to be distributed equally between his daughters, and that her mother was silent about these intentions. In the same affidavit, Hampton Luzak states her father never mentioned giving his wife a power of appointment. Hampton Luzak Affidavit ¶ 56, **Exhibit A**. It simply defies logic for Ms. Luzak to claim that Mrs. Barringer, by being silent, made an implied promise not to use her power of appointment and then suggest her claim is supported by evidence that no one ever said anything about the power of appointment. That is, if, as alleged by Hampton Luzak, no discussion of the power of appointment took place in Mrs. Barringer's presence, then Mrs. Barringer's silence could not constitute acquiescence to an agreement not to exercise that power. Thus, even if Mrs. Luzak's affidavit is true, it does not support her claim. For the same reasons, Kevin Luzak's affidavit also fails to support the claim.

Plaintiff suggests that various documents through which Mr. Barringer, prior to his death, transferred equal amounts of stock to each of his three children or alternatively to just his two daughters, constitute evidence to support her claim. Even if prior trusts or agreements could be considered evidence of Mr. Barringer's intent at the time, they do not prove an irrevocable intention to make distributions in identical proportions between their children into the future, regardless of what events may transpire. And these documents clearly do not constitute competent summary judgment evidence that Mr. Barringer or Mrs. Barringer intended to be *contractually bound* not to revoke their wills in a manner that their estate planning documents expressly allowed.

The parties have conducted additional discovery and now the two estate planning attorneys who prepared Mr. Barringer's various wills and revocable trusts have testified that they had no knowledge of any such agreement or promise between the Barringers. In 1998, attorney Neil G. McBryde drafted Mr. Barringer's estate planning documents and witnessed their execution. Mr.

McBryde was not aware of and did not prepare any contract or agreement – oral, written or otherwise – related to Paul Barringer's estate or trust. Paul Barringer never mentioned any such contract or agreement to Mr. McBryde. Affidavits of Neil McBryde; McBryde Dep. 14-15, 39-41, **Exhibit B**.

Further, on February 28, 2012, attorney John Jolley prepared a new will and trust amendment for Mr. Barringer (and Mrs. Barringer). Mr. Jolley testified he had no knowledge of a contract or agreement between the Barringers as is alleged in the complaint. *See* Deposition of John Jolley, Jolley Dep. 86:11-90:5, **Exhibit C**.

CONCLUSION

In view of the foregoing, Defendant Mrs. Barringer asks the Court to grant summary judgment in her favor and dismiss Plaintiff's second cause of action on the grounds that 1) S.C. Code Section 62-2-701 bars Plaintiff's second cause of action for constructive trust/injunction; and 2) the undisputed facts, in the light most favorable to Ms. Luzak, do not support her claim for a constructive trust and injunction as stated in her second cause of action.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley

J. ASHLEY TWOMBLEY
S.C. Bar #72916
LEE ANNE WALTERS
S.C. Bar #74984
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
lwalters@twlawfirm.com
Attorneys for Defendant, Merrill U. Barringer

Beaufort, South Carolina

June 14, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2016-CP-07-01294

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. 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

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 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 I 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.

13. Prior to the spring 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 understand my husband 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 my father had participated in all the meetings and discussions. Following the February 2012 board of directors presentation, my father, as a result of the worsening of dementia, made completely unfounded accusations that my husband was trying in effect to steal the company.

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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.

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.

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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 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

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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. During the week of May 7, 2012 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. I complied without hesitation. Later that week, 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.

24. I understand that, while I was helping my father through treatments at MUSC, my sister, unbeknownst to me, was involved in moving my father's voting stock in CFRC into my father's Revocable Trust for which my sister purportedly had become a co-trustee.

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

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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.

28. At this same time, my father was confused about a memorandum that my husband prepared regarding the February 18, 2012 family discussion 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. My sister later admitted to me that she had given my father the PowerPoint presentations from the March 2012 board meetings and earlier management meetings which

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confused and upset my father, given his mental infirmities at that time. 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."

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

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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, 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.

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, 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. 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 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, Michael 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. Michael Hagler

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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 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.

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."

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.

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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."

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.

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

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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.

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 exam, 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 Mini Mental State Exam ("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 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.

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.

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

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issuance by CFRC on October 3, 2004 to both my sister and me of 6,428,058 shares each of non-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.

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.

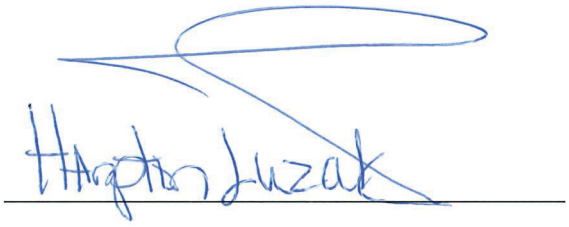
56. In all the discussions I had with my father, either alone or with other family members, not one time did he ever mention that he had given my mother a power of appointment. Not one time did my mother mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor to us or shown to us mentioned any power of appointment. It was clear to me that my father was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after Victor spun off to Coastal Lumber, equally between his two daughters. Not one time did my mother object to the plan or suggest she had the power to change it or would change it. My mother always was acquiescent and compliant in accepting his statement of his plan for his estate and for his company. It is my understanding

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that, during their lengthy marriage, my father did not give any stock in his company to my mother nor did he give her any position in the company. My father was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way. No family member, including my mother, expressed any notion to the contrary. Neither my father or any family member ever suggested that anyone could change his plan for his company and his estate. It is inconceivable to me, based on a lifetime of observation and interaction, that it would ever have occurred to my father to empower my mother to make any single decision related to the company or about his estate plan. The notion that he would empower her, and burden her, with the decision of future leadership and control of his company is impossible for me to imagine. All of the experiences I shared with my father convince me of this. It was his way and no one else's, and he always intended for control to be shared equally among the children, until Victor spun off his company, after which he always intended for control to be shared equally between his daughters. As long as he was alive and competent and free from undue influence, tortious interference, etc., my mother never disputed or contested that his intentions about the company, and about equal control, would be upheld.

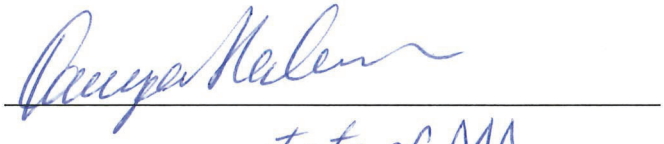
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AND FURTHER THE AFFIANT SAYETH NOT.



Hampton Luzak

SWORN TO BEFORE ME this 25 day of September, 2020



Notary Public for state of MA

My commission expires: 02/06/2026



TAISIYA S. PALENCIA
Notary Public
Commonwealth of Massachusetts
My Commission Expires February 6, 2026

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**AFFIDAVIT**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. My name is Neill G. McBryde and I am a lawyer in Charlotte, North Carolina.

2. I currently practice with the law firm of Moore & Van Allen, one of the largest law firms in the southeast.

3. I am a member in good standing of the North Carolina and the Georgia Bar Associations.

4. In 1969, I received my Juris Doctor from the University of North Carolina at Chapel Hill, where I was Editor-in-Chief of the North Carolina Law Review. I was also a Morehead Fellow in Law.

5. For over 50 years, I have been actively engaged in the practice of law with primary emphasis in the areas of tax planning, business planning for closely-held businesses,

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insurance planning, estate and wealth transfer planning, estate administration, and trust and estate tax and fiduciary litigation. I have led Moore & Van Allen's closely held business, tax planning, estate and wealth transfer planning, and trusts and estates groups.

6. My primary areas of emphasis include providing:

- Tax and business planning advice for closely-held businesses;
- Tax, estate planning, and insurance planning for owners of closely-held businesses and high net worth individuals;
- Advice and counsel in connection with mergers and acquisitions involving stock, corporate assets, real estate and other assets;
- Specialized services in the wealth transfer, estate planning and estate administration areas;
- Charitable planning for individuals and non-profit representation; and
- Tax controversies.

7. I have lectured nationally and written extensively in areas relating to closely held businesses, tax planning, tax controversies, insurance planning, and estate planning and administration.

8. I have been included in Best Lawyers in America for Trusts and Estates, Tax Litigation & Controversy and Tax Law every year since 1983.

9. I am the Past President and Fellow of the American College of Trust and Estate Counsel; am a North Carolina Bar Board-Certified Specialist in Estate Planning and Probate; am the Past President and Trustee, Advisory Board, Southern Federal Tax Institute; and a Fellow of the American College of Tax Counsel.

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Paul Barringer

10. I was introduced to Paul Barringer around 1996, and I served as his attorney for the preparation of the following documents:

a. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 ("1998 Will");

b. Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("1998 Revocable Trust"); and

c. The Paul B. Barringer, II Family Trust executed on December 22, 1998.

11. I have been made aware of the litigation Hampton Luzak filed in South Carolina, and I understand Mrs. Luzak is asking the court to set aside all of the wills and trusts Paul Barringer executed after 1998.

12. If that relief were granted, I understand that the 1998 Will and 1998 Revocable Trust I prepared for Paul Barringer would be the operative will and trust, and further, that the 1998 Will and 1998 Revocable Trust would control the disposition of Paul Barringer's estate.

13. I submit this affidavit to explain Paul Barringer's 1998 Will and 1998 Revocable Trust, and the facts and circumstances surrounding their preparation and execution.

The Attorney Client Privilege

14. I have been provided a copy of the order entered by the Honorable Carmen Mullen dated August 23, 2017, finding that South Carolina recognizes the testamentary exception to the attorney client privilege.

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15. This affidavit is submitted in accordance with that ruling and with the consent and approval of Merrill Underwood Barringer ("Mrs. Barringer"), as Personal Representative of the Estate of Paul Barringer.

16. This affidavit is intended only to cover matters covered by Judge Mullen's order, and nothing more.

17. By executing and submitting this affidavit, there is no intended or implied waiver of the attorney client privilege.

18. In any event, the affidavit is submitted with the consent of Mrs. Barringer, the personal representative of Paul Barringer's estate.

Paul Barringer's 1998 Estate Plan

19. Paul Barringer's 1998 estate plan begins with a standard "pour over" will.

20. This means that after his estate is probated (if necessary) and administration is complete, any assets in his individual name – excluding certain personal property – would be transferred or "poured over" into his 1998 Revocable Trust.

Paul Barringer's 1998 Revocable Trust

21. Upon Paul Barringer's death, the 1998 Revocable Trust calls for his trust estate to be divided into three sub-trusts: two marital trusts, the "A Trust" and the "B Trust," and a residuary trust, the "Item V Trust" (collectively, the "sub-trusts").

22. For the A Trust and the B Trust, Mr. Barringer provided that "my said wife shall have the use of this trust property . . . as a life beneficiary" and that the principal in each marital trust can be distributed to Mrs. Barringer for the "support, health and maintenance of my wife."

23. For the Item V Trust, Mr. Barringer provided that the trustee could make distributions of income and principal to Mrs. Barringer for her "support, health, and maintenance"

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and that the Trustee could also make distributions of income and principal to Mr. Barringer's descendants for "support, maintenance, health and education." Mr. Barringer instructed that his "primary desire is that my wife be supported in reasonable comfort during my wife's lifetime and that my children be supported in reasonable comfort and properly educated, rather than that the principal of this trust be preserved until the division of the trust into separate shares."

24. For any assets remaining in the sub-trusts at the time of Mrs. Barringer's death, Mrs. Barringer is given a testamentary power of appointment over any assets of the sub-trusts at her death.

25. The language granting the testamentary powers of appointment is as follows:

a. For the A Trust and the B Trust:

- Upon the death of my said wife … the property remaining in the A Trust and the B Trust shall be distributed by the Trustee, free of the trust, to or among my descendants, and in such manner in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto, making express reference to this power, except that such wife shall have no power to appoint such property to such wife, to such wife's estate, to such wife's creditors or to the creditors of such wife's estate.

b. For the Item V Trust:

- My wife shall have the power upon her death by her last will and testament or codicil thereto, making express reference to this power, to appoint any part or all of the property in this trust to or among my descendants, and in such manner, in trust or otherwise, as she may in such will provide, except that she

shall have no power under any circumstances to appoint any of such property to herself, to her estate, to her creditors or to the creditors of her estate.

26. Mrs. Barringer can exercise her power of appointment over all of the sub-trusts "to *or among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ."

Purpose of a Power of Appointment

27. A power of appointment is a power to direct the disposition of property.

28. The power can be broad or limited depending on desire of the creator, here, Mr. Barringer.

29. A power of appointment can also be presently exercised or postponed until a specified event occurs or a condition is met.

30. With respect to Mr. Barringer's 1998 Revocable Trust, the purpose of the powers of appointment is to confer authority upon Mrs. Barringer to designate – at the time of her death – who is to receive and enjoy the remaining assets of Mr. Barringer's estate.

31. These powers of appointment are called testamentary powers of appointment, which means Mrs. Barringer can only exercise them at the time of her death.

32. There are many reasons why a spouse (Mr. Barringer) would give a testamentary power of appointment to a surviving spouse (Mrs. Barringer).

33. A testamentary power of appointment builds flexibility into an estate plan and allows the surviving spouse to account for changes in circumstances that occur after a decedent's death.

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34. For example, individuals who may otherwise be beneficiaries at the first spouse's death might experience significant economic and other life changes in between the first spouse's death and the surviving spouse's death.

35. For example, after a decedent's death, potential beneficiaries may remarry; seek, lose or fail to maintain employment; become disabled or develop other health related issues; develop serious financial needs or experience a financial windfall; or experience other circumstances that make it desirable to leave them less, more or none of the decedent's estate.

36. After a decedent's death, potential beneficiaries may engage in behavior that is disfavored by the power holder.

37. Here, Mr. Barringer conferred authority upon Mrs. Barringer to decide who should benefit from the remaining assets of Mr. Barringer's estate at the time of her death.

38. This would include the opportunity to observe her children, their behavior, their life choices, and any other factors she deemed relevant – in her sole discretion – to decide who "*among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ." should benefit from the assets.

Language Selected by Paul Barringer for Powers of Appointment

39. The specific language used for the powers of appointment selected by Paul Barringer specifically empower Mrs. Barringer with the right to decide what portion – if any – of Mr. Barringer's estate each child should receive.

40. Nothing in the trust requires or otherwise suggests that Paul Barringer intended to obligate or require Mrs. Barringer to appoint any particular asset to any particular child, or treat the children equally.

41. To the contrary, the language chosen by Paul Barringer specifically empowers Mrs. Barringer with the discretion to treat his descendants in an unequal fashion --- based upon her judgment.

Consequences of CFRC Voting Stock Gift Being Set Aside

42. I have been informed that in 2012, Paul Barringer individually owned 38,272 shares of voting stock in Coastal Forest Resources Corporation, Inc. (CFRC).

43. I have been further informed that in 2012, Paul Barringer engaged in transfers related to this stock, ultimately transferring all but one share to his daughter Merrill Light (hereinafter collectively referred to as the "Voting Stock Gift Transaction").

44. I understand that Hampton Luzak has asked the Court to set aside the Voting Stock Gift Transaction for various reasons.

45. Assuming Mrs. Luzak were to prevail in having the Voting Stock Gift Transaction set aside, and further assuming that Mrs. Luzak were to prevail in setting aside all of the estate planning documents Paul Barringer executed after 1998, then the 1998 Will and 1998 Revocable Trust outlined above would control the disposition of any assets in Paul Barringer's estate, including but not limited to the CFRC voting stock.

46. If the 1998 Will and 1998 Revocable Trust control the disposition of Mr. Barringer's estate, then Mrs. Barringer would have the power – at the time of her death – to appoint the stock to or among Mr. Barringer's descendants through her last will and testament or any codicil thereto.

Contract or Agreement

47. I have been informed that Hampton Luzak alleges that, prior to the execution of their 1998 estate plans, Paul Barringer and his wife Mrs. Barringer entered into a "contract" or

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other agreement wherein each agreed not to revoke their wills and trusts, such that Mrs. Barringer is now obligated not to change her will to exercise the powers of appointment given to her by Paul Barringer in the 1998 Revocable Trust.

48. I am not aware of, and did not prepare, any such contract – oral, written or otherwise – related to Paul Barringer's estate or trust.

49. Paul Barringer never mentioned the existence of any such contract, agreement or promise to me despite the fact that I was, at the time, intimately familiar with his estate planning and decisions related to his assets.

50. Mr. Barringer never expressed a desire to prevent Mrs. Barringer from having discretion in exercising her powers of appointment after Paul Barringer passed away, nor did he ever informed me that Mrs. Barringer had promised she would not exercise the powers of appointment.

51. To the contrary, Paul Barringer expressly wanted to include the power of appointment language in his 1998 estate plan to specifically empower his wife (Mrs. Barringer) to choose – at the time of her death – who among his descendants would receive assets from his estate following Mrs. Barringer's death.

52. Any such purported agreement would be directly at odds with the expressed directives Paul Barringer gave me and directly at odds with his 1998 estate plan.

53. I understand that despite the expressed terms of Paul Barringer's 1998 Revocable Trust, Hampton Luzak alleges Paul Barringer actually wanted his wife not to exercise the powers of appointment given to her.

54. As stated above, Paul Barringer never expressed that desire to me.

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55. In fact, such a result is expressly at odd with the terms of his estate plan, which gives Mrs. Barringer the absolute right to decide who among Mr. Barringer's descendants will receive assets from his estate, and which ones do not. Of course, Mrs. Barringer could choose not to exercise her powers of appointment, but she is certainly under no contractual obligation that I am aware of with respect to the exercise or nonexercise of the powers of appointment.

56. Should Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions given to me by Paul Barringer regarding his 1998 estate plan.

Tax Issues and Equality and Chapman

57. I have been provided with a copy of *Chapman v. Citizens & Southern National Bank of South Carolina.*

58. In 1981, the United States Congress passed the Economic Recovery and Tax Act of 1981 ("ERTA"), which made several watershed changes to the estate tax regime.

59. One important change was to allow a full marital deduction for "qualified terminable interest property" ("QTIP") trusts.

60. The tax motivations at issue in *Chapman* were no longer present after the passage of ERTA. In the documents at issue in the *Chapman* case, in order to obtain a marital deduction, the surviving spouse was required to have a power of appointment.

61. When Mr. Barringer's 1998 Revocable Trust was drafted and executed, granting a power of appointment to the spouse was no longer required to obtain a marital deduction.

62. If Mr. Barringer did not want to give Mrs. Barringer the power to exercise a power of appointment, he could have directed that the documents not grant her a power of appointment.

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63. Moreover, if Mr. Barringer wanted to be certain his assets would be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Mrs. Barringer's death and then pass to his children equally without giving Mrs. Barringer a power to change that disposition.

64. There is no reason (tax or otherwise) for Mr. Barringer to give Mrs. Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me

This 8th day of September 2020.

NOTARY PUBLIC FOR NORTH CAROLINA

My Commission Expires: 1-17-24

DELORES C. BUTLER
NOTARY PUBLIC
CARTERET COUNTY, NC
My Commission Expires 1-17-24

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	**SUPPLEMENTAL AFFIDAVIT**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

I, Neill G. McBryde, 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 depose and state the following:

1. This affidavit will supplement the September 8, 2020 affidavit I provided related to the captioned case.

2. I have been provided with a copy the affidavit of James C. Hardin, III, Esquire, dated September 19, 2020, and the affidavit of Richard B. Allen, Esquire, dated September 28, 2020.

3. Mr. Hardin's affidavit addresses "whether tax reasons exist for clients to include powers of appointment in their estate planning documents" and discusses some of the tax reasons why "clients commonly include" power of appointment in estate planning documents.

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4. Similarly, Mr. Allen's affidavit addresses some of the "tax planning opportunities available" to estate planning clients through the use of powers of appointment.

No Tax Objectives

5. There was no tax objective associated with Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of Mrs. Barringer's death.

6. As stated in my prior affidavit, the purpose of Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of her death was to confer authority upon Mrs. Barringer to designate – at the time of her death – who among Paul and Merrill Barringer's children would receive and enjoy the assets of Mr. Barringer's estate.

7. The power of appointment specifically empowers Merrill Barringer with the discretion to treat Paul Barringer's children in an equal or unequal fashion – based solely upon her judgment – at the time of her death.

8. When Paul Barringer gave Merrill Barringer a power of appointment in his December 4, 1998 Revocable Trust that I drafted, I did not advise Paul Barringer regarding, or rely upon, any of the "tax reasons" or other "tax planning opportunities" generally discussed in the affidavits of Mr. Hardin or Mr. Allen because the purpose of the power of appointment was to provide distribution flexibility following Mr. Barringer's death..

Merrill Barringer Did Not Receive the Power of Appointment Until Paul Barringer's Death

9. Assuming Paul Barringer's December 4, 1998 Revocable Trust are operative, Merrill Barringer did not receive her power of appointment until Paul Barringer died.

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10. Because she did not receive the power of appointment until the time of Paul Barringer's death, Merrill Barringer could not have exercised the power of appointment until after Paul Barringer's death.

The Power of Appointment Can Only Be Exercised at Merrill Barringer's Death

11. The powers of appointment Paul Barringer gave Merrill Barringer in his December 4, 1998 Revocable Trust are "testamentary" powers of appointment, which means they can only be exercised by Merrill Barringer at the time of her death.

12. Therefore, not only did Merrill Barringer not receive the power of appointment until Paul Barringer's death, she cannot exercise the power of appointment until the time of her death.

Paul Barringer Chose to Give Merrill Barringer Dispositive Flexibility

13. If Paul Barringer did not want to give Merrill Barringer the power to exercise a power of appointment, he could have directed that his December 4, 1998 Revocable not grant her a power of appointment.

14. Moreover, if Paul Barringer wanted specific assets to be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Merrill Barringer's death and then pass to his children equally without giving Merrill Barringer a power to change that disposition.

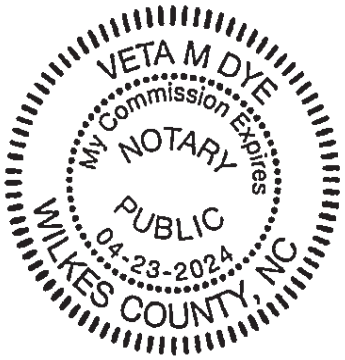
15. There was no reason (tax or otherwise) for Paul Barringer to give Merrill Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me,
This 2nd day of ~~September~~ October 2020.

NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 04-23-2024



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ROA 004165

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VERITEXT LEGAL SOLUTIONS

Deposition of:

Neill McBryde

March 26, 2021

In the Matter of:

Luzak, Hampton v. Light, Merrill

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want to make sure you have mine in front of you, and they are -- the notebook with 12 tabs, and I think they red numbers at the top that says "McBryde depo 1, McBryde depo 2." I -- I think you have them in that black binder, if you'll turn to tab -- Tab 1.

A. I do.

Q. Okay. Do you see the red numbers "McBryde depo 1, McBryde --"

A. Yes.

Q. Okay. Just for your reference and for mine, I'm going to be referring to those page numbers, the ones in red at the top, so if I direct you to page 1 or page 100, that -- those are the numbers I'm going to be referring to. Okay?

A. I understand.

Q. Okay. The first document that is labeled McBryde 1 through McBryde 11, do you recognize this document?

A. You mean the -- just the materials in there?

Q. Well, correct. This -- this is the affidavit that was signed by you --

A. Yep. Yes.

Q. -- on September 8th --

A. The first affidavit, yes.

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ROA 004168

Q. Okay. All right. And so what is -- this document is the affidavit that you signed for this case?

A. This is the document that I prepared and signed for this case.

Q. Okay. All right. And was this -- was this affidavit true and accurate, to the best of your knowledge?

A. Yes, to the best of my knowledge, and I understand obligations of -- of my oath.

Q. All right.

I'm going to start asking you a few questions that related to page 3, McBryde deposition 3.

Tell us, please, approximately, when you recall first meeting and doing legal work for Paul Barringer.

A. I first met him and was introduced to him and he me somewhere in 1996, but the -- the subjective and substantive work really picked up or was culminated with respect to Mr. Barringer and his estate planning in 1998 in that period, the second half of that year.

Q. And it's my understanding that you prepared some of the estate planning documents for

ROA 004168

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going to try to share my screen with you, and I want to show you a document --

A. Okay.

Q. -- 19 in the notebook. But it's one that's a matter of public record. And let me make sure I got it right here.

Okay. Are you able to see my screen now?

A. Yes. It's on -- yeah, separate screen.

Q. Okay. And what I want to show you -- and this is page 58 of the lawsuit that Hampton Luzak has.

A. Can you blow it up a little bit more.

Q. Yes, sir.

A. Yes. Yes, that's -- that's good. You need to move it. Yeah, there you go. Yeah, there you go. Thank you. Okay.

Q. All right. I'm -- I'm just going to read this to you starting in paragraph 142, and it says: "Upon information and belief, descendants Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plan. Upon..."

Well, let's just take that first sentence, okay? Are you aware of any contracts or other agreement between Mr. and Mrs. Barringer, where they agreed not to revoke their estate planning?

A. No. Did I -- did I -- I continued to do

work for them, but never did that issue ever even arise or thought arise from my being counsel, and with at least Paul on several matters after this was done.

Q. Okay. What, if any -- and I'm -- that is all I want to ask you about at this moment.

But what, if any, discussions did you have with Mr. or Mrs. Barringer about their desire to ensure or otherwise guarantee that the kids were treated equally in the future no matter what?

A. Don't -- I can't answer that question because we got in in August. Because of the way you stated it is, we would and I'm sure did -- again, it's a long time ago, but I have a certain methodology that I find -- follow with virtually every client because I know what you need to do and what you don't need to do.

We make sure that both spouses clearly understand, agree and approve. And I feel very comfortable because I was intentionally involved in this, you can see from my hours, too little rate, but nevertheless, the -- that at the time of execution on December 4, this is what they wanted to do, and there was no -- no concern that -- I mean, just never heard a thing about that.

And I would say I'm sure I went over the

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document at the time of execution, and obviously, there is just nothing in the file and nothing that would tell me that they had any different direction in mind.

Q. If you -- if you would, Mr. McBryde, I know would like to look at -- behind Tab 7 at McBryde Depo 80.

A. Yes.

(Reporter Clarification.)

Q. 80?

BY MR. TWOMBLEY:

Q. Do you have this diagram in front of you, Mr. McBryde?

A. I do.

Q. And it says at the top "if his wife, Merrill Barringer, survives him."

What is -- what is this document?

A. This is a diagram that we provide to clients almost uniformly for a long time, but always hopefully, getting better and better each year, which lays out what will happen under the docs if you want to read the 50 pages, or however many it was -- if you get to the short version here, which is, of course, laid out, and we've just gone through the detail of the actual document.

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EXHIBIT C

John Jolley Deposition Excerpts pp. 86 - 90

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this is the complaint that Hampton Barringer Luzak brought against her mother, Merrill Underwood Barringer, that was filed in the Beaufort County Court of Common Pleas on May 28, 2019. Before I hand it to you, I want to first draw your attention to paragraph 142 on page 58.

MR. KIRBY: Do you have any more copies?

MR. TWOMBLEY: No. I'm sorry. I don't.

THE WITNESS: You want -- you're drawing my attention to paragraph 142?

BY MR. TWOMBLEY:

Q. Right.

A. Okay.

Q. First of all, will you read paragraph 142 into the record?

A. 142. "Upon information and belief, decedent, Paul Barringer, and Ms. Barringer entered into a binding contract not to revoke their estate plans. Upon information and belief, other proof could be discerned from a review of Ms. Barringer's estate planning documents, which she has refused to produce in the case of Hampton B. Luzak versus Merrill B. Light, et al., Case No. 2016-CP-07-1919,

South Carolina Common Pleas. This contract not to revoke applied to the estate plans in place until his lack of capacity and the undue influence and tortious interference practiced on him as described above."

Q. Do you know of any evidence regarding any contract between Mr. and Ms. Barringer regarding their estate plans?

A. No.

Q. Do you know why anyone would say that?

A. I do not.

Q. Do you know anything about the terms of any such alleged contract?

A. I am unaware of any contract between Mr. and Ms. Barringer to make a will or any other testamentary documents.

Q. To your knowledge, is there any language in either Mr. Barringer's wills and trust or Ms. Barringer's wills and trust that was in any way intended to reflect or reference or otherwise memorialize any such contract?

A. No. In fact, I think the terms of their -- of Mr. Barringer's documents fly in the face of an argument that there's an agreement not to change their estate plan.

Q. Did Mr. Barringer ever mention anything

about any agreement with Ms. Barringer regarding their estate plans?

A. Mr. Barringer never mentioned to me anything about a contract to -- for their estate plan.

Q. Were you aware of any promises that may have been made by Mr. Barringer or Ms. Barringer with respect to the other's estate plan?

A. No.

Q. Do you know why someone would say that they had made promises to each other about their estate plans that are not reflected in the terms of the estate plan?

A. So I'm sorry. Repeat the question.

Q. Do you know why anyone would say that Mr. and Ms. Barringer had made promises to each other about their estate plan that are not reflected in the terms of their estate plan?

A. The only reason to do that is if there had been a contract to make an estate plan.

Q. And since we're not -- I think you testified you're not aware of any such contract, right?

A. I am definitely not aware of any contract between the Barringers to make -- you know, with

respect to their estate plan.

Q. Okay. Do you know why anyone would assert or why Ms. Luzak has asserted that there is some type of promise or a contract regarding their estate plan?

A. To the extent that Ms. Luzak had a written contract to make a will that was something that I didn't see and was contrary to the terms of the estate plan, that's the only reason I can imagine asserting such a claim.

Q. Have you ever seen this alleged contract?

A. I have not seen any -- any contract with respect to Mr. and Ms. Barringer.

Q. I'll also represent to you that in this complaint, Hampton Luzak accuses her mother of engaging in a conspiracy to harm Hampton Luzak. Do you know why Hampton Luzak would make that type of allegation about Merrill Barringer?

MR. TRAXLER: Object to form. This is Tom Traxler.

THE WITNESS: I don't think there's any basis for that. I can't -- I can't answer what Ms. Luzak's motivation for any of that, but I don't believe there's any basis for such a claim.

BY MR. TWOMBLEY:

Q. Okay. Did you ever observe any type of

behavior from Ms. Barringer that led you to believe that she was not acting in Paul's best interest?

A. I always believed -- no. I did not. I always believed that Ms. Barringer was acting in Paul's best interest.

Q. I think I might be done with my questioning. I'd like to take about a five-minute break and review my notes and use the restroom. And if I've got anything else, I'll hit it when I come back. Otherwise, I might be done. So we'll stand down for about five minutes.

THE VIDEOGRAPHER: We are going off record. The time is 12:47 p.m.

(Off the record.)

THE VIDEOGRAPHER: We are back on record. The time is 12:57 p.m.

MR. TWOMBLEY: I have no further questions at this time.

MR. TRAXLER: You ready to go ahead?

MR. TWOMBLEY: Yeah. I said I don't have any further questions. I'm sorry if y'all didn't hear.

MR. TRAXLER: I didn't hear that. Let's take a lunch -- Alice, you got anything? Let's take a lunch break, if we would. I guess it's up to

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S THIRD CAUSE OF ACTION**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

TO: PLAINTIFF AND HER COUNSEL

In her third cause of action — a claim for "Enforcement of Contract Not to Revoke and Injunction" — Plaintiff Hampton Luzak asks this Court to stop Mrs. Barringer from changing her will because her parents supposedly entered into a contract "not to revoke" their wills or estate plans. Because Plaintiff has not produced any evidence of a contract in Mr. Barringer's will, trust or any other signed writing, she is unable to establish the supposed contract by any of the three ***only*** means allowed by statute. *See* S.C. Code § 62-2-701 (South Carolina's statute on "contracts regarding succession" which sets forth the ***only*** three ways to establish such a contract.) For this reason, Mrs. Barringer is entitled to summary judgment on Plaintiff's claim to enforce the "contract regarding succession" she alleges.

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FACTS NOT IN DISPUTE

All of decedent Paul Barringer's wills — from December 1998 to February 2015 — are "pour-over wills" that he executed at the same time he executed a corresponding revocable trust. The result is that at his death, Mr. Barringer left his estate in trust, with the income to Mrs. Barringer for her life, and gave Mrs. Barringer a special power of appointment permitting her, through her own will, to decide who receives the assets remaining in Mr. Barringer's estate, when she dies. Each of Mr. Barringer's revocable trusts also include a default provision that provides what happens to the remainder of his estate at Mrs. Barringer's death if she does not use or "exercise" the special power of appointment through her own will.

Specifically, on December 4, 1998, Paul Barringer executed a "pour-over will" (the "1998 Will") that provided that, upon Mr. Barringer's death, his personal effects would pass to his wife, Mrs. Barringer, if she survived him, and provided that the remainder of his property would pass to the Paul B. Barringer, II Revocable Trust dated December 4, 1998 (the "1998 Revocable Trust").[1] Mr. Barringer's 1998 Revocable Trust provides that, upon his death and after the estate's administration, his trust estate is to be divided into three sub-trusts: Trust A, Trust B and a Residuary Trust. These three sub-trusts are, as discussed below, identical in all respects relevant to the current Motion.

Under the Trust's provisions governing Trust A, Trust B, and the Residuary Trust, Mrs. Barringer is entitled to all of the income generated by the assets of each of those sub-trusts during her life. Further, principal from each sub-trust may be distributed to Mrs. Barringer during her life for her "support, health and maintenance." Finally, Mr. Barringer granted Mrs. Barringer a "power of appointment" over any remainder assets in the three sub-trusts at the time of her death. Under

[1] Mr. Barringer's 1998 Will and 1998 Revocable Trust are attached as **Exhibit A**.

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this power of appointment, Mrs. Barringer is allowed to direct the sub-trusts remainders upon her death "to *or among* [Mr. Barringer's] descendants, and *in such manner in trust or otherwise*, as my said wife may appoint *in such wife's last will and testament or codicil thereto* . . . ." Nowhere in the 1998 Revocable Trust (or in any other document) did Paul Barringer place additional limitations on Mrs. Barringer's authority to exercise her power of appointment over assets remaining in the sub-trusts.

On February 28, 2012, Mr. Barringer executed a "pour-over will" (the February 28, 2012 Will) that provided that, upon Mr. Barringer's death, his personal effects would pass to his wife, Mrs. Barringer, if she survived him, and provided that the remainder of his property would pass to the Paul B. Barringer, II Revocable Trust dated December 4, 1998, as amended (the "February 28, 2012 First Amendment and Restatement of Revocable Trust").[2] The Trust Amendment provides for the division of Mr. Barringer's assets into various trusts at Mr. Barringer's death. Mr. Barringer's Trust Agreement further directs, through specific provisions termed "Special Power of Appointment in Wife…" that if his wife survived him, upon his wife's death, the remaining principal and interest is to be distributed to the appointees "in such manner and in such proportions as the Settlor's wife may appoint in and by the Last Will of the Settlor's wife, making specific reference to the power of appointment herein conferred upon her." February 28, 2012 First Amendment and Restatement of Trust Agreement of Paul B. Barringer, page 7 - 8.

The testimony of Neill G. McBryde and John Jolley, the two estate planning attorneys responsible for preparing Mr. Barringer's wills and revocable trusts from 1998-2015, confirms that Mr. Barringer's wills and trusts do not contain contractual language or evidence a contract between the Barringers. Attorney Neill G. McBryde submitted affidavits confirming that Mr. Barringer's

[2] Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Amendment and Restatement of Revocable Trust are attached as **Exhibit B.**

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1998 Will and 1998 Revocable Trust did not contain a contract with Mrs. Barringer or otherwise obligate Mrs. Barringer, which he affirmed in deposition testimony. Attorney John Jolley, who prepared and witnessed Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Restatement and Amendment of Trust Agreement[3], testified under oath that no language in Mr. Barringer's wills and trusts was intended to reflect, reference or otherwise memorialize any contract between Mr. and Mrs. Barringer, and that in fact "the terms of their – of Mr. Barringer's documents fly in the face of an argument that there's an agreement not to change their estate plans." John Jolley Deposition March 16, 2021 ("Jolley Dep. Day 1") 86:18 – 87:24, attached as **Exhibit D** and McBryde Affidavits, Neill McBryde Deposition 14-15, attached as **Exhibit E**.

ARGUMENT

I. Defendant is entitled to summary judgment on Plaintiff's third cause of action, which asks this Court to enforce a contract between Paul and Merrill Barringer "not to revoke their estate plans."

In her third cause of action, Ms. Luzak asks this Court to order her mother to comply with a contract that Ms. Luzak alleges was made between her father and mother "not to revoke their estate plans." Specifically, Ms. Luzak alleges as follows:

FOR A THIRD CAUSE OF ACTION
(ENFORCEMENT OF CONTRACT NOT TO REVOKE AND INJUNCTION)

[3] John Jolley also prepared Mr. Barringer's July 20, 2012 Second Amendment and Restatement of Trust, June 12, 2014 Will and June 12, 2014 Third Amendment and Restatement of Trust, and February 5, 2015 Will and February 5, 2015 Fourth Amendment and Restatement of Trust, attached as **Exhibit C**. Each of these trust amendments give a special power of appointment to Mrs. Barringer.

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> 141. Plaintiff Hampton Luzak realleges and reiterates all of the allegations contained in the preceding paragraphs as fully as if repeated herein verbatim.
>
> 142. Upon information and belief, Decedent Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans. Upon information and belief, other proof could be discerned from a review of Mrs. Barringer's estate planning documents, which she has refused to produce in the case of Hampton B. Luzak v. Merrill B. Light, et al, Case No. 2016-CP-07-1919 (S.C. Com.Pl.). This contract not to revoke applied to the estate plans in place until his lack of capacity and the undue influence and tortious interference practiced on him, as described above.
>
> 143. Consequently, Plaintiff Hampton Luzak is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke her will.

Compl. ¶¶ 142-43.

A contract not to revoke a will is an example of a "contract concerning succession." The South Carolina legislature has specifically addressed "contracts concerning succession" by statute— S.C. Code § 62-2-701. Section 62-2-701 of the South Carolina Code governs contracts regarding wills (succession) executed after July 1, 1987, allowing a person to prove a contract to make a will or devise (or not to revoke one) ***only*** if (1) provisions of the decedent's will state the material provisions of the contract, (2) the decedent's will contains an express reference to the contract and extrinsic evidence proves the terms of the contract, or (3) when the decedent signed a writing that evidences the contract and other evidence shows its terms.[4] Although a plaintiff may, under the third prong of the statute, rely on extrinsic evidence to prove the terms of a contract

[4] § 62-2-701. Contracts concerning succession.
A contract to make a will or devise, or to revoke a will or devise, ***or not to revoke a will or devise***, or to die intestate, if executed after [July 1, 1987], can be established ***only by*** (1) **provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will** of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) **a writing signed by the decedent evidencing the contract and** extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. S.C. Code § 62-2-701

concerning a will, the existence of such a contract must be confirmed by a signed writing. *See id*., Comment ("Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract *whose mere existence is proved by a signed writing*.") (emphasis added).

S.C. Code § 62-2-701 was drawn from a section of the Uniform Probate Code. *See* Unif. Probate Code § 2-701. The Official Comment to UPC § 2-701 explains the rationale for this type of statute:

> It is the purpose of this section to tighten the methods by which contracts concerning succession may be proved. Oral contracts not to revoke wills have given rise to much litigation in a number of states; and in many states if two persons execute a single document as their joint will, this gives rise to a presumption that the parties had contracted not to revoke the will except by consent of both.

See id., Comment.

1. **Plaintiff has no evidence to establish a contract by Method One: Mr. Barringer's wills do not contain "material provisions of a contract" between Mr. and Mrs. Barringer not to revoke their wills.**

S.C. Code 62-2-701(1) states a contract not to revoke a will may be established by (1) **provisions of a will of the decedent stating material provisions of the contract.** An example of a provision of a contract in a will is below:

> My spouse and I are executing our wills at or about the same time and such wills are intended to be and should be construed [as] contractual and reciprocal wills. Neither wills [sic] shall be subject to revocation by it's [sic] make without the consent of the other party."

See Self v. Slaughter, 16 So. 3d 781, 785 (Ala. 2008) (quoting *Humphries v. Whiteley*, 565 So.2d 96, 97 (1990)).

Plaintiff could establish the purported contract through S.C. Code 62-2-701(1) if the decedent's will (the only decedent here is Paul Barringer) contained material provisions of a contract between Mr. and Mrs. Barringer. Plaintiff suggests such a provision is found in Paul

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Barringer's Last Will and Testament dated December 4, 1998, Item III at pages 1-2, which is included below. However, these pages of the will do not contain a material provision of a contract.

ITEM III

All of the rest, residue, and remainder of my property of every kind and description, and wherever located, including any lapsed or void devise (but not including any property over which I may have a power of appointment), I devise to the then acting Trustee or Trustees of The Paul B. Barringer, II Revocable Trust executed by me immediately prior to my execution of this Will on the 4th day of December, 1998, as the same may from time to time be amended prior to my death, to be held, managed, and distributed in accordance with the terms and provisions of such trust agreement as of the date of my death.

Plaintiff also suggests that Mr. Barringer's 1998 revocable trust (executed at the same time as his 1998 will) states material provisions of a contract between Mr. and Mrs. Barringer not to revoke their estate plans because the trust grants Mrs. Barringer powers of appointment. *See* Luzak's Memo in Opposition to Motion to Compel Response to Supp. Interrogatories, page 4, attached as **Exhibit F.** Thus, nonsensically, Plaintiff asks this Court to rule that the part of the trust that ***expressly gives*** Mrs. Barringer a power of appointment is a "material provision of the contract" between Mr. and Mrs. Barringer that somehow also ***prevents*** her from using that power of appointment. That is, Plaintiff would have this Court conclude that when Mr. Barringer specified that his assets should be distributed "to *or among* my descendants, and *in such manner in trust or otherwise*, as my said wife may appoint *in such wife's last will and testament or codicil thereto* . . . ." (*see id*. at pp. 8 and 13) he really meant the exact opposite – that his wife may not ever appoint who among his descendants would receive his assets. The logic of this argument is self-defeating.

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Plaintiff also indicates that the material provision of a contract is found in "Paul Barringer's Last Will and Testament dated February 28, 2012 (see entire document with no power of appointment exercised)" and Paul Barringer's First Restatement of Trust Agreement dated February 28, 2012. *See* Response to Defendant's First Interrogatories, attached as **Exhibit G,** Response to No. 2., p. 7, L. and K. For "material provisions of the contract" in the February 28, 2012 Will and the February 28, 2012 First Restatement and Amendment of Trust Agreement, Plaintiff refers to the whole document and the fact that Mr. Barringer did not exercise a power of appointment in the document. But the fact that Mr. Barringer did not exercise a power of appointment does not in any way constitute evidence of an agreement between Mr. and Mrs. Barringer that Mrs. Barringer was precluded from exercising her express power of appointment in her own will. The ***absence*** of a writing obviously does not prove the ***existence*** of a writing.

To be clear—Mr. Barringer's 1998 Will and his 1998 Revocable Trust, and his February 28, 2012 Will and February 28, 2012 Revocable Trust Amendment ***do not*** contain material provisions of a contract.[5] As attorney John Jolley, who prepared Mr. Barringer's February 28, 2012 Will and February 28, 2012 First Restatement and Amendment of Trust Agreement testified, the language not only does not reference or state material provisions of a contract, its terms "fly in the face of an argument that there's an agreement not to change their estate plans." See Jolley Dep. Day 1, 86:18 – 87:24.

2. Plaintiff has no evidence to establish a contract by Method Two: Mr. Barringer's Will does not contain an express reference to a contract.

None of Mr. Barringer's wills or revocable trusts from 1998 to 2015 have an express reference to a contract, and Plaintiff concedes that she cannot establish that Mr. Barringer's wills

[5] Mr. Barringer's July 20, 2012 Second Amendment and Restatement of Trust, June 12, 2014 Will and June 12, 2014 Third Amendment and Restatement of Trust, and February 5, 2015 Will and February 5, 2015 Fourth Amendment and Restatement of Trust also do not contain material provisions of a contract.

meet the requirements of S.C. Code 62-2-701(2). *See* Response to Defendant's First Interrogatories, attached as **Exhibit F,** Response to No. 4, p. 11 ("As to part (2) of § 62-2-701,…there is no express reference to a contract in a will of Paul Barringer if the term "express reference" means a specific use of the term "contract" in a will.").

3. Plaintiff has no evidence to establish a contract by Method Three: There is no other "signed writing evidencing" the contract.

S.C. Code 62-2-701(3) allows a contract not to revoke a will to be established if (3) **a writing signed by the decedent evidences the contract and then extrinsic evidence proves the terms.** Although a plaintiff may, under the third prong of the statute, rely on extrinsic evidence to prove the terms of a contract concerning a will, the existence of such a contract must first be established by a ***signed writing***. *See* S.C. Code 62-2-701, Comment. ("Extrinsic evidence is freely admissible under Section 62-2-701 to prove the important terms of a contract *whose mere existence is proved by a signed writing*.") (emphasis added).

Plaintiff attempts to argue that she has evidence compliant with 62-2-701(3), because "numerous other documents and evidence" serve as signed writings. Again, Plaintiff must set forth ***specific facts*** to create a genuine issue of material fact that a writing evidences a contract between Mr. and Mrs. Barringer not to revoke their wills. At a minimum, such proof would require a signed writing, but that does not exist, and Plaintiff can identify no such document.

Plaintiff lists the following categories of documents as somehow supporting her argument that a contract not to revoke exists—"family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and numerous meetings involving family and business planning, at which Mr. Barringer expressed his intent for equal control, which was never disputed, or even

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commented upon, by Defendant." *See* **Exhibit E** Luzak's MIO to Motion to Compel Response, at p. 5**.** But critically, Plaintiff does not argue—and cannot argue—that any of these documents evidence a contract whereby Mrs. Barringer agreed never to exercise the power of appointment that Mr. Barringer expressly granted to her. Indeed, Plaintiff does not provide any explanation at all as to how these documents supposedly relate to the requirements of Section 62-2-701, or otherwise support her argument.

Next, Plaintiff argues that the "simultaneous and symbiotic" estate planning documents of Mr. and Mrs. Barringer are signed writings. *See* Exhibit E, p. 6**.** But "simultaneous and symbiotic estate planning documents" is a dressed-up term for mutual wills — separate wills that are reciprocal or substantially similar. Mutual wills can contain clauses which state that they are not revocable unless the other party, usually a spouse, consents. Mr. Barringer's wills do not contain such a clause. In fact, Plaintiff's argument is expressly foreclosed by Section 62-2-701, which states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills." Plaintiff's entire argument seems to be that, because Mr. and Mrs. Barringer executed mutual wills in which Mr. Barringer granted Mrs. Barringer a power of appointment and Mrs. Barringer did not use such power at the time of the execution of the documents, a contract not to revoke was somehow created. But, once again, a signed writing ***granting*** an express right of appointment cannot be evidence of a written agreement ***not to exercise*** that right. There is ***no evidence of a writing in which*** Mr. and Mrs. Barringer agreed for their wills to be contractual or irrevocable[6], and Mrs. Barringer is entitled to summary judgment on this issue.

[6] To avoid summary judgment, the Plaintiff must set forth specific facts creating a genuine issue of material fact as to the existence of a contract. A contract to make a will or not to revoke one ***must have the essential elements of any legal contract***, which are: contractual intent, an actual meeting of the minds of the parties, and valid mutual consideration. Moreover, the terms of the contract must be definite and certain. *See* 32 S.C. Jur. Wills § 31.

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4. Accepting Plaintiff's argument would have devastating policy implications.

Accepting Plaintiff's argument would have devastating policy implications, upsetting estate plans containing a power of appointment and opening the door to lawsuits by descendants who are disinherited through the exercise of a power of appointment. If Plaintiff's argument is correct, then every testator who grants his spouse a power of appointment—and who intends for his spouse to hold that power of appointment up until the spouse's death—will not have his estate planning intentions carried out, because the spouse will be prohibited from exercising the power of appointment if he or she failed to do so during the testator's lifetime.

CONCLUSION

Defendant Mrs. Barringer asks the Court to grant summary judgment in her favor and dispose of Plaintiff's third cause of action on the grounds that Plaintiff is unable to establish the alleged contract between Mr. and Mrs. Barringer by any of the three *only* means allowed by statute.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley

J. ASHLEY TWOMBLEY
S.C. Bar #72916
LEE ANNE WALTERS
S.C. Bar #74984
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
lwalters@twlawfirm.com
Attorneys for Defendant, Merrill U. Barringer

Beaufort, South Carolina

June 14, 2021

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EXHIBIT A
Paul Barringer 1998 Will & Trust

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EXHIBIT B

Paul Barringer 2-28-2012 Will & Trust

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EXHIBIT C

Paul Barringer 7-20-2012 Second Amendment and Restatement of Trust

Paul Barringer 6-12-2014 Will and 6-12-2014 Third Amendment and Restatement of Trust

Paul Barringer 2-5-2015 Will and 2-5-2015 Fourth Amendment and Restatement of Trust

EXHIBIT D

John Jolley Deposition Excerpts pp. 86-87

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
	)	
HAMPTON BARRINGER LUZAK,	)	
	)	**AFFIDAVIT**
Plaintiff,	)	
	)	
v.	)	
	)	
MERRILL U. BARRINGER,	)	
	)	
Defendant	)	
	)	

I, Neill G. McBryde, am over the age of eighteen, am capable of giving this affidavit under oath, and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. My name is Neill G. McBryde and I am a lawyer in Charlotte, North Carolina.

2. I currently practice with the law firm of Moore & Van Allen, one of the largest law firms in the southeast.

3. I am a member in good standing of the North Carolina and the Georgia Bar Associations.

4. In 1969, I received my Juris Doctor from the University of North Carolina at Chapel Hill, where I was Editor-in-Chief of the North Carolina Law Review. I was also a Morehead Fellow in Law.

5. For over 50 years, I have been actively engaged in the practice of law with primary emphasis in the areas of tax planning, business planning for closely-held businesses,

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insurance planning, estate and wealth transfer planning, estate administration, and trust and estate tax and fiduciary litigation. I have led Moore & Van Allen's closely held business, tax planning, estate and wealth transfer planning, and trusts and estates groups.

6. My primary areas of emphasis include providing:

- Tax and business planning advice for closely-held businesses;
- Tax, estate planning, and insurance planning for owners of closely-held businesses and high net worth individuals;
- Advice and counsel in connection with mergers and acquisitions involving stock, corporate assets, real estate and other assets;
- Specialized services in the wealth transfer, estate planning and estate administration areas;
- Charitable planning for individuals and non-profit representation; and
- Tax controversies.

7. I have lectured nationally and written extensively in areas relating to closely held businesses, tax planning, tax controversies, insurance planning, and estate planning and administration.

8. I have been included in Best Lawyers in America for Trusts and Estates, Tax Litigation & Controversy and Tax Law every year since 1983.

9. I am the Past President and Fellow of the American College of Trust and Estate Counsel; am a North Carolina Bar Board-Certified Specialist in Estate Planning and Probate; am the Past President and Trustee, Advisory Board, Southern Federal Tax Institute; and a Fellow of the American College of Tax Counsel.

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Paul Barringer

10. I was introduced to Paul Barringer around 1996, and I served as his attorney for the preparation of the following documents:

a. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 ("1998 Will");

b. Paul B. Barringer, II Revocable Trust dated December 4, 1998 ("1998 Revocable Trust"); and

c. The Paul B. Barringer, II Family Trust executed on December 22, 1998.

11. I have been made aware of the litigation Hampton Luzak filed in South Carolina, and I understand Mrs. Luzak is asking the court to set aside all of the wills and trusts Paul Barringer executed after 1998.

12. If that relief were granted, I understand that the 1998 Will and 1998 Revocable Trust I prepared for Paul Barringer would be the operative will and trust, and further, that the 1998 Will and 1998 Revocable Trust would control the disposition of Paul Barringer's estate.

13. I submit this affidavit to explain Paul Barringer's 1998 Will and 1998 Revocable Trust, and the facts and circumstances surrounding their preparation and execution.

The Attorney Client Privilege

14. I have been provided a copy of the order entered by the Honorable Carmen Mullen dated August 23, 2017, finding that South Carolina recognizes the testamentary exception to the attorney client privilege.

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15. This affidavit is submitted in accordance with that ruling and with the consent and approval of Merrill Underwood Barringer ("Mrs. Barringer"), as Personal Representative of the Estate of Paul Barringer.

16. This affidavit is intended only to cover matters covered by Judge Mullen's order, and nothing more.

17. By executing and submitting this affidavit, there is no intended or implied waiver of the attorney client privilege.

18. In any event, the affidavit is submitted with the consent of Mrs. Barringer, the personal representative of Paul Barringer's estate.

Paul Barringer's 1998 Estate Plan

19. Paul Barringer's 1998 estate plan begins with a standard "pour over" will.

20. This means that after his estate is probated (if necessary) and administration is complete, any assets in his individual name – excluding certain personal property – would be transferred or "poured over" into his 1998 Revocable Trust.

Paul Barringer's 1998 Revocable Trust

21. Upon Paul Barringer's death, the 1998 Revocable Trust calls for his trust estate to be divided into three sub-trusts: two marital trusts, the "A Trust" and the "B Trust," and a residuary trust, the "Item V Trust" (collectively, the "sub-trusts").

22. For the A Trust and the B Trust, Mr. Barringer provided that "my said wife shall have the use of this trust property . . . as a life beneficiary" and that the principal in each marital trust can be distributed to Mrs. Barringer for the "support, health and maintenance of my wife."

23. For the Item V Trust, Mr. Barringer provided that the trustee could make distributions of income and principal to Mrs. Barringer for her "support, health, and maintenance"

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and that the Trustee could also make distributions of income and principal to Mr. Barringer's descendants for "support, maintenance, health and education." Mr. Barringer instructed that his "primary desire is that my wife be supported in reasonable comfort during my wife's lifetime and that my children be supported in reasonable comfort and properly educated, rather than that the principal of this trust be preserved until the division of the trust into separate shares."

24. For any assets remaining in the sub-trusts at the time of Mrs. Barringer's death, Mrs. Barringer is given a testamentary power of appointment over any assets of the sub-trusts at her death.

25. The language granting the testamentary powers of appointment is as follows:

a. For the A Trust and the B Trust:

- Upon the death of my said wife … the property remaining in the A Trust and the B Trust shall be distributed by the Trustee, free of the trust, to or among my descendants, and in such manner in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto, making express reference to this power, except that such wife shall have no power to appoint such property to such wife, to such wife's estate, to such wife's creditors or to the creditors of such wife's estate.

b. For the Item V Trust:

- My wife shall have the power upon her death by her last will and testament or codicil thereto, making express reference to this power, to appoint any part or all of the property in this trust to or among my descendants, and in such manner, in trust or otherwise, as she may in such will provide, except that she

shall have no power under any circumstances to appoint any of such property to herself, to her estate, to her creditors or to the creditors of her estate.

26. Mrs. Barringer can exercise her power of appointment over all of the sub-trusts "to *or among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ."

Purpose of a Power of Appointment

27. A power of appointment is a power to direct the disposition of property.

28. The power can be broad or limited depending on desire of the creator, here, Mr. Barringer.

29. A power of appointment can also be presently exercised or postponed until a specified event occurs or a condition is met.

30. With respect to Mr. Barringer's 1998 Revocable Trust, the purpose of the powers of appointment is to confer authority upon Mrs. Barringer to designate – at the time of her death – who is to receive and enjoy the remaining assets of Mr. Barringer's estate.

31. These powers of appointment are called testamentary powers of appointment, which means Mrs. Barringer can only exercise them at the time of her death.

32. There are many reasons why a spouse (Mr. Barringer) would give a testamentary power of appointment to a surviving spouse (Mrs. Barringer).

33. A testamentary power of appointment builds flexibility into an estate plan and allows the surviving spouse to account for changes in circumstances that occur after a decedent's death.

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34. For example, individuals who may otherwise be beneficiaries at the first spouse's death might experience significant economic and other life changes in between the first spouse's death and the surviving spouse's death.

35. For example, after a decedent's death, potential beneficiaries may remarry; seek, lose or fail to maintain employment; become disabled or develop other health related issues; develop serious financial needs or experience a financial windfall; or experience other circumstances that make it desirable to leave them less, more or none of the decedent's estate.

36. After a decedent's death, potential beneficiaries may engage in behavior that is disfavored by the power holder.

37. Here, Mr. Barringer conferred authority upon Mrs. Barringer to decide who should benefit from the remaining assets of Mr. Barringer's estate at the time of her death.

38. This would include the opportunity to observe her children, their behavior, their life choices, and any other factors she deemed relevant – in her sole discretion – to decide who "*among* [Paul Barringer's] descendants, and *in such manner* in trust or otherwise, as my said wife may appoint in such wife's last will and testament or codicil thereto . . . ." should benefit from the assets.

Language Selected by Paul Barringer for Powers of Appointment

39. The specific language used for the powers of appointment selected by Paul Barringer specifically empower Mrs. Barringer with the right to decide what portion – if any – of Mr. Barringer's estate each child should receive.

40. Nothing in the trust requires or otherwise suggests that Paul Barringer intended to obligate or require Mrs. Barringer to appoint any particular asset to any particular child, or treat the children equally.

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41. To the contrary, the language chosen by Paul Barringer specifically empowers Mrs. Barringer with the discretion to treat his descendants in an unequal fashion --- based upon her judgment.

Consequences of CFRC Voting Stock Gift Being Set Aside

42. I have been informed that in 2012, Paul Barringer individually owned 38,272 shares of voting stock in Coastal Forest Resources Corporation, Inc. (CFRC).

43. I have been further informed that in 2012, Paul Barringer engaged in transfers related to this stock, ultimately transferring all but one share to his daughter Merrill Light (hereinafter collectively referred to as the "Voting Stock Gift Transaction").

44. I understand that Hampton Luzak has asked the Court to set aside the Voting Stock Gift Transaction for various reasons.

45. Assuming Mrs. Luzak were to prevail in having the Voting Stock Gift Transaction set aside, and further assuming that Mrs. Luzak were to prevail in setting aside all of the estate planning documents Paul Barringer executed after 1998, then the 1998 Will and 1998 Revocable Trust outlined above would control the disposition of any assets in Paul Barringer's estate, including but not limited to the CFRC voting stock.

46. If the 1998 Will and 1998 Revocable Trust control the disposition of Mr. Barringer's estate, then Mrs. Barringer would have the power – at the time of her death – to appoint the stock to or among Mr. Barringer's descendants through her last will and testament or any codicil thereto.

Contract or Agreement

47. I have been informed that Hampton Luzak alleges that, prior to the execution of their 1998 estate plans, Paul Barringer and his wife Mrs. Barringer entered into a "contract" or

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other agreement wherein each agreed not to revoke their wills and trusts, such that Mrs. Barringer is now obligated not to change her will to exercise the powers of appointment given to her by Paul Barringer in the 1998 Revocable Trust.

48. I am not aware of, and did not prepare, any such contract – oral, written or otherwise – related to Paul Barringer's estate or trust.

49. Paul Barringer never mentioned the existence of any such contract, agreement or promise to me despite the fact that I was, at the time, intimately familiar with his estate planning and decisions related to his assets.

50. Mr. Barringer never expressed a desire to prevent Mrs. Barringer from having discretion in exercising her powers of appointment after Paul Barringer passed away, nor did he ever informed me that Mrs. Barringer had promised she would not exercise the powers of appointment.

51. To the contrary, Paul Barringer expressly wanted to include the power of appointment language in his 1998 estate plan to specifically empower his wife (Mrs. Barringer) to choose – at the time of her death – who among his descendants would receive assets from his estate following Mrs. Barringer's death.

52. Any such purported agreement would be directly at odds with the expressed directives Paul Barringer gave me and directly at odds with his 1998 estate plan.

53. I understand that despite the expressed terms of Paul Barringer's 1998 Revocable Trust, Hampton Luzak alleges Paul Barringer actually wanted his wife not to exercise the powers of appointment given to her.

54. As stated above, Paul Barringer never expressed that desire to me.

55. In fact, such a result is expressly at odd with the terms of his estate plan, which gives Mrs. Barringer the absolute right to decide who among Mr. Barringer's descendants will receive assets from his estate, and which ones do not. Of course, Mrs. Barringer could choose not to exercise her powers of appointment, but she is certainly under no contractual obligation that I am aware of with respect to the exercise or nonexercise of the powers of appointment.

56. Should Mrs. Barringer be prevented from exercising the powers of appointment given to her by Paul Barringer in his 1998 estate plan, such a result would be antithetical to the expressed instructions given to me by Paul Barringer regarding his 1998 estate plan.

Tax Issues and Equality and Chapman

57. I have been provided with a copy of *Chapman v. Citizens & Southern National Bank of South Carolina.*

58. In 1981, the United States Congress passed the Economic Recovery and Tax Act of 1981 ("ERTA"), which made several watershed changes to the estate tax regime.

59. One important change was to allow a full marital deduction for "qualified terminable interest property" ("QTIP") trusts.

60. The tax motivations at issue in *Chapman* were no longer present after the passage of ERTA. In the documents at issue in the *Chapman* case, in order to obtain a marital deduction, the surviving spouse was required to have a power of appointment.

61. When Mr. Barringer's 1998 Revocable Trust was drafted and executed, granting a power of appointment to the spouse was no longer required to obtain a marital deduction.

62. If Mr. Barringer did not want to give Mrs. Barringer the power to exercise a power of appointment, he could have directed that the documents not grant her a power of appointment.

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63. Moreover, if Mr. Barringer wanted to be certain his assets would be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Mrs. Barringer's death and then pass to his children equally without giving Mrs. Barringer a power to change that disposition.

64. There is no reason (tax or otherwise) for Mr. Barringer to give Mrs. Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me

This 8th day of September 2020.

NOTARY PUBLIC FOR NORTH CAROLINA

My Commission Expires: 1-17-24

DELORES C. BUTLER
NOTARY PUBLIC
CARTERET COUNTY, NC
My Commission Expires 1-17-24

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2019-CP-07-01253 2019-CP-07-01294
	)	
IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II	)	
HAMPTON BARRINGER LUZAK,	)	**SUPPLEMENTAL AFFIDAVIT**
Plaintiff,	)	
v.	)	
MERRILL U. BARRINGER,	)	
Defendant	)	

I, Neill G. McBryde, 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 depose and state the following:

1. This affidavit will supplement the September 8, 2020 affidavit I provided related to the captioned case.

2. I have been provided with a copy the affidavit of James C. Hardin, III, Esquire, dated September 19, 2020, and the affidavit of Richard B. Allen, Esquire, dated September 28, 2020.

3. Mr. Hardin's affidavit addresses "whether tax reasons exist for clients to include powers of appointment in their estate planning documents" and discusses some of the tax reasons why "clients commonly include" power of appointment in estate planning documents.

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4. Similarly, Mr. Allen's affidavit addresses some of the "tax planning opportunities available" to estate planning clients through the use of powers of appointment.

No Tax Objectives

5. There was no tax objective associated with Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of Mrs. Barringer's death.

6. As stated in my prior affidavit, the purpose of Paul Barringer providing Merrill Barringer with a power of appointment over the assets of his estate at the time of her death was to confer authority upon Mrs. Barringer to designate – at the time of her death – who among Paul and Merrill Barringer's children would receive and enjoy the assets of Mr. Barringer's estate.

7. The power of appointment specifically empowers Merrill Barringer with the discretion to treat Paul Barringer's children in an equal or unequal fashion – based solely upon her judgment – at the time of her death.

8. When Paul Barringer gave Merrill Barringer a power of appointment in his December 4, 1998 Revocable Trust that I drafted, I did not advise Paul Barringer regarding, or rely upon, any of the "tax reasons" or other "tax planning opportunities" generally discussed in the affidavits of Mr. Hardin or Mr. Allen because the purpose of the power of appointment was to provide distribution flexibility following Mr. Barringer's death..

Merrill Barringer Did Not Receive the Power of Appointment Until Paul Barringer's Death

9. Assuming Paul Barringer's December 4, 1998 Revocable Trust are operative, Merrill Barringer did not receive her power of appointment until Paul Barringer died.

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10. Because she did not receive the power of appointment until the time of Paul Barringer's death, Merrill Barringer could not have exercised the power of appointment until after Paul Barringer's death.

The Power of Appointment Can Only Be Exercised at Merrill Barringer's Death

11. The powers of appointment Paul Barringer gave Merrill Barringer in his December 4, 1998 Revocable Trust are "testamentary" powers of appointment, which means they can only be exercised by Merrill Barringer at the time of her death.

12. Therefore, not only did Merrill Barringer not receive the power of appointment until Paul Barringer's death, she cannot exercise the power of appointment until the time of her death.

Paul Barringer Chose to Give Merrill Barringer Dispositive Flexibility

13. If Paul Barringer did not want to give Merrill Barringer the power to exercise a power of appointment, he could have directed that his December 4, 1998 Revocable not grant her a power of appointment.

14. Moreover, if Paul Barringer wanted specific assets to be distributed to his children in equal shares after the death of his wife, he could have provided for the assets to be held in trust until Merrill Barringer's death and then pass to his children equally without giving Merrill Barringer a power to change that disposition.

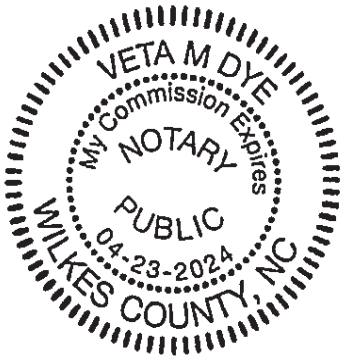
15. There was no reason (tax or otherwise) for Paul Barringer to give Merrill Barringer a power of appointment over his estate unless that is precisely what he wanted to do.

THE AFFIANT FURTHER SAYETH NAUGHT!

Neill G. McBryde, Esquire

Sworn to and Subscribed before me,
This 2nd day of ~~September~~ October 2020.

NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 04-23-2024



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Deposition of:

Neill McBryde

March 26, 2021

In the Matter of:

Luzak, Hampton v. Light, Merrill

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want to make sure you have mine in front of you, and they are -- the notebook with 12 tabs, and I think they red numbers at the top that says "McBryde depo 1, McBryde depo 2." I -- I think you have them in that black binder, if you'll turn to tab -- Tab 1.

A. I do.

Q. Okay. Do you see the red numbers "McBryde depo 1, McBryde --"

A. Yes.

Q. Okay. Just for your reference and for mine, I'm going to be referring to those page numbers, the ones in red at the top, so if I direct you to page 1 or page 100, that -- those are the numbers I'm going to be referring to. Okay?

A. I understand.

Q. Okay. The first document that is labeled McBryde 1 through McBryde 11, do you recognize this document?

A. You mean the -- just the materials in there?

Q. Well, correct. This -- this is the affidavit that was signed by you --

A. Yep. Yes.

Q. -- on September 8th --

A. The first affidavit, yes.

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Q. Okay. All right. And so what is -- this document is the affidavit that you signed for this case?

A. This is the document that I prepared and signed for this case.

Q. Okay. All right. And was this -- was this affidavit true and accurate, to the best of your knowledge?

A. Yes, to the best of my knowledge, and I understand obligations of -- of my oath.

Q. All right.

I'm going to start asking you a few questions that related to page 3, McBryde deposition 3.

Tell us, please, approximately, when you recall first meeting and doing legal work for Paul Barringer.

A. I first met him and was introduced to him and he me somewhere in 1996, but the -- the subjective and substantive work really picked up or was culminated with respect to Mr. Barringer and his estate planning in 1998 in that period, the second half of that year.

Q. And it's my understanding that you prepared some of the estate planning documents for

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going to try to share my screen with you, and I want to show you a document --

A. Okay.

Q. -- 19 in the notebook. But it's one that's a matter of public record. And let me make sure I got it right here.

Okay. Are you able to see my screen now?

A. Yes. It's on -- yeah, separate screen.

Q. Okay. And what I want to show you -- and this is page 58 of the lawsuit that Hampton Luzak has.

A. Can you blow it up a little bit more.

Q. Yes, sir.

A. Yes. Yes, that's -- that's good. You need to move it. Yeah, there you go. Yeah, there you go. Thank you. Okay.

Q. All right. I'm -- I'm just going to read this to you starting in paragraph 142, and it says: "Upon information and belief, descendants Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plan. Upon..."

Well, let's just take that first sentence, okay? Are you aware of any contracts or other agreement between Mr. and Mrs. Barringer, where they agreed not to revoke their estate planning?

A. No. Did I -- did I -- I continued to do

work for them, but never did that issue ever even arise or thought arise from my being counsel, and with at least Paul on several matters after this was done.

Q. Okay. What, if any -- and I'm -- that is all I want to ask you about at this moment.

But what, if any, discussions did you have with Mr. or Mrs. Barringer about their desire to ensure or otherwise guarantee that the kids were treated equally in the future no matter what?

A. Don't -- I can't answer that question because we got in in August. Because of the way you stated it is, we would and I'm sure did -- again, it's a long time ago, but I have a certain methodology that I find -- follow with virtually every client because I know what you need to do and what you don't need to do.

We make sure that both spouses clearly understand, agree and approve. And I feel very comfortable because I was intentionally involved in this, you can see from my hours, too little rate, but nevertheless, the -- that at the time of execution on December 4, this is what they wanted to do, and there was no -- no concern that -- I mean, just never heard a thing about that.

And I would say I'm sure I went over the

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document at the time of execution, and obviously, there is just nothing in the file and nothing that would tell me that they had any different direction in mind.

Q. If you -- if you would, Mr. McBryde, I know would like to look at -- behind Tab 7 at McBryde Depo 80.

A. Yes.

(Reporter Clarification.)

Q. 80?

BY MR. TWOMBLEY:

Q. Do you have this diagram in front of you, Mr. McBryde?

A. I do.

Q. And it says at the top "if his wife, Merrill Barringer, survives him."

What is -- what is this document?

A. This is a diagram that we provide to clients almost uniformly for a long time, but always hopefully, getting better and better each year, which lays out what will happen under the docs if you want to read the 50 pages, or however many it was -- if you get to the short version here, which is, of course, laid out, and we've just gone through the detail of the actual document.

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
and 2019-CP-07-01294

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT MERRILL U. BARRINGER'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES

To understand Plaintiff's compliance with and appropriate responses to the interrogatories, it is helpful to understand the history of Defendant's own treatment of applicable procedural rules. Merrill U. Barringer continually resisted compliance with a court order to produce her estate planning documents pursuant to Plaintiff's request for production. Only under threat of the imposition of significant sanctions by the Court did she finally produce those documents. It is understandable why Defendant so strongly resisted the production of her estate planning documents. In 1998, Paul Barringer executed, inter alia, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him. Although Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, neither Paul Barringer or Defendant really understood that these documents gave Defendant a testamentary power of appointment, Plaintiff assumes arguendo that Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in

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1998. Even so, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment. Moreover, Defendant's 1998 revocable trust apparently gave Mr. Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume arguendo that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's 1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant a testamentary power of appointment in his 1998 documents, he also knew that Defendant expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. That understanding between Mr. Barringer and Defendant, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, serves as a foundation for all of Plaintiff's assertions: that a contract not to exercise existed, that there was an express promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer, that there was an implied promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer, and/or that Defendant is equitably estopped from exercising any such power of appointment. Although this was the foundation, it is certainly not all of the

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evidence Plaintiff asserts that proves that Mrs. Barringer is precluded from exercising any power of appointment; plenty of other evidence exists to prove the existence of an agreement and/or an express or implied promise not to exercise.

Attorney John Jolley prepared the documents and Defendant executed reciprocal documents between 2012 and Mr. Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant exercised any testamentary power of appointment. Defendant did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when Attorney Harley Ruff began representing her.

Even assuming arguendo that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant attempt to exercise any testamentary power of appointment. Defendants Merrill Barringer and Merrill Light characterized Paul Barringer as a man in control. Paul Barringer never involved Defendant in his legacy business: she was never given any stock or any position in that business. She testified that she attended the June 2012 meeting to ensure that Paul Barringer did not forget to fire Kevin Luzak. It is beyond reasonable belief that Paul Barringer, who excluded his wife from his business for the entirety of their marriage while including his children, would knowingly give her the ability to decide the control of that company after his death, which would include the power to give the controlling stock to grandchildren or great-grandchildren, who might not even have been born before his death.

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The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is 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. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

South Carolina Probate Code (SCPC) section 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: "by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract."

Assuming arguendo that Plaintiff relies *solely* on the existence of a contract not to revoke a will or devise — which she does not — any of the three methods may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent's will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent's will, but rather only that the will state material provisions of the contract. Mr. Barringer's 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Mrs. Barringer's 1998 will, executed simultaneously and symbiotically with Mr. Barringer's 1998 will and revocable trust, stated material provisions as to

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the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Mr. Barringer's estate plan. Mr. Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant's estate plan. Although these Barringer 1998 estate planning documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Mrs. Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Mr. Barringer's will. The mutuality of the contract is confirmed by Mr. Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust. If Mr. Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Mrs. Barringer, then he also understood that Mrs. Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract.

The material provisions of the contract stated in their 1998 estate plans, and particularly in Defendant's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following: the pattern of the reciprocal wills and trusts executed by Mr. Barringer and Defendant beginning in 2012, none of which exercised any power of appointment, until Defendant breached the contract by executing wills after he died which purport to exercise a power of appointment; family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate

documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and 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. These documents form a consistent pattern of evidence.

SCPC section 62-2-701(3) provides different requirements: "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term "contract." This is consistent with contract law, which of course does not require the word "contract" in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Mr. Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Mr. Barringer and Defendant's 1998 documents create special testamentary powers of appointment and Mrs. Barringer's will specifically and expressly declines to exercise any power of appointment. This alone "evidences" a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment.

Although Plaintiff prevails under either SCPC section 62-2-701 subsection (1) or (3), Plaintiff also prevails under other South Carolina law. Defendant was in a fiduciary relationship

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with Mr. Barringer: she was his wife and was the attorney-in-fact under his power of attorney. In *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (S.C. App. 1990), the surviving spouse had a fiduciary and confidential relationship with the deceased spouse because she was his wife. The *Chapman* court held that either an *express or implied* promise from the surviving spouse not to exercise a testamentary power of appointment was binding, and that such an implied promise could be implied even *from silence*.

As discussed more thoroughly above, Mr. Barringer and Defendant, represented by the same attorney, executed mutual and reciprocal estate planning documents in 1998. Mr. Barringer purportedly gave Defendant a special testamentary power of appointment, and her will specifically and expressly declined to exercise that power. For the rest of Mr. Barringer's life, Defendant did not execute a document purporting to exercise that power.

Defendant's 1998 will made an express promise by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Mr. Barringer's life. Mr. Barringer went to his grave believing that his wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, *Trusts*, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. Certainly Mr. Barringer could infer a promise from Defendant because of her specific and express declination to exercise any power in her 1998 will; her failure to exercise any power for the rest of his competent life, and even for the rest of his life once he was incompetent; and from the numerous other situations where she engaged in acts supporting Mr. Barringer's intent that his children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.

South Carolina law recognizes that a promise not to revoke can be enforced through

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equitable estoppel, which requires the enforcement of a promise on which a decedent detrimentally relied based on the expression of that promise. In *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535, the court enforced a grandfather's oral promise to leave property to his grandson because the grandson detrimentally relied on that promise. The court enforced the promise even though it was oral and made after the enactment of section SCPC 62-2-701. Mr. Barringer relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other acts evidencing the intent to treat the children equally.

Consequently, there is not necessarily a single signal moment in time when the evidence must be applied to show that Mrs. Barringer became precluded from exercising any power of appointment she may have. The responses to interrogatories are as thorough and complete as can be. Those responses address all of the arguments Plaintiff has for asserting that Mrs. Barringer either agreed by contract and/or by enforceable promise not to exercise the power of appointment. The pattern and history between Mr. and Mrs. Barringer, as set forth in the response to the interrogatories, constitute permissible evidence to prove Plaintiff's assertion, as thoroughly and completely as can be done presently, given the types of evidence that will be allowed to show the contract and/or promise. Additional discovery may well lead to additional information that will be provided to Defendant as appropriate.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: s/ WILLIAM M. HOGAN .
James R. Gilreath (SC Bar No. 2133)
William M. Hogan (SC Bar No. 65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

S. Alan Medlin (SC Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-7465
amedlin@sc.rr.com

and

Charles B. Macloskie (SC Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

and

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Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: (864) 242-3566
Fax: (864) 232-1558
tom.traxler@carterlawpa.com

ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: May 26, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 2019-CP-07-01294 **RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: Defendant Merrill U. Barringer and her attorney of record, J. Ashley Twombley:

The Plaintiff, Hampton B. Luzak ("Plaintiff"), by and through her undersigned attorneys, sets forth below information in response to interrogatories propounded to her by Defendant Merrill U. Barringer ("Defendant" and/or "Barringer").

GENERAL OBJECTIONS

Plaintiff Hampton Barringer Luzak, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby answers Defendant's First Set of Interrogatories subject to the general objections set forth below. These general objections form a part of the response to each Interrogatory and are set forth here to avoid the duplication and repetition of restating them for each response. The general objections may be specifically referred to in response to an Interrogatory for the purpose of clarity; however, the failure to incorporate specifically a general objection should not be construed as a waiver of the objection.

1. Plaintiff objects to each interrogatory and production request to the extent that it seeks discovery of matters protected from disclosure by the attorney-client privilege and the work product doctrine.

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2. Plaintiff objects to responding to Interrogatories that seek information not reasonably calculated to lead to the discovery of admissible evidence or to the production of relevant information as required by the South Carolina Rules of Civil Procedure.

3. Plaintiff objects to responding to any Interrogatory which is overly broad, unduly burdensome, cumulative or duplicative under the South Carolina Rules of Civil Procedure.

4. Plaintiff objects to responding to any Interrogatory that exceeds the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.

5. Plaintiff objects to responding to any request for discovery as to any matters that are not relevant to the claims or defenses in this case.

6. Plaintiff objects to any Interrogatories to the extent they seek disclosure of mental impressions, conclusions, opinions and legal theories of Plaintiff's attorneys or other representatives concerning this litigation.

7. Plaintiff objects to those Interrogatories that seek identification of a specific document, paragraph, sentence or phrase since the meaning of contracts and estate planning instruments must be determined by reviewing all the applicable documents as a whole and not by viewing any one document, paragraph, sentence of phrase in isolation. Evidence of such matters as contracts not to revoke, fiduciary responsibility, and/or promises not to change an estate plan and/or exercise a testamentary power of appointment in a manner that would change an estate plan cannot necessarily be gleaned solely from references to specific terms, sentences, items, phrases, or paragraphs, and not even necessarily from an entire document, but rather from an analysis and/or comparison of a history of documents, discussions, meetings, patterns, agreements, and understandings.

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8. Plaintiff objects to those Interrogatories that seek identification of a specific document, paragraph, sentence, or phrase because the nature of the relationship between two persons' estate plans, and understandings and agreements about those estate plans, must be viewed in light of their pattern of estate planning over time and the historical symmetry (or lack thereof) of their estate planning documents and relevant documents and discussions. Accordingly, evidence of such matters as contracts not to revoke, fiduciary responsibility, and/or promises not to change an estate plan and/or exercise a testamentary power of appointment in a manner that would change an estate plan cannot necessarily be gleaned solely from references to specific terms, sentences, items, phrases, or paragraphs, and not even necessarily from an entire document, but rather from an analysis and/or comparison of a history of documents, discussions, meetings, patterns, agreements, and understandings.

9. Plaintiff objects under Rule 33(d), SCRCP, to the contention interrogatories contained in Defendant's First Set of Interrogatories as being premature at this stage of the litigation since essential discovery including but not limited to written discovery and the depositions of the Defendant and many other witnesses on the issues raised in these Interrogatories have not been completed.

10. In providing these responses and objections to the interrogatories and production requests, Plaintiff does not in any way waive nor intend to waive, but rather intends to preserve and is preserving:

a. All objections as to competency, relevancy, materiality and admissibility of the Interrogatory and/or production request or subject matter thereof;

b. All rights to object to the use of any said answer or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other action;

c. All rights to object on any ground to any request for further responses to these or any other interrogatories and/or request for production, or other discovery

requests involving or related to the subject matter of the interrogatory and/or request for production; and,

d. All rights to supplement her responses since the objections and responses set forth below constitute the best information presently available to Plaintiff. Plaintiff has not completed discovery and/or investigation of the facts relevant to this proceeding, nor has Plaintiff completed preparation of this case for trial. Plaintiff reserves the right to supplement these responses as she completes preparation of this case for trial. Discovery requests from Defendant and third parties remain outstanding, and material factual witnesses have yet to be deposed. Accordingly, the following objections and responses are provided without prejudice to Plaintiff's right to amend, supplement, or change her objections and responses if and when additional, different, or more accurate information becomes available.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

As qualified and limited by the foregoing general objections, incorporated herein by reference, Plaintiff responds and objects specifically to Defendant's first set of interrogatories as follows:

Interrogatory No. 1. Identify all documents supporting your assertion Paul Barringer and Merrill Barringer entered into a "binding contract not to revoke their estate plans" (as stated in the third cause of action of the Complaint).

Response:

A. The Paul B. Barringer, II Revocable Trust dated December 4, 1998 (Bates numbered MUB's 1st Document Production 1-49);

B. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998 (Bates numbered MUB's 1st Document Production 172-184);

C. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998 (unnumbered);

D. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998 (unnumbered);

E. 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 (MUB's 1st Document Production 245-260; Hampton Luzak 3-37, 43-70, 400-455) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998;

F. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998 (MUB's 1st Document Production 261-300);

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G. Barringer Family Voting Agreement of September 21, 1998, as amended on or about September 30, 20004 (Bates numbered Hampton Luzak 926-34);

H. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company entered February 1, 2010 among Merrill Light, Hampton Luzak, Victor Barringer, and CFRC (Hampton Luzak 76-81);

I. First Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 28, 2012. (MUB's 1st Document Production 50-79)

J. Last Will and Testament of Paul B. Barringer, II dated February 28, 2012 (MUB's 1st Document Production 185-192);

K. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012. (unnumbered);

L. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered);

M. Second Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated July 20, 2012. (MUB's 1st Document Production 80-108);

N. Third Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 109-140);

O. Last Will and Testament of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 193-200);

P. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered);

Q. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered);

R. Fourth Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 141-171);

S. Last Will and Testament of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 201-209);

T. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered);

U. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered);

V. All documents showing 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 (see CFRC 629);

W. All documents showing 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 (see CFRC_SC_000000004-6);

X. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001 (Hampton Luzak 1081-1082);

Y. E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Hampton 1-2);

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Z. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765);

AA. Various 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; (ii) MUB's Supplement to 1st Doc Production 684-700 and 740-758; (iii) 9-22-17 McNair Subpoena Response 205-211; and (iv) CFRC Harrell 287-294;

BB. Will of Merrill U. Barringer dated September 15, 2016 (unnumbered);

CC. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 (unnumbered);

DD. Will of Merrill U. Barringer dated March 2, 2017 (unnumbered);

EE. Will of Merrill U. Barringer dated February 22, 2018 (unnumbered);

FF. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 (unnumbered);

GG. Will of Merrill U. Barringer dated May 30, 2019 (unnumbered);

HH. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 (unnumbered);

II. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 (MUB's Supplement to 1st Doc Production 682-683);

JJ. All gift tax returns of Paul and Merrill Barringer (9-14-17 Davis Subpoena Response 53-72, 85-264); and

KK. All documents related to the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012.

Interrogatory No. 2. For each document you identify in response to interrogatory number 1 above, set forth the page number, paragraph number and specific sentence(s) that evidence the contract or contain any terms of the contract.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff identifies various page numbers, paragraphs and sentences that would be included in an analysis of a contract not to revoke their estate plans between Paul and Merrill Barringer, but any such analysis would

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encompass a review of the entire documents listed below and not be limited to the following isolated excerpts of documents:

A. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998, Item III at pages 1-2 (unnumbered);

B. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-42 (unnumbered);

C. The Paul B. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-41 (Bates numbered MUB's 1st Document Production 40-41);

D. The Paul B. Barringer Family Trust under Agreement dated December 22, 1998, Item XII, para. (d)(v) at pages 28-30 (MUB's 1st Document Production 237-239) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998;

E. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998, Item XV, para. (d)(v) at pages 32-34 (MUB's 1st Document Production 293-295);

F. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, wherein the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants (Hampton Luzak 76-81);

G. Barringer Family Voting Agreement, as amended, wherein the applicable sentences include but are not limited to: the introductory sentence, Recitals paragraphs A, B and C including the chart and footnote thereto in paragraph B, Agreement paragraphs 1-7, and the Amendment to Barringer Family Voting Agreement of September 2004 (Bates numbered Hampton Luzak 926-34);

H. Last Will and Testament of Paul B. Barringer, II dated December 4, 1998, Item III at pages 1-2 (Bates numbered MUB's 1st Document Production 172-173);

I. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered) – see entire document with no power of appointment exercised;

J. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

K. First Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 28, 2012. (MUB's 1st Document Production 50-79) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

L. Last Will and Testament of Paul B. Barringer, II dated February 28, 2012 (MUB's 1st Document Production 185-192) – see entire document with no power of appointment exercised;

M. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered) – see entire document with no power of appointment exercised;

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N. Second Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated July 20, 2012. (MUB's 1st Document Production 80-108) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

O. Third Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 109-140) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

P. Last Will and Testament of Paul B. Barringer, II dated June 12, 2014 (MUB's 1st Document Production 193-200) – see entire document with no power of appointment exercised;

Q. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

R. Fourth Amendment and Restatement of Trust Agreement of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 141-171) – see entire document with no reference to exercise of power of appointment from Merrill Barringer;

S. Last Will and Testament of Paul B. Barringer, II dated February 5, 2015 (MUB's 1st Document Production 201-209) – see entire document with no power of appointment exercised;

T. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered) – see entire document with no power of appointment exercised;

U. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered) – see entire document with no reference to exercise of power of appointment from Paul Barringer;

V. All documents showing 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 (see CFRC 629 – entries for nonvoting share certificates numbers 1, 2, and 39-41);

W. All documents showing 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 (see CFRC_SC_000000004-6 – entries for voting share certificates 2 and 3);

X. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001: see entire letter (Hampton Luzak 1081-1082);

Y. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765) whose depictions include indistinguishable trusts to each of the three Barringer children from the Family Trust and Charitable Lead Trust (pgs. 762-765) and the description that funds coming from both "Paul's Death" and "Merrill's Death" would "Distribute equally" to trusts for each of the children (pg. 764); and

Z. Various 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 [including but not limited to "Paul and Merrill's goals" paragraphs 3 and 4 dated Nov. 11,

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2011]; pg. 628 [1st and 3rd paragraphs of R. Slane memo after Feb. 22, 2012]; pg. 631 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated Nov. 10, 2011]; pg. 632 [Family By-pass Trust to "Distribute equally" to children, dated Nov. 10, 2011]; pg. 633 [Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated Nov. 10, 2011]; pg. 634 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 635 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 640 [Family Trust for the benefit of each of the 3 Barringer children, dated Feb. 23, 2012]; pgs.641-642 [Merrill Barringer estate plan options flowing into the Family Trust and use of the Paul & Merrill Barringer Insurance Trust, dated Feb. 23, 2012]; pg. 1798 [Barringer Family Trust for benefit of all 3 children, dated Dec. 6, 2011]; pg. 1799 [Barringer Family Trust for benefit of all 3 children to be funded with assets upon both Paul's death and Merrill's death and to "Distribute equally" to trusts for each of the children]; (ii) MUB's Supplement to 1st Doc Production 684 [estate plan overview addressed to both Paul and Merrill Barringer; pg. 687 [all factors listed in the Primary Goals as applied to Paul and Merrill Barringer]; pg. 692 [Gertrude H. Barringer Skip Trust distributions going to all children]; pg. 695 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated April 11, 20060]; pg. 696 [Family By-pass Trust to "Distribute equally" to children, dated April 11, 2006]; pg. 697 [PBB II Family Skip Trust & Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated April 11, 2006]; pg. 698 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated April 11, 2006]; pg. 699 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated April 1, 2006]; and (iv) CFRC Harrell 287-289, letter of Robert Slane to Paul Barringer dated March 7, 2001 including but not limited to paragraph 1 of page1 (Bates pg. 287), 2nd page, 6th paragraph (Bates pg. 288), and entirety of page 3 (Bates pg. 289); and

AA. Will of Merrill U. Barringer dated September 15, 2016 at Articles Two and Three of pages 1 and 2 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

BB. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

CC. Will of Merrill U. Barringer dated March 2, 2017 at Articles Two and Three of pages 1 through 3 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

DD. Will of Merrill U. Barringer dated February 22, 2018 at Articles Two and Three of pages 1 through 3 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

EE. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

FF. Will of Merrill U. Barringer dated May 30, 2019 at Articles Two and Three of pages 2 through 4 thereof for purported exercise of powers of appointment after death of Paul Barringer (unnumbered);

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GG. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 – see entire document with no reference to exercise of power of appointment from Paul Barringer (unnumbered);

HH. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 – see entire handwritten letter (MUB's Supplement to 1st Doc Production 682-683); and

II. All gift tax returns of Paul and Merrill Barringer for tax years 1998, 1999, 2002, 2003, 2004, 2006 and 2012 at page 1, Part 1 (9-14-17 Davis Subpoena Response 53-72, 85-264 for tax years 1998, 1999, 2003, 2004, 2006 and 2012);

JJ. E-mail of Randy Light to Kevin Luzak on February 21, 2011 (Hampton 1-2); and

KK. All documents related to the transfer of Paul Barringer's voting stock in CFRC to an irrevocable trust on May 7, 2012.

Interrogatory No. 3. S.C. Code 62-2-701 (1) provides that a contract not to revoke a will can only be established by "provision of a will of the decedent stating material provisions of the contract." If you contend any will ever executed by Mr. Barringer contains material provisions of such a contract, identify the will and set forth the page number, paragraph number and specific sentence(s) in the will stating the material provisions of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

South Carolina Code § 62-2-701 provides several methods of proving a contract not to revoke a will (see responses to Interrogatory numbers 4 and 5 below): "(1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." As to part (1) of § 62-2-701, however, the terms of the 1998 estate planning documents of Paul and Merrill Barringer, specifically their wills and trusts, identified above establish the material provisions of equal treatment of the siblings. The reciprocal provisions of Merrill U. Barringer's will, and her express failure to exercise the power of appointment, show similar contract terms. For the reasons stated in General Objections 7 and 8, the foregoing

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documents are construed in context with the other documents listed in Response Number 1 above.

Interrogatory No. 4. S.C. Code 62-2-701 (2) provides that a contract not to revoke a will can only be established by "an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract." If you contend any will ever executed by Mr. Barringer contains an express reference to a contract, a) identify the will and set forth the page number, paragraph number and specific sentence(s) in the will that reference the contract and b) set forth all extrinsic evidence proving the terms of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objection number 7 above, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

South Carolina Code § 62-2-701 provides several methods of proving a contract not to revoke a will (see responses to Interrogatory numbers 3 and 5). As to part (2) of § 62-2-701, however, there is no express reference to a contract in a will of Paul Barringer if the term "express reference" means a specific use of the term "contract" in a will.

Interrogatory No. 5. S.C. Code 62-2-701 (3) provides that a contract not to revoke a will can be established by "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." If you contend any writing ever signed by Mr. Barringer evidences any such contract, a) identify the writing and set forth the page number, paragraph number and specific sentence(s) in the writing signed by Mr. Barringer that evidences the contract and b) set forth all extrinsic evidence proving the terms of the contract.

Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the

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deposition of the defendant on the issues raised in this Interrogatory has not been completed. Plaintiff further objects on the grounds this Interrogatory is compound and in actuality comprises two interrogatories. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Subject to the above-stated objections, Plaintiff responds as follows:

As to part (3) of § 62-2-701, however, see all the documents listed in Responses Numbers 1 and 2 above, incorporated herein, along with the references and descriptions in Responses 1 and 2 above, incorporated herein, including the following documents:

A. 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 (MUB's 1st Document Production 245-247; Hampton Luzak 3-37, 43-65, 400-455) and all other documents related to the Irrevocable Paul B. Barringer Family Trust under Agreement dated December 22, 1998 including Item XII, para. (d)(v) at pages 28-30 (MUB's 1st Document Production 237-239);

B. Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, wherein the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants (Hampton Luzak 76-81);

C. Barringer Family Voting Agreement, as amended, wherein the applicable sentences include but are not limited to: the introductory sentence, Recitals paragraphs A, B and C including the chart and footnote thereto in paragraph B, Agreement paragraphs 1-7, and the Amendment to Barringer Family Voting Agreement of September 2004 (Bates numbered Hampton Luzak 926-34);

D. The Paul B. Barringer, II Revocable Trust dated December 4, 1998, Item XVII, para. (d)(5) at pages 40-41 (Bates numbered MUB's 1st Document Production 40-41);

E. All documents showing 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 (see CFRC 629 – entries for nonvoting share certificates numbers 1, 2, and 39-41);

F. All documents showing 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 (see CFRC_SC_000000004-6 – entries for voting share certificates 2 and 3);

G. Estate planning letter of Paul Barringer to Kevin Luzak dated March 13, 2001: see entire letter (Hampton Luzak 1081-1082);

H. J. Jolley letter to Paul Barringer dated December 6, 2011 with enclosed diagrams (MUB's Suppl. to 1st Doc. Prod. 761-765) whose depictions include indistinguishable trusts to each of the three Barringer children from the Family Trust and Charitable Lead Trust (pgs.

762-765) and the description that funds coming from both "Paul's Death" and "Merrill's Death" would "Distribute equally" to trusts for each of the children (pg. 764); and

I. Various 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 [including but not limited to "Paul and Merrill's goals" paragraphs 3 and 4 dated Nov. 11, 2011]; pg. 628 [1st and 3rd paragraphs of R. Slane memo after Feb. 22, 2012]; pg. 631 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated Nov. 10, 2011]; pg. 632 [Family By-pass Trust to "Distribute equally" to children, dated Nov. 10, 2011]; pg. 633 [Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated Nov. 10, 2011]; pg. 634 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 635 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated Nov. 10, 2011]; pg. 640 [Family Trust for the benefit of each of the 3 Barringer children, dated Feb. 23, 2012]; pgs.641-642 [Merrill Barringer estate plan options flowing into the Family Trust and use of the Paul & Merrill Barringer Insurance Trust, dated Feb. 23, 2012]; pg. 1798 [Barringer Family Trust for benefit of all 3 children, dated Dec. 6, 2011]; pg. 1799 [Barringer Family Trust for benefit of all 3 children to be funded with assets upon both Paul's death and Merrill's death and to "Distribute equally" to trusts for each of the children]; (ii) MUB's Supplement to 1st Doc Production 684 [estate plan overview addressed to both Paul and Merrill Barringer; pg. 687 [all factors listed in the Primary Goals as applied to Paul and Merrill Barringer]; pg. 692 [Gertrude H. Barringer Skip Trust distributions going to all children]; pg. 695 [Family By-pass Trust to Children and use of PBB II Family Skip Trust and P&M Barringer Irrevocable Insurance Trust dated April 11, 20060]; pg. 696 [Family By-pass Trust to "Distribute equally" to children, dated April 11, 2006]; pg. 697 [PBB II Family Skip Trust & Insurance Skip Trust to "Divide equally" among trusts for each child of the Barringers, dated April 11, 2006]; pg. 698 [Child's Family Trust to "Divide equally" to each grandchild's family trust, dated April 11, 2006]; pg. 699 [Grandchild's Family Trust to "Divide equally" to each grandchild's family trust, dated April 1, 2006]; and (iv) CFRC Harrell 287-289, letter of Robert Slane to Paul Barringer dated March 7, 2001 including but not limited to paragraph 1 of page1 (Bates pg. 287), 2nd page, 6th paragraph (Bates pg. 288), and entirety of page 3 (Bates pg. 289).

The above-referenced documents signed by Paul Barringer include those listed in Response No. 1 at paragraphs A, B, E -- G, I, J, M -- O, R, S, V – X, and II – KK; and in Response No. 2 at paragraphs C – H, K, L, N – P, R, S, V – X, HH, II, and KK.

Interrogatory No. 6. With respect to your contention that Merrill Barringer owes a fiduciary duty to Paul Barringer to take or not take certain actions related to her estate plan, state a) what Merrill Barringer had a duty to do or not to do and b) set forth any evidence to support your assertion or believe.

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Response:

Plaintiff objects under Rule 33(d), SCRCP, to this contention interrogatory as being premature at this stage of the litigation since essential discovery including but not limited to the deposition of the defendant on the issues raised in this Interrogatory has not been completed. As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Plaintiff further objects on the grounds this Interrogatory is compound and in actuality comprises two interrogatories. Subject to the above-stated objections, Plaintiff responds as follows:

At family discussions and meetings, it was consistently explained by Paul Barringer that the company control would be divided equally between Plaintiff and Merrill Light. Merrill Barringer never indicated that she would override this plan and was always compliant. Neither Paul Barringer nor Merrill Barringer ever discussed exercising any powers of appointment. Merrill Barringer has a fiduciary duty to honor the plan to divide the company control equally between Plaintiff and Merrill Light and not exercise the powers of appointment. Merrill Barringer has a fiduciary duty not to change her estate plan established with and by Paul Barringer. Plaintiff anticipates this evidence will be presented in testimony of Plaintiff and Kevin Luzak and perhaps others. Plaintiff also incorporates all the documents listed in Response No. 1 above as responsive to this interrogatory request.

Interrogatory No. 7. In response to Interrogatory number 20 to Defendant's Third Set of Interrogatories in Civil Action No. 2016-CP-07-1919, you identified documents a - j as documents that provided for you to receive CFRC voting stock when Paul Barringer passed away. When respect to each document identified, set forth the page number, paragraph number and specific sentence(s) of each document that provides for you to receive CFRC voting stock.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

A. For document *a*, the Paul B. Barringer, II Revocable Trust dated Dec. 4, 1998, the applicable sentences include but are not limited to: (1) Item V(e), all sentences, on pages 13-14 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document Production 13-14 for GST exempt

trusts and shares; (2) Item VI(a), all sentences, on page 17 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document production 17; and (3) Item XVII, paragraph (d), sub-paragraph (5) on pages 40-41 of PBB Rev. Trust of 12/4/98 at MUB's 1st Document Production 40-41. The remaining provisions of the Revocable Trust of Paul Barringer of Dec. 4, 1998 not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

B. For document *b*, Last Will &Testament of Paul Barringer dated Dec. 4, 1998, the applicable sentences include but are not limited to the one sentence that comprises Item III of the Last Will &Testament of PBB dated 12/4/1998. The remaining provisions of the Last Will &Testament of Paul Barringer dated Dec. 4, 1998 not specified above are also included in this response as the provisions of the will are interrelated and provide context to the specific paragraphs and sentences identified above.

C. For document *c*, the First Amended and Restated Revocable Trust of Paul B. Barringer, II dated February 28, 2012, the applicable sentences include but are not limited to: (1) the last sentence of Article VII, ¶ (5) on page 7 thereof (MUB's 1st Document Production 57); and (2) the 3rd sentence of Article VII, ¶ (4) on pages 8-9 thereof (MUB's 1st Document Production 58-59); and (3) the one sentence consisting of Article IX, ¶ (5) on page 10 of the First Amended and Restated Revocable Trust of Paul B. Barringer dated 2/28/2012 which references and incorporates Article VI of Merrill U. Barringer's Revocable Trust of 12/4/1998. The remaining provisions of the Revocable Trust of Paul Barringer of Feb. 28, 2012 not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

D. For document *d*, Last Will &Testament of Paul B. Barringer dated February 28, 2012, the applicable sentences include but are not limited to Item V, first and second sentences, page 3 thereof (MUB's 1st Document Production 188). The remaining provisions of the Last Will &Testament of Paul Barringer dated Feb. 28, 2012 not specified above are also included in this response as the provisions of the will are interrelated and provide context to the specific paragraphs and sentences identified above.

E. For document *e*, the November 6, 2011 e-mails between Paul Barringer and Travis Bryant, the applicable sentences include but are not limited to all sentences of the Paul Barringer e-mail and the list of recipients in "CC:" line of the Travis Bryant response (Hampton Luzak 938).

F. For document *f*, estate plan diagrams of John Jolley and Robert Slane sent to Paul Barringer on 12/6/2011, the applicable sentences include but are not limited to: (1) MUB's Supplement to 1st Doc Production 762 showing three trusts for Paul Barringer's children; (2) MUB's Supplement to 1st Doc Production 763 showing three trusts for Paul Barringer's children; (3) MUB's Supplement to 1st Doc Production 764 showing three sub-trusts for Paul Barringer's children out of the Barringer Family Trust for the trustee to "distribute equally"; and (4) MUB's Supplement to 1st Doc Production 765 showing three trusts for Paul Barringer's children.

G. For document *g*, various estate planning documents from Robert Slane files, the applicable sentences include but are not limited to: (1) 12-19-17 Slane Subpoena Response 43, 1st paragraph 3 and 2nd paragraph 5, sub-paragraph *c*; (2) 12-19-17 Slane Subpoena Response 628 includes all 4 paragraphs and all sentences therein; (3) 12-19-17 Slane

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Subpoena Response 631 showing Family By-pass Trust at 1st Spouse's Death for the Barringer children with reference to the "PBB II Family Skip Trust" and the "P&M Irrevocable Insurance Trust" flowing "Outside of estate"; (4) 12-19-17 Slane Subpoena Response 632 showing Family By-pass Trust to "distribute equally" to the Barringer children and a new skip trust to support the Barringer children with reference to the "PBB II Family Skip Trust" and the "P&M Irrevocable Insurance Trust" flowing "Outside of estate"; (5) 12-19-17 Slane Subpoena Response 633 showing Insurance Skip Trust to "divide equally" for the benefit of all three Barringer children; (6) 12-19-17 Slane Subpoena Response 640 showing "Overall Estate Plan At Paul's Death" showing distributions from Paul Barringer's trusts for the benefit of all three Barringer children. The remaining parts of the above-stated estate planning documents of Paul Barringer not specified above are also included in this response as the various components of Paul Barringer's estate plan are interrelated and provide context to the specific documents identified above.

H. For document *h*, Assignment of Limited Partner Interest dated December 31, 2007, the applicable sentences include but are not limited to: (1) the second sentence of paragraph B of the Recitals (Hampton Luzak 66); paragraph 2 of the Agreement section (*Id.*); and consent signatures of Merrill Light and Hampton Luzak (Hampton Luzak 69-70). The remaining provisions of the Assignment of Limited Partner Interest dated Dec. 31, 2007 not specified above are also included in this response as the provisions of the Assignment are interrelated and provide context to the specific paragraphs and sentences identified above.

I. For document *i*, the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 as modified, the applicable sentences include but are not limited to: (1) Item II, paragraph (b), first sentence at pages 1-2 of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 3-4); (2) Item II, paragraph (e), first sentence of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 5); (3) Item XII(d)(v) of the Paul B. Barringer Family Trust under Agreement dated December 22, 1998 (Hampton Luzak 30 and 32); (3) First Amendment to The Paul B. Barringer, II Family Trust made October 16, 2006, paragraph FIRST, 2nd sentence (Hampton Luzak 52); (4) letter of Keith Martens, Esquire, dated September 22, 2006, first paragraph, 3rd and 4th sentences thereof (Hampton Luzak 64). The remaining provisions of the Paul B. Barringer Family Trust Under Agreement dated Dec. 4, 1998, as modified, not specified above are also included in this response as the provisions of the trust are interrelated and provide context to the specific paragraphs and sentences identified above.

J. For document *j*, Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated February 1, 2010, the applicable sentences include but are not limited to: the introductory sentence, both sentences in the Recitals, and all sentences in the introductory paragraph, paragraphs 1 through 5 and paragraph 8 of the Covenants. (Hampton Luzak 76-81). The remaining provisions of the Agreement Regarding Right to Purchase Shares of Coastal Forest Resources Company dated Feb. 1, 2010 not specified above are also included in this response as the provisions of the Agreement are interrelated and provide context to the specific paragraphs and sentences identified above.

The documents described in paragraphs A – J above are not the only documents and evidence responsive to this topic. Plaintiff also incorporates by reference the documents identified in response numbers 1 and 2 above.

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Interrogatory No. 8. Identify any and all writings and/or document(s) that are 1) signed by Merrill Barringer and 2) evidence a contract between Paul Barringer and Merrill Barringer not to revoke their estate plans.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms since the terms of the applicable documents must be considered in their entirety. Any analysis of the documents encompassed in a contract not to revoke an estate plan would entail a review of the entire documents listed below and not be limited to isolated excerpts from such documents. Subject to the above-stated objections, Plaintiff responds as follows:

A. Last Will and Testament of Merrill U. Barringer, II dated December 4, 1998 (unnumbered);

B. The Merrill U. Barringer, II Revocable Trust dated December 4, 1998 (unnumbered);

C. Last Will and Testament of Merrill U. Barringer dated February 28, 2012 (unnumbered);

D. First Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 28, 2012. (unnumbered);

E. Last Will and Testament of Merrill U. Barringer dated June 12, 2014 (unnumbered);

F. Second Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated June 12, 2014 (unnumbered);

G. Last Will and Testament of Merrill U. Barringer dated February 5, 2015 (unnumbered);

H. Third Amendment and Restatement of Trust Agreement of Merrill U. Barringer dated February 5, 2015 (unnumbered);

I. Letter of Paul and Merrill Barringer "[t]o our children" dated December 24, 1998 (MUB's Supplement to 1st Doc Production 682-683); and

J. The Paul B. Barringer, II and Merrill U. Barringer Irrevocable Trust dated December 22, 1998 (MUB's 1st Document Production 261-300);

K. The split gift tax returns of Paul and Merrill Barringer (9-14-17 Davis Subpoena Response 53-72, 85-264);

L. Will of Merrill U. Barringer dated September 15, 2016 (unnumbered);

M. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated September 15, 2016 (unnumbered);

N. Will of Merrill U. Barringer dated March 2, 2017 (unnumbered);

O. Will of Merrill U. Barringer dated February 22, 2018 (unnumbered);

P. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated February 22, 2018 (unnumbered);

Q. Will of Merrill U. Barringer dated May 30, 2019 (unnumbered); and

R. The Merrill U. Barringer Revocable Trust dated December 4, 1998 – Restatement dated May 30, 2019 (unnumbered).

Interrogatory No. 9. If you allege Merrill Barringer promised Paul Barringer she would not exercise her testamentary powers of appointment contained in Paul Barringer's estate plans, please identify all documents referring to, relating to or evidencing this promise; identify the date the promise was made; and identify all persons present at the time the promise was made or who have knowledge of the promise.

Response:

As set forth in General Objections 7 and 8 above, and incorporated herein, regarding contract terms not to be viewed in isolation and the necessity of considering the pattern and symmetry of the subject estate planning documents, Plaintiff objects to the identification of a single page number, paragraph or specific sentence(s) as the exclusive evidence of a particular contract or its terms. Subject to the above-stated objections, Plaintiff responds as follows:

A. See all of the documents listed in Response to Interrogatory number 1 above.

B. The promise(s) would have been made no later than December 4, 1998.

C. The persons present or with knowledge of the promise(s) would include Hampton Luzak, Kevin Luzak, Merrill U. Barringer, Merrill B. Light, Randy Light, Victor Barringer, John Jolley, Robert Slane and perhaps others.

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan

William M. Hogan (S.C. Bar No. 65272)
James R. Gilreath (S.C. Bar No. 02133)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
bhogan@gilreathlaw.com
jim@gilreathlaw.com

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and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-7465
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
Macloskie Law Firm
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: July 27, 2020
Greenville, South Carolina.

ELECTRONICALLY FILED - 2021 Jun 14 6:23 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT In the Matter of: Estate of Paul B. Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A Nos.: 2019-CP-07-01253 2019-CP-07-01294 **CERTIFICATE OF SERVICE**

The undersigned attorney for the Plaintiff Hampton B. Luzak certifies that he served a true copy of the **Response to Defendant's First Set of Interrogatories to Plaintiff** regarding the above-captioned cases by the following means:

____	Hand Delivery	____	Facsimile
_X_	United States Mail	____	Overnight Delivery
_X_	Other: Electronic Mail		

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

J. Ashley Twombley, Esquire
Twombley@twlawfirm.com
Kevin Johnson, Esquire
Kjohnson@twlawfirm.com
Lee Anne Walters, Esquire
lwalters@rosenhagood.com
TWENGE + TWOMBLEY LAW FIRM
311 Carteret Street
Beaufort, SC 29902
Attorney for Defendant Merrill U. Barringer, individually and as Personal Representative of the Estate of Paul Brandon Barringer, II

Harley D. Ruff, Esquire
hruff@ruffllc.com
Denise Collins, Esquire
dcollins@ruffllc.com;
RUFF & RUFF, LLC
17 Professional Village Circle
Beaufort, SC 29907
Attorneys for Defendant Merrill U. Barringer, as Personal Representative of the Estate of Paul Barringer, II

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Alice Paylor, Esquire
apaylor@rrhlawfirm.com
Bijan Ghom, Esquire
bghom@rosenhagood.com
ROSEN, ROSEN & HAGOOD, LLC
P.O. Box 893
Charleston, SC 29402
Attorneys for Defendants, Merrill B. Light, 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

Charles B. Molster, III, Esquire
cmolster@molsterlaw.com
THE LAW OFFICES OF CHARLES B. MOLSTER, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
Attorney admitted *pro hac vice* for Defendants, Merrill B. Light, 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

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan

William M. Hogan (S.C. Bar No. 65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
bhogan@gilreathlaw.com

Attorneys for Plaintiff Hampton B. Luzak

Date: July 27, 2020
Greenville, South Carolina.

ELECTRONICALLY FILED - 2021 Jun 14 6:23 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

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 **MOTION TO RECONSIDER, AMEND, AND VACATE THE COURT'S LETTER DATED JUNE 7, 2021**

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, v. Merrill U. Barringer, Defendant.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. Nos.: 2019-CP-07-01253 2019-CP-07-01294 **MOTION TO RECONSIDER, AMEND, AND VACATE THE COURT'S LETTER DATED JUNE 7, 2021**

TO: THE COURT; ALL DEFENDANTS; COASTAL FOREST RESOURCES COMPANY (CFRC); AND THEIR RESPECTIVE COUNSEL:

This Motion is made reserving all rights under Plaintiff's Motion for Recusal and/or Disqualification filed with this Court on June 16, 2021 and under any other motion and/or appeal of any Court order, including but not limited to the appeal of the order for bifurcation.

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You will please take notice that the Plaintiff does hereby move for an Order reconsidering and vacating or, alternatively, amending this Court's extrajudicial letter dated June 7, 2021 ("Letter") received by Plaintiff June 7, 2021. (Exhibit 1).

While the Plaintiff characterizes Exhibit 1 as a "letter" as indicated by the email transmitting such document to the parties' counsel, this Letter arguably contains elements of an order and is, therefore, for purposes of this motion treated as an order, despite not being filed.[1] This Motion is made pursuant to the inherent authority of the Court to reconsider and amend its orders and also pursuant to the *South Carolina Rules of Civil Procedure* (SCRCP) Nos. 52 and 59 and this Motion is made on the grounds set forth herein.

Plaintiff moves for the Court to declare this letter is not an Order.

The Plaintiff moves for the Court to delete and vacate the following findings:

1. "[I]t has become abundantly clear that this case is being mishandled and quite frankly is a miscarriage of justice that must be addressed."
2. "It became immediately clear to the Court the lengths to which the Plaintiff is willing to go to ensure this case never sees the inside of a courtroom with 12 jurors seated."
3. "The mere fact that the Plaintiff alleges that it still needs to conduct discovery and take depositions in a six year old case speaks volumes of how this case is being handled."
4. "[T]here is a glaring disconnect [between Defendants' and Plaintiff's estimates of trial length] that quite honestly may not exist."

[1] Plaintiff expressly reserves all rights to contend that said letter is not an order.

5. "Plaintiff's counsel's argument that the Court would be limiting its ability to present its case in a week is unfounded and is seen as nothing more than another delay tactic."

6. "The Court finds it appalling that the Plaintiff, through counsel and unlimited resources, has attempted to air out her distain [sic] from being extricated from the Will and Trust in the Court system."

7. The finding that the parties "…simply don't want to be assisted."

8. "This practice will stop immediately."

9. "To allow a case, regardless of the unlimited resources, to tempt attorneys into tip toeing the line of unethical and reportable behavior is deplorable."

10. "The Court has never seen a case whereby each and every assertion, request or attempt to move the case forward has been met with countless motions, letters and court appearances before this one and this practice will too stop."

11. "[T]he Court is fully aware of everyone's position in this case."

12. "[A]ny future desires to correct the Court will be met with a firm response."

This Motion is made on the grounds that there is no justification or evidence in the record for the foregoing findings by the Court and that all of the foregoing findings by the Court are the result of the partiality, bias, and prejudice of Judge Bentley Price against the Plaintiff, her counsel, and her case. It is further made on the grounds that such findings show that Judge Price has prejudged this matter and has deliberately attempted to intimidate the parties from seeking redress and clarification from the Court. The Plaintiff also incorporates her Motion to Recuse on the grounds set forth therein as additional basis for vacating the foregoing findings and that Motion to Recuse is incorporated herein by reference, all working to the prejudice to the Plaintiff

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and her case. Further, such findings leveled at the Plaintiff and her counsel are not supported by the facts and the record in this case.

In addition, the Plaintiff moves for this Court to vacate and delete the following provisions from its Letter inasmuch as the same appeared to arguably constitute an Order, despite not being filed;

1. "…ALL discovery will cease on July 30, 2021 at midnight."
2. "Any and all Motions in this case will need to be filed by that date and will be ruled upon on Thursday, August 12, 2021 commencing at 10:00 a.m."
3. That parties' briefs be ready and that a hardcopy be brought before the Court.
4. "With the impending trial of August 30th, 2021"

The Plaintiff moves to delete and vacate the foregoing Orders set forth in the Letter on the grounds that the foregoing is vague and ambiguous and access to this Court for clarification has been chilled with a threat of retribution.

In the alternative to deleting and vacating the foregoing order provisions, the Plaintiff moves that the Order be amended to provide for a trial date no sooner than December 2021 and that discovery be allowed to continue through November 2021 with a provision that dispositive motions be filed with the Court no later than November 1, 2021.

Further, the Plaintiff moves for a determination by this Court that any bifurcated claims will be tried and determined by a jury.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: s/ JAMES R. GILREATH .
James R. Gilreath (S.C. Bar No. 2133)
William M. Hogan (S.C. Bar No. 65272)
110 Lavinia Avenue (Zip 29601)

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P.O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Thomas W. Traxler (S.C. Bar # 5624)
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Phone: (864) 242-3566 / Fax: (864) 232-1558
tom.traxler@carterlawpa.com

and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-2368
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
Macloskie Law Firm
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

Attorneys for Plaintiff Hampton Barringer Luzak

June 17, 2021
Greenville, South Carolina.

ROA 004249

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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 MOTION TO RECONSIDER AND AMEND ORDER ON MOTIONS ENTERED JUNE 7, 2021**

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, v. Merrill U. Barringer, Defendant.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. Nos.: 2019-CP-07-01253 2019-CP-07-01294 **PLAINTIFF'S MOTION TO RECONSIDER AND AMEND ORDER ON MOTIONS ENTERED JUNE 7, 2021**

TO: THE COURT; ALL DEFENDANTS; COASTAL FOREST RESOURCES COMPANY (CFRC); AND THEIR RESPECTIVE COUNSEL:

This Motion is made reserving all rights under Plaintiff's Motion for Recusal and/or Disqualification dated and filed with this Court on June 16, 2021 and under any other motion

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and/or appeal of any Court order, including but not limited to the appeal of the order for bifurcation.

You will please take notice that the Plaintiff (Hampton Luzak) does hereby move for an order reconsidering and amending the Order On Motions entered on June 7, 2021 (Order). Plaintiff received notice of the Order on June 7, 2021. This Motion is made pursuant to the inherent authority of the Court to reconsider and amend its orders and also pursuant to *South Carolina Rules Civil Procedure* (SCRCP) Nos. 52 and 59 and this Motion is made on the grounds set forth herein.

This Motion tracks the paragraph numbers of the Order commencing on page 2 of the Order:

1. Plaintiff consented to the Motion to Seal John Jolley's Deposition and it is not necessary for the Court to reconsider or amend the Order with respect to this issue.

2. The Plaintiff moves for the Court to reconsider and amend its Order with regard to John Jolley's Motion to Terminate and amend it to provide that the Plaintiff shall be entitled to depose Mr. Jolley between 9 a.m. and 5 p.m. with a sufficient lunch break and that the Defendant shall have a reasonable amount of time thereafter for re-direct examination. This Motion is made on the grounds that the Defendants never raised the issue of re-direct examination before this Court, but it is certainly reasonable for them to have a reasonable period of time for re-direct examination, but only after the Plaintiff has concluded her questioning of Mr. Jolley between 9 a.m. and 5 p.m.

3. The Plaintiff moves to reconsider the Order with regard to Merrill Light's Motion for Protective Order, CFRC's Motion for Protective Order, and Merrill Barringer's

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Motion for Protective Order, and to hold all issues with regard to assertion of privilege in abeyance or, alternatively, rule on the matters of privilege as set forth in the Motions and also the Plaintiff's Return to such Motions. Further, the Court has issued a separate Protective Order addressing privilege issues raised by CFRC's Motion, and inclusion of CFRC in this Order will result in conflicting provisions.

4. The Plaintiff moves to reconsider and deny Merrill Light's Motion to Amend her Answer as set forth in the Response of the Plaintiff. While Plaintiff has filed and served her Motion to Recuse and contemporaneously herewith files and serves her Motion to Reconsider, Amend and Vacate the Court's Letter Dated June 7, 2021 (Letter), such amendment in light of the "stringent" discovery deadline imposed in that Letter prejudices the Plaintiff's right to conduct reasonable discovery relevant to the amendment, especially with a discovery deadline of July 30, 2021 and a trial date of August 30, 2021.

5. The Plaintiff moves to reconsider and deny Merrill Barringer's Motion for Protective Order on the grounds set forth in the Plaintiff's Response to Merrill Barringer's Motion for Protective Order.

6. The Plaintiff moves for an order reconsidering and denying Merrill Barringer's Motion to Compel documents from Truist Bank and Wells Fargo, on the grounds set forth in the Plaintiff's response to said Motion.

7. No relief is sought by the Plaintiff as to this issue.

8. The Plaintiff moves for an order to reconsider and grant the Plaintiff's Amended Motion to Compel Documents as set forth in its Motion in this matter.

9. The Plaintiff moves to reconsider and grant the Plaintiff's Motion for Judgment on the Pleadings and Motion to Strike Merrill Barringer's Counterclaims filed January 26, 2021.

10. The Plaintiff moves to reconsider and grant Plaintiff's Motion for Summary Judgment on Merrill Barringer's Counterclaim filed January 26, 2021.

11. No relief is sought as to this issue.

12. The Plaintiff moves for an order reconsidering and amending the Order that the Plaintiff withdraw her objections to Defendant Barringer's Interrogatories Nos. 2 and 3 and ordering her to respond by identifying any specific instances when Ms. Barringer remained silent, including who was present and what was discussed. That Motion should be denied on the grounds set forth in the Plaintiff's response, or, alternatively, if such Motion is not denied, then the Order be amended to provide the specifics of discussions regarding family estate planning and company succession when Ms. Barringer did not state that she would exercise any power of appointment, including the date and circumstances and persons present with such discussions. Otherwise, the Plaintiff is burdened with trying to prove a negative.

13. The Plaintiff moves to reconsider and deny Merrill Barringer's Motion to Set a Trial Date filed May 5, 2021 and ordering the trial of that matter on August 30, 2021. The motion as to this issue is made in the following particulars:

    A. First, the Plaintiff reserves all of her objections, motions, and appeals with regard to the Order of Bifurcation, but, nonetheless and notwithstanding, the Plaintiff seeks an Order by the Court establishing that any trial of any bifurcated claims will be a jury trial.

    B. Second, that the jury trial of the bifurcated claims be stayed until such time as the appeal by the Plaintiff of the Order to Bifurcate has been

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finally determined or alternatively, (1) for a trial date to commence no sooner than December 2021 as indicated by this Court at the status conference on April 15, 2021 and (2) to set the term of the trial for two weeks.

Plaintiff has set forth her arguments in her various motions, responses and/or memoranda related to the foregoing issues, and those arguments, motions, responses and/or memoranda are incorporated herein by reference, rather than burdening this Motion by reiterating them verbatim.

Therefore, subject to the reservation of rights set forth hereinabove, Plaintiff moves before this Court for reconsideration and amendment of its Order on Motions in the particulars set forth above.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: s/ JAMES R. GILREATH .
James R. Gilreath (S.C. Bar No. 2133)
William M. Hogan (S.C. Bar No. 65272)
110 Lavinia Avenue (Zip 29601)
P.O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Thomas W. Traxler (S.C. Bar # 5624)
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Phone: (864) 242-3566 / Fax: (864) 232-1558
tom.traxler@carterlawpa.com

and

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S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-2368
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
Macloskie Law Firm
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

Attorneys for Plaintiff Hampton Barringer Luzak

June 17, 2021
Greenville, South Carolina.

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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,	)	
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.	)	**PLAINTIFF'S MOTION TO RECONSIDER AND AMEND ORDER GRANTING CFRC'S MOTION FOR INTERVENTION AND PROTECTIVE RELIEF**

TO: THE COURT, ALL DEFENDANTS AND COASTAL FOREST RESOURCES COMPANY (CFRC) AND ITS COUNSEL:

This Motion is made reserving all rights under Plaintiff's Motion for Recusal and/or Disqualification dated and filed with this Court on June 16, 2021 and under any other motion and/or appeal of any Court order, including but not limited to the appeal of the order for bifurcation.

You will please take notice that the Plaintiff (Hampton Luzak) does hereby move this Court for an Order reconsidering and amending the Order Granting CFRC's Motion for Intervention and Protective Relief entered on June 7, 2021 (Order). Plaintiff received notice of the entry of the Order on June 7, 2021. This Motion is made pursuant to the inherent authority of

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the Court to reconsider and amend its Orders and also pursuant to *South Carolina Rules of Civil Procedure* (*SCRCP*) Nos. 52 and 59, and this Motion is made on the grounds set forth herein.

The Court erred in its Order in the following particulars[1]:

1. Granting leave to CFRC to intervene in this matter pursuant to *SCRCP* Rule 24(a)(2). Hampton Luzak has set forth in her Memorandum why intervention by CFRC is improper.

2. Dismissing Hampton Luzak's cause of action for civil conspiracy for lack of standing and subject matter jurisdiction.

3. Finding that the civil conspiracy cause of action constitutes a derivative claim.

4. Striking Hampton Luzak's first, second, fourth and sixth categories of damages set forth in her damages report by Dr. Alford and ordering that she cannot recover damages based on those claims.

5. Finding that Hampton Luzak's first, second, fourth and sixth categories of damages set forth in her damages report by Dr. Alford constitute derivative claims and that she does not have standing and that this Court does not have subject matter jurisdiction to adjudicate them.

6. Finding that Hampton Luzak is not entitled to recover her second category of damages arising from the 2013 sale of CFRC stock to Travis Bryant because of res judicata and finding that the United States District Court for the Eastern District of Virginia granted summary judgment as to this exact claim.

7. Failing to limit the Court's ruling to claims asserted against or on behalf of CFRC and not allowing the claims and damages to proceed forward against the individual Defendants as the Court ruled at the oral argument on the Motions on May 27, 2021.

Hampton Luzak has set forth her arguments in her Memorandum In Opposition to CFRC's Motion For Intervention and Protective Relief filed on May 25, 2021 (Plaintiff's

[1] The Plaintiff does not concede the findings that she did not fulfill the requirements for commencing a derivative action or that she has not complied with any exclusive forum provision in CFRC's By-Laws or that this Court lacks subject matter jurisdiction to consider foreign claims arising out of the internal affairs of a foreign corporation or that certain matters are res judicata, but those findings are irrelevant inasmuch as the claims and damages asserted by the Plaintiff against Defendants are not derivative.

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Memorandum), and those arguments are incorporated herein by reference, rather than burdening this Motion by reiterating them verbatim.

To expound further on those arguments and focusing more specifically on this Court's Order, the Court has fundamentally erred as specified in Paragraphs 2-5 above in that it has concluded that the claims of Hampton Luzak are, in fact, derivative. That means that the Court has found that those claims really belong to CFRC. That is not the case, very simply because Hampton Luzak does not assert any cause of action that belongs to CFRC nor does she seek any relief against CFRC. No judgment in favor of Hampton Luzak will ever be executed against CFRC. This outcome of this litigation will not result in any financial benefit or detriment for CFRC. Yet, somehow CFRC seeks to intervene to have claims and/or damages against the individual Defendants thrown out.

CFRC asserts that Hampton Luzak's claim for damages actually belong to CFRC. "CFRC seeks to intervene for the limited purpose of precluding Hampton Luzak from litigating shareholder derivative *claims that belong to CFRC*." (Motion for Intervention and Protective Relief filed on May 14, 2021 (Motion), p. 1)(emphasis added). CFRC's Memorandum in Support of Its Motion To Intervene and Protective Relief (CFRC Memorandum) goes a step further to assert that Hampton Luzak's claims belong "*exclusively*" to CFRC. (CFRC Memorandum, p. 1) Further: "[S]ome of **$104 million** of the **$112** million in damages she seeks is attributable only to alleged injuries suffered, if at all, by CFRC." All of that is incorrect. For example, CFRC somehow alleges that the damages Hampton Luzak suffered from tortious interference with inheritance and gifts by the Defendants really belong to CFRC.

Hampton Luzak seeks damages against her sister (Merrill Light) and her husband (Randy Light) for their own individual torts of fraud, conversion, unjust enrichment, breach of fiduciary

duty and self-dealing[2], tortious interference with inheritance and gifts. She also seeks similar damages against her mother. Associated with those claims, she seeks the imposition of a constructive trust and other ancillary relief.

CFRC does not have a dog in this fight. It is an interloper. That is why the Court commented in the hearing on May 27, 2012: "Ms. Light is still in it. If you are suing her individually, I don't understand what CFRC has to do with any of this." (Hearing Transcript May 27, 2021, p. 103, lines 12-14), and the Court confirmed it when it agreed that the damages as to CFRC are gone but that Hampton Luzak could sue Ms. Light "all day long." (Hearing Transcript May 27, 2021, p. 106, lines 4-6.) and held: "My ruling only applies to CFRC. He doesn't represent anybody else but CFRC. Period." (Hearing Transcript May 27, 2021, p. 77, lines 16-18).

That was correct, but the written Order stands contrary to that, and this Court's Order should be amended to reflect that damages as to CFRC are "gone" but claims against Merrill Light and the individual Defendants remain. That is the gravamen of this Motion. That is why the Plaintiff cites that as error in Paragraph 7 on Page 2 and moves for the Court to amend its Order.

A more blunt way to view this is: if Hampton Luzak's claims for damages *really* belonged to CFRC, as CFRC asserts, then CFRC would have standing to sue Merrill Light for tortious interference with Hampton Luzak's inheritance and gifts, for defrauding Hampton Luzak, for conspiring with her husband against Hampton Luzak, and the like. CFRC tells the Court that all of these damages belong *exclusively* to CFRC, to the exclusion of Hampton Luzak,

[2] Plaintiff's Sixteenth cause of action for breach of fiduciary duty and self-dealing is against Merrill Light in her capacity as trustee of the Paul B. Barringer, II Revocable Trust and against Randy Light for aiding and abetting, not against the Lights in their capacities as corporate directors or officers. None of the claims are against the Lights in any of their corporate capacities.

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the victim. That would be ludicrous. Under the argument of CFRC, CFRC could sue Merrill Light for improperly seizing control of the company from her father to the detriment of Hampton Luzak. This Court would have no trouble finding that CFRC lacked standing for such claims or damages and dismiss such claims by CFRC.

CFRC is also improperly moving to strike elements of damages in Hampton Luzak's case against the Defendants, claiming the *damages* and not causes of action to be derivative (with the exception of the civil conspiracy cause of action).

To address the elements of damages more particularly, CFRC seeks to strike the damages asserted against the named Defendants for improperly getting the voting stock of Paul Barringer and thereby consolidating the majority ownership (control) of the company in Merrill Light and consequently causing the value of Hampton Luzak's stock to decline. The diminution in the value of Hampton Luzak's stock was caused by improper actions of individual family members, only one of whom also happened to be a co-stockholder, not by actions internal to the company or by the company or by anyone acting on behalf of the company. Prior to the acquisition of Paul Barringer's voting stock by Merrill Light, Hampton Luzak and Merrill Light owned the same amount of voting stock and were each the largest shareholders of CFRC. They each owned 31.2% of the outstanding voting stock of the company, and Paul Barringer owned 20% (rounded). There was no majority control vested in any shareholder. However, after Merrill Light secured her father's 20% (minus one share) in 2012, Merrill Light owned 51% of the company, and Hampton Luzak's voting shares were then subject to Merrill Light's control of the company. Hampton Luzak's expert, Dr. Alford has issued his report stating that this gain in control by Merrill Light reduced the value of Hampton Luzak's stock by $62 million. He specifically stated in his report: "The difference, or $61,728,933, is the measure of damage from the gain of control

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(by Defendant Light) related to the transfer of voting stock." (Exhibit H to CFRC's Motion For Intervention and Protective Relief, Report of Charles L. Alford, Ph.D, Page 1, PDF Page No. 63, Bates No. Luzak – Alford 0007).

Dr. Alford testified to the same effect in his deposition that CFRC attached to its Motion: "When one of the owners suddenly gains control, it has to be at the expense of the other owner…What I have valued is the gain that Ms. Light has enjoyed by obtaining control of the company. And that gain was at the expense of, primarily, Ms. Luzak." (Exhibit J to CFRC's Motion For Intervention and Protective Relief, Excerpted Alford Deposition Transcript September 22, 2020, Pages 144-145, PDF Page Nos. 89-90). That damage to the value of Hampton Luzak's stock by Merrill Light improperly getting her father's stock and gaining control to the detriment of Hampton Luzak is patently not derivative. The damages suffered by Hampton Luzak from Merrill Light's gain of control of the voting stock were unique to her and were not losses to the corporation and were not proportionate to her ownership. (Exhibit J to CFRC's Motion For Intervention and Protective Relief, Excerpted Alford Deposition Transcript September 22, 2020, Page 132, lines 10-15, PDF Page No. 85).

It is not a claim that can be asserted against CFRC, and it is not a claim assertable by CFRC, and it is not based upon any action or inaction by CFRC or anyone acting on behalf of CFRC. It is a claim by Hampton Luzak against Merrill Light and the named Defendants individually for their individual complicity and participation in that wrongful transfer. Therefore, CFRC has no standing to intervene to have that element of damages dismissed since it has no interest in the outcome of that claim.

Similarly, the claim Hampton Luzak has against Merrill Light and the other Defendants for dilution of her ownership in CFRC because of stock they had the company issue to Travis

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Bryant was also a direct result of Merrill Light improperly seizing control of the company and then using that control to benefit Travis Bryant at the cost of Hampton Luzak. That is a claim asserted against the individual Defendants for their acts in improperly seizing control and their conspiracy; it is an element of damages proximately caused by improper seizing control of the company and their conspiracy; it is not a claim asserted against the company, and the company has no interest in that claim. Hampton Luzak does not assert any allegation of malfeasance against CFRC. It does not assert any claim on behalf of the company. The same argument applies to the elements of damages associated with Merrill Light using her newly acquired control of the company to install her husband, Randy Light, as director of the company, to the direct financial detriment to Hampton Luzak, and to the claim for damages on forgone returns on the sales of timberlands. It was a consequence of improper gain of control of the CFRC, and that is exactly what Dr. Alford was saying when he testified in his deposition: "But it is Ms. Light who has gained control. And her having gained that control means that, essentially, the entire operation of the company is at her disposal…Well, the damage occurred when Ms. Light gained control of the company. The damage has not ended." (Exhibit J to CFRC's Motion For Intervention and Protective Relief, Excerpted Alford Deposition Transcript September 22, 2020, Pages 146, PDF Page No. 91). Hampton Luzak's claims against the individual Defendants are asserted against them for the improper seizure of control and also then using that control to harm Hampton Luzak in the specifics set out in Dr. Alford's report. The *scope* of the damages may be affected by the amount of ownership that Hampton Luzak has in CFRC, but she asserts no claim against the company or for the company. Damages will be assessed against Defendants in their individual capacity and in no way assessed against the company or anyone in their capacities as company shareholders.

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In *Hite v. Thomas & Howard Co. of Florence, Inc.*, 305 S.C. 358, 409 S.E.2d 340 (1991), the plaintiff shareholder alleged a co-shareholder obtained additional stock for himself to the exclusion of plaintiff, through a breach a fiduciary duty and negligence, resulting in a diminution of the plaintiff's percentage of corporate ownership. The Supreme Court held that the reduction on plaintiff's individual percentage of corporate control from 33 1/3% to 11.5 % is separate and distinct from any general diminution in the value of corporate stock. The Court held: "The gravamen of Hite's complaint is clearly a particular loss separate and distinct from that of the corporation." *Id.* at 361, 409 S.E.2d at 342.

In the present case, Paul Barringer's stock was never going to the Congers[3] in any version of Paul Barringer's wills and trusts; therefore, the Congers' percentage share of ownership was not going to change with or without the tortious stock transfer. Not all the shareholders were adversely impacted by Merrill Light's actions. Only Hampton Luzak and possibly the trusts established by her brother Victor Barringer were impacted by Merrill Light's actions to obtain her father's voting stock. So Damage Element #1 is a "particular loss" to specific "individual stockholders." Hampton Luzak's loss is "separate and distinct from that of the corporation."

Furthermore, Paul Barringer's transfer of his stock to Merrill Light as a result of her tortious conduct toward her mentally impaired father was not a corporate management decision. The Board of Directors played no role in approving or causing the stock transfer. The transfer was a direct shareholder-to-shareholder, family member-to-family member transaction that did not result from acts of "corporate mismanagement."

The civil conspiracy claim and damages that were dismissed in the Order similarly are derived from and are based upon Merrill Light's improper seizure of control and the conspiracy

[3] Members of the unrelated Conger family owned approximately 18% of CFRC's voting stock.

surrounding all the wrongdoing alleged in this case. Again, under CFRC's position, such conspiracy claims would belong to CFRC and CFRC would be the *only* person or entity with standing to sue Merrill and Randy Light with others for conspiring to do harm to Hampton Luzak. That argument is not at all tenable. Somehow CFRC asserts that the claims of the victim of a conspiracy really belong to CFRC despite the fact that the injury caused by that conspiracy was visited upon Hampton Luzak individually by Defendants acting in their individual capacity.

CFRC's position in the Motion seems to suggest that such claims must be either derivative or direct individual claims, but cannot be both. That has been rejected by the South Carolina Supreme Court: "When determining whether a claim is derivative or direct, some inquiries affect both the corporation and the stockholders; if this dual aspect is present, a plaintiff can choose to sue individually." *Patterson v. Witter*, 425, S.C. 232, 821 S.E.2d 677, 687 (2018). In the *Patterson* case, the Supreme Court laid out the simple test: "Specifically, to distinguish a derivative claim from a direct one, the court considers: (1) who suffered from the actual harm, the corporation or the suing stockholders, individually, and (2) who would receive the benefit of any recovery or other remedy, the corporation or the stockholders individually." *Id.* In the present case, CFRC does not stand to gain nor does it stand to lose on Hampton Luzak's claims, and the reason is simple: these are claims made against the individual Defendants, and CFRC has no role in these claims.

Finally, the South Carolina Supreme Court recently expanded the scope of damages recoverable in a civil conspiracy case, which is exactly what is before this Court. Traditionally, a plaintiff was required to plead and prove special damages associated with a civil conspiracy. As of May 19, 2021, the need for special damages has been removed:

> In light of our decision today, we are returning to our long-standing precedent pre-*Todd* and for clarification specifically state a plaintiff asserting a civil

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> conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. *See Charles II*, 199 S.C. at 176, 18 S.E.2d at 727; *Charles I*, 192 S.C. at 101, 5 S.E.2d at 472; *see also* 16 Am. Jur. 2d *Conspiracy* § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. *Conspiracy* § 4 (2012) (same). By doing so, we are returning not only to our historical roots, but also to the traditional elements of a civil conspiracy claim as they have been similarly defined by the majority of jurisdictions.

Paradis v. Charleston Cty. Sch. Dist., No. 2018-002025, 2021 WL 1992245, at *6 (S.C. May 19, 2021).

Hampton Luzak has alleged a cause of action for civil conspiracy, asserting that the Defendants combined and conspired to secure control of CFRC for Merrill Light, which was then accomplished, with a resulting damage to the extent set out in Dr. Alford's Report and deposition submitted to the Court by CFRC. The damages that Hampton Luzak seeks against the Defendants proximately resulted, inter alia, from their civil conspiracy and the consummation of their conspiracy.

For the foregoing reasons, the Court erred in the particulars set forth above on page 2, Paragraphs 2-5.

The Court also erred in its Order finding that Hampton Luzak is not entitled to recover her second category of damages arising from the 2013 sale of CFRC stock to Travis Bryant because of *res judicata* and finding that the United States District Court for the Eastern District of Virginia granted summary judgment as to this exact claim. This issue is referenced in Paragraph 6 above on Page 2.

Hampton Luzak has not brought the present action to challenge that validity nor to assert a derivative claim. Instead, Ms. Luzak asserts the diminution in the value of her stock as an element of her damages because of the transfer of stock to Travis Bryant that was proximately

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caused by the torts of the Defendants in unlawfully gaining control of CFRC. Hampton Luzak is suing Merrill Light and Randy Light individually for those torts and the resulting damages and not for torts committed by them in their corporate capacities at CFRC. CFRC has no financial stake in the outcome, and no outcome affects it. CFRC simply lacks standing to seek the elimination of claims and damages against the individual Defendants.

Therefore, the Plaintiff moves for this Court to reconsider its Order and amend it as follows:

1. Deny the Motion of CFRC for Intervention and deny the Protective Relief it sought;

2. Or, alternatively, allow the intervention of CFRC but amend the Order to delete the findings therein (articulated in Paragraphs 2-7 set forth above on page 2) and simply hold that the Plaintiff does and is not allowed to assert any claims for or against CFRC but she may continue to pursue her claims and damages against the named Defendants.

THE GILREATH LAW FIRM, P.A.

By: s/JAMES R. GILREATH .
James R. Gilreath (SC Bar No. 2133)
William M. Hogan (SC Bar No. 65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin (SC Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-7465
amedlin@sc.rr.com

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Charles B. Macloskie (SC Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: (864) 242-3566
Fax: (864) 232-1558
tom.traxler@carterlawpa.com

ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: June 17, 2021
Greenville, South Carolina.

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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, vs.	)	**CFRC'S RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER AND AMEND PROECTIVE ORDER FOR CFRC DATED JUNE 7, 2021**
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.	)	

Plaintiff Hampton Luzak's motion, which asks the Court to reconsider the June 7, 2021 Protective Order ("Order") granted to CFRC, is unnecessary and a waste of the Court's time and resources. CFRC sought and obtained a narrow protective order over confidential communications between CFRC's directors and officers and its former counsel, John Jolley, "***regarding*** Mr. Jolley's engagement as corporate counsel" or "***about*** Board meetings held in 2012." Order at 2. Mrs. Luzak has conceded that the communications for which CFRC sought protection are privileged. And her suggestion that the Order improperly prevents her from asking questions about other conversations is false. The Court should deny her motion.

CFRC sought and was granted a protective order in this litigation pursuant to Rule 30(j)(3), SCRCP, to protect CFRC's former counsel from having to answer questions about the substance

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of (1) "Confidential communications between CFRC's directors and officers and Mr. Jolley regarding Mr. Jolley's engagement as corporate counsel"; and (2) "Communications between CFRC's directors and Mr. Jolley about Board meetings held in 2012." Order at ¶¶1–2; CFRC Motion at 2–3. Mrs. Luzak did not dispute CFRC's invocation of privilege in her return or at the May 27, 2021 motions hearing, and the Court entered the Order granting CFRC's motion on June 7, 2021. Even now in requesting reconsideration, Mrs. Luzak largely concedes the application of the attorney-client privilege.

As to the Order's protection over "Confidential communications between CFRC's directors and officers and Mr. Jolley regarding Mr. Jolley's engagement as corporate counsel," Order ¶ 1, Mrs. Luzak squarely concedes that "the substance of communications between Mr. Jolley and representatives of CFRC to discuss retention of Mr. Jolley are generally privileged." Pl. Motion at 3. Mrs. Luzak's only evident concern with paragraph 1 of the Order is the hypothetical possibility that CFRC might have waived the privilege "if third parties were involved in such communications or there was disclosure beyond CFRC." *Id.* Nothing prohibited Mrs. Luzak from asking foundational questions about third parties whose presence might have broken the privilege. *Id.* at 3–4. CFRC did not preclude Mr. Jolley from answering foundational questions during his deposition. And during the May 27 hearing, the Court made clear that foundational questions—i.e., the setting and who was there—are fair game for questioning. *See* Ex. A (May 27, 2021 Hearing Tr.) at 16:21–17:3. The Court should Mrs. Luzak's request to modify Paragraph 1.

As to the Order's protection over "Communications between CFRC's directors and Mr. Jolley about Board meetings held in 2012." Order ¶ 2, Mrs. Luzak concedes that "communications between Mr. Jolley and Board members *after* he became corporate counsel are similarly

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privileged." Pl. Motion at 3 (emphasis in original). Despite that concession, Mrs. Luzak contends that the Court's order "dramatically expanded" the scope of CFRC's motion by "includ[ing] ALL communications between CFRC directors and Mr. Jolley about Board meetings held in 2012," even if those communications predated his time as corporate counsel or involved CFRC directors acting in their personal rather than corporate capacities. *Id.* at 2 (emphasis in original). That is a straw man. CFRC's only concern as to privilege—and all that CFRC has requested and obtained from this Court—is protection over privileged communications between Mr. Jolley and CFRC's directors/officers concerning *corporate* matters—not any *personal* matters unrelated to their roles as directors/officers. To that end, the Order clearly states that it is protecting privileged communications "as requested in the Motion." Order at 1. The Order is clear and no amendment is necessary.

CFRC respectfully requests that the Court deny the motion for reconsideration.

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Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Ryan G. Rich
RYAN G. RICH (S.C. Bar No. 80906)
One South at the Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280-0008
Telephone: 704-378-4700
rrich@huntonAK.com

EDWARD J. FUHR
(admitted *pro hac vice*)
JOHNATHON E. SCHRONCE
(admitted *pro hac vice*)
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: 804-788-8201
Facsimile: 804-788-8218
efuhr@huntonAK.com
jschronce@huntonAK.com

Counsel for Coastal Forest Resources Company

June 28, 2021
Charlotte, North Carolina

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EXHIBIT A

Excerpted

Hearing Transcript
Honorable Bentley Price
May 27, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN GENERAL SESSIONS
14th JUDICIAL CIRCUIT

HAMPTON B. LUZAK,

Petitioner,

vs.

CASE NOs.: 2016-CP-07-01919
2019-CP-07-01253
-01924

MERRILL B. LIGHT, et al,

Respondents.

HEARING BEFORE: HONORABLE BENTLEY PRICE

DATE: May 27, 2021

LOCATION: Beaufort County Judicial Center
102 Ribault Road
Beaufort, SC 29902

REPORTED BY: KYMBERLEE WILLIAMS, CSR/RPR

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APPEARANCES

ATTORNEYS FOR THE PETITIONER
JAMES R. GILREATH, ESQ.
WILLIAM M. HOGAN, ESQ.
CHARLES B. MACLOSKIE, ESQ.
S. ALAN MEDLIN, ESQ.
THOMAS W. TRAXLER, ESQ.

ATTORNEYS FOR THE RESPONDENT
ALICE PAYLOR, ESQ.
BIJAN GHOM, ESQ.
J. ASHLEY TWOMBLEY, ESQ.
LEE ANN WALTERS, ESQ.

ATTORNEYS FOR JOHN JOLLEY
ARIAIL B. KIRK, ESQ.

ATTORNEYS FOR CFRC
EDWARD J. FUHR, ESQ.
RYAN G. RICH, ESQ.
JONATHON SCHRONCE, ESQ.

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MS. KIRK: Yes, sir. I move for a motion to terminate the deposition.

THE COURT: This will stay under seal. Both of you are re-noticed. He's to sit for one day. It will start at 9:00 and it will end promptly at 5:00. Work hard. What's next?

MS. KIRK: With regard to the instructions to not answer.

THE COURT: He's saying that he agrees with you on that. There is attorney/client privilege issues. He's just saying it's taking him time to go through that. He said he's not fussing at you. He agrees.

I'm just telling you, let's see what we can do to fast-track that a little instead of taking 15,000 side bars.

MS. KIRK: Thank you, Your Honor.

MR. TRAXLER: I think what she's asking you -- they have moved for a protective order that he's not to answer the privileged questions.

THE COURT: You're saying that you agree with him. If it's protected information, then he doesn't have to answer it. You're saying you should get the opportunity to go into what you call the setting, who was there. Basically don't

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tell me the protected information.

Yes, he can ask those questions, and Mr. Jolley will answer those.

MR. TRAXLER: I don't want the record to reflect that I'm conceding that their instructions not to answer are proper. I'm just recognizing there are times when it's proper and we have not fleshed that out yet.

THE COURT: We agree.

MS. KIRK: I don't mean to sound --

THE COURT: We're here today to get all the stuff sorted out.

MS. KIRK: Can you tell me exactly what your ruling is with regard to instructions not to answer?

THE COURT: Well, he's saying that he agrees with you that the privileged information is not to be -- I mean, it's kind of weird because it's the client's privilege, but the client is dead. Oh well.

If you truly think that it's privileged information and it should not be testified to, all he's saying is, that's fine. He's asking subsequent questions about who was there, what was the scene. Apparently, he's not answering those questions.

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I'm telling you he has to answer those questions. He doesn't have to give the privileged information over. All I'm telling you-all to do is to re-notice the deposition and see if you-all can get through it. He's saying he's spending more of his time arguing with you-all over privileged information and not substantive information.

I'm telling you he needs to get to the substantive information. You-all need to quit bothering him every time about privileged information. Let's get this information and move on.

The only other thing I know to do is to just to waive the privilege and then seal the deposition and give it to me. I will decide it at a later date.

MS. KIRK: Is there any distinction, I guess -- where I'm having a lot of confusion here is Mr. Traxler talked about the subject matter of the conversation but not the substance. I want to know where the Court draws the line between what is the subject matter of the conversation and what is the substance. I really don't know.

THE COURT: What did you-all talk about? We talked about the will. That's a subject. What did you-all talk about as to the will? That's privileged.

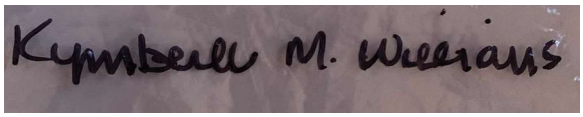
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, County of Beaufort, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 27th day of May, 2021.

I do further certify that I am not related, of counsel, or of interest to any party herto.

This, the 7st day of June, 2021.



KYMBERLEE M. WILLIAMS, CSR/RPR

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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 **DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER, AMEND, AND VACATE THE COURT'S LETTER DATED JUNE 7, 2021**
STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 2019-CP-07-01294

The Court should deny Plaintiff's Motion to Reconsider, Amend, and Vacate the Court's Letter Dated June 7, 2021 ("Motion to Reconsider"). Plaintiff moves for reconsideration under Rules 52 and 59 of the South Carolina Rules of Civil Procedure, but these rules govern amendments to "judgments." The Court's letter to counsel dated June 7, 2021 ("June 7 Letter"), is not a "judgment" subject to amendment under these rules, nor does any statement in the letter

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warrant reconsideration or amendment. The June 7 Letter did not purport to rule on any issue, nor was it filed with the Court. Rather, Judge Price merely criticized how the parties have handled this case in the past and informed them that further delays in this five-year-old dispute will not be tolerated and that the Court intends to move the case forward to trial. It is the trial judge's responsibility to manage his docket, and Judge Price's effort to do so here was entirely appropriate.

Plaintiff's motion represents nothing more than an excuse to continue her brazen attacks on Judge Price. The motion merely repeats the same allegations Plaintiff made in her motion to recuse Judge Price. Defendants already responded to these baseless allegations in their memorandum in opposition to Plaintiff's motion to recuse filed on June 22, 2021.[1] Defendants incorporate their prior arguments by reference and will not rehash them here. In addition to being wrong on the merits, for the reasons Defendants previously argued, the instant motion is also procedurally improper for the reasons stated below. Accordingly, Plaintiff's motion should be denied, and this case should proceed in accordance with the schedule discussed in the Court's letter.

I. The Motion to Amend should be denied because the June 7 Letter is not a "judgment" subject to amendment under Rule 52(b) or Rule 59(e).

Rule 52(b) and Rule 59(e) grant the Court authority to amend a "judgment" on motion of a party made within ten days after the party receives notice of the entry of the judgment. Rule 52(b), 59(e), SCRCP. But the June 7 Letter is not a judgment. The Court did not make any

[1] In her motion to recuse and in this motion, Plaintiff argued that the June 7 Letter "chilled" her ability to prosecute her case because she and her counsel were intimidated by Judge Price. Plaintiff's aggressive attacks on Judge Price in the instant motion further belie this claim.

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rulings or otherwise determine the rights of any party.[2] Moreover, the letter was not filed with the Court and therefore is not a final judgment subject to Rule 52(b) or 59(e). *See* Rule 58(a), SCRCP ("A judgment is effective only when . . . entered in the record."); *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20–21, 633 S.E.2d 722, 730 (2006) (holding an order is not final until it is entered by the clerk of court). The June 7 Letter therefore is not subject to amendment under Rule 52(b) or 59(e).

Nor was the letter improper. Trial judges routinely discuss case management with counsel, and these discussions often involve comments on the parties' handling of the litigation and the merits. The South Carolina Supreme Court recently stated, "[t]his Court fully recognizes and supports the role that judges, particularly trial court judges, have in facilitating the resolution of cases." Ledford v. Dep't of Pub. Safety, 428 S.C. 387, 392, 835 S.E.2d 509, 511 (2019). The Court noted that judges often engage in discussions with parties (through counsel) concerning "a host of matters involving the case" and that "such discussions may necessarily convey a preliminary view of the merits of a claim or defense, which may indirectly include an assessment of a party's or a witness's credibility." Ledford, 835 S.E.2d at 512. The Court continued, "[t]his role of a trial court is both accepted and, quite frankly, invited." Id. As discussed more fully in Defendants' memorandum in opposition to Plaintiff's motion to recuse, the June 7 Letter is precisely the type of communication expressly endorsed by the Supreme Court in Ledford.

[2] Although the letter stated that trial will begin on August 30, 2021, that deadline was already established by a prior order granting Defendants' motion to set a trial date. *See* June 7, 2021 Order ("A trial on the first phase as indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021.") The June 7 Letter merely reiterated the trial date and added the interim discovery and pretrial deadlines.

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II. The Court should formalize the deadlines referenced in the June 7 Letter, and Plaintiff's request to extend the deadlines should be denied.

Although Plaintiff's motion should be denied, the Court should enter a formal scheduling order establishing and clarifying the deadlines referenced in the June 7 Letter. Plaintiff's request to extend these deadlines should be denied.

The Court's letter referenced the following schedule for these cases:

1. Discovery will end on July 30, 2021;
2. Motions must be filed by July 30, 2021;
3. A motions hearing will take place on August 12, 2021 at 11 a.m.;
4. A trial will occur on August 30, 2021 (established in the June 7 Order).

This schedule is reasonable and should be formalized in an order.[3]

Plaintiff's request to extend these deadlines should be denied. These cases have been litigated for five years, and the Court has heard extensive argument from the parties regarding the trial schedule. After the parties could not agree on a scheduling order, the Court established a reasonable schedule to resolve this dispute. In response, Plaintiff yet again seeks further delay, but she identifies no reason why further delay is warranted. Enough is enough. As Judge Price recognized at the hearing on Defendants' request for a trial date, it is time to try this case:

> I know it's a ton of money. I get it. I get it's a complex case. I get it, but it's [sic] ain't five years coming. It's just not. So we have got to do something. Just stop all of this back and forth between you-all and all these letters and all of this stuff has got to stop. We have got to try this case. Let's pull our pants up, and let's get this thing done.

[3] Plaintiff argues the letter was ambiguous as to whether the July 30, 2021, discovery deadline applies to both trials or only to the first trial scheduled to begin on August 30, 2021. Defendants assume the deadline applies to *all* discovery in connection with both trials, but Defendants do not oppose Plaintiff's request for clarification on this point.

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(Id. at 120:25-121:7). Accordingly, Defendants request the Court enter an order establishing the schedule referenced in the June 7 Letter, and reject Plaintiff's request to extend these deadlines.

CONCLUSION

The Motion to Reconsider is a procedurally improper rehash of Plaintiff's prior motion to recuse Judge Price, which the parties have briefed extensively. Further, although the Court should formalize the scheduling order, Plaintiff has provided no basis for a continuance, and the trial should proceed as planned on August 30, 2021. Accordingly, the Motion to Reconsider should be denied.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley

J. Ashley Twombley (SC Bar #72916)
Lee Anne Walters (SC Bar #74984)
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
lwalters@twlawfirm.com
Attorneys for Defendant Merrill U. Barringer

Alice F. Paylor, Esquire (SC Bar #4380)
Bijan Ghom, Esquire (SC Bar #103531)
ROSEN HAGOOD, LLC
P.O. Box 893 (29402)
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
apaylor@rosenhagood.com
bghom@rosenhagood.com
Attorneys for Defendant Merrill B. Light

July 1, 2021

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ROA 004284

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,	)	
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.	)	

SUPPLEMENT TO CFRC'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER GRANTING CFRC'S MOTION FOR INTERVENTION AND PROTECTIVE RELIEF

This matter came before the Court on July 2, 2021 for a hearing before the Honorable B. Price. During the hearing, Coastal Forest Resources Company ("CFRC") requested that it be able to supplement its Response in Opposition to Plaintiff's Motion for Reconsideration of Order Granting CFRC's Motion for Intervention and Protective Relief.

CFRC specifically requested that Plaintiff's Response to Defendant Merrill B. Light's First Request for Admission to Plaintiff be admitted into the Court record.

Judge Price granted the request and directed that the responses be electronically submitted to the court's docket.

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CFRC hereby submits Plaintiff's Response to Defendant Merrill B. Light's First Requests for Admission to Plaintiff attached hereto as Exhibit V for consideration.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Ryan G. Rich
RYAN G. RICH (S.C. Bar No. 80906)
One South at the Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280-0008
Telephone: 704-378-4700
rrich@huntonAK.com

EDWARD J. FUHR
(admitted *pro hac vice*)
JOHNATHON E. SCHRONCE
(admitted *pro hac vice*)
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: 804-788-8201
Facsimile: 804-788-8218
efuhr@huntonAK.com
jschronce@huntonAK.com

Counsel for Coastal Forest Resources Company

July 2, 2021
Charlotte, North Carolina

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EXHIBIT V

RESPONSE TO DEFENDANT MERRILL B. LIGHT'S FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF

July 30, 2020

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THE GILREATH LAW FIRM, P.A.

JAMES R. GILREATH*
jim@gilreathlaw.com
*ALSO ADMITTED TO PRACTICE IN NC

WILLIAM M. HOGAN
bhogan@gilreathlaw.com

110 LAVINIA AVENUE (29601)
P.O. BOX 2147
GREENVILLE, SC 29602
www.gilreathlaw.com

TELEPHONE (864) 242-4727
FACSIMILE (864) 232-4395

July 30, 2020

VIA ELECTRONIC MAIL AND U.S. MAIL

Alice Paylor, Esquire
Bijan Ghom, Esquire
ROSEN, ROSEN & HAGOOD, LLC
P.O. Box 893
Charleston, SC 29402

RE: *Hampton B. Luzak v. Merrill B. Light, et al.* - Case No.: 2016-CP-07-1919

Dear Alice and Bijan:

Enclosed is the Response to Defendant Merrill B. Light's First Requests for Admissions to Plaintiff with Certificate of Service.

Sincerely,

William M. Hogan

William M. Hogan

WMH/kmk
Enclosures
cc (via electronic mail and U.S. Mail/w enclosures): Charles Macloskie, Esquire
S. Alan Medlin, Esquire
Charles B. Molster, Esquire
Harley D. Ruff, Esquire
Denise Collins, Esquire
J. Ashley Twombley, Esquire
Kevin Johnson, Esquire
Lee Anne Walters, Esquire

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

RESPONSE TO DEFENDANT MERRILL B. LIGHT'S FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF

TO: DEFENDANT MERRILL B. LIGHT, 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, AND HER/THEIR ATTORNEYS OF RECORD, ALICE PAYLOR, BIJAN GHOM, AND CHARLES MOLSTER, III:

The Plaintiff, Hampton B. Luzak ("Plaintiff"), pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby responds to Defendant Merrill B. Light's Requests for Admissions to Plaintiff as follows:

REQUEST NO. 1.: Admit that Plaintiff does not seek to recover damages from Defendants in this action for assets Defendants allegedly misappropriated from Coastal Forest Resources Company ("CFRC").

RESPONSE:

Plaintiff objects to this Request because it is vague, ambiguous and does not describe the information sought with sufficient particularity. More specifically, this Request does not identify or define what element of Plaintiff's "damages" Defendant is referring to.

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Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

REQUEST NO. 2.: Admit that none of Plaintiff's claims against Defendant Merrill Light are brought against her as a director of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claims." More specifically, this Request does not specify whether Defendant is referring to "claims" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Merrill Light in her individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Merrill Light is not named as a defendant in her capacity as a director of CFRC, but otherwise Plaintiff denies the Request as drafted.

REQUEST NO. 3.: Admit that none of Plaintiff's claims against Defendant Merrill Light are brought against her as an officer of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claims." More specifically, this Request does not specify whether Defendant is referring to "claims" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Merrill Light in her individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Merrill Light is not named as a defendant in any capacity as an officer of CFRC, but otherwise Plaintiff denies the Request as drafted.

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REQUEST NO. 4.: Admit that none of Plaintiff's claims against Defendant Randy Light are brought against him as a director of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claims." More specifically, this Request does not specify whether Defendant is referring to "claims" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Randy Light in his individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Randy Light is not named as a defendant in his capacity as a director of CFRC, but otherwise Plaintiff denies the Request as drafted.

REQUEST NO. 5.: Admit that none of Plaintiff's claims against Defendant Randy Light are brought against him as an officer of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claims." More specifically, this Request does not specify whether Defendant is referring to "claims" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Randy Light in his individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Randy Light is not named as a defendant in his capacity as an officer of CFRC, but otherwise Plaintiff denies the Request as drafted.

REQUEST NO. 6.: Admit that Plaintiff is not claiming that Defendant Merrill Light breached any fiduciary duties owed to Plaintiff as a director of CFRC.

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RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claiming." More specifically, this Request does not specify whether Defendant is referring to "claiming" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Merrill Light in her individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Merrill Light is not named as a defendant in her capacity as a director of CFRC, but otherwise Plaintiff denies the Request as drafted.

REQUEST NO. 7.: Admit that Plaintiff is not claiming that Defendant Randy Light breached any fiduciary duties owed to Plaintiff as a director or officer of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claiming." More specifically, this Request does not specify whether Defendant is referring to "claiming" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Randy Light in his individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff admits Defendant Randy Light is not named as a defendant in his capacity as a director or officer of CFRC, but otherwise Plaintiff denies the Request as drafted.

REQUEST NO. 8.: Admit that Plaintiff is not claiming that Defendant Merrill Light is liable for corporate actions taken by CFRC.

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RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claiming." More specifically, this Request does not specify whether Defendant is referring to "claiming" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Merrill Light in her individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

REQUEST NO. 9.: Admit that Plaintiff is not claiming that Defendant Randy Light is liable for corporate actions taken by CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague and ambiguous, including as to the term "claiming." More specifically, this Request does not specify whether Defendant is referring to "claiming" as asserting independent causes of action or alternatively as facts asserted in support of Plaintiff's causes of action against Defendant Randy Light in his individual capacity.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

REQUEST NO. 10.: Admit that Article VIII, Section 7 of CFRC's By-Laws is valid and binding on Plaintiff.

RESPONSE:

Plaintiff objects to this Request to the extent it seeks a legal conclusion or an answer on a question of law. More specifically, this Request does not ask a question on facts or

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the application of law to facts. Plaintiff further objects on the grounds that the request is unduly burdensome since it requires an analysis of Virginia law not at issue in this South Carolina litigation. Plaintiff further objects because the information known or readily obtainable by Plaintiff is insufficient to enable her to admit or deny this Request – for example, Plaintiff has no information on the authenticity on the purported copies of the unanimous consents provided to Plaintiff.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

REQUEST NO. 11.: Admit that Plaintiff is not alleging that CFRC took inappropriate actions.

RESPONSE:

Plaintiff objects to this Request because it is vague, ambiguous and does not describe the information sought with sufficient particularity. More specifically, it does not define "inappropriate actions" or set forth any standard for determining what Merrill Light considers "inappropriate actions." Plaintiff further objects to this Request to the extent it seeks a legal conclusion or an answer on a question of law.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

REQUEST NO. 12.: Admit that Plaintiff is not seeking any damages as a result of any inappropriate actions of CFRC.

RESPONSE:

Plaintiff objects to this Request because it is vague, ambiguous and does not describe the information sought with sufficient particularity. More specifically, this Request does

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not identify or define what element of Plaintiff's "damages" Defendant is referring to. Plaintiff further objects to this Request to the extent it does not define "inappropriate actions" or set forth any standard for determining what Merrill Light considers "inappropriate actions." Plaintiff further objects to this Request to the extent it seeks a legal conclusion or an answer on a question of law.

Subject to and without waiving the foregoing objections, Plaintiff responds as follows: Plaintiff denies the Request as drafted.

Plaintiff reserves the right to amend or supplement any and all of the above responses as she completes discovery and preparation of this case for trial.

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan

William M. Hogan (S.C. Bar No. 65272)
James R. Gilreath (S.C. Bar No. 2133)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-7465
amedlin@sc.rr.com

and

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Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

ATTORNEYS FOR PLAINTIFF
HAMPTON BARRINGER LUZAK

Dated: July 30, 2020
Greenville, South Carolina.

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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 **Response to Defendant Merrill B. Light's First Requests for Admissions to Plaintiff** regarding the above-captioned matter by the following means:

____	Hand Delivery	____	Facsimile
_X_	United States Mail	____	Overnight Delivery
_X_	Other: Electronic Mail		

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

Alice Paylor, Esquire
apaylor@rrhlawfirm.com
Bijan Ghom, Esquire
bghom@rosenhagood.com
ROSEN, ROSEN & HAGOOD, LLC
P.O. Box 893
Charleston, SC 29402
Attorneys for Defendants, Merrill B. Light, 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

Charles B. Molster, III, Esquire
cmolster@molsterlaw.com
THE LAW OFFICES OF CHARLES B. MOLSTER, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
Attorney admitted *pro hac vice* for Defendants, Merrill B. Light, 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

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J. Ashley Twombley, Esquire
Twombley@twlawfirm.com
Kevin Johnson, Esquire
Kjohnson@twlawfirm.com
Lee Anne Walters, Esquire
Lwalters@rosenhagood.com
TWENGE + TWOMBLEY LAW FIRM
311 Carteret Street
Beaufort, SC 29902
Attorney for Defendant Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II

Harley D. Ruff, Esquire
hruff@ruffllc.com
Denise Collins, Esquire
dcollins@ruffllc.com;
RUFF & RUFF, LLC
17 Professional Village Circle
Beaufort, SC 29907
Attorneys for Defendant Merrill U. Barringer, as Personal Representative of the Estate of Paul Barringer, II

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan

James R. Gilreath (S.C. Bar No. 02133)
William M. Hogan (S.C. Bar No. 65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

Attorneys for Plaintiff Hampton B. Luzak

Date: July 30, 2020
Greenville, South Carolina.

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ELECTRONICALLY FILED - 2021 Jul 16 3:01 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

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 **PLAINTIFF'S MOTION TO RECONSIDER AND AMEND ORDER GRANTING DEFENDANT MERRILL LIGHT SUMMARY JUDGMENT AS TO FEBRUARY 8 [sic], 2012, WILL AND FIRST AMENDMENT TO THE PAUL B. BARRINGER, II, REVOCABLE TRUST, DATED DECEMBER 4, 1998**

TO: THE COURT, ALL DEFENDANTS, AND THEIR COUNSEL:

This Motion is made reserving all rights under Plaintiff's Motion for Recusal and/or Disqualification dated and filed with this Court on June 16, 2021 and under any other motion and/or appeal of any Court order, including but not limited to the appeal of the order for bifurcation.[1]

You will please take notice that the Plaintiff does hereby move for an Order reconsidering and amending the Order entered on July 6, 2021, granting Merrill Light's Motion for Summary Judgment as to February 8 [sic], 2012, Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, Dated December 4, 1998. Plaintiff received notice of the entry of the Order on July 6, 2021. This Motion is made pursuant to the inherent authority of the Court

[1] Plaintiff also incorporates here 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 ("Plaintiff's Response in

to reconsider and amend its Orders and also pursuant to *South Carolina Rules of Civil Procedure* (*SCRCP*) Nos. 52 and 59, and this Motion is made on the grounds set forth herein.

The Court erred and/or was under misapprehension as follows:

I. *Allowing Defendant to seek summary judgment on issues that were previously denied by Judge Mullen.*

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).[2] Judge Mullen conducted a hearing that stretched over three days: November 17-19, 2020. On December 30, 2020, Judge Mullen 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 and filed the current motion for summary judgment on May 14, 2021.

Rule 43(l), SCRCP states: "If any motion be made to any judge and be denied, in whole or in part or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action."

Justice Pleicones wrote in *Smith v. Breedlove*, 377 S.C. 415, 419 (2008), that when considerable discovery has taken place and new evidence established, the trial court can rule on

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Opposition") and all related motions, memoranda, and pleadings.

[2] 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 to Plaintiff's Response in Opposition as Exhibit 1. Those previous summary judgment exhibits, totaling 1572 pages, are not attached as exhibits hereto or to Plaintiff's Response in Opposition but are instead incorporated by reference. With the exception of Exhibits 1 – 6 attached to Plaintiff's Response in Opposition to this second summary judgment motion, references in this motion are to the exhibits filed in the first summary judgment motion, as indicated by letters on the exhibit list attached to Plaintiff's Response in Opposition to this second summary judgment motion 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 to Plaintiff's Response in

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a second summary judgment motion even if made on the same legal basis as the first motion. However, Defendant failed to produce new evidence in her motion and argument, nor has considerable additional discovery taken place. Although Defendant relied on deposition testimony from John Jolley,[3] who drafted the February 28, 2012 will and trust, that in Jolley's opinion Paul Barringer was competent and free from undue influence, this is not new evidence because Jolley testified to the same facts contained in his certifications in the wills and trusts. As an attorney preparing a will and trust, Jolley had the ethical responsibility to believe that Paul Barringer was competent.[4] This is hardly new evidence. Further, Mr. Jolley was deposed by Defendants who secured his testimony on their direct examination, but Plaintiff has not completed her cross examination of Mr. Jolley. Nevertheless, the Court proceeded to grant summary judgment before Mr. Jolley's deposition could be completed. 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 lacked mental capacity or were unduly influenced or mistaken. In addition, he has taken that same 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

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Opposition to this second summary judgment motion.

[3] Jolley represented the Light Defendants, Defendant Merrill Barringer, Mr. Barringer, and eventually Mr. Barringer's legacy company and the Estate of Randy Light. The Court also erred by finding that "Plaintiff offered no evidence to prove the Mr. Jolley had an actual conflict of interest on the basis of his representation of both the Lights and the Barringers, and the Court notes no such conflict based on the record." The record is full of evidence of Mr. Jolley's multiple representations, which inherently creates a conflict of interest, although some multiple representation conflicts can be permissible. A finding by this Court on the instant motion as to whether Jolley had conflicts is not necessary to a determination of the instant motion and is a gratuitous finding.

[4] As the Court noted in the Order, Jolley's belief is not dispositive as to the issues of capacity or undue influence. "The Court finds Mr. Jolley's observations of Mr. Barringer at the execution of the Testamentary Documents and in the preceding months to be relevant, but not conclusive on the question of whether Mr. Barringer had testamentary capacity or was under undue influence when he executed the Testamentary Documents."

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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. Therefore, Mr. Jolley's deposition testimony is no more new evidence than if he had said in his deposition the sun rose on that day.[5]

Nor was there considerable discovery since Judge Mullen's order of December 30, 2020. In *Breedlove,* the first summary judgment was issued before any depositions were taken: at least seven depositions were taken between the first and second motions for summary judgment spanning two years of discovery. However, in the case of Defendant Light's motion for summary judgment, only five months elapsed between the filing of the first summary judgment order and the hearing on the second summary judgment motion, with only one partially completed deposition presented as new discovery.[6]

Despite Judge Price's expressed statement that he has never "gone against" an order by another judge issued in the same case,[7] he did exactly that: His order contradicts and overturns 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.

[5] Moreover, Jolley's assessment of Paul Barringer's capacity is certainly questionable and can be seen as supporting Plaintiff's assertion that Mr. Barringer lacked capacity on February 28, 2012. Jolley testified that he saw no change in Mr. Barringer's cognitive abilities from 2011 until the time of his death. See excerpt from Jolley deposition transcript, attached hereto as **Exhibit A**. Mr. Barringer was scoring zero, one, four, and ten on mini-mental tests in 2015 and 2016, yet Jolley saw no change, leading to the inference that Mr. Barringer was just as incompetent in 2011 as he was in 2015 and 2016.

[6] The Court ruled in this instant matter despite the fact that Jolley's deposition was not complete. See Plaintiff's SCRCP 56(f) Affidavit, attached as Exhibit 6 to Plaintiff's Response in Opposition. Before defending this summary judgment motion, Plaintiff should have first been given a fair opportunity to complete the deposition.

[7] July 2, 2021 Transcript, p. 30; see also May 27, 2021 Transcript, p. 115.

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II. ***Failing to hold that Defendants are estopped because (A) they assert the validity of the February 28, 2012 wills, which if valid revoked the 1998 will and trust that Defendants assert are the sole subject of the bifurcated claims and (B) they assert the validity of the post February 28, 2012 wills and trusts, which if valid revoke the February 28, 2012 will and trust.***

Just as Defendants did in their argument to bifurcate, they 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 asked the Court to find valid documents that revoke earlier documents that they also assert are valid — a complete non sequitur. Subsequent to the February 28, 2012 documents, Mr. Barringer purportedly executed documents on July 20, 2012, on June 12, 2014, and on February 5, 2015. 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 asked this Court to find valid in this summary judgment. Defendants asked 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.[8]

Thus, Defendants took inconsistent legal positions and should have been estopped from

[8] As discussed below, this is the same inconsistent and illogical argument that Defendants assert as to the 1998 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. 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.

wasting any more of this Court's time on their current summary judgment motion.

Similarly, Defendants took 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 *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 took inconsistent legal positions. They convinced Judge Mullen that the second and third causes of action --- more accurately stated as the power of appointment issues[9] rather than the 1998 Contract Claims --- in consolidated case numbers 2019-CP-07-1253 and -1294 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 more of this Court's 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.

The Court erred by finding that Defendants were not estopped. Defendants are indeed taking inconsistent factual positions: (1) they argue that the 1998 documents are valid for purposes of the power of appointment trial, even though they are revoked by the February 28,

[9] 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

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2012 documents which they assert are valid; (2) they argue that the February 28, 2012 documents are valid, even though they are revoked by the subsequent documents that Defendants contend are valid. The Court and Defendants apparently misapprehend that a revoked document is not valid. The Court further erred in determining that Defendants have not been successful in maintaining their factually inconsistent arguments; to the contrary, they convinced Judge Mullen to have a separate trial based solely on the 1998 documents which they assert are valid. Plaintiff did establish the elements necessary for estoppel, and the Court erred by not recognizing that Defendants were estopped.[10]

III. *Finding that the February 28, 2012 will and trust were valid.*

For the reasons explained in the prior section, the February 28, 2012 will and trust cannot be determined to be valid in a vacuum. If any of the subsequent documents are valid, as asserted by Defendants, then the February 28, 2012 will and trust are revoked and *cannot be valid*.

The Court's conclusion that the February 28, 2012 will and trust are valid is also erroneous because Defendants sought their summary judgment *only* as to Plaintiff's Seventh (Capacity), Eighth (Undue Influence), and Ninth (Mistake) Causes of Action. As discussed more fully below, the Court erred in finding that Plaintiff failed to establish for summary judgment purposes those three causes of action, but even if the Court were correct, there is a glaring gap in the Court's logic in determining that the February 28, 2012 will and trust were valid: in her Eleventh Cause of Action, Plaintiff also alleges that Defendants practiced fraud

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silence. Nowhere has Plaintiff limited these arguments to only the 1998 documents.

[10] The Court states that Plaintiff did not even attempt to establish elements of judicial estoppel. That is an erroneous statement. Plaintiff's memoranda and argument clearly discussed the factors relevant to estoppel and to judicial estoppel.

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upon the testator/settlor, with any resulting documents being invalid and of no legal force and effect. Defendants failed to ask the Court to rule, and the Court failed to rule, on the Eleventh Cause of Action, so Plaintiff still has a surviving cause of action as to fraud.[11] Consequently, the Court erred in ruling that the February 28, 2012 will and trust are valid. Further, while it is one thing to grant summary judgment on the February 28, 2012 instruments with respect to capacity, undue influence, and mistake (which grant was in error), it is another thing to establish their validity and ignore the remaining cause of action of fraud and also to ignore the subsequent testamentary instruments, the validity of which remains to be litigated.

IV. *Applying the wrong standard as to the burden of proof for summary judgment.*

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.[12] The Court erred in its application of the burden of proof.

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

[11] Similarly, Plaintiff's Seventeenth Cause of Action alleges intentional interference with inheritance, with the effective result of invalidating documents resulting from such tortious interference. Defendants failed to ask the Court to rule, and the Court failed to rule on the Seventeenth Cause of Action, so Plaintiff still has a surviving cause of action as to intentional interference with inheritance.

[12] 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. 2015-001941 (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 (2003)).

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relationship.[13] 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.[14] Thus, the burden is on Defendant.[15] 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 demonstrates that the testator was suffering from chronic incapacity beginning no later than November 2011 and perhaps as far back as 2010.[16] Thus, in addition to the confidential relationship issue, the burden is on Defendant as to capacity.[17]

Determining what standard for the burden of proof the Court used in the instant order is problematic because of the language in the Order. At one point in the Order, the Court states: "'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.' *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003)." However, in the portion of the Order dealing with undue influence, the Court states that Plaintiff has the burden to establish her case "convincingly and unmistakably."

V. *Failing to recognize that Plaintiff alleged sufficient facts to withstand summary judgment.*

As to capacity, mental capacity is determined based on the circumstances and evidence

[13] See, e.g., *Chapman v. Citizens & Southern National Bank*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990).
[14] 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.
[15] 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 (1911); *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330 (1920).
[16] See V. *infra*
[17] 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.L. 1827); *Keely v. Moore*, 196 U.S. 38 (1904); *Haghart v. Cooley*, 278 Ala. 354, 178 So.2d 226 (1965).

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around the time of execution of donative documents.[18] 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 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.[19] In fact, the cases cited by Defendant in her memorandum do so.[20] 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.[21]

Plaintiff presented substantial medical and non-medical evidence, including statements from Paul Barringer and from Defendant Randy Light, calling into question his mental capacity to make a will and revocable trust on February 28, 2012.[22] Although the Court dismisses a concern about Paul Barringer's deficits in short-term memory, among other mental deficits, around the time of the execution of the will and trust, a deficit in short-term memory is of

[18] 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*, and *Byr*d, *supra*.

[19] 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.

[20] 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).

[21] 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 (1973).

[22] Plaintiff's Response in Opposition thoroughly and painstakingly demonstrates this evidence. Plaintiff summarized this evidence during the argument, given the limited time afforded by the Court. Rather than repeat this evidence, Plaintiff refers to her prior memoranda, incorporated herein.

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significant concern when determining whether a testator or settlor has sufficient mental capacity. An obvious requirement to making a will is the ability to know and understand what making a will is about. It is hornbook law that a testator must be capable of understanding "the disposition that he or she is making of [] property, and must also be capable of [] relating these elements one to another and forming an orderly desire regarding the disposition of the property." Restatement (Third) of Property: Wills and Other Donative Transfers section 8.1(b). Merely having the ability to know one's property and the objects of one's bounty is not sufficient[23] --- one must know that he or she is making a will, what it does (including its legal significance), and how it operates. Suffering from short-term memory loss clearly raises the issues of whether a testator has this capacity: if one cannot remember what he just read or what was just explained to him, he cannot have this present ability. The Court erred by summarily determining that Plaintiff produced no evidence of lack of mental capacity, which she clearly did. The Court effectively required her to prove her entire case at the summary judgment stage.

As to undue influence, it 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.[24] The evidence is necessarily circumstantial because it is not typically openly exercised.[25] 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.[26] (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

[23] Plaintiff produced sufficient evidence to call into question Paul Barringer's ability to know his property and/or the objects of his bounty. For example, Mrs. Barringer testified Mr. Barringer did not love his innocent young grandson, demonstrating an inability to know the natural objects of his bounty.

[24] See, e.g., *Cumbee*, *supra*.

that undue influence occurred, and the proponent has the ultimate burden of proof.[27])

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) 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.[28]

Again, the Court seemed to require Plaintiff to prove her entire case at the summary judgment level rather than applying the proper burden of proof for the summary judgment stage. Plaintiff presented substantial evidence of all of these enumerated factors;[29] even though all are not required to prove undue influence and certainly not required at the summary judgment level: (1) that Paul Barringer was suffering from mental deficiencies and thus susceptible to undue influence; (2) that Defendants had ample opportunity to practice undue influence on Paul Barringer because of proximity and confidential/fiduciary relationships[30]; (3) that Defendants had ample motive to influence Paul Barringer, including Defendant Randy Light's involvement around that time in bankruptcies involving tens of millions of dollars, with potential substantial personal liability; (4) that Defendants had the disposition/propensity to practice undue influence, as demonstrated by Defendants' situation involving Randy Light's company bankruptcies and

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[25] See e.g., *Macaulay, Swiger, Cumbee, Byrd*, *supra.*

[26] See, e.g., *Hairston, Swiger, Salerno, supra*.

[27] See, e.g., *Brooks v. Kay*, 339 S.C. 479, 530 S.E.2d 120 (2000); *Bullard v. Crawley*, 294 S.C. 276, 363 S.E.2d 897 (1987); *Hudson v. Leopold*, 288 S.C. 194, S.E.2d 137 (1986).

[28] 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.

[29] Rather the repeat this evidence, Plaintiff refers to her prior memoranda, incorporated herein.

[30] The Court states that Defendant Light had no role in the planning of the will and trust, yet recognizes that she drove him to the meeting (which of course, gives her the opportunity to influence him). This is a classic factor in many undue influence cases. A perpetrator does not overtly practice influence at meetings with counsel (although mere presence can create influence), but rather outside the meetings with counsel. The Court errs in assuming that no opportunity existed because of Defendant Light driving Mr. Barringer to such a meeting.

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Defendant's propensity to usurp fiduciary property for their own uses[31]; (5) that there was a change in the dispositive plan, giving Defendant Merrill Light unprecedented power as a co-trustee with the ability to act alone, which was especially powerful given Paul Barringer's undisputed weakened mental state; and (6) Defendants' long-term concerted effort to keep these actions secret.[32]

The Court appears to be particularly in error about the contents of the will and trust and the importance of making Defendant Merrill Light co-trustee with the sole power to act on behalf of the trust. According to the Court, the focus is merely whether the February 28, 2012 will and trust changed beneficiaries, rather than the critical change in fiduciary empowerment.[33]

As to mistake, if a testator or settlor/donor suffers from mistake, the part of the will resulting from mistake is invalid.[34] South Carolina Probate Code section 62-2-601(B) authorizes the reformation of a will that results from mistake; similarly, South Carolina Trust

[31] 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. 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. 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. 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.

[32] In addition to keeping secret her involvement in the estate plan, Defendant Light testified that Defendants never told Mr. Barringer about Randy Light's bankruptcies and business failures. This was an intentional omission and part of the undue influence and deception.

[33] The Court continues to demonstrate confusion about the operation of the will and trust, stating: "His wife remained the sole beneficiary with a power of appointment" and Mr. Barringer "left all of his assets to the surviving spouse." Order, pp. 5, 16. That is not an accurate description of the documents, which inter alia named Plaintiff as a beneficiary. The Court's misapprehension may rest on the misstatements to the Court by defense counsel, proclaiming that his wife got "everything," (Tr. pp. 72, 146), which is clearly not true.

[34] 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").

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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.[35] If a testator or settlor does not know that he or he is making a will, what it does, and how it operates, the will is also the result of a mistake and thus invalid. Plaintiff demonstrated substantial evidence of mistake. Once again, however, the Court seemed to require Plaintiff to prove her entire case at the summary judgment level rather than applying the proper burden of proof for the summary judgment stage.

VI. *Conclusion.*

Substantial evidence exists, through the pleadings, depositions, affidavits, and discovery on file, to show there are genuine issues of material fact such that Plaintiff must prevail, especially when all the evidence and all reasonable inferences must be viewed in the light most favorable to Plaintiff. Plaintiff respectfully prays that this Court reconsider and amend the Order entered on July 6, 2021, and deny Merrill Light's Motion for Summary Judgment as to February 28, 2012, Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, Dated December 4, 1998.

Respectfully submitted,

THE GILREATH LAW FIRM, P.A.

By: s/ JAMES R. GILREATH .
James R. Gilreath (SC Bar No. 2133)
William M. Hogan (SC Bar No. 65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com

[35] Rather than repeat this evidence, Plaintiff refers to her prior memoranda, incorporated herein.

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bhogan@gilreathlaw.com

and

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: (864) 242-3566
Fax: (864) 232-1558
tom.traxler@carterlawpa.com

and

S. Alan Medlin (SC Bar No. 3924)
1713 Phelps Street
Columbia, SC 29205
Telephone: (803) 777-7465
Fax: (803) 777-7465
amedlin@sc.rr.com
and

Charles B. Macloskie (SC Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
1506 Prince Street
Beaufort, SC 29901
Telephone: (843) 524-0909
Fax: (843) 521-1379
macloskielawfirm@hargray.com

ATTORNEYS FOR PLAINTIFF HAMPTON BARRINGER LUZAK

Dated: July 16, 2021
Greenville, South Carolina.

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Exhibit A

John Jolley deposition transcript excerpt

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF: ESTATE OF
PAUL BRANDON 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 PAUL BRANDON BARRINGER, II Revocable Trust Dated December 4, 1998, and MERRILL B LIGHT, as Trustee of the MERRILL BARRINGER LIGHT Revocable Trust,
Defendants.
(Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE

DATE: March 16, 2021

TIME: 10:08 a.m.

LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

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MS. KIRK: Object to the form.

THE WITNESS: I think it depends.

BY MR. TRAXLER:

Q. On what?

A. On to what extent they're suffering from dementia.

Q. All right. Let's talk about full-blown Alzheimer's. Is that person more susceptible to undue influence?

MS. KIRK: Object to the form.

THE WITNESS: I think to the extent that someone is fully incapacitated, then, yes, they're more susceptible to undue influence.

Q. All right. We're going to come back to this later. But with regard to this question, did you ever see a change yourself from 2011 until Paul Barringer's death of his cognitive abilities?

A. Of his cognitive abilities?

Q. Yes, sir.

MR. MOLSTER: Object to the form.

THE WITNESS: I did -- from 2011 through 2015?

BY MR. TRAXLER:

Q. Yes.

A. I did not.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: Estate of Paul Brandon Barringer, II Hampton B. Luzak, Plaintiff, vs. Merrill U. Barringer, Defendant.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Civil Action Nos.: 2019-CP-07-01253 2019-CP-07-01294 **PLAINTIFF'S NOTICE OF MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S SECOND AND THIRD CAUSES OF ACTION**

TO: DEFENDANT AND HER COUNSEL:

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Merrill U. Barringer ("Mrs. Barringer") made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property in a manner other than as set forth in the default provisions of the estate plan of Decedent Paul Barringer ("Mr. Barringer"). In particular, Mrs. Barringer has contended that she has a testamentary power of appointment to redirect the voting stock of Mr. Barringer in his legacy company Coastal Forest Resources Company ("CFRC") to Defendant Merrill Light. Plaintiff alleges that, if in fact Mr. Barringer intended to give Mrs. Barringer a testamentary power of appointment over such voting stock, which Plaintiff disputes, Mr. Barringer relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Mr.

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Barringer,[1] Mr. Barringer intended to treat his daughters --- Plaintiff and Defendant Merrill Light --- equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Mrs. Barringer and assertions made in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise any testamentary power of appointment given her and to impose a constructive trust for the benefit of Plaintiff in the subject property with respect to the intended equal treatment of Plaintiff.

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Mr. Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Mrs. Barringer's will(s) that did not exercise any power of appointment related to voting stock before Mr. Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Mr. Barringer resulting from those actions would be invalid. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke.

[1] Those that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

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Reserving all rights, Plaintiff seeks summary judgment as to her second and third causes of action. Plaintiff, hereby incorporating all prior pleadings, memoranda, and exhibits, will subsequently file accompanying memoranda.

Consequently, Plaintiff respectfully requests that this Court grant summary judgment in her favor on Plaintiff's second and third causes of action.

Respectfully submitted,

s/ JAMES R. GILREATH
James R. Gilreath (S.C. Bar No. 2133)
William M. Hogan (S.C. Bar No. 65272)
THE GILREATH LAW FIRM P.A.
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 2960
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Desa Ballard (SC Bar No. 498)
Harvey M. Watson III (SC Bar No.74053)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

and

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

ROA 004319

and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone:803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Facsimile: 843.521.1379
macloskielawfirm@hargray.com

Attorneys for Plaintiff Hampton Barringer Luzak

July 30, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Case Nos.:
2016-CP-07-01919
2019-CP-07-01253
2019-CP-07-01294

In re: 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--

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

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent.

NOTICE OF APPEAL

Appellant Hampton B. Luzak (hereafter "Appellant") appeals from the trial court's order dated June 7, 2021 granting the motion to intervene and protective relief (including the striking of

damages sought) by nonparty/intervenor/respondent Coastal Forest Resources Company (CFRC) and finally adjudicating other rights of Appellant, including the striking of Appellant's civil conspiracy cause of action, which order was received by counsel for Appellant on June 7, 2021. A copy of the order dated June 7, 2021 granting the motion to intervene and protective relief by CFRC is attached hereto as **Exhibit A**.[1] In addition, Appellant appeals from the order denying the Appellant's Motion for Reconsideration of this order dated July 13, 2021, received by counsel for Appellant on July 13, 2021. A copy of the order denying the Motion for Reconsideration of this order dated July 13, 2021 is attached hereto as **Exhibit B**.[2]

Appellant also appeals from the trial court's order dated July 6, 2021 which granted Respondent Merrill Light's Motion for Summary Judgment as to the February 28, 2012 Will of Paul B. Barringer and the First Amendment to the Paul B. Barringer II Revocable Trust set forth in the Seventh (alleging lack of capacity), Eighth (alleging undue influence), and Ninth (alleging mistake) Causes of Action asserted by Plaintiff, ruling that these documents were valid.[3] This order was received by counsel for Appellant on or about July 6, 2021. **Exhibit C.** The trial court denied Appellant's Motion for Reconsideration of this order on August 4, 2021, which order was received by counsel for Appellant on August 4, 2021. A copy of the order denying reconsideration of the order granting Merrill Light's Motion for Summary Judgment as to the February 28, 2012

[1] This order struck Appellant's cause of action for civil conspiracy and struck the first, second, fourth and sixth elements of damages set forth in the damage report of Appellant's damages expert. The damage elements struck by the trial judge comprise 93% of the damages sought by Appellant in her 11th, 12th, 13th, 16th, 17th,and 19th causes of action. With the striking of the civil conspiracy cause of action, the order is immediately appealable. A trial on bifurcated causes of action is scheduled for August 30, 2021. Appellant's inability to litigate the civil conspiracy cause of action negatively impacts Appellant's ability to prove the invalidity of critical documents at the scheduled trial. The order also released intervenor CRFC as a party to the action, ending its involvement in the case with finality and making the order immediately appealable.

[2] The order dated July 13, 2021 denied a total of five (5) motions, only one of which was specifically identified in the order.

[3] The dismissal by summary judgment with finality on the causes of action is immediately appealable. *See* footnote 1 regarding a pending trial date of remaining causes of action.

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Will of Paul B. Barringer and the First Amendment to the Paul B. Barringer Revocable Trust set forth in the seventh, eighth and ninth causes of action is attached hereto as **Exhibit D**.

Appellant also appeals from that order dated June 7, 2021 entitled "Order on Motions" which, *inter alia*, ordered that trial "shall proceed on the bifurcated claims only. A trial on the first phase as indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021." A copy of this order is attached hereto as **Exhibit E**.[4] Appellant also appeals from that order filed July 13, 2021, also entitled "Order on Motions" which denied four Motions to Reconsider, one of which is related to the June 7, 2021 "Order on Motions" and denied Appellant's Motion to Reconsider the June 7, 2021 "Order on Motions." The July 13, 2021 "Order on Motions" is already attached to this filing as **Exhibit B**.

Lastly, Appellant appeals from the trial court's order dated December 30, 2020 captioned "Order Granting Motion to Bifurcate," a copy of which was received by Counsel for Appellant on December 30, 2020 and the Form 4 order dated January 13, 2021 denying Appellant's Motion for Reconsideration, a copy of which was received on that same date. This appeal is already pending at the Court of Appeals as Appellate Case No. 2021-000159, and Appellant prays that the current appeal be consolidated with Appellate Case No. 2021-000159. Copies of the order already on appeal are of record by filing with this court dated February 12, 2021.

BALLARD & WATSON

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299

[4] This order ruled on thirteen (13) motions, including Plaintiff's motion for judgment on the pleadings as to a pending counterclaim, a motion to compel production of documents, and a motion for summary judgment on certain counterclaims. This order is included in this Notice of Appeal pursuant to S.C. Code Ann. Section 14-3-330(a), which permits review of any intermediate order or decree necessarily affecting the judgment which has since been issued. *See also* Rule 54.

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Facsimile 803.796.1066
desab@desaballard.com

James R. Gilreath (S.C. Bar #02133)
William M. Hogan (S.C. Bar #65272)
THE GILREATH LAW FIRM, PA
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Fax: 843.521.1379
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM ROGERS & TRAXLER, PA
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

Attorneys for Appellant Hampton B. Luzak

August 5, 2021

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OTHER COUNSEL OF RECORD:

Alice Paylor, Esquire
Bijan Ghom, Esquire
ROSEN, ROSEN & HAGOOD, LLC
P.O. Box 893
Charleston, South Carolina 29402
apaylor@rrhlawfirm.com
bghom@rosenhagood.com
Attorneys for Respondents, Merrill B. Light, 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

Charles B. Molster, III, Esquire
THE LAW OFFICES OF CHARLES B. MOLSTER, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
cmolster@molsterlaw.com
Attorney admitted *pro hac vice* for Respondents, Merrill B. Light, 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

J. Ashley Twombley, Esquire
Kevin Johnson, Esquire
Lee Anne Walters, Esquire
TWENGE + TWOMBLEY LAW FIRM
311 Carteret Street
Beaufort, South Carolina 29902
Twombley@twlawfirm.com
kjohnson@twlawfirm.com
lwalters@rosenhagood.com
Attorney for Respondent Merrill U. Barringer, individually and Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II

Harley D. Ruff, Esquire
Denise Collins, Esquire
RUFF & RUFF, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
hruff@ruffllc.com
dcollins@ruffllc.com
Attorneys for Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Barringer, II

Ryan G. Rich
One South at the Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 29280-0008
Telephone 704.378.4700
rrich@huntonAK.com
Attorney for Respondent Coastal Forest Resource Company

Edward J. Fuhr (admitted *pro hac vice)*
Johnathon E. Schronce (admitted *pro hac vice)*
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone 804.788.8201
Facsimile 804.788.8218
efuhr@huntonAK.com
jschronce@huntonAK.com
Attorneys for Respondent Coastal Forest Resource Company

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EXHIBIT A
ROA 004327

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ELECTRONICALLY FILED - 2021 Jun 07 8:58 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF: ESTATE OF PAUL B. 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.	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-07-1919 **ORDER GRANTING CFRC'S MOTION FOR INTERVENTION AND PROTECTIVE RELIEF**

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Aug 05 2021
SC Court of Appeals

This matter is before the Court on the Motion for Intervention and Protective Relief of Coastal Forest Resources Company ("CFRC").

After reviewing the Motion and accompanying materials, the Court finds that the Motion should be GRANTED.

It is therefore ORDERED AND ADJUDGED as follows:

1. CFRC is granted leave to intervene in this matter pursuant to Rule 24(a)(2), SCRCP for the limited purpose of precluding the litigation of derivative claims on behalf of CFRC in this action.

2. Mrs. Luzak's cause of action for civil conspiracy is hereby dismissed for lack of standing and subject matter jurisdiction. That cause of action constitutes a derivative claim under

ROA 004327

the law of Virginia, CFRC's state of incorporation. *Simmons v. Miller*, 261 Va. 561, 573, 544 S.E.2d 666, 674 (2001). Mrs. Luzak lacks standing to pursue those claims because she has not fulfilled the requirements for commencing a derivative action set forth in the Virginia Stock Corporation Act, *see* Va. Code § 13.1-672.1, and she has not complied with the exclusive forum provision in Article VIII, Section 7 of CFRC's bylaws. In addition, this Court lacks subject matter jurisdiction to consider claims arising out of the internal affairs of a foreign corporation. 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).

3. Mrs. Luzak's first, second, fourth, and sixth categories of damages, as identified in her damages report by Dr. Charles Alford, are hereby stricken, and Mrs. Luzak cannot recover damages based on those claims. Those four categories of alleged damages also constitute derivative claims under Virginia law. Mrs. Luzak lacks standing to pursue derivative claims, and the Court lacks the subject matter jurisdiction to adjudicate them. *See* Va. Code § 13.1-672.1; S.C. Code § 33-15-105(c); *Pertuis*, 423 S.C. at 649–50, 817 S.E.2d at 277–78.

4. Mrs. Luzak is not entitled to recover for her second category of damages arising from the 2013 sale of CFRC to J. Travis Bryant because of res judicata. The United States District Court for the Eastern District of Virginia granted summary judgment as to this exact claim. *See Luzak*, 2016 WL 3854118 at *3–8.

5. Pursuant to S.C. Code § 15-53-20, the Court hereby declares that Mrs. Luzak may not litigate any derivative claims on behalf of CFRC in this action.

SO ORDERED, this the _____ day of ___ 2021.

_____

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Intervene

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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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

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Aug 05 2021
SC Court of Appeals

ORDER ON MOTIONS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

These consolidated cases came before the Court for a hearing on July 2, 2021 related to Plaintiff's Motion to Recuse filed June 16, 2021, and four Motions to Reconsider, all filed by Plaintiff on June 17, 2021. After reviewing the transcript from the hearing held May 27, 2021, the parties' briefing, and carefully considering the motions, the Court finds that the motions are due to be, and are hereby, denied.

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IT IS SO ORDERED!

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



ELECTRONICALLY FILED - 2021 Aug 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Jul 06 9:43 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT IN THE MATTER OF ESTATE OF PAUL BRANDON 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 CIVIL ACTION NO: 2016-CP-07-01919 **ORDER GRANTING DEFENDANT MERRILL LIGHT SUMMARY JUDGMENT AS TO FEBRUARY 8, 2012, WILL AND FIRST AMENDMENT TO THE PAUL B. BARRINGER, II, REVOCABLE TRUST, DATED DECEMBER 4, 1998**

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SC Court of Appeals

This matter came before me for a hearing on May 27, 2021, on Defendant Merrill Light's Motion for Summary Judgment as to the validity of the Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998, executed by Paul B. Barringer, II, on February 28, 2012 (hereinafter "February 2012 Testamentary Documents"). I hereby grant Defendant's motion and, for the reasons set forth below, find as a matter of law that Mr. Barringer had testamentary capacity, was not subject to undue influence and was not mistaken when he executed the February 2012 Testamentary Documents, and that the February 2012 Testamentary Documents are valid.

PROCEDURAL OBJECTION TO MOTION

Plaintiff argues that this Court could not consider this motion because Judge Mullen denied a previously moved for summary judgment as to all causes of action and on the basis of judicial estoppel. The Court rejects these arguments.

First, the prior order denying summary judgment as to all causes of action does not preclude consideration of this motion. Defendant has the benefit of additional testimony and evidence in support of her new motion and a prior denial of summary judgment by a different judge does not preclude renewal of the motion later in the proceedings. *See Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) ("[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment."); *Smith v. Breedlove,* 377 S.C. 415, 662 S.E.2d 67 (2008) ("The fact that different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered.").

Second, Defendants are not estopped from bringing this motion. Plaintiff claims that Defendant Merrill Light is "estopped" from asserting that the February 2012 Testamentary Documents "are valid for purposes of this summary judgment motion" because Plaintiff "inconsistently assert[s] the validity of a prior will and trust in 1998 and subsequent amendments to the will and trust which were executed after February 2012." Defendants' 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."[1] Defendants' summary judgment motion seeks no relief as to

[1] The Court notes that two different complaints were filed in this consolidated action. One version (2016-CP-07-01919) asserted nineteen causes of action and was filed in probate court and then removed to circuit court. A second complaint (2016-CP-07-1961) asserting sixteen causes of action was filed directly in circuit court. The Court consolidated these actions under Case No. 2016-CP-07-1919 with consent of the parties in Orders dated May 19, 2017. No new consolidated complaint was filed and the Consolidation Orders do not designate which version of the complaint is the consolidated complaint. This motion addresses the Seventh, Eighth and Ninth causes of action as designated in the complaint filed originally in probate court and removed to circuit court (1919). That complaint also

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any other version of Mr. Barringer's wills or trusts. Although Plaintiff cites no authority in support of her estoppel argument, presumably she intends to assert judicial estoppel.

> For the doctrine of judicial estoppel to apply, the following elements must be satisfied: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013). Further, "[j]udicial estoppel generally applies only to inconsistent statements of fact." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997).

Plaintiff alleges in the Seventh, Eighth and Ninth Causes of Action in her Amended Complaint that the trust amendments in 2012 "and/or" 2015 are invalid, because Mr. Barringer lacked testamentary capacity (Seventh) and was under undue influence (Eighth), and due to a mistake (Ninth). Here, although the pending motion for partial summary judgment relates only to the February 2012 Testamentary Documents, the Court understands that Defendants contend that all of Mr. Barringer's trusts and amendments were executed when Mr. Barringer had testamentary capacity and was not under undue influence. Thus, Defendants deny these causes of action in their entirety and put Plaintiff to her proof as to her claims that the trust amendments in 2012 "and/or" 2015 are invalid. If Plaintiff is unable to meet her burden of proving that some or all of the trust amendments are void on the basis that Mr. Barringer lacked capacity or was under undue influence when he executed the documents, then the Court will determine which, if any, amendment of the trust is controlling. Merely arguing that the February 2012 Testamentary

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bears the consolidated case number. These same causes of action are designated as the Fourth, Fifth, and Sixth causes of action in the complaint filed directly in circuit court (1961). For clarity, this Order applies to the Fourth, Fifth and Sixth causes of action in 1961, as well as the Seventh, Eighth, and Ninth causes of action in the complaint filed in 1919.

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Documents are not void due to lack of capacity, undue influence, or mistake does not contradict taking the same position as to subsequent trust amendments.

Thus, Plaintiff establishes none of the elements required to establish judicial estoppel (nor did Plaintiff even attempt to do so in her opposition brief or at the hearing on this motion). Defendants' position that none of the trust amendments are void due to a lack of testamentary capacity, undue influence or mistake is perfectly consistent with filing a motion for summary judgment as to only the February 2012 Testamentary Documents. The Court perceives no inconsistency at all, much less a "total inconsistency," as to any factual issue. Further, Defendants have not "been successful" in maintaining any prior factually inconsistent position, and nothing in Defendants' summary judgment motion appears to be a part of an intentional effort to mislead the Court.

Accordingly, Defendants are not estopped from bringing this motion for partial summary judgment.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment is set forth in Rule 56(c), SCRCP, which states that "summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In cases with a higher burden of proof, such as will contests, "the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." *Hancock v. Mis-South Mgmt. Co., Inc.,* 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there

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must be more than a scintilla of evidence in order to defeat a motion for summary judgment." *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003*).*

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." S.C. Code Ann. § 62-3-407. As our Supreme Court has said:

> When the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. The contestants continue to bear the burden of proof throughout the will contest. In determining whether the contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants.

Calhoun v. Calhoun, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

FINDING OF FACTS

After a careful review of the briefs, exhibits and extensive oral argument, the Court finds that the following facts are in evidence, are undisputed and are relevant to Defendant's motion:

On December 4, 1998, Paul Barringer and his wife Merrill Barringer executed wills and revocable trusts, each of which, on the death of a spouse, left all the decedent's assets to the surviving spouse, who had a power of appointment to designate which of their direct descendants would receive the assets at his/her death. If the surviving spouse did not exercise the power of appointment in a subsequent will, the remaining assets at the surviving spouse's death were to be distributed equally to the Barringers' three children, Defendant Merrill Light, nonparty Victor Barringer and Plaintiff Hampton Luzak. These wills and trusts were prepared by a lawyer in Charlotte, North Carolina.

In 2011, the Barringers, residents of South Carolina, retained Hilton Head lawyer John Jolley to prepare updated wills and trusts. In addition to Mr. Jolley, Mr. Barringer brought in his

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estate planning insurance agent, Robert Slane, to assist in the estate planning. Mr. Barringer met with Mr. Jolley and Mr. Slane on multiple occasions and had numerous telephone conversations with them. Mr. and Mrs. Barringer executed their updated wills and trusts at the offices of Mr. Jolley on February 28, 2012.

As to whether Mr. Barringer had testamentary capacity to execute the Testamentary Documents and whether he was being unduly influenced at the time, Mr. Jolley testified as follows:

> Q. At any point in time prior to Mr. Barringer signing this February 28, 2012 will and trust, did you ever have any concern that Mr. Barringer was being unduly influenced or forced to sign these documents against his will?
>
> A. I had no reservations about Mr. Barringer.
>
> Q. Did you ever have any concern that he lacked the capacity to understand and sign the documents?
>
> A. I did not.[2]

In addition, Rebecca Bostick, Mr. Jolley's paralegal, testified that, during the entire period in which Mr. Jolley represented Mr. Barringer (2011-2015), Mr. Barringer "was fully competent and had no issues whatsoever from my standpoint . . . He certainly could make

[2] Plaintiffs argue that Mr. Jolley is subject to impeachment because he failed to notice a decline in Mr. Barringer's cognitive functioning in later months and years after February 28, 2012, and that Mr. Jolley's opinion "is not gospel." Plaintiff also complains that Mr. Jolley represented the Lights in their estate planning for many years and that he later became general counsel to the family timber business. Plaintiff has presented no proof to undermine the credibility of the observations made by Mr. Jolley on February 28, 2012, and indeed, Plaintiff's counsel stated at the hearing on this motion that Mr. Jolley had an ethical duty not to allow the documents to be executed if he did not believe that his client had capacity or was under undue influence. The Court finds Mr. Jolley's observations of Mr. Barringer at the execution of the Testamentary Documents and in the preceding months to be relevant, but not conclusive on the question of whether Mr. Barringer had testamentary capacity or was under undue influence when he executed the Testamentary Documents. Plaintiff has presented no evidence to indicate that either Mr. Jolley, or any other witness to the execution of the Testamentary Documents, was untruthful in their assessment of Mr. Barringer's condition on that day. Further, Plaintiff offered no evidence to prove the Mr. Jolley had an actual conflict of interest on the basis of his representation of both the Lights and the Barringers, and the Court notes no such conflict based on the record. Also, Plaintiff presented no evidence to prove that any of his observations relevant to this motion were influenced by any duties he owed to the Lights as their estate planning counsel. For the Court to conclude he was improperly influenced would require pure speculation. His later retention as general counsel to the family business also does not seem relevant to the signing of the February 2012 Testamentary Documents.]

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decisions." Mr. Slane was not present at the execution, but he testified that, based on his interactions with Mr. Barringer in close proximity to the execution, he had no concerns about Mr. Barringer's capacity or being unduly influenced.

Although counsel at the hearing stated that Merrill Light "admitted she was involved in her father's estate planning" and that she was present at the execution of the documents, Plaintiff has presented no testimony or documentary evidence from Mrs. Light admitting she was involved with the February 2012 Testamentary Documents or that she was present at the execution of the documents. To the contrary, Mr. Slane testified that, although Mrs. Light drove her father to one estate planning meeting on February 23, 2012, she "played no role" in the meeting. Further, Mrs. Light signed the amended trust document as the co-trustee on March 2, 2012, indicating she was not in attendance when her parents signed the amended will and trust on February 28.

In 2011, Paul Barringer suffered from prostate cancer and had radioactive seeds implanted in his prostate. That procedure caused multiple issues for Mr. Barringer, including frequent urinary tract infections and increased frequency of urination. He visited with his treating physician, Dr. Paul Long, on a frequent basis. Dr. Long's testimony and medical records from 2011 through February 28, 2012, show:

a. Mr. Barringer first complained of cognitive issues on November 23, 2011.

b. Dr. Long referred Mr. Barringer to the Mind Center which gave Mr. Barringer a test that was a "predictor" of future significant dementia, and it gave a 60% chance that the patient might have significant dementia in the future. The test said nothing about his current abilities.

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c. Dr. Long also referred Mr. Barringer to Dr. William Garrett, a neurologist. In a December 27, 2011, letter to Dr. Long, Dr. Garrett stated that Mr. Barringer had some difficulty with abstract reasoning but he did not believe that Mr. Barringer had Alzheimer's Disease or significant dementia. Dr. Garrett wrote in a letter to Dr. Long that Mr. Barringer had "excellently preserved short-term memory and visual spatial difficulty, which would make the diagnosis of a primary degenerative dementia unlikely."

d. On January 3, 2012, Mr. Barringer self-complained to Dr. Long of "short term memory loss." Dr. Long gave Mr. Barringer the Mini Mental Status Exam ("Mini Mental") on that date, and Mr. Barringer had a perfect score, 30 out of 30. Dr. Long testified that he was not worried about Mr. Barringer's cognition at that time.

e. Mr. Barringer visited Dr. Long again on January 16, 2012. Dr. Long testified that on this visit, Mr. Barringer's cognition was improved and that Dr. Long agreed with Dr. Garrett's assessment. Dr. Long did not believe Mr. Barringer was suffering from Alzheimer's disease as of this date.

f. On February 16 and 27, 2012, Mr. Barringer visited Dr. Long complaining about urinary issues. Dr. Long noted on the February 27 visit, just one day before Mr. Barringer signed the February 2012 Testamentary Documents, "he has dementia but it is mild according to the test we give." The record of that visit makes no other reference to Mr. Barringer experiencing any cognitive impairment.

Plaintiff's evidence included these and other medical records, as well as various medical records relating to Mr. Barringer's condition in the months and years after the relevant date, February 28, 2012.

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Plaintiff also submitted evidence from lay witnesses reflecting observations about Mr. Barringer's mental state in the time leading up to execution of the February 2012 Testamentary Documents. The record contains emails sent by Mrs. Light's late husband Randy Light and by Tom Evans, a CFRC employee, in February of 2011, September of 2011, and January of 2012, in which the author expressed concern that Mr. Barringer was "confused and not himself," was "experiencing different health issues that affect his judgment regarding everyday decisions personally and business wise," and was exhibiting "irrational behavior." More specifically, Plaintiff referenced an email from Mr. Light on January 3, 2012, in which Mr. Light stated Mrs. Light "is concerned that PBB is starting to show more Irrational [sic] behavior on certain family issues which is disturbing to all siblings. A close friend of hers had a similar situation with her older parents and before power of attorney could be transferred they were declared unsound and the State took took [sic] control which was devastating." Notably, as noted above, Mr. Barringer achieved a perfect score on a Mini Mental examination administered by Dr. Long on that same day.

Plaintiff stated in her affidavit that Mr. Barringer "began having speech and processing problems, and he became unusually quiet, beginning in 2011." She testified that at Christmas in 2011, Mr. Barringer "was having trouble with his memory and he was having trouble speaking." She also testified that he exhibited "erratic behavior."

Plaintiffs also submitted an affidavit of Mr. Luzak, which largely overlaps with her own sworn statement. In pertinent part, as summarized in Plaintiff's brief, Mr. Luzak testified in his affidavit that:

> starting in early 2011, Mr. Barringer needed help 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.

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Mr. Luzak further stated in his affidavit that Mr. Barringer was "completely confused and incoherent and had tremendous difficulty speaking" at a board of directors meeting in February 2018. Mr. Luzak also repeated nearly verbatim testimony in Mrs. Luzak's affidavit that following the February 2012 board of directors meeting, Mr. Barringer "made completely unfounded accusations that [Mr. Luzak] was trying in effect to steal the company." Neither of the Luzak affidavits, however, places any statement to this effect in February 2012 or otherwise relates the timing of that statement to the execution of the Testamentary Documents on February 28, 2012. Further, Mr. Luzak testified in his affidavit that as of May 2012, Mr. Barringer's "relationship with Hampton Luzak and with me was on good terms as it had always been." Neither Mr. nor Mrs. Luzak provides a specific example of Mr. Barringer falsely believing Mr. Luzak was stealing from him before spring 2012 at the earliest.

Neither Plaintiff nor her husband were present when Mr. Barringer executed his estate planning documents on February 28, 2012. Plaintiff testified that she is unaware of any evidence of lack of testamentary capacity at the time of the execution or around that time. At her deposition, Plaintiff testified that she "did not know" of any wrongdoing by any Defendants prior to February of 2012.

The remaining evidence referenced by Plaintiff in her argument was months to years after the execution on February 28, 2012, and not relevant to the issues presently before the Court.

I. TESTAMENTARY CAPACITY (SEVENTH CAUSE OF ACTION)

"The 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).

"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." *Hairston v. McMillan,* 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010). "The 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 . . . . Further, the capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." *In re Estate of Weeks,* 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997).

Plaintiff has failed to present evidence sufficient to create a genuine issue of material fact on any of the three elements of testamentary capacity as to the February 2012 Testamentary Documents. Specifically, none of the documents or testimony before the Court creates a dispute over whether Mr. Barringer had the capacity to understand his estate, the objects of his affection or to whom he wished to leave his property at the time that he executed the Testamentary Documents on February 28, 2012. In fact, Plaintiff presented no witness to testify that Mr. Barringer did not have the capacity to meet these elements on that date. Not even Plaintiff or her husband's affidavits state that Mr. Barringer's cognitive condition was such that he did not know (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property on February 28, 2012.

The Court has carefully considered the circumstantial evidence put forth by Plaintiff, but at most, Plaintiff has painted the picture of an elderly person who in the several months preceding execution of the Testamentary Documents sought medical attention as a result of having some memory problems and confusion. The treating physicians have testified that in this time frame Mr. Barringer did not have "any significant dementia," he had not been diagnosed

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with Alzheimer's Disease, and in his most recent Mini Mental examination, he scored a perfect 30.[3] On the day before he executed the Testamentary Documents, Mr. Barringer visited his doctor who noted only "mild" dementia. This is simply not sufficient evidence that Mr. Barringer was incapable of understanding his assets, his beneficiaries or to whom he wished to leave his estate. Accordingly, this evidence is insufficient to create a genuine issue of material fact as to the claim the Mr. Barringer lacked testamentary capacity at the time of the execution of the February 2012 Testamentary Documents.

Instead of addressing the three requirements to show the absence of testamentary capacity, Plaintiff instead argues that Mr. Barringer was "chronically incapacitated" beginning in 2011 in general. Plaintiff's reliance on *Gaddy v. Douglass*, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004), is misplaced. That case involved contractual capacity and not testamentary capacity of an elderly woman whose treating physician said she had the mind of a five to six year old. Importantly, in *Gaddy*, the Court pointed out in Footnote 12 that:

> We in no way suggest that all people suffering some degree of dementia, from Alzheimer's disease or otherwise, invariably lack contractual capacity. We hold that the subject of contractual capacity of one suffering dementia should be decided in a fact-driven, individualized manner. There may well be situations where an individual at the onset of Alzheimer's disease, or in the early stages of dementia, may retain sufficient capacity to contract. This, however, is not such a case, for Ms. M's capacity to contract had long since passed when her previously absent family members entered her life and attempted to gain control of her assets.

Id. at 346, 597 S.E.2d at 21 n.12. The undisputed evidence in this record, even when viewed in the light most favorable to Plaintiff, shows that in the time leading up to and including February 28, 2012, Mr. Barringer experienced some intermittent short-term memory issues, some

[3] Plaintiff argues that Mr. Barringer achieved very low scores on the Mini Mental exam at times, including a four, a twenty-four, and even a zero. But all of these scores were months or even years after the date in question and only tend to prove that Mr. Barringer did not have chronic incapacity in February 2012, which was shortly after he scored a perfect 30.

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confusion, some difficulty formulating words, and unspecified "irrational" behavior. Plaintiff's counsel argued at the hearing that "[i]f you can't remember what you do short-term, you can't know what you're doing when you are signing a will. You don't have the capacity to understand what the will does." These arguments and opinions of counsel, however, are not admissible evidence and no fact or expert witness testimony to this effect has been proffered. None of Mr. Barringer's treating physicians or others testified that his short-term memory was as advanced at this point as Plaintiff's counsel suggests. The record simply does not support a finding that as of February 28, 2012, Mr. Barringer was experiencing anything like the "chronic incapacity" at issue in the *Gaddy* decision. Further, the statements relied on by Plaintiff are not connected to Mr. Barringer's condition on the date of execution of the documents. No witness or document is in the record to indicate that Mr. Barringer was not aware of what he was signing on February 28, 2012, or that his short-term memory issues prevented him from understanding the three key elements required for capacity.

Plaintiff has failed to submit any evidence in opposition to this motion for summary judgment to indicate that Mr. Barringer did not know who his children were, that he did not know what his assets were, or that he did not know to whom he wanted to leave his assets. Accordingly, Plaintiff has failed to create a genuine issue of material fact as to whether Mr. Barringer lacked Testamentary Capacity on February 28, 2012. As a result, Defendants are entitled to summary judgment as a matter of law as to the Seventh Cause of Action as it applies to the February 2012 Testamentary Documents.

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II. UNDUE INFLUENCE (EIGHTH CAUSE OF ACTION)

Plaintiff admits that she has no direct evidence of undue influence of Paul Barringer at the time of his execution of the Testamentary Documents. Instead, she argues that she has sufficient circumstantial evidence to prove undue influence.

In *Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d 788 (1983), the Supreme Court discussed the sufficiency of evidence needed to submit an undue influence claim to a jury and held that "the circumstances must point unmistakenly and convincingly to the fact that the mind of the testator was subject to that of some other person so the will is that of the latter and not of the former." *Id.* at 427, 308 S.E.2d at 789. [4] Further, under South Carolina law:

> Undue influence, the influence necessary to void a will, "must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act . . .."

Calhoun v. Calhoun, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982) (quoting *Floyd v. Floyd*, 3 Strob. 44, 34 S.C.L. 23 (1848)). "A mere showing of opportunity and even of a motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized. It is not unlawful for a person, by honest intercessions and modest persuasions, to procure a will to be made in his behalf." *Id.* at 531, 290 S.E.2d at 418 (citations omitted).

Plaintiff argues the burden of proof on undue influence is on the proponents of the February 2012 Testamentary Documents because Mrs. Light owed fiduciary duties to her father.

[4] In that case, the evidence showed that the alleged undue influencer son had threatened the testator father with placement in a nursing home if the testator father did not do what the influencer son wanted him to do, that the undue influencer restricted the testator from talking to the influencer's brothers and sisters, and that the undue influencer was "calming down" the testator by giving him Valium. In addition, the influencer told his sister, when she volunteered to stay with the testator, that the influencer son had already gotten the testator to change his will and he could hire nurses to look out for the testator father, which was evidence that the alleged undue influencer son had made himself the chief beneficiary of the will executed by the testator.

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Plaintiff maintains Mrs. Light owed her father fiduciary duties because she was Mr. Barringer's daughter in whom he reposed trust and confidence, because she was on the board of directors of the family corporation in which Mr. Barringer was a shareholder, and because they were partners in a partnership. The Court makes no determination based upon the current record of whether Mrs. Light owed her father a fiduciary duty on February 28, 2012, but will nonetheless apply the burden-shifting that would be required if Mrs. Light was a fiduciary.

When the proponent of a will owes fiduciary duties to the testator, the proponent must offer evidence to rebut a presumption of undue influence, but the proponent of the will is not required to affirmatively disprove undue influence, and the contestant of the will retains the ultimate burden of proof. *Swiger by & through DeHaven v. Smith*, 426 S.C. 408, 418, 827 S.E.2d 200, 205 (Ct. App. 2019). As outlined above, the medical evidence from Dr. Long and Dr. Garrett indicates that although Mr. Barringer had some signs of dementia at this time, he scored a perfect score on the Mini Mental exam and did not demonstrate the type of vulnerability to undue influence that might exist in other cases, such as *Gaddy*. Mr. Barringer was represented by Mr. Jolley, who drafted the February 2012 Testamentary Documents in consultation with Mr. Barringer and his wife over several months. Mr. Slane, an insurance adviser, was also very involved in the preparation of the February 2012 Testamentary Documents. Mr. Jolley, Mr. Slane and a paralegal all testified that they had no concerns about undue influence being exercised over Mr. Barringer in the weeks leading up to, or on the day of, the execution of the February 2012 Testamentary Documents. Mrs. Light was not present when the February 2012 Testamentary Documents were executed and, according to Mr. Slane, she played no role in a meeting between Mr. Barringer, Mr. Jolley and Mr. Slane, although she may have driven her father to that meeting. Further, no record evidence indicates that Mrs. Light used any authority as

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a fiduciary to facilitate or influence the preparation or execution of the Testamentary Documents. This evidence is even more compelling than the proof the court in *Swiger* found "sufficient . . . to rebut any presumption of undue influence created by the existence of these fiduciary relationships." *Id*. at 421, 827 S.E.2d at 207.

Accordingly, Plaintiff has the burden to establish convincingly and unmistakably that Mr. Barringer's mind was overtaken by his daughter Mrs. Light when he executed the Testamentary Documents on February 28, 2012. Further, "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*, 426 S.C. at 417, 827 S.E.2d at 204 (citations omitted). In *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003), the South Carolina Supreme Court affirmed the granting of summary judgment finding insufficient evidence to establish a genuine issue of material fact supporting a claim for undue influence. That court held that "when opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is metaphysical doubt as to the material fact but must come forward with 'specific facts showing that there is a genuine issue for trial . . . . A judgment for Appellants was not reasonably possible under the facts presented when measured against the level of unmistakable and convincing proof." *Id.* at 220, 578 S.E.2d at 335.

As in the *Russell* and *Swiger* cases, Plaintiff fails to meet her summary judgment burden. Here, at the outset, it is undisputed that the February 2012 Testamentary Documents did not change the beneficiary of Mr. Barringer's estate. His wife remained the sole beneficiary with a power of appointment and Mrs. Light, the alleged perpetrator of undue influence, gained no additional inheritance from these amendments. Although Mr. Barringer, in his previous will and trust, had named his son Victor as his first successor trustee, he changed that designation in the

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February 2012 Testamentary Documents and named Mrs. Light as a co-trustee. It is undisputed that this change was on the advice of Mr. Slane and Mr. Jolley. Plaintiff has provided the Court with no evidence that Mrs. Light unduly influenced -- or even attempted to influence -- her father in any way to name her as co-trustee, or that she even wanted to be in that position. Rather, testimony in the record from Mr. Jolley and Mr. Slane indicates that Mr. Barringer chose Mrs. Light, his oldest daughter, because she lived near him and was available if he needed anything. Last, although Plaintiff argues that Mrs. Light's now deceased husband Randy Light "was desperate for money" as a result of his own failed business ventures, Plaintiff fails to raise an inference beyond mere speculation that Mr. Light's financial difficulties had any effect on Mrs. Light's conduct, or that by becoming co-trustee she could have done, or did do, anything to assist her husband in his financial affairs. In short, the record is devoid of evidence indicating Mrs. Light had a motive or intention to influence her father into executing the February 2012 Testamentary Documents at all, much less through improper means.

Due to her residing in Hilton Head, Mrs. Light appears to have had the opportunity to have more access to her father at this time, but " 'a mere showing of opportunity or motive does not create an issue of fact regarding undue influence.' " *Swiger* , 426 S.C. at 417, 827 S.E.2d at 204 (Quoting *In re Estate of Cumbee*, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999)). Here, Plaintiff has presented no facts showing threats, coercion, isolation, or even general influence bearing upon the February 2012 Testamentary Documents. Rather, Plaintiff herself testified under oath that she had no knowledge of any wrong that occurred prior to February of 2012.

Instead of addressing facts showing that some act of undue influence was brought to bear upon Mr. Barringer in the weeks leading up to, and at the actual time that he executed the

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February 2012 Testamentary Documents, Plaintiff points to a number of actions which occurred after February 28, 2012, and which Plaintiff submits showed undue influence by Mrs. Light. The Court need not recount the documents and testimony relating to the alleged deterioration of Mr. Barringer's cognitive functioning after February 28, 2012, as none of that evidence is relevant to his condition when he executed the February 2012 Testamentary Document. Indeed, Plaintiff's excessive reliance on evidence from later time periods only underscores the absence of proof needed to meet her burden as to the February 2012 Testamentary Documents. Of course, the Court will continue to carefully consider the arguments and proof on both sides of this case, and nothing in this Order will preclude Plaintiff from having every opportunity to meet her burden of proving Mr. Barringer lacked testamentary capacity and/or that he was unduly influenced when he executed other documents after February 28, 2012.

Plaintiff, however, has failed to create a genuine issue of material fact as to the motion before the Court, and Defendant Merrill Light is entitled to summary judgment as to the Eighth Cause of Action as to the claim for undue influence about the February 28, 2012, Testamentary Documents.

III. MISTAKE (NINTH CAUSE OF ACTION)

Plaintiff's Ninth Cause of Action alleges that certain testamentary documents, including those executed by Mr. Barringer on February 28, 2012, are invalid due to mistake. Although Plaintiff stated that she would explain what constituted the alleged mistake in her legal memorandum, she never did. The only "mistake" that she argued was that Mr. Barringer did not intend to sign the February 2012 Testamentary Documents. Plaintiff did not present any evidence in support of this contention and did not even explain what Mr. Barringer supposedly intended to otherwise do in these documents. Plaintiff's only complaint is that Defendant Merrill

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Light was named as co-trustee. There is no evidence that Mr. Barringer did not want to name Mrs. Light as his co-trustee. In fact, he named Plaintiff as Mrs. Light's successor co-trustee.

Hanahan v. Simpson, 326 S.C. 140, 148, 485 S.E.2d 903, 907 (1997), discussed "mistake" under South Carolina law:

> It is the general rule that the validity of a will is not affected by a mistake of either law or fact unless a mistake goes to the identity of the instrument or to fundamental error, as where, for example, two wills are drafted for different persons and one party signs that intended for another . . .. Where a testator is mistaken as to the contents of his will, the will may be invalidated in part . . .. The contestant has the burden of proof as to any alleged invalidity once due execution of the challenged will is proved.

Plaintiff has failed to create a genuine issue of material fact, and Defendant Merrill Light is entitled to summary judgment as to the Ninth Cause of Action as to Plaintiff's claim for invalidity due to mistake as to the February 28, 2012 Testamentary Documents.

IT IS, THEREFORE, ORDERED that Defendant Merrill Light's Motion for Summary Judgment as to the validity of the February 28, 2012 Will and First Amendment to the Revocable Trust of Paul Barringer, II, is hereby granted.

AND IT IS SO ORDERED.

The Honorable Bentley Price
Presiding Judge

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Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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Aug 05 2021
SC Court of Appeals

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 ET AL.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-1919

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER AND AMEND ORDER GRANTING DEFENDANT MERRILL LIGHT SUMMARY JUDGMENT AS TO FEBRUARY 8 [sic], 2012, WILL AND FIRST AMENDMENT TO THE PAUL B. BARRINGER, II, REVOCABLE TRUST, DATED DECEMBER 4, 1998

The Plaintiff Hampton Luzak filed a motion asking this Court to reconsider its Order entered on July 6, 2021. Specifically, Plaintiff asks the Court to reconsider: (1) whether Defendant sought summary judgment on issues previously decided by Judge Mullen (2) whether the Court should have found Defendants were estopped from asserting the validity of the February 28, 2012 wills and trust (3) whether the February 28, 2012 will and trust were valid (4) whether the Court used the correct standard as to the burden of proof for summary judgment and (5) if the Plaintiff alleged sufficient facts to withstand summary judgment.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 31, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff's motion, the Court hereby DENIES Plaintiff Hampton Luzak's Motion for Reconsideration.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

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ELECTRONICALLY FILED - 2021 Aug 04 2:54 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Aug 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

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ELECTRONICALLY FILED - 2021 Aug 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

Beaufort Common Pleas

Case Caption: Hampton B Luzak VS Merrill B Light , defendant, et al

Case Number: 2016CP0701919

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



ELECTRONICALLY FILED - 2021 Aug 06 9:25 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919
ELECTRONICALLY FILED - 2021 Jun 07 9:28 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701919

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

RECEIVED
Aug 05 2021
SC Court of Appeals

ORDER ON MOTIONS

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

This matter came before the Court for a hearing on May 27, 2021, upon various motions filed by plaintiff Hampton Luzak and defendants Merrill Light and Merrill Barringer. In addition, non-parties Coastal Forest Resources Company (CFRC) and John Jolley also had motions pending. Present before for the Court for Plaintiff were James Gilreath, William Hogan, Charles Macloskie, Alan Medlin, and Thomas Traxler. Present for Merrill Barringer were

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Ashley Twombley and Lee Anne Walters. Present for Defendant Merrill Light were Alice Paylor, Bijan Ghom, and Charles B. Molster, III. Present for CFRC were Ryan G. Rich, Edward Fuhr, and Jonathan Schronce. Present for John Jolley was Ariail Kirk.

After reviewing the briefing and hearing from counsel related to all of the pending motions, the Court enters the following rulings:

1. Merrill Barringer's Motion to Seal John Jolley's deposition transcript filed May 18, 2021 is granted. Plaintiff's pending motions to seal are also granted.
2. John Jolley's Motion to Terminate is denied. The deposition of John Jolley shall continue on a day within the next 6 weeks and shall begin at 9 a.m. and end at 5 p.m. with a sufficient lunch break. Plaintiff shall conclude its cross examination and provide Defendants a reasonable amount of time for re-direct. There will be no additional depositions of Mr. Jolley unless it is further ordered by the Court.
3. As to Merrill Light's Motion for Protective Order, CFRC's Motion for Protective Order and Merrill Barringer's Motion for Protective Order regarding the deposition of John Jolley, filed May 3, 2021, the Court declines to make any specific ruling on whether responding to a particular question would require Mr. Jolley to disclose confidential or otherwise privileged information. However, the undersigned, if informed by counsel of the date of the upcoming deposition, will try to make himself available by telephone to resolve issues related to privilege.
4. Merrill Light's Motion to Amend her Answer is granted.
5. Merrill Barringer's Motion for Protective Order as to Plaintiff's Fifth Set of Interrogatories filed October 23, 2020 is granted.
6. Merrill Barringer's Motion to Compel Docs from Truist Bank and Wells Fargo filed October 28, 2020 is granted. Plaintiff shall produce all documents to the defendants

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within 60 days of the hearing, pursuant to the confidentiality order allowing review by attorneys and experts only.

7. Plaintiff's Motion for Sanctions against Merrill Barringer filed April 27, 2021 was withdrawn.

8. Plaintiff's Amended Motion to Compel documents in response to the subpoena to McNair filed on December 31, 2020 is denied.

9. Plaintiff's Motion for Judgment on the Pleadings and Motion to Strike Merrill Barringer's Counterclaims filed January 26, 2021 is denied.

10. Plaintiff's Motion for Summary Judgment on Merrill Barringer's Counterclaims filed January 26, 2021 is denied.

11. As to Merrill Barringer's Motion for Protective Order regarding Mr. Scully's deposition, Plaintiff has 30 days to re-notice the deposition of Mr. Scully. If Plaintiff fails to re-notice the deposition within 30 days, Merrill Barringer's Motion is granted. This order is entered without prejudice to the rights of Mr. Scully, who is not a party to these proceedings.

12. Merrill Barringer's Motion to Compel Luzak's Complete Answers to Supplemental Interrogatories filed February 3, 2020 is granted. Plaintiff shall withdraw her objections to interrogatories number 2 and 3 and respond by identifying any specific instances when Mrs. Barringer remained silent including who was present and what was discussed. In addition, Plaintiff shall provide a list of the material terms of the contract/promise she alleges between Mr. and Mr. Barringer.

13. Regarding Merrill Barringer's Motion to Set Trial Date filed May 5, 2021, the Court rules that trial shall proceed on the bifurcated claims only. A trial on the first phase as

indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021.

14. Regarding Merrill Light's Motion for Summary Judgment and CFRC's Motion to Intervene and Dismiss, the Court will address those motions in separate orders.

IT IS SO ORDERED!

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Beaufort Common Pleas

Case Caption: Hampton Barringer Luzak VS Merrill U Barringer

Case Number: 2019CP0701294

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action Nos.: 2019-CP-07-01253
2019-CP-07-01294

NOTICE OF ELECTRONIC FILING

Plaintiff hereby submits for electronic the Affidavit of Hampton Luzak and the Affidavit of Kevin M. Luzak attached hereto as Exhibits 1 and 2, respectively. These affidavits are being submitted to the Court in connection with and in support of Plaintiff's [memorandum in] Opposition to Defendant Merrill U. Barringer's Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action and Plaintiff's Memorandum Supporting Plaintiff's Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action to be filed in the above-cation action.

THE GILREATH LAW FIRM, P.A.

By: s/ WILLIAM M. HOGAN .
William M. Hogan (S.C. Bar No. 65272)
James R. Gilreath (S.C. Bar No. 02133)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
bhogan@gilreathlaw.com
jim@gilreathlaw.com

and

Desa Ballard (SC Bar No. 498)

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Harvey M. Watson III (SC Bar No.74053)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

and

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone:803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Facsimile: 843.521.1379
macloskielawfirm@hargray.com

Attorneys for Plaintiff Hampton Barringer Luzak

August 6, 2021
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2019-CP-07-01253
2019-CP-07-01294

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. Being duly sworn, I hereby state the following:

1. These statements are based on my own personal knowledge. I hereby incorporate my affidavit, which is also based on my own personal knowledge, in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, my father Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.

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4. I was present at these meetings, as was my husband Kevin Luzak. My mother Merrill Barringer was usually present during these discussions. Often, my sister Merrill Light and Randy Light were also present. My brother Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved my father discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat me and my sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, my mother remained silent as to any intent she may have had to exercise any power of appointment or to change my father's intent to treat me and my sister equally as to voting control of his forestry company or, for that matter, to change my father's intent about anything. My mother never spoke up to anyone, including my father, about my father's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all my mother ever mentioned about estate planning, on a few occasions, was 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.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change my father's estate plan.

8. To my knowledge, my mother never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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9. 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. It was clear to me that my father was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after my brother spun off Coastal Lumber, equally between his two daughters. Not one time did my mother object to the plan or suggest she had the power to change it or would change it.

10. During their lengthy marriage, my father did not give any stock in his company to my mother nor did he give her any position in the company. My father was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.

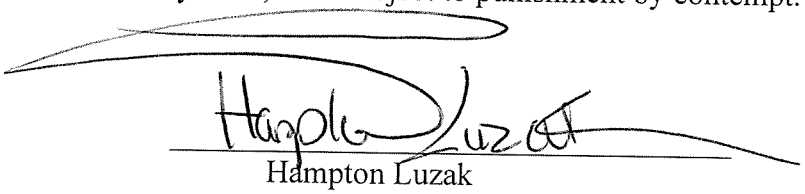
11. In all the discussions I had with my father, either alone or with other family members, not one time did he ever mention that he had given my mother a power of appointment. Not one time did my mother mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor to us or shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

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.



Hampton Luzak

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2019-CP-07-01253
2019-CP-07-01294

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

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. Being duly sworn, I hereby state the following:

1. I hereby incorporate my affidavit in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.
4. I was present at these meetings, as was my wife Hampton Luzak. Merrill Barringer was usually present during these discussions. Often, Hampton's sister Merrill Light and

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Randy Light were also present. Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved Paul Barringer discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat Hampton and her sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, Merrill Barringer remained silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's intent to treat Hampton and her sister equally as to voting control of his forestry company or, for that matter, to change Paul Barringer's intent about anything. Merrill Barringer never spoke up to anyone, including Paul Barringer, about Paul Barringer's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all Merrill Barringer ever mentioned about estate planning, on a few occasions, was 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.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's estate plan.

8. To my knowledge, Merrill Barringer never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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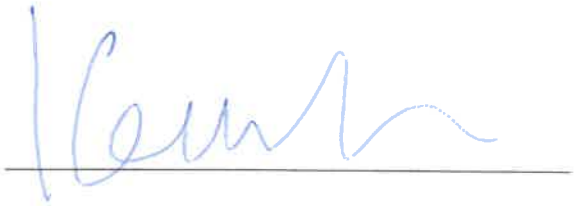
9. These discussions were often accompanied by a comment by Paul Barringer about the fact that the children would have to work together to make decisions about the company after he was gone. He repeated this comment to me on numerous occasions during conversations that we had away from these family meetings. It was clear to me that Paul Barringer was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after Victor Barringer spun off Coastal Lumber, equally between his two daughters. Not one time did Merrill Barringer object to the plan or suggest she had the power to change it or would change it.
10. During their lengthy marriage, Paul Barringer did not give any stock in his company to Merrill Barringer nor did he give her any position in the company. Paul Barringer was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.
11. In all the discussions I had with Paul Barringer, either alone or with other family members, not one time did he ever mention that he had given Merrill Barringer a power of appointment. Not one time did Merrill Barringer mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

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.



Kevin Luzak

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

v.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. Nos.: 2019-CP-07-01253
2019-CP-07-01294

PLAINTIFFS OPPOSITION TO DEFENDANT MERRILL U. BARRINGER'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S SECOND AND THIRD CAUSES OF ACTION

TO: DEFENDANT AND HER COUNSEL:

Background

Defendant Merrill U. Barringer's Motion for Summary Judgment as to Plaintiff's Second and Third Cause of Action was denied after a hearing on October 15, 2020 by order of the Honorable Carmen Mullen filed on November 4, 2020. Defendant's present Motions for Summary Judgment as to Plaintiff's Second and Third Causes of Action are impermissible attempts to obtain a second bite of the summary judgment apple. Defendant has no new evidence[1] since Judge Mullen's Order filed on November 4, 2020 and does not even plead in her

[1] Defendant does not assert that there is new evidence but only that Defendant has conducted additional discovery, and then cites the affidavits of attorney McBryde, who drafted the 1998 documents, and the deposition testimony of attorney Jolley, who drafted the February 28, 2012 will and trust that, according to the order recently obtained by Defendants, is valid and thus supersedes the 1998 will and trust (again showing the flaws in Defendant's argument that only the 1998 documents need to be examined for the second and third causes of action). McBryde's evidence is not new; these same affidavits were filed in the prior summary judgment motions denied by Judge Mullen. Jolley's testimony is not new: he represented Defendants and Paul Barringer and Defendants have had access to him long before his deposition. Both attorneys are subject to impeachment. In any event, simply because two attorneys testify that they were unaware of any contract is hardly dispositive of the issue.

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motions that she has new evidence. Defendant's motions should be summarily dismissed under Rules 43(l)[2] and 59(e), SCRCP.

Nevertheless, reserving all rights, Plaintiff will address Defendant's motion, but in the interests of economy and efficiency, hereby incorporates all of Plaintiff's responses, memoranda, arguments, affidavits, and exhibits from the prior summary judgment motion denied by Judge Mullen. This memorandum will address the relevant issues, but reference is made to the filings in the prior summary judgment motion, including Exhibit references.

Defendant makes separate motions for summary judgment for each of the second and third causes of action, as opposed to Defendant's previous summary judgment motion, which combined both causes of action. Plaintiff intends for this memorandum to address both of Defendant's present separate motions for summary judgment on the second and third causes of action.

In Plaintiff's second cause of action, for constructive trust and injunction, Plaintiff alleges that Defendant Merrill U. Barringer ("Mrs. Barringer") made an express or implied promise not to exercise any testamentary power of appointment she may have in a manner that would redirect the subject property other than as set forth in the default provisions of the estate plan of Decedent Paul Barringer ("Mr. Barringer"). In particular, Mrs. Barringer has contended that she has a testamentary power of appointment to redirect the voting stock of Mr. Barringer in his legacy company Coastal Forest Resources Company ("CFRC") to Defendant Merrill Light. Plaintiff alleges that, if in fact Mr. Barringer intended to give Mrs. Barringer a testamentary power of

[2] Rule 43(l), SCRCP states: "If any motion be made to any judge and be denied, in whole or in part or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action." Justice Pleicones wrote in *Smith v. Breedlove*, 377 S.C. 415, 419 (2008), that when considerable discovery has taken place and new evidence established, the trial court can rule on a second summary judgment motion even if made on the same legal basis as the first motion. However, Defendant has failed to produce new evidence in her motion and argument, nor has considerable additional discovery taken place.

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appointment over such voting stock, which she disputes, Mr. Barringer relied on Mrs. Barringer's express or implied promise not to exercise the testamentary power of appointment given her. Based on numerous estate planning and succession documents of Mr. Barringer,[3] Mr. Barringer intended to treat his daughters --- Plaintiff and Defendant Merrill Light --- equally, especially with respect to control of his legacy company. Based on the estate planning documents produced by Mrs. Barringer and assertions made in court, she intends to disregard her promise and/or the trust reposed in her by executing or intending to execute a will that would exercise any testamentary power of appointment given to her in a manner that would not treat the daughters equally with respect to the CFRC voting stock. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with her promise and the trust reposed in her not to exercise any testamentary power of appointment given her and to impose a constructive trust for the benefit of Plaintiff in the subject property with respect to the intended equal treatment of Plaintiff.

In Plaintiff's third cause of action, for enforcement of contract not to revoke and injunction, Plaintiff alleges that Mr. Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plans, especially with respect to Mrs. Barringer's will(s) that did not exercise any power of appointment related to voting stock before Mr. Barringer's death. This contract not to revoke applied to the estate plans in place that were not the result of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, fraud, and/or lack of capacity because any estate plan of Mr. Barringer resulting from those actions

[3] Those that were not invalid because of, inter alia, undue influence, mistake, fraud, tortious interference with inheritance, civil conspiracy, and/or lack of capacity. Plaintiff alleges that any of Mr. Barringer's estate planning documents purportedly executed after 2011 are invalid for one or more of those reasons.

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would be invalid. Consequently, Plaintiff is entitled to an order from this Court directing Defendant Merrill U. Barringer to comply with the contract not to revoke.

Argument

Defendant continually resisted compliance with a court order to produce her estate planning documents pursuant to Plaintiff's request for production. Only under threat of the imposition of significant sanctions by the Court did she finally produce those documents. It is understandable why Defendant so strongly resisted the production of her estate planning documents. In 1998, Paul Barringer executed, inter alia, a will and revocable trust that included language purportedly giving Defendant a special testamentary power of appointment over property held in the revocable trust at his death, assuming she survived him. Plaintiff asserts that, based on family planning meetings and other planning conferences among Paul Barringer, Defendant, Plaintiff, and Plaintiff's husband Kevin Luzak, and others, there is no evidence that either Paul Barringer or Defendant knew about or really understood that these documents gave Defendant a testamentary power of appointment over voting stock. Even if Defendant and Paul Barringer understood about the existence and possible application of a testamentary power of appointment given to Defendant in 1998, Defendant's 1998 will, prepared by the same drafting attorney, and executed at the same time and in conjunction with Paul Barringer's 1998 will and revocable trust, expressly declined to exercise that testamentary power of appointment. Moreover, Defendant's 1998 revocable trust apparently gave Mr. Barringer an identical special testamentary power of appointment over the property in her revocable trust if he survived her — establishing the mutuality of their planning — which he similarly expressly and specifically declined to exercise in his will. Thus, continuing to assume arguendo that Paul Barringer and Defendant understood what a testamentary power of appointment was and that Paul Barringer's

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1998 documents contained such a special testamentary power of appointment, their symbiotic estate planning documents prepared by the same attorney and executed simultaneously included both a grant of such a testamentary power of appointment by Paul Barringer and a concomitant express declination to exercise that testamentary power of appointment by Defendant, and vice-versa.

Thus, if Paul Barringer knew he was giving Defendant a testamentary power of appointment in his 1998 documents, he also knew that Defendant expressly declined to exercise that testamentary power of appointment in her will executed simultaneously, just as she knew that he declined to exercise the power she gave him. Because Plaintiff has produced significant proof that Paul Barringer never made another will or trust when he was competent and/or free from improper influence,[4] he thus spent the rest of his cogent un-influenced life[5] understanding that Defendant had agreed not to exercise that testamentary power of appointment.[6] That understanding between Mr. Barringer and Defendant, evidenced by the 1998 documents, including her specific and express declination to exercise the special testamentary power of appointment, if there was one, serves as a foundation for all of Plaintiff's assertions in addition to there being no intent for Paul Barringer to give Defendant a power of appointment over voting stock.

[4] Paul Barringer might have understood that Defendant could have changed her will without his knowledge, but presumably he trusted her not to do so — and she never did. She did not execute any document purporting to exercise the testamentary power of appointment until after he died. Every amendment Defendant made to her estate plan while Paul Barringer was alive occurred simultaneously with any purported amendment he made to his estate plan (except his purported July 2012 amendment to his revocable trust), although Plaintiff asserts that no estate planning document executed by Paul Barringer after 2011 is valid.

[5] Meaning that any document he executed after 2011 was invalid because he lacked capacity and was unduly influenced, etc., as to any documents he executed after 2011.

[6] The voluminous and detailed evidence of the invalidity of any post-1998 estate planning documents purportedly executed by Paul Barringer is found in the filings in the prior summary judgment motion incorporated herein.

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The pattern of other planning related acts[7] by Paul Barringer while competent and free from undue influence, is 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. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that *his* plan for *his* company — shared control after his death — would remain intact.

Why would Paul Barringer establish or maintain a mechanism that would destroy his long -held company succession plan and potentially place his lifelong work under the control of persons in which he had no confidence or knowledge?

In brief, Plaintiff makes a number of assertions, any one of which successfully supports her second and third causes of action.

1. Paul Barringer never intended to give Defendant a power of appointment.
    a. Despite Defendant's assertions, there is no reliable evidence that any advisor explained the effect of the power of appointment language in the documents or discussed powers of appointment with Paul Barringer.
    b. Paul Barringer never involved his wife in the company business, gave her any stock, or named her trustee. Why would he give her the power to change his intentions about who would run his legacy company after his death?

[7] The voluminous and detailed evidence of these other estate planning related acts is found in the filings in the prior summary judgment motion incorporated herein.

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c. The power of appointment language in the documents purportedly gives Defendant the power to appoint to descendants. Why would Paul Barringer give her power to give control to a grandchild, great-grandchild, etc.: someone who might not have even been born by the time of his death?

d. Paul Barringer's intent is determined according to the facts and circumstances existing at the time of execution of the documents. On December 4, 1998, he could not have intended to give Defendant the power over stock with voting control because he did not own enough stock on that date to affect voting control.

2. Even if Paul Barringer intended to give Defendant a testamentary power of appointment, she does not have the power to exercise it for several reasons, any one of which successfully supports Plaintiff's second and third causes of action.

a. A contract not to exercise any power over the voting stock existed, pursuant to South Carolina statutes.

b. There was an express promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer

c. There was an implied promise not to exercise by Defendant who was in a fiduciary relationship with Paul Barringer.

d. Defendant is equitably estopped from exercising any such power of appointment.

Although this was the foundation, it is certainly not all of the evidence Plaintiff asserts that proves that Mrs. Barringer is precluded from exercising any power of appointment; plenty of other evidence exists to prove the existence of an agreement and/or an express or implied promise not to exercise.

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Attorney John Jolley prepared the documents, and Defendant executed reciprocal documents between 2012 and Mr. Barringer's death. Importantly, none of the documents prepared by Jolley and executed by Defendant exercised any testamentary power of appointment. Defendant did not purport to execute the power of appointment until after Paul Barringer died *and* the commencement of this action in 2016, when Attorney Harley Ruff began representing her.

Even assuming arguendo that the estate planning documents executed by Paul Barringer after 2011 might be valid, Defendant and Paul Barringer executed estate planning documents at the same time, prepared by the same lawyer (Jolley), similar to each other, and symbiotic. Not once during Paul Barringer's lifetime did Defendant attempt to exercise any testamentary power of appointment. Defendants Merrill Barringer and Merrill Light characterized Paul Barringer as a man in control. Paul Barringer never involved Defendant in his legacy business: she was never given any stock or any position in that business. She testified that she attended the June 2012 meeting to ensure that Paul Barringer did not forget to fire Kevin Luzak. It is beyond reasonable belief that Paul Barringer, who excluded his wife from his business for the entirety of their marriage while including his children, would knowingly give her the ability to decide the control of that company after his death, which would include the power to give the controlling stock to grandchildren or great-grandchildren, who might not even have been born before his death.

The pattern of other planning related acts by Paul Barringer while competent and free from undue influence, is 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. These other acts are consistent with the plan set forth in his 1998 estate plan because in that plan he purportedly gave Defendant a special testamentary power of appointment while

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Defendant concomitantly and simultaneously expressly declined to exercise any power, thereby giving Paul Barringer the assurance that his plan for his company — shared control after his death — would remain intact.

Applicable Law[8]

Defendant continues to contort and conflate applicable law, arguing that a contract not to exercise any power of appointment is required for Plaintiff to prevail. That is not correct. As discussed below, a contract not to exercise any power of appointment would suffice for Plaintiff to prevail as discussed below, Plaintiff has sufficient evidence to show such a contract --- but South Carolina law precludes the exercise of a power of appointment by a powerholder for other reasons, separate from a contract: an express or implied promise not to exercise that is binding, not because of any contract, but because of a fiduciary or confidential relationship --- such a promise can even be a silent one (for example, based on acquiescence) --- and/or equitable estoppel, which can also be based on silence. Defendant argues that these enforceable promises are the same as contracts, but they are clearly not: a contract requires an exchange of consideration, whereas an enforceable fiduciary promise is based on the fiduciary duty, not a contract, in which case the promisee does not need to provide consideration, which is why it is not a contract.

Contract Not to Revoke Will (Not to Exercise any Power of Appointment)

South Carolina Probate Code (SCPC) section 62-2-701 provides several methods of establishing a contract not to revoke a will or devise: "by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a

[8] An additional discussion of the applicable law is found in the filings in the prior summary judgment motion incorporated herein.

contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract."

Assuming arguendo that Plaintiff relies solely on the existence of a contract not to revoke a will or devise — which she does not — any of these three methods may be used to establish the existence of a contract not to revoke a will or devise. The first option provides for the decedent's will stating material provisions of the contract. That option does not require that the entire contract be contained in the decedent's will, but rather only that the will state material provisions of the contract. Mr. Barringer's 1998 revocable trust executed in conjunction with his 1998 will stated material provisions as to the existence of a power of appointment and the intent to treat their children equally. Mrs. Barringer's 1998 will, executed simultaneously and symbiotically with Mr. Barringer's 1998 will and revocable trust, stated material provisions as to the existence of a power of appointment and the intent to treat their children equally, as well as, importantly, expressly and specifically declining to exercise the power of appointment set forth in Mr. Barringer's estate plan. Mr. Barringer similarly expressly and specifically declined to exercise the power of appointment set forth in Defendant's estate plan. Although these Barringer 1998 estate planning documents should be read together because they were prepared by the same lawyer representing both of them and executed together, it is Mrs. Barringer's will that should not be revoked as to the express and specific declination to exercise any power of appointment: her will states the material provisions of the contract in itself, and is corroborated by the material provisions stated in Mr. Barringer's will. The mutuality of the contract is confirmed by Mr. Barringer's will, which declines to exercise the special testamentary power of appointment that Defendant gave him in her 1998 revocable trust. If Mr. Barringer understood what a power of appointment was and he understood that his 1998 revocable trust gave that power to Mrs.

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Barringer, then he also understood that Mrs. Barringer had agreed at the same time, in documents prepared by the same lawyer representing them both and executed at the same time, not to exercise that power of appointment, just as he declined to exercise the power of appointment she apparently gave him. He relied on that contract.

The material provisions of the contract stated in their 1998 estate plans, and particularly in Defendant's 1998 will, are sufficient to satisfy the requirements of SCPC section 62-2-701(1), but are also augmented and corroborated by the following: the pattern of the reciprocal wills and trusts executed by Mr. Barringer and Defendant beginning in 2012 (although Plaintiff contends Mr. Barringer's wills and trusts are invalid), none of which exercised any power of appointment, until Defendant breached the contract by executing wills after he died which purport to exercise a power of appointment; family agreements demonstrating Mr. Barringer's intent to keep voting control equal; gift tax returns joined in by Defendant; corporate documents demonstrating Mr. Barringer's intent to keep voting control equal; communications among the family and with advisors; and 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. These documents form a consistent pattern of evidence.[9]

SCPC section 62-2-701(3) provides different requirements: "a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract." Under subsection (3), a contract can be established by the signature of the decedent on a writing evidencing a contract as augmented by extrinsic evidence. Thus, subsection (3) broadly and effectively allows the terms of the contract to be established by extrinsic evidence. Just as with

[9] The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

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subsection (1), there is no requirement that the will (subsection (1)) or the signed writing (subsection (3)) expressly and specifically include the term "contract." This is consistent with contract law, which of course does not require the word "contract" in a writing to create a contract.

The simultaneous and symbiotic 1998 estate planning documents of Mr. Barringer and Defendant are obviously signed writings. As discussed above regarding subsection (1), Mr. Barringer and Defendant's 1998 documents create special testamentary powers of appointment and Mrs. Barringer's will specifically and expressly declines to exercise any power of appointment. This alone "evidences" a contract. Numerous other documents and evidence also serve as signed writings evidencing a contract and as extrinsic evidence establishing the contract, especially as to equal treatment. [10]

Fiduciary Relationship and Duty: Express or Implied Promise Is Binding

Although Plaintiff prevails under either SCPC section 62-2-701 subsection (1) or (3), Plaintiff also prevails under other South Carolina law. Defendant was in a fiduciary relationship with Mr. Barringer: she was his wife and was the attorney-in-fact under his power of attorney. In *Chapman v. Citizens and Southern Nat. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990),[11] the surviving spouse had a fiduciary and confidential relationship with the deceased spouse because she was his wife. The *Chapman* court held that either an express or

[10] The voluminous and detailed evidence of these documents is found in the filings in the prior summary judgment motion incorporated herein.

[11] Defendant argues that the applicable contract statute supplants *Chapman*. That is not correct. The statute deals only with contracts; *Chapman* deals with a fiduciary promise, not a contract. A statute dealing only with contracts cannot supplant a case that does not deal with contracts. See S.C. Code Ann. § 62-1-103: "Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions." *Chapman* was decided on July 23, 1990. The South Carolina Probate Code became effective on July 1, 1987. See S.C. Code Ann. § 61-1-100.

implied promise from the surviving spouse not to exercise a testamentary power of appointment was binding, and that such an implied promise could be implied even from silence.

As discussed more thoroughly above, Mr. Barringer and Defendant, represented by the same attorney, executed mutual and reciprocal estate planning documents in 1998. Mr. Barringer purportedly gave Defendant a special testamentary power of appointment, and her will specifically and expressly declined to exercise that power. For the rest of Mr. Barringer's life, Defendant did not execute a document purporting to exercise that power.

Defendant's 1998 will made an express promise by stating that she would not exercise her power of appointment. Nor did she attempt to exercise the power for the rest of Mr. Barringer's life. Mr. Barringer went to his grave believing that his wife would keep her promise. The *Chapman* court specifically and expressly adopted the rule in Bogert, Trusts, §89 (6th ed. 1987), noting that the promise by the fiduciary may be express or implied, even by silence. Certainly Mr. Barringer could infer a promise from Defendant because of her specific and express declination to exercise any power in her 1998 will; her failure to exercise any power for the rest of his competent life, and even for the rest of his life once he was incompetent; and from the numerous other situations where she engaged in acts supporting Mr. Barringer's intent that his children be treated equally, and always acquiesced and never expressed any disagreement about his intention of equal treatment.

Equitable Estoppel

South Carolina law recognizes that a promise not to revoke can be enforced through equitable estoppel, which requires the enforcement of a promise on which a decedent detrimentally relied based on the expression of that promise. In *Satcher v. Satcher*, 351 S.C. 477, 570 S.E. 2d 535 (Ct. App. 2002), the court enforced a grandfather's oral promise to leave

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property to his grandson because the grandson detrimentally relied on that promise. The court enforced the promise even though it was oral and made after the enactment of SCPC section 62-2-701. Mr. Barringer relied on his wife's promise, whether express or implied, by declining to exercise the power of appointment she gave him and by his knowledge that she had promised to honor his intent to treat their children equally by declining to exercise any power in her 1998 will or in any will she executed thereafter while he was alive, by participating in family and estate planning meetings and never indicating that she would contradict his intention of equal treatment, and by participating in or acquiescing in other acts evidencing the intent to treat the children equally.

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 favorable to Plaintiff. Plaintiff demonstrates substantial evidence of a contract not to revoke, an express promise not to revoke arising from a fiduciary and confidential relationship, an implied promise not to revoke arising from a fiduciary and confidential relationship, and equitable estoppel.

Reserving all rights, Plaintiff respectfully prays that this Court deny Defendant's motion for summary judgment.

Respectfully submitted,

THE GILREATHLAW FIRM, P.A.

By: s/ JAMES R. GILREATH
James R. Gilreath (S.C. Bar No. 2133)
William M. Hogan (S.C. Bar No. 65272)
110 Lavinia Avenue (zip 29601)

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P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM, ROGERS & TRAXLER, P.A.
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

and

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

and

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Facsimile: 843.521.1379
macloskielawfirm@hargray.com

and

Desa Ballard (SC Bar No. 498)
Harvey M. Watson III (SC Bar No.74053)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066

ROA 004385

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desab@desaballard.com
harvey@desaballard.com

Attorneys for Plaintiff Hampton Barringer Luzak

August 6, 2021
Greenville, South Carolina.

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Exhibit 1

Affidavit of
Hampton Luzak

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,

Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2019-CP-07-01253
2019-CP-07-01294

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. Being duly sworn, I hereby state the following:

1. These statements are based on my own personal knowledge. I hereby incorporate my affidavit, which is also based on my own personal knowledge, in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, my father Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.

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4. I was present at these meetings, as was my husband Kevin Luzak. My mother Merrill Barringer was usually present during these discussions. Often, my sister Merrill Light and Randy Light were also present. My brother Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved my father discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat me and my sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, my mother remained silent as to any intent she may have had to exercise any power of appointment or to change my father's intent to treat me and my sister equally as to voting control of his forestry company or, for that matter, to change my father's intent about anything. My mother never spoke up to anyone, including my father, about my father's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all my mother ever mentioned about estate planning, on a few occasions, was 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.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change my father's estate plan.

8. To my knowledge, my mother never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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9. 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. It was clear to me that my father was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after my brother spun off Coastal Lumber, equally between his two daughters. Not one time did my mother object to the plan or suggest she had the power to change it or would change it.

10. During their lengthy marriage, my father did not give any stock in his company to my mother nor did he give her any position in the company. My father was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.

11. In all the discussions I had with my father, either alone or with other family members, not one time did he ever mention that he had given my mother a power of appointment. Not one time did my mother mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor to us or shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

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.

Hampton Luzak

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Exhibit 2

Affidavit of
Kevin Luzak

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A Case No.: 2019-CP-07-01253
2019-CP-07-01294

IN THE MATTER OF:
Estate of Paul Brandon Barringer, II

Hampton B. Luzak,
Plaintiff,

vs.

Merrill U. Barringer,

Defendant.

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. Being duly sworn, I hereby state the following:

1. I hereby incorporate my affidavit in the previous summary judgment action for the second and third causes of action, which was denied by Judge Mullen on November 4, 2020. I attach that earlier affidavit as Exhibit 1 to this affidavit.
2. Since at least 1992 and through 2011, Paul Barringer regularly discussed his estate planning intentions during family meetings.
3. These estate planning family meetings occurred regularly and more formally around Christmas family gatherings and also more informally around Thanksgiving family gatherings.
4. I was present at these meetings, as was my wife Hampton Luzak. Merrill Barringer was usually present during these discussions. Often, Hampton's sister Merrill Light and

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Randy Light were also present. Victor Barringer was not involved in many of these family meetings.

5. These meetings typically involved Paul Barringer discussing his estate plan. These discussions made clear his intent to make charitable contributions and to treat his children equally, and after Victor spun off Coastal Lumber, to treat Hampton and her sister equally as to voting control of his forestry company.

6. At every one of those meetings attended by me, Merrill Barringer remained silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's intent to treat Hampton and her sister equally as to voting control of his forestry company or, for that matter, to change Paul Barringer's intent about anything. Merrill Barringer never spoke up to anyone, including Paul Barringer, about Paul Barringer's estate planning intentions to say that she intended to exercise any power of appointment. In fact, all Merrill Barringer ever mentioned about estate planning, on a few occasions, was 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.

7. I am unaware that, during meetings with Paul Barringer and estate planning advisors, such as Neill McBryde, John Jolley, and Robert Slane, Merrill Barringer did anything other than remain silent as to any intent she may have had to exercise any power of appointment or to change Paul Barringer's estate plan.

8. To my knowledge, Merrill Barringer never spoke about any power of appointment or in any way indicated that she might change his estate plan.

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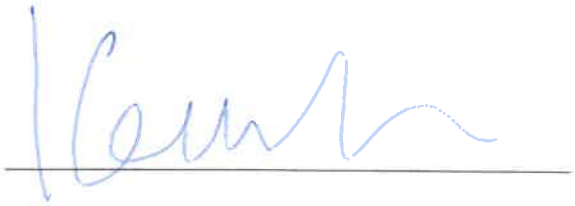
9. These discussions were often accompanied by a comment by Paul Barringer about the fact that the children would have to work together to make decisions about the company after he was gone. He repeated this comment to me on numerous occasions during conversations that we had away from these family meetings. It was clear to me that Paul Barringer was making his estate plan and that he did not intend for or expect anyone to change that, including his often-stated intention to have the company controlled equally by the children and, after Victor Barringer spun off Coastal Lumber, equally between his two daughters. Not one time did Merrill Barringer object to the plan or suggest she had the power to change it or would change it.
10. During their lengthy marriage, Paul Barringer did not give any stock in his company to Merrill Barringer nor did he give her any position in the company. Paul Barringer was not the type of person to expect any family member to dispute his control of the company or his plans for its succession. As to company matters, he got his way.
11. In all the discussions I had with Paul Barringer, either alone or with other family members, not one time did he ever mention that he had given Merrill Barringer a power of appointment. Not one time did Merrill Barringer mention that she had a power of appointment. Not one time did any advisor mention to us anything about a power of appointment. Not one estate planning diagram or chart shown at any meeting mentioned any power of appointment. Not one letter from any estate planning advisor shown to us mentioned any power of appointment.

AND FURTHER THE AFFIANT SAYETH NOT.

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Certification In Lieu of Affidavit pursuant to South Carolina Supreme Court Order RE: Operation of the Trial Courts During the Coronavirus Emergency (As Amended June 15, 2021), Paragraph (c) General Guidance (16) Certification in Lieu of Affidavit.

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.



Kevin Luzak

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Exhibit 3

McBryde Documents 1-82, 109, 150, and 157
(Previously filed under seal on July 30, 2021)

(To be submitted to the Judge *in camera*)

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Exhibit 4

John Jolley
Handwritten Notes

(To be submitted to the Judge *in camera*)

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Exhibit 5

John Jolley
Deposition Excerpts

(To be submitted to the Judge *in camera*)

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Exhibit 6

Affidavit of
John Jolley, Esq.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2016-CP-07-1919
IN THE MATTER OF ESTATE OF PAUL BRANDON 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	)	**AFFIDAVIT OF JOHN JOLLEY, ESQ.**

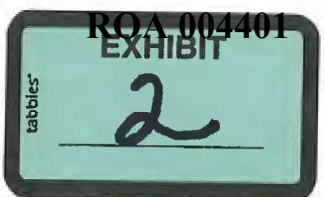
PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

1. My name is John Jolley, I am above the age of 18, and I am capable of making this affidavit, which is made from my own personal knowledge.

2. I am an attorney licensed to practice law in the State of South Carolina, and I am a shareholder with The McNair Law Firm, PA, where I have practiced for twelve (12) years.

3. The McNair Law Firm has represented Coastal Forest Resource Corporation ("CFRC") and its predecessor in various matters for many years and well greater than ten (10 years. CFRC is a Virginia Corporation that is headquartered in Havana, Florida.

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4. The McNair Law Firm has represented Paul and Merrill Barringer in various matters for many years and well greater than ten (10) years.

5. The McNair Law Firm has represented Randy and Merrill Light in various matters since approximately for many years and well greater than ten (10) years.

6. Kevin Luzak, the former CEO of CFRC, personally engaged The McNair Law Firm to represent CFRC in various matters between approximately 2008 and 2012.

7. Beginning in August, 2012, in my position as an attorney with The McNair Law Firm, I began acting as outside corporate counsel for CFRC, and I was appointed Assistant Secretary of CFRC on or about August 29, 2012.

8. In my experience representing closely-held corporations, especially family-owned or family-controlled corporations, it is not unusual for the same attorney to represent the corporation, as well as various family members and other related parties.

9. I understand that a question has arisen about an email that Randy Light sent to me on September 20, 2012, with a copy to Travis Bryant. When Randy Light sent that email to me, I was counsel for CFRC, and Travis Bryant was the CEO of CFRC. I was also counsel for Randy Light and Merrill Light regarding certain trusts and estate matters, and had been so for many years. I also represented Paul and Merrill Barringer regarding certain trusts and estate matters.

10. I understood that the purpose of the September 20, 2012 email from Randy Light to me was to ask me a legal question, and to request legal advice from me, regarding certain matters relating to CFRC, Paul Barringer and Merrill Light.

11. The September 20, 2012 email did not relate to the September 11, 2012 transfer of CFRC voting stock from Paul Barringer to Merrill Light, which had occurred on September 11, 2012.

12. Because the subject of the request for legal advice included issues relating to CFRC, I

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believed that it was appropriate that Travis Bryant was copied on the email, because Mr. Bryant was the CEO of CFRC at that time.

13. In fact, in my response to Randy Light's email of September 20, 2012, I indicated that I expected to be speaking with Mr. Bryant in the near future and could discuss the issues with Mr. Bryant at that time.

14. I also copied Mr. Bryant on my response to Randy Light, again because I believed that it was appropriate for Mr. Bryant to be included in the communications, since the communications also involved CFRC.

15. I have no knowledge of any fraudulent scheme perpetrated, or planned to be perpetrated, by either Merrill or Randy Light and I considered the email to be simply a request for legal advice.

16. I never took any action to consummate the matter discussed, and I am not aware that anyone else did either.

John Jolley, Esq.

Sworn to and subscribed before me
This 16th day of July, 2018.

Kimberly Vigil (seal)

Notary Public for South Carolina
My Commission Expires: 8-17-2027

KIMBERLY VIGIL NOTARY PUBLIC SOUTH CAROLINA COMMISSION EXPIRES AUGUST 17, 2027

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Exhibit 7

Barringer Family
Voting Agreement

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BARRINGER FAMILY
VOTING AGREEMENT

This Voting Agreement dated September 21, 1998 by and between Paul B. Barringer ("Paul"), Merrill Barringer Light ("Merrill"), Victor C. Barringer ("Victor"), Hampton Barringer Luzak ("Hampton") and Paul B. Barringer, II and C. Hobson Goddin, Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer ("Barringer Trust") provides as follows:

RECITALS

A. Each of the parties is a shareholder of Coastal Lumber Company, a Virginia Corporation ("Coastal").

B. Upon favorable action by the shareholders of Coastal on a Plan of Recapitalization (the "Plan") and the issuance of a Certificate of Restatement by the Virginia State Corporation Commission (together, the "Reorganization"), Coastal's authorized capital stock (the "Shares") will consist of 300,000 shares of common stock, of which the parties hereto will own the number of Shares set forth below opposite the name of each party:

NAME	SHARES
Paul	23,905*
Merrill	59,521
Victor	59,521
Hampton	59,521*
Barringer Trust	13,373

*Note: Paul's shares are estimated pending final determination as provided in the Plan, and the shares listed reflect Paul's intention to give one share of common stock to Hampton on the effective date of the Reorganization.

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C. The parties desire to enter into this Voting Agreement to provide the mechanism whereby their votes as shareholders of Coastal will be cast as a block on each issue presented to the shareholders for consideration.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and of the mutual agreements herein contained, the parties enter into this Voting Agreement pursuant to Section 13.1-670 of the Virginia Stock Corporation Act and agree as follows:

1. From October 4, 1998 until the end of Coastal's fiscal year ending in 2008, each of the parties will vote his or her Shares on each matter voted on at a shareholders' meeting in accordance with Paul's direction, provided that he is mentally competent to make business judgments in respect to Coastal, as determined by two-thirds of the parties other than Paul, voting per capita after considering professional medical and legal advice on the subject.

2. From and after the commencement of Coastal's fiscal year beginning in 2008, or the earlier termination of Paul's power as a result of his mental incompetence as provided in Section 1, above, each of the parties will vote his or her Shares on each matter voted on at a shareholders' meeting in accordance with the collective determination of the parties (the "Determination") established as follows:

(a) Each Determination shall be made by a majority vote of the parties in which (i) each party who is not a full-time employee of Coastal shall be entitled to one vote for each Share owned by such party and (ii) each party who is a full-time employee of Coastal shall be entitled to two votes for each Share owned by such party, except that (iii) in reaching the Determination, the votes of any Shares owned by a trust created by Paul or owned by Paul's

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estate shall in any event be entitled to one vote per Share which shall be cast in the manner determined only by a majority of those fiduciaries of such trust and estate, voting together as a voting group, who are not shareholders of Coastal, if there are any, or otherwise by a majority of the fiduciaries, voting together as a voting group.

(b) In the event that a Determination cannot be reached because of a tie vote, the Determination shall be made by the majority per capita vote of one or more tiebreakers who are not shareholders of Coastal. The tiebreakers shall be the fiduciaries of Paul's estate, if it owns Shares, and of any trusts created by Paul which own Shares. If there are no such fiduciaries, Paul may name one or more tiebreakers; but if he has not, one or more tiebreakers shall be selected by majority vote of the parties, with each being entitled to cast one vote per Share owned without regard to full-time employment.

3. This Voting Agreement shall bind the parties and their successors in title and/or voting rights in respect to any Shares that they may now or in the future own, and such successors in title shall without further action on their parts become parties bound by this Voting Agreement.

4. Each certificate representing Shares which are subject to the terms of this Agreement shall bear the following legend:

> The shares of stock represented by this Certificate, and the voting rights in connection therewith, are subject to the terms of a Barringer Family Voting Agreement between Paul B. Barringer and others, dated as of September 21, 1998, a copy of which is on file at on file at the office of the Corporation.

Coastal has executed this Voting Agreement for the sole purpose of agreeing to place the foregoing legend on each certificate representing each of such Shares.

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5. No modification, waiver or amendment of this Voting Agreement shall be effective and enforceable unless it is in writing and is signed by each party to the Voting Agreement at the time of such action.

6. This Voting Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, except those laws relating to conflicts of laws.

7. This Voting Agreement may be signed in one or more counterparts, each of which shall constitute one agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

_____ (SEAL)
Paul B. Barringer

_____ (SEAL)
Merrill Barringer Light

_____ (SEAL)
Victor C. Barringer

_____ (SEAL)
Hampton Barringer Luzak

Trust under the Will of Gertrude H. Barringer for the Benefit of Paul B. Barringer, II,

By _____ (SEAL)
Paul B. Barringer, II, Trustee

By _____ (SEAL)
C. Hobson Goddin, Trustee

COASTAL LUMBER COMPANY

By _____
President

#553291

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Amendment To Barringer Family Voting Agreement

WHEREAS, on September 21, 1998, Paul B. Barringer ("Paul"), Merrill B. Light, Victor C. Barringer, Hampton Barringer Luzak, and Paul B. Barringer and C. Hobson Goddin, Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer ("Barringer Trust") (collectively "the Parties") entered into the Barringer Family Voting Agreement (the "Agreement"), and

WHEREAS, the Parties (or their substitutes, in the Trustees' case) desire to amend clauses (i) and (ii) of Paragraph 2. (a) of the Agreement as follows:

> ". . . (i) each party who is not both a full-time employee of Coastal and a direct lineal descendant of Paul shall be entitled to one (1) vote for each Share owned by such party, and (ii) each party who is both a full-time employee of Coastal and a direct lineal descendant of Paul shall be entitled to two (2) votes for each Share owned by such party. . . ."

NOW, THEREFORE, in consideration of the aforementioned recitals and mutual agreements contained herein, and in consideration of the recitals and mutual agreements contained in the original Agreement, which the Parties acknowledge as remaining in force, the undersigned Parties hereby amend the Agreement as recited above and otherwise reaffirm their rights and obligations under the Agreement as amended by this Agreement.

This Amendment may be signed in one or more counterparts, each of which shall constitute one Amendment.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates indicated.

Paul B. Barringer — 9/29/04 Date

Merrill Barringer Light — Date

Victor C. Barringer — Date

Hampton Barringer Luzak — Date

Victor C. Barringer, Trustee — Date — Barton K. Yount, Trustee — Date

As Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer

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This Amendment may be signed in one or more counterparts, each of which shall constitute one Amendment.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates indicated.

_____ _____
Paul B. Barringer Date

M. Barringer Light 9/30/04
_____ _____
Merrill Barringer Light Date

_____ _____
Victor C. Barringer Date

_____ _____
Hampton Barringer Luzak Date

_____ _____ _____ _____
Victor C. Barringer, Trustee Date Barton K. Yount, Trustee Date
As Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer

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This Amendment may be signed in one or more counterparts, each of which shall constitute one Amendment.

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_____ _____
Paul B. Barringer Date

_____ _____
Merrill Barringer Light Date

_____ _____
Victor C. Barringer Date

_____ _____
Hampton Barringer Luzak Date

_____ _____ _____ _____
Victor C. Barringer, Trustee Date Barton K. Yount, Trustee Date
As Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer

ELECTRONICALLY FILED - 2021 Aug 06 5:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701253

Amendment To Barringer Family Voting Agreement

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This Amendment may be signed in one or more counterparts, each of which shall constitute one Amendment.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates indicated.

_____ _____
Paul B. Barringer Date

_____ _____
Merrill Barringer Light Date

_____ _____
Victor C. Barringer Date

Hampton Barringer Luzak 9/28/04
Hampton Barringer Luzak Date

_____ _____ _____ _____
Victor C. Barringer, Trustee Date Barton K. Yount, Trustee Date
As Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer

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Amendment To Barringer Family Voting Agreement

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NOW, THEREFORE, in consideration of the aforementioned recitals and mutual agreements contained herein, and in consideration of the recitals and mutual agreements contained in the original Agreement, which the Parties acknowledge as remaining in force, the undersigned Parties hereby amend the Agreement as recited above and otherwise reaffirm their rights and obligations under the Agreement as amended by this Agreement.

This Amendment may be signed in one or more counterparts, each of which shall constitute one Amendment.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates indicated.

_____ _____
Paul B. Barringer Date

_____ _____
Merrill Barringer Light Date

_____ _____
Victor C. Barringer Date

_____ _____
Hampton Barringer Luzak Date

_____ _____ _____ 9/3/21
Victor C. Barringer, Trustee Date Barton K. Yount, Trustee Date
As Trustees of the Paul B. Barringer, II Trust under the Will of Gertrude H. Barringer

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Exhibit 8

Neill G. McBryde
Deposition Transcript of
March 26, 2021

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT No. 2016-CP-07-1919

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.

(CAPTION CONTINUED ON PAGE 2)

Virtual Videotape Deposition of
Neill G. McBryde
Friday, March 26, 2021
At 9:00 a.m.
Charlotte, North Carolina

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT No. 2019-CP-07-01253
No. 2019-CP-07-01294

IN THE MATTER OF ESTATE OF PAUL BRANDON BARRINGER, II, HAMPTON BARRINGER LUZAK,
Plaintiff,
vs.
MERRILL U. BARRINGER,
Defendant

Reported by LeShaunda Cass-Byrd, CSR, RPR

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All attorneys participating in this deposition acknowledge that in compliance with public health orders, I am not physically present in the deposition room and that I will be reporting remotely, with all individual participants at their own independent, respective locations.

You further acknowledge that in lieu of an oath administration in person, the witness will verbally declare his testimony in this matter under penalty of perjury.

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APPEARANCES OF COUNSEL:
On behalf of Plaintiff Hampton B. Luzak:
S. ALAN MEDLIN, Esq.
University of South Carolina School of Law
1713 Phelps Street
Columbia, South Carolina 29205

CHARLES B. "Mike" MACLOSKIE, Esq.
Macloskie Law Firm.
1506 Prince Street
Beaufort, South Carolina 29902
THOMAS W. TRAXLER, Esq.
Carter Smith Merriam Rogers & Traxler, P.A.
900 East North Street.
Suite 100
Greenville, South Carolina 29601
JAMES R. GILREATH, Esq.
WILLIAM HOGAN, Esq.
The Gilreath Law Firm, P.A.
110 Lavinia Avenue
Greenville, South Carolina 29601
On Behalf of the Deponent:
CAITLIN HORNE, Esq.
SCOTT TYLER, Esq.
Moore & Van Allen.
100 North Tryon Street
Suite 4700
Charlotte, North Carolina 28202

On Behalf of Defendants Merrill B. Light and J. Randolph Light, Jr.:
ALICE PAYLOR, Esq.
BIJAN GHOM, Esq.
Rosen Hagood, LLC
151 Meeting Street
Suite 400
Charleston, South Carolina 29401

CHARLES B. MOLSTER, III, Esq.
The Law Offices of Charles B. Molster, III, PLLC
2141 Wisconsin Avenue, N.W.
Suite M
Washington, DC 20007

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On behalf of Defendant, Merrill U. Barringer, Individually and as Personal Representative of the Estate of Paul Brandon Barringer, II
J. ASHLEY TWOMBLEY, Esq.
Leeanne Walters
Twenge + Twombley Law Firm
311 Carteret Street
Beaufort, South Carolina 29902

Also Present:
Andrew Smith, Videographer.

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ROA 004420

EXAMINATION OF NEILL G. McBRYDE

By Mr. Twombley 10
By Mr. Medlin 67

DEPOSITION EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
Def Exhibit 12	Notes from file from the October 1, 1998 meeting Bates 149-156 of Exhibit 1 (not marked separately)	62
Exhibit 1	Defendant's Exhibit Notebook to Deposition of Neill G. McBryde	
Exhibit 2	Plaintiff's Exhibit Notebook to Deposition of Neill G. McBryde	

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THE VIDEOGRAPHER: Good morning. My name is Andrew Smith, and I'm the legal videographer in association with Veritext.

Due to -- due to the severity of COVID-19 and the following practice of social distancing, I will not be in the same room with the witness. Instead, I will record this videotape deposition remotely.

Our court reporter, LeShaunda Byrd, will also not in be the same room with the witness and will swear in the witness remotely.

Do all parties stipulate to the validity of this video recording and the remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedures and the states' rule where this case is pending?

MR. TWOMBLEY: Yes.

ALL COUNSEL: Yes.

THE VIDEOGRAPHER: All right. We are now going on the record at 9:13 a.m. on March 26th, 2001. This is media Unit 1 in

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the recorded deposition of Neill McBryde taken by counsel for the defense, in the matter of Hampton Luzak V. Merrill B. Light, et al., filed in the Court of Common Pleas, State of South Carolina, County of Beaufort, Case Number 2016-CP-07-1919. And this deposition is being recorded via Zoom.

My name is Andrew Smith from the firm Veritext, and I'm the videographer. Our court reporter is LeShaunda Byrd, also from Veritext.

Counsel will all be stip- -- appearance of counsel will all be stipulated on the transcript by our court reporter. And so at this time, our court reporter may go ahead and swear in the witness.

NEILL MCBRYDE,

having been first duly sworn, was examined and testified as follows:

MR. TWOMBLEY: Mr. McBryde, before we get started, I want to put a couple of things on the record that you do not need to concern yourself with, but just so the record is clear, I would just like to note

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that -- that Merrill Barringer has identified Mr. McBryde as a witness in this action, based upon the plaintiff's claim that Merrill Barringer and Paul Barringer entered into a contract, or other agreement regarding their estate plans.

In addition, we have identified exhibits to this deposition, Merrill Barringer's 1998 will and trust, and those documents continue to remain under the Court's order to be viewed by attorneys only.

Of course, Mr. McBryde drafted those documents with the attorney, so we take position that he want to approach that and can see them.

But we're not waiving any privilege or other protection related to those documents or any of the protections in -- in the Court's order.

And in general, we're not waiving any privilege or other protections simply by naming him as a witness and describing te testimony from him specifically related to the plaintiff's claim.

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With that having been said, we can get started.

EXAMINATION

BY MR. TWOMBLEY:

Q. Good morning, Mr. McBryde. We have met before, but if you would, please, introduce yourself.

A. Neill McBryde. I live in Charlotte, North Carolina. Married. Two grown children. Both of them lawyers at least by education. And that's about it.

Q. Okay. Where do you -- where do you -- where do you work, Mr. McBryde?

A. I work at Moore & Van Allen. I started off at King & Spalding in 1971. I decided to come back to the Tar Hill state in '76 with Russell Robinson, Stone Robinson & Bradshaw, and then I moved to Smith Helms, Helms Mullis, then Smith Helms Mullis & Moore until 1990, and then I have been at Moore & Van Allen since then.

I have been practicing a little over 50 years, and that's about it.

Q. Can you tell us a little bit about the type of law practice that you have?

A. I started out and have continued to cover the spectrum of what I would call broad estate

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planning lawyers, which would include anything relating to estate -- yeah, anything relating to the persons who created wealth and wanted to have it protected and/or taxes avoided.

I believe I presided from then, there is set forth somewhere in your resume -- my resume in effect. I have been very active nationally. Very active locally. I have been past present of the ACTEC, American College of Trust and Estate Counsel, here in a section in North Carolina. You name it.

But basically, I've been working with those persons, corporations, entities with wealth, mainly because of health, but I have been involved in some public offerings as counsel.

So it's a broad spectrum of what you would consider estate planning, trust, closely-held business interests, sales and purchases, businesses, the full gambit that comes to you once you start working that kind of client base.

Q. Okay. And -- and you said you have been practicing for 50 years. Have you been -- have you been practicing in the field of estate planning for 50 years?

A. Yes.

Q. Okay. Can you tell us briefly, for folks

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who may not know, can you tell us a little bit about what ACTEC is?

A. American College of Trust and Estate Counsel is the premiere world class organization that has basically members all over the country, literally every state, and indeed, even Canada.

And now we have a -- it was about five or ten years ago, we moved in international folks from overseas as fellows. We meet regularly, three times a year except for this year, this past 12 months.

And we -- it's a very intense group that has subgroups within that have study groups within them so that you can go as deep as you want in the guide into almost any area of tax and estate planning, involving particularly estate planning for the wealthy and that have lots of assets.

And we generally work with all of the entities and assets to some of these -- that those individuals own or had interest in.

Q. Okay. And have you ever served as an officer for -- for that organization?

A. Yes. As I mentioned earlier, I'm president, and I guess my -- my you know, lead up in terms of three or four years before you act, and I think it was -- 2001 was my annual meeting with Dan

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Boggo, and these are attended by 800 to 1,000 attendees. About half -- about half of them are the lawyers, and the other half are accompanies -- children and spouses.

It's -- it's the preeminent organization in the country really.

Q. Okay. I also noted on your resume that -- that you have been included in the Best Lawyers in America for trust and estate tax and litigation controversy since 1983. What is the -- what is your understanding of what Best Lawyers in America group is?

A. It's a -- just a third-party -- independent folks who also, I'm sure, make a few dollars, but they have over the years, really gotten pretty intense -- an intensive process for getting peer comments, recommendations, those that are deemed to be the best by locale and by state, by region.

And it's -- it's -- you'd rather be in that than not be in that, and I -- and I was -- I've been in it for a long time.

Q. Okay. Great.

Mr. McBryde, I sent you a notebook of documents that I want to ask you about today, and I know you've been sent documents by the plaintiff. I

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want to make sure you have mine in front of you, and they are -- the notebook with 12 tabs, and I think they red numbers at the top that says "McBryde depo 1, McBryde depo 2." I -- I think you have them in that black binder, if you'll turn to tab -- Tab 1.

A. I do.

Q. Okay. Do you see the red numbers "McBryde depo 1, McBryde --"

A. Yes.

Q. Okay. Just for your reference and for mine, I'm going to be referring to those page numbers, the ones in red at the top, so if I direct you to page 1 or page 100, that -- those are the numbers I'm going to be referring to. Okay?

A. I understand.

Q. Okay. The first document that is labeled McBryde 1 through McBryde 11, do you recognize this document?

A. You mean the -- just the materials in there?

Q. Well, correct. This -- this is the affidavit that was signed by you --

A. Yep. Yes.

Q. -- on September 8th --

A. The first affidavit, yes.

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Q. Okay. All right. And so what is -- this document is the affidavit that you signed for this case?

A. This is the document that I prepared and signed for this case.

Q. Okay. All right. And was this -- was this affidavit true and accurate, to the best of your knowledge?

A. Yes, to the best of my knowledge, and I understand obligations of -- of my oath.

Q. All right.

I'm going to start asking you a few questions that related to page 3, McBryde deposition 3.

Tell us, please, approximately, when you recall first meeting and doing legal work for Paul Barringer.

A. I first met him and was introduced to him and he me somewhere in 1996, but the -- the subjective and substantive work really picked up or was culminated with respect to Mr. Barringer and his estate planning in 1998 in that period, the second half of that year.

Q. And it's my understanding that you prepared some of the estate planning documents for

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Mr. Barringer, signed on December the 4th, 1998.

Can you -- can you tell us what those were?

A. Yes. That is -- that was actually the culmination of a number of meetings, beginning in August with Mr. Barringer, and gradually moving through all of his desired issues that should be addressed with regard to his estate planning, some tax planning and the like, and ultimately, focusing on updating and having his estate planning documents reviewed and completed, following lengthy discussions, voluminous correspondence back and forth, to ensure that it carried out his and Mrs. Barringer's wishes.

Q. Okay. I would like to ask you -- and for my reference, I'm moving over to page 4. And I would like to ask you about generally, Mr. Barringer's estate planning.

A. His estate? Okay. Excuse me.

Q. First of all, I understand he executed a will on December 4th of 1998. Can you just generally, explain to us what Mr. Barringer's will -- December 4th, 1998, will provided?

A. The will provided in somewhat standard form in the sense of those who want to have the best planning incorporated in their wills and trust estate planning documents was to provide for irrevocable

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trust in place, which would receive the assets, if not already funded in part with assets by him during his lifetime that would dispose of the property through distributions that end up in the revocable trust, postmortem irrevocable, and that would address where all of his property was to go in the standard form of any dispositive scheme.

Q. Okay. So let me just try to simply that a little bit to make sure I understand it for -- in the non-lawyers non-estate planners.

I understood you to say that Mr. Barringer's will essentially just says that the assets he owns at the time of his death go into his revocable trust?

A. That's correct.

Q. Okay. And so --

A. That is a pretty standard mechanism --

Q. Okay.

A. -- to have in place.

Q. Okay. So no specific person receives a dispositive distribution from Mr. Barringer in his will. They just pour over into his trust.

A. I think -- and it's noted here, there are some personal property effects, I think, for, you know, just -- you know, I have to go back and look at

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it, but I would think that there would be tangible property that would be off the top provided to his surviving spouse or otherwise.

Q. Okay. Aside from the tangible personal property and effect --

A. Yeah, yeah.

Q. -- as far as any significant valuable assets, they just simply go over to the revocable trust; is that right?

A. That's correct. That's correct.

Q. All right. So if we want to determine who is going to receive Mr. Barringer's assets at the time of his death, where -- where would we have to look?

A. Well, you'd have to move his interested in his -- as indicated in the deposition, you'd look at the remaining provisions of the trust, which create -- goes to the will. It goes to the revocable trust, but first, it goes to the tangible personal property off the top.

And then Item 5, it goes to a QTIP trust for the benefit of Mrs. Barringer, and it goes on to provide for the residue. In fact, a QTIP trust, depending on the value of the estate, would potentially be to trust.

And then it would go to, the remaining

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assets with -- to the extent -- would go basically to the -- under the provisions of the revocable trust, which are to trust for the remainder when -- after Mrs. Barringer's death, subject to her exercising or not exercising the power given to her to ultimately see how the -- she wanted the property to go to the family or whomever at the time of her death. It's not limited.

Q. Okay. I'm going to -- we're going to look at the trust and the specific provisions in the trust. For now, I just wanted to confirm that the will provides that Mr. Barringer's assets are poured over to the trust; is that right?

A. Yes. That's correct.

Q. All right. And if you would turn to Tab 3 in this -- can you tell me what Tab 3 is?

MR. MEDLIN: Ashley, can you give us the Bates number, please?

MR. TWOMBLEY: It starts with McBryde depo 16 and goes to McBryde 28.

MR. MEDLIN: Thank you, sir.

THE WITNESS: This is -- yeah, this is the -- the will, the last will and testament.

BY MR. TWOMBLEY:

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Q. Okay.
A. -- that we -- I'm jumping ahead of you, but that's just what I was referring to.
Q. If you would turn to page 28, the last page of the will.
A. What page? I'm sorry.
Q. Page 28. And again, I'm referring to the red numbers at the top.
A. Oh, okay. Okay. Okay. I will go back. Okay.
Q. McBryde depo --
A. Got it. That's the execution aspect of the revocable trust.
Q. Okay. All right. Just so tell us generally, what this is and whose names and signatures appear on page 28.
A. Mr. Barringer signed it after filling in the date, 4th day of December. And then I signed it, and Robert Slain, who was a separate advisor, my legal advisor, who was a second witness, and then on our doc -- our signing of that document, that is Robert Slain and myself saying that we witnessed it was imposed at the bottom in front of a notary.
Q. And who -- who is the notary. It says David R. Vines. Who is David R. Vines?

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A. And David Vines is another lawyer in my firm that was -- was involved in working with me for a number of years.

Q. Okay. Well, that was my next question is, was Mr. Vines working with you in the preparation and execution of Ms. Barringer's 1998 December 4th will?

A. Yes.

Q. Okay.

A. One -- one of several, but I was obviously leading the charge.

Q. All right. Now -- I'd now ask you to please turn to Tab 4, which is, for -- for others, I believe this is Mr. Barringer's December 4th, 1998 revocable trust, and it begins on McBryde page 29, and it ends on McBryde page 77.

A. Okay.

Q. If we could just start, Mr. McBryde, can you identify this document that starts at page 29?

A. Yes. This is the revocable trust in which we made allusion a bit ago, and it sets out all of the dispositive provisions that will prevail when the estate is forwarded to the trust.

Assets are put into the trust, and it would basically state what happens to the property, and that -- which is controlled by the terms of the trust,

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which at that point would be irrevocable.

Q. Okay. All right. Now, when you say "dispositive provisions," I just want to make sure everybody understands what we're talking about, the dispositive provisions are actually who gets what; is that correct?

A. That's correct.

MR. MEDLIN: Objet to the form. Object to the form.

BY MR. TWOMBLEY:

Q. What is a dispositive provision, Mr. McBryde?

A. What are they?

Q. Yes. Since there has been an objection, I'm going to rephrase the question.

What is a -- what do you mean by a dispositive provision?

A. It is basically, as a term we all use is that you have to dispose of your property when you die, and you do it by -- you can do a will alone. You can do a will and a revocable trust, but it is an entity that either is existence or broader existence. But in this case, it was already existing, and that's why it's executed by him as a irrevocable trust. So it is the vehicle to receive the assets, if assets are

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otherwise to be provided to it from the will or other sources.

You can have direct transfers of property at death, depending on how you use the beneficiary that it mentions.

Q. So the dispositive provisions in the trust then -- what does the dispositive provisions in the trust in -- in general, what does a dispositive provision in a trust provide?

A. Well, when you -- you say -- for example, if you look on page 1- -- I guess page 111, McBryde depo 131, you go right to the "following my death." It gives complete instructions as to what to do with all of the property that comes into the revocable trust.

It's very standard. This is -- this is -- and then it proceeds to set all of the ground rules, if you will, for the disposition of the property over time to or from the benefit of family members as directed and provided for in the terms of the trust.

Q. Okay. And if you could, I'd just ask you that please, use the page numbers at the top --

A. Okay.

Q. -- when you're referring to these it different numbers.

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Let's look at -- well, before we look at the specific terms of Mr. Barringer's trust, I would like to look at the execution page at that -- at page 76. Can you please turn to page 76?

A. Yes. I've got 76.

Q. Okay. Can you, again, just tell us what page 76 is and who's --

A. This is the part of the total document -- the last page except for making sure that you have consideration because a dollar bill, like -- I can't (inaudible comment) so much it out the next page.

This is the execution process where Mr. Barringer executed his grantor. I was a witness. Robert Slain was a witness, and David Vines was the notary, again, to complete the process of validating the validity of this being his document.

Q. Okay. And did you -- did you see Mr. Barringer sign his December 4th, 1998 revocable trust?

A. Oh, absolutely.

Q. And -- and the same for the document we previously identified as the December 4th, 1998 will. Did you witness --

A. Yes.

Q. Okay. All right. Where would the

execution of these documents have taken place?
A. I go up to.
Q. Where would the execution of the 1998 will and trust have taken place? Do you remember where?
A. You know, I don't. I don't remember exactly whether he came to us or we went to him. But we were there in person. I just really haven't gone back and looked at the --
Q. I -- I understand. But either way, you would have been physically present with him?
A. Oh, absolutely.
Q. Would Mr. -- the other lawyer who was assisting you, Mr. Vines, would he have been physically present?
A. Yes.
Q. And how about Mr. Slain, would he have been he physically present?
A. Yeah. He -- he was there, too.
Q. Okay. All right. Okay.
Now, I want to talk now about the dispositive provisions in Mr. Barringer's trust. And you -- you were a little in front of me?
A. I'll slow down.
Q. That's okay. That's okay.
I believe the first dispositive provision

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is found on McBryde depo 32, under item Roman numeral IV in the trust. Are you on that page?

A. Yes.

Q. Okay. All right. Is -- is -- this is the page that you identified earlier correct?

A. That's correct.

Q. All right. And if you turn to page 33 at the bottom, it says that, The trustee shall provide well, actually, how -- will you just read Section D at the bottom of page 33? Just read that into the record for us, please.

A. Sure. "The trustee shall provide the amount determined to paragraph -- pursuant to paragraph A of this item into two separate trusts, which shall be designated as A Trust and B Trust respectively as follows..."

Q. Okay. All right. Now, if you would, please turn to page 36, the -- the Section G. And would you please read Section G into the record?

A. "Upon the death of my said wife and after satisfaction of making provision for the satisfaction of any distribution required pursuant to paragraph little i below, the property remaining in the A Trust and the B Trust will be distributed by the trustee, free of the trust, to or among my descendants, and

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such manner and trust or otherwise as my said wife may appoint in such wife's last will and testament or codicil thereto, making express reference to this power, except as such wife shall have no power to appoint such property to such wife -- to such wife's estate or to such wife's creditors or to the creditors of such wife's estate."

Q. Okay. Now, tell me in layman's terms what Section G means?

A. First, it means that -- that Mrs. Barringer is going to -- oh, we were looking at G now. Did you say G?

Q. G, yes, sir, the one you just read.

A. Yes, yeah. This is how you place where the property goes. And you place it in Trust A for marital reduction purposes and, Trust B for marital reduction purposes. That means that they are the two trusts that will hold all of the property -- virtually all of the net property coming in.

And then upon her death, she has the power to appoint that part of the trust to -- and maybe I'm jumping ahead -- to or among her descendants, and she also has no power to point the property to -- to her estate or the creditors of her estate, because without that last provision, you could lose the ability of the

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trust to be directed in that manner of her death.

Q. Okay. I want to talk specifically about the language that says that she has the power to "appoint to or among my descendants and in such manner in trust or otherwise..."

What does that give Mrs. Barringer the right to do?

A. It really means exactly what it says. It's a provision very commonly used when the couple decides that the last spouse to die -- because it's generally in both wills, and irrevocable trust and of the effect of it -- and that it is to take in -- and to allow the spouse to take into account changes in circumstances, which would be personal, change with respect to any or all of the children or more remote descendants.

It could be -- take into consideration issues of all sorts, and it has been commonly used since long before. You just took more importance here because of the -- the marital reduction had been changed. But it allows, in effect, her to rewrite the dispositive scheme in such manner as she sees fit.

And this is one that you spend a good bit of time with, and I have over about 50 years, but more importantly, in the last 20 years, because we had more and more situations where there -- there are large

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families, and you want to take into consideration how circumstances can change, personal, tax, legal and so on.

Q. Okay. Now, in -- in one -- I want to try to use language that I think every -- or at least I understand, since I'm not an estate planning. But you said that it gives it a right to rewrite dispositive provisions.

Does that -- does that effectively mean that it gives Mrs. Barringer the right to decide who gets what whenever she dies?

A. Yes.

MR. MEDLIN: Object to the form.

BY MR. TWOMBLEY:

Q. Can you please repeat your answer so it's clear on the record, Mr. McBryde?

A. Basically, yes. It gives her the power to determine where the property is going to go among the descendants and how.

Q. Now, is there any limitation on -- on what Mrs. Barringer can consider when she's deciding who among her descendants benefit from the power of appointment?

A. There's no limitations and intended no limitation, and again, this is a very common provision

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to allow for any kind of change in circumstances, a few of which I mentioned just a second ago.

And it is basically, generally considered when you're putting together documents like this as something that you would be remiss and probably malpractice if you didn't tell the clients that that was the possibility, to let the last spouse take into account the situation, the change in circumstances, condition of the family at that moment, if you will.

Q. Okay. Now, it appears to me, and you correct me if I'm wrong -- but it appears that this right to decide who among the descendants get what applies for Trust A and for Trust B; is that correct?

A. That's correct.

MR. MEDLIN: Object to the form.

BY MR. TWOMBLEY:

Q. Okay. I would now like to turn to McBryde Depo 39 and talk about the other sub-trust, and I believe that's the item 5 or what I refer to as the residuary trust. Are you there on page 39?

A. Okay. I'm on page 39. Are you looking at J?

Q. Below J.

A. Okay.

Q. Do you see that?

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A. Yes. That's correct.
Q. And if you would, just read the first four lines into the record, please.
A. "After my death and upon satisfaction or after making provision for satisfaction for such distribution required by Item 4 and after making any payment required under Item 3 --" they being the two marital trusts, and the other being tangible personal property, I believe we went back and looked at it, the remainder of the trust property -- the trust issue and all the rest -- the remainder of the trust property and separate trust upon the use of the trust hereinafter set out and deciding provided. If my wife does not survive me or does not presume to survive me, only fractional shares such residue of the trust shall be held in any trust created in item -- should be held and the trust created and decided.
Q. Okay. And --
A. And then it goes on to the fractional share, and what it means for remaining skipping tax possibilities at that point.
Q. Okay. I guess the rest of that provision is what applies if Mrs. Barringer were to predecease Mr. Barringer, correct?
A. Right. Right.

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Q. So I want to focus on -- on the part before that --

A. Okay.

Q. -- because Mrs. Barringer did not predecease Mr. Barringer. Tell me -- explain what happened to the residue of Mr. Barringer's trust, the part that is not used for marital reduction or administration expenses retained for personal property. What happens to the remainder?

A. At Mrs. Barringer's death.

Q. At Mr. Barringer's death?

A. At Mr. Barringer's death. It's held in trust for the benefit of Mrs. Barringer, and therefore, she has the benefit of the trust during her lifetime.

Q. Okay. And if you would please now turn to McBryde depo page 41, and if you would please read into the record paragraph D.

A. Did you say --

Q. D. D as in dog.

A. Oh, B, okay. "The death of --"

Q. No, no, I'm sorry. I said -- I apologize. It's D as in dog on page 51.

A. Okay. "My wife shall have the power upon her death at her last will and testament and codicil,

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thereto, making express reference to this power to appoint any part or all of the property in this trust among my descendants in such manner and trust of -- or otherwise, as she may such will provide, except that she's going to have no power in any circumstances to appoint any and such property to herself, to her estate, to her creditors, or to the creditors of her estate."

Q. Okay. And is this the dispositive provision for the Item 5 residuary trust?

A. Yes. Yes.

MR. MEDLIN: Object to the form.

BY MR. TWOMBLEY:

Q. And again, I know you've already told us what this lines mean, but can you again explain what Section D gives Mrs. Barringer the right to do?

A. Well, she can do -- she can appoint any part or all of the property to or among my descendants, and in such manner and trust as she may such will provide.

I mean, it's very obvious what it says, is that she has that power, except -- because you don't want that property to have been included in her estate. She cannot have the power to appoint the property to herself, to her estate, to her creditors

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of the creditors of her estate.

So it's going to have to go to or among whatever amount she provides the descendants.

Q. Okay. Well, let's talk about that language, the -- the "to or among" and then "the manner in which she decides." What does that mean?

A. It means that she has sole responsibility, authority and discretion to decide if and when and how the children or descendants -- not limited to children -- will take the property as -- and provide whatever provision she seems -- she deems appropriate in that process because it says "in trust or otherwise," which means that it could be another trust of some consequence and duration. Maybe one of the children, grandchildren, great grandchildren or one child or whatever it could be.

Q. Okay. Is -- is -- is there anything in the language that requires the children to be treated equally?

A. The -- the whole purpose of this provision -- and this -- you know, this is such a standard estate planning technique in my -- I can -- I couldn't tell you how many trusts I have had in that regard. It doesn't say at all, other than it has to go to descendant or descendants. There is no child

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designate, no child designated.

So she has full authority to slice and dice and distribute and cause a trust to be created as long as she sets it forth as required in her will or codicil, making express reference to this document.

Q. Now, let's talk for a minute about making express reference in her will or codicil, thereto.

How would -- generally speaking, how would someone exercise a power of appointment like we have just reviewed in Mr. Barringer's trust?

A. It would be in her will that she would exercise because it's power. It's a personal power. And she would say, adding to the will, I'm given the power, and she would recite that. And that's the way it's commonly done. And I wish to distribute the property in this manner and direct that it be done, pursuant to the provisions of this trust.

I would right a title in that, but that's the gist of it.

Q. I understand.

Now, does Mrs. Barringer have the ability to -- to change her mind in the future as to how she may or may not want to exercise the power of appointment?

MR. MEDLIN: Object to the form.

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THE WITNESS: Oh, yes. I mean, basically, she can write a will every day. I mean, amend a will any time she wants and can change it back and forth and over time, you know, it's not just -- it's not just a provision that relates to the issues that there are with -- in her view, and she has sole authority to the children, her grandchildren, her great grandchildren.

It also could be issues relating to total change in the tax laws, or -- that would cause a confiscation if she gave to some -- or creditor problems or any kind of issues that we all know can happen to any generation of level individual who are descendants.

BY MR. TWOMBLEY:

Q. What if she just gets upset at -- at one of the descendants?

A. This is a -- this is the sole -- I mean, that's one of the things you take -- take into consideration when you draft these documents, and it's -- it was discussed. I -- we will get into that later. But I know it has been discussed here. It's her primary -- it's her direct right in this case to

decide. And -- and she does have to appoint it to -- at least the way I read it, to a -- a descendant.

Q. Sure. I understand. Okay.

A. In trust or otherwise, which I'm reading in the rest of the language.

Q. Sure. Now, you -- you did reference or mention that this is a common provision. Is this type of provision in every couples' trust, or do some of the couples choose not to have this type of provision?

A. It -- normally in a process, you would have to tell them -- and we did here, too, for sure -- is, Here are the options. This is one option. Another option would be per stirpes. Another option would be at the start, rearrange to get to the maybe one spouse -- one child is not or it just to a grandchild. Or basically, not exercise the power, which means it then goes in accordance to the term.

So -- but yes. You know, it's discussed, and this was discussed in this case.

Again, I -- I professionally would never allow a document like this be executed if I had not discussed it and made clear to -- just to the issue you're stating, and besides it's clear in its right actually.

Q. So -- so you mentioned that there were

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different options for including a power of appointment or not including a power of appointment. How did you decide which one to put in Paul Barringer's trust?

A. I don't -- I don't decide that. It's done by consultation with, in this case Paul. And again, this was in 1998, and I got a fairly good memory, and I know what my process is. I have been through this literally dozens of times.

And basically, you have to walk through the very questions you've asked, does it apply here, does it apply there, and they have to make a decision, and you hope that it's the best decision. It's one that they will be well informed with, and of course, these documents can be amended and restated if necessary over time.

But this was clearly where they came out where Paul came out at the time of the execution.

Q. And so this -- this power of appointment language would apply for the A Trust, the B Trust and the residuary trust?

A. Correct.

MR. MEDLIN: Object to the form.

BY MR. TWOMBLEY:

Q. Now, Mr. McBryde, are you able to see my -- I guess you are able to see me on my screen. I'm

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going to try to share my screen with you, and I want to show you a document --

A. Okay.

Q. -- 19 in the notebook. But it's one that's a matter of public record. And let me make sure I got it right here.

Okay. Are you able to see my screen now?

A. Yes. It's on -- yeah, separate screen.

Q. Okay. And what I want to show you -- and this is page 58 of the lawsuit that Hampton Luzak has.

A. Can you blow it up a little bit more.

Q. Yes, sir.

A. Yes. Yes, that's -- that's good. You need to move it. Yeah, there you go. Yeah, there you go. Thank you. Okay.

Q. All right. I'm -- I'm just going to read this to you starting in paragraph 142, and it says: "Upon information and belief, descendants Paul Barringer and Mrs. Barringer entered into a binding contract not to revoke their estate plan. Upon..."

Well, let's just take that first sentence, okay? Are you aware of any contracts or other agreement between Mr. and Mrs. Barringer, where they agreed not to revoke their estate planning?

A. No. Did I -- did I -- I continued to do

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work for them, but never did that issue ever even arise or thought arise from my being counsel, and with at least Paul on several matters after this was done.

Q. Okay. What, if any -- and I'm -- that is all I want to ask you about at this moment.

But what, if any, discussions did you have with Mr. or Mrs. Barringer about their desire to ensure or otherwise guarantee that the kids were treated equally in the future no matter what?

A. Don't -- I can't answer that question because we got in in August. Because of the way you stated it is, we would and I'm sure did -- again, it's a long time ago, but I have a certain methodology that I find -- follow with virtually every client because I know what you need to do and what you don't need to do.

We make sure that both spouses clearly understand, agree and approve. And I feel very comfortable because I was intentionally involved in this, you can see from my hours, too little rate, but nevertheless, the -- that at the time of execution on December 4, this is what they wanted to do, and there was no -- no concern that -- I mean, just never heard a thing about that.

And I would say I'm sure I went over the

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document at the time of execution, and obviously, there is just nothing in the file and nothing that would tell me that they had any different direction in mind.

Q. If you -- if you would, Mr. McBryde, I know would like to look at -- behind Tab 7 at McBryde Depo 80.

A. Yes.

(Reporter Clarification.)

Q. 80?

BY MR. TWOMBLEY:

Q. Do you have this diagram in front of you, Mr. McBryde?

A. I do.

Q. And it says at the top "if his wife, Merrill Barringer, survives him."

What is -- what is this document?

A. This is a diagram that we provide to clients almost uniformly for a long time, but always hopefully, getting better and better each year, which lays out what will happen under the docs if you want to read the 50 pages, or however many it was -- if you get to the short version here, which is, of course, laid out, and we've just gone through the detail of the actual document.

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Q. Okay. Well, let's first talk about the A Trust and B Trust that we went over first in the document. Do you see where it says "The wife's GST exempt Trust A"?

A. Right.

Q. Okay. And then you see where it says wife's GST nonexempt Trust B?

A. Yes.

Q. And at the bottom of Trust A it says: "At Merrill's death, unless she provides otherwise in her will, the trust property goes into trust for the children."

What does the "unless she provides otherwise in her will" mean?

A. That's exactly the shorthand of what I would have pointed out, and I'm sure I did, because it's an important provision that's in the document itself. We just been through the longer language within -- in the trust itself.

Q. Okay. So those -- that is a reference to the power of appointment?

A. That power of appointment, and so unless the trust property goes to children, GST nonexempt.

Q. And so it's my understanding that the trust or the property going into the trust to the children

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only applies if Mrs. Barringer doesn't exercise the power of appointment; is that correct?

MR. MEDLIN: Object to the form of the question.

MR. TWOMBLEY: Yeah.

THE WITNESS: That's correct. This -- this mirrors, just in shorthand form, because if you're going to do longhand, I'd write it all out again like I did in the cover letter and explanation.

BY MR. TWOMBLEY:

Q. Okay. And now --

A. So you see it -- you kind of -- basically, it -- it indicates that that's where they are, that there is the power to -- in their discretion. There's no limitations. But if it's not exercised, then this is where it goes --

Q. Okay.

A. -- which is what the will says and the trust says.

Q. Did -- now under -- under the Trust B, I see the same language, "at Merrill's death, unless she provides otherwise in her will, the trust property goes to the children."

I know we are getting repetitive here. But

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can -- can you tell me just again what that historically is for?

A. Well, again, that's the exact parallel to -- that's the shorthand way. Mainly, they've already seen the longhand, and we discussed it before we even got the longhand document in front of them.

So they would have been beat in the head about the importance of that provision.

Q. Okay. Now, let's now go over to the -- to the family trust, which I -- I previously referred to that as the residuary trust and the Item 5 trust.

A. Where is this? I'm sorry.

Q. On the same page we were just looking at, which is page 80.

A. Okay.

Q. I'm at the red numbers at the top.

A. Yeah, I get it. I just flip through. Okay. The -- I got it -- 80 again, I'm sorry.

Q. I should have mentioned that I was staying on the same page. But on the same page, just to the left on the diagram where we discussed Trust A and B, to the left it says "family trust."

Do you see that?

A. Yes.

Q. Okay. And I think that's what we

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previously referred to as the Item 5 trust or the residuary trust?

A. That's correct.

MR. MEDLIN: Object to the form.

THE WITNESS. Again, it's got the same language "unless she provides otherwise."

BY MR. TWOMBLEY:

Q. So what is that reference to again for --

A. The reference is, again, she has the power to set forth in the actual document itself and in the explanatory information that they otherwise received, that she -- she can rewrite it.

And she would be limited because it's not the -- it has to be -- because she is limited to keeping it to a descendant. But other than that, that's -- that's -- the reference to the same language in the -- in the trust.

Q. Okay. Now, Mr. McBryde, what, if any tax issue was involved in Mr. Barringer giving Mrs. Barringer a power of appointment to or among her descendants at the time of her death?

A. There was no extra tax imposed as a result of this provision because they had been back in, I guess, the early '80s or no -- maybe, whatever.

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But in this case, in their situation, there's no -- that's -- that's really not an issue. You've got the A and B Trust and residual trust, and they all have the same provision.

Q. Okay. Now, Mr. McBryde, if you would now turn to -- actually, what I would like to do now, we've been going about one hour. I would like to take a five-minute restroom break. If you need to use the restroom or step aside for a minute --

A. Okay.

Q. -- this is a good stopping point for me, and we are at 10:12, so if everybody will stand down for five minutes, and then we'll -- we'll come back.

THE VIDEOGRAPHER: The time is 10:12 a.m. we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 10:21 a.m. We are back on the record.

BY MR. TWOMBLEY:

Q. Mr. McBryde?

MR. MEDLIN: Actually, can you give us the Bates numbers please, circumstance sir.

MR. TWOMBLEY: Sure.

BY MR. TWOMBLEY:

Q. If you will now turn to Tab 8 which is McBryde Depo 81 through McBryde Depo 93. Can you tell us what this document is?

A. I believe one is the last will and testament that was executed before me and the others, along with Paul. And then -- then you got -- I guess you rollover to the revocable trust -- irrevocable trust, which was executed the same time.

Q. Okay. So let's just start with Tab 8, which is 81 through 93. Whose will and trust is found at page 81?

A. Merrill Barringer's last will and testament.

Q. Okay. And let's -- if you turn to page 93, tell us what page 93 is.

A. Page 93 is the -- it's the same thing. It's the -- it's the signature page for her last will and testament.

Q. Okay. And tell me who -- who witnessed Mrs. Barringer signing this will?

A. And Robert Slain and myself executed this one, too.

Q. Okay.

A. It's notarized by David Vines, which is, of

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course, the three people that were there for Mr. Barringer.

Q. Okay. All right. And let's now turn to tab 9, which starts at page 94. And tell me what -- what -- what we're looking at here at -- at page 94?

A. Well, this is Mrs. Barringer's revocable trust, since we've now already covered his will and revocable trust. This is her will as we just mentioned, and this is her revocable trust.

Q. Okay. And briefly, can you -- can you describe why this tab -- at one point, I saw you wrote that these wills and trusts are virtually identical. But can you describe for me essentially, what -- what Mrs. Barringer's will provides?

A. I think it's -- I go back and look at it again. There was a special provision, I think, that was not in his will, with respect to James Randolph Light, but I can't -- and -- Kemp Light. I don't -- let me make sure.

Q. I think you might have looked. I --

A. I'm just -- I'm -- I'm sorry, it'll just take me a second.

Q. I think it's page 97.

A. Yeah. And there's -- this sentence, "The trustee shall distribute the sum of the $10,000 each

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to James Randolph Light and Miranda Kemp Light, and to each of my nieces and nephews."

I don't think that was -- if I recall, that was not something he put into his trust. And if I'm wrong about that, then let's find it.

Q. Okay. Well, I'm just asking you about Mrs. Barringer's will, not --

A. Okay.

Q. -- not her trust yet.

A. Okay.

Q. Just in general, what did her will provide?

A. All right. Give me the number again. I'm sorry.

Q. It's Tab 8. It starts at page 81.

A. Okay. There we go. It's -- she's creating her own revocable trust and has signed it prior to execution of the will. And then -- and then everything goes -- pours over. It's basically a pour-over will.

Q. Okay. And is that virtually identical to what Mr. Barringer did?

A. Yes.

Q. Okay.

A. Yes. After -- I thought I told you that same basically -- yes.

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ROA 004464

Q. Okay. Now, I want to look at the revocable trust, which is Tab 9, and it starts at page 94.

And you -- you told me previously, that there was a, one provision in this trust that was different from Mr. Barringer's, but what I want to ask you about are the overall dispositive provisions in the trust.

A. Right. Okay. Go ahead.

Q. All right. Tell me what are the --

A. It's basically identical to his trust.

Q. Okay. All right.

A. Because it's the same dispositive. I mean, you know, each of them can have an estate, and they wanted to have it the same way.

Q. Okay. Did Mrs. -- Mrs. Barringer's trust, does it give Mr. Barringer power of appointment?

MR. MEDLIN: Object to the form.

(Reporter asks for Clarification.)

MR. MEDLIN: Object to the form.

THE WITNESS: I'm just trying to look for those.

BY MR. TWOMBLEY:

Q. We can go page by page, but let's start, Mr. McBryde --

A. Since I saw that one difference, I want to

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make sure we don't have another difference.

Yeah, it's going to --

Q. Take as much time as you need.

A. Okay.

Q. Mr. McBryde, let me ask you a different question.

A. Sure. I'm looking.

Q. If you would, please, turn to page 101, McBryde Depo 101, Tab 9, and if you would review Section G on page 101.

A. Yes. That's -- there was a difference, yes.

Q. Tell -- what does Section G say about Mrs. Barringer's Trust A and B?

A. Okay. A and B Trust, the same kind of trust we had under his documents, okay. And then you have A Trust (reading document to self), husband gets the income and principal. Trustee distribute all amount of principal --

(Reporter asks for clarification.)

BY MR. TWOMBLEY:

Q. Mr. McBryde, please turn to 101 at Section G, and how about read that into the record.

A. Yeah. "Upon the death of my said husband, after satisfying or making satisfaction, property

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remains to be distributed trust free of trust, to and among my descendants, making express reference to this power and such manner is..." (reading document to self.)

Q. All right.

A. "Should have no power to appoint such property."

Q. Mr. McBryde, you have to hold on a minute. Because the court reporter --

A. Okay. I will slow down. I'm sorry.

Q. What the court reporter has said is you either have to read it to yourself completely silently --

A. Okay.

Q. -- or you can read it -- read it aloud.

So why don't we start, and just -- I want you to just read Section G to yourself silently.

A. Okay. Yes. On page -- okay.

This is the one that says "Upon his death, property remaining in Trust A and Trust B, shall be distributed by the trustee, free of the trust, through and amongst descendants and in such manner, in trust or otherwise as my said husband may appoint in such husband's last will and testament, codicil thereto, making express reference to this power, but he can't

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appoint the property to his estate or preface his estate.

Q. Is this the same language that we found in Mr. Barringer's revocable trust?

A. I believe that is the same language.

Q. Okay. Now, I would like you to please turn -- hold on one minute and let me find it.

Please turn to 105, McBryde Depo 105, which deals with the Item 5 trust or --

A. Yes. There we go.

Q. Okay. All right. And if you would please turn now to page 107, at the top it's Section D, as in dog. And would you please read Section D silently to yourself?

A. Sure.

Q. Are you on page 107, Mr. McBryde?

A. Yes. Paul was given the power under 1 of -- under D, on page 14 of the document --

Q. With the red number at the top?

A. Or D under McBryde 107, to appoint all of the property of the trust to or among my descendants in such matter and trust or otherwise, which will provide and such where -- expect that she would have no power to appoint."

This is where this -- I caught this -- this

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is what I picked up. I think we've got the husband and wife -- there would be no question about interpretation, but I think we've got the gender or the denomination of husband and wife -- it's just not sitting correctly.

It -- you can only interpret it one way. But it -- but it --

Q. I -- I upon --

A. Shall have the power upon her death? No, upon his death.

Q. Sure.

A. That's what I was trying to figure out, and I just picked that up.

Q. Okay. My question, to you, though, is, is this the same provision that we found in -- in Mr. Barringer's trust as far as this dispositive provision?

A. I -- I don't believe --

Q. Let me just ask you a more specific question.

A. Sure.

Q. Did Mr. Barringer, if he survives Mrs. Barringer, does he have the same exact type of power appointment that his wife had under his documents?

MR. MEDLIN: Object to the form.

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THE WITNESS: No, he does not, I don't think.

BY MR. TWOMBLEY:

Q. Okay. Why -- why not?

A. Unless -- I can't -- that's what I was trying to look at.

Q. Doesn't he have the exact same power of appointment, just like she had to appoint --

A. Oh, yeah.

Q. -- to or among -- (Crosstalk)

A. To or among --

MR. MEDLIN: Object to the form.

THE WITNESS: Yes.

BY MR. TWOMBLEY:

Q. Can -- okay.

Tell me what the dispositive provision is under Section D for the residuary trust that we just discussed?

A. Yeah. My husband shall have the power upon his death by his last will and testament -- unfortunately, they say "her" there -- making express reference to power any part or all of the property of the trust to and among my descendants and trust in such a manner, trust or otherwise as, she -- as she will provide, except that she shall have no power to

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appoint."

Again, I've got a feeling my scrivener on that one didn't quite clean up that, so it's intended to be identical with the right reference to gender to appoint such property here to herself, to her estate, to her creditors, to the creditors to her estate, and that should be his and him.

Q. Okay. So, Mr. McBryde, if you'll -- if you will -- I understand that there is a pronoun discrepancy there, and I want --

A. Yeah.

Q. -- and I want you to forget about that for a moment.

A. Okay.

Q. I understand that. I think we all understand. Maybe plaintiff's counsel will try to say they don't understand.

But just assume for a moment that we all understand the issue with the pronouns. What my question is about the substance of the provision, is the substance of the provision the same as is -- that's found in Mr. Barringer's trust?

MR. MEDLIN: Object to the form.

THE WITNESS: Yes. The substantive provision is, it's got to go to

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descendants, but to or among the descendants as you shall appoint. And therefore, it's the exact analog, but take away the her and put him.

Yes. It's exactly the same in substance. It's going to have to go to a descendant, but it can be for any reason, and that is a very -- again, standard provision in many documents in this context. Sorry, I got --

BY MR. TWOMBLEY:

Q. Yeah, no problem.

A. But, yes, it's the same thing.

Q. No problem. If you would, please, turn to Tab 10, which is McBryde depo page 143.

A. Yes.

Q. At the top here it says "Disposition of the Estate of Merrill Barringer if her husband, Paul Barringer, survives her."

Do you see that?

A. Yes. Yes.

Q. And is this a chart that explains the overall distribution scheme for -- for Mr. Barringer's estate if he survives Mrs. Barringer?

A. Correct. It's a --

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MR. MEDLIN: Object to the form.

THE WITNESS: It's an exact analog.

BY MR. TWOMBLEY:

Q. Okay. And let's -- on that same page, let's just stay on that same page 143, in the middle where it says "husband GST exempt Trust A."

Where on this chart do you describe the power of appointment?

A. Unless he provides otherwise in his will --

Q. Okay.

A. -- which is the exact language.

Q. Okay.

A. Again, it's exact for those gender problems back -- a few pages back.

Q. I understand. How about if you just go on the same page, page 143, to the right of Trust A where you see Trust B. Where do you describe the power of appointment here?

A. Unless a -- again, he says, "Unless he provides otherwise in his will."

Q. All right. And then now go to the left, and again, on this same page, page 143, up under Family Trust, where -- where is the power of appointment described here?

A. Well, it's the same thing, "Unless he

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provides otherwise in his will."

Q. Okay.

A. So...

Q. Okay. All right.

And if you would, please, Mr. McBryde, now I would like to turn to Tab 11, which is McBryde depo 144?

Do you see that?

A. Yes, I got it.

Q. And this -- I'll represent to you that this was a letter produced from your file that was sent to the Barringers on December 2nd, 1988, or at least the date December 2nd, 1988.

MR. MEDLIN: Object to the form.

BY MR. TWOMBLEY:

Q. What is this -- what is document number 11 found at McBryde 144 to 148?

A. This is a description, again, of the letter itself of what they have in detail in the actual documents that were executed.

Q. Okay.

A. Therefore, it's an explanation of exactly what the document itself shows, but in narrative form, for purposes of easier consumption --

Q. Okay.

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ROA 004474

A. -- for reinforcement.
Q. I want to share my screen with you for a moment, and I want to -- I'm going to be asking you about page 146, if you'd like to turn to there.
A. Okay.
Q. And let me see if I can share my screen with you just for a moment. Are you able to see my screen now?
A. Yeah, and I've got it here, too.
Q. Okay. All right.
A. Page 3.
Q. Yes. So let's first talk about if you'll -- if you can view my screen, let's talk about the family trust. Do you see where I'm referencing here in the letter, the reference to the family trust, which is in the second full paragraph?
A. Oh, yeah, under the terms of the family trust.
Q. Right. Okay. If you go down five or six lines, there's a sentence that starts "Upon the death of the surviving spouse."
A. Right.
Q. Okay. Can you read that sentence into the record, please?
A. Yeah. "Upon the death of the surviving

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spouse, he or she will have the power to appoint any property remaining in trust or among your descendants."

Q. Okay. All right. And let's go down to the bottom of this page where it talks about A Trust and the B Trust.

A. Right.

Q. Or what you refer to as the Item 5 -- or I'm sorry, Item 4, A Trust and B Trust. Do you see that?

A. Right. Right.

Q. And if you turn to page 4 at the top, do you see the sentence that starts "Upon the surviving spouse's death" which I've highlighted on my screen?

A. Yes.

Q. Okay. Can you read that sentence?

A. "Upon the surviving spouse's death, he or she will have the power to appoint any property remaining in Trust A to your descendants."

Again, your current wills do not grant the surviving spouse the power of appointment.

Q. And then down a few sentences, what does it say about Trust B?

A. Oh, okay.

"Any property remaining in Trust B as to

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which surviving spouse does not exercise effectively his or her power of appointment will be added to the children's GST nonexempt trust, be held, managed, and distributed pursuant to the terms of such trust."

Which, again, is a -- I think almost an exact analog about what we said about his.

(Defendant's Exhibit 12 was marked for identification.)

BY MR. TWOMBLEY:

Q. All right. If you would, Mr. McBryde, I'd now like to ask you about Exhibit 12, which are some notes that were in your file that appear to be from the October 1, 1998 meeting, and I want to have it on my screen as well, if that will help you.

A. You say 12?

Q. Yes, McBryde 149.

A. Yes. Okay. Got it. Okay.

Q. Do you see these notes?

A. Yes. I'd rather -- 149. I'd rather -- close back.

Okay. Okay. I got it. Okay.

Q. Okay. What -- what are we looking at here Tab 11, page 1 -- 149?

A. You're looking at part of the overall continuing to try to hit all of the issues that Paul

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wanted to address, and that planning and otherwise, and it began -- I think you -- the documents have been presented already, show that again, in terms of actually written beginnings back in August with work all along the way, and that this is, you know -- the early on meeting with him and Robert Slain and myself.

Q. Okay. I would like to ask you about page 152.

A. Okay.

Q. And I think -- if you'll, just for a moment, look at my screen and let me show you what I want to ask you about, and you're welcome to look at yourself.

There's a provision right here at the bottom of the page that I am highlighting, and it looks like to me it starts off "LPA" at the bottom.

MR. MEDLIN: Can you enlarge it?

THE WITNESS: Just enlarge it, yeah, just a little bit.

BY MR. TWOMBLEY:

Q. And let me just read what I -- the way I read it, but I want to you ask the way you read it.

A. Yes. Yes.

Q. What I read is it says "LPA in favor of descendants only."

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Do you see that?

MR. MEDLIN: Object to the form.

THE WITNESS: Yes. And that was the beginning or the continuation of the conversation about what powers of appointment, because, you know, we really are beginning to get into it at that point.

BY MR. TWOMBLEY:

Q. Okay.

A. And --

Q. Well, just hold on one moment, since there's been an objection to the question.

Can you please read to me what you see on the -- that's highlighted on page 152 on the screen?

A. Right. Recognizing that this is my notes, and therefore, I -- I don't type or -- it says "LPA in favor of descendants only." That is, to the extent he exercises the power, it had to be for descendants only.

Q. What -- what does the -- does the LPA mean limited power of appointment?

A. Yes --

MR. MEDLIN: Object to the form.

THE WITNESS: -- which is what we have in all of the documents.

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ROA 004479

BY MR. TWOMBLEY:

Q. Since there's been an objection, let me ask the question a different way.

What does the LPA mean?

A. Limited power of appointment. That's just a shorthand for me when I am scratching along trying to keep up with the conversation.

Q. Okay. Got you. Okay.

Mr. McBryde, now, I understand that these wills and trusts were executed by Mr. and Mrs Barringer at the same time at the same place.

Is there -- is there any significance -- well, let me ask a different question.

Can Mr. Barringer or Mrs. Barringer change their will after December 4th, 1998?

A. Sure. I mean, if they go to another lawyer and want to change it or come to me and say, This is what we have to do, then we could do it. But...

Q. Okay. Can -- can one of them change -- decide to change their will and the other one decide that they don't want to change it?

A. I suppose they could. I mean, I'm not going to be sitting on the doorstep and saying, Don't you think you ought to, you know, you can...

Q. Right.

ROA 004479

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A. If they -- their modification -- you know, they can both be modified, the wills and the trust.

Q. Well, that was my next question. Both of these trust say they're revocable trusts. What is -- what does it mean that a trust is revocable?

A. It means that it can be totally rewritten, scrapped and take the money -- take whatever the assets back and not even have a trust, because it's revocable until death.

Q. Okay. Again, I think I asked you this previously, but just to make sure that we have it clear on the record: What if any discussion do you recall there ever being between Mr. Barringer and Mrs. Barringer and yourself or any of the advisors about an agreement between the Barringers that they would never change the wills that they were executing with you on December 4th, 1998?

A. Never was there any information, indication that they wanted to do other than exactly what we put out, which gives each surviving spouse the authority to effectively determine how it's to go to descendants.

And I certainly wouldn't have -- if I'd heard something different like that, I would not have allowed them to even execute the documents without

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talking through with them whether that's -- that was the appropriate or would require other action.

Q. Okay. I think I may be done, if you will just hold one moment, and let me consult with my cocounsel and I may -- I may turn you over.

A. Okay.

MR. TWOMBLEY: That's all -- that's all of the questions that I have for now. Thank you -- thank you very much for your time.

THE WITNESS: Sure.

THE VIDEOGRAPHER: Are there any other questions?

MR. MEDLIN: I guess I'm going to go next.

EXAMINATION

BY MR. MEDLIN:

Q. This is Alan Medlin on behalf of the plaintiff. And again, just for the record, to respond to Mr. Twombley's comments at the beginning of the deposition, we want to argue at some point there is no privilege to any response to the questions I may ask for a number of reasons generally.

Under the rubric of waver, Mr. McBryde has voluntarily produced affidavits. He's provided his

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notes. He's provided his file, or at least some part of it, we will get into that.

He's providing an estate plan, and he's including Mrs. Barringer's estate plan. He's opened the door through Mrs. Barringer's counsel, and of course, we've got the general test memory exception issue as well.

And I just want to put that on the record, and hopefully we'll deal with all of that at some appropriate time.

BY MR. MEDLIN:

Q. Mr. McBryde -- and I'm sure I'm going to slip and call you Neill from time to time, and I know this --

A. That's fine.

Q. I'm going to trying to keep calling you Mr. McBryde, but if I don't, I apologize.

Just as part of the deposition, and I'm comfortable you know this, but I want to say it anyway, if you have a question about my being unclear or you not being able to understand my accent from a different state from you, if you need some clarification or definitions or whatever, will you ask me about that.

This is not an attempt to trick witnesses

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in depositions, as I think you know. We're just trying to get some information, and I want to make sure that you're comfortable that you understand the question before you answer them. You cannot ask your counsel or any other counsel. You just ask me for clarification, please. And I will try to get that done.

This is not an endurance contest, although I think I do have a number of questions for you. And so if at any time you want to take a break, will you please let me know? And I'm going to let you know if at any time I want to take a break, so we'll try to be fair about that as well.

When we take a break -- and in fact, until this deposition concludes, whenever that is, I think you know that you are not supposed to discuss anything about this case with anyone else until your deposition is concluded.

And I know, but just for the record, you are represented by Scott Tyler for purposes of this deposition; is that correct?

A. Yes.

Q. Thank you. All right. Mr. McBryde, are you testifying today with the estate's permission?

A. Yes.

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Q. Did you provide affidavits in this case with the estate's permission?

A. Let me ask if that -- if you -- I don't know whether -- I trust you implicitly. But I'd like to just make sure my counsel -- I'll have to discuss with counsel here. I -- I -- because I don't know the impact of what you're saying, and so I will have to pull off, and if you're --

MR. TYLER: I need a moment to discuss privilege questions with the witness.

THE VIDEOGRAPHER: Would you like to go off the record?

MR. TYLER: Yes, please.

THE VIDEOGRAPHER: The time on the monitor is 10:58 a.m. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 10:59 a.m. We are back on the record.

BY MR. MEDLIN:

Q. Did you provide affidavits with the estate's permission?

A. Yes. And you will see that in 15 of my

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affidavit.

Q. Did you produce --

A. Item 15.

Q. Did you produce your files with the estate's permission?

A. Yes.

MR. TWOMBLEY: Object to the form of the question.

BY MR. MEDLIN:

Q. Did you get that permission from the personal representative directly or from her counsel?

A. I assume. I have no idea.

Q. When you -- (Crosstalk)

A. By counsel in this case for that purpose would seem to be on this call.

Q. Have you spoken with Mrs. Barringer directly?

A. Have I spoken to Mrs. Barringer directly? No.

Q. About this case?

A. Okay.

Q. And have you spoken to Mr. Twombley about your files, your affidavits and your testimony today?

A. Yes.

Q. And you understand that he gave you

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permission on behalf of the estate to testify, to produce affidavits and to produce the file?

A. Correct.

Q. Thank you. If you would look at our notebook, which is --

A. Okay.

Q. -- which is Mr. McBryde -- do you have that handy and available?

A. This is yours? All right.

Q. Yes. And it should say in the top in the McBryde depo and a page number, just to make sure you have the right documents.

(Audio interruption)

MR. TWOMBLEY: We have something going on with the audio. I'm not sure if there's some interference here. Did something change?

(Reporter asks for Clarification.)

THE VIDEOGRAPHER: The time is 11:02 a.m. We are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 11:17 a.m. We are back on the record.

BY MR. MEDLIN:

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Q. Mr. McBryde, I asked you to look at our -- plaintiffs' documents that we sent ahead of time. Did you get a chance to look at these documents that we sent?

A. Very generally, but just -- yes, very general, but not in detail. But I think I can pick it up, most of it -- I've seen most of it.

Q. Well, the question I want to ask preliminarily is: Is this the order of your file as you produced it to Mr. Twombley?

MR. TWOMBLEY: Object to the form.

THE WITNESS: Mr. Twombley may have to tell you that because this is coming from his -- his -- because he had everything to start with, and we gave it to him, and therefore, Mr. Twombley, you'll have to say.

BY MR. MEDLIN:

Q. What did you give Mr. Twombley?

MR. TWOMBLEY: Object to the form.

THE WITNESS: He's not around.

MR. TYLER: You can answer his question.

THE WITNESS: What did -- say your question again.

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BY MR. MEDLIN:

Q. Did you give your entire estate planning file of the Barringer to Mr. Twombley?

A. I gave to him -- I don't think we gave him the entire estate planning file. I can't tell you. We gave him the information that he requested, so what he got was -- I mean, I think we gave him anything relevant or pertinent.

We -- I mean, as far as I know we did. We haven't held anything back, let's put it that way. I don't know what we'd be holding back.

Q. Is there anything in your estate planning file for the Barringers that would not be included in pages 4 through 209 of the documents that you're looking at right now?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: It looks like it was inclusive of all of the stuff that we gave him. I mean, there's nothing that we held back that he wouldn't have.

BY MR. MEDLIN:

Q. Are you aware of anything that you gave him that would not be in the documents numbered 4 through 209?

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A. No.

Q. How did you decide what documents from your file to give to Mr. Twombley?

A. I gave him the pertinent documents for the period that we talked about, from August where our documents pick up through -- yeah, before this litigated -- before this litigation.

Q. It --

A. I mean, just recent. I mean -- I mean, you know, for purposes of you're wanting -- I need to ask that. Give me a second.

I don't know. You'll have to find out, because I really don't know we sent anything -- we sent most anything pertinent, because they asked for it.

Q. Do you recall how Mr. Twombley asked for the documents; in other words, what documents did he ask you for?

A. He asked me for -- I assume he asked me for pertinent documents. And, you know, I run a big operation, and, you know, give him whatever was pertinent. You know, you've gotten a ton of stuff.

And I think that's all that's relevant for that period, because all we're talking about is from August through December, and I'm not sure we have

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anything much at all after that. That's it.
Q. Well you -- (Crosstalk.)
A. I'm saying we -- we would have given to him our files for that period.
Q. Did he --
A. And most -- I bet you virtually all of the documents that we have in our file you have.
Q. Do you think there are documents after December that are in your file that we don't have?
MR. TWOMBLEY: Object to the form. Asked and answered.
THE WITNESS: Have -- if they are, they have nothing to do with this and have everything to do with just Merrill, because we did not prepare any more documents for him or for them after that time. We -- I mean, they asked us to do some things, but not related to this at all.
BY MR. MEDLIN:
Q. Were those -- any of those things related to estate planning?
A. I don't think they -- I'd have to go back, and my guess is no. I can look, but I -- that's what we would have given to -- have to begin with.
Q. Did Mr. Twombley have access to your entire

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file to determine what he thought was relevant that you should produce?

A. I think -- I think if you read through what we sent, and you have a copy of it, that's what we have, and it's been disclosed.

Again, you sound very curious the way you ask me this. I -- we sent only documents that were relevant to something related to this, and it was very indicative but intense because there was a lot done.

But I -- I can't -- I don't know. I don't know what you're trying to infer about. I mean, I don't know, but I know that we sent everything that we thought was relevant, and -- and have not -- any reason to believe that you don't have it.

Q. Well, Mr. McBryde, I'm not accusing anybody of not producing documents, believe me. What I'm trying to make sure is, is that we have all of the relevant documents in this case, so that when we go to trial, some other documents don't show up that we haven't had an opportunity to see.

So my questioning is that?

A. We -- we did a few more things --

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: -- totally unrelated to

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this and estate planning afterwards, my, but didn't get -- but it wasn't related at all to this matter. We did not pick up the ball after this period with respect to their estate planning.

BY MR. MEDLIN:

Q. So this would be all of your estate planning notes related to the Barringer's estate planning and all of the documents?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I mean, I haven't pulled the file up. I know what I -- I mean, I pulled the file and had people get it out and make copies and send it. That's -- that's what you do.

BY MR. MEDLIN:

Q. Is there some way that you your office can ascertain that for us?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: We'll -- we'll -- we'll look at this if there's anything else. I'm just telling you, I doubt there is. I'm not going to do it right now, because, you

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know, as far as I know, the file is in storage.

BY MR. MEDLIN:

Q. I understand, and I appreciate that, Mr. McBryde.

But if you get the opportunity in the near future just to make sure we have all of the estate planning documents in your file that are set forth in pages 4 through 209 of the documents in front of you today.

A. Okay.

MR. TWOMBLEY: Alan, just for the record, if you think you're missing something, you know -- you know how to get ahold of us and Mr. McBryde and so...

THE WITNESS: I mean, yeah. We're not holding back nothing -- anything. But I can't tell you, period. So...

BY MR. MEDLIN:

Q. All right. Thanks. Let's move on.

Mr. McBryde, what did you review before you filed your affidavits?

A. I reviewed all of the information in the file for that period of which you received copies.

Q. So essentially, you reviewed pages 4

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through 209 of the documents in front of you?

A. Yeah. I'm assuming 4 through 209, if you're talking about not your -- yeah. Yeah.

Q. All right. So who -- who created the affidavit?

A. We -- we did in terms of putting together what was thought to be appropriate in terms of getting affidavits on record.

Q. And, Mr. McBryde, by "we," you mean whom?

A. Well, with counsel. I mean, I'm not going to send to you something when you have counsel.

Q. But did you communicate with Mr. Twombley and coordinate with Mr. Twombley about the contents of the affidavit?

A. Yes.

Q. And were there other drafts of the affidavit?

A. I don't know. I'm sure that -- I'm sure there had to be another draft. But go ahead. I don't know. But I'm sure -- if you say you need to see other drafts, my counsel will have to tell me whether that's appropriate. I don't know.

Q. Well, certainly, Mr. McBryde, I'm not going to ask you something -- ask you to do something that your counsel is going to advise you not to do. We'll

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deal with that obviously, in a separate way.

A. Okay.

Q. Did -- do you recall, did Mr. Twombley make edits or changes to the version that you -- the versions of those two affidavits that you create?

A. I suspect not, but he could have. We pretty much did that inhouse because we knew what the affidavits should include.

Q. So how did you know what the affidavit should include?

A. I assume we discussed with it, and -- and we -- but we had to prepare the affidavits, and I'm sure along the way, there were changes. I doubt you've ever put anything in final form without drafts. Have you? Even you.

Q. Did Mr. Twombley tell you what he wanted the affidavits to say?

A. He -- he told us the areas that the affidavit should address, and we addressed them. And there are affidavits, but we can take input as to what to report. I mean, I can give you 10,000 affidavits. I don't know if that makes sense.

Q. If you have copies of other versions of those affidavits, can we see those?

A. I have to ask counsel whether that's

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appropriate.

Q. But if counsel determines that that's appropriate, you don't have any problem producing those for us?

MR. TWOMBLEY: Object to the form of the question. I will -- I will instruct the -- well, I'm just going to say that Mr. McBryde was our -- Mr. Barringer's and Mrs. Barringer's attorney.

Whether or not he's required or you are entitled to see any other documents is a separate issue that we can take up. You know how to get ahold of us, and you sure -- y'all know how to ask for additional stuff, and we will take that up offline.

MR. MEDLIN: Actually, we understand that you are going to want to review whatever Mr. McBryde's counsel might allow him to produce along the normal way that we've been doing that, so we understand that.

BY MR. MEDLIN:

Q. Why did you produce the affidavit --

MR. TYLER: This is Scott Tyler. We

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will discuss that, and if there's anything to be produced, we will discuss whether it can be produced. But we don't even know if it exists. So -- but we will discuss it.

MR. MEDLIN: Thank you Scott, and I appreciate that.

BY MR. MEDLIN:

Q. Why did you create the affidavit, Mr. McBryde?

A. We discussed -- the same answer Scott just said.

MR. TWOMBLEY: You can answer that question.

THE WITNESS: Yes. To memorialize, since it looked like I was going to be involved in this, what really happened.

BY MR. MEDLIN:

Q. But did someone ask you to produce the affidavit, or did you do it sua sponte?

A. I think it was -- it was a decision that information needed to be provided because -- whatever. I mean, we're going to go back to the same path we just talked about a minute ago.

Counsel can tell you -- we'll talk to counsel and see what -- what the answer is.

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Q. Well, Mr. McBryde, in a deposition, if your counsel want to instruct you not to answer typically for privilege, he'll do that, and we'll give him an opportunity to do that of course.

MR. TYLER: Answer his question. When he asks a question, answer his question.

THE WITNESS: He is asking multiple questions. It's mixing up like spaghetti.

Go ahead. What's the question now?

BY MR. MEDLIN:

Q. Why did you decide to produce an affidavit?

A. To give some information since we were the preparers of the documents and had the work product, which was fully shared, you have, and therefore, it highlighted the points that we thought were important as you looked at the product.

Q. Did you volunteer to produce an affidavit, or were you asked to produce an affidavit?

A. I -- I don't even recall -- I mean, that's the 5th time or 6th time or 8th time that you've asked that, and I'm not going to say any more about it.

Why should I? I mean, I don't -- no, you asked, and counsel even talked to you, so...

MR. TWOMBLEY: I mean, our -- your

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question, I guess -- Mr. McBryde politely described it as curious, but it sounds like you're accusing Mr. McBryde or me of some type of impropriety related to the bare routine effort to provide an affidavit in a case.

I mean, if there is some suggestion that's something been done inappropriate, I hope you have the courtesy to let me and Mr. McBryde know -- know directly.

(Reporter asks for Clarification.)

MR. TWOMBLEY: That was Ashley Twombley.

MR. MEDLIN: And, Ashley, I would certainly have the courtesy to let you or Mr. McBryde if I was accusing anyone of doing anything improper. I'm simply trying to determine the prominence of this, and to determine what may or may not have been included in the affidavit and why.

I think I'm entitled to find that out, and to the extent that you're inferring some accusation about impropriety, please do not do that because that is not implied at all.

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MR. TWOMBLEY: Well, go ahead. Go ahead and ask your questions.

MR. MEDLIN: I've asked the question.

BY MR. MEDLIN:

Q. Mr. McBryde, I think you told me you haven't spoken with Mrs. Barringer about this cases; is that correct?

A. That's correct.

Q. And in the affidavit, which we will look at in more detail later, it seems to me that you're expressing your opinion about her intent?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I am not doing anything but stating the fact that in the process between August and her execution and his execution of the documents of December 4th, they were fully informed and discussed with respect to all of the matters.

BY MR. MEDLIN:

Q. But does some of your affidavit contain your assertion about her intent in these documents?

MR. TWOMBLEY: Objection to the form

MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Calls for a legal

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conclusion.

THE WITNESS: I will say once again, and I am a lawyer who makes sure the clients know what they are getting, have discussed the same and get the product that they wanted, and that was all done with me.

And therefore, the documents were prepared and executed and explained in detail with them at the time and before, period.

BY MR. TWOMBLEY:

Q. But you did not speak with Mrs. Barringer to confirm your understanding of her intent for purposes of this case?

MR. TWOMBLEY: Object to the form.

MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Asked and answered.

BY MR. MEDLIN:

Q. Answer the question.

MR. TYLER: I'm going to object to that one. He's -- he's answered that already. You can move on. He's not going to answer that question.

MR. MEDLIN: Are you instructing him not to answer?

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MR. TYLER: Yep, he's answered it already.

MR. MEDLIN: Are you instructing him not going to answer on the grounds of privilege, or just because he's --.

MR. TYLER: He's answered it already. Move on.

BY MR. MEDLIN:

Q. Did you try to speak to Mrs. Barringer?

MR. TWOMBLEY: Object to the form of the question

MS. PAYLOR: Object to the form.

THE WITNESS: No.

BY MR. MEDLIN:

Q. With whom did you speak about your affidavit other than your own counsel -- and I don't want to know what your counsel and you had to say about that -- and other than Mr. Twombley?

A. When we pulled all of the files, I would have talked to other lawyers in our firm who work with me.

Q. And don't tell me about that.

A. Huh?

MR. TYLER: Don't --

BY MR. MEDLIN:

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Q. Don't tell me about conversation with them, Mr. McBryde.
A. So what was the question, then?
Q. Other than your own counsel and Mr. Twombley, did you speak with anyone else about these affidavits?
A. Except I can't --
MR. TYLER: Anyone else, other than us.
THE WITNESS: No.
BY MR. MEDLIN:
Q. With whom did you speak about this deposition? And again, Mr. McBryde, don't tell me what you discussed with your counsel to the extent that's privileged.
A. Okay.
Q. But with whom did you speak about this deposition?
A. Internal lawyers and counsel.
Q. Have you spoken with anyone else?
A. Not that I'm aware of.
Q. You have not spoken to Mr. Twombley?
A. Oh, excuse me. Yes, obviously Mr. Twombley.
Q. And when did you speak with Mr. Twombley?

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A. Several occasions.
Q. When were those occasions?
A. I don't have them on my -- per se. I can get you that information if that -- if that's appropriate, and I will have to ask my counsel if it's appropriate.
MR. TYLER: When did you speak with him? You can answer that question.
THE WITNESS: Yeah. I think -- I don't have my calendar with me, and I don't keep a calendar with me and I don't keep a calendar very well at any rate, but I can get that information to you but I don't have it -- I can't give it to you now.
BY MR. MEDLIN:
Q. And again, Mr. McBryde, just for moving forward, if we ask for things, we have an understanding, I hope, that you're not going to produce something that your counsel tells you not to produce.
A. Okay.
Q. As Mr. Twombley pointed out we have other ways of dealing with that?
A. All right. So I can just respond that way. If counsel says okay and answer yes, we did.

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Q. Unless your counsel --
A. That will save us a lot of time.
(Crosstalk.)
Q. Well, hopefully so. I know your time is valuable.
So in these conversations with Mr. Twombley, what did you discuss?
A. The same issue we just mentioned. I'll --
Q. And tell me about what he said. Tell me about what you said.
A. If I can do that, I will get back to you, too. If he tells me -- if my counsel tells me --
MR. TYLER: If you remember any details, you can...
THE WITNESS: He -- he asked me about the documents as you would.
BY MR. MEDLIN:
Q. And what did he ask you about the documents?
A. Just asked me general questions. I don't know. I -- I -- I haven't spent a whole lot of time with Mr. Twombley. I got other things to do.
But, I mean, I can't give you a detailed conversation because we discussed things, and we discussed the information that is appropriate to share

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with them, and counsel for us says, That's fine.

Q. Mr. McBryde, what else did he ask you about, and what else did you respond?

MR. TWOMBLEY: Object to the form of the question, asked and answered.

MR. MEDLIN: Not answered.

BY MR. MEDLIN:

Q. But go ahead.

MR. TWOMBLEY: Well, I'm disagreeing.

THE WITNESS: I answered.

MR. TWOMBLEY: He said he can't remember the details of it.

THE WITNESS: I mean, I -- I, you know, I'd got other things to do than take down, Oh, I talked to so and so for five minutes and here it is.

I -- maybe you are a good lawyer that way, but I wasn't.

BY MR. MEDLIN:

Q. And -- and when did you first meet with Mr. Twombley, approximately?

MS. PAYLOR: Object to the form.

THE WITNESS: I gave you the date. I don't remember now.

BY MR. TWOMBLEY:

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Q. Was it a year ago, six months ago?
A. I don't -- I don't -- I -- all I can say is I give you a date -- but I don't recall off the top.
Q. Yeah. But you don't keep a calendar, I think I heard you say.
A. Not well. But I can find out, that's for sure.
Q. All right. But it would have been since this case started?
A. Yes.
MS. PAYLOR: Object to the form.
THE WITNESS: How would I know that?
BY MR. TWOMBLEY:
Q. And so from the time this case started until more recently, you're not sure exactly when the time met with Mr. Twombley or even approximately?
A. No. But I can get that to you. I can get that to you quickly.
Q. Thank you.
A. A lot more quickly than the time we're spending on this call.
Q. Did you meet with anyone else about this deposition?
A. Did I meet with anyone else? Yes. Counsel. And -- and my fellow lawyers who -- in my

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firm.

Q. Well, when you say counsel -- I'm sorry. I interrupted you.

A. Yeah. I said counsel.

Q. Your counsel, Mr. Twombley. Anyone else?

A. I don't think so.

Q. Okay. Thank you.

Have you spoken to Ms. Paylor about this deposition?

A. No.

Q. Have you spoken to Ms. Paylor about this case?

A. No.

Q. Have you spoken to Mr. Molster about this deposition?

A. No.

Q. Have you spoken to Mr. Molster about this case?

A. No.

Q. Have you spoken to Randy Light about this case?

A. No.

Q. Have you spoken to Merrill Light about this deposition?

A. No.

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Q. Have you spoken to Merrill Light about this case?
A. No.
Q. Have you spoken to anyone at CFRC about this case?
A. What is CFRC?
Q. It's Mr. Barringer's company, and your affidavit refers to his stock CFRC.
A. No.
MR. TWOMBLEY: Object to the form of the question.
BY MR. MEDLIN:
Q. Have you ever represented Randy Light?
A. No.
Q. Have you ever represented Merrill Light?
A. Well, we have in the past and through the execution of these documents. Whether we had any -- I don't think we had any representation after that December 24 or --
MR. TWOMBLEY: Merrill Light?
THE WITNESS: Huh?
MR. TWOMBLEY: Merrill Light.
BY MR. MEDLIN:
Q. I'm sorry, Mr. McBryde. Merrill Light, not Merrill Barringer.

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A. Okay. Yeah.
Q. Sorry. Did you ever represent Coastal Lumber Company?
A. Did we -- along the way, we may have done work, but nothing of the consequence. And I don't even remember it, but I just know that -- that the company, we did something with them along the way years and years ago.
Q. And I presume you've never represented the company CFRC?
A. No.
Q. Okay. Thank you.
You are --
A. What is CFRC?
Q. Coastal --
A. Huh?
Q. It's -- it's a company that Mr. Barringer own stock in when he died that your affidavit refers to.
All right. So you are testifying today --
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: I -- you broke up right there.
BY MR. MEDLIN:

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Q. Yeah. You are -- as a fact witness?
A. Yes. Fact witness.
Q. Do you intend to testify as a fact witness at trial?
A. I don't have any intention on anything. I'm just here because you subpoenaed me to testify.
Q. Yeah. I did not subpoena you to testify Mr. McBryde. Mr. Twombley did.
A. Well, Mr. Twombley. But you all did initially. Thank you.
MR. TWOMBLEY: Yeah, object to the form of the question. Misstates the record and misstates what has happened in the case.
MR. MEDLIN: Not correct, but let's move forward.
BY MR. MEDLIN:
Q. Have you discussed the possibility that you will testify at trial with anyone as a fact witness?
A. I think I assume that I might have to, but I haven't talk to anybody it.
Q. Are you testifying today as an expert witness?
MR. TWOMBLEY: Object to the form of the question.

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ROA 004512

THE WITNESS: No.
BY MR. MEDLIN:
Q. Do you expect to testify at trial as an expert witness?
MS. PAYLOR: Object to the form. Asked and answered.
MR. TWOMBLEY: Same objection.
BY MR. MEDLIN:
Q. First time it's asked. Go 1ahead and complete, Mr. McBryde.
MS. PAYLOR: He has 1already answered it.
THE WITNESS: I don't know.
BY MR. MEDLIN:
Q. Have you discussed the possibility that you would testify as an expert at the trial, Mr. McBryde?
A. No. (Inaudible comment)
Q. Are you being paid to testify today, Mr. McBryde?
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: I would like somebody to pay me.
BY MR. MEDLIN:
Q. Are you licensed -- are you licensed to

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practice law in South Carolina?

A. No.

Q. You are licensed in North Carolina and Georgia, I believe; is that correct?

A. That's correct.

Q. And have you ever been licensed to practice in South Carolina?

A. No.

Q. What is Moore & Van Allen's policy about lawyers who are not licensed in South Carolina representing South Carolina citizens for estate plan?

MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Object to the form.

THE WITNESS: We always associate indeed with, as you probably know, we have an office that opened up in 1996 in Charleston, and we before then used -- whenever we had a matters in South Carolina in this context, we will get them to, in some way, sign off.

So we -- just like we do for Florida residents or Georgia residents -- well, Georgia's not a problem, and so we always make sure that somebody has seen the docs.

BY MR. MEDLIN:

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Q. Who -- who would that have been -- who would that have been in the case of the Barringers?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: There were several people. Excuse me. There were several people in the Charleston office that had some contact with this firm.

BY MR. MEDLIN:

Q. Okay. Do you recall their names?

A. No. Well, I guess whoever was there. I mean, that was a different office then. But -- and they would have -- it would have been a very -- I don't think I was even required to do it with the testamentary. I don't know what the answer is.

All I know is that we -- I never just go down to a state and say, Here, sign these documents. I always run them by -- which is what you're required to do in North Carolina. I don't know what you do in South Carolina. Maybe you do them everywhere.

Q. Do you hold yourself out to be an expert in South Carolina law?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I'm an expert in

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federal law, and that's what we're talking about here.

BY MR. MEDLIN:

Q. Federal law governs dispositive provisions in estate planning?

MS. PARLOR: Object to the form. He is not listed as an expert.

THE WITNESS: And -- and that's -- but I'm saying, that's why I give South Carolina counsel to look at it.

BY MR. MEDLIN:

Q. So let's look at page 75 of the documents in front of you.

A. Okay. Is this Moore & Van Allen letterhead?

Q. Yes.

A. Okay.

Q. Now, let's look in the first paragraph under "wills."

A. Okay.

Q. And let's look on the third line, please, sir.

MR. TWOMBLEY: Alan, are you --

THE WITNESS: I'm not --

MR. TWOMBLEY: Yeah. I'm not

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following what page? 75. Is this 75 of 206 or what -- what is it?

MR. MEDLIN: Yeah, it's should be --

THE WITNESS: There's -- it says 0075.

BY MR. MEDLIN:

Q. Yeah. Actually, it should be -- at the bottom it will say McBryde documents, page 72 of 206.

A. Okay. There you go.

Q. Are you with me?

A. Yes.

Q. Okay. So starting in the third line, you have a sentence that says, "For wills also provide that you leave a writing that although not binding upon your executor expresses your wishes --"

MS. PAYLOR: What page are you on, Alan? What page are you on? You're not on the page that you told us to get on.

MR. MEDLIN: I think we're on page 75. But in any event, it's page -- if you look in the bottom right-hand corner, Alice, it's page 72 of the McBryde documents.

MS. PAYLOR: Well, you said the third line, and that would be number 1, last will

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and testament. So I don't know where you are.

MR. MEDLIN: No. What I said was, under the paragraph wills. Under wills.

MS. PAYLOR: Okay. Okay.

MR. MEDLIN: Okay.

MS. PAYLOR: Thank you.

MR. MEDLIN: Are you with me now?

MS. PAYLOR: I got it.

MR. MEDLIN: Good.

BY MR. MEDLIN:

Q. All right. So I'm going to start over with that, Mr. McBryde.

"Your will also provide that you may leave a writing that all of, not binding upon your executor expresses your wishes regarding the disposition of your tangible personal property."

Do you see that?

A. I do.

Q. And the Barringers were South Carolina residents at the time they executed this will?

MR. TWOMBLEY: Object to the form of the question. Calls for a legal conclusion.

THE WITNESS: You know, I'm not sure.

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ROA 004518

Tell me. You asked the question.

BY MR. MEDLIN:

Q. Well, your documents -- headings talk about State of South Carolina, County of Beaufort.

A. I asked -- I asked a question where -- you know as a matter of law in fact whether they were residents of South Carolina, sure.

Q. Mr. McBryde, I get to ask the questions, and so my question --

A. Give me context to answer it --

Q. Right.

A. -- because you are the one that knows.

Q. If you --

A. I -- I know these are good in North Carolina, and I know that we got this looked at in South Carolina. What can I say?

Q. Yeah. So would you have prepared documents with the caption State of South Carolina, County of Beaufort, if you didn't think your clients were residents of South Carolina?

MS. PAYLOR: Object to the form.

THE WITNESS: I -- I think that's a hypothetical question. I can't answer it because that was 1998, and maybe you understand that happened in 1998. But

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maybe I don't, so I can't answer that question.

BY MR. MEDLIN:

Q. Look at page 86 --

A. All right.

Q. -- just by example.

A. Okay.

Q. And you see the caption in the top hand corner, Mr. McBryde, State of South Carolina, County of Beaufort?

A. All --

MR. TWOMBLEY: Hold on one minute. Hold on one minute.

Alan, I don't know -- when you say page 86 -- I mean, I'm looking at 86 and 206. Is that what you're referring to?

MR. MEDLIN: Well, we have two different numbering systems actually, and these are our documents, not yours, right?

So in the top right-hand corner -- in the top right-hand corner we've got 0086, but the document as you produced them are shown in the bottom right-hand corner is page 83 of 206. Does that help?

MR. TWOMBLEY: So you're referring to

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ROA 004520

the top right-hand corner number; is that correct?

MR. MEDLIN: For this one, yes.

MR. TWOMBLEY: Okay. If you'll just -- I'm not trying to be difficult. I honestly was looking at a different 82, and so if you'd let us know which one you're referring to.

MR. MEDLIN: Well, I meant -- I meant to say 86.

MR. TWOMBLEY: Okay. I'm there. Thank you.

(Reporter asks for Clarification.)

BY MR. MEDLIN:

Q. All right. So, Mr. McBryde, this is --

A. We were treating them as residents of South Carolina for this purpose.

Q. Okay. Thank you. All right. So back to page 75.

A. Okay.

Q. Do you know whether in 1998 South Carolina law allowed a testator to direct the disposition of certain tangible property?

MR. TWOMBLEY: Object to the form of the question

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MS. PAYLOR: Objection.
THE WITNESS: Say it again. I'm not understanding what you're saying.
BY MR. MEDLIN:
Q. Do you know whether in 1998, South Carolina law allowed a testator to direct the disposition of the tangible personal property.
MR. TWOMBLEY: Object to the form of the question
MS. PAYLOR: Object to the form.
THE WITNESS: No.
MR. TWOMBLEY: That was a waste of time.
THE WITNESS: You bet.
MR. TYLER: This is Scott Tyler. We've been going almost three hours. Let us know when is a good time for a break as well.
MR. MEDLIN: Whenever you want, Scott.
MR. TYLER: Do you want to break now?
THE WITNESS: Probably.
THE VIDEOGRAPHER: Do you want to go off first?
MR. TYLER: Sure.

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THE VIDEOGRAPHER: The time on the Monday to 11:57 a.m., and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 12:09 p.m. and we are back on the record.

BY MR. MEDLIN:

Q. Mr. McBryde, looking at page 75 in the sentence that we read before you took a break, and you -- you were giving legal advice to the Barringers about what went into their documents, right?

A. I'm giving advice, yes.

Q. And you were giving legal advice when you were discussing their estate plans with them, right?

A. Yes.

Q. Okay. So when you sent this letter, was it your understanding that South Carolina law did not allow a direction to dispose of tangible personal property in a separate writing?

MS. PAYLOR: Object to the form.

THE WITNESS: I did not run that by counsel, but they did not tell me -- South Carolina counsel that was a problem, but it's irrelevant.

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BY MR. MEDLIN:

Q. Why do you say it's irrelevant?

A. Just because that was not a material factor in their documents.

Q. You don't think tangible personal property and the disposition of it is important to clients?

MR. TWOMBLEY: Object to the form

MS. PAYLOR: Object to the form.

THE WITNESS: It is what it is.

MR. TWOMBLEY: Object. Just confirm an objection for one defendant is an objection for all, so we don't have to --

MR. MEDLIN: That works for me if it works for you all.

MR. TWOMBLEY: Okay.

BY MR. MEDLIN:

Q. Answer the question, Mr. McBryde, please.

A. I did not know. Again, this was run by Florida counsel. They didn't pick it up. So I didn't pick it up.

Q. Why did you run it by Florida counsel?

A. Florida. South Carolina. Excuse me.

Q. My question was: In response to your answer that it's irrelevant, and I asked if the clients considered the disposition of their tangible

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ROA 004524

personal property to be irrelevant in your experience?
MS. PAYLOR: Object to the form.
THE WITNESS: Just back up. It certainly can be rev- -- relevant. This is -- I think it says your will may be in writing, but not binding upon your executives, especially with regard to disposition of tangible personal property.
Tell me, you're saying that although I'm saying it may not be binding, that that's not appropriate.
BY MR. TWOMBLEY:
Q. I'm asking you if you understand that South Carolina law allowed a tangible personal property memorandum to bind the executor.
MS. PAYLOR: Object to the form.
THE WITNESS: They may be irrelevant to another state at some point in time. I mean, it's just -- where they're going to be living, this will could be done while they lived in Florida, I mean, being the operative document.
All I'm saying is -- we're saying don't count on the -- South Carolina could change their laws. Who knows. But at any

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ROA 004525

rate...

BY MR. MEDLIN:

Q. So --

A. I think I answered your question.

Q. -- when you prepare a will for a client, you assume that will is going to be valid in every state, mean the same thing in every state?

A. I said I ran it by South Carolina counsel who did not pick it up.

Q. But if -- if one only requested that beneficiary abide by a memorandum as opposed to directing a beneficiary to abide by it, that would be a difference, wouldn't it?

MS. PAYLOR: Object to the form.

THE WITNESS: Well, you tell me since I don't know.

BY MR. MEDLIN:

Q. I believe you said that -- just to confirm, briefly, Mr. McBryde, you haven't discussed the Barringer's estate planning with them since 1998 -- since December-ish of 1998?

A. I do not think so in that -- there were some work done, but it was if I recall -- looking at the file, it was not material, and I don't believe it had anything to do with anything that we're talking

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about.

Q. Yes, sir.

And do you recall approximately, the last time you saw either of them?

A. Years ago. Many years ago. No, I do not.

Q. Thank you.

How many estate planning clients would you estimate you've had over your career?

A. Hundreds.

Q. How many would you estimate you had in 1998?

A. A lot.

Q. Maybe since 1998?

A. A lot.

Q. Do you typically take careful notes?

A. I take notes on conversations and meetings, but they are not careful notes. They are notes that sometimes I will even just make appoint that on its face may not look like it's even addressing the issue when I'm just really reminding me to look at it for purposes of further consideration.

Q. So why do you take notes?

A. Why do I take notes?

Q. Yes.

A. Because they may be helpful.

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Q. Do you use them in preparing the estate planning?
A. I gave you all of the notes.
Q. I'm sorry, Mr. McBryde. I think you misunderstood the question.
A. I'm sorry. Yes, what is the question? I'm sorry.
Q. I'm sorry.
Do you use notes in preparing your clients' estate plans?
MS. PAYLOR: Object to the form.
THE WITNESS: It depends -- it depends on what the notes say: Do they apply to the estate planning per se; do they -- as I say, sometimes I'll even have just a note to look at something when we're not going to use it.
I mean, you know, my notes are personal to me and to get me thinking about something that may need to be addressed later or was addressed. But it...
BY MR. MEDLIN:
Q. Okay. Thank you.
Is it fair to say that you take notes at least in part to help recall your discussions with

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clients?

A. Yes, but sometimes not to follow, but to actually raise questions about other notes we've got to look at. I mean, I don't take careful notes of everything that's said.

I take notes that are important for me and -- and looking back at the matter after I -- after me, and I do it all the time.

Q. And your notes would also include your thoughts about the estate planning that you're preparing?

A. Could and could not. I say sometimes I'll mention -- I'll say something that at the moment I know is not correct, but I want to just go back and look at it so that to be true.

Q. Thank you.

Do you remember every detail of every conversation you have ever had with every client?

A. Absolutely not.

Q. Do your notes indicate the important parts of the discussions that you had with your clients?

A. They can, and they cannot be.

Q. The notes that you produced, Mr. McBryde, which are -- if you want to look, although I'll leave that up to you, but pages 3 through 7, 42 through 49,

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59 through 63, and 70 to --

A. Okay.

Q. -- 70. Do you want to look at all of those?

MS. PAYLOR: Object to the form.

THE WITNESS: What are you asking me to do?

BY MR. MEDLIN:

Q. Well, what I'm going to ask you is, do you recall if these were realtime notes, or do you add thoughts later to your notes as you review them?

A. Both of them.

Q. Okay. Thank you.

In your notes -- and let's look, for example, at pages 4 through 7 -- actually, beginning on page 5.

A. Okay.

Q. And this -- this is your handwriting. These are your notes, correct?

A. That's correct.

Q. So you have a lot of numbers, 1, 2, 3, 4, etc. How does that fit in with what you're doing with note taking?

A. When I just take notes, I take notes. I scribble scrabble. That's all. Everything important

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to me at the time to recall thoughts, comments, but that's all. They're not directive or determinative of what was actually said or how to move forward.

For me it works. It's worked for 50 years.

Q. Understood. So, Mr. McBryde, if you would flip over to page 72.

A. Okay.

Q. Is that your handwriting also?

A. No.

Q. Whose handwriting is that?

A. I don't know.

Q. Who else would be in a meeting with you?

A. Yeah.

(Reporter asks for Clarification.)

THE WITNESS: Telephone conversation with -- oh, it's a telephone conversation. It wasn't a meeting I was on. Do you not -- did you not see that at the top?

BY MR. MEDLIN:

Q. Are those -- those notes in your handwriting?

A. No.

Q. Whose handwriting would that be, do you know?

A. It's got to be probably an associate that

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was sitting in -- or I don't know. I don't whose handwriting that is.

Q. Okay.

A. I have had a lot of associates.

Q. So it's possible that there were other people in the room in meetings or during telephone conferences who aren't shown as being there in your notes?

A. They -- they could -- yeah. It's obviously done by someone who I probably grabbed for that telephone conversation.

If -- I would suspect it could be -- it's got to be somebody in our firm, I mean, somebody who's -- got on the call.

Q. So --

A. These are internal notes, not -- not notes for action.

Q. Sure.

So, Mr. McBryde, if you'll flip back -- I'm sorry to keep doing this to you, but if you flip back to page 11.

A. All right.

Q. And this is a document -- this document is from Robert Slain, right?

A. Right. Hold on a second. Page 11?

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Q. Yes.
A. Okay. I got it. I got it.
Q. And then following, you'll see an executive summary from Robert Slain and some diagrams --
A. Correct.
Q. -- which is on pages --
How did you get those documents?
A. I assume he took them to the meeting we had, which I think was outlined in the information that you got.
Q. And would you recall if these are all of the documents that you had with Mr. Slain?
A. They were all documents with Mr. Slain relating to this matter at all, yeah.
Q. Okay. Thank you.
There are a lot of proposals in Mr. Slain's documents for the Barringer estate plan. Would you agree?
A. This was the -- let me see. That was the August meeting, or is it the note?
Q. Yes, sir. This would be particularly set out in the letter that you just referred -- the executive summary that you just referred to.
A. All right. What -- what date is that? It should be dated.

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It would have been in the August to October -- again, let me -- what was the page again?

Q. Well, starting -- the number page, Neill -- Mr. McBryde is on page 11.

A. Okay.

Q. And then the executive summary file.

A. Yeah. This would have been something that was brought or introduced at the August, which was the first time we met Mr. Barringer.

Q. Did Mr. Slain bring Mr. Barringer to you as a client, do you recall?

A. Maybe way back. But I started -- he certainly -- he certainly might have been one of the people. It could have been him. That's a long time ago. A lot of people send me clients over the years.

Q. Understandably.

Mr. McBryde, was Mr. Slain your agent?

A. No. He was -- he was -- he had a separate relationship and that -- I mean, he -- he used Mr. Barringer, and if they were looking for counsel, he could well have recommended me for a good reason.

Q. For a good reason you said, Mr. McBryde?

A. Yeah. Because it's my area.

Q. Yes.

A. And they -- they were considering a lot of

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complex matters that take a lot of horsepower in terms of additional lawyers to help.

Q. Yeah.

A. So within the --

Q. No argument here.

So, there were any number of proposals that were discussed with the Barringers about estate planning devices, a lot of tax savings devices; is that correct?

A. That's correct.

Q. And they didn't agree to all of them; is that correct?

A. I don't know whether they have ultimately implemented them or not, because again, we did not have a whole lot of interaction after '98.

Q. Thank you.

One of the suggestions was that Mr. Barringer give half of his stock to Mrs. Barringer so that she could create her own draft.

A. There was -- when I went back to the style, I saw just what you saw, and obviously, there were a lot of things talked about, but what we ended up focusing on after discovering a whole lot of things was getting the wills and trust in order, and as -- basic estate planning which we did by December 4.

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Q. I'm sorry for interrupting you.

So one of the proposals was that Mrs. Barringer creat a GRAT?

A. Right. I can -- I can see that, and I -- personally I never got -- you read what I read because I don't know where we're at in the sense, that's not where we ended up with my -- with my work.

(Reporter asks for Clarification.)

MS. PAYLOR: Alan, you are breaking up.

MR. MEDLIN: I'm breaking up again?

THE REPORTER: You have to repeat your question.

MR. MEDLIN: Well, I was apologizing to Mr. McBryde about continually interrupting him. I think he's finished and moved on, and he's not.

THE WITNESS: Okay.

BY MR. MEDLIN:

Q. The GRAT proposal involved Mr. Barringer giving Mrs. Barringer half of his Coastal Lumber stock so she could create GRAT?

A. I see what you see, and that was obviously considered.

Q. But to your knowledge, he's never done it?

A. To my knowledge. Now, I didn't go back to

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post not working with the file, so I could have -- there could have been something in there because I still had some contact and mended relationship, but nothing material.

Q. So is the power of appointment an important part of estate planning?

A. You certainly need to know what you're giving a power of appointment to. Now, they -- in their particular plan what they wanted to do, power of appointment was very important.

Q. And what were your discussions with them about that?

A. First, I would need to listen to them what they want to do with their property and when; and secondly, did they want -- we've already been over this morning a good bit all of the powers of appointment that were, in fact, in place, and that -- in this context they're very important.

We've got a lot of property, and you've got property that could go to descendants or whomever else your primary beneficiaries are, and they thought very clearly about that.

And you see -- I think we discussed the documents you saw earlier this morning, that that's -- that's something that became very important to them,

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and by December 4th, they were very glad to have submitted that change, so that the last of them to die could make the final decisions as to how and who within the descendants framework were to receive the property, passing onto the will and the revocable trust.

Q. So tell me as much as you recall about the specific discussions with them regarding powers of appointment?

A. All I can say is, I can absolutely state that I would have spent considerable time going over that because -- and -- and considerable time over the documents generally because these, you know -- any time you're dealing with a new set of documents, you want to make darn sure they -- it's exactly what they want and that they understand all of the implications.

And I would have said upon their desire to keep the flexibility of dealing with descendants on the second death as a very customary framework for clients with multiple siblings and the like.

So that's -- that's -- that's the whole point of why we started in August is to end up with the planning they wanted to implement, look at other things that they could implement, that Robert Slain and other third parties had pushed in front of them,

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and -- and but what was most importantly, get those documents signed.

I think you may have noted, you didn't mention it -- that -- that they wanted to get it done by December, and we got it done by December.

And they were fully informed. I can't tell you exactly what I said, but I know what I've done for over 50 years, and I think you -- and I'm very thorough and very good and make sure they know what they're -- they're doing and that that's what they want to do.

Q. So this is based on not your recollection specifically, but based on your practice?

A. Yes.

MR. TWOMBLEY: Object to the form.

THE WITNESS: I'm not going to put the documents in front of them and say, sign them. And I don't prepare them unless I've had -- in this context because we were and are talking about substantial wealth, it was very important that they understand the implications of what they were doing.

So I have no question but that I spent ample time as -- as I think you can sort of see the process. But it moved

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forward fast because it was sort of -- everyone wanted to get it done right before Christmas, which is not always my favorite time to have to do that.

BY MR. MEDLIN:

Q. Understood.

So you wouldn't have put the powers of appointment in the documents without already having discussed it with them, correct?

A. No, we discussed it along the way. That didn't just pick up. That was discussed along the way.

Q. Yeah. Again, based on your practice?

A. Yes.

Q. So when did you -- when would you have -- when would you have discussed that with Mrs. Barringer?

A. Either indirectly through Paul, or certainly the day of the execution, and probably before then.

Again, that's a pretty important decision and one that spouses are interested in on both sides. So it was a -- I know that there was absolutely just because of the feeling afterwards that, you know, we'd done a great job for them, and they were very

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appreciative, and that -- that that was where they came out, and we agreed that that made sense for all of the reasons that had been rendered how to pull forward.

Q. Did you meet with Mrs. Barringer before the execution?

A. I can't tell you. I don't know that I did. But I know that she would not have signed or been asked to sign anything that I haven't been completely discussed with her, and if it was at the meeting, fine.

And I have -- there was -- that's just the way it works. I don't have spouses just sign documents that their spouse -- their other spouse puts in front of them or their lawyer's counsel. That's something that --

Q. If I understood your earlier answer, Mr. McBryde, you would not even have prepared the document for Mrs. Barringer dealing with powers of appointment without having discussed it with her first?

MR. TWOMBLEY: Objection.

THE WITNESS: I suspect that's exactly the case, that's correct. How I discussed it in with a telephone or any

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other way, I -- I know that she would know, and more importantly, it would be reinforced and determined that she -- she was quite capable of makings decisions herself.

BY MR. MEDLIN:

Q. So to make a decision, she has to have a discussion, correct?

A. Yes.

MS. PAYLOR: Objection to the form.

THE WITNESS: And there is no question that we would have had and had a material, substantive discussion to the extent there was any discussions about that because it's not only clear on its face, but it does have implications which I know they were cognitive of and wanted to have that flexibility.

BY MR. MEDLIN:

Q. To have a discussion, she'd have to either be present --

A. Correct.

Q. -- with you or have --

A. Or telephone or --

MR. TYLER: Let him -- let him --

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ROA 004542

Neill, let him finish his question.

THE WITNESS: Yeah. Go ahead.

BY MR. MEDLIN:

Q. Go ahead, Mr. McBryde.

A. No, go ahead.

Q. I was going to say a conversation by telephone back in 1998?

A. I don't know what you were saying.

MR. TWOMBLEY: Can you restate the question?

BY MR. MEDLIN:

Q. To have a discussion with her, you would have had to have met with her in person or have had a telephone call with her; is that correct?

A. Or -- yes, or -- or she would have gotten a copy of the documents after I mailed them out on December 2. They didn't execute them until December 4.

Q. But that means that -- go ahead, I'm sorry.

A. No. I'm saying they did have all of the basic answer in those documents.

Q. But she wouldn't have participated in discussions before the preparation of the documents if you did not have a conversation with her; is that correct?

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A. Probably not. I would have had a conversation with her. But I can't separately recall it, but I can absolutely state -- and I have never had a client have a problem saying that they weren't informed -- is that no one and neither of them would have begun to execute those documents without a direct discussion with me of the importance or lack of importance, depending on how they come out, that -- that that's where they were going to go and give them the power to make the final decision as to how the property goes to descendants.

And that has been discussed, as you know, along the way -- I think as you know from all of the documents that you were presented, that that was an important point.

So all I can say is I'm the best of the best, and I -- I give them all the information they need. I make sure they understand it and approve of it and want to execute it.

And I had every sense of satisfaction that process was properly implemented at the appropriate time in the appropriate circumstances, so both of them knew exactly the changes that were being made in that regard.

Q. So if your notes don't show a meeting with

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Mrs. Barringer, can we --

A. The notes show the meeting where her I know on the 4th.

Q. If your notes don't show a meeting with Mrs. Barringer before the execution of the documents, can we rely on the notes?

MR. TWOMBLEY: Object to the form asked and answered. We've covered all of this.

THE WITNESS: Can you rely on the notes. I don't know what you're saying.

BY MR. MEDLIN:

Q. Can we believe the notes if they show the participants in discussions did not include Mrs. Barringer before December 4th?

A. And I can't give you the definitive answer, but I have said because I can't -- I would say it's very -- would be very unlikely to not have gotten the information to know that she got it.

But had -- had that not been the case, I can flat guarantee you that I would not have her sign this unless we had discussed it in full, if not earlier, and if earlier, still at the time of execution of the documents.

These were important documents. They both

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ROA 004545

knew they had a very substantial family structure in terms of folks who were siblings, and they also knew the magnitude of the wealth that might be coming, and they were -- they -- and they were determined to go ahead and get it done, and we got it done.

Q. Would there be a letter to Mrs. Barringer that wasn't included in your file?

A. Not that I know of.

Q. So if the first letter to Mrs. Barringer was dated December 2nd, you would not have written her before then?

A. I don't know for sure. But I don't think you get the point. And the point is, she would not have done that -- signed that document with that change in it unless she had had material substantial discussions over time or any time and certainly at the time of the meeting that gave me complete satisfaction that she knew that -- when she signed the document, that she knew or read it and sign it and did sign it.

Q. Would there be notes of that discussion and explanation on December 4th, the date of execution?

A. There would need to be done -- none to be done. I mean, I appreciate you're trying to make something out of nothing, but the truth of the matter is my professional career has been based on the

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ROA 004546

credibility of what I do and how well I do it.

And in particular -- not particularly, but in the context of this magnitude, it is going to be absolutely something that would have been discussed and addressed and highlighted. So I feel very comfortable in knowing that I did that.

Q. Do you recall what was said during the discussion on December 4th?

A. No. You know, out of the 250 -- actually probably 500 estate planning arrangements in my 50 years, I know what I do when I do something, and that's not the way I operate. It's --

Q. Mr. McBryde, other than what Mr. Twombley highlighted earlier, those few words, is there anywhere else in your notes discussing or talking about a power of appointment that you recall?

A. I -- I can't -- I'm not sure, but that came up, and it was an issue, and I remember that orally for sure, and so it had to be addressed.

And obviously, to have gotten the documents in the form they got them, that was a big issue because it was a big change.

And therefore, I'm sure along the way -- I suspect for sure with Paul, but with Mrs. Barringer, too, that was focused on and decided upon.

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ROA 004547

Q. Do any of your letters to Mrs. Barringer prior to December 4th mention a power of appointment?

A. Not at least what our file shows.

Q. Do any of the diagrams that Mr. Slain presented at that meeting show anything about power of appointment?

A. They were not -- remember they started out on all of these other things that they wanted to do, but they ended up wanting to get their wills updated and the power of appointment issue included in that as the first priority and have it done quickly.

Q. Would you be surprised to know that Mr. Jolly, who took over their estate planning in 2012, also produced diagrams along with Mr. Slain?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I don't know what you're saying, what happened.

BY MR. MEDLIN:

Q. Let's put it this way, are diagrams an important part of the estate planners explaining estate planning to clients?

A. They are helpful for sure. Yeah. I mean, good gosh. If they can't read, you can't talk, and it's hard to deal with clients.

ROA 004547

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Q. But that's why estate planners use the diagrams, for exactly that reason, correct?

A. Well, no. It's just one of the -- it's redundant. It's in the letter. It's in the diagrams, and it's in the final documents that's prepared. And I've been around -- I've been around with a lot of clients. I've never had a problem, and I'm convinced that they -- I mean, there is not even an issue that they were fully informed when those documents were signed.

Q. So is a power of appointment a intuitive matter to non-lawyers in your experience?

A. In my experience, you will go through all of the parameters when you've got multiple siblings, and particularly, in this day in time, it's even worse that you want to make sure that you never are fixed in to the point -- if you have one of the adult parents who were responsible for getting -- protecting the children at the same time I guess, that they considered that.

Do some accept it, or do some not want to do that? Certainly. But it's -- it's something that's actually done quite -- quite frequently.

Q. But do clients understand that before you explain it to them in your experience?

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A. Of course they do. I mean, the wording is straight forward, and particularly when it's reinforced orally and by written word and by modeling with your exhibits.

Q. Yeah. I don't think that's my question, Mr. McBryde. If I asked it poorly, I apologize.

When a client comes to you, do you think they already understand about powers of appointment, or do you explain that to them?

MR. TWOMBLEY: Object to the form.

THE WITNESS: Of course I explain it to them.

BY MR. MEDLIN:

Q. You explain it to them because a non-lawyer may well not understand that concept before they --

A. I suspect you may have lawyers that don't know.

(Reporter asks for Clarification.)

BY MR. MEDLIN:

Q. So in your letter on page 75, you tell the Barringers that this is the first time that they have had a power of appointment; is that correct?

A. To my knowledge.

Q. All right. So I assume, based on your previous questions and answers, you've never discussed

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ROA 004550

CFRC with Mr. Barringer because, if you'll let me represent to you, it didn't exist at the time that you did their estate planning.

So you did not discuss CFRC with them; is that correct?

A. No.

Q. You did discuss Coastal Lumber, it looks like, several places in your notes; is that correct?

A. Yes. But it never became a separate issue. I think we worked with Coastal Lumber maybe earlier in some context, but it was not front and center --

Q. So --

A. -- in planning prep -- in this planning exercise, it ended up in the execution of the estate planning documents.

Q. Do you recall if Coastal Lumber was important to Mr. Barringer?

A. Yes. I remember the name. I remembered, again, I spent a good bit of time and effort working with them on a number of matters, but I don't have any separate recall. This is 1998 or earlier. And, therefore, I knew a lot about it, but that's not germane to why we're here today.

Q. So you never discussed Coastal Lumber with respect to his estate planning?

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A. I'm sure we did. But this is -- I -- in terms of -- he's got an estate, and he's going to pass some interest in it, depending on whether or not he's taken care of it during lifetime or otherwise, and therefore, it's an asset of his estate.

But for purposes of preparing the will, that doesn't come front and center because that was being separately and had been separately worked on, and that didn't specifically need to be addressed in the context at that time in the will.

Q. Do you mean that the transfer of any interest he had in Coastal Lumber was going to pass outside of his estate planning?

MS. PAYLOR: Objection to form.

THE WITNESS: What I'm saying is it's not material for purposes of deciding what they wanted to do with whatever property they had. If they had a Christmas tree farm or whatever, you've got to get -- you've got to dispose of whatever is left.

And if there's separate planning going on, which he had a whole lot of over a number years, different kinds of planning or interest property he owned or dealt with, that doesn't mean that you have to

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mention every asset for purposes of knowing that if they died tomorrow, what are we going to do, regardless of the state of that particular asset.

And that's what they want to make sure they got covered and covered properly.

BY MR. MEDLIN:

Q. So have you had clients who have a particular concern about how their family business will pass?

A. You can't do everything in one will that they said they wanted. They -- they have, and I'm sure afterwards have, even though I wasn't representing them, they had a lot going on.

This addresses one issue that had to be addressed and should be addressed in the way they wanted it addressed, regardless of whether a lumber company or this or that, or assets all over the place, timber.

You don't change the will because of the fact that there are other assets that are in play. You've got to have something that's ready to go. That's why you have a will. And even if you die, that would be nice, but never know.

Q. Well, let's say you have a client who is

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the sole proprietor of a business and he wants to leave it to his daughter only and not to his other children. Would you --

A. If that's where he -- yeah, if that's where it was, he would have told me. That would have been the -- that is not where he was on December 24 and the time before, fully informed, along with his wife of what the ramifications would be if both of them died.

And I -- in fact, in many of my discussions, I probably had with them I said, You've got to realize, this is what -- you die, this is what's going to happen. And, you know, I make sure that they understand that they're making a decision which will impact directly and indirectly, you know, virtually all of their assets.

Q. And so your clients' intent, is what you manifest in the documents, correct?

A. That's correct.

Q. And --

A. Will and testament and revocable trust --

(Reporter asks for Clarification.)

MR. TYLER: Repeat what you just said. Repeat --

THE WITNESS: I Can't even remember.

MR. TYLER: If I may, I think he said

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and the will and the trust documents.
BY MR. MEDLIN:
Q. The estate planning documents I think we're talking about, which would include the will and irrevocable trust, correct?
A. Correct, yeah.
Q. Sorry, Mr. McBryde. So if a clients' intent is set forth in the documents, that's the intent that existed at that time, correct?
A. That's correct.
Q. And that would be based on the fact and circumstances that existed at that time, correct?
A. And their decisions with respect to any fact and circumstances that were germane as discussed and concluded and memorialized by the execution of the documents that went the way they wanted to go.
Q. But unless we represent psychics, they have to base their intention on the way -- the way the world exists at the time we prepared the documents, correct?
MS. PAYLOR: Object to the form.
THE WITNESS: If you are saying I can do a will only once and then I do it for my wife, no. That's absurd.
BY MR. MEDLIN:

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Q. Things change after documents are executed, and we can't anticipate every change?

MS. PAYLOR: Object to the form.

THE WITNESS: Is that a question?

BY MR. MEDLIN:

Q. Question mark at the end.

MR. TYLER: We're going to -- we're going to propose to break here when you have a good moment, Alan, for -- for about 20 minutes for lunch, but you tell me when you want to do that.

MR. MEDLIN: I want to do it when Mr. McBryde wants to do it.

THE WITNESS: I'm all for eating.

MR. TYLER: We are going to do that now then. Can you give me a sense of how much longer you think you have, Alan?

MR. MEDLIN: It's going to be a while. Again, I'm not good at estimating how long I'm going to talk.

MR. TYLER: I'm not asking for -- I'm not asking for a commitment. I'm asking for an estimate.

THE VIDEOGRAPHER: The time on the monitor is 12:54 we are off the record.

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(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 12:55 p.m. We are back on the record.

MR. TWOMBLEY: All right. This is Ashley Twombley. We briefly went off the record, at which time I think Mr. McBryde's counsel asked how long -- how much longer the plaintiff's counsel had for questioning. And I think you said you thought several hours, Alan, but you didn't want to be held in a commitment, and I understand that.

And then Mr. McBryde said that he felt that you had spent about an hour on asking the same question over and over again, and then I asked for us to come back on the record so we can have this discussion. So I just want to have a record of, you know, whatever we discuss so that, you know, if it ever needs to be looked at, there would be a record of it, so --

MR. MEDLIN: Ashley, I object stringently to your letting us go off the

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record, having a conversation, then try to put on the record what that off-the-record conversation was. So unless you've got certification as a court reporter and we were on the record, I just object to what you just did and what you just said.

MR. TWOMBLEY: Well, let me ask Scott.

Did I misrepresent anything in your opinion about what was said off the record?

MR. TYLER: I don't think you did but --

MR. TWOMBLEY: Wait a minute. Wait a minute. Since that assertion has been made, I just want to ask, does anybody on this call, other than plaintiff's counsel including Mr. McBryde, contend that I misrepresented what was said during the, you know, 40-second break? If anyone does, please let me know, because I obviously did not intend to misrepresent anything that was said. I was trying to simply get a summary of what was said so that this conversation would have context.

MR. MEDLIN: And your point is --

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MS. PAYLOR: I think you were right, and I think Mr. McBryde should go ahead and tell Mr. Medlin what he was saying that he thought about the first hour of the deposition, so that it's on the record and not just your --

MR. MEDLIN: Why don't you ask him that, Alice, when you get a chance to question the witness. Why don't you ask him that. This is my part of the deposition, and I'm asking the questions.

And, Ashley, yes, I disagree with exactly the way you stated what was said when we went off the record. But more problematically, I disagree with the fact that we go off the record to have a conversation among counsel, and then you put that conversation or attempt to put that conversation on the record. That is the purpose of going off the record.

MR. TWOMBLEY: Well, you know, the problem is, just respectfully, is that, you know, I think you spent an incredible amount of time with Mr. McBryde on some totally irrelevant and immaterial issues.

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And I am fearful, respectfully, that you are going to spend hours and hours of more additional time on what I think are totally irrelevant and immaterial issues.

And, you know, I just wanted to memorialized that Mr. McBryde said sua sponte, on his own, that he also thought that you had spent an hour asking the same question or something to that effect.

But, look, I -- you know, again, I am not trying to hold anybody to anything, but I do want there to be a record of, you know, what -- what was said. So --

MR. MEDLIN: All right. So next time don't agree to go off the record, and we'll create a record.

MR. TYLER: Well, this is Scott. I am going to revisit this question, repeatedly if we need to, so we will stay on the record each time we do that. And when I first talked with Bill about this deposition six weeks ago and when the plaintiff had subpoenaed Mr. McBryde, I was told that your exam on the plaintiff's side would be two to four hours. And, you know,

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I'm not holding anyone to any exact time frames either, but I think it's reasonable to be asking and getting some sense as to how long we are going to go. I mean, at some point I'm going to tell you how much longer you have, and I prefer not to get to that spot.

So let's take our break, and we will revisit this issue as we go forward.

THE VIDEOGRAPHER: All right. The time on the monitor is 12:59 p.m. We are off the record.

(Lunch recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 1:30 p.m., and we are back on the record.

BY MR. MEDLIN:

Q. Mr. McBryde, I hope you enjoyed the short lunch that we had. I want to pick back up with something that I want to deal with before I get back to the line of questioning that I was on when we broke.

If you recall, or you can look at the letter that we talked about on page 75 of our documents, the ones I think you still have in front of

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you?

A. Uh-huh (affirmative.)

Q. And if you flip to the end of that letter, before you get to the attachments or inclusions.

It should be page 79.

A. Yeah.

Q. Is that signed?

A. No.

Q. Do we have a signed version in your file?

A. I feel certain we do. If that was -- that went out December 2.

Q. Well, would you have sent out an unsigned letter?

A. I don't think so. So I will have to just go with, I didn't know that it was unsigned but...

Q. Do you know why a signed version, if one exists, wasn't produced?

A. I don't know that it wasn't. I do not know. It wasn't addressed. I just didn't pick that up. But I'll -- I'll go see what we can do.

Q. And this was sent on December 2nd by U.S. mail, correct?

MR. TWOMBLEY: I'm going to object to the form of the question.

THE WITNESS: It doesn't look like

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it's U.S. mail. I usually put that on top if it is. I don't recall.

BY MR. MEDLIN:

Q. Don't you otherwise, in your file, show when something was faxed with a fax receipt or UPS --

A. Have you --

Q. -- UPS receipt?

A. Have you looked on page 1 of 1 at the end of that? UPS Next Day.

Q. What page are we looking at?

A. If you just keep on going.

Q. Well, you direct me to the page number you are talking about.

A. I see that is for the 27th. Via UPS.

Q. That would be an earlier letter, wouldn't it be?

A. Actually, that's the ending. That is the ending letter. That's the 27th.

Q. That was one sent a couple of years later when you transmitted the documents, correct?

A. Oh, okay. You are right. I just -- you set these documents up. Let's see.

Q. Those documents are in the form we received them, Mr. McBryde.

A. Yeah.

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ROA 004563

Q. And the order.
A. What is the question?
THE WITNESS: Well, I'm -- I'm --
MR. TYLER: Let him ask the question.
THE WITNESS: The question is, was this sent because it's not signed.
BY MR. MEDLIN:
Q. And the question is, was it mailed? Because I don't see a UPS or a fax receipt accompanying that letter.
A. I feel certain it was mailed, but I will -- we'll confirm that.
Q. All right. So if it was mailed, it was mailed on December the 2nd, wouldn't you think?
A. You know, it wouldn't have been mailed unless it could get there. I can't tell you right now.
Q. Well, the letter is dated December 2nd, correct?
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: Yeah.
BY MR. MEDLIN:
Q. You would want have mailed it before it was dated, correct?

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A. I said you're going to have to let me just check. I can't -- you say that 10 times. We'll check and confirm.

Q. If it were mailed on December the 2nd --

A. I will check and confirm. I can't do anything right here. Do you want to go look in the files now, so --

Q. That is not my question, Mr. McBryde. I'm sorry.

A. It is your question. But go ahead.

Q. No. If it were mailed on December the 2nd, is my question now -- that is a different question, that is assuming that it was mailed on December 2nd -- when do you think that letter might have arrived in Hilton Head, South Carolina?

A. I'm not going to go on your assumption that it was not sent and received in whatever format that they would have gotten it because sent -- obviously, we sent them information right after that by UPS or whatever it was, and I wouldn't be surprised if this was not sent at least in the same manner.

Q. But when you say "right after," that was actually a couple of years later transmitting the documents, correct?

A. Yeah.

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ROA 004565

Q. And --
A. Again, I can't do anything now but say we'll look immediately and see if we have it.
Q. That is not my current question, Mr. McBryde. I appreciate you --
A. But your hypothetical, that makes no sense.
Q. If you mailed the letter on December the 2nd, it would have arrived in Hilton Head after December the 2nd, correct?
A. I don't know.
MS. PAYLOR: Object to the form.
THE WITNESS: I don't know.
BY MR. MEDLIN:
Q. U.S. mail can get the letter the same day to the recipient?
A. I don't know.
Q. So if, in fact, it got there on say December 3rd, let's say you sent it by FedEx --
A. Yeah.
Q. -- when did we execute the documents?
A. On the 4th.
Q. And where did we execute the documents?
A. I -- I can't recall. Obviously, somewhere because we would have formed the docs.
Q. Let's assume that it was Charlotte since

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the notary signed --

A. Yeah.

Q. -- in Mecklenburg County.

A. Yeah.

Q. So the Barringers have a letter sent to them in Hilton Head. They are supposed to digest all of this and get to Charlotte and execute the documents within two days of the time the letter is dated; is that correct?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: It's a hypothetical. On a hypothetical, yes. I have no idea, and I suspect this hypothetical is garbage. But just -- we'll see.

BY MR. MEDLIN:

Q. Mr. McBryde --

A. And in any event -- and in any event, they did execute the documents in our presence when they were executed.

Q. Yes. As you've testified and as those signatures would seem to indicate.

A. Yeah.

Q. So let's get back to the questions that we were looking at before we took a lunch break.

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I was asking about how you treat a client who wants to make a specific disposition of his or her business. Do you just include that in the overall estate planning dispositive provisions, or do you make specific dispositive provisions about that?

A. At the time this will and trust were executed, you take the documents and they make them say that whatever assets are, this is what it's going to be. If you have separately not yet finished on some planning exercise with respect to an asset, you are not going to wait a week or a month or a year. I hope you've never told a client to, don't sign this because we need to add some more stuff in there later on. I'd say, fine, we will do it colossal as soon as we get through. I mean, that -- that is what you are saying.

Q. But we did no other estate planning documents for the Barringers after December 4th, 1998, correct?

A. That is their decision and/or their -- didn't want to do anything further at that point.

Q. So if I have a client who has a closely held business, she owns all the stock, she wants to leave all the stock to her daughter, but the rest of her estate equally among her children, you would have

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a specific provision as to that stock, correct?

A. If there were a change in decision, you'd have to have a valid provision. That is not where she was when she signed it at this point. So, I mean, you are giving a hypothetical off a hypothetical.

Q. No, I'm not doing that, but I appreciate your thought about that.

If a client comes to you, you've never done an estate plan for the client before, and says, look, I've got all these assets, generally I want them to go to my children equally, but I want my closely held business to go to my daughter who works for me. You would have a specific provision in that set of documents leaving the stock of that closely held business to that daughter, correct?

MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Object to the form.

MS. PAYLOR: You are asking for a hypothetical.

MR. TWOMBLEY: And asked and answered.

THE WITNESS: That is not a -- that is not a hypothetical because at that point in time we have a decision made by her that clearly does not anticipate the

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hypothetical.

BY MR. MEDLIN:

Q. And you would --

A. Because the hypothetical wasn't in place at that point in time.

Q. Did you discuss specifically with Mr. and Mrs. Barringer, that the power of appointment would include Mr. Barringer's troubling interest in Coastal Lumber?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I discussed, I am sure, that it applies to all of the assets now owned that they owned in their individual names or interests therein, if they were not otherwise disposed of.

BY MR. MEDLIN:

Q. Okay. So as he processes that, he is thinking, here is what I own, and all of that is subject to the power of appointment, correct?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: No. I don't have no idea that that's it. You can't -- you can't say that, and you don't know that.

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And I think that is wrong because he knows what he has done and she knows what has been done at the point of execution, and therefore, there will be.

Obviously, if you start doing things with other assets that become -- needed to be addressed separately, they can do what they have done in the past, I'm sure, is that additional estate planning documents such as consoles or amendments to trust.

BY MR. MEDLIN:

Q. But we are focusing on your documents and your discussions with Mr. --

A. At that point in time, not -- yeah.

Q. Yes. So at that time, he would have understood based on his discussions with you that whatever he owned at that time would be subject to a power of appointment?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: Yes. Absolutely.

BY MR. MEDLIN:

Q. And if he did not have a controlling interest in the company at that time, he wouldn't have thought that a controlling interest would be subject

to that, correct?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: Say it again. I don't understand that.

BY MR. MEDLIN:

Q. If he didn't own the Brooklyn Bridge at the time he executed those documents, he would not have thought that he would -- might be conveying the Brooklyn Bridge under a power of appointment. It would --

A. Of course, he would. He knows what he owns, and he knows what he owned at that moment. The fact that he may not own it five days later or 10 days later or three years later or seven years later, he knows that I've got to make an amendment to the will if that's -- or a trust as applicable.

Q. Right. He knows he would have to make an amendment, correct?

A. On your hypothetical. I don't accept the fact that he'd do any of that, but I'm -- you used a hypothetical.

Q. Right. So Mr. Barringer, if he did not have controlling interest in Coastal Lumber at the time you created these documents, would not have

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ROA 004572

thought that he was conveying a controlling interest under a power of appointment, he didn't own it?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: No, I don't -- I mean, I just don't understand what you are saying.

BY MR. MEDLIN:

Q. Do you know whether Mr. Barringer had controlling interest in --

A. It --

Q. -- Coastal Lumber when you represented --

A. It doesn't matter. He was -- executed the will. If he died that day, the moment -- before he had a will, he wouldn't have gotten the result that he wanted based on whatever assets happened to be still in his name.

So a will is almost -- that is why we keep them coming back as often as we can. We want to take into account any change in circumstances, and when they occur -- and we knew there were going to be change in circumstances, look at all the planning between all this and December 4. There was going to be a lot more planning. And they have to be updated as the clients are willing and want to pay lawyers to

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ROA 004573

do it. And that is -- your premise is, well, unless everything is squared away, whether it be a closely held business or whatever, you got to wait, you got to wait, you got to wait. Huh-uh. That is -- if you did that in your practice, you'd go bankrupt. But any rate, so that is -- that is the point and that the answer to your question.

Q. Yeah. That is not exactly my question, but I will accept your answer as your answer to my question.

If Mr. Barringer thought that he might be hit by a Mack truck the day after he executed the will, then he would be thinking that whatever I had is going to pass into the revocable trust and at my wife's death she has the power to appoint?

A. That is correct.

MR. TWOMBLEY: Object to the form of the question.

BY MR. MEDLIN:

Q. So if he did not have a controlling interest in the company on the day he executed the documents, he wouldn't be thinking that if a Mack truck hit him the next day, somehow magically a controlling interest in the company would pass to his wife.

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ROA 004574

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I can't accept that premise that he knows what he has. And he had a lot of different assets, and he was going to have to straighten them out. And he did -- and he consciously and regularly sort of went through these assets.

So on your premise, you can never -- this is the second time you have done this. You are sort of saying, you can't do a will if you've got some more things to do or it's not going to be perfect. He wanted the will. He said, I want it by December -- actually, he said he wanted it by November, but we got it in December. That is pretty good. And you saw that in the language. And that was it. He wanted to get that will up to date on that -- which included the issue that we are talking about.

BY MR. MEDLIN:

Q. Right. And so his asset ownership changed after that, you would think he would make an amendment to his will?

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MR. TWOMBLEY: Object to the form of the question. That is assuming he wanted to make a change.

THE WITNESS: Absolutely. I would -- I would -- with that -- in hearing that, when he wanted to make a change, he can make a change. And if he decided -- you don't know, you're not in his mind. You don't know what really is going to happen. And if he died the next day, he would be in worse shape if he hadn't changed everything in the sense that they wouldn't have been able to implement the very -- one of the key things that was changed to the trust -- to the will in the first place in the trust.

MR. TWOMBLEY: And, Alan, I apologize. I thought I was on mute when I said that, and I just realized I wasn't. So I apologize.

MR. MEDLIN: Well, only because I don't have a mute button, Ashley, are you able to speak now. I'm trying to figure out how to do that.

I am kidding, and I accept your

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apology, of course. You don't ever need to apologize to me, but appreciate you doing that.

BY MR. MEDLIN:

Q. Whatever Mr. Barringer owned in company stock in 1998 when you executed these documents, even if he meant to give it to Mrs. Barringer to distribute at her death under the power of appointment, could they have agreed that she would not do so?

A. All I can say is that through the date of execution, that had not come up in any sense that they both agreed that they would have that provision in there to have that approach and provision. Now, could they change their mind a month later, a year later, a decade later? Sure.

Q. Could they have agreed without telling you?

A. I guess if they wanted to, but that is just such rank speculation. They didn't tell me. And I gave them every opportunity, and they didn't seem to have any issue. They did what they -- that is the whole point. You missed it. They did what they gave professional advice of counsel to make sure that this is what they wanted and how they wanted to go. This is what they wanted to do, and they wanted to memorialize it in the will in November -- or December

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we finally got it done.

Q. And again, that is based not on your recollection but on your practice?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: Yeah. If you can say -- maybe you used to do this. I don't know now. You go in and -- and say, sign this. We don't do that. You may have. You may have had a practice with somebody that does that. We don't do that. I've never done that. I am going to force them as much as they dislike it and probably if -- if it's been a long exercise, I'm not even going to bill them all for it. But that is -- that is -- that is what you do.

Again, you are saying, oh, can't sign anything, and even if you tell them fully disclosed, get every feedback, unless they've done X, Y and Z looking back. You just -- that is not the way a good lawyer works.

BY MR. MEDLIN:

Q. If the Barringers had such an agreement, would they have to tell you for it to be valid?

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MR. TWOMBLEY: Object to the form of the question. It calls for a legal conclusion.

THE WITNESS: I -- I have not researched that issue or anything. I have no idea.

BY MR. MEDLIN:

Q. Well, you talked about --

A. I know that -- I know their will is going to be valid whether or not they had concluded something behind the scenes or off the record. If they died the next day, or one of them does or he does, it will be as -- as is -- where the property and where the assets are because that is what he wanted it to be at that point in time.

Q. But you talk about such an agreement in our affidavit, right? You volunteered the discussion about this, correct?

A. Yeah.

MR. TWOMBLEY: Objection to form --

THE WITNESS: His agreement -- do you mean on the issue itself?

BY MR. MEDLIN:

Q. Yes, sir.

A. He wanted to allow the second spouse. She

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wanted to allow -- allow the second spouse as the documents state in terms of what they executed right then and there. And to the extent there was cleanup that you assert hypothetically and anything -- that is going to be true, they were saying, this is where we are now. If one of us died right now, this is the way we want to go. We got plenty of time, probably they were saying themselves, if you in fact correct -- which I don't concede one way or the other -- that there is some more cleanup that is going to be done or needs to be done based on a lot of other planning suggestions that we had put in place from August until December. They had a lot of time to think about all of that. A lot of time to make change if they wanted to before they executed the documents. But they wanted to go ahead and get the documents updated on that point.

Q. Well, when you say "they," you mean he, because we don't have any evidence that you ever had any discussion with Mrs. Barringer before December 4th, correct?

MS. PAYLOR: Object to the form.

THE WITNESS: I'm saying "they," because before they executed it, they heard and would have received and did receive the

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information about what the big change or how it's working out in terms of what would happen if one of them died in terms of how it went to the children.

BY MR. MEDLIN:

Q. Yeah. I was simply referring, Mr. McBryde, to your comment that this was a lengthy process from August to December and they had been discussing that.

We don't really know it was they, is my point, during that period of time, from August --

A. We've spent 10 minutes on this, literally 10 minutes.

MR. TYLER: Yeah, don't --

THE WITNESS: You asked the same question.

MR. TYLER: Just stop. Stop. He is going to move on. He is not going to answer that again. He's already answered it multiple times.

MR. MEDLIN: On what grounds -- on what grounds are you instructing him not to answer?

MR. TYLER: Because he has already answered it 10 times. And I'm in control of this deposition, and he's going to move

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on. So ask your next question.

MR. MEDLIN: And -- well, we'll talk about who's in control of the deposition later. Mr. Twombley might have an issue with that as well.

BY MR. MEDLIN:

Q. So could she have promised him that she would not exercise that power of appointment?

A. At the moment she executed, if she is, it's totally -- they gave no indication, and indeed, if she promised him, he is smart enough to know, well, gosh, if it's so important that he has got her to promise him, that they would have told me and we would have added that in there.

Q. And that promise could have occurred later, too, correct? Again, not saying it happened, but if you wouldn't --

MS. PAYLOR: Alan, we can't hear you anymore.

MR. TYLER: Yeah, we can't hear you.

THE WITNESS: We can't year you.

(Off the record.)

BY MR. MEDLIN:

Q. Okay. They would have entered into an agreement afterwards, correct?

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ROA 004582

A. They could have entered into agreement before, but they didn't. And they could do it afterwards.

Q. And you wouldn't know about the afterwards, correct?

MS. PAYLOR: Objection to form.

BY MR. MEDLIN:

Q. You said they -- you said they didn't afterwards. How do you know they did not enter into an agreement after December of 1998?

A. Well --

Q. How do you know that?

A. -- I'm just saying if they -- you can always change a will and a trust, if they're -- basically the will, and you die, and the trust if it's revocable. Therefore, to the extent they wanted to make changes after December 6th, they could make changes. Certainly. They could --

Q. And they --

A. They could --

Q. Sorry. I keep interrupting you. Sorry.

A. No. They can make it. But that is not where they were. And the very fact that it was never changed to me is you are really making the concrete case, if they knew about all of this and wanted it

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done, that they really didn't want to do it as you seem to assert.

Q. How do you know that they did not want to enter into an agreement or that she made a promise after they last saw you?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I'm just saying, if they didn't make the change, the presumption has got to be since they knew what they were doing, they got -- knew specifically what they were doing, that they didn't want to change.

BY MR. MEDLIN:

Q. If they knew, if I heard you correctly, if they knew.

MR. TWOMBLEY: Object to the form of it the question.

BY MR. MEDLIN:

Q. Is that what you answered?

A. No. I'm saying they knew. You are saying if they knew. They knew. I know they knew. That is -- and your clients, if you were in the will execution process, you would do what I did. And I hope you would. You -- you are a great lawyer. And

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you -- and maybe wouldn't do quite as well as I have. But I fully -- fully explained. And we did. And that is what they wanted to do at that point in time.

Q. Let's look at page 45 of those notes.

A. Okay.

Q. All right. Just to make sure we have the right page, that will be also --

A. 17.

Q. -- 45.

A. Yeah, page 45. But it's -- 17 is circled at the top.

Q. Yes. And at the bottom, Mr. McBryde, just to be sure, it shows me McBryde documents page 42.

A. That is correct.

Q. All right. Now, this is the document that Mr. Twombley showed you earlier, correct?

A. Yes.

Q. And he highlighted five words: "LPA in" -- well, excuse me -- six words -- "LPA in favor of descendants only," correct?

A. Yeah.

Q. Do you recall that?

A. I think that is near the bottom.

Q. Yes, sir. On the left towards the bottom.

A. Yeah.

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Q. All right. What is -- what is to the left of that language?

A. Well, it's possible, as long as possible -- GST as long as possible, two marks LPA -- in the PowerPoint -- in favor of descendants only. And that is -- that is reflective of their conclusion that we discussed and which is incorporated in the documents.

Q. Based on your practice, correct?

MR. TWOMBLEY: Object to the form of the question.

MS. PAYLOR: Object to the form.

BY MR. MEDLIN:

Q. So, Mr. McBryde, what is a generation skipping transfer trust tax -- transfer trust in five words or less? I'm kidding.

But generally, what is a GST? What does that mean?

A. That would be if you skip a generation.

Q. Okay. So what is -- what is typically the purpose --

A. It's a tax thing that you're -- you're -- go ahead.

Q. You are anticipating my question, so please keep answering, sir.

A. Well, that is a generation skipping trust,

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which means you could potentially skip a generation.

Q. And certain states maybe longer?

A. I don't know if we've got rule against perpetuities or stuff like that. But generally, I'm referring to the run-of-the-mill generation skipping trust arrangements.

Q. Right.

A. And if you look in my will books, I've done three of them, or your document forms.

Q. And don't about half the states now, not have any rule against perpetuities?

A. Bottom note, that is correct.

Q. Yeah. And that sort of creates a Delaware tax trap opportunity --

A. Yeah.

Q. -- in those states, right, to sometimes get tax advantages?

A. Uh-huh (affirmative.)

Q. So if I understand your answer correctly, we have a parent who creates the trust and benefits the children, but ultimately, benefits grandchildren; is that the basic premise of a GST?

A. Yeah. But it could -- you could put some more provisions in the GST trust for the -- wherever you want to put it. But, yeah, it's GST, generation

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skipping, but that is all.

Q. Right. And for tax reasons, we have to limit the ownership of the children in that trust property, right?

A. That is correct.

Q. And how do we typically do that?

A. How would you do it? I mean, basically, you can have a separate generation skipping trust. That has nothing to do with what we have. It could be through an exercise of power of appointment, I suppose, but I don't think even that actually plays out as a generation skipping trust.

Q. If you give a child a limited power of appointment in a generation skipping trust, then that property is not captured as the child's estate, correct?

A. That is correct.

Q. And so the tax purpose of a generation skipping trust is to try not to get taxed at every generation, right?

A. That is correct.

Q. And there are exemptions to rules where Congress tries to prevent estate planners from playing games like that, right?

A. Yeah. I don't know which one you are

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referring to, I mean.

Q. Just generally --

A. Yeah.

Q. -- I think you will agree.

A. Yeah.

Q. Is there a generation skipping trust in Mr. Barringer's revocable trust?

A. In the current?

Q. In the '98, yes, sir.

A. In the '98 trust. I think there could be. And I just have to go back because that is not one I have been focusing on. But you could exercise that power of appointment and skip a generation.

Q. Well, if you didn't exercise -- if you didn't exercise the power of appointment, it would skip a generation, too, correct?

A. Because it's going to a generation skipping trust. If you --

Q. Right.

A. Yeah. But --

Q. But my -- my question is a little preliminary to all that answer there, Mr. McBryde. The 1998 trusts that you created, the revocable trust that you created for Mr. and Mrs. Barringer, have generation skipping trusts in them, correct?

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ROA 004589

MR. TWOMBLEY: Object to the form.

THE WITNESS: Well, if the -- at death of one of the spouses, it keeps on going, the GST trust, but that surviving spouse can revisit how the property is to be distributed, not only to, how, when, where, or eliminate it.

BY MR. MEDLIN:

Q. Your plan and your diagrams show generation skipping exempt trusts and not exempt trusts?

A. Oh, yeah. You've got a GST exempt and non-exempt, because you only have so many exemption. Yeah.

Q. Right. And in fact, even though your affidavit talks about Trust A and Trust B and the trust under Item 5, there really can be another trust which is a 90 percent trust, right?

A. That is correct.

Q. So if we have a GST trust and we want to make sure that the assets don't get captured in the child's estate, the most we can give that child is a limited power of appointment, right?

A. Okay.

Q. You agree?

A. Play it out and tell me -- tell me why you

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think that is the case but --

Q. Well, if the child -- if the child has a general power of appointment, that property is going to be captured in the child's estate, right?

A. Sure.

Q. Okay.

MR. TWOMBLEY: Object to the form of the question.

BY MR. MEDLIN:

Q. So the way to avoid that capture at the child's level is to give only a limited power of appointment to a child, right?

MR. TWOMBLEY: Object to the form of the question. It misstates --

THE WITNESS: I --

(Reporter asks for clarification.)

MR. TWOMBLEY: This is Mr. Twombley. I objected to the form of the question on the grounds that it misstates the trust document and the power of appointment that we are talking about.

MR. MEDLIN: I'm not even talking about the trust document with that question.

THE WITNESS: Well, then, why are we

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talking about it?

MR. TWOMBLEY: That is part of the problem. That is the point I'm trying to make.

MS. PARLOR: Yeah. Alan, why don't we talk about something that is relevant to this case. All of these hypotheticals about things that didn't happen --

MR. MEDLIN: Why don't you do that when you get a chance to ask questions, and I'm going to continue to ask relevant questions, which maybe you don't.

THE WITNESS: Well, and I'm going to continue to answer. Here is the answer.

BY MR. MEDLIN:

Q. Right.

A. When they sign those documents, and if they are going to be effective, the surviving spouse is going to have a final say as to who and how and what manner, either under the existing tax laws at that point in time or in the current tax laws if they haven't changed, to or among the descendants, the iteration -- any generational level, which means you go to a grandchild, you go to a child, you go to an adopted child for all I care, depends on what the

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will -- I forget what the will otherwise said and the trust otherwise said.

So they are -- the channel point is, they are not precluding the exercise of power of appointment by the surviving spouse over those trusts from being any kind of trust as long as the beneficiaries are one or more of the children, under whatever form they want to put it. They can have it generation skipping, non-generation skipping, outright. They can do it any way they want.

Q. But once the estate plan, as you designed it, in fact, has a generation skipping trust --

A. Right.

Q. -- which your documents anticipate, correct?

A. Right. Anticipate.

Q. And --

A. Because it can be outright.

(Reporter asks for Clarification.)

THE WITNESS: It can be outright.

BY MR. MEDLIN:

Q. I think you said -- correct me, Neill -- it could be outright; is that --

A. Yes.

Q. -- what you said? Yeah.

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A. Yeah.

Q. All right. So once that GST trust comes into effect, then the children have an interest in that trust, correct?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: They have no interest in the trust to the extent that the direction given and allowed to -- to move property out of that trust is not changed or affected at all.

Obviously, if mom -- if dad's dead, mom dies, she's done nothing, now we've got the scenario you're talking about. But the point is --

BY MR. MEDLIN:

Q. Thank you. And that is -- that is the scenario I'm trying to get to.

MR. TWOMBLEY: Let him he finish his answer.

THE WITNESS: And that's not -- that is something for the planning for Mrs. Barringer, frankly. That is her planning.

BY MR. MEDLIN:

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Q. The documents -- I'm sorry --
MR. TWOMBLEY: Let him -- let him finish his answer.
MR. MEDLIN: I apologize.
THE WITNESS: Well, I mean, that's the -- she has the ultimate power to restructure how the assets in the various trusts are going to be distributed at her death, period.
BY MR. MEDLIN:
Q. Your documents anticipate, as you point out, options. One option is she doesn't exercise her power.
Where does the property go?
A. Well, it goes into the two trusts.
Q. And those trusts have generation skipping aspects to them?
A. One does.
Q. One does.
A. One does.
Q. Okay. Yes. That would -- all right. We won't get into any more detail than that.
So she could also, according to you, appoint the property to any descendants outright, and then if she appointed all the property, there would

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not be a trust, a GST trust, correct?

A. At her death. Now, she could have received all of the distributions, so that could happen anyway, under the distribution scheme that is allowed to make a distribution.

So, yes, you can't -- she is in charge, and that is -- and she is in charge, but in a way that is tax efficient, unless you have cataphoretic illness, you have family issues, you have any one of the dozens of things that can happen that would make her want to exercise that power.

And that's the whole purpose of it, and that is to give the last spouse the last say based on the end circumstances. She may live to be 110 and all of this is sort of moot. So that is -- that is the whole point of that arrangement. And therefore, if you have bad marriages, extraordinary deaths, you have any kind of issues that would dictate not keeping it on a per stirpes basis to the beneficiaries as -- and from the two separate trusts, I'm saying that sort of general there, that is -- that is what you want to do.

Guess who has a trust like that? And I'm an estate planner.

Q. Mr. McBryde --

A. And I wouldn't have it any other way. I

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want Peggy -- we only got two children, but I want Peggy to be able to say what the heck how it goes to descendants.

Q. Mr. McBryde --

A. Don't you have it in your will?

Q. Your documents anticipate that -- you know, I'm happy to talk with you any time you want to talk, but in this setting --

A. Go ahead.

Q. -- I'm the one who has to ask questions.

A. Go ahead.

Q. So in your documents, we have an anticipation that if she does not exercise her power of appointment, we could create a generation skipping transfer trust unless all of the distributions from the trust had been made before she died, correct?

MR. TWOMBLEY: Object to the form.

THE WITNESS: Yes. That is correct.

BY MR. MEDLIN:

Q. Okay.

A. And she could create trusts separately that depending on the state of the law, the tax -- the tax environment, she could rearrange it any which way as long as the final arrangement ends up going to descendants after her death.

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Q. Yeah.
A. And she pick up -- she can use a great-grandchild to get it all.
Q. If the generation skipping transfer trust is created, the children in your documents have only a limited power of appointment; is that correct?
A. Right.
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: No.
BY MR. MEDLIN:
Q. I'm sorry --
A. I'm saying she could -- she could get that same result by creating or directing it to go into a GST trust.
Q. If under your documents we get assets into the GST trust, however that happens, the children then have a limited power of appointment over those assets --
A. Uh-huh (affirmative.)
Q. -- is that correct?
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: Go ahead. What is your next question? Yeah.

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BY MR. MEDLIN:

Q. The answer is yes.

A. Because I'm not sure I'm on the same wavelength with you because I'm not -- she is -- the documents have been executed. We've got the real documents. Right?

Q. Right. Let's -- let's look at the revocable trust, paragraph 5F.

MS. PAYLOR: What page is it on?

THE WITNESS: Where is it at? There it is, revocable trust.

BY MR. MEDLIN:

Q. The revocable trust starts --

A. What page?

Q. -- on page 112?

A. Okay.

Q. And then we want to go to paragraph 5F.

A. 112, yeah.

I don't think 112. What page do you want to go to?

Q. Well, that is not right. Looking at the wrong -- bear with me, Mr. McBryde.

Let's look at page 125.

A. 125? Because that --

Q. Paragraph G. Yes, sir. Paragraph G.

A. Okay.
Q. What does paragraph G do?
A. Right.
Q. What -- what does it do?
A. It says she has the power upon death to appoint any part or all property of the trust to and among my descendants in such manner and trust or otherwise being such will provide, except that such child shall have no power and any circumstances to appoint any such property to herself to her estate or creditors of her estate.
Q. When you read that, you said "she." But it says upon the death of the primary beneficiary, correct?
A. My primary desire is my wife (inaudible) -- my wife's lifetime. And then the D was upon her death. I thought that's what you were looking at.
Q. Yeah. Paragraph G --
A. So C and E are different. They're not the same.
Q. I'm sorry, Mr. McBryde. Paragraph G, the paragraph that starts at the bottom of the page.
A. E now.
Q. G.
MR. TWOMBLEY: I think you -- he is

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ROA 004600

on the wrong page.

THE WITNESS: I'm 124.

BY MR. MEDLIN:

Q. 125, Neill. I'm sorry. It's 125.

A. Okay. You said 124.

MR. TWOMBLEY: He is skipping over that provision, going to another one.

THE WITNESS: Okay. I'm at 125.

BY MR. MEDLIN:

Q. Yes. Paragraph G, what does that paragraph do?

A. On the death of primary beneficiary, this is G, okay.

Power --

MR. TYLER: Read it to yourself or out loud, one or the other.

THE WITNESS: Okay.

Okay. Well, this is after both deaths, after mom's death now.

BY MR. MEDLIN:

Q. And it took me forever to get there. I apologize. But that is the question --

A. Oh.

Q. -- I have been trying to ask for 15 minutes.

ROA 004600

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A. Okay. And by then, you are at a -- upon the death of the survivor, you've got each child share or set aside, each descendants --

THE REPORTER: I can't understand you. I can't understand you.

MR. TYLER: Read it to yourself.

BY MR. MEDLIN:

Q. Mr. McBryde, either out loud or silently for the court reporter, please.

A. Got it.

Q. I would do the same thing, so I understand.

A. Well, the paragraph just keep the -- the trust assets intact at each generational level and give powers of appointment at that level.

Q. If the child is alive at that stage, that child has a limited power of appointment?

A. Yes.

MR. TWOMBLEY: Object to the form of the question.

BY MR. MEDLIN:

Q. Now, let's go back and look at page 45, which are your notes that we were just looking at.

A. I've got page 145. What we are you looking at?

Q. No, I'm sorry. It's page 45.

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ROA 004602

A. Okay. Okay.

Q. All right. So we are back looking at that same language that we just talked about, GST, double arrow, as long as possible, two backslash, LPA in favor of descendants only.

Are we looking at the same language, Mr. McBryde?

A. Yeah.

Q. All right. So what does "as long as possible" mean?

A. Until the trust as under current law in these documents would allow it to continue to stay in trust --

Q. So --

A. -- (inaudible) tax benefits.

Q. -- as you kept explaining to me, mostly because I apparently unartfully asked the question, which just got answered, Mrs. Barringer could avoid the creation of a GST trust as you explain it, correct?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: I don't understand what you are saying.

BY MR. MEDLIN:

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Q. Mrs. Barringer could have exercised -- could exercise her power of appointment --

A. Right.

Q. -- so that it goes to any descendants outright and we would not create a GST trust for that property, correct?

A. That is correct.

Q. All right. Is that consistent with as long as possible?

A. I'm sorry. Say it again. I couldn't hear it.

Q. Mrs. Barringer avoid the creation of the GST trust, is that consistent with the words "as long as possible"?

A. She has got to make the decision. That is the point. She gets to make the decision. This is -- she will need the help from lawyers if she decides that she's going to do A, B or C, all of which involve her exercise of her power under both sets of trust.

Q. Right.

A. She can give everything to one person. He's going to be -- he or she should be subject to maybe estate tax at the next day's death if that person died the next day. Sure. She can keep it going on. She can keep the family line only on one

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ROA 004604

family by keeping it in trust arrangements. She can give little bits to two of the children and a lot to another. I mean, she has total control as to how ultimately it plays out.

Q. So when you have these notes, the language that we are looking at, who are we talking about --

A. I told you --

Q. -- at this point --

A. I told you --

Q. -- are we talking about her or are we talking about him?

A. I wasn't talking to anybody. I was just making notes as we went along. You don't see -- you know, you meet with somebody for an hour or so. I don't take an hour of notes. I'll just take jagged little notes. I know what they said they wanted. It is incorporated in the documents. It was explained to them, and they understood it. And it gave maximum power ultimately, to the surviving spouse to say to whom and in what manner they were going to get the benefit of the property, provided that it was for one or more children or grandchildren or great-grandchildren.

Q. Generation skipping transfer trusts typically look down generations, at least to the

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grandchild generation, right?
A. Right.
Q. So if we want to keep property in trust for as long as possible, we want to create that GST trust, right?
MR. TWOMBLEY: Object to the form of the question.
THE WITNESS: Well, but -- but that is up to her. She can give it all outright right now to one of the -- the three.
BY MR. MEDLIN:
Q. And so there's no way that --
A. Absolutely.
Q. There's no way that your note might be referring to the limited power of appointment --
A. We went through this for 10 minutes this morning --
Q. No --
A. -- that exact question you just said, and now you are coming back repeating.
MR. TYLER: It sounds like harassment to me.
THE WITNESS: Yeah.
She has full authority. That was the intention. And she can cut out everybody

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but a great-grandchild and give it to that great-grandchild.

BY MR. MEDLIN:

Q. Mr. McBryde, with all due respect, I haven't asked you this question before. So if you would, let me --

A. You did ask that actual -- that exact question earlier. And I said the answer is she is given absolute authority as he would have had -- that's irrelevant there, obviously. But she is given absolute authority to say how it goes to or among the descendants, period. There is nothing said, oh, but by the way, you've got to get a tax reduction because it's got to be GST if it's coming out of GST trust, blah, blah, blah.

Q. Yeah.

A. That is not what it says.

Q. Okay. I'm going to ask you this question.

A. Yeah.

Q. And I haven't asked you this question before because I am now focusing for the first time on those very words.

A. Uh-huh (affirmative.)

Q. We didn't do that this morning. All right.

A. Uh-huh (affirmative.)

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Q. So look at those words. You're absolutely certain that your note doesn't refer to the children's limited power in the GST trust, you are certain of that?

MR. TWOMBLEY: Objection --

THE WITNESS: Absolutely certain. Absolutely certain.

BY MR. MEDLIN:

Q. And we know that -- that note, that one particular note, refers to her overall power that you talked about, how?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: Yeah. It does. That is what it -- and remember, these -- I'm notorious. I take notes to get points that I got to go back to and make sure we get it done right. But those notes in no way override or indicate anything other than exactly where we came out and as discussed with them and with the clear language discussed with them, both in my attached explanation and in the letter itself, which are not inconsistent and which are absolutely straightforward.

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BY MR. MEDLIN:

Q. How many powers of appointment are in the '98 trust that Mr. Barringer created, the irrevocable trust?

A. I think, what, three maybe. You know, I -- I have to go back.

Q. We've got some in Mrs. Barringer, correct?

A. Right.

Q. We've got some in the kids', correct? We just looked at that language in the document, paragraph 18, right?

A. Right.

Q. Is there anywhere else in your notes where it talks about a limited power of appointment or, for that matter, a power of appointment?

A. It uses the broadest language possible. And if you think you can construe it some other way, you are going to lose in court if you try to -- if you try and change it.

Q. I'm asking if there is anywhere else in your notes that refer to any kind of power of appointment other than the language we just looked at?

MR. TWOMBLEY: I object to the form. I think this has been asked and answered about 10 times.

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MR. MEDLIN: It hasn't been answered yet.

THE WITNESS: My notes are not -- I put some notes all the time, things that don't ever end up in the trust because it's not -- or in the document, whether it be a will or trust, GST or not.

What -- the decision that was made was there would be no limitation, and it's very clearly set out in the trust, both trusts, that it's to or among such descendants, in trust or otherwise, and basically that is the power she has, period.

BY MR. MEDLIN:

Q. We're talking --

A. And it's just unequivocal --

Q. -- about (crosstalk) --

A. My notes, if you relied on my notes, you'd never even be able to put the -- put the will or trust together because you couldn't figure out what that heck I was saying.

Q. So correct me, I want to construe your answer just there to mean that that is the only place in your document where your notes refer to a power of

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appointment?

MR. TWOMBLEY: Objection --

THE WITNESS: It may be. And so what? I know what I -- we ended up with. I know why we ended up with it. I reviewed it with them. They knew, absolutely. And I'd be surprised if you got any other answer from anybody who was involved that that was going to be a -- and, again, this is not uncommon. I'll -- I'll challenge you. I bet in all of your estate planning work you have had ample use of giving a surviving spouse the power to decide how it goes to children and descendants. I know I have. And if you haven't, you haven't come to that their choice.

BY MR. MEDLIN:

Q. How --

MR. TYLER: We're at another hour -- oh, sorry. I'll let you finish your question, but we're at another hour. So let's plan on taking a break when you are ready.

MR. MEDLIN: Yeah. Mr. Tyler, I'm sorry, you broke up. Do you want to take a

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break now?

MR. TYLER: I said I'd like to take a break when -- as soon as you're ready. It's been another hour, so, you know, we can do it now --

MR. MEDLIN: Again, again, I'm happy when Mr. McBryde wants a break.

MR. TYLER: All right. Let's break for five.

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time on the monitor is 2:32 p.m. We are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the monitor is 2:39 p.m. We are back on the record.

MR. TYLER: Alan, Alan, before -- Alan, before you get started, this is Scott Tyler. I just wanted to -- I want to keep us on the record, of course, for this, but I wanted to ask what you anticipated for additional time.

MR. MEDLIN: Well, again, please don't hold me to that. It's still going to

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ROA 004612

be a while. I've got a lot the questions I need to get through.

MR. TYLER: Well, can you give me a sense as to what that means?

MR. MEDLIN: It may be, you know, more than several hours. I just -- I just don't know. You know, Neill gives --

MR. TYLER: Well --

MR. MEDLIN: Neill gives very thorough --

MR. TYLER: It can't be more than several hours. I'm just going to tell you that now. It's already 2:40. So I'm just going to tell you it can't be more than several hours, so please act accordingly.

MR. MEDLIN: Neill gives -- well, we don't agree based on the history of this case, and we are not aware that South Carolina or North Carolina puts a limit on the time of depositions.

MR. TYLER: I'm just telling you, he's got a -- he is not going to be here all night, and he is not coming back without a court order. So you've got a limited amount time.

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MR. MEDLIN: Well, again, you do what you need to do for your client. I'm just saying we are unlikely to agree when you try to shut it down, and we'll have to deal with it in court. But I appreciate your warning.

MR. TYLER: Okay.

MR. MEDLIN: And, again, part of it is Neill gives very thorough answers, and so it's hard for me to sort of judge when I think I'm asking a yes or no question --

THE WITNESS: I'm going to give short answers.

MR. MEDLIN: -- (inaudible) answer. But he gets to answer however he wants to answer. I get that.

All right. So, Scott, are you ready to proceed?

MR. TYLER: Yes.

MR. MEDLIN: Okay.

BY MR. MEDLIN:

Q. So, Mr. McBryde, one last time I hope with those words that we have been looking at on page 45, GST, double arrows, as long as possible, etc.

There is nothing in that note about any

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stock, is there?

MR. TWOMBLEY: Object to the form of the question.

THE WITNESS: Is that a question?

BY MR. MEDLIN:

Q. Yes. Mr. McBryde, is there anything in that seven words talking -- that includes the word "stock"?

A. S-T-O-C-K?

Q. Yes, sir.

A. No.

Q. All right. Now, you may remember off the top of my head, or you may want to just look, but we also have a Paul Barringer family trust that you created in 1998 and a Paul and Merrill Barringer irrevocable trust.

Do you recall those?

A. I recall those, but I have not looked at them at all or had any reason to do so.

Q. Okay. Do you recall if they might contain -- they might qualify generation skipping transfer trusts?

A. I don't have that information. I don't know.

Q. If those trusts provide that property could

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go to the children generation, and then to the grandchildren generation, could that be considered a generation skipping transfer trust?

A. Well, not having the trust in front of me, I really don't want to answer.

MR. TWOMBLEY: Object to the form of the question.

BY MR. MEDLIN:

Q. I'm trying to -- I'm trying to be as collegial with your counsel as I can and not make you take the time to look through those documents that you don't recall. But, again --

A. I don't recall if that is --

Q. But if those documents have property that passed to the child generation was held in trust and then moved to the grandchildren generation, those could be generation skipping transfer trusts, again --

A. Yeah.

Q. -- if that's in there?

A. Based on what you said, I suppose it could. But I have not looked at the trust.

Q. Good. I understand. Thank you.

Do you recall why Mrs. Barringer wasn't part of the discussions from August to the time of execution?

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MS. PAYLOR: Object to the form.

MR. TWOMBLEY: Form and misstates his testimony.

THE WITNESS: I didn't arrange the issue one way or the other. We did talk about -- as you can see, there was a much more grand planning scheme the first in August, a little bit September, and then by November, it had begun to focus entirely on the others. So that's the main reason that she didn't get -- I assume that she went and bought, because we really weren't hitting on the big issue that was deemed to be the one that needed to get done by now, which is what we discussed in all the details.

BY MR. MEDLIN:

Q. Well, you answered my next question, so thank you.

Do you know if Mrs. Barringer ever had anything to do with the company as it existed when you represented them?

A. I don't recall.

Q. Was she an officer?

A. I don't recall.

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Q. Was she a shareholder?
MS. PARLOR: Object to the form.
THE WITNESS: I don't recall.
BY MR. MEDLIN:
Q. Was she a director?
A. I don't recall.
Q. Was Mrs. Barringer the trustee of the trust, the revocable trust that you created for Mr. Barringer, in 1998?
A. Say that again. I'm sorry, I just didn't hear it.
Q. Yeah. I'm sorry. And I had my papers covering up my microphone, Neill, so I apologize.
Was Mrs. Barringer the trustee under Paul's 1998 revocable trust?
A. On his revocable trust, you've got a copy of it. I've got a copy of it right here.
Q. Yes, sir. Do you have it handy, or do you want me to give you the page number?
A. Well, give me the page number.
Q. Okay. It's 112.
A. Okay.
Q. Page 112.
A. Okay.
Q. Okay.

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A. Okay. What was the question?

MR. TWOMBLEY: If you'll tell us which page 112. I think Mr. McBryde might be looking at my page 112 and you -- of course, there is -- the bottom right-hand conner there is a 112 and then in the top red --

THE WITNESS: I'm looking there. It's 112 in the red, right, McBryde --

MR. MEDLIN: No. I'm sorry. And thank you, Ashley.

BY MR. MEDLIN:

Q. We are not -- we are not going to refer to Mr. Twombley's documents except perhaps in an emergency. These are the documents we gave you, and at the top it would say NMcBryde W0112, and at the bottom right it would be your documents page 109, if that helps you find it.

A. Okay. Let's see here.

Okay. Page 109 McBryde?

Q. Yes. And actually, to save time, I think, Mr. McBryde, if you skip to page 132 in the top right corner number.

A. In which, the same thing, 132?

Q. Yes, sir. Page 132. And it would be

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item 11 of the trust.

A. Okay. Okay. Got it.

Q. All right. So hopefully that will make more efficient to answer questions.

Is Mrs. Barringer a trustee out of the trust?

A. I need to see, what is the first page of the trust?

Q. Well, the documents I think you're in now it would be on 112.

A. Okay.

Q. Would be the top right-hand corner.

A. Yes. Okay.

Q. And we're going to go Item 11 on page 132, top right-hand corner, and look at paragraph 10.

A. Paragraph 10?

Q. Item 11. Item 11.

A. Okay. Okay. Trustee.

Okay. I'm reading it. I've read it. Yeah. Okay. Are you talking about --

Q. Do you recall --

A. Huh?

Q. Well, let's answer it this way. Mr. Barringer is the trustee until he dies or is incapacitated.

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A. Right.
Q. And then we have successor trustees kick in, and Mrs. Barringer is not one of the successor trustees, correct?
A. Yes. That is correct.
Q. All right. Do you remember why Mr. Barringer didn't want her to be trustee?
A. Never discussed.
MR. TWOMBLEY: Object to the form.
THE WITNESS: That I'm aware of. It could have been dis- -- I was a little bit cavalier. I'd have to go back and look through the notes to see if I have any reference to that. But it was not discussed, or it was not an issue that I'm aware of.
BY MR. MEDLIN:
Q. Now, trustees under this trust have a lot of power, do they not?
A. All trustees have power.
Q. Yes, sir.
They can make distributions of principal to Mrs. Barringer?
A. Who are the trustees?
Q. Yeah.

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