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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 XII OF XVI

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INDEX (Vols. I – XVI)

Volume I

Orders and Decisions

Order of Removal (2016-ES-07-00517) filed September 1, 2016	9
Consent Order Declaring Litigation Complex (1961) filed May 19, 2017	10
Consent Order Declaring Litigation Complex (1919) filed May 19, 2017	15
Order for Consolidation of Actions by Consent filed May 19, 2017	20
Consent Order on Plaintiff's Motion for Consolidation of Actions (1919) filed December 3, 2019.....	25
Order (1253/1294) filed November 4, 2020	30
Order Denying Merrill Light's Motion for Summary Judgment, filed December 30, 2020.....	33
Order Granting Motion to Bifurcate filed December 30, 2020	36
Form 4 Order Denying Motion to Reconsider Order to Bifurcate filed January 14, 2021	39
Form 4 Order recusing Judge Mullen filed February 19, 2021	42
Order Granting CFRC Motion for Intervention and Protective Relief filed June 7, 2021	45
Order on Motions filed June 7, 2021	48
Protective Order filed June 7, 2021	53
Order on Motion to Seal Jolley Deposition filed June 14, 2021	56
Order Granting Def. Merrill Light Summary Judgment as to February 8, 2021, Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, Dated December 4, 1998 filed July 6, 2021	59
Order on Motions filed July 13, 2021	79
Supreme Court Order on Motion Replacement Judge be Assigned filed July 16, 2021	82

Order Reassignment of Case Designed as Complex filed July 23, 2021	86
Order Denying Plaintiff Motion to Reconsider filed August 4, 2021	89
Order Denying Plaintiff's Motion to Reconsider and Amend Order Granting Def. Merrill Light Summary Judgment as to February 8, 2021, Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, Dated December 4, 1998 filed August 4, 2021	93
Order Granting Summary Judgment to Def. filed August 20, 2021	96
Order Denying Plaintiff Motion to Reconsider Summary Judgment filed October 8, 2021	112

Pleadings

Petition for Conservator (2016GC0700007) filed February 12, 2016	115
Summons and Complaint (2016-ES-07-00517 became 2019-CP-07-1294), filed August 26, 2016	142
Summons and Complaint (1961) filed September 7, 2016	277
Defendants' Motion to Dismiss filed November 3, 2016	411

Volume II

Amended Summons and Complaint (2016-CP-07-1919) filed November 22, 2016	459
Plaintiff Memo in Opp. To Def. Motion to Dismiss filed March 13, 2017	536
Defendant Merrill B. Light and J. Randolph Light Answer to Amended Complaint, filed May 2, 2017	675
Summons and Complaint (2019-CP-07-01253) filed May 28, 2019	715
Removal from Probate Court filed June 4, 2019 (partial)	871

Volume III

(cont.) (partial) Removal from Probate Court filed June 4, 2019 page 88-162 of PDF Exhibit 5-end	958
Motion for Consolidation of actions under Rule 42 (a) filed September 13, 2019	1033

Plaintiff Response to MUB 3 rd Set of Interrogatories filed October 22, 2019	1041
Plaintiff's Motion to Compel (2019-CP-07-01253; 2019-CP-07-01294), filed August 3, 2020.....	1077
Defendant Merrill Light's Memo in Support of Motion for Summary Judgment (2019-CP-07-1919) (partial), filed September 8, 2020.....	1200

Volume IV

(cont.) Defendant Merrill Light's Memo in Support of Motion for Summary Judgment (2019-CP-07-1919), filed September 8, 2020.....	1395
Defendant Merrill Light's Motion for Summary Judgment (2016-CP-07-1919), filed September 10, 2020	1507
Defendants' Joint Motion for Bifurcation (2019-CP-07-01253; 2019-CP-07-01294), filed October 23, 2020	1509
Defendant Merrill Light Memo in Support of Joint Motion to Bifurcate filed November 6, 2020	1536
Defendant Merrill Barringer Memo in Support of Joint Motion to Bifurcate filed November 6, 2020	1542
Plaintiff Memo in Opp. To Motion to Bifurcate Trial filed November 9, 2020.....	1623
Plaintiff's Response in Opp. to Defendant Merrill B. Light's Motion for Summary Judgment (2016-CP-07-1919) filed November 9, 2020 (partial).....	1632

Volume V

(cont.) (partial) Plaintiff's Response in Opposition to Defendant Motion for Summary Judgment (2016-CP-07-1919) filed November 9, 2020, Exhibit A, attachments 5-26	1804

Volume VI

(cont.) (partial) Plaintiff's Response in Opposition to Defendant Motion for Summary Judgment (2016-CP-07-1919) filed November 9, 2020, Exhibit A, attachments 27 –38.....	2251

Volume VII

(cont.) (partial) Plaintiff's Response in Opposition to Defendant Motion for Summary Judgment (2016-CP-07-1919) filed November 9, 2020, Exhibit A, attachment 39 – Exhibit NN.....	2657

Volume VIII

(cont.) Plaintiff's Response in Opposition to Defendant Motion for Summary Judgment, (2016-CP-07-1919) filed November 9, 2020, Exhibit OO – end	3147
Defendant Supplemental Memo in Support of Joint Motion to Bifurcate Trial (2019-CP-07-01253; 2019-CP-07-01294; 2016-CP-07-1919), filed November 16, 2020	3250
Defendant Second Supplemental Memo in Support of Joint Motion to Bifurcate Trial (2016-CP-07-1919), filed December 3, 2020	3254
Plaintiff Motion to Reconsider Order to Bifurcate Trial and Memo in Support (2019-CP-07-01253; 2019-CP-07-01294; 2016-CP-07-1919), filed January 8, 2021	3260
Plaintiff Notice of Appeal filed February 12, 2021	3274
Appellant's Memorandum on Immediate Appealability filed March 4, 2021	3286
Respondent's Memorandum on Immediate Appealability filed March 4, 2021	3447
CFRC Motion for Protective Order filed May 4, 2021	3617
Merrill Barringer Motion to Set Trial Dated filed May 5, 2021	3621

Volume IX

CFRC Motion for Intervention and Protective Relief filed May 14, 2021	3624
Defendant Light's Motion and Memorandum in Support of Summary Judgment as to February 29, 2012 Will and amendment to Paul B. Barringer II Revocable Trust (2016-CP-07-1919), filed May 14, 2021	3847

Plaintiff Response in Opp. To Defendant Light’s Motion for Summary Judgment as to the Plaintiff’s Seventh, Eighth, and Ninth Causes of Action (2016-CP-07-1919), filed May 24, 2021	3915
Plaintiff Memo in Opp. To CFRC’s Motion for Intervention and Protective Relief (2016-CP-07-1919) filed May 25, 2021	4093
Plaintiff Response to Motion to Set Trial date filed May 26, 2021	4107

Volume X

Defendant’s Motion for Summary Judgment of Plaintiff’s Second Cause of Action (2019-CP-07-01253; 2019-CP-07-01294) filed June 14, 2021	4121
Defendant’s Motion for Summary Judgment of Plaintiff’s Third Cause of Action (2019-CP-07-01253; 2019-CP-07-01294) filed June 14, 2021	4178
Plaintiff’s Motion to Reconsider, Amend and Vacate the Court’s letter, filed June 17, 2021	4245
Plaintiff’s Motion to Reconsider and Amend Order on Motions entered June 7, 2021, filed June 17, 2021	4250
Plaintiff’s Motion to Reconsider and Amend Order granting CFRC’s Motion for Intervention and Protective Relief, filed June 17, 2021	4256
CFRC’s Response to Plaintiff’s Motion to Reconsider and Amend Protective Order for CFRC dated June 7, 2021 filed, June 28, 2021	4268
Defendants’ Response to Motion to Reconsider, Amend and Vacate the Court’s letter, filed July 1, 2021.....	4279
CFRC’s Supplement to Response in Opp. to Plaintiff’s Motion to Reconsider and Amend Order Granting CFRC’s Motion for Intervention and Protective Relief filed, July 2, 2021.....	4285
Plaintiff’s Motion to Reconsider and Amend Order Granting Defendant Light’s Motion for Summary Judgment as to February 29, 2012 Will and First Amendment to Paul B. Barringer II Revocable Trust (2016-CP-07-1919) filed July 16, 2021.....	4299

Plaintiff's Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed July 30, 2021.....	4317
Notice of Appeal filed August 5, 2021	4321
Notice of filing Affidavits of Hampton Luzak and Kevin Luzak (2019-CP-07-01253; 2019-CP-07-01294), filed August 6, 2021	4361
(partial) Plaintiff's Memo in Opposition to Defendant MUB Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07- 01294), Filed August 6, 2021.....	4371

Volume XI

(cont'd) Plaintiff's Memo in Opposition to Defendant MUB Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07- 01294), Filed August 6, 2021.....	4621
Defendant's Joint Motion for Summary Judgment as to All of Plaintiff's Remaining Causes (2019-CP-07-01253; 2019-CP-07-01294), Filed August 8, 2021	4696
Plaintiff's Memo in Opp. To Def. Merrill U. Barringer's Motion for Summary Judgment as to Plaintiff's First and Fourth Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021	4699
Defendant's Reply in Support of her Motions for Summary Judgment on Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021	4707
Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021	4731
Plaintiff's Opp. To Defendants' Joint Motion for Summary Judgment as to all of Plaintiff's Remaining Causes of Action (2016-CP-07-1919), filed August 9, 2021.....	4808
Plaintiff's Opp. To Def. Merrill U. Barringer's Motion for Partial Summary Judgment And Judgment on the Pleadings (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021.....	4811

Plaintiff's Motion to Reconsider Order Granting Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 30, 2021	4817
Plaintiff's Motion to Reconsider and/or Vacate (2016-CP-07-1919; 2019-CP-07-01253; 2019-CP-07-01294) filed September 3, 2021	4841
Plaintiff's Reply to Defendant's Opp. To Plaintiff's Motion to Reconsider Order Granting Summary Judgment as to Plaintiff's Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed October 6, 2021	4863

Transcripts

Transcript of Proceedings held June 27, 2018	4870
Transcript of Proceedings held August 20, 2019	4997
Transcript of Bifurcation Hearing held November 17-19, 2019 (partial) (pp. 1-39).....	5082

Volume XII

(cont.) Transcript of Bifurcation Hearing held November 17-19, 2019 (pp. 40-end)	5121
Transcript of the Deposition of Rebecca Bostick held December 3, 2020 (partial) (pp. 1-117).....	5504

Volume XIII

(cont.) Transcript of the Deposition of Rebecca Bostick held December 3, 2020 (118-end)	5621
Transcript of the Deposition of Paul Long, M.D. held January 13, 2021	5697
Transcript of the Deposition of John Jolley held March 16, 2021 (partial) (pp. 1-221)	5900

Volume XIV

(cont.) Transcript of the Deposition of John Jolley held March 16, 2021 (pp.222-end).....	6121
Transcript of the Deposition of John Jolley held April 21, 2021	6263

Volume XV

Transcript of Proceedings held May 27, 2021	6612
Transcript of Proceedings held July 2, 2021	6797
Transcript of the Deposition of John Jolley held July 19, 2021 (partial) (pp. 1-259)	6829

Volume XVI

(contd.) Transcript of the Deposition of John Jolley held July 19, 2021 (Word index-end)	7089

Transcript of Status Conference held August 2, 2021	7135

Other Documents

Dr. Garrett medical record dated December 27, 2011	7193

Dr. Carter medical record dated May 2, 2012	7196

CFRC Bylaws	7198

Plaintiff's Memo in Support of Motion to Compel Exhibit 8 filed March 9, 2018	7211

Alice Paylor Letter to the court dated August 7, 2020	7254

COA letter requesting Memoranda on immediate appealability dated February 22, 2021	7256

Judge Price letter filed June 7, 2021	7258

Twombly letter to Beaufort County Clerk of Court filing depo transcript excerpts of John Jolley filed July 21, 2021	7260

Twombly letter to Beaufort County Clerk of Court filing depo transcript of Kevin Luzak dated August 4, 2021	7263

Plaintiff Memo in Opp. To CFRC's Motion for Intervention and Protective Relief (2016-CP-07-1919) Exhibits 1-8 filed May 25, 2021	7280

CFRC's Response to Plaintiff's Motion to Reconsider and Amend Its Order Granting CFRC's Motion for Intervention and Protective Relief filed, June 28, 2021	7316

Certificate of Counsel

1 MS. PAYLOR: Mr. Barringer did not want to become an
2 investment vehicle for Kevin Luzak and his friends, which is
3 the direction that Kevin Luzak wanted to take it. He wanted
4 to sell off a large portion of assets and use that money to
5 make investments. That's not the business of CFRC---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---and Mr. Barringer told him, in no
8 uncertain terms, in each of these meetings, as set forth in
9 these audiotapes, that he wasn't going there.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: And if Mr. Luzak wanted to keep his job,
12 he better get on the straight and narrow and do what Mr.
13 Barringer wanted him to do.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: The only opinion given by Doctor Sanders
16 is that Mr. Barringer was susceptible to undue influence in
17 the middle of 2012.

18 THE COURT: Okay.

19 MS. PAYLOR: The only evidence we have of anybody
20 trying to unduly influence Mr. Barringer is that Kevin Luzak
21 was trying to do that.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Kevin Luzak took it to a very -- he took
24 it to a threat, Your Honor. The last time he was there, he
25 threatened Mr. Barringer that he would never see his

1 grandson, Hampton and Kevin Luzak's son, Wade Luzak, who was
2 a young boy at the time, if he did not do what Kevin Luzak
3 wanted him to do. A threat. That is the only threat that
4 was made. However, Mr. Barringer was not susceptible to
5 undue influence---

6 THE COURT: Alice?

7 MS. PAYLOR: ---and he failed to do what Kevin Luzak
8 wanted him to do.

9 THE COURT: Alice, let me ask you.

10 That last conversation where he said he wasn't gonna be
11 able to see his grandson, was that transcribed?

12 MS. PAYLOR: No, that was one he didn't -- well, I know
13 if he, if he---

14 THE COURT: Taped it.

15 MS. PAYLOR: He, he probably did, but he didn't
16 present -- produce that. I don't know.

17 THE COURT: Okay.

18 MS. PAYLOR: We asked him in his deposition.

19 THE COURT: Okay.

20 MS. PAYLOR: But that's the one conversation that was
21 not transcribed.

22 THE COURT: Okay.

23 MS. PAYLOR: However, both Merrill Light and Merrill
24 Barringer were present when he made that threat.

25 THE COURT: And have they both said that that occurred?

1 They both agreed that that occurred?

2 MS. PAYLOR: Oh, yeah. They were stunned.

3 THE COURT: Okay.

4 MS. PAYLOR: And I mean Merrill Barringer -- Merrill
5 Light was trying to help Kevin up until I think that threat
6 happened.

7 THE COURT: Okay.

8 MS. PAYLOR: And so, after that, what does Kevin Luzak
9 do?

10 He's still the president. He's still the CEO. He
11 called a meeting of the board of directors of CFRC.

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: Mr. Barringer didn't call it. Mrs. Light
14 didn't call it. Kevin Luzak called it cause Kevin Luzak
15 thought he could convince Merrill Light to go against her
16 father's wishes.

17 At that meeting Paul Barringer moved to terminate Kevin
18 Luzak as an officer of the company, and with the support of
19 his daughter, Merrill Light, a board member, his motion
20 passed. Kevin Luzak did record a conversation that he had
21 with his wife after this meeting, and incredibly he says in
22 that, Your Honor, that Merrill Light told him that she was
23 not gonna vote with him. But he was just hoping that, that
24 she would, as he said, do the right thing and vote against
25 her father and vote with him.

1 He made all of these statements that, you know, he felt
2 bad for her because she was basically under pressure
3 because -- to do what her father wanted her to do rather
4 what Kevin Luzak considered to be---

5 THE COURT: Right.

6 MS. PAYLOR: ---the right thing.

7 THE COURT: Okay.

8 MS. PAYLOR: So, Kevin Luzak precipitated the motion to
9 fire himself by calling this meeting. Mrs. Light had
10 nothing to do with that, and all she did was to vote to
11 support her father who has always supported her. There's no
12 question that my client, that my client and Hampton Luzak
13 are extremely wealthy women today all because of what Paul
14 Barringer gave to them during his lifetime.

15 After June of 2012, the Luzak's had no further
16 interaction or in person communications with Paul Barringer.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: Mr. Barringer had a cell phone and was
19 living in his own home with his wife.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: He drove himself and frequently visited
22 with his friends and even flew on the company plane,
23 sometimes just with the pilot, to visit the various CFRC
24 facilities.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: No one restricted anyone from seeing Paul
2 Barringer or calling him on his cell phone.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: From May of 2012 until days before his
5 death on May 30, 2016, Plaintiff took no steps to contact
6 him directly or visit him. Mr. Barringer wrote her several
7 letters asking her to return to the family, which she---

8 THE COURT: This is Mr. or Mrs. Barringer?
9 who wrote---

10 MS. PAYLOR: Mr.---

11 THE COURT: ---the letters?

12 MS. PAYLOR: Mr. Barringer.

13 THE COURT: Okay.

14 MS. PAYLOR: There was one in December of 2012 that's
15 handwritten---

16 THE COURT: Yeah.

17 MS. PAYLOR: ---and is attached to that -- my reply
18 memo.

19 THE COURT: Okay.

20 MS. PAYLOR: And Mrs. Luzak admitted that she received
21 it.

22 THE COURT: Okay.

23 MS. PAYLOR: She failed to respond to them or even
24 acknowledge them.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: Instead she hired a lawyer to write
2 letters to CFRC threatening legal action.

3 Just so you know, Hampton Luzak, this wasn't the first
4 time she had isolated herself from a family member. She
5 testified in her deposition that she had no contact with her
6 brother, Victor Barringer, after she got angry at his wife
7 in 1998. To this day she has not spoken to her brother,
8 Victor Barringer. The only time she saw his wife was at her
9 father's funeral when they gave a hug to each other. That
10 was the only interaction.

11 So, for 22 years she held a grudge. She was mad at his
12 wife for doing something she didn't like. She held that
13 grudge for 22 years, Your Honor. It's still there and she
14 still has no relationship with her brother.

15 In this case, in October of 2012, she wrote her sister,
16 this is the last contact she had with Merrill Light, and
17 told her never to contact her or a member of her family
18 again. Never. She had sent a gift to her nephew, Wade,
19 and---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: ---that's what response she got---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---from Hampton Luzak.

24 During the years that Hampton Luzak removed herself
25 from the Barringer family. She took steps to further incur

1 the wrath of her father. He sent many -- she sent a number
2 of letters that she signed, and then she had her lawyer send
3 letters that were threatening letters to him and his
4 company. In there -- and this is -- in 2012, she declared
5 that he was mentally incompetent.

6 Mr. Barringer didn't like that as you can imagine, and
7 she fails to understand today why he disinherited her.

8 In reaction to really the first letter from Hampton
9 Luzak, which she sent in July of 2012, Paul Barringer
10 discussed the ownership of his voting stock with numerous
11 people, including his wife who has testified about it, and
12 his son, Victor Barringer, who is also testified about it.
13 They testified -- and what happened was he subsequently
14 amended his Revocable Trust to provide that all CFR (sic)
15 stock owned by his Trust specifically go to Merrill Light.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: That's the only thing he did in that, that
18 change, Your Honor, which was in July of 2012.

19 Mr. Barringer signed this Trust Amendment, Amendment in
20 Alabama at a CFR (sic) facility where he had traveled to
21 visit the facility. The document was witnessed by Travis
22 Bryant, the CEO of CFRC---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---and Tom Evans, the, the COO of CFRC.
25 Merrill Light was not present when---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---he signed this document. Randy Light
3 was present, but he doesn't even remember the incident in
4 his deposition.

5 In any event, Merrill Light could not exert any
6 influence on her father to sign the document because she was
7 not present when he signed it. Hampton has no witness who
8 was present and she knows nothing about any influence on her
9 father to get him to sign the Revocable Trust Amendment so
10 that the stock would go to Merrill Light. Kevin Luzak never
11 saw Paul Barringer after May -- after his meeting in June.

12 Your Honor, those are the basic undisputed facts.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: I now want to talk about each of the 19
15 causes of action, and -- well, I'm -- I did, I did want to
16 make one other legal argument, Your Honor.

17 THE COURT: Sure.

18 MS. PAYLOR: There is a Doctrine of Unhampered
19 Opportunity that our Courts have adopted, and in that, if a
20 testator, after he signs a document like this amendment to
21 his Revocable Trust, if he has the unhampered opportunity to
22 talk to friends, to go to his lawyer, to do whatever he
23 wants to do, that presents a persuasion -- persuasion that
24 says that he was not subject, subject to undue influence
25 because he could of changed the will and/or the Revocable

1 Trust afterwards.

2 THE COURT: Are you saying that that's evidence?

3 Are you saying that that's evidence?

4 MS. PAYLOR: I -- what I'm saying, Your Honor, is that
5 -- I'm sorry.

6 THE COURT: Well, you said persuasion and I'm just
7 trying to figure out is that evidence that can be used.

8 MS. PAYLOR: Well, what's -- what -- what the Courts
9 have said is unhampered opportunity---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: ---to make changes defeats even proved
12 claims of undue influence.

13 THE COURT: Okay.

14 MS. PAYLOR: So, for example, if they have evidence
15 that Mrs. Light threatened that she was gonna kill him
16 unless he signed that (indiscernible) amendment, and he
17 signed it because of that threat, but later---

18 THE COURT: Okay.

19 MS. PAYLOR: ---he still saw his lawyer, he still could
20 have talked to everybody, and he never changed it, that
21 would defeat the claim of undue influence.

22 THE COURT: Okay.

23 MS. PAYLOR: Your Honor, we have that. This man
24 changed his will about four or five times after he did that
25 Trust Amendment.

1 THE COURT: Okay.

2 MS. PAYLOR: At any of those occasions he could of
3 changed it back to give Mrs. Luzak what she claimed she
4 should of been given.

5 THE COURT: When---

6 MS. PAYLOR: But he didn't.

7 THE COURT: When did our Court adopt unhampered
8 opportunity?

9 MS. PAYLOR: It's been around forever.

10 THE COURT: Okay. I was just wondering.

11 MS. PAYLOR: And I, I apologize.

12 And, Your Honor, I talk about it later and I know I've
13 got a case citation. I know it's in my---

14 THE COURT: Okay.

15 MS. PAYLOR: ---in my brief as well.

16 THE COURT: Okay.

17 MS. PAYLOR: So, let's look, Your Honor, at the first
18 cause of action.

19 THE COURT: Okay. Hold on one second.

20 (Pause.)

21 THE COURT: All right. Alice, whenever you're ready.

22 MS. PAYLOR: Okay. Your Honor, I have, I have found
23 it.

24 THE COURT: Okay.

25 MS. PAYLOR: The case that we cited in our brief is the

1 case of wilson versus Dallas.

2 THE COURT: Okay.

3 MS. PAYLOR: It's a 2013 case, Your Honor.

4 THE COURT: Okay.

5 MS. PAYLOR: 743 S.E.2d 746.

6 THE COURT: Yeah.

7 MS. PAYLOR: And this is what the Court said. Even if
8 a contestant does establish an inference of undue influence,
9 the unhampered opportunity of the testator to change the
10 will after the operation of undue influence destroys this
11 conclusion.

12 THE COURT: Okay.

13 MS. PAYLOR: So, for that reason alone, there's no
14 undue influence, Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: And it's a well established doctrine, and
17 I cite it on Page 10 of my reply memo.

18 THE COURT: Okay.

19 MS. PAYLOR: And the other cases that cite it are Smith
20 versus Whetstone, Calhoun versus Calhoun.

21 THE COURT: Got it.

22 MS. PAYLOR: Martin versus Smoak, Henry versus Henry.

23 THE COURT: Got it. It's your Footnote 8.
24 Okay.

25 MS. PAYLOR: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MS. PAYLOR: Let's go to the first cause of action.

3 THE COURT: Okay.

4 MS. PAYLOR: The first cause of action alleges that the
5 February 5, 2015, will, his last will, was invalid due to
6 incapacity, and I will say -- I'll tell you that this was
7 the will where he totally disinherited Hampton Luzak, and
8 merely left \$50,000 to her son, Wade, on the death of his
9 wife if she lived after he died.

10 Looking at Plaintiff's affidavit, they submitted only
11 the affidavits of the Plaintiff and her husband. Paragraph
12 42 of the affidavit is her only mention of the date
13 February 5, 2015 --

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: -- and she presents no admissible summary
16 judgment facts regarding the execution of the will.

17 THE COURT: Okay. So---

18 MS. PAYLOR: And then---

19 THE COURT: Just so I understand, so you're saying that
20 her testimony, her husband's testimony can not be used
21 because they were not present at the time, and they did not
22 witness this or know what was going on, correct, cause they
23 hadn't spoken since 2012?

24 MS. PAYLOR: Correct. They hadn't been around him.
25 They had no personal knowledge of him.

1 THE COURT: I understand that.

2 MS. PAYLOR: Okay.

3 THE COURT: I understand that.

4 MS. PAYLOR: Yeah.

5 THE COURT: I'm just pointing out, and then
6 additionally, you're telling me that Doctor Sanders, who I
7 have an Exhibit K, doesn't anywhere state, in 2015, whether
8 or not he was incapacitated, and does -- she doesn't give an
9 opinion?

10 MS. PAYLOR: Right.

11 THE COURT: Am I correct on that?

12 MS. PAYLOR: That's correct. She only gave one
13 opinion, Your Honor, and that was that he was susceptible to
14 undue influence in the Summer of 2012.

15 THE COURT: Okay.

16 MS. PAYLOR: That was it.

17 THE COURT: And cause I presume that that would be, of
18 course, continuing if it was something that was presumed to
19 happen in the Summer of 2012, that would continue?

20 MS. PAYLOR: Only susceptible --

21 THE COURT: Susceptible.

22 MS. PAYLOR: -- to undue influence.

23 THE COURT: I understand the susceptible part. I
24 understand. Okay.

25 MS. PAYLOR: She, she had no evidence that anyone had

1 exerted undue influence on him.

2 THE COURT: I guess the reason why I ask this, Alice,
3 and just because I, you know, have a very just lawyer's view
4 of understanding of Alzheimer's and dementia, and I
5 certainly understand that people can become dehydrated and
6 have specific issues causing maybe a potential short term
7 dementia or confusion, but then, obviously, if they are
8 either medicated or hydrated or can be brought back, which
9 is, I think, kind of where your argument is about him
10 presenting for a UTI, and being dehydrated, and being
11 confused, and then obviously that you can restore someone.
12 So, I'm, I'm just trying to understand how far she goes I
13 guess is what I'm saying.

14 So, is, is that what you're saying is she says that he
15 is potentially subject to undue influence beginning in 2012
16 and then again that that would be continuing?

17 MS. PAYLOR: Yes.

18 THE COURT: Okay.

19 MS. PAYLOR: She say he was susceptible.

20 THE COURT: Susceptible.

21 MS. PAYLOR: That was her exact---

22 THE COURT: I mean I understand.

23 MS. PAYLOR: ---words.

24 THE COURT: Right. Okay. Okay. Okay.

25 MS. PAYLOR: So no affidavits have been submitting --

1 submitted challenging the facts taken from sworn
2 testimony---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---that, from Mrs. Barringer and
5 Mrs. Light, that Mr. Barringer in her presence -- now this
6 is Mrs. Barringer testifying.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: She testified that Mr. Barringer, in her
9 presence, told John Jolley the changes that he wanted in his
10 will prior to Mr. Jolley's drafting of it. She further
11 testified that he was competent to sign this will on
12 February 5, 2015, that he knew the assets he owned, that he
13 knew who his children were, and that he knew the persons to
14 whom he wanted to leave his assets.

15 THE COURT: So, Mrs. Barringer testified to that as
16 well as John Jolley was required -- when I say required, he,
17 he was required, to, to be able to do that change, he would
18 have to agree, am I correct on this, that he understood
19 those three things?

20 MS. PAYLOR: He has not been deposed yet.

21 THE COURT: Okay.

22 MS. PAYLOR: But yeah, my understanding is that that's
23 what lawyers do, and I'm assuming that he's a good lawyer
24 and that he did it.

25 THE COURT: Okay.

1 MS. PAYLOR: But, right now, all I have to put up---

2 THE COURT: Okay.

3 MS. PAYLOR: ---is somebody who can testify---

4 THE COURT: Okay.

5 MS. PAYLOR: ---and Mrs. Barringer was there---

6 THE COURT: Can testify.

7 MS. PAYLOR: ---and she testified to that.

8 THE COURT: Okay. Okay.

9 MS. PAYLOR: And they have not rebutted her testimony.

10 THE COURT: Okay.

11 MS. PAYLOR: In fact, Mrs. Barringer wrote Hampton
12 Luzak 10 days later stating that well, daddy and I are very
13 disappointed in you. You have crossed the line in bringing
14 legal action against your family company, and for your
15 astounding ungratefulness to your father, and all that he
16 has done to make you more than financially comfortable.
17 This will not be easily forgiven nor forgotten.

18 THE COURT: Okay.

19 MS. PAYLOR: Mrs. Barringer testified that she
20 discussed this letter with her husband prior to sending it
21 and that he agreed with it and that's in her deposition.

22 THE COURT: Okay.

23 MS. PAYLOR: Mr. Barringer wrote the Plaintiff about a
24 week before the testamentary -- actually on February 26th,
25 2015, telling her how disappointed he was with her.

1 THE COURT: So that would be after?

2 MS. PAYLOR: Mrs. Barringer---

3 THE COURT: After he had done this, correct?

4 MS. PAYLOR: I think so.

5 THE COURT: Okay.

6 MS. PAYLOR: Yeah, that would be after.

7 THE COURT: After cause it, it sounds like the, the
8 change was made on February 5th.

9 Okay. Okay.

10 MS. PAYLOR: Mrs. Luzak makes a big deal about her
11 parents stating that she had brought legal action against
12 CFRC when actually CFRC had brought a declaratory judgment
13 action against her.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: Your Honor, I mean there were numerous
16 letters by lawyers that her -- that started in all by
17 Hampton Luzak. So, the fact they might of been a little bit
18 confused, cause they're not lawyers, about what actually
19 happened does not change the fact that this is what they
20 believed and where they were coming from.

21 THE COURT: Okay.

22 MS. PAYLOR: In March of 2015 Mr. Barringer also
23 handwrote a memo stating that he had made his own decisions
24 with regard to his stock, and the firing of Kevin Luzak, and
25 that no one had told him what to do or what to write. This

1 is also in Merrill Barringer's deposition, and it's attached
2 as Exhibit 12, which you should have.

3 THE COURT: Right.

4 MS. PAYLOR: Paul Long testified at Beaufort County
5 Probate Court that Paul Barringer had mental capacity to
6 execute legal documents, including a will, until the Fall of
7 2015.

8 THE COURT: Okay.

9 MS. PAYLOR: Also Mr. Barringer had unhampered access
10 to his legal counsel and could of made any changes that he
11 desired if he did not like what he had done.

12 THE COURT: And just so -- and I -- you know, I -- this
13 is just me.

14 Do we know when he was driving until?

15 I mean you said he was driving through the Summer of
16 2015 by himself.

17 Is that correct?

18 MS. PAYLOR: Pretty sure that's correct. I don't think
19 he stopped driving until the Summer of 2015.

20 THE COURT: That's what I heard you say earlier and I
21 just want to make sure.

22 Okay.

23 MS. PAYLOR: All right. If anybody knew how to amend
24 his will it was Mr. Barringer because he had done it -- I
25 think this was the fourth or fifth amendment that he had

1 made since 2011.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: The Plaintiff has no evidence of the
4 decedent's mental condition at the time that he signed this
5 will. So, she has not met the burden---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---set forth in Hairston versus McMillan
8 because we have a witness to the execution who testified
9 that the decedent understood the extent of his estate,
10 potential beneficiaries of his estate, and what he was doing
11 in changing his will. She must present evidence relative to
12 what happened on that day that he executed his will.

13 In the Hairston versus McMillan case, Your Honor, the
14 Plaintiff presented evidence from a toxicologist and a
15 doctor who had reviewed medical records and stated that
16 testator did not have mental capacity. The Court upheld the
17 validity of the will.

18 First of all, those doctors had not examined him --

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: -- and they say that wasn't good enough,
21 and that's what -- even if Doctor Sanders had given an
22 opinion, this case tells you that you can't consider that
23 really because she wasn't there. She doesn't know his
24 condition on February 5, 2015.

25 It was Mr. Barringer's decision to disinherit his

1 wife -- his daughter. There is no other evidence, none,
2 anywhere in this case. They can't even present a scintilla
3 of evidence that it was not his decision to do that.

4 The Plaintiff has failed to present any admissible
5 summary judgment evidence to counter the testimony of
6 Merrill Barringer, the witness to the will, to the execution
7 of the will by her husband, Mr. Barringer. The Plaintiff
8 has the burden to present evidence that Mr. Barringer did
9 not have testamentary capacity when he signed the will on
10 February 5, 2015, and she has not done that, Your Honor.

11 THE COURT: Okay.

12 MS. PAYLOR: And I invite whoever's gonna argue on
13 behalf of Mrs. Luzak to point out what admissible summary
14 judgment facts they have to show that he did not have
15 testamentary capacity on February 5, 2015.

16 Thank you, Your Honor.

17 THE COURT: Okay. So, Mr. Medlin, are you arguing or
18 is Mr. Macloskie arguing?

19 MR. MEDLIN: I'm gonna argue, Your Honor, with your
20 permission.

21 THE COURT: Absolutely.

22 You tell me. I would like to, when we go through the
23 causes of action, have you specifically address them, but
24 also you certainly have an opportunity, if you need to, to
25 clarify any law that you think Ms. Paylor either misspoke or

1 you tell me how you want to respond to it. Although I will
2 say, as to each cause of action, I will need you to respond
3 directly. But you can do anything else you need to do as
4 well I guess is what I'm to trying say.

5 So, you tell me what you want to do.

6 MR. MEDLIN: Thank you, Your Honor.

7 what I'd like to do is similar to what Alice did.

8 THE COURT: Okay.

9 MR. MEDLIN: I'd like to go through the basic law, and
10 I'd like to go through the facts. We don't agree that the
11 so called undisputed facts are undisputed. Some we do agree
12 with, but---

13 THE COURT: Okay.

14 MR. MEDLIN: ---not all of them. And we have a lot of
15 other facts that we think clearly carry whatever burden we
16 may have, and then, if I may do that generally---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: ---then we can respond to each individual,
19 individual cause of action --

20 THE COURT: Okay.

21 MR. MEDLIN: -- which I think, based on Alice's
22 summary, will be a, a much quicker procedure once we get to
23 that point.

24 THE COURT: Okay.

25 MR. MEDLIN: Getting to that point, again, is gonna be

1 as lengthy a discussion as, as Alice took cause, again, it's
2 a complex case.

3 THE COURT: I agree.

4 MR. TWOMBLEY: Alan, if---

5 THE COURT: And, and I'll go ahead and tell you too, I
6 have all day for this. So, that was one of the reasons last
7 Thursday I was so worried about constraints and time just
8 because other things had been booked as well. I have no
9 where to go, nothing to do.

10 So, you know, not that I'm encouraging we go till
11 midnight. But just to let you know we're here if we need
12 to.

13 okay?

14 MR. MEDLIN: Understood, Your Honor.

15 MR. TWOMBLEY: Your Honor?

16 MR. MEDLIN: Ashley had a point I think.

17 THE COURT: Sure.

18 Ashley.

19 MR. TWOMBLEY: It's, it's -- this is not my motion, but
20 in, in -- I want to be candid with, with the Court and
21 there's just two things that Alice said. I'm, I'm not --
22 don't think she said them exactly correctly, but I think
23 they're important before Alan responds.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. TWOMBLEY: Hampton Luzak was never disinherited by

1 her father. In every will and Trust that Mr. Barringer ever
2 executed---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. TWOMBLEY: ---in-between 1998 and the time of his
5 death in 2016 --

6 THE COURT: Uh-huh. (Affirmative).

7 MR. TWOMBLEY: -- every single one of his wills and
8 Trusts always provide that his assets go into a Trust for
9 his wife, and that his wife has a Power of Appointment over
10 those assets at the time of her death, and then there is a
11 default clause---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. TWOMBLEY: ---that says if Mrs. Barringer does not
14 side -- decide what happens, then there's a default clause
15 that says everything goes to the kids equally.

16 THE COURT: Okay.

17 MR. TWOMBLEY: That's in every single will and Trust.
18 That's, that's very important cause, in the traditional
19 sense you use the word disinherited, you're thinking that
20 there's a will that says well, you get X, and then now
21 there's a will that says you, you don't get X, and that's
22 just not the case here, and I don't think that is in
23 dispute.

24 The second thing is, I'm gonna find it for you in the
25 record, I believe it was 2014 when Mr. Barringer stopped

1 driving and not 2015.

2 THE COURT: Okay.

3 MR. TWOMBLEY: And -- but, but we'll get that exact,
4 you know, date for you as, as Alan responds.

5 I just wanted to make sure Your Honor under --
6 understood those two points.

7 Thank you.

8 THE COURT: Thank you.

9 MR. MEDLIN: And, Your Honor---

10 THE COURT: Okay.

11 MR. MEDLIN: ---if I may just respond to one of the
12 points.

13 First of all, we've already had a summary judgment on
14 motion of whether Mrs. Barringer had a Power of Appointment,
15 and whether any exercise was valid, and part of our argument
16 was, at least as to stock way back in 1998, there was no
17 intent to give her a Power of Appointment.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: That's been done. That's been argued
20 with. But I do want to take exception -- I think Alice
21 actually was a little more accurate in stating what
22 happened.

23 Regardless of whether you take the position that Ashley
24 always has that there's a Power of Appointment, and that
25 it's not exercised, the beneficiaries take or the

1 beneficiaries take unless the Power of Appointment is
2 exercised.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: And I understand legally one can argue six
5 and one-half dozen of the other. Although, as an estate
6 planner, I certainly believe our position is more
7 practically the one. She was no longer a beneficiary
8 period. Even an, an alternative beneficiary using their
9 theory about the Power of Appointment --

10 THE COURT: Okay.

11 MR. MEDLIN: -- unless the 2014 will rolled around.
12 So, yes, in fact, she was disinherited by Mr. Barringer.

13 THE COURT: Okay. Okay. All right. So, you can keep
14 going, Mr. Medlin.

15 MR. MEDLIN: All right. Your Honor, and, again, I, I
16 ask the Court's indulgence. This is gonna take a while. So
17 --.

18 THE COURT: It's okay.

19 MR. MEDLIN: When, when you want to shut me up, of
20 course, you have the authority to do that, and, obviously,
21 the discretion, and we can take a break whenever---

22 THE COURT: Okay.

23 MR. MEDLIN: ---whenever obviously.

24 Your Honor, first of all, I want to clarify one thing
25 for the record.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: We asked for postponement of this argument
3 in a hearing before you last Monday, and despite that
4 argument that was made from the other side, I'd like to make
5 it clear the only reason we asked for a postponement was
6 because we had not yet gotten any naming of experts from the
7 defense --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- any reports from those experts or any
10 opportunity to in -- depose them unlike what the Defendants
11 got to do.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: They stridently told this Court we need to
14 get reports. We did finally.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: They deposed our experts in time for this
17 hearing.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: They used their reports, or at least one
20 of their reports---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: ---and -- well, actually two in their
23 memoranda, and we just think that fairness would of dictated
24 that we got that same opportunity. You've ruled. We accept
25 that, Your Honor, and here we are.

1 THE COURT: Just, Mr. Medlin---

2 MR. MEDLIN: That's the whole---

3 THE COURT: Just hold on one second just so I can make
4 sure though.

5 Alice, when you named in your interrogatories these
6 doctors that would testify as to Mr. Barringer's
7 testamentary capacity, I assume that you named them both as
8 fact witnesses and expert witnesses.

9 Am I correct on that?

10 MS. PAYLOR: They are fact witnesses, but they're also
11 experts by virtue of being---

12 THE COURT: And that's what I'm asking you.

13 Did you name them---

14 MS. PAYLOR: Yes, ma'am.

15 THE COURT: ---them as both?

16 You named them as both?

17 MS. PAYLOR: Yes, ma'am.

18 THE COURT: Correct?

19 MR. MACLOSKIE: And, Your Honor---

20 THE COURT: I need to know that in---

21 MS. PAYLOR: I can't remember if I named them as both
22 or not, but---

23 THE COURT: Alice, that makes a huge difference. So,
24 it does make a difference.

25 MS. PAYLOR: I will look it up.

1 THE COURT: Okay. So, Mr. Medlin, keep going and she's
2 gonna look it up.

3 okay?

4 MR. MEDLIN: Yeah, Your Honor, and to address that, we
5 certainly didn't take that in the sense that they would name
6 experts---

7 THE COURT: Yeah.

8 MR. MEDLIN: ---like we named experts---

9 THE COURT: Right.

10 MR. MEDLIN: ---to reply about medical testimony in any
11 event. But the clarification for today is we were and
12 always have been fully ready to move forward.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: We did want every fair advantage we
15 thought we were due. Again, Your Honor ruled.

16 THE COURT: Yeah.

17 MR. MEDLIN: We'll accept the ruling, of course. But
18 there was no reliance on our part about the law, the
19 facts---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---and I think that the memo we filed with
22 close to 1,600 pages of documents---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---45 pages of discussion indicates that
25 we were ready. We just thought it was fair to have experts.

1 THE COURT: Yeah.

2 MR. MEDLIN: So---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---to the extent that we mentioned this,
5 and this is over my head, but like in the Balman case cited
6 in our memo that we think that this is premature.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: We would still raise that as a concern
9 today because we haven't had a chance to deal with the
10 experts, but that's---

11 THE COURT: And---

12 MR. MEDLIN: ---the only reason---

13 THE COURT: Okay.

14 MR. MEDLIN: ---we assert, Your Honor.

15 THE COURT: And, Mr. Medlin, just for the record as
16 well, what I stated originally and what I understand from
17 Ms. Paylor in her argument is that they aren't necessarily
18 going to name any further experts in this case. Quite
19 frankly, their fact witnesses are their experts, and would
20 be who they would rely on cause they're people that actually
21 saw them.

22 So, that's why it's important to me to know whether or
23 not Alice named them as both fact and expert witnesses so
24 they would be permitted to give their opinion. But,
25 additionally, there's nothing that prohibited you, over the

1 last four years of this case, from taking the deposition of
2 any of these named doctors. And so I go through and I
3 think, again, we talk about Doctor Paul Long, his internist
4 or GP, I can't remember what he is. We talk about Doctor
5 Baughman who your people actually took Mr. Barringer to. We
6 talk about Doctor -- I remember Mazzeo was in there and
7 there were a couple of others.

8 But I, I guess my point and my concern was -- is that I
9 heard Alice saying we aren't necessarily going to -- Sorry.
10 Sorry. That they're gonna name any expert opinions, and
11 whether or not they do at this point, or if they do it at a
12 later date, you know, obviously you can always challenge
13 that. But, again, I don't think there's anything
14 prohibiting you all along.

15 Go ahead, Alice.

16 MS. PAYLOR: Well, we looked and we, we named them as
17 fact witnesses. But we testified, you know, we say they
18 were gonna testify about the facts of the case, and they --
19 obviously part of their factual testimony is---

20 THE COURT: Yeah.

21 MS. PAYLOR: ---their opinion as to whether or not Mr.
22 Barringer had capacity.

23 THE COURT: Okay.

24 MS. PAYLOR: Thank you.

25 THE COURT: Okay.

1 All right. Mr. Medlin, just so you and I both made our
2 record just for appellate purposes, you can go ahead and go
3 forward now. We're fine.

4 MR. MEDLIN: Yeah.

5 Your Honor, and since you've raised that, I will
6 address why we haven't deposed any of their doctors yet.

7 THE COURT: Okay.

8 MR. MEDLIN: The other side, of course, is gonna
9 disagree, but we've had a longstanding disagreement about
10 whether we've received the proper discovery. You know,
11 starting in March, we've been dealing with COVID, and, in
12 fact, with some health issues in some of our co-counsel as
13 well.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: All of which is not to say that we think
16 we should of deposed him any earlier for purposes of the
17 summary judgment because their medical reports are what
18 we're going to rely on for medical evidence.

19 As I'm gonna go through with you, Your Honor, their
20 medical reports create the proof that we need to show that
21 summary judgment should not be awarded.

22 THE COURT: Okay.

23 MR. MEDLIN: If they don't name an expert, we're happy
24 with that.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: And so, again, we don't feel that we
2 needed to rush before we got their expert reports to depose
3 their medical doctors, their fact witnesses, because we've
4 already had their reports.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: And as you'll see, Your Honor, those
7 reports are compelling.

8 Your Honor, this is a lot more complicated as to the
9 issues of burden of proof---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---than was presented---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---for several reasons.

14 First of all, we would agree that normally the
15 nonmoving party would have to satisfy the scintilla of the
16 evidence rule.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: And we'll even agree, for purposes of
19 right now, that there are cases out there that say, for the
20 issue of undue influence --

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: -- that you have to have more than a
23 scintilla of evidence --

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: -- more than a mere scintilla of evidence.

1 Although though, Your Honor, there's some cases that we cite
2 in our brief and in the footnotes---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---where the Court didn't get into more
5 than a mere scintilla. They looked just at the mere
6 scintilla rule.

7 But that's a little different between the test for
8 capacity and the test for undue influence. But there are
9 several other factors, and Defendant's mentioned one, that
10 affect the burden of proof going forward and the burden of
11 proof for today.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: And that is that, as Defendant admits in
14 the argument today and in her own testimony, that she has
15 confidential and fiduciary relationship with Mr. Barringer.
16 She also has one with the Plaintiff.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: And as we'll discuss in more detail later,
19 it's for a number of reasons. Not just one. They're
20 confidential and fiduciary relationships that are created by
21 any number of legal mechanisms---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: ---in this case.

24 well, when there is a confidential relationship, as the
25 Defendant points out, then the burden of persuasion shifts

1 to proponent of the will, in this case the Defendant, the
2 proponent of a revocable trust, which is treated generally
3 without getting into nuance, like a will---

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: ---because they are both revocable
6 documents, and once having rebutted that presumption, then
7 we would then have the burden again.

8 Now, where that fits into the mere scintilla rule or
9 more than a mere scintilla, it's a little complex because,
10 if they don't rebut---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---then the can is kicked back into our
13 Court on that issue. But we're also dealing with a transfer
14 of stock, which is probably the most critical issue in this
15 case, cause, as we've mentioned to Your Honor before, our
16 damages expert has substantial damages based simply on that
17 stock transfer on September 11th, 2012. That was an
18 irrevocable transfer.

19 THE COURT: Right.

20 MR. MEDLIN: And the law is different as to the burden
21 for an irrevocable transfer.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: If there is a confidential relationship,
24 the burden is completely and ultimately on the proponent.
25 There is no shifting back and forth the burdens.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: And we cite a number of cases, Your Honor,
3 that I won't bore you with in the argument. But---

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: ---those cases we cite, starting over on
6 Page 3 of our brief, show that that is clearly the South
7 Carolina law.

8 So, without a doubt, as to the stock transfer, that
9 burden is on the Defendant. It's on the proponent of that
10 transfer.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: So, that's a whole different category,
13 Your Honor, with respect to that.

14 The same is true for fraud, and we've alleged fraud.
15 The burden is on the Defendant for that stock transfer.

16 Number 2. What makes this different from the simple
17 scintilla, more than a mere scintilla test, case law in
18 South Carolina says that when one is suffering from a
19 chronic incapacity, and Mr. Barringer was suffering from
20 dementia diagnosed by doctors since 2011, and we'll show
21 that there's an email from the Defendants way back in
22 February, 2011, and that would be one of several emails,
23 saying Mr. Barringer's not right. So, you're gonna see that
24 we have diagnosis after diagnosis after diagnosis starting
25 in 2011 of dementia.

1 Now, certainly the degree of that dementia is something
2 that would have to be fleshed out, but clearly he's
3 suffering from dementia. We would argue that creates what
4 is described in the law as a chronic incapacity. And when
5 there is a chronic incapacity, the burden is on the
6 proponents, again the Defendant in this case, even as to a
7 will, and by parallel argument, the Revocable Trust---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: ---to show that the execution occurred
10 during a lucid interval.

11 Now---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---Your Honor, I want to digress for just
14 a minute. I want to come back to some of those things that
15 were stated in the reply brief.

16 But, in the reply brief, the Defendant accuses us of
17 intentionally misleading the Court with some case cites,
18 and, in particular, as---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---as to this issue, they cite two cases
21 of the several that we cite.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: One is Wright v. Lewis, which is a South
24 Carolina case, and the other is the Keeley case, which is
25 U.S. Supreme Court case.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: I just want to read briefly to you from
3 each of those two cases.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: The Wright v. Lewis case, the Court said
6 the testimony was fully summed up and carefully presented to
7 the jury with the instruction that as the lunacy, chronic
8 incapacity would be my editorial there, Your Honor, of the
9 testator was established, they must be satisfied that the
10 will was the result of a clear, lucid interval, that the
11 burden of showing that the will was executed in a lucid
12 interval rested on the executors, rested on the proponents,
13 in this case being Defendant. We did not miscite that case
14 for that proposition.

15 The United States Supreme Court case of Keeley---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---beginning to quote, the whole testimony
18 regarding his insanity was duly submitted to the jury who
19 were instructed that, if they found his insanity to be
20 permanent in its nature and character, the presumptions were
21 that it would continue, and the burden was upon the
22 Defendant to satisfy the jury, by a preponderance of
23 testimony, that he was, at the time of executing the will,
24 of sound mind. There was no error in this instruction.
25 Both of the cases they cite us for being misleading do

1 exactly what we've cited those cases---

2 THE COURT: Okay.

3 MR. MEDLIN: ---to say, Your Honor. That goes as to
4 the burden when there is a chronic incapacity.

5 So, we argue that even as to the revocable transfers,
6 the ultimate burden as well, not just the rebuttal of the
7 undue influence, but the ultimate burden is on the
8 Defendant. And, finally, Your Honor, we've got, as to the
9 Trust, and that's supposedly where things are happening
10 really, the wills are basically just pour over wills, but
11 the Trust have most of the dispositive provisions in them,
12 Trust Code Section 62-7-802 prohibits self-dealing.

13 Now, classically, self-dealing is when a trustee, and
14 Mrs. Barringer, excuse me, Mr. Barringer was a cotrustee of
15 his---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---Revocable Trust, assuming they were
18 valid beginning in February of 2012, along with Defendant
19 Merrill Light. Merrill Light is a cotrustee.

20 And regardless of any argument that she didn't sign a
21 document or she didn't do this, that's not how self-dealing
22 works. Self-dealing works is if you have a fiduciary
23 relationship as a trustee, and, as trustee, she had a
24 fiduciary relationship not only to Mr. Barringer, but
25 ultimately to the Plaintiff as we'll discuss, then that's

1 self-dealing. She received property from the Trust.

2 Even if the transfer into the Revocable Trust in May of
3 2012 was valid, the transfer of the stock on
4 September 11th of 2012 actually went from Mr. Barringer's
5 Trust to---

6 THE COURT: To her, Mrs. Light.

7 MR. MEDLIN: ---the Defendant's trust. She is a
8 trustee. She is obligated under trust law to know what the
9 other trustee is doing. She's obligated under trust law to
10 stop the trustee from doing something that was improper or
11 invalid, and she sat there -- and, by the way, knows because
12 she's signing the documents receiving the Trust. She, as
13 we'll talk in more detail about later, was present in the
14 room when that stock transfer happened. Then she has a
15 clear case of self-dealing, and---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---the burden is on the fiduciary who
18 self-deals to show that one of the exceptions, which we
19 don't think applied here---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---applies to a voiding of transfer. It
22 is, according to the Reporter's comment, an irrebuttable
23 presumption. So, this is a lot more nuance than just saying
24 a mere scintilla.

25 We think the ultimate burden is on them for those three

1 reasons.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Clearly for the stock transfer because
4 South Carolina case law says so. Clearly for our argument
5 that Mr. Barringer was suffering from a chronic incapacity.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: South Carolina case law and U.S. Supreme
8 Court law says the burden is on the proponent of the will,
9 the Defendant in this case.

10 And with respect to the property coming out of the
11 Trust, trust law says that that is self-dealing, and so
12 there's the burden.

13 So, Your Honor, we would say that the burden is on them
14 to disprove all of that, and that really there's no burden
15 on us whatsoever for the summary judgment.

16 Nevertheless, Your Honor, we think---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: ---we clearly meet whatever burden might
19 be placed on us.

20 THE COURT: Okay.

21 MR. MEDLIN: Now, at -- the Defendant should understand
22 that, assuming we survive the summary judgment, the
23 Defendant's gonna have the burden at trial to show these
24 things.

25 All right. Your Honor, so now if I may talk about the

1 more specific law dealing with each of the issues here.

2 First of all, capacity is determined as it, as it
3 exists at the time of execution. We won't argue with that.
4 Of course---

5 THE COURT: Right.

6 MR. MEDLIN: ---it depends on that, but the evidence
7 isn't limited to just that moment in time. If that were the
8 case, then it would be impossible to have any evidence of
9 anything other than the people in the room, and that's
10 clearly not the law.

11 The cases clearly -- even the cases cited by
12 Defendant---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---allow a consideration of evidence both
15 before and after the execution of the will with respect to
16 mental capacity. It can be medical testimony and the cases
17 include medical testimony before and after---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---the execution of the will.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: It can be other than medical testimony,
22 and as Defendant pointed out, the Court doesn't have to
23 listen to doctors. In fact, in the Gatti case that I'm
24 gonna mention in more detail in just a minute, the Court
25 said we don't care what an internal medicine doc says. We

1 care more about what a neurologist says.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: And as the Defendant pointed out, there
4 are cases where the Court said we don't care what the doctor
5 said period. The evidence is the evidence and it is taken
6 together.

7 THE COURT: I guess, Mr. Medlin, let me ask you then.

8 In this case, if you were to take out the medical
9 doctors, your testimony or evidence as to his capacity is
10 coming from Mrs. Barringer I presume, Mrs. Light, obviously
11 Mr. Light is not here anymore, Mr. Luzak before ties were
12 cut, Mrs. Luzak before any ties were cut, potentially Victor
13 Barringer, am I correct, and then also I guess Mr. Hagler,
14 although he has passed away, so I'm not quite sure what
15 we're doing about that, am I correct, and then maybe Travis
16 Bryant and then who else?

17 MR. MEDLIN: John Jolley.

18 THE COURT: John Jolley. Thank you. John Jolley.
19 who else?

20 MR. MEDLIN: John Jolley, Tom Evans, Brad Herring,
21 general counsel---

22 THE COURT: Brad Herring.

23 MR. MEDLIN: ---for---

24 THE COURT: Okay.

25 MR. MEDLIN: So---

1 THE COURT: Okay.

2 MR. MEDLIN: Again, again, certainly our clients who
3 were around Mr. Barringer all the time. Probably nobody was
4 around Mr. Barringer, maybe not even Mrs. Barringer, more
5 than Kevin Luzak for the many years he worked hand and glove
6 with Paul Barringer. And, and certainly we understand that,
7 once they didn't have personal contact, they lose the
8 opportunity to talk about their personal observation. That
9 doesn't mean they have to disregard medical testimony of
10 emails they received from the Defendants themselves, et
11 cetera, questioning Mr. Barringer's capacity.

12 And, by the way, the crucial point of all this was
13 beginning in the Spring of 2012. He didn't get better after
14 the Spring of 2012. I think we can all recognize that.

15 THE COURT: Let me ask you, Mr. Medlin, cause I --
16 that's why I have a problem because I do think that people
17 can have -- I'm not saying necessarily dementia can improve.
18 Some of the things that he presented with at the doctor or
19 the hospital could have been something that was acute and
20 not necessarily dementia related.

21 For instance, again, the only, the only thing that I
22 would be able to throw out that potentially is, is that
23 people who are dehydrated have issues, and certainly elderly
24 people who are dehydrated can show and exhibit signs of
25 incapacity, dementia, not knowing what they're saying or

1 doing, and then, when they're hydrated, they're fine. I, I
2 guess that's, that's -- I'm asking, and I guess this is what
3 I need to know, is if you survive summary judgment and we
4 are at trial, I'm gonna assume Doctor Sanders is gonna tell
5 us, and I'm gonna assume some of the other doctors,
6 hopefully neurologists, are gonna be able to explain
7 dementia to this jury, and be able to explain to them how it
8 progresses or doesn't progress.

9 I mean my understanding is some people it progresses
10 more quickly, some less. And I'm, I'm just not sure how we
11 get the evidence I guess to a jury, and also -- I, I mean do
12 you see what I'm saying?

13 Just because he, you know, was forgetful, let's say, in
14 2012, doesn't mean necessarily that, in 2015, he was
15 anything. So, that's, that's what I'm having a hard time
16 figuring out is how we're presenting this. Not we're. How
17 your all -- you-all are presenting this.

18 MR. MEDLIN: Your Honor, we would be happy for you to
19 present it for us, but I'm not sure that's---

20 THE COURT: Yeah, I don't think you want me to.

21 MR. MEDLIN: ---the right way.

22 A couple things there, Your Honor.

23 First of all---

24 THE COURT: Yeah.

25 MR. MEDLIN: ---I'm not disregarding the medical

1 testimony for purposes of this --

2 THE COURT: I am -- I hear that.

3 MR. MEDLIN: -- summary judgment---

4 THE COURT: Yeah.

5 MR. MEDLIN: ---because it works in our favor.

6 THE COURT: Right.

7 MR. MEDLIN: And, and so, let's take one example that
8 they keep harping on --

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: -- which is that he had a urinary tract
11 infection---

12 THE COURT: Right.

13 MR. MEDLIN: ---or he was dehydrated.

14 THE COURT: Right.

15 MR. MEDLIN: And listen I, I understand the, the point.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: But when you've been diagnosed with
18 dementia six months before --

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: -- you have this urinary tract infection,
21 and when you are released from the hospital after having
22 been restrained, which is not usually what happens with a
23 UTI --

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: -- and the reports says he still has

1 dementia, then he's got dementia.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: And dementia is, for purposes of the
4 validity of making a will, the same as Alzheimer's. The
5 percentage, I understand. Of course, I'm certainly no
6 medical expert---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: ---but I've lived through Alzheimer's.
9 Not personally yet or we may disagree, but please don't put
10 that on the record.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: The, the issues are the same whether it's
13 formally diagnosed as Alzheimer's, which is---

14 THE COURT: Right.

15 MR. MEDLIN: ---the vast majority of diagnoses today
16 for dementia are dementia.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: You don't know what you're doing.

19 THE COURT: Okay.

20 MR. MEDLIN: And he's been diagnosed with dementia
21 since December of 2011. Actually I think since September.
22 I'll get into all that in detail, Your Honor---

23 THE COURT: Okay.

24 MR. MEDLIN: ---when we get into the facts.

25 THE COURT: Okay.

1 MR. MEDLIN: But it's, it's pretty clear that there is
2 this ongoing diagnosis, reports from him himself, Mr.
3 Barringer, that he can't remember. He can't do those sorts
4 of things.

5 So, to answer your other question, Your Honor, we're
6 gonna have to do this the way we do it in every other case
7 where mental capacity is questioned.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: We're going to have to bring in
10 evidence---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---some more reliable than others, about
13 where his mind was at the time he executed the will.

14 THE COURT: Okay.

15 MR. MEDLIN: And the jury will believe or not that---

16 THE COURT: Okay.

17 MR. MEDLIN: ---we said that he didn't have the
18 capacity to make a will.

19 THE COURT: Let me ask you---

20 MR. MEDLIN: Again---

21 THE COURT: ---are we at the -- and I apologize. I
22 don't mean to cut you off. I, I hear you.

23 But my question then is, is that can we get to the
24 point now where we're talking about what you-all agree to
25 are the facts in this case or it might even be easier just

1 for you to tell me what you disagree with what Ms. Paylor
2 said before or tell me how the best way, and then obviously
3 we need to go through each of the causes of action laying
4 out what your evidence is that's a question of fact.

5 MR. MEDLIN: Your Honor?

6 THE COURT: Yeah.

7 MR. MEDLIN: And I'm happy, I'm happy to do that, but
8 if I may, I'm gonna---

9 THE COURT: Sure.

10 MR. MEDLIN: ---cover a lot of that when we get into
11 the facts discussion.

12 THE COURT: Okay.

13 MR. MEDLIN: I've got a lot -- I've got a lot to argue
14 about the law still first.

15 THE COURT: Okay.

16 MR. MEDLIN: And I made some notes about things that I
17 disagree with about the undisputed nature of some of these
18 facts, and I'll try to address those as I go through the
19 facts---

20 THE COURT: Okay.

21 MR. MEDLIN: ---cause they're a number of them, if you
22 don't mind.

23 THE COURT: Okay. Sure.

24 MR. MEDLIN: And I think, with your permission, I'll
25 deal with those in the process of what we're going through

1 here.

2 THE COURT: Okay.

3 MR. MEDLIN: Your Honor, let's talk about Alzheimer's
4 for just a minute in the Gatti case.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: And here we have a neurologist who offers
7 a diagnose (sic) of moderate Alzheimer's --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- based on such observations as aphasia
10 --

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: -- what we're hearing about Mr. Barringer
13 in the Spring of 2012.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: The Court's asking about a lucid interval
16 because that there's a chronic incapacity, and the
17 neurologist replied a lucid moment is not a term that fits
18 well with Alzheimer's disease. You distinguish the
19 psychiatric disease like Alzheimer's disease, and then later
20 he switches over to dementia---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: ---from chemical defects --

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: -- because dementia is the progressive
25 death of brain cells.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: The neurologist said that dementia results
3 in a faulty, rational process. Dementia sufferers do not
4 fully understand the nature of what they are doing, and they
5 do not fully understand the ramifications of what is there.
6 They don't get any better because it's a progressive brain
7 disease.

8 There may be apparent good days or bad days.

9 THE COURT: Right.

10 MR. MEDLIN: But the disease killing the brain cells
11 isn't vacillating there. The brain cells continue to die,
12 and that neurologist gave obviously what, to us, is an
13 explanation of Alzheimer's and dementia that fits right into
14 our argument in this case. The Court in that case---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---looked at evidence both before and
17 after the execution---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---of the document.

20 By the way, in that case, the proponents failed to tell
21 the drafting attorney about the dementia, and we'll talk
22 more about those in a second too with your permission, Your
23 Honor. But, but since it was raised in Defendant's opening
24 argument, the drafting attorney in this case, in the Gatti
25 case, thought the testator had capacity. He executed the --

1 he created a will, executed it. The Court said too bad.

2 So, it's also true that a drafting attorney isn't the
3 end all and be all of a determination of whether capacity
4 exists. Certainly not with respect to undue influence. But
5 even as to capacity, because, in this case, the Court
6 observed that the attorney who was not told about the
7 dementia, the attorney drafted the document and the Court
8 still---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: ---overturned the document. So, we're
11 gonna show, in a while, Your Honor, why the facts clearly---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---demonstrate to us that Mr. Barringer
14 lacked mental capacity and chronically so.

15 Now, undue influence occurs when the testator or the
16 settlor is coerced into making a will or a Trust or transfer
17 that the testator or settlor or transferor did not want to
18 make---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---but felt coerced in doing it.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: Case after case after case, including the
23 Swiger case, which I wouldn't, wouldn't agree is the Bible,
24 but I agree has a lot of valid law in it --

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: -- recognizes that undue influence
2 necessarily has to be proved by circumstantial evidence
3 because people don't practice undue influence in the open.
4 I doubt that Merrill Light went to the execution ceremony
5 with John Jolley, put a gun to Mr. Barringer's head, and
6 said okay, if you don't sign this, I'm going to pull the
7 trigger. That's not the way undue influence works. It
8 works in secret, and, in fact, secrecy is one of the
9 factors---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---as we'll describe in just a minute that
12 we take into account.

13 If undue influence is presented by somebody in a
14 confidential relationship or fiduciary relationship, which
15 the Lights clearly were, then the burden shifts back to the
16 proponent of the will for a revocable document like a will
17 or Revocable Trust. It's just totally to the proponent of
18 an irrevocable document, like the stock transfer, and if
19 it's a revocable document as we said before, before you add
20 in the self-dealing, before you add in the capacity, the
21 burden would shift back for revocable documents---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: ---to the contestant.

24 Now, every fact pattern is unique both in capacity
25 cases and in undue influence cases. So, there are a set of

1 factors that Courts tend to consider. You don't have to
2 have each one of those to have undue influence. We think we
3 have each one of those as we'll show Your Honor, but you
4 don't have to have all of them.

5 For example, just because we may or may not have
6 restrictions, and we have proof we have restrictions, that's
7 not an end all and be all to the determination of undue
8 influence.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: It's a set of factors or a factual
11 determination of whether the testator or the settlor or the
12 transferor---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---was coerced, which could be by overt or
15 covert methods such as fooling that person, which went, went
16 on in this case, to do something that otherwise he wouldn't
17 have done.

18 Here are the factors, the susceptibility of the
19 testator, settlor, donor to be unduly influenced.

20 Mr. Barringer clearly was in a weakened mental state
21 beginning in 2011. The Defendants noted that in February of
22 2011. The company officials noted that starting in 2011.
23 He went to a doctor for it and was diagnosed with dementia
24 in 2011.

25 So, that weakened mental capacity continues on, and not

1 just through medical evidence, Your Honor, but through
2 evidence -- continuing evidence of Defendants, of company
3 employees, not to mention Plaintiff and her husband, but
4 we've got plenty of evidence without their testimony, but
5 their testimony is valid.

6 The opportunity to practice the influence.

7 well, we've got Mrs. Light, for example, in a fiduciary
8 capacity. We have Mr. Light in a fiduciary capacity. They
9 spend a lot of time with Mr. Barringer. Randy Light
10 testified, as you'll see, that he was constantly with Mr.
11 Barringer.

12 So, they had the opportunity to perpetrate the practice
13 of influence. Again, we'll show that with specific facts in
14 more detail in just a little bit, Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: The motive of the perpetrator.

17 well, we got some clear motive here. We've got
18 somebody who sees a golden opportunity to take control of
19 the company, and as you'll see, to make it their personal
20 pocketbooks, which they did. And so we've got motive and we
21 agree motive alone, the case law is clear, common sense will
22 tell you, motive alone is not all you need to show, to show
23 undue influence. It's just one of the factors.

24 The disposition or the propensity, as I tend to use
25 that term more often, to practice the undue influence.

1 we're gonna show, with the facts, how the Defendants had the
2 propensity to practice undue influence by evidence that's in
3 existence.

4 critically a change in the pattern, and there is a
5 change in the pattern. We've got a life long pattern of
6 treating, after Victor got out of the company, his daughters
7 equally in control of the company --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- and that changed. It changed on
10 July 20th, 2012, and it changed more dramatically on
11 September the 11th, 2012, and secrecy.

12 And we're gonna show how, despite an invitation to join
13 the board after the stock transfer took place, and despite
14 the other way they described this in the memo, an invitation
15 to take Mr. Barringer to the Medical University, that was a
16 request, not an invitation, and that's, that's meaningless,
17 first of all, and, secondly, there are probably sinister
18 reasons for that as well.

19 But, Your Honor, let me mention our own case, and I
20 think we'll dispel some of the notions about the so called
21 liable on the Swiger case, and this is just to dispel -- I,
22 I didn't hear it quite so clearly in the argument today,
23 although I heard remnants of it, but in argument the
24 Defendant has made time and again, and that is that unless
25 you had somebody present at execution to prove that there

1 was a lack of capacity of undue influence, then you can't
2 get there.

3 well, Swiger actually does say, and it lists a couple
4 of reasons that there was no undue influence, but the
5 alleged perpetrator was not present. That's just a factor
6 in that particular case. It's certainly not a requirement.

7 In fact, Swiger's a Court of Appeals case, and I'm not
8 sure that case can become the Bible. We have cited to you,
9 Your Honor, for example, a Supreme Court case, the Byrd
10 case, Byrd versus Byrd, where somebody was not present, and
11 there was still undue influence. The undue influence can
12 exist without somebody being in the room practicing the
13 undue influence right there with the testator. That just
14 happened to be a factor in the Swiger case.

15 If that were the rule the Defendant keeps saying is the
16 rule, number one, it would gut the rule about circumstantial
17 evidence cause there wouldn't need to be any circumstantial
18 evidence. Open and shut for Your Honor would be was the
19 perpetrator in the room. No.

20 Okay. So, that's not the way the cases work, Your
21 Honor, and it would also gut the before and after rule where
22 we just discussed that Courts look at evidence before and
23 after, and as closely as possible during the execution of
24 the will. But, again, we, we wouldn't have that rule. The
25 question would simply be was the undue influencer in the

1 room when the document was signed. If the answer is no,
2 then there's no undue influence. So, that is a gross
3 mischaracterization of the law to say that somebody has to
4 be present.

5 But, Your Honor, just to make it clear that the law
6 agrees with me, not only does the Byrd case do that, which
7 is a Supreme Court case, and I would say the Swiger case can
8 not overrule the Byrd case, then let's talk about a case
9 that came down from the Court of Appeals a year after
10 Swiger, and that's Gunnells versus Harkness, and, Your
11 Honor, I apologize. This was not in our brief. It's at 847
12 S.E.2d 97, 847 S.E.2d 97. It's the Court of Appeals.
13 April 1st, 2020. And Gunnells is important for several
14 reasons.

15 First of all, again, it makes it clear that Defendant's
16 argument that the only way to prove undue influence or lack
17 of capacity is to have somebody in the room at the time is
18 just not the law. Because, in fact, in Gunnells, the
19 perpetrator was not in the room when the document was
20 signed. The lawyer and her assistant were the only two
21 people in the room, and, in fact, the lawyer and her
22 assistant testified that the testator did not feel
23 pressured, that he was doing what he wanted to do -- she was
24 doing I think what she wanted to do.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: And the perpetrator was not there. Not in
2 the room. Not anywhere near.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: In fact, two physical therapists who dealt
5 with the testator said that the testator clearly wanted the
6 property to go to the perpetrator, and not the other
7 children, and they talked with him about that all the time.

8 So, what did the Court do?

9 The Court found undue influence. The Court starts out
10 by saying, and this is in my review of the law, Your Honor,
11 the first time these facts have come up in this way.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: But it's still the law is clear and the
14 same.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: The perpetrator actually rebutted the
17 presumption against him because he wasn't a confidential
18 relationship. He had a Power of Attorney. He rebutted it
19 because of the testimony of the drafting attorney, and the
20 testimony of the two physical therapists.

21 So, the Court said okay, that puts the burden back on
22 the contestant. But the Court found undue influence,
23 influence anyway---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: ---even though the burden got put back on

1 the contestant --

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: -- because a significantly different
4 pattern in this case. That's true in almost all undue
5 influence cases.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: Changed behavior of the testator. The
8 testatrix in this case.

9 A couple of other factors that we think apply in our
10 case.

11 Restricted communication by the beneficiaries, and
12 despite the way the Defendants paints it, we say in our
13 affidavit, Paragraph 41, and this was asked at deposition,
14 that she was restricted from communicating with Mr.
15 Barringer by Mrs. Barringer. Again, she's a codefendant in
16 this case, and the withholding of dementia medication. And
17 we can show Mrs. Barringer did not know what was going on
18 with his dementia medication.

19 The problem -- the doctor reports. In fact, the title
20 of one of the doctor's reports was get back on meds. That
21 was the title of the report.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: Now -- so we've got a South Carolina
24 Supreme Court case that found undue influence even though
25 the perpetrator was not there executing.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: We've got a more recent Court of Appeals
3 case than the Bible that says it's undue influence even
4 though the perpetrator wasn't in the room.

5 So, clearly it's not just the simple rule that if the
6 perpetrator's not there the will is valid. That's clearly
7 not the case.

8 But, Your Honor, even if that were the case, the
9 Defendant was there. The Defendant just said that Mr. Light
10 was on a trip to Alabama when the first critical document
11 got executed, which was July 20th, 2012---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---which disinherited Plaintiff from the
14 voting stock, and the Defendant, Merrill Light, has
15 testified that she was in the room as a witness when this
16 stock transfer occurred. So, even though Defendant is wrong
17 about the law with respect to presence, it doesn't matter.
18 The perpetrators were present when those documents were
19 executed.

20 Now, Your Honor, fraud in the wills and Trust venue is
21 an intentional representation or omission---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: ---that's intended to deceive the settlor
24 or the settlor and the donor.

25 To -- according to South Carolina law, to recover for a

1 claim for fraud in inducement, which means deceiving the
2 testator or the settlor into doing something, that's
3 different from undue influence. Undue influence is putting
4 pressure. Again, it can be very overt, a gun to the head.
5 It can be very covert like taking advantage of the confusion
6 of a testator, and giving him documents, and letting him
7 believe that Mr. Luzak is trying to steal the company when
8 there's already documents that have been presented over and
9 over in formal board presentations and family meetings for
10 over a year---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---and the testator was saying yeah,
13 sending emails. Yes, this is good. Sounds good. That's
14 covert.

15 Now, we don't know whether when Merrill Light had Mr.
16 Barringer's ear she was more overt but we don't need that.
17 We just need to show that there was pressure with respect to
18 undue influence including an omission, and the issue of
19 fraud is different. There has to be an intentional
20 misrepresentation. We think we have a situation where there
21 was an intentional misrepresentation.

22 It's got to be intended to deceive the Plaintiff, and
23 the decedent had a right to reply, and as we'll again
24 explain when we get to the facts, we think we have exactly
25 that situation going on here as well.

1 A fiduciary has a duty to disclose. Mrs. Light is a
2 fiduciary in a number of ways. She had a duty to disclose.
3 And so the secrecy, you'll see -- and, by the way, you'll
4 see she has a duty to disclose to Plaintiff. The secrecy
5 goes towards undue influence, goes towards fraud.

6 By the way, one of the cases we cited when we get down
7 on to Page 7, which is not the South Carolina case, but it's
8 consistent with South Carolina law, I cite it because it
9 cites the New York case that says well, we actually have a
10 rule in New York that we get to look at evidence starting
11 three years before through two years after---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---the execution of the will.

14 Again, that's consistent with the general rule that you
15 have to look before and after to see what was going on at
16 the time. Well, they actually had a five year window,
17 which, of course, would take us all the way back to 2009 and
18 including Mr. Barringer's death or admissible evidence.

19 All right. Your Honor, I'm gonna state the law on
20 mistake. Defendant's argue there is no remedy for mistake
21 in South Carolina and I disagree.

22 First of all, although I know what the Hanahan case
23 said, but the Hanahan case also cites Ex Parte King, which
24 among a number of issues that it discusses, indicates that
25 if a part of the will is the result of mistake you can

1 invalidate a part of the will.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: More importantly, Hanahan was decided in
4 1997, and the South Carolina Probate Code came into effect
5 on January 1st, 2006, and the amendment to the South
6 Carolina Probate Code became effective January 1st, 2014.
7 We have statutes that override any argument we want to make
8 about mistake in South Carolina.

9 Both of those statutes allows the reformation of a will
10 or a Trust. Obviously the Probate code, Section 62-2-601(b)
11 as to a will, the Trust Code, Section 62-7-415 as to Trust,
12 but the bottom line is the same. If there's a mistake, then
13 the Trust or the will can be overturned. So, the law now,
14 by statute, is that you can overturn a will because we can
15 perform it.

16 If there's no remedy for mistake, state why would the
17 Trust Code or the Probate Code have those sections?

18 All right. Your Honor, the law on tortuous
19 interference with an inheritance, and, again, Your Honor,
20 we, of course, incorporate our memo, but much more detail
21 and history with respect to the citations and authority.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: But as briefly as I can on tortuous
24 interference, tortuous interference is a different way to
25 remedy undue influence. Undue influence, of course we know

1 about. It's when somebody coerces a testator or a donor or
2 settlor to do something he or she did not want to do. The
3 remedy is to un do the document that was the result of undue
4 influence or the part of the document that was result of
5 undue influence.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: Your Honor, in trying to get away with
8 undue influence, the worse that happens, if I commit undue
9 influence in a will, and Your Honor finds that I committed
10 undue influence, is to give it back.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: Now, I may have to pay some attorney's
13 fees that we'll talk about in just a little bit but that's
14 it. Intentional interference with an inheritance or
15 tortuous interference with an inheritance or intentional
16 interference with an expectancy, it's got a number of names,
17 has been recognized since the late 70's by the restatement
18 as a valid tort, and the difference here is, if we have a --
19 I'm sorry, Your Honor. I've got my phone cut off and it
20 still talks to me. I can't figure out how to stop that. I
21 apologize.

22 The remedy is different in this way. The facts are
23 going to be essentially the same. The difference is that
24 utilizing the same facts that show undue influence, we bring
25 a cause of action against the tortfeasor, in this case the

1 Defendant, who caused the testator, or settlor, or donor to
2 change the pattern of giving, to do---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---something he didn't want to give, which
5 takes it away from the intended beneficiary. And the
6 benefit here is that it has a deterrent effect and a
7 punitive effect unlike the remedy of undue influence cause
8 now we're bringing the action based on the same facts
9 against the tortfeasor---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---and it's an intentional tort. So, we
12 get punitive damages.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: And that's the deterrent effect, and
15 that's the punitive effect.

16 Now, we agree with Defendant -- they've been
17 (indiscernible). I think they've both taken this position,
18 that South Carolina has not formally recognized intentional
19 interference with expectancy in South Carolina, but, Your
20 Honor, nor has it declined---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: ---to accept intentional interference with
23 an expectancy, and, in fact, the Ellis v. Boyce case that we
24 cite, it was a malpractice case brought against, brought
25 against lawyers that---

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: ---two well respected lawyers who clearly
3 hadn't committed malpractice, and had no duty to the person
4 bringing it.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: So, the Court didn't even need to get to
7 the intentional interference claim, but the Court said, in a
8 footnote, we don't need to get into intentional
9 interference. They said that in the text and then they said
10 it -- but let me just point out that the elements of
11 intentional interference with an expectancy are exactly the
12 same elements as intentional interference with a contract --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: -- which we do recognize in---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---South Carolina.

17 Now, I'm, particularly recently, not really good at
18 predicting what the Supreme Court's gonna do, but I think
19 that is an invitation for somebody to recognize tortuous
20 interference with an inheritance or intentional interference
21 with an inheritance, and we cite the Welham case, and I
22 wonder if the Defendants agree, agree with that case as a
23 bunch of lawyers in South Carolina are, where Judge Norton
24 provided an exegesis about why South Carolina State Law
25 would recognize tortuous interference with an expectancy.

1 Now, of course---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: ---that's not binding on Your Honor or the
4 South Carolina Supreme Court. Judge Norton didn't even
5 bother to refer that issue to the South Carolina Supreme
6 Court. He said I can decide that myself, and I'm gonna look
7 at all the law, and South Carolina recognizes tortuous
8 interference. We're gonna show the, the acts that show
9 particularly undue influence.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: Also show that the Defendants have
12 committed intentional interference with an expectancy.

13 All right. Your Honor, conversion is the next legal
14 issue that comes up in our causes of action. It's the
15 unauthorized assumption and exercise of property belonging
16 to someone else.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: Again, we're gonna show, based on the
19 facts, that's exactly what's occurred. Particularly with
20 respect to the stock.

21 Your Honor, it's footnotes at this point that
22 Defendant's arguing that Mrs. Light does not, excuse me,
23 Mrs. Luzak does not have standing against Mrs. Light to
24 assert conversion---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---and we're gonna show she absolutely
2 does. If I may, I'll get to that argument in a moment.

3 The next remedy is constructive trust. It is very
4 basic.

5 As our Courts have recognized, constructive trust takes
6 property from someone who fought not to have it, and gives
7 it to someone who ought to have it. Normally, with a
8 constructive trust, you've got some bad acts, which you
9 don't have to have a bad act, and when the cases give a
10 litany of those factors that might constitute a ground for
11 the equitable remedy of constructive trust, they, they say
12 bad act, bad act---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---bad act or a violation of fiduciary
15 duty.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: Now, what I -- again, footnote here.
18 That's also the case with undue influence. In fact, in the
19 very case that Defendant read a significant portion of, the
20 Swiger case, it picks up that same language. It says undue
21 influence occurs when there are this bad act, this bad act,
22 this bad act, or an existing fiduciary relationship. That
23 doesn't even have to be a bad act under the law of undue
24 influence.

25 It said -- they -- and the cases are numerous on this.

1 Undue influence occurs with bad act, bad act, bad act,
2 bad act or an existing fiduciary relationship. So, it
3 doesn't have to be a bad act. It just has to be an existing
4 fiduciary relationship to be able to show undue influence,
5 and it's the same for a constructive trust, and we're gonna
6 show, under the facts, that Plaintiff is entitled to a
7 constructive trust.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: Resulting trust is a different remedy, and
10 it is also an equitable remedy that arises when the punitive
11 settlor of a Trust transfers property to someone, and the
12 Trust fails, or, more particularly in this case, when a
13 punitive donor of property gives the property to someone who
14 was not---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---intended to receive it, and that
17 creates an unjust enrichment, and the equitable remedy says
18 we're bringing it back. We're bringing it back to where it
19 belongs. It's a different remedy from constructive trust
20 although constructive trust is probably a broad enough
21 remedy to encompass the resulting trust as well.

22 Quantum meruit, unjust enrichment.

23 Quantum meruit is the legal remedy for unjust
24 enrichment in South Carolina, and everywhere else that I'm
25 aware of, and the remedy is based on somebody being unjustly

1 enriched. They're gonna show, by the facts, that the
2 Defendants have been unjustly enriched.

3 we've alleged breach of fiduciary duty, self-dealing,
4 and conflict of interest, and, again, I've discussed the
5 Trust Code itself prohibits---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---self-dealing by a trustee. The Probate
8 Code prohibits self-dealing by a personal representative.
9 But we've got self-dealing by a trustee here, and it creates
10 an un-irrebuttable presumption of a breach of duty.

11 We argue civil conspiracy, and the law of civil
12 conspiracy, as I understand it, is my bailiwick of---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---reading from it.

15 My co-counsel's very wise assertion of this part, three
16 elements. Got to have a combination of two or more people
17 for purpose of injuring the Plaintiff. Also special
18 damages. It can be determined from the very nature of the
19 act itself, from the relations of the parties, the interests
20 of the coconspirators. By its nature, just like undue
21 influence, it's covert and clandestine and we prove it with
22 circumstantial evidence. Got to show concert of action.

23 The cases say that the admissibility of evidence is
24 quite broad in situations like this, great latitude, again,
25 because we have to prove it by circumstantial evidence.

1 we're not gonna reward people who sneak around and get
2 things done where there isn't somebody else to prove
3 otherwise and get away with that. So, we're gonna allow
4 circumstantial evidence. And so, again, we'll recall --
5 rely on the facts that lead to a conclusion. Now, the
6 Defendants are guilty of the civil conspiracy.

7 Defendants, I think said, in their initial memo,
8 there's no remedy for attorney's fees and costs in this
9 case. I disagree. The Probate Code and the Trust Code
10 specifically say so.

11 62-1-111 and 62-7-1004, for wills and Trusts,
12 respectively provide that remedy to Your Honor.

13 All right. So, Your Honor, that's our discussion of
14 the law. I'd like now to get into---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---the discussion of the facts that
17 support it, and then we can go back and forth. I'll start
18 with capacity.

19 THE COURT: Let me ask you-all just very quickly before
20 you start is -- when do y'all want to take a break?

21 I'm thinking really roughly -- I, I can take a five
22 minute break and we can start in on the facts, and then we
23 can take a lunch break in a bit or we can take a lunch break
24 now?

25 what do y'all want to do?

1 MS. PAYLOR: I need a break right now.

2 THE COURT: You need a break right now. I think
3 everyone needs a break right now.

4 MS. PAYLOR: No, no. I need a short break right now.

5 THE COURT: You need a short break right now. So do I.
6 (Pause.)

7 THE COURT: Okay. Let's just take -- how about this?

8 Are y'all okay with let's take a short break right now.
9 Just a quick three, five minutes, whatever, and then let's
10 go for a little bit, and then we can take a lunch break?

11 How long do you think the facts, just in discussing,
12 and then we'll go back and forth on the causes of action?

13 MR. MEDLIN: Okay. Oh, Your Honor, we're 11 pages into
14 our memo based on the law --

15 THE COURT: Yeah.

16 MR. MEDLIN: -- and we've got -- most of the rest of
17 our memo dealing with -- well, I'd say another 23 or 24
18 pages. So, maybe -- well, at least as long and maybe
19 longer. Probably longer.

20 THE COURT: Got it.

21 Okay. Let's do this then. Let's just go ahead and
22 take -- if y'all are, are fine with this, let's take 30
23 minutes, and maybe everyone hop back on at 1:00.

24 Is that okay?

25 Do I have anything -- I'm okay.

1 Is that okay with everybody if we just -- we'll all hop
2 back -- that gives you a little over 30 minutes, and we'll
3 all just come back at 1:00.

4 Go ahead, Alice.

5 MS. PAYLOR: I do want to say I, I did not go into
6 every cause of action because I'm gonna do it when I take it
7 up.

8 THE COURT: Yeah.

9 MS. PAYLOR: So, I don't want you to think that I---

10 THE COURT: Oh, no, I know.

11 MS. PAYLOR: --- (indiscernible) argument with regard
12 to---

13 THE COURT: Oh, I know.

14 MS. PAYLOR: --- (indiscernible) and also I do not agree
15 with most of what Mr. Medlin has argued. But I do---

16 THE COURT: Yeah.

17 MS. PAYLOR: --- I do want you to understand that I
18 didn't go into everything---

19 THE COURT: Oh, I know. He started---

20 MS. PAYLOR: --- as to the cause of action---

21 THE COURT: As far as maybe -- we started on the first
22 cause of action. So, I understand he's just laying out the
23 law as to each of the causes of action. But now we're gonna
24 sit and go through specifically what facts that he says are
25 in dispute as to each of the causes of action.

1 MS. PAYLOR: Yes.

2 THE COURT: So, I understand that. We're gonna go
3 there and he's gonna talk about his set of facts, which is
4 fine.

5 MS. PAYLOR: Thank you, Your Honor.

6 THE COURT: So, let's just take, like I said, a little
7 over 30 minutes. Let's all hop back on at one o'clock if
8 that's acceptable with everybody, and I'll see you-all at
9 1:00.

10 Okay. Okay.

11 MR. TWOMBLEY: Yes, ma'am.

12 MR. MEDLIN: Your Honor, should we stay signed on or
13 should we sign back in?

14 THE COURT: Laura, should we or should we not, stay
15 signed on?

16 THE LAW CLERK: Yeah, you can. I'll just---

17 THE COURT: They said you can if you want to, but you
18 don't have to. Yeah, I mean it's fine. Whatever you
19 prefer. Just you can put your screen down, which is what
20 I'll do.

21 So -- okay. All right. Thank you, y'all.

22 (WHEREUPON, Court was in recess at this time.)

23 THE COURT: So, anyway. Yes.

24 MS. PAYLOR: I just wanted to say, before Mr. Medlin
25 starts in his two hour rendition of his facts, if we could

1 just maybe do it cause of action by cause of action---

2 THE COURT: Yeah.

3 MS. PAYLOR: ---and he can tell us what the specific
4 facts are for the first cause of action, and then, when we
5 goes to the other ones, he can do that for those. I think
6 it would make it a lot easier for you to comprehend, and I
7 think it would speed things up so that we could get there.

8 So, what, what I would like to do are what specific
9 summary judgment admissible facts he has to support his
10 claim that Mr. Barringer was incapacitated on February 5,
11 2015.

12 THE COURT: Mr. Medlin, what, what do you propose to
13 do, sir?

14 MR. MEDLIN: Okay. Your Honor, I propose to do what we
15 started out doing and what Alice did, and I'm gonna talk
16 about all the facts, and they -- I think it's a much more
17 efficient way for me to do it because a lot of the facts
18 impact different causes of action.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: If I had to go through and list the facts
21 for each cause of action, we really will be here for a long
22 time. So, Your Honor, I would ask that we stay on the path
23 that we're on. I'm gonna talk about the facts and---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: ---then I respond to, as Alice did, her

1 part about capacity and then we can go back and forth after
2 that. I don't think I'd have to repeat all the facts if we
3 do it that way.

4 THE COURT: Well, I can tell you---

5 MS. PAYLOR: It's not -- oh, I'm sorry.

6 THE COURT: Just -- I'm sorry. Just really quickly.

7 what I need, Alan, is -- I understand you're gonna give
8 me a broad base of everything. But I will need you to, on
9 each cause of action, be able to say, you know, this is, you
10 know, this doctor visit, this, this, this. It doesn't
11 matter to me if you don't cover every last one of them.
12 But, again, you know, this is summary judgment, and I need
13 to have something to know whether or not I need to dismiss
14 it.

15 So, again, I don't know your facts like you know your
16 facts. So, we can talk about everything in general. But as
17 each of them applies to the causes of action, I just need to
18 know, at the end of the day, what causes of action are gone
19 or not gone.

20 So, I may need you to, again, I, I think though, if you
21 do give me your overview like you're talking about, I think,
22 when you are listing them, for each one, again, I'm not
23 holding you to missing any of them. I just need to know
24 that there's something for that cause of action.

25 Is that fair?

1 I mean that's what I'm gonna need.

2 MR. MEDLIN: Your -- Your Honor?

3 THE COURT: Yeah.

4 MR. MEDLIN: Go ahead, Alice.

5 MS. PAYLOR: I, I did not list all of my facts. I gave
6 a five minute overview---

7 THE COURT: Right.

8 MS. PAYLOR: ---of the facts.

9 THE COURT: Right.

10 MS. PAYLOR: So, I mean -- and that's -- I didn't give
11 you all of the law either.

12 THE COURT: I know.

13 MS. PAYLOR: I mean if we take it by cause of action,
14 it will be a whole lot easier for you to digest it, for me
15 to digest it, and we can see if there are genuine issues of
16 material fact. Mr. Medlin has already given us, in his
17 brief, all the facts that, that they rely upon. I do not
18 agree that those are summary judgment admissible facts, and
19 that's where, you know, we're gonna have some big debate.
20 But what we, what we need is for him to give us what they
21 are by cause of action.

22 Thank you, Your Honor.

23 MR. MEDLIN: Yeah, Your Honor. I didn't hear those
24 facts being related only to capacity when we were talking
25 about the overview of the facts.

1 Secondly, as you'll see, cause I'm pretty much
2 following our memo, Your Honor, we'll start on Page 12 with
3 the facts.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: They're my facts that deal with capacity.
6 They're a lot of facts that deal with undue influence. They
7 aren't necessarily one in the same --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- other than the fact that lack of
10 capacity is an element of facts in determining whether
11 somebody's susceptible to undue influence.

12 After that, Your Honor, it gets a lot cleaner because,
13 for example, with tortuous interference, we can argue the
14 facts that apply that we've already discussed would apply to
15 intentional interference that way. So, I, I think you'll
16 find that I'm essentially doing what Alice is proposing
17 other than I think we need to combine the facts about lack
18 of capacity, and undue influence if we can, and, Your Honor,
19 with your indulgence, I'm sorry, I---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: I, I, I guess I was excited about taking a
22 break. But there are a few other points on the law that I'd
23 like to cover before we get into the facts if I may do that.

24 THE COURT: Sure.

25 MS. PAYLOR: Your Honor?

1 THE COURT: Yeah.

2 MS. PAYLOR: I mean all -- I mean his brief speaks for
3 itself, and it's---

4 THE COURT: Right.

5 MS. PAYLOR: ---covered (indiscernible). For him to go
6 through and spend another two hours reciting what he's
7 written in his brief is---

8 THE COURT: Yeah.

9 MS. PAYLOR: ---certainly a waste of judicial time, and
10 I -- you know, why can't we get to the heart of the matter?
11 I haven't talked about the law of anything except
12 capacity and undue influence so far.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: And he can talk about the law when we get
15 to the specific causes of action. So --.

16 MR. MEDLIN: I've already covered -- I've already
17 talked about the law---

18 THE COURT: Yeah.

19 MR. MEDLIN: ---other than just a few points in
20 response to their reply brief for which I can not rely on
21 our memo because we didn't get a chance, of course, to do a
22 memo to their reply brief. So, I would like that
23 opportunity.

24 THE COURT: Okay. Well, Mr. Medlin, what I don't want
25 you to do is read me your brief. That I don't want to do.

1 So, again, I've read it. So, however we need to go
2 about it, you can give me a brief -- your background of the
3 facts. You can show me -- and, and I understand this is
4 over time before, during, and after this 2015. So -- but I,
5 I will need you to be able to address each of the, each of
6 the causes of action for me to, to show me why you survive
7 summary judgment on them.

8 I mean it's -- so, let's do it that way. If you want
9 to give me a brief overview.

10 I mean I would be very interested, Mr. Medlin, and,
11 again, I am not asking you to cover every last thing. But I
12 need you to give me your theory because I, I think I've
13 heard the, the Defendants all along that, you know, he
14 wasn't influenced, he wasn't influenced, and these are the
15 doctors and blah, blah, blah. I think I need to hear from
16 your prospective of where you're at and how you're putting
17 your case together just so I understand and can follow you.

18 MR. MEDLIN: Well, I appreciate all that. I certainly
19 don't intend to read the brief.

20 THE COURT: Okay.

21 MR. MEDLIN: I do want everyone to hear what we
22 consider to be the pertinent, relevant facts. Many of which
23 address the facts that the Defendant raised---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: ---in their opening argument. And so I

1 won't go through every document. I will try to highlight
2 the ones that -- I'm not gonna read the brief.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: But I'm gonna follow the format of the
5 brief, if I may, so that those who, like Alice suggest, want
6 to be better informed, they can follow the format of the
7 brief.

8 But, Your Honor, I, I hear you. I'm not gonna read you
9 my brief.

10 THE COURT: Okay. Then go ahead.

11 MR. MEDLIN: I would like to respond to a few issues of
12 law that -- the, the first is, again, in their reply. The
13 first is about the inadmissibility of the evidence.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: Hampton and Kevin's affidavit is based on
16 their state of mind (indiscernible) as long as they had
17 contact with him, which continued long after 2012 for
18 Hampton, but certainly fell off once Merrill and Mr.
19 Barringer, with her coaching, fired her husband. The main
20 thing that they're saying in their affidavits after that
21 time they are basing on the knowledge which they have from
22 the evidence that's already here, doctor's reports and so
23 forth.

24 (Indiscernible) I'll speak to Mr.---

25 MS. PAYLOR: Your Honor, it's breaking up. I can not

1 hear him. I don't know---

2 THE COURT: Okay. What's going on?

3 MR. MEDLIN: Can you hear me now, Alice?

4 THE COURT: I think -- okay.

5 MR. MEDLIN: Alice?

6 THE COURT: Start again, and if I wave you, then we may
7 have to do you audio calling in. I don't know why there's a
8 problem, but go ahead and start again.

9 MR. MEDLIN: I think the problem is that Mr. Technology
10 here had his notebook on his microphone.

11 Can you hear me better now?

12 MS. PAYLOR: That's better.

13 THE COURT: Okay. Perfect.

14 MR. MEDLIN: Well, to repeat, Hampton and Kevin have
15 personal knowledge for all the times they were with Mr.
16 Barringer and the Defendants into the Summer of 2012, and
17 their affidavits are based on information that they have
18 seen personally from doctor's reports, emails, et cetera.
19 All of that forming their state of mind.

20 Secondly, Mr. Hagler, who, unfortunately, is deceased,
21 sent letters to the board, most of which were addressed to
22 Merrill Light as well, who's a member of the board. So, she
23 has those letters. She has those emails. She's, she's
24 quite aware and is able to argue that somehow she didn't
25 receive them. In her testimony she said she just didn't

1 bother to respond. But, but she's, she's gotten that.

2 Your Honor, you, you raise a question about unhampered
3 opportunity.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: And the Merrill case, which is not a South
6 Carolina case I understand, but it follows the general rule
7 about hampered opportunity. Unhampered, it means that you
8 are free from the undue influence.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: Once you're free from the undue influence,
11 then the longer that period is, the more the argument about
12 undue influence dissipates. But Mr. Barringer was never
13 free from undue influence. He never had unhampered
14 opportunity to change his documents under the law. So, we
15 don't have an unhampered opportunity.

16 To use Alice's analogy, if somebody threatens to kill
17 the testator if he doesn't put something in his will, he's
18 not gonna have the unhampered opportunity to change that
19 will unless that person ends up in jail -- the perpetrator
20 ends up in jail or dies. Oh, he's still gonna be worried
21 that person's gonna kill him.

22 So, that's what unhampered opportunity means under the
23 law. We're, we're gonna talk about something they argue in
24 their reply memo about she only -- Merrill Light only owed a
25 duty to Paul Barringer. That's not true.

1 Merrill Light owed a duty to the -- Hampton both as a
2 director owing a duty to a shareholder, but, more
3 importantly, as a trustee. When you look at the law, and
4 the most famous commentator, Bogart, the number of cases
5 cited in our brief that we'll mention briefly again, but I
6 won't go into detail about it, 62-7-603 we've discussed many
7 time in our Court, Your Honor. That means that a contingent
8 beneficiary, like Hampton, because as long as a Trust is
9 revocable, the settlor has the right to revoke. A
10 contingent beneficiary can not bring an action until the
11 settlor dies.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: At that time, however, the beneficiary is
14 now vested, and Hampton would be vested under the documents
15 we think were valid, and Merrill Light was trustee. Even if
16 the February, 2012 document itself isn't valid, which first
17 named her as cotrustee, she is a constructive trustee under
18 the law. Bonnie v. Grainger being a case we cite as an
19 example. So, she's held to the standards of a trustee in
20 any event.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: And, at that time, the clear to me
23 prevailing view is, while I don't see any South Carolina
24 case law on this issue at all, but the prevailing view
25 elsewhere, and, again, including in the most respected

1 commentator of trusts, is that, at that time, the now vested
2 beneficiary can sue the trustee for acts that occurred
3 before the settlor's death, and here's the sense of it.

4 If that weren't the case, otherwise a trustee could
5 commit all kinds of bad acts which would impact the
6 contingent beneficiary's interest, and then, when the
7 settlor with the right to revoke dies and the contingent,
8 contingent beneficiary vests, the contingent beneficiary
9 would have no remedy. There'd be no reason for a trustee to
10 worry about having to do something to the contingent
11 beneficiary's interest.

12 And, by the way, the Estate of Brown case gave the
13 children in that case, the children of James Brown, standing
14 to assert the rights that their father would of had even
15 though there was a personal representative and a trustee in
16 that case.

17 Again, they raised the old (indiscernible) about being
18 time barred. We're not time barred. We couldn't bring our
19 cause of action until Mr. Barringer died under 62-7-603.

20 They do argue that fraud doesn't survive death, and I
21 think they may be right about that. But, more specifically,
22 the Estate of Mr. Barringer can not assert fraud --

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: -- although, if you look at 62-1-106,
25 maybe it can, but even at this point that's not the issue.

1 The Plaintiff is asserting fraud on her own behalf under the
2 rule from Bogart and 62-7-603.

3 Now that her interest is vested, she has the right to
4 see what happened to her interest in the Trust at that point
5 in time. If -- the argument in, in the reply brief under
6 the law, the claim is that there's no constructive trust
7 because the property wasn't Hamptons.

8 Well, it was again. It was her property that was
9 intended for her and that she would of received if Mr.
10 Barringer hadn't been unduly influenced, coerced, et cetera.

11 That's just a quick follow-up on the legal issues that
12 I wanted to address that weren't in our initial memo because
13 they came up in the reply brief.

14 Thank you for letting me do that, Your Honor.

15 THE COURT: Okay.

16 MR. MEDLIN: All right. So, Your Honor, I do -- you,
17 you didn't think perhaps the medical evidence was as
18 compelling, but, again, we're at summary judgment stage, and
19 I do want to take you through the particular diagnoses, and
20 we're not looking at all of them, we're not gonna go into
21 all of them, but in -- if -- as early as November of 2011 he
22 was diagnosed with dementia in the 60 percent range.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: In December he presented---

25 THE COURT: By who?

1 I think this is, this is where we need to get into a
2 little more specific -- I need to know by whom and at what
3 visit, and that's why I almost feel like specifics are
4 better as to causes of action because -- and, and I wouldn't
5 say I'm not impressed by the medical evidence. I do think
6 you have some evidence.

7 But, again, typically, in summary judgment, all you
8 need is an affidavit's expert to say that these facts are in
9 question based on what we have and it gets you past it.

10 So, I don't ever think that it's all that tough or
11 difficult to get past it. I just need to make sure that
12 this expert in this case is getting us to where we need to
13 be, and I understand you have facts as to certain visits,
14 but you got to tell me what they are.

15 You can't just say that someone diagnosed him with
16 dementia in 2011 because I don't know who that is and when
17 it was. And I will say this, probably more than anything,
18 even though I don't have it memorized like you-all, I think
19 I pretty much have read the medical records as to -- and the
20 medical records are not all that lengthy. They are doctor's
21 notes, and specific visits, and hospital visits, and
22 doctor's visits.

23 So, I mean it's, it's not like this is a huge, you
24 know -- we're not talking about a huge medical file in this
25 case. It's just not. I mean I know that there's documents

1 and -- but we're not talking about forever, and, you know, a
2 week long doctor's visits. So, that's what I need from you
3 is to tell me where it is so I understand.

4 MR. MEDLIN: I, I think I can do that, Your Honor, and,
5 and, again, I'm -- our memo starts discussing this on Page
6 12 of the Footnote --

7 THE COURT: So it says -- right.

8 MR. MEDLIN: -- and each of the attachments---

9 THE COURT: Do you want me to just---

10 MR. MEDLIN: Each of the attachments---

11 THE COURT: Do you want me just to reach -- read each
12 of the attachments?

13 I mean that -- I guess it's what I'm asking you is
14 write on November 23rd he was diagnosed with dementia in
15 the 60 percent range.

16 So, so, it's your Exhibit G. I mean --.

17 MR. MEDLIN: Attachment 1. That's Doctor Long.

18 THE COURT: Okay.

19 MR. MEDLIN: Doctor Long who supposedly testified---

20 THE COURT: Right.

21 MR. MEDLIN: ---in the conservatorship that he was
22 perfectly competent until the Fall of 2015.

23 THE COURT: Okay.

24 MR. MEDLIN: We, we -- it's---

25 THE COURT: Okay.

1 MR. MEDLIN: Exactly what he said. But, in any event,
2 yes, Doctor Long says dementia. He has dementia.

3 THE COURT: Okay.

4 MR. MEDLIN: And we have a prediction that he has
5 significant dementia in the 60 percent range, and he starts
6 him on Alzheimer's medications.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: Aricept and Namenda.

9 THE COURT: Okay.

10 MR. MEDLIN: That's in November 23rd. So, we're
11 gonna show that, as we go through, there is a chronic
12 incapacity. On---

13 MS. PAYLOR: Your Honor, Doctor Long testified and said
14 he had capacity.

15 Now, this -- these are his notes from way before that,
16 and what does that mean, a prediction that he has
17 significant dementia in the 60 percent range?

18 There's no explanation. When they questioned him at
19 the hearing, he said he had capacity up until the Fall of
20 2015. So, I mean I don't see---

21 MR. MEDLIN: And so we're impeaching. We're
22 impeaching---

23 MS. PAYLOR: He needs medical---

24 MR. MEDLIN: ---Doctor Long's testimony.

25 MS. PAYLOR: ---admissible facts throughout February of

1 '15.

2 Thank you.

3 MR. MEDLIN: Yeah, we're impeaching Doctor Long's
4 testimony with his own reports.

5 MS. PAYLOR: That's what you're doing.

6 MR. MEDLIN: That's exactly what we're doing.

7 well, yes, I think we can. We've got his reports. He
8 says dementia. He has dementia, et cetera. Dementia
9 mentioned three times and he prescribes medications for
10 Alzheimer's in November of 2011.

11 MS. PAYLOR: Just, just one last point. Dementia does
12 not equal incapacity.

13 THE COURT: I understand.

14 MS. PAYLOR: Thank you.

15 MR. MEDLIN: Your Honor, we're going to show chronic
16 incapacity based on dementia, and, in any event, show issues
17 with his ability to understand what he needs to understand
18 to make a will, and, in fact, our own expert, which we don't
19 need, but she says the same thing. I'll get to that, Your
20 Honor.

21 well, let me just do that. Doctor Sanders says in her
22 report, which is in Exhibit K, by mid-2012 -- now, again,
23 she's -- she can't, we agree, give a personal report because
24 she didn't examine him in 2012. To -- so, for an expert I
25 think would be inappropriate. She's basing it on his

1 doctor's medical reports. His doctors --

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: -- including Doctor Long.

4 By mid-2012, he was cognitively compromised by
5 Alzheimer's, by deficits in abstract reasoning, in inability
6 to understand concepts and language.

7 Now, one of the requirements to be able to make a will
8 or to have capacity is to understand what you're doing.
9 That is a concept that you're leaving property after you
10 die.

11 He has an ability to understand concepts. He has an
12 inability to understand language, which is---

13 MS. PAYLOR: What page are you---

14 MR. MEDLIN: ---replete throughout---

15 MS. PAYLOR: ---are you reading from?

16 Can you tell us what page you're reading from?

17 MR. MEDLIN: I don't have that, Alice. I have a note.
18 We'll find it and let you know. It's in Exhibit K.

19 MS. PAYLOR: Thank you.

20 THE COURT: Okay.

21 MR. MEDLIN: So, our own expert, without saying "he
22 doesn't have legal capacity," he says she doesn't -- he's
23 got deficits in abstract reasoning and his inability to
24 understand concepts and language. But some of these medical
25 reports, in Exhibit 2, he presents with a history of

1 dementia in December of 2011.

2 In Attachment 3 -- I'm sorry. It's Exhibit G.
3 Attachment 2 in Exhibit G.

4 Attachment 3, Mr. Paul states that he has noted
5 difficulty with his cognition for the last one or two years.
6 He understands he has problems and he has trouble finding
7 words.

8 On January 24th, which is Exhibit G, Attachment 4,
9 has difficulty with abstracts -- this is Doctor Garrett.
10 This is a neurologist, Your Honor. He does have some
11 difficulty with abstract reasoning, which is documented on
12 his neurological exam.

13 In February, Your Honor, just to make an insertion
14 here, this is not medical evidence, but in February he signs
15 this purported Trust that makes Merrill Light a cotrustee.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: And as you'll see later, he has difficulty
18 communicating at the board meeting in February. He can't
19 even communicate at the board meeting, and yet he's signing
20 very, very sophisticated estate planning documents.

21 On March 30th, Your Honor, which is Attachment 5 to
22 Exhibit G, he calls a neurologist's office. Can't remember
23 why he called.

24 Now, first of all, he's seeing neurologists, which
25 tells us something, and, as early as March, he can't even

1 remember why he called the neurologist.

2 On April 3rd, Doctor Long, once again, says he has
3 expressive aphasia. This is Attachment 6. He has dementia.
4 This patient is demented.

5 Now, he says we're not a hundred percent sure whether
6 this is Alzheimer's. Nobody thinks it's Alzheimer's. It
7 doesn't matter. He's got dementia. They're diagnosing him
8 with dementia since November of 2011.

9 Doctor Long, again, says on Attachment 6 on the next
10 page he has dementia.

11 where is the next page?

12 Doctor Garrett has a conversation in Attachment 7 with
13 Doctor Long. Doctor Long says I received -- Doctor Garrett
14 says, a neurologist, I received the call from Doctor Long
15 today that said the patient has had a dramatic decline in
16 memory in the last several weeks. Progression, progression
17 has occurred, and here's where it really starts to heat up.

18 Your Honor, again, he's got this going on.

19 On May the 2nd, when they claim he's suffering from a
20 urinary tract infection, infection, he goes to St. Joe's
21 Hospital and he's diagnosed by the doctors there, including
22 Doctor Carter, who is a neurologist, altered mental
23 statement, confusion---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: ---secondary to evolving semantic dementia

1 with brain activity most compatible with Alzheimer's.

2 2549 said accurate for immediate memory. Short term is
3 25 49 percent. He had to be restrained at the hospital.

4 On May the 3rd, before he made two attempted transfers
5 of stock into his Trust, he had difficulty following
6 commands to clench his right hand to his left ear and to
7 show two fingers. He is aphasic.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: Defendant denied Mr. Barringer's dementia.

10 Now, he's been diagnosed with dementia since 2011, and
11 from Defendant -- I mean Mrs. Barringer denied Mrs. -- Mr.
12 Barringer's dementia, and the fact that he was on Aricept,
13 which is an Alzheimer's drug.

14 So, he's being restrained. He doesn't know how to
15 touch his ear with his hand. He can't show two fingers
16 without difficulty. This is not a -- simply the result of a
17 urinary tract infection. He's being diagnosed as having
18 semantic dementia.

19 And, on May 8th, 2012, he is diagnosed with dementia.

20 May 10th, he's diagnosed with 11. That would be
21 Doctor Long again.

22 Now, Doctor Long, the doctor that said he was great
23 until 2015, said he was having trouble with urinary
24 problems. They put in a catheter and relieved all his
25 symptoms. He's still confused and still has a poor memory.

1 That didn't go away. Doctor Long, their own witness, is
2 saying that.

3 Doctor Baughman, once we get into Exhibit attached G,
4 Attachment 12, says he has likely got Alzheimer's, and he is
5 having trouble forming words for the last two years.

6 Mrs. Barringer called the day before he was suppose to
7 have a follow-up with Doctor Baughman, and this is in
8 Attachment 14---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: ---and has to cancel this appointment for
11 a family emergency. Turns out the family emergency is to
12 fire Kevin, and -- on June we have that meeting---

13 THE COURT: Okay. Just---

14 MR. MEDLIN: ---and I'll get into those---

15 THE COURT: Just so we're clear.

16 For a board meeting that Kevin Luzak requested himself,
17 correct?

18 He just didn't realize he was gonna be---

19 MS. PAYLOR: Yes.

20 THE COURT: ---the subject of being fired.

21 Okay. Just making sure.

22 MR. MEDLIN: No, actually, Your Honor. No, and, and I
23 want to correct some of those---

24 THE COURT: Okay.

25 MR. MEDLIN: ---statements---

1 THE COURT: Okay. Good.

2 MR. MEDLIN: ---later, but I'll, I'll deal with that
3 one now.

4 THE COURT: Okay.

5 MR. MEDLIN: Mr. Barringer got angry with, with Kevin
6 because Merrill Light gave him these former board
7 presentations that he had thought were fine, and, by the
8 way, ironically, the diversity in part was because Merrill
9 Light kept complaining that she wasn't getting enough
10 distributions from the company. So, Kevin was trying to
11 help her out by finding diversifications that would create
12 more income and distributions for the shareholders.

13 By the way, that's not Hampton. Hampton actually wrote
14 a letter, once Merrill Light took control and had a huge
15 distribution come out, and said we shouldn't be doing this.
16 Daddy wouldn't want this. So---

17 THE COURT: I remember.

18 MR. MEDLIN: It's just---

19 THE COURT: But I also remember Mrs. Light saying that
20 Mr. Luzak wanted to take this company in a totally different
21 direction that had nothing to do with forestry product.

22 But -- okay. So, this all the argument, and I, and I
23 get that, and I hear that, and I hear both sides of it. So
24 --.

25 MR. MEDLIN: Right.

1 But again---

2 THE COURT: Okay.

3 MR. MEDLIN: ---the evidence shows that Mr. Barringer
4 went along with that. Mr. Barringer was seeing these as
5 early as February, 2011, the board meeting. He was sending
6 emails to Kevin saying great presentation, you silver
7 tongued devil, way to go, thumbs up. He was onboard with
8 all of this when he was in more control of his faculties,
9 and, in fact, in February of 2011, they went out and bought
10 an apartment complex in Alexandria, Virginia --

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: -- and they closed in December. I think
13 it was December 15th of 2011.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: That's with Paul Barringer's
16 participation.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: So, first of all, he was not totally
19 opposed to those things. It wasn't until he got confused
20 and Merrill Light saw an opportunity to get him angry at
21 Kevin that they started having their arguments in late
22 May---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---early June.

25 And, by the way, as the transcript shows, the idea that

1 Paul was upset about him trying to steal the company was,
2 was clearly not based on evidence because, again, you can't
3 steal a company from the shareholders and the board of
4 directors, particularly from John Wayne, and, more
5 importantly, in that transcript, Kevin says several times
6 you're the boss, whatever it is you want me to do I'm gonna
7 do.

8 So, any idea that Kevin was trying to take the company
9 in a different direction without Paul's permission or
10 knowledge is just absolutely false.

11 MS. PAYLOR: Your Honor?

12 MR. MEDLIN: So---

13 MS. PAYLOR: Your Honor, none of this has anything to
14 do with his testamentary capacity on February 5 of 2015. I
15 mean they can make all these arguments, which are based on
16 the air, but they don't have any proof of any of it. They
17 don't have any proof that Merrill Barringer -- Merrill Light
18 did anything other than what her father asked her to do.
19 That's all they've got and this going around and making up
20 stuff and just putting it in his voice does not make it
21 based on evidence.

22 So, if he has evidence to support these so called
23 facts, I'd like for him to give us the page of the
24 deposition or the affidavit of a summary judgment admissible
25 fact.

1 THE COURT: Okay.

2 MS. PAYLOR: I mean he's gonna spend three hours doing
3 what he's done at every hearing. It's a filibuster. Let's
4 get back to what's relevant.

5 Thank you.

6 THE COURT: Well, the---

7 MR. MEDLIN: Well, Your Honor, what I---

8 THE COURT: Hold on a second.

9 MR. MEDLIN: And I note---

10 THE COURT: What I think he was going through was the
11 attachments and showing the medical records. We both know
12 he was cherrypicking them, but just like you would as well
13 just on your side, and that's fine.

14 But I really think we need to go back to what, what I
15 originally said was I understand what your theory is now. I
16 understand how you're gonna take, you know, obviously these
17 medical records and you're picking through them to show,
18 obviously, what the issues were, and then you're gonna have
19 argument, and you're gonna have assumption, and you're gonna
20 sell it to a jury. I get all that.

21 I'm back down to this is summary judgment, and I need
22 to see if any of these causes of action can be done, done
23 away with.

24 So, I need to see cause of action by cause of action
25 literally what you're relying on, and you can, like I said,

1 you don't have to cover everything. But you just got to
2 give me some evidence in dispute that's for a jury to
3 determine.

4 So, I, I really do think, and agree with Alice at this
5 point, that I, I think that's where we need to go because we
6 got 19 causes of action, and, you know, it's 1:00 -- almost
7 1:40. So --.

8 MR. MEDLIN: Your Honor, again---

9 THE COURT: Yeah.

10 MR. MEDLIN: ---a couple things.

11 THE COURT: Yeah.

12 MR. MEDLIN: Number one. When I got into the issue of
13 the dispute between Kevin, et cetera, that was in response
14 to your question dealing with what Alice said earlier that
15 Kevin called a meeting to try to get the board to agree to
16 take the company in a different way.

17 THE COURT: And I understand you both have different
18 arguments of why that occurred and what happened. I, I get
19 that.

20 MR. MEDLIN: Well, Your Honor---

21 THE COURT: But that's all for the jury. I mean right
22 now---

23 MR. MEDLIN: Okay.

24 THE COURT: ---I want to know what causes of action
25 you -- are survived, and, and what are we going forward on.

1 I mean that's really where we need to go.

2 MR. MEDLIN: Your Honor, again, I was working my way
3 through the evidence about capacity, and starting with the
4 doctor's evidence. And so this goes to the issue of
5 capacity---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---which is what is his capacity with
8 respect to a will, with respect to a Revocable Trust, with
9 respect to an irrevocable transfer. So---

10 THE COURT: Which cause of action---

11 MR. MEDLIN: ---these, these---

12 THE COURT: ---of actions are those then?

13 Obviously it's the February 5th, 2015, will.

14 So, what other causes of action is that to again
15 because I don't have the causes of action memorized?

16 I, I just know there's 19, and all -- we've all talked
17 about them. But I, I need to know specifically to what
18 we're talking about.

19 MR. MEDLIN: Well, Your Honor, right now, because you
20 said let's talk about the capacity issues, and that's what I
21 was working on, capacity impacts any action he took
22 different. It impacts his testamentary capacity.

23 THE COURT: Okay.

24 MR. MEDLIN: It impacts his capacity to make a
25 Revocable Trust. It impacts his capacity to make an

1 irrevocable stock transfer, and part of what I want to do,
2 Your Honor---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---is to qualify the progression of these
5 documents. The February, 2015 will is probably the least
6 important will of or Revocable Trust of any of the documents
7 that are in play. What matters is going back to 2012.

8 In July 20th of 2012, he changed his longstanding
9 pattern of---

10 MS. PAYLOR: Your Honor, I---

11 MR. MEDLIN: ---and estate plan---

12 THE COURT: Okay.

13 MS. PAYLOR: He -- they've put it as the first cause of
14 action. Now, if they want to talk about these other ones
15 first, I'll be happy to go to those, but I get to put
16 forward my case first.

17 I've only talked about February 5, 2015. I think the
18 least he can do is give us any specific facts relative to
19 that will that shows he was -- did not know what property he
20 owned, who his children were, and to whom he wanted to give
21 his assets. That is -- that's the standard.

22 He's talking about all kinds of other stuff that has
23 nothing to do with that.

24 MR. MEDLIN: I would---

25 MS. PAYLOR: So, if we can get him on track to talk

1 about our legal standard in South Carolina, and give us some
2 facts that establish that he didn't know those three things,
3 that's, that's what we want to know.

4 MR. MEDLIN: Your Honor, first of all, what I didn't do
5 is I didn't interrupt Alice when she was making her
6 argument, and I won't do it when she---

7 MS. PAYLOR: I can't hear you.

8 THE COURT: I can't hear you either, Mr. Medlin.

9 MR. MEDLIN: Can you hear me now?

10 MS. PAYLOR: And just for response, and I only went for
11 an hour. You're now almost on three hours. So --.

12 MR. MEDLIN: I have more -- I have a lot more facts
13 than you do.

14 THE COURT: Hold on. Hold on.

15 MR. MEDLIN: And---

16 MS. PAYLOR: The facts---

17 THE COURT: Just -- hold on y'all. Just before we get
18 in the weeds.

19 MS. PAYLOR: I'm sorry. I apologize.

20 THE COURT: No, no, no, no, no.

21 I need a copy of the most recent Complaint.

22 So, I'm gonna -- since no one seems to be able to just
23 address specifically causes of action, I know you're trying
24 to, Alice, I'm bringing a copy of the Complaint for myself,
25 the most recent Amended Complaint, so I can follow it down

1 by causes of action so I can know what we're talking about
2 because, again, I don't have it memorized.

3 So, just give me two minutes. Let me get a copy
4 printed cause I got a lot of material in front of me, and,
5 you know, I, I hate interrupting as well. But I got to tell
6 you, I mean, at, at this point, you're gonna have me so
7 going that I don't know where you're going with anything.

8 So, I just -- I, I need it more directed, and I need, I
9 need you to tell me what we're talking about, and what it
10 affects---

11 MR. MEDLIN: All right. Your Honor?

12 THE COURT: ---and follow---

13 MR. MEDLIN: Let me try to continue to do what I was
14 gonna do but explain to you why I'm doing it in the way I'm
15 doing it.

16 THE COURT: Okay.

17 MR. MEDLIN: We are arguing in our Complaint that Mr.
18 Barringer lacked capacity to make any will or Trust or
19 irrevocable transfer beginning in 2012.

20 THE COURT: Right.

21 MR. MEDLIN: That could encompass a will and Trust in
22 February of 2012, the Trust Amendment in July 20th of
23 2012, which was---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: ---the first significant change in his

1 pattern. That's when he directed his voting stock solely to
2 Merrill Light and away from Hampton Luzak.

3 He made an irrevocable stock transfer, which makes no
4 sense, and we'll get to that argument, Your Honor, on
5 September the 11th, 2012.

6 In 2014 he made a new Will and Trust, again amending
7 the Trust, in which he disinherited Hampton completely---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: ---giving his -- giving her share to Wade,
10 his grandson, Hampton and Kevin's son.

11 In February of 2015 he made another will and Revocable
12 Trust in which he completely disinherited Wade as well.

13 Now, we can go backwards in talking about the facts and
14 the argument, but our evidence starts in 2011 and
15 encompasses, in a continuing progression, all of those
16 documents. I think that's a much more efficient way to
17 present the evidence about capacity.

18 We also argue that, for all of those documents in that
19 irrevocable stock transfer---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---that there was undue influence, and we
22 argued mistake, and we argued conversion, and we argued
23 resulting trust, and we argued a resulting trust, and all
24 the things---

25 THE COURT: Can I just ask you a question?

1 MR. MEDLIN: ---that the board---

2 THE COURT: Mr. Medlin, I understand you say this is
3 the easiest way to do it, but this is not how you pled it in
4 your Complaint. You pled your causes of action as to each,
5 from what I recall, as to each of these wills and everything
6 you've done.

7 So, again, you can brushstroke it, but what I'm asking
8 you to do is, while I hear you talk about each of these
9 separate, you know, executions of whatever he did,
10 transfers, new wills, I need to know what causes of action
11 you're talking about as to incapacity.

12 And so you should be able to tell me. That's why I'm
13 asking my office to print a copy of it. I mean I, I
14 shouldn't have to go cross-reference it.

15 You -- I hear you saying he's incapacitated beginning
16 from 2011 potentially through 2015. I hear you. I've heard
17 you read the potential evidence that are coming from the
18 doctor's reports.

19 Now, I need you to tell me which causes of action that
20 exactly what you're trying to show.

21 I mean, I mean do you understand?

22 I mean this is the practical way of trying to do this.
23 I don't know. It may not be the scholarly way to do it, but
24 it's, it's how we get past and in knowing whether or not
25 certain cause of action -- you could of just -- you could of

1 brought a cause of action for incapacity and said it applied
2 to all five or six, however many transfers there were, or
3 you could have bought -- brought a cause of action as to
4 just undue influence including all of it, but that's not
5 what you did.

6 That's why I need to know, as to each cause of action,
7 what you're talking about. I mean I hear you. I hear the
8 evidence you're showing me as to incapacity, and, and, and I
9 think there is a question of fact based on what you're
10 telling and what I'm seeing in these medical records. I can
11 see how that could be a question of fact. But you got to
12 tell as to which cause of action we're talking about.

13 MR. MEDLIN: Your Honor, again I'm not doing a good job
14 at all explaining obviously, but---

15 THE COURT: No, you are---

16 MR. MEDLIN: ---causes of action---

17 THE COURT: I, I hear you. I hear you.

18 But, again, the -- I guess it's the practical
19 application. I mean you're arguing in general, and, again,
20 I understand that.

21 But basically what you're making me do is, after we
22 finish all this, I'm gonna have to sit down and I'm gonna
23 have to go through and say all right, he was arguing
24 capacity. So, this appoint -- so this applies to this,
25 this, this, and this. And while obviously it's my job, I'll

1 do it if I have to, but it's nice when the lawyers help me,
2 and it's nice when the lawyers show me where it is.

3 And I, I don't mean to be flippant or rude. I try to
4 be really user friendly, but I just need you to tell me. I
5 mean I hear you.

6 For your first cause of action, that he lacked mental
7 capacity, I hear you. From everything you just told me, and
8 this was as to the February 5th, I guess what I'm saying
9 is that I shouldn't have to be the one going through and
10 looking and saying okay, so this is the execution of the
11 February 5th will. You're saying he lacked capacity, and
12 I see it in the records. I see what you're saying. So, I
13 would say okay, yeah. You probably survive summary judgment
14 on that.

15 And, Alice, don't argue cause I know you're gonna say
16 wait a minute, no. But, again, I, I think you do. So, so
17 we get past that.

18 So, I guess, for me, maybe that's easier. You can go
19 through as groups. You can do it as a, you know, a lack of
20 capacity, and that could be, you know -- obviously the
21 second one is undue influence. So, we'll get past that one.

22 Action to set aside for mistake. Interview those tract
23 or transfer for lack of mental capacity. So, that's the
24 fourth cause of action. We can look at that.

25 I'm just -- I'm trying to find an easier way to get

1 past it, and maybe I need to step off for five minutes, but
2 I, I just -- I feel like, I feel like, Mr. Medlin, you're
3 not giving me what I need to give you what you're asking
4 for.

5 So, I'm, I'm not sure the best way to go about that. I
6 mean I can sit here and listen all day and I, and I will.
7 But that doesn't mean I'm not gonna have the same question
8 at the end.

9 But you know what?

10 Maybe now that I've had my little, I won't call it a
11 rant, if you want to go ahead, just keep arguing your way,
12 but what you need to be talking about strictly is lack of
13 capacity, and then Alice needs to go and be able to make her
14 arguments as to her next cause of action, and I mean this is
15 her motion. So, again, you're talking in general.

16 So, I just -- I need to know where we're at. I just
17 need to know the easiest way to get it done.

18 MR. MEDLIN: Your Honor, again, and, and I, I, I can
19 not apologize profusely enough for not, not being able to
20 communicate this to the Court. The, the facts affect
21 virtually all the causes of action. So---

22 THE COURT: I hear you.

23 MR. MEDLIN: ---I think---

24 THE COURT: I hear you.

25 MR. MEDLIN: I think---

1 THE COURT: I know that. I, I, I hear that. I mean
2 you keep saying that same thing over and over again, and I,
3 I know that and I get that.

4 So, again, we just need to keep going from here. You
5 got to, you got to help me be able to address the causes of
6 action. I, I guess -- I mean I don't know any other way to
7 do that other than I think, as to the cause of action, the
8 first cause of action, I can say this, I, I heard what you
9 said, and I believe, based on what I'm looking at as the
10 medical records, I think there's a question of fact as to
11 this transfer of February 5th.

12 Again, I know Alice disagrees, but that's all fine and
13 good.

14 So, my question is can we then move on now to the
15 second cause of action, and you may be repeating again what
16 you say. But, but, at some point, she's got to be able to
17 make her argument.

18 MR. MEDLIN: Oh, Your, Your Honor, the lack of capacity
19 issue affects -- our argument is it affects every document
20 executed starting in February of 2012. So, the facts are
21 going to impact every one of those documents that deal with
22 capacity.

23 So, again, here's what our capacity issue goes to. The
24 February will and Trust of 2012, the July Trust amendment of
25 2012, the September, 2012 stock transfer, the 2014 will and

1 Trust, and the 2015 will and Trust. All of those we attack
2 for capacity, and the evidence starts in 2011, continues up
3 through 2016, and affects every one of those documents as to
4 our cause of action for capacity.

5 So, to start with 2015 -- the 2015 will, I could tell
6 you that, in, in 2014, he scored a three on a mini-mental.

7 THE COURT: I see that.

8 MR. MEDLIN: In 2015 -- so, to me, just to give the
9 Court the whole history of the lack of capacity facts would
10 allow the Court to say okay, yes, he was not only lacking
11 capacity in February of 2015---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: -- but in 2014 and in 2012, and all of
14 those are subsumed within the lack of capacity argument.
15 We'll do the same thing with undue influence. We'll get all
16 of those documents that are the subject---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: ---claims as being invalid---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---under the argument of undue
21 influence---

22 THE COURT: Okay.

23 MR. MEDLIN: ---which we haven't gotten to yet.

24 Again, Your Honor, I apologize. I, I just -- I, I
25 don't know how to just go to one fact and say okay, well

1 here's the 2015 will when we're going after all the wills.
2 That just seems a much more efficient way to do it.

3 THE COURT: I know the problem---

4 MR. MEDLIN: The same thing. I'm gonna do my---

5 MS. PAYLOR: Your Honor?

6 MR. MEDLIN: And I'm gonna do my best---

7 THE COURT: The problem is, is this how---

8 MS. PAYLOR: Your Honor, I understand---

9 THE COURT: This is how you pled it.

10 MS. PAYLOR: I understand where he's coming from. I
11 would like to argue the law that those are not relevant
12 facts under the law.

13 THE COURT: Okay.

14 MS. PAYLOR: All right. I'm telling you that the, the
15 law is clear that the fact -- I mean I got cases where some
16 guy slept in a tree. He had been insane, but, on the day he
17 wrote his will, he knew who his children were, he knew what
18 he owned, and he knew to whom he wanted it to go. I mean In
19 Re Weeks, which I believe he cited---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: -- testamentary capacity, even though the
22 woman had Alzheimer's disease, even though she had had a
23 guardian appointed for her because she could not handle her
24 affairs, even though she didn't know the property she owned,
25 they said she had a general idea of the property she owned.

1 She didn't know what year it was. She didn't know who the
2 president was. She had a general idea of the property she
3 owned. She knew who her children were, and she didn't want
4 to give anything to her son, and she wanted it all to go to
5 her daughter.

6 She had capacity and that's a Supreme Court case, In Re
7 Weeks.

8 That's not the only case that talks about capacity like
9 that, Your Honor. They're all -- the ones he just cited,
10 Gunnells, I mean they had all kinds of undue influence in
11 that case, which they don't have here.

12 I mean he's, he's going on like oh, because he went to
13 the doctor, and because he said he had issues, well, he
14 obviously recognized that something wasn't right, and he was
15 trying to figure out what was wrong with him, but that
16 didn't mean he lost his capacity -- testamentary capacity.

17 He cited Janny versus Douglas. That was a contractual
18 capacity case---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---which is not as easy for the proponent
21 to prove---

22 THE COURT: Right.

23 MS. PAYLOR: ---as testamentary capacity, and they had
24 much more evidence in that case than just the two medical
25 experts that he's talking about. They had all -- they had

1 all of this extraneous stuff where -- it was in one case
2 where Judge Frank was one of the, the witnesses who said---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---that the person who was the proponent
5 to the will, he should get it because the guy got the will
6 exerted all of his undue influence on her. We don't have
7 any of that here. None of it.

8 MR. MEDLIN: We don't have any, Your Honor, because I
9 keep being interrupted---

10 MS. PAYLOR: We don't---

11 MR. MEDLIN: ---when we try to---

12 MS. PAYLOR: In 2015---

13 MR. MEDLIN: ---to present our case.

14 MS. PAYLOR: ---whether Mr. Barringer knew what he
15 owned, who he loved, and to whom he wanted his property to
16 go to, that is testamentary capacity, and you can't just say
17 oh, he had Alzheimer's disease. So, he can never make a
18 change, this same guy who is riding around, flying in an
19 airplane, hunting. That is---

20 MR. MEDLIN: Scoring zeros on mini-mentals.

21 MS. PAYLOR: Those are the---

22 MR. MEDLIN: Scoring threes on mini-mentals. Not being
23 able to touch his ear with his hand.

24 Your Honor, I'd really like the opportunity to---

25 MS. PAYLOR: Okay. We really---

1 MR. MEDLIN: ---present---

2 MS. PAYLOR: I'd like you to---

3 MR. MEDLIN: I'd like the opportunity to present our
4 argument---

5 MS. PAYLOR: On the effort---

6 MR. MEDLIN: ---without further interruption.

7 MS. PAYLOR: From Savannah---

8 THE COURT: Okay.

9 MS. PAYLOR: ---he -- they emptied liters of blue fluid
10 from his urine -- from him because he had had radioactive
11 seeds put in, and it had been building up since they'd been
12 put in the prior September. We're talking about nine
13 months.

14 Yeah, he was confused and everybody said he was doing a
15 lot better after he got out, and after he got that problem
16 fixed.

17 That is not evidence of chronic incapacity. It's
18 evidence of acute incapacity on those two days he was at the
19 Savannah hospital.

20 THE COURT: Okay.

21 MS. PAYLOR: I mean if he was so incapacitated, why did
22 Kevin Luzak go to him and beg him to do something that he
23 told him he didn't want to do, and he knew he didn't want to
24 do it?

25 THE COURT: Okay. But these are all arguments for a

1 jury. So --.

2 MS. PAYLOR: I agree.

3 THE COURT: Can we go back---

4 MS. PAYLOR: But I'm just saying---

5 THE COURT: Can we just---

6 MR. MEDLIN: Judge?

7 THE COURT: Can we just go back---

8 MS. PAYLOR: Where are the facts---

9 THE COURT: Okay.

10 MS. PAYLOR: ---for the February 5, '15 incapacity?

11 He's got to tell you something, that he didn't know

12 those three things, and he hasn't given you a single

13 admissible fact to support his position. All he's---

14 MR. MEDLIN: The reason I haven't is---

15 MS. PAYLOR: ---talking about is---

16 MR. MEDLIN: The reason---

17 MS. PAYLOR: ---general stuff.

18 MR. MEDLIN: The reason I haven't completed our facts

19 to Ms. Paylor's satisfaction is she won't let me.

20 THE COURT: All right. Well, this is what I want to

21 do.

22 Mr. Medlin, I just need you to go through and tell me

23 what issues of facts we have just when we're talking about

24 incapacity. So, you've already read me the first like 15 or

25 16 attachments where you've picked out the things that help

1 you, and I'm sure Ms. Paylor would go and pick out the ones
2 that help her.

3 So, let's all understand that that is evidence, and
4 they can be used cause it is evidence.

5 So, again, it takes a doctor saying, based on that,
6 that there is a question of fact, but let's keep going.
7 Let's just go. Let's just talk as to start of his
8 incapacity, and then we'll address undue influence, and then
9 we'll just keep going.

10 So, go ahead, Mr. Medlin.

11 Anything else?

12 MR. MEDLIN: Your Honor, I have a lot and I will
13 keeping going if I could do it without being interrupted.

14 THE COURT: Yes.

15 MR. MEDLIN: So, Your Honor---

16 THE COURT: Except remember this is her motion. You
17 got to remember this is her motion though again.

18 So, so, what she addresses, you need to respond to.
19 So, you go ahead and respond.

20 MR. MEDLIN: I'm responding to what she has addressed
21 in her motion, Your Honor. I've been doing that all day,
22 and I'm gonna continue to do that. It is more difficult for
23 me to do that in an efficient manner when she is allowed to
24 continue to interrupt me, and I'm making our presentation in
25 response to her motion.

1 THE COURT: Okay.

2 MR. MEDLIN: So, I would appreciate the courtesy of
3 being able to make my argument without interruption, and
4 I'll return the courtesy when she makes her reply argument.

5 MS. PAYLOR: I have not made my entire argument.
6 That's the problem.

7 MR. MEDLIN: Whenever you want to entire argument---

8 MS. PAYLOR: I thought we were taking it cause of
9 action by cause of action. So --.

10 MR. MEDLIN: I'm going through---

11 MS. PAYLOR: I'm not---

12 MR. MEDLIN: I'm going through---

13 MS. PAYLOR: I haven't made---

14 MR. MEDLIN: ---capacity.

15 MS. PAYLOR: ---anywhere near my full argument on
16 anything.

17 MR. MEDLIN: I'm, I'm, I'm going through capacity only,
18 Your Honor.

19 THE COURT: Thank you.

20 MR. MEDLIN: Only capacity.

21 THE COURT: Go ahead.

22 MR. MEDLIN: That's---

23 THE COURT: Go ahead.

24 MR. MEDLIN: But I was from the start, and that's what
25 I'd like to continue doing.

1 THE COURT: Go ahead.

2 MR. MEDLIN: All right. So, on August 29th, his
3 short term memory is bad. That is at MUSC on Attachment 15.

4 September the 19th, Doctor Baughman, who is referring
5 to his earlier diagnosis of mild Alzheimer's, which is a
6 preliminary diagnosis, says he has a pattern of deficits
7 very concerning from Alzheimer's disease, and a pattern of
8 atrophy on an MRI that is also concerning. Doctor
9 Baughman's wondering if his diagnosis from six months ago
10 was correct, even four months ago was correct, because he's
11 saying this is a lot worse than I expected.

12 Let's skip forward to January 23rd, 2014, which is in
13 Attachment 19, and, on that day, he goes to see --

14 THE COURT: Doctor Garrett.

15 MR. MEDLIN: -- Doctor Garrett, Your Honor. Thank you.
16 You know more about the case than I do. Appreciate that.

17 This is six months before the June, 2014 will that
18 completely disinherited Hampton. He scores a 13 on the
19 mini-mental exam.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: Shows severe cognitive, cognitive defects.
22 He could not name the year, and, yes, there's case law where
23 people couldn't name the year. There's also case law where
24 they found they were competent. There's also case law where
25 they couldn't name the year, and they were found incompetent

1 because it's a bunch of factors that go together, which is
2 what I'm trying to get to, Your Honor.

3 By the way, Mrs. Barringer, he's just a little worse.
4 He, again, when she says he was fine, we're gonna see just
5 how credible that testimony is.

6 And, in fact, on January 23rd, in Attachment 20, this
7 is the get back -- back on the meds triage note where the
8 doctor says the wife is confused about his declining memory.
9 He's out of Aricept and she knew nothing of the Namenda.
10 That's the drug cocktail they give Alzheimer's patients,
11 Aricept and Namenda. She's not even giving him his meds,
12 which, again, is one of the factors in the Gunnells case
13 that we can show that occurred here.

14 On December 3rd, 2014, in Attachment --

15 THE COURT: 21.

16 MR. MEDLIN: -- 21, he has significant decline in his
17 cognitive ability.

18 On June 12th, 2015, which is in our Attachment 2, he
19 is unable to answer a single question on the mini-mental.
20 Again, Your Honor, the mini-mental---

21 THE COURT: I know what it is.

22 MR. MEDLIN: -- is not a law school exam. The
23 mini-mental is blink your eyes upon command, fold this piece
24 of paper, and put it on the floor upon command. He couldn't
25 do any of that. Yet, supposedly four months earlier, he

1 amended his estate plan to completely disinherit Wade in
2 2015. So, again, Your Honor, I'm tying this in to all the
3 documents.

4 So, as early as February, he's got dementia. In June,
5 when he attends the board meeting, as we'll see by further
6 evidence about his capacity, all still going to his
7 capacity, he doesn't know what's going on.

8 In July of 2012, he still has no idea what's going on
9 because of the testimony of Mike Hagler in particular that
10 we'll see.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: On September the 11th, the doctors says
13 I'm surprised he's declined so much. That was Doctor
14 Baughman. And then, in 2014 and 2015, he is scoring threes,
15 and zeros, and fours, and tens on the mini-mental supposedly
16 about the time he voluntarily intervened in the federal
17 lawsuit where---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---Mrs. Light testified he always knew
20 what he was doing. He always knew what he was doing.

21 So, that showed you how credible the Defendant's
22 testimony is about that because, again, in September of
23 2015, a four on the mini-mental.

24 October, 2015, a 10 on the mini-mental, and Doctor
25 Mazzeo said, in our Attachment there, that he couldn't

1 testify. Now, think about what happened here.

2 The lawyers for Mr. Barringer, who supposedly
3 intervened in the federal lawsuit in his own volition in
4 August, between the times he's scoring a four, and a ten,
5 and a zero on the mini-mental, he was able to comprehend
6 what he was doing. Yet, in October, when he was diagnosed
7 as scoring a 10, that very doctor said he can not even
8 testify he is so far gone, and his lawyer filed both of
9 those documents on the same day in 2016.

10 So, all this goes to show, number one, he's had a
11 continuing and progressive lack of capacity. It also
12 impeaches the testimony of the Defendants who said he was
13 always fine. He knew what he was doing.

14 If you don't know how to fold a piece of paper in half
15 and put it on the floor and pick it back up upon command,
16 you don't understand getting involved in a complex federal
17 lawsuit. You don't understand giving your stock and control
18 of the company away to the rest of the company.

19 Your Honor, I just point out that---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---I'm referring to all the documents that
22 we list on Page 15 of our memo.

23 Now, the medical evidence isn't the only evidence of
24 lack of capacity. In fact, as you're gonna see, a lot of
25 the evidence is from the Defendants. But let's first start

1 with the Plaintiff's husband, Kevin, who was constantly with
2 Mr. Barringer. He said it started in 2011. His behavior's
3 becoming erratic. His memory's failing. He couldn't
4 remember he ordered the sale of the company airplane. He
5 got furious when Kevin said this is the last chance you get
6 to ride on the airplane, and he ordered him to rescind the
7 sale, and then they -- later the company turned around and
8 bought the airplane.

9 That's about the time that Merrill Light is giving him
10 these documents, knowing that he was confused, and making
11 him angry at Kevin to get him fired, which eventually led to
12 him being angry at Hampton for no good reason.

13 Mr. Barringer wrote I have doubled the company's stock
14 that anyone in the family has. That's not true. He doesn't
15 have double the stock. He doesn't have anywhere near that.
16 He doesn't have anywhere near the nonvoting stock, and he
17 only has 20 percent of the voting of stock.

18 He couldn't remember those previous board presentations
19 dating back to February, 2011 when the very documents and
20 PowerPoints that Merrill Light gave to him in May and June,
21 and got him confused and angry because of his demented
22 state, he couldn't remember that at the time that he was
23 given those documents again. But he was all for those
24 presentations in the board meetings in 2012. He favorably
25 commented on those as we've noted.

1 Kevin says he came to him in the Spring of 2012 and
2 said let's form a holding company, Kevin. I'm gonna give
3 you half of it, and I'll take the other half, and then
4 eventually I'm gonna give you the company. Unlike the
5 Lights, Kevin didn't go along with that. Kevin went to
6 Hampton and Merrill and said your dad is getting worse.
7 This doesn't make sense for a whole bunch of reasons, and we
8 need to put a stop to this.

9 He was confused and incoherent at the February '12
10 board meeting. They're people -- other people there, Your
11 Honor, who are gonna be able to testify about that. He was
12 confused and incoherent at the April board meeting. They're
13 other people there including Mr. Hagler who we already have
14 in an attachment into evidence that he said Paul was not
15 himself. He didn't know what he was doing.

16 He accused Kevin of throwing a book at Merrill Light at
17 the April board meeting. You got people at that April
18 meeting, including Congressman Governor Sanford, and Kevin
19 supposedly throwing a book at Kevin -- I mean at, at
20 Merrill.

21 He denied attending the February, 2012 family meeting.
22 He was there. He can't even remember little things like
23 that.

24 You think he can remember what he's suppose to own, the
25 pockets of his bounty, and the complexity of making a will?

1 In, in June Kevin even spoke with Mrs. Light. She said
2 she was aware of her dad's mental problems. He became
3 increasing delusional according to his affidavit.

4 Now, again, this is all on personal observation, and
5 Kevin's state of mind about his constant interaction with
6 Paul Barringer. Merrill Light admitted to him that she had
7 given him those presentation materials that had upset him,
8 and it's clear that Merrill and Merrill, both Merrills, were
9 in John Jolley's office at the telephonic board meeting in
10 June of 2012, June 28th, 2012, when Kevin was fired.

11 They had to coach him, and not only is it on tape, but
12 Mr. Hagler notes the same thing on many occasions as we'll
13 get to in just a minute, Your Honor.

14 So, at the critical points of him firing Kevin, which
15 led to him cutting Hampton out of his will, all of that is
16 because of the manipulations and the coercion of Merrill
17 Light, and, in that case, Mrs. Barringer who are---

18 THE COURT: So now are we undue influence?

19 Are we now, are we now onto undue influence?

20 MR. MEDLIN: No, Your Honor.

21 THE COURT: And I'm asking that because---

22 MS. PAYLOR: And I can, I can---

23 THE COURT: ---you started this by saying we're talking
24 about it's not just the medical evidence that shows his lack
25 of capacity. It also the emails from Randy Light himself.

1 So, I just need to know if we're changing.

2 MR. MEDLIN: No, Your Honor, and let me make it clearer
3 please. I'm sorry.

4 THE COURT: Okay.

5 MR. MEDLIN: If he doesn't understand how to vote at a
6 board meeting, he doesn't have capacity.

7 THE COURT: Okay.

8 MR. MEDLIN: He's also being unduly influenced, and
9 that's why I tried to -- what I tried to point out earlier.
10 A lot of these facts go to both of our causes of action,
11 capacity and undue influence. But if he doesn't understand
12 how to vote---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---at a board meeting on whether to fire
15 somebody or not, then he doesn't have the capacity to make a
16 will.

17 MS. PAYLOR: This is editorial comments by Mr. Medlin.

18 MR. MEDLIN: Yeah, arguing our case---

19 MS. PAYLOR: He's not a doctor. He's giving you---

20 MR. MEDLIN: Arguing our case, Your Honor.

21 THE COURT: Hold on.

22 MS. PAYLOR: ---a spiel---

23 THE COURT: Hold on.

24 Alice, I understand that all of his connecting the dots
25 is just his argument. I, I understand that and I know that

1 that's not what I'm considering. But I am listening to the
2 evidence part, and to see what there is. But I would agree
3 with you that -- the assumptions and putting it together,
4 that's, that's not appropriate for here.

5 So, let's just keep going, and I understand -- I guess
6 you're still talking about lack of capacity and undue
7 influence now because, again, you said you can't have lack
8 of capacity or you can't have undue influence unless he
9 lacked the capacity. So, it makes him subject, I guess, to
10 undue influence although I don't know if he'd necessarily
11 have to, but keep going.

12 MR. MEDLIN: I sure didn't mean to say it that way.

13 Number one. I was responding to your question about
14 whether we were talking about lack of capacity and undue
15 influence when I was talking about that board meeting---

16 THE COURT: Okay.

17 MR. MEDLIN: ---and indicated---

18 THE COURT: Okay.

19 MR. MEDLIN: Number two. I, I hope I never said on the
20 record that one has to have lack of capacity to be unduly
21 influenced.

22 THE COURT: You did.

23 MR. MEDLIN: That is not---

24 THE COURT: You did.

25 MR. MEDLIN: ---the law.

1 THE COURT: You did. I know that. It's not the law.
2 I understand.

3 MR. MEDLIN: So, Your Honor---

4 THE COURT: It's a hurdle obviously.

5 MR. MEDLIN: ---lack of capacity makes one more
6 susceptible to undue influence.

7 THE COURT: Yes. Right.

8 MR. MEDLIN: All right. So, Hampton Luzak's affidavits
9 follows essentially the same thing going to the same sorts
10 of patterns of facts about what Mr. Barringer didn't know.
11 Wasn't able to comprehend. All that goes to lack of
12 capacity. They're mostly repetitive of what Kevin said, and
13 so I won't go into those details.

14 All right. Let's talk about what the Defendant said,
15 Your Honor.

16 So, again, the exhibits are listed. I don't know if
17 you want to deal with those or not starting on 17 of our
18 memo. But let's start with Randy Light.

19 In February of 2011 he sends an email that says Paul
20 was experiencing different health issues that affect his
21 judgment, and he won't let us be involved in the company,
22 he's never let us be involved with the company, regarding
23 every day decisions personally and business wise. And, by
24 the way, there's a difference from being able to make
25 personal decisions and being able to make business

1 decisions.

2 So, if I make a will leaving my very valuable company,
3 that's a business decision. A personal decision is what am
4 I gonna wear today. Am I gonna go play golf today. That's
5 the kind of personal decisions that one differentiates from
6 a business decision when one is making a will and a Trust
7 that deals mostly with the valuable asset of the business.

8 So, Randy Light is noticing this in February of 2011.
9 In January, 2012, Randy Light sends an email. Paul is
10 exhibiting irrational behavior.

11 May, 2012, he is progressively getting worse as to
12 where he is, where he is.

13 He doesn't know where he is in May of 2012?

14 You think he has the ability to make a will?

15 And what is going on?

16 Company, company officials, independent people, Brad
17 Herring, who was general, general counsel, who resigned by
18 the way---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---over the firing of the way that Kevin
21 Luzak was fired -- and, by the way, Your Honor, let me
22 address just one more point about that before leaving that.

23 Kevin did not call that, if I understood the
24 Defendant's argument earlier, to try to get the board to
25 approve his attempt to steal the company or to diversify the

1 assets. Again, he already told Mr. Barringer it's your way
2 and I'm gonna do whatever you want to do.

3 It was to, instead of receiving the wrath -- wrongly
4 receiving the wrath of Mr. Barringer because he'd been
5 unduly influenced by Merrill Light about what he was doing,
6 he asked to appoint a special investigator. That's the
7 first thing in the minutes of the board meeting. He didn't
8 call the meeting---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: ---to say oh, let's steal the company.

11 He called the meeting to appoint a special investigator
12 to see if what he was doing was appropriate or not. That's
13 what -- why he called the board meeting. That was on the
14 agenda.

15 All right. So, Brad Herring says, in an email, there
16 could be a capacity issue as to voting---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: ---about the June, 2012 meeting.

19 The general counsel is concerned about capacity. The
20 day after the board meeting he wrote Mr. Hagler and said
21 your concern about his mental health may ultimately
22 decide -- be decided by the Courts. But, Your Honor, I'm
23 sorry. Here we are. Brad Herring's impression about that.

24 Tom Evans, the senior company official---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---September 9th, 2011, Mr. Barringer
2 was very confused about himself, and then Mr. Hagler -- and,
3 again, these are letters and emails to---

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: ---the board including Merrill Light.

6 THE COURT: Yeah, I understand those are in evidence
7 just like John Jolley actually writing the will and doing it
8 and not questioning his capacity at the time is evidence.

9 So, I get, I get that. You're still jumping to that
10 assumption part of it. So, all I need to know is what
11 evidence, and I'm hearing what you're saying, that it was
12 Mike Hagler. I'm hearing that you're saying they were
13 questioning it and there were issues.

14 MR. MEDLIN: So, to me, Your Honor, evidence is what
15 Mr. Hagler says in his emails, writing numerous
16 communications, questioning Mr. Barringer's capacity. If
17 Paul is voting in facts that exist in his mind, but no where
18 else is his vote valid. At the meeting Paul actually casts
19 his vote in the opposite way he meant to cast the vote until
20 he was corrected and coached by whoever was in the room with
21 him. We know that's both Merrill Barringer, Merrill
22 Barringer and Merrill Light now.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: And so that's evidence of what Mr. Hagler
25 saw. He sent another email and he said that's not Paul.

1 He's in Paul's body. But he's not thinking right or he's
2 acting irrationally.

3 He begged Merrill Light not to let her father go down
4 to the destructive path that he was on. Your observation --
5 by my observations, your father does not seem to be acting
6 rational. I urge you to reconsider what is best for your
7 father and your family.

8 He emphasized that he was opposed to having had Kevin
9 Luzak fired until we investigate Paul's mental state. He
10 personally observed behavior in at least two board meetings
11 and in a call with Paul Barringer two weeks ago suggesting
12 they're issues with his mental capacity. All that goes to
13 mental capacity.

14 Paul Barringer is ill. His judgment is impaired. I
15 experienced this at the last regular director's meeting held
16 in Charleston. I heard it in the telephonic meeting in
17 June. I believe Merrill and her husband are exercising poor
18 judgment. And, finally, eventually, he would quit, as did
19 Mr. Herring, but not many -- until the August meeting.

20 And one correction that I would make. The June board
21 meeting was not a shareholder's meeting. It was a, it was a
22 board meeting---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---at which the board voted between
25 Merrill Light and Mr. Barringer, with coaching, to fire

1 Kevin as CEO of the company. Kevin's still on board. The
2 board doesn't have the power to fire him. That has to
3 happen at a shareholder's meeting---

4 THE COURT: Uh-huh. (Affirmative).

5 MR. MEDLIN: ---in August.

6 Right after that, and during the time Mr. Hagler up
7 until August is talking about Mr. Barringer's lack of
8 capacity and irrationality, we've got this purported
9 amendment that was executed on July 20th, 2012, which,
10 again, Your Honor, is the first time Mr. Barringer deviated
11 supposedly from his pattern of treating his two daughters
12 equally with the voting stock.

13 All right. Let's talk about John Jolley. He prepared
14 the wills. We can talk about it once we depose John Jolley
15 on the 21st why he did that, and why he continued to be
16 involved in the capacities wherein multiple tasks for the
17 Lights, for the Barringers, for the corporation even though,
18 if he's general counsel for the corporation, he owes a duty
19 to shareholders, including Hampton Luzak. Yet he's drafting
20 wills that disinherit Hampton Luzak.

21 Looking at the -- we'll deal with that in the
22 deposition. But even John Jolley told Mr. Hagler that
23 sometimes Mr. Barringer was not there when he met with him.

24 MS. PAYLOR: Your Honor, this is all hearsay.

25 MR. MEDLIN: It's not---

1 MS. PAYLOR: Mr. Hagler is dead. This is something he
2 wrote in a letter. It's double hearsay. I mean that's --
3 we can't cross-examine him to ask him anything. It's not---

4 MR. MEDLIN: Your Honor, we have an audio---

5 MS. PAYLOR: It's not into evidence---

6 MR. MEDLIN: We have an audio -- we have an audiotape
7 of this.

8 So, now let's get into the---

9 MS. PAYLOR: That doesn't make it admissible.

10 MR. MEDLIN: ---August -- I believe it will be. It was
11 a board meeting.

12 In August, 2012, this is when Mr. Hagler said it, after
13 the board meeting and on the same tape, in August of 2012,
14 John Jolley sends something we're all too familiar with,
15 Your Honor, a Certification of Competency to Merrill Light
16 and said it would be---

17 MS. PAYLOR: Your Honor?

18 MR. MEDLIN: ---great if we could get a neurologist to
19 sign this. It would be great.

20 Now, why in the world does that need to go out if
21 they're no questions about his capacity?

22 But it goes out.

23 Now, Merrill Light, in her deposition, denies ever
24 knowing anything about it, and, yet, in February of this
25 year, a signed version by Doctor Long, who has to scratch

1 through neurologist, and it's undated, that's---

2 MS. PAYLOR: It said (indiscernible). Didn't say
3 neurologist. You're saying---

4 MR. MEDLIN: (Indiscernible) saying this. Same thing.
5 Some, somebody can examine his mental capacity. So -- and
6 Doctor Long's not one of those either.

7 So, he---

8 MS. PAYLOR: There you are.

9 MR. MEDLIN: That shows up. We still don't know, Your
10 Honor, despite what we think he ordered Mrs. Barringer to
11 do, whether Merrill Light had a copy of that when she was
12 being deposed and, and, and claiming she has no idea about
13 any of those transactions.

14 In 2013, Mr. Barringer, early 2013, March, he signs a
15 tax organizer.

16 Now, here's a man whose been very, very consistent and
17 pristine about his taxes. He's filed gift tax returns, as
18 far as we know, every time those need to be filed. He
19 prepares a tax organizer and says no gifts were made in
20 2012, and Mrs. Barringer's signs that too by the way.

21 Now, supposedly on September the 11th, 2012, or
22 December 31st, 2012, depending on which one of the company
23 documents you look at, Mr. Barringer gave his voting stock
24 to Merrill.

25 Now, again, I want to point out why that shows his lack

1 of capacity, Your Honor, on this part.

2 MS. PAYLOR: Your Honor, it's the evidence that has,
3 that has to create it. Not Mr. Medlin telling you why he
4 thinks it creates it. It either does or it doesn't.

5 MR. MEDLIN: I'm gonna tie this together so that it
6 shows why all the evidence is relevant.

7 well, here's the, here's the tax organizer that says I
8 didn't give the stock away that he does with his CPA. By
9 the way, be interested in seeing why John Jolley didn't
10 advise Mr. Barringer to file the tax return, gift tax
11 return, until he heard from Randy Light in 2015.

12 So, let's talk about this transfer on September 11th,
13 2012. In Plaintiff's, excuse me, in Defendant's memo, they
14 say that the reason that Mr. Barringer changed his Trust in
15 July of 2012 giving the voting stock to Merrill on his
16 death, and then gave away his stock during his lifetime just
17 a couple months later on September 11th, 2012, that is
18 because he wanted to make sure Kevin never got back into the
19 company. So, if that's what he thought, he lacks capacity
20 because that---

21 MS. PAYLOR: That---

22 MR. MEDLIN: ---makes no sense.

23 MS. PAYLOR: Your Honor, can we get a specific fact?

24 Victor Barringer testified to that. That is based on a
25 specific summary judgment fact. Not Alan Medlin saying

1 something. That's not a fact in evidence.

2 MR. MEDLIN: I'm not arguing that what I say is a
3 fact---

4 MS. PAYLOR: This (indiscernible) would say---

5 MR. MEDLIN: ---Your Honor---

6 MS. PAYLOR: ---as an advocate from the facts and give
7 us facts.

8 MR. MEDLIN: I'm explaining why what you said in your
9 memo is not an accurate explanation of the facts. That's
10 exactly what I'm doing.

11 MS. PAYLOR: No, you're saying that it -- to you it's
12 not credible---

13 MR. MEDLIN: And I'm gonna explain---

14 MS. PAYLOR: But that doesn't help us.

15 MR. MEDLIN: And I'm gonna explain to the Judge why
16 it's not credible.

17 It's not credible, credible because, if he didn't want
18 Kevin to come back into the company, which is the argument
19 that they make in their memo, and that they made in Court
20 before, that he already had that covered in July.

21 As long as he was alive, he had 20 percent, and Merrill
22 had 31 percent, and they could always vote together, until
23 his death, to make sure Kevin never came back into the
24 company.

25 why did he have to give it away while he was alive?

1 This, this is John Wayne. This is a man, according to
2 the facts that---

3 THE COURT: And this is argument.

4 MR. MEDLIN: ---that they---

5 THE COURT: That's -- you're just continuing to make
6 argument.

7 MR. MEDLIN: Your Honor?

8 THE COURT: I mean the person that needs to put all
9 these facts---

10 MR. MEDLIN: Your Honor?

11 THE COURT: ---together is the expert that says all of
12 this proves, all of this shows that he lacked capacity. I
13 mean that, that's---

14 MR. MEDLIN: Your Honor.

15 THE COURT: ---what I think we're missing.

16 MR. MEDLIN: He couldn't have understood what he was
17 doing because he didn't need to give away his stock. He'd
18 already made sure that Kevin Luzak was never coming back
19 into the company. What he---

20 MS. PAYLOR: And Your Honor?

21 Your Honor?

22 MR. MEDLIN: ---did was created the opportunity---

23 MS. PAYLOR: We have a fact -- an undisputed fact.
24 Victor Barringer has testified what his father told him was
25 the reason why he was doing that. Victor Barringer would

1 have benefited from the stocks -- from nothing going away
2 with the stock.

3 This -- that is a summary judgment admissible fact. It
4 is undisputed.

5 Now, the fact that Mr. Medlin wants to tell you that he
6 doesn't believe that, that is not his job. His job is to
7 give us a fact in evidence to dispute that. He doesn't have
8 one and he needs to say I don't have one, and then we can go
9 on, and you can grant our Motion for Summary Judgment as to
10 that cause of action, which is why I wanted to take it up
11 cause of action by cause of action cause I haven't---

12 MR. MEDLIN: That's what I'm doing.

13 MS. PAYLOR: ---given you our facts with regard to all
14 of the causes of action that he's now making up stuff about.
15 It's rid -- it's crazy.

16 I've never been in a summary judgment motion that has
17 totally been taken over by a lawyer who will not address the
18 facts in evidence and tell us what they are. That's his
19 job. If he can't do that, then we're entitled to summary
20 judgment. He needs---

21 MR. MEDLIN: Your Honor, I'm addressing---

22 MS. PAYLOR: ---to tell you---

23 MR. MEDLIN: I'm, I'm addressing the---

24 MS. PAYLOR: ---the facts in evidence.

25 MR. MEDLIN: I'm addressing---

1 MS. PAYLOR: Okay.

2 MR. MEDLIN: ---the facts in evidence, and I'm
3 explaining exactly why the fact that he gave away supposedly
4 the stock on September 11th, 2012, shows he had no
5 capacity because it makes no sense. Just like if he had a
6 will that said I give my phone (indiscernible) to A, that's
7 a fact that shows somebody doesn't have capacity cause he
8 didn't know how to use his language or what the words mean.
9 And so---

10 MS. PAYLOR: We don't have that in this case. There's
11 nothing like that.

12 MR. MEDLIN: We do have it in the case. We absolutely
13 have it with respect to this fact which shows that he lacked
14 capacity. He didn't need to do this. It shows he lacked
15 capacity.

16 MS. PAYLOR: But, Your Honor, again---

17 MR. MEDLIN: He's giving---

18 MS. PAYLOR: ---Mr. Medlin---

19 MR. MEDLIN: ---Randy Light---

20 MS. PAYLOR: ---is trying to be an expert. He is an
21 advocate---

22 THE COURT: I know.

23 MS. PAYLOR: ---for Mrs. Luzak. He is not an expert.
24 Can we get back to summary judgment admissible facts
25 rather than Mr. Medlin's opinion?

1 we'll be here for three days. He hasn't told us one
2 specific fact yet. Not one, Your Honor.

3 MR. MEDLIN: Your Honor, just because I happen to know
4 a good bit of the law doesn't mean I'm posing as an expert
5 here. I am being an advocate. I can't help that I know
6 what the law is. So, I'm---

7 MS. PAYLOR: Well, in your book---

8 MR. MEDLIN: ---certainly not---

9 MS. PAYLOR: ---you say---

10 MR. MEDLIN: ---bringing an expert opinion.

11 MS. PAYLOR: Three elements, three elements for
12 testamentary capacity you said in your book.

13 Can you address those for February 5, 2015?

14 That's what you need to do.

15 MR. MEDLIN: Yes, I can and I have, and I've showed all
16 the medical testimony to---

17 THE COURT: Okay. Guys, this is what we're gonna do
18 really quickly.

19 We're gonna go ahead and take just about a 10 minute
20 break right now. It's 2:30. I'm just gonna put my screen
21 down for a quick moment, and we'll come back in 10 minutes.

22 Okay.

23 MS. PAYLOR: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. MEDLIN: Thank you, Your Honor.

1 (WHEREUPON, a short recess was taken at this time.)

2 THE COURT: Alice, when you're ready, I, I just have a
3 quick question for Mr. Medlin, and I'll tell y'all what I
4 did over the 10 minutes.

5 I took the opportunity to reread Doctor Sanders report.
6 That's what I did. Cause I wanted to see what her opinion
7 was, and, again, wanted to see what the basis of it is.

8 I'm seeing in her report, on Page 7, where she goes
9 through and talks about all the different things, and she
10 says she did believe that Mr. Barringer was susceptible to
11 undue influence, coercion, and mistakes in judgment, and she
12 uses that based on a lot of the medical reports. I don't
13 see anywhere in this report, and someone correct me if I'm
14 wrong, I don't see anywhere in this report where she says he
15 lacks capacity.

16 I know she says---

17 MS. PAYLOR: She did not.

18 THE COURT: I know and she says arguments throughout
19 there.

20 So, my question is, and, and, Mr. Medlin, you said it
21 earlier. You said obviously he doesn't have to lack
22 capacity to be able to be unduly influenced.

23 But, but how do you survive summary judgment without an
24 expert saying that he lacks capacity?

25 You can use all these things as evidence, but, but a

1 jury can't make that decision. That's why you have to have
2 an expert who says to you he did or did not have capacity,
3 and, and that's what I'm missing, I guess, in this.

4 You have to have an expert. I mean we, we can go back
5 to again, and I say this all the time, and for everyone
6 that's in front of me all the time, you know, usually it's
7 pretty easy to get past summary judgment, you know, in South
8 Carolina. You give me an expert that says, in their
9 opinion, whatever you believe or your facts or that's it,
10 and you get past it, and it's not hard. I mean I can tell
11 you.

12 I mean we don't grant summary judgment all that often.
13 But, but your doctor isn't even going that far. And so I, I
14 have a concern about that.

15 You -- but you've made your arguments. You've said
16 that there's a doctor that says he has Alzheimer's. There's
17 a doctor that says he has this. He's forgetting things. He
18 can't count. His mini-mental exam went from literally what
19 was I think a 26 out of a 32 to a three out of 30. That is
20 all evidence. But I can tell you you got to have an expert
21 put it together because there is no way a lay person has
22 that knowledge, and, and, and I'm just not sure, on the
23 causes of action, as to capacity.

24 who is going to opine that he lacked capacity?

25 MS. PAYLOR: Nobody is.

1 THE COURT: I mean I don't think any of those things
2 specifically -- I, I just don't know what the jury's
3 determination is gonna be based on or my determination right
4 now is based on.

5 I mean I heard your argument, Mr. Medlin, but Alice is
6 right. That's just you putting this all together. I need
7 an expert to tell me this is what this means, and this is
8 what---

9 MR. MEDLIN: Your Honor?

10 THE COURT: ---their opinion is.

11 MR. MEDLIN: With all due respect, there is absolutely
12 no requirement for an expert in a case of mental capacity.
13 The law is replete with cases where the Court has determined
14 that the testator lacked mental capacity without an expert
15 medical opinion. In fact---

16 THE COURT: Are you talking---

17 MR. MEDLIN: ---there are cases---

18 THE COURT: ---probate cases where you've only got a
19 judge deciding it because, again, I, I still have a concern
20 about what you're talking and asking 12 people to do.

21 MR. MEDLIN: Well, Your Honor, we're talking two things
22 here.

23 Number one, we're talking about summary judgment where
24 I am dealing with a Judge, and then, number two, with the
25 jury. And I'm unaware of any requirement, under the law,

1 that an expert has to give a diagnosis of---

2 THE COURT: A medical opinion. A medical opinion.

3 That's what this is.

4 MR. MEDLIN: A medical opinion. Thank you. I'm
5 totally unaware of any requirement in the law where that has
6 to happen. In fact---

7 THE COURT: And can I ask---

8 MR. MEDLIN: ---in order to---

9 THE COURT: ---a quick question just in case?

10 Is this completely different than any other malpractice
11 action or any type of action where we have to establish --
12 and I know we're talking about the standard of care. So, I
13 understand it somewhat differently.

14 But are you telling me that, in Probate Court, it never
15 requires a, a expert opinion?

16 Because I can tell you, in a medical malpractice case,
17 other than something that is commonly known, in other words
18 doctor cuts off the wrong leg, and that's pretty obvious
19 that you don't need an expert opinion to say he cut off the
20 leg that didn't have cancer on it versus the one that did,
21 typically you need expert testimony.

22 And so that's why I'm trying to figure out what, what
23 is required, and if you're just telling me that, that is --
24 it doesn't require it, that this jury gets to take all of
25 this, and they get to decide whether or not he lacked

1 capacity, and if that's the case, that's, that's fine.

2 MR. MEDLIN: That's, that's the case, Your Honor.

3 THE COURT: Okay.

4 MR. MEDLIN: There's absolutely no requirement---

5 THE COURT: Okay.

6 MR. MEDLIN: ---under the law.

7 THE COURT: Perfect.

8 MR. MEDLIN: This is not a medical malpractice case.

9 THE COURT: I understand that.

10 MR. MEDLIN: This is a question of whether the testator
11 had legal capacity to execute wills, and Revocable Trusts,
12 and irrevocable transfers, and that does not, in any way,
13 require medical expert, medical expert opinion. And let's
14 think about the reasoning behind that.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: Doctor Sanders, who is clearly an expert,
17 is also a very honest expert.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: And she knows that she can not go back in
20 time and examine Paul Barringer on July 20th, 2012. All
21 she can do is look at the medical records that his own
22 doctors created to form her opinion.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: We didn't have to have a medical expert.
25 We chose to have one because we think it will be some

1 additional evidence that the jury will want to hear, but
2 there is absolutely no requirement that there be an expert.

3 Now, the Defendant has already said that her medical
4 doctors are fact witnesses and experts. So, you got people
5 saying he can't ask her a single question on the
6 mini-mental. You've got things like that anyway. But all
7 that's beside the point.

8 Capacity cases can be decided without medical
9 testimony. Sometimes medical testimony is completely
10 disregarded---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---and sometimes it's regarded. But there
13 is no requirement of that, Your Honor. It is a confluence
14 of facts---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---and that's what we've been trying to
17 present to you on our causes of action for---

18 THE COURT: Okay.

19 MR. MEDLIN: ---the Revocable Trust and the wills.
20 And, you know, I'm sorry. I, I was trying to argue in
21 categories. And so my co-counsel has apprized me that -- I,
22 I don't have a Complaint in front of me. I can dig it up,
23 but I don't want to do that---

24 THE COURT: That's okay. I've got it.

25 MR. MEDLIN: ---you know. But -- so, we've got Cause

1 of Action 1, 7, 8, and 9 dealing with capacity, and, again,
2 there is no requirement of an expert period in capacity
3 cases. We just happen---

4 THE COURT: I just---

5 MR. MEDLIN: ---to have a lot of medical testimony---

6 THE COURT: Can I just ask you a quick question, and I
7 just want to make sure.

8 In a case is, I would say, more settled. I understand
9 where there's probably cases where someone never saw a
10 doctor, and the question becomes what does mama,
11 grandmother, the next door neighbor, farmer say. And then
12 I'm sure there are cases where your person is questioning
13 their, their capacity is running screaming naked down the
14 street. So, I guess that's some evidence that maybe they
15 aren't all there together.

16 I guess my question is, in a case like this where you
17 have doctors who have seen him and, and is the problem that
18 I am having that these doctors haven't been deposed yet?

19 Is, is, is, is, is that what my problem is that you
20 haven't deposed Long, you haven't deposed Baughman and
21 Mazzeo?

22 I, I guess---

23 MR. TWOMBLEY: They haven't even noticed---

24 MR. MEDLIN: No, Your Honor.

25 MR. TWOMBLEY: ---those depositions, Your Honor.

1 MS. PAYLOR: Can I read you---

2 MR. TWOMBLEY: They haven't even noticed them. They've
3 got 27 deposition notices pending---

4 MS. PAYLOR: And no---

5 MR. TWOMBLEY: ---and not one single medical expert
6 because they know what the doctors are gonna say. They're
7 gonna say---

8 MS. PAYLOR: Your Honor?

9 MR. TWOMBLEY: They're gonna say what they put in their
10 notes.

11 MS. PAYLOR: Can I---

12 MR. MEDLIN: We know what the doctors are going to say
13 because we've already---

14 MS. PAYLOR: Can I---

15 MR. MEDLIN: ---seen the reports, Your Honor.

16 THE COURT: Okay.

17 MS. PAYLOR: Can I just say---

18 MR. MEDLIN: We're relying on the reports.

19 MS. PAYLOR: Can I cite a South Carolina case?

20 It says although other evidence, which is all Mr.
21 Medlin has talked about so far, may show confusion, that is
22 when McClam took testator to the grocery store---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---but testator acted as if he had entered
25 an unfamiliar place, this evidence has no bearing on whether

1 testator had capacity when he executed the will, and is,
2 therefore, insufficient to withstand summary judgment.

3 Then they cite -- and this is South Carolina Court of
4 Appeals Langley versus Lynch, May 24th, 2017. And as the
5 Supreme -- U.S. Supreme Court has said, only disputes over
6 facts that might affect the outcome of the suit will
7 properly preclude the entry of summary judgment.

8 Mr. Medlin has not given us a single fact that is
9 relevant to what he says are the elements in his book. Now
10 he's trying to tell you that those aren't the elements.
11 That only applies when he's teaching a course. But, to us,
12 he's gonna tell us oh, you can bring all this garbage from
13 everywhere in the world and pile on.

14 He needs specific facts, first of all, for the first
15 cause of action, February 5, 2015. He doesn't have a single
16 one, and I would like for him to tell you that so we can
17 move on to the second cause of action.

18 THE COURT: well, just so---

19 MS. PAYLOR: He's not gonna have any facts---

20 THE COURT: Alice, just so I understand.

21 Do you think he needs an expert that says that Mr.
22 Barringer lacked---

23 MS. PAYLOR: No.

24 THE COURT: ---capacity during his signing of the will
25 in February of 2015?

1 MS. PAYLOR: No, I don't think he can get an expert to
2 say that because he would have to---

3 THE COURT: My question is does he need one though to
4 survive summary judgment?

5 Does he need one to survive summary judgment?

6 Let's pretend---

7 MS. PAYLOR: Some -- and he doesn't have anything right
8 now.

9 THE COURT: Listen though. No, no, no, no, no.

10 what, what I'm saying is this. As we went through
11 every painstaking attachment, which was every doctor's
12 record, it was a doctor's record.

13 I mean correct me if I'm wrong, I didn't see doctor's
14 reports. I saw medical records and that we were reading
15 from, and maybe one of those was a report after a discharge.
16 But technically these -- pretty much this was medical
17 reports, and while there were things up there, do you agree,
18 do you agree with him that he doesn't need an expert to say
19 she lacked capacity?

20 He can -- listen. He can based on the facts as he
21 reads them and as he cherrypicks them out of the medical
22 records.

23 Do you agree that that's the case cause I, I need to
24 know that?

25 MS. PAYLOR: I -- if he had direct evidence, he would

1 not need an expert---

2 THE COURT: Okay.

3 MS. PAYLOR: ---because he has no direct evidence---

4 THE COURT: Okay.

5 MS. PAYLOR: ---he does need somebody to say he was
6 incapacitated---

7 THE COURT: Okay.

8 MS. PAYLOR: ---and he doesn't.

9 THE COURT: Okay.

10 MS. PAYLOR: Other than himself, he has nobody.

11 THE COURT: Okay. You answered my question.
12 Okay.

13 MS. PAYLOR: Thank you.

14 THE COURT: All right.

15 MR. MEDLIN: Your Honor?

16 THE COURT: So -- yeah.

17 MR. MEDLIN: If I may, I'm sorry.

18 But just to respond to that one cite to the McClam
19 case.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: Again, and we cite all these cases in our
22 memo, the cases looked at a confluence of factors. There's
23 not a bright line test. There's not safe harbor, and, no, I
24 am not changing my understanding of what the law is. The
25 law is the testator has to have the ability to know his

1 property, the people he should give it to---

2 THE COURT: I understand that.

3 MR. MEDLIN: ---and he has to know that he's -- what a
4 will does, and all these factors go into that test for
5 capacity, and it doesn't have to be medical. It can be
6 medical and it's not somebody standing in the execution
7 saying you don't have to have capacity because, if that were
8 the case, the will will never get executed. And, yeah,
9 there are cases overturning wills for lack of capacity.

10 So, all we have to show are these factors that can lead
11 to the reasonable inference that he did not -- was not able
12 to understand, and capacity includes the ability to
13 understand the complexity of what he's doing in a document,
14 and this is, again, you assume -- I grant you assume the
15 lawyer has explained that. But his ability to understand it
16 is a totally different issue.

17 So, no, Your Honor, we don't need an expert, and I'm
18 sorry to prolong it, but we would have---

19 THE COURT: Okay.

20 MR. MEDLIN: ---a dishonest expert and everybody would
21 have a dishonest expert who, after the fact, had to opine
22 about capacity at that exact moment. That's not the law.
23 You have the ability to look at factors before and after
24 just as every case cited---

25 THE COURT: Okay.

1 MR. MEDLIN: ---by Defendant---

2 THE COURT: Okay.

3 MR. MEDLIN: ---in their---

4 MS. PAYLOR: Your Honor?

5 MR. MEDLIN: Your Honor, may---

6 MS. PAYLOR: Confluence of factors is not the standard.

7 The standard is three elements.

8 THE COURT: I know and y'all said them ad nauseam.

9 MR. MEDLIN: How do you prove that?

10 MS. PAYLOR: Even---

11 MR. MEDLIN: How do you prove that?

12 THE COURT: I know.

13 MS. PAYLOR: He can not -- he can not give you one fact
14 that supports his claim that he did not know or understand
15 those three elements. Not one fact. And it has to be at
16 the time he signs it.

17 He can't give you one fact. He's had six years to take
18 John Jolley's deposition. They haven't done it. They
19 haven't taken any depositions.

20 We have people who were with him who said he knew
21 exactly what he was doing. He knew his property. He knew
22 his children, and he knew what he wanted to do. They have
23 to come up with a fact, some summary judgment admissible
24 fact, either a witness who was there, somebody who says no,
25 he didn't --

1 THE COURT: Okay.

2 MS. PAYLOR: -- and they can't do it. We win summary
3 judgment. It's very clear---

4 MR. MEDLIN: Your Honor, again---

5 MS. PAYLOR: ---and that's---

6 MR. MEDLIN: Their witnesses---

7 MS. PAYLOR: --- (indiscernible) all the way over.

8 MR. MEDLIN: Their witnesses weren't in the room either
9 other than Defendant Lights, who was---

10 MS. PAYLOR: And Mrs. Barringer.

11 MR. MEDLIN: ---and her testimony, of course, is going
12 to be self-serving. She's not about to admit she was
13 engaging in undue influence and fraud.

14 The medical evidence, let's just pick February 5th,
15 2015. And, and, again, Courts look at a, a spectrum here.
16 They don't have to go right on that day.

17 The, the odds that somebody's gonna have evidence right
18 on that day is so remote that we wouldn't even have cases
19 about testamentary capacity.

20 So, on January, 2014, he scores a 13 on the mini-mental
21 exam. He doesn't know what he's---

22 THE COURT: And we've already done this.

23 MS. PAYLOR: That's a---

24 THE COURT: Mr. Medlin, you've already done this.

25 MR. MEDLIN: I---

1 THE COURT: I know what the evidence is in there.

2 My question again is how would anyone -- if you're
3 telling me it would be an expert witness that would be
4 untruthful if they turned around and tried to go back and
5 opine whether or not he had capacity at this time, how does
6 12 people in a jury box do it?

7 I mean I understand they weigh the evidence, and it's
8 by preponderance of the evidence. You're just saying a
9 medical expert is not gonna do it.

10 But, again, I don't -- are you telling me that a
11 medical expert would never give an opinion as to whether or
12 not someone had capacity on the day they executed a will
13 unless they were actually there?

14 MR. MEDLIN: Your Honor, I don't know. I would think
15 that would be difficult to say on that day unless there were
16 other doctor's reports from that day. I would think that
17 would be difficult.

18 THE COURT: But see I---

19 MR. MEDLIN: But, Your Honor---

20 THE COURT: I would be surprised if there weren't---

21 MR. MEDLIN: ---we can---

22 THE COURT: ---weren't experts out there that said
23 whether or not someone was, you know, lacked capacity or
24 didn't on that date even if they weren't there. And we have
25 experts opine all the time based on the medical records, and

1 based on the history. So, I guess just---

2 MR. MEDLIN: We can walk -- we can ask our expert. But
3 I, I just don't see how somebody can do that. Maybe she
4 can.

5 THE COURT: See this is the problem, Mr. Medlin.

6 MS. PAYLOR: Your Honor?

7 MR. MEDLIN: It's not necessary. It's not necessary.

8 THE COURT: Mr. Medlin---

9 MS. PAYLOR: Can I give you one more---

10 THE COURT: ---though you should of already done that.

11 MS. PAYLOR: Can I give---

12 THE COURT: You should of already asked your expert.

13 MR. MEDLIN: It's not necessary, Your Honor, to have
14 a---

15 MS. PAYLOR: Can I give you one, one second---

16 MR. MEDLIN: ---a medical expert. Even Defendant---

17 THE COURT: Stop, Alice.

18 MR. MEDLIN: ---agrees with that.

19 MS. PAYLOR: The medical---

20 MR. MEDLIN: Even Defendant agrees---

21 MS. PAYLOR: Unless---

22 MR. MEDLIN: ---I don't need a medical expert.

23 THE COURT: Okay. Okay.

24 MS. PAYLOR: Your Honor?

25 MR. MEDLIN: So, why would I do what I don't---

1 MS. PAYLOR: Before the Court---

2 MR. MEDLIN: ---what I don't need to do---

3 MS. PAYLOR: The Court---

4 MR. MEDLIN: ---and call into question the voracity
5 otherwise of her report based on their doctor's reports?

6 I don't need it because that's not what the law
7 requires, Your Honor. I'm sorry.

8 THE COURT: Okay. But you're asking 12 people to give
9 you 160 million-dollars, and I have a hard time believing
10 they're going to hand that over to you unless you can prove
11 to them that he lacked capacity, and, again, that isn't for
12 my determination. It's for 12 people on a jury box. And so
13 that's why you get expert witnesses. That's why you get the
14 people---

15 MR. MEDLIN: Your Honor?

16 THE COURT: ---who are smarter than the 12 sitting
17 there and say this is what it is. I'm not saying you can
18 create a question. I can't -- I'm not saying you're not
19 right. I'm just saying that's why we have expert witnesses
20 to do something and explain to the jury something that is
21 beyond---

22 MR. MEDLIN: Your Honor?

23 THE COURT: Again, a lawyer arguing whether or not
24 someone lacked capacity doesn't do it. I, I think you need
25 an expert that's a medical expert, but beyond all that,

1 let's back up a second you guys. It's three o'clock right
2 now, and I really feel like we're just going in circles.

3 So, my question to you-all is this. I propose -- we
4 can either keep going for another hour or so, and if we need
5 to reconvene tomorrow morning we can. But I really feel
6 like we need to get to these causes of action, and I really
7 feel like we need to address them.

8 I hear you saying how that you've looked at the Summons
9 and Complaint. That one, seven, eight, and nine causes of
10 action have to do with capacity. I hear you saying that
11 your medical records get you past whether or not there's a
12 question of fact. I, I -- Alice, you can shake your head.
13 I know, but I---

14 MS. PAYLOR: I'm shaking it.

15 THE COURT: I know.

16 MS. PAYLOR: I'm sorry. I apologize.

17 THE COURT: I know. But that is what he's said.

18 MS. PAYLOR: There's one thing I want to say when you
19 finish.

20 THE COURT: I understand that and that's why I asked
21 the question. If he's telling me he doesn't need an expert
22 saying that, then, then I'm taking you for what you're
23 telling me. So -- and, and, again, I don't practice probate
24 law, which is why I always say having dual jurisdiction I
25 don't think is so smart. But, quite frankly, you're here

1 and I've got you. So, I really don't get a choice.

2 So, I'm getting my own education. But the point is we
3 need to move on. I see that your expert witness is saying,
4 Doctor Sanders, in her report that he was subject to undue
5 influence.

6 Alice, I know you're shaking your head, but, really,
7 the report says it. Her actual---

8 MS. PAYLOR: I'm sorry.

9 THE COURT: ---opinion---

10 MS. PAYLOR: I forget you're looking at me.

11 THE COURT: And I'm -- it's okay.

12 So, again, I'm just saying that I see that.

13 MR. MEDLIN: Your Honor---

14 THE COURT: So, what hurdle does that get past as far
15 as causes of action, Mr. Medlin, that makes you survive it
16 based on your own expert because I think you're torturing it
17 when I don't think you need to torture it. I actually
18 think, in this case, for sure, you've got a doctor saying
19 it, and she is saying in her opinion within a reasonable
20 degree of medical, medical certainty based on these records
21 he was susceptible to undue influence, coercion, and
22 mistakes in judgment, and she pretty much clears you from
23 2009 on.

24 So, again, what causes of action are those, and then
25 what does that leave us is, is what I want to know.

1 MR. MEDLIN: Well, Your Honor, may I just say, we have
2 more than medical evidence about capacity. We went through
3 that. We have the Defendant's own testimony. We have
4 the---

5 THE COURT: I---

6 MR. MEDLIN: ---officers---

7 THE COURT: Mr. Medlin, I heard that. I, I --
8 honestly, I know I might---

9 MR. MEDLIN: But you---

10 THE COURT: ---be a little bit slow, but I've heard
11 what you've already said. My question then becomes---

12 MR. MEDLIN: Your Honor?

13 THE COURT: ---again I'm, I'm trying to cut to the
14 chase, and I don't know if you can read through the lines or
15 not, but I'm, I'm just trying to figure out what it is that
16 you have some facts, and I just want to make sure that, if I
17 can get rid of any causes of action, if there isn't any, you
18 know, question of fact, then we'll get rid of them.

19 I'm just asking you right now, and I don't know if
20 anyone on the Plaintiff's side can answer it, but what
21 causes of action are just based on undue influence?

22 I mean---

23 MR. MEDLIN: Your Honor?

24 THE COURT: ---can Mike, can Jim, can someone?

25 I mean if you want me to go through it I'll look

1 through it myself if---

2 MR. MEDLIN: Once again---

3 THE COURT: ---if that's what I need to do.

4 MR. MEDLIN: Your Honor, again, I apologize. First of
5 all, Your Honor, let me please say that---

6 THE COURT: Yeah.

7 MR. MEDLIN: ---that I'm the last person to think that
8 you're in any way (indiscernible). And so I don't---

9 THE COURT: Listen, if I'm not, it's your fault---

10 MR. MEDLIN: I hope I didn't give that implication.

11 THE COURT: ---because you're the one that taught me.
12 So, again, if anyone lacks anything, it's probably due to
13 you because you were my professor. But that said, and
14 aside, I'm going through right now looking at this. I'm
15 looking at two, five -- that's due to mistake.

16 MS. PAYLOR: And---

17 MR. MEDLIN: Eight. Eight, Your Honor.

18 THE COURT: Eight. Thank you. Mistake.

19 Okay. Maybe we need to get to and start talking about
20 fraud, and aiding and abetting, which is the eleventh cause
21 of action, cause I actually do want to hear a little bit
22 about that. I know you touched on the law on that, Mr.
23 Medlin, before.

24 Conversion, you touched on the law of that, but we need
25 to talk about the facts.

1 Obviously, quantum meruit, constructive trust,
2 resulting trust, and intentional interference, and maybe we
3 need to talk about civil conspiracy. At least I think we
4 need to talk about it. I'm gonna admit attorney's fees and
5 costs, you guys are gonna have to show me, and I know you
6 said in the statute where it provides for it, but I need to
7 see that.

8 MS. PAYLOR: They got to win first. If they win, then
9 they would have some argument.

10 THE COURT: Right. Right.

11 Okay. So, what else do we need to talk about?

12 I mean I really think we've beat the dead horse on the
13 capacity and the undue influence.

14 So, what other -- what else do we need to talk about as
15 far as intentional torts and any of the other equitable
16 claims?

17 MS. PAYLOR: Well, that -- Your Honor, I haven't
18 given---

19 THE COURT: Yeah.

20 MS. PAYLOR: I haven't really talked about---

21 THE COURT: Okay.

22 MS. PAYLOR: ---this---

23 MR. MEDLIN: Your Honor, may I, may I---

24 MS. PAYLOR: I mean I'm still looking at the specifics,
25 which, you know, which is what I'm coming from---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---cause I, I read the law to say that.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: They have to give specific facts for each
5 cause of action.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: And as far as the incapacity goes, it has
8 to be directed at the testamentary act itself---

9 THE COURT: I know.

10 MS. PAYLOR: ---and I don't think there's any evidence
11 of that. So, I mean just right there, and he did have,
12 whether he likes it or not, he had an unhampered
13 opportunity. There's no evidence that Merrill Light exerted
14 any influence on him. Her testimony is she did not even ask
15 him for the stock. He didn't know how many shares he had.
16 He thought it was one share, and she thought he had 12
17 because he wasn't in control.

18 There's, there's, you know, there's so much evidence
19 that's out there like Anne Surrentt's testimony. She's the
20 wells Fargo person.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: He knew everything he owned. He knew
23 everything about every investment that he had made. She
24 saw -- the last time she saw him was in 2014. She had no --
25 he was not confused. He, he knew everything that was going

1 on. We've cited that and given you her deposition---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---testimony.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: We've given you Victor Barringer's
6 deposition testimony that nobody ever influenced his father
7 to do anything, and I believe that based on all the stuff
8 that, that I've read, Your Honor. I just want to make sure
9 you know we've got all of that, those facts, cause I hadn't
10 gotten to giving you, to giving you all the facts on the---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---on the undue influence, Your Honor.

13 THE COURT: Okay. Just a second, Alice.

14 Mr. Medlin, you want to respond just briefly---

15 MR. MEDLIN: Yes, Your Honor.

16 THE COURT: ---or say something.

17 MR. MEDLIN: Thank you, Your Honor.

18 A couple things.

19 Number one, my cocounsel tells me we're suppose to be
20 able to argue about inferences from facts. In fact, the
21 very first case we cite on Page 1 of our brief talks about
22 that.

23 So, I apologize if somebody thinks I was going astray,
24 but my understanding of the law is I'm able to argue about
25 inferences to be able to put the facts together.

1 THE COURT: Well, I understand.

2 MR. MEDLIN: Number, number two---

3 THE COURT: The facts you're giving me gives an
4 inference. I mean I would assume that's the only reason why
5 you'd be using them.

6 I, I guess the problem I have is, is some of them are
7 pretty darn obvious. So, no, you don't need to connect the
8 dots for me to understand that when someone diagnoses him
9 with, you know, mild stages of dementia that there could be
10 a problem as to his capacity. I don't need you to infer
11 that. I think I can infer that.

12 I'm just trying to figure out, y'all, and, and I'm
13 gonna admit that I'm getting slightly frustrated how we're
14 going about this, and I feel like we're all stepping on each
15 other, and I don't want to do that. I don't want to be
16 frustrated.

17 I just want to know maybe, y'all, are we better off
18 starting again fresh tomorrow?

19 I mean I can -- I don't care what I have to do. I can
20 clear the day. I just think this needs a fair and full
21 opportunity, and I just want to make sure that we're getting
22 it, and completely on the record. And, again -- yes, Mr.
23 Medlin.

24 MR. MEDLIN: Your Honor, I'm -- we were gonna
25 propose---

1 THE COURT: Yeah.

2 MR. MEDLIN: ---and we're fine with doing this anytime.
3 Of course, Your Honor, that maybe we let the Defendant make
4 her argument---

5 THE COURT: Yeah.

6 MR. MEDLIN: ---and I won't interrupt, and let's, let's
7 let her make her whole argument because I think she thinks
8 she didn't get to do it, and then I'll respond to that, and
9 maybe she won't interrupt again. And we'll do it that way
10 in a more orderly fashion, and let's let her go through her
11 arguments. Whether it's today or tomorrow morning, Your
12 Honor, I'll do that, and then we'll respond.

13 THE COURT: I hear you. But really, Mr. Medlin, what
14 Alice and I both wanted to do is, is we have the same
15 agreement of we go through it cause of action by cause of
16 action. I understand there's overlap. Again, I don't need
17 to connect the dots on inferences. But I can't force her to
18 say that, you know, what -- you just need to make your whole
19 entitled argument unless -- I, I guess I can. You're right.
20 I can. That seems to be---

21 MR. MEDLIN: I just want to be---

22 THE COURT: The only way that anyone---

23 MR. MEDLIN: I just don't want to be interrupted
24 anymore. I'm, I'm just trying not to be interrupted. I
25 can't get five words out of my mouth that Alice doesn't

1 interrupt me, and I, I -- I'd like to be able to say
2 whatever I'm gonna say without being interrupted, Your
3 Honor. So, however we can do that---

4 THE COURT: Okay.

5 MR. MEDLIN: ---that's what I'd like to do.

6 THE COURT: Okay. Well let's do this then. Let's
7 start tomorrow morning again at ten o'clock. We'll just
8 have Alice make her entire argument.

9 Alice, just put it all out there. I've heard I think
10 pretty much the law, the facts, and this is what I'm also
11 gonna do too. I always believe in the Bill Howard method
12 of -- he use to ask questions. Certainly when I was in
13 Circuit Court -- when he was on the Circuit Court Bench, and
14 then when he was on the Court of Appeals. I personally
15 liked it because it made me know what he was interested in
16 him, but I'm gonna go ahead and agree to be quiet as well.

17 So, Alice, you just give me everything you need to give
18 me, however long it takes tomorrow morning, and then, Mr.
19 Medlin, you obviously go ahead and reply. And if she needs
20 to make a brief reply, that's fine, and I'll keep my mouth
21 shut.

22 So, I will just -- again, other than I do like it when
23 you-all point me to exhibits. If you say something is in an
24 exhibit or if you, if you can refer to something, that's
25 just helpful to me cause it's just easier for me to visually

1 see it then just to hear you talk about it because,
2 typically, you're paraphrasing or I'm not getting
3 everything.

4 So, that's, that's the only thing I would ask, that,
5 you know, if you're referring to a specific piece of
6 evidence, just say it's in, you know, Attachment, you know,
7 16 of K, and it's Doctor Long's report on such and such a
8 day or his record on such and such a day.

9 Is that, is that okay?

10 Is that fair and I, I -- I need to ask Laura.

11 Laura, time wise.

12 (Pause.)

13 THE COURT: So, Laura's doing double duty. She is --
14 Tommy Houghston is in Colleton trying a criminal case for
15 us, and retired judges don't have law clerks. And so she
16 is -- he is charging a jury tomorrow. He's trying a
17 criminal case, and she has to do the jury charge, and make
18 sure everything is going fine.

19 So -- and so can we start at 11:00?

20 Is that okay with everybody?

21 Is that okay if we start at 11:00 as well?

22 Okay. Let's do that. So, let's just plan on starting
23 at 11:00 tomorrow.

24 You can get there and back you think, and he'll be okay
25 with that?

1 He won't be mad.

2 Okay. Hopefully he won't be angry at me.

3 Yes.

4 MR. MEDLIN: Your Honor, you're asking me questions. I
5 do not consider it to be an interruption. So, I just want
6 to make that clear. I don't mind being asked questions.

7 THE COURT: You know, and, again---

8 MR. MEDLIN: I just ask---

9 THE COURT: I sometimes don't know. I may be, be
10 completely off base and it's also is another way for you to
11 redirect me, but, you know, I'm just gonna -- I'm gonna
12 listen. I'm gonna rely on you-all to tell me what the law
13 is and what's important. You lay out the facts. I'm gonna
14 listen.

15 Alice, what were you gonna say?

16 MS. PAYLOR: I was gonna say the same thing. I
17 actually like questions because it directs me to what you're
18 most interested in hearing.

19 THE COURT: Yeah.

20 MS. PAYLOR: So, I don't have a problem with that.

21 THE COURT: You know, I think that works at times. But
22 I also say, and I said this in my screening yesterday, I
23 certainly have plenty of time and have no problem changing
24 my mind sitting on the bench. So, I don't know if that
25 necessarily, from what I say, from one hour to the next, in

1 a multi hour hearing necessarily says I'm going in one
2 direction or not cause I really truly feel like I'm a little
3 all over the board today.

4 So, let's just plan on eleven o'clock tomorrow.

5 Again, Alice, you're gonna give me everything you need,
6 however long that takes.

7 Mr. Medlin, you're gonna respond.

8 Can we have some kind of agreement though you know -- I
9 use to laugh. I hate it when judges said you only have so
10 much time. But, you know, there is something to Perry
11 Buckner's, you know, this amount of time is enough.

12 So, what do you think, Alice, for tomorrow?

13 what -- how much time roughly?

14 MS. PAYLOR: I don't know. Give us each an hour.

15 THE COURT: Okay. Do you think that that -- Mr.
16 Medlin, can you do an hour?

17 MR. MEDLIN: Your Honor, I will say this. I'm not good
18 at judging time other than 60 minute increments, but I've
19 gotten through the facts about capacity.

20 THE COURT: Okay.

21 MR. MEDLIN: I still have to go through the facts about
22 undue influence---

23 THE COURT: Okay.

24 MR. MEDLIN: ---which will take about as long---

25 THE COURT: Okay. Okay.

1 MR. MEDLIN: ---or that much. And then, for the rest
2 of the causes of action, it will be much quicker to be able
3 to say well, for the same reason as this and that.

4 THE COURT: Okay.

5 MR. MEDLIN: So, I, I -- once we get past undue
6 influence, I think the facts won't take very long to go
7 through.

8 THE COURT: Okay. Okay. Well then let's, let's just
9 plan again---

10 MS. PAYLOR: Let's go have a glass of wine.

11 THE COURT: There isn't enough wine out there, Alice.
12 Let me tell you. There is not.

13 MR. MEDLIN: We're not suppose to be doing that while
14 we're doing this?

15 I didn't realize that was a rule.

16 THE COURT: That's for a whole nother day and whole
17 nother off the record conversation. So, anyway.

18 All right. Y'all, so if you're fine with eleven
19 o'clock tomorrow, let's start -- what I really want to do is
20 can I just give you a total we're not going past four hours
21 tomorrow?

22 So, by 3:00. But it's not because -- I don't have any
23 where to go and nothing to do, y'all. I, I really truly
24 have no life.

25 It's just that, I think, at some point, I've got to

1 give you an end point so, you know, we can kind of get
2 there. But I will say this much, and I hope, I hope you'll
3 understand this, and I feel, I feel like I'm getting a
4 little testy. So, I need to stop that.

5 But I really have a much better handle than you would
6 hope I would after, you know, five hours of this. But I
7 have a much better handle of this case as a result of today
8 than probably at any other time.

9 So, I, I -- truthfully, I feel good about it although I
10 can tell you, after all of this, I kept sitting in my head
11 thinking who can I get to try this case, who can I get to
12 try this case. But I do have a much better handle on it.

13 So, I feel like tomorrow will go faster because I'll
14 have a better knowledge. So, for what it's worth, that's
15 what I'm saying.

16 Okay. So, is that fine, everyone?

17 And I don't want anyone going away angry or, you know,
18 I feel bad because I, I really -- I swore yesterday in my
19 public hearing -- we have a joke in my office, that, you
20 know, when we get tired, there's a signal, and they say be
21 quiet, and Laura actually has leaned over and said it's time
22 for a break two times now.

23 So, I'm getting my signal. I just need to hear it.

24 So, if, if that's okay with you-all, we're good?

25 Yes?

1 Yes?

2 (WHEREUPON, there was no audible response.)

3 THE COURT: All right. All right. I will go ahead and
4 say this for the record and I don't need any more platitudes
5 for you-all. But it's -- you have no idea how much I
6 respect all of you. You know, we talk about, you know,
7 Professor Medlin being a professor. I've known Alice for
8 years and I know how brilliant she is.

9 Mike Macloskie, from the day I went on the bench, took
10 care of me and has been so incredibly wonderful, and I've
11 tried so many cases with him, and Ashley and I have had so
12 many cases together. I mean he really has tried a lot here
13 in Civil Court.

14 So, just please know how much I respect you-all, and,
15 and know that, you know, none of this is gonna be ever based
16 on any specific friendship or necessarily respect. I just
17 got to do what I have to do in this case, and, you know,
18 I'm, I'm just trying to pare it down so I understand so I
19 can make the right choice, you know, and, and narrow the
20 issues if I can. And, if not, let's just try it.

21 So, I'm kind of just looking at an end point for this.

22 So, that's my two cents. I'll see y'all tomorrow at
23 11:00.

24 Is that okay, everyone?

25 Everyone okay?

1 MR. MACLOSKIE: Oh, yeah, thank you, Judge.

2 MR. TWOMBLEY: Yes, ma'am.

3 THE COURT: I appreciate it. I'll see you at 11:00.
4 okay?

5 MS. PAYLOR: Thank you.

6 MR. MACLOSKIE: Thank you, Your Honor.

7 MR. TWOMBLEY: Thank you, Your Honor.

8 MR. MEDLIN: Thank you, Your Honor.

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10 (WHEREUPON, Court was in recess for the day.)

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wednesday, November 18th, 2020

THE COURT: Okay. All right. There's Mr. Medlin.

MR. MEDLIN: Morning, Judge.

THE COURT: Good morning. Good morning.

So, are we ready to go?

We okay?

(WHEREUPON, there was no audible response.)

THE COURT: Okay. So, should I just go ahead and mute everyone except for -- okay. If you'll do that except for Alice and Mr. Medlin, and we'll just go from there.

Does that sound good?

All right. So, Alice, tell me how you want to start this morning.

MS. PAYLOR: Well, you said you were gonna give us four hours. So I would---

THE COURT: Okay. I'm laughing because---

MS. PAYLOR: ---like to take an hour.

THE COURT: ---actually I have to narrow that and I apologize.

MS. PAYLOR: Okay. That's fine. That's fine.

THE COURT: It's only gonna be three hours. So, sorry.

MS. PAYLOR: Three hours is better.

THE COURT: And, and I can tell you, for some reason we need more time, we can figure out what we're gonna do

1 tomorrow. So -- or Friday. So, it's all good.

2 MS. PAYLOR: Well, what I'd like to do, to make sure I
3 get my time is, for me to take the first hour and finish up
4 what I never got to finish up. And then Mr. Medlin can have
5 the next hour and a half, and then I can have 30 minutes to
6 reply to what he said.

7 THE COURT: Okay.

8 MS. PAYLOR: Then that would give us our three hours.

9 THE COURT: Okay.

10 MS. PAYLOR: Thank you.

11 THE COURT: Okay. So, Alice, whenever you want to
12 start.

13 MS. PAYLOR: Thank, thank you, Your Honor.

14 And I apologize. I got a little undone yesterday
15 afternoon. So, I am, I am back in the saddle and I feel
16 very fresh this morning --

17 THE COURT: Good.

18 MS. PAYLOR: -- and I will proceed to tell you why
19 Merrill Light is entitled to summary judgment---

20 THE COURT: Okay.

21 MS. PAYLOR: ---as to each of her sister, Hampton
22 Luzak's---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---Amended Complaint.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: I started off yesterday with the Swiger
2 case---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---and I want to kind of go back there
5 today because it's so clear---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---and it sets out -- it sets out every
8 basic legal tenant of---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---undue influence. It goes through
11 everything.

12 THE COURT: Yeah.

13 MS. PAYLOR: Swiger clearly states that the burden is
14 always on the Plaintiff. Mrs. Luzak has argued that the
15 burden is on Defendants because she claims that her father
16 suffered from chronic incapacity. She has absolutely no
17 factual support for this assertion.

18 Now, chronic testamentary incapacity---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---is a -- very different from chronic
21 incapacity where someone is committed to an insane asylum.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: And the interesting case that Mr. Medlin
24 mentioned yesterday, the 1851 case, what was the name -- oh,
25 Wright versus Lewis.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: I've got it right here. Wright versus
3 Lewis.

4 This was an 1851 case, Your Honor, and the testator
5 involved had been committed to an insane asylum for over 20
6 years. He, he had had two illegitimate daughters.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: But he had no other children besides those
9 two. And so he's been insane his whole life.

10 He got out at some point, and then he went back into
11 the insane asylum. So, if anybody was chronically
12 incapacitated, it was this man.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: So, the Court said that the burden was on
15 the Plaintiff, which was -- cause he left a will devising
16 all of his property, which were slaves.

17 THE COURT: Right.

18 MS. PAYLOR: So that tells you how old this is.

19 THE COURT: Right.

20 MS. PAYLOR: To, to his two daughters, and called him a
21 lunatic throughout---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---the case. The, the Court found the
24 will to be valid.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: The Court held that if the testator was
2 sane at the execution of the will, and understood the act,
3 which he did---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---it was sufficient. That was all that
6 was required. All witnesses to the execution of the will
7 testified that the lunatic was perfectly sane at the
8 execution of the will, and it was his free and voluntary
9 act.

10 So, when you say chronic incapacity, they're still
11 gonna have to prove that, at the time of the execution---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---he did not meet the requirements of
14 testamentary capacity.

15 They're only three requirements, Your Honor. No matter
16 what Mr. Medlin wants to tell you, in every case it says
17 there are three requirements.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: One, to know what -- a general idea of
20 what your assets are.

21 Two, to know who your loved ones are or your children.
22 However, you want to define that.

23 And, three, to know to whom you want to give your
24 property.

25 The burden is always on the Plaintiff to give us that.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: And as we discussed yesterday, she has
3 absolutely no evidence. Their hired expert did not give an
4 opinion that he was incapacitated. She never gave an
5 opinion that he was ever incapacitated.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: And we asked her that question in her
8 deposition numerous times. She said she could not do it
9 because she had not examined him, which I think is to her
10 credit.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: The requirements that establish
13 testamentary capacity are not great because there is a
14 presumption by the Courts and applicable statutes that
15 any person should be free to devise, to devise his assets as
16 he sees fit.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: Testamentary capacity is the lowest form
19 of capacity under the law. South Carolina Code Section
20 62-3-407 -- this is from the law. Directly from the law.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: "Contestants of a will have the burden of
23 establishing undue influence---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---fraud, duress, mistake, revocation, or

1 lack of capacity -- lack of testamentary capacity. Parties
2 have the ultimate persuasion as to matters with respect to
3 which they have the initial burden of proof." The burden
4 never ever shifts to the Defendant in a (indiscernible).

5 So, in our case, Mrs. Luzak has to prove, prove that
6 her father, Paul Barringer, at the times that he executed
7 all the testamentary documents that are in dispute in this
8 case did not have the ability to know or understand the
9 assets of his estate, to know or understand the objects of
10 his affection, and to know and understand the persons to
11 whom he wished to give his property. And that's straight
12 out of In Re Estate of Weeks, which is a---

13 THE COURT: Right.

14 MS. PAYLOR: ---1997 Court of Appeals case.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: And, Your Honor, it is also a very
17 interesting case because, in that case, Mrs. Weeks, the
18 testator, they had had a guardian appointed for her because
19 she was not able to take care of her day-to-day affairs and
20 her financial. She was still found to have testamentary
21 capacity. It's a very low bar.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Plaintiff wants to void all wills and
24 Trusts executed after she believes, only she believes, that
25 Paul Barringer started having cognitive issues. That is not

1 the standard. Having cognitive issues is not the legal
2 standard.

3 She would have you believe that, after he went to his
4 doctor and said, you know, I'm having trouble remembering
5 things, my memory is not as good as it used to be, he could
6 no longer execute a will or a Trust or make any decisions
7 with regard to his assets.

8 Your Honor, that is not the law. That is not the law,
9 and it can not be the law. In fact, Mr. Medlin, you know,
10 was arguing yesterday that Mr. Barringer had no reasonable
11 basis to give this stock to his daughter after he had
12 changed his first -- his Revocable Trust so that she got it
13 on her death.

14 But, as the cases say, Your Honor, there is no
15 requirement that the testator "have a reasonable basis on
16 which to found his like or dislike of the natural objects of
17 his bounty or to be reasonable in what he decides to do with
18 his asset."

19 In this case, the evidence is clear that he fell out
20 with his daughter. I mean he wrote many, many letters to
21 her, and one of them was attached, was attached to our last
22 memo.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: And he was clearly telling her what he
25 felt and that he had -- and that she should come back.

1 This man had given her properties worth hundreds of
2 millions of dollars just because she was his daughter, and
3 she fell out with him because her husband didn't get his
4 way.

5 In each testamentary act over the four year period of
6 time that Mr. Barringer lived after 2012 --

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: -- Mr. Barringer took more and more away
9 from his daughter with most of his actions occurring after
10 she had written a letter about him or his company. Paul
11 Long has testified he had testamentary capacity up until at
12 least the Fall of 2015.

13 In McCollum versus Banks, a 1948 South Carolina Supreme
14 Court case, the Court said one who relies on insanity proven
15 at another time to invalidate a will has the burden of
16 proving that, at the moment of executing the will, the
17 testator did not have mental capacity to do so. And even if
18 a testator has been previously adjudged non compos mentis,
19 that would not be conclusive that he was insane at the time
20 of the execution of the will.

21 So, this chronic incapacity argument, Your Honor, is
22 not true, unless every time he signed a testamentary
23 document, they have evidence that he did not know his
24 assets, his loved ones, or to whom he wanted to receive his
25 assets.

1 In Re Estate of Weeks, a 1997 Court of Appeals case --
2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: -- the Court stated that to void a will
4 for insanity, insanity at the time of execution of the will
5 must be shown. That's a direct quote.

6 They also cited from McCollum versus Banks, an earlier
7 opinion, which said, and I quote, "ordinarily one need not
8 have full mental contractual capacity in order to make a
9 valid will, iteria (phonetic) or difference.

10 In the Weeks case, the testator, she didn't know what
11 year it was. She didn't know who the president was. She
12 didn't know what property she owned. She had a general idea
13 that she owned some real estate, and they found -- she's the
14 one who had had a guardian appointed also before signing her
15 will.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: And her doctor testified that she needed
18 guidance in handling day-to-day business affairs. But the
19 Court held that she was capable of making major decisions
20 concerning her property, and was competent to make a will.

21 We have medical testimony from Doctor Paul Long, and
22 the medical record of Doctor Baughman from March of 2013
23 that Paul Barringer was capable of handling even his
24 day-to-day affairs. He was still driving. So, he had
25 greater capacity than the Court found sufficient in Weeks or

1 Wright versus Lewis or any of those cases.

2 In, in Mrs. Weeks case, they found that, because she
3 emphatically made known her wishes that her daughters
4 receive the bulk of her estate, and that she only left \$1.00
5 to her son in her will, that this showed her specific wish
6 to provide more for her other children.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: And in all of Mr. -- in Mr. Barringer's
9 late wills, he discusses the fact that he has a daughter to
10 whom -- who is not a beneficiary under his Revocable Trust.

11 So, he emphatically made known his wishes, Your Honor,
12 and that included leaving his CFRC stock to Merrill Light
13 emphatically. In fact, he left it in his amendment to his
14 Trust and then he emphatically left it to her by giving it
15 to her, Your Honor.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The Weeks course -- the Weeks Court held
18 that the capacity test "does not include that the, the
19 proviso or that the testatrix or testator must have a
20 reasonable basis on which to found her like or dislike of
21 the natural objects of her bounty."

22 And this goes to Mr. Medlin's argument that, you know,
23 he didn't have to give the stock to Merrill Light after he
24 left it to her in his, in his Trust amendment, but he
25 decided to. whether it was reasonable or not has nothing to

1 do with it. It was his decision.

2 The standard to prove undue influence, Your Honor, is
3 set forth in that Swiger case.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: Plaintiff must show more "than mere
6 existence of influence." She must show that Mrs. Light
7 "unmistakably and convincingly destroyed the will of Mr.
8 Barringer and supplanted her own." Circumstantial evidence
9 of undue influence includes threats, force---

10 THE COURT: Coercion.

11 MS. PAYLOR: ---restricted visitation, coercion, or an
12 existing fiduciary relationship, and I misspoke yesterday.
13 I said that she had, on paper, she was a fiduciary to Mr.
14 Barringer, but she never, ever exercised any of her powers
15 as a trustee. So, she never did anything -- she never
16 accepted the Trust property, which is set forth in the Trust
17 Code.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: She never had any -- anything to do with
20 it (indiscernible) and that's in line with what the Trust
21 Code and the Probate Code say. Mrs. Light owed no duty to
22 anyone other than the settlor, who is -- who has created a
23 Revocable Trust.

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: Only to the settlor during his lifetime.

1 She owed absolutely no duty to Mrs. Light -- Mrs. Luzak and
2 that is clear in the Probate Code, Your Honor. Because
3 Mrs. Light never exercised any powers as the cotrustee,
4 there is only a fiduciary relationship on paper.

5 Mr. Medlin yesterday made some statement that she used
6 the Trust as her checkbook. This -- Judge Mullen, there is
7 no evidence, none, that Mrs. Light ever took any assets from
8 that Trust that were not intended to go to her. He -- if he
9 has any evidence to refute that, I welcome him to put it in.
10 But just to make a bold, untrue statement like that, Your
11 Honor, I could not let that go.

12 THE COURT: I, I swore I wouldn't interrupt, but I
13 thought he said he used -- that they used the company.
14 That's what I understood him to say. Not the Trust, but the
15 company as their checkbook, her and her husband's checkbook.

16 MS. PAYLOR: Oh, no. Well, if she didn't -- okay.
17 Well, he has no proof of that either, Your Honor.

18 THE COURT: Okay.

19 MS. PAYLOR: Absolutely none. This woman was on the
20 Board of Directors. Her husband got put as the chairman of
21 the board after her father retired.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Neither one of them were dying to run this
24 company, contrary to what Mr. Medlin and Mrs. Luzak say, and
25 Mrs. Luzak wasn't dying to run the company either cause she

1 wouldn't even go on the board of directors.

2 It was may -- it was way more than anything that any of
3 these people wanted. And if she used CFRC as her checkbook,
4 Your Honor, that is a derivative claim, and she would have
5 to bring that on behalf of the corporation. It is not her
6 personal claim, and she has not done that.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: The only substantial transfers between
9 Mrs. Light and her father, while she was a paper fiduciary,
10 was when he asked her to pay his quarterly income taxes when
11 he was in the mountains. She paid them by her check in the
12 amount of \$300,000. Her father paid her back when he got
13 back home.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: That's the only transfer. She loaned him
16 money. Not the other way around.

17 He didn't -- she didn't need anybody's money, Your
18 Honor, nor did Mrs. Luzak. They both got hundreds of
19 millions of dollars in assets.

20 In any event, the case law is clear that an existing
21 fiduciary relationship alone is not sufficient to overcome
22 eye witness testimony of a testamentary act.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: There was no fiduciary relation at the
25 time of the February 28th, 2012, execution of the will and

1 first amendment to Mr. Barringer's Revocable Trust because
2 she was not named cotrustee until he signed that amendment.

3 Plaintiff has the burden to show that the influence was
4 brought directly on the testamentary act. The testamentary
5 act is the execution of the will or the Revocable Trust or
6 an amendment there too.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: To quote from the case law, Your Honor,
9 "while the existence of a fiduciary relationship between the
10 testator and beneficiary references a presumption of undue
11 influence, the proponents of the will must offer rebuttable
12 evidence. However, the proponents of the will do not have
13 to affirmatively disprove the existence of undue influence."

14 The trustee of her father's Revocable Trust beginning
15 on February 28, '12, the only duties she owed to anyone was
16 to her father. Section 67-7-603 of the Probate Code says
17 specifically, "while a Trust is revocable, rights of the
18 beneficiaries are subject to the control of the settlor, and
19 the duties of the trustee are owed exclusively to the
20 settlor."

21 So, until he died in May of 2016, and only if Mrs.
22 Luzak were a beneficiary, which she'd be owed a fiduciary
23 duty by or any duty by Mrs. Luzak, and she was not a
24 beneficiary at that time.

25 So, what is the evidence that's been presented to rebut

1 this presumption?

2 We have the testimony of Mrs. Light, of Mrs. Barringer,
3 and of Victor Barringer. They all testified that Mrs. Light
4 did not influence her father with regard to any of his
5 estate plans, and that those plans were based on his
6 decision and his decision alone.

7 That's the rebuttal, Your Honor, and those are from
8 people who were actually talking to and seeing Mr.
9 Barringer. Plaintiff has presented no evidence of threats,
10 coercion, restricted visitation, or isolation on the part of
11 Merrill Light. Plaintiff has presented -- has to present an
12 admissible fact through testimony or other admissible
13 evidence, and she has failed to do that. With regard to any
14 of these transactions, Your Honor, she has failed to do
15 that.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: Because of that failure, the cases require
18 that you grant summary judgment for Merrill Light.

19 As the South Carolina Courts have consistently held,
20 the contestants of the will still retain the ultimate burden
21 of proof---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---to invalidate the will. It never goes
24 to the proponent of the will.

25 In fact, Plaintiff must put forth unmistakable and

1 convincing evidence of undue influence that must be shown to
2 have existed at the time of the testamentary act to
3 withstand a Motion for Summary Judgments, and that language
4 is straight out of the Swiger versus Smith case, Your Honor.

5 Now, Swiger held "sufficient evidence exists to rebut
6 any presumption of undue influence created by the existence
7 of the fiduciary relationship." The proponent of the will,
8 who would of been the one who had the fiduciary relationship
9 in the Swiger case, was not present when the will was
10 dictated and drafted, and other people met with the testator
11 before he executed the will. So, there was no evidence of
12 restricted visitation and there was no evidence that the
13 powers of attorneys in that case were utilized.

14 The Court determined that these facts were not rebutted
15 by the contestant. In our case, that would be Plaintiff,
16 Hampton Luzak, and the proponent was entitled to summary
17 judgment.

18 As we discussed yesterday---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---Your Honor, Paul Barringer had many
21 unhampered opportunities to go to his counsel, to talk to
22 his wife, to talk to his son, to talk to his friends --

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: -- and he had many opportunities to make
25 changes in his will and his amendment -- and his Trust and

1 he did that.

2 There is no evidence anywhere in this case, in any of
3 the depositions, in any of the affidavits, that Merrill
4 Light made any threats or exerted any influence on Paul
5 Barringer. The exact opposite is supported by the evidence.

6 Merrill Light did only what her father wanted her to
7 do. Not the other way around. Unhampered opportunity to
8 make changes defeats even proved claims of undue influence.

9 We don't have a proved claim here, Your Honor.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: But we have the, the additional
12 suspenders, in addition to our belt, to show that there's no
13 claim of undue influence that should, that should go forward
14 in this case.

15 The Plaintiff has no personal knowledge of anything
16 that happened after May of 2012, the last time she was with
17 her father.

18 Contrary to restricting visitation, Mrs. Light, in May
19 of 2012, asked Plaintiff to help her father go see a
20 neurologist, and a urologist at the Medical University.
21 Mrs. Light did not come with them. She did not even have
22 any interactions with them while they were at her house.

23 That is not what an undue influencer would do, Your
24 Honor, and Plaintiff testified that Mrs. Light's actions
25 began well before the end of May of 2012.

1 I've already talked about the undisputed medical
2 testimony, Doctor Long's testimony, Doctor David Baughman's
3 medical record, the Greenbrier doctor, Doctor Dotson---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---who only met with Mr. Barringer, and he
6 got his whole life history from him including what he did
7 for fun, hunting, and he was an active tennis play, and all
8 kinds of things like that. Plaintiff's expert has given no
9 opinion as to Mr. Barringer's capacity.

10 Your Honor, there is no genuine issue of material fact
11 as to Mr. Barringer's capacity to execute any of the
12 documents that he executed. There are medical records that
13 say that he was demented. There are medical records that
14 show that he didn't do very well on the mini-mental exam.
15 But the medical records have nothing to do with testamentary
16 capacity.

17 Nobody asked him those three elements ever when he was
18 at a doctor's office, and that's what even Mrs. Sanders
19 testified -- Doctor Sanders testified.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: She did not know what the legal
22 requirements for testamentary capacity are.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: So, she couldn't testify to that if she
25 wanted to cause no one had even told her what they were.

1 Plaintiffs have also ignored the testimony of a totally
2 disinterested witness, Your Honor, Anne Surrett. She's an
3 employee and still is an employee of Wells Fargo.

4 It -- in 2011, she first met Mr. and Mrs. Barringer,
5 and they were moving their substantial investment assets
6 from BB&T to---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---Wells Fargo---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---because Mr. Barringer no longer liked
11 the CEO at BB&T. So, he wanted to move the assets to Wells
12 Fargo.

13 So, she testified that she met with him, and this is in
14 late 2011, and he knew everything about his assets. He was
15 asking questions about their investment strategies, what
16 they were gonna do to help him, how are they gonna keep him
17 aware of what was going on. She said that he -- talk about
18 being in charge. He was in charge.

19 Now, she met with him a number of other times, and this
20 is where Mr. Medlin gets his nickname for Paul Barringer
21 because she testified that the people at the bank, he was so
22 in charge and so knowledgeable about what he was doing, that
23 they nicknamed him John Wayne.

24 So, this comes from bank employees who had meetings
25 with him and discussions about his assets. He knew what

1 they were, Your Honor.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: He knew what they were up until the last
4 time she saw him, which was in 2014.

5 Mrs. Light sometimes sat in our meeting. Ms. Surrentt
6 said she never said anything other than hello, how are you,
7 small talk.

8 Mr. Barringer ran the meetings, told them what
9 investments he wanted to make. He questioned them about
10 what he was doing.

11 This is not a person who does not know what his assets
12 were and does not understand that he can give them to
13 whoever he wants to.

14 I just ask you to read her testimony, Your Honor,
15 because---

16 THE COURT: Okay.

17 MS. PAYLOR: ---it is so strong that it is -- it's
18 awesome. I mean she just said that he was in control of
19 every meeting that he attended asking detailed questions
20 about his investments.

21 The nickname of John Wayne, Your Honor, is a
22 compliment, and it is evidence of his competence.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: Rule 56(e), Your Honor---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: ---talks about a contestant to a summary
2 judgment motion has to produce. Affidavits shall be made on
3 personal knowledge. Shall set forth such facts as would be
4 admissible in evidence.

5 Mr. and Mrs. Luzak have no personal knowledge, Your
6 Honor, of anything after 2012. Nothing. They can not
7 present any testimony about whether or not he was competent
8 or whether or not he was subject to undue influence. They
9 were not there.

10 They can not rely upon their mere allegations. They
11 have to provide admissible, specific facts that show that
12 there is a genuine issue for trial.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: As the rules says, if Mrs. Luzak does not
15 respond with specific facts showing that there is a genuine
16 issue for trial, summary judgment shall be entered against
17 her.

18 The Plaintiff has not presented any specific summary
19 judgment admissible facts showing that there is a genuine
20 issue for trial regarding any of her causes of action. In
21 fact, in her memo and in Mr. Medlin's argument yesterday,
22 they set forth no specific summary judgment fact. Instead
23 he gave you this big picture of okay, he was having
24 cognitive issues.

25 That is undisputed, Your Honor. He was having

1 cognitive issues. That does not make him testamentor (sic)
2 in -- incapable of doing a testamentary act. He had the
3 necessary capacity.

4 I'm gonna go through the 19 causes of action, Your
5 Honor---

6 THE COURT: Okay.

7 MS. PAYLOR: ---and, you know, I invited Mr. Medlin
8 yesterday to, to give us some specific facts. After I
9 finish all the causes of action, I will invite him again to
10 do that.

11 Again, his first cause of action stated that the
12 February 5, 2015, will was invalid due to Paul Barringer's
13 incapacity. This was the last will that he ever signed,
14 Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: This was the will that was submitted to
17 probate, and this is the will that they are basically
18 contesting, but they want to go back for four years also.

19 In Plaintiff's affidavit, her only mention of the day
20 February 5, 2015, is in Paragraph 42. She presents no
21 admissible summary judgment facts regarding the execution of
22 the will.

23 She can't. She was not there. She did not talk to her
24 father since May of 2012. She has no basis on which to say
25 he was testamentary incapable of executing a will.

1 No affidavits have been submitted challenging the facts
2 that we put forth taken from sworn testimony. In
3 particular, we put forth the testimony of Merrill Barringer.
4 She testified that Merrill -- that Mr. Barringer, in her
5 presence, told John Jolley the changes that he wanted in his
6 will prior to Mr. Jolley's drafting it. Mrs. Light was not
7 present then.

8 She further testified that he was competent to sign the
9 will on February 5, 2015, that he knew what he was doing,
10 that he knew the assets he owned, that he knew who his
11 children were, and that he knew to whom he wanted to leave
12 his assets.

13 There were letters shortly after that where Mrs.
14 Barringer sent a letter to her daughter and said that what
15 she had done, and the things that she had, you know, done to
16 the company, and her husband, and her father, were not
17 easily forgiven nor forgotten. It was right after this will
18 was executed where she was not left as a beneficiary.

19 Mr. Barringer wrote to her before this -- after, I'm
20 sorry, after the act telling her---

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: ---how disappointed he was with her.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: She never responded. She never came back.

25 Now, at that point he could of still changed his

1 amended change -- he could of gone in and amended his Trust
2 again. He had the unhampered opportunity to do it if he
3 wanted to.

4 Plaintiff has not met her burden to show that he did
5 not possess testamentary capacity on February 5, 2015.

6 In Hairston versus McMillan, the Court stated "when a
7 witness to the execution testified that the decedent
8 understood the extent of his estate, the potential
9 beneficiaries of his estate, and what he was doing in
10 changing his will, the contestant must present evidence
11 relevant -- relative to the execution of the will."

12 In Hairston versus McMillan, Your Honor, the Plaintiff
13 presented testimony from a toxicologist and a doctor who had
14 reviewed medical records, medical records and say that
15 testator did not have mental capacity much more than
16 Plaintiff's expert has said. The Court upheld the validity
17 of the will because those two people, first of all, had
18 never examined him, and, second of all, they weren't there
19 on February 5, 2015, when he executed -- or whatever date
20 this woman ex -- this person executed a will.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Mr. Barringer made the decision as to what
23 he wanted in his will and amendment and he executed it.

24 Plaintiff has failed to present any, not any admissible
25 summary judgment evidence, to counter the testimony of the

1 eye witness to the execution, Mrs. Barringer.

2 For that reason alone, Your Honor, Merrill Light is
3 entitled to summary judgment as to the first cause of
4 action.

5 Moving on to the second cause of action, the Plaintiff
6 has alleged here that the undue influence of Merrill Light
7 on Paul Barringer invalidated the February 5, 2015, will.

8 Again, Plaintiff has presented no admissible summary
9 judgment evidence that Merrill Light ever exerted any
10 influence, much less that she took over the will of her
11 father, in order to get him to sign this February 5, 2015,
12 will. Plaintiff has that burden and she can not present any
13 evidence that Merrill Light took over Paul Barringer's free
14 will and coerced him to change his will. That's what she
15 has to prove. She can't just say well, these doctors said
16 he had cognitive impairments.

17 In, in Paragraph 60 of Hampton Luzak's affidavit---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---she makes many allegations and claims,
20 but she has no personal knowledge of any of them. None of
21 it. She makes them up out of whole cloth.

22 She testified at her deposition that her father was not
23 scared of or intimidated by Merrill Light. Well, if he's
24 not scared of or intimidated by her, he's certainly not
25 gonna let her dictate to him what he should do.

1 Again, Merrill Light requested her sister to take her
2 father in May of 2012 to the doctor. That was not---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---what an undue influencer would do, Your
5 Honor.

6 The only threat in evidence in this case is the threat
7 by Kevin Luzak to Paul Barringer that he would never see his
8 grandson again, and he followed through on that. Even
9 Hampton Luzak admitted in her deposition that her father
10 should of been upset by that statement.

11 Again, in Hairston versus McMillan, it said -- the
12 Court said a contestant must show that the influence was
13 brought directly to bear upon the testamentary act upon the
14 execution of the will, of the Revocable Trust. General
15 influence is not enough.

16 Again, Merrill Barringer has testified that Merrill
17 Light did not except any influence on her husband, and he
18 made all of his own decisions. The Hairston Court held,
19 Your Honor---

20 THE COURT: Uh-huh. (Affirmative) quote.

21 MS. PAYLOR: ---"we emphasize that although the
22 proponents of the will, in this case who had a fiduciary
23 relationship with the testator---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: ---must present evidence in rebuttable,

1 they do not have to affirmatively disprove the existence of
2 undue influence. Instead, the contestants of the will still
3 retain the ultimate burden of proof to invalidate the will."

4 Again, Plaintiff has presented no admissible evidence
5 of undue influence by Merrill Light, and none of the
6 circumstantial evidence discussed by the South Carolina
7 Appellate Courts.

8 There's no evidence of a threat. There's no evidence
9 of restriction on his activities. There's no evidence of
10 isolation.

11 They claim that Mrs. Barringer told her to call.
12 That's not my client. Merrill Light did not do anything.
13 As a matter of fact, Mrs. Luzak told Merrill Light never to
14 contact her again in October of 2012. There's no evidence
15 whatsoever that Merrill Light had anything to do with the
16 February 5, '15 will. She and Merrill Barringer had both
17 denied they exerted influence on Mr. Barringer.

18 Similar to the unhampered opportunity argument I made
19 earlier---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: ---Mr. Barringer could of made any changes
22 that he wanted after he signed that will. He had plenty of
23 opportunity and they were unhampered.

24 Merrill Light didn't live with him. She didn't tell
25 him what he could and could not do. She didn't have a baby

1 monitor on him watching what he did. She didn't have him
2 using hand signals when she was around because he was scared
3 of her. That's not what we have here, Your Honor.

4 We do---

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: ---not have undue influence.

7 In fact, Hampton Luzak testified that, in the Summer of
8 2012, she had called Merrill Light to get her to vote with
9 her husband, and Merrill Light told her she could not go
10 against her father's wishes. That's not undue influence,
11 Your Honor. That's not any influence.

12 The only influence was from her father on her, and the
13 reason she didn't want to go against him was he had given
14 her great wealth, and had supported her throughout her life,
15 and she was doing the same for him.

16 No matter whether the burden is a scintilla or more
17 than a scintilla, Plaintiff has failed to present any
18 evidence concerning any influence brought directly to bare
19 upon Mr. Barringer's testamentary act of signing the will on
20 February 5, 2015. Without that, Your Honor, Merrill Light
21 is entitled to summary judgment on the second cause of
22 action.

23 The third cause of action claims that the February 5,
24 '15 will is invalid because of mistake.

25 In her memorandum Plaintiff did not even discuss the

1 mistake cause of action.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: She has presented no evidence to support
4 her act -- bald allegations that Mr. Barringer made a
5 mistake when he executed his will.

6 Hanahan versus Simpson discusses what a mistake is in
7 the execution of a will, Your Honor. It provides that the
8 validity of a will is not affected by mistake or either law
9 or fact unless the mistake goes to the identity of an
10 instrument or to a fundamental error where, for example, two
11 wills are drafted for different persons and one party signs
12 the will intended for another. A mistake as to the legal
13 effect of the language in a will is no basis for refusal of
14 probate even if it is caused by incorrect legal advice, Your
15 Honor.

16 Mr. Barringer signed the will that he directed
17 Mr. Jolley to prepare. There is no mistake. Defendant,
18 Merrill Light, is entitled to summary judgment on the third
19 cause of action.

20 The fourth cause of action alleges that the
21 September 11, 2012, transfer of stock to Merrill Light is
22 invalid because of incapacity. The only statement in
23 Plaintiff's memo concerning this transaction is found at
24 Pages 32 through 33 where Plaintiff's counsel stated "with
25 respect to the purported stock transfer by Mr. Barringer on

1 September 11, 2012, Jolley drafted the stock power form
2 naming himself as attorney in fact to transfer shares on the
3 books of CFRC. Yet, as corporate counsel, he did not notify
4 plaintiff of the transfer."

5 That statement has nothing to do with Mr. Barringer's
6 capacity on September 11th, 2012, or any time around that
7 date. That's the only statement in their memo. Has nothing
8 to do with incapacity. It has nothing to do with undue
9 influence. It has, has nothing to do with mistake. I'm not
10 sure it has anything to do with anything in this case, Your
11 Honor.

12 What Mr. Barringer directed Jolley to do was to, to
13 change the ownership on the books of the corporation.
14 Plaintiff was not present or around her father on
15 September 11, 2012. She has presented no admissible
16 summary judgment evidence that creates a question of fact
17 about his capacity on September 11, 2012.

18 Rather than provide admissible, admissible summary
19 judgment facts, Plaintiff argues that what Paul Barringer
20 did by giving away the stock does not make sense to her.
21 That is not an admissible fact, Your Honor. That is the
22 opinion of Plaintiff and her counsel, and has nothing to do
23 with the case. The only thing that matters is whether or
24 not Mr. Barringer intended to make a gift to his wife and he
25 understood that.

1 In this case the, the gift is valid if Paul Barringer
2 possessed the mental capacity to form an intent to give the
3 object of a gift to the donee. Our Appellate Courts have
4 stated "a donor has sufficient mental capacity to make a
5 gift when the donor understands and comprehends, in a
6 reasonable manner, the nature and effect of the gift."

7 In her deposition, Hampton Luzak's testimony was that
8 he was incapacitated once he received a diagnosis of
9 Alzheimer's, and, after that, he could never execute a legal
10 document again.

11 Your Honor, that is not the law. That is not what
12 capacity means.

13 In fact, Plaintiff's expert, Doctor Sanders, did not
14 agree with Hampton Luzak. She made no findings concerning
15 Paul Barringer's capacity and instead testified that
16 Alzheimer's disease affects each person in a unique manner.

17 Numerous witnesses testified that Paul Barringer knew
18 what he was doing and discussed giving the stock to Merrill
19 Light. Merrill Barringer and Victor Barringer gave
20 deposition, deposition testimony to that effect. It is what
21 Paul Barringer wanted to do and he did it.

22 Now, Victor Barringer is the brother, Your Honor, and,
23 under the original will, he would of been entitled to
24 one-third of the voting stock. However, he said his father
25 talked with him many, many times about the fact that he

1 wanted to give the voting stock to Merrill Light so that she
2 would have control, so that Kevin Luzak could never, ever
3 get control of this stock.

4 His testimony was very strong, Your Honor. He stated
5 that his father decided to transfer the voting stock to
6 Merrill Light to keep the company from Kevin getting his
7 hands on it. When questioned by Plaintiff's counsel why he
8 didn't want Kevin to be involved with CFRC, Victor Barringer
9 testified "Paul Barringer felt like Kevin Luzak was not
10 interested in the forest products business, which is what
11 was in Paul Barringer's DNA, his whole makeup. He felt that
12 Kevin Luzak wanted to do things that were self-serving. He
13 thought that, that Kevin Luzak were going to do things that
14 were not in Paul Barringer's way of thinking."

15 Victor Barringer testified I didn't care. I listened
16 to my father. I talked to him two or three times a week. I
17 was there. He vented to me, and that was it. It was not my
18 fight.

19 Victor Barringer further testified that he knew of no
20 one who would agree that Paul Barringer lacked mental
21 capacity in 2012 through 2014. This is Paul Barringer's son
22 who talked to him two or three times a week, Your Honor.

23 Your Honor, we also have the medical testimony again of
24 Paul Long that he had capacity in September of 2012. Mr.
25 Medlin testified, not testified, I'm sorry, argued yesterday

1 that Mr. Jolly had a certificate -- Certification of
2 Competency that he wanted to get signed.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: It wasn't signed. He didn't get it. That
5 is not a requirement to show that Paul Barringer was
6 competent.

7 Mr. Medlin also argued that Paul Barringer failed to
8 include the gift in his tax organizer that he completed six
9 months later in March of 2013. That was an error. He
10 didn't remember it. We actually have notes that Mr.
11 Barringer made in his own, own handwriting of the value of
12 the stock and the fact that he would owe no taxes on it
13 because it would be way less than the exemption at that
14 time.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: So, I think there's an inference there
17 that he didn't think he had to file a tax return because it
18 was -- he didn't have -- owe any taxes. In fact, when he
19 subsequently did file a tax return, he owed no taxes. So,
20 there was no question.

21 The Courts have stated, and I quote, "the mere fact
22 that a person's mind has been weakened by old age, accident,
23 or disease is not sufficient to show that he lacks mental
24 capacity. In order to cancel a legal transaction on the
25 basis of incompetency, the proponent must prove that the

1 grant -- the proponents of an -- the incompetency must prove
2 that the grantor was so incompetent as to fail to comprehend
3 the nature of his act."

4 And this is -- we cited the case of Ballenger versus
5 Inman, and this was an interesting case because this was the
6 execution of an annexation petition.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: And the woman owned the property, and she
9 apparently didn't read and write, but her daughter was with
10 her when she signed it.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: And the only testimony her daughter gave
13 was that she explained to her mother what it was. She did
14 not know whether her mother understood that when she signed
15 it.

16 The Court said that the testimony, the evident (sic)
17 was inconclusive regarding her mother's capacity to
18 understand the petition for annexation. So, they found that
19 the Plaintiff failed to prove lack of capacity because she
20 did not have any definite evidence.

21 That's what we've got, Your Honor. All of these cases
22 say that Merrill Light is entitled to summary judgment.
23 Every one of them. There are plenty of cases where they
24 find undue influence, but, in those cases, Your Honor,
25 there's evidence of undue influence. People having baby

1 monitors in the testator's room.

2 In our case, there is not a scintilla of admissible
3 summary judgment evidence that Paul Barringer was not
4 capable of giving a gift on September 11, 2020.

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: The Defendant, Merrill Light, is entitled
7 to summary judgment on the fourth cause of action.

8 In the fifth cause of action, Your Honor, Plaintiff
9 alleges that the September 11, 2012, stock transfer is
10 invalid because of undue influence. Rather than go through
11 everything that I just went through, Your Honor, all of that
12 tells you that he was not subject to undue influence.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: He discussed it with his son, with his
15 wife. He discussed it with his business colleagues.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The one person he didn't discuss it with
18 was his daughter, Merrill Light. She said that he didn't
19 discuss it with her.

20 There's no evidence of undue influence.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: In fact, Mrs. Light testified, and this is
23 uncontradicted, she testified that she never asked him for
24 the stock, that she didn't want the stock, that she did not
25 want to control the corporation. She only did it because he

1 wanted her to do it.

2 Merrill Light, Your Honor, is entitled to summary
3 judgment as to the fifth cause of action.

4 The sixth cause of action says that September 11, '12,
5 transfer was void because of mistake. As we set Court
6 earlier -- set forth earlier, there's no mistake. He knew
7 what he was doing, and they have absolutely no evidence.

8 The seventh cause of action, Your Honor, is lack of
9 capacity to execute amendments---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: ---and restatements of Revocable Trust on
12 February 28th, 2012, July 20, 2012, and February 5, 2015.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: The Court has to look at each individual
15 testamentary act, and the Plaintiff has the burden of
16 presenting specific summary judgment admissible facts with
17 regard to each testamentary act.

18 The February 28th, 2012, execution, Your Honor, the
19 only substantive change with regard to beneficiaries or the
20 Trust from the 1998 version was that Mr. Barringer made
21 Merrill Light as his cotrustee.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: why would -- Plaintiff testified that both
24 he and John Jolley advised him that he should have a
25 cotrustee because she's still his child and he lived there

1 and they did. Again, the same facts are given regarding the
2 execution of the February 28, 2012, testamentary, and
3 there's been no contrary evidence presented.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: The July 20, 2012, Trust amendment, Your
6 Honor, in that document Mr. Barringer provided that Merrill
7 Light would receive all of his voting shares in CFRC on his
8 death. He also removed Hampton Luzak as a successor
9 cotrustee. He had her in the February 28th trustee as a
10 successor trustee.

11 Paul Barringer was in Alabama. Merrill Light wasn't
12 there when he executed this document, Your Honor.

13 Again, you have to look at was there influence on the
14 testamentary act. There was actually none and Mrs. Luzak
15 can't give you that with regard to the lack of capacity.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The burden is on the Plaintiff. She has
18 failed to meet it.

19 Now, Paul Barringer executed a Trust amendment on
20 June 12th, 2014, but Hampton Luzak did not challenge this,
21 Your Honor. So, it must be valid. I won't even go into it.
22 But even if they had brought it up, it would be valid for
23 the same reasons that we've already discussed.

24 In the February 5, 2015, Trust amendment, Your Honor,
25 is the same as we set forth in -- for the first cause of

1 action.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: And the same arguments go to the eighth
4 cause of action, which we claim -- they claim that the
5 2/28/12, July, 2012, and February 5, '15, amendments were
6 invalid for undue influence. There is no evidence that any
7 influence was brought to bear on any of those testamentary
8 acts.

9 The same with the cause of action with regard to
10 mistake. Again, there is no evidence.

11 The fifth cause of action, Your Honor, claims that Paul
12 Barringer executed documents attempting to deliver his
13 voting stock to his Revocable Trust in May of 2012 when he
14 was incompetent.

15 Your Honor, this is no -- this needs to be thrown out
16 for the simple reason that Paul Barringer executed no
17 documents in May of 2012 or any other time regarding this
18 transaction except on September 11th, 2012. So, we would
19 ask for summary judgment on the tenth cause of action.

20 The eleventh cause of action asserts fraud.

21 Your Honor, there are nine elements of fraud. Mrs.
22 Luzak has not presented facts to support any of these.

23 First of all, no representation was made to Hampton
24 Luzak.

25 THE COURT: Can you---

1 MS. PAYLOR: She directly---

2 THE COURT: Give me one sec.

3 (Pause.)

4 THE COURT: I'm sorry. Keep going. I'm sorry, Alice.

5 MS. PAYLOR: That's okay. No, no, no. You interrupt
6 any time you want.

7 She sets forth no specific acts in her memo -- no
8 specific facts because she can't. She talks about fraud and
9 the inducement.

10 This is a claim for fraud. Nine elements. She has not
11 met any of them, and she states in her memo that Mr.
12 Barringer was the victim of fraud. Mr. Barringer is not the
13 Plaintiff in this case. She does not have standing and
14 actually, actually a cause of action for fraud expires on
15 the death of Mr. Barringer.

16 She doesn't even claim that Merrill Light made a
17 representation to her.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: In fact, Merrill Light told her, back in
20 February of 2012 as set forth in her Complaint, that she was
21 getting involved in her father's estate planning. That's
22 the only thing she ever told her.

23 Did Hampton Luzak ever ask her what that meant?

24 No, she didn't.

25 Mrs. Light had no requirement to tell the sister,

1 especially when her sister had totally isolated herself from
2 the family, of anything.

3 She has made no showing of any adverse reliance on any
4 statement. She has not shown that she suffered any damages
5 because of fraud. She hasn't met any of the nine elements,
6 Your Honor.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: She has to present specific facts as to
9 each one.

10 Similarly, the cause of action for conversion, the
11 claim is that Merrill Light took property from her father
12 and that she is somehow liable to Plaintiff.

13 How is that true, Your Honor?

14 She has no standing to bring a claim on behalf of her
15 father. If her father had a claim, his estate would be the
16 appropriate---

17 THE COURT: Okay.

18 MS. PAYLOR: ---person to bring it.

19 THE COURT: Okay.

20 MS. PAYLOR: The con -- and I'm going quick cause I --
21 my hour is over. We just -- the constructive trust cause of
22 action---

23 THE COURT: Okay.

24 MS. PAYLOR: ---again, there's no claim that Merrill
25 Light took any assets of Hampton Luzak. She couldn't have.

1 Merrill Luzak still has the same -- I'm sorry.

2 Hampton Luzak still has the same tax break that she had
3 before all of this started. Again, Mrs. Light is entitled
4 to summary judgment as to this cause of action.

5 Now, the Fourteenth Amendment is the same cause of --
6 the fourteenth cause of action is exactly the same as the
7 thirteenth. So, I think everyone would agree that you can
8 grant that summary judgment.

9 On the fifteenth cause of action, the resulting trust,
10 they're the same arguments as with the constructive trust,
11 Your Honor. No standing for Hampton Luzak to bring. It
12 belongs to the estate. She has presented no specific
13 summary judgment admissible facts.

14 Sixteenth cause of action, Your Honor, I quoted from
15 the, the Probate Code. Any duty owed by Merrill Luzak was
16 solely to Paul Barringer. Section 62-7-603. While a Trust
17 is revocable, rights of the beneficiaries are subject to the
18 control of the settlor. They're all -- the duties of the
19 trustee are owed exclusively to the (indiscernible).

20 Mrs. Luzak's reliance on 62-7-802 is misplaced because
21 that only applies after the death of the settlor in a
22 Revocable Trust---

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: ---because 62-7-603 governs the other.

25 Hampton Luzak was not a beneficiary under his Revocable

1 Trust. So, she has no duties owed to him.

2 Seventeenth cause of action, intentional interference
3 with a inheritance, Your Honor, the Supreme Court has not
4 adopted this as a cause of action.

5 THE COURT: Yeah.

6 MS. PAYLOR: So, for that reason alone you should grant
7 summary judgment.

8 The (indiscernible) Court said that the Supreme Court
9 would adopt. As we know, the Supreme Court probably is not
10 gonna go along with what Judge Norton said because -- when
11 he didn't send it to them.

12 In any event, Mrs. Luzak has failed to present specific
13 summary judgment admissible facts. She had no expectancy.
14 Once she, once she left her father and her family, she had
15 no expectation of inheritance and she received numerous
16 letters telling her that.

17 THE COURT: Can I -- Alice, can I ask you to back up
18 for just one second?

19 MS. PAYLOR: Okay.

20 THE COURT: On the sixteenth cause of action alleging
21 breach of fiduciary duty, self-dealing, and conflict of
22 interest by the Lights, some -- somehow I missed that and I
23 apologize.

24 MS. PAYLOR: No, I understand.

25 THE COURT: I think I'm pretty much on it, but somehow

1 I missed that one.

2 MS. PAYLOR: Okay. No fiduciary duty was owed by
3 Merrill Light to Hampton Luzak ever.

4 THE COURT: Okay.

5 MS. PAYLOR: The, the Probate Code, Section 62-7-603,
6 specifically states "while a Trust is revocable---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---like Mr. Barringer had, the rights of
9 the beneficiaries are subject to the control of---

10 THE COURT: The settlor.

11 MS. PAYLOR: ---the settlor.

12 THE COURT: Right.

13 And so you're saying that duty would only be to Mr.
14 Barringer?

15 Not to---

16 MS. PAYLOR: Correct.

17 THE COURT: Not to, not to Mrs. Luzak.

18 MS. PAYLOR: And the duties of the trustee are owed
19 exclusively to the settlor.

20 THE COURT: I got you.

21 MS. PAYLOR: Mr. Medlin cited Section 62-7-802 --

22 THE COURT: Okay.

23 MS. PAYLOR: -- which would only apply in a case where
24 the settlor is dead---

25 THE COURT: Okay.

1 MS. PAYLOR: ---when there's a Revocable Trust.

2 THE COURT: Okay.

3 MS. PAYLOR: Because the specific statute overrules
4 that statute.

5 THE COURT: Okay. I'm sorry. You can jump onto 18
6 now. I got it.

7 MS. PAYLOR: Okay. The Eighteenth cause of action
8 seeks attorney's fees. I mean that's done---

9 THE COURT: Okay.

10 MS. PAYLOR: ---after the case. Kevin and Hampton can
11 make a motion. But that's not a cause of action that would
12 ever go to a jury, Your Honor.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: The nineteenth cause of action is the
15 conspiracy.

16 The claim that they put forth in their Complaint is
17 that Merrill Light was slain and various CFRC
18 representatives conspired among themselves for the purpose
19 of injuring Hampton Luzak, and what they argue is that
20 Merrill Light had made plans to sell CFRC.

21 Your Honor, eight years have passed. CFRC has not been
22 sold.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: They sold assets in the ordinary course of
25 business, which they did even when Kevin Luzak was president

1 and CEO. She claims that her family and she have lost the
2 ability to be involved in the family business.

3 CFRC offered her a seat on the board of directors---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---and she declined it. There's no
6 evidence that she did not have the ability to be involved in
7 the family business. She can't bring a cause of action on
8 behalf of---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---her husband or her son. In fact,
11 neither one of them have applied for a job there. So,
12 there's absolutely no evidence that they may not have been
13 hired.

14 Plaintiff testified about a scheme to take over control
15 of CFRC. She had no facts to support that in her
16 deposition.

17 THE COURT: Does she allege that Mrs. Barringer was
18 also part of that conspiracy?

19 MS. PAYLOR: No, ma'am, not in her Amended Complaint.

20 THE COURT: Okay.

21 MS. PAYLOR: She did not.

22 THE COURT: Okay.

23 MS. PAYLOR: The only facts that she has in her memo
24 are these things by Mike, Mike Hagler.

25 THE COURT: Yeah.

1 MS. PAYLOR: But those, first of all, are inadmissible.
2 He's dead. They -- you know, they're, they're trying to
3 admit them for the proof -- the truth of what he asserted.
4 That is hearsay. It is not admissible.

5 There is no question of fact concerning whether Paul
6 Barringer was the initiator of every decision made by him
7 regarding Hampton Luzak and Kevin Luzak.

8 THE COURT: Uh-huh. (Affirmative).

9 Alice, can I ask you just one quick question just---

10 MS. PAYLOR: Sure.

11 THE COURT: ---and this may be completely not where I
12 should be going?

13 where do I have the deposition of Merrill Light?

14 MS. PAYLOR: Well, Your Honor, we---

15 THE COURT: So---

16 MS. PAYLOR: ---included excerpts of it in our original
17 memo.

18 THE COURT: Do I have the whole thing somewhere?

19 MS. PAYLOR: We filed it all, Your Honor.

20 You want me to send you---

21 THE COURT: No, no, no. If it was filed, and if it's
22 in the Clerk's file, then I -- if it's in the electronic
23 file I have it. But I just need you to address for me very,
24 very quickly.

25 My understanding, just correct me if I'm wrong, was Mr.

1 Luzak was the CEO and Mrs. Merrill Light was on the board.

2 My question is, is what kind of day-to-day interactions
3 did she have with the business?

4 MS. PAYLOR: She did not have any day-to-day.

5 THE COURT: But that's what I'm asking---

6 MS. PAYLOR: It was---

7 THE COURT: ---is because it---

8 MS. PAYLOR: It was---

9 THE COURT: It seems to me that most of the control
10 that I'm seeing, and, and, again, I don't know this, but it
11 apparently -- apparently at one point Victor Barringer was
12 either the president or the CEO. At one point then, of
13 course, Mr. Luzak was, and then Mr. Light became.

14 But, but my question is, on a day-to-day basis, when
15 did whoever take over as either CEO of the company, CFRC,
16 and then, at that point, what was Mr. Barringer's roles?

17 was he just on the board or chairman of the board or
18 what, what was his title?

19 MS. PAYLOR: He was chairman of the board.

20 THE COURT: Okay.

21 MS. PAYLOR: Travis Bryant became the chief executive
22 officer.

23 THE COURT: Right.

24 MS. PAYLOR: He had been the chief financial officer.

25 THE COURT: Right.

1 MS. PAYLOR: And then Tom Evans was his right-hand. He
2 was the chief operating officer. Then---

3 THE COURT: And when was that -- when did, when did
4 Travis Bryant---

5 MS. PAYLOR: In the Fall---

6 THE COURT: Because I remember there was an issue about
7 Travis Bryant getting some stock, and some people said oh,
8 he would never do that.

9 And so I'm just wondering what was the time period when
10 Travis Bryant took over?

11 MS. PAYLOR: He took over in August of 2016.

12 THE COURT: Okay.

13 MS. PAYLOR: Mr. Barringer made the decision.

14 THE COURT: Okay.

15 MS. PAYLOR: He did not want to give him an employment
16 contract.

17 THE COURT: Okay.

18 MS. PAYLOR: And this is all -- this, this is all set
19 forth in everything.

20 THE COURT: Okay.

21 MS. PAYLOR: And Mr. Barringer said he wanted him to
22 have some stock so he would have some skin in the game --

23 THE COURT: Got it.

24 MS. PAYLOR: -- and it worked.

25 THE COURT: My other question though is too at what

1 point did Mr. Barringer stop -- and when I say, I don't know
2 if -- I don't know kind of how they're set up. But whether
3 or not he was going into an office every day or if he was
4 running the company remotely.

5 But, but my question is, is when, when did he not -- I
6 mean he sounds like he was very much in it until a certain
7 point and then he stepped off.

8 when was that?

9 MS. PAYLOR: The end of twenty -- 2014 he went off the
10 board.

11 THE COURT: Okay.

12 MS. PAYLOR: He was chairman of the board, Your
13 Honor---

14 THE COURT: Okay.

15 MS. PAYLOR: ---which meant---

16 THE COURT: Yeah.

17 MS. PAYLOR: ---that he visited the facilities---

18 THE COURT: Right.

19 MS. PAYLOR: ---you know---

20 THE COURT: Okay.

21 MS. PAYLOR: ---when he wanted to---

22 THE COURT: Okay.

23 MS. PAYLOR: ---that he talked on the telephone---

24 THE COURT: Okay.

25 MS. PAYLOR: ---to Mr. Bryant and Mr. Evans.

1 THE COURT: Right.

2 MS. PAYLOR: And he made, he made general decisions,
3 big decisions.

4 THE COURT: I guess I'm just trying to figure out at
5 what point he was not literally running any day-to-day
6 operations of the business or I don't know that he ever was,
7 but at least he would of been more involved. I mean
8 everything I've read is that he built this company---

9 MS. PAYLOR: He did.

10 THE COURT: ---and if he built this company, at some
11 point he was running the day-to-day operations or at least
12 overseeing it. So, I'm just saying---

13 MS. PAYLOR: He was president and CEO until he made
14 Kevin Luzak in like 2009/2010.

15 THE COURT: Okay. That's what I need to know.

16 MS. PAYLOR: But he was chairman of the board and he
17 made---

18 THE COURT: Okay.

19 MS. PAYLOR: ---every big decision.

20 THE COURT: I understand. I understand -- I understand
21 that portion of it and -- okay. Okay. I think that --
22 that's my answer.

23 Is there anything else, Alice, you need to address?

24 I need to take like just a literally three minute break
25 because we are so tight on time.

1 But is there anything else?

2 MS. PAYLOR: No, that's fine.

3 THE COURT: You, you---

4 MS. PAYLOR: I am finished with all of my causes of
5 action.

6 THE COURT: Okay.

7 MS. PAYLOR: I'm now inviting Mr. Medlin---

8 THE COURT: Right.

9 MS. PAYLOR: ---to give his speil and then I get a
10 few -- I'd like to have a good 20 or 30 minutes at the end
11 to reply to what he says.

12 THE COURT: Okay. So, let's take three minutes,
13 everybody.

14 MS. PAYLOR: Thank you.

15 THE COURT: Let's just take three minutes and literally
16 three minutes. We'll be right back and we'll start.

17 okay?

18 MS. PAYLOR: Thank you.

19 THE COURT: Thank you.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: All right. Let's go, Mr. Medlin.

22 MR. MEDLIN: Thank you, Your Honor.

23 I want to talk a little bit about the law and
24 particularly about the burden of proof. We disagree in some
25 ways with what Defendant says.

1 First of all, with respect to chronic incapacity --

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: -- the burden, if there is a chronic
4 incapacity, is on the proponent to prove that the testator
5 had a lucid interval. So, if, in fact, Mr. Barringer had a
6 chronic incapacity, then the burden is on the proponent of
7 the will --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: -- and we cite the cases in Footnote 8 of
10 our memo, and, in fact, the restatement of property noted in
11 transfers 8.1(h), which we didn't cite---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---confirms that well known rule of law.
14 whether he has a chronic incapacity or not's a question of
15 fact. She thinks he doesn't and we think he did, and, of
16 course, that's just one of the many disagreements we have
17 about the facts, which is why we think we should prevail
18 about -- on every issue with the summary judgment.

19 The same disagreement arises as to burden of proof for
20 other reasons.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: Yes, there is a difference between the
23 level of capacity required for a will versus a lifetime
24 transfer.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: The will is a lower capacity, and it is --
2 essentially I didn't say differently yesterday. The
3 testator has to have the ability to know what he owns,
4 people he ought to give it to, and he has to have the
5 ability to know that he's making a will and what that does.
6 That's testamentary capacity.

7 It's a higher standard for an (indiscernible) transfer
8 that's irrevocable like that stock transfer that purportedly
9 occurred on September 11th, 2012, because we want to protect
10 people more while they're still alive in case they're
11 incompetent.

12 So, we have a much higher capacity. He has to
13 understand the consequences on himself such as he would no
14 longer be able to control his company that he built up and
15 cared so much about. He'd have to understand that to have
16 that capacity to make a lifetime transfer.

17 So, we have different capacities for different things
18 that are occurring.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: Now, the Defendant got it right yesterday.

21 The Defendant is a fiduciary, and the Defendant is a
22 fiduciary in many ways both to Mr. Barringer, and that's
23 where the will contest and Trust issue cases come up is was
24 there a fiduciary relationship between the testator and the
25 perpetrator. Then of course he did. He was a -- she was

1 the Trustee of his Trust.

2 In fact, in the February 5th, 2015, Trust, she was
3 purportedly made, made the sole trustee. She didn't even
4 share the trusteeship. So, she is a fiduciary to him.

5 There are a couple of cases where, in undue influence
6 situations, the Court said well, somebody had a power of
7 attorney, but that person never used it, and that was one of
8 the factors that was taken into account. You don't just get
9 to say I'm not trustee, and I'm, therefore, not a fiduciary.
10 When you're named as a trustee, when you sign and agreed to
11 do it, as Mrs. Light did, then you're a trustee. You're a
12 fiduciary.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: She was also an -- a director, and Mr.
15 Barringer was a shareholder. She owed him a duty there.
16 They were partners in subdivision, properties, partnerships.
17 She was a fiduciary and she has his power of attorney, and,
18 by the way, she used it. So, she's clearly a fiduciary.

19 She's also a fiduciary to the Plaintiff, Mrs. Luzak,
20 because the rule is that even though a trustee of a
21 Revocable Trust owes a duty only to the settlor, while the
22 settlor's alive -- that's clearly the law, 62-7-603. We've
23 never tried to argue contrary to that. But the law says
24 that once the settlor dies, then the contingent
25 beneficiaries become vested and they are now beneficiaries.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: Now, Defendant makes a self-serving
3 argument.

4 well, Mrs. Luzak isn't a beneficiary because the wills
5 and Trust that we claim to be invalid eventually cut her
6 out.

7 well, we're saying we're getting rid of those. She was
8 a beneficiary. And so, consequently, assuming those wills
9 don't get thrown out, she's still a beneficiary. And, Your
10 Honor, we discussed on Page 31 of our memo, I'm not gonna go
11 back into detail, we talked about it in a little more detail
12 yesterday---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---that it's clear under the law that once
15 the settlor dies, those contingent beneficiaries, now
16 vested, have the standing to assert claims for what the
17 trustee did wrong while the settlor was alive. Otherwise
18 the trustee could get away with murder.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: The trustee could do all kinds of things
21 to the contingent beneficiary's interest --

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: -- and then there would be no remedy.

24 So, of course, the law doesn't allow that, and, again,
25 the, the Uniform Probate Code comment to 7603 says that.

1 Bogart, the leading authority on trusts, says that. There
2 are cases that say that. No South Carolina case on point we
3 admit, but it hasn't come up, but it's clear that there is
4 standing. Not only that, but in the Estate of Brown case,
5 once again, recently, this summer---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---the Supreme Court said that a
8 beneficiary can stand in the shoes of a testator, even
9 though there's a personal representative, and assert claims
10 on behalf of that testator.

11 So, we've got standing and there is a fiduciary duty,
12 without question, both to Mr. Barringer, which is what
13 matters with the testamentary capacity in undue influence
14 issues, and with respect to---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---Mrs. Luzak who has claims in her own
17 right. Both of those come into play.

18 So, when there's a confidential relationship, which
19 Defendant admitted yesterday and that's the case, then, when
20 there's a confidential relationship, the burden as to undue
21 influence, she gets first to the proponent, the Defendant in
22 this case, who has to rebut, and the Defendant accurately
23 described this, and then ultimately the burden would go back
24 to the contestant, Mrs. Luzak, in this case. That's for a
25 will or Revocable Trust, and that's without getting into the

1 self-dealing issue because I think that supersedes that.

2 But with respect to an irrevocable transfer, South
3 Carolina case law clearly, this is in Footnote 5 on --
4 again, I'm not gonna get into the cases unless you want me
5 to again, Your Honor, in our brief. The burden is
6 completely and irrevocably on the proponent.

7 So, as to that stock transfer, without question,
8 Mrs. Light has the burden of proof all the way through and
9 our case law says that. The same is true for fraud. When
10 we get into a discussion of fraud, the burden of proof is on
11 the fiduciary in this case, Mrs. Light.

12 So, there's several reasons we think we have the burden
13 of proof on Mrs. Light.

14 Number one. We can show chronic incapacity.

15 Number two. She is a fiduciary, and, therefore, with
16 the irrevocable transfer, that's the ultimate burden, and
17 with the revocable transfer, it's like wills and Trusts, she
18 has a rebuttable responsibility first.

19 With respect to fraud, she has the ultimate burden of
20 proof. And also, although Defendant wants to throw this
21 away claiming that there's no fiduciary duty, there is a
22 fiduciary duty, and 62-7-802 says that any receipt of trust
23 property from a trust where somebody is a trustee, which is
24 exactly what purportedly happened in this case, is
25 self-dealing.

1 That's an irrebuttable presumption under the law, Your
2 Honor. There are things that the trustee has to prove
3 happened, but the burden is on the trustee there. For
4 example, that somebody consented to it. Maybe they can do
5 that, but they have the burden to do that.

6 Now, Your Honor, just a few minutes to deal with some
7 of the points that the Defendant made, and then I'd like to
8 get into our recitation of facts, which we started
9 yesterday, but I'm gonna try to organize them a little
10 better for you today as we go through.

11 There's a famous saying in wills law, whether it's will
12 contexts or will construction cases, it's no will has a
13 brother. That's an old-fashioned saying now.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: We probably today say no will has a
16 sibling.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: But no will has a brother, and that's
19 because every set of facts is unique in a will contest, and
20 we can give some examples of whether there was a baby
21 monitor or this or that, but the ultimate question, when
22 we're dealing with will contests, is that particular set of
23 facts.

24 Does that particular set of facts show a lack of
25 testamentary capacity?

1 Does that particular set of facts show undue influence,
2 et cetera?

3 And we have some guidelines and we've set those out,
4 and we'll talk about them again when we get to a discussion
5 of undue influence, but they're basic factors that Courts
6 look at. There's no bright line, safe harbor. You don't
7 have to check every box.

8 So, we have to look at the facts. The facts are always
9 different.

10 As we discussed yesterday, Your Honor---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: ---doctor reports aren't gospel. We don't
13 even need an expert. In fact, there are many cases where
14 there's not even a doctor let alone an expert. By the way,
15 when it comes to standards of capacity, marriage is actually
16 the lowest standard one has to have. It's even less than to
17 make a will.

18 THE COURT: That's funny.

19 MR. MEDLIN: Yes.

20 THE COURT: Okay.

21 MR. MEDLIN: So, that's led to a couple of interesting
22 cases.

23 We cite Gunnells---

24 THE COURT: Yeah.

25 MR. MEDLIN: ---just to let the Court understand that

1 the position that Defendant had been taking that you can't
2 have proof of lack of capacity, you can't have proof of
3 undue influence unless the perpetrator is in the room, and
4 that's just clearly not the law. Again, the Byrd in the
5 South Carolina Supreme Court case found undue influence when
6 the perpetrator wasn't in the room and the Gunnells case---

7 THE COURT: Okay.

8 MR. MEDLIN: ---did that.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: It's the question of circumstantial
11 evidence as we discussed yesterday and---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---evidence both before and after because
14 nobody can take a snapshot---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---of exactly the moment somebody signs
17 the will---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---or the Trust. In fact, as I'm sure
20 Your Honor knows---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: ---since 1987, I can sign my will today,
23 you can sign as a witness a year from now, and Alice can
24 sign as a witness three years from now.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: When is it a will?

2 I don't think it's a will until all those signatures
3 are done.

4 So, when's the question of capacity?

5 Maybe during that whole three year period.

6 So, the idea that you got to take a snapshot on one day
7 just to determine capacity is not the law. Never has been
8 the law.

9 We disagree with their argument that there's no
10 evidence, and they're undisputed facts. We dispute
11 virtually every fact, and that's exactly why we think we
12 prevail on summary judgment.

13 Your Honor, she raises the issue of John Wayne
14 transferring his stock, and her argument is that it's what
15 he wanted to do.

16 Well, that's a circular argument. It's what he wanted
17 to do if he wasn't unduly influenced. In fact, the
18 inference to be taken from that is that a man who had
19 already created an estate plan where Kevin Luzak could never
20 return to the company, just a couple of months before, would
21 have no need to give his stock away during his lifetime. He
22 already had it covered. He and Merrill Light could vote
23 together to keep Kevin from coming back for the rest of his
24 life based on his July Trust.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: If he thought it was valid, if we were
2 competent, and then when he died, the voting stock would go
3 to Merrill Light, and she'd have 51 percent and she'd
4 keep---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: ---Kevin from coming back to the company.
7 what that proves in that particular situation that,
8 number one, he lacked capacity, and, number two, he was
9 unduly influenced is John Wayne would never have given away
10 control of his company he -- while he was alive, while he
11 was still going to work, while he was still subject to the
12 control of somebody else.

13 why would he do that?

14 He did not need to do it to keep Kevin Luzak from
15 coming back to the company. Instead, he opened the door for
16 Randy Light, whose had two bankruptcies, of course, he
17 didn't know about it because they didn't bother to tell him,
18 but he never put him on the board before because obviously
19 he didn't think he was worthy of being on the board as a
20 businessman, no -- dropped out of college his first year, et
21 cetera, et cetera. I mean this is not the resume item of
22 somebody you want to be controlling your life and your
23 company particularly while you're still alive.

24 THE COURT: Let me ask you, Mr. Medlin, really---

25 MR. MEDLIN: If they had gotten---

1 THE COURT: ---quickly.

2 How do we know what Mr. Barringer knew or didn't know
3 in reference to Randy Light's two bankruptcies, having
4 dropped out of college?

5 I mean how do we know what he knew or he didn't know?

6 I mean does, does, does Merrill say that she withheld
7 that from her dad and that he didn't have the ability to go
8 on the Internet and look to see?

9 I mean he may not be---

10 MR. MEDLIN: Your Honor?

11 THE COURT: ---a stellar person to put on a board, but
12 he is the son-in-law to the man, and that's probably why he
13 was put on the board. It wasn't because he had two
14 bankruptcies and he had dropped out of college.

15 So, how, how do we know any of this?

16 Is this just an assumption?

17 MR. MEDLIN: No, Your Honor. We disagree. That
18 probably wasn't why he was put on the board cause he was a
19 son-in-law. It's because he was incompetent and he was
20 unduly influenced. But -- and that's exactly the point.

21 THE COURT: Okay.

22 MR. MEDLIN: This is -- Alice says my client has
23 hundreds of millions of stocks. So, it's a very valuable
24 company.

25 Those kind of companies don't put first year college

1 dropouts, unless you're Bill Gates, and create your own
2 company, in charge of your company. They don't put people
3 with two bankruptcies and 25 million-dollar bankruptcies
4 filed, by the way, in June of 2012. They don't put those
5 people in charge of their companies.

6 He was never put on the board before, and Merrill
7 testified that she never told her parents about the
8 bankruptcies. That's part of the deception, and, again,
9 when we get into the undue influence---

10 THE COURT: Okay. And that's what I asked.

11 Did Merrill say or admit that her parents knew nothing
12 about the bankruptcies, she never revealed, that she never
13 revealed her husband was a college dropout at some point?

14 MR. MEDLIN: Your Honor, I don't---

15 THE COURT: Does she admit all that?

16 MR. MEDLIN: Your Honor, I don't know about the college
17 dropout part, but I'm, I'm assuming he didn't have a diploma
18 on his wall if anybody wanted to look. But she did say, in
19 her deposition, that they did not tell the parents about the
20 bankruptcy. That was sort of their business.

21 THE COURT: Okay.

22 MR. MEDLIN: And that's more important to know.

23 THE COURT: Okay.

24 MR. MEDLIN: So, again, this is something where, even
25 if he were competent, even if we were an accomplished

1 businessman, even if he were a captain of industry, Randy
2 Light could of gotten all the stock, divorced Merrill, or
3 Merrill could of died first, then he would own control of
4 the company. Mr. Barringer's still alive. Randy Light,
5 very nice person based on, based on what I can tell,
6 personable, nice looking man, I suspect he would maybe think
7 about getting married again, and then he's gonna leave the
8 stock to his new wife or---

9 THE COURT: Oh, we went down this whole rabbit hole in
10 Mrs. Barringer's deposition asking her where Mr. Gilreath
11 said well, what happens if they divorce, what happens if
12 they left. I mean I, I think we need to get past that. I
13 think we need to get past that.

14 MR. MEDLIN: Well, Your Honor, I'm, I'm, I'm sorry. I
15 disagree because any estate planner would talk about that
16 with the client --

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: -- and there's an easy way to make sure
19 you keep control of your company and your family.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: You put it in a Trust and you let the
22 Trust handle it.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: So, I've never had a client that wanted a
25 business to end up in somebody else's family. It's, it's a

1 very important point, and I'm sorry to disagree with you,
2 Your Honor, but that's an important point.

3 All right. So, the unhampered issues she raises again,
4 it's -- the law is clearly, if it's unhampered, that means
5 that the influence no longer continues. But we're gonna
6 show that the influence has continued since 2012, at the
7 earliest, and all the way through the end.

8 When one determines testamentary capacity, there's no
9 rule that you ask your client do you understand your
10 property, do you understand the people you want to give it
11 to, do you understand what a will does. That's not a rule
12 and nobody does that.

13 The way you determine if somebody has testamentary
14 capacity is if the facts and circumstances, both before and
15 after, has the ability to---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---take a movie rather than a snapshot,
18 determines whether that person did know those questions.

19 Your Honor, again, we'll just briefly talk about what
20 we talked about yesterday under 56(e). Everything in
21 Hampton and Kevin's affidavits are from their own personal
22 knowledge either because they observed things up through
23 2012. Yes, they didn't see Paul Barringer a lot after 2012.
24 But they have medical records. They have business records.
25 They have all these other things that they've seen. So,

1 they have personal knowledge of -- and as to Mike Hagler,
2 yes, he's dead, and I'm sure that the Defendant would love
3 to keep that testimony out.

4 But she received all his letters and emails. She got
5 them along with the rest of the board. They can be verified
6 easily and the Defendant herself, who sometimes doesn't
7 remember receiving emails. In fact, if you look at her
8 deposition, she doesn't remember or know much at all about
9 anything. But I think even she would have to admit that she
10 got those emails.

11 They continue to make a deal out of the -- Hampton
12 being upset. They deceived Mr. Barringer when he was in the
13 stages of dementia and Alzheimer's into thinking Kevin was
14 trying to steal his company, and because of that, they
15 continued to influence Mr. Barringer to join with Merrill
16 and fire him, although Merrill and Mrs. Barringer had to
17 coach him at the meeting.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: And that's just not because we have a tape
20 of the meeting, but Mike Hagler, in his emails we talked
21 about yesterday, said---

22 THE COURT: So, so---

23 MR. MEDLIN: ---the same things.

24 THE COURT: So, did they say that Merrill Light also
25 coached?

1 I understood that there was a lot of Mrs. Barringer,
2 Mrs. Barringer said that she was there to make sure
3 everything went the right way and all that.

4 But is there also testimony that Merrill Light in
5 that -- and I think it -- wasn't it a telephonic -- was it
6 not a telephone board meeting?

7 I thought it was.

8 MR. MEDLIN: Telephone.

9 THE COURT: Right.

10 MR. MEDLIN: Mr. -- Mrs. Barringer, Mrs. Light, and Mr.
11 Barringer were in a room with -- at John Jolley's office.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: You can hear the coaching going on.

14 THE COURT: By who?

15 Coaching by who?

16 MR. MEDLIN: Well, according to Make Hagler, he thought
17 it was from both, and, Your Honor---

18 THE COURT: Both who?

19 MR. MEDLIN: ---to be honest---

20 THE COURT: Both who?

21 Both Mrs. Barringer---

22 MR. MEDLIN: It's, it's hard---

23 THE COURT: ---and Mrs. Light?

24 MR. MEDLIN: It's, it's clearly female voices. But
25 somebody's in there helping to coach. You don't have one of

1 them saying oh, no, no, no, dad, you do what you want to do
2 or no, no, no, husband, you do what you want to do.

3 THE COURT: And---

4 MR. MEDLIN: It's a concerted effort---

5 THE COURT: Well, this is the problem though.

6 MR. MEDLIN: ---but the coaching is going on.

7 THE COURT: The only thing I'm asking you this is when
8 you're -- I'm looking. I'm reading on your Page 22 of your
9 brief, and it says facts supporting undue influence. And
10 the first page talks about Mrs. Merrill Barringer exerting
11 undue influence, and then -- and it goes on -- the only
12 thing I'm seeing so far that you say is that Mrs. Light
13 produced what was a earlier given presentation by Mr. Luzak.
14 I, I remember someone saying it was some kind of PowerPoint
15 or something that, that showed he wanted to take the company
16 in a direction that was more investment related, and had
17 nothing to do with forestry products.

18 But I, I -- I'm trying just to look straight at what
19 you're saying as to what Merrill Light's undue influence --
20 what, what the evidence is of that. I know it's
21 circumstantial evidence. But, again, I'm trying to figure
22 out exactly what you're saying other than she ended up being
23 the one that benefited from it---

24 MR. MEDLIN: Your Honor, we believe---

25 THE COURT: ---in the end.

1 MR. MEDLIN: We believe she coached as well.

2 THE COURT: Okay.

3 MR. MEDLIN: She was in the room. And so, again,
4 that's what our belief is.

5 By the way, Randy Light, in his own email, admitted
6 that Mr. Barringer would not let him have, let him have
7 anything to do with the business. That was in 2011.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: And, all of a sudden, that seemed to
10 change conveniently after he gets Alzheimer's and they
11 deceive Mr. Barringer about Kevin Luzak, who never tried to
12 steal the company. None of that was true. Again, we went
13 through that yesterday.

14 That's exactly the point, Your Honor. Undue influence
15 can be overt or covert, and that's why the Court says you
16 need circumstantial evidence, and we have exactly the kind
17 of circumstantial evidence that at least will get us past
18 summary judgment on the issue of whether they committed
19 undue influence.

20 Now, after the Lights and Mrs. Barringer get Kevin
21 fired---

22 THE COURT: Okay.

23 MR. MEDLIN: ---then, two months later, in August, get
24 him -- and that's, that's a board meeting getting him fired
25 as CEO.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: Two months later, in August, Mr. Barringer
3 is not present. John Jolley is representing Merrill Light
4 who is moving Mr. Barringer's shares.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MEDLIN: So, again, that's a fiduciary relationship
7 where she's acting and they fire Kevin again just to make
8 sure, as a CEO, wouldn't have a board meeting, but, as a
9 shareholder, they fire him from the board. And Merrill
10 Light seems to be pouting that Hampton is upset about that
11 with her.

12 Of course she is and she's upset about what they're
13 doing to their father. And letter after letter shows that
14 she's trying to protect her father first and foremost. In
15 fact, she had to bring the conservatorship because, while
16 Mr. Barringer was in a secured daycare center unkempt and
17 unshaven---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---having been determined he can't testify
20 in Court because he's incompetent, they're claiming he
21 doesn't need a conservator. Somebody's got to protect her
22 daddy. She's doing it. That's, again, what this is all
23 about for her.

24 THE COURT: Where was he being kept again?

25 I apologize. I remember that portion of it where they

1 said when he visited, and he was a very meticulous man
2 always. So, he would of never been unshaven and not well
3 dressed.

4 where was he?

5 Do you know?

6 MR. MEDLIN: Your Honor, I don't know the name. It was
7 an adult -- secure adult daycare center because, when you,
8 you have Alzheimer's, you tend to disappear.

9 THE COURT: It wasn't Memory Matters, was it?

10 It wasn't Memory Matters on Hilton Head?

11 MR. MEDLIN: I think, I think that may be it, Your
12 Honor, but I don't---

13 THE COURT: Yeah.

14 MR. MEDLIN: I honestly---

15 THE COURT: Okay.

16 MR. MEDLIN: ---don't remember, but yeah.

17 THE COURT: It's like a day program. But okay. Okay.
18 okay.

19 MR. MEDLIN: Again, he can't, he can't act and yet they
20 claim he doesn't need protection.

21 THE COURT: Okay.

22 MR. MEDLIN: Now, Paul Barringer was removed from the
23 board on February 19th, 2015.

24 THE COURT: Okay.

25 MR. MEDLIN: And here's John Wayne being removed.

1 By the way, they don't even put that in the minutes,
2 and that's when they made Randy the chairman of the board.
3 And the idea that, within a couple weeks after that
4 February 5th, 2015, will that Defendant says we have no
5 evidence about, he is so incompetent, so subject to undue
6 influence, he allows himself to be removed from the board.

7 THE COURT: What was that date again?

8 MR. MEDLIN: He's voted off---

9 THE COURT: What was that date again, Mr. Medlin, that
10 he was removed from the board?

11 MR. MEDLIN: February 19th. February 19th, 2015.
12 It's in our Exhibit---

13 THE COURT: Okay.

14 MR. MEDLIN: ---CCC.

15 THE COURT: Got it.

16 MR. MEDLIN: There aren't nine elements of fraud in a
17 will fraud inducement case, and that's clearly what we're
18 bringing. We discussed that in, in our brief. I won't say
19 anything moreover than that.

20 The, the, the argument that he didn't sign over his
21 stock in May of 2012, that's just inaccurate. To go into
22 his Revocable Trusts, it doesn't magically happen. When you
23 own stock, you have to sign it or some stock power or some
24 assignment to get the stock where you want it to go.

25 So, yes, and, by the way, Kevin Luzak signed as the

1 CEO. He didn't think anything was funny about it because he
2 didn't mention that Merrill was cotrustee. He didn't
3 mention Paul was cotrustee. Again, part of the secrecy---

4 THE COURT: Okay.

5 MR. MEDLIN: ---which is one of the factors of undue
6 influence that we'll talk about---

7 THE COURT: Okay.

8 MR. MEDLIN: ---more in just a little bit, Your Honor.

9 THE COURT: Can I ask you one other question just so I
10 understand?

11 MR. MEDLIN: Sure.

12 THE COURT: You didn't sue John Jolley for either civil
13 conspiracy or undue influence or anything along those lines.

14 What, what are you -- what do you believe or what do
15 you think his actions show, in circumstantial evidence, his
16 involvement in all this because, to me, it's a concern
17 because I think, for him to be have done and facilitated all
18 this, he's got some problems.

19 So, my, my question is what, what, what are you
20 thinking is his, his role?

21 I mean you talk a lot about well, he served as the
22 attorney for both the Lights and the Barringers. He also
23 served as the corporate attorney, and you seem to allege
24 there is a lot of conflict potentially of interest and
25 having to serve a lot of masters here.

1 So, so, what, what are you saying he did?

2 I mean, again, you didn't name him. So -- and you
3 didn't list him, I don't think, in your civil conspiracy
4 cause of action as far as being someone that was involved in
5 all this, but you seem to throw his name in a lot.

6 MR. MEDLIN: Do I answer that question, Your Honor?

7 THE COURT: Yeah, because I think that's a big part of
8 all this.

9 MR. MEDLIN: I'm not gonna be involved in a case suing
10 a lawyer. It's just that simple.

11 THE COURT: Okay.

12 MR. MEDLIN: Plaintiff had a choice. They could have
13 me --

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: -- or they can sue John Jolley.

16 THE COURT: Okay.

17 MR. MEDLIN: They chose to have me.

18 THE COURT: Okay. And you can clearly choose who you
19 wish to sue, and we all understand that, and the client can,
20 and I get that cause they're many cases where they find
21 someone that is potentially complicit or whatever, but they
22 don't want to sue that person, and I, and I understand that.

23 I just -- it just is concerning to me that I just see
24 his name thrown in here a lot as part of circumstantial
25 evidence of this undue influence or, at a minimum, just

1 remaining silent, and it's a concern. I just -- I'm not
2 sure how you deal with that. I'm not sure how you're gonna
3 deal with it at trial either, but that's not my problem. I
4 know that's yours. But I just wanted to know just from your
5 standpoint.

6 okay.

7 MR. MACLOSKIE: Judge Mullen?

8 THE COURT: Yeah.

9 MR. MACLOSKIE: This is Mike Macloskie.

10 May---

11 THE COURT: Yeah.

12 MR. MACLOSKIE: May, may I try to answer that question
13 for you?

14 THE COURT: Sure.

15 MR. MACLOSKIE: The reason---

16 THE COURT: Sure.

17 MR. MACLOSKIE: The reason Mr. Jolley comes up has
18 nothing really to do with him. It has everything in the
19 world to do with the Lights influencing the Barringers to
20 use their attorney, and also the, the Lights, particularly
21 Merrill Light, influence over CFRC, putting him as secretary
22 of the board, putting him, putting him as a, as a member of
23 the board, putting him as, as corporate counsel.

24 All that has really nothing to do with, with John Light
25 or John Jolley being a part of any conspiracy. It has

1 everything in the world to do with Merrill Light's
2 ability---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MACLOSKIE: ---to control corporate business, and
5 control her parent's personal business.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MACLOSKIE: And, and---

8 THE COURT: Okay.

9 MR. MACLOSKIE: ---the control of the corporate
10 business goes to the damages that, that we allege---

11 THE COURT: Okay.

12 MR. MACLOSKIE: ---occurred because of Hampton Light's
13 loss of control.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MACLOSKIE: And if anybody else wants to jump in
16 there and---

17 THE COURT: Okay.

18 MR. MACLOSKIE: ---help me out or, or tell me I'm
19 crazier than an outhouse rat, that's fine.

20 THE COURT: The only concern I have, Mike, about that
21 is, is it requires---

22 MR. TWOMBLEY: Judge, can I---

23 THE COURT: ---it requires undue influence. Just
24 having influence isn't a problem. It's whether or not it's
25 undue, and it would require -- and, and this is how I look

1 at it is it would require John Jolley to promote someone
 2 else's agenda or someone else's benefit, which, again, is an
 3 inherent conflict if he did it. And so that's what concerns
 4 me about it, and that's, that's what I keep hearing. I
 5 don't---

6 MR. MACLOSKIE: Judge, we're concerned---

7 THE COURT: ---know.

8 MR. MACLOSKIE: We're concerned about it too, but don't
 9 forget---

10 THE COURT: Okay.

11 MR. MACLOSKIE: ---that, that Mr. Jolley was the, was
 12 the person who generated---

13 THE COURT: Right.

14 MR. MACLOSKIE: ---this Certification of Competency,
 15 which is still an issue.

16 THE COURT: When you say generated, I don't know that
 17 he necessarily generated it. I -- the form I saw where it
 18 said a psychologist that was crossed out, I may be wrong,
 19 but I, I will probably guess that most wills, Trusts, and
 20 estate lawyers have that as a form. It was printed off. It
 21 wasn't even signed by Paul Long at the beginning when
 22 allegedly it could of happened.

23 I mean I, I don't know about the generate other than
 24 did he -- was he the one that reached out and said -- I
 25 thought he gave it to Mrs. Barringer to get Mr. Long or

1 Doctor Long to sign it.

2 No?

3 Did he actually do it himself?

4 MR. TWOMBLEY: He gave -- he emailed---

5 MR. MACLOSKIE: Your Honor?

6 MR. MEDLIN: He emailed it to Merrill Light.

7 THE COURT: Okay.

8 MR. MEDLIN: He emailed it to Merrill Light---

9 THE COURT: Okay.

10 MR. MEDLIN: ---in August of 2012.

11 THE COURT: Okay.

12 MR. MEDLIN: And, Your Honor, I'm, I'm not -- I'm, I'm
13 not, in any way, condoning what happened---

14 THE COURT: Yeah.

15 MR. MEDLIN: ---with the lawyers in this case.

16 THE COURT: Okay.

17 MR. MEDLIN: Mike's absolutely right, of course, and,
18 and that's a different issue about how we think he was a
19 tool, and---

20 THE COURT: Yeah.

21 MR. MEDLIN: ---we don't -- I don't agree with all the
22 interests that he had.

23 THE COURT: Okay.

24 MR. MEDLIN: We can't even get an engagement letter or
25 a waiver --

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: -- when we've asked in discovery.

3 THE COURT: Okay.

4 MR. MEDLIN: And we're gonna depose him. We'll see.

5 THE COURT: Okay.

6 MR. MEDLIN: Your question to me was why he wasn't---

7 THE COURT: All right. Mr. Macloskie---

8 MR. MACLOSKIE: I want---

9 THE COURT: Yeah.

10 MR. MEDLIN: Your question to me was why he wasn't
11 sued, and I'm---

12 THE COURT: Yeah.

13 MR. MEDLIN: ---not gonna be involved with suing a
14 lawyer. It's just that simple.

15 THE COURT: Okay. Okay.

16 MR. MACLOSKIE: One other thing, Judge.

17 THE COURT: Yeah.

18 MR. MACLOSKIE: One other thing, Judge.

19 THE COURT: Yeah.

20 MR. MACLOSKIE: John Jolley was listed as a witness on
21 their Answers to Interrogatories.

22 THE COURT: Okay.

23 MR. MACLOSKIE: They were listed---

24 THE COURT: Okay.

25 MR. MACLOSKIE: That's all I want to say.

1 THE COURT: Okay. Okay.

2 MR. TWOMBLEY: Your Honor, may I make one comment---

3 THE COURT: Sure.

4 MR. TWOMBLEY: ---in response to what Mr. Macloskie
5 said?

6 There is no evidence anywhere that Merrill Light or
7 Randy Light improperly influenced the Barringers to use John
8 Jolley in any way, shape, or form. There is no evidence of
9 that whatsoever.

10 Kevin Luzak was using the McNair firm at the same time
11 that Merrill Light was, and at the same time Paul Barringer
12 was, and the assertion that some -- sudden -- there is no
13 evidence whatsoever that there was ever anything improper on
14 that, and if there is, I'm sure the Plaintiffs will show it
15 to you and, and---

16 THE COURT: Okay.

17 MR. TWOMBLEY: ---point it out to you. They're just
18 assuming---

19 THE COURT: Okay.

20 MR. TWOMBLEY: ---that simply because the fact he was
21 used, and that there must be something improper, and that's
22 not the case.

23 THE COURT: Okay.

24 MR. MEDLIN: Well, Your Honor, now that he's---

25 THE COURT: Let's let Mr. Medlin---

1 MR. MEDLIN: Now that he's joined in, I'll respond to
2 that too.

3 THE COURT: Yeah.

4 MR. MEDLIN: There are a number of cases where, in
5 fact, a factor that the Court takes into account is where
6 the perpetrator of undue influence gets the testator to
7 their lawyer.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: And that is exactly what happened here
10 regardless of whether the company had used the McNair firm
11 before or not. John Jolley had represented the Lights for a
12 number of years, and, all of a sudden, they show up,
13 introduced, for estate planning purposes. So---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---again, it's a factor that fits into the
16 cases.

17 THE COURT: I understand that.

18 MR. MEDLIN: So, Your Honor, we don't have to show that
19 it was anything sinister.

20 THE COURT: Okay.

21 MR. MEDLIN: It's just a factor.

22 THE COURT: Okay. I understand that.

23 MR. MEDLIN: All right.

24 THE COURT: Okay.

25 MR. MEDLIN: All right. Your Honor, again, I apologize

1 for---

2 THE COURT: No, no. You're good. You're good.

3 MR. MEDLIN: I just---

4 THE COURT: Keep going. Keep going. You're fine.

5 MR. MEDLIN: I, I -- yeah, I personally would rather

6 not get into a discussion about those issues on the record

7 if---

8 THE COURT: Yeah, I just don't know.

9 MR. MEDLIN: Of course, I will, Your Honor, if, if---

10 THE COURT: I just don't know---

11 MR. MEDLIN: ---you want to.

12 THE COURT: ---how you're handling this, and that's---

13 MR. MEDLIN: I, I---

14 THE COURT: ---that's what I don't understand. But

15 okay.

16 Okay. That's -- keep going.

17 MR. MEDLIN: I, I appreciate that, that, Your Honor.

18 Let's talk about the issue of -- oh, one more point I

19 want to mention. Two more points actually---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---in response to Alice's opening.

22 CFRC hasn't been sold even though the evidence was

23 clear that Merrill wanted to sell it as soon as daddy was no

24 longer able to be in control, and the reason it can't be

25 sold is because there's been this dispute going on for all

1 this time.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Nobody's gonna buy the company when it's a
4 question about who owns the company and who controls the
5 company.

6 So, until that's resolved, I don't think anybody's
7 gonna buy the company. That's, that's not an answer.

8 Your Honor -- Your Honor, let's look at the capacity
9 issue first, if I may, and that goes to the first cause of
10 action, the fourth cause of action, and the seventh cause of
11 action, and I'll put, chronically, if I can remember to do
12 it, where each of the critical documents comes up in the
13 evolution. And let's start with an understanding that
14 dementia, whether it's Alzheimer's or not, is a devolution.
15 You don't get better.

16 As we discussed in the Gatti versus Douglas case
17 yesterday, the brain cells just keep dying. And so it's not
18 like you're gonna have a recovery. You're gonna continue to
19 get worse.

20 And so we have to take that span into account, which
21 Courts often do in looking at testamentary capacity and to
22 the extent undue influence is affected by a weakened
23 testamentary capacity, undue influence.

24 So, we're gonna look at that evolution, and let's start
25 with Doctor Sanders' report, which is Exhibit K, Your Honor,

1 and---

2 THE COURT: I've read it twice now in two days. So,
3 I've got it.

4 MR. MEDLIN: Great. So, I just was gonna point out two
5 quick things for the record.

6 Patients can become vulnerable persons even in the
7 early stages of the disease meaning they're susceptible to
8 undue influence and decision making.

9 THE COURT: Right.

10 MR. MEDLIN: The disease and it -- is inexorably
11 progressive. So this situation only---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---ultimately worsens over time.

14 Persons with Alzheimer's disease may have trouble
15 reasoning, following chronology, making decisions, and
16 evaluating complex information. This can occur as early as
17 the mild stage of the disease, and is expected by the time
18 the moderate disease stage is reached, is reached, and then
19 she goes into a discussion of the evolution.

20 I'm gonna get into a little more detail of that with
21 Your Honor, but in a more chronological way.

22 But she points out that, as early as May, when he is
23 discharged for what Defendant says was just a bad urinary
24 infection, he's put on not the medicine you get for kidney
25 infections. He's put on medicine for Alzheimer's.

1 So, he's got these problems and our own expert notices
2 that, and he forgets significant issues. He can't deal with
3 language, and he can't remember things such as buying a
4 building. That's from their doctor's report that she notes.

5 So, the important thing about that, Your Honor, is her
6 indication -- and, again, we don't need an expert. We don't
7 have to have one in a will contest. You don't have to have
8 doctors, as we've noted. We're using their own doctor's
9 reports as evidence of this continuing devolution again
10 remembering the standards.

11 And not only do we have the medical evidence, but we
12 have the Defendant's own statements. We have the
13 Plaintiff's statements, of course. We have company
14 officials, board members. We have all these people who will
15 tell you that he is having problems.

16 THE COURT: Mr. Medlin?

17 MR. MEDLIN: So---

18 THE COURT: Mr. Medlin, I'll go ahead and cut to the
19 chase right now. I think there's a question as to fact
20 whether or not he was incapacitated or not incapacitated. I
21 got to tell you, and I know Alice is shaking her head, but
22 sorry. There's enough there.

23 So, my question and my point is, is that I need to see
24 where the undue influence is. I need to see whether or not
25 you have a cause of action for conversion, for fraud because

1 those I don't see.

2 So, I think that's what you need to address for me at
3 this point because we've got another, you know, half hour to
4 45 minutes, and that's where your concern is. I can read
5 the medical records. I understand where that question
6 comes.

7 I do not know, and, again, I just need -- and, again,
8 you've said there's circumstantial evidence for the undue
9 influence. I hear you.

10 Again, it's -- so, you know, maybe let's talk about --
11 let's, let's talk about the fraud. Let's talk about the
12 conversion. I know we talked about the fraud very, you
13 know, little bit. But I mean fraud's hard to prove. I mean
14 it's just hard. And so you got to be able to show it.

15 MR. MEDLIN: We understand we've got to convince a
16 jury, Your Honor. But we certainly have the facts to get
17 past summary judgment. Even if we have to show more than a
18 mere scintilla, but as I've indicated, the burden is really
19 on the Defendant in this case. Whatever burden we might
20 have, and we don't, we satisfy.

21 So, Your Honor, if I may skip to that, I'll skip to
22 that. Let's---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---talk about undue influence. And, and,
25 again, let's start with Doctor Sanders' report, Exhibit K,

1 where she says you're susceptible at the early stages---

2 THE COURT: Right.

3 MR. MEDLIN: ---to undue influence.

4 THE COURT: And, and I understand---

5 MR. MEDLIN: That's one of the factors.

6 THE COURT: I understand she's saying that. Again, in
7 your brief, what you mostly talked about was undue influence
8 by Mrs. Barringer. Not by Mrs. Light. And that's, that's
9 what I'm asking you.

10 And so, if they're working in concert and that goes for
11 your civil conspiracy complaint, I understand that. But,
12 again, it requires more.

13 So, again, you know, other than her using their
14 attorney, you know, other than Mrs. Light being the one that
15 benefits from any undue influence, again, I, I just --
16 that's where I need you to talk to me about all the facts
17 that show what, in fact, exactly Mrs. Light did to unduly
18 influence him.

19 MR. MEDLIN: Your Honor, I think we can show you plenty
20 of that, and I'm gonna go through a chronology. And, again,
21 we're gonna start with Doctor Sanders report that somebody
22 is susceptible.

23 So, susceptibility, we list these factors on Page 7 of
24 our memo, classic factors that one looks at for undue
25 influence. Susceptibility is one of them, having a weakened

1 capacity, and you've already recognized that we have an
2 argument about weakened capacity. Then we've got
3 susceptibility.

4 Mrs. Barringer, in her deposition, in our Exhibit M,
5 says it's easy to influence Paul Barringer in 2012. She
6 didn't say in 2012. She says it's easy to influence him
7 cause she wanted Travis Bryant to become CEO.

8 Exhibit J. Mrs. Barringer says I was at a board
9 meeting making sure what she said and to correct him in any
10 manner. So, she's there for that purpose. It shows he
11 didn't know what he was doing, and he could be influenced,
12 and Merrill Light's in the room doing the same thing.

13 Exhibit A, Attachment 9, Merrill Light becomes the
14 cotrustee of the Trust. Again, she owes a fiduciary duty to
15 Mr. Barringer. That's what matters with undue influence.
16 But she also is a fiduciary duty as we discussed to Hampton.

17 When you look at Exhibit R and John Jolley's affidavit,
18 which is an Exhibit S, and Randy Light's affidavit, which is
19 at Exhibit U, Jolley had represented the Lights for years,
20 and the Lights directed the Barringers to him for estate
21 planning. Jolly also served as general counsel and
22 corporate secretary among his many ties to the Lights.

23 Exhibit V. Randy Light emails Kevin on
24 October 25th that they're moving the -- 2011. They're
25 moving the account to the individual trustee at the law firm

1 he likes to do business with.

2 Exhibit W. Merrill Light's deposition testimony that
3 John Jolley serves as the Light's trustee for multiple
4 trusts. The PowerPoints that clearly upset Mr. Barringer in
5 his demented state where he completely turned on Kevin.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: He went from being like a father to Kevin
8 and thinking that he was the best CEO ever, and the evidence
9 shows that with emails---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---from Paul and conversations at the
12 board meetings, all of a sudden, when he gets these
13 documents that Merrill Light gave him, he becomes angry,
14 thinks that Kevin's trying to steal the company. Those
15 documents don't show that at all---

16 THE COURT: Is this---

17 MR. MEDLIN: ---and Merrill Light---

18 THE COURT: Just let me ask you, Mr. Medlin.

19 Is the simple fact that they had been presented before
20 and she gave them to him later on, is that enough to show?

21 I mean he authored them. He presented them earlier.
22 They were what he thought should happen, and is it because
23 we're further now down the line, you believe he was probably
24 further incapacitated, and she used it just to insight him?

25 I mean is, is that what we're saying is that -- I mean

1 if that's what it is I get it. But you think she---

2 MR. MEDLIN: It's undue influence.

3 THE COURT: Pardon?

4 MR. MEDLIN: That's undue influence.

5 THE COURT: And I understand that.

6 MR. MEDLIN: That's absolutely undue influence.

7 THE COURT: Yeah, that's -- and that's what I'm asking.

8 But I mean when you say -- I mean he documented. He wrote
9 these things. He had presented them once before.

10 MR. MEDLIN: No, ma'am.

11 THE COURT: He didn't?

12 MR. MEDLIN: No. No, Your Honor. Kevin presented
13 these PowerPoints---

14 THE COURT: Right.

15 MR. MEDLIN: ---and these presentations.

16 THE COURT: Right.

17 MR. MEDLIN: When you say he, I thought you meant Mr.
18 Barringer.

19 THE COURT: No. Obviously it's not Mr. Barringer cause
20 I can't imagine why, even if he's incapacitated, why he'd be
21 upset about something he brought up himself. So, again---

22 MR. MEDLIN: He didn't remember them period.

23 THE COURT: Okay.

24 MR. MEDLIN: This, this goes back to March of 2011 at
25 board meetings and family meetings.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. MEDLIN: These things have popped up constantly---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---and Mr. Barringer is saying this is
5 great stuff.

6 THE COURT: But it was never acted on.

7 MR. MEDLIN: In fact---

8 THE COURT: But it was never acted on is what I
9 understood is or is that part of the they started buying
10 apartment complexes, and they started to diversify and
11 invest?

12 Is that what your argument is?

13 MR. MEDLIN: All of it's subject to Mr. Barringer's
14 control, of course, and that's part of the undue
15 influence---

16 THE COURT: Okay.

17 MR. MEDLIN: ---to make him think that Kevin's trying
18 to pull off a coup, which would be impossible to do if
19 anybody understood anything about corporate governance. It,
20 it just couldn't be done. We've got the taped discussion
21 where Kevin's saying Paul, you're the boss. I'm never gonna
22 do anything you don't want to do.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: And so that precipitated it and Merrill
25 Light did not try to diffuse the situation, and instead

1 continues to be involved with having Kevin fired, and then
2 continuing to fuel that anger to have Hampton disinherited
3 from the voting stock, and then who actually received the
4 voting stock, which is something he would never do.

5 Again, undue influence is typically circumstantial and
6 it's often covert. But this is a little more obvious than
7 covert because it's the presentation of those PowerPoints.

8 why would Merrill Light give him those PowerPoints from
9 over a year ago and immediately he changes his opinion of --
10 about Kevin Luzak?

11 That's the trigger point of all this undue influence
12 right there, Your Honor. That's---

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: ---the trigger point.

15 THE COURT: Okay.

16 MR. MEDLIN: And it was after---

17 THE COURT: I get that.

18 MR. MEDLIN: It was within weeks after he can't touch
19 his ear with his fingers. He can't remember that he bought
20 a building. And he can't remember that he had ordered the
21 sale of a plane.

22 So, he is clearly susceptible, and, of course, I've
23 lived with this. My mother had Alzheimer's for 12 years. A
24 common factor of Alzheimer's is change of personality and
25 mood swings. He got angry and part of that's frustration

1 that you can't process.

2 And so she was able to convert that anger. She could
3 have said daddy, Kevin's a great CEO, which is, by the way,
4 what she always thought communicating with Kevin and
5 Hampton, and at board meetings, and at family meetings up
6 until that moment. He could of tried to say no, don't give
7 me the stock, and the, and the canard that she didn't ask
8 for the stock.

9 First of all, we don't know whether she asked for the
10 stock.

11 How would we ever prove that?

12 Maybe we can. Maybe somebody else overheard a
13 conversation, but, again, that's how undue influence
14 operates in the dark. The caretaker's saying if you don't
15 give me something in the will, I'm going to send you to the
16 nursing home. That's the kind of things that goes on with
17 undue influence.

18 That, Your Honor, is a fact---

19 THE COURT: Okay.

20 MR. MEDLIN: ---and that fact is where we see that
21 Merrill is first seriously getting involved in the undue
22 influence.

23 Now, again, remember, she's in a fiduciary
24 relationship. If that February, 2012 Trust is valid she is.
25 If it's not valid, then she's a constructive trustee and

1 subject to the duties of a trustee and the fiduciary
2 relationship under trust law. Bonnie v. Grainger being the
3 case that says that.

4 So, here we are at this critical point.

5 Now, opportunity not only existed there, but you've got
6 the Defendants living near the Barringers in constant
7 contact. That's Exhibit X and Exhibit Y.

8 Randy Light testified he was in constant contact with
9 Mr. Barringer. He also admitted he communicated with
10 Mr. Jolley regarding general matters regarding Mr. and Mrs.
11 Barringer's estate planning.

12 All right. There's another fact.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. MEDLIN: A year earlier Randy Light is emailing Mr.
15 Barringer won't let me have anything to do with the company,
16 and now, all of a sudden, the son-in-law is involved with
17 the estate planning?

18 And they try to wash that away by saying well, it was
19 nothing substantive.

20 Well, what does that mean?

21 If you're talking to somebody about estate planning,
22 then you've been brought in with an opportunity to influence
23 somebody, and again opportunity is one of the factors, to
24 influence their estate planning.

25 Around about this time, again, Mr. Hagler writes these

1 letters talking about the coaching, et cetera, and Paul's
2 incapacity in Exhibit F. So now we have an outsider saying
3 those two people in the room were influencing him to vote.

4 Again, it's all part of a pattern, all part of a
5 process, and the first step in taking over the company is to
6 get rid of Kevin. Turn Mr. Barringer against Kevin, and to
7 get rid of Kevin.

8 Your Honor, John Jolley's billing records show very
9 little contact with Mr. Barringer before the two most
10 critical changes in his estate planning. This is Exhibit
11 CC.

12 THE COURT: Right.

13 MR. MEDLIN: The purported July 20th, 2012, Trust
14 amendment, which left the voting stock to Merrill Light at
15 his death, and the purported stock transfer of September 11.
16 But he's got a billing entry with a telephone conversation
17 with Randy Light on July the 18th.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: And we heard yesterday, and we already
20 knew according to the airplane records and the signatures,
21 that Randy Light is with Mr. Barringer in Alabama on
22 July 20th, 2012.

23 Now, I have, on only two occasions in all the wills
24 that I've prepared for clients---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---and most of them were friends and
2 colleagues since I've been a professor, there have been lots
3 of them, hundreds if not into the thousands, only in two
4 emergency situations, one was a deathbed situation, one was
5 a buddy of mine who I'd done several wills before who was
6 leaving going along Doctors Without Borders, the idea that
7 I would send a complicated Trust document out that was
8 changing control, changing the pattern of somebody after his
9 long dispositive history, equal treatment among his
10 siblings, his children, and then eventually his daughters to
11 run his legacy empire, without having him in the room with
12 me so that I can explain the documents and execute the
13 signing, is incomprehensible to me. And I don't know of
14 many really good estate planners who do that, and I doubt
15 John does that a whole bunch, and what was the rush?

16 why couldn't we wait for Mr. Barringer to get back from
17 Alabama so we could have him in the room?

18 Another factor in undue influence cases, Your Honor---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---is that the perpetrator is present.
21 Again, doesn't require it, but it is another factor, and
22 guess what?

23 THE COURT: Okay.

24 MR. MEDLIN: We have presence all over the place.

25 THE COURT: Okay.

1 MR. MEDLIN: Randy Light is present when, when Mr.
2 Barringer signs that critical document. Merrill Light is
3 present when he transfers the stock.

4 Again, another critical factor in undue influence. We
5 check the boxes in both cases.

6 THE COURT: Okay.

7 MR. MEDLIN: Your Honor, on July 3rd, 2012, this is
8 after Kevin has been fired, John Jolley sends an email to
9 Merrill Light about company ownership. He doesn't copy Mr.
10 Barringer.

11 Now, this is gonna be a pattern going along moving
12 forward in our undue influence evidence. Mr. Barringer is
13 being cut out of these conversations. If he really is John
14 Wayne, and he really is in control, and he really is the guy
15 who's making decisions---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. MEDLIN: ---why are Merrill and Randy and John
18 Jolley sending emails back and forth about issues critical
19 to Mr. Barringer?

20 And they're not copying Mr. Barringer. That's the
21 secrecy that's also an important factor.

22 THE COURT: Okay.

23 MR. MEDLIN: Your Honor, on August 1st, Merrill
24 procured a proxy purportedly signed by Paul at the
25 shareholder's meeting. Again, it was faxed from John

1 Jolley's office, Exhibit BB.

2 Paul Barringer did not attend the August 3rd, 2012,
3 shareholder meeting and board meeting where all
4 relationships with Kevin was terminated. Merrill has her
5 proxy -- his proxy that she had procured it at the meeting
6 by not saying how she was voting his stock. She certainly
7 didn't say she was doing it as cotrustee. We have an
8 audiotape of that meeting. She just said she was there to
9 vote on behalf of Mr. Luzak.

10 THE COURT: Okay.

11 MR. MEDLIN: Excuse me. Mr. Barringer. I'm sorry.

12 THE COURT: I understood.

13 MR. MEDLIN: Mr. Luzak's being fired at these meetings.

14 THE COURT: I got it, yeah.

15 MR. MEDLIN: All right. So, in the Virginia lawsuit, a
16 long time later, we finally end up having to demand
17 shareholder minutes. Actually I think this occurred before.

18 But, in any event, we have to demand the shareholder
19 minutes, and, finally, the shareholder minutes show on an
20 attachment, in small print, that actually Merrill Light is
21 the cotrustee of Paul's Trust. That's the first time
22 Hampton Light (sic) ever found out about it.

23 Now, again, she's a beneficiary at that time.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. MEDLIN: And so she's entitled to knowledge under

1 the Trust Code. So, she's not been being told that. She's
2 also a shareholder where Merrill Light is a director and
3 owes a fiduciary duty there.

4 She's entitled to that information. She's not getting
5 the information that's pertinent to both her relationship as
6 the beneficiary but also pertinent to her relationship as a
7 shareholder of the company.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. MEDLIN: John Jolley ended up -- oh, and by the
10 way, if Mr. Barringer was so dead set on getting rid of
11 Kevin Luzak---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---and he was at that June 28th, 2012,
14 board meeting---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---where he was fired as CEO the first
17 time, why didn't he show up this time?

18 If he's John Wayne, if he wants to make sure all these
19 things are going on, he didn't even bother to show up at the
20 meeting cause it's not he's embarrassed to fire Kevin cause
21 he was at the other meeting.

22 John Jolley drafted the stock for him naming himself as
23 attorney in fact to transfer all shares on the books to
24 Merrill Light. He's corporate counsel. He owes a duty to
25 the shareholders. He doesn't notify Mrs. Luzak of the

1 transfer. He's also Merrill Light's personal attorney.
2 He's also trustee, et cetera, et cetera, as we've talked
3 about before. But, again, it shows the secrecy that's going
4 on in this case.

5 Now, we're gonna tie this back in a little bit later
6 too because several months from now, when they can't figure
7 out when they're suppose to say the stock transfer took
8 place and---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. MEDLIN: ---there's emails saying well, it's -- Mr.
11 Barringer signed, why can't we get Mr. Barringer to sign,
12 all that sort of stuff, but John Jolley had the stock power.
13 He could of signed for him. So, there shouldn't have been
14 any question about that. That's in Exhibit GG, Your Honor.

15 Nine days after this purported stock transfer on
16 September the 11th, Randy Light sends an email to Travis
17 Bryant. Defendants fought long and hard with Your Honor
18 before they produced this, and then they said oh, well, it's
19 nothing.

20 Travis, who was described as a puppet by Mike Hagler,
21 and that would be puppet of the Lights, said I have an idea.
22 Let's take 5 million-dollars from the company. Let's give
23 it to Paul and gin up some reason to distribute to him and
24 no other shareholder cause remember they're other
25 shareholders in addition to Anthony. The shareholders owned

1 18 percent of the company.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Let's take 5 million-dollars from the
4 company, give it to Paul, and let Paul give it to Merrill as
5 a gift cause we can give away 5 million-dollars.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: That shows several things.

8 It shows their motive in making the company their
9 personal pocketbook, and we'll see other examples of how
10 they do that.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. MEDLIN: No concern whatsoever about the other
13 owners, and that fact that it's other people's money that
14 they're talking about.

15 Now, Defendant's going to say well, it never happened.

16 well, it doesn't matter that it never happened. It
17 shows how he thinks---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: ---and it got shot down as it should have
20 been shot down. But here's how he's thinking. It also
21 shows he has the opportunity to do it.

22 Guess who he didn't copy on that email, Your Honor?

23 Paul Barringer.

24 Again, this secrecy, this idea that it's our company
25 now, that we pulled this off, and that we're gonna keep Paul

1 Barringer unaware of what's going on because we can.

2 Again, Your Honor, as we talked about before, in
3 Exhibit II, Merrill Light, in her deposition, says she never
4 told Paul Barringer about Randy's bankruptcies and business
5 failures.

6 Again, that would be important information for Mr.
7 Barringer to know.

8 As we say in our brief, that's not exactly the resume
9 item of somebody you want running your company, but
10 particularly somebody you want to control your company once
11 you supposedly had given away control of it while you're
12 still alive, son-in-law or not.

13 Exhibit A, Your Honor, talks about---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---the (indiscernible) documents that in
16 Attachments 1 through 6, 9 through 21, prove the history of
17 Paul Barringer treating his daughters equally, equally with
18 respect to voting control.

19 I'm sorry, Your Honor. That's Exhibit A, Attachments 1
20 through 6, 9 through 21. Consistent with the 1998 estate
21 planning.

22 Exhibit III Travis Bryant, John Jolley, and Randy Light
23 email themselves about getting Paul to transfer his voting
24 stock to Merrill, but they do not copy Paul Barringer except
25 on one email, and that's where John Jolley says Paul, can we

1 get those certificates signed.

2 On November 12th, 2013, Plaintiff's assistant emails
3 Mr. Barringer's company assistant and says that Hampton has
4 been trying to call her mother's cell number, but she could
5 not get through, and asked if she has a new number, and the
6 company assistant responded without answering the question.

7 Now, the Lights control the company at this point.
8 Hampton is asking how can I get in touch with my family,
9 and, by the way, she's trying to find that out because her
10 mother has told her don't call your daddy, call me.

11 So, we are having restricted visitation in that regard.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: May 12th, 2014, Randy Light emails John
14 Jolley asking him to forward the new estate planning
15 documents the Barringers will be executing, and that John
16 Jolley discussed with Randy Light the previous week.

17 Exhibit HHH, Your Honor.

18 THE COURT: Okay.

19 MR. MEDLIN: March 24th, and June 20, June, 2014, we
20 have notes from dad wishing Hampton a happy birthday, and
21 notes from Mrs. Barringer sending a note to Hampton thanking
22 her for her birthday gift to Paul Barringer, and the poem
23 Wade wrote for her. This is a couple years after they claim
24 Hampton is estranged herself from the family. She's still
25 sending Father's Days present, and birthday presents, and

1 all that to her father.

2 Around about this time, in June of 2014, Paul Barringer
3 supposedly executed another Revocable Trust amendment
4 completely disinheriting Hampton. Either of these people
5 are awfully duplicitous, and I mean by that the Barringers.

6 Hi, sweetie. We love you. Thank you for the gifts.
7 Have a happy birthday. Give Wade a handshake for me and a
8 hug for me. And, by the way, I'm not telling you, but I
9 just disinherited you.

10 We don't think Mr. Barringer was that kind of person.
11 We don't think Mrs. Barringer was that kind of person.

12 Now, Your Honor, just a couple more on the undue
13 influence. I got to find it.

14 In fact, Your Honor, on February 25th, 2015, again
15 Defendant talks about these letters that Paul Barringer sent
16 talking about her disapproval. By the way, his disapproval
17 of her for suing the company.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. MEDLIN: She never sued the company. All she did
20 was when, in February of 2015, she saw in a footnote that
21 Travis Bryant effectively had been given stock. He, he got
22 the stock, gave a note for it, and was allowed to pay off a
23 note from dividends. That's after being given the stock.
24 And she thought her daddy would never want to do that. And
25 she wrote concerned about that.

1 In the Summer of 2012, she wrote concerned about what
2 was happening to her daddy. Again, she's concerned about
3 her daddy, and it's being termed against her.

4 Defendant admitted Mr. Barringer got mad about that.

5 Well, if Mr. Barringer wasn't being unduly influenced,
6 he would of appreciated his daughter trying to protect him.
7 In the Exhibit III, Merrill emails Mr. Barringer's assistant
8 on February 25th, 2015, which, again, is right around the
9 time he supposedly did these 2015 documents---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---to his assistant about Dad is working
12 on a letter. I will forward it to you. And then the next
13 day Merrill emails dad's assistant. Dad's not doing this.
14 It's his assistant. Merrill's doing it. Please put the
15 letter on dad's stationary and return it to me.

16 On February 3rd, two days before the 2015 documents,
17 of course, we don't have any evidence according to the
18 Defendant about things going on the 2015 documents---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---two days before, Merrill Light, they're
21 emails with Merrill Light and Victor on preparing the new
22 estate planning documents, Mr. Barringer's estate planning
23 documents. Nothing from Mr. Barringer. From them.

24 Two days before, Cindy Sprouse, trustee, emails Randy
25 and says don't you think we need to get Paul Barringer off

1 as a cotrustee?

2 There's only one reason to do that. That's because he
3 can't handle and it gives Merrill total control.

4 And guess what?

5 The February 5th, 2015, Trust gets rid of Paul as
6 cotrustee. So, not only did it show their opportunity, and
7 their motive, and the acts and the secrecy, but it's pretty
8 blatant what they're doing not only to Hampton, but what
9 they're doing to Mr. Barringer, they're firing him from the
10 board of directors. They're taking him out as cotrustee of
11 this Trust. None of these emails include him.

12 Let's talk about company govern -- governance, company
13 governance. He's not on it.

14 Let's talk about taking money and giving it to him and
15 then, then giving it to us. He's not on it.

16 why wouldn't you include him on those emails?

17 So, Your Honor, with respect to undue influence, we
18 think we have plenty of facts that certainly---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---survive whatever test we might have to
21 survive. But, again, because of the fiduciary relationship
22 and the self-dealing, the burden is on the Defendant. Not
23 us. I, I don't even know how you have a summary judgment
24 issue on that case because the burden's on them, not even on
25 us, with respect to that.

1 well, Your Honor, those, for now, are the bullet points
2 of undue influence.

3 THE COURT: Okay.

4 MR. MEDLIN: All right. Your Honor, before I move on
5 to the rest, do you want to take a break?

6 How, how -- it's up to you.

7 THE COURT: I got to tell y'all, I mean I have to leave
8 before -- just a couple minutes before two o'clock. So, it
9 doesn't matter where we are, I got to go. So I'm just
10 telling you.

11 MR. MEDLIN: Well---

12 MS. PAYLOR: I'm entitled to reply, Your Honor. I mean
13 I, I -- he's had almost an hour and a half, which he's
14 entitled to, and then I would like the rest of the time to
15 reply.

16 THE COURT: Okay.

17 MS. PAYLOR: Thank you.

18 MR. MEDLIN: Your Honor, I'm happy for her to have a
19 reply, but I'd like to finish our argument.

20 THE COURT: Okay. Well, I can tell you that y'all have
21 fully briefed it, and it really is up to me how much
22 argument I allow you to have. And between yesterday, five
23 hours, and now today, another three hours, I've given y'all
24 a total of eight hours. So, I'm, I'm pretty comfortable
25 that I can give y'all sufficient -- and it's been well

1 briefed. I mean clearly.

2 So, let's go ahead and just let Mr. Medlin finish, and
3 then, Alice, if I decide I need more or I want you to reply,
4 I guess we'll hear more later.

5 So, go ahead, Mr. Medlin. Just finish up.

6 MS. PAYLOR: Can I just say one thing --

7 THE COURT: Yeah.

8 MS. PAYLOR: -- before he goes forward?

9 Your Honor, he had four hours yesterday and now he's
10 gonna have---

11 THE COURT: I know.

12 MS. PAYLOR: ---two hours today. I, I broke my time up
13 so that I would be able to respond to things that he said,
14 and I do want to respond to them.

15 THE COURT: And that's fine. You, you can. Again,
16 it's -- whether or not you can get a hearing is up to me. I
17 could of decided this on briefs. So --.

18 MS. PAYLOR: Well, I agree with you, but I think it's
19 not fair if I don't get equal time that he gets.

20 THE COURT: Okay. Go ahead, Mr. Medlin. Finish up.

21 MR. MEDLIN: Your Honor, my time yesterday was mostly
22 taken up by her by interrupting. So, this is the first real
23 opportunity I've had a chance, without interruption, to make
24 a cogent presentation.

25 So, that covers the undue influence, Your Honor. That

1 covers capacity.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. MEDLIN: Now, mistake, Your Honor, would go a lot
4 towards the same facts, and that's what I told Your Honor
5 yesterday. If I can get through the facts that talk about
6 capacity and the facts that talk about undue influence, then
7 I think this could be significantly truncated, and I'll try
8 to be as brief as I can, Your Honor, and, of course, you
9 have the absolute right to shut me down any time you want.

10 But with respect to mistake, he's mistaken because of
11 his lack of capacity and the undue influence about what's
12 going into his documents and what he's doing. And one of
13 the classic mistakes that we see that if he had taken care
14 of it originally---

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: ---we wouldn't be in this case was, in
17 May, he attempted to put this voting stock into his
18 Irrevocable Trust, and then, a few days later, that
19 certificate gets canceled---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---and it goes into his Revocable Trust
22 where Merrill is cotrustee.

23 Now, Your Honor, that Irrevocable Trust divided the
24 stock equally --

25 THE COURT: Right.

1 MR. MEDLIN: -- and it couldn't be changed. And
2 despite what---

3 MS. PAYLOR: Your Honor, there was no Irrevocable
4 Trust. You know, this is where I'm not gonna get to
5 respond. He hasn't put an Irrevocable Trust into evidence.
6 There wasn't one.

7 MR. MEDLIN: The Irrevocable Trust, Your Honor, is in
8 evidence. The only question is, and this is the issue of
9 mistake, is did he use the correct date. There was an
10 Irrevocable Trust in December and Defendant knows that, and,
11 in fact, by -- that Irrevocable Trust got amended in a
12 Probate Court action where Mrs. Light's, excuse me, Mrs.
13 Barringer's life interest was voluntarily given up, and
14 everybody consented to that. And the question is whether he
15 put down the date of December 22nd, and we're not aware of
16 a revocable -- an irrevocable trust dated December 27th,
17 1998, or whether he meant to put it in his Irrevocable Trust
18 of December the 4th, and that's a question of his intent.

19 That technicality wouldn't make a difference if he
20 intended to put it in the revocable -- Irrevocable Trust
21 that did, in fact, exist.

22 So, that's a question of mistake.

23 Did he mistakenly take it back out or was that part of
24 an undue influence?

25 That too is an important factor, Your Honor, in our

1 discussion of all this.

2 So, not only---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. MEDLIN: ---would his documents resulting from lack
5 of capacity or undue influence be the result of mistake, but
6 not successfully putting it into the Irrevocable Trust that
7 he, that he intended to, and then somehow magically wanting
8 to take it back out, which, by the way, unless that Trust
9 doesn't exist, I don't think you can undo that. It's an
10 Irrevocable Trust. Then we wouldn't even be here today.

11 The idea that Mr. Swain and Mr. Jolley told him, in
12 February, to transfer the property to this Revocable Trust,
13 he's just getting around to it in May?

14 So, again, we think all that goes to mistake, Your
15 Honor, and that applies to all the transfers that we're
16 talking about.

17 The tenth cause of action that deals with the recall of
18 the transfer of personal property, including the stock, is,
19 is based on the lack of capacity, undue influence, and the
20 mistake arguments.

21 Now, conversion is, as we noted yesterday, the taking
22 of someone else's property.

23 well, if Mr. Barringer's post 2011 estate planning
24 documents are invalid---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: ---Hampton has an equitable interest in
2 that Trust. When Mr. Barringer dies, it goes from
3 contingent to vested, and obviously the Court -- the law
4 allows, no South Carolina case law on point I, I admit, Your
5 Honor---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. MEDLIN: ---but the exact same language of the
8 statute, the Uniform Probate Code, says that contingent
9 beneficiary, once vested, can sue. And so she's had her
10 property taken by Mrs. Light. And so she does have standing
11 for conversion, and it fits the classic definition of
12 conversion.

13 Quantum meruit, Your Honor, is the thirteenth cause of
14 action --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: -- and it goes to unjust enrichment. It's
17 a different remedy from a constructive trust with it based
18 on the same concepts. So, it's not the same cause of
19 action. It's a different cause of action, and Mrs. Light
20 has ended up with property she's not entitled to.

21 So (indiscernible).

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: Again, she has standing regardless of
24 whether she can sue a trustee.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: The trustee has property that belongs to
2 her. It happens to be in Merrill Light's hands
3 individually, but she has it.

4 Constructive trust is our fourteenth cause of action,
5 and, with a constructive trust, Your Honor, again, as we
6 noted yesterday, the remedy is simply to take property away
7 from somebody who took it from Hampton. And if Mr.
8 Barringer's documents are invalid, and that irrevocable
9 transfer is invalid, then Merrill Light shouldn't have it.

10 The same with a resulting trust. When somebody
11 mistakenly gives property to someone and doesn't intend for
12 them to have it, equity imposes a resulting trust, deposits
13 it back, and it goes to the rightful owner.

14 Now, with respect to fraud, Your Honor, and I'm sorry I
15 skipped over fraud. I'm trying to follow along with the
16 causes of action.

17 Again, many of the factors that we talked about, that
18 obviously I won't repeat, for undue influence and lack of
19 capacity go to fraud. You don't have to show the nine
20 elements of fraud as we point out in our brief with cases
21 cited when we're talking about fraud in the inducement, and
22 you will, which is clearly what we're arguing about, that
23 the Defendants defrauded Mr. Barringer, and also Hampton
24 Luzak, by taking that voting stock from Mr. Barringer, and
25 eventually from Hampton Luzak.

1 And, remember, not only does Hampton have standing to
2 sue for herself because now she would be a vested
3 beneficiary, and can chase after what somebody did to the
4 Trust even while it was revocable, even if the property was
5 suppose to go into the Revocable Trust to begin with, she
6 also has standing under the Estate of Brown despite the
7 existence of a personal representative, Mrs. Barringer,
8 who's not going to do that, has the standing, under Estate
9 of Brown, to assert claims her own father would have because
10 the property was taken from him while he was alive, but
11 eventually from---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. MEDLIN: ---Hampton because she was gonna end up
14 with it.

15 Again, Your Honor, I'll point out that a fiduciary has
16 a duty to disclose, and, again, Mrs. Light is a fiduciary to
17 both Mr. Barringer and to Mrs. Hampton Luzak.

18 Here's the misrepresentation. She gives him the
19 papers---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---that confuse him an angered him, and
22 she eggs that on, and she doesn't try to stop it---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. MEDLIN: ---and she has a duty to stop it if she's
25 a trustee or if she's a fiduciary in any other way, which

1 she is as a director of the company, the duties owed to Mr.
2 Barringer and to Hampton Luzak.

3 So, she should of corrected anything that resulted that
4 was a mistake and she didn't. That's an intentional
5 misrepresentation and an intentional, I should say,
6 omission, which is treated like an intentional
7 misrepresentation under the law. And she hid all this over
8 the years from Hampton Luzak, and she hid a lot of things
9 from Paul Barringer, again, with duties to disclose as a
10 fiduciary to both of them.

11 She didn't try to correct Paul Barringer who said in
12 the April board meeting Kevin threw a book at her, which, of
13 course, no rational person would believe happened. Her
14 silence eggs it on. She knows Mr. Barringer is claiming
15 that he threw a book. She's talking to Kevin like they're
16 best buddies before she sticks a knife in his back, and, at
17 the same time, a knife in Hampton's back. Kevin's still
18 trying to help her and he always has, and rather than saying
19 daddy, that didn't happen, she let's him continue to believe
20 that that is a horrible thing that Kevin did to her.

21 All right. Your Honor, back in line again, sorry, the
22 sixteenth cause of action is breach of fiduciary duty, and,
23 again, I want to just take this into context.

24 Mrs. Barringer, Mrs. Light I should say, owes a
25 fiduciary duty to Mr. Barringer in several ways, and despite

1 what Defendant said earlier today, you can't agree to be
2 trustee and said I don't owe a duty. When you're a trustee,
3 you owe a fiduciary duty. That's simply the way it works.

4 I don't care that the document, for a few years, gives
5 the power to either cotrustee to act on behalf of the Trust.
6 That's simply a question of who can act, but you have a
7 panel duty. And, in fact, South Carolina Probate Code
8 follows the general rule on responsibilities between
9 cotrustees. 62-7-703 deals with that.

10 So, not only does Mrs. Barringer -- sorry, Your Honor.
11 I'm getting tired. So I keep---

12 THE COURT: It's okay.

13 MR. MEDLIN: ---bringing Mrs. Barringer in, and I'm
14 trying to rush, not only does Mrs. Light owe a duty to Paul,
15 even Defendant admits that because of 62-7-603, as the
16 beneficiary, she owes a duty to the cotrustee.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: So, the notion that there's no duty as
19 owed as trustee is just fallacious, and, again, she owes a
20 duty as director. She owes a duty as a partner. She owes a
21 duty as his agent---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. MEDLIN: ---under power of attorney, which she does
24 use.

25 And, again, Your Honor, and I want to just cite our

1 discussion on Page 31 of our memo, the law is clear that she
2 also owes a duty to Hampton Luzak.

3 Now, owes a duty, and she admitted this in her
4 deposition, as a director owes to a shareholder. And, by
5 the way, the idea of -- I'm sorry, Your Honor. That
6 reminded me of one other thing.

7 THE COURT: Go ahead.

8 MR. MEDLIN: In Florida, we have an admission now
9 finally, again, they fought long and hard about this---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. MEDLIN: ---that in the Virginia lawsuit, which
12 CFRC, under the control of the Lights, brought against
13 Hampton---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: ---to determine who owned the stock,
16 simply because she has exercised her shareholder's rights in
17 asking what's going on, I want the minutes. I want
18 (indiscernible).

19 Now that I think things are going on behind my back,
20 which I'm entitled to know about as a shareholder, I want to
21 know who owns the stock in the company. Three requests from
22 the company to simply give her what she was clearly entitled
23 to under the law, which was the ownership records. They
24 don't -- still don't want her to know about this transfer.
25 Again, the secrecy is important cause while (indiscernible)

1 don't lie, Hampton's gonna be better able to do something
2 about that.

3 So, there is this recalcitrance on the part -- part of
4 the company daddy had, and what's happening at the same time
5 is Merrill Light is telling Mrs. Barringer that Hampton is
6 suing the company, Paul is sending a nasty letter, whether
7 he drafted or not we're not quite sure, but sending a nasty
8 letter to Hampton saying I can't believe you're suing the
9 company, this is awful, this is my legacy, and, again,
10 whether he had capacity to that or not is real problematic,
11 and we don't think actually he did, but, in any event, to
12 the extent that that angered him as well -- and, again,
13 let's notice the difference in time.

14 In 2012, Hampton sends a letter to the board saying
15 daddy, we need to take care of daddy. In 2015 she's asking
16 the company to give me the company records that I'm entitled
17 to, and Mrs. Barringer hears from Merrill that Hampton's
18 suing the company. She's not suing the company. She's just
19 asking for information she's entitled to.

20 Mr. Barringer supposedly writes a letter saying I hate
21 you. It's not quite that cruel, but it's pretty cruel, that
22 says that he thinks she's suing the company.

23 Again, Merrill Light has lit that fuse. She has told
24 something that's not true to Mr. and Mrs. Barringer, and
25 they're acting on it, if he's competent to act on it, but

1 certainly he may be mad because he might understand
2 somebody's trying to tear down his legacy. Although, you
3 know, within a few weeks of this he's been deposed as
4 chairman of the board and the board member by the Lights.

5 So, we have this going on in 2015 where, once again, we
6 see how susceptible Mr. Barringer is and how dishonest
7 Merrill Light is. And so we get into this lawsuit, and it's
8 expensive, just like I suspect this one is, and you're
9 right, Your Honor, we're dealing with wealthy people.

10 So, it turns out Merrill Light's individual fees in the
11 lawsuit are paid by the company.

12 Now, when we got into this action and Hampton got sued,
13 as I know Your Honor recalls, she counterclaimed, and one of
14 the counterclaims was well, you don't own the stock now that
15 I found out about it cause we've got an agreement that the
16 company gets to buy it back first.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: And so now Merrill is an individual
19 defendant---

20 THE COURT: Uh-huh. (Affirmative).

21 MR. MEDLIN: ---to Hampton's counterclaim.

22 This is not a claim against the company. This is not
23 something the company should pay for, and yet we now know
24 that the company paid her legal fees.

25 They still resist giving us a whole bunch of

1 information.

2 MS. PAYLOR: She paid them back. They paid them and
3 then she---

4 MR. MEDLIN: I'll make that---

5 MS. PAYLOR: ---paid (indiscernible).

6 MR. MEDLIN: ---for you right now. You don't need to
7 make it for me. I'll make it.

8 And that, again, it shows Defendant doesn't understand
9 the point. The comptroller says she paid them back after
10 Hampton got involved with the conservatorship, and it was
11 clear that there was gonna be a lawsuit after Mr.
12 Barringer's death. That's when they got paid back.

13 But that's not the point. The point is that it, it
14 shows the motive and opportunity and the personal pocketbook
15 that they think the company is because, when they take an
16 advance for somebody's personal fees, which we think may be
17 close to a couple million bucks, they're taking it from
18 other people.

19 Hampton Luzak is a shareholder. The Conger family are
20 shareholders, and they won't show us the records --

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MEDLIN: -- even though their shareholders.

23 Now, again, that's not a derivative action. It shows
24 motive and propensity in the undue influence case.

25 Now, maybe it's also a derivative action, but that's

1 not what we're raising this for in this case, and it doesn't
2 matter that she's paid it back. The fact that she took it
3 to begin with, whether she would of paid it back if Hampton
4 had started nosing around, I don't know. But even the fact
5 that she borrowed it without any kind of documentation,
6 without any kind of notice to the board or the shareholders
7 shows just exactly how they think other people's property is
8 theirs, including Mr. Barringer's.

9 So, Your Honor, again, I'm sorry. I got off track, but
10 I, again, being in a hurry, forgot to mention that point.

11 So, back to the self-dealing. It's clear that, once
12 Mr. Barringer dies, Hampton vests as a beneficiary, and she
13 has the right to sue a trustee for improper actions during
14 Mr. Barringer's life. Otherwise, as I've noted a couple of
15 times now, Your Honor, and it's really in context here, the
16 trustee could get away with anything, could steal from the
17 trust reducing or eliminating what the now vested
18 beneficiary will receive on the settlor's death.

19 The law doesn't say oh, because it happened while the
20 settlor was alive you don't have a remedy, and it's
21 particularly problematic, in fact, there's some bracketed
22 language in the UPC that goes on, we don't have that
23 question in South Carolina.

24 What happens if somebody is incompetent as a settlor
25 and Mr. Barringer was?

1 He was incompetent and subject to undue influence. So,
2 it makes it even easier for the trustee to do something that
3 Hampton Luzak, the now vested beneficiaries, property, and
4 that's where 62-7-802 comes in. That's the self-dealing
5 statute.

6 You don't need a statute to know that the law doesn't
7 allow self-dealing with the trustee. If the trustee
8 receives trust property, even if it's purchased, that's
9 self-dealing. But if it just comes out of the Trust,
10 without any kind of consideration, that is blatant
11 self-dealing. But any kind of self-dealing is conclusively
12 presumed to be self-dealing, and the burden is on the
13 trustee to show that one of the recognized exceptions to the
14 self-dealing statute applies, and that would be the consent
15 to the beneficiaries, and we don't have Hampton's consent
16 here.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. MEDLIN: It would be a ratification by a Court. We
19 don't have that here. And it would be the approval of the
20 settlor, and we can't have that here because he's subject to
21 lack of capacity and undue influence.

22 So, we've got the self-dealing statute, which, again,
23 puts the burden to show why she should be allowed to keep
24 that property.

25 And, again, one more point on that issue. She is the

1 sole trustee, according to the 2015 Trust. Again, all --
2 none of which, since 2011, we think are valid, but if they
3 want to argue it's valid, then they've got a problem with
4 self-dealing.

5 All right, Your Honor. Intentional interference with
6 an inheritance.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: And I'm just gonna talk briefly about the
9 elements. Defendant says it's automatic summary judgment
10 because South Carolina doesn't recognize that. But, Your
11 Honor, under that theory---

12 THE COURT: Mr. Medlin, I, I think you covered this
13 yesterday. I, I heard it. I, I know you said you talk
14 about not wanting to know what the Supreme Court argue is --
15 our Supreme Court does these days, but I tend to agree with
16 you. I actually think they would adopt it.

17 So---

18 MR. MEDLIN: Can I just make one quick point about that
19 argument?

20 THE COURT: Sure.

21 MR. MEDLIN: If that were the case, if a nonissue was
22 always thrown out on summary judgment---

23 THE COURT: I know.

24 MR. MEDLIN: ---we'd never get a resolution of that
25 issue---

1 THE COURT: I understand that.

2 MR. MEDLIN: ---of that case.

3 Okay.

4 THE COURT: Okay.

5 MR. MEDLIN: So, Your Honor, and, and I won't get back
6 into the law of the existence of an expectancy, et cetera,
7 et cetera. I'll just talk about what we have and we have
8 the evidence in the Luzak's affidavits that get us to where
9 we need to go, and I'm gonna start with Kevin, Paragraph 3,
10 that there was an expectancy.

11 Kevin says, and the documents also prove, that there
12 was suppose to be equal treatments between the daughters.

13 Paragraph 5 -- this is Exhibit B, Your Honor.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MEDLIN: He entered into a stock purchase agreement
16 with the kids to make sure that the stock remained equal.

17 Paragraph 5. Family meetings. He's saying the same
18 thing. We've gone into that that -- those family meetings.

19 Paragraphs 7 through 11. He creates trusts and does
20 others estate planning that are spelled out in our Exhibit A
21 with 40 exhibits, and then other exhibits, Your Honor, ad
22 nauseam, to show that. So, we won't get into that cause I
23 know you don't want to hear that again.

24 Paragraph -- I'm gonna be showing the facts that we
25 have to get past summary judgment.

1 Again, at Paragraph 57, Kevin recites all the ways that
2 we get there, and, in 59, he talks about the understanding
3 among the family as well.

4 In Exhibit A, Attachment 5, you have that 1998
5 Irrevocable Trust amended with the consent of all the family
6 at the Probate Court, and then you have similar assertions
7 by Hampton in her affidavit, Exhibit C, Paragraphs 1 through
8 3, Paragraphs 5 through 9, 51 and 52.

9 So, otherwise the factors that go into particularly
10 undue influence that we discussed would apply to intentional
11 interference.

12 The influence, also the fraud that was practiced on Mr.
13 Barringer, interfered with Hampton's expectancy, which is
14 clearly spelled out in the documents.

15 So, under that cause of action, if this Court
16 recognized it, and this Appellate Courts agreed, then we
17 have a separate claim for that directly against the Lights,
18 and we're entitled to punitive damages, and I want to talk
19 more about punitive damages in just a minute too, Your
20 Honor.

21 THE COURT: Okay. Mr. Medlin, I got to tell y'all, I,
22 I got to go. So, this is what I plan on doing. I think
23 that was the last cause of action we needed to address.

24 So, again, I told you I believe that there is some
25 evidence of it. Whether or not it's proven, and there is

1 punitive damages is something that is to be determined at
2 trial.

3 But is there any other cause of action you did not
4 address?

5 MR. MEDLIN: Your Honor, I didn't get into the
6 attorney's fees and costs issue.

7 THE COURT: I don't think you need to address that---

8 MR. MEDLIN: And, again---

9 THE COURT: ---at this point. I mean that's not---

10 MR. MEDLIN: All right.

11 THE COURT: ---where we're at. So, that, that doesn't
12 matter right now.

13 what else?

14 MR. MEDLIN: And then, and then I didn't get into the
15 conspiracy issue, which---

16 THE COURT: Okay. So, this is what we're gonna do.

17 MR. MEDLIN: Your Honor, can we just---

18 THE COURT: This is what---

19 MR. MEDLIN: ---rest on our brief with that---

20 THE COURT: Sure.

21 MR. MEDLIN: ---Your Honor?

22 THE COURT: That'd be great.

23 Okay. Yes, that would be good.

24 Alice, is an hour enough tomorrow morning to respond?

25 MS. PAYLOR: Yes, ma'am.

1 THE COURT: Okay. I mean -- and tell me if you want
2 longer. If you want an hour and a half, you can have it.
3 My thought is---

4 MS. PAYLOR: An hour is plenty. An hour is plenty.

5 THE COURT: Okay. So, 9:30 tomorrow morning by WebEx.

6 MS. PAYLOR: Okay.

7 THE COURT: 9:30 and I'll just let Alice finish up.
8 Okay.

9 MR. MEDLIN: Now, Your Honor---

10 MS. PAYLOR: Thank you.

11 MR. MEDLIN: -- I would like you to consider an
12 opportunity for me to deal with new issues that Alice
13 raises---

14 MS. PAYLOR: Can I have a---

15 MR. MEDLIN: ---you're gonna allow us to do.

16 MS. PAYLOR: ---respond (sic)?

17 THE COURT: We can go back and forth forever. No,
18 she's just gonna respond. That's enough. She's -- we're,
19 we're good.

20 MR. MEDLIN: (Indiscernible) responds, that's fine.

21 THE COURT: Okay.

22 MR. MEDLIN: But, again, if she brings up something
23 new, I'd like to at least ask the Court for the opportunity
24 to do that.

25 THE COURT: Absolutely. If there's anything new, I'd

1 be surprised.

2 So, anyway, so 9:30 tomorrow morning, WebEx.

3 MS. PAYLOR: Thank you.

4 THE COURT: Okay. 9:30.

5 MR. MACLOSKIE: Your Honor please?

6 MR. MEDLIN: Your Honor, may---

7 THE COURT: Yeah.

8 MR. MEDLIN: May I just -- I know you got to get out of
9 here, and I'm sort of talking against myself here. I, I
10 never try to use class as a reason, but tomorrow is the last
11 day of class---

12 THE COURT: Okay.

13 MR. MEDLIN: ---and review and it starts at noon. So,
14 even if you let me respond to something new that Alice
15 raises, I promise you---

16 THE COURT: We'll be done by 11:00?

17 MR. MEDLIN: ---it will be over -- yes, ma'am, unless
18 you make---

19 THE COURT: Okay.

20 MR. MEDLIN: ---make me stay, but I would ask the Court
21 not---

22 THE COURT: Of course not.

23 MR. MEDLIN: I'll manage that class tomorrow.

24 THE COURT: Okay. All right.

25 MS. PAYLOR: It's my, it's my motion. I get to do the

1 reply, Your Honor.

2 THE COURT: Exactly. So -- okay. That, that sounds
3 good. We'll be done then.

4 So, tomorrow morning, 9:30.

5 Alice, take an hour. You're welcome to, and if you can
6 do a reply to anything new, then we'll just go from there.

7 Okay?

8 MR. MACLOSKIE: Your Honor?

9 THE COURT: Okay.

10 MR. MACLOSKIE: If Your Honor please?

11 THE COURT: Yes.

12 MR. MACLOSKIE: Would -- may I be heard for just a
13 moment?

14 I have surgery scheduled on my right-hand at seven
15 o'clock tomorrow morning.

16 THE COURT: Okay.

17 MR. MACLOSKIE: I wish you would excuse me---

18 THE COURT: Of course.

19 MR. MACLOSKIE: ---tomorrow.

20 THE COURT: You be well. You be well.

21 MR. MACLOSKIE: I will.

22 THE COURT: I hope someone good is doing it.

23 MR. MACLOSKIE: It will be fine.

24 THE COURT: Good.

25 MR. MACLOSKIE: Thank you.

1 THE COURT: Okay. Anything else?

2 we good?

3 MR. HOGAN: Thank you, Judge.

4 THE COURT: All right. Thank y'all. I appreciate it.

5 MR. MEDLIN: Thank you for your patience.

6 THE COURT: Thank you.

7 MR. MEDLIN: And, Alice, I appreciate your patience.

8 MS. PAYLOR: Thank you. I don't have much.

9

10 (WHEREUPON, Court was in recess in this matter.)

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Thursday, November 19th, 2020

THE COURT: All right. Well good morning again. I think we're now all on the record.

So, Groundhog Day. We're back and I think we just need to finish up.

Mr. Medlin, I think you had a few things you needed to just wrap up.

Am I still correct on that?

It's almost like I have no memory.

MR. MEDLIN: No, Your Honor. If you, if -- you allowed us to rest on our brief on the civil conspiracy issue---

THE COURT: Yeah.

MR. MEDLIN: ---I, I think we have taken care of that.

THE COURT: Okay.

MR. MEDLIN: I, I do want to clarify one---

THE COURT: Uh-huh. (Affirmative).

MR. MEDLIN: ---comment from yesterday.

THE COURT: Okay.

MR. MEDLIN: I, I think I mentioned, whichever Groundhog Day it was, maybe yesterday, that, even though it didn't matter whether Merrill Light ever acted as trustee because you can't turn the trustee fiduciary faucet on or off once you're a trustee or a trustee --

THE COURT: Uh-huh. (Affirmative).

1 MR. MEDLIN: -- she, in fact, did vote the stock for
2 Mr. Barringer, and that wasn't the August 3rd, 2012,
3 shareholder meeting. Again, when I went back and looked at
4 our brief yesterday, I'm not sure we cited that in the
5 brief.

6 So, just for your information, it's at Exhibit EE---

7 THE COURT: Okay.

8 MR. MEDLIN: ---in our materials.

9 THE COURT: Thank you.

10 MR. MEDLIN: And, Your Honor, I think, with that, we
11 would, again, like the opportunity to, to respond to
12 whatever Alice raises that's new.

13 THE COURT: Okay.

14 MR. MEDLIN: But, otherwise, I think we're done.

15 THE COURT: Okay.

16 All right, Alice.

17 MS. PAYLOR: Thank you, Your Honor.

18 would you allow Bijan to share his screen?

19 He's gonna put up some documents---

20 THE COURT: Sure.

21 MS. PAYLOR: ---for me so that you can see those.

22 THE COURT: Sure.

23 MS. PAYLOR: Thank you.

24 And I want to correct an error that I made yesterday.

25 I misspoke.

1 You asked when Travis Bryant became CEO---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---and I believe I said August of 2016.

4 He became CEO on August 3rd, 2012.

5 THE COURT: Okay.

6 MS. PAYLOR: So---

7 THE COURT: Okay.

8 MS. PAYLOR: ---I just wanted to make sure the record
9 is clear on that. He, he came in right after Mr. Luzak was
10 gone, Your Honor.

11 THE COURT: Okay.

12 MS. PAYLOR: Your Honor, what I'd like to do is to look
13 at the -- each, each of the causes of action, and see what
14 facts were there---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: ---to support incapacity---

17 THE COURT: Okay.

18 MS. PAYLOR: ---first.

19 I don't believe that the Plaintiff has presented any
20 evidence that Mr. Barringer was incapacitated on
21 February 28th, 2012, which is the first will and Trust
22 that they are hoping to invalidate.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: As we've gone over numerous times, there
25 are three elements of testamentary capacity.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: It's a very low bar.

3 THE COURT: Yeah.

4 MS. PAYLOR: The Defendant presented evidence that he
5 did meet those requirements at the time of each testamentary
6 act. Plaintiff failed to present any facts that he did not,
7 and the cases are clear that the proponent of the will has
8 to show, at the time of the testamentary act, that the, the
9 decedent knew what he owned, his loved ones, and to whom he
10 wanted to leave his assets.

11 There's no requirement that the decedent have a
12 reasonable basis for what he wants.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: Mr. Medlin never mentioned, even one time,
15 that Paul Barringer did not know his heirs --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: -- did not know what property he owned, or
18 that he didn't know to whom he wanted to give his assets.
19 He didn't give you one day when they have any evidence of
20 that, Your Honor, and that is what the Courts require.

21 I'm not requiring it. That is what the Courts require.

22 THE COURT: Uh-huh. (Affirmative).

23 Can I ask a question just really quick, and I, I didn't
24 want to interrupt you, but obviously I still am having a
25 concern about no expert being able to tell me that he was

1 incapacitated, and I understand we have these doctor's notes
2 that Mr. Medlin has pulled up, you know, obviously going
3 through saying, you know, he's, you know, got dementia and
4 he's got these issues, and he's having difficulty finding
5 his words.

6 Do you think, Alice -- and I know you, you don't
7 consider that evidence, but I, I still am having a hard time
8 with how that's gonna be presented to a jury, and for them
9 to make that determination, and---

10 MS. PAYLOR: Well, Your Honor---

11 THE COURT: You know, I guess I'm just tied in how do
12 you -- how can it, as lay people, we decide?

13 How, how can we decide whether or not he had capacity
14 at the time without an opinion---

15 MS. PAYLOR: It's on the basis of all the witnesses---

16 THE COURT: ---without having---

17 MS. PAYLOR: ---who were with him.

18 THE COURT: Okay.

19 MS. PAYLOR: And that's what the cases say. It's not a
20 medical incapacity, Your Honor.

21 THE COURT: I understand.

22 MS. PAYLOR: It's a testamentary incapacity.

23 THE COURT: I understand that, but I also do think that
24 it's something that medical testimony would help with. And
25 so -- and I'm going to presume, and, of course, we, we don't

1 know, and Paul Long's deposition hasn't been taken, but I'm
2 presuming all your doctors are continuing and will continue
3 to say that they believe that he had legal capacity, you
4 know, and he understood those three things. I mean I, I --
5 I'm guessing.

6 MS. PAYLOR: I'm sure -- yes, I mean---

7 THE COURT: Right.

8 MS. PAYLOR: ---Mr., Mr -- Doctor Long has already
9 testified to it.

10 THE COURT: Okay. Okay.

11 MS. PAYLOR: And Doctor Baughman gave an, in his
12 medical record, said that he had capacity to handle his
13 affairs in March of 2013.

14 THE COURT: Okay.

15 MS. PAYLOR: So, based on those two, I don't know how
16 you can set aside the February 28, '12, will or the July 20,
17 2012, Trust amendment.

18 THE COURT: Okay.

19 MS. PAYLOR: He---

20 MR. TWOMBLEY: Your Honor, may I---

21 MS. PAYLOR: He had capacity for those two --

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: -- because here we've got -- and, and all
24 the cases say that Alzheimer's is a progressive---

25 THE COURT: Right.

1 MS. PAYLOR: ---discipline, and I want to read you from
2 Gatti versus Douglas.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: And Bijan's gonna put up -- this is the
5 case that Mr. Medlin was relying on---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---for that chronic capacity --
8 incapacity.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: But -- and we're gonna go to Footnote
11 12---

12 THE COURT: Looking at it.

13 MS. PAYLOR: ---that's up on the screen.

14 THE COURT: Yeah.

15 MS. PAYLOR: And it says, this is the Court, we, in no
16 way, suggest that all people suffering some degree of
17 dementia from Alzheimer's disease or otherwise invariably
18 lack contractual capacity.

19 Now, contractual capacity is more than---

20 THE COURT: Right.

21 MS. PAYLOR: ---testamentary capacity.

22 THE COURT: I understand that, and, and, and, and I get
23 that. Again, it's why I have such a hard time with how in
24 the world a jury is suppose to figure out whether or not he
25 knew those three things when -- anyway.

1 MR. TWOMBLEY: Your Honor, may I make a comment about
2 that?

3 THE COURT: Sure. Sure.

4 MR. TWOMBLEY: Your Honor, typically, in these types of
5 cases---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. TWOMBLEY: ---when you're proving that the decedent
8 didn't know his heirs, you have witnesses come in---

9 THE COURT: Okay.

10 MR. TWOMBLEY: ---that say I act -- you know, he didn't
11 recognize me.

12 THE COURT: Okay.

13 MR. TWOMBLEY: I asked him who his children were, and
14 he didn't know who his children were. You know, he didn't
15 recognize his brother.

16 THE COURT: Okay.

17 MR. TWOMBLEY: And that usually comes in the form of
18 evidence -- you know, it can even be from the barber or the
19 guy who cuts the grass or an accountant---

20 THE COURT: Okay.

21 MR. TWOMBLEY: ---or someone of that nature, and the
22 points I think Alice is trying to make is---

23 THE COURT: We don't have that.

24 MR. TWOMBLEY: ---really I listened very carefully to
25 Mr. Medlin. He never -- no one has ever said, at any point

1 in time, Mr. Barringer didn't know who his children were or
2 who his---

3 THE COURT: Uh-huh. (Affirmative).

4 MR. TWOMBLEY: ---wife was. No one has ever said he
5 didn't know what his assets were.

6 THE COURT: Right.

7 MR. TWOMBLEY: And those are the, as to capacity---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. TWOMBLEY: ---legal capacity, the lowest standard
10 under the law.

11 THE COURT: Right.

12 MR. TWOMBLEY: And he just -- there's no affidavit.
13 There's no deposition. There's no anything that supports
14 those three elements.

15 THE COURT: Okay.

16 MR. TWOMBLEY: But that's how you would present it to
17 the jury---

18 THE COURT: Okay.

19 MR. TWOMBLEY: ---and that's what they can't do.

20 THE COURT: Okay. Okay. Thank you, Ashley.

21 MS. PAYLOR: Well, in, in going on, I'm -- Bijan's
22 gonna put up a handwritten letter from Paul Barringer to
23 Hampton Luzak---

24 THE COURT: Yeah.

25 MS. PAYLOR: ---dated December 15, 2012.

1 THE COURT: I read it yesterday and, yeah, I -- it was
2 attached I think to your reply, one of your reply briefs,
3 and I actually -- I had it in front of me yesterday and I
4 read the whole thing, and it's, quite frankly, well written
5 as to be expected, I guess, of a man who was that
6 successful, and I'm sure defense counsel's gonna, or I'm
7 sorry, Plaintiff's counsel is gonna argue that, you know,
8 someone else told him what to write.

9 But okay.

10 MS. PAYLOR: We have, we have evidence---

11 THE COURT: Okay.

12 MS. PAYLOR: ---that he wrote it, and he has a peculiar
13 way of expressing himself and---

14 THE COURT: Yeah.

15 MS. PAYLOR: ---he's doing it in here. I mean you can
16 see.

17 THE COURT: Yeah.

18 MS. PAYLOR: And you had distanced yourself from the
19 Barringer family.

20 THE COURT: Yeah.

21 MS. PAYLOR: We all suffer.

22 THE COURT: Right.

23 MS. PAYLOR: He, you know, he, he was a southern UVA
24 guy and---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: ---it's -- they were kin to Wade
2 Hampton---

3 THE COURT: Yeah.

4 MS. PAYLOR: ---and, you know, they had all of this
5 sufficient. He was very proud of his heritage---

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: ---and you can see it in this letter.

8 THE COURT: Oh, yeah.

9 MS. PAYLOR: This is not written by an insane person.

10 THE COURT: Yeah.

11 MS. PAYLOR: He knew what he was doing.

12 THE COURT: Well, at the end he says we don't want to
13 lose you.

14 MS. PAYLOR: And I -- and she never responded, Your
15 Honor. Never responded. This is the letter -- this is the
16 end of 2012.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. PAYLOR: So, we have three acts before this letter
19 was written. We have the will, February of 2012.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: We have the personal -- we have the second
22 amendment to the Trust in July of 2012, and we have the
23 transfer of the stock on September 11th of 2012.

24 THE COURT: Okay.

25 MS. PAYLOR: He had capacity, Your Honor. There is no

1 evidence that he did not, and this is -- you know, you talk
2 about circumstantial evidence. That's what you've got.
3 You're never gonna have, you might have, somebody who's at
4 his doctor's office while he's signing, and they, they go
5 through that.

6 THE COURT: Yeah.

7 MS. PAYLOR: But what lawyers do is they ask questions
8 to ascertain that they are there, and they don't let you
9 sign the will unless you show that you know those three
10 basic tenants.

11 THE COURT: which, which is why I asked yesterday what
12 John Jolley's duty was when he, you know, is changing a will
13 and doing things, and that's what I wanted to know. And I
14 assume, you know, with the, with the transfers as well.

15 MS. PAYLOR: well, that's it. That is his duty to make
16 sure that he -- that he has the being -- capacity to do
17 it---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---and that's what he wants to do, and
20 he's -- that's, that's what he wants to do.

21 THE COURT: Okay.

22 MS. PAYLOR: And he knows what he's doing.

23 THE COURT: Okay.

24 MS. PAYLOR: I mean the cases all say, Your Honor, that
25 a person adjudicated insane -- even a person adjudicated

1 insane and housed in an institution was found to have
2 testamentary capacity.

3 THE COURT: I understand that.

4 MS. PAYLOR: It's -- this, this -- I mean this is for
5 the Court to make a decision. This should not go to the
6 jury --

7 THE COURT: Okay.

8 MS. PAYLOR: -- because they are not gonna understand
9 the law the way you -- the judge does, and it's up to you to
10 be able to take -- there's no question of fact, and take
11 that away from the jury, and that's what we're asking you to
12 do.

13 Let's get rid of some of these causes of action where
14 there is no basis in fact. It's gonna be a lot easier for
15 you. It's gonna be a lot easier for the jury. And it's
16 gonna be a lot easier for us to try. You're gonna cut down
17 many witnesses. But there is no fact that supports him
18 being incapacitated at anytime in 2012. All of the facts
19 are the opposite.

20 THE COURT: Okay.

21 MS. PAYLOR: He was taking himself to the doctor, Your
22 Honor, because he was concerned about his cognitive issues.

23 THE COURT: Okay.

24 MS. PAYLOR: But just being aware of them tells you
25 that he had capacity right there cause he was going to the

1 doctor and doing those things.

2 The Probate Code provides that the contestant, the
3 Plaintiff, always has the ultimate burden of proof.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: She has not provided any facts with regard
6 to his lack of testamentary capacity. All she's given is
7 some general medical records. That is it. There are no
8 facts that support chronic testamentary capacity, which
9 is -- Professor Medlin is trying to sell to you.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: That is not true.

12 He may of had some general medical cognitive issues
13 that impaired his capacity, but it was never impaired low
14 enough for him not to have capacity and write a will and to
15 sign a Trust.

16 THE COURT: Okay.

17 MS. PAYLOR: Even if the burden is on Defendant,
18 Merrill Light has met that burden by presenting witnesses to
19 the executions who testify that he had testamentary
20 capacity. Their testimony is uncontradicted and undisputed.
21 There is no genuine issue of material fact as to whether or
22 not he has testamentary capacity on the days that we're
23 talking about --

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: -- especially in 2012 when he was in the

1 early stages of, if he had Alzheimer disease when he died,
2 when he was in the early stages of that.

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: I mean we can look back at what Gatti
5 versus -- you know what everybody says about Alzheimer's
6 disease. There's another case, I think it's Byrd versus
7 Byrd, that mentions Alzheimer's disease.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: Bijan, you got that one?
10 well -- maybe it was Weeks. It was In Re Weeks.
11 Have you got that up there?

12 Oh, yeah, it was In Re Weeks.

13 They're talking about this woman who -- she didn't know
14 what her property was. She didn't know a lot of things, but
15 she knew the people to whom she wanted to leave her assets.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: And this is what her doctor said. He
18 said -- he included that Ms. Weeks probably suffered from
19 Alzheimer's disease --

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: -- the same diagnosis that they made of
22 Paul Barringer, and he expressed his opinion, the doctor
23 did, that she had capacity to write a will, to sign a will,
24 to do what she wanted.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. PAYLOR: And, in this case, she cut her son out.

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: And she said in there that she was only
4 giving him a dollar, and she wanted him to know that she
5 didn't want him to have any, any of her assets, and he
6 brought this case against her. They found she had capacity.

7 This is the woman they had appointed a guardian for
8 her, a guardian for her. She made -- she -- this is where
9 she emphatically made known her wishes that her two
10 daughters receive the bulk of her estate.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: She had had a guardian appointed for her,
13 and conservators over her property, but that does not mean
14 she lacked testamentary capacity.

15 These folks made the same argument that Mr. Medlin
16 made. She had a guardian appointed. She couldn't have
17 capacity to write a will. The Court determined that she
18 did, Your Honor, and they found that she did, and they
19 upheld it, and they said -- and they cited in here a person
20 is not incompetent to make a will because he has been
21 adjudicated to be of unsound mind or insane or has been
22 combined -- confined in an institution for the insane.

23 None of these things happened to Paul Barringer. He
24 was having cognitive issues. He was going to the doctor.

25 Your Honor, and I, and I invite you to---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---tell me have you heard a fact presented
3 by Mr. Medlin that Paul Barringer did not meet these three
4 elements with regard to any of the executions of his wills
5 or Trusts. I didn't hear him give us a single fact as to
6 any of them including the last will in 2015. And I'm
7 telling you, he had capacity to make a will when he did
8 that. Paul Long said he did, his own doctor who saw---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---him on a monthly basis pretty much.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: There is no evidence, Your Honor. This is
13 ripe for summary judgment, and you need to grant it because
14 it's the right thing to do. It's in accordance with the
15 law. The Swiger case was a summary judgment case.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: The Russell case was a summary judgment
18 case.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: The, the Court of Appeals, in these types
21 of cases, has indicated to the Circuit Court do your job.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Get rid of these cases so we're not
24 burdened with them when there are no facts to support the
25 allegations. Nobody's gonna bring a case unless they got

1 some basis, they got some dementia, they got something, and
2 if you look at all of the cases, they hardly ever, ever find
3 anyone incapacitated---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---to such an extent that he can not
6 execute a will.

7 And, in our case, we have Paul Barringer, John Wayne,
8 whatever you want to call him, he had capacity to do what he
9 wanted to do. He knew what he wanted to do.

10 If you read that letter to Hampton Luzak, there's no
11 question that he was not happy with her. He was begging her
12 to come back and all she had to do was come back and
13 apologize or makeup or whatever you have to do. But she
14 could not do that.

15 She didn't do it with her brother for 22 years. She
16 still hadn't made up. And she couldn't do it with her
17 father and -- or her sister, and she's the one, Your Honor,
18 she told her sister not to ever communicate with her again
19 or her son.

20 It's not my client restricting visitation. The
21 Plaintiff is, which takes us to undue influence.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: All of the cases cited by the Defendant
24 where the undue influencer was not present at the execution
25 of the testamentary document --

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: -- and the documents were found to be
3 void, void for undue influence, had evidence of threats---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---coercion, restricted visitation, or
6 isolation.

7 Your Honor, the, the Plaintiff is asking you to find
8 that Paul Barringer, who ran his own company, who built his
9 company from nothing, was unduly influenced by his daughter
10 for four years, continuing over four years.

11 There is no case anywhere where a Court finds undue
12 influence over four years and five different executions of
13 testamentary done. There is none. And there is no evidence
14 of it in this case. Plaintiff has not shown a shred of
15 admissible evidence that Mrs. Light did anything other than
16 what her father asked her to do.

17 Mr. Medlin cited Byrd versus Byrd repeatedly and
18 Bijan's gonna put, put this up. The testator in that case
19 was found to have sufficient mental capacity to execute the
20 will in question, but the jury found that the will was the
21 product of undue influence exerted upon the testator.

22 If you look here on the screen, this is from the case,
23 and the Court said of particular importance on the question
24 of undue influence is the proof of continuing threats made
25 to the testator by the appellate to place him in a nursing

1 home even though his fear and dislike of nursing homes was
2 well known to his children. We don't have that here.

3 Numerous friends of the decedent testified that the son
4 with whom she was living always threatened her with that,
5 always threatened her with that, and they also found -- they
6 said there was also evidence of a purpose and design by
7 James and the members of his immediate family to restrict
8 the visits and to prevent communications between the
9 testator and the testator's children prior to and following
10 the execution of the will.

11 There's no evidence of that, Your Honor.

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: My client -- he was -- Paul Barringer was
14 doing his own thing. He was flying to Alabama. He was
15 going to North Carolina with his wife. He went to
16 Charlottesville for months on end.

17 He was living his life. No one was restricting him.
18 He was doing that up until basically the end of 2015, Your
19 Honor.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: He was going to football games. He was
22 hunting, hunting.

23 In this case that Mr. Medlin relies on so heavily,
24 there was a witness who said that the proponent of the
25 will -- this is what she said. He said I've got daddy to

1 change the will and fix it so I can hire nurses and I don't
2 need you anymore. That was to his sister. That's what he
3 said.

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: So, they accepted that as evidence that he
6 admitted that he got his father to change the will.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: This is strong evidence of undue
9 influence, Your Honor. None of this is present in this
10 case.

11 In Byrd, the testator lived with his son and he made
12 him -- and he was also the signor on all of the testator's
13 accounts. This is so much more than anything that we have
14 here, and this was a very close case, Your Honor.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: There was a -- there was a strong dissent
17 in it --

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: -- and it was, you know, three to two. If
20 you read it here, it said these circumstances, all of the
21 things that I just told you about---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---combined with proof of a fiduciary and
24 confidential relationship, so you need both, and James'
25 admission of his role in the procurement of the will---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---clearly distinguished this case from
3 Calhoun, which was an earlier case that they had to cite,
4 and required submission to the jury of the issue of undue
5 influence.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. PAYLOR: Now, I'm gonna -- we're gonna talk
8 about -- let's go to the Calhoun case which they cite in
9 here as being distinguishable---

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: ---cause in that case they did not let the
12 issue of undue influence go to the jury, Your Honor.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: And this is a 1982 Supreme Court case.

15 In here they talk about the testator's condition. It
16 is undisputed that the testator was in a feeble physical
17 condition during the last several years of his life. Mr.
18 Barringer wasn't in a feeble condition until shortly before
19 his death.

20 Respondents allege that on the date of the will's
21 execution, the testator had a weakened mental capacity.
22 However, the test -- testator continued to transact his
23 usual business affairs for a period of approximately three
24 years subsequent to the will's execution. Witnesses
25 described him as an honest, brute trader, shrewd trader, and

1 hard worker who used profanity frequently, was rough at
2 times, but he was also generous and kind.

3 Paul Barringer carried on for years. He didn't give up
4 managing his business affairs. He was still doing it in
5 2014 when he met with Wells Fargo.

6 THE COURT: Alice, I'm sorry.

7 Can I ask you a question?

8 So where---

9 MS. PAYLOR: Sure.

10 THE COURT: ---do I have Paul Long's testimony in
11 Probate Court?

12 MS. PAYLOR: It's attached to my initial memorandum.

13 THE COURT: Okay. And is, is that the only testimony
14 we have from him?

15 MS. PAYLOR: Yes, ma'am.

16 THE COURT: Okay. I just wanted to make sure his
17 deposition had been taken.

18 Okay. Okay.

19 MS. PAYLOR: It has not. No doctor's depositions have
20 been taken.

21 THE COURT: Okay. Okay.

22 MS. PAYLOR: Testator --.

23 THE COURT: Hold on one second, Alice.

24 MS. PAYLOR: Okay.

25 (Pause.)

1 THE COURT: I'm sorry. Go ahead, Alice.

2 MS. PAYLOR: Testator drafted a will and gave
3 everything to this woman who visited with him---

4 THE COURT: Right.

5 MS. PAYLOR: ---when he was in the nursing home. She
6 came almost every day. The testator would fuss at her he
7 was frustrated. The testator was one day overheard to say
8 that, that she wanted it all. However, proponent was not
9 present when the testator had conference with his
10 attorney---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---and was not physically present when he
13 executed the will.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: Merrill Light was not present when Paul
16 Barringer discussed his wills and his Trusts with John
17 Jolley. They also said that there was no evidence that the
18 proponent interfered with the making of the will.

19 The Court said she may have been interested in the
20 will, and may have had more opportunities for persuasion
21 than the respondents.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: However, this alone does not constitute
24 undue influence.

25 Your Honor, that's, that's what they're claiming, you

1 know, Merrill Light. She was around him. She was. She
2 lived near him. He was her father. She would visit her
3 parents, you know, once a week, bi-weekly, whenever. She
4 did not tell him what to do with his estate plans. He did
5 it all on his own.

6 There is no evidence anywhere in the record. Let's
7 look at February, 2012 will.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: There is no evidence. She was not with
10 him when he told John Jolley what he wanted. No evidence.

11 They advised him, and that's -- Robert Swain's
12 deposition testimony is in evidence. He advised him to name
13 a cotrustee.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: And they let him -- and he looked at his
16 three children, and he said well, Merrill's closest. I'm
17 gonna name her first, and Victor had had some issues. And
18 so he was actually the last one although he had been the
19 original successor trustee in the 1998 Trust.

20 So, he moved things around. He wasn't -- he, he didn't
21 do anything with Hampton. She was the second successor
22 trustee if Merrill Light didn't take it or something
23 happened to her.

24 There is no evidence, none, that he---

25 THE COURT: Okay.

1 MS. PAYLOR: ---was unduly influenced with regard to
2 the February 28, 2012, will.

3 THE COURT: Okay.

4 MS. PAYLOR: And I want you---

5 THE COURT: Yeah.

6 MS. PAYLOR: ---to really look at each of these, Your
7 Honor.

8 Yeah, I -- Bijan, can you find that?

9 It should be towards the beginning of my exhibits and I
10 apologize.

11 THE COURT: Laura is looking for me for it right now.
12 She was asking me if it looked -- if it was a deposition
13 transcript, and I said no, it's a -- it's---

14 MS. PAYLOR: It looked like a transcript.

15 THE COURT: It does look the same.

16 MS. PAYLOR: Yeah. And I'm looking for it too.

17 THE COURT: And, Alice, can I ask one more question and
18 this is where I'm gonna probably show that I really -- was
19 there a reason -- I know you feel like you don't have to
20 show -- and why didn't you just get an affidavit from John
21 Jolley saying -- or do you just think you don't need to?

22 You know, saying listen, at the time this was
23 executed---

24 MS. PAYLOR: At this point I don't think I need to,
25 Your Honor. I think we have---

1 THE COURT: Okay.

2 MS. PAYLOR: They don't have any facts.

3 THE COURT: Okay. And, and I guess my question is---

4 MS. PAYLOR: Now, you know, if you want to, if you want
5 to -- if you're on the fence, and you want to wait for John
6 Jolley's deposition, it's scheduled to be taken in December,
7 and we can come back and present that to you.

8 But, right now, the only evidence that we have is that
9 he had capacity, Your Honor, and he had -- was not subject
10 to undue influence. I mean their argument about
11 February 28, 2012, is pretty outrageous, and the only reason
12 they're doing that is cause they don't want a new will after
13 1998.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: But that -- this -- and that's what we've
16 got here is he, he exercised his capacity to execute a new
17 will.

18 THE COURT: Okay.

19 MS. PAYLOR: And I know we've had -- we've talked about
20 unhampered opportunity, Your Honor.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: The basis are very, very clear that, even
23 if a testator was subjected to undue influence --

24 THE COURT: Uh-huh. (Affirmative).

25 MS. PAYLOR: -- if he had time and unhampered

1 opportunity to change his will---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. PAYLOR: ---after that, that -- you can not -- you
4 have to grant summary judgment to us --

5 THE COURT: Uh-huh. (Affirmative).

6 MS. PAYLOR: -- to my client, Merrill Light. We've
7 got -- he went to John Jolley and signed the February 28,
8 2012, 2012 will.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: There's no evidence of any undue
11 influence. He then went back to him in the Summer---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---of 2012---

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: ---after he got angry at his daughter --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: -- and he amended his Trust so the CFRC
18 stock would go to Merrill Light, and there's a reason why he
19 did it.

20 Oh, here's the Probate Court---

21 THE COURT: Yeah, I'm seeing it. Laura's having a hard
22 time putting her hands on it. I don't know why, but---

23 MS. PAYLOR: well, you know, I couldn't find it in here
24 either. So, I'm --.

25 THE COURT: Okay. Okay.

1 MS. PAYLOR: We, we don't have very much in here. I
2 know that we also have Paul Mazzeo's information.

3 THE COURT: Okay.

4 MS. PAYLOR: Bijan, can you find where he talks about
5 capacity?

6 Yeah, I'm having a hard time finding it also, Your
7 Honor.

8 THE COURT: Okay.

9 MS. PAYLOR: I know we refer to it and we can send you
10 that, you know, his -- all of his testimony if you would
11 like. I think it's 40 -- I can't find it either.

12 The evidence is clear that Paul Barringer got angry at
13 Kevin Luzak after the April board meeting. The evidence is
14 also clear that he asked Merrill Light to bring him the
15 PowerPoints. She didn't just go get them to him to confuse
16 him. He asked her for them.

17 That is the only evidence, and that's what she told
18 Kevin cause she was talking to Kevin and Hampton. She was
19 very concerned because she didn't want to have a falling out
20 in her family. She wanted things to be civil and pleasant.
21 The last thing she wanted for -- was for all this to happen.

22 Merrill Light testified that no one threw a book at
23 her, and that she told her father that was not true. You
24 know, Paul Barringer was a guy who he just bowled his way
25 through.

1 So -- and he -- I mean Kevin wanted to, you know, bring
2 Merrill over there one day when he was meeting with him, and
3 Paul Barringer said, and this is in a transcript, Paul
4 Barringer said I don't want to bring her in here. This is
5 between you and me.

6 He hadn't been talking to her. She hadn't been
7 influencing him. Here's the transcript of---

8 THE COURT: I'm reading it.

9 MS. PAYLOR: ---his testimony.

10 Okay. So---

11 THE COURT: Yeah, Paul Long basically says that Mr.
12 Barringer had, you know, if you wanted to, was able to
13 marry, vote, have a driver's license, enter into a contract.
14 He says yeah, I would.

15 MS. PAYLOR: And a, and a will.

16 THE COURT: Yeah.

17 MS. PAYLOR: Would you have placed any restrictions on
18 him?

19 THE COURT: Right.

20 MS. PAYLOR: No, I wouldn't have.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Of course, getting married and all of
23 that, voting, driver's license---

24 THE COURT: Yeah.

25 MS. PAYLOR: ---requires capacity, as we know.

1 THE COURT: Right.

2 MS. PAYLOR: Driving requires capacity.

3 THE COURT: Well, it's in the contract and obviously
4 that's a higher standard. So, I understand.

5 Okay. Okay.

6 MS. PAYLOR: Well, and then he goes on and he says
7 that---

8 THE COURT: Yeah.

9 MS. PAYLOR: ---in 2014, he wouldn't place any
10 restrictions on him either. And then, when he was asked the
11 question when did his conditions begin to deteriorate so
12 that you would of placed limitations, and he talks about
13 Alzheimer's disease---

14 THE COURT: Uh-huh. (Affirmative).

15 MS. PAYLOR: ---being a stair step---

16 THE COURT: Right.

17 MS. PAYLOR: And one down unfortunately. There's a
18 spectrum and he said basically he would guess some time in
19 mid 2015.

20 THE COURT: Uh-huh. (Affirmative).

21 MS. PAYLOR: He died in May of 2016.

22 THE COURT: Okay.

23 MS. PAYLOR: The last testamentary document that he
24 signed was in February of 2015.

25 THE COURT: Okay.

1 MS. PAYLOR: This was after that and he never placed --
2 he said he never placed any restrictions. I know that he
3 quit driving on, on his own. He and his wife made that
4 decision together.

5 THE COURT: Okay.

6 MS. PAYLOR: But, you know, he hadn't placed any
7 restrictions on him.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: Your Honor, the facts show if you -- they
10 talk a lot about the June 28, 2012, board meeting---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: ---and alleging that some coaching was
13 going on.

14 Your Honor, we have the recording of that and we will
15 be happy to send it to you. There is no evidence of any
16 coaching.

17 THE COURT: Okay.

18 MS. PAYLOR: You can listen to the entire -- okay.
19 Bijan, will you make sure that happens?

20 THE COURT: Yeah.

21 MS. PAYLOR: We'll send that recording to you.

22 THE COURT: And, Bijan, did you ever find this
23 testimony from the Probate Court anywhere?

24 (WHEREUPON, there was no audible response at this
25 time.)

1 THE COURT: Bijan, do you mind also emailing that to
2 me, the Probate Court testimony that you're doing right now?

3 Okay.

4 MR. GHOM: Yes, ma'am.

5 MS. PAYLOR: I know I referenced it in my memo and
6 probably---

7 THE COURT: Yeah.

8 MS. PAYLOR: ---whoever was gathering these---

9 THE COURT: We just can not find it, and I mean if---

10 MS. PAYLOR: I couldn't find it either.

11 THE COURT: Okay. So, yeah, and if -- yeah, send me
12 that. Yeah.

13 MS. PAYLOR: Well, the interesting thing also in that
14 recording, Your Honor, is that---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: ---Paul Barringer stated at the meeting
17 that he had discovered that Kevin Luzak was self-dealing
18 because he intended to receive fees from his dis --
19 diversification using CFRC asset, and that's in the
20 transcript of the board meeting.

21 THE COURT: Uh-huh. (Affirmative).

22 MS. PAYLOR: Paul Barringer was a very capable man.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: And, yeah, he had some cognitive issues,
25 but he also knew what was going on, and he knew that he was

1 mad at Kevin Luzak, and he needed to apologize, and get back
2 on the train if he wanted to.

3 So, their reliance on that board meeting is totally
4 displaced. Mrs. Barringer testified -- well, they were
5 getting ready to go to the mountains. So, she was waiting
6 for him to get finished, and she testified that she helped
7 her husband do what he wanted to do.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: And if you hear it, she like moves to
10 adjourn.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. PAYLOR: Things, things like that.

13 THE COURT: Okay.

14 MS. PAYLOR: Now, I find no evidence of coaching when I
15 listened to the recording. In the transcript that Mr. Hogan
16 had of the recording, there's no coaching on there either,
17 and that is in Exhibit 2 to the transcript.

18 Your Honor, there's -- he made -- Mr. Medlin made
19 numerous horrible statements about Randy Light.

20 First of all, I want the record to be clear. Randy
21 Light never filed personal bankruptcy.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: He never filed personal bankruptcy. He
24 was involved in some real estate deals in Texas back when,
25 you know, the real estate market---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---plummeted back the end of the -- 2009,
3 2010, 2011 --

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: -- when everything just bottomed out---

6 THE COURT: Yeah.

7 MS. PAYLOR: ---he was involved in some deals with some
8 other guys, and they basically left him there to take care
9 of them, which we did. So, he hired a lawyer and they put
10 the entities---

11 THE COURT: Into bankruptcy.

12 MS. PAYLOR: ---into bankruptcy.

13 THE COURT: I understand that, yes.

14 MS. PAYLOR: That is a far cry---

15 THE COURT: I understand.

16 MS. PAYLOR: ---from Randy Light filing bankruptcy. In
17 fact, Randy Light ultimately got a release from all his
18 debts for a payment of -- with regard to what we're talking
19 about in this case---

20 THE COURT: Yeah.

21 MS. PAYLOR: ---an insignificant amount of money, and
22 he paid it himself.

23 He did not get it from Paul Barringer. He did not get
24 it from CFRC. Randy Light was actually a successful
25 businessman. He had his own businesses and he was in real

1 estate, and he and Paul Barringer had some dealings together
2 way back when Paul Barringer was a very sharp businessman
3 with no cognitive issues, Your Honor, and they made money
4 together.

5 He and Paul Barringer were friends. He never asked
6 Paul Barringer to put in -- him on the board. He had plenty
7 to do, and he was older. When he, when he died I think he
8 was 75, 76. He, he wasn't looking for a career at CFRC, but
9 he---

10 THE COURT: Okay.

11 MS. PAYLOR: ---Mr. Barringer asked him to accompany
12 him on trips so he knew a lot about the company, and he'd
13 met all the people involved, but he wasn't asking.

14 After Kevin Luzak left, Travis Bryant and Tom Evans
15 asked Randy Light to come on the board and he did. He did
16 it. These, these are total misstatements and
17 mischaracterizations, mischaracterizations, Your Honor.

18 Randy Light was a great guy. He was not a fool as they
19 want to portray him. He did a lot for CFRC when he was on
20 the board and as chairman of the board. He's spent a lot of
21 his time dealing with their issues.

22 Now, Randy Light did send an email to Travis Bryant and
23 John Jolley in September of 2012.

24 But the question you need to ask yourself is, if his
25 wife had total control over Paul Barringer, who had

1 submitted himself to her will, why didn't she just take the
2 5 million-dollars from him?

3 And if she used CFRC as her pocketbook, why didn't she
4 just take the 5 million-dollars from the company?

5 This is not evidence of undue influence. This is
6 evidence that they didn't exercise undue influence. They
7 asked a question and it never happened. That's what we're
8 talking about here, Your Honor.

9 THE COURT: Okay.

10 MS. PAYLOR: The state -- and the statement by Mr.
11 Medlin that Paul Barringer was removed from the board in
12 February of 2015, that is not true. Mr. Barringer retired
13 from the board of directors at the end of 2014. They had a
14 going away party for him, a retirement party, in Alabama.
15 He went, went there and, and told everybody, you know,
16 good-bye.

17 This is not, you know, some fool. He's still doing it.
18 He wanted to get out. He wanted to know that his company
19 was in good hands. He felt confident in Travis Bryant, and
20 Tom Evans, in his daughter, and in his son-in-law, the
21 Lights.

22 There is no evidence at all to support them saying that
23 he was removed from the board of directors. He voluntarily
24 retired because he wanted to leave the board.

25 Your Honor, they're claiming that Merrill Light unduly

1 influenced Paul Barringer for four years beginning in
2 February of 2012, I guess, and lasting up until the day that
3 he died in 2016. They have no evidence of restrictive
4 visitation. They have no evidence of domination. They have
5 no evidence of coercion. They have no evidence of threats.

6 Paul Barringer led his own life without doing what his
7 daughter wanted him to do. He did what he wanted to do and
8 he, at all times, had the unhampered opportunity to change
9 his wills and Trusts.

10 Your Honor, there is -- there are no facts to support
11 undue influence, and this is another area that you need to
12 grant summary judgment on.

13 There is no -- absolutely no evidence of it. They
14 don't have anything other than their speculative innuendo
15 inferences. That is not sufficient, Your Honor. They need
16 to have a fact, a specific admissible fact, and they do not
17 have them.

18 And, and for them to say that, in 2012, she was doing
19 all those things, I mean that, that is so crazy it is beyond
20 belief, and there's no question that, in February of 2012,
21 she was not exerting undue influence on him. There's no
22 question that, in July of 2012, she was not exerting undue
23 influence on him. There's no question that, on
24 September 11th, 2012, she was not exerting undue influence
25 on him.

1 He talked about all of these things with his son,
2 Victor, and you have Victor's testimony---

3 THE COURT: Uh-huh. (Affirmative).

4 MS. PAYLOR: ---where he clearly said this is what he
5 wanted to do. He talked to me two or three times a week.

6 He didn't talk to Merrill Light. Victor wasn't talking
7 to Merrill Light. He was talking to his father, and
8 that's -- it was his father's idea.

9 Your Honor, let's go to mistake. I mean the Hanahan
10 case is so clear, Your Honor, about what a cause of action
11 for mistake with regard to a will or a Trust is. They have
12 no fact that Paul Barringer was mistaken in anything that he
13 did.

14 I mean look at that December 15, 2012, letter, Your
15 Honor. He knew what he was doing. He told her to come
16 back, and he wrote her a number of times saying come back
17 before it's too late.

18 That is him talking. I mean if Merrill Light were at
19 his control, I'm assuming she would tell him not to write
20 her at all, just keep her out. But that didn't happen, Your
21 Honor.

22 Paul Barringer never had and he will -- he never had a
23 personal irrevocable trust. Not at all. The irrevocable
24 trust that's in their document is either the Gertrude
25 Barringer Revocable -- Irrevocable Trust or the family

1 trust. Neither of which would Paul Barringer put his
2 personal assets into, and we have evidence showing that Brad
3 Herring, who was corporate counsel for CFRC---

4 THE COURT: Uh-huh. (Affirmative).

5 MS. PAYLOR: ---made a mistake. He thought he heard
6 irrelevant or the other thing that -- if you look when Paul
7 Barringer signs his name, he always puts the two out
8 there---

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: ---roman numeral two.

11 So it would be Paul B. Barringer, II Revocable Trust.
12 He might of thought that said irrevocable the way it was
13 written. In any event, he recognized it was a mistake, and
14 he changed it the next day.

15 Mr. Barringer didn't have anything to do with that.
16 His advice was to put his assets, including the stock, into
17 his Irrevocable Trust, and that's what he did. There's no
18 mistake. There's no evidence of mistake.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: In the Hanahan case, Your Honor, we've
21 got -- this is straight from Hanahan. It is the general
22 rule that the validity of a will is not affected by a
23 mistake of either law or fact unless a mistake goes to the
24 identity of the instrument or to fundamental error as where,
25 for example, two wills are drafted for different persons,

1 and one party signs the will intended for another.

2 That did not happen here, Your Honor. This is another
3 area where this -- these causes of action should be
4 dismissed on summary judgment. There's no basis. There's
5 no case ever cited, like Mr. -- in South Carolina like Mr.
6 Medlin wants you to, to find that this was.

7 He didn't make a mistake. He knew exactly what he was
8 doing. Look at the letter he wrote to Hampton. You can
9 look at the dates when he, when he took his actions. They
10 were after Hampton Luzak made him mad, after she sent him a
11 letter saying he was mentally incompetent. He didn't like
12 that. I can promise you. You don't tell a man like Mr.
13 Barringer that he's mentally incompetent, and that's what
14 she did over and over.

15 Your Honor, Mr. Medlin was talking about fraud in the
16 inducement. I read the Amended Complaint again, Your Honor.

17 They tried to plead the nine elements of fraud. There
18 were all on information and belief, but it doesn't say --
19 the word inducement is, I don't believe, even in his cause
20 of action. He's trying to plead a fraud case. In that case
21 he has to provide evidence of the nine elements---

22 THE COURT: Nine elements.

23 MS. PAYLOR: ---of fraud and I set those out. We all
24 know what they are. Fraud is a very hard cause of action to
25 prove.

1 Even if this case is fraud and inducement, by the case
2 of Smith versus Smith says the Plaintiff must show the
3 Defendant made a false representation relating to a present
4 or preexisting fact. They also must prove the Defendant
5 intended to deceive the Plaintiff, and the Plaintiff had a
6 right to rely on the false representation.

7 There's no false representation ever made by Merrill
8 Luzak -- Merrill Light to Hampton Luzak. As a matter of
9 fact, she told her, in February of 2012, that her dad had
10 asked her to get involved in his estate planning. She has
11 that in her Complaint, Your Honor. She says that and she
12 testified to that.

13 She had a duty, if she wanted to find out in what way
14 she was getting involved, to ask her or to ask her father.
15 She never, ever, ever did.

16 So, she was on notice that her sister was getting
17 involved. That can be -- I mean I don't know how you get
18 involved other than as the cotrustee or trustee or power of
19 attorney.

20 Well, he didn't give her power of attorney. He named
21 her as cotrustee on his Revocable Trust.

22 The intent to deceive is an essential element of this,
23 of this action. She told her sister she was getting
24 involved.

25 How can there be an intent to deceive when she told

1 her?

2 She had no duty to tell her anything after that. None
3 whatsoever. Her sister quit talking to her and told her
4 never, ever to communicate with her again.

5 No reasonable person, Your Honor, is going to call her
6 up after she gets that letter from her, and so, oh by the
7 way, I'm the cotrustees on daddy's trust. It's none of her
8 business actually. I mean if she wanted to know, then she
9 should of asked her father what are you doing with your
10 estate plans, and he could of told her if he wanted to.

11 I -- my children know nothing about my estate plans. I
12 don't have any duty to tell them. I mean most parents
13 don't, and they don't do it.

14 Your Honor, there are no other representations that
15 they claim that Merrill made. None. Zero. In fact, she
16 said that Merrill Light told her that she was gonna vote
17 with her father to fire Kevin. That wasn't a false
18 representation. She did it.

19 There is no evidence of intent to deceive. She told
20 her everything that was important, and then Hampton Luzak
21 walked out and shut the door with her husband and her son,
22 and said I never want to have anything to do with you.

23 Hampton Luzak didn't rely on anything that Merrill
24 Light told her or didn't tell her. She had no reason to.
25 She wasn't talking to her. I mean this is the most absurd

1 of all of the claims that they've got.

2 They can not meet any of the elements, Your Honor. It
3 is just not there and I'm asking you to please grant summary
4 judgment on the fraud cause of action.

5 THE COURT: Okay.

6 MS. PAYLOR: That is a terrible thing to accuse your
7 sister of when she did nothing wrong.

8 I know I'm running out of time.

9 Conversion. All of these other claims, Your Honor,
10 conversion, quantum meruit where she's asking, asking for a
11 constructive trust, the constructive trust, the resulting
12 trust, Plaintiff is asking this Court to give her money --
13 the voting stock.

14 That's -- that would of never happened, Your Honor,
15 because no matter what will, it's the last valid will.

16 THE COURT: Uh-huh. (Affirmative).

17 MS. PAYLOR: She is not entitled to any stock.

18 Even under the 1998 will, Your Honor, as we already
19 know, Mr. Barringer signed a will. All of his assets, on
20 his death, went to his wife. They made no provision for his
21 stock in that 1998 will.

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: Then the February, 2012 will didn't
24 specify anything about the CFRC stock either, and it all
25 went to his wife on his death.

1 The only time it changed was when he signed the
2 July 20th, 2012, Trust amendment and he specifically said
3 that his CFRC voting stock was going to Merrill Light.
4 That's the only time it changed. Prior to that, no matter
5 whether he owned it individually or in his Revocable Trust,
6 it was going to his wife.

7 Mrs. Luzak never, ever was going to get it unless his
8 wife decided, after she got it, that she would let her have
9 some. That is not gonna happen, especially now, after she's
10 cut everybody off.

11 So, for all of those causes of action, Your Honor---

12 THE COURT: Uh-huh. (Affirmative).

13 MS. PAYLOR: ---she can not state a claim because she,
14 first of all, never owned the stock. Never once.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: She didn't own any of that -- of his
17 voting stock, and she was never a direct beneficiary of the
18 voting stock.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: There is no -- not a scintilla of evidence
21 that she was entitled to inherit that stock. Nothing. She
22 never had control.

23 So, she's the same place she was. She can't say she's
24 entitled to something that would of never gone to her ever.
25 As of today, it wouldn't have gone to her because

1 Mrs. Barringer is still alive no matter what she ended up
2 doing.

3 Those causes of action, Your Honor, all need to be
4 thrown out. They're all based on Hampton Luzak saying she's
5 entitled to the stock. Those are also equitable causes of
6 action, Your Honor, which you would have to make the
7 decision on---

8 THE COURT: Uh-huh. (Affirmative).

9 MS. PAYLOR: ---anyway.

10 THE COURT: Right.

11 MS. PAYLOR: So, I would ask you to come -- look at
12 those and let's take them out of this case.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. PAYLOR: There's, there's no basis for it.

15 THE COURT: Alice, really quickly, and the other thing
16 that I need to obviously decide in this case is Mr. Twombly
17 and your joint motion to bifurcate the trial. We talked
18 about this if we tried the case just as to Mrs. Barringer,
19 and whether or not she agreed or contracted with her husband
20 not to change the will in any way.

21 I mean do you still see that as the, as the best way to
22 go about this?

23 I mean I, I have---

24 MS. PAYLOR: Your Honor, that's totally different. I
25 mean that has -- that's -- according to them, it was made

1 before 1998. So, I mean they can put in evidence that okay,
2 they didn't change it. I think we'll stipulate to that. we
3 can probably stipulate to just about everything in a case
4 like that, Your Honor.

5 THE COURT: Uh-huh. (Affirmative).

6 UNIDENTIFIED SPEAKER: Your Honor, this is---

7 MS. PAYLOR: Very easy to try unless -- I don't know.
8 Ashley had to step out.

9 UNIDENTIFIED SPEAKER: Your Honor?

10 MS. PAYLOR: I do want to address---

11 MR. TWOMBLEY: I'm here.

12 MS. PAYLOR: ---the (indiscernible), Your Honor.
13 That's the last one, Judge, that I, that I was gonna talk
14 about.

15 THE COURT: Uh-huh. (Affirmative).

16 MS. PAYLOR: The breach of fiduciary, self-dealing, and
17 conflict of interest.

18 Your Honor, a principal, in this case that would be Mr.
19 Barringer, is entitled to make a gift to his agent as agent
20 must act in good faith, and make sure that Paul Barringer
21 knew what he was doing---

22 THE COURT: Uh-huh. (Affirmative).

23 MS. PAYLOR: ---and he did. She knew that.

24 Now, the other thing I want to -- well, I got some
25 stuff -- okay. If you look at 62-7-802---

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: ---there are exemptions when a trustee can
3 receive gifts or whatever, property from the Trust.

4 THE COURT: Right.

5 MS. PAYLOR: Okay. The first exception is the
6 transaction was authorized by the terms of the Trust.

7 Your Honor, I have the Trust. It's, it's in Mr.
8 Medlin's materials.

9 THE COURT: Uh-huh. (Affirmative).

10 MS. PAYLOR: It's Attachment 1 and it's Page 3, and
11 it's got a bates stamp number, and it's -- she's put -- can
12 you put that up, Bijan?

13 Here it is.

14 THE COURT: Yeah.

15 MS. PAYLOR: This is the Trust, Your Honor. This is
16 the one from 2012.

17 Settlor's right to amend, change, or revoke the trust
18 agreement. The settlor, Paul Barringer, made by signed
19 instruments delivered to the trustee during the settlor's
20 life, withdraw property from the Trust in any amount and at
21 any time upon giving reasonable notice in writing to the
22 trustee.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: Paul Barringer's the one who took this
25 property out of the Trust.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. PAYLOR: He gave it to her. He signed as the
3 trustee, and this specifically allows him to do it. So, it
4 falls under the first exception in the section that Mr.
5 Medlin---

6 THE COURT: Okay.

7 MS. PAYLOR: ---keeps arguing to you.

8 That's, that's what we have, Your Honor. We have a
9 gift that he made. He had capacity to make it. He wanted
10 to make it. He talked about it with everybody he knew and
11 he made it, and there was no self-dealing because Merrill
12 Light didn't give herself the property. Mr. Barringer gave
13 it to her.

14 THE COURT: Okay.

15 MS. PAYLOR: He gave it from his Revocable Trust to her
16 Revocable Trust, and this is specifically allowed by Section
17 62-7-802. It is not self-dealing. She is not giving
18 property to herself, Your Honor.

19 Intentional interference, we still, for purposes of
20 appeal, we want to assert that it's not a recognized cause
21 of action---

22 THE COURT: I understand.

23 MS. PAYLOR: ---and I understand where you're coming
24 from.

25 There's also no reasonable certainty that the

1 expectancy would have been realized because she never --
2 Paul Barringer -- as we discussed earlier, that stock was
3 never going to her. Never.

4 They also have produced not a scintilla of evidence
5 that Merrill Light did anything to intentionally interfere
6 with Hampton Luzak getting her inheritance. There's
7 nothing.

8 There are no facts in evidence that support the
9 incapacity, that support undue influence, that support
10 mistake, that support any of the equitable claims they have,
11 that support conversion.

12 THE COURT: Fraud.

13 MS. PAYLOR: Kevin Luzak didn't own that stock.

14 How could he -- how could she steal it from her?

15 She didn't. That's so Black letter law, Your Honor.

16 You have to give us summary judgment.

17 Your Honor, I'm asking you to look very closely---

18 THE COURT: Uh-huh. (Affirmative).

19 MS. PAYLOR: ---at the causes of action.

20 THE COURT: Okay.

21 MS. PAYLOR: I'm asking you to look and remember that
22 Mr. Medlin didn't give you a single fact regarding Mr.
23 Barringer's lack of testamentary capacity. Not one. None
24 near or around the times that he---

25 THE COURT: Okay.

1 MS. PAYLOR: ---executed of his documents.

2 In addition, there's no evidence of undue influence.
3 There's no evidence that Merrill Light did anything other
4 than what her father wanted her to do, and if you look even
5 at the medical records, the one when he's talking to Doctor
6 Dotson of the Greenbrier---

7 THE COURT: Uh-huh. (Affirmative).

8 MS. PAYLOR: ---he's, he's concerned about Mr.
9 Barringer still being involved in his company. He said oh,
10 no, I have transitioned that to my daughter, and she is
11 taking care of it.

12 It was his whole idea, his plan. She just did what he
13 asked her to do.

14 Your Honor, thank you very much. I did not address
15 anything that had not been addressed before. And if you
16 give Mr. Medlin a chance to talk, I get to end because it's
17 my summary judgment motion, and I get to have the last word.
18 But I'm asking that we, we leave today now and---

19 THE COURT: Uh-huh. (Affirmative).

20 MS. PAYLOR: ---we will send you whatever you need,
21 whatever you think you don't have.

22 THE COURT: Okay.

23 MS. PAYLOR: If you would just let us know and we'll
24 get it to you.

25 Thank you very much for your patience and your

1 consideration cause this is very, very important to my
2 client, Merrill Light, Your Honor. She wants to get this
3 behind her. At least some of it.

4 THE COURT: Okay.

5 MS. PAYLOR: Thank you very much.

6 THE COURT: Okay. Thank you.

7 Mr. Medlin.

8 MR. MEDLIN: Your Honor?

9 THE COURT: Do you think anything new was raised?

10 MR. MEDLIN: I, I do, Your Honor, and---

11 THE COURT: Tell me what that is.

12 MR. MEDLIN: ---I, I would like---

13 THE COURT: Just tell me what that is.

14 MR. MEDLIN: Well, Your Honor, I have about two pages
15 of notes where they raised some facts that I don't think
16 were raised properly, and that they didn't argue it in that
17 way before. And they -- I mean I just have -- it will take
18 me 20 or 30 minutes, Your Honor, to, to tick through it
19 including things such as the argument about the letter,
20 about the -- which was first written in Mrs. Barringer's
21 handwriting. We have that which we can show you on the
22 screen.

23 THE COURT: Uh-huh. (Affirmative).

24 MS. PAYLOR: So, she wrote it in her handwriting. By
25 the way, that came from discovery from Mr. Barringer's

1 assistant. Not from the Defendants. They didn't show us
2 where Mrs. Barringer had handwritten that before.

3 But also some different takes on the testimony from
4 Long and things they showed on the screen, Your Honor. I,
5 I, I just really like the opportunity to, to deal with that
6 shortly, and I, and I promise I'll be as brief as I can.
7 But I think, in fairness to my client, we've had summary
8 judgment arguments and other arguments before where we were
9 the movant and people got to argue back and forth and got
10 past the reply stage.

11 So, we would like that opportunity, Your Honor, and,
12 again, I'll be brief.

13 MS. PAYLOR: Your Honor?

14 THE COURT: In those summary judgment motions, did the
15 Court actually give you eight hours?

16 MS. PAYLOR: No.

17 THE COURT: I'd love to know that cause I'd love to
18 know. I never had a judge give me eights hours on any kind
19 of summary judgment motion.

20 So, let's just do this. I am gonna give you about 15
21 minutes right now.

22 Alice, if there's anything you need to briefly respond
23 to after that, that's fine. But I got to tell y'all I have
24 another hearing at eleven o'clock. So, if that tells you --
25 I'm gonna be gone at 11:00. So, I---

1 MR. MEDLIN: All right.

2 THE COURT: I think it -- I think there's a few things,
3 Alice, that, that I've asked Bijan to send me so I can look
4 at a few things, and also too there's some other cases I
5 need to look at.

6 And, Mr. Medlin, you can go ahead. But I will say
7 this, if you're saying something that I've heard, I'm gonna
8 tell you you've already said this, let's move on.

9 Okay?

10 MR. MEDLIN: Understood, Your Honor, and I, and I, I
11 appreciate that.

12 So, again, these cases are based on facts. And so all
13 the cases are different, and we need to look at these
14 particular facts.

15 This is summary judgment. Jury arguments made, that
16 needs to be made in front of the jury, and, by the way, as
17 to any issues you may have to decide, we need a chance to
18 show our evidence too.

19 Your Honor, you asked how the jury would determine,
20 again we've talked about this, but the jury will base it on
21 facts, not necessarily medical testimony, but on facts.

22 Now yesterday I was getting ready to get into a lengthy
23 list of our facts of medical testimony and other facts, and
24 I understood you to say that you were okay with capacity,
25 and for me to move on. So, I did and I'd like the

1 opportunity not to go through all that again. It's in our
2 brief.

3 THE COURT: I don't need medical facts. Go ahead and
4 tell me your other facts. I mean -- and I---

5 MR. MEDLIN: Well---

6 THE COURT: I, I feel bad. I shouldn't have cut you
7 off, but, again, I can read the medical.

8 what, what are your other facts?

9 MR. MEDLIN: Your Honor, we had facts where the
10 Defendants themselves are indicating that Mr. Barringer had
11 problems with capacity as early as 2011 where the most
12 reliable witness in this case, the only real independent
13 witness in this case, Mike Hagler, talks about Paul's total
14 lack of capacity as, as the sole independent director.

15 We have.

16 MS. PAYLOR: He's already gone through all this, Your
17 Honor. I just responded---

18 THE COURT: Yeah.

19 MS. PAYLOR: ---to what he said yesterday.

20 MR. MEDLIN: I'm answering her question, Alice.

21 So, we have testimony from John Jolley. We have
22 testimony from other people, who are not just the medical
23 reports, about his lack of capacity. It's in our brief---

24 THE COURT: This is---

25 MR. MEDLIN: ---Your Honor. So---

1 THE COURT: This is the problem though that I have with
2 that. I don't hear John Jolley saying in this case that he
3 lacked capacity to know what he was doing, know his assets,
4 and know who he wanted to give it to. And so you're, you're
5 saying that he may of said I'm concerned about certain
6 things at certain times.

7 I still have a fundamental problem right now, and I can
8 tell you I'm -- you know, whatever I said before, I told you
9 I easily change my mind. I mean I'm not someone who decides
10 one thing.

11 I don't know how a jury in this case or me is suppose
12 to make a determination that he was incapacitated at the
13 time he signed the will. I, I don't see how -- and based on
14 what we have, and that's my concern. I, I don't know how.

15 That's why in, in -- I hear Ashley telling me that it's
16 based on, you know, certain facts and people saying certain
17 things and doctors and the rest of it. But, but, in this
18 case, we've got Paul Long. We've got John Jolley. I mean
19 John Jolley's there. He's saying he's fine. Miss
20 Barringer -- Mrs. Barringer, I'm sorry, is saying he's fine.

21 I just don't know what a jury is suppose to do with
22 that, and when you tell me -- you know I'm looking at
23 this -- obviously it's a summary judgment stage. We're
24 gonna be in the same place if we're trying the case and
25 we're at the directed verdict stage. I still am trying to

1 put together how someone can decide this without someone
2 giving an opinion, and, and your expert, Mr. Sanders,
3 didn't. Doctor Sanders doesn't do it as to capacity.

4 MR. MEDLIN: Your Honor, they, they don't have an
5 opinion about that either although they just argued that
6 did.

7 Doctor Long was not asked in the conservatorship here's
8 the legal test for capacity. Now, based on this legal test,
9 what do you opine.

10 THE COURT: But that's so low.

11 MR. MEDLIN: By the way, Doctor Long---

12 THE COURT: But, Mr. Medlin, it's so low that, even if
13 they asked it, I, I am guessing again, and this is where I
14 feel slightly handicapped, is that if you went and took his
15 deposition today, and I can't assume anything, but based on
16 what he said in the Probate Court, he's gonna say he had
17 capacity, and, again, I don't---

18 MR. MEDLIN: Your Honor, he had, he had records showing
19 that Paul is scoring zeros on a mini-mental test, and yet
20 he's claiming Paul was competent into the Fall of 2015.
21 That's impeachable testimony.

22 MR. TWOMBLEY: That is not---

23 THE COURT: So, wait.

24 MR. TWOMBLEY: ---factually correct---

25 MR. MEDLIN: Anyway, the cases---

1 MR. TWOMBLEY: ---at all.

2 THE COURT: Just a sec.

3 MR. TWOMBLEY: That is not true.

4 THE COURT: Mr. Medlin, back up a second.

5 MR. MEDLIN: It is absolutely true, Ashley.

6 THE COURT: Shhh. Listen. Stop for a second please.

7 when did he score zero on the mini-mental evaluation?

8 MR. TWOMBLEY: 2016.

9 THE COURT: Exactly.

10 MR. MEDLIN: He scored a zero on---

11 MR. TWOMBLEY: That is not correct.

12 MR. MEDLIN: ---on June the 12th, 2015. June the 12th,
13 2015. Look at Exhibit G, Attachment 22, Your Honor. We
14 have that---

15 MR. TWOMBLEY: Okay. Even if it's June 15th---

16 THE COURT: Exactly.

17 MR. TWOMBLEY: Even if it's June 15---

18 THE COURT: It's not 2012.

19 MR. TWOMBLEY: We're talking about 2012.

20 MR. MEDLIN: He scored a thirty -- we're talking about
21 impeaching Doctor Long, and Doctor Long is testifying that
22 Paul was fine and fell off a cliff in the Fall of 2015.

23 THE COURT: Okay.

24 MR. MEDLIN: He's got evidence showing that he scored a
25 13 in January of 2014, and less than a 17 is severe

1 dementia. So, Doctor Long---

2 MR. TWOMBLEY: For an 85 year old it's not.

3 MR. MEDLIN: ---is not a trustworthy witness---

4 MR. TWOMBLEY: I---

5 MR. MEDLIN: ---number one.

6 Number two, that Gatti versus Douglas case says the
7 testimony of an internist is not as important as a
8 neurologist.

9 Doctor Baughman said, in 2013, that Paul could handle
10 his personal affairs. Doctor Baughman said, in May of 2012,
11 that Paul couldn't remember buying a building or opening a
12 bank account, and he didn't know how much stock he owned
13 based on the letter he wrote to Kevin Luzak in May of 2015.

14 Those are the kinds of things, Your Honor, that a jury
15 has to decide when determining if somebody has the capacity
16 to know his property.

17 THE COURT: This is the problem that I have---

18 MR. MEDLIN: So the statement -- Ashley saying earlier,
19 despite -- excuse me, Your Honor.

20 Despite Ashley saying it earlier that there's
21 absolutely no evidence that he, he didn't have capacity, he
22 didn't know if he bought a building. He didn't know about
23 his airplane. He didn't know he had opened up a, a bank
24 account. He didn't know how much stock he owned. He, he
25 thought he owned double the stock of everybody else in his

1 legacy company.

2 Those are all facts that a jury would take into account
3 to determine if he had capacity, and I didn't get into those
4 detailed discussions yesterday. They're in our brief---

5 THE COURT: Oh, I've heard them many times.

6 MR. MEDLIN: ---because, again, my assumption was I
7 didn't need to.

8 THE COURT: And I've heard them many times. So, it's
9 not as if I don't know those.

10 Okay. What else?

11 MR. MEDLIN: All right. So, again, Your Honor, we can
12 show you the letter if you'd like, but we can also just send
13 it up to save time.

14 THE COURT: Send it.

15 MR. MEDLIN: This letter---

16 THE COURT: You say the letter was handwritten by
17 Mrs. Barringer before he wrote it, correct?

18 MR. MEDLIN: Yes.

19 THE COURT: So, just send it to me.

20 MR. MEDLIN: We'll do that, Your Honor. Thank you.

21 I didn't rely on Byrd for anything other than to say
22 that the testator can still be found incompetent without the
23 perpetrator in the room or subject to undue influence.

24 It, it is absolutely not true that Merrill Light was
25 not present. She testified herself that Exhibit one --

1 Footnote 132 in our brief, Exhibit I, that she was present
2 at estate planning meetings with lawyers. She was present
3 because she had to sign documents as a trustee.

4 We already know Randy Light was present when Mr.
5 Barringer signed the critical document on July 20th, 2012,
6 in Alabama. She's testified she was present at the stock
7 transfer, the other critical time.

8 So, the idea that she is not present is just not true,
9 Your Honor.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PAYLOR: I said she wasn't---

12 MR. MEDLIN: In February---

13 MS. PAYLOR: ---present when they discussed the
14 estate -- what he wanted done.

15 MR. MEDLIN: She said she was there at, at meetings
16 when, when they discussed it. It's in her own testimony.

17 THE COURT: Okay.

18 MR. MEDLIN: So, in February---

19 THE COURT: Can I just ask one more question really
20 quickly?

21 MR. MEDLIN: The February will, Your Honor, changes
22 nothing about Mr. Barringer's dispositive plan, and that
23 dispositive plan was to, on the death of Mrs. Barringer and
24 Mr. Barringer, have that stock come out of trust in equal
25 shares.

1 All the February will did was name Merrill Light as a
2 cotrustee.

3 MR. TWOMBLEY: That is---

4 MR. MEDLIN: That's the only change that took place.
5 That, that's also not true---

6 MR. TWOMBLEY: That's not true, Your Honor.

7 MR. MEDLIN: ---Your Honor, that Mrs. Barringer got the
8 stock. Mrs. Barringer, if she has the Power of Appointment,
9 and, again, we disputed that and I think we've produced
10 plenty of evidence that she didn't, but if she did, she
11 didn't get the stock. All she had was the opportunity to
12 direct it and she's still alive. And that has to take place
13 at her death.

14 So, the way these documents would be described by most
15 estate planners is that Hampton has an equitable interest
16 until Mrs. Barringer dies. Mrs. Barringer doesn't have the
17 stock either. And, when she dies, all the assets in the
18 Trust go equally, with some nuance, not really important
19 what we're talking about here, Your Honor, to between the
20 beneficiaries of -- among the beneficiaries.

21 So, she would be entitled to the stock under the idea
22 of a constructive trust.

23 I'm not aware that Paul Barringer asked to see those
24 documents. It seems strange to me that he would ask to see
25 documents he couldn't even remember, but it wouldn't really

1 matter because, again, even if he had asked for them,
2 Merrill Light didn't try to dissuade him of his confusion
3 about them. She lit that match and that was important.

4 The coaching, I don't care what you might be able to
5 hear on the tape. It's heard and we have documented
6 evidence of that.

7 Mike Hagler, during the meeting, called them down for
8 coaching him. It's in the meeting transcript.

9 Kevin and Hampton were listening to it. They heard it.
10 It's in their affidavits.

11 So, regardless of what the -- Alice might hear, or I
12 might hear cause I don't have great hearing now, it's
13 documented about what he said.

14 THE COURT: Okay.

15 MR. MEDLIN: Randy Light -- the companies filed
16 bankruptcy. Most people create companies to do deals today.
17 He was a principal. In fact, partners in both of those
18 companies accused him of some really underhanded things.
19 That's in Court records, and, in fact, that's evidence that
20 we have here.

21 MS. PAYLOR: None of them was (indiscernible) to be
22 true. That's Courts---

23 MR. MEDLIN: He borrowed---

24 MS. PAYLOR: Everybody makes claims. That's---

25 MR. MEDLIN: He borrowed---

1 MS. PAYLOR: ---not -- Your Honor?

2 MR. MEDLIN: He borrowed over a million dollars from
3 his---

4 MS. PAYLOR: He's disparaging---

5 MR. MEDLIN: ---wife.

6 MS. PAYLOR: ---a dead man for something he didn't do
7 is terrible.

8 MR. MEDLIN: We're just basing it on the records,
9 Alice. I'm just telling you what his partners accused him
10 of. I'm not accusing him of it. I'm telling you what his
11 partners accused him of.

12 MS. PAYLOR: Well, that's not evidence. It's not
13 admissible evidence. You can't say they accused him of it.
14 He's already -- that is not admissible evidence.

15 MR. MEDLIN: We're just showing that he has a history
16 of bankruptcies in his business and that's a reason to
17 understand why Mr. Barringer would not want him to, to be
18 the---

19 MS. PAYLOR: (Indiscernible.)

20 THE COURT: Sorry.

21 MR. MEDLIN: ---chairman of his board.

22 MS. PAYLOR: You've got your assistant there. I like
23 it.

24 MR. MEDLIN: I do too and I feel like I'm barking now,
25 Your Honor, but you, you---

1 THE COURT: It's okay.

2 MR. MEDLIN: ---gave me a brief time limit and I
3 apologize.

4 Randy Light had to borrow well over a million-dollars
5 from his wife that---

6 MS. PAYLOR: Okay.

7 MR. MEDLIN: ---based upon the time of our deposition.

8 THE COURT: Okay.

9 MR. MEDLIN: She testified to that and hasn't been
10 repaid as of the time of the deposition or she didn't know.

11 THE COURT: Okay.

12 MR. MEDLIN: The idea that Tom Evans and Travis Bryant
13 asked him to join the board, they weren't on the board. In
14 fact, Randy Light was put on the board in August of 2012,
15 and then the board voted to hire Travis Bryant as CEO.

16 The reason they didn't take the 5 million-dollars is
17 because nobody was gonna let them do that. It just shows
18 how they think in their motive and opportunity. Taking the
19 money from the company to pay her private legal fees did
20 happen. So, it does show that they'll do that.

21 And, again, mistake, the statute's now supplant the old
22 case law, and I've cited that -- those to Your Honor.

23 THE COURT: Yeah.

24 MR. MEDLIN: In 62-2-601(b).

25 THE COURT: Uh-huh. (Affirmative.)

1 MR. MEDLIN: 62-7-415.

2 THE COURT: Okay.

3 MR. MEDLIN: Regardless of what we pleaded to try to
4 cover the (indiscernible) was fraud, as Alice herself noted,
5 when you're having a fraud argument about a will case,
6 defrauding somebody into making a will, that's fraud in the
7 inducement. You don't have to show the nine elements of
8 fraud. You just have to show what Alice described
9 accurately in that case, and this is what we've done so far.

10 Telling Hampton that she's going to be involved in her
11 father's estate planning is not a get out of jail pass for
12 not being deceptive. In fact, it's more deceptive. Hampton
13 trusted her. She didn't think the statement would mean I'm
14 gonna steal stock from daddy --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MEDLIN: -- and ultimately from you. So, that's
17 the ultimate deception by saying she did into that. But,
18 again, she has a duty to Hampton---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MEDLIN: ---and she has a duty to Mr. Barringer,
21 and part of the duty is a duty to disclose, and, again, Your
22 Honor, all of that is cited in our brief.

23 THE COURT: All right.

24 MS. PAYLOR: That's 15 minutes, Your Honor.

25 THE COURT: Okay.

1 MS. PAYLOR: So, I get---

2 MR. MEDLIN: Your Honor?

3 MS. PAYLOR: ---time to respond.

4 THE COURT: Yes.

5 MS. PAYLOR: Thank you.

6 THE COURT: We're good, Mr. Medlin.

7 Alice, do you need to go ahead and -- anything?

8 MR. MEDLIN: Can, can -- Your Honor, I've got two more
9 point to make just to---

10 MS. PAYLOR: I think there's still---

11 MR. MEDLIN: ---address.

12 MS. PAYLOR: ---the bifurcation issue that I think you
13 wanted to take up.

14 MR. MEDLIN: This is on---

15 MS. PAYLOR: I don't know that---

16 MR. MEDLIN: This is on---

17 MS. PAYLOR: It doesn't---

18 MR. MEDLIN: This is on the bifurcation issue---

19 MS. PAYLOR: I'd like to address it.

20 MR. MEDLIN: ---and this is on---

21 THE COURT: Hold on.

22 MR. MEDLIN: ---the new argument, the new argument---

23 THE COURT: Hold on.

24 MR. MEDLIN: ---that she raised about the trust
25 language.

1 MS. PAYLOR: I really wanted to---

2 MR. MEDLIN: ---which she did not raise in her first
3 argument.

4 THE COURT: Let me ask you.

5 MS. PAYLOR: I didn't have to raise it.

6 THE COURT: Hold on.

7 Is it in your brief?

8 Mr. Medlin, is it in your brief?

9 MR. MEDLIN: No, Your Honor. Not about that because---

10 THE COURT: Please if you -- not the bifurcation issue.
11 The other one.

12 Is it in your brief?

13 MR. MEDLIN: It's not, but I can deal with that in one
14 minute.

15 THE COURT: You've got one.

16 Go ahead.

17 MR. MEDLIN: 62-7 -- 62-7-802 says that the burden is
18 on the trustee.

19 THE COURT: Okay.

20 MR. MEDLIN: All the---

21 THE COURT: Go ahead.

22 MR. MEDLIN: All the language shows---

23 MS. PAYLOR: He's already talked about this, Your
24 Honor.

25 MR. MEDLIN: It's an irrebuttable presumption of

1 (indiscernible) dealing, Your Honor.

2 THE COURT: You already said this.

3 MS. PAYLOR: He's already said this.

4 MR. MEDLIN: And all the -- all the language in the
5 Trust says is that he has the power, of course, as settlor
6 of an irrevocable trust---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. MEDLIN: ---but that's not a power he can exercise
9 if he is incompetent. So, again, it's a circular argument
10 they make.

11 If he's competent, and he's not unduly influenced, and
12 he's not subject to all the other issues that we described,
13 then we don't have a case, and the jury will find that we
14 didn't. But if he was incompetent, having the ability to
15 revoke is meaningless because he can not do so if he's
16 incompetent.

17 And then, finally, Your Honor, on the bifurcation---

18 MS. PAYLOR: But that's (indiscernible).

19 MR. MEDLIN: On the bifurcation issue, Your Honor,
20 cause I didn't get a chance to weigh in on that, we've had
21 that argument before. We will need all witnesses just
22 about, all the evidence just about, to try the Power of
23 Appointment case.

24 THE COURT: You said that last time. Someone from your
25 side said that last time. I, I need anything new.

1 MR. MEDLIN: I, I said it last time but I wanted to
2 just -- you asked the question again, Your Honor. So, I'm
3 just responding.

4 THE COURT: Let me ask you.

5 Is there anything new that you need to tell me that you
6 didn't put in your motions to bifurcate and a response?

7 MR. MEDLIN: That is---

8 THE COURT: That's what I'm asking.

9 MR. MEDLIN: That is -- Your Honor, I'm done and I
10 appreciate the opportunity to---

11 THE COURT: Okay.

12 MR. MEDLIN: ---make those points.

13 THE COURT: Okay.

14 MR. TWOMBLEY: And, Your Honor, I can---

15 THE COURT: Let me ask one other question.

16 Can I just ask whose deposition is scheduled to be
17 taken in December?

18 And I am most interested right now in Paul Long. I'm
19 most interested in John Jolley. I see Victor Barringer's
20 deposition was taken.

21 Correct?

22 MS. PAYLOR: Correct.

23 THE COURT: Okay.

24 MS. PAYLOR: Yes, ma'am.

25 THE COURT: And that's -- and it's not planning on

1 being again?

2 I, I assume not, but I just want to make sure.

3 MS. PAYLOR: It's -- yeah.

4 THE COURT: Okay.

5 MS. PAYLOR: We, we did attach that. I saw that when I
6 was looking for it.

7 THE COURT: Okay.

8 MS. PAYLOR: So, Paul Long.

9 THE COURT: And I know that -- I heard 27 different
10 depositions have yet to be taken by the Defendants from the
11 Motion for Continuance.

12 But -- so just so I'm clear, are you taking Paul Long's
13 deposition?

14 And I hear you say yes. John Jolley's has been noticed
15 for December.

16 MR. MEDLIN: December 21st I believe, Your Honor, and
17 we will take Paul Long's deposition.

18 THE COURT: And you take Paul Long's deposition.

19 What about any of the other doctors that you relied on
20 their medicals as facts for you showing that he has
21 Alzheimer's, or dementia, or can't remember his words, or
22 anything along those lines?

23 who else?

24 MR. MEDLIN: Your Honor, we plan to do that too.

25 THE COURT: Okay. I figured.

1 Okay. Okay. That's all I need to know.

2 Let's just do this. If there is anything new that
3 anyone has not already argued on their motions to bifurcate,
4 you can do it by memo.

5 Okay. And---

6 MR. TWOMBLEY: I would just like to say one thing.
7 It's not new argument, but I just want to remind you---

8 THE COURT: Yeah.

9 MR. TWOMBLEY: ---at the last hearing what you said you
10 were gonna do, Judge Mullen, and I thought it was a great
11 idea. Is during all of this summary judgment argument, you
12 were gonna make a list -- you said I'm gonna be listening.

13 THE COURT: Right.

14 MR. TWOMBLEY: I'm gonna make a list---

15 THE COURT: Of what the witnesses---

16 MR. TWOMBLEY: ---of the things---

17 THE COURT: ---would be testifying as to the -- I know.
18 I know.

19 MR. TWOMBLEY: Right. And I, and I just wanted to
20 point out that, after the past three days of hearing all of
21 this back and forth---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. TWOMBLEY: ---nothing, absolutely nothing came up
24 about whether or not Paul and Merrill Barringer entered into
25 a contract---

1 THE COURT: Contract.

2 MR. TWOMBLEY: ---on December the 4th of 1998. Please
3 seriously consider bifurcating that issue. Otherwise it's
4 gonna be an unmanageable---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. TWOMBLEY: ---mess if we try it all together---

7 THE COURT: Okay.

8 MR. TWOMBLEY: ---respectfully.

9 MR. MEDLIN: Your Honor, those issues wouldn't have
10 come up in, in this argument. We've already made our
11 argument about bifurcation, and how we're gonna need all the
12 witnesses who---

13 THE COURT: You've already said that.

14 MR. MEDLIN: ---who sue Paul and Merrill---

15 THE COURT: I've heard it.

16 MR. MEDLIN: ---all the way through his death. And so
17 that's a -- that's a canard, Your Honor.

18 THE COURT: Okay. Okay. All right. So, I have
19 another hearing that I have to get on on another WebEx.

20 So -- sorry. It's on this one. Sorry.

21 Okay. I will let you know -- oh, I see.

22 Okay. So, I'm not gonna promise you when I'm gonna
23 rule on this cause I don't know. But I can tell you this.
24 It will -- when I do, and even potentially before, I will
25 rule on the motion to bifurcate as well. So, just to let

1 you know, and that may come before this. I don't know.

2 I'm just gonna go through everything one more time, and
3 go ahead and give me the meeting minutes. Not the minutes.
4 I'm sorry. I want to hear the audiotape.

5 MS. PAYLOR: Audiotape.

6 THE COURT: Thank you.

7 MS. PAYLOR: Yes, ma'am.

8 THE COURT: And we'll go from there.

9 Okay. Yeah.

10 MR. MEDLIN: And, Your Honor, you wanted a copy of the
11 handwritten letter. We can just send that without---

12 THE COURT: Yeah. I'm gonna assume it's the same one
13 you -- exactly written in Mrs. Barringer's handwriting,
14 correct?

15 I'm gonna take your word for it. You're telling me.
16 So, I believe it.

17 MR. MEDLIN: We'll, we'll send it, Your Honor.

18 THE COURT: I believe that it's---

19 MS. PAYLOR: Your Honor, there's, there's no testimony
20 on when that was written. She may have -- it went to Mr.
21 Barringer's secretary to type and mail.

22 THE COURT: Right. Okay.

23 MR. MEDLIN: We'll send it, Your Honor.

24 MS. PAYLOR: I think she might of copied what he
25 wrote---

1 THE COURT: Okay.

2 MS. PAYLOR: ---and sent it to her.

3 Thank you.

4 THE COURT: Okay. Okay.

5 MS. PAYLOR: There's no evidence that what he -- of
6 what he's saying.

7 MR. MEDLIN: You'll see, Your Honor.

8 THE COURT: Okay. Thank you. Just send it to me.

9 Okay. All right. Y'all have a nice Thanksgiving.
10 okay?

11 MR. MEDLIN: You too, Your Honor. Thank all of y'all.

12 MR. TWOMBLEY: You as well.

13 THE COURT: Appreciate it.

14 All right. Thank you.

15

16

17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina, on the 17th, 18th and 19th days of November, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 18th, 2020



PAMELA E. GREEN, Court Reporter

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

23 -----
24 STATE OF SOUTH CAROLINA
25 COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
IN THE MATTER OF:
ESTATE OF PAUL B. BARRINGER, II
HAMPTON B. LUZAK,
Plaintiff,
vs. C/A NO. 2019-CP-07-01253
and 2019-CP-07-01254
MERRILL U. BARRINGER,
Defendants.
VIDEO
DEPOSITION OF: REBECCA L. BOSTICK
DATE/TIME: December 3, 2020 at 2:30 PM
(TITLE PAGE CONTINUED ON NEXT PAGE)

ROA 005505
Page 2

1 DATE: December 3, 2020
2 TIME: 2:30 PM
3 LOCATION: Jolley Law Group
 99 Main Street
4 Suite 103
 Hilton Head Island, SC
5
6 TAKEN BY: Counsel for the Plaintiff
7
8 REPORTED BY: Priscilla Nay,
9 Court Reporter
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1 APPEARANCES (CONTINUED)

2 ALSO PRESENT:

3 Kevin Ward, Videographer

4
5 (INDEX AT REAR OF TRANSCRIPT)

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1 (PLAINTIFF'S EXHIBIT 1, Plaintiff's
2 deposition notebook with 36 tabbed documents, was
3 marked for identification.)

4 THE VIDEOGRAPHER: Good afternoon.
5 We are going on record at 2:30 PM, December 3rd,
6 2020. This is Media Unit 1, recorded deposition
7 of Rebecca Bostick taken by Counsel for the
8 Plaintiff in the matter of Hampton B. Luzak
9 versus Merrill B. Light, et al filed in the Court
10 of Common Pleas, Case Number 2016-CP-07-1919.

11 This deposition is being held at Jolley
12 Law Group located at 99 Main Street, Hilton Head,
13 South Carolina 29926. My name is Kevin Ward from
14 the firm Veritext. I'm the videographer. The
15 court reporter is Priscilla Nay from the firm
16 Veritext. Would the court reporter please swear in
17 the witness.

18 REBECCA LYNN BOSTICK
19 being first duly sworn, testified as follows:

20 MS. KIRK: Jim, before you get
21 started -- this is Ariail Kirk. I just wanted to
22 say that we've got a copy of the August 23rd, 2017
23 order on the motions to quash and testamentary
24 exception. And in the witness' role at the
25 previous McNair Law Firm we are here in accordance

1 with this order and anything that she's going to
2 testify to would be limited to the decedent's
3 estate planning and communications related to
4 their preparation, execution and amendment as
5 provided for in that order.

6 MR. TWOMBLEY: And I -- I want to make
7 sure you guys agree that by allowing her to testify
8 in accordance with this order that we're not
9 waiving any attorney-client privilege.

10 MR. GILREATH: She's going to have
11 to testify to things with testamentary exceptions,
12 but I don't think I'm going to ask anything that's
13 outside the borders of that.

14 If you want to try to stop her I guess
15 you can insert your exceptions and instruct her --
16 do whatever you want to do at your own risk, but I
17 don't intend to ask anything that's not consistent
18 with the testamentary exception.

19 MR. TWOMBLEY: Okay. Well, I -- I am
20 agreeing to allow her to testify in accordance with
21 Judge Mullen's order and, you know, if I think you
22 are going outside of it I'll -- I'll object and
23 we'll just deal with it as it comes.

24 MR. GILREATH: That's fine.

25 MR. TWOMBLEY: But you -- I want to

1 make sure you agree that by allowing her to testify
2 about the preparation, execution and amendment of
3 Mr. Barringer's estate planning documents we are
4 not waiving the attorney-client privilege. Do you
5 agree to that?

6 MR. GILREATH: Just wait a minute.
7 I'll agree with that one. I agree you're not
8 waiving it, but she's going to be testifying
9 subject to the testamentary exception. So --

10 MR. TWOMBLEY: If you agree we're not
11 waiving it that's -- I'm not sure what you said
12 after that, but that's -- as long as we've got
13 your agreement that by allowing her to testify
14 about the preparation, execution or amendment of
15 Mr. Barringer's estate planning documents we're
16 not waiving the attorney-client privilege.

17 MR. GILREATH: Well, now you're
18 representing Mrs. Barringer. Right?

19 MR. TWOMBLEY: Yes, and the estate.

20 MR. GILREATH: Are you speaking for
21 everybody else?

22 MR. TWOMBLEY: I'm sorry?

23 MR. GILREATH: Are you speaking for
24 everybody else?

25 MR. TWOMBLEY: I don't know what you

1 mean everybody else. I'm speaking for --

2 MR. GILREATH: Last time I'm looking at
3 the picture there's some other people in the room
4 that are representing some other people, at least
5 on this screen.

6 MR. TWOMBLEY: Well, I don't know that
7 anybody else has got any interest in it other than
8 my client, but I'm -- I'm happy to hear what
9 everybody else's thoughts are. But as far as
10 I'm concerned me and Ms. Walters who represent
11 Mrs. Barringer are the only ones that matter.

12 MR. GILREATH: All right. Well, you
13 asserted your position. You've heard what I said.

14 MR. TWOMBLEY: Well, no. It's not a
15 matter of me asserting my position. It's a matter
16 of you agreeing on the record that by me allowing
17 Ms. Bostick to testify in accordance with Judge
18 Mullen's order you are agreeing that we are not
19 waiving the attorney-client privilege. I need you
20 to state that you are agreeing to that.

21 And if you don't state that you agree
22 to that we will have to go back to Judge Mullen
23 and get an order from her. I think she's -- she's
24 already found that it applies. I'm just asking you
25 to agree that this order applies to Ms. Bostick's

1 deposition.

2 MR. GILREATH: I -- I agree that
3 Judge Mullen's order applies to this deposition.

4 MR. TWOMBLEY: Okay.

5 THE VIDEOGRAPHER: Would the attorneys
6 and counsel please state their affiliation for the
7 record.

8 EXAMINATION

9 BY MR. GILREATH:

10 Q. All right. Good afternoon,
11 Ms. Bostick. Sorry we had so much --

12 A. Good afternoon.

13 Q. -- technological problems here. It's
14 the first time we've run into that. Hopefully
15 it doesn't happen again.

16 I'm Jim Gilreath from Greenville
17 sitting here with Bill Hogan of my firm and we
18 represent the Plaintiff, Hampton Luzak. There's
19 housekeeping stuff I need to go over in the
20 beginning and then I'll get to some questions.

21 At the beginning of each deposition the
22 rules require that I instruct you to ask the
23 opposing counsel -- myself -- rather than the
24 witness' own -- your counsel -- for clarification,
25 definitions, explanations to words, questions or

1 documents presented during the course of the
2 deposition and you are to -- to abide by these
3 instructions according to the rules.

4 Any objections except those which would
5 be waived if not made at the deposition under Rule
6 32(d)(3) of the South Carolina Rules of Civil
7 Procedure and those necessary to assert privilege
8 to enforce the limitations on evidence directed
9 by the Court or to present a motion pursuant to
10 Rule -- Rule 30(d) shall be preserved.

11 Counsel shall not direct or request
12 that a witness not answer a question unless that
13 counsel has objected to the questions on the ground
14 that the answer is protected by a privilege or
15 limitation on the evidence directed by the Court or
16 unless that counsel intends to present a motion
17 under Rule 30(d) of the South Carolina Rules of
18 Civil Procedure.

19 In addition counsel shall have
20 affirmative duty to inform you as the witness that
21 unless such objection is made the question must be
22 answered.

23 Counsel directing that a witness not
24 answer a question on those grounds or allowing a
25 witness to refuse to answer a question shall move

1 the Court for a protective order under Rule 26
2 of the South Carolina Rules of Civil Procedure
3 within -- or 30(d) of South Carolina Rules of Civil
4 Procedure within five business days of the
5 suspension or termination of the deposition.

6 Failure to file such a motion will
7 constitute waiver of the objection and the
8 deposition made. Counsel shall not make objections
9 or statements which might suggest an answer to a
10 witness.

11 Counsel's objections shall be
12 stated concisely and in a nonargumentative and
13 nonsuggestive manner stating the basis of the
14 objection and nothing more.

15 Counsel and the witness shall not
16 engage in private off-the-record conferences during
17 depositions or during breaks or recesses regarding
18 the substance of the testimony at the deposition
19 except for the purpose of deciding whether to
20 assert a privilege or to make an objection or to
21 move for a protective order.

22 Any conferences which occur pursuant
23 to or in violation of Section 5 of this rule
24 which I just went over are proper subjects for
25 inquiry by -- by me to ascertain whether there's

1 been any witness coaching and if so to what extent
2 and nature. I would ask that opposing counsel
3 avoid -- do you understand you're under oath,
4 ma'am?

5 A. Yes.

6 Q. Ms. Bostick.

7 A. Yes, sir.

8 Q. You understand you're under oath?

9 A. Yes, sir.

10 Q. I can't hear her.

11 MS. PAYLOR: She's muted.

12 MR. GILREATH: She needs to unmute.

13 How do we unmute her?

14 THE COURT REPORTER: Can you cut the
15 volume up over there? If I unmute here it's going
16 to echo again. That's why were trying to do it,
17 where we could see everyone.

18 MR. GILREATH: Ashley, you seem to be
19 running the show in there. Can you unmute the
20 witness.

21 THE VIDEOGRAPHER: Right here?

22 THE COURT REPORTER: Can you cut the
23 volume up there? If we unmute on the laptop then
24 it's going to create an echo. You're just going to
25 have to speak louder.

1 THE WITNESS: Okay.

2

3 THE WITNESS: Good. Yes, sir.

4 THE COURT REPORTER: You're just going
5 to have to speak really loud.

6 THE WITNESS: Okay. Can you can hear
7 me now?

8 BY MR. GILREATH:

9 Q. Yeah.

10 A. Okay.

11 Q. All right. So you can hear me now?

12 A. Yes, sir.

13 Q. Okay. You understand you are under
14 oath?

15 A. Yes, sir.

16 Q. And being under oath means you're sworn
17 to tell truth, correct?

18 A. Yes, sir.

19 Q. Do you understand that your responses
20 here will have the same force as in a courtroom
21 with a judge and a jury?

22 A. Yes.

23 Q. Are you prepared to answer my questions
24 today?

25 A. Yes, sir.

1 Q. Is there anything that would prevent
2 you from providing me your full attention?

3 A. No.

4 Q. And you aren't taking any medications
5 that will prevent your answering any questions?

6 A. No, sir.

7 Q. And you will let me know if you don't
8 understand one of my questions?

9 A. Yes.

10 Q. And if you need to take a break at any
11 time just let me know and we'll take a break. This
12 is not an endurance contest.

13 So can we agree that you'll give me
14 your -- we can agree that you will give me your
15 full attention and if you don't understand one of
16 my questions you will let me know, correct?

17 A. Yes, sir.

18 Q. All right. Okay. State your full name
19 for the record.

20 A. Rebecca L. Bostick.

21 Q. Have you ever used any other names?

22 A. Maiden name is Warren.

23 Q. Do you have any nicknames?

24 A. Becky and Becca.

25 Q. What is your date of birth?

1 A. May 20th, 1976.

2 Q. And where were you born?

3 A. New Castle, Pennsylvania.

4 Q. Okay. Can you give me your Social
5 Security number.

6 MS. KIRK: I object.

7 MR. TWOMBLEY: I object. Irrelevant.

8 BY MR. GILREATH:

9 Q. Do you have your driver's license with
10 you?

11 A. In my office.

12 Q. All right. What is your -- what is
13 your residence address?

14 A. 51 Sandy Pointe Drive, Bluffton, South
15 Carolina 29910.

16 Q. And how long have you lived there.

17 A. 14 years.

18 Q. Where did you live before that?

19 A. Crystal Beach Drive in Bluffton, South
20 Carolina.

21 Q. Are you married?

22 A. Divorced.

23 Q. Divorced. What is the name of your
24 ex-husband?

25 A. Joshua J. Bostick.

1 Q. Okay. And what is his occupation?

2 A. He's self-employed. He's a car
3 detailer.

4 MR. GILREATH: Can you hear her? Madam
5 Court Reporter, I am not hearing her with a lot of
6 clarity. Have you got a better mic connection or
7 something?

8 THE COURT REPORTER: We -- we can
9 either have her through the laptop where you can't
10 see everyone or we have it where it's on the big
11 screen so you'd have it both ways. But I'd have to
12 have the -- the mute on her microphone. Ma'am if
13 you could just speak louder. I think --

14 THE WITNESS: Yeah.

15 THE COURT REPORTER: -- we have volume
16 in the -- I mean we have audio in the room. It's
17 just if she could speak louder.

18 MR. GILREATH: Well, I'm having -- I'm
19 having trouble understanding her. So is Mr. Hogan.
20 Have you got something --

21 THE VIDEOGRAPHER: We'll go off the
22 record. It's 2:43 PM.

23 (Off-the-record conference.)

24 THE VIDEOGRAPHER: We are back on the
25 record. It is 2:45 PM.

1 BY MR. GILREATH:

2 Q. Okay. You've only been married one
3 time?

4 A. Yes, sir.

5 Q. Okay. Do you have any children?

6 A. Yes, sir.

7 Q. What are their names?

8 A. Zachary James Bostick and Jamison Page
9 Bostick.

10 Q. Are they old enough to be employed or
11 they're not?

12 A. No, sir. No.

13 Q. You said they're -- they're not
14 employed?

15 A. No.

16 Q. Too young to -- too young to work?

17 A. Yes, sir.

18 Q. Okay. And what -- give me your
19 educational background and work history --

20 A. Sure.

21 Q. -- before you went to work with the
22 McNair firm.

23 A. Okay. I went to school at Slippery
24 Rock University located in Pennsylvania. Following
25 that I went to work in New Jersey for an

1 architectural firm and then a marketing firm. And
2 then I returned or came down to South Carolina
3 and I worked for Michael Howe who is an attorney on
4 the island in estate planning and I waitressed.

5 And then I worked in the golf industry
6 for a while before joining Bethea, Jordan & Griffin
7 which eventually merged with McNair which was
8 eventually -- became part of Burr Forman McNair or
9 Burr and Forman now.

10 Q. I didn't catch all that. Can you slow
11 down a little bit.

12 A. Sure. Start from the beginning?

13 Q. You said something about merging with
14 the McNair firm or something. I didn't pick that
15 up.

16 A. Okay. Bethea Jordan and Griffin is the
17 firm I started with and then it merged with McNair
18 Law Firm which became a part of Burr & Forman and
19 now I work at Jolley Law Group.

20 Q. Okay. And are you still working there
21 or are you working for Mr. Jolley now?

22 A. I'm working for Mr. Jolley.

23 Q. But you're not associated with Burr,
24 Forman & McNair anymore, right?

25 A. No, sir.

1 Q. Have you ever been involved in any
2 business entity as an owner, part owner or officer
3 or director that's filed for bankruptcy?

4 A. I'm sorry. What was that?

5 Q. Have you ever been involved in any
6 business entity as an owner, part owner or officer,
7 director or manager that filed for bankruptcy?

8 A. No, sir.

9 Q. Okay. Have you ever testified in
10 court?

11 A. No, sir.

12 Q. Have you ever been a Plaintiff or a
13 Defendant in another lawsuit?

14 A. No, sir.

15 Q. Okay. Can you give me the telephone
16 numbers of all cell phone numbers you've had since
17 2010.

18 A. Personal numbers?

19 Q. Do what?

20 A. Personal numbers?

21 Q. Yes. Well, if you've got any -- what
22 other numbers would you have?

23 A. My direct line at work.

24 Q. No. I'm talking about cell phone
25 numbers now.

1 A. Okay. I've only had one.

2 (843)304-2190.

3 Q. Do you often use text messaging?

4 A. For personal use only.

5 Q. Do you delete texts off your phone or
6 are they still on there?

7 A. I delete them.

8 Q. Give me all the e-mail addresses you've
9 used since 2010.

10 A. Becky -- B-E-C-K-I -- Bostick,
11 B-O-S-T-I-C-K -- @gmail.com and Becky -- I'm sorry.
12 Becca -- B-E-C-C-A -- lbsc@gmail.com.

13 Q. Okay. What kind of computer do you use
14 other than the one at work, if you have one?

15 A. I do not have one.

16 Q. Are you on Facebook?

17 A. Yes, sir.

18 Q. And what is your address or whatever it
19 is?

20 A. Becca Bostick.

21 Q. Spell that. Is it B-E-C-C-A?

22 A. Yes, sir.

23 Q. Is that -- is that the only name you
24 use? I'm not a Facebook person. So --

25 A. I only have --

1 Q. -- this is --

2 A. -- one account.

3 Q. -- foreign territory?

4 A. -- account. Previously it was under
5 Becky Bostick, but it's the same account.

6 Q. Repeat that again.

7 A. Previously it's under Becky Bostick,
8 but I changed it. I updated it, but it's still the
9 same account.

10 Q. Okay. What is the name of it now?

11 A. Becca Bostick.

12 Q. Okay. Have you ever been arrested?

13 A. No, sir.

14 Q. Have you ever been -- well, I don't
15 guess you've ever been convicted of a crime if you
16 haven't been convicted --

17 A. Nope.

18 Q. -- or arrested. Have you ever been
19 involved in any legal claims or lawsuits?

20 A. No.

21 Q. Okay. Tell me what -- everything you
22 did to get ready for this deposition.

23 A. I reviewed the documents and I spoke
24 with my attorney.

25 Q. Who gave you the documents?

1 A. My attorney, Ariail.

2 Q. Okay. That's Ms. Kirk, right?

3 A. Yes, sir.

4 Q. Have you had any meetings with Ashley
5 Twombley?

6 A. No.

7 Q. When is the first time you ever met
8 Ashley Twombley?

9 A. I believe today and I think we may have
10 spoken on the phone earlier this year.

11 Q. Okay. But the first time you met him
12 was today?

13 A. I believe so. Otherwise it was just in
14 passing.

15 Q. Have you spoken to anyone other than
16 your counsel about this case?

17 A. No. Well, John.

18 Q. John?

19 A. Jolley.

20 Q. Talking about John Jolley?

21 A. Yeah, just generally.

22 Q. Tell me what you and Mr. Jolley talked
23 about.

24 A. Just how to present myself --

25 Q. Let me turn this --

1 A. -- and what to expect.

2 Q. All right. What -- what did you talk
3 about with Mr. Jolley?

4 A. What to expect in a deposition and how
5 to present myself.

6 Q. Okay. Anything else?

7 A. That's basically about it.

8 Q. Did he show you any of the documents
9 that we have in the exhibit notebook that I'm going
10 to be going through with you?

11 A. No, sir.

12 Q. Have you ever testified in court
13 before?

14 A. No. Well, I mean, for my divorce if
15 you count that.

16 Q. Other -- other than your divorce.

17 A. No, sir.

18 Q. Okay. And you've never been a
19 Plaintiff or a Defendant in another lawsuit?

20 A. No, sir.

21 Q. You may have already told me this, but
22 when -- when did you start working for Mr. Jolley
23 at the McNair Law Firm?

24 A. 2006. No. I'm sorry. 2005.

25 Q. 2005?

1 A. That's when we first started working
2 together.

3 Q. And what was the nature of the work you
4 did for him?

5 A. Estate planning. I -- I was his legal
6 assistant at the time.

7 Q. Okay. Could you -- did you take on
8 another position?

9 A. Yes, sir.

10 Q. What was that?

11 A. Paralegal.

12 Q. Okay. And what did -- what did you do
13 as a paralegal?

14 A. I became a bill keeper or a timekeeper
15 and I helped him more redacting documents and
16 meeting with clients and doing -- having more
17 responsibilities.

18 Q. And you said you became -- what did you
19 say? You said a gatekeeper or a timekeeper?

20 A. A timekeeper, so I can bill my work.

21 Q. Is -- is that a timekeeper for you or
22 for him?

23 A. For me.

24 Q. So they billed out your time?

25 A. Yes, sir.

1 Q. And you filled out a time sheet
2 every day?

3 A. Yes, sir. Well, we entered it into the
4 computer.

5 Q. Do what?

6 A. Yes. We entered it in the computer.

7 Q. You entered it in a computer?

8 A. Yes, sir.

9 Q. So all of your -- all of your time that
10 you spent on various matters would be on the
11 computer at the McNair firm? I'll just refer to
12 that firm as McNair.

13 A. Yes, sir.

14 MR. TWOMBLEY: Object --

15 MS. KIRK: Object to the form.

16 MR. TWOMBLEY: Object to the form.

17 BY MR. GILREATH:

18 Q. Did you put any time in for
19 Mr. Jolley or did he keep up with his own time?

20 A. He would often write it and I would --
21 I would enter it.

22 Q. I didn't -- you're going to have to
23 start over on that one. I didn't catch it.

24 A. Oh. He would often write out his time
25 and he and I would word process it.

1 Q. He -- he would write it out and then
2 you would edit it and put it in the computer?

3 MS. KIRK: Object to the form.

4 BY MR. GILREATH:

5 Q. Did I get that wrong?

6 A. I would just enter it.

7 Q. Okay. Do you know what happened to his
8 original notes on the time he -- he wrote out for
9 you? What happened to that?

10 A. I would leave them in my drawer at
11 work.

12 Q. Do you still have those -- those files?

13 A. I no longer work there.

14 Q. Do what?

15 A. I no longer work there.

16 Q. Okay. Were -- were they there when
17 you left?

18 A. I would keep them for a couple of
19 years.

20 Q. What did you do with them then?

21 A. Shred them.

22 Q. What happened -- when you leave were
23 there any there when you left?

24 A. There should have been.

25 Q. Did anybody ever call you about what to

1 do with them or anything?

2 A. No, sir.

3 Q. Is -- is -- has anybody from the
4 McNair firm asked you about where those papers may
5 be?

6 A. Nobody has contacted me about those.

7 Q. Okay. And what year did you leave
8 McNair?

9 A. I left Burr & Forman this past January.

10 Q. Is that when -- when Mr. Jolley left?

11 A. Yes. He would left right before me.

12 Q. Did you ever in the course of working
13 with Mr. Jolley meet my client's father, Paul
14 Barringer?

15 A. I sure did.

16 Q. Tell me what you remember about
17 Mr. Barringer.

18 A. Mr. Barringer, he -- excuse me. He
19 was a -- a very great businessman. He was just a
20 nice guy. He always acknowledged me when I came in
21 the room, which was nice.

22 Q. Okay. Anything else you can remember
23 about him?

24 MR. TWOMBLEY: Object to form of the
25 question.

1 BY MR. GILREATH:

2 Q. Do you understand my question?

3 A. Has he objected?

4 MR. TWOMBLEY: Yeah. Unless someone
5 tells you not to answer you can answer.

6 THE WITNESS: Oh, I'm sorry.

7 MR. TWOMBLEY: That's okay. I just --
8 I just said --

9 THE WITNESS: I'm sorry. Can you
10 repeat the question then.

11 BY MR. GILREATH:

12 Q. Well, I --

13 THE COURT REPORTER: Do you want me to
14 read that back?

15 THE COURT REPORTER: Would you read
16 that back to me, Madam.

17 (The Court Reporter read the question
18 commencing on page 28 line 21.)

19 MS. KIRK: Object to the form.

20 MR. TWOMBLEY: Same objection.

21 BY MR. GILREATH:

22 Q. Is there anything else particularly you
23 remember about him that you haven't told us?

24 MS. KIRK: Object to the form. I -- I
25 object to that to the extent you're asking for

1 anything outside of the testamentary exception.

2 It's such a vague question. I'm not really sure if
3 that's your intent or not.

4 MR. TWOMBLEY: Same objection.

5 MS. KIRK: So to the extent that that's
6 what you're asking I do object to it and would have
7 her not answer on the grounds of anything that's
8 privileged.

9 MR. TWOMBLEY: Yeah. Why don't you be
10 more specific with --

11 BY MR. GILREATH:

12 Q. Can you answer that question.

13 MR. GILREATH: I'm not looking for
14 anything privileged. It was a really simple
15 question. Can you read it back, Madam Court
16 Reporter.

17 THE COURT REPORTER: I'm sorry. The
18 same question.

19 (The Court Reporter read the question
20 commencing on page 28 line 21.)

21 MS. KIRK: And note our continuing
22 objection.

23 MR. TWOMBLEY: I -- I think -- I mean,
24 don't want to instruct her not to answer. I think
25 you're just asking for general information about --

1 about him. Right, Jim?

2 MR. GILREATH: I'm not -- I'd prefer
3 you not be making any speaking objections,
4 actually. It was a fairly simple question under
5 the English language as I understand it. I just
6 asked her what else she remembered about him, I
7 believe.

8 Is that right? It's certainly not
9 seeking anything privileged. Y'all let her answer
10 the question and let's get on with this thing.

11 MR. TWOMBLEY: Well, I mean, it's just
12 not that easy, Jim. I mean, you asked her what
13 else --

14 MR. GILREATH: It is easy.

15 MR. TWOMBLEY: What else she remembers.
16 What if she starts saying, well, I remember one --

17 MR. GILREATH: Quit making speaking
18 objections, Ashley.

19 MR. TWOMBLEY: Okay. Well --

20 MR. GILREATH: You're making
21 objections.

22 MR. TWOMBLEY: Well, look --

23 MR. GILREATH: Don't have a right to
24 say anything else.

25 MR. TWOMBLEY: This will be easy then.

1 I instruct -- it's my opinion that that question
2 could potentially invade the attorney-client
3 privilege and it -- it is not within the
4 testamentary exception to the attorney-client
5 privilege and I do not believe she should answer
6 it.

7 MS. KIRK: And based upon that
8 objection I will instruct her not to answer.

9 MR. TWOMBLEY: Now, if you want to ask
10 a better specific question you can do it, but if
11 you're going to just lob out insults to us and ask
12 these vague and ambiguous questions that's --
13 that's -- that's -- you know, that's how we're
14 going to handle it.

15 MR. GILREATH: Well, Madam Court
16 Reporter, so we've got the record straight would
17 you read out my question to her again so we all
18 understand what it is.

19 THE COURT REPORTER: Yes, sir. Give me
20 one second. The same question. Question --

21 MR. GILREATH: The same question.

22 THE COURT REPORTER: I'm sorry?

23 MR. GILREATH: The same question I
24 started with.

25 THE COURT REPORTER: Yes, sir.

1 (The Court Reporter read the question
2 commencing on page 28 line 21.)

3 MR. TWOMBLEY: And I am stating that
4 it is possible that a response to that question
5 could potentially require the witness to disclose
6 attorney-client privileged information. I doubt
7 it and I'd like to try to talk with you to work out
8 where she can respond.

9 But if you're going to refuse to let
10 me do that, accuse me of make -- making a speaking
11 objection and then insult me for not understanding
12 the English language then we'll just leave it at
13 that. However you'd like to proceed. It's your
14 deposition, Mr. Gilreath.

15 MR. GILREATH: It's a fairly simple
16 question, Ashley. It's not intended to seek out
17 anything that would be privileged. I'm just
18 asking her if there's anything in particular she
19 remembered about him that she hadn't told me.

20 MR. TWOMBLEY: Yeah. We got the
21 question. We've heard it three times now.

22 MR. GILREATH: Yes. It was a fairly
23 simple question Ashley, but you -- just so the
24 record is clear you are instructing her not to
25 answer it on the grounds of privilege, correct?

1 MR. TWOMBLEY: That is incorrect. What
2 I am doing --

3 MR. GILREATH: What is -- what is your
4 reason? Because you know what the rule says. I've
5 already gone through that --

6 MR. TWOMBLEY: Well --

7 MR. GILREATH: You know -- you well
8 know what the rule is. So what's your objection?

9 MR. TWOMBLEY: My objection is that
10 it is my opinion that that question is so broad
11 that it could potentially require the witness to
12 disclose attorney-client privileged information.
13 And it is my opinion that it goes outside the
14 scope of Judge Mullens' order that only allows
15 information to be disclosed related to the
16 preparation, execution or amendment of
17 Mr. Barringer's estate planning documents. If --
18 that's my opinion. Based on that opinion I believe
19 it was Ms. Kirk, the witness' lawyer, who
20 instructed her not to answer.

21 MS. KIRK: That is correct.

22 MR. TWOMBLEY: And so again, I am
23 offering to you to try to craft a question that
24 the witness can answer so that you can get the
25 information you are seeking and so we don't have

1 to have this -- delay the deposition. But if you
2 don't want to do that that -- that is your choice.

3 MR. GILREATH: I asked her, Ashley,
4 if there were any other observations of her in her
5 dealings with them that --

6 MR. TWOMBLEY: That is not what you
7 asked her. That is not what you asked her. That's
8 a different question.

9 MR. GILREATH: Not privileged. This is
10 something she saw or observed. Are you still
11 taking the deposition?

12 MR. TWOMBLEY: Yes.

13 MR. GILREATH: Well, I'm going to talk
14 to Judge Mullen about it. You file your motion or
15 do whatever you've got to do.

16 MR. TWOMBLEY: Well, what I'd like to
17 do is talk to you about what my objection is so you
18 can try to ask a better question and you can get
19 what you need and we won't have to bother the judge
20 with it.

21 But if you would like to handle it the
22 way you suggested then the record will speak for
23 itself and we will go see Judge Mullen.

24 MR. GILREATH: An observation Ashley
25 and Ms. Kirk is it's not -- it's an observation.

1 There's nothing privileged about an observation. I
2 just -- if that's your position then you've got the
3 right to take it and -- and -- but I just want to
4 be sure I understand what you're saying.

5 There's nothing in the world that I
6 know that could be privileged about an observation.
7 Now, do you still stick by your objection or are
8 you going to -- are we going to talk to the judge
9 about it later?

10 MR. TWOMBLEY: Well, would you like to
11 limit your question to time period of 2011 to 2015
12 which is the time that the testamentary documents
13 in -- in question were executed?

14 And would you also like to limit your
15 question to observations during the preparation and
16 the execution of the estate planning documents?

17 I mean, I -- I don't want to take the
18 deposition for you, Jim, but I don't want to go in
19 front of Judge Mullen and look like I'm trying to
20 be an obstructionist because I'm not. I --

21 MR. GILREATH: Well --

22 MR. TWOMBLEY: I want you to be able to
23 ask your questions.

24 MR. GILREATH: I'm not going to craft
25 my questions to suit your --

1 MR. TWOMBLEY: Well, then I stand by my
2 objection and --

3 MR. GILREATH: Go ahead and stand by --

4 MR. TWOMBLEY: And we can move on.

5 MR. GILREATH: You're standing -- I
6 want to be sure the record is clear. You're
7 standing by the fact that I've asked her for her --
8 about -- about some of her observations of Mr. --

9 MS. KIRK: I feel like you just kind of
10 changed -- that's a different question.

11 MR. TWOMBLEY: What was that, Ariail?
12 I didn't --

13 MS. KIRK: Isn't that a different
14 question?

15 MR. GILREATH: I don't think it was.

16 MR. TWOMBLEY: Well --

17 MS. KIRK: And I feel like that's a
18 question that you asked that she's answered.

19 MR. GILREATH: She hasn't answered my
20 question.

21 MR. TWOMBLEY: Why don't you try to ask
22 it a different way?

23 MR. GILREATH: I like the way I
24 asked it the first time, Ashley. You -- I'm not
25 going to let you get in here and make a bunch of

1 objections and get my mind off of what my questions
2 are and -- and I asked a very simple question
3 about her observations of Mr. Barringer and you
4 and Ms. Kirk have seen to fit to somehow fit that
5 in some cubbyhole of privilege.

6 And if that's what you're going to
7 stick by that's fine. Assert your privilege and --
8 and we'll go on if that's your position.

9 MR. TWOMBLEY: Jim, I respectfully
10 think my position is -- is pretty clear. And
11 again, I'm happy -- I mean, we can even dismiss the
12 witness from the room and I'm happy to talk to you
13 about it to try to work it out.

14 I mean, you know, that's what I've done
15 for 15 years when I practiced law is try to work it
16 out and let you ask the -- craft a new question and
17 try to move on with it.

18 But if you -- if your position is that
19 you're going to refuse to rephrase the question,
20 you're going to rephrase to limit it and --

21 MR. GILREATH: You --

22 MR. TWOMBLEY: I'm --

23 MR. GILREATH: Well --

24 MR. TWOMBLEY: I'm not finished.

25 Let -- let me finish. I'm speaking, Mr. Gilreath.

1 I'm speaking. If -- if you refuse to talk about it
2 and try to work it out in good faith, try to
3 recraft -- craft the question in a way that will
4 address these issues we'll -- we'll have to go to
5 the Court.

6 But, no. That is not the way I want to
7 handle it at all. I think it is ridiculous that we
8 would have to go bother Judge Mulllen about this.

9 I'll note for the record that it was
10 originally Ms. Kirk who pointed out the objection
11 to the question and I concur with it. So in any
12 event, just let us know how you'd like to proceed.
13 I'm happy --

14 MR. GILREATH: The attorney-client
15 privilege I'll remind you only applies to
16 communications. My question dealt with -- was
17 about her observations of Mr. Barringer and you
18 and Ms. Kirk have seen fit to apparently instruct
19 her not to answer that on the basis of some kind of
20 privilege.

21 MR. TWOMBLEY: All right. Well, I'd
22 like to take a break and I'll -- I want to talk
23 with Ariail for a moment about the best way to
24 handle this. So we'll go off.

25 THE VIDEOGRAPHER: We are going off the

1 record. It is 3:11 PM.

2 (A recess transpired.)

3 THE VIDEOGRAPHER: We are back on
4 record at 3:16 PM. Would counsels (sic) please
5 state their affiliation for the record. Jim.

6 MR. GILREATH: Jim Gilreath, Bill
7 Hogan, Greenville for the Plaintiff Hampton Luzak.
8 Alice, you're muted.

9 MR. MOLSTER: Charles --

10 MS. PAYLOR: Alice Paylor --

11 MR. MOLSTER: Charles --

12 MS. PAYLOR: -- for Merrill Light.

13 MR. MOLSTER: Thank you. Charles
14 Molster on behalf of Merrill Light.

15 MR. GHOM: Bijan Ghom on behalf of
16 Merrill Light.

17 MS. WALTERS: Lee Walters for Merrill
18 Barringer.

19 MR. TWOMBLEY: Ashley --

20 MR. MACLOSKIE: Mike Macloskie for
21 Hampton Luzak.

22 MR. TWOMBLEY: Ashley Twombley for
23 Merrill Barringer and --

24 MS. KIRK: And Ariail Kirk for the
25 witness, Ms. Bostick.

1 MR. GILREATH: Are we back on
2 the record?

3 THE VIDEOGRAPHER: Yep.

4 MS. KIRK: Yes, sir.

5 BY MR. GILREATH:

6 Q. I just want to make clear for the
7 record the thing we've been arguing about -- about
8 your observations with Mr. Barringer. And just so
9 the record is clear, when was the first time you
10 remember meeting him?

11 A. Approximately eight, ten years ago.

12 Q. And when was the last time you remember
13 seeing him before he died?

14 A. Probably about five years ago.

15 Q. Okay. That would be in 2015?

16 A. That sounds accurate.

17 Q. Over the course of that period of time
18 did you -- as he got older and towards the latter
19 part of your contact with him did you notice any
20 change in him? Anything that got your attention.

21 A. Maybe a little slower, but that's about
22 it.

23 Q. What do you mean by slower?

24 A. I'm sorry. Just maybe not moving quite
25 as fast. As people get older they slow down a

1 little bit.

2 Q. Was that mentally or physically?

3 A. Oh, physically.

4 Q. Did you notice anything about any
5 change in his mental condition?

6 A. No, sir.

7 Q. How much time would you see and/or
8 spend with him when he came in?

9 A. Usually an appointment lasts an hour,
10 hour and a half. I would go in towards the end of
11 the appointment.

12 MR. TWOMBLEY: I'm going to just
13 caution the witness to limit your testimony to
14 the preparation, execution or amendment of
15 Barringer's estate planning documents.

16 BY MR. GILREATH:

17 Q. Was most of your interaction with
18 Mr. Barringer involved in the preparation of
19 estate planning and related estate documents that
20 Mr. Jolley was doing for him?

21 A. I'm sorry. Can you repeat that.

22 Q. Was most of your interaction with
23 Mr. Barringer related to the estate planning work
24 that Mr. Jolley was doing for him on his will and
25 trust?

1 A. Yes. I assisted John with that.

2 Q. Okay. And when he came into the office
3 and he met with Mr. Jolley were you in on any of
4 those meetings?

5 A. Yes, sir.

6 Q. How long -- were you in on all of them?

7 A. Not every single one.

8 Q. Were you in on most of them?

9 A. Yes, sir.

10 Q. Okay. So -- so you were present in
11 the room with Mr. Jolley when he was meeting with
12 Mr. Barringer or with Mr. And Mrs. Barringer,
13 correct?

14 A. Yes, sir.

15 Q. Did you take notes during the meetings?

16 A. No, sir.

17 Q. During -- I didn't hear you.

18 A. No, sir.

19 Q. Okay. And how long would -- would a
20 typical meeting like that last?

21 A. A typical estate planning meeting would
22 be an hour to an hour and a half.

23 Q. And you would have been in there the
24 whole time?

25 A. Not the very beginning of the meeting.

1 Q. Not at the very beginning?

2 A. Correct.

3 Q. Oh. You -- now, what do you mean by
4 the very beginning?

5 A. Usually we would go and meet with a
6 client and they would discuss what they're going to
7 be talking about or the documents and then he'd
8 bring me in once he's had a chance to have that
9 preliminary discussion with him.

10 Q. Okay. Were you -- were you in on any
11 discussions before he drafted any documents?

12 MS. KIRK: Jim, can we just like agree
13 on the record that when you're generally asking
14 about these documents you're talking about estate
15 planning documents?

16 I'm trying to make the deposition
17 tedious. I just want to be clear that that's what
18 we're talking about.

19 MR. GILREATH: Yeah. That's what we're
20 talking about. That's what this lawsuit is about.

21 MR. TWOMBLEY: Well, the question --
22 the problem is that's not the way your question was
23 asked.

24 MR. GILREATH: Ashley, let -- let's
25 tone down the -- the speaking objections and let

1 her answer my question, please.

2 MR. TWOMBLEY: Well...

3 BY MR. GILREATH:

4 Q. Do you remember the first time he came
5 into the office?

6 A. No, sir.

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 BY MR. GILREATH:

10 Q. Do you remember what year you first met
11 Mr. Jolley?

12 A. Mr. Jolley? I met him in 2005.

13 Q. I'm sorry. Do you remember what year
14 you first met Mr. Barringer?

15 A. I do not.

16 Q. You don't have any idea?

17 A. Approximately ten years ago.

18 Q. Okay. Okay. And -- and when was the
19 last time you remember seeing him?

20 A. Approximately five years ago.

21 Q. So we're in 2020 now. You met him --
22 would it be fair to say you met him sometime around
23 2010 and then the last time you saw him was
24 sometime around 2015?

25 MS. KIRK: Object to the form.

1 BY MR. GILREATH:

2 Q. Is that the time frame --

3 MR. TWOMBLEY: Same objection.

4 BY MR. GILREATH:

5 Q. -- bracket when you saw him and last
6 time you met him?

7 MS. KIRK: You can answer.

8 THE WITNESS: Mr. Barringer was a long-
9 time client of the firm. It is hard for me to
10 determine when exactly I met him.

11 BY MR. GILREATH:

12 Q. Do you have any recollection of the
13 last time you saw him?

14 A. Approximately five years ago. I'm not
15 sure of the exact date ever.

16 Q. According to the record in this case
17 Mr. Jolley I believe prepared a first, second,
18 third and fourth amendment to his revocable trust.
19 Do you remember working on those?

20 A. Yes, sir.

21 Q. And the first amendment was in February
22 of 2012 and the fourth amendment was in February of
23 2015. So that kind of brackets a three-year
24 period.

25 During that time especially towards the

1 end of it which would have been in February of 2015
2 did you notice any change in Mr. Barringer?

3 A. As far as --

4 Q. Just the way he handled himself, how he
5 remembered things, those kinds of things.

6 A. No. He was a very engaging gentleman.

7 Q. What?

8 A. He was a very engaging gentleman.

9 There was -- there was no issue there.

10 Q. A very engaging gentleman?

11 A. Yes.

12 Q. Tell me exactly what you mean by that.

13 A. That means that he and John had lengthy
14 conversations. There was no doubt that there
15 was -- he was fully competent and had no issues
16 whatsoever from my standpoint.

17 Q. That he was fully competent and had
18 what?

19 A. And that he -- he could certainly make
20 decisions.

21 Q. Okay. Are you -- were you around
22 or have anything to do with a certificate
23 of competency that Mr. Jolley prepared for
24 Mr. Barringer to sign?

25 MS. KIRK: Object to the form.

1 BY MR. GILREATH:

2 Q. Are you familiar that document?

3 A. I am familiar with the document.

4 Q. Look at Exhibit 27, which is an e-mail
5 to Mr. Jolley to Merrill Light dated August 28th,
6 2012 regarding a blank physician's certification of
7 competency.

8 Did you have anything to do with the
9 preparation of that document?

10 A. I don't recall.

11 Q. Did you ever -- do you have any
12 recollection of ever preparing such a form for
13 any client of Mr. Jolley's?

14 A. We have prepared forms for doctors to
15 sign before.

16 Q. Say that again. I didn't understand.

17 A. We have prepared forms for doctors to
18 sign before.

19 Q. Do you have any recollection now that
20 I've showed you this document of preparing that
21 form for -- for Mr. Barringer?

22 A. I don't recall. It's a very basic
23 form.

24 Q. Well, would it -- did Mr. Jolley
25 prepare this form for everybody he did a will for?

1 MS. KIRK: Object to --

2 MR. TWOMBLEY: Object to the form --

3 MS. KIRK: -- the form --

4 MR. TWOMBLEY: -- of the question.

5 MS. KIRK: -- and I object to anything
6 that's going again outside the scope of what we're
7 here for with the exception.

8 BY MR. GILREATH:

9 Q. Let me ask you this. Let me ask you
10 this another way. How many of these forms do you
11 remember working on, if you do?

12 A. Doctor's certifications? Well, it's
13 various kinds depending on what the circumstances
14 are and the type of form.

15 Q. Well, tell me if you can what the
16 circumstances were to the best of your recollection
17 that would have caused Mr. Jolley to prepare this
18 form and send it to Merrill Light with an e-mail
19 that says: This would be great. Let me know if
20 Dr. Long needs any help or has any questions.

21 Can you answer that question?

22 MR. TWOMBLEY: Object to --

23 THE WITNESS: You'd have --

24 MR. TWOMBLEY: -- the form.

25 THE WITNESS: -- to ask John.

1 BY MR. GILREATH:

2 Q. Okay. You don't have any other
3 knowledge about that?

4 A. No sir.

5 Q. Did you have ever have any discussions
6 with Mr. Jolley about anything relating to the
7 competency of Mr. Paul Barringer?

8 A. No.

9 Q. Would you agree with me that at least
10 it appears from this document that Mr. Jolley had
11 some questions about his competency? Correct?

12 MS. KIRK: Object --

13 MR. TWOMBLEY: Object --

14 MS. KIRK: -- to the form.

15 MR. TWOMBLEY: -- to the form of the
16 question. -

17 MS. PAYLOR: Object to the form.

18 BY MR. GILREATH:

19 Q. You can answer the question.

20 A. I'm sorry.

21 MR. GILREATH: Read that question back
22 to her, Madame Court Reporter.

23 (The Court Reporter read the question
24 commencing on page 50 line 8.)

25 THE WITNESS: I have no way of knowing

1 what Mr. Jolley thought.

2 BY MR. GILREATH:

3 Q. And you have absolutely no recollection
4 of preparing this form, typing it or having any
5 discussions with Mr. Jolley about Paul Barringer's
6 competency, correct? Is that your testimony --

7 MS. KIRK: Object --

8 BY MR. GILREATH:

9 Q. -- under oath today?

10 MS. KIRK: Object to --

11 MR. TWOMBLEY: Object to the form.

12 MS. KIRK: -- the form.

13 MR. GILREATH: I didn't hear what she
14 said.

15 MS. KIRK: We objected to the form.
16 She hasn't answered.

17 MR. GILREATH: Oh.

18 BY MR. GILREATH:

19 Q. You can answer it, ma'am.

20 THE WITNESS: Can you repeat the
21 question.

22 THE COURT REPORTER: I'm going to --

23 MR. GILREATH: Not the way I wanted it.
24 I'll try to remember it again.

25 THE COURT REPORTER: I'm sorry. Would

1 y'all like me to read the question back again for
2 the witness? I think she's requesting that I read
3 the question.

4 MR. GILREATH: Yes.

5 THE COURT REPORTER: Okay.

6 THE WITNESS: Thank you.

7 (The Court Reporter read the question
8 commencing on page 50 line 8.)

9 MR. TWOMBLEY: Object to the form.

10 MS. PAYLOR: Object to the form.

11 MS. KIRK: Object to the form.

12 THE WITNESS: Now answer?

13 MS. KIRK: Yes.

14 THE WITNESS: Okay. I have no idea
15 what Mr. Jolley thought.

16 BY MR. GILREATH:

17 Q. Okay. Was it normal for Mr. Jolley to
18 get this type of form for everybody he did a will
19 for?

20 MR. TWOMBLEY: Object to the form.

21 MS. KIRK: Object to the form.

22 MS. PAYLOR: Object to the form.

23 MS. KIRK: And to the extent you're
24 asking about interactions with other clients I'm
25 also objecting to that if that's how I'm

1 understanding your question.

2 MR. GILREATH: I'm not asking about any
3 specific client. I'm asking about what his normal
4 procedure was. The question is really simple: Did
5 he normally get this form filled out for everybody
6 he did a will for? Yes or no.

7 MS. PAYLOR: Object to the form.

8 MR. TWOMBLEY: Same objection.

9 MS. KIRK: Object to the form.

10 THE WITNESS: Now I answer?

11 MS. KIRK: Yes.

12 THE WITNESS: No.

13 BY MR. GILREATH:

14 Q. You said no, correct?

15 A. No.

16 Q. All right. All right. Flip over to
17 Tab 28, which is a signed version of that form
18 signed by Dr. Paul Long.

19 A. Uh-huh.

20 Q. Have you ever seen that document
21 before?

22 A. I have.

23 Q. When did you -- tell me about the first
24 time you remember seeing it.

25 A. Probably when we received it in the

1 mail or received it back to firm and I don't
2 recall how.

3 Q. You received -- is it your testimony
4 if I hear you right that you received this in the
5 mail from Dr. Long?

6 A. I corrected myself. I'm not sure how
7 we received it, but when we received it back to --
8 to the firm that's when I saw it.

9 Q. And it was signed, correct?

10 A. Yes.

11 Q. And -- and what did -- can you tell me
12 if you remember who sent it to you.

13 A. I do not recall.

14 Q. And what did you do when you got it?

15 A. I put it in the file.

16 Q. Did you talk with Mr. Jolley about it?

17 A. Yes.

18 Q. And tell me everything you can remember
19 that Mr. Jolley said about that.

20 A. I said it wasn't notarized and he said
21 not to worry about it. It doesn't matter.

22 Q. Not to worry about it? It doesn't
23 matter? That's what he said, correct?

24 A. Not verbatim, but that's basically what
25 he said.

1 Q. Okay. And can you give me a time frame
2 when that came back in.

3 A. I do not recall.

4 Q. Did Mr. Jolley -- do you have any
5 recollection of Mr. Jolley asking you to send that
6 to Merrill Light or Randy Light?

7 A. No.

8 Q. Do you know -- you know Merrill Light,
9 correct?

10 A. Yes, sir.

11 Q. You know Randy Light?

12 A. I knew him. Yes, sir.

13 Q. And when Mr. Barringer come to see
14 Mr. Jolley about these estate planning matters
15 would Randy or Merrill Light accompany him on those
16 visits?

17 A. It's not uncommon for people to
18 accompany on visits.

19 Q. Ma'am, what did you say?

20 A. I'm sorry. I couldn't hear you. I'm
21 sorry.

22 Q. My question is -- I'm still having
23 to -- I don't -- it's not your fault. There's
24 something wrong with the mic over there or
25 something. I'm having a really --

1 THE COURT REPORTER: The air --

2 MR. GILREATH: I'm having the hardest
3 time hearing.

4 THE COURT REPORTER: The air
5 conditioner just cut on and it's really loud in the
6 room. The heat or something.

7 BY MR. GILREATH:

8 Q. I'm having trouble with an echo. It's
9 the worst reception I've ever had in this kind of
10 thing. I will never use this outfit again unless
11 they can assure me it will never happen again and I
12 apologize to you. It's not your fault.

13 It's somebody's fault, whoever is
14 running this deposition on the technical side. But
15 I think my question was -- Mr. Hogan's trying to
16 remind me and apparently his hearing is better than
17 mine. You said you put it in the file, correct?

18 A. Yes. We keep a file of all of our
19 clients.

20 Q. And -- and Mr. Jolley said don't worry
21 about it?

22 MR. TWOMBLEY: Object --

23 MS. KIRK: Object to form.

24 MR. TWOMBLEY: -- to the form.

25 MS. PAYLOR: Object to the form.

1 BY MR. GILREATH:

2 Q. What did Mr. Jolley say?

3 MR. TWOMBLEY: Object to the form.

4 Repeat the question, Jim.

5 MR. GILREATH: Do what?

6 MR. TWOMBLEY: Repeat the question.

7 BY MR. GILREATH:

8 Q. I said, when it came back in you said
9 you put it in the file. Correct?

10 A. Yes. I -- we put it in the file.

11 Q. And Mr. Jolley said don't worry about
12 it, correct?

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Object to the form.

15 BY MR. GILREATH:

16 Q. Is that what he said?

17 A. Yes.

18 Q. Don't worry about it. Did you ever do
19 anything with it after that or did you not worry
20 about it?

21 MR. TWOMBLEY: Object to the form.

22 MS. KIRK: Object.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: No. It stayed in the
25 file.

1 BY MR. GILREATH:

2 Q. Did you ever have any discussions with
3 John Jolley about it after you put it in the file?

4 A. Well, that's a matter of timing. I'm
5 not sure if I put it in the file before or after we
6 spoke.

7 Q. I don't understand your answer. Can
8 you clarify it a little better.

9 MR. TWOMBLEY: I don't understand the
10 question. But if you do, God bless you.

11 THE WITNESS: Can you repeat the
12 question then.

13 BY MR. GILREATH:

14 Q. You said you put it in the file,
15 correct?

16 A. We include everything in a client's
17 file, yes.

18 Q. Do -- do you recall any conversations
19 with Mr. Jolley about that form after you put it in
20 the file?

21 A. Just the conversation that we
22 discussed.

23 Q. And that was the one where he said
24 don't worry about it, correct?

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: Yes.

3 BY MR. GILREATH:

4 Q. Is that correct?

5 A. Yes.

6 Q. Did you ever see that form again until
7 you saw it here today?

8 A. Possibly.

9 Q. Possibly? Tell me about that.

10 A. When we were gathering the files when
11 they were requested I could have possibly seen it
12 then and that was after Mr. Barringer's death.

13 Q. Was that in connection with -- with our
14 subpoena?

15 A. Yes.

16 Q. You don't think you saw it again until
17 you were going through the file to respond to the
18 subpoena. Is that correct?

19 A. Well, it was in the files. Any time I
20 had the file if I needed to look at something I
21 could have -- possibly have seen it. That's kind
22 of open-ended.

23 It was included in the file. So it's
24 very possible I saw it. That's why we keep it in
25 the file.

1 Q. Had you done anything with it
2 before then?

3 MS. KIRK: Object to the form.

4 THE WITNESS: What do you mean exactly?
5 BY MR. GILREATH:

6 Q. I -- I didn't understand. What did you
7 say?

8 A. What do you mean exactly. What I --
9 what did I do with it?

10 Q. All right. Let's go back. You got the
11 form in?

12 A. Yes.

13 Q. Correct?

14 A. Yes.

15 Q. It came in the mail, right? Correct?

16 A. I -- I don't know.

17 Q. But it came in to your desk, correct?

18 A. It came into the firm, yes.

19 Q. Did -- did you open up that piece of
20 mail or did Mr. Jolley open it up and give it to
21 you?

22 MS. KIRK: Object to the form.

23 THE WITNESS: I have no -- I have no
24 recollection of how it was received.

25 BY MR. GILREATH:

1 Q. But -- but if -- but Mr. -- but
2 you put it in the file after Mr. Jolley said if
3 I understood you correctly, don't worry about it.
4 Correct?

5 MS. KIRK: Object to the form.

6 MR. TWOMBLEY: Object to form.

7 BY MR. GILREATH:

8 Q. Correct?

9 A. Yes. We -- we included it in the file
10 after we think it was an issue.

11 Q. Did -- do you recall or have any
12 knowledge of Mr. Jolley sending a copy of that
13 signed form from Dr. Long to Merrill Light?

14 A. I have no idea.

15 Q. Do you have any explanation of why
16 Mr. Jolley would have seen fit to not forward that
17 form to Merrill Light after he sent it to her in
18 blank?

19 MS. KIRK: Object --

20 MS. PAYLOR: Object.

21 MS. KIRK: -- to the form.

22 THE WITNESS: I'm sorry. Can we repeat
23 that.

24 THE COURT REPORTER: Would you like me
25 to read that back again?

1 MR. GILREATH: What did she say?
2 Ma'am, could you read -- Court Reporter, could you
3 read the question back.

4 THE COURT REPORTER: Yes.

5 (The Court Reporter read the question
6 commencing on page 61 line 14.)

7 MR. TWOMBLEY: I object to the -- to
8 the form of the question. I mean, I'm not --

9 MS. PAYLOR: Object to the form.

10 MS. KIRK: Yeah.

11 MR. TWOMBLEY: I'm not sure --

12 MS. KIRK: Object to the form.

13 MR. TWOMBLEY: I'm not sure that's got
14 anything to do with the preparation --

15 MR. GILREATH: No comments, Ashley.

16 MS. TWOMBLEY: No. This isn't a
17 comment. This is an objection.

18 MR. GILREATH: Yeah. It's a speaking
19 objection, is the way I'm hearing it.

20 MR. TWOMBLEY: Well, I -- I mean, I
21 guess technically you're -- you're right. If
22 you just want me to state the basis for my
23 objection and have Ariail instruct her not to
24 answer we can -- we can go do that again or we
25 can try to work it out in good faith.

1 BY MR. GILREATH:

2 Q. What I'm trying to find out,

3 Ms. Bostick --

4 A. Yes, sir.

5 Q. -- is did you or Mr. Jolley or anybody

6 at the -- at the McNair Law Firm ever take that

7 form out of there and send it to anybody or have

8 any -- or do you have any knowledge of any

9 discussions about it with Merrill Light --

10 MS. PAYLOR: Object to form.

11 BY MR. GILREATH:

12 Q. -- or Lindsay Light?

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Same objection.

15 THE WITNESS: I can only speak for
16 myself, but I don't recall ever doing anything or
17 sending it to anybody.

18 BY MR. GILREATH:

19 Q. Okay. Did you ever send it to Ashley
20 Twombley?

21 A. Not that I'm aware of. I've no reason
22 to.

23 Q. But your testimony here under oath
24 today is you don't have any recollection or
25 knowledge of sending it to Ashley Twombley,

1 correct?

2 A. Correct.

3 Q. Did you ever send it to Mrs. Merrill
4 Barringer? Mrs. Barringer's wife.

5 MR. TWOMBLEY: Now, I'm going to -- I
6 mean, I'm happy to talk about it. But I just don't
7 see how that's got any connection to the claims and
8 defenses in the case. I don't -- also don't -- I'm
9 I'm just trying to think as to whether or not it --

10 MR. GILREATH: Quit thinking out loud
11 and either voice your objection and instruct her
12 not to answer or let her answer the question. It's
13 a simple question, Ashley. I know you don't like
14 it because you objected to it, but she's going to
15 have to answer some questions you don't like.

16 MR. TWOMBLEY: It's got nothing to do
17 with whether or not I like them.

18 MS. KIRK: She's also already
19 answered --

20 MR. TWOMBLEY: Yeah. She --

21 MS. KIRK: -- whether or not she sent
22 it anywhere.

23 MR. TWOMBLEY: She's already -- plus
24 this is a -- the -- this is my client's lawyer's
25 assistant and you don't get to ask her just

1 anything you want to ask her. And I'm going to
2 take as much time as I need for each question and
3 determine how I'm going to handle it and it's going
4 take a long --

5 MR. GILREATH: Look here.

6 MR. TWOMBLEY: It's going to take a
7 long time if you don't want to talk about it and
8 try to work it out. So I -- I agree with Ariail.
9 She has already asked and answered the question
10 and so --

11 MR. GILREATH: We'll -- we'll just take
12 her answer. We -- we like it. We'll -- we'll deal
13 with her answer.

14 THE WITNESS: I'm supposed to answer?

15 MS. KIRK: No.

16 THE WITNESS: Okay.

17 BY MR. GILREATH:

18 Q. Do you have any recollection of how
19 many -- if you can say so -- of these type forms
20 you dealt with over the years you worked with
21 Mr. Jolley?

22 Was it -- did he use them a lot or was
23 it a rare occasion that he used them?

24 A. Well, rare is kind of hard to say
25 because we meet with so many clients a year.

1 They're not used for -- they're not typically used.

2 Q. Okay. If he sent one out and didn't
3 get an answer back or a signed version back would
4 he typically move forward with getting the estate
5 planning documents signed anyway if you know?

6 MR. TWOMBLEY: Object --

7 MS. KIRK: Object to --

8 MR. TWOMBLEY: -- to the form.

9 MS. KIRK: -- the form.

10 MS. PAYLOR: Object to form.

11 BY MR. GILREATH:

12 Q. Do you understand the question?

13 A. I'm sorry. Can you repeat that? I'm
14 sorry.

15 THE COURT REPORTER: I'm going to read
16 the question back for the witness. Is that okay?

17 MR. GILREATH: Do what?

18 THE COURT REPORTER: The witness wanted
19 me to read the question back.

20 MR. GILREATH: That will be fine.

21 THE COURT REPORTER: Okay.

22 (The Court Reporter read the question
23 commencing on page 66 line 1.)

24 MS. PAYLOR: Object to the form.

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: I have no idea how
3 Mr. Jolley would react.

4 BY MR. GILREATH:

5 Q. Okay. So you can't really answer that
6 question, correct?

7 MS. KIRK: Objection to form.

8 MR. TWOMBLEY: Object to form.

9 THE WITNESS: Yes. I -- I don't know
10 how Mr. Jolley would react.

11 BY MR. GILREATH:

12 Q. All right. Do you know when John
13 Jolley started representing Merrill and Randy
14 Light?

15 MS. KIRK: Object --

16 MR. TWOMBLEY: Object to the form.

17 THE WITNESS: I do not recall.

18 BY MR. GILREATH:

19 Q. Would it be fair to state that he was
20 their estate planning lawyer when he started
21 representing Mr. Barringer?

22 MR. TWOMBLEY: Object to the form.

23 MS. KIRK: Object to form.

24 THE WITNESS: I'm not sure who
25 represented them first. Again, they were long-

1 time clients of the firm.

2 BY MR. GILREATH:

3 Q. Do you know who referred Mr. Barringer
4 to John Jolley?

5 A. I do not.

6 Q. What was your ability to write for the
7 Barringer estate planning matters?

8 MR. TWOMBLEY: Object to form of the
9 question --

10 MS. PAYLOR: Object to form.

11 MR. TWOMBLEY: -- and --

12 MS. KIRK: I didn't hear the question.
13 What was the question?

14 MR. GILREATH: If she knows, what was
15 her billing rate for Mr. Barringer's estate
16 planning matters?

17 MS. KIRK: Object to form.

18 THE WITNESS: At the beginning when I
19 was an assistant I did not have a billing rate.
20 After that it changed over the years. I want to
21 say at the end I was at 175.

22 BY MR. GILREATH:

23 Q. 175. Do you know what Mr. Jolley's
24 billing rate was?

25 A. When we left McNair -- Burr Forman

1 McNair that would have been 375.

2 Q. 375?

3 A. Yes, sir.

4 Q. Is that right?

5 A. Yes. I don't know what his billing
6 rate was when he started.

7 Q. Tell me how -- did you actually draft
8 the estate planning documents?

9 A. Yes. I assisted in the drafting
10 process.

11 Q. Do what?

12 A. Yes. I assisted in the drafting
13 process.

14 Q. Well, tell me how the drafting process
15 works. You're not -- you're not a lawyer, correct?

16 A. That is correct. Yes, sir.

17 Q. Do you have any kind of formal training
18 in -- in drafting complicated wills and trusts?

19 MR. TWOMBLEY: Object to the form --

20 MS. KIRK: Object to the form.

21 MR. TWOMBLEY: -- of the question.

22 THE WITNESS: John and I worked closely
23 for a very long time and I had a great work ethic
24 and I produced -- he taught me and I produced a lot
25 of documents, good documents. So he thought it

1 would be a good idea for me to be a billing
2 timekeeper. So I became paralegal. And within
3 McNair we had training every year, required
4 courses.

5 Some of the courses were McNair, but
6 we were also allowed to do the courses in our
7 field, to substitute. And so I always like --
8 any time I could I would do courses outside to --
9 within my field.

10 BY MR. GILREATH:

11 Q. Did -- would you bill for discussions
12 that you had with Mr. Jolley about the estate plan?

13 MS. KIRK: Object to the form.

14 MS. PAYLOR: Object to the form.

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: If it was directly
17 related, yes.

18 BY MR. GILREATH:

19 Q. Would Mr. Jolley also be billing for
20 that same on discussion if you know?

21 MR. TWOMBLEY: Same objection.

22 MS. KIRK: Me, too.

23 THE WITNESS: I don't know how he did
24 his timekeeping.

25 BY MR. GILREATH:

1 Q. Did you say he put his time in?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I would enter it, yes,
4 but I -- I don't know how he decided what to and
5 what not to.

6 BY MR. GILREATH:

7 Q. Do you remember any discussions you had
8 with Mr. Jolley about Mr. Barringer's estate?

9 A. Do I have any -- I'm sorry. Can you
10 repeat that, sir.

11 Q. Do you recall any discussions that you
12 had with Mr. Jolley about drafting documents for
13 Mr. Barringer's estate?

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: We would generally
17 discuss the scope of the work.

18 BY MR. GILREATH:

19 Q. Repeat that, please. I didn't hear
20 you.

21 A. Oh. We would generally discuss the
22 scope of the work.

23 Q. Were you present when Mr. Jolley
24 discussed Mr. Barringer's estate plan with him?

25 A. Often times I would be in the room when

1 they discussed the estate plan.

2 Q. Well, tell me what you recall about
3 those discussions.

4 A. John would review the documents with
5 them to make sure they fully understood them and
6 make sure that he allowed time for questions.
7 That's it.

8 Q. Was anybody else present other than you
9 and Mr. Jolley when you had that discussion?

10 A. Which --

11 MR. TWOMBLEY: Object.

12 THE WITNESS: -- discussion?

13 MR. TWOMBLEY: Object to the form.

14 BY MR. GILREATH:

15 Q. The discussion about Mr. Barringer's
16 estate plan.

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Same objection.

19 THE WITNESS: There would be no reason
20 to.

21 BY MR. GILREATH:

22 Q. Were you or Mr. Jolley aware of the
23 dementia diagnoses Mr. Barringer started receiving
24 in 2011?

25 MS. KIRK: Object to the form.

1 MS. PAYLOR: Object to the form.

2 THE WITNESS: No.

3 BY MR. GILREATH:

4 Q. Did you ever have hear any discussions
5 between Mr. Jolley and Ms. Merrill Light or Randy
6 Light talking about Mr. Barringer's dementia or his
7 cognitive problems?

8 MS. KIRK: Objection.

9 MR. TWOMBLEY: Objection to the form --

10 MS. PAYLOR: Objection.

11 MR. TWOMBLEY: -- of the question.

12 MR. MOLSTER: Objection. Instruct not
13 to answer.

14 MS. PAYLOR: You're asking for
15 attorney-client communications there and Merrill
16 Light is not subject to the testamentary exception.

17 BY MR. GILREATH:

18 Q. I'm not talking about Merrill Light.
19 I'm talking about Mr. Barringer.

20 MS. PAYLOR: You asked about a
21 communication between Mr. Jolley and Mrs. Light.

22 MR. GILREATH: It dealt with
23 Mr. Barringer's estate plan. Your lawyer -- about
24 Merrill Light's estate plan. I'm trying to get --

25 MR. MOLSTER: He was -- he was her

1 lawyer.

2 MR. PAYLOR: He was her lawyer also at
3 the time.

4 MR. GILREATH: I understand that.

5 MS. PAYLOR: Why don't you ask her if
6 she ever heard them talk about his estate plan
7 first.

8 MR. GILREATH: I'll form my own
9 questions. I don't need any help from you and I
10 appreciate you -- you not making these speaking
11 objections or whatever and telling her what you
12 want me to ask her.

13 MR. PAYLOR: Well, you can find out
14 without going into a communication, is what I was
15 trying to say. But you do it your way, Jim. I
16 mean, not instructing you what --

17 MR. GILREATH: I'll do it my way, but
18 you and Ashley are making it pretty darn difficult.

19 MR. TWOMBLEY: Object to the form of
20 the statement.

21 MR. GILREATH: There's nothing funny
22 about this at all.

23 MR. TWOMBLEY: Well --

24 MR. GILREATH: I'm very serious.

25 MR. TWOMBLEY: The idea that you would

1 accuse us of making it confusing and more difficult
2 is very funny because you in my respectful opinion
3 are the sole cause and reason of this being
4 confusing.

5 MR. GILREATH: You keep your opinions
6 to yourself, Ashley.

7 MR. TWOMBLEY: Well, when you get to
8 state yours, Jim, and I don't get to respond to
9 it --

10 MR. GILREATH: I don't want this all on
11 the record.

12 MR. TWOMBLEY: You may be able to bully
13 people around like that, but you're not going to
14 bully me around like that. You say --

15 MR. GILREATH: I think --

16 MR. TWOMBLEY: Something about me like
17 that I'm going to respond to it every time. And if
18 you want to go in front of Judge Mullen about it
19 I'm happy to do it. But don't you call me down and
20 tell me I'm being funny and then don't expect me to
21 respond to it because I'm going to do it every
22 time.

23 MR. GILREATH: I think the last
24 question I asked was: Were you -- were you
25 present when John Jolley had any discussions with

1 Merrill Light about Mr. Barringer's cognitive
2 problems or dementia?

3 MS. PAYLOR: Can you instruct --

4 THE COURT REPORTER: I'm sorry. Can
5 you repeat what you just said, Mr. --

6 MS. PAYLOR: I'm trying to understand
7 the question is. I'm not sure I do.

8 MR. GILREATH: Well, would you please
9 read the question back, ma'am. I think I've got it
10 the way I wanted it.

11 THE COURT REPORTER: I'm sorry. The
12 very last question?

13 MR. GILREATH: Yes. Can you read it
14 back.

15 THE COURT REPORTER: The last question
16 I have is...

17 (The Court Reporter read the question
18 commencing on page 73 line 17.)

19 THE COURT REPORTER: Was it the one
20 before that?

21 BY MR. GILREATH:

22 Q. I don't want to know anything you were
23 in on when he was talking to Merrill Light about
24 any of her estate work. I want to know. Were you
25 in on any conversations or meetings where Merrill

1 Light was meeting with John Jolley and they were
2 discussing Mr. Barringer's mental condition or
3 dementia?

4 MR. TWOMBLEY: All right. I --

5 MR. PAYLOR: I object and instruct
6 her --

7 MR. MOLSTER: She can answer yes or no,
8 whether or not she was there. She cannot divulge
9 the substance of it. Now --

10 MR. PAYLOR: That's fine.

11 MS. KIRK: I object to the form.

12 BY MR. GILREATH:

13 Q. Yes or no.

14 MS. KIRK: Yes or no.

15 THE WITNESS: No.

16 BY MR. GILREATH:

17 Q. You said no, correct?

18 A. Correct.

19 Q. You have no recollection of any such
20 conversation?

21 A. No, sir.

22 MR. TWOMBLEY: Object to form.

23 MS. KIRK: Asked and answered.

24 MR. GILREATH: All right. I'll move
25 on.

1 BY MR. GILREATH:

2 Q. Are you aware of any procedure that
3 Mr. Jolley had for ensuring himself that an estate
4 planning document -- I mean an estate planning
5 client had capacity to do a will or trust?

6 A. Can you repeat the question, sir.

7 Q. Are you aware of any procedure or
8 process that Mr. Jolley went through to ensure
9 himself that an estate planning client had capacity
10 to execute a will or trust he was preparing for
11 them?

12 A. Absolutely.

13 Q. He did?

14 A. Yes, sir.

15 Q. All right. Well, tell me what he
16 did.

17 A. He would ask the client questions
18 and have a conversation with them, make sure they
19 are -- understand what they're signing and that
20 they are aware of what's going on.

21 And he'll also ask them questions of
22 personal -- not personal questions but like about
23 the family, where they met their spouse, things
24 like that to determine whether or not they are
25 capable of signing through interaction with the

1 client.

2 Q. Did he have any process for ensuring
3 that the client was free from undue influence?

4 MR. TWOMBLEY: Object to the form.

5 THE WITNESS: Again, he would have a
6 conversation with them to see if there was anything
7 that would limit them from being able to sign.

8 BY MR. GILREATH:

9 Q. How often if you recall did Mr. Jolley
10 represent a husband or wife, their daughter and
11 her spouse and the family company with other
12 shareholders while also serving as a fiduciary
13 under the estate planning documents he was drafting
14 for them?

15 MR. PAYLOR: Object to the form.

16 MS. KIRK: Object to the form.

17 MR. TWOMBLEY: Same objection.

18 THE WITNESS: I do not know.

19 BY MR. GILREATH:

20 Q. You don't know. Do you have any
21 recollection of him obtaining a conflict waiver or
22 confidentiality agreements in such situations?

23 MR. PAYLOR: Object to the form.

24 MS. KIRK: Object to the form.

25 THE WITNESS: Since what situation?

1 BY MR. GILREATH:

2 Q. The situation I just determined
3 where he's -- he's representing the husband, the
4 wife, their daughter, the daughter's spouse, the
5 family company and other shareholders while he's
6 also a fiduciary under some of the estate planning
7 documents he's drawing up.

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: Object to the form.

10 MR. PAYLOR: Object to the form.

11 BY MR. GILREATH:

12 Q. Can you answer that question?

13 A. No.

14 Q. Do you ever remember Mr. Jolley
15 obtaining conflict waivers in these family-related
16 situations?

17 MS. PAYLOR: Object --

18 MS. KIRK: Object to the form.

19 MR. PAYLOR: -- to the form.

20 THE WITNESS: Are you asking generally
21 or for this particular case?

22 BY MR. GILREATH:

23 Q. Well, I guess both really.

24 A. I -- I do not know for this particular
25 case, this particular matter. He has in the past

1 did conflict letters, but this -- this was an
2 ongoing matter --

3 Q. You said in the past --

4 A. So I don't know.

5 Q. --- you've seen conflict waivers?

6 A. Excuse me.

7 Q. You said in the past you've seen him
8 get conflict waivers?

9 A. Yes, sir.

10 Q. Are you aware of any conflict waivers
11 that he got involving Paul Barringer and the work
12 he was doing for him?

13 MS. KIRK: Object to the form.

14 MR. PAYLOR: Object to the form.

15 THE WITNESS: I do not know.

16 BY MR. GILREATH:

17 Q. Do you recall any discussions with him
18 about conflict waivers on the Barringer work?

19 MS. KIRK: Object to the form.

20 MS. PAYLOR: Object to the form.

21 MR. TWOMBLEY: Jim, I don't see how
22 this has got anything to do with the testamentary
23 exception to the attorney-client privilege. I
24 mean, can you explain to me why you think you're
25 entitled to ask this witness.

1 MR. GILREATH: Ashley, I'm not --
2 you're not -- I'm not going to put myself under
3 oath and I'm not going to answer any of your
4 questions.

5 So you don't need to ask any more
6 questions. I'm trying to ask her a question and
7 would appreciate y'all letting her have the time
8 to answer it.

9 MR. TWOMBLEY: Well, just move on to
10 your next question.

11 MR. GILREATH: That's what I'm trying
12 to do. I don't think she's answered that question.

13 MR. TWOMBLEY: What is the question
14 again?

15 MS. PAYLOR: What is the question?

16 THE COURT REPORTER: Give me one second
17 to find it.

18 MR. GILREATH: If y'all -- if y'all
19 would quit interrupting me we could move on with
20 this thing a little quicker. I asked her a fairly
21 simple question. And can you read that back to
22 her, Madame Court Reporter.

23 THE COURT REPORTER: Yes, sir.

24 (The Court Reporter read the question
25 commencing on page 81 line 9.)

1 MR. TWOMBLEY: I'm going to -- it's my
2 opinion that the way that question is worded that
3 a response could elicit attorney-client privileged
4 work product information that's outside the scope
5 of Judge Mullens' order and I believe answering
6 it -- unless we can talk about it I believe
7 answering it would be improper.

8 MR. GILREATH: You instructed her not
9 to answer that?

10 MR. TWOMBLEY: I didn't -- I didn't
11 instruct her not to answer. I think only her
12 lawyer can do that, but I -- I think based on the
13 way you asked the question that it could elicit
14 that information.

15 MS. KIRK: Jim, in the interest of
16 moving forward I think what I'd like to do is
17 instruct her not to answer anything outside the
18 scope of Judge Mullen's order and to have her
19 answer subject to that caveat.

20 MR. GILREATH: I asked her a fairly
21 simple question. It wasn't directed to anybody in
22 particular. Y'all -- y'all are going to tell her
23 not to answer it. Tell her and let's move on.

24 MR. TWOMBLEY: Well, why don't we take
25 a break and we'll talk about it? It's a good time

1 for a break anyway.

2 THE VIDEOGRAPHER: We're going off the
3 record. It is 4:16 PM.

4 (A recess transpired.)

5 THE VIDEOGRAPHER: We are back on
6 record. This is the beginning of Media Unit 2. It
7 is 4:26 PM.

8 BY MR. GILREATH:

9 Q. Would you usually have a conversation
10 with Mr. Barringer every time you saw him in the
11 office?

12 A. Every time I saw him in the office,
13 yes.

14 Q. Did you ever notice that he seemed to
15 have trouble finding words?

16 A. No, sir.

17 Q. You didn't notice anything funny about
18 his speech or unusual?

19 A. No.

20 Q. Okay. Was it Mr. Jolley's practice to
21 have sophisticated estate plans signed in his
22 office?

23 MR. TWOMBLEY: Object to the form of
24 the question.

25 THE WITNESS: He would always --

1 or he would definitely sign estate planning in his
2 office.

3 BY MR. GILREATH:

4 Q. So he always had them signed in his
5 office?

6 MR. TWOMBLEY: Object.

7 MS. KIRK: Object to the form.

8 MR. TWOMBLEY: Object to the form.

9 MR. PAYLOR: Object to the form.

10 THE WITNESS: Not always.

11 BY MR. GILREATH:

12 Q. How often did he allow his clients to
13 sign sophisticated estate plans away from the
14 office?

15 MS. KIRK: Object to the --

16 MR. PAYLOR: Object to the form.

17 MS. KIRK: -- form and to the extent
18 you're seeking anything that's privileged amongst
19 other clients.

20 THE WITNESS: It was our general
21 practice to sign estate planning documents with him
22 present.

23 BY MR. GILREATH:

24 Q. Hold on just a minute. Let me get a
25 number to a document here. Look at Tab 16 of the

1 exhibit book you've got there.

2 A. Yes, sir.

3 Q. This is the second amendment and
4 restatement of trust agreement dated July the 20th
5 of 2012 --

6 A. Yes, sir.

7 Q. -- between Mr. Barringer, estate
8 planner, and Mr. Barringer -- Barringer Light as
9 the trustee.

10 A. Yes, sir.

11 Q. And look over at Page 26. Excuse me.
12 27. I'll call your attention to 27, 28 and maybe
13 29. Can you find your way there?

14 A. Yes, sir.

15 Q. Okay. Look at Page 27. Is that your
16 signature there on the last witness line?

17 A. Yes, sir.

18 Q. And then on Page 29 you signed as a
19 notary public?

20 A. Yes, sir.

21 Q. And do you see where this document
22 was signed by Paul Barringer both as settlor and
23 individual trustee down in the State of Alabama?
24 Do you see that?

25 A. Yes, sir.

1 Q. So that's one instance where a fairly
2 complicated trust -- this one being some 26 pages
3 long -- 27 -- was signed by Mr. -- Mr. Jolley's
4 client down in Alabama, correct?

5 MS. PAYLOR: Object to the form.

6 MS. KIRK: Object to the form.

7 MR. TWOMBLEY: Object to form.

8 THE WITNESS: I can't determine if
9 it's a complicated document or not, but, yes.
10 Mr. Barringer did sign it when he was out of town.
11 BY MR. GILREATH:

12 Q. Okay. Look on Page 27. There's -- the
13 first four lines of witnesses -- appears to be two
14 different people. They look like they signed --
15 they witnessed his signature both as settlor and
16 individual trustee. Do you know any of those
17 people?

18 A. No, sir.

19 Q. Do you remember anything about this
20 thing getting signed down in Alabama?

21 A. I do not recall.

22 Q. Any mention about that?

23 A. I do not recall.

24 Q. You don't have any recollection about
25 that?

1 A. No, sir.

2 Q. And you don't know who those people
3 are, correct?

4 A. Correct.

5 Q. Do you have any recollection about how
6 this document got to Alabama?

7 A. No, sir.

8 Q. Do you know -- you see on Page 28 where
9 it was signed down in Alabama on July the 20th and
10 it was witnessed by Carolyn Mace Snipes I believe
11 it is or Skipper maybe. But then you notarized it
12 being signed by Merrill Barringer Light on Page 27
13 but you didn't notarize it.

14 You signed -- you witnessed Merrill
15 Barringer Light's signature on Page 27, correct?

16 A. Yes, sir.

17 Q. And you also acknowledged her signature
18 as individual trustee on Page 29, correct?

19 A. Yes, sir.

20 Q. And all of that happened on July the
21 20th, correct?

22 A. Yes, sir.

23 Q. Do you have any explanation of how
24 this document got all the way from Hilton Head to
25 Alabama and back to Hilton Head in one day?

1 MS. KIRK: Object to the form.

2 MS. PAYLOR: Object to the form.

3 MR. TWOMBLEY: Same objection.

4 THE WITNESS: Well, I don't know when
5 the document actually got to Alabama.

6 BY MR. GILREATH:

7 Q. Say that again.

8 A. I don't know when the document got to
9 Alabama.

10 Q. Well, you don't question that it was
11 signed in Alabama on July the 20th, correct?

12 MR. TWOMBLEY: Object to the form.

13 MS. PAYLOR: Object to --

14 MS. KIRK: Object to form.

15 MS. PAYLOR: -- the form.

16 BY MR. GILREATH:

17 Q. Do you agree?

18 A. Yes, sir.

19 Q. And you don't question that you signed
20 it on July the 20th, correct?

21 A. Yes, sir.

22 Q. Have you ever been to Alabama?

23 MR. TWOMBLEY: Object to the form.

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: I have not spent

1 significant time in Alabama. I -- we drove
2 through it.

3 BY MR. GILREATH:

4 Q. You've been through it?

5 A. Yes, sir, but not -- I haven't
6 actually --

7 Q. There's testimony here --

8 A. -- visited Alabama.

9 Q. Your testimony here as you're sitting
10 here today and you're under oath that you did not
11 have -- you did not have -- you did not have
12 anything to do with taking this thing -- this
13 document -- Exhibit 16 I believe it is -- to
14 Alabama. Correct?

15 A. I did not physically take the document
16 to Alabama. No, sir.

17 Q. And do you have any knowledge of how it
18 got from Hilton Head to Alabama and back to Hilton
19 Head all on the same day?

20 MS. KIRK: Object to the form.

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: Again, I don't know when
23 it actually got to Alabama.

24 BY MR. GILREATH:

25 Q. Well, it was certainly there on July

1 the 20th or somebody's committing perjury.

2 Correct?

3 MR. TWOMBLEY: Object to --

4 MS. PAYLOR: Object to the form.

5 MS. KIRK: Object to the form.

6 MR. TWOMBLEY: -- the form.

7 BY MR. GILREATH:

8 Q. Correct?

9 A. Correct. It would have been present in
10 Alabama on July 20th, 2012. I don't know when it
11 got to Alabama. That's my --

12 Q. Do you have any knowledge or have you
13 seen any documents or had any discussions with
14 anybody other than your lawyer about how this
15 document mysteriously gets signed in Hilton Head
16 or in South Carolina and Alabama on the same day?
17 Do you know anything about that?

18 MS. KIRK: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: I do not know.

21 BY MR. GILREATH:

22 Q. You don't know? You don't have any
23 recollection of any discussions with Mr. Jolley,
24 correct?

25 A. No.

1 Q. And I believe you just testified it was
2 normally not his procedure on -- on a complicated
3 estate planning document to not have it signed with
4 him present, correct?

5 MR. TWOMBLEY: Object to the form.

6 MS. KIRK: Object to the form.

7 MS. PAYLOR: Object to the form.

8 THE WITNESS: I'm not one to determine
9 if it's a complicated document and Mr. Barringer
10 was not in town. So I don't know who he signed it
11 with.

12 BY MR. GILREATH:

13 Q. You said Mr. Barringer wasn't in town?

14 A. Correct. He was in Alabama.

15 MS. PAYLOR: Object to the form.

16 MS. KIRK: I didn't hear the question,
17 if there was one.

18 BY MR. GILREATH:

19 Q. I believe she said Mr. Barringer wasn't
20 in -- did you say Mr. Barringer wasn't in town?

21 A. Correct. He signed it in Alabama.

22 Q. Did you or anybody that you know at
23 the McNair firm have anything to do with getting
24 this document back and forth to Alabama if that, in
25 fact, happened on July the 20th of 2012?

1 MS. KIRK: Object to the form.

2 MS. PAYLOR: Object to the form.

3 MR. TWOMBLEY: Object to the form.

4 THE WITNESS: I'm sorry. Can you
5 repeat that, sir.

6 BY MR. GILREATH:

7 Q. Did you or anybody you know at the
8 McNair firm have anything to do with getting
9 this document down to Alabama to be signed by
10 Mr. Barringer?

11 MS. KIRK: Object to the form.

12 MR. TWOMBLEY: Same objection.

13 MS. PAYLOR: Object to form.

14 THE WITNESS: I do not know how the
15 document got to Mr. Barringer.

16 BY MR. GILREATH:

17 Q. You don't know?

18 A. No, sir. I do not recall.

19 Q. And you don't recall any discussions
20 with Mr. Jolley about how this thing got back and
21 forth to Alabama on what appears to be the same
22 day?

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: Object to the form.

25 MR. TWOMBLEY: Asked and answered.

1 THE WITNESS: I do not know.

2 BY MR. GILREATH:

3 Q. Do you know where the original of this
4 document would be?

5 A. Typically we leave original
6 documents -- current original documents in the
7 vault and that would have been at McNair -- now
8 Burr & Forman -- but I don't know since I don't
9 work there who has the originals at this point.

10 Q. You still work for Mr. Jolley, correct?

11 A. Yes, sir.

12 Q. Did he take the original of any
13 documents that were in his vault from the McNair
14 firm to his new firm when he left?

15 MS. KIRK: I object to that question on
16 the grounds that that relates to other clients and
17 their files. That's completely outside the scope
18 of this.

19 BY MR. GILREATH:

20 Q. I'm talking about Mr. Barringer's
21 documents, ma'am.

22 MS. KIRK: As long as you're talking
23 about Mr. Barringer's estate planning documents
24 that's fine.

25 MR. TWOMBLEY: That's not what the

1 question was, but that's fine.

2 MS. KIRK: I'm happy for her to answer
3 as it relates to Mr. Barringer's estate planning
4 documents.

5 THE WITNESS: Unless the client
6 specifically -- in this case it would be Mrs.
7 Barringer specific --

8 MR. TWOMBLEY: I don't -- I mean, you
9 don't want to talk about Mrs. Barringer. I'm
10 instructing you not to answer anything about her.

11 She's -- her -- she's not deceased and
12 her documents are not at issue and I'm instructing
13 you not to answer anything about Merritt Underwood
14 Barringer. I think his question dealt with Paul
15 Brandon Barringer and his documents.

16 THE WITNESS: Okay. Unless Mr.
17 Barringer requested his documents to be sent here
18 they should still be in the vault at McNair. So
19 I --

20 BY MR. GILREATH:

21 Q. Okay. All right. Do you know this --
22 ever heard of -- know anything about this -- this
23 woman? I guess it's Carolyn -- Carolyn Marie
24 Skipper? Does that ring any bells with you?

25 A. No, sir.

1 Q. You don't have any knowledge or
2 explanation about how this document got from
3 South Carolina to Alabama and back to South
4 Carolina on the same day, correct?

5 MS. KIRK: Object to form. She's
6 answered that countless times.

7 MR. TWOMBLEY: Same.

8 THE WITNESS: I do not know when the
9 document got to Alabama. So I cannot -- I don't
10 know.

11 BY MR. GILREATH:

12 Q. If Mr. Jolley would send the document
13 down to Alabama to be signed would he normally --
14 would it be accompanied by a letter of transmittal?
15 Would that be his normal procedure?

16 MR. TWOMBLEY: Objection to the form.

17 MS. PAYLOR: Object to the form.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I don't know how
20 Mr. Jolley would have addressed that.

21 MR. GILREATH: Well, wouldn't you have
22 been involved in helping him get it down there

23 MR. TWOMBLEY: Object to the form.

24 MS. PAYLOR: Object to the form.

25 MS. KIRK: Object to the form. She

1 already answered that question.

2 THE WITNESS: It could have been done
3 a number of different ways. It could have been --
4 it could have been mailed. It could have been
5 e-mailed. It could have been hand-delivered.

6 It could have been done different ways.
7 I mean, we don't know -- we honestly don't know
8 when it got there.

9 BY MR. GILREATH:

10 Q. If you sent this e-mail or
11 hand-delivered or sent it by FedEx what kind of
12 documentation or paper trail would there be at the
13 McNair firm that showed how this thing got down to
14 Alabama? Because it certainly didn't grow legs and
15 walk down there.

16 MR. TWOMBLEY: Object to the form.

17 MS. PAYLOR: Object to the form.

18 MS. KIRK: Object to form.

19 THE WITNESS: I don't know.

20 BY MR. GILREATH:

21 Q. Would there -- would there be a --
22 would something about the transmittal of this form
23 and how it got to Alabama would that typically be
24 part of the file at McNair --

25 MR. TWOMBLEY: Object to form.

1 MS. KIRK: Object to the form.

2 BY MR. GILREATH:

3 Q. -- maintained for this document?

4 A. I don't -- I don't know how this
5 document got there. I don't know.

6 Q. You don't -- all of this I've talked
7 about with this document is not ringing any bells?

8 You don't have any recollection or any
9 memory of any of that, correct?

10 A. No.

11 MS. KIRK: Object to the form.

12 MR. TWOMBLEY: Object to the form.

13 THE WITNESS: No, sir.

14 BY MR. GILREATH:

15 Q. And you're telling me that you think
16 there may still be a file at McNair that's got this
17 document in it, correct?

18 MS. KIRK: Object to the form.

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form.

21 THE WITNESS: It's possible that it
22 could still be in a wheel vault there.

23 BY MR. GILREATH:

24 Q. Okay. I want to put on the record --
25 y'all have been talking about Judge Mullens' order.

1 I've got a copy of it right here where I can --

2 MR. TWOMBLEY: Well, we've got it, too.
3 I've got it right here. Tell us what page you want
4 me to look at and paragraph.

5 MR. GILREATH: I don't want to look at
6 the page. I just want to put on the record I want
7 to be sure we're all talking about the same order.
8 The one I've got is electronically filed and dated
9 August 23rd, 2017 filed at 2:14 PM and it consists
10 of -- well, I don't know the pages -- six pages.

11 And there's an electronic signature
12 page for Judge Mullen that's unnumbered. Is that
13 the same -- are we talking about the same thing?

14 MS. KIRK: Mine matches your
15 description, Jim, except for -- the electronic
16 signature for Judge Mullen is numbered and it's
17 electronically signed and it's numbered Page 7
18 of 7.

19 MR. TWOMBLEY: Are those --

20 MR. GILREATH: It's seven pages total.

21 MR. TWOMBLEY: Are you just --

22 MR. GILREATH: You're correct.

23 MR. TWOMBLEY: Are you just asking us
24 if this is --

25 MR. GILREATH: It was signed on 2017,

1 8/23, Page 77.

2 MS. KIRK: Yes, sir. That's the order
3 that I've referenced.

4 MR. GILREATH: Okay. I just want to
5 make sure we're all singing off the same page and
6 hymnal. I don't think I need to put that in the
7 record. It's already part of the record down
8 there.

9 MR. TWOMBLEY: I mean, if there's
10 any other order that you think would be applicable
11 to Ms. Bostick testifying just please let us know.
12 BY MR. GILREATH:

13 Q. Okay. Did the McNair firm typically
14 require engagement letters when undertaking
15 representation of clients on fairly complicated
16 estate planning matters?

17 MR. TWOMBLEY: Object to the form--

18 MS. KIRK: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: Again, I -- I can't
21 attest this -- this is a complicated estate
22 planning document or documents. But, yes, we do
23 use engagement letters.

24 BY MR. GILREATH:

25 Q. Say that again. You said they would --

1 they would get engagement letters? You're aware
2 of that, right?

3 MS. KIRK: Object to the form.

4 MR. TWOMBLEY: Same objection.

5 THE WITNESS: Yes. We typically used
6 engagement letters.

7 BY MR. GILREATH:

8 Q. Did Mr. Jolley do engagement letters
9 for clients on complicated estate planning matters?

10 MR. TWOMBLEY: Object to the form.

11 MS. KIRK: Object to the form.

12 THE WITNESS: Again, I can't say if
13 it's a complicated estate planning matter. But,
14 yes, he often or we did do engagement letters.

15 BY MR. GILREATH:

16 Q. And -- and where would those engagement
17 letters be filed?

18 A. It would be in the file.

19 Q. Was there just one file or is it more
20 than one file?

21 A. More --

22 MS. KIRK: Object to the form, other
23 than you're asking about anything other than
24 Mr. Barringer's estate planning documents.

25 MR. TWOMBLEY: Absolutely. She said it

1 before I could.

2 BY MR. GILREATH:

3 Q. If you could go back to the McNair firm
4 today or tomorrow morning and you were looking for
5 an engagement letter on Mr. Barringer where would
6 you start looking?

7 MR. TWOMBLEY: I object to that
8 question.

9 MS. PAYLOR: Object to the form.

10 MS. KIRK: Object to the form.

11 MR. TWOMBLEY: I'll be happy to talk to
12 you about it. I think we can get her to answer the
13 question that you really want, but --

14 THE COURT REPORTER: I just realized it
15 looks like Mr. Macloskie has -- has dropped off and
16 it looks like he may be trying to get admitted
17 there on the screen here.

18 MR. GILREATH: I can't hear what she --

19 MR. TWOMBLEY: Well, it looks like Mike
20 Macloskie dropped off. We're trying to get him
21 back on.

22 THE WITNESS: I'm sorry. I didn't
23 even know.

24 MR. GILREATH: Who dropped off?

25 THE WITNESS: Good eye.

1 MR. GILREATH: It came back on? Let's
2 get him back on.

3 MS. PAYLOR: He's on now, looks like
4 it.

5 BY MR. GILREATH:

6 Q. Can you give me any help on where I
7 could ask the McNair firm to go look for an
8 engagement letter if such exists on Mr. Barringer?

9 MR. TWOMBLEY: I'm going to --

10 MS. PAYLOR: Object to the form.

11 MR. TWOMBLEY: -- object and I'm going
12 to instruct you not to answer unless he wants to
13 limit it to matters dealing with his estate.

14 MR. GILREATH: I limited it, Ashley.
15 Either tell her not to answer it or put your
16 objection in and instruct her not to answer and
17 file your motion.

18 MR. TWOMBLEY: You didn't -- you didn't
19 limit it.

20 MR. GILREATH: Let's get on with it.

21 MR. TWOMBLEY: You didn't limit it.
22 You just said Mr. Barringer. That's all you said.
23 You did not limit it. You may think that you did,
24 but you did not.

25 MR. GILREATH: Well, if didn't I --

1 I'll limit it to Mr. Barringer.

2 MR. TWOMBLEY: Well, you -- will you
3 limit it to his -- the preparation and execution of
4 his estate planning documents and engagement letter
5 related to that? Because I wouldn't object to
6 that.

7 MR. GILREATH: We can get more --

8 MR. TWOMBLEY: So you do agree to --

9 MR. GILREATH: I want her to tell me
10 where she thinks it would be at the McNair firm.

11 MR. TWOMBLEY: If it's related to the
12 preparation and execution of estate planning
13 documents, correct?

14 MR. GILREATH: Ashley, my question
15 is fairly simple and I think I've asked it. If I
16 haven't I'll ask it now.

17 BY MR. GILREATH:

18 Q. Did he sign an engagement letter that
19 you can recall?

20 MR. TWOMBLEY: I'm going to object and
21 instruct you not to answer.

22 MR. GILREATH: You're going to instruct
23 her not to --

24 MS. KIRK: To the extent your question
25 exceeds the scope of estate planning matters for

1 Mr. Barringer, I object to it and that's the issue
2 we keep coming back to.

3 MR. GILREATH: That's what I'm limited
4 to. Y'all can't under -- I -- I -- I know I've got
5 a bad southern drawl, but I'm speaking pretty clear
6 I think about Barringer and an estate planning
7 engagement letter.

8 MR. TWOMBLEY: You never said that,
9 Jim. I'm -- I'm sorry. You didn't. You did not
10 say that.

11 MR. GILREATH: Maybe that's not what I
12 said.

13 MR. TWOMBLEY: But if you --

14 MR. GILREATH: That's what I meant.

15 MR. TWOMBLEY: Okay. Well, if you
16 agree that it's limited to that question and if
17 you can answer that question I'm fine with you
18 answering it.

19 MS. KIRK: You're welcome to answer.

20 MR. GILREATH: If she can answer you
21 what?

22 MR. TWOMBLEY: I said --

23 MR. GILREATH: You're fine with her
24 answering.

25 BY MR. GILREATH:

1 Q. So can you answer that question?

2 Ashley and I finally agreed on something.

3 A. I do not know.

4 Q. You don't know?

5 A. I don't know.

6 Q. Well, I've got to call up -- what's
7 his name -- Nick Felix and see if he can find
8 that and I'd like for you to tell me where I can
9 ask Mr. Felix to go on his search --

10 MS. KIRK: Asked --

11 BY MR. GILREATH:

12 Q. -- if you'll give me any help.

13 MS. KIRK: Asked and answered.

14 MR. TWOMBLEY: And -- and I want to
15 state for the record that if you're going to be
16 talking to that firm about the work they did for
17 my client I want to be present and you can send --
18 you can -- you know, anyway, I'll -- I'll handle
19 that with the McNair Law Firm.

20 MR. GILREATH: Ashley, you know what
21 I'm asking for. Let me get on with this deposition
22 and quit -- just -- anyway...

23 BY MR. GILREATH:

24 Q. Can you give me any help or you can't?

25 A. I do not know where it would be.

1 Q. Okay. Can you tell me if you recall
2 how often Merrill and/or Randy Light would be in
3 meetings with Mr. Barringer at the McNair firm when
4 he was working on his estate planning matters.

5 A. I don't know.

6 MR. MOLSTER: Objection. Instruct not
7 to answer. Allison --

8 THE COURT REPORTER: I'm sorry.

9 MS. PAYLOR: Objection. Don't answer.

10 MR. GILREATH: Do what?

11 MS. PAYLOR: We instructed her not to
12 answer.

13 MR. GILREATH: So what's privileged
14 about that? That's all right. You'll -- you'll
15 have to explain that one to the judge. All I'm --
16 the question is very simple.

17 It's got nothing to do with Merrill
18 Light. It's to ask her how often Merrill Light --
19 was there a meeting with Mr. Barringer. Are y'all
20 going to instruct her not to answer that? I want
21 to be sure I've got the record clear.

22 MS. PAYLOR: All right. Let's go off
23 the record for a minute.

24 MR. MOLSTER: We'll take --

25 MR. GILREATH: We're not going off the

1 record.

2 MS. PAYLOR: Well --

3 MS. MOLSTER: Jim, we need to talk
4 about whether -- about the privilege issue. So,
5 please, be courteous. We'll go off the record and
6 we'll talk about it and see whether or not we'll
7 resolve it. Could the court reporter please read
8 back the question so we can make sure we got it.

9 MR. GILREATH: Is that you talking,
10 Chip?

11 MR. MOLSTER: Yes, sir.

12 MR. GILREATH: Your lips aren't moving.

13 MR. MOLSTER: We're going to try and
14 resolve it. We're going to try to resolve it.
15 It's because I'm out in the country, Jim. I've got
16 a bad connection here.

17 We're going to try and resolve it for
18 you, if the court reporter could please read back
19 the question so we make sure we've got it. We'll
20 take a quick break and we'll --

21 MR. GILREATH: We've got it resolved.

22 THE COURT REPORTER: I'm sorry. One
23 second.

24 MR. MACLOSKIE: We need to excuse the
25 witness.

1 THE VIDEOGRAPHER: We are going off the
2 record. It is 4:55 PM.

3 (A recess transpired.)

4 THE VIDEOGRAPHER: We are back on the
5 record. It is 4:58 PM.

6 MR. GILREATH: All right. Y'all tell
7 her what she said. I mean, you said she can answer
8 the question. Right?

9 MS. PAYLOR: Yes. Yes.

10 THE WITNESS: Can you remind me what
11 the question is.

12 BY MR. GILREATH:

13 Q. Do you remember the question, ma'am?

14 THE COURT REPORTER: I think the
15 witness wants me to read back the last question.
16 Is that correct? Mr. Gilreath.

17 MR. GILREATH: Yeah. That's fine.
18 Yeah. Read the question to her.

19 (The Court Reporter read the question
20 commencing on page 106 line 25.)

21 BY MR. GILREATH:

22 Q. That's the question.

23 A. I don't know.

24 Q. Well, were they -- would it be fair to
25 say they were there some?

1 MS. PAYLOR: Object to the form.

2 MS. KIRK: Object to the form.

3 THE WITNESS: I honestly don't
4 remember.

5 BY MR. GILREATH:

6 Q. You have no recollection of that?

7 A. No, sir.

8 Q. Okay. Let me ask you this. Are you
9 aware of any reason why Mr. Barringer needed to
10 sign the July 2012 trust amendment while he was in
11 Alabama?

12 A. I do not know why.

13 Q. Look at Tab 13 in my document book,
14 Page 235 of 236, the top entry there. I'll read it
15 into the record, July 18th of '2012: The prepared
16 restatement of Paul Barringer irrevocable trust
17 agreement, telephone conference with Randy Light.

18 Do you have any explanation of why
19 Mr. Jolley would be having a telephone conference
20 with Randy Light about anything related to Paul
21 Barringer's irrevocable trust agreement?

22 MR. TWOMBLEY: Object to form of the
23 question.

24 MS. KIRK: Object to the form.

25 MS. PAYLOR: Object to the form.

1 THE WITNESS: I don't know generally
2 why he would have a telephone conference with Randy
3 Light. I wasn't there.

4 BY MR. GILREATH:

5 Q. Look at Tab 1 in the book, assignment
6 of shares, dated the 11th day of September of 2012.

7 MR. TWOMBLEY: What was the tab again?

8 THE WITNESS: One.

9 MR. TWOMBLEY: One. Okay. Sorry.

10 BY MR. GILREATH:

11 Q. It's a three-page document. Do you
12 have any recollection of this document or have any
13 knowledge of anything dealing with its preparation
14 or execution?

15 A. I don't recall.

16 Q. You don't recall. Do you recognize
17 whose handwriting's in the dateline on Page 224?
18 That's Tab 1.

19 A. I don't know.

20 Q. How about Page 226 where somebody wrote
21 in 11? Is that -- do you recognize that
22 handwriting?

23 A. No, sir.

24 Q. Have you ever seen or been made aware
25 of Mr. Jolley backdating a document?

1 MS. KIRK: Object to the form.

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: No.

4 BY MR. GILREATH:

5 Q. You understand what I mean by
6 backdating, correct?

7 MS. KIRK: Object to the form.

8 MR. TWOMBLEY: Same objection.

9 THE WITNESS: Yes, sir.

10 BY MR. GILREATH:

11 Q. And it's your testimony here under oath
12 today that you have never seen or been made aware
13 of Mr. Jolley ever backdating a document, correct?

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 MS. PAYLOR: Object to form.

17 THE WITNESS: Not that I'm aware of.

18 BY MR. GILREATH:

19 Q. Did he ever give you any instructions
20 as a paralegal or assistance -- assistant about
21 backdating?

22 MS. KIRK: Object to the form.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: No.

25 BY MR. GILREATH:

1 Q. Did the McNair firm have any kind of
2 interim policy that you were aware of that would
3 condone the backdating of a client's document?

4 MS. PAYLOR: Object to the form.

5 MS. KIRK: Object to the form.

6 MR. TWOMBLEY: Same objection.

7 THE WITNESS: I don't know.

8 BY MR. GILREATH:

9 Q. Did anybody at the McNair firm ever
10 instruct you or comment on or make any
11 conversations with you about backdating documents?

12 MS. KIRK: Object to the form.

13 MS. PAYLOR: Objection to the form.

14 THE WITNESS: No.

15 MR. GILREATH: What is your opinion on
16 backdating?

17 MS. PAYLOR: Object to the form.

18 MS. KIRK: Object to the form.

19 THE WITNESS: There's no purpose for
20 it. So...

21 BY MR. GILREATH:

22 Q. Can you answer that. Do you have an
23 opinion?

24 A. There's no purpose for it.

25 Q. Do what?

1 A. I don't see a purpose in it.

2 Q. No purpose for backdating?

3 A. Uh-huh.

4 Q. Okay. What would you do or have done
5 if a client came in and wanted to backdate a
6 document? Would you let them do it?

7 MR. TWOMBLEY: Object to the form.

8 MS. KIRK: Object to the form.

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: No.

11 BY MR. GILREATH:

12 Q. Do you remember a board meeting of
13 the CFRC? That's Coastal Forest Resources
14 Corporation which was Mr. Barringer's corporation.

15 Do you have any recollection or memory
16 about a June 28th, 2012 board of directors meeting
17 held in Mr. Jolley's office at the McNair firm?

18 MS. KIRK: Object to the form and I
19 object to the fact that it exceeds the exception of
20 the scope of the testamentary privilege.

21 BY MR. GILREATH:

22 Q. Can you answer my question.

23 MS. KIRK: I'm going to instruct
24 her not to answer it to the extent that you're
25 seeking -- your entire question sounds like it is

1 asking for information about a different entity.

2 MR. GILREATH: It's Coastal Forest
3 Resources Corporation, ma'am, and it's very much
4 involved in this lawsuit.

5 MR. TWOMBLEY: Well, let --

6 MR. GILREATH: The board of directors
7 can't --

8 MS. KIRK: It's not a decedent in this
9 lawsuit.

10 MR. GILREATH: Do what?

11 MS. KIRK: It's not the decedent in
12 this lawsuit. It's a different entity.

13 MR. TWOMBLEY: Jim, let's -- let me
14 talk with Ariail about that. I think I can get her
15 comfortable with allowing the witness to answer,
16 but --

17 MR. GILREATH: You better get her
18 comfortable. She's going to be explaining to
19 the judge about it.

20 MR. TWOMBLEY: Well, I think your
21 threatening, bullying comments are not helpful
22 and they're disrespectful. But I'll be happy to
23 talk with Ms. Kirk and we'll be back in a moment.

24 MR. GILREATH: All right. Take a
25 break.

1 THE VIDEOGRAPHER: We are going off the
2 record. It is 5:11 PM.

3 (A recess transpired.)

4 THE VIDEOGRAPHER: We are back on
5 record. It is 5:15 PM.

6 MS. KIRK: Jim, to the extent your
7 question is general I'm okay with the witness
8 answering. But to the extent you want to get into
9 any privileged communications that may have taken
10 place during the meeting I will object to that and
11 have her not -- instruct her not to answer.

12 MR. GILREATH: All I asked her was
13 that -- I think was the June 28, 2012 CFRC Board of
14 Directors meeting held at the -- Mr. Jolley's
15 office at the McNair firm.

16 THE WITNESS: I do not recall that
17 specific meeting, but they -- we often let people
18 use our conference rooms without us present.

19 BY MR. GILREATH:

20 Q. Do you know whether -- did you ever see
21 Randy Light at any CFRC Board of Directors meetings
22 held at the McNair firm?

23 A. I don't know. I don't attend them.

24 Q. You would know they were going on,
25 though. Wouldn't you?

1 MR. TWOMBLEY: Object to the form.

2 MS. KIRK: Object to the form.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I would know when they
5 were scheduled, but I would not have any
6 involvement in it.

7 BY MR. GILREATH:

8 Q. Where -- where would the board meeting
9 be? How far would it be from Mr. Jolley's office?

10 A. On the other side of the building.

11 Q. Okay.

12 A. It's in a general area of the building
13 when we were in our work spaces.

14 Q. You said the general area of the
15 building?

16 A. Yeah.

17 Q. How far away was that from your office?

18 A. Well, the general area is closed off by
19 doors and then my office and John's office were in
20 the back corner. So I would say it would be a
21 minute-or-two walk --

22 Q. Minute-or-two walk. Okay.

23 A. -- depending on which conference room
24 they used as well.

25 Q. Well, let me ask you this. Do you have