

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

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

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

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

**RECORD ON APPEAL
VOLUME XIII OF XVI**

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Certificate of Counsel

1 any knowledge of Randy Light being in a CFRC Board
2 of Directors meeting that was held in McNair's
3 office at any time?

4 A. I do not know.

5 Q. All right. Are you aware of John
6 Jolley ever obtaining any medical records on
7 Mr. Barringer?

8 MS. KIRK: Object to the form.

9 MR. TWOMBLEY: Object to the form of
10 the question. If you'd like to limit it to the --
11 related to the preparations, execution or amendment
12 of estate planning documents I'll allow her to
13 answer.

14 BY MR. GILREATH:

15 Q. That's what he was doing for them
16 when you -- when he was working on Mr. Barringer's
17 estate planning documents are you aware of whether
18 Mr. Jolley ever attempted in any way from either
19 Merrill or any other way to get any medical records
20 on Mr. Barringer?

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 MS. KIRK: Object to form.

24 THE WITNESS: I would have -- no. I --
25 I don't know.

1 BY MR. GILREATH:

2 Q. Okay. Do you remember any
3 discussions with Mr. Jolley where he was discussing
4 Mr. Barringer's health situation?

5 MR. TWOMBLEY: Object to the form.

6 MS. KIRK: Object to the form.

7 MR. TWOMBLEY: Asked and answered.

8 THE WITNESS: I don't know.

9 BY MR. GILREATH:

10 Q. Did -- are you aware of Merrill Light
11 and/or Randy Light discussing with John Jolley any
12 health issues involving Mr. Barringer?

13 MS. PAYLOR: Asked and answered.

14 MS. KIRK: Object to the form.

15 MR. MOLSTER: Object to the form. I'll
16 also instruct her not to answer because --

17 MR. TWOMBLEY: Limit it to estate
18 planning and --

19 MS. PAYLOR: She's already answered and
20 said that she was not aware of it. So...

21 BY MR. GILREATH:

22 Q. Is that your answer?

23 MR. TWOMBLEY: Well, I think you need
24 to rephrase the -- reask the question.

25 BY MR. GILREATH:

1 Q. Are you aware that on or about
2 February 21st of 2011 that Kevin Luzak which is my
3 client's husband e-mailed the deceased -- he
4 received an e-mail from Randy Light and I -- I'll
5 read from it.

6 MS. PAYLOR: Object to the form. Se
7 hasn't -- why would she have seen that?

8 MR. GILREATH: Please, ma'am, could you
9 please have the common decency, Alice, to let me
10 get through with my question? And then you're free
11 to object all you want to.

12 Now, I've got the right to ask my
13 questions without you interrupting me. I don't
14 interrupt your questions. Could we have an
15 agreement on that maybe anyway?

16 MS. PAYLOR: No. No.

17 MR. GILREATH: Okay.

18 MS. PAYLOR: No.

19 MR. GILREATH: I'll play that back to
20 the judge, too. All right. Are you aware that --
21 that on February 21st of 2011 Randy Light sent an
22 e-mail to Merrill -- Kevin Luzak and said, quote --
23 this is -- what exhibit is this? Exhibit 34.

24 It's not in the book. I haven't got it
25 in there yet. What -- Kathie you say. It's not in

1 the exhibit book. I e-mailed it to you. I'll read
2 the e-mail. And he said: I feel it would be
3 advantageous for the four of us -- talking about
4 Randy and his wife and Kevin and his wife -- to
5 discuss the future plans -- present and future
6 with CFRC.

7 It is evident to Merrill and I that
8 PBB -- that being Paul Barringer -- is starting to
9 experience different health issues that affect his
10 judgment regarding everyday decisions personally
11 and business-wise. It appears that this makes it
12 harder for you to exercise your authority as
13 President of CFRC if he will not listen.

14 Merrill and I have absolutely no
15 say in the operations of CFRC which PBB has made
16 clear on many occasions. Merrill and I have total
17 confidence in your ability to guide the company in
18 a direction that will benefit stockholders most.

19 Our fear is that PBB -- being Mr.
20 Barringer -- is going to attempt some irrational
21 move that will harm the profitability of the
22 company simply to satisfy his desire to underwrite
23 Victor or keep the stockholders graveling. Any
24 thoughts? Signed RL, which is Randy Light.

25 Do you have any knowledge of that or

1 that being brought to the attention of Mr. Jolley?

2 MR. TWOMBLEY: Object to the form of --

3 MS. KIRK: Is this the document that --

4 MR. TWOMBLEY: Object to the form of
5 the questions.

6 MS. KIRK: -- you e-mailed while we
7 were setting up? Is this one of those documents?

8 MR. GILREATH: Yes.

9 MS. KIRK: Okay. Well, to the extent
10 that you want to ask questions about documents that
11 we got while we were trying to get online for the
12 deposition I'll need to take a break and discuss it
13 with my client.

14 Do you want to save this for the end or
15 do you want us to do the break now?

16 MR. GILREATH: If you want to take a
17 break and talk to your client you've got the right
18 to. We were late getting that to you.

19 MR. TWOMBLEY: I mean, if she doesn't
20 know anything about it wouldn't that alleviate the
21 need for it, the conference about it?

22 MS. KIRK: Yes.

23 MR. TWOMBLEY: So do you know anything
24 about this e-mail?

25 THE WITNESS: No.

1 MR. TWOMBLEY: Well, just answer.

2 MR. GILREATH: Did she say she didn't
3 know anything about it?

4 MR. TWOMBLEY: Yeah.

5 MS. KIRK: Correct.

6 THE WITNESS: Correct.

7 MR. GILREATH: That's all I needed.

8 BY MR. GILREATH:

9 Q. Do you know whether Mr. Jolley had any
10 knowledge of a visit that Mr. Barringer had with --
11 over at St. Joseph's/Candler Health System where
12 he was seen by Dr. Jessica F. Carter where she said
13 he was aphasiac and he had difficulty following
14 two-step commands but eventually gets it right with
15 being able to touch his right hand to his left ear?

16 When I asked him to show my two fingers
17 he does have some difficulty with this. Are you --
18 are you aware of the fact that -- that that
19 happened over at St. Joseph's with Mr. Barringer
20 May the 3rd of 2012?

21 MR. KIRK: Object to form, but you may
22 answer.

23 MR. TWOMBLEY: Object to the forms of
24 the questions.

25 THE WITNESS: I have no idea.

1 MS. PAYLOR: Object to the form.

2 BY MR. GILREATH:

3 Q. Are you aware of that?

4 A. No.

5 MR. TWOMBLEY: Same objection.

6 BY MR. GILREATH:

7 Q. Have you ever had any discussions with
8 Mr. Jolley or are you aware of anything he may know
9 about that?

10 MR. TWOMBLEY: Same objection.

11 MS. KIRK: Same objections and she's
12 already answered that.

13 MR. GILREATH: What did you say?

14 MS. KIRK: I said, same objection and
15 she's already answered it.

16 BY MR. GILREATH:

17 Q. Well, answer it again. I didn't -- I
18 didn't get the answer --

19 A. I don't know.

20 Q. -- to that. You don't know anything
21 about that. Okay.

22 Do you think this medical record
23 that I'm reading from would have been something
24 Mr. Jolley would have been interested in in that
25 it's dated May the 3rd of 2012 which is just right

1 before Mr. Barringer signed this second amendment
2 on July the 20th?

3 MR. TWOMBLEY: Object to the form.

4 BY MR. GILREATH:

5 Q. Signed over --

6 MS. PAYLOR: Object to the form.

7 BY MR. GILREATH:

8 Q. -- on September 11th?

9 MS. KIRK: Object to the form as well.

10 MR. TWOMBLEY: Same here.

11 THE WITNESS: I don't know what
12 Mr. Jolley would be interested -- I -- I have no
13 idea.

14 BY MR. GILREATH:

15 Q. Okay. Did you ever have any
16 conversation with Mr. Jolley's about Mr.
17 Barringer's health or how he was doing mentally or
18 cognitively?

19 MR. TWOMBLEY: Object to the form.

20 MS. KIRK: Object to the form. She's
21 answered this a couple of times as well as it
22 relates to his health and estate planning
23 documents.

24 BY MR. GILREATH:

25 Q. Well, answer it again, please, ma'am.

1 A. No.

2 Q. All right. I do. I get to go through
3 these documents. That's all simple. All right.
4 Let me look at these documents here a minute. Have
5 you ever heard of a guy named Travis Bryant?

6 A. Yes, sir.

7 Q. You have?

8 A. Yes, sir.

9 Q. Did Mr. -- did he ever come in to see
10 Mr. Jolley?

11 MS. KIRK: I object to the question to
12 the extent that you're going after some other
13 entities, privileged communications.

14 MR. TWOMBLEY: I think --

15 MR. GILREATH: Can she answer that
16 question?

17 MS. KIRK: Do you want to narrow the
18 question?

19 MR. GILREATH: I just asked if she ever
20 meet Mr. Travis Bryant, did he ever come in and
21 meet with Mr. Jolley.

22 MR. TWOMBLEY: That is not what you
23 asked.

24 MR. GILREATH: I'll tell you he was
25 an executive with Coastal Forest Resources which

1 is Mr. Barringer's company which apparently you're
2 not aware of that.

3 MS. KIRK: I'm aware that the company
4 is not the decedent that has the testamentary
5 exception to the attorney-client privilege and to
6 the extent you're asking her about a separate
7 entity and privileged communications regarding that
8 entity I cannot let her answer.

9 If you're asking something else and
10 want to clarify that we can move forward.

11 MR. GILREATH: Hold on a minute.
12 You've got an estate planning form. You going to
13 give up that easy? All right. We won't have to.
14 BY MR. GILREATH:

15 Q. Look at Tab -- Tab 5. There's some
16 stock certificates there, Coastal Forest Resources
17 Company.

18 A. Uh-huh.

19 Q. Look over on the third page. This is
20 Number 14. Somebody had written canceled on it.
21 Do you recognize that writing?

22 A. No, sir. No.

23 Q. Did you have anything to do with the
24 preparation of those stock certificates?

25 A. I don't recall.

1 Q. Look at -- look at 6-A. Look at
2 Tab 6-A, Certificate Number 15. It says the date
3 of issue is 12/31/2012 for one share. Do you see
4 that entry? It's on Page 2.

5 A. Yes, sir.

6 Q. The stock registry. Do you recall
7 having anything to do with working on that stock
8 register or dating that certificate that date?

9 A. I don't recall.

10 Q. Did you ever -- did you ever do stock
11 certificates for corporate entities that Mr. Jolley
12 was involved with?

13 A. On occasion.

14 Q. I couldn't hear you.

15 A. On occasion I do or did.

16 Q. On occasion. Okay. Look at Tab 7.
17 There is an e-mail. Is that an e-mail that you
18 sent to Travis Bright with some stock certificates?

19 A. Yes, sir.

20 Q. Thursday, January the 24th of 2013.

21 A. Yes, sir.

22 Q. Do you have any recollection of sending
23 that?

24 A. Not this particular e-mail.

25 Q. And look at the next document which is

1 a letter dated January the 24th of 2013 --

2 MS. KIRK: Are you still --

3 BY MR. GILREATH:

4 Q. -- Travis Bryant Jolley enclosing
5 Certificates Number 15 and 16. Is that a letter
6 that you would have written for Mr. Jolley?

7 A. Yes. My initials are on it.

8 Q. Okay. Look at the certificates that
9 are behind that letter. There's several of them
10 front and back.

11 Would those have been certificates
12 that you would prepared under the direction of
13 Mr. Jolley?

14 A. I don't know about these particular
15 certificates.

16 Q. Do what?

17 A. I do not know about these particular
18 certificates.

19 Q. We asked about -- does that start on
20 14? Go to Tab 14. It starts on 27. Right?

21 I may have already asked you this. If
22 I did I apologize. There's your signature as a
23 witness on Page 27 and there's a notary on Page 28
24 and 29.

25 A. Yes, sir.

1 Q. Okay. Look over at Number 15. Is that
2 your signature on Page 7 of that document? Last
3 will and testament.

4 A. Yes, sir.

5 Q. Talking about 16. Look at Number 17,
6 Page 29. Who is Sheree Morris?

7 A. Sheree Morris is HR person at McNair,
8 operations manager.

9 Q. At where?

10 A. At the time at McNair. Now it's Burr
11 and Forman.

12 Q. What is her position?

13 A. Operations manager, HR. Human
14 Resources.

15 Q. Have you got any explanation of why
16 she would have been witnessing Mr. Barringer's
17 signature as settlor or trustee of the third
18 amendment that was executed on June 12th, 2014?

19 A. Yes, sir.

20 Q. You have no recollection of that?

21 A. No. I know exactly why.

22 Q. You know?

23 A. Yes, sir.

24 Q. Tell me.

25 A. Because Mr. Jolley is named in the

1 document as somebody that can appoint a successor
2 trustee and that is on Page 13. And whenever
3 John is named in a document we don't like him
4 to witness. So we brought in Sheree Morris as a
5 third witness just so there is two disinterested
6 witnesses.

7 Q. I can't understand what you're saying.
8 Let me see if Bill understood it. Hold on a
9 minute. All right. Was that a matter of policy
10 at the firm?

11 MR. TWOMBLEY: Object to the form.

12 MS. KIRK: Object to the form.

13 MS. PAYLOR: Object.

14 THE WITNESS: I can't say for the firm,
15 but I do know it's policy for John.

16 BY MR. GILREATH:

17 Q. Okay. What about this one? Nothing
18 there. She signed there, too. Yeah.

19 All right. On to 19. Nothing on 19.
20 She -- yeah. She -- she signed all of them. Is
21 that your signature at Tab 19 on Pages 20 as the
22 witness?

23 A. Yes, sir.

24 Q. Okay. And your notary signature on
25 Page 30?

1 A. Both of them, yes.

2 Q. All right. At Tab 20, Page 8, is that
3 your signature as a witness and as a notary?

4 A. Yes, sir.

5 Q. Wait a minute. Number 21, is that
6 your signature on page -- on the second to third
7 page of that? The revocation, power of attorney.

8 A. Yes, as a witness and as notary.

9 Q. Okay. Page 20, Tab 22. Is that
10 your signature on Page 9 there right below
11 Mr. Jolley's when you signed as a notary?

12 A. Yes, sir, witness and notary.

13 Q. On page -- Page 23 -- Tab 23, Page 9,
14 is that your signature?

15 A. Yes, as witness and notary.

16 Q. And Tab 24, is that your signature as a
17 notary on Page 2 a revocation of the power of
18 attorney?

19 A. On Page 2, witness and notary, yes,
20 sir.

21 Q. And on Page 3, correct?

22 A. Yes, sir, as witness and notary. I
23 think you missed one. Tab 22 on Page 8 as witness
24 and notary. It was before Page 9. It may have
25 been Tab 23, one of the two. I'm sorry.

1 MR. GILREATH: We need to take a break
2 for a minute.

3 THE VIDEOGRAPHER: We are going off
4 record. It is 5:53.

5 (Off-the-record conference.)

6 THE VIDEOGRAPHER: We are back on
7 record. It is 5:54 PM.

8 BY MR. GILREATH:

9 Q. Tab 25, Page 4, affidavit. Is that
10 your signature as a witness and a notary?

11 A. Yes, sir.

12 Q. Tab 26, is that your signature on
13 Page 4?

14 A. Yes, as witness and notary.

15 Q. As a witness and notary?

16 A. Yes, sir.

17 Q. Tab 27 -- I think I've been through
18 27 and 28 Bill says. Going to 29. Look at Number
19 30 -- Tab 30.

20 Do you know why Randy Light would be
21 directing Mr. Jolley to send Paul Barringer's
22 estate documents to be executed to somebody at
23 Wells Fargo?

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Object to form.

1 THE WITNESS: It is not uncommon for us
2 to send documents to a financial institution for
3 their records that holds assets there for the
4 client.

5 BY MR. GILREATH:

6 Q. Do you have any independent knowledge
7 about this e-mail or why it occurred?

8 A. No.

9 MR. GILREATH: On 31, Bill.

10 BY MR. GILREATH:

11 Q. Do you have any independent
12 recollection about Randy Light sending e-mails
13 in to Mr. Jolley wanting to know about when the
14 voting shares that were going to Merrill Light
15 that were going to be prepared? Do you have any
16 recollection of anything about that?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Object to the form.

19 MS. PAYLOR: Object to form.

20 MR. MOLSTER: It could (inaudible) --

21 THE COURT REPORTER: I'm sorry. I
22 didn't hear what Mr. Molster said.

23 MS. PAYLOR: It could elicit
24 attorney-client privilege. We instruct her not
25 to answer.

1 MR. GILREATH: You take the position
2 that that has got to do with attorney-client
3 privilege and you instructed her not to answer?

4 MR. MOLSTER: That's correct.

5 MS. PAYLOR: Yes.

6 MR. MOLSTER: Communication with the
7 lawyer. Communications with the lawyer, her
8 lawyer. His lawyer. Yes.

9 MR. GILREATH: Yeah, about a stock
10 transfer to Merrill Light from Paul Barringer which
11 is the subject of this lawsuit. I just want to be
12 sure this is straight on the record and y'all don't
13 think I can go into that. Is that correct? Y'all
14 instructed her not to --

15 MS. PAYLOR: Yes. Well, I doubt she
16 knows anything about it. But, yeah. It's going
17 into -- it could potentially go into
18 attorney-client --

19 MR. GILREATH: Well, you know, if you
20 can object on stuff that --

21 MS. PAYLOR: We --

22 MR. GILREATH: If y'all are going to
23 instruct her not to answer why don't -- we'll move
24 on -- we'll move on to other -- bigger and better
25 things.

1 MR. MOLSTER: Well, jim, why don't we
2 do this. Why don't we see if we can work this out.
3 So if you -- if you ask her -- let her answer to
4 yes or no, do you know anything about this e-mail?
5 Let her answer that question.

6 Depending on the answer to that then we
7 can deal with the next question as to whether or
8 not we're going to let her ask -- answer anything
9 more. So we'll go one step at a time and --

10 MR. GILREATH: These relate to the
11 e-mails at Tab 32. I'm still trying to figure out
12 how you're talking without moving your lips. I
13 can't see your lips.

14 MR. MOLSTER: I can't answer that.
15 It's -- I can only say the explanation is Reva,
16 Virginia. But -- all right. So -- so are you
17 okay if she answers just yes or no to your question
18 as to whether or not she knows anything about this
19 e-mail and then we go from there?

20 MR. GILREATH: If she doesn't know --
21 we'll just ask her. All right.

22 So I'm asking her does she know
23 anything about that e-mail or the fact that Randy
24 and Travis were inquiring of Mr. Jolley in a series
25 of e-mails that are found at Tab 32 about where was

1 this -- the stock certificates, signing the lost
2 waiver.

3 BY MR. GILREATH:

4 Q. Do you have any knowledge of that?

5 A. I wasn't directly involved with this.

6 MR. GILREATH: What did she say?

7 THE WITNESS: I was not directly
8 involved with this.

9 BY MR. GILREATH:

10 Q. You said you were not involved in that,
11 correct?

12 MR. TWOMBLEY: Object to the form.

13 Calls --

14 MR. GILREATH: All right. We'll move
15 on.

16 MR. TWOMBLEY: Did you get my
17 objection?

18 THE COURT REPORTER: Yes.

19 BY MR. GILREATH:

20 Q. I've got one document here that I want
21 to show to you. It's not in the book. I just want
22 you to --

23 MR. HOGAN: Share the screen.

24 MR. GILREATH: I need to share the
25 screen, Madam Court Reporter. I'm going to put

1 this --

2 MR. HOGAN: She hasn't enabled to the
3 share the screen. She hasn't enabled the share
4 screen yet.

5 MR. TWOMBLEY: She's working on it.

6 MR. GILREATH: Have we got it?

7 THE COURT REPORTER: I know how to
8 share my screen. I've forgotten how to do this.
9 Give me a second. I apologize. I think I found
10 it. I found it. Can you see if it works now?

11 MR. GILREATH: Try it.

12 MR. HOGAN: Okay. There we go.

13 MR. TWOMBLEY: Just tell us what the
14 document is, Bill.

15 MR. HOGAN: Just one second here.

16 BY MR. GILREATH:

17 Q. Okay. Voila. Can you see that
18 document, ma'am?

19 A. Yes, sir.

20 Q. These are -- I'll represent these were
21 handwritten notes on a legal pad that were produced
22 to us.

23 MS. KIRK: Can -- can you e-mail that
24 to me, please.

25 MR. GILREATH: Do what?

1 MS. KIRK: Could you please e-mail that
2 to me?

3 MR. GILREATH: You can't see it on
4 your screen?

5 MS. KIRK: I can, but if I need to talk
6 to my client about it I can't leave the room with
7 the screen.

8 MR. GILREATH: Well, it's several
9 documents.

10 BY MR. GILREATH:

11 Q. All I want to know is, can you identify
12 for me the handwriting on that -- on the -- on
13 the -- on these sheets of paper. They're all the
14 same.

15 MS. KIRK: I mean, we can only see the
16 first page.

17 MR. GILREATH: Well, we're going to
18 show you the next page in a minute. Go ahead. You
19 want me to flip over to the other one so you can
20 see the rest of them? We'll e-mail them to you,
21 too.

22 MS. KIRK: Okay. I'll pull up my
23 e-mail.

24 MR. GILREATH: Yeah. I want to know
25 about the e-mail on that one. What is the next

1 one? Yeah. I want to know whose handwriting is on
2 all these pages. They're -- they're not all the
3 same it looks like.

4 MR. TWOMBLEY: Well, I want you to
5 identify them. I --

6 MS. KIRK: Yeah. I don't have an
7 e-mail yet.

8 MR. HOGAN: They're coming. The
9 secretary is down --

10 MR. GILREATH: They're getting ready to
11 e-mail them.

12 MS. KIRK: Okay. Thank you.

13 MR. GILREATH: You want me to identify
14 them, Ashley? Somebody produced them to me. I
15 didn't find them out on the street.

16 MR. TWOMBLEY: Well, Jim, I don't know
17 about you. But, you know, since I've been
18 practicing law for 15 years normally you might say
19 something like this document is Bates Stamp 151 out
20 of 236 which is part of the September the 27th,
21 2017 McNair Subpoena Response, can you identify
22 this document.

23 That way then we all know what you're
24 talking about and it's clear on the record. Have
25 you ever seen anything like that?

1 MR. GILREATH: I'm not answering your
2 questions. What do you -- are you -- are you
3 trying to question me? I'm showing y'all a
4 document. We've e-mailed it to you. You produced
5 it.

6 MS. KIRK: We don't have an e-mail yet
7 or I don't.

8 MR. TWOMBLEY: And you're showing us
9 one page of a document, but you've got ten and
10 you're flipping through them and we can't see them
11 all. I mean, I'm trying to help you out, Jim.

12 So, Bill, can you go back through them,
13 please. Start with the first one, 25.

14 MR. GILREATH: They're all produced.
15 Let me hold the thing, Bill. I'll read it into the
16 record. This right here.

17 MR. TWOMBLEY: Bill, will you just tell
18 us the Bates Stamp pages.

19 MR. HOGAN: It's right here.

20 MR. GILREATH: Bill will just read in
21 the record what it is.

22 MR. HOGAN: It's right here. Okay.
23 First document up is -- just straightened out --
24 okay. Document -- Bates Number 92217, McNair
25 Subpoena Response 25 of 236.

1 MR. TWOMBLEY: All right.

2 EXAMINATION

3 BY MR. HOGAN:

4 Q. Do you recognize the handwriting on
5 that document?

6 MR. KIRK: I --

7 MR. TWOMBLEY: No. We're not going
8 to let two lawyers do the same deposition now.
9 I mean, we've got to draw the line somewhere.

10 MR. GILREATH: Look, Ashley. We're
11 trying to get the thing over with. I'll be glad to
12 pick it up. Bill's just trying to cut through all
13 the flak you're trying to throw up. If you want me
14 to ask them I'll be glad to. I know how to ask the
15 questions.

16 MR. TWOMBLEY: All right.

17 MR. GILREATH: I've been doing this
18 long before you were ever born.

19 MR. TWOMBLEY: Go -- go ahead.

20 BY MR. GILREATH:

21 Q. So the question, ma'am -- we're going
22 to show you these documents and we want to know
23 if you can identify the handwriting on them. And
24 apparently there's several different pages. So --

25 MS. KIRK: Okay. Jim --

1 BY MR. GILREATH:

2 Q. I'm going to read into the record
3 where it was. How well -- I'll have to lean over a
4 little further to see it because the camera is at
5 the other end of the table.

6 MS. KIRK: Jim, this is Ariail. I'm
7 happy for the witness to tell you whether or not
8 she can identify the handwriting, but if you want
9 to go any further than that with these documents
10 I'm going to take a break.

11 MR. GILREATH: I just want to know if
12 she can identify the handwriting. Does she know
13 who it is? Yes or no. It's kind of a simple
14 exercise there.

15 MS. KIRK: You can answer.

16 THE WITNESS: Yes.

17 BY MR. GILREATH:

18 Q. Did you say you can identify the
19 handwriting.

20 A. Yes, sir.

21 Q. And whose handwriting is it?

22 A. It appears to be Mr. Jolley's.

23 MR. GILREATH: Mr. Jolley's. Okay.

24 That's on which one? Let's get the Bates number on
25 it, the one she identifies. Is that the first

1 page?

2 MR. HOGAN: Yeah. It's 25 of 236.

3 BY MR. GILREATH:

4 Q. 25 of 236 is Mr. Jolley. Okay. Next
5 one is 26 of 236. Who is that if you recognize it?

6 A. The top line appears to be Mr. Jolley.
7 I am not sure about underneath.

8 Q. Okay. The next one is 27 of 236. It
9 says Barringer.

10 A. That appears to be Mr. Jolley's.

11 Q. That's Mr. Jolley? Okay. 58 of 236.

12 A. That was a combination of --

13 Q. 2014.

14 A. That's a -- sorry. Give me one second.
15 Can you hear me now? That's a combination of two
16 people.

17 The majority of it is -- appears to be
18 Mr. Jolley's and where -- underneath where it says
19 share for Hampton and -- and there's an arrow and
20 then there's a block with writing underneath it
21 where it says: Incoming and discretionary. Yeah.
22 Discretionary SPOA, that's me. That's my writing
23 and then on the very bottom with the arrow --

24 Q. So that's your writing where it says,
25 Victor's share in trust? Discretionary trust, that

1 part's your writing?

2 A. No. No, sir. Under the: Share for
3 Hampton.

4 Q. It's who?

5 A. Under the: Share for Hampton.

6 Q. Yeah.

7 A. There is small writing.

8 MS. PAYLOR: Y'all lie. It's up on the
9 page.

10 THE WITNESS: Yes, there. That's my
11 writing and then on the very, very bottom that's
12 my writing.

13 BY MR. GILREATH:

14 Q. Is the rest of it John Jolley?

15 A. It appears to be John Jolley's.

16 Q. Okay. Now -- now, who -- who was
17 telling Mr. Jolley to write this down and told
18 you to write down what you wrote down?

19 MS. KIRK: Do you want us to take a
20 break now?

21 MR. GILREATH: I just want to know
22 where she was getting her instructions from.

23 MR. TWOMBLEY: I think you're --

24 MS. KIRK: Well, if you're going to
25 go into any more questions about the documents

1 we're going to take a break to discuss them if
2 you're going into details about it. We can go off
3 the record.

4 THE VIDEOGRAPHER: We are going off the
5 record. It is 6:15 PM.

6 (A recess transpired.)

7 BY MR. GILREATH:

8 Q. We'll we can come back to that one.
9 We'll come back to that and move along. The next
10 one is Document 151 of 236 dated 2/30/2015.

11 A. That appears to be Mr. Jolley's.

12 Q. And -- wait a minute. That's who?

13 A. John Jolley's.

14 Q. That's Jolley's. Okay. How about
15 152 of 236?

16 A. That appear to be -- appears to be
17 John Jolley's.

18 Q. Okay. All right. That's all of it.
19 Didn't I have a question I want to ask that day --
20 the one -- let's go back to this one. This is
21 that -- the one you wrote on. This is Barringer
22 58 of 236.

23 A. That's -- my writing is on that.

24 MS. KIRK: I think it's P. Barringer
25 113 and the 58 of 236 is a subpoena response

1 number.

2 MR. GILREATH: Okay. So whatever it
3 is, P. Barringer, 113. Just so we've got --is
4 that -- are we all on the same page on that?

5 MS. KIRK: We're on Page 113 on the
6 screen.

7 BY MR. GILREATH:

8 Q. Okay. And it's Page 58 of 236 on their
9 subpoena response. My question to you is, you
10 were apparently in the room when that was being
11 discussed because you wrote some notes on it down
12 at the bottom. Right?

13 MS. KIRK: We're going to take a break
14 to discuss the document if you're going into the
15 details about it so we can go off the record.

16 THE VIDEOGRAPHER: We are going off the
17 record. The time is 7:5 PM.

18 MR. GILREATH: 'All.

19 (Off-the-record conference.)

20 THE VIDEOGRAPHER: This is the
21 beginning of Media Unit 3. The time is 6:19. We
22 are back on record.

23 BY MR. GILREATH:

24 Q. We have got on the screen P. Barringer,
25 000113, 58 of 236 to the subpoena response. And

1 you identified just for -- so the record is clear
2 Bill was pointing to that part up about the middle
3 of the page that's -- it's underneath: In trust
4 for Ray Wade. Is that your writing?

5 A. Yes.

6 Q. Can you --

7 A. I'm sorry. Yes.

8 Q. Tell me what you're trying to say there
9 or what that abbreviation means if you remember.

10 A. Yes. INC stands for income and slash
11 D-I-S-C would be discretionary principal.

12 Q. Okay.

13 A. SPOA is special power of appointment
14 and the Y wide open. In default of that it would
15 go to the issue.

16 Q. Okay. Then you wrote the part down at
17 the bottom that -- he's got that pointed to that --
18 says -- what -- something -- points -- underneath
19 Victor as trustee. You've got something about a
20 successor. Is that what that says?

21 A. Yes.

22 Q. What about the part over to the left?
23 Did you write or that or is that his writing?

24 A. That's his.

25 Q. Okay. Now, my question is, who was in

1 the room with you when you were writing these notes
2 and getting these instructions?

3 A. When I was writing the notes it was
4 just me and John.

5 Q. Just you and John?

6 A. When I was writing my notes. Yes, sir.

7 Q. And he was telling you to do that,
8 correct?

9 A. Yes. We were discussing the scope of
10 the work.

11 Q. Now, up at the top it says: Barringer,
12 5/1/2014. Would that be a date that he had a
13 meeting with them?

14 A. Yes, sir.

15 Q. Were you in that meeting?

16 A. No, sir.

17 Q. Do you know who he met with?

18 A. Barringer at the top indicates that he
19 met with the client named Barringer.

20 Q. If Randy or Merrill were in that
21 meeting would he typically a make a note of that?

22 A. I can't say what he would do.

23 Q. All right. Okay. Can you tell me what
24 the -- what is the -- you've got Victor with an
25 arrow and then Hampton with an X through -- through

1 Hampton. What does that X mean?

2 MR. TWOMBLEY: Object to form of the
3 question.

4 BY MS. KIRK: Object to the form.

5 BY MR. GILREATH:

6 Q. Do what? Can you answer my question.

7 A. Yes, sir. So you're talking about the
8 top. It says: Change order, successor trustee.
9 The X across Hampton would be not to include her.

10 Q. Successor trustee. So in other words
11 you were saying not to make Hampton a successor
12 trustee. Right?

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: Object to form.

15 BY MS. GILREATH:

16 Q. Somebody told you that, right?

17 MS. KIRK: Object to the form.

18 MS. PAYLOR: Object to form.

19 BY MS. GILREATH:

20 Q. Did somebody tell you that?

21 A. It -- it's on his notes. He didn't
22 necessarily tell me that.

23 Q. All right. That's John Jolley's
24 writing?

25 A. Yes --

1 Q. We'll --

2 A. -- sir.

3 Q. -- talk to Mr. Jolley about that. What
4 about the part over this where it says MBL? Which
5 I assume is Merrill Barringer Light --

6 A. Uh-huh.

7 Q. -- as trustee. And then you've got:
8 Not Victor. What is that?

9 MS. KIRK: Object to the form.

10 MR. TWOMBLEY: Same objection.

11 MS. PAYLOR: Objection to the form.

12 THE WITNESS: I don't see how you're
13 saying not Victor.

14 BY MR. GILREATH:

15 Q. Do what?

16 A. Why did you say not Victor?

17 Q. That's what it says. It says: MBL as
18 trustee. Line underneath trustee -- abbreviation
19 for trustee. Then it says: Not Victor, S-T-T-E-E.

20 A. Oh, down at the bottom. I'm sorry. I
21 was looking in the middle of the page. Thank you.
22 I don't recall what that means.

23 Q. Is that Mr. Jolley's writing?

24 A. Yes, sir. Okay. Actually, I think I
25 understand now what that means.

1 Q. Say what? They --

2 A. It appears to me that they didn't want
3 Victor to be trustee of his share of the trust.

4 Q. They did not want Victor's trustee of
5 his share, right?

6 MR. TWOMBLEY: Object to the form.

7 MS. KIRK: Object to the form.

8 THE WITNESS: That is what I would take
9 that to -- that's how I would interpret John's
10 notes.

11 BY MR. GILREATH:

12 Q. I've got you. I couldn't hear you
13 good. Do -- do you have any understanding of why
14 they didn't want Victor as trustee of his own
15 trust?

16 A. It's a discretionary --

17 MS. PAYLOR: Object to --

18 THE WITNESS: Trust --

19 MS. KIRK: Object to the form.

20 THE WITNESS: -- which means it's
21 discretionary income and principal and so they
22 don't want to give him power over that discretion.

23 BY MR. GILREATH:

24 Q. All right. What does this say here?
25 And that date up at the top is 5/1/2014. Correct?

1 A. Yes. It appears to be 5/1/2014.

2 MR. GILREATH: Okay. All right.
3 Everybody hold on one minute. All right. Let
4 me -- let me talk to my troops here one more time
5 and I think I'm through.

6 MS. KIRK: I really want him to put
7 a picture of his house up because I want to know
8 if his whole thing's got lights or if it's just
9 the one tree. I think way too much about people's
10 like decor and stuff when I'm sitting here looking
11 at it for too long.

12 THE WITNESS: It could have been a
13 lanai as well.

14 THE COURT REPORTER: Are we still on
15 the record?

16 MR. TWOMBLEY: No. Let's not --
17 sorry.

18 THE COURT REPORTER: We need to go off
19 then.

20 MR. TWOMBLEY: We'll just stop talking.

21 MS. KIRK: I apologize. I thought we
22 were off the record.

23 MR. GILREATH: All right. We're ready
24 to the shut it down. Y'all got any questions?

25 MS. PAYLOR: I have no questions.

1 MR. TWOMBLEY: I don't have anything.

2 MR. GILREATH: Mr. Molster, you got any
3 questions?

4 MR. MOLSTER: No, sir.

5 MR. GILREATH: Ashley.

6 MR. TWOMBLEY: I --

7 MR. MACLOSKIE: No questions.

8 MR. TWOMBLEY: I have one.

9 MR. MOLSTER: Thank you for asking.

10 MR. TWOMBLEY: The only question I have
11 for you, Jim, is do you -- do you want us to -- I'm
12 not a hundred percent sure if you think we got
13 around the privilege issues and you -- you've got
14 the answers or do -- do you want us to file a
15 motion or -- I think what Bill and I did last time,
16 Bill, was you -- you got the transcript and
17 reviewed it and then you were going to let me know
18 if you wanted us to file a motion.

19 And I'm fine doing, that, too but I
20 know there's like a timing deadline on doing it.

21 I think you've got what you wanted to.
22 But, you know, it's up to y'all.

23 MR. GILREATH: Well, you think I've got
24 everything you wanted -- I wanted.

25 MR. MOLSTER: I've got the same

1 question, Jim. I've got the same question. I
2 think we worked around all of the instructions,
3 but if you don't think so and we need to file a
4 motion just let us know and we'll do it.

5 MS. KIRK: And one other issue that
6 comes up with that, too, Jim was that you had asked
7 for her Social Security number. Are you still
8 seeking that or have you abandoned that question?

9 MR. GILREATH: I'll probably let you
10 get away with that.

11 MR. TWOMBLEY: Bill, why don't you just
12 review the transcript and, you know, just let us
13 know. If you -- you want us to file one we'll file
14 it.

15 MR. GILREATH: I'm going to push on
16 the Social Security question; so that's resolved.
17 But I don't -- I don't know. The rest of them,
18 y'all had so many I could write a book about them.
19 I'm certainly not --

20 MS. PAYLOR: There weren't that many.
21 There weren't that many.

22 MR. MACLOSKIE: I haven't said much,
23 but let's wait for everybody to get the transcript
24 and decide what to do after that. In the meantime
25 everybody have a Merry Christmas. Be safe.

1 MS. PAYLOR: Thank you, Mike.

2 MS. KIRK: I just want to make sure
3 it's clear on the record. The only thing that
4 I think has been marked as an exhibit is this
5 notebook which has 33 tabs in it. Is that correct?

6 MR. GILREATH: It's got -- we e-mailed
7 them to you. It's not 37 tabs I'm told.

8 MS. KIRK: I've got 33.

9 MR. GILREATH: Well, you'll get the
10 rest of them.

11 THE COURT REPORTER: I need to know.

12 MR. MACLOSKIE: There's 33 in the
13 original ones and we e-mailed some -- I think three
14 more today or I believe yesterday.

15 MS. KIRK: Well, those are the
16 documents I think that she hadn't seen. So I'm
17 just confused about what everybody thinks is on the
18 record and --

19 MR. GILREATH: Those are exhibits to
20 33. The book I've got now -- I think when you get
21 them all and put the tabs in them there will be 36.
22 Right, Bill? There will be three more. It's 36.

23 MS. KIRK: The court reporter hasn't
24 been provided with any of that I don't believe.

25 MR. GILREATH: We'll send that to her.

1 I think we'll sent it all to y'all. There ain't
2 any secrets to any of that. We sent it all.

3 THE COURT REPORTER: I can e-mail him
4 and find out, but --

5 MR. TWOMBLEY: It's not a matter of it
6 being a secret. We want to make sure the record is
7 straight. If you don't care if it's straight I
8 certainly don't care, 33 plus these three that are
9 out there in Never Never Land in the -- in the
10 e-mails. So sounds good to me.

11 THE COURT REPORTER: I'm sorry. Will
12 there be three more they're sending me? And I
13 don't know what they are.

14 MR. TWOMBLEY: Allegedly.

15 MS. KIRK: I don't know.

16 MR. TWOMBLEY: Neither do I. Please
17 put that on the record, your question and my
18 answer.

19 THE COURT REPORTER: I'm just trying to
20 find out if --

21 MR. TWOMBLEY: I know. I'm trying to,
22 too. I'm just trying to help. I'm trying to help
23 her. I want that on the record.

24 MS. PAYLOR: Are we done?

25 MR. TWOMBLEY: I'm serious. I

1 want that --

2 MS. PAYLOR: Bye, everybody.

3 MS. TWOMBLEY: All right. Thank you.

4 THE COURT REPORTER: I need to get
5 order information before we hang up.

6 MR. GILREATH: Mr. Macloskie.

7 MR. MACLOSKIE: Yeah.

8 THE VIDEOGRAPHER: This concludes the
9 deposition of Rebecca Bostick. The time is 6:38
10 PM. We are now off the record.

11 THE COURT REPORTER: Reading or
12 waiving?

13 MS. KIRK: We'll read. You can send
14 that to my e-mail.

15 (The witness, after having been advised
16 of her right to read and sign this transcript, does
17 not waive that right.)

18 (The deposition was concluded at 6:38
19 PM.)

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Priscilla Nay, Court Reporter and
Notary Public for the State of South Carolina, do
hereby certify that the foregoing transcript is a
true, accurate, and complete record.

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

Witness my hand, I have hereunto
affixed my official seal this 11th day of December,
2020 Charleston, Charleston County, South Carolina.



Priscilla Nay,
Court Reporter
My Commission expires
December 2, 2021

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1 Ariail B. Kirk

2 akirk@jolleylawgroup.com

3 December 11, 2020

4 RE: Luzak, Hampton v. Light, Merrill

5 12/3/2020, Rebecca Lynn Bostick (#4337918)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 litsup-ga@veritext.com.

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,
23 Veritext Legal Solutions

Luzak, Hampton v. Light, Merrill

Rebecca Lynn Bostick (#4337918)

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REASON_____

Rebecca Lynn Bostick

Date

Luzak, Hampton v. Light, Merrill

Rebecca Lynn Bostick (#4337918)

ACKNOWLEDGEMENT OF DEPONENT

I, Rebecca Lynn Bostick, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Rebecca Lynn Bostick

Date

*If notary is required

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_____ DAY OF _____, 20____.

NOTARY PUBLIC

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

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

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

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT ROA 005696

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HAMPTON B. LUZAK vs MERRILL B. LIGHT and MERRILL U. BARRINGER
2016-CP-07-1919 - PAUL LONG, M.D.

1 IN THE COURT OF COMMON PLEAS
2 STATE OF SOUTH CAROLINA
3 COUNTY OF BEAUFORT

4 IN THE MATTER OF ESTATE OF PAUL
5 BRANDON BARRINGER, II,
6 HAMPTON BARRINGER LUZAK,
7 Plaintiff,

8 vs. CIVIL ACTION NUMBER
9 2016-CP-07-1919

10 MERRILL B. LIGHT, MERRILL U. BARRINGER, AS
11 PERSONAL REPRESENTATIVE OF THE ESTATE OF
12 PAUL BRANDON BARRINGER, II, J. RANDOLPH LIGHT,
13 JR., MERRILL B. LIGHT AS PUTATIVE TRUSTEE OF THE
14 PAUL B. BARRINGER, II REVOCABLE TRUST DATED
15 DECEMBER 4, 1998, AND MERRILL B. LIGHT AS
16 TRUSTEE OF THE MERRILL BARRINGER LIGHT REVOCABLE
17 TRUST,
18 Defendants.
19 -----/

20 IN THE MATTER OF ESTATE OF PAUL
21 BRANDON BARRINGER, II,
22 HAMPTON BARRINGER LUZAK,
23 Plaintiff,

24 vs. CIVIL ACTION NUMBER
25 2019-CP-07-01253
2019-CP-07-01294

26 MERRILL U. BARRINGER,
27 Defendant.
28 -----/

29 VIDEO DEPOSITION OF
30 PAUL M. LONG, M.D.
31 JANUARY 13, 2021



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The videotaped deposition of PAUL M.
LONG, M.D., a witness in the above-entitled
cause, taken pursuant to Notice and agreement,
before Amanda Bowen, Stenographic Reporter and
Notary Public and Charles
Nussbum, Video-Technician at Heritage Medical
Partnership, 89 North Main Street, Hilton Head
Island, South Carolina, on the 13th day of
January 2021, commencing at or about the hour of
3:44 p.m.



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18 Hampton Luzak

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1 (Whereupon, Defendant's Exhibit
2 Number 1 was marked for
3 identification.)

4 PAUL LONG, M.D.,
5 having been produced and first duly sworn as a
6 witness, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. TWOMBLEY:

9 Q Would you please introduce yourself for
10 the record?

11 A I'm Paul Long. I'm a board-certified
12 internist. I've practiced internal medicine on
13 Hilton Head for the last 46 years.

14 Q Okay.

15 A I'm 75 years old.

16 Q Okay. Thank you.

17 Dr. Long, my name is Ashley Twombley.
18 We met before. I represent Merrill Barringer,
19 along with Lee Walters, in a lawsuit that has
20 been brought by Mr. and Ms. Barringer's
21 daughter, Hampton Luzak, and we're here today to
22 take your deposition.

23 Have you ever had your deposition
24 taken?

25 A Many times.



1 Q Okay. So you know the ground rules,
2 but you've obviously been placed under oath and
3 swore to tell the truth. And even though we're
4 not in the courtroom, the oath you were
5 administered is the same as if we were in a
6 courtroom.

7 You realize that?

8 A I do.

9 Q Okay. I'm going to ask you questions
10 and the court reporter is going to take down my
11 question and your answer. If you will try to
12 let me finish my question and complete it before
13 you answer, that will make it a lot easier for
14 the court reporter. Okay?

15 A That will be fine.

16 Q If you have a question about my
17 question, you just let me know. If you don't
18 understand them, I can rephrase them. We'll be
19 happy to try to do our best to make sure you
20 understand all the questions.

21 Is that fair enough?

22 A It is.

23 Q Okay. Great. Could you start, please,
24 by telling us a little bit about your formal
25 education?



1 A Graduated from high school in Dallas in
2 1964. Graduated from North Texas State
3 University in 1968. I graduated from the
4 University of Health Sciences in Chicago in
5 1973. I did a straight medical internship and
6 a -- followed by a residency in internal
7 medicine at the Tucson Hospital's Medical
8 Education Program, which included the University
9 of Arizona Pima County Hospital and Tucson
10 Medical Center.

11 Q Okay. And when did you start formally
12 practicing as a doctor?

13 A 1976.

14 Q Okay. And where did you first
15 practice?

16 A Here.

17 Q Okay. So you've been in Hilton Head
18 since 1976?

19 A I have.

20 Q Okay. And you've been an internal
21 medicine doctor that entire time?

22 A That's all I practice, is internal
23 medicine.

24 Q Okay. All right. I don't want to go
25 back to the very beginning in 1976, but, say,



1 for the past 30 years, can you tell us the names
2 of the medical practices that you've practiced
3 under?

4 A Well, it's been a variety, but let's
5 see. I practiced on my own for several years
6 and then 1990 -- let's say 1991, I joined
7 Southeast Healthcare Associates. We had 61
8 doctors, 21 clinics around Georgia and South
9 Carolina. And I was -- my office was here.
10 They recruited me to join their group. In 2000,
11 that broke up and we started Heritage Medical
12 Center on Hilton Head and we had six internists.
13 Five --

14 MR. GILREATH: Ashley? Ashley,
15 this is Jim Gilreath. I hate to
16 interrupt, but this mike, I'm having
17 the worst time hearing him than I could
18 on the one we had here not too long ago
19 that we had a bad mike on. I don't
20 know how you guys are hooked up over
21 there or whether he's on a computer or
22 something, but I can't understand
23 anything he's saying hardly.

24 Can you, Bill?

25 THE VIDEOGRAPHER: We're going off



1 the video.

2 MR. TWOMBLEY: We're going to go
3 off the record.

4 (Whereupon, we were off the record
5 at 3:48 p.m.)

6 THE VIDEOGRAPHER: Back on video.

7 THE WITNESS: Okay. So I joined
8 the -- we built a clinic in 2000,
9 called it The Heritage Medical
10 Partners. And then seven, eight years
11 ago now, that broke up and we all kind
12 of went on our own. I'm in private
13 practice by myself now at this
14 location.

15 BY MR. TWOMBLEY:

16 Q Okay. So I guess from roughly about
17 2000 until 2011 or so, you were at Heritage
18 Medical Partners?

19 A Correct.

20 Q Okay. And then for the past seven or
21 eight years, you've been in a private practice?

22 A Correct.

23 Q Okay. All right. And do you treat
24 elderly patients here on Hilton Head?

25 A The majority of my patients are



1 elderly.

2 Q Okay.

3 A I mean, currently.

4 Q Has that always been the case?

5 A No. When I was -- back in 1976, I
6 probably had -- I treated elderly patients, 20
7 percent, maybe. Now, the great -- the great
8 majority of my patients are in their 70s, 80s,
9 90s.

10 Q Okay. How long would you say that the
11 majority of your patients have been elderly?

12 A Thirty years.

13 Q Okay. Do you treat --

14 A I don't know what the word "elderly"
15 means, I don't like the word, but Medicare age,
16 I should say.

17 Q Okay. All right. Do you have
18 experience treating elderly people who have
19 dementia, Alzheimer's Disease?

20 A I do, yes.

21 Q Have you been treating those patients
22 for --

23 A Long time.

24 Q Over 30 years?

25 A Absolutely.



1 Q Okay. Is treating elderly patients
2 with cognitive disorders, is that a routine part
3 of your practice?

4 A It is.

5 Q You obviously were the doctor for Paul
6 Barringer, who we are here about today.

7 Can you please tell me when you met
8 Paul Barringer, if you remember?

9 A I can't remember the day I met him. He
10 came in to my practice sometime prior to that.
11 I knew about Paul Barringer. He is one of the
12 local icons here and I saw him around the island
13 and then he became my patient. And the exact
14 date or week, I'm not sure of when that was, but
15 a long time I've known Paul Barringer.

16 Q I think you previously testified he was
17 your patient for decades. Is that consistent --

18 A Long time, yeah.

19 Q Okay. All right. Do you have a
20 concierge medical practice or is it --

21 A I didn't back then. I do now.

22 Q Okay. When did you make that switch?

23 A I made the switch four years ago.

24 Q Okay. All right. Did you know Paul
25 Barringer socially or just professionally as a



1 patient?

2 A I saw him at different things, chamber
3 ball, all these things that happen on the
4 island. And most people, I think, in my group
5 that I socialize with either knew Paul Barringer
6 or knew of him.

7 Q Okay.

8 A And so we saw him a lot of different
9 places.

10 Q Okay. All right. I have marked as
11 Exhibit 1 in this black binder in front of you,
12 some of Mr. Barringer's medical records from
13 your office and some other providers, and I'd
14 ask that you get this notebook in front of you.
15 I got one in front of me, as do the other
16 attorneys, and we're going to be talking about
17 some of those documents and I'll be referring to
18 the tabs on the right-hand side.

19 If you would turn to Tab 1, and this
20 appears to be a December 2nd, 2010, note from
21 you about Paul Barringer; is that correct?

22 A It appears to be that, yes.

23 Q Okay. And I think I said 2001, it is
24 2010. I misspoke.

25 Anyway, I started with this note



1 because it would appear that this was around the
2 time that Paul found out he had prostate cancer.

3 Do you remember that?

4 A I do remember him having prostate
5 cancer.

6 Q Okay. And is your memory consistent,
7 that that would have been around December 2010?

8 A Yes.

9 Q Okay. During this visit, I don't see
10 any note or reference about Mr. Barringer having
11 any type of cognitive disorder or any type of
12 memory problem at all.

13 Do you know or do you remember whether
14 or not Mr. Barringer was experiencing any type
15 of memory problem in 2010?

16 A He didn't have any memory problem.

17 MR. GILREATH: Object to the form
18 of the question.

19 THE COURT REPORTER: Who was that?

20 MR. TWOMBLEY: That was Jim
21 Gilreath.

22 THE WITNESS: Yeah, he doesn't
23 have -- he didn't have, to my
24 knowledge, any memory problems.

25 BY MR. TWOMBLEY:



1 Q Okay. Let me rephrase the question
2 since there was an objection.

3 Tell me about the medical problems
4 Mr. Barringer was having in December 2010.

5 A Prostate cancer.

6 Q Okay. Was there anything else of note?

7 A That particular day he came in, I
8 remember, he was very interested -- he had seen
9 other people and he had had a biopsy, and he had
10 a Gleason score of 3.4. He was concerned about
11 that because, you know, the Gleason score, the
12 majority of the people with Gleason scores have
13 a Gleason score of six. He wanted to know
14 about -- what's the difference between a six and
15 a seven and what was treatment.

16 Q Okay. And did you explain those things
17 to him?

18 A I did.

19 Q Let's turn to Tab 2, which is a
20 December 28, 2010 record of -- do you remember
21 seeing Mr. Barringer on the 28th of 2010, in
22 December?

23 A Right.

24 Q Okay. Do you remember having
25 discussions with him about the options for his



1 prostate cancer?

2 A Roughly, I did. Yeah, we went over the
3 same thing again.

4 Q Okay. And in this note, it says that
5 he's been all over and he's talked to many
6 urologists, and basically we decided, after a
7 long detailed session, that he would have
8 radioactive implants; is that correct?

9 A Right.

10 Q All right. And do you remember
11 discussing that with him?

12 A In a general way, I do remember that.

13 Q Okay. Other than the prostate problem,
14 do you recall Mr. Barringer have any other
15 problems?

16 A No.

17 Q Okay. All right. How was
18 Mr. Barringer, how would you describe his
19 cognition at that point in time?

20 A Excellent.

21 Q Okay. If we turn to Tab 3, this is a
22 March 24, 2011 record from your office regarding
23 Mr. Barringer; is that correct?

24 A This says 5/17/11.

25 Q You may have skipped one by accident.



1 A Let me see. March 24th.

2 Q Okay. All right. You saw
3 Mr. Barringer in your office on March 24, 2011?

4 A Apparently I did, yeah.

5 Q Is this your record from that visit?

6 A It appears to be that.

7 Q Okay. How was Mr. Barringer's
8 cognition at that point in time?

9 A I don't think there was a question of a
10 problem.

11 Q Okay. All right. If you'll turn to
12 the next record, which is Tab 4, this is a May
13 17th of 2011 record, and I would note, this one
14 says that he is going to have radiation at the
15 University of Virginia.

16 Do you see that?

17 A Mm-hmm.

18 Q Okay. Do you recall Mr. Barringer
19 having radioactive treatment for his prostate
20 cancer at the University of Virginia?

21 A Yes. Radium implants, as I remember.

22 Q Okay. Again, at this point in time,
23 how would you describe Mr. Barringer's
24 cognition?

25 A Fine.



1 Q Okay. The next record is November the
2 1st of 2011. It would appear, from your record,
3 that he has -- by this time, he has now had the
4 seeds implanted.

5 Is that consistent with your memory?

6 A He had had the seed implants, yeah.

7 Q Okay. And these are -- well, tell us
8 what -- generally, what -- how radioactive seeds
9 treat prostate cancer?

10 A Well, it kills the prostate cells. I
11 mean, you put a radioactive material anywhere,
12 it -- the key to radium implants is the
13 placement of the seeds. You get them off -- it
14 was in -- it was in vogue at this particular
15 time, to do implants.

16 Q Okay.

17 A Seed implants. It's not in vogue now,
18 but it was at the time.

19 Q Okay.

20 A And he had that, he had the seeds
21 implanted. The details of implantation, you'll
22 have to get from the urologist -- from a
23 radiation specialist.

24 Q Okay. Generally speaking, though, it
25 is my understanding you actually insert a



1 radioactive material into the body within --

2 A That's correct.

3 Q -- close proximity -- within close
4 proximity to the prostate cancer; is that right?

5 A That's correct, yeah.

6 Q Now, later in this record, number
7 three, it discusses complications with the
8 prostate surgery.

9 Tell me what you remember about
10 complications Mr. Barringer had for the prostate
11 surgery.

12 A Well, he had a lot of complications.
13 He had urinary incontinence at this point in
14 time, but it got much worse.

15 Q Okay.

16 A In the months and ahead.

17 Q Okay. What is your urinary
18 incontinence?

19 A That's where you're urinating --
20 basically, urinating in your pants.

21 Q Okay.

22 A When you're not trying to. Leakage of
23 urine.

24 Q Okay.

25 A It's a complication of all the



1 different treatments of prostate cancer.

2 Q Okay. Is that a known complication --

3 A Yes.

4 Q -- of a procedure like this?

5 A It is.

6 Q Okay. Now, it says here, the patient
7 has some potency problems. He has no urine
8 incontinence, but he is -- he has had trouble
9 urinating sometimes and he is somewhat
10 debilitated.

11 Does that refresh your memory as to the
12 specific complication Mr. Barringer was having?

13 A That is what the note says, and I have
14 to believe that that's what was going on.

15 Q Okay. So is it fair to say he was
16 having trouble urinating as opposed to leaking
17 urine?

18 A I think the leaking came, to my memory,
19 a little later. But at this particular time, it
20 says no leakage of urine, but he had potency
21 problems.

22 Q Okay. All right. What is a potency
23 problem?

24 A Difficulty getting an erection.

25 Q Okay.



1 A Which is a complication of all the
2 types.

3 Q Okay. It also says he has trouble
4 urinating sometimes and it is somewhat
5 debilitating.

6 Why would trouble urinating have a
7 debilitating effect on someone?

8 A Well, it depends on the trouble you're
9 having. I had prostate surgery five weeks ago
10 and I urinate basically every hour around the
11 clock, that's a complication of that. It
12 happens to a lot of different people. What
13 happens is they urinate in small amounts and
14 they have to do it all the time. They get
15 urgency incontinence, and I'm not sure what I
16 was referring to in that statement, but that is
17 not a uncommon complication.

18 Q Okay. He's clearly having some type of
19 problem with his urinary function?

20 A Yes, mm-hmm.

21 Q Okay. All right. If we turn to the
22 next record on Tab 6, this is the November 23rd,
23 2011 record. Now, in this record, I -- this is
24 the first reference I saw to dementia or any
25 type of cognitive dysfunction.



1 Do you have any memory Mr. Barringer
2 having any type of memory problem or cognitive
3 dysfunction prior to November 23, 2011?

4 A No. I don't have any memory of that.
5 Prior to this?

6 Q Correct.

7 A No.

8 Q Okay. All right. Now, it says, number
9 one, dementia.

10 Tell me what it means or what you meant
11 when you wrote dementia here?

12 A Well, dementia is a spectrum, and you
13 can use a scale of 1 to 10. Some people leave
14 their keys in the car and can't remember
15 people's names, that's very common. 50 percent
16 of people over the age of 85 have some dementia.
17 Maybe two and a half percent of the population
18 gets dementia at an early age. It can go up to
19 number ten, they can't remember anything, they
20 don't time, place, and person, they don't know
21 anybody around them. So it is spectrum.

22 Q Okay.

23 A And, you know, back at this time, it
24 was more like leaving the keys in the car and
25 not remembering somebody's name at a cocktail



1 party.

2 Q Okay.

3 A You know, that kind of deal. So I
4 would classify that back here -- I mean, it -- I
5 didn't think it was critical back here.

6 Q Okay. It says here next that you sent
7 him down to the mind center, briefly tell us
8 what -- what is the mind center and why did you
9 send Mr. Barringer there?

10 A We had -- we were getting very busy at
11 this particular time in our office and so we set
12 up a clinic just to have our patients that had
13 dementia, and we treated a lot of patients with
14 dementia, and we had a -- you know, consults
15 with neurologists if we needed it. And just to
16 handle their medication and explain to the
17 family what's going on.

18 Q Okay.

19 A We also had a spot where people that
20 were obese, that we would send them and talk
21 about diets and things.

22 Q Okay. What age -- would a urinary
23 problem or inability to urinate, could that
24 affect someone's cognition?

25 A Absolutely.



1 Q Okay. Why is that and how is that?

2 A If somebody comes into my office and
3 they are, let's say, 80, and they have become
4 demented in some form, the first thing you do is
5 a urinalysis.

6 Q And why is that?

7 A Because urine infections in elderly
8 people cause dementia.

9 Q Okay.

10 A It's a -- we see that -- I mean, I bet
11 I see it five, six, eight times a week.

12 Q Okay.

13 A People coming in from a nursing home or
14 from the home and they're demented, we treat the
15 urinary infection and the dementia goes away.

16 Q Okay. On November 23rd of 2011, did
17 you know exactly why Mr. Barringer was
18 exhibiting these signs of dementia?

19 A No.

20 Q Okay. And let's go back to the note.
21 The note says you sent him to the mind center
22 and they inscribed 31 percentile, 30th
23 percentile, and a 55th percentile and a 15th
24 percentile. This gives him a prediction that he
25 has significant dementia in the 60 percent



1 range.

2 I've been trying to do this math for a
3 while, can you tell me what you mean by or how
4 you came up with that 50 percent number?

5 A That is a good question. I don't have
6 a clue. That was in vogue at this time to do a
7 test called CANS-MCI, computer -- C-A-N --
8 assisted neurological testing something, mild
9 cognitive impairment, and that -- it didn't tell
10 you if you had dementia. A mini medical exam
11 tells if have you dementia, but this gives it
12 the percentage of chance that you might have
13 dementia.

14 Q Okay.

15 A That's why it fell out of vogue.

16 Q Okay.

17 A I didn't -- I don't put much weight in
18 it.

19 Q Okay.

20 A It was done, it was in vogue to do it.
21 Came out of the state of Washington and
22 everybody did it, but I'm not sure anybody does
23 it now. I don't know.

24 Q Okay. Thank you for clarifying that.

25 The note says, this gives him a prediction that



1 he had significant dementia in a 60 percent
2 range.

3 Do you know how you came up with the
4 60 percent number?

5 A Yeah. Basically, I did a
6 miscalculation there. He's got -- there are
7 three things that checks executive function and
8 two others, and one was 30 and the other was 30
9 and I think I added them together. Well, you
10 can't do that.

11 Q Okay.

12 A It is 30 percent for executive function
13 and 30 percent for cognitive. What are the
14 percentage chance that an individual has
15 dementia? It's 30 for executive function and
16 30 percent for cognitive. I'd have to look at
17 the test again, but that is my rec -- remember.

18 Q Okay. So if I heard you correctly --
19 do you need to take that?

20 A Can I get this?

21 Q Sure. We'll go off the record.

22 THE VIDEOGRAPHER: Off the video.

23 (Whereupon, a break was taken at
24 4:10 p.m.)

25 THE VIDEOGRAPHER: Back on video.



1 (Back on the record at 4:10 p.m.)

2 BY MR. TWOMBLEY:

3 Q Okay. So if I understood you
4 correctly, the 60 percent number is a
5 miscalculation?

6 A It has to be because it wasn't -- as I
7 recall, and what it says here, it's 30 percent.

8 Q Okay. All right.

9 A As I recall. Do you have a copy of
10 that test?

11 Q No. That was going to be my next
12 question to you. We --

13 A A year ago, whenever the -- we were
14 looking at this, I tried my best to find it and
15 I -- we don't have it.

16 Q Okay. All right. Well, let me just
17 ask you based on your memory and your -- you
18 know, the time you spent evaluating
19 Mr. Barringer in November of 2011, did
20 Mr. Barringer have significant dementia, in your
21 opinion, by any criteria?

22 A I don't think he had significant
23 dementia, he clearly had Swiss cheese, being
24 great for a while and occasionally, like I said,
25 he forgot things, he forgot people's names on



1 occasion. They call that swiss cheese because
2 it comes and goes.

3 Q Okay. All right. It says here under
4 the -- under the -- under the P for soap, I told
5 him, since he really cannot calculate or do
6 anything with short-term memory, we will start
7 him on Aricept or Namenda. He is to see Will
8 Garret, who is a neurologist.

9 What did you mean by he was not able to
10 calculate?

11 A Well, generally, we ask people to count
12 backwards from 100 by sixes or sevens or fives
13 or whatever, and, you know, he had a difficult
14 time doing that.

15 Q Okay. Other than that, were you able
16 to have an intelligent conversation with
17 Mr. Barringer?

18 A I had many. I mean, the guy was a
19 genius. He was one of the brightest people I've
20 ever talked to. We had long talks about
21 airplanes and airplane engines. As a
22 licensed -- I have an airplane. And we spent a
23 lot of time talking about aviation. You know,
24 he -- he had a very deep understanding of a lot
25 of very complicated things.



1 Q Okay.

2 A Excuse me.

3 Q And would you describe -- I mean, do
4 you remember having those conversations --

5 A I do.

6 Q -- with Mr. Barringer during this
7 period of time?

8 A I can take ten patients over the last
9 40 years that I remember having discussions
10 with, and these are people that are out of the
11 mainstream, they are like Paul. He was amazing.

12 Q Okay.

13 A I do remember talking with him.

14 Q It says, down at the bottom, that you
15 prescribed him Cipro.

16 What was the Cipro for?

17 A Urinary tract.

18 Q Okay. And did you believe he may have
19 had a urinary tract infection?

20 A That's why I gave it to him.

21 Q Okay.

22 A I thought that may have been the case.

23 Q Okay. And that --

24 A Because he -- can I go back?

25 Q Sure.



1 A Says he had to urinate all the time,
2 six to ten times a night. So that means he's
3 not getting much sleep, he's sleep deprived.
4 His urinary tract was a mess. It was a mess.

5 Q Okay. Okay. Let's turn to the next
6 tab, Tab No. 7. This is the first note I was
7 able to find in 2012. It says at the top,
8 you'll note, it says second note.

9 Do you know why it says second note?

10 A I don't have any idea.

11 Q Okay. If you -- if you read this note
12 for a moment, down about three quarters of the
13 way down, now you say that he scored a 37
14 percentile above the dementia scale.

15 What does that mean? Says we checked
16 three different scales and this took us about an
17 hour.

18 A Yeah. This was another CANS-MCI thing,
19 test, and basically, I can imagine that this is
20 37 percent chance of having significant
21 dementia.

22 Q Okay. All right. Down at the bottom,
23 it says, he can now pass a mini mental with a
24 perfect score of 30 so I do not see where we
25 need to do anything more than what we are doing.



1 Do you remember administering the mini
2 mental to Mr. Barringer during this time period?

3 A I can't put myself that day and what
4 chair, but I did mini mental exams and I was
5 surprised that he had a perfect score of 30.

6 Q Okay. All right. But you wouldn't
7 have put this in your record unless you had
8 actually performed the test and he scored a 30?

9 A Absolutely would not have done that.

10 Q Okay.

11 MR. GILREATH: Objection to the
12 form of the question.

13 THE COURT REPORTER: Who was that?

14 MR. TWOMBLEY: That was Jim
15 Gilreath.

16 BY MR. TWOMBLEY:

17 Q Why did you put in your record that he
18 can pass a mini mental with a perfect of 30?

19 A It says -- because we did it.

20 Q Okay.

21 A I wouldn't have put it in there.

22 Q Okay. Okay. All right. That's great.

23 A I don't know where that is.

24 Q Okay. If you'll turn to the -- turn to
25 the next document, it's 7-A, and do you have the



1 7-A there?

2 A I've got something that says A.

3 Q Okay. Are --

4 A December 27th?

5 Q Yeah. This is the December 27th, 2011
6 letter from Dr. William Garret to you about Paul
7 Barringer.

8 Previously, we saw that you referred
9 Mr. Barringer to Dr. Garret; is that right?

10 A That's right.

11 Q Okay. And do you remember receiving
12 this letter from Dr. Garret?

13 A Apparently I did. I don't remember
14 that, but --

15 Q Okay.

16 A -- apparently I sent it to him.

17 Q Okay.

18 A Yeah.

19 Q On the third page under the impression
20 section, Dr. Garret says he does have some
21 difficulty with abstract reasoning, which is a
22 documented on his neurological exam, but
23 overall, he has excellently preserved short-term
24 memory and visual spacial difficulty, which
25 would make the diagnosis a primary degenerative



1 dementia unlikely.

2 What did that mean to you?

3 A Well, it means that -- like I said,
4 there is -- dementia is not one disease, it is a
5 spectrum. It means that, you know, he had some
6 little bits -- small amount of difficulty, but
7 he could pass a mini mental exam. He doesn't
8 have any significant dementia.

9 Q Okay. And is that consistent with your
10 memory of Mr. Barringer during this time?

11 A Yes, it is.

12 Q Okay. If you turn to the next record,
13 this is a January 26, 2012 medical record of you
14 for Mr. Barringer. It says here that he is
15 markedly improved, he had a dementia study which
16 was very abnormal. We treated him and he is
17 markedly improved.

18 A Where are we now?

19 Q This is number eight.

20 A Oh, yeah. 1/26/12?

21 Q Yes. 1/26/12.

22 A Okay.

23 Q How had Mr. Barringer improved in
24 between the time you saw him -- the last time
25 you saw him and this visit on January --



1 A I must have been referring to the
2 CANS-MCI test when I said abnormal, because that
3 was abnormal.

4 Q Okay.

5 A Improved, I mean, I can only think of
6 what I was thinking about back then and I -- you
7 know, when you're improved, your short-term
8 memory is improved and he -- you know, he can
9 score a perfect 30. If you have any significant
10 dementia, nobody can score a perfect 30.

11 Q Gotcha. Down at the bottom, it says, I
12 probably spent one hour and thirty minutes with
13 him and his doctors on the telephone today.

14 Was that a significant period of the
15 time for you to spend with one of your patients?

16 A Not to spend with this gentleman.

17 Q Okay.

18 A I mean, I hate to keep saying this, but
19 this is not the ordinary citizen.

20 Q I gotcha. It says, about halfway down,
21 Dr. Will Garret -- it says that we sent him to
22 Dr. Will Garret who felt that he did not have
23 Alzheimer's disease.

24 A Correct.

25 Q Did you agree with that in January --



1 A Yes, I did. Absolutely.

2 Q Okay. All right. If we'll turn to the
3 next document, which is Tab No. 9, and I would
4 ask you to briefly review the record. And I
5 don't see any mention or reference during this
6 visit, which is February 16th of 2012, of any
7 type of the dementia or any type of memory or
8 cognitive problem.

9 Do you see anything?

10 A Yeah, I just read that. I didn't
11 mention anything.

12 Q Okay. If he was having cognitive
13 problems or memory disorder on February 16,
14 2012, is that something you would have recorded?

15 A Probably.

16 Q Okay. It says here you put him back on
17 Cipro, 500 milligrams, is that for the same
18 urinary --

19 A Yes. Yes.

20 Q Okay. And it says he -- at the top,
21 the patient had been urinating heavily all
22 night.

23 Where did you get that information?

24 A I don't remember. It could have been
25 his wife.



1 Q Okay.

2 A It was probably from Paul.

3 Q Okay. The note says, at the top, Paul
4 comes in for care.

5 A Right.

6 Q I notice some say Paul comes in with
7 his wife.

8 Would you have noted who the patient
9 came in with?

10 A Not necessarily.

11 Q Okay.

12 A I mean, I might -- it might have been
13 one or ten people and I didn't put it down.

14 Q Okay. Let's turn to the next record,
15 which is February the 27th of 2012. Take a
16 moment and review this record. The only
17 reference I see is at the end of the last --
18 first paragraph, it says, he has dementia but it
19 is mild according to the test that we give.

20 Do you see anything else dealing with
21 any memory problem?

22 A There's nothing on the note that I --
23 except for that.

24 Q Okay. If there had been anything else
25 other than a mild problem, would you have



1 recorded that in your record?

2 A Almost certainly.

3 Q On the next record behind Tab 11 is a
4 visit from March 15th of 2012.

5 Do you see that?

6 A Yes, 3/15/12?

7 Q Yes, sir.

8 A Yep.

9 Q On March the 15th of 2012, did you
10 notice any type of cognitive problems with
11 Mr. Barringer?

12 A I didn't put anything down, so I
13 didn't.

14 Q Okay. And that's my next question, if
15 you had noticed any type of cognitive problem,
16 is that something you would have recorded in
17 your record?

18 A I would think I would.

19 Q Okay. All right. Now, Dr. Long, I
20 want to go out of order in the exhibits for a
21 moment and I want to ask you to turn to page 35
22 or to Tab 35.

23 A Thirty-five.

24 MR. MOLSTER: Is there a page
25 number for that, Ashley?



1 MR. TWOMBLEY: There is no page
2 number, it's the Tab 35 in the notebook
3 of the exhibits that I circulated.

4 MR. MOLSTER: Okay.

5 BY MR. TWOMBLEY:

6 Q Dr. Long --

7 MR. MOLSTER: There are 100 -- 229
8 pages -- 228 pages.

9 MR. TWOMBLEY: It should be, I
10 think, the last two, Chip.

11 MR. MOLSTER: Thank you.

12 BY MR. TWOMBLEY:

13 Q While they are getting there --

14 MR. MOLSTER: Standards?

15 MR. TWOMBLEY: Yeah, correct.

16 MR. MOLSTER: Thank you.

17 BY MR. TWOMBLEY:

18 Q Dr. Long, what I'll represent to you
19 that what I have provided you here are some
20 statements under South Carolina law about the
21 standards for capacity in South Carolina to
22 engage in different -- to engage in different
23 activities.

24 Have you had a chance to read through
25 these standards?



1 A Well, almost all of them.

2 Q Okay. Well, let me ask you before we
3 talk --

4 MR. GILREATH: Ashley, I don't
5 mean to interrupt you, but before you
6 go any further there, I'm going to
7 object to this document. It's just --
8 I'm not sure what it is or where it
9 comes from, but I am going to object to
10 you using that with him. You can go
11 ahead, but --

12 MR. TWOMBLEY: Are you going to
13 continue to do the speaking objections
14 or?

15 MR. GILREATH: I just got through
16 with an objection to this document.

17 MR. TWOMBLEY: Yeah. Well, I'd
18 ask that you just object to the form of
19 the question.

20 MR. GILREATH: I couldn't make
21 that a form of the question.

22 MR. TWOMBLEY: And since you
23 asked, these are direct quotes from
24 South Carolina Jurisprudence and South
25 Carolina case law.



1 BY MR. TWOMBLEY:

2 Q So, Dr. Long, back to our -- my
3 question, in March of 2012, which is where we --
4 where we left off, did you have any question or
5 concern about Mr. Barringer's cognitive ability
6 as it may relate to him making a gift or
7 executing a will, enter into a contract,
8 anything of that nature?

9 A No.

10 Q Okay. Did Mr. Barringer have a
11 sufficient mental capacity to comprehend the
12 nature and consequences --

13 A Can I get this?

14 Q Sure.

15 THE VIDEOGRAPHER: Off the video.

16 (Whereupon, a break was taken at
17 4:28 p.m.)

18 THE VIDEOGRAPHER: Back on video.

19 (Back on the record at 4:30 p.m.)

20 BY MR. TWOMBLEY:

21 Q In March of 2012, and any time prior,
22 did you ever have any concern that Mr. Barringer
23 did not have the legal capacity to engage in any
24 act?

25 A No. Like I say, there is no question



1 that had a -- he would forget a few things, but
2 it didn't affect his -- I didn't feel that
3 with -- with -- with the talks that we had, that
4 he had any serious problems with short term or
5 long-term dementia. Like I said, if a 28 year
6 old man leaves his keys in the car, nobody
7 thinks a thing of it, but if you're 80 and leave
8 the keys in your car, immediately, a lot of
9 times -- that's a joke.

10 Q Right.

11 MR. GILREATH: Stand by a minute,
12 you -- I didn't want to interrupt, but
13 I'm going to object to that question
14 you just asked, relative to his answer.

15 THE WITNESS: Yeah, I don't -- I
16 wasn't alarmed at all in 2012.

17 BY MR. TWOMBLEY:

18 Q Okay. In your opinion, would
19 Mr. Barringer have the mental capacity to
20 comprehend the nature and consequences of making
21 a gift?

22 A Fairly sure.

23 MR. GILREATH: Object to the form.

24 BY MR. TWOMBLEY:

25 Q I'm sorry. Can you repeat your answer?



1 A Yes.

2 Q Okay. Did Mr. Barringer have the
3 mental capacity to know what he owned, know who
4 was his loved ones were, and to know he wanted
5 to -- what he wanted to give his loved ones at
6 the time of his death?

7 A I would think yes, absolutely.

8 MR. GILREATH: Object to the form.

9 BY MR. TWOMBLEY:

10 Q Did he have the ability to understand
11 the nature of a contractual agreement?

12 A I would think he would.

13 MR. GILREATH: Object to the form.

14 BY MR. TWOMBLEY:

15 Q Okay. Do you have any question about
16 that?

17 A No.

18 Q All right. Let's move on to Tab No.
19 12, going back in chronological order, related
20 to Mr. Barringer's care, and it appears that
21 Mr. Barringer came in on April the third of 2012
22 with several problems; is that right?

23 A I'm reading it, yes.

24 Q Okay.

25 MR. GILREATH: You on Tab 12,



1 Ashley?

2 MR. TWOMBLEY: Yes.

3 BY MR. TWOMBLEY:

4 Q Take a minute and familiarize --
5 familiarize yourself with the record and refresh
6 your memory.

7 A I read it.

8 Q Okay. It says number one, expressive
9 aphasia. What is expressive aphasia and why did
10 you put that in your note for Mr. Barringer in
11 April of 2012?

12 A Well, there are two types of aphasia.
13 There is receptive aphasia and expressive
14 aphasia. Expressive aphasia comes from area 44
15 of the frontal lobe and it is where people know
16 what they want to say but they miss a word, they
17 can't utter the word. So if they want to -- say
18 I'm going to the A & P drugstore or grocery
19 store, they'll say, I'm going to that grocery
20 store down there. They can't think of the word
21 A & P. They can't express the word. They know
22 what they want to say in their brain, but can't
23 express it.

24 Q Did you notice that in Mr. Barringer in
25 April of 2012?



1 A Apparently I did, he's missing words.

2 Q Okay. Further down, you say, the
3 patient is demented, at least he's lost a lot of
4 energy. And then you go on to say, he has
5 significant problems but when we test him, the
6 mini mental turned out fine and I have done the
7 mini mental multiple times.

8 What did you mean by that?

9 A Well, I think we've been talking about
10 that, the word demented is a scale, okay? I'm
11 going to repeat myself again. It is a scale.
12 You can be demented and have minimal dementia or
13 you can be completely loss of all brain function
14 and not know anybody and don't know relatives
15 and you can be demented. I didn't qualify this,
16 but at this period of time, he passes his mini
17 mental exams, so it has to be -- I would suggest
18 that he has -- at the lower end of the scale.

19 Q Okay. Was his -- was he still having
20 problems with his bladder function?

21 A Right.

22 Q Okay. And when you say at the lower
23 end of the scale, I think, previously, you
24 talked about a scale of 1 to 10?

25 A Arbitrary scale, yeah. You can make a



1 scale of the 1 to 1,000.

2 Q Okay.

3 A You know, he's -- to my way of -- my
4 remembering this, based on the conversations I
5 had, it was lucid and made good sense in depth
6 reasoning. And like I say, he could talk about
7 complicated things from the aviation realm with
8 ease.

9 Q Okay.

10 A If he had significant dementia, I don't
11 think he could do that.

12 Q Okay. It says here at the bottom that
13 you had spent 35 minutes with the patient face
14 to face.

15 Why did you put that in your note?

16 A Because I spent 35 minutes with him --

17 Q Okay.

18 A -- face to face.

19 Q Well, I see sometimes you note how long
20 you spent and sometimes you don't, did you want
21 to --

22 A You know, I don't know. Yeah, we
23 generally would put a time on that if I knew
24 what the time was. Apparently I knew what it
25 was that day.



1 Q Okay. Well, I've been to the doctor a
2 lot, it is hard to get 35 minutes with a busy
3 family practitioner.

4 A You know, the people -- the internist
5 at Hilton Head Hospital see 40 patients a day.
6 They have to in order to make their salary. I
7 see 12 to 14 patients a day. I spend at least
8 45 minutes with every patient I see, at least 30
9 minutes with every patient I see. Sometimes I
10 spend an hour, sometimes I spend 45 minutes.
11 But I've always done that.

12 Q Okay. And the -- great. Let's turn to
13 the next document exhibit or Tab No. 13. This
14 is a dated April the 30th of 2012, and it would
15 appear that Mr. Barringer is getting worse.

16 What was going on with Mr. Barringer on
17 April the 30th of 2012?

18 A Well, first of all, his urinary
19 problems are becoming logarithmic. He has a lot
20 of problems, a lot of pain in his pelvis,
21 urinating every five minutes. And I talked
22 Langley, Dr. Langley on the phone and he said,
23 you know, basically, there is nothing else -- as
24 I remember it, because we went -- we sought
25 other help after that.



1 Q Who is Dr. Langley?

2 A Mike Langley, he is a board certified
3 urologist that practices on Hilton Head.

4 Q Okay. And you said he's a urologist;
5 correct?

6 A Urologist.

7 Q Okay. And so why did you call his
8 urologist when he's having increase --

9 A I thought his primary problem was
10 urological, and he wasn't getting any better.
11 He was getting worse.

12 Q Okay. All right. Now, I will -- give
13 me one second. I'm going to now ask you about
14 number 14 -- well, before I ask you about 14,
15 I'm going to represent to you that Mr. Barringer
16 was hospitalized at Savannah Memorial Hospital
17 from May the 2nd to the May the 4th, which would
18 have been immediately following this visit.

19 Do you have any memory of when
20 Mr. Barringer was hospitalized in May of 2012?

21 A I know he was hospitalized, and we
22 talked about flying back to Virginia and he --
23 or I'd say, you have to have help right this
24 minute. He was literally screaming in pain. I
25 mean, he needed help immediately.



1 Q Why was he screaming in pain?

2 A Because the seeds had -- in my opinion,
3 his radium seeds were misplaced and they were
4 burning the tissue around the prostate.

5 Q Okay. And would that affect his urine
6 function?

7 A Absolutely.

8 Q Would his urine function affect his
9 cognition?

10 A Absolutely.

11 Q Okay. You said Mr. Barringer was
12 screaming in your office.

13 A It's horrible pain he had.

14 Q Okay. And this was immediately prior
15 to him going to the hospital in Savannah?

16 A We sent him right to Memorial, as I
17 recall, and I think we didn't spend much time
18 talking about it.

19 Q Okay. All right. Now, the next
20 document behind Tab 14 is a record from May the
21 8th of 2012, and I guess this would have been
22 about four days after his hospitalization.

23 Do you remember seeing Paul after his
24 hospitalization at --

25 A I can read my note.



1 Q Okay.

2 A But I did see him after his
3 hospitalization.

4 Q Okay. This note says, Paul comes in
5 with his wife and we talked to St. Joseph's
6 Hospital, with three doctors over there. We
7 spent about an hour together. He had terrible
8 trouble urinating. He went to St. Joseph's,
9 they put a catheter and it relieved all of his
10 symptoms. He is still confused and has poor
11 memory.

12 Tell me -- obviously, other than what's
13 in the note, what you remember about what they
14 did for Mr. Barringer and why that improved his
15 condition?

16 A Well, he couldn't urinate and his
17 bladder was expanded. And, you know, when they
18 relieve the pressure off of there, and that's --
19 he got better. As I recall, they treated an
20 infection. When you have retention of urine,
21 you almost always have some infection if it's a
22 significant retention. And so they relieved the
23 retention, one thing or another, and he got
24 better.

25 Q Okay. How was Mr. Barringer's



1 cognitive condition on May 8th, 2012 after he
2 got out of the hospital?

3 A I don't think I mentioned anything
4 about it.

5 Q Well, it says, he's still confused and
6 has poor memory.

7 A Does it say that there? Let's see,
8 where does it say that?

9 Q At the end of the first paragraph.

10 A Oh, yeah, he is still confused and
11 still has a poor memory.

12 Q Okay. Did you think his cognition had
13 decreased after the hospitalization?

14 A I can't tell by my note.

15 Q Okay. You have any memory of there
16 being a --

17 A Well, I know that after that, he was
18 much better. I mean, I can't describe the pain
19 he had, it was horrible. And so, clearly, he
20 was much better with his urinary tract, and I'm
21 not -- you know, I can't tell from my note
22 whether it was worse, better, or the same.

23 Q Okay. Would any degree of cognitive
24 impairment that he had on May the 8th, would any
25 of it have risen to the level of affecting his



1 ability to understand a contract or a gift or
2 execute a will?

3 MR. GILREATH: Object to the form
4 of that question.

5 BY MR. TWOMBLEY:

6 Q You can answer.

7 A Oh, throughout 2012, I didn't think he
8 had dementia that had risen to the point of
9 affecting his day-to-day life or -- I don't know
10 much about his business, but I wouldn't think it
11 would affect his business life either. You
12 know, he would walk into the office and have a
13 conversation, and, you know, he would forget
14 things, occasionally.

15 But, you know, dementia comes in
16 multiple forms, and generally, you can tell if
17 somebody walks into the office and they have
18 significant dementia. It is the way they
19 present themselves, their persona is different
20 and they -- the way their eyes look are
21 different. It's just a picture you get with
22 them coming in.

23 Generally, people don't come in and
24 shake your hand and say, how are you doing, how
25 is that airplane of yours? You know, that kind



1 of thing, and that's the way he was at this
2 point in time.

3 Q Okay. Great. It says here he is going
4 to go to the University of South Carolina and
5 Cleveland Clinic to get some help.

6 A We talked about those things.

7 Q Okay. All right. Let's turn to Tab
8 15, and I will represent to you that what you're
9 looking at, Dr. Long, is e-mail from an attorney
10 here on Hilton Head named John Jolly to -- it's
11 addressed to Merrill Light and it says, Merrill,
12 this would be great, let me know if Dr. Long
13 needs any help or has any questions.

14 And if you look at the second page, it
15 is an unsigned physician's certificate of
16 competency.

17 A I don't see those notes or that letter.

18 Q Okay.

19 A It is under 17?

20 Q Fifteen. It's behind 15. You jumped
21 ahead of us.

22 A Okay. It's from John Jolly to Merrill
23 Light. Okay. I see that. I don't remember
24 that.

25 Q Okay. If you'll turn to the second



1 page, this is an unsigned physician's
2 certificate of competency that was attached to
3 the e-mail, and then if you'll turn to the third
4 page, this is the same certificate, but now
5 it's -- it's been signed.

6 You see those three documents?

7 A I do.

8 Q Okay. Now, first of all, do you -- do
9 you have -- well, strike that. Let me just
10 rephrase the question.

11 Is this your signature on page 3?

12 A It is.

13 Q Okay. And it says in this certificate
14 that you signed that you had reviewed
15 Mr. Barringer's relevant medical history.

16 Did you review or are you familiar with
17 his relevant medical history prior to signing
18 this document?

19 A Apparently I did because I signed it.

20 Q Okay. Would you have signed it if you
21 had not done that?

22 A No. No, I wouldn't have signed it if
23 I --

24 Q Okay.

25 A I just didn't sign the document --



1 Q Okay.

2 A -- unless I agree with everything that
3 is on there.

4 Q All right. Let me show you, I'm going
5 to come back to the certificate. If you go back
6 to the e-mail, it is dated August the 28th of
7 2012, and then if you'll turn to page -- Tab 16,
8 it appears that you saw Mr. Barringer on August
9 the 29th of 2012.

10 Do you -- do you remember whether or
11 not you signed the certificate on the 29th of
12 August 2012?

13 A Do I remember? I don't remember
14 signing it.

15 Q Okay.

16 A I can only say that I wouldn't have
17 signed it if I didn't agree with it.

18 Excuse me one second.

19 THE VIDEOGRAPHER: Off the video.

20 (Whereupon, a break was taken at
21 4:48 p.m.)

22 (Back on the record at 4:51 p.m.)

23 MR. GILREATH: I'm going to object
24 to that last question. Asked and
25 answered.



1 THE VIDEOGRAPHER: I'm back on the
2 video.

3 MR. TWOMBLEY: Which question was
4 that, Jim?

5 MR. GILREATH: The last one you
6 asked.

7 MR. TWOMBLEY: What was it and
8 what's the objection?

9 MR. GILREATH: About signing this
10 document on August 29, 2012. I don't
11 know how you formed it, you -- I have a
12 problem with the form of it.

13 MR. TWOMBLEY: Well, what's the
14 objection?

15 MR. GILREATH: Object to the form.
16 Leading question.

17 MR. TWOMBLEY: I think -- I think
18 I can ask you to give me the basis for
19 your objection so I can try to remedy
20 it. So what is the basis for your
21 objection?

22 MR. GILREATH: Object to the form
23 of it, it's a leading question. That's
24 all I got to do.

25 MR. TWOMBLEY: Anything other



1 objections you got to the question?

2 MR. GILREATH: I stated them all
3 on the record, Ashley. That's all I
4 have to do, as I understand it.

5 MR. TWOMBLEY: Okay.

6 BY MR. TWOMBLEY:

7 Q Dr. Long, I'm not quite sure where we
8 left off. I think I was showing you the Tab 15,
9 which is on August the 28th and showing you that
10 you saw Mr. Barringer the next day on August
11 29th.

12 Do you recall that discussion?

13 A The one we just had. Yes.

14 Q Okay. And I think I asked you if
15 you -- well, obviously, the certificate that you
16 signed is not dated.

17 Do you have any reason to believe you
18 didn't sign it on the next day, on August 29th,
19 2012?

20 A Apparently I did, that's my signature.

21 Q Okay. But as far as the specific date?

22 A Well, I would have to assume that's
23 when it occurred.

24 Q Okay. All right. Now going back to
25 the certificate that you signed, which is the



1 third page of exhibit -- of Tab 15, it says, I
2 have personally interviewed Paul Barringer and I
3 have examined him.

4 Do you see that?

5 A Mm-hmm.

6 Q Okay. So -- and I think you testified
7 you wouldn't have signed it unless you had
8 complied with it; correct?

9 A Right. It doesn't give a time or
10 place.

11 MR. GILREATH: Object to the form.
12 Leading.

13 THE WITNESS: It just says I have
14 examined him, it doesn't say that day.

15 BY MR. TWOMBLEY:

16 Q Okay. Fair point, but --

17 A It makes sense that I would have.

18 Q I'm just trying to find out whether or
19 not, would you have signed the certificate if
20 you had not personally examined Mr. Barringer?

21 A I would not -- probably not signed it.
22 I mean --

23 Q Okay.

24 A Yeah, that -- I did sign it and I don't
25 know why we didn't date. It says 2012.



1 Q Okay.

2 A But I wouldn't have signed this without
3 reading it --

4 Q Okay.

5 A -- and complying with it.

6 Q Okay. The next sentence says that, he
7 has sufficient mental capacity to understand the
8 nature, scope, and extent of the business
9 about -- which he was about to transact.

10 Were you familiar with the specific
11 business that he was about to transact?

12 A No.

13 Q Okay. It says, I have concluded, in my
14 medical opinion, that Paul Barringer is
15 competent to transact his business and competent
16 to enter a contract.

17 Do you see that?

18 A Yeah. At that particular time in 2012,
19 I think he would be competent to sign anything
20 about any business.

21 Q Okay. Well, that was my next question,
22 and I have two questions since we don't know the
23 specific -- since the certificate is not dated.

24 And my first question is: Would you
25 have signed this certificate at any point in



1 2012?

2 A Yeah, probably would.

3 Q Okay. And would you have signed it
4 irrespective of the business that Mr. Barringer
5 was about to engage in?

6 A I don't have any idea what business he
7 was doing or what business he was in. I know
8 the business he was in, but a general way.

9 Q Okay. But my question to you is: Is
10 there any type of business transaction that you
11 didn't think Mr. Barringer was capable of
12 handling in 2012?

13 A I think he would be able to understand
14 any type of transaction.

15 Q Okay. Let's go to the --

16 MR. TWOMBLEY: Jim, just so you
17 know, your audio is coming through and
18 we can all hear it so you might want to
19 mute your line so it doesn't disrupt
20 the questioning.

21 MR. GILREATH: I'm sorry. I
22 thought it was muted.

23 MR. TWOMBLEY: That's okay.

24 BY MR. TWOMBLEY:

25 Q We'll turn to Tab 16. This is a note



1 from you from examination of Mr. Barringer on
2 August 29th of 2012; is that right?

3 A Yes.

4 Q Okay. And was Mr. Barringer still
5 having problems with his urinary function at
6 that time?

7 A Yes.

8 Q Okay. You say here, I think this is
9 radiation toxicity from the misplaced radium
10 seeds. We are going to see about getting him
11 some hyperbaric oxygen.

12 Tell me about why you considered
13 getting hyperbaric oxygen treatments for
14 Mr. Barringer.

15 A There are 13 absolute diagnoses that
16 insurance will pay for, radiation toxicity is
17 one of them.

18 Q Okay.

19 A And there's the bens, snake bites,
20 crush injuries, 13.

21 Q Okay.

22 A And this is one of them.

23 Q Okay. Did you believe that
24 Mr. Barringer might have some radiation toxicity
25 from the seed implants?



1 A Absolutely.

2 Q Okay. And is the -- hyperbaric oxygen
3 chamber, how does that help with that?

4 A Hyperbaric oxygen delivers 20 times
5 more oxygen at the cellular level than you can
6 get in any other way. Oxygen is healing. It
7 heals scars on the outside of the body and it's
8 used routinely for wounds. All wound care
9 centers have that. And it heals internal
10 derangement.

11 Most NFL football teams have one in the
12 tunnel. They go right through the tunnel and
13 get into the machine. So it heals tissue by way
14 of oxygen. Oxygen has incredible healing
15 qualities to it.

16 Q Okay. Later in the note, at the end,
17 it says, he keeps quite active.

18 What did you mean Mr. Barringer keeping
19 quite active?

20 A I guess he's quite active.

21 Q Okay.

22 A Walking around, engaging people, going
23 to get-togethers and parties, taking care of his
24 business.

25 Q Okay. All right. Let's turn to



1 Tab 17, which is a record from a visit on
2 September 12th of 2012. The note starts off, it
3 says that you called Dr. Bachman on the
4 telephone, with him, about this patient's
5 dementia and Dr. Bachman really does want to do
6 anything except have the patient do mind games
7 on the computer.

8 Tell me what you remember about your
9 conversation with Dr. Bachman?

10 A Well, Dr. Bachman is a renown
11 neurologist who is up at MUSC.

12 Q Okay. And this is a neurologist?

13 A He is a neurologist.

14 Q Okay.

15 A And he basically wanted him to -- like
16 we tell everybody in the world, I mean, whether
17 you have dementia or not, you do mind games and
18 it will stimulate the temporal lobe of the brain
19 and open up circuits.

20 Q Okay.

21 A And that's all he wanted to do.

22 Q Okay. And was it your understanding
23 that Dr. Bachman had evaluated and seen
24 Mr. Barringer?

25 A Yes.



1 Q Okay. And that -- you remember
2 anything else that Dr. Bachman told you?

3 A Not really. It's been so long.

4 Q Was Dr. Bachman concerned about
5 Mr. Barringer's condition?

6 A Well, it's -- I think if he was
7 concerned, he would have instituted more
8 treatment of some sort. He didn't seem to be
9 too concerned about it.

10 Q Okay. The next sentence says, I had a
11 long talk with Mr. Barringer today and we,
12 indeed, have sent him yesterday, after a long
13 discussion on the telephone, for hyperbaric
14 oxygen. I want to focus your attention on the
15 conversation that you had the day before when
16 you say yesterday on September the 11th of 2012.

17 Do you remember talking with
18 Mr. Barringer on September the 11th of 2012
19 about --

20 A I don't remember talking to him.

21 Q Okay. Obviously, you wouldn't have
22 wrote this down in your note unless you had
23 talked to him?

24 A Correct.

25 Q Okay. And it appears you had a



1 discussion about the hyperbaric oxygen; is that
2 right?

3 A Mm-hmm.

4 Q Okay. When you talked to Mr. Barringer
5 on September the 11th of 2012, did he understand
6 what you were recommending with respect to the
7 hyperbaric oxygen?

8 A Sure. Absolutely.

9 Q And did he ask questions about it?

10 A I don't know, probably.

11 Q Okay. Was there anything about your
12 discussion with him on September the 11th of
13 2012 that caused you any concern with respect to
14 his cognition?

15 A You know, it doesn't appear that he was
16 still, you know, accessing the world, and I
17 think I would have written something differently
18 if I had --

19 Q Okay.

20 A -- any concerns?

21 Q All right. And indeed, Mr. Barringer
22 did get the hyperbaric oxygen treatment;
23 correct?

24 A Correct.

25 Q All right. On the day that you saw



1 Mr. Barringer on September the 12th of 2012, did
2 he appear to be in any distress?

3 A On this particular day?

4 Q Yes.

5 A If he had been, I would have documented
6 it.

7 Q Okay. Did Mr. Barringer express to
8 you, on this day or any time prior to this, that
9 he was fearful in any way?

10 MR. GILREATH: Object to the form
11 of that question.

12 THE WITNESS: I mean, I don't have
13 anything on the note.

14 BY MR. TWOMBLEY:

15 Q Okay.

16 A And that's all I have to got on.

17 Q You think that's something you would
18 have written down if you had --

19 A I mean, if he came in and said I'm
20 scared to death, you know, I think I might have
21 put that down.

22 Q Okay. Up through this time, September
23 the 12th of 2012, would Mr. Barringer frequently
24 come to the office by himself?

25 A I don't remember a percentage of time



1 he was with somebody or by himself. I just
2 don't remember.

3 Q Okay. But sometimes he was by himself?

4 A Sometimes he was.

5 Q Okay. And when someone was with him,
6 who was with him?

7 A Merrill.

8 Q Okay. And that's his wife, Merrill
9 Barringer?

10 A Yeah. It's -- his daughter's named
11 Merrill too, but his wife.

12 Q Okay. Did you ever -- did
13 Ms. Barringer ever try to influence the care
14 that you gave Mr. Barringer?

15 A No.

16 Q Okay. Was she supportive?

17 A Very.

18 Q Okay. How would you describe the
19 relationship between Mr. Barringer and --
20 Mr. Barringer and Ms. Barringer based on your
21 observation of them?

22 A I would say it was the same as my
23 relationship with my wife.

24 Q Okay.

25 A We would do anything to take care of



1 each other, and that's the way she was, in my
2 opinion.

3 Q Okay. All right. Ever have any reason
4 to question that?

5 A No.

6 Q Okay. All right. Let's go to the next
7 document on 18, which is from October the 16th
8 of 2012. Under the A, it says, he's much better
9 today. Although his memory is still not back,
10 he is not missing any words, which is great.

11 How would you describe Mr. Barringer's
12 condition on October the 16th as opposed to --

13 A I can only go with what my notes says.

14 Q Okay.

15 A Do you want me to read it?

16 Q Sure. If that will refresh your
17 memory, absolutely.

18 A He has --

19 Q You don't have to read it out loud, I'm
20 just --

21 A Oh, okay.

22 (Reading sotto voce.)

23 A I think -- if I can comment on that, I
24 think, throughout this whole thing up until now,
25 he has mild -- very mild cognitive impairment



1 and doesn't appear to be getting any serious --
2 anything serious.

3 Q Okay. Did you place any restrictions
4 on Mr. Barringer?

5 A No.

6 Q Did you ask him not to drive?

7 A I didn't.

8 Q Okay. Did you tell him not to fly his
9 airplane?

10 A You know, we talked about airplanes. I
11 don't recall telling him not to fly or not to
12 drive. I might have, but I didn't document it.

13 Q Okay. All right.

14 A I don't recall anything like that.

15 Q Okay.

16 A But people have significant dementia.
17 When they come in the office, the first thing I
18 tell them is don't drive an automobile, and they
19 usually fire me at that point.

20 Q I gotcha. Let's move to the next
21 record, which, I think, is the last one of 2012,
22 which is behind Tab 19 which is December 10th,
23 2012. The record says, he seems better since
24 his hyperbaric treatment. He still has
25 receptive aphasia, but he is better.



1 A Is this 19?

2 Q Yes, it is.

3 A Okay.

4 Q I see here you say, receptive
5 aphasia --

6 A It's expressive aphasia, that's a
7 misquote.

8 Q Okay. All right. But you say he seems
9 better after his hyperbaric treatment and that
10 his aphasia is better.

11 A Hyperbaric oxygen also is good for
12 people with dementia. It's rarely used for
13 that. First of all, it's not covered, that's
14 not a problem with Mr. Barringer. For the
15 average citizen, it's something that is
16 expensive, if it's something that is not
17 covered, they don't do it.

18 Q Gotcha. Says at the bottom that you
19 spent 55 minutes talking with him face to face,
20 most of with counseling, 30 to 50 percent was
21 due to the examination.

22 How would you describe the examination
23 that you did on Mr. Barringer on December 10th,
24 2012?

25 A Well, usually, you know, you watch



1 people walk, you discuss complexities of their
2 life, how they're doing, take seven from 100,
3 take seven from 93 and down -- you don't do a
4 complete mini mental, but just an idea of, see
5 how things are and how good they are. And
6 usually, you know, I -- I also listen to their
7 heart. If somebody comes in with a broken
8 wrist, I'll listen to the heart and their
9 carotid arteries, and like that.

10 Q Would you say it was thorough, 55
11 minutes?

12 A You know, I can only go by my note, and
13 I'm not very specific here.

14 Q Okay. But you did spend 55 minutes
15 with him talking face to face?

16 A Right.

17 Q Okay. During that time, you would have
18 asked him questions?

19 A Right. Well, not all the time,
20 sometimes we talked about, like I said, a lot of
21 different things.

22 Q Okay. How would you describe his
23 cognition on December the 10th of 2012?

24 A I can -- I can read the note.
25 Obviously I can't remember the specific



1 conversation, it's been ten years ago. I have a
2 wonderful memory, it's just short.

3 Q Right.

4 A That's another joke.

5 He seems better than -- since his
6 hyperbaric treatment, his dementia. He still
7 has receptive -- he has expressive aphasia, it
8 should be -- but he is better.

9 Q Okay. So prior to -- with respect to
10 the times you've seen him previously, you
11 thought he was doing better than he was before?

12 A Right.

13 Q All right.

14 MR. TWOMBLEY: I want to take
15 about a five-minute break since we are
16 at a natural stopping point at 2012.
17 So you can go to the restroom, give
18 everybody else a chance to --

19 THE WITNESS: Can I ask a
20 question? What's the estimated time
21 of --

22 THE VIDEOGRAPHER: Off the video.

23 (Whereupon, a break was taken at
24 5:11 p.m.)

25 THE VIDEOGRAPHER: Back on video.



1 (Back on the record at 5:34 p.m.)

2 BY MR. TWOMBLEY:

3 Q Dr. Long, a couple more questions about
4 the September the 12th, 2012 visit, which is
5 Tab 17.

6 A September 12th?

7 Q September the 12.

8 A Which tab?

9 Q 2012, Tab 17.

10 A Seventeen. Okay.

11 Q When you met with Mr. Barringer --
12 well, let me ask you this: It says you spoke to
13 Mr. Barringer on the telephone.

14 Did you have his telephone number?

15 A I'm sure I did. I can't remember that
16 specifically, but I'm sure I did. I talked to
17 him a lot.

18 Q Did you frequently -- or how did you
19 normally communicate with him if he was not here
20 on the office?

21 A I called him on the phone.

22 Q Okay. Would you call his house or his
23 cell phone or both?

24 A I don't remember.

25 Q Okay. Did you ever have any trouble



1 getting ahold of him?

2 A I can't remember that.

3 Q Okay. Did anyone ever prevent you from
4 talking to him?

5 A Prevent me from talking, I don't recall
6 that.

7 Q Okay. Did you ever have to get
8 permission from anyone or did anyone screen his
9 calls?

10 A If it happened, I don't remember that.

11 Q Okay. Did Mr. Barringer -- did you
12 have any reason to believe that he was being
13 secluded in any way in September of 2012?

14 A No. I don't have any recollection of
15 that.

16 Q Okay. Was he able to drive where he
17 wanted to go whenever he wanted to go?

18 A I assume that that's the case.

19 Q Okay. Did anyone else, other than Ms.
20 Barringer, to the best of your memory, ever
21 appear with him with for one of his visits with
22 you?

23 A I have no recollection of that
24 happening.

25 Q Okay. All right.



1 A But it's possible, it's certainly
2 possible.

3 Q Okay. So at no point in time -- was
4 there any point in time in the year 2012 where
5 you had any reason to question Mr. Barringer's
6 ability, cognitive ability to engage in any type
7 of legal transaction?

8 A I didn't -- I don't recall questioning
9 his ability to engage in any kind of situation.

10 Q Okay. And now having gone through all
11 your notes in 2012 and looking at each visit, do
12 you have any reason to believe that he did not
13 have the cognitive --

14 A No.

15 Q -- ability to engage in any type of
16 legal transaction in 2012?

17 A I have no reservation. I don't recall
18 any reservations. I have to rely heavily on my
19 notes.

20 Q Okay.

21 MR. GILREATH: Object to the form
22 of that question.

23 BY MR. TWOMBLEY:

24 Q If you would, please, there's only
25 about, I think, three or four visits from 2013,



1 and those are Tab 20, 21, 22, and 23.

2 So 21, 22, and 23, would you review
3 those records for a moment, please?

4 A Starting with January 14th?

5 Q Yes, sir.

6 MR. GILREATH: Ashley, you can
7 hear me, can't you?

8 MR. TWOMBLEY: Yes.

9 MR. GILREATH: Okay. I wanted to
10 make sure if I make an objection, it is
11 on the record. I didn't make one,
12 don't get me wrong. Not yet.

13 THE WITNESS: Okay. I mean, you
14 want to go through Tab 21?

15 BY MR. TWOMBLEY:

16 Q Through Tab 23.

17 A Oh, okay. Okay.

18 Q So in January the 14th of 2013, you say
19 he's still demented, but he's better and his
20 speech is better.

21 What did you base that on?

22 A Talking to him.

23 Q Okay. And your evaluation of him?

24 A Yeah.

25 Q Okay. Down under subjective, it says,



1 he gets up at night -- at nighttime too, but
2 otherwise, he is doing remarkably better.

3 What did you base that on?

4 A You on January 14th?

5 Q Yes, sir, under subjective at the
6 bottom.

7 A At the bottom. He gets up at
8 nighttime, but otherwise, is doing remarkably
9 better. Dr. Manny Perez kept him on the rapid
10 flow from Dr. Funderburk. And they gave him
11 another medicine, that I didn't know what it
12 was, for his urine.

13 Q Okay.

14 A So this is talking about the frequency
15 of urination.

16 Q Okay. And how was that?

17 A Much better, apparently, according to
18 my note.

19 Q Okay. But his speech was better and
20 his aphasia that he had was better?

21 A Right.

22 Q How would you describe your
23 conversations with him, were they normal or
24 abnormal?

25 A Somewhere -- I mean, yeah, for the most



1 part, they -- I mean, they were normal
2 conversations. I mean, it wasn't like -- you
3 know, I take care of a lot of patients with
4 significant dementia in the seven, eight, nine
5 range and they can't carry on a conversation.
6 Had regular conversations with him.

7 Q Okay. At any point in time in 2013,
8 did you notice any significant progression of
9 his disease?

10 A I have to rely on my notes. I don't
11 think so.

12 Q Well, based on your notes after having
13 reviewed them, do you see any --

14 A No, I don't. I don't see anything that
15 would reflect that he was getting much worse or
16 getting worse at all.

17 Q Okay. On March the 20th, 2013, you
18 say, the dementia seems stable?

19 A Yep.

20 Q Is that consistent with -- well, let
21 me -- on November 14th, 2013 at Tab 23 on the
22 second page -- I'm sorry, the third page, you
23 say, dementia is stable.

24 Is that consistent with your memory?

25 A Yeah.



1 MR. GILREATH: Ashley, where was
2 that now, tab what?

3 MR. TWOMBLEY: Tab 23.

4 MR. GILREATH: 23?

5 MR. TWOMBLEY: Yes, 23. It's the
6 November 14th, 2013 record.

7 MR. GILREATH: Okay. What was it
8 you read off there? I can't find it.

9 MR. TWOMBLEY: Dementia is stable.

10 MR. GILREATH: On the next -- wait
11 a minute. Is that two pages over?

12 MS. PAYLOR: It's on page 197
13 of --

14 (Crosstalk.)

15 MR. GILREATH: What is --

16 MS. PAYLOR: Under R-O-S.

17 MR. GILREATH: On 196?

18 MR. TWOMBLEY: In bold.

19 MR. GILREATH: I see it. Okay.

20 THE WITNESS: The reason the
21 quality of the notes have changed is we
22 bought a new electronic medical record
23 and you can see the difference.

24 BY MR. TWOMBLEY:

25 Q Understand. I was going to ask you



1 that, so thanks for letting us know.

2 How does something in the record get
3 bolded because I noticed on --

4 A When we -- there are templates and when
5 we change the template, it bolds.

6 Q So is that something that you --

7 A So for example, under heart, it says,
8 no chest pain, shortness of breath,
9 palpitations, and if we said patient now has
10 palpitations, it bolds it.

11 Q Okay. That would be something, I
12 guess, more significant than the other thing?

13 A Right.

14 Q Okay. So in the November the 14th of
15 2013, you would have selected that the dementia
16 was stable and --

17 A Right.

18 Q -- selected the option to bold it?

19 A I have to look at it again, but yes,
20 that's right. That's what it says. I wrote
21 that in there, dementia stable.

22 Q So we -- we talked about 2012, now
23 we've gone through 2013.

24 How -- can you just describe, in your
25 own words, after reviewing the records, of



1 whether or not Mr. Barringer's dementia
2 increased or decreased?

3 A Apparently, it was unchanged.

4 Q Okay.

5 A Better at times, worse at times when he
6 had urinary problems, it always screws up
7 dementia. But for the most part, 12 and 13, I
8 put in the same category.

9 Q Okay. Was he able to drive a car?

10 A You know, I assume he continued to
11 drive, yeah. People with significant dementia,
12 I take their license away.

13 Q Okay. Did you ever take
14 Mr. Barringer's license away?

15 A I don't recall, but I would put that in
16 the record, I think, if that was the case.

17 Q Okay.

18 A I don't think it entered my mind up at
19 this time.

20 Q Okay. And why did it not enter your
21 mind at this time?

22 A Because he didn't have significant -- I
23 mean, dementia to the point to where he couldn't
24 understand signs and things like that. In my
25 opinion, he could understand all that.



1 Q Okay. Now, if you had been asked, and
2 I think you -- well, I'll just represent to you,
3 previously when you testified in probate court,
4 that you testified you would not place any
5 restrictions on Mr. Barringer in 2013.

6 A Correct.

7 Q Having gone through all your records
8 for 2013, do you still agree with the testimony
9 you previously gave?

10 A Yes.

11 Q Okay. Was there anything, that you are
12 aware of, that Mr. Barringer couldn't do in
13 2013?

14 A No.

15 Q Cognitively or otherwise?

16 A Nope.

17 Q Okay. Let's look at 2014, and that's
18 behind Tab 24 -- 24, five, six, and seven -- I'm
19 sorry, 14, five and six.

20 A Let's see. Okay.

21 Q It looks like you saw him on February
22 13th and then you didn't see him again until
23 November third, and then again on November 24th;
24 is that right?

25 A Apparently. Yep.



1 Q Okay. At -- I'm looking at Tab 24,
2 which is the February 13th, 2014 record. It
3 says, on the third page, dementia stable.

4 MR. GILREATH: Can you give me the
5 Bates number.

6 MR. TWOMBLEY: 192.

7 MR. GILREATH: 192?

8 BY MR. TWOMBLEY:

9 Q This is Tab 24. You're there. Flip
10 over two pages, one and then one more, and then
11 about at the bottom, the narrative.

12 A Dementia stable, yep.

13 Q Okay. And is that consistent with your
14 memory of him at that time?

15 A It is.

16 Q Okay. If you go to 25, which is the
17 November third, 2014 record, on the third page,
18 there's a section about amenda -- I'm sorry,
19 there is a section about dementia, can you --

20 A Where are we now?

21 Q This is on Tab 25, the third page in.

22 A Okay.

23 MR. GILREATH: 768?

24 MR. TWOMBLEY: It is page 187 of
25 768.



1 THE WITNESS: What are you

2 referring to here?

3 BY MR. TWOMBLEY:

4 Q The section on dementia.

5 A Associated symptoms, no depression, no
6 paranoia, no anxiety, no irritability, no weight
7 loss, no wandering around, and stable on
8 dementia, 10 milligrams twice a day, Namenda.

9 Q Okay. And then let's go to the next,
10 Tab 26, which is November 24th. On the third
11 page in, again, there is a section on dementia,
12 and it says, dementia associated with another
13 disease.

14 Do you see that?

15 A Yes.

16 Q Okay. Is there anything of note that
17 you recorded on this day about his dementia?

18 A No.

19 Q Okay. All right. So can you describe
20 for us, the dementia that Mr. Barringer was
21 experiencing in 2014 after having reviewed the
22 notes?

23 A You know, it appeared that he was
24 unchanged again from '12 to '14. I mean, I
25 don't put anything in my notes suggesting that



1 he's, you know, getting lost, time, place,
2 person, anything like that.

3 Q Okay.

4 A Hold on one second. I'll be right
5 back.

6 THE VIDEOGRAPHER: Off the video.

7 (Whereupon, a break was taken at
8 5:52 p.m.)

9 THE VIDEOGRAPHER: Back on the
10 video.

11 (Back on the record at 5:53 p.m.)

12 BY MR. TWOMBLEY:

13 Q So again -- well, I'll give you a
14 moment.

15 A Go ahead.

16 Q I'll represent to you that, again, you
17 previously testified that during calendar year
18 2014, you would not and did not place any
19 restrictions on Mr. Barringer in your prior
20 testimony?

21 A Not to my memory.

22 Q Okay. And after having gone through
23 your notes, do you agree with the previous
24 testimony you gave?

25 A Yes.



1 Q Okay. Now, through 2012 and 2013 and
2 2014, was Mr. Barringer, did he have the mental
3 capacity to comprehend the nature and
4 consequences of gift transactions?

5 MR. GILREATH: Object to the form
6 of that question.

7 THE WITNESS: I don't know about
8 individual things, but I can say that
9 he had -- in my opinion, he had the
10 mental capacity to understand any kind
11 of transaction.

12 BY MR. TWOMBLEY:

13 Q Okay. I mean, you said any kind of
14 transaction?

15 A I did.

16 Q Okay. You believe he was of sound
17 mind?

18 A You know, a gift transaction, I would
19 think would be --

20 MR. GILREATH: Object to the form
21 of the question.

22 THE WITNESS: -- easy.

23 BY MR. TWOMBLEY:

24 Q Did Mr. Barringer have the mental
25 capacity to know his estate, what he owned



1 through 2014?

2 A I would think so, yeah.

3 Q Okay. Would he have the mental
4 capacity -- would he have the mental capacity to
5 know who his loved ones are?

6 A Yes.

7 Q Okay.

8 MR. GILREATH: Object to the form
9 of that question.

10 BY MR. TWOMBLEY:

11 Q And about the mental capacity to decide
12 who he wanted to receive his property at his
13 death?

14 A I would think so.

15 Q Okay. Do you have --

16 MR. GILREATH: Object to the form.

17 BY MR. TWOMBLEY:

18 Q Do you have any reservations about his
19 cognitive --

20 A In 2014, none.

21 Q Okay. Now, obviously, we know
22 Mr. Barringer's condition got worse and I
23 believe you previously testified that he -- I
24 think you said, started to fall off of a cliff
25 in the later part of 2015.



1 Do you remember that?

2 A I'd have to review my notes, but I do
3 remember.

4 Q Okay. And tell us what you -- what you
5 mean by falling off a cliff?

6 A I don't know what I was referring to,
7 but obviously, he's getting worse at that point.

8 Q Okay.

9 THE VIDEOGRAPHER: Off the video.

10 (Whereupon, a break was taken at
11 5:57 p.m.)

12 THE VIDEOGRAPHER: Back on video.

13 (Back on the record at 6:08 p.m.)

14 BY MR. TWOMBLEY:

15 Q Dr. Long, we are back after the short
16 break.

17 Going to move on to 2015, but let me
18 just ask you about 2014. Do you recall
19 regularly talking to Paul on the phone when you
20 needed to in 2014?

21 A Yeah, I'm -- I don't recall that, but
22 I'm sure I did because I do remember talking to
23 him. But just the timing of it, I'm not sure
24 about.

25 Q Okay. Do you ever recall having to get



1 permission from somebody to talk with him?

2 A I don't recall that, but it could have.

3 But I don't remember it.

4 Q Okay. As far as you remember, though,
5 if you needed to call Mr. Barringer, you'd just
6 call his cell phone; is that right?

7 A Yeah, I called him. Yeah, pick up the
8 phone and call him and he'd answer.

9 Q Okay.

10 A Or I'd call Merrill and she'd say, hold
11 on a minute.

12 MR. GILREATH: Object to the form
13 of that question.

14 BY MR. TWOMBLEY:

15 Q Give me one second.

16 Did Mr. Barringer -- strike that.

17 Did you ever talk with Mr. Barringer
18 about his social life during this time?

19 A Social -- I don't recall.

20 Q Do you know whether or not he was at
21 home all the time or out and about handling his
22 affairs?

23 A I have no idea.

24 Q Let's talk about 2015, which I believe
25 the first note from 2015 is at Tab 27, and on



1 the third page in, it says that Mr. Barringer's
2 dementia is getting worse.

3 Do you see that down at the bottom?

4 A Yes.

5 Q Okay. Do you remember what happened in
6 2015?

7 THE WITNESS: Stay online.

8 THE VIDEOGRAPHER: I'm off the
9 video.

10 (Whereupon, a break was taken at
11 6:11 p.m.)

12 THE VIDEOGRAPHER: Back on video.

13 (Back on the record at 6:11 p.m.)

14 BY MR. TWOMBLEY:

15 Q Okay. Mr. Long, we were talking about
16 the Tab 27, which is the first record from
17 2015 --

18 A Right.

19 Q -- note which says Mr. Barringer's
20 dementia was getting worse.

21 How would you characterize the
22 progression from 2014, what you saw at the
23 beginning of 2015?

24 A Well, I didn't characterize it,
25 unfortunately, but it says it's getting worse,



1 so I assume that he was getting worse a little
2 bit.

3 Q Okay. Do you recall why you concluded
4 that it was getting worse?

5 A I don't.

6 Q If you turn to page 4, it says -- under
7 psychiatric, it says, insight, good judgment,
8 mental status, normal.

9 A Where is this?

10 Q The fourth page in.

11 A Yeah. Okay. Yep.

12 Q Was Mr. Barringer -- do you believe he
13 still had good judgment at that point in time?

14 A Well, I didn't change it and it says
15 good judgment there. I have to assume that's
16 the case.

17 Q Okay. Do you think you would have
18 changed it if you felt his judgment had been --

19 A Yeah, I think I might have.

20 Q Okay. You recall placing any
21 restrictions on Mr. Barringer in January of
22 2015?

23 A I don't recall doing anything.

24 Q Do you have any memory of how bad or
25 how worse his dementia got in 2015?



1 A You know, I don't. I can't tell you
2 that -- see, he had -- the dementia in him waxed
3 and waned depending on his urinary tract. If he
4 had a bad infection, it got worse, as it does
5 with almost everybody. And when he doesn't have
6 an infection, it got better. I don't know if
7 that was going on here. Second -- secondary to
8 general anesthesia, it should affect -- should
9 the infection wear off.

10 Q Do you know anything about any general
11 anesthesia that Mr. Barringer may have had?

12 A I don't recall. I just don't recall.

13 Q Okay. Would general anesthesia make
14 his dementia worse?

15 A Yes --

16 Q Okay. And would that --

17 A -- it could.

18 Q Does that improve after the general
19 anesthesia wears off?

20 A Sometimes it gets better, most of the
21 time, you have, if you have post anesthesia
22 syndrome and you get -- I mean, even normal
23 people -- I mean, people that have no issues at
24 all, they can get a problem and then a week or
25 two, it wears off.



1 Q Okay.

2 MR. GILREATH: I'm going to object
3 to the form of that question, Ashley.
4 I'm not sure if his mike cut off and
5 cut back on.

6 MR. TWOMBLEY: What's the
7 objection?

8 MR. GILREATH: Object to the form
9 of that question.

10 MR. TWOMBLEY: I think I'm
11 entitled to know what the objection is,
12 and so I'm asking you to tell me what
13 it is.

14 MR. GILREATH: It's leading.
15 Object to the form is all I got to say,
16 Ashley. Leading, it's a leading
17 question.

18 MR. TWOMBLEY: Anything else?

19 MR. GILREATH: That's enough.

20 MR. TWOMBLEY: Okay.

21 BY MR. TWOMBLEY:

22 Q It looks like the next note is in June
23 of 2015.

24 MR. GILREATH: Give us a page
25 number, tab and page number, please.



1 MR. TWOMBLEY: This is Tab 28, the
2 third page in. At the top, it says,
3 dementia reported by patient.

4 Do you see that?

5 THE WITNESS: Yes.

6 BY MR. TWOMBLEY:

7 Q Okay. What is -- is there any
8 significance to the fact that -- that what
9 your -- that you write down that it's reported
10 by the patient?

11 A Well, it -- the significance is he's
12 saying, this is how I feel.

13 Q Okay.

14 A And, you know, there's people that a
15 physician or the nurse will look at a patient
16 and say, you know, this patient doesn't look
17 very good. The patient says, I feel like a
18 million dollars. I mean, it could either be
19 confabulating or telling you the truth, and you
20 never know for sure.

21 Q Okay. Did you believe he was telling
22 you the truth?

23 A Yeah, I have to believe that.

24 Q Okay. I mean --

25 A I give the patient the benefit of the



1 doubt.

2 Q Okay. Did you feel that you were able
3 to rely on what he was telling you in -- to
4 administer medical treatment to him in June of
5 2015?

6 A Can you repeat that?

7 Q Did you believe that you could rely on
8 what he was telling you in order to administer
9 medical treatment to him in June of 2015?

10 A Yes.

11 Q I mean, presumably, you've had patients
12 that you can't rely on what they tell you?

13 A Right. No question. A lot of times,
14 they don't know.

15 Q Okay. I'm trying to determine if
16 Mr. Barringer was in that condition in June of
17 2015?

18 A The conditions? You mean -- what do
19 you mean? What condition?

20 Q Well, condition that you -- such that
21 you couldn't rely on what he was telling you.

22 A No. No, I think that he is a straight
23 shooter. I think that I could rely on anything
24 he'd tell me.

25 Q Okay. And did you base medical



1 decisions on what he told you up to this point?

2 A Absolutely.

3 Q Okay. I mean, if Mr. Barringer had
4 reached a condition in his disease where you
5 felt that you could not rely on what he was
6 telling you, what would you have done?

7 A Well, I'm not sure -- I'm not sure I
8 would do anything. I mean, if I thought he had
9 such bad dementia that, you know, he -- his
10 cognition had gone to the point where, you know,
11 it's like -- I mean, I think I'd probably know
12 that in him because he was such a clear speaker
13 and thinker and stuff. I think I would know
14 that.

15 Q Okay. Would -- if you couldn't -- if
16 you felt like you couldn't rely on anything a
17 patient told you, might you talk to the
18 patient's loved ones, their wife or spouse?

19 A Possibly.

20 Q Would you try to get information from
21 other people?

22 A Yeah.

23 Q Okay. Have any record of doing that at
24 this point in time with respect to
25 Mr. Barringer?



1 A I don't recall.

2 Q If you'll turn to Tab 26, this is a
3 note from September of 2015. The third page in
4 down at the bottom, it says, neurologic gait and
5 station, normal gait and station, Alzheimer's
6 disease. I believe this is the first time since
7 2012 there's any reference to Alzheimer's
8 disease.

9 What is the significance of that in the
10 record -- in your record?

11 A People use Alzheimer's disease
12 inappropriately, and I do the same thing. There
13 is no way anybody can tell, while the patient is
14 alive, if they have Alzheimer's disease.
15 Alzheimer's disease is defined by postmortem or
16 after death biopsy of the brain or dissection
17 where you see either Tile-protein or neural
18 tangles, which are characteristic. You can't
19 tell that while somebody is alive. Alzheimer's
20 disease is used inappropriately, interchangeably
21 with dementia. So the appropriate phrase is
22 dementia.

23 Q Okay.

24 A Because it could be Creutzfeldt-Jakob
25 disease, lewy body dementia, mad cow disease.



1 The only way you can tell any of those is with a
2 biopsy. So I used -- I use this as a generic
3 definition --

4 Q Okay.

5 A -- of dementia.

6 Q All right. So --

7 A It was inappropriate, I should have put
8 dementia down.

9 Q Okay. All right. Did you ever
10 diagnose Mr. Barringer with Alzheimer's disease?

11 A Like I said, while he's still alive,
12 you can't.

13 Q Okay. So if you can't do it while he
14 was alive, then you wouldn't have done it while
15 he was alive?

16 A That's correct.

17 Q Okay.

18 MR. GILREATH: Ashley, I'm not
19 sure I understand what parts you were
20 asking about on that page. You're
21 under Tab 26, the third page over --

22 MS. PAYLOR: 29, Tab 29.

23 THE WITNESS: No, Tab 26.

24 MR. GILREATH: Oh, he said 26.

25 MR. TWOMBLEY: Well, I apologize



1 if I misspoke, I'm at 29.

2 THE WITNESS: Oh, sorry.

3 MR. TWOMBLEY: And it's the --

4 it's the third page down, third page in
5 at the bottom.

6 THE WITNESS: Yeah, 29.

7 BY MR. TWOMBLEY:

8 Q Now that you're looking at the right
9 tab, does that change any of your testimony?

10 A I'm looking at 29?

11 Q That's correct, that's what you should
12 be looking at. I think we previously misspoke.

13 A Alzheimer's disease, yeah. Dementia
14 was the right word.

15 MR. GILREATH: Third page in, is
16 it on 171 of 768?

17 MR. TWOMBLEY: Yes.

18 MR. GILREATH: And where is that
19 you're talking about?

20 MR. TWOMBLEY: Down at the bottom.

21 THE WITNESS: At the bottom,
22 there's a --

23 MR. GILREATH: Okay. I see it.

24 THE WITNESS: Alzheimer's, yeah.

25 MR. GILREATH: It just says



1 Alzheimer's. Okay. All right. I got
2 you. Thank you.

3 BY MR. TWOMBLEY:

4 Q During the entire time that you treated
5 Mr. Barringer, did you ever perceive that he was
6 afraid?

7 A No.

8 Q Okay. Did you ever believe that anyone
9 was trying to improperly influence his medical
10 care?

11 A I'm not aware of anything like that.
12 It could have happened, I'm just not aware of
13 it.

14 Q Okay. Well, certainly, anything could
15 have happened, I'm just talking about what
16 you --

17 A I don't have any recollection of that.

18 Q Okay. So you never were concerned or
19 perceived that anyone was in any way trying to
20 improperly influence his medical care?

21 A I don't have any recollection of that.

22 Q Okay. Did anyone try to suggest what
23 his diagnose should be or get you to change it
24 in any way?

25 A I don't have any recollection of that.



1 Q Did you have numerous private
2 conversations with Mr. Barringer?

3 A I don't know about numerous and I don't
4 know how many, but we would always generally go
5 into my office after both of the examining room
6 and go into my office and talk.

7 Q Okay. Did he ever ask you for any
8 nonmedical help or suggest he was in trouble in
9 some way?

10 A No. I wasn't privy to that
11 information.

12 Q Okay. Well, the question is: Did he
13 ever appear to you to be in trouble or ask you
14 for any help?

15 A Other than medical help?

16 Q Correct.

17 A No. At least I don't remember anything
18 like that.

19 MR. TWOMBLEY: Okay. I think
20 that's all questions I've got for now,
21 I'm going to pass the witness to one of
22 the other attorneys. Thank you.

23 MR. GILREATH: You through?

24 MR. TWOMBLEY: Yes, go ahead.

25 MR. GILREATH: Alice, do you go



1 next or do I go?

2 MS. PAYLOR: You can go, Jim.

3 MR. GILREATH: Let me get my stuff
4 together here. Where's -- where's --
5 get that out of the way.

6 CROSS-EXAMINATION

7 BY MR. GILREATH:

8 Q While we're -- okay. Dr. Long, while
9 we're on this book of Ashley's, I've got a few
10 questions on that, so just keep that out in
11 front of you and go to tab -- go to Tab 6, and
12 you said -- well, the first question I've got
13 is: You got these -- out on the left margin,
14 you got number one, dementia, and then
15 underneath that, you've got SOAP.

16 What is that S-O-A-P, soap?

17 A We don't do it anymore, but back then,
18 it's subject objective assessment and plan, so
19 subjective is generally what people -- you glean
20 with them subjectively. Objective is like a
21 blood pressure, objective hard data. Assessment
22 is what you're concluding and the plan is what
23 you're going to do. These are soap notes. We
24 don't do it anymore.

25 Q So you -- on that date, November the



1 23rd of 2011, you concluded in your records that
2 Paul Barringer had dementia; correct?

3 MR. TWOMBLEY: Object to the form
4 of the question.

5 THE WITNESS: Yes.

6 BY MR. GILREATH:

7 Q And you send him down to the mind
8 center and they have inscribed a 31 -- 31
9 percent or whatever you call that -- a 30th
10 percentile, 55th percentile, and a 15th
11 percentile. What -- explain that to me.

12 A Okay. There's three things they look
13 at, and I may not get them exactly right. One
14 of them, executive reasoning, one of them is
15 cognitive reasoning, and one of them is, I
16 think, social interaction, something like that.
17 And this is a percentage chance, 30 percent
18 chance he has dementia related to that, 55
19 percent and 15 percent. CANS-MCI was a test.
20 It's not used anymore, to my knowledge, because
21 it didn't tell you if you had definitive
22 dementia, only a mini mental exam does that.

23 Q But based on what the mind center did,
24 you wrote in your records that on November 23rd,
25 2011, he had significant dementia in the



1 60 percent range; correct?

2 MS. PAYLOR: Object to the form.

3 MR. TWOMBLEY: Same objection.

4 THE WITNESS: Yes, sir, that's
5 right.

6 BY MR. GILREATH:

7 Q Okay. Now, let's go over to the next,
8 Tab 7, and you say he now can pass a mini mental
9 exam with a perfect score of 30. I didn't see
10 anything in your records with a copy of a mini
11 mental exam with a score of over 30.

12 Did you give him one or are you just
13 saying if you gave him one, you thought --

14 A I've given him several. A lot of
15 times, I would do a partial, but on this
16 instance, apparently I did a full one. I mean,
17 normal, if you get -- if you're under 80 and you
18 can do a 25 out of 30, that's pretty good. 26
19 normal, it's -- apparently, he scored a 30. I
20 don't have my notes on that. After I dictate
21 it, I throw the notes away. That may be a good
22 thing or a bad thing.

23 Q You don't have any record of -- other
24 than what you wrote in here, you don't have a
25 copy of a mini mental exam that he made a 30 on;



1 correct?

2 A No, I don't have my notes because I
3 dictated he had a 30. That means I did the test
4 and he made a 30.

5 Q Okay.

6 MS. PAYLOR: What tab are you
7 looking at, Jim?

8 MR. TWOMBLEY: Seven.

9 MR. GILREATH: Tab 7.

10 MS. PAYLOR: Thank you.

11 MR. GILREATH: 24 of 768.

12 BY MR. GILREATH:

13 Q Let me see here. All right. Go over
14 to Tab 13. I don't think Mr. Twombley asked you
15 about this. You said his mini mental exam is
16 getting worse and he scored about 30 -- I mean,
17 20. Excuse me.

18 Explain to me, the significance of a 20
19 on the mini mental?

20 A Let's see. You're on 4/30/2012?

21 Q 4/30/2012, first thing under the tab,
22 it's 217 of 768.

23 You see, his mini mental exam is
24 getting worse, he scored about 20?

25 A Yeah, that's less than 30.



1 Q Right.

2 A So that means he has mild to moderate
3 dementia.

4 Q Okay. And did you explain that to the
5 family?

6 A I don't recall that. Probably would
7 have.

8 Q But you don't recall anything about
9 that?

10 A No, sir, I don't recall.

11 Q All right. Now, let's go over to
12 Tab 15. This is the blank form of the
13 physician's certification of competency?

14 A Right.

15 Q That -- do you recall where you got
16 that from and when you got it?

17 A No, sir, I don't recall that.

18 Q Do you have any --

19 A I'm looking at it.

20 Q You don't have any memory about any of
21 that?

22 A I do not.

23 Q Okay. And that form talks about the
24 business that he is about to transact, and you
25 signed that form over on the next page, it's at



1 281 of 768, second or third sheet behind Tab 15,
2 and you certified that he has a sufficient
3 mental capacity to understand the nature, scope,
4 and extent of the business which he is about to
5 transact, and he's competent to transact his
6 business and enter a contract.

7 Now, tell me who -- who, if anybody,
8 that you talked to about that before you signed
9 it?

10 A I have no recollection of talking to
11 anybody.

12 Q Well, would you have signed this form
13 if you didn't know the business he was about to
14 transact?

15 A You know, it's -- the basic intent of
16 this, they could have put to open 16 pizza
17 factories. He had the -- in my opinion, he had
18 the mental capacity to do anything. And so I
19 didn't know exactly what the business was he was
20 going to do, but basically, any business I
21 thought that if he was going to undertake, he
22 had the mental capacity to do it.

23 Paul never shared his business stuff
24 with me or with -- but somebody apparently gave
25 this to me. I don't know who it was. I read



1 it, agreed with it, and signed it. I wouldn't
2 have signed it if I didn't agree with it, if I
3 didn't read it.

4 Q My next question is: Do you know where
5 or who -- who did you get this from?

6 A I don't know. I don't --

7 MR. TWOMBLEY: Object to the form.

8 Asked and answered.

9 THE WITNESS: I don't remember
10 that.

11 BY MR. GILREATH:

12 Q Is that -- the top line and that first
13 blank where it says -- somebody has written in
14 there, Paul Long, is that your handwriting?

15 A No.

16 Q Do you recall whether that was in there
17 when you signed it?

18 A I don't recall.

19 Q And somebody struck through that
20 petitioner -- psychiatric.

21 Did you do that or do you know who did
22 that?

23 A I don't know who did it. But if I'm
24 striking through something, it wouldn't be like
25 that. I usually do a jagged line.



1 Q So you don't think you had anything to
2 do with that part of it?

3 A Correct.

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

6 BY MR. GILREATH:

7 Q You have no recollection of -- about
8 anything with this form; correct?

9 MR. TWOMBLEY: Object to the form
10 of the question. Misstates prior
11 testimony.

12 MS. PAYLOR: Object.

13 BY MR. GILREATH:

14 Q Go ahead and answer.

15 A I don't -- I don't recall this form.

16 Q And I think you said you don't recall
17 any conversations with anybody about this form;
18 correct?

19 A That's correct.

20 Q Can you give me any reason why you
21 didn't date it? It's got a place down there
22 to --

23 A I have no -- I have no knowledge of
24 that, and I don't know why I wouldn't date it.
25 I think -- I just don't have any knowledge of



1 why I would have or wouldn't have.

2 Q All right. My recollection is when we
3 subpoenaed your records, we did not get a copy
4 of that.

5 Do you have any explanation of why you
6 didn't keep a copy of that in your records?

7 A No, sir, I have no idea.

8 Q And I believe -- I'm sure he'll correct
9 me if I'm incorrect -- that Mr. Twombly said he
10 found this in some file he had that he didn't
11 realize he had, and that's when we got it served
12 some time later.

13 MR. TWOMBLY: Object to the form
14 of the question.

15 BY MR. GILREATH:

16 Q Do you have any recollection of ever
17 sending this to Mr. Twombly or why he would
18 have it?

19 A I don't have any understanding one way
20 or another.

21 Q Okay. Okay. Hold on a minute.

22 Do you have any recollection ever
23 discussing this form with Mr. Barringer?

24 A No. I don't have any recollection of
25 that.



1 Q And do you have any recollection of
2 discussing it with anybody else?

3 A No, sir, don't have any recollection.

4 Q Did you ever discuss it with John
5 Jolly?

6 A With who?

7 Q Attorney John Jolly?

8 A I have no recollection of that. It's
9 possible, but I don't have any recollection of
10 it.

11 Q Okay. Did anyone ever tell you the
12 purpose of asking you to sign this?

13 A No. No, sir. I don't know.

14 Q Did you ever wonder they were giving
15 you a form for a psychiatrist to sign?

16 MR. TWOMBLEY: Object to the form
17 of the question.

18 THE WITNESS: Wonder why they
19 would give me a form -- this form to
20 sign? I don't know if I wondered
21 anything --

22 (Crosstalk.)

23 BY MR. GILREATH:

24 Q -- psychiatrist.

25 A You know, I'm looking at this form, and



1 that's my signature. And I don't ever sign
2 anything that I don't agree with. That's all I
3 know about this form. I don't know where it was
4 going. I don't know who sent it to me.

5 Q And you don't know who you delivered
6 the signed version to; correct?

7 A Yes, sir. No, sir, I don't know.

8 Q And you don't have any -- do you have
9 any explanation of how it would have got to the
10 file over at Ashley Twombly's office?

11 MS. PAYLOR: Object to the form.

12 MR. TWOMBLEY: Same objection.

13 THE WITNESS: I don't know that.

14 I don't know the answer to that.

15 BY MR. GILREATH:

16 Q Did you have any meetings with
17 Mr. Twombly where he's discussed anything about
18 this form with you?

19 A Discuss the form with me?

20 Q Yes.

21 A No. I mean, it's in here and I
22 reviewed everything in here, but, you know, I
23 don't have any idea about anything to do with
24 the form.

25 Q But y question is: Have you had any



1 discussion at any time with Ashley Twombley
2 about this form?

3 MR. TWOMBLEY: Objection to the
4 form. Asked and answered.

5 THE WITNESS: Yeah. He pointed it
6 out, among a thousand other things, and
7 said -- he said, do you know anything
8 about this? And I said, nothing. I
9 don't know anything about it.

10 BY MR. GILREATH:

11 Q And when did he point it out to you?

12 A Last night.

13 Q Tell me everything you talked about
14 with him last night, where you were when you met
15 with him, what time it was, and how long the
16 meeting lasted.

17 A I don't know. It was in my office. I
18 asked for the meeting because I needed to be
19 brought up to speed of what all this is about
20 because I had forgotten most of it, and he just
21 pointed out the record and he said, here, and I
22 went and read it at home.

23 Q Well, tell me what you recall that he
24 said or that transpired that is related to this
25 form.



1 A Nothing, really. Just part of the
2 record.

3 Q Can you give me any explanation to why
4 you didn't have a copy in your file when we
5 subpoenaed your records?

6 A I don't have a clue. I don't know. I
7 don't know anything about that.

8 Q And I don't believe you said anything
9 about this form when you testified on April 28th
10 of 2016 down at probate court?

11 A I don't recall seeing this back then.
12 I don't recall anybody asking me a question
13 about it.

14 Q Would you have looked at your files
15 before you had your -- went down there to
16 testify at probate court?

17 A I almost always do.

18 Q Do you recall whether this form was in
19 there when you testified at the probate court?

20 A I don't recall. I just don't recall.
21 You mean ten years ago? I don't recall.

22 Q Wasn't ten years ago.

23 A Four years ago.

24 MR. TWOMBLEY: Five years.

25 BY MR. GILREATH:



1 Q Is it your practice not to date medical
2 records?

3 A Sir?

4 Q This thing has no date.

5 A I don't know why it is not dated.

6 MS. PAYLOR: Objection.

7 MR. TWOMBLEY: Same objection.

8 THE WITNESS: I don't know.

9 BY MR. GILREATH:

10 Q Mr. Twombley was kind enough to give us
11 a -- where is that, the thing you got out of the
12 legal book about testamentary -- Tab -- yeah,
13 Tab 35.

14 Look at Tab 35, and he's got it -- it's
15 called standards, and he's got standard down
16 there for a gift for testamentary capacity and
17 contractual capacity.

18 Can you tell me whether somebody who
19 scored a four on the mini mental could pass any
20 of those tests?

21 MS. PAYLOR: Object to form.

22 MR. TWOMBLEY: Object to the form.

23 THE WITNESS: Can you repeat that
24 again? If you score a four on a given
25 day, and on this -- what's the question



1 again?

2 BY MR. GILREATH:

3 Q The question is -- I want you to get
4 that stuff that is Tab 35.

5 A Okay.

6 Q And I guess, if I understood
7 Mr. Twombley, this is what he contends are the
8 legal standards in South Carolina for a gift in
9 the testamentary capacity, capacity to make a
10 will, and then a contractual -- capacity for a
11 contract.

12 And my question to you is: If somebody
13 scored a four on the mini mental exam, would
14 they have sufficient mental capacity to make a
15 valid gift?

16 A Not on that day. He had a four on the
17 Tuesday.

18 MR. TWOMBLEY: Object to the form
19 of the question.

20 THE WITNESS: Yeah, on the Tuesday
21 and --

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: -- he was asked to
24 sign something on the day he had a
25 four, I doubt he could do -- I doubt he



1 could understand it.

2 BY MR. GILREATH:

3 Q Okay. And let's go down and look at
4 the testamentary capacity about making a will.

5 If he made a four, if --

6 A I think he had a four on that day.

7 Q Right.

8 A Now -- then I would doubt that any of
9 these things he could do, realizing --

10 MS. PAYLOR: Objection.

11 THE WITNESS: Realizing, of
12 course, that mini mental exams, as you
13 can understand, if he's got a urinary
14 tract infection, a bad one, or
15 retention or post surgery syndrome on
16 that day and his -- he's otherwise --
17 it's a dementia of another illness. If
18 you fix the illness and it goes away,
19 then he can do that.

20 I don't know if on that -- what
21 day you're referring to that he had a
22 four. If it's the same day that these
23 things were being contemplated, he
24 couldn't, but he was treated and the
25 four went up to the 26, he could indeed



1 understand it.

2 BY MR. GILREATH:

3 Q All right. What about if he made a
4 ten, where would that put him under the --

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: Same thing. Same
7 thing.

8 (Crosstalk.)

9 MR. TWOMBLEY: Same objection.

10 THE WITNESS: Same answer.

11 BY MR. GILREATH:

12 Q He would not be competent to do that;
13 correct?

14 A I wouldn't think so --

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Same objection.

17 THE WITNESS: -- if he had scored
18 a ten.

19 BY MR. GILREATH:

20 Q I just want to make sure I understand
21 your question, so you're -- you're saying if he
22 scored a ten, he still wouldn't be able to do
23 these things, right?

24 MR. TWOMBLEY: Object to the form.

25 Misstates his testimony.



1 MS. PAYLOR: Object to the form.

2 BY MR. GILREATH:

3 Q Let them make their objection before
4 you answer because I can't listen to both of you
5 at the same time.

6 I just want to make sure, if he made a
7 ten, that you're telling me he would not have
8 the mental capacity to make a gift or do a will
9 or enter into the contract; correct?

10 MR. TWOMBLEY: Object to the form.

11 Misstates his testimony.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: Probably.

14 BY MR. GILREATH:

15 Q Probably would not have; correct?

16 A Correct.

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Same objection.

19 THE WITNESS: It depends on --

20 BY MR. GILREATH:

21 Q You said correct, right?

22 MR. TWOMBLEY: Let the witness --

23 MS. PAYLOR: Let him finish his
24 answer.

25 THE WITNESS: Yeah, I did. It



1 depends entirely on what is going on
2 with the rest of his body. You know,
3 you can be -- I've had 85 year old
4 women that come into my office and
5 they're completely out of it. I give
6 them antibiotics and they call me back
7 the next day and say, you know, why
8 don't we go fishing in South America?
9 You know, it's -- they -- it depends on
10 what else is going on that particular
11 time.

12 BY MR. GILREATH:

13 Q All right. If the legal definition of
14 testamentary capacity, which Mr. Twombly was
15 kind enough to give to us, would somebody who
16 scored a ten be able to know the objects of
17 their bounty?

18 MR. TWOMBLY: Object to the form
19 of the question. Asked and answered.

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: You know, I think if
22 you had a ten, you know, this is -- you
23 know, he knows his estate. I think if
24 he had ten, I don't think he would
25 ever, ever lose that. I think that the



1 object of his affection, no question.
2 I mean, that's not a very complicated
3 thing. If he had a ten, he could
4 certainly understand the object of his
5 affection and to who he wanted to give
6 the property. I mean, that's -- that's
7 a fairly one dimensional type of
8 reason. So I think he can possibly do
9 that too.

10 BY MR. GILREATH:

11 Q All right. You're talking about a ten,
12 let's talk about a four.

13 A No, you can't.

14 Q What if he scored a four?

15 A I don't think he could do it if he had
16 a four.

17 Q Okay.

18 MR. TWOMBLEY: Object to the form
19 of that last question.

20 MS. PAYLOR: Same objection.

21 BY MR. GILREATH:

22 Q I'll get back to that on something
23 else.

24 Look on Tab 16, first page there, it
25 says the patient's short-term memory is bad.



1 Where did you get that information
2 from?

3 A Where did I get -- well, probably from
4 talking to him. He -- I mean, I can't tell you
5 exactly where I got it, but it does -- the --
6 it's kind of raised, so it kind of stands on its
7 own. He has bad memory. I don't quantitate it,
8 though.

9 Q Look at number 17, Tab 17, first page
10 there, he says -- or you say that
11 neurologically, he is still somewhat demented,
12 but I do not think it is Alzheimer's like
13 dementia.

14 In retrospect, do you still agree with
15 that or do you -- have changed your mind?

16 A You're talking about --
17 (Reading sotto voce.)

18 A Which part of that? Here, under A,
19 assessment?

20 Q Yeah?

21 A Neurologic, is still somewhat demented,
22 but I don't think it is an Alzheimer's like
23 dementia. People generally have thrown around
24 Alzheimer's to mean significant, severe
25 dementia. I didn't think he had severe or



1 significant.

2 Q Do you still --

3 A And I --

4 Q Here's my question: Do you still stick
5 by that statement that you wrote on September
6 the 12th?

7 A All I can do is read the statement,
8 and, you know, interpret it. So I guess I have
9 to, of course.

10 Q Okay. Hold on a minute. Get through
11 this.

12 Look on Tab 26, third page, which is
13 184 of 768. And under number three, said,
14 dementia associated with another disease,
15 1094.10, dementia and condition is classified
16 elsewhere without behavioral disturbance.

17 Explain to me what that means.

18 A Well, he got, you know, worse when
19 his -- the other condition, his urinary tract
20 problem, and when he got the urinary tract
21 problems, his memory got worse. That's what the
22 dementia associated with another disease means.

23 Q You're talking about the urinary
24 problem, right?

25 A Yes, sir.



1 Q All right. I just want to make sure I
2 understood that.

3 Look over at Tab 27 at the bottom of
4 the page on the second -- let's see, third --
5 two -- third page over, 179 of 768 when you say,
6 dementia getting worse.

7 Can you tell me any more about why you
8 said that or what is going on there?

9 A I don't have any -- I mean, I can read
10 the note, but specific discussions, I can't
11 remember. But the note says, no depression, no
12 paranoia, no anxiety, no irritability, no --
13 what did you want me to -- what's the question
14 again? I'm sorry.

15 Q Well, I just want to tie down the date
16 that you're saying there under that thing --

17 A It says -- at the bottom. I see.

18 (Crosstalk.)

19 BY MR. GILREATH:

20 Q What does ROS stand for?

21 A Review of systems.

22 Q And you're saying --

23 A That's where you go through all the
24 systems.

25 Q So you reviewed everything and you have



1 concluded -- made a diagnosis that his dementia
2 is getting worse; correct?

3 MR. TWOMBLEY: Object to the form
4 of the question.

5 THE WITNESS: Yes.

6 MS. PAYLOR: Object to the form.

7 BY MR. GILREATH:

8 Q All right. And then over on the next
9 page, page 180, in the physical exam, you say
10 he's dementia worse, and then --

11 A That's what it says.

12 Q -- the assessment/plan, you say, that's
13 dementia associated with another disease,
14 getting worse, probably -- is that secondary to
15 the general anesthesia?

16 A I see that, yeah.

17 Q Well, are you saying that his dementia
18 got worse there because of anesthesia or are you
19 speculating or what?

20 A I don't know what surgery I was
21 referring to, but apparently he did have a
22 procedure of some sort, and apparently they gave
23 him anesthesia. And anesthesia can cause
24 temporary dementia --

25 Q Okay.



1 A -- or temporary worsening of dementia
2 if you already have dementia.

3 Q All right. I thought I hit that.

4 MS. PAYLOR: Hold on, Henry, I'm
5 coming.

6 MR. TWOMBLEY: I think your mike
7 is not muted, just so you know.

8 MR. GILREATH: All right. You can
9 go ahead and listen, I'm not trying to
10 hide anything from you.

11 MR. TWOMBLEY: No, I wasn't
12 talking to you, I was talking to
13 somebody else.

14 MR. GILREATH: Who?

15 MR. TWOMBLEY: I think you got a
16 little paranoia, Jim.

17 MR. GILREATH: All right. I think
18 I'm through with Ashley's book. Let me
19 get to my back to my book.

20 Does the court reporter got a copy
21 of the book we sent for you?

22 MR. TWOMBLEY: Yes, we got it.

23 MR. GILREATH: Got that in front
24 of you? Let me get that.

25 (Whereupon, Plaintiff's Exhibit



1 Number 1 was marked for
2 identification.)

3 BY MR. GILREATH:

4 Q Okay. Tell me who, if anybody, helped
5 you prepare for this deposition.

6 A You mean the deposition we're doing
7 now?

8 Q Yeah.

9 A I talked to Ashley Twombly for a very
10 short period of time last night.

11 Q Did you talk with anybody else, any of
12 the other lawyers you talked with --

13 A No, sir.

14 Q -- Ms. Paylor?

15 A No, sir.

16 Q You didn't talk to Mr. Molster?

17 A No, sir. No.

18 Q Has anyone reviewed your records of
19 Mr. Barringer to assist you with your testimony,
20 that you're aware of?

21 A No, and I didn't send the records to
22 anybody and nobody reviewed them for me.

23 Q Were you Mr. Barringer's primary care
24 physician up until the time he died?

25 A As far as I know. He had a -- when he



1 was in Virginia, he had physicians in Virginia.
2 I don't know who they were. But when he was
3 here in town, I was his primary physician. Yes,
4 that's the answer.

5 Q You don't who it was up in Virginia?

6 A Excuse me?

7 Q You don't who it was up in Virginia?

8 A I don't know who he saw, but he saw a
9 lot of people in Virginia from time to time.

10 Q Can you just give me a brief
11 description of Mr. Barringer's health for the
12 last full year of his life?

13 A Yeah. He -- it was determined and
14 promulgated by two factors, basically. I mean,
15 he had a chronic factor five Leiden deficiency,
16 which was -- had no bearing on the quality of
17 his life the last four years. He had radiation
18 burns in his pelvis. He had retention, urinary
19 incontinence at times. And that was the -- that
20 was the factor that got him into the most
21 trouble. And he had dementia and so at the end
22 of his life, we -- it was 2016, he died as a
23 complication of that.

24 Q And what was this Leiden thing you're
25 talking about?



1 A It's a condition one out of 200 people
2 get. You know, there is a clotting cascade when
3 you touch -- it's a long story, but -- hold on
4 one second.

5 THE VIDEOGRAPHER: Off the video.

6 (Whereupon, a break was taken at
7 7:07 p.m.)

8 (Back on the record at 7:11 p.m.)

9 THE VIDEOGRAPHER: Back on video.

10 THE WITNESS: All right. I think
11 we're ready.

12 BY MR. GILREATH:

13 Q All right. Did you ever have any
14 conversations with Merrill Light or Randy Light
15 about Mr. Barringer's health issues?

16 A I don't recall -- I'm sure I talked to
17 Merrill, but I don't recall talking to Randy.

18 Q Talking about the daughter, Merrill
19 Light, not Merrill Barringer.

20 A You're right. The daughter, I don't
21 recall, but I'm sure they were very interested
22 and I probably talked to them. I just don't
23 recall when or how many times or whatever.

24 Q Would you -- if you had talked to her,
25 would you have made a note in your records?



1 Would that have been in your records? I didn't
2 see it anywhere, I don't believe.

3 A Not necessarily. I mean, if somebody
4 called me and said, how's dad, and I would have
5 told her, I wouldn't necessarily put that in the
6 record.

7 Q There's an e-mail in the record, I
8 don't think we got it in our book and just --
9 I'm going to just read it to you. It's a
10 February 21st, 2011 e-mail that, I think, Randy
11 wrote on Merrill Light's e-mail where he says, I
12 feel that it would be advantageous for the four
13 of us to discuss the future plans, present, and
14 future with CFRC, and that's Mr. Barringer's
15 company. It is evident to Merrill and I -- this
16 is Randy talking -- PVB, being Mr. Barringer, is
17 starting to experience different health issues
18 that affect his judgment regarding everyday
19 decisions personally and business wise. It
20 appears that it makes it harder for you -- and
21 he addresses, I think, to Kevin Luzak to
22 exercise your authority of president of CFRC if
23 he will not listen.

24 Did -- it says -- then he closes with
25 saying, our fear is PVB, Paul Barringer, is



1 going to attempt some irrational move that will
2 harm the profitability of the company simply to
3 satisfy his desire to underwrite Victor or keep
4 the stockholders graveling.

5 Did Merrill Light or her husband,
6 Randy, or Ms. Merrill Barringer ever express
7 those concerns to you?

8 MR. TWOMBLEY: Object to the form
9 of the question.

10 MS. PAYLOR: Object to the form.

11 THE WITNESS: I have no
12 recollection of that.

13 BY MR. GILREATH:

14 Q If they had done that, would it more
15 likely than not that there would be something in
16 your records about that?

17 MR. TWOMBLEY: Object to the form
18 of the question.

19 MS. PAYLOR: Object to form.

20 THE WITNESS: Maybe not. You
21 know, if I had seen that, and I don't
22 recall seeing it, I probably wouldn't
23 have put anything in the record. I
24 mean, I would -- if I recall -- if I
25 had recalled that and if Randy or



1 Merrill had said, we want to meet, I
2 would meet, but I don't recall that. I
3 don't recall. I mean, I might have met
4 with them, but I just don't recall
5 that.

6 MR. TWOMBLEY: Object to the form
7 of the question.

8 MS. PAYLOR: Object to the form.
9 He thinks the meeting was with him,
10 Jim.

11 MR. TWOMBLEY: That's not what he
12 is talking about.

13 MR. GILREATH: Y'all need to just
14 make an objection, please.

15 MS. PAYLOR: Well, you need to
16 make your questions clear so that he
17 understands them because your question
18 made no sense.

19 MR. GILREATH: That's your
20 opinion.

21 MS. PAYLOR: It is my opinion.

22 MR. TWOMBLEY: It's mine too.
23 It's mine too.

24 MR. GILREATH: Okay. Sorry nobody
25 liked my question.



1 MR. MACLOSIE: I did.

2 BY MR. GILREATH:

3 Q So would I be correct to assume that as
4 you sit here today, you have no recollection of
5 anybody in Paul Barringer's immediate family,
6 being his wife and daughters, Merrill, talking
7 about him -- or talking about their concern that
8 he is maybe starting to show more irrational
9 behavior on certain family issues --

10 MS. PAYLOR: Object to the form.

11 BY MR. GILREATH:

12 Q -- no recollection of that; correct?

13 A That's correct.

14 Q All right. Look over at tab -- let's
15 see, what's this? Tab 13.

16 A All right.

17 MS. PAYLOR: In your book, Jim?

18 MR. GILREATH: In my book, yep.

19 This thing got a cover on it?

20 MS. PAYLOR: We don't have covers.

21 THE WITNESS: Okay.

22 BY MR. GILREATH:

23 Q All right. That is the -- some amended
24 responses and objections that were filed on
25 Mr. Barringer's behalf in litigation up in the



1 Eastern District of Virginia, and I would ask
2 you to look at the -- well, wait a minute.
3 Yeah, look at the very last page right before
4 Tab 14 and you see -- and that's a filing in
5 Document 315-2 in that litigation.

6 And that is an affirmation that
7 Mr. Barringer signed, on the 14th day of
8 January, 2016, and he said, I do solemnly
9 declare and affirm under the penalties of
10 perjury that the contents of the forgoing
11 answers to interrogatories are truly and
12 pertinent, to the best of my knowledge,
13 information, and belief.

14 And my question to you, Dr. Long, is:
15 On January 14th of 2016, after you've gone
16 through these records and looked at them and
17 hopefully got your memory refreshed, do you
18 believe that Paul Barringer would have known
19 what he was signing there and had the mental
20 capacity understand it?

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: Object to the form.

23 THE WITNESS: On that date, I
24 can't say because I don't know the
25 circumstances of what was going on in



1 the rest of his life and his body at
2 that time.

3 BY MR. GILREATH:

4 Q Well, can you find -- let me see, hold
5 on a minute. All right. Let's go talk about
6 the mini mental scores to help you get that in
7 context. Hold on a minute. Go to Tab 8.

8 A Tab 8?

9 Q In my book, yeah.

10 A Okay.

11 MR. TWOMBLEY: The court reporter
12 is asking to take a five-minute break,
13 so we will stand down for five or ten
14 minutes. Let's take a five or
15 ten-minute break.

16 MR. GILREATH: Okay.

17 THE VIDEOGRAPHER: Off the record.

18 (Whereupon, a break was taken at
19 7:21 p.m.)

20 THE VIDEOGRAPHER: Back on video.

21 (Back on the record at 7:31 p.m.)

22 BY MR. GILREATH:

23 Q All right. I want you to look at, in
24 my book, at Tab 8.

25 A Okay.



1 Q Page -- this will be at the top, Tab 8,
2 page 365 through 367.

3 MS. PAYLOR: Do you know what
4 total page this is because I'm having a
5 hard time getting around, Jim?

6 MR. GILREATH: Well, those pages
7 are Bates numbered up at the top
8 right-hand corner.

9 MS. PAYLOR: Okay. So what page
10 are you on?

11 MR. GILREATH: We're looking at --
12 we're going to be looking -- on 351.

13 MR. TWOMBLEY: 351, Alice.

14 MS. PAYLOR: 351. Okay. Thank
15 you.

16 MR. GILREATH: We're going to be
17 looking at 365.

18 MR. TWOMBLEY: I thought it was
19 Tab 8. Tab 8 starts at 351.

20 BY MR. GILREATH:

21 Q Tab 8 at 365 and he -- can -- do you
22 see that?

23 A Yes.

24 Q And isn't it true that on that day, he
25 scored a zero on the mini mental exam; correct?



1 MR. TWOMBLEY: Object to the form
2 of the question.

3 THE WITNESS: Is this 365?

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Yeah, that's it.

6 MR. GILREATH: Do what?

7 THE WITNESS: 365?

8 BY MR. GILREATH:

9 Q 365 through 367. If you look at those
10 pages under Tab 8, isn't it true that he scored
11 a -- well, actually, on the one 365, it says he
12 scored 24 on May 2014, he couldn't participate
13 in a mini mental at all today, and that's on --
14 he couldn't answer any of the questions and that
15 is on June 12th.

16 Do you see that?

17 MR. TWOMBLEY: Object to the form.

18 MS. PAYLOR: Ask a question. What
19 question have you got?

20 THE WITNESS: Yeah, I don't know
21 what the question is.

22 BY MR. GILREATH:

23 Q Do you agree with me, and look at pages
24 in my notebook from 0365, 66, and 67, would you
25 agree with me that based on those, he scored a



1 zero on those dates, right?

2 MR. TWOMBLEY: Object to the form
3 of the question.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: Well, the mini
6 mental exam, on my end, is blurred out.
7 All I see on the right-hand side of the
8 page is five zeros.

9 BY MR. GILREATH:

10 Q Are you in my notebook?

11 A They didn't finish the test. It looks
12 like they didn't do the test.

13 Q Right. You see, it says down there in
14 the middle of the page, his wife says he is
15 doing worse cognitively, his memory is worse, no
16 hallucinations, he doesn't drive, he does get
17 assistance with ADL. I guess that's something
18 about -- what is that called? Activities of
19 daily living from his wife. He scored a 24 in
20 May of 2014. He couldn't participate in the
21 mini mental at all today. He couldn't answer
22 any of the questions.

23 My question is: On that day, would he
24 have been able to have known what he was signing
25 in the federal litigation up in Virginia with



1 these interrogatory answers --

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: This is somebody
4 else's note. I can't interpret his
5 note.

6 (Crosstalk.)

7 MR. GILREATH: Can I get through
8 with my question, please.

9 MS. PAYLOR: I don't know.

10 BY MR. GILREATH:

11 Q -- that are at tab -- that are at
12 tab --

13 A Wasn't he in the hospital at this time?

14 Q -- Tab 13.

15 A Wasn't he in the hospital at this time?

16 Q I don't know. He could have been, but
17 my question is --

18 A He's a hospital neurologist, so --

19 Q -- these lawyers --

20 A -- they would -- nobody would ask him a
21 question if he was in the throws of urinary
22 sepsis. I mean, it's a question, I think, if
23 you'll excuse the phrase, hypothetical.

24 Q Look at Tab 13, look at the last page.

25 MS. PAYLOR: What page are you on?



1 MR. GILREATH: I'm on Tab 13.

2 THE WITNESS: I've got -- you're
3 talking about the one from --
4 you're not talking about 4/22/16?

5 BY MR. GILREATH:

6 Q I'm talking about January the 14th of
7 2016. Look at --

8 MS. PAYLOR: What page are you on,
9 Jim?

10 MR. GILREATH: It's under Dr. Long
11 depo, 0463.

12 MS. PAYLOR: Okay.

13 MR. GILREATH: It's the last --
14 it's right before -- it's right before
15 Tab 14.

16 BY MR. GILREATH:

17 Q And my question to you, Dr. Long, is:
18 On January the 14th of 2016, somebody had
19 Mr. Barringer sign under penalties of perjury
20 and tell the federal court up in Alexandria,
21 Virginia that he had solemnly declared and
22 affirmed under the penalties of perjury that the
23 contents of his answers in the previous 19 pages
24 were true and correct to best of his knowledge
25 and belief. Now -- and he signed that on



1 January the 14th of 2016.

2 Did you believe that when he signed
3 that, and those lawyers had him sign it, that he
4 had any idea of what he was doing?

5 MR. TWOMBLEY: Object to the form.

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: Misstates the
8 testimony. Mistakes the record. And
9 also it's already been asked and
10 answered.

11 THE WITNESS: I wasn't there, I
12 can't possibly answer that. I don't
13 know the circumstances of what that was
14 about. And if somebody else,
15 Mr. Barringer signed it, I mean, I
16 can't answer that question. I wasn't
17 there. I don't know.

18 BY MR. GILREATH:

19 Q This is not a hospital -- this is a
20 doctor's office record.

21 A No, I see that now. I was looking a
22 the prior hospital records. It is my record?

23 MS. PAYLOR: No. Object to the
24 form.

25 THE WITNESS: I mean, I can't



1 answer somebody else's record.

2 BY MR. GILREATH:

3 Q Doctor -- I believe it's Dr. Robert
4 McGregor and he --

5 MS. PAYLOR: Object to the form.

6 MR. GILREATH: I'm trying to
7 explain it to him if you'll let me do
8 it.

9 THE WITNESS: Are you asking me to
10 comment on it?

11 MS. PAYLOR: He's already said
12 it's not his record, he can't testify
13 about it.

14 MR. MACLOSKIE: Can y'all please
15 have the courtesy of letting him finish
16 his question and then you can object
17 without testifying?

18 MR. GILREATH: Amen.

19 THE WITNESS: Well, that's the
20 answer. I can't comment on it.

21 (Crosstalk.)

22 MR. TWOMBLEY: I haven't heard a
23 question, but go ahead.

24 BY MR. GILREATH:

25 Q Would you look at was is -- at Tab 8,



1 and it says Dr. Long depo, 0365, record from Dr.
2 Robert McGregor, and it says, his wife says he
3 is doing worse cognitively, his mood is worse,
4 no hallucinations, he doesn't drive, he does get
5 assistance with ADLs from his wife. He scored
6 24 on the MMSE in 2014. He couldn't participate
7 in MMSE at all today. He couldn't answer any of
8 the questions.

9 Now, my question --

10 MR. TWOMBLEY: Jim, you just asked
11 him about all this.

12 MR. GILREATH: Please let me
13 answer -- ask my question.

14 BY MR. GILREATH:

15 Q My question to you, based on that, is:
16 Was he capable of signing when he signed this
17 thing on January the 14th of 2016? Do you think
18 he knew what he was doing?

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form.

21 Asked and answered.

22 BY MR. GILREATH:

23 Q Can you answer it, Dr. Long?

24 A Yeah. I wasn't there, I can't
25 answer -- I can't interpret that. I don't know



1 what -- what was going on at that particular
2 time. I mean, I -- I mean, I just wasn't there
3 when he signed it? And I don't see -- you're
4 talking about my note or somebody else's?

5 Q I'm not talking about you being there
6 when he signed it, I'm talking about this other
7 doctor's notes, and I'm telling you that he
8 signed something on January 14th of 2016, and
9 that he affirmed, under penalties of perjury,
10 the answers he was signing to.

11 And what I want to know is did he have
12 the mental capacity, on that date based on what
13 you're reading in Dr. McGregor's records or
14 anything else you've got in your records about
15 that time that you believe that he knew what was
16 going on then?

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Object to the form.

19 Asked and answered. Misstate the
20 testimony.

21 THE WITNESS: I wasn't -- I
22 can't -- first of all, I can't -- I
23 can't comment on other people's
24 records. And second of all, I don't
25 know, on that particular day, what was



1 going on that with him. He could have
2 had a lucid moment, maybe he didn't, I
3 just don't know.

4 BY MR. GILREATH:

5 Q All right. Let's go look at some of
6 your records.

7 A All right.

8 Q We're going to look at Tab 8 at page
9 368.

10 A Right. 368?

11 Q Well, it's up at the top, it says Dr.
12 Long dep, 0368.

13 A Yeah. I got it.

14 Q Getting -- it says, notes, getting
15 worse, mini mental exam, four out of 30. Now
16 that's in your records.

17 A Okay.

18 Q And that's on -- and that's on -- let
19 me get that date. That's on 9 -- September the
20 10th of 2015, and he's signing this thing on
21 January the 14th --

22 MS. PAYLOR: Object to the form.

23 BY MR. GILREATH:

24 Q -- 2016.

25 Do you believe, based on that mini



1 mental exam that was taken a few months before
2 that, that he would have known what he was doing
3 when he signed this on January the 14th of 2016?

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Object to the form.

6 BY MR. GILREATH:

7 Q Can you answer the question, Dr. Long.

8 A Yeah, I'm looking. It's -- the mini
9 mental exam, it says, unable to complete.

10 MR. TWOMBLEY: No.

11 THE WITNESS: Is that the one?

12 BY MR. GILREATH:

13 Q No. We're looking at the one that's on
14 0368.

15 A Yeah, I've got that right here.

16 Q It says, under dementia, notes, getting
17 worse, mini mental exam, four out 30 and --

18 MS. PAYLOR: That he orders the
19 will.

20 BY MR. GILREATH:

21 Q -- the date that's associated with that
22 record is -- wait a minute.

23 A Let's see.

24 Q On the 10th of 2015.

25 MS. PAYLOR: Object to the form.



1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: I'm reading it.

3 Hold on. Here's a mini mental from
4 10/11. Let's see here, 10/30, what
5 year is that mini mental exam, this one
6 here?

7 MR. TWOMBLEY: I don't know.

8 THE WITNESS: All right. It says
9 here -- let's see if I got the right
10 one. Is that the one with all zeros?

11 MR. TWOMBLEY: I'm not sure what
12 he's asking about.

13 THE WITNESS: Okay. Show me, is
14 this on page 0368, and it says -- let
15 me look at the date here. Where is the
16 date on this? Oh, yeah, 9/10, so it
17 says --

18 BY MR. GILREATH:

19 Q 0368.

20 A -- additional reports, four out of 30,
21 right?

22 Q Right.

23 A He had four out of 30, that doesn't
24 jive with everything around it, all the notes
25 around it. He may be having, you know, other



1 issues, but I can't explain that. I don't know
2 why he is four out of 30. I mean, you have to
3 be -- and he was not -- he did not have deep
4 dementia in 2015. I mean, he might have been,
5 you know, disturbed for other reasons, just
6 didn't concentrate or something, but I can't
7 explain that. I don't know the answer to that.

8 Q You gave him the test; correct?

9 MS. PAYLOR: Object to the form.

10 MR. TWOMBLEY: Object to the form.

11 MS. PAYLOR: He did not give him
12 the test.

13 THE WITNESS: I don't know if I
14 gave him the test or not. It is my
15 note, it could have come from somebody
16 else, but it probably was me, I gave
17 him a lot of them. See, the one that
18 I'm looking at, which is probably the
19 one, was right next to it and he
20 couldn't fill anything out.

21 BY MR. GILREATH:

22 Q Right.

23 A He was unable to complete it, so --

24 Q What's the date on that one?

25 A -- that's probably the one we're



1 talking about. It's not dated, it's right
2 before it. I mean, yeah, that's -- so.

3 Q Is that -- the one you're looking at,
4 is that on page 0367 where it says date, 6/12,
5 and it's got all zeros over there?

6 A Yes.

7 Q Okay.

8 A I don't know if that's the one I was
9 referring to or misquoted it, but I do know from
10 2013 through 2015, he was competent to do --
11 competent to do this. This could have been a
12 misread or a miswrite or something, but I just
13 can't believe that he descended to a four and
14 then came out of it and tested 28 unless he was
15 being consumed by some other illness at the
16 time. I don't know. I can't answer it.

17 Q Let's go over to -- let's go over
18 to the next -- couple pages more over, it's
19 Bates 0370, it's number 31 out of 69 on these
20 notes, urology records --

21 A I see that.

22 Q -- and it says -- shows he scored ten
23 out of 30.

24 A Right.

25 Q On -- what day is that? On October the



1 14th -- that's October 19th, excuse me. October
2 19th of 2015, he scored ten out of 30.

3 A I'm looking at the --

4 Q Do you see that?

5 A Yeah, I didn't do that test, somebody
6 else did.

7 Q But -- but if that's the test that he
8 had done by one of his doctors, tell the jury
9 how bad of shape you're in when you can only
10 score a ten out of 30.

11 MR. TWOMBLEY: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: Well, if you have
14 ten out of 30, you have moderate
15 dementia. And, you know, like I was
16 saying earlier, if the patient looks
17 different than the paper says he is,
18 you always treat the patient. And, you
19 know, you admit the paper to the
20 hospital and treat the patient. So I
21 see a ten, and that's a significant
22 decrease from what he was, but I don't
23 think it lasted because if you go --

24 BY MR. GILREATH:

25 Q Let's go look at page --



1 MS. PAYLOR: Let him finish his
2 answer.

3 THE WITNESS: If you look down the
4 stream, I think there is reference to
5 the fact that he -- so he's better some
6 days and other days he isn't. And I
7 don't know on this particular day, what
8 was going on in his life, but
9 everything depends. If you're upset,
10 you can probably score -- you and me
11 probably could, at any given time,
12 could score a ten or 15 or five, if
13 you're upset or depressed or sick from
14 anything, and then you could -- the
15 next week, score a 28. So I don't
16 know. I can't remember if there was
17 anything significant on that day, but
18 that's my answer.

19 BY MR. GILREATH:

20 Q Okay. Let me refer you to Tab 10 in my
21 book.

22 A Okay.

23 Q At page 0397 is a copy of the portions
24 of the transcript where you testified in front
25 of the probate judge back in April of 2016.



1 Do you remember testifying over there,
2 don't you?

3 A I do, yes, sir.

4 Q And I believe this is Mr. Twombly
5 that's asking you, and you said -- at the top of
6 the page, he said when did Mr. Barringer's
7 condition begin to deteriorate such that you
8 would have placed limitations on what he could
9 do and he could not do. And then read that
10 answer there and that's what you said under oath
11 that day in court.

12 A What is the page? Can you give me the
13 page?

14 Q Yeah. It's up at the top, 0397.

15 A Okay.

16 Q Read your answer there and tell me if
17 it is --

18 A 0397, I got it, just a second.

19 (Crosstalk.)

20 BY MR. GILREATH:

21 Q And tell me if you still believe that
22 answer here today.

23 A Okay. Let's see.

24 (Crosstalk.)

25 BY MR. GILREATH:



1 Q -- through line 23.

2 A 23, it says --

3 Q It actually goes over to page 85.

4 A Says I would guess sometime in mid
5 2015, but certainly in the fall of 2015, and I
6 don't know exactly what month, September,
7 October, December, he took -- he was in the
8 descending certainly, I don't know what that
9 means with his illness. Descending certainly, I
10 don't know what I meant by that.

11 But prior to that time, you had not
12 placed any restrictions? Hadn't, no. So the
13 question is: What does that mean? That means
14 that sometime toward the end of '15 -- it could
15 have been early '16, I didn't know the exact
16 date, but he was in his efflorescence of his
17 disease. His transformation, but I don't know
18 exactly.

19 Q Explain what you mean by that,
20 efflorescence of his disease.

21 A What's that?

22 Q Explain to the jury what you mean by
23 that.

24 A That basically -- efflorescence is --
25 the first diagnosis is -- bricklayers leave a



1 little sandy material on the brick, the second
2 diagnosis explains a caterpillar turning into a
3 butterfly, and it's described as efflorescence.
4 So some writers, TS Elliot could be one, have
5 used that on a transformation of anything. Like
6 a pupa to a butterfly or the reverse.

7 Q And look up there -- I'm referring now
8 to the court reporter's transcript, page 84.

9 A Page 84. I got it.

10 Q It's on the transcript page, it's Dr.
11 Long depo, page 0397 at Tab 10 of our exhibits.

12 MS. PAYLOR: That's what he just
13 read.

14 THE WITNESS: No, I didn't read
15 it. I was just answering. I guess I
16 answered it the exact way.

17 BY MR. GILREATH:

18 Q I want you to read that answer starting
19 on page -- the question was starting up at
20 page -- line 5, and I believe Mr. Twombly
21 asked, when did Mr. Barringer's condition begin
22 to deteriorate such that you would have placed
23 limitations on what he could do and what he
24 could not do? And then you started explaining
25 that on line 9, and your answer goes on over to



1 line 6 on 85 of the transcript, which is at 0398
2 in the notebook.

3 My question to you is: Were you
4 telling the truth that day when you said that
5 and do you still agree with that today as you
6 sit here and read it again?

7 A Let me -- can I read it again?

8 MS. PAYLOR: Object to the form.

9 MR. TWOMBLEY: Same objection.

10 (Crosstalk.)

11 THE WITNESS: (Witness reading
12 from document.)

13 Most people follow some sort of a
14 similar path. They start out to where
15 they might leave their keys in the car,
16 they might miss a word or two, and they
17 end up relating -- not relating to the
18 world around them. They have lost
19 brain tissue so there is a spectrum.
20 He has gone through the complete
21 spectrum. When did he -- when did
22 the -- did he fall off the cliff, so to
23 speak?

24 I don't like the term cliff, but
25 did he metamorph or morph into somebody



1 that couldn't relate to the outside
2 world? Is that what you're asking me?
3 Yes. I would guess sometime -- it says
4 here, in the mid 2015. All right,
5 that's certainly in the fall of 2015,
6 and I don't know exactly what month,
7 September, October, December. He was
8 in the descending certainly with his
9 illness. But prior to that time, you
10 had not placed any restrictions on
11 Mr. Barringer? I hadn't, no. Okay.
12 No further questions, Your Honor.

13 So I didn't know exactly when I
14 answered that question when he -- and I
15 said that I didn't know when he fell
16 off the cliff, but he was certainly in
17 transition. And somewhere at the end
18 of '15, middle of '16, he did
19 transition.

20 BY MR. GILREATH:

21 Q Okay. Now turn over to Tab 13 in my
22 book, last page, it's the page right before Tab
23 14, and you see --

24 MS. PAYLOR: What page, Jim, the
25 page at the top?



1 MR. GILREATH: The page at the top
2 is 0463.

3 THE WITNESS: Yeah. I got it.

4 BY MR. GILREATH:

5 Q It says, I do solemnly -- I'll
6 represent to you, this is a signature page that
7 he signed apparently on December the 14th, 2016
8 with -- through some lawyers up in Virginia
9 somewhere, I understand, and he said on January
10 the 14th of 2016, I do solemnly declare and
11 affirm under the penalties of perjury that the
12 contents of the foregoing answers to
13 interrogatories are true and correct to the best
14 of my knowledge and belief.

15 And if you will go back and look, on
16 that page forward to the first of Tab 13, you
17 will see that he is signing and affirming his
18 answers to 20-something pages of interrogatory
19 answers under penalties of perjury.

20 And my question to you is: Based on
21 what we been talking about and what you said up
22 there under oath in the probate court, isn't it
23 true that he really didn't know what he was
24 doing on January the 14th of 2016 and was not --

25 MR. TWOMBLEY: Object to the form.



1 MS. PAYLOR: Object to the form.

2 MR. GILREATH: Let me get through
3 with my question, please.

4 MS. PAYLOR: I thought you were
5 through.

6 MR. TWOMBLEY: I was hoping you
7 were through.

8 THE WITNESS: So I made the
9 statement or are you saying that on
10 January the 14th, he was seriously
11 demented?

12 BY MR. GILREATH:

13 Q Yes.

14 A Okay. I didn't sign the form, Paul
15 Barringer did. He signed it, that it's his
16 belief that this is -- everything was fine. I
17 can't answer to that question. I don't know.

18 Q So if one of those lawyers in Virginia
19 had come to you and said, doctor -- Dr. Long, we
20 got this form here on this 20 pages of
21 interrogatories and we need Mr. Barringer to
22 sign it, we got to go file it under penalties of
23 perjury in a federal courthouse up in Alexandra,
24 Virginia, do you believe that it is appropriate
25 for us to do that and that he will know what he



1 is signing? Please tell us yes or no, what
2 would you have told him?

3 MR. TWOMBLEY: Object to the form
4 of the question.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: It's a hypothetical,
7 I can't answer that. It is
8 hypothetical.

9 BY MR. GILREATH:

10 Q Okay. The truth, Dr. Long, is that
11 Paul Barringer was totally out of his mind on
12 January 14th and nobody wants to admit it; is
13 that correct?

14 MR. TWOMBLEY: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: You know, I'm just
17 one guy practicing medicine, I can't go
18 with everybody. I don't know who they
19 are.

20 BY MR. GILREATH:

21 Q Okay. So you're telling me you --

22 A I was not part -- I'll tell you what, I
23 was not part of the conspiracy. I don't even
24 know what this was all about at the time, and I
25 still don't, but I can only testify to what I



1 know. I never talked to anybody in Virginia, to
2 my knowledge. I just go to work and go home.

3 Q Well, go look at page 34 under Tab 13,
4 these amended answers that he signed. I want
5 you to just thumb through those, and these are
6 typed up answers and they're questions and he's
7 answering them, and -- and then he's affirming,
8 under penalties of perjury, that his answer is
9 true and correct.

10 Do you believe it was proper for these
11 lawyers to go to him and get him to sign this
12 when they knew or should have known that he
13 didn't know what he was signing?

14 MR. TWOMBLEY: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I am not an
17 attorney, I have no idea what is proper
18 and legally. I don't do legal, I just
19 don't know that.

20 BY MR. GILREATH:

21 Q Okay. All right. I think I beaten
22 that horse, I'll move on.

23 MS. PAYLOR: Thank you.

24 BY MR. GILREATH:

25 Q Let's see. Let me get back into my



1 questions here. Where are we?

2 Is it true that a person that has
3 Alzheimer's and a urinary tract infection, and
4 then gets over the urinary tract infection, that
5 the person still has Alzheimer's?

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: Same objection.

8 THE WITNESS: What's the -- I'm
9 sorry, I missed the question.

10 BY MR. GILREATH:

11 Q Isn't it true -- I'm talking about the
12 fact that he's got Alzheimer's and a urinary
13 tract infection, which we have been talking
14 about some, and then he gets over the urinary
15 tract infection because of the antibiotics or
16 whatever, that he still has Alzheimer's; isn't
17 that correct?

18 MR. TWOMBLEY: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: As I stated earlier,
21 nobody on the planet can tell him if he
22 had Alzheimer's, that is a postmortem
23 diagnosis.

24 BY MR. GILREATH:

25 Q I understand that.



1 A Okay. So I can't -- I wouldn't -- a
2 lot of people, and I probably was at the time,
3 using Alzheimer's as a generic word, it --
4 really, dementia is what I should have put in
5 there.

6 Q Well, let's change that, then, for my
7 question and say that once he got over the
8 urinary tract infection, then does he still have
9 dementia?

10 MR. TWOMBLEY: Object to the form.

11 THE WITNESS: Yes.

12 MS. PAYLOR: Object to the form.

13 BY MR. GILREATH:

14 Q Not Alzheimer's, but dementia?

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. GILREATH:

18 Q Okay. How would you, based on these
19 records we've looked at, and we've looked at a
20 lot of them today, how would you classify his
21 dementia on -- what's the date of this thing?

22 How would you classify his dementia on
23 January the 14th of 2016?

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Can you refer me to



1 a note in the chart or I can try to
2 find it?

3 BY MR. GILREATH:

4 Q Wait a minute. Look at the last page,
5 Tab 13.

6 A Okay.

7 Q And you see -- wait a minute.
8 Look at the last tab of 463, which is
9 the declaration that he signed on January the
10 14th of 2016.

11 A Right. I'm looking at it.

12 Q You see that?

13 A Yeah.

14 Q Based on what we've talked about here
15 today and these records you've looked at, would
16 you agree with me that when he signed that on
17 January the 14th of 2016, that he still had
18 dementia?

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: Object to the form.

21 MS. PAYLOR: Asked and answered a
22 million times.

23 THE WITNESS: Yeah. He had
24 dementia, it's just -- I don't know
25 what -- where he is on the scale. He's



1 had some form of dementia for years,
2 but most of the time, it's functional
3 dementia. So I can't answer that on
4 that particular day. Yes, he had
5 dementia.

6 BY MR. GILREATH:

7 Q Okay. Good. Do you know Dr. Paul
8 Mazzeo?

9 A Very well.

10 Q And look at Tab 12.

11 A All right.

12 Q And there is a -- it's Dr. Long depo,
13 page 437 through 439.

14 A Yep.

15 Q And there is a conclusion by Dr. Mazzeo
16 that he said -- in paragraph 11, it is my
17 professional medical opinion that
18 Dr. Barringer -- Mr. Barringer currently lack
19 testimonial capacity, and he signed that on
20 January 20th of --

21 A Right.

22 Q -- 2016. Do you have any -- would you
23 agree with Dr. Mazzeo's conclusion there?

24 MR. TWOMBLEY: Object to the form
25 of the question.



1 MS. PAYLOR: Object to the form.

2 THE WITNESS: I don't know what he
3 is basing it on. You know, I'm -- he
4 is a neurologist, I'm an internist. I
5 treat a lot of the people with
6 Alzheimer's, but I don't know what he
7 is basing that on. But he thinks that
8 that's the case because that is what he
9 wrote, but I can't comment on it, it's
10 his opinion.

11 BY MR. GILREATH:

12 Q He's a pretty good doctor, isn't he?

13 MR. TWOMBLEY: Object to the form.

14 MS. PAYLOR: Object to the form.

15 BY MR. GILREATH:

16 Q He's still --

17 A He is a board certified excellent
18 neurologist and --

19 Q Okay.

20 A -- he specialized in neurology.

21 Q Do you know of any reason why I
22 shouldn't take, as viable proof, what he signed
23 in this declaration --

24 A I don't have any --

25 Q -- January the 20th of 2016?



1 MR. TWOMBLEY: Object to the form.

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: I mean, I just can't
4 answer that. This is not my note, and
5 you have to decide that for yourself,
6 to whether you take this at its own
7 merit or think there was something else
8 going on.

9 BY MR. GILREATH:

10 Q Well, I'm showing you a copy of it. If
11 you want time to read it, you're welcome to read
12 it, but I want to know whether you know of any
13 good reason why I should not believe that what
14 Dr. Mazzeo said under penalties of perjury is
15 true and correct?

16 MR. TWOMBLEY: Object to the form.

17 MS. PAYLOR: Object to the form.

18 MR. TWOMBLEY: Asked and answered
19 repeatedly. He's --

20 THE WITNESS: He is a good doctor.

21 MR. TWOMBLEY: Let me finish my
22 objection.

23 THE WITNESS: Oh, I'm sorry.

24 MR. TWOMBLEY: He's answered that
25 question directly. This is repetitive



1 and it is unnecessary. Please move on
2 to the next question.

3 MS. PAYLOR: And it's harassing.

4 MR. GILREATH: Only if he will
5 answer the question.

6 MS. PAYLOR: He did answer it.

7 MR. TWOMBLEY: If you want to ask
8 the same question --

9 THE WITNESS: I don't know it's
10 based on.

11 MR. TWOMBLEY: Let me finish,
12 please.

13 If you want to ask all your
14 questions twice, you're welcome to do
15 that. But I'm asking you to please
16 move on. You have asked him this
17 question, he just said he read it, and
18 he's given -- he's testified to your
19 questions.

20 MR. GILREATH: He hasn't answered
21 the question, but that's --

22 MS. PAYLOR: Yes, he did.

23 MR. GILREATH: That's your
24 interpretation of it. Anyway, I'll
25 take what I got. He speaks very highly



1 of Dr. Mazzeo, appears to me from his
2 sworn testimony. All right.

3 MR. TWOMBLEY: Then move on to the
4 next question, please.

5 MR. GILREATH: I'm about to move
6 on.

7 MR. MACLOSKIE: Let him, Allen
8 [sic]. Great day, why don't y'all let
9 him move on.

10 BY MR. GILREATH:

11 Q Let me ask you this: Did you have any
12 involvement with Mr. Barringer being admitted to
13 Memory Matters?

14 A No.

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Same objection.

17 BY MR. GILREATH:

18 Q Did you -- are you -- do -- you know
19 what Memory Matters is, don't you?

20 A I do, indeed.

21 Q Do they require a doctor certification?

22 A No --

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: -- anybody can go to
25 Memory Matters. They can self refer.



1 BY MR. GILREATH:

2 Q Say what now?

3 A Anybody can just walk in and sign up
4 for Memory Matters.

5 Q So you don't have to have a doctor's
6 certification?

7 A No.

8 Q Okay.

9 MR. TWOMBLEY: Object to the form
10 of the last question. Asked and
11 answered.

12 BY MR. GILREATH:

13 Q So you -- you say you didn't have
14 anything to do with it?

15 A I didn't say that.

16 MR. TWOMBLEY: Object to the form
17 of the question.

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: I didn't say that.

20 I said -- you asked me the question, if
21 you -- if I have a patient. I've got a
22 lot of patients that come into my
23 office and say, I sent my husband to
24 Memory Matters, and I didn't have
25 anything to do with it. That was the



1 question. I'm not saying I sent him or
2 I didn't send him, I just don't if it
3 was -- I was involved in that back
4 then.

5 BY MR. GILREATH:

6 Q Did you say you were involved in it or
7 you don't know?

8 MR. TWOMBLEY: Object to the form.

9 THE WITNESS: I don't know whether
10 I was or not.

11 BY MR. GILREATH:

12 Q Okay.

13 A Could have been that he came in -- I
14 don't -- you know, I don't send a lot -- just
15 between you and I, I don't send a lot of
16 patients to Memory Matters.

17 Q Okay.

18 A And the reasons are not that critical.

19 Q Okay.

20 A So probably, I would say, somebody else
21 did, but I can't answer that for sure because I
22 don't remember.

23 Q Do you remember when you found out he
24 was over there?

25 A What's that?



1 Q Do you remember when you found that he
2 was over there?

3 A I don't remember that.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: I don't remember
6 that.

7 (Crosstalk.)

8 BY MR. GILREATH:

9 Q I need you to look at my book at Tab 1
10 at page 0034, paragraph 3, and this is part of
11 your records back in 2015. And it says,
12 dementia associated with another disease,
13 getting worse, probably secondary to general
14 anesthesia. Should affect where -- something,
15 something, something -- worse sudden confusion,
16 saw a neurologist, 9/10/2015, performed mini
17 mental exam, four out of 30. Also filled out H
18 & P -- I don't know what that stands for -- for
19 Memory Matters.

20 That indicates to me that in your
21 records that you filled out whatever H & P is
22 for Memory Matters. Do you have any knowledge
23 about that?

24 A A lot of people go to Memory Matters --

25 MS. PAYLOR: Objection to the



1 form.

2 MR. TWOMBLEY: Same objection.

3 THE WITNESS: A lot of people go
4 to Memory Matters and they call me and
5 say, we need some records.

6 BY MR. GILREATH:

7 Q Do you know what H & P from memory
8 Matters would be? It is in your records.

9 A You mean what does H & P stand for?

10 Q Yeah?

11 A History --

12 Q History and something?

13 A History and physical exam.

14 Q So it appears --

15 MS. PAYLOR: What page are you on?

16 MR. GILREATH: I'm on page 0034.

17 MS. PAYLOR: Where on that page,
18 please? I don't see that.

19 MR. GILREATH: Dementia associated
20 with another disease, performed a mini
21 mental exam on 9/10/2015.

22 MS. PAYLOR: Okay.

23 BY MR. GILREATH:

24 Q Four out of 30. Also filled out
25 history and physical for Memory Matters. So it



1 appears to me, from looking at your records,
2 that you filled out something for Memory
3 Matters.

4 Would you agree with me?

5 A I could have very well, yes.

6 Q Okay. All right. But you don't -- as
7 we sit here today, you don't have any memory of
8 that?

9 A You know, I don't.

10 MR. TWOMBLEY: Object to the form.

11 Asked and answered.

12 MS. PAYLOR: Same objection.

13 BY MR. GILREATH:

14 Q All right. Did you ever use the
15 Barringer's house up in Linfield? Did they ever
16 make that available to you?

17 A They did.

18 Q And how much did you pay them for it,
19 if anything?

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: Nothing.

22 MR. TWOMBLEY: Same objection.

23 THE WITNESS: I paid nothing.

24 BY MR. GILREATH:

25 Q Okay. And how many times would you go



1 up there over the last four or five years of
2 Mr. Barringer's life?

3 A None while he was alive.

4 Q Did you -- when did you start going up
5 there, after he died?

6 A I think so, yes.

7 Q You don't think you ever went up there
8 when he was alive?

9 A I don't recall ever going up there
10 while he was alive. It was after his death.
11 Two or three times.

12 Q And that house is owned by Merrill
13 Barringer, his daughter; correct? His --

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I don't know who
16 owns it.

17 MR. TWOMBLEY: Same objection.

18 BY MR. GILREATH:

19 Q Okay. But you didn't pay them any rent
20 for it, whoever owned it, right?

21 A That's right.

22 MR. TWOMBLEY: Object to the form.

23 THE WITNESS: Right.

24 MS. PAYLOR: Object to the form.

25 BY MR. GILREATH:



1 Q Is that right?

2 A You got it. That's right.

3 Q People don't do that to their lawyers.

4 All right. Hold on a minute. Lets
5 take a break here and see I can start trying to
6 wind this thing down.

7 THE VIDEOGRAPHER: Off the video.

8 MR. TWOMBLEY: No objection.

9 (Whereupon, a break was taken at
10 8:20 p.m.)

11 (Back on the record at 8:30 p.m.)

12 THE VIDEOGRAPHER: Back on video.

13 MR. GILREATH: Tell me when we're
14 back on the record.

15 THE VIDEOGRAPHER: We're back on
16 the record.

17 BY MR. GILREATH:

18 Q All right. I'm glad to report that we
19 don't, at this point, have any further
20 questions. If -- I don't know whether anybody
21 else has got any questions. We reserve the
22 right to ask anything -- what they ask. If they
23 don't have anything, we're through.

24 MR. TWOMBLEY: I've just got a
25 couple of quick questions.



1 MR. GILREATH: What about Alice,
2 she got any?

3 MR. TWOMBLEY: Well, yeah, how
4 about you, Alice, go ahead. I'm sorry,
5 I didn't mean to jump in front of you.

6 MS. PAYLOR: I don't have any
7 questions.

8 MR. TWOMBLEY: Okay.

9 MR. GILREATH: What about Chip?
10 He's gone, isn't he?

11 REDIRECT EXAMINATION

12 BY MR. TWOMBLEY:

13 Q Dr. Long, did Mr. Barringer, during the
14 entire time that you treated him, did he ever
15 tell you or in any way suggest to you that he
16 was being mistreated by Ms. Barringer?

17 A Never.

18 MR. MACLOSKIE: Asked and
19 answered.

20 BY MR. TWOMBLEY:

21 Q Did he tell you that he was ever
22 being --

23 MR. TWOMBLEY: That was
24 Mr. Macloskie, right?

25 MR. MACLOSKIE: Yep.



1 MR. GILREATH: I'll interpose that
2 objection. Asked and answered.

3 BY MR. TWOMBLEY:

4 Q All right. Did he -- did Mr. Barringer
5 ever suggest to you that Ms. Barringer was
6 manipulating him or making him do things that he
7 didn't want to do?

8 A I don't recall anything about that.

9 Q Okay. Did he ever suggest that he was
10 being taken advantage of or tricked?

11 A He never suggested that me.

12 MR. GILREATH: Objection. Asked
13 and answered.

14 BY MR. TWOMBLEY:

15 Q Did he ever suggest that he couldn't
16 use the phone or he couldn't talk to people that
17 he wanted to talk to?

18 A I have no recollection of that.

19 MR. GILREATH: Objection. Asked
20 and answered.

21 BY MR. TWOMBLEY:

22 Q Did he ever -- did he ever ask you for
23 help in any way other than medical help?

24 MR. GILREATH: Objection. Asked
25 and answered.



1 THE WITNESS: No.

2 BY MR. TWOMBLEY:

3 Q Okay. The same questions for Merrill
4 Light, did he ever tell you that his daughter
5 was manipulating him in any way?

6 A I don't recall anything like that.

7 Q Do you know why -- did he ever suggest
8 to you that Merrill Light was making him do
9 things he didn't want to do?

10 A Big Merrill?

11 Q Little Merrill.

12 A Little Merrill?

13 Q Little.

14 A I don't recall that.

15 Q Okay. Well, for big Merrill as well?

16 MR. GILREATH: Object to the form
17 of the question.

18 THE WITNESS: No, I didn't. No, I
19 don't recall anything like that.

20 BY MR. TWOMBLEY:

21 Q Do you know why anyone would say that
22 about Merrill Barringer?

23 A I have no idea.

24 Q You know why anybody would say that
25 about Merrill Light?



1 A No.

2 MR. GILREATH: What are you
3 saying, say what? I don't understand
4 the question.

5 MR. TWOMBLEY: He got it.

6 MR. GILREATH: He what?

7 BY MR. TWOMBLEY:

8 Q Did Mr. Barringer ever suggest to you
9 that he was being denied access to his telephone
10 or to his car or to his e-mail?

11 A Not to me.

12 MR. GILREATH: Objection.
13 Leading.

14 THE WITNESS: No. No, no
15 knowledge of that.

16 BY MR. TWOMBLEY:

17 Q Do you know of any instance where
18 Mr. Barringer was tricked, manipulated, or
19 anyone took advantage of his condition?

20 A No. I have no knowledge of that at
21 all.

22 Q Okay.

23 MR. TWOMBLEY: I need one second
24 to confirm with my co-counsel. I'm
25 sorry, but I got -- I need one second



1 to confirm I don't have any other
2 questions.

3 THE WITNESS: You want me to --

4 MR. TWOMBLEY: No, you don't have
5 to do anything, I'm just asking you to
6 stand down for a moment.

7 THE VIDEOGRAPHER: You want to us
8 go off?

9 MR. TWOMBLEY: Yeah, that would be
10 fine.

11 THE VIDEOGRAPHER: Off the record.

12 (Whereupon, a break was taken at
13 8:35 p.m.)

14 (Back on the record at 8:36 p.m.)

15 THE VIDEOGRAPHER: Back on video.

16 MR. TWOMBLEY: Okay.

17 MR. GILREATH: Are we talking to
18 him?

19 MR. TWOMBLEY: Go ahead, we're
20 ready.

21 MR. GILREATH: Can you hear me?

22 THE WITNESS: Yes, sir.

23 RECROSS-EXAMINATION

24 BY MR. GILREATH:

25 Q All right. Look at tab -- Tab 5 in my



1 book.

2 MS. PAYLOR: What is the page
3 number, please?

4 MR. GILREATH: Page 0171, it's --

5 MR. MEDLIN: Ashley?

6 MR. TWOMBLEY: Yeah.

7 MR. MEDLIN: Ashley?

8 MR. TWOMBLEY: Yeah. Hold on a
9 second, Jim.

10 MR. MEDLIN: I just called your
11 cell. Can you call me back?

12 MR. TWOMBLEY: Sure.

13 Go ahead, Jim, I'll let you finish
14 and then I'll --

15 (Crosstalk.)

16 THE WITNESS: There is only one
17 page.

18 BY MR. GILREATH:

19 Q Have you found that at Tab 5?

20 A Yeah, Tab 5. There's only one small
21 paragraph at the top.

22 Q Yeah. That's -- I think that's out of
23 his records. This is out of some Memory Matters
24 records we got, and it says -- it's dated
25 1/04/2016, Paul had been having a rough time in



1 the afternoons. He is exit seeking and worried
2 about Merrill. He struggles with explaining and
3 answering questions. He has also been unshaven
4 and wearing dirty clothes. Merrill does have
5 home health, but she is not using them for
6 hygiene. She did call Manual to start assisting
7 and she is coming in for appointments on Friday
8 to help -- on how to help Paul and understand
9 dementia.

10 That was in your records, right?

11 MR. TWOMBLEY: Object to the form.

12 BY MR. GILREATH:

13 Q That's in some Memory Matters records
14 that we got. What -- when they're talking in
15 there about exit seeking, does that mean he is
16 trying to escape?

17 MR. TWOMBLEY: Object to the form
18 of the question.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: I don't know what
21 they -- whoever wrote this meant by
22 that. Exit seeking, I don't know what
23 that means. I didn't write it.

24 BY MR. GILREATH:

25 Q But this doesn't describe the normal



1 condition that you saw Paul Barringer when you
2 were seeing in his office, he didn't come in
3 there unshaven and worried about Merrill?

4 A I don't recall that.

5 Q Do what?

6 A I don't recall that specifically.
7 Could be, I just don't recall it.

8 MR. GILREATH: Okay. That's all I
9 got.

10 MR. TWOMBLEY: I want to take a
11 break and talk to my co-counsel and
12 then I'll be back in three minutes.

13 THE VIDEOGRAPHER: Off the record.

14 (Whereupon, a break was taken at
15 8:39 p.m.)

16 (Back on the record at 8:41 p.m.)

17 THE VIDEOGRAPHER: Back on video.

18 MR. TWOMBLEY: No further
19 questions.

20 (SIGNATURE WAIVED.)

21 (Whereupon, the videotaped
22 deposition of Paul M. Long, M.D.,
23 was concluded at 8:41 p.m.)

24

25



C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Amanda Bowen, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Amanda Bowen

Amanda Bowen

Court Reporter

Notary Public

Beaufort, South Carolina



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1 STATE OF SOUTH CAROLINA
2 COUNTY OF BEAUFORT
3 IN THE MATTER OF: ESTATE OF
4 PAUL BRANDON BARRINGER, II

COURT OF COMMON PLEAS

5 HAMPTON BARRINGER LUZAK,
6 Plaintiff,

7 vs.

CASE NO. 2016-CP-07-1919

8 MERRILL B. LIGHT, MERRILL U.
9 BARRINGER, as Personal
10 Representative of the Estate
11 of PAUL BRANDON BARRINGER, II,
12 J. RANDOLPH LIGHT, JR., MERRILL
13 B. LIGHT as Putative Trustee of
14 PAUL BRANDON BARRINGER, II
15 Revocable Trust Dated December 4,
16 1998, and MERRILL B LIGHT, as
17 Trustee of the MERRILL BARRINGER
18 LIGHT Revocable Trust,
19 Defendants.

(Caption continues on Page 2)

20 VIDEOTAPED
21 VIDEOCONFERENCE

22 DEPONENT: JOHN JOLLEY, ESQUIRE

23 DATE: March 16, 2021

24 TIME: 10:08 a.m.

25 LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

1 (Caption continues)

2

3 HAMPTON BARRINGER LUZAK,
4 Plaintiff,

5 vs.

CASE NO. 2019-CP-07-01253

2019-CP-07-01294

6 MERRILL U. BARRINGER

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(Appearances Continued on Page 2)

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ALSO PRESENT: HAMPTON LUZAK, (VIA ZOOM)
ASHLEY BOWLER, VIDEOGRAPHER

(INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: Good morning. We
2 are going on record at 10:08 a.m. on March 16, 2021.
3 This is media unit one of the video recorded
4 deposition of John Jolley, Esquire, taken by counsel
5 for the defendant in the matter of consolidated
6 Barringer case filed in the Court of Common Pleas,
7 Case No. 2016-CP-07-1919.

8 This deposition is being held at
9 Jolley Law Group, located at 810 Bellawood Road,
10 Columbia, South Carolina 29205. My name is
11 Ashley Bowler from the firm Veritext and I'm the
12 videographer. The court reporter is Kimberly Power
13 from the firm Veritext.

14 Counsel and all present in the room
15 and everyone attending remotely will now state their
16 appearances and affiliations for the record.

17 MR. TWOMBLEY: Ashley Twombley,
18 counsel for Merrill Barringer.

19 MS. KIRK: Ariaail Kirk with the
20 Jolley Law Group, counsel for John Jolley.

21 MR. TRAXLER: Tom Traxler with Jim
22 Gilreath and Bill Hogan on behalf of the plaintiff.

23 MR. MACLOSKIE: Mike Macloskie on
24 behalf of plaintiff.

25 MS. PAYLOR: Alice Paylor on behalf

1 of Merrill Light.

2 MR. MOLSTER: Charles Molster on
3 behalf of Merrill Light.

4 MR. GHOM: Bijan Ghom on behalf of
5 Merrill Light.

6 MS. WALTERS: This is Lee Walters on
7 behalf of Merrill Barringer.

8 MR. MEDLIN: Alan Medlin on behalf of
9 the plaintiff.

10 MR. SCHRONCE: John Schronce on
11 behalf of Coastal Forest Resources Company.

12 MR. FUHR: Ed Fuhr, also on behalf of
13 Coastal Forest. John and I are both with the law
14 firm of Hunton, Andrews & Kirk.

15 THE VIDEOGRAPHER: Will the court
16 reporter please swear in the witness and we may
17 proceed.

18 JOHN JOLLEY, ESQUIRE,
19 being duly sworn, testified as follows:

20 EXAMINATION

21 BY MR. TWOMBLEY:

22 Q. Good morning, Mr. Jolley. I'm, obviously,
23 Ashley Twombley, counsel for Merrill Barringer.
24 We're here to take your deposition today in some
25 litigation brought by Mr. Barringer's daughter,

1 Hampton Luzak.

2 Have you ever had your deposition taken
3 before?

4 A. I have not.

5 Q. Okay. I'm going to -- I'm going to ask
6 you some questions. The court reporter is going --
7 going to take down your answers. If you have any
8 questions about my questions, you let me know. Okay?

9 A. Okay.

10 Q. If you need a break, let us know. We can
11 take a break at any time you need to. Okay?

12 A. Okay.

13 Q. Since we're on Zoom, you know, I ask that
14 you please let me finish my question. Let everybody
15 have time to object, if they need to lodge an
16 objection, before you give your answer. I'll try to
17 let you finish your answer before you start your --
18 before I start the next question. Fair enough?

19 A. Certainly.

20 Q. Okay. Before I begin asking you any
21 substantive questions, I want to put on the record
22 that Merril Barringer has identified you as a
23 potential witness in this case. Obviously you are an
24 attorney and you have privileged information and work
25 product information in your possession. By

1 identifying you as a witness and by noticing your
2 deposition, neither Ms. Barringer nor the estate is
3 waiving the attorney-client privilege or the work
4 product protection or any other protection or
5 privilege under the law. Judge -- the trial court
6 has ruled that there is a limited exception to the
7 attorney-client privilege in this case, which is the
8 testamentary exception to the attorney-client
9 privilege. The order from the trial court allows
10 information related to the preparation, execution,
11 and amendment of Mr. Barringer's estate planning
12 documents to be disclosed without waiving the
13 attorney-client privilege or any other protection.
14 Ms. Barringer and the estate intend to extract
15 testimony from you in accordance with that order and
16 is not waiving any privilege or other protection
17 related to the same.

18 MR. MOLSTER: So, Ashley, we'll just
19 make the same statement on behalf of Merrill Light
20 that we're not waiving any privileges. Obviously the
21 testamentary exception doesn't apply to us, but we
22 have -- make the same non-waiver statement. Thank
23 you.

24 MR. SCHRONCE: And this is
25 John Schronce on behalf of Coastal, and we would make

1 the same statement on behalf of the company, that the
2 company is not waiving any privilege with respect to
3 witness.

4 MR. TWOMBLEY: All right. Thank you.
5 BY MR. TWOMBLEY:

6 Q. Mr. Jolley, will you please tell us your
7 full name and where you live?

8 A. My name is John Michael Jolley. I live on
9 Hilton Head at 6 Sawtooth Court, Hilton Head Island,
10 South Carolina.

11 Q. Are you married?

12 A. I am.

13 Q. Okay. Do you have children?

14 A. I do.

15 Q. Who -- who is your wife and what are your
16 children's names?

17 A. My wife is Kellie McPherson Jolley, and I
18 have four children. John Michael Jolley, Jr., Bryant
19 Jolley, Claire Jolley, and Kate Jolley.

20 Q. Great. What's the age range between these
21 children?

22 A. My son, Jack, is 20 years old and at South
23 Carolina, and my youngest daughter is in third grade.
24 So she's nine.

25 Q. Okay. How long have you lived on Hilton

1 Head?

2 A. I've lived on Hilton Head since 2005.

3 Q. Okay. Tell us what you -- what you do for
4 a living?

5 A. I'm an estate planning and tax lawyer.

6 Q. Okay. And how long have you been an
7 estate planning and tax lawyer?

8 A. Since 1998.

9 Q. Can you tell us where you -- where you
10 started your legal career at and just take us through
11 where you work now through the Jolley Law Group,
12 please?

13 A. Sure. I began my legal career -- I
14 graduated in 1998, was admitted to the bar that year,
15 and I practiced in Virginia for several years and I
16 returned to Columbia, South Carolina and practiced
17 for a few years before I moved to Hilton Head in 2005
18 and which I had joined the McNair Law Firm at that
19 point. And in January of 2020, I left the McNair Law
20 Firm, which was, at that point, called Burr, Forman,
21 McNair and joined Jolley Law Group, where I practice
22 to -- I still practice today.

23 Q. Okay. So you were with McNair for
24 approximately 15 years?

25 A. Yes, sir.

1 Q. Okay. What is estate planning?

2 A. Well, estate planning, in general,
3 would -- would describe as what the planning for
4 individuals to transfer their assets in a orderly way
5 and in accordance with their wishes and -- and in an
6 efficient way.

7 Q. Okay. Have you -- since you -- since you
8 started practicing in 1998 through -- through today,
9 have you always practiced in the area of estate
10 planning?

11 A. I have.

12 Q. Okay. Is that -- what percentage of your
13 work is estate planning work? I mean, is that all
14 you do?

15 A. I do estate planning, estate
16 administration and those, what, ancillary activities
17 that come from that.

18 Q. Okay. Do you have any certifications or
19 any special type of education in the area of estate
20 planning?

21 A. Well, I'm a member of the South Carolina
22 and the Virginia state bars. I am a certified
23 specialist for estate planning and probate law in
24 South Carolina. I'm a member of the American College
25 of Trust and Estate Counsel.

1 Q. Okay. Let's talk about a couple of those.
2 What is a -- what does it mean to be certified as a
3 specialist in -- in estate planning in South
4 Carolina?

5 A. Generally the -- the supreme court in
6 South Carolina, through its commission on CLE and
7 specialization, recognizes a few areas of the law in
8 which lawyers may receive this designation as a
9 specialist. Estate planning and probate law is one
10 of those specializations that involves, one, having
11 practiced in the area for a period of time. I
12 believe it's five years, but I'm not sure that I
13 remember that at this point. And that they -- that
14 there is a certain percentage of their practice
15 devoted to the subject matter, and then it would --
16 the -- that lawyer would also have to pass a written
17 test almost as the equivalent of boards with respect
18 to the subject area. And, of course, there's a
19 committee within the -- under the auspices of the
20 supreme court that evaluates a lawyer to see whether
21 or not they should be designated as -- as a certified
22 specialist.

23 Q. Okay. Do you remember approximately when
24 you were certified as a specialist by the Supreme
25 Court of South Carolina in the field of estate

1 planning?

2 A. My recollection is in 2005.

3 Q. Okay. Do you have to periodically renew
4 or reapply for the certification?

5 A. Every five years you have to do a
6 recertification.

7 Q. Okay. So we're 2021 now. I guess
8 approximately three times you've had to apply or
9 reapply?

10 A. That sounds right.

11 Q. Okay. And are you currently still
12 certified as a specialist in estate planning?

13 A. I am. I submitted my recertification in
14 December, and I know that there was some question,
15 that is, there was an error in calculating my CLE
16 credits. And, therefore, I believe that I am still
17 certified. If -- anyway, but I know there was a
18 hiccup in the CLE office about -- or in the
19 commission for specialization office about whether or
20 not I had enough credit hours when, in fact, I had
21 more than were required for recertification.

22 Q. Okay. Do you expect to be recertified?

23 A. I do. And I'm not -- I'm frankly not sure
24 about the timing of that. I'm not sure to what
25 extent that committee has met again to rectify the --

1 what that error would have happened in December.

2 Q. Okay. All right. Good. Have you ever
3 served on any committees or participated in the South
4 Carolina bar?

5 A. I have. I participated -- I was a member
6 of the South Carolina bar committee on professional
7 responsibility.

8 Q. Okay. And do you remember when that was?

9 A. So I was a member of that committee for
10 probably a decade. So certainly from early 2000s
11 through 2010. I don't remember specifically. I know
12 I was on the committee during our effort to study
13 ethics 2000. That was really something that happened
14 in the early 2000s. I was on that committee for
15 several years. I served in a couple of roles.
16 Ultimately was the chair of that committee for at
17 least one year, maybe two years. I can't remember
18 what the cycle is for that.

19 Q. How do you -- how -- how do you become the
20 chair of the professional responsibility committee?
21 I mean, is that something that's voted on or do you
22 get appointed or do you recall?

23 A. Well, after you've been on the committee
24 for some period, then -- I'm not sure of the precise
25 process as far as that goes, but the outgoing chair

1 gets to nominate their successor to serve as chair.
2 And then I believe the state bar chair appoints the
3 new committee chairs for the upcoming cycle.

4 Q. Okay. All right. You mentioned the
5 fellow of American College Trust and Estate Counsel.
6 I think that's frequently referred to as ACTEC; is
7 that right?

8 A. Uh-huh. The American College of Trust and
9 Estate Counsel. We do frequently refer to it as
10 ACTEC.

11 Q. Okay. What is ACTEC for someone who --
12 who has no idea?

13 A. ACTEC is an organization of estate
14 planning lawyers, a national organization, that is
15 made up of lawyers that limit their practice or at
16 least spend the primary amount of their practice in
17 the area of estate planning. It is -- and after you
18 meet certain credentials, you may be nominated to be
19 elected to the college. This is -- and, again, it
20 has similar credentials in terms for the -- the
21 certified specialist, that is, you have to be in
22 practice for -- in the practice in this area for more
23 than ten years. You also have to exhibit what high
24 ethical standards. You also have to show that you
25 have made significant contributions to the practice

1 area, that is, estate planning, generally. And then
2 you may be elected to ACTEC.

3 Q. Okay. Great. Do you remember
4 approximately when you became a member of ACTEC?

5 A. I think it was -- well, five or six years
6 ago.

7 Q. Okay. Great. Let's talk for a minute
8 about Paul Barringer. Tell me when you first
9 remember meeting Paul Barringer.

10 A. I first met Paul Barringer in 2008 or
11 2009.

12 Q. Okay. And do you remember what the
13 circumstances were that led you to meet him?

14 A. Well, I think I first met Paul Barringer
15 in a social sense, that is, I met him -- I was
16 introduced to him when I was at a restaurant or
17 something on Hilton Head. I don't remember the
18 precise location. But in '08 and '09, I -- I spent
19 time with Paul when I began to review his estate
20 planning documents.

21 Q. Okay. Tell me -- well, before I ask you
22 that, tell me in general about Paul Barringer. What
23 type of -- what type of guy was Paul?

24 A. Paul was a gentleman. He was someone who
25 I really enjoyed working with. He was -- I would

1 certainly think of him as a self-made man and who
2 was, what? He was very firm in what he thought
3 should happen, and he really wasn't afraid to tell me
4 what he thought was the right thing to do. I found
5 him -- I found him charming. I thought he was very
6 smart. I think he understood his business. He had a
7 very strong idea about what his business was and
8 should be and had a very strong affinity to his
9 family.

10 Q. Great. Limiting your testimony only to
11 estate planning work that you did for Mr. Barringer
12 in accordance with the court's order in this case,
13 tell us what you recall doing for Mr. Barringer
14 related to his estate plan in the '08/'09 time frame.

15 A. In '08 and '09, I, what? I met with
16 Mr. Barringer and talked about his current -- his
17 then current documents. I reviewed those documents
18 and discussed with him what those documents said. At
19 that time, we -- Mr. Barringer didn't go forward with
20 changes in his documents.

21 Q. Okay. And do you recall actually --
22 approximately how much time you would have spent
23 either reviewing his documents or meeting with him
24 about his documents that existed in that time?

25 A. That's hard for me to say. I -- I would

1 estimate two to three hours worth of time.

2 Q. Okay. Let's move on to the next time you
3 interacted with Mr. Barringer regarding his estate
4 plan. Do you recall the next time that you worked
5 with him after '08/'09?

6 A. In the fall of 2011, my perception was
7 that Paul and Merrill Barringer reengaged with me in
8 the estate planning process.

9 Q. Okay. And do you know what was the
10 impetus for them -- for them doing that or for
11 Mr. Barringer doing that?

12 A. I think Mr. Barringer -- again, we had
13 talked about the documents he had in place when we
14 had reviewed the documents in '08 and '09, and I
15 think it was Mr. Barringer's perception and Mr. and
16 Ms. Barringer's perception that they needed to do an
17 update of those documents.

18 Q. Okay. And did you end up drafting and
19 preparing new documents for Mr. Barringer in 2012?

20 A. We did.

21 Q. Okay. All right. Before we talk about
22 those documents specifically, I want to talk to
23 you -- or ask you some questions about a couple of
24 the claims that Hampton Luzak has made in this case.
25 First of all, can you tell me what your understanding

1 is of testamentary capacity as it relates to someone
2 executing estate planning documents?

3 A. Well, so, I generally would describe
4 testamentary capacity as the client, the person
5 making the documents, having -- knowing the natural
6 objects of their bounty. That is, knowing who
7 they -- we would normally presume they would provide
8 for in their documents, and then I -- they would be
9 required to know or have the ability to know what
10 their property is.

11 Q. And when you say "the documents," can
12 you -- can you explain what you're referring to for
13 someone who is not familiar with the estate planning
14 process?

15 A. Well, in -- in this context, we were
16 talking about updating Mr. Barringer's and Mr. and
17 Ms. Barringer's estate planning documents,
18 specifically their wills and their trust agreements.

19 Q. Okay. All right. And so you mentioned
20 the natural object affection of the capacity to know
21 what assets that you own. Is there anything else
22 that goes into testamentary capacity?

23 A. Well, they have to know what they're
24 doing. That is, they have to know that they are
25 executing a testamentary document.

1 Q. Okay. All right. Great. The -- what is
2 your understanding of whether or not the -- having
3 testamentary capacity, is that a high level of
4 capacity or a low level of capacity in your
5 understanding?

6 A. I would describe it as a low standard.

7 Q. Okay. Why do you -- why is it a low
8 standard?

9 A. Well, I think it's a low standard for
10 several reasons because, one, I believe it has to be
11 that the capacity is measured at the time they
12 execute the documents. And, further, the case law
13 that I've seen about this involves people who are,
14 what, people that we wouldn't -- we wouldn't commonly
15 expect to have capacity or be normally functioning
16 and yet they have been found to have testamentary
17 capacity.

18 Q. Okay. Is -- is -- is there any -- based
19 on your understanding, are there any particular
20 medical diagnoses or medical conditions that would
21 prevent someone or preclude them from executing a
22 will or a trust?

23 A. I am -- assuming they satisfied
24 testamentary capacity standards, I am unaware of any
25 medical diagnosis that would preclude a person from

1 executing testamentary documents.

2 Q. Okay. So as far as you know, can someone
3 who -- who has cancer execute a will or trust if they
4 have testamentary capacity?

5 A. Yes.

6 Q. What about --

7 MR. TRAXLER: This is Tom Traxler.

8 Object to the form.

9 BY MR. TWOMBLEY:

10 Q. What about someone who has had a stroke?

11 A. Someone who has had a stroke could execute
12 testamentary documents.

13 Q. Okay. What about people with cognitive
14 impairment or dementia?

15 A. People with cognitive impairment can
16 execute testamentary documents.

17 Q. Okay. What about someone who has been
18 diagnosed with Alzheimer's disease?

19 A. All -- all subject to the -- their having
20 testamentary capacity, then, yes, they could execute
21 testamentary documents.

22 Q. Okay. When you prepare wills and trusts
23 for clients, what, if any, effort do you make to
24 determine whether or not someone has testamentary
25 capacity?

1 A. I'm sorry, Ashley -- Mr. Twombly. Do you
2 mean at the beginning of the process? I'm not sure I
3 understand.

4 Q. Well, at any point in time during --
5 during the process.

6 A. So one of the things that we do in the
7 process of determining this is, of course, make sure
8 that they are able to identify their property.
9 Right? And so we do that by having an initial
10 investigation where they talk to us -- to me about
11 the assets they have. Further, I interview the
12 clients. I spend time with the clients and -- and
13 have, what, extensive conversations about who the
14 natural objects of their bounty are and their
15 property.

16 Q. Okay. Do you -- do you have -- do you
17 believe you have a lot of experience in representing
18 elderly people and people that have various different
19 medical conditions during the estate planning
20 process?

21 A. I do believe that. Yes.

22 Q. Okay. During the time you've been in
23 Hilton Head, what percentage of your clients would
24 you say are elderly? And by that I mean, you know,
25 70 or above.

1 A. I have no idea what the percentage is. On
2 Hilton Head, I certainly do represent lots of people
3 who are 70 and above. I mean, I also represent
4 people from the age of majority through the age of
5 70. The bulk of my clients certainly are between --
6 the bulk of my clients are older, but I still have
7 significant clients that are under the age of 70.

8 Q. Okay. I want to talk for a minute about
9 undue influence. Ms. Luzak has alleged in this case
10 that her father signed various documents while he was
11 being unduly influenced. Can you tell us what your
12 understanding of undue influence is?

13 A. I think undue influence generally involves
14 the substitution of someone else's desires or will
15 for the -- the client, the principal, the person, the
16 testator, or the settlor. That is, there is -- there
17 is influence -- all of us have influence on those
18 people around us. But in this context, undue
19 influence is when the person exerting the influence,
20 their desires overwhelm and become -- and substitute
21 the client's desires.

22 Q. Okay. When you meet with estate planning
23 clients in general, do you -- do you make an
24 assessment of whether or not you believe someone is
25 being unduly influenced?

1 A. Yes.

2 Q. Okay. How -- how do you do that?

3 A. Well, some of that is just a function of
4 interviewing the client and spending time with the
5 client. In my practice, I certainly have instances
6 where clients are brought to an appointment by a
7 caregiver or by a family member, and I even have
8 instances where family members or caregivers sit in
9 conferences with them -- with me.

10 All of the kind of things I would look for
11 is, one, if someone is speaking for them, and
12 occasionally I certainly have people who try to speak
13 for the client. And also I look to see whether or
14 not I have full access to the client, that is,
15 whether or not I can freely communicate with the
16 client beyond that initial -- those initial
17 communications. And I ask -- and I always -- every
18 single time I represent a client, I meet with that
19 client or those clients individually without anyone
20 else present and impress upon them the fact that I am
21 their lawyer and their lawyer alone and that I -- my
22 only job is to make sure that their desires are
23 effectuated through the planning.

24 I, in fact, always insist that they do, in
25 fact, tell me that this -- that the planning we

1 discussed, it reflects their desires. I always give
2 them -- even when they are brought in by a family
3 member or caregiver, I give them my business card
4 separately. I ask them to reach out to me privately
5 if they have any concerns, and I specifically ask if
6 anyone is telling them what to do or what their plan
7 should say.

8 Q. All right. When you say you have access
9 to the person, could you explain what you mean by
10 that?

11 A. Well, one of those things that I would be
12 alarmed about and that would cause me -- would raise
13 flags for me is if the only interaction with the
14 client was through a third-party and if someone tried
15 to limit my ability to communicate with the client by
16 e-mail, telephone, in person, all of those things.

17 Q. Okay. I'd like to talk just in general
18 terms for a moment before we talk about the specific
19 documents. But during the 2012 to 2015 time frame
20 when you were providing estate planning services to
21 Mr. Barringer, did you ever have any trouble getting
22 access to Mr. Barringer?

23 A. So, Mr. Twombly, when you say 2012, are
24 we really talking about 2011 -- the fall of 2011
25 through 2015?

1 Q. Yes. Let me -- let me correct because
2 I -- I apologize. Between 2011 when you began an
3 earnest the estate planning process through the last
4 documents you prepared for Mr. Barringer in 2015,
5 during that time frame did you ever have any trouble
6 with access to Mr. Barringer?

7 A. No.

8 Q. When you would contact him, how would you
9 do that?

10 A. It depends. It depended. In some -- in
11 some instances, I would pick up the phone and call
12 Paul at -- my recollection is at his -- at his home
13 phone. He's -- he certainly is one of those people
14 that had a landline at the house, and I would call
15 him at the -- at the house. Paul -- I would e-mail
16 him as well, just thinking that Paul was intermittent
17 in terms of responding directly to e-mails, but I
18 would certainly deal with that. And I -- and I met
19 Paul individually both at my client -- at my
20 client -- at my house and at his home.

21 Q. When you would call Mr. Barringer or
22 e-mail him, did you -- did you ever have to get
23 permission from anyone else to speak with him?

24 A. No. The most permission I would get was
25 Ms. Barringer telling me that he was in his office or

1 she had to call him to the phone.

2 Q. All right. When Mr. Barringer was at your
3 office, how would he -- how would he get to your
4 office?

5 A. Well, what -- sometimes Mr. Barringer and
6 Ms. Barringer would come themselves, and I
7 occasionally -- I say -- I'm not sure how he got to
8 our office all the time.

9 Q. Okay. Were there instances when he was
10 there by himself with no one else there?

11 A. Yes. Yeah.

12 Q. And -- and during those instances, how did
13 he -- how did he travel to your office?

14 A. I'm not sure how he -- I don't know how he
15 -- how he traveled to the office.

16 Q. Okay. All right. During the -- from the
17 2011 to the 2015 time frame, did you ever have any
18 concern that Mr. Barringer lacked testamentary
19 capacity?

20 A. I never had any concern about
21 Mr. Barringer's capacity at all in any time when I
22 met with him or dealt with him.

23 Q. Okay. During 2011 to 2015, were you --
24 were you ever concerned that Mr. Barringer was being
25 unduly influenced in any way?

1 A. I was not.

2 Q. Okay. As far as you knew, did it appear
3 that Mr. Barringer understood all of the changes that
4 he was making to his estate planning documents?

5 A. Absolutely.

6 MR. TRAXLER: This is Tom Traxler.
7 Object to the form.

8 BY MR. TWOMBLEY:

9 Q. When it came to Mr. Barringer's estate
10 plan, who communicated to you the decisions about
11 what would happen with Mr. Barringer's estate plan?

12 A. I'm not sure I understand the question.

13 Q. Okay. It was a bad question. Let me --
14 let me try and rephrase it. Was there anyone else
15 communicating to you other than Mr. Barringer about
16 what should go in his estate planning documents?

17 A. The answer is Mr. Barringer is the only
18 one who communicated to me about what his estate plan
19 should say. Mr. Barringer did have people that he
20 relied on that -- that communicated with me about --
21 about his financial assets and conversations about
22 the decisions to be made that Mr. Barringer directed
23 in his estate plan.

24 Q. Okay. But as far as the substantive
25 decisions about who would receive what, would anyone

1 ever give you direction other than Mr. Barringer on
2 those issues?

3 A. Mr. Barringer is -- was the sole director
4 of what happened with his estate plan.

5 Q. Okay. Did you ever observe anyone attempt
6 to manipulate Mr. Barringer?

7 A. No.

8 Q. There were other people at your firm who
9 would have interacted with Mr. Barringer during the
10 2011 to 2015 time frame regarding his estate plan.
11 Would there -- is that correct?

12 A. That is correct.

13 Q. Who are some of the other people at your
14 firm that would have had occasion to either meet with
15 or talk with Paul Barringer during this time frame?

16 A. Well, I mean, beyond Mr. Barringer's
17 interaction with us in terms of calling the
18 receptionist and getting transferred to my extension
19 or coming to the lobby and having things signed,
20 Mr. Barringer and Ms. Barringer were in the habit --
21 I say the habit. It wasn't a problem for us. But
22 they would periodically come by and get things
23 witnessed and notarized that had no relationship to
24 the work I did for them. So, of course, he had
25 interaction -- they had interaction with our staff in

1 that context.

2 Mr. Barringer had interaction with
3 Ms. Becky Bostick, who was my estate planning
4 paralegal at the time, and he would have had at least
5 limited communications with her by telephone in
6 coordination and those kinds of things. And beyond
7 all of that, Becky Bostick, Sharon Potts,
8 Sheree Morris, and Virginia Ritchie all interacted
9 with Mr. Barringer in reception -- in them coming in
10 and being -- coming into the office and them being
11 involved in signings with Mr. Barringer.

12 Q. What, if any, concern did any of these
13 other individuals ever express to you about
14 Mr. Barringer's capacity or whether or not he was
15 being influenced by someone else?

16 A. No one -- no one indicated they thought
17 Mr. Barringer was -- was being unduly influenced or
18 lacked capacity.

19 Q. Okay. Is that something that you would
20 have expected one of these other individuals to
21 communicate to you if they had that concern?

22 MR. TRAXLER: This is Tom Traxler.
23 Object to the form.

24 BY MR. TWOMBLEY:

25 Q. You can answer.

1 A. I certainly would have expected any of our
2 employees who had concerns about our clients'
3 capacity or undue influence to communicate that to me
4 or someone else in the firm -- to me.

5 Q. Okay. I know you represented -- or that
6 Mr. Barringer executed several different documents
7 during the 2012 to 2015 time frame. But, in general,
8 after Mr. Barringer executed one document, did you
9 ever observe Mr. Barringer or hear that he had
10 regretted a previous decision that he had made?

11 A. No.

12 Q. Were you always available to Mr. Barringer
13 to change his estate planning documents if he wanted
14 to make a change?

15 A. Yes. Certainly.

16 Q. Okay. All right. I want to -- I want to
17 talk about some of the specific documents that you
18 helped Mr. Barringer with, and I'd like to start with
19 the February 28, 2012 amendment to his -- to his --
20 or I guess he did a will and a trust. So if you
21 would turn to tab 15 in the binder that was provided
22 by plaintiff's counsel.

23 A. You said tab 15?

24 MS. PAYLOR: Ashley, what page is
25 that?

1 MR. TWOMBLEY: It's tab 15 and it's
2 page 0387.

3 MS. PAYLOR: Thank you.

4 MR. TWOMBLEY: And it's also tab 16,
5 which follows which is 0413.

6 BY MR. TWOMBLEY:

7 Q. So, Mr. Jolley, let me ask you about -- I
8 presume that plaintiff's counsel is going to make
9 this entire notebook an exhibit. And if my
10 assumption is correct, I'm just going to refer to the
11 tabs and the Bates range.

12 MR. TWOMBLEY: Is that okay with you,
13 Tom?

14 MR. TRAXLER: That's fine. You can
15 make it an exhibit now, if you will.

16 (PLF. EXHIBIT 1, Plaintiff's Exhibit
17 Notebook, was marked for identification.)

18 BY MR. TWOMBLEY:

19 Q. So I want to draw your attention to the
20 Bates range in the upper right-hand corner, which
21 right now I want to ask you about 0387 to 0411. Can
22 you tell me what this document is?

23 A. So, I'm sorry, you said the range being
24 0387 to 04...

25 Q. I apologize. Give me one moment. Give me

1 one second. I think I got my pages mixed up. Let's
2 look at 0395 through 0402. Tell me what this
3 document is.

4 MR. TRAXLER: Tom Traxler. You want
5 me to get you oriented?

6 MR. TWOMBLEY: Sure.

7 MR. TRAXLER: You're looking for the
8 2012 will?

9 MR. TWOMBLEY: Yes. I got it. I
10 think it's 0387 -- I didn't realize y'all had all of
11 them. 0387 to 0394.

12 BY MR. TWOMBLEY:

13 Q. I apologize. It's 0387 to 0394.

14 A. Yeah. This is -- this is Mr. Barringer's
15 last will and testament that I assisted -- I prepared
16 for his signature -- for his execution that
17 Mr. Barringer executed on February 28, 2012.

18 Q. Okay. And let me ask you also behind tab
19 16 with a document that starts 0413 through 0442.

20 A. That appears to be the first amendment and
21 restatement of trust of Paul Barringer, II that I
22 assisted Mr. Barringer in preparing and he executed
23 on February 28, 2012.

24 Q. So with respect to the February 28, 2012
25 will and trust, first of all, can you tell me about

1 the process that you would have engaged in with
2 Mr. Barringer related to the preparation and
3 execution of these documents?

4 A. Well, that process was several months
5 long, and that is, we began in the fall of 2011.
6 That involved several meetings with Mr. Barringer and
7 some of his advisors to, one, identify the assets
8 that Mr. Barringer had; and, two, discuss what
9 Mr. Barringer's objectives were for estate planning;
10 and then, three, we created the -- planning the
11 drafts for Mr. Barringer's review. And then
12 ultimately we would -- we did review those documents
13 with Mr. Barringer and ultimately implement and
14 execute those documents in February of 2012.

15 Q. Okay. You say you worked with some of
16 Mr. Barringer's advisors. Can you tell us what you
17 mean by that?

18 A. Yeah. So in this context, Mr. -- I say
19 that. I say this context. In all context,
20 Mr. Barringer, before I was -- before he engaged me
21 had used Mr. Robert Slane as a financial advisor and
22 as an advisor with respect to insurance issues, and
23 Mr. Barringer relied on Mr. Slane to be involved in
24 the conversation and that included Mr. Slane being
25 involved in -- in some of those meetings during which

1 we went through all the various assets that Mr. and
2 Ms. Barringer had and Mr. Barringer told us about
3 assets that weren't on Mr. Slane's list and, in
4 addition, told us about assets that were on
5 Mr. Slane's preliminary list that had been prepared
6 many years before, I understand, with Mr. Barringer.

7 So Mr. Barringer also had what I -- I
8 communicate -- I didn't communicate with Travis
9 Bryant. I understand that Mr. Barringer sometimes
10 communicated with Travis Bryant about -- about tax
11 and estate planning ideas.

12 Q. Okay. Is it unusual for individuals to
13 have advisors or other people that they rely on to
14 help them in the estate planning process?

15 A. Not in this context. Mr. Barringer had --
16 in some of the materials he -- he discussed with me
17 or provided in terms of assets and asset information,
18 he got -- at the time I think he still had
19 Ms. Harrell at CFRC who assisted him with, what, his
20 role with the company, but also personally. So
21 Mr. Barringer would direct other people to provide
22 information to me, whether those were bankers or
23 financial advisors independently, Mr. Slane, or folks
24 at the company being Travis Bryant and Ms. Harrell.
25 But, no, I don't -- I don't find that unusual.

1 Q. Okay. All right. Did you and Mr. Slane
2 have -- meet with Mr. Barringer alone together?

3 A. We did.

4 Q. At any point in time during the estate
5 planning process for the two thousand -- February 28,
6 2012 will and trust, did you ever have any concern
7 that Mr. Barringer didn't have testamentary capacity?

8 A. I did not.

9 Q. Did anyone that you were working with or
10 otherwise communicated with -- whether it was
11 Mr. Bryant, Ms. Harrell, Mr. Slane, anyone else --
12 did anyone else ever suggest that Mr. Barringer
13 lacked testamentary capacity?

14 A. No. No, sir.

15 Q. Okay. Did you ever have any concern that
16 Mr. Barringer didn't understand what he was doing or
17 why he wanted to do it?

18 A. Absolutely not.

19 Q. Let's look at the will. It's, again, 387
20 to 394. And, first of all, can you -- I understand
21 this is what's called a pour-over will; is that
22 correct?

23 A. That's correct.

24 Q. Can you tell us what a pour-over will is,
25 basically?

1 A. Yeah. Mr. Barringer's estate plan was
2 based on -- primarily based on a revocable trust
3 agreement, that is, the dispositive terms of his
4 plan. The plan that -- the parts of the plan that
5 actually provided for distribution of assets were
6 contained in the terms of his revocable trust
7 agreement. So this will -- this will, is what I
8 would have described as a pour-over will, was
9 designed to -- to transfer any assets that had not
10 yet been transferred to Mr. Barringer's trust -- to
11 his trust no later than at the time of his death.

12 Q. I guess another way I've heard that
13 described is that you're pouring over assets in his
14 estate over into his trust. Is that a fair
15 description?

16 A. The will is -- the will pours over any
17 assets remaining at his death to his trust.

18 Q. Okay. And if we turn to page 394. I see
19 here Mr. Barringer's signature is at the top; is
20 that -- is that right?

21 A. That is correct.

22 Q. Okay. And is this where Mr. Barringer is
23 signing his will?

24 A. Yeah. This is where Mr. Barringer signed
25 his will.

1 Q. Okay. All right. Now, there are two
2 signatures up under his signature. Whose signatures
3 are those?

4 A. Well, the first signature following
5 Mr. Barringer's is my signature, and the second
6 signature following Mr. Barringer's is
7 Rebecca L. Bostick.

8 Q. Okay. Now, above your signatures there is
9 a statement. Can you -- can you read the statement
10 into the record, please?

11 A. Certainly. "We, John M. Jolley and
12 Rebecca L. Bostick, the witnesses, sign our names to
13 this instrument being first duly sworn and do hereby
14 declare to the undersigned authority that the
15 testator signs and executes this instrument as his
16 last will and that he signs it willingly or willingly
17 directs another to sign for him and that each of us
18 in the presence and hearing of the testator and in
19 the presence of each other hereby signs this will as
20 witness to the testator signing and that, to the best
21 of our knowledge, the testator is 18 years of age or
22 older, of sound mind, and under no constraint or
23 undue influence."

24 Q. Okay. And who is the testator here?

25 A. Paul B. Barringer, II.

1 Q. Okay. And in this instance, did
2 Mr. Barringer sign his name to the document or did he
3 have someone else do it?

4 A. Mr. Barringer signed his own name to this
5 document.

6 Q. Okay. And Rebecca Bostick, again, is your
7 estate planning --

8 A. Rebecca Bostick is an estate planning
9 paralegal whose worked with me.

10 Q. Okay. Was this statement correct when you
11 signed it?

12 A. Yes.

13 Q. Do you believe it would be correct now?

14 A. Well, I mean, Mr. Barringer is dead. So
15 in that sense, no, it's not correct. I believe that
16 this was his signature, that this was his will, that
17 he signed it, and was an adult, not unduly
18 influenced, and he had capacity to sign.

19 Q. Okay. And I guess I must have asked a bad
20 question, but what I -- what I intended to ask was
21 you believe it was true when you signed it and you
22 continue to believe that on February 28, 2012 that
23 this statement was true?

24 A. Absolutely.

25 Q. Let's go to tab 16, to the first amendment

1 to the trust. And that is -- again, that's 413 to
2 442. All right. Now, can you tell me in general
3 what this first amendment to Mr. Barringer's trust
4 provides?

5 A. This document generally provided that
6 Mr. Barringer -- that the assets -- Mr. Barringer's
7 trust assets would be held for his benefit and during
8 a period of incapacity for the benefit of his wife.
9 It further provides that upon Mr. Barringer's death,
10 the assets would have been provided for
11 Ms. Barringer, whether outright or in trust, and
12 ultimately provides that upon the death of the
13 survivor of Mr. and Ms. Barringer -- in this case, if
14 Ms. Barringer survived, the assets, as I said, were
15 in trust for her benefit. And then to the extent
16 Ms. Barringer didn't redirect where the property went
17 at her death, these assets -- it provided for a
18 payment of money or the discretion to pay money to an
19 irrevocable trust, but otherwise provided for those
20 assets to be divided amongst Mr. Barringer's three
21 children.

22 Q. Okay. So let's -- let me ask you some
23 specific questions. On page -- on page 416 under
24 Article III, there's a section entitled, "Right to
25 Modify Trust Agreement." What -- what is that --

1 what is the purpose of that term?

2 A. I'm sorry. By "term," do you mean this
3 provision, Article III?

4 Q. Yes. I'm sorry. By the -- by the
5 provision?

6 A. So Article III is where Mr. Barringer
7 reserved the right to amend this trust agreement in
8 any way. That is, change the terms at any time
9 throughout the remainder of his life.

10 Q. Is this a typical provision that you find
11 in a trust of this nature?

12 A. It is. In any -- in each instance when we
13 have a revocable trust, this reservation of right to
14 amend or adjust the terms should be contained in the
15 document.

16 Q. Okay. Let's turn to page 415 (sic) under
17 Article V. This deals with specific distributions.
18 What are specific distributions?

19 A. I'm sorry. Which page did you say,
20 Mr. Twombly?

21 Q. 417.

22 A. And you're asking me about Article V. Can
23 you repeat the question?

24 Q. Yes. What -- Article V is entitled
25 "Specific Distributions." What are specific

1 distributions?

2 A. In this context, the specific
3 distributions refer to tangible personal property and
4 household effects, and this provision generally
5 provides that Mr. Barringer had the right to make a
6 list or memo about where he would like his tangible
7 personal property to go. That is, household
8 furniture, furnishings. And to the extent that
9 Mr. Barringer made no such list, then it provides how
10 the tangible personal property would be distributed.
11 In fact, it says it would be distributed to
12 Merrill U. Barringer if she shall survive the
13 settlor.

14 Q. Okay. Other than the specific
15 distribution of personal property and household
16 effects, are there any other specific distributions
17 to any particular people in the trust?

18 A. I don't believe so.

19 Q. Okay. So let's turn to the next article.
20 I believe this is -- this is Article VI. You
21 mentioned that Mr. Barringer's trust estate is held
22 after his death for the benefit of his wife. Can you
23 show us the provision in here where Mr. Barringer
24 directs his trust estate to be held for the benefit
25 of his wife or passed to her outright? And take as

1 much time as you need.

2 A. Article VI, paragraph one, is where if
3 Merrill U. Barringer survives Mr. Barringer, the
4 assets are divided into these two shares.

5 Q. Okay. And what --

6 A. They're further divided, but they are for
7 the benefit of Ms. Barringer as outlined in Article
8 VII, and Article VIII, and Article IX.

9 Q. Okay. And whenever Ms. Barringer dies,
10 what happens to the assets in these trusts?

11 A. In Article VII, with respect to Trust C,
12 paragraph five, Ms. Barringer has a power of
13 appointment over those assets. That is, she may
14 direct where those assets go from amongst
15 Mr. Barringer's issue, espouses of Mr. Barringer's
16 issue in charities. If she did not exercise her
17 power of appointment, then those assets would be
18 distributed pursuant to the Barringer family trust,
19 which is Article VIII.

20 In Article VIII, at Ms. Barringer's later
21 death, Ms. Barringer had a special power of
22 appointment to redirect the assets I amongst
23 Mr. Barringer's issue, espouses of Mr. Barringer's
24 issue in charity. In default of Ms. Barringer's
25 exercise of that power of appointment, this would

1 direct that the assets be divided amongst
2 Mr. Barringer's children if all three survived.

3 And then, lastly, with respect to Article
4 IX, the reverse QTIP trust, paragraph five says that
5 at the time of Ms. Barringer's later death, the
6 remaining portion of the reverse QTIP trust would be
7 distributed pursuant to Ms. Barringer's trust
8 agreement.

9 Q. Okay. When does Ms. Barringer say who she
10 wants the assets and the various trusts to go to?

11 MR. TRAXLER: This is Tom Traxler.
12 Object to the form.

13 THE WITNESS: I'm not -- I'm not sure
14 I understand the question.

15 BY MR. TWOMBLEY:

16 Q. It's my understanding these are
17 testamentary powers of appointment; is that correct?

18 A. The power of appointment that is in
19 Article VII and in Article VIII are, in fact,
20 testamentary powers of appointment.

21 Q. And so at what point in time do we
22 determine whether or not Ms. Barringer has exercised
23 the powers of appointment?

24 A. At the death of Ms. Barringer, if she
25 survives Mr. Barringer.

1 Q. Okay. And how does Ms. Barringer exercise
2 the power of appointment?

3 A. Ms. Barringer would exercise the power of
4 appointment in a will.

5 Q. Okay. I want to ask you about the default
6 clause. If Ms. Barringer does exercise her power of
7 appointment, does the default clause come into play
8 at all?

9 A. Mr. Twombly, I'm not sure which -- are
10 you referring to the default -- the default clause in
11 Article VII, paragraph five?

12 Q. Yes.

13 A. Okay. So with respect to the Trust C
14 under Article VII, paragraph five, if Ms. Barringer
15 survived Mr. Barringer and exercised the power of
16 appointment granted herein, the default language
17 would have no effect.

18 Q. Okay. Why would a spouse like
19 Mr. Barringer want to give another spouse like
20 Ms. Barringer the opportunity to decide in the future
21 who receives the assets from the first spouse's
22 estate or trust?

23 MR. TRAXLER: This is Tom Traxler.
24 Object to the form.

25 THE WITNESS: We would -- for

1 flexibility because we have no idea, nor do any of my
2 clients, know what will happen between the time they
3 execute the documents and the time of the death of --
4 their death or the death of their surviving spouse in
5 this context.

6 Q. Okay. Did you have any discussions with
7 Mr. Barringer about these powers of appointment?

8 A. We discussed each of the dispositive terms
9 and most -- and certainly discussed the powers of
10 appointment, that power to redirect, that
11 Mr. Barringer granted in his trust agreement to his
12 surviving spouse.

13 Q. If you will, I'd like you to turn to page
14 0440 and 0441 and 0442. First of all, on 0440, what
15 is -- what is this page in general?

16 A. It's the execution page where
17 Mr. Barringer signed the trust agreement.

18 Q. Okay. And is that his signature on the
19 top of 0440?

20 A. It is Mr. Barringer's signature.

21 Q. Okay. Now, down under his name under
22 witnesses, who are the two signatures there?

23 A. My signature is the next signature, the
24 first witness, and the second witness would be
25 Rebecca L. Bostick.

1 Q. Okay. And did you witness Mr. Barringer
2 sign this document?

3 A. I did.

4 Q. Okay. And was Ms. Bostick there with you
5 when that -- when that occurred?

6 A. She was.

7 Q. All right. Turn to the next page, 0441.
8 Tell me what this page is.

9 A. These are the notarial -- the
10 acknowledgments for each of -- this really is split
11 out above. It is an acknowledgment that the notary
12 signed, that is Rebecca Bostick as notary, with
13 respect to Paul B. Barringer as settlor, and then
14 below with respect to Paul B. Barringer as trustee.

15 Q. Okay. And did you see Ms. Bostick
16 notarize these documents after Mr. Barringer signed
17 them?

18 A. Yes. That would have happened when we
19 were all together. That is, when Mr. Barringer and
20 myself and Mr. Bostick -- and Ms. Bostick were
21 together.

22 Q. At any point in time prior to
23 Mr. Barringer signing this February 28, 2012 will and
24 trust, did you ever have any concern that
25 Mr. Barringer was being unduly influenced or forced

1 to sign these documents against his will?

2 A. I had no reservations about Mr. Barringer.

3 Q. Did you ever have any concern that he
4 lacked the capacity to understand and sign the
5 documents?

6 A. I did not.

7 Q. Okay. I'd like to -- I'd like to turn now
8 to the second amendment and restatement to
9 Mr. Barringer's trust, which was done on July 20,
10 2012, which is at tab 16 at Bates range 443. And
11 it's 443 through 471. Do you see this?

12 A. I see the second amendment and
13 restatement.

14 Q. Okay. Now, tell me about the
15 circumstances that led to the preparation and
16 execution of an amendment to Mr. Barringer's trust in
17 July of 2012.

18 A. Mr. Barringer told me that he wished for
19 his documents to be changed to provide for the
20 transfer of his voting shares in CFRC -- excuse me,
21 Coastal Forest Resources Company to Merrill Barringer
22 Light.

23 Q. Okay. Do you know why he -- did he tell
24 you why he wanted to do that?

25 A. He did.

1 Q. And what did he say?

2 A. He said he did not want Hampton Luzak to
3 receive voting shares -- any more voting shares in
4 the company because he wanted Merrill Barringer Light
5 to have control -- the voting -- his voting shares.

6 Q. Okay. Do you recall when Mr. Barringer
7 asked you or directed you to prepare this document?

8 A. This document was prepared several days --
9 several days before July 20, the day that we
10 executed -- the document was executed. So it might
11 have been July the 17th or 18th.

12 Q. Okay. Now, if you would turn to page 446
13 and 447, which is the specific devise section of the
14 trust. Can you -- can you show us or tell us what
15 was added to this trust that was not in the one
16 executed in February of 2012?

17 A. It's certainly my recollection, and I
18 believe, that the only addition to this trust was
19 Article V, paragraph two, specific distribution of
20 voting shares.

21 Q. Okay. Can you -- can you read that new
22 provision into the record, please?

23 A. "Specific Distribution of Voting Shares.
24 The trustee shall distribute to Merrill Barringer
25 Light any voting shares of the stock of Coastal

1 Forest Resources Company, of any successor or
2 resulting corporation, and of any subsidiary or
3 related entity which are a part of the settlor's
4 trust estate, whether an asset of the settlor
5 individually or an asset of this revocable trust if
6 she shall survive the settlor. If she shall not
7 survive the settlor, such interest shall pass to the
8 successor trustee of the Merrill Barringer Light
9 revocable trust."

10 Q. Okay. Did anyone other than Paul
11 Barringer ask you, direct you, or have any impact on
12 you making this change to Mr. Barringer's trust?

13 A. No.

14 MR. TRAXLER: This is Tom Traxler.
15 Object to the form.

16 BY MR. TWOMBLEY:

17 Q. When Mr. Barringer asked you to make this
18 change, was there anybody else with him, to your
19 knowledge?

20 A. No.

21 Q. Did you have any question about
22 Mr. Barringer's mental capacity to make such a change
23 to his -- his trust?

24 A. I did not.

25 Q. If you'll turn to page 0469 and 0470. I

1 noticed that on these documents you are not one of
2 the witnesses to the document; is that correct?

3 A. Are you asking if on 0469 I am -- I am --
4 I did not witness on this document on 0469 or
5 otherwise.

6 Q. Okay. Why did you not witness this
7 document when you had served as a witness for the
8 February 2012 documents?

9 A. Mr. Barringer wasn't on Hilton Head at the
10 time of -- at the time he instructed me to make the
11 change and at the time of execution, Mr. Barringer
12 wasn't on Hilton Head.

13 Q. Okay. Tell me what you recall about where
14 Mr. Barringer was, when he asked you to make this
15 change, and what your understanding of where he was
16 when he actually executed the document?

17 A. Mr. Barringer telephoned me and he told me
18 that he was at the -- their home in Linville in North
19 Carolina mountains and he was there for the summer
20 and Mr. Barringer was concerned that if something
21 happened to him precipitously, that is, if he died,
22 that these shares wouldn't -- the voting shares
23 wouldn't go to Merrill Light. When I spoke to
24 Mr. Barringer on the phone, he directed me to make
25 the change to the document and he directed me to give

1 the document -- my recollection is to give the
2 document to Randy Light to take to Mr. Barringer --

3 Q. Okay.

4 A. -- for execution wherever Mr. Barringer --
5 my understanding was Mr. Barringer was going to have
6 it executed at Linville, North Carolina.

7 Q. Okay. Was -- was there any urgency
8 associated with Mr. Barringer's request that his
9 trust be changed to direct the voting shares to
10 Merrill Light?

11 A. Mr. Barringer -- Mr. Barringer had a sense
12 of urgency because he was concerned if he died that
13 the shares wouldn't go where he wanted them to go.

14 Q. Was there anything that -- that you know
15 of that led Mr. Barringer to believe he might die or
16 was this just a general concern that anyone could
17 drop dead at any point in time?

18 MR. TRAXLER: This is Tom Traxler.
19 Object to the form. Leading.

20 THE WITNESS: I do not believe
21 Mr. Barringer was worried about anything in
22 particular.

23 BY MR. TWOMBLEY:

24 Q. Okay. All right. Great. Now, you
25 mentioned that you telephoned Randy Light and asked

1 him to pick up the document. Did you have any
2 discussions with Mr. Light about what was in the
3 document?

4 A. I'm not sure --

5 MS. KIRK: Ariail Kirk. I object to
6 the form.

7 BY MR. TWOMBLEY:

8 Q. Okay. Let me just ask a different -- a
9 different question. Did you follow Mr. Barringer's
10 directive to contact Mr. Light?

11 A. I don't -- I'm not sure if Mr. Light
12 called me or I called him. Mr. Barringer told me
13 that Randy would be -- would take the document to
14 him. I think -- I think Randy was going to fly on
15 the corporate plane with Mr. Barringer and do some
16 visits to corporate facilities, and Mr. Barringer
17 directed me to give those -- the document to
18 Mr. Light.

19 Q. And did you do that?

20 A. I did talk to Mr. Light on the phone and
21 when we -- after I prepared the document, I arranged
22 for -- arranged -- I did arrange for the document to
23 be put at the front desk for Randy Light to pick up.

24 Q. Okay. And as far as you know, did
25 Mr. Light come pick it up?

1 A. As far as I know, Mr. Light did pick it
2 up.

3 Q. Okay. Did Mr. Barringer execute it?

4 A. Yes. I mean, Mr. Barringer didn't execute
5 it in my presence, as we discussed, but we did --
6 yes. I mean, I see his signature on these documents.

7 Q. Okay. At any point in time after
8 Mr. Barringer executed the July 2012 trust amendment,
9 did he ever express any reservation about doing so?

10 A. No.

11 Q. Did he ever ask you to take any -- or
12 what, if any, action did he ever ask you to take to
13 undo this change?

14 A. No action to undo this change.

15 Q. Okay. Were you in frequent communication
16 with him after July of 2012?

17 A. I was.

18 Q. Were there any -- and I think there are
19 not, but just to confirm. Were there any changes
20 made to the powers of appointment that were given to
21 Merrill Barringer in the second amendment to the
22 trust?

23 A. I don't believe so. I don't believe there
24 were any changes to the second amendment other than
25 that provision that we just -- about the voting stock

1 that we just read into the record.

2 Q. Okay. All right. I'd like to take -- I'm
3 at a good stopping point for a five-minute break. So
4 we'll go off the record.

5 THE VIDEOGRAPHER: We are going off
6 record. The time is 11:30 a.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: We are back on
9 record. This is the beginning of media unit two.
10 The time is 11:40 a.m.

11 BY MR. TWOMBLEY:

12 Q. Mr. Jolley, I want to now turn your
13 attention to tab 4, which is Bates range of 279 to
14 281. Do you -- do you recognize these documents?

15 A. The tab for this is 279 through 281?

16 Q. Yes.

17 A. I do recognize these documents.

18 Q. Okay. What -- what -- what are these
19 documents?

20 A. These are the documents that we prepared
21 for Mr. Barringer to transfer his shares -- his
22 voting shares in CFRC, Coastal Forest Resources
23 Company, to Merrill Barringer Light. Excuse me.
24 Merrill Barringer Light. And I say that the bulk of
25 his voting shares because he reserved -- I think he

1 reserved one share -- a voting share to remain a
2 voting shareholder of the company.

3 Q. Okay. What do you recall about your
4 communications with Mr. Barringer about this
5 transfer?

6 A. Mr. Barringer -- can you repeat the
7 question?

8 Q. What do you recall about your
9 conversations with Mr. Barringer that led up to
10 this -- you preparing these documents?

11 A. That my communications with Mr. Barringer
12 had been for several weeks -- actually, several
13 months at the point in September, and Mr. Barringer
14 had indicated to me that he wished to transfer the
15 bulk, all but one, of his voting shares to Ms. Light.
16 He did not -- we talked about it several times before
17 we prepared these documents in September and gave
18 them to Mr. Barringer.

19 Q. Okay. Did Mr. Barringer tell you why he
20 wanted to do this?

21 A. Mr. Barringer wanted Merrill
22 Barringer Light to have control of the company and
23 not Hampton Luzak.

24 Q. Do you know why he wanted Ms. Light to
25 have control of the company?

1 A. Mr. Barringer did not want Hampton or
2 Kevin involved in the running of the company.

3 Q. Okay. How many times did you -- would you
4 estimate that you were able to speak with
5 Mr. Barringer about his desire to transfer this stock
6 up until the time that he actually executed the
7 transfer of documents at tab No. 4?

8 A. I think Paul probably told me about this
9 four or five times during that time period from, say,
10 June through the time we prepared these documents for
11 him.

12 Q. Okay. If he told you about it in June,
13 why didn't you actually prepare the documents and him
14 sign them until September?

15 A. We discussed making that -- making the
16 transfer before, but -- we discussed making the
17 transfer before the September transfer, but he didn't
18 choose to do that before this point.

19 Q. Do you know why he mentioned it to you and
20 told you he wanted to do it, but didn't actually do
21 it until September?

22 A. Mr. Barringer and I discussed whether or
23 not the timing was a good idea at -- during the
24 June/July/August time frame.

25 Q. Okay. And tell me about your discussion

1 with Mr. Barringer about the timing of the transfer.

2 A. Mr. Barringer, in the context of the
3 conflict he had with his daughter, Hampton, and his
4 son-in-law, Mr. Barringer told me that he wanted to
5 make sure Kevin and Hampton didn't get control of the
6 company. He further wanted to make sure that we
7 transfer the -- he wanted to go ahead and gift the
8 shares to Ms. Light, and we discussed whether or not
9 that was a good idea at the time that Ms. Luzak and
10 others, that is Ms. Luzak and Kevin Luzak, were
11 making allegations of his incapacity.

12 Q. Okay. Tell me what Mr. Barringer told you
13 about the allegations that Hampton and Kevin were
14 making.

15 A. Mr. Barringer indicated that he felt
16 betrayed by Mr. -- by Kevin Luzak and then probably,
17 more significantly, by Hampton and that Kevin was
18 trying to take over -- take control of the company
19 and that he didn't want Kevin and Hampton to have
20 control.

21 Q. Okay. Let's look at these two documents.
22 The first one is called an assignment of shares, and
23 the second one is called a stop power. Did you
24 prepare these documents for Mr. Barringer?

25 A. We did.

1 Q. Okay. Did anyone other than Mr. Barringer
2 ask you or otherwise direct you to prepare these
3 documents?

4 A. No. No one other than Mr. Barringer.

5 Q. Okay. What, if any, instructions did
6 Merrill Light, Randy Light, or anyone else give you
7 with respect to this transfer?

8 A. No one other than Mr. Barringer gave me
9 instructions about the transfer of these shares.

10 Q. What, if any, discussions did you have
11 with Mr. Barringer regarding the permanency of
12 transferring these shares from himself to
13 Merrill Light?

14 A. We discussed the fact that in order for
15 him to make this transfer, that this would be a
16 permanent and irrevocable transfer; that it would be
17 treated as a gift; and that once transferred, he
18 couldn't take it back.

19 Q. And did Mr. Barringer appear to understand
20 that?

21 A. Mr. Barringer certainly understood that.

22 MR. TRAXLER: Object to the form.
23 This is Tom Traxler.

24 BY MR. TWOMBLEY:

25 Q. Did you ever see any other person attempt

1 to influence or pressure Mr. Barringer to engage in
2 this transfer?

3 A. No, I did not.

4 Q. Did you have the opportunity to -- to meet
5 and talk with Mr. Barringer after he engaged in this
6 transfer on September the 11th of 2012?

7 A. I did.

8 Q. At any point in time, did Mr. Barringer
9 express any regret about making the transfer?

10 A. Never.

11 Q. Okay. If Mr. Barringer had made a change
12 to his trust that directed the stock to Merrill Light
13 in July, do you know why he wanted to go ahead and
14 give it to her in September?

15 A. The change to the trust in July was based
16 on the fear that something would happen to
17 Mr. Barringer. Right? That is, he would be in a car
18 wreck and get killed and that that -- the shares
19 would not pass to Merrill Light. In September,
20 Mr. Barringer decided that it was appropriate to go
21 ahead and make the gift, and I counseled him to
22 retain the language in the trust agreement that said
23 that if something happened to him and if he had
24 shares in the company -- voting shares, that those
25 would be distributed to Merrill Barringer Light.

1 Q. I want to now turn your attention to tab
2 23. I'll give everybody a second to turn over there.

3 MS. PAYLOR: Ashley, what page is
4 that?

5 MR. TWOMBLEY: I'm going to get to
6 it. It's 0758.

7 MS. PAYLOR: Thank you.

8 BY MR. TWOMBLEY:

9 Q. Can you tell me -- or do you recognize
10 this document at 0758?

11 A. I do.

12 Q. Okay. What is this document?

13 A. This is certification of incapacity.

14 Q. Okay. We actually read the -- I think you
15 misspoke by accident. Can you read the -- read the
16 title?

17 A. I did. Excuse me. This is --

18 MR. TRAXLER: This is Tom Traxler. I
19 object to the form. Coaching.

20 BY MR. TWOMBLEY:

21 Q. I'll just rephrase the question. What is
22 the title of this document, Mr. Jolley?

23 A. The document at 0758 is a Physician's
24 Certification of Competency.

25 Q. Okay. And what -- what is the -- what is

1 this document?

2 A. This is a document that is intended to
3 provide a medical doctor a form in which after
4 examination of a person they can render an opinion
5 about their competency.

6 Q. And this physician certificate of
7 competency is for Mr. Barringer; is that correct?

8 A. This physician certification of competency
9 is for Mr. Barringer.

10 Q. Okay. Why did you prepare this document?

11 A. We prepared the document in light of the
12 allegations made by Mr. and Ms. Luzak about
13 Paul Barringer's competency. This was an effort to
14 be, to some degree, defensive about Mr. Barringer's
15 competency at the time of the transfer.

16 Q. Okay. And when you -- well, tell me what
17 you understood about the allegations that Ms. Luzak
18 and her husband were making about Mr. Barringer and
19 his competency.

20 A. I understood they alleged that he didn't
21 have the competency to be involved in the
22 corporation, its management, nor the competency to
23 make decisions on his own.

24 Q. Okay. Did you agree with those
25 allegations?

1 A. Did I agree with those allegations? I had
2 no doubt after interviewing and spending time with
3 Mr. Barringer that he was competent throughout the
4 time period I met and worked with him.

5 Q. Okay. So if you were confident about his
6 competency, why did you prepare this physician's
7 certificate?

8 A. This was simply in an effort to be, as I
9 said, defensive to the extent that someone came back
10 at a later date and suggested Mr. Barringer wasn't
11 competent, then this -- Mr. Barringer's doctor's
12 certificate I thought would be good to have.

13 Q. Okay. Now, this certificate is signed by
14 Paul Long. Do you know who Paul Long is?

15 A. I do know who Paul Long is.

16 Q. And who -- who is Dr. Paul Long?

17 A. Dr. Long is a medical doctor on Hilton
18 Head.

19 Q. Okay. Do you know how long he's been on
20 Hilton Head and practicing?

21 A. I'm sorry. I don't. Multiple decades.
22 Twenty or 30 years.

23 Q. Okay. All right. Do you know Dr. Long in
24 any --

25 A. I do know Dr. Long.

1 Q. Okay. Did you -- do you know how this
2 certificate got from your office to Dr. Long for him
3 to execute it?

4 A. I know that my office sent this blank form
5 to Merrill Light for printing and for -- for
6 Paul Barringer to take to Dr. Long.

7 Q. Okay. And why did you send it
8 Merrill Light and not send it directly to
9 Mr. Barringer?

10 A. I don't remember.

11 Q. Okay. Now, this -- this certificate says
12 that Mr. Barringer has sufficient mental capacity to
13 understand the nature, scope, and extent of the
14 business in which he was about to transact. Did you
15 draft that language?

16 A. That language is language that I drafted
17 generally in a certification of competency.

18 Q. Okay. And what was the business that
19 Mr. Barringer was about to transact?

20 A. We prepared this in advance of
21 Mr. Barringer making the transfer of the shares.

22 Q. Okay. So the business you were referring
23 to was the gift of stock?

24 A. This document wasn't drafted specific --
25 that is, that language wasn't inserted to refer to

1 the transfer of stock.

2 Q. Okay. But that's what you had in your
3 mind when it was --

4 A. When we prepared -- when we prepared this
5 document and sent it to Mr. -- to Merrill for
6 Mr. Barringer -- for Merrill Light for Mr. Barringer,
7 then, yes, this was in anticipation of Mr. Barringer
8 making the transfer of voting shares.

9 Q. Okay. I notice here that the document is
10 not dated. Do you know why it's not dated?

11 A. I do not.

12 Q. Okay. Do you -- do you remember when you
13 would have received it back executed from Dr. Long
14 after Mr. Barringer had engaged in the stock
15 transaction on September the 11th of 2012?

16 A. I remember this -- I remember the
17 certificate showing up in my office in my in-box
18 within a week to ten days of the time that we
19 prepared and sent the transfer documents -- or gave
20 the transfer documents to Paul.

21 Q. Okay. And did you ever speak to Dr. Long
22 about the certificate?

23 A. I did not speak to Dr. Long about the
24 certificate.

25 Q. What was your understanding about

1 Dr. Long's opinion of Mr. Barringer's capacity at the
2 time that he executed this certificate?

3 A. My understanding --

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

6 BY MR. TWOMBLEY:

7 Q. You can answer.

8 A. My understanding is Dr. Long believed that
9 Paul Barringer had capacity to do any business.

10 Q. I'm going to go back for a moment to
11 the -- to the stock transfer documents that we
12 previously talked about at tab 4, page 279.
13 Mr. Jolley, after these three documents were prepared
14 and executed, that being page 279, 280, and 281, what
15 was supposed to happen to have these -- this transfer
16 formalized on the records of the company?

17 A. After Paul signed these documents, he was
18 supposed to give them to the company to update the
19 records of the company to reflect the transfer.

20 Q. Okay. And did you -- did you send them to
21 the company after Mr. Barringer executed them in
22 September of 2012?

23 A. I received these from Mr. Barringer after
24 he signed them and, at that point, I was supposed to
25 update the records to reflect the transfer.

1 Q. Okay. All right. Did you do that?

2 A. Not immediately.

3 Q. Why not?

4 A. In error, I did not. This was something I
5 put aside to deal with and didn't deal with it.

6 Q. Okay. Do you recall approximately when
7 you got around to sending the documents to the
8 company so that the transfer could be recorded? And
9 I'll tell you, let me -- before you answer, I'll just
10 give you a document. I'm going to give you this
11 document that we'll mark as Exhibit No. 2.

12 MR. TWOMBLEY: And, for the record,
13 I'll tell you guys what this is. What I am showing
14 Mr. Jolley is his January 24, 2013 letter to
15 Travis Bryant that's Bates stamped Coastal 64, and
16 this document is in the binder that you provided,
17 Tom. And then I have attached Coastal 65, 66, 67
18 through 71. I don't know if you need a second to get
19 that, Tom.

20 MR. TRAXLER: Yeah. Hold on a
21 second. We're going to get to it. So this
22 contract -- I think it's in our book at 663 under tab
23 18.

24 MR. TWOMBLEY: Okay. Tom, you are
25 correct. I'm happy to use those. There was another

1 place in the documents you guys identified where you
2 had the letter, but, in my opinion, the attachments
3 you had to it were not the correct attachments. But
4 let me look at these one minute to make sure that
5 I -- that these are the correct ones. Just for the
6 record for everybody who's listening in, we're
7 looking at the John Jolley depo Bates range 663
8 through 667.

9 BY MR. TWOMBLEY:

10 Q. All right. So, John, we'll -- we will not
11 mark that as an exhibit, and I will draw your
12 attention to tab No. 18 and documents 663 through
13 670.

14 A. I'm sorry. 0663 through 0670?

15 Q. Correct.

16 A. And, I'm sorry, what's the question?

17 Q. Okay. I'm going to ask you a question. I
18 was just --

19 MR. TWOMBLEY: You there? Are y'all
20 ready, Tom? I just want to make sure everybody had a
21 chance to get on the right page.

22 MR. TRAXLER: Yeah. I'm with you.

23 Thank you.

24 THE WITNESS: Actually, is 0671 and
25 0672 a part of that same letter?

1 BY MR. TWOMBLEY:

2 Q. No. No, it's not.

3 A. Okay. Thank you.

4 Q. So I think the question that was pending
5 was: Do you recall when you ultimately got around to
6 at having these shares at issue transferred? And
7 before you answer that, I would ask you to look at
8 0663 through 0670 and ask you: Does that refresh
9 your memory?

10 A. And January 24, 2013 is when I sent the
11 share certificates for signature along with the
12 underlying documents to Mr. Bryant.

13 Q. Okay. And so it looks like what would
14 have been attached to this letter was an unsigned
15 stock certificate No. 15, which is 0664; is that
16 correct?

17 A. That is correct.

18 Q. Then the next attachment was unsigned
19 stock certificate 16, which is 0665?

20 A. That looks correct.

21 Q. And then the next document is certificate
22 No. 14, which is 666, correct?

23 A. That is certificate No. 14. That looks
24 right.

25 Q. Okay. And then 0667 I think is the back

1 page of 0666?

2 A. That's what it appears to be.

3 Q. Okay. And then what are 668, 669, and
4 670?

5 A. These are copies of those transfer
6 documents that Mr. -- that -- transfer documents
7 where Mr. Barringer transferred his shares to
8 Merrill Light --

9 Q. Okay.

10 A. -- as trustee of her trust.

11 Q. Now, if we go back to the two unsigned
12 share certificates, I note here that both of these
13 share certificates have the date typed in them of
14 December 31, 2012. Do you see that?

15 A. This is 0664 and 0665?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Why did you put the date of
19 December 31, 2012 on these share certificates?

20 A. It was my perception that Mr. Barringer
21 had delivered the transfer documents to the
22 company -- that is, to me, to have the transfer
23 formalized by being recorded on the books. And in
24 December when I got to that process, what, the
25 document -- we chose to use the 12/31 date as a date

1 so that we would -- the gift that, I think, had
2 happened in 2012 when Mr. Barringer had signed the
3 transfer documents, that was reflected on the books
4 as of 12/31/2012.

5 Q. Okay. Did you discuss with Mr. Barringer
6 the fact that you had failed to have the shares
7 recorded back in September when he signed the
8 transfer documents?

9 MR. KIRBY: Object to form.

10 BY MR. TWOMBLEY:

11 Q. Go ahead.

12 A. I discussed with Mr. Barringer that the
13 documents for transfer had been signed in September
14 and that the -- that transfer hadn't been recorded on
15 the books in September.

16 Q. Okay. Let me just repeat the question.
17 What, if any, conversations did you have with
18 Mr. Barringer about the fact that the transfer
19 documents had not been sent to the company to be
20 formally recorded in September of 2012?

21 MR. TRAXLER: Tom Traxler. Same
22 objection.

23 THE WITNESS: I spoke with Paul about
24 the transfer of the shares. My recollection is that
25 Paul didn't consider this to be a big deal and didn't

1 want to have it being an accounting problem or an
2 issue for Travis Bryant to have to adjust. And,
3 therefore, Mr. Barringer agreed that we should treat
4 that transfer on the books as having occurred on
5 12/31.

6 BY MR. TWOMBLEY:

7 Q. Okay. At any point in time did
8 Mr. Barringer express any regret in making the
9 transfer in September?

10 A. Mr. Barringer never expressed any regret
11 for making the transfer. That is, to me.

12 Q. Are you aware of him expressing regret to
13 anyone else?

14 A. I'm unaware of Mr. Barringer expressing
15 any regret about the transfer of the voting shares to
16 Merrill Light.

17 Q. Okay. I'd now like to turn to tab 15,
18 please. It would appear --

19 MS. PAYLOR: What's the Bates number,
20 please?

21 MR. TWOMBLEY: Yeah. As soon as we
22 get there. It's 0387. It's the start -- let me find
23 the exact one I'm looking at. It's 396 -- hold on
24 one moment, Alice. Yes. It's 396 to 402. Let me
25 just confirm that based on the way they've got them

1 in here. I'm sorry. It's 395 to 402.

2 BY MR. TWOMBLEY:

3 Q. Before I ask you about that document, do
4 you remember having -- or do you remember
5 Mr. Barringer making any other changes to his estate
6 planning documents after the -- the September 2012
7 stock transfer?

8 A. I do.

9 Q. Tell me -- tell me what you remember.
10 When was the next change?

11 A. My recollection is that the next change
12 was made at the time -- as reflected in these
13 documents that you referred to that is dated 12
14 June 2014.

15 Q. And what -- what is this we're looking at
16 at 395 to 402?

17 A. 395 to 402 is Mr. Barringer's last will
18 and testament dated 12 June 2014.

19 Q. Okay. And do you recall any significant
20 changes that were made to Mr. Barringer's estate plan
21 through the June 2014 will?

22 A. I think the change -- my recollection is
23 the only change with respect to the will was those
24 people who would serve as personal representatives of
25 Mr. Barringer's will -- under Mr. Barringer's will.

1 Q. Other than that, do you recall any other
2 changes?

3 A. I do not recall any other changes.

4 Q. Okay. Did Mr. Barringer also execute a
5 new trust in June of 2014?

6 A. I believe so.

7 Q. Let me ask you. I think it's in this
8 binder. The last page is 504 and it starts...

9 A. I think 504 is the fourth amendment, so I
10 think it must be 503 is the end.

11 Q. Yes. I apologize. So the Bates range is
12 472 to 503. And I'll give you a minute to turn there
13 and take a look at those documents.

14 A. Mr. Twombly, when you refer to those
15 documents, do you mean the third amendment and
16 restatement versus the second amendment and
17 restatement?

18 Q. Yeah. I apologize that I wasn't clear.
19 What I'm looking at is the Bates range 472 to 503 --

20 A. Yes, sir.

21 Q. -- which, it's my understanding, is
22 Mr. Barringer's third amendment and restatement of
23 his trust agreement.

24 A. And I'm sorry. What's the question about
25 those documents?

1 Q. Well, the first question is: What is the
2 document?

3 A. Okay. I'm sorry. This is the -- this is
4 Mr. Barringer's third amendment and restatement to
5 his revocable trust -- to Mr. Barringer's revocable
6 trust.

7 Q. Okay. And this was executed by
8 Mr. Barringer, I guess, on June the 12th of 2014?

9 A. Yes, sir.

10 Q. Okay. Tell me about the discussions that
11 you had with Mr. Barringer about the change he wanted
12 to make through his third amendment.

13 A. This document reflected, as I see it, the
14 evolution of Mr. Barringer's desire about how to
15 treat Hampton Luzak in his documents.

16 Q. Okay. And what did -- what did
17 Mr. Barringer's 2012 -- I'm sorry, 2014 amendment to
18 his trust change from where his trust was in 2012?

19 A. The primary difference in -- reflected in
20 this document is that Mr. Barringer wanted a share
21 provided for Hampton to be instead held in further
22 trust for Hampton's son, Wade Hampton Luzak.

23 Q. Okay. Now, was that a specific devise or
24 how did that interact or relate with respect to the
25 power of appointment that Ms. Barringer had?

1 A. So as I mentioned with respect to the
2 earlier trust agreement, that this amended and
3 restated Mr. Barringer continued to first, at his
4 death, provide to or for the benefit of his surviving
5 spouse. So the document continues to reflect
6 Ms. Barringer as the primary beneficiary, and
7 continues to give Ms. Barringer the power to redirect
8 through a power of appointment contained in the -- in
9 this amendment and restatement. So it's the default
10 that was changed for the benefit of Victor and
11 Hampton, Victor's share being in further trust and
12 Hampton's share being in further trust not for
13 Hampton, but for Hampton Luzak's son, Wade Hampton
14 Luzak.

15 Q. Okay. Do you know or did Mr. Barringer
16 tell you why he wanted to make this change?

17 A. Yes. Mr. Barringer, at that point, had
18 determined -- had decided that he didn't expect that
19 he would be able to reconcile with Ms. Luzak, yet he
20 did not want to -- Mr. Barringer and Ms. Barringer
21 had a very good relationship previously with their
22 grandson, Wade, and they still wanted to make sure
23 they provided for Wade for Hampton's share -- the
24 share that would have otherwise passed to Hampton.

25 Q. Okay. And in this document, did -- was

1 the share for Wade required to go to Wade or was it
2 part of the default clause?

3 A. In this document, no -- no one received
4 anything if Ms. -- if Ms. Barringer exercised her
5 power of appointment away from them.

6 Q. Okay. Did you receive instructions or
7 directions from anyone other than Mr. Barringer
8 related to this change to his trust?

9 A. I did not.

10 Q. Okay. Let's look at the notary -- the
11 signature pages on this document at page -- it's
12 around page 503. Actually, it's at page 501. I see
13 at the top under "settlor" and "individual trustee"
14 there's Mr. Barringer -- what appears to be his
15 signature. Is that Mr. Barringer's signature?

16 A. It is.

17 Q. Did you witness him sign this document?

18 A. I did.

19 Q. Okay. And who are the other names who are
20 listed here by his signature?

21 A. There are three names. Mine, Sheree L.
22 Morris, and Rebecca L. Bostick.

23 Q. And were they physically present to watch
24 Mr. Barringer sign this?

25 A. They were. So wait. Becky and I were

1 physically present and when we -- as is evidenced.
2 And when we realized -- and that's why there's three
3 signatures here and not two. When we realized -- my
4 practice is not -- if I'm named in the document in
5 any role, my practice is not to be a witness. And in
6 this -- in this document, I think I have the
7 authority to name a successor trustee -- to nominate
8 a successor trustee. So after we talked to Paul and
9 signed, we realized that we needed someone other than
10 me to witness. And so Mr. Barringer would have
11 acknowledged his signature and this being his trust
12 agreement to Sheree -- with Sheree L. Morris, myself,
13 and Rebecca Bostick being physically present in the
14 same room with Paul Barringer.

15 Q. Thank you. Were you confident that
16 Mr. Barringer had the capacity to understand what he
17 was intending to accomplish in this document?

18 A. Yes.

19 MR. TRAXLER: Tom Traxler. Object to
20 the form.

21 BY MR. TWOMBLEY:

22 Q. I'd like to turn to -- let me just make
23 sure I've got this tab right. Tab 15, 403 through
24 411, which I believe is the next will that
25 Mr. Barringer executed. And also tab 16 at 504,

1 which appears to be the next trust amendment.

2 A. I'm sorry. You're going to have to give
3 me those numbers again.

4 Q. Sure. It's 403 through 411.

5 A. 403.

6 Q. I didn't organize them like this --

7 A. I got it.

8 Q. -- just so you know.

9 A. 0403 through 0411.

10 Q. Right. And also 504 -- 504 through 534.

11 Can you identify these documents for us, please?

12 A. Okay. So the documents identified as 0403
13 through 0411 -- the document, I should say,
14 identified 0403 through 0411 is Mr. Barringer's last
15 will and testament executed on February 5, 2015.
16 That's that first document that you asked me about,
17 being 0403 through 0411. And the next document you
18 asked me about is the fourth amendment and
19 restatement. That's 0504 through 0534 and appears to
20 be -- and that is this fourth amendment and
21 restatement of Mr. Barringer executed on February 5,
22 2015.

23 Q. Hold your fingers there because we're
24 going to come back to them, but I --

25 A. Okay.

1 Q. I want to go back to the -- to the 2014
2 will and trust before I start asking you some
3 substantive questions about the 2015 documents. Back
4 to the two thousand -- June 2014 documents, did you
5 ever have any concern -- or what, if any, concern did
6 you ever have that Mr. Barringer was being unduly
7 influenced in any way related to the 2014 documents?

8 MR. TRAXLER: Tom Traxler. Object to
9 form.

10 THE WITNESS: I had no concerns about
11 Mr. Barringer being unduly influenced or lacking
12 capacity with respect to the -- those documents.

13 BY MR. TWOMBLEY:

14 Q. Okay. Why do you say that?

15 A. I interacted with Mr. Barringer. And in
16 all of my interactions with Mr. Barringer, I believe
17 that he did, in fact, have capacity, and I certainly
18 never believed that he was being unduly influenced.
19 That is, Mr. Barringer did what he wanted to do and
20 what he thought was right throughout that time, not
21 pursuant to someone else's direction.

22 Q. Okay. Let's move back to the 2015
23 documents.

24 A. Okay.

25 Q. 0403 through 0411 and 0504 through 0534.

1 You previously identified these as Mr. Barringer's
2 February 2015 will and trust agreement; is that
3 right?

4 A. February 5, 2015 and February 5, 2015.
5 Yes. That is correct.

6 Q. Okay. Tell me, generally speaking,
7 what -- what changes were made with these documents
8 as far as dispositive provisions go?

9 A. I don't think the will contained changes
10 to the dispositive terms. I believe the will
11 reflected a change in the personal representative.

12 Q. All right. How about the trust, 0504 to
13 0534?

14 A. 0504. So in this fourth amendment and
15 restatement, I believe the changes to the document
16 were that with respect to the tangible personal
17 property, if Ms. Barringer didn't survive
18 Mr. Barringer, it was provided that the tangible
19 personal property would be divided between Victor and
20 Merrill -- Victor Barringer and Merrill Light rather
21 than including Ms. Luzak as a potential beneficiary
22 and remainder beneficiary. And then -- and that's in
23 Article V, the special -- specific distributions.
24 That's paragraph one, generally.

25 And then paragraph two contained an

1 additional -- a new distribution, and this is a
2 \$50,000 gift to Wade Hampton Luzak subject to him
3 being old enough. That's pursuant to Article XVIII,
4 and that would only occur at the death of the
5 survivor. That is at -- that would only occur at
6 Mr. Barringer's death had he been the survivor of
7 Mr. and Ms. Barringer.

8 And then, additionally, with respect to --
9 it's not a change. Everything else was distributed
10 to or in trust for Ms. Barringer. Ms. Barringer
11 continued to have a power of appointment in the trust
12 for her benefit, and the default language is changed
13 because no longer did Mr. Barringer wish to provide
14 the share that would have otherwise passed to Hampton
15 in earlier versions to go in trust for Wade Hampton
16 Luzak. Rather, that the ultimate default
17 distribution of assets under this trust would pass
18 between Victor and -- and Merrill Light -- Victor
19 Barringer and Merrill Light.

20 Q. Do you know why Mr. Barringer wanted to
21 make these changes or what was the impetus for them?

22 A. So, I mean, this is just a continuation of
23 what I described a few minutes ago. I believe that
24 Mr. Barringer in two thousand -- in July of 2012
25 continued to want to reconcile with Hampton -- his

1 daughter, Hampton. And then as time went along, he
2 believed that he couldn't reconcile with Hampton, or
3 wouldn't, and that ultimately he decided that he
4 didn't need to provide for Wade Hampton other than in
5 this \$50,000 specific distribution based on the fact
6 that they were estranged and that Wade would be --
7 receive plenty of other resources.

8 Q. Okay. All right. Were you present when
9 Mr. Barringer signed the 2015 documents, both the
10 will and trust?

11 A. I don't remember. I believe that I was.

12 Q. Okay. Do you recognize the signature box?
13 Let's just start with the -- with the trust on page
14 533 and 534.

15 A. I do see the signature box on 0533, and I
16 see the acknowledgments on 0534.

17 Q. Okay. Who are the two witnesses on 0533?

18 A. This is Virginia Ritchie and Rebecca L.
19 Bostick.

20 Q. And those are the two ladies that worked
21 in your office?

22 A. These are two ladies that worked in my
23 office.

24 Q. Okay. And how about on 0354 -- I'm sorry,
25 0534?

1 A. 0534 reflects the acknowledgment executed
2 by Rebecca Bostick.

3 Q. Okay. And how about for the will which
4 ends at page 411? So I believe the signature blocks
5 are on, yeah, 0411?

6 A. On 0411, Virginia Ritchie and Rebecca
7 Bostick are the witnesses to Mr. Barringer's will.

8 Q. Okay. Who asked you to make these changes
9 to Mr. Barringer's will and trust in 2015?

10 A. Mr. Barringer.

11 Q. Did anyone else have any discussions with
12 you about these changes?

13 A. I discussed the changes with Becky
14 Bostick, but no one outside of my office. No one.
15 Not to any direction other than Paul Barringer.

16 Q. Do you believe that Mr. Barringer had the
17 capacity to know what his estate consisted of and who
18 he wanted to receive his estate at his death in 2015?

19 A. I do.

20 Q. Did you observe anyone try to influence
21 Mr. Barringer in any way regarding his February 2015
22 documents?

23 A. I did not.

24 Q. Do you know of any evidence that
25 Mr. Barringer was under duress when he signed these

1 documents in February 2015?

2 A. I do not.

3 Q. Has anyone ever interfered with your
4 representation of Paul Barringer related to his
5 estate planning?

6 A. No.

7 MR. TRAXLER: Object to form.

8 BY MR. TWOMBLEY:

9 Q. What, if any, influence has there ever
10 been from anyone related to your representation of
11 Paul Barringer and his estate planning?

12 MR. TRAXLER: Tom Traxler. Same
13 objection.

14 THE WITNESS: Can you repeat the
15 question?

16 BY MR. TWOMBLEY:

17 Q. What, if any, interference did you ever
18 observe with respect to your representation of
19 Mr. Barringer regarding his estate plan?

20 MR. TRAXLER: Same objection.

21 THE WITNESS: I never had any
22 interference with my representation of Mr. Barringer.

23 BY MR. TWOMBLEY:

24 Q. Mr. Jolley, I now want to show you -- for
25 the record, we'll mark this as Exhibit No. 2, but

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

7 MR. KIRBY: Do you have any more
8 copies?

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

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

13 BY MR. TWOMBLEY:

14 Q. Right.

15 A. Okay.

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

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

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

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

8 A. No.

9 Q. Do you know why anyone would say that?

10 A. I do not.

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

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

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

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

25 Q. Did Mr. Barringer ever mention anything

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

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

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

9 A. No.

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

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

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

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

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

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

1 respect to their estate plan.

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

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

10 Q. Have you ever seen this alleged contract?

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

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

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

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

24 BY MR. TWOMBLEY:

25 Q. Okay. Did you ever observe any type of

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

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

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

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

14 (Off the record.)

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

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

19 MR. TRAXLER: You ready to go ahead?

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

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

1 me when we get back; is that right?

2 MR. TWOMBLEY: I don't know what you
3 mean. I've got some lunch here.

4 MR. TRAXLER: Alice, you don't have
5 any questions, do you?

6 MR. MOLSTER: No. We're -- we're
7 good -- we're good, Tom.

8 MR. TRAXLER: All right. Let's take
9 lunch break. How long y'all want? Forty-five
10 minutes?

11 MS. KIRK: How long are you planning
12 on going? We don't need a lunch break.

13 MR. TRAXLER: We do. We have a long
14 way to go. So how much time do you need? Thirty
15 minutes, 45 minutes? Y'all tell me.

16 MS. KIRK: Thirty is plenty for us.

17 MR. TRAXLER: Anybody want more than
18 30? Let's take 45 just to be -- just to be safe.
19 Why don't we come back at 1:45. All right?

20 MR. TWOMBLEY: If y'all want to take
21 a lunch break, then that's fine.

22 MR. TRAXLER: Yeah. We need to take
23 a lunch break. We have a lot to go. A lot of hours.
24 I think it would be best if everybody be fed.

25 MS. KIRK: Well, I'm not objecting to

1 us eating. I'm just telling you we don't need a long
2 time to do it.

3 MR. TRAXLER: I understand.
4 Forty-five minutes is what we're going to take.
5 Anyway, 1:45. Mr. Jolley, you understand that you're
6 not allowed to discuss your testimony with anybody,
7 including your own counsel, right?

8 THE WITNESS: I do.

9 MR. TRAXLER: Okay. Thank you. All
10 right. We'll go off the record, Madam Court
11 Reporter.

12 THE VIDEOGRAPHER: We are going off
13 record. This is the end of media unit two. The time
14 is 1:00 p.m.

15 (Off the record.)

16 THE VIDEOGRAPHER: We are back on
17 record. This is beginning media unit three. The
18 time is 1:48 p.m.

19 MR. TWOMBLEY: And, Tom, before you
20 get started, the court reporter asked for me to make
21 the complaint that I introduced as exhibit
22 Defendant's No. 1 instead of Plaintiff's No. 2. So
23 with your permission, we'll mark that as Defendant's
24 No. 1 and just leave your binder as Plaintiff's No.
25 1. Okay?

1 MR. TRAXLER: What are we going to do
2 about that transcript that refers to it as
3 Plaintiff's 2?

4 MR. TWOMBLEY: Well, I'm sure we can
5 figure it out. I think I referred to it one time or
6 something, but --

7 MR. TRAXLER: Okay. We're on record
8 now. We have noted on the record that that exhibit
9 has been remarked as Defendant's 1.

10 MR. TWOMBLEY: Yes.

11 MR. TRAXLER: Okay. That's fine.

12 MR. TWOMBLEY: Okay. All right.

13 Thank you.

14 MR. TRAXLER: Thank you.

15 EXAMINATION

16 BY MR. TRAXLER:

17 Q. Mr. Jolley, if I ask you a question you
18 don't understand, please tell me, and I'll be happy
19 to repeat it or rephrase it, whatever I need to do to
20 help you understand. All right?

21 A. Yes. Thank you.

22 Q. And it is entirely likely -- in fact, I
23 can guarantee you at some point in time I'm going to
24 ask you a question that is unintelligible. Just tell
25 me and we'll get it straightened out. Okay?

1 A. Yes, sir.

2 Q. And I'm going to assume that if you answer
3 my question, you have understood it. Is that fair?

4 A. It seems fair.

5 Q. Okay. You are here in this deposition
6 today by subpoena?

7 A. Yes.

8 Q. Okay. And was it necessary for you to
9 have a subpoena to show up and testify on
10 Mr. Twombly's questions?

11 MR. TWOMBLEY: Object to the form of
12 the question.

13 MS. KIRK: Also object to the form.
14 This is Ariail Kirk.

15 MS. PAYLOR: Same objection. Alice
16 Paylor.

17 BY MR. TRAXLER:

18 Q. You can answer.

19 A. I don't know.

20 Q. Would you not have come voluntarily to
21 testify in this deposition without a subpoena?

22 A. I'm not sure the answer to that. I would
23 have consulted with my lawyer before I decided
24 whether I was going to appear voluntarily absent
25 being compelled by a subpoena.

1 Q. All right. We don't know exactly when
2 this trial is going to be, Mr. Jolley. Who knows
3 when it's going to with this COVID virus and
4 everything going on. Is there any reason to think or
5 believe that you will not be available for trial this
6 year or next year?

7 A. I expect to be practicing law in South
8 Carolina in the next several years. So, you know,
9 other than scheduling, I don't know why I wouldn't be
10 available.

11 Q. And I don't mean to pry into your personal
12 life, but I'm trying to figure out if there's any --
13 what the chances are that you won't be at trial. It
14 could be because of a serious illness by you. Are
15 you in reasonably good health in the next year or
16 two?

17 A. I think I'm in reasonably good health, but
18 I have no reason to believe I won't be available in
19 the next year or two due to my health.

20 Q. Okay. Great. Thank you. Have you ever
21 given a deposition before?

22 A. No, sir.

23 Q. Have you ever testified in a trial or
24 administrative hearing before?

25 A. I don't believe so.

1 Q. So I guess you have never been qualified
2 as an expert witness in any area before; is that
3 correct?

4 A. So no. I'm sorry. I do -- I'm sorry.
5 Thank you for prompting that. I do believe I
6 appeared as an expert witness in one case.

7 Q. Okay. And tell me what that case was
8 about, how long ago, and where it was.

9 A. I would have to say that it was between
10 2005 and 2010 in the probate court for Beaufort
11 County, South Carolina.

12 Q. And you were an expert on what topics,
13 what opinions?

14 A. My recollection at this time is pretty
15 vague, but my belief is that it was about
16 reasonableness of a fee in an estate planning matter.

17 Q. Did you have to testify in that?

18 A. I did testify in that.

19 Q. All right. Testified in deposition or
20 courtroom or both?

21 A. No. Just -- I'm sorry. In a courtroom.

22 Q. Okay. Thank you. Any other deposition
23 testimony that you recall?

24 A. No, sir.

25 Q. Have you ever been identified as an expert

1 other than that instance you just told us about in
2 probate court in Beaufort County?

3 A. I don't believe so.

4 Q. Have you ever written or published on any
5 legal topics?

6 A. I have.

7 Q. Okay. Can you give me a list of what they
8 were and where they were published, to the best of
9 your recollection?

10 A. I have written several articles for the
11 South Carolina Lawyer. I edited a chapter in the
12 book in South Carolina on estate planning published
13 by the South Carolina bar. Would you consider
14 published being CLE materials for presentations I
15 gave?

16 Q. Let's hold that. I'm going to get to that
17 one next. Okay?

18 A. Okay.

19 Q. Have you written or published anything
20 other than the articles for South Carolina Lawyer
21 magazine and the South Carolina bar for estate
22 planning?

23 A. Not that I recall.

24 Q. What were the titles or the substantive
25 matters of the articles that you wrote for South

1 Carolina Lawyer magazine?

2 A. The chapter in the estate planning book
3 was about estate taxation. I wrote or co-authored an
4 article for the South Carolina Lawyer with regard to
5 the Drayer case in South Carolina. I also wrote an
6 article for the South Carolina Lawyer in which I
7 talked about estate taxes and generation-skipping
8 taxes.

9 Q. All right. Have you ever written on
10 ethics for estate planning?

11 A. I don't recall writing anything on ethics
12 for estate planning.

13 Q. Have you ever written anything on ethics
14 for corporate counsel?

15 A. I have not written anything on ethics for
16 corporate counsel.

17 Q. Okay. And tell me what CLEs you have
18 presented at.

19 A. I've presented a CLE on estate and gift
20 and generation-skipping transfer taxes. I have
21 presented a CLE on irrevocable trusts and collateral
22 attacks on irrevocable trusts. I've been involved in
23 numerous panel presentations. I've presented with
24 respect to guardian -- with respect to planning for
25 incapacitated adults. I'm sure there are others that

1 I'm forgetting.

2 Q. All right. Let me talk to you about what
3 you did to prepare for this deposition today. Can
4 you tell me what you did to prepare for your
5 testimony today?

6 A. I reviewed the materials forwarded to me
7 by your office. I met with my lawyer, and I met with
8 Mr. Twombly, and I met with the attorneys for
9 Coastal Forest Resources.

10 Q. Did you meet with Mr. -- Ms. Paylor or
11 Mr. Molster?

12 A. In preparation for this deposition, I did
13 not.

14 Q. Okay. Did you talk to them, whether you
15 met with them in person or not, in preparation for
16 your deposition?

17 A. I did not.

18 Q. Did you receive any communications from
19 them directly or indirectly in preparation for your
20 deposition?

21 A. I did not.

22 Q. And how long -- who is -- you're presently
23 represented in this deposition; is that correct?

24 A. That is correct.

25 Q. And who is your lawyer? Is she sitting

1 there with you?

2 A. She is. It's Ariail Kirk.

3 Q. And which firm is she with?

4 A. Jolley Law Group.

5 Q. And how long has she represented you?

6 A. My recollection is Ms. Kirk has
7 represented me with respect to this matter as -- as
8 soon as I received any communication with respect to
9 this litigation since I've been at the Jolley Law
10 Group.

11 Q. All right. And how long did you meet with
12 Ms. Kirk to prepare for your deposition? Let me
13 break that down. How many times did you meet with
14 her to prepare for today?

15 A. I think I met with Ms. Kirk either in
16 person or electronically yesterday and one time
17 before that.

18 Q. Okay. And how long did you meet with her
19 yesterday? Bless you. How long did you meet with
20 her yesterday?

21 A. From approximately 11:30 until 6:00 p.m.

22 Q. All right. And at that time, were other
23 counsel present?

24 A. During a portion of that time, other
25 counsel were present.

1 Q. And who -- during that other -- what other
2 counsel were there during that portion of time you're
3 referring to?

4 A. During a portion of that time,
5 Mr. Twombly was present. And during a different
6 portion of that time, Mr. Schronce and Mr. Fuhr were
7 present.

8 Q. How long was each of those other lawyers
9 present in that meeting?

10 A. I think I met with Ms. -- Mr. Twombly for
11 the bulk of the time between 11:30 and 2:30. I
12 believe I met with Mr. Schronce and Mr. Fuhr, as well
13 as my lawyer, from, say, 2:30 to 4:00 or 4:30. And
14 then I met with Mr. Twombly again from 4:30 until,
15 maybe, 5:45.

16 Q. And was Ms. Kirk present in that meeting?

17 A. Throughout my interactions -- throughout
18 this case, yes. Ms. Kirk was present.

19 Q. All right. And you did not review any
20 documents other than the documents we provided to
21 you; is that correct?

22 A. That is correct.

23 Q. You didn't read any depositions?

24 A. I didn't read -- no. I have read the
25 deposition transcript of Rebecca Bostick.

1 Q. Okay. When did you read that?

2 A. Sunday.

3 Q. Any other depositions that you have read?

4 A. Regarding this case?

5 Q. Yes.

6 A. I haven't -- I have not -- I have not
7 reviewed any other transcript or read any other
8 transcript deposition in this case.

9 Q. Did you include in that you have not read
10 any deposition summaries?

11 A. Yes. I would include deposition
12 summaries.

13 Q. Okay. And as a quick aside, do you recall
14 seeing anything in Ms. Bostick's deposition that you
15 saw to be inaccurate or untrue?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 BY MR. TRAXLER:

19 Q. You can answer.

20 A. I did not see any -- I don't recall
21 anything in Ms. Bostick's deposition that would --
22 that I thought was untrue.

23 Q. So why would Mr. Twombley be there to help
24 you get ready to answer questions?

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: I would -- I'm going
2 to instruct not to answer to the extent we were
3 discussing privileged issues that may be raised
4 regarding the subject of your testimony.

5 BY MR. TRAXLER:

6 Q. Did you discuss any issues with
7 Mr. Twombley or in his presence other than privileged
8 issues?

9 A. I'm sorry. I'm not sure I understand that
10 question.

11 Q. Sure. When you were meeting and
12 Mr. Twombley was present, did y'all discuss anything
13 other than privileged issues that might arise with
14 regard to your deposition?

15 A. I don't believe so. We -- I don't believe
16 so.

17 Q. Did you discuss the facts of the case at
18 all?

19 MR. TWOMBLEY: Object to the form of
20 the question. And to the extent they were discussed
21 with respect to privileged issues, I would instruct
22 you not to answer.

23 MS. KIRK: This is Ariail Kirk. I
24 have the same objection.

25

1 BY MR. TRAXLER:

2 Q. You may go ahead. You can answer.

3 MS. KIRK: Whoa, whoa.

4 MR. TWOMBLEY: I'm instructing him
5 not to answer to the extent the facts were discussed
6 related to any privileged issue and I would -- I
7 would -- I would caution the witness to listen to me
8 and not to Mr. Traxler when it comes to what you can
9 answer and what you cannot because I am the only
10 person who can instruct you whether to answer or not
11 when it comes to a privilege associated with the
12 estate. Mr. Traxler is adversary in this case,
13 represents Hampton Luzak. So please be mindful of
14 that.

15 BY MR. TRAXLER:

16 Q. Have you understood that instruction,
17 Mr. Jolley, as to what he just told you?

18 A. I'm not entirely clear what the question
19 is that I can answer.

20 MR. TRAXLER: Mr. Twombley, which --
21 what privilege are you asserting in instructing
22 Mr. Jolley not to answer my question?

23 MR. TWOMBLEY: All available
24 privileges under the law.

25 MR. TRAXLER: And are you willing to

1 articulate them for the record?

2 MR. TWOMBLEY: Not at this time.

3 Attorney-client, work product are the two that jump
4 off my head. We've had this issue come up many times
5 before and, you know, the -- in any event, that's all
6 I'm going to say now.

7 BY MR. TRAXLER:

8 Q. Okay. All right. So was there any
9 discussion with Mr. Twombley beyond privilege issues,
10 Mr. Jolley?

11 MR. TWOMBLEY: Object to the form.
12 Asked and answered.

13 BY MR. TRAXLER:

14 Q. If you would, sir, please answer.

15 A. So I'm sorry. Can you repeat the
16 question?

17 Q. Sure. Did you discuss anything in
18 Mr. Twombley's presence other than privilege issues?

19 A. I don't believe so.

20 Q. Okay.

21 MS. KIRK: Can we -- I'm sorry. I
22 don't mean to interrupt, but I'm having a really hard
23 time hearing. Is there anything we can do with the
24 volume in here?

25 MR. TRAXLER: You're having trouble

1 hearing me?

2 MS. KIRK: Yes.

3 MR. TRAXLER: Okay. Let me see if I
4 can sit a little bit closer.

5 MS. KIRK: Thank you. I'm sorry.

6 MR. TRAXLER: Can you hear me better
7 now?

8 MS. KIRK: Yes. Thank you.

9 MR. TRAXLER: No problem.

10 BY MR. TRAXLER:

11 Q. Who else did you meet with yesterday
12 besides Ms. Kirk and Mr. Twombley?

13 A. Mr. Schronce and Mr. Fuhr.

14 Q. Okay. Did you discuss any issues with
15 them other than privilege issues?

16 A. I don't believe so.

17 Q. All right. How long did you spend
18 reviewing the exhibit notebook we sent to you?

19 A. Several hours.

20 Q. Other than members of your firm, Ms. Kirk,
21 the lawyers here, have you discussed your deposition
22 with anyone else?

23 A. So I'm sorry. The beginning of that,
24 Mr. Traxler?

25 Q. Yes, sir. My question is: Who have you

1 discussed your deposition with before today other
2 than the lawyers that we have discussed already and
3 who may be here today?

4 A. I haven't discussed the substance of my
5 deposition today with anyone other than as I have
6 described to you.

7 Q. Okay. Now, prior to your deposition
8 preparation that you described to me, have you met
9 previously with any of the counsel who are involved
10 in this case to discuss this case itself?

11 A. I have.

12 Q. Okay. Who all have you met with?

13 A. I've met with Chip Molster and I've met
14 with Mr. Twombly, and I don't -- and I've had a
15 telephone conversation with Ms. Paylor.

16 Q. And how many times have you talked to
17 Mr. Molster about this case?

18 A. I -- I think I've spoken to Mr. Molster
19 twice about this case.

20 Q. Okay. Can you give me the best time frame
21 that you can recall?

22 A. I think I spoke to Mr. Molster when this
23 case first started, and then I believe I had -- I did
24 have a short telephone conversation with Mr. Molster
25 I think January of last year.

1 Q. Okay. And when you first talked to him,
2 what did you talk about?

3 A. Mr. Molster asked me questions --
4 interviewed me about the case.

5 MR. MOLSTER: Yeah. So, Alice, I
6 think -- Tom, if you want to stand on ceremony, I'll
7 ask Alice to make the objections or I can make the
8 objections.

9 MR. TRAXLER: You go ahead, Chip. I
10 don't care.

11 MR. MOLSTER: I just instruct you --
12 to the extent that our discussions involved Randy or
13 Merrill Light in your role as their counsel, I
14 instruct you not to answer those questions. Thank
15 you. Thank you, Tom, for the courtesy.

16 MR. TRAXLER: Thank you, Chip.

17 BY MR. TRAXLER:

18 Q. Did you discuss Paul Barringer with
19 Mr. Molster?

20 A. I do not believe so.

21 Q. Did you discuss Merrill Barringer with
22 Mr. Molster?

23 A. I do not believe so.

24 Q. Did you discuss the corporation and
25 corporate affairs with Mr. Molster?

1 A. I don't believe so.

2 Q. Did you discuss anything with him other
3 than matters pertaining to Merrill or Randy Light?

4 A. I don't believe so.

5 Q. Okay. Let me ask you the same questions
6 about the -- I think you described it as a short, I
7 think, short phone call January of last year. Did
8 you discuss anything with Mr. Molster other than
9 Merrill Light and Randy Light?

10 A. No.

11 Q. And Mr. Twombly, how many times have you
12 talked or met with him prior to the preparation of
13 your deposition?

14 A. With respect to this case?

15 Q. Yes, sir.

16 A. I think I have met or talked to
17 Mr. Twombly before the -- I want to say two or three
18 times since 2015.

19 Q. Okay. What -- and sum total, if you can
20 guesstimate that for me, about how much time all
21 total have you spent talking to him prior to the
22 deposition preparation?

23 A. I -- I gave you the time for yesterday.

24 Q. Yes, sir.

25 A. I think I spent an hour or an hour and a

1 half with Mr. Twombley, I would say, two other times
2 since the start of this case.

3 Q. What did y'all -- what did y'all talk
4 about? I'll withdraw that question.

5 Who did you understand Mr. Twombley to be
6 representing when you talked with him?

7 A. Initially, Mr. -- I understood
8 Mr. Twombley was representing Paul and Merrill
9 Barringer.

10 Q. Okay. Did you have any conversations with
11 Mr. Twombley other than conversations about Paul and
12 Merrill Barringer?

13 A. I don't believe so.

14 Q. Did you talk about Merrill Light?

15 A. I did not.

16 Q. Talk about Randy Light?

17 A. I did not.

18 Q. Did you review documents with
19 Mr. Twombley?

20 A. Did I review documents? I don't recall
21 review -- I'm sorry. Yesterday.

22 Q. Excluding yesterday. We don't need to go
23 back through that.

24 A. Okay. I don't recall going through
25 documents with Mr. Twombley.

1 Q. Okay. Are you billing anybody for your
2 deposition today?

3 A. I am not.

4 Q. You will not bill for your time? You will
5 go uncompensated for this time today; is that
6 correct?

7 A. Yes, Mr. Traxler. That's correct.

8 Q. Thank you. I believe the McNair Law Firm
9 received subpoenas in this case prior to your
10 departure from McNair, did it not?

11 A. It did.

12 Q. Tell me what you did, if anything, to
13 participate in the McNair's response to those
14 subpoenas?

15 A. My involvement in the response to
16 subpoenas was limited to turning over any files I had
17 at the firm to the folks at the firm responsible for
18 responding to the subpoena.

19 Q. Who at McNair was responsible for
20 responding to the subpoena?

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 MS. KIRK: This is Ariail Kirk. I
24 also object to the form.

25

1 BY MR. TRAXLER:

2 Q. You can go ahead, Mr. Jolley.

3 A. The person I dealt with was Ann -- Ann --
4 Jane Trinkley.

5 Q. I believe she was in law school with me
6 and Mr. Medlin. Did you have responsible
7 gathering -- responsive documents beyond that which
8 you yourself had that is going to staff assistants or
9 associates or anything beyond what you physically had
10 control of yourself?

11 A. I'm sorry. I need you to repeat that
12 question.

13 Q. Sure. When you were gathering documents
14 and turning them over to Ms. Trinkley, did you simply
15 turn over what you had in your possession or on your
16 computer or did you go do a search beyond what you
17 yourself had?

18 A. I did not -- other than -- anything on my
19 computer would be something that the IT people would
20 have dealt with in the firm. And other than making
21 sure that myself and Becky Bostick cooperated with,
22 you know, any -- anything that Jane would ask for, I
23 didn't have any responsibility other than making sure
24 that anything I had and that anything Becky Bostick
25 had in terms of a physical file was boxed and sent to

1 Ms. Trinkley.

2 Q. Now, did Ms. Trinkley or anyone else at
3 McNair ever come back to you and ask you to review or
4 research again to see if you had produced all the
5 documents?

6 MS. KIRK: I want to be sure -- are
7 you asking him about communications with
8 Ms. Trinkley?

9 MR. TRAXLER: Yeah. Really what I
10 want to know is did anybody come back to him and have
11 him double check, whether Ms. Trinkley or otherwise.
12 Here's -- here's what I want to know. You know,
13 Ariail, if you want to object, we can deal with it.
14 That's fine. I just want to know if it was the
15 initial production of documents or whether there was
16 an effort later on again to make sure everything had
17 been produced.

18 MS. KIRK: Okay. I just want to be
19 sure we're walking the line, you know, because --

20 MR. TRAXLER: Sure.

21 MS. KIRK: -- prior to my involvement
22 in this case, he was represented with the McNair
23 firm.

24 MR. TRAXLER: Yeah. Sure.

25 THE WITNESS: Mr. Traxler, I don't

1 recall.

2 MR. TWOMBLEY: I object to the form
3 of the question just because I don't understand it.
4 Go ahead.

5 MR. TRAXLER: Okay.

6 BY MR. TRAXLER:

7 Q. Go ahead, Mr. Jolley.

8 A. No. I don't recall.

9 Q. Okay.

10 A. So I'm sorry. I did have a follow-up that
11 asked if I had printed all of my e-mails in the case,
12 and I indicated it was not my practice to print every
13 e-mail and put it physically in the file. That's the
14 only follow-up I recall.

15 Q. All right. Did you ever later, after the
16 initial production of documents, turn over any other
17 documents to anyone to be produced in this case?

18 A. I don't recall.

19 Q. Did you participate in the production of
20 the privilege log that was provided to us in this
21 case from McNair?

22 A. I did not.

23 Q. Did you review the privilege log?

24 A. I don't remember reviewing a privilege
25 log.

1 Q. When you reviewed our documents yesterday,
2 was that the first time you had ever seen the McNair
3 privilege log?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Object to the form.

6 BY MR. TRAXLER:

7 Q. Did you review our documents yesterday and
8 see the privilege logs?

9 A. I did see privilege logs in your
10 documents.

11 Q. Is that the first time you had seen those?

12 A. I didn't recall seeing -- I don't recall
13 seeing those before this production of documents --
14 or before you produced these documents for the
15 deposition.

16 Q. Okay. Do you know who prepared the
17 privilege log?

18 A. I do not.

19 Q. Did Mr. Twombley prepare the privilege
20 log?

21 A. I don't know who prepared the privilege
22 log.

23 Q. Do you know why someone other than McNair
24 would have produced the privilege log?

25 A. I do not.

1 Q. Okay. All right. Now, let's get to who
2 you represented and the like. We know that you
3 represented Paul Barringer and Merrill Barringer,
4 correct?

5 A. That is correct.

6 Q. At various times did you represent Merrill
7 Light?

8 A. I have.

9 Q. And Randy Light?

10 A. I have.

11 Q. And how about Victor Barringer?

12 A. I've never represented Mr. Victor
13 Barringer.

14 Q. And CFRC?

15 A. I have --

16 Q. Go ahead.

17 A. I'm sorry. Can you repeat that question?

18 Q. CFRC.

19 A. And what's the question about CFRC?

20 Q. Have you represented it?

21 A. I have represented the company.

22 Q. All right. Have you ever represented
23 Travis Bryant?

24 A. I have not represented Travis Bryant.

25 Q. Have you ever represented Tom Evans?

1 A. I have not represented Tom Evans.

2 Q. Have you ever represented any other
3 employees, officers, directors, or shareholders of
4 CFRC other than what we have already talked about?

5 A. I don't -- I don't know of anyone other
6 than what you've talked about that I represented.

7 Q. Okay. And I believe you testified on
8 direct with Mr. Twombly that you, I believe, first
9 met Paul Barringer on some social occasion. I'm
10 digging back through my notes. I think it was around
11 2008 or '09 time frame; is that correct?

12 A. That sounds correct.

13 Q. Okay. And do you recall what that social
14 setting was?

15 A. I don't.

16 Q. I'm sorry. Sir?

17 A. I do not.

18 Q. Okay. So I assume you don't remember
19 anything about that encounter other than you met him;
20 is that correct?

21 A. That is correct.

22 Q. All right. When did you first start to
23 represent Merrill Light?

24 A. I believe I started to represent
25 Merrill Light in 2006 or 2007.

1 Q. And how about Randy Light?

2 A. That would have been the same time.

3 Q. And I think you told me you have never
4 represented Victor. Do I recall that correctly?

5 A. I have never represented Victor Barringer.

6 Q. Okay. Thank you. And Paul Barringer,
7 when was the first time you did any substantive legal
8 work for him in terms of estate planning documents or
9 whatever it was?

10 A. In 2008 or 2009.

11 Q. Okay. And I believe you started to
12 undertake reviewing the estate planning documents at
13 that time, correct?

14 A. That is correct. Although, I'd like to
15 note that when I talk about representing
16 Mr. Barringer, I'm talking about John Jolley
17 representing and not my -- the firm I practiced with
18 at the time.

19 Q. And that law firm was which one?

20 A. McNair Law Firm.

21 Q. Had McNair Law Firm done work for
22 Paul Barringer prior to 2008 or '09?

23 A. I'm not sure.

24 Q. Okay. Do you have any reason to believe
25 that they did?

1 MR. TWOMBLEY: I would ask --

2 BY MR. TRAXLER:

3 Q. You seem to qualify it. I just need to
4 know that there was a reason to qualify it.

5 MR. TWOMBLEY: I would just ask and
6 instruct to answer yes or no without disclosing if
7 you know in any way what the nature or substance of
8 any representation might have been other than estate
9 planning.

10 THE WITNESS: Mr. Traxler, can you
11 repeat the question?

12 BY MR. TRAXLER:

13 Q. I believe the question that was pending
14 was in 2008 or '09 when you first got involved with
15 Mr. -- while representing Mr. Barringer and doing
16 work for him, had he been previously represented by
17 McNair that you know of?

18 A. I think he had been previously represented
19 by McNair.

20 Q. Okay. Do you know who at McNair had done
21 work for him?

22 A. I do not.

23 Q. All right. Do you know if anyone had done
24 any estate planning or tax work for him prior to your
25 involvement?

1 MS. KIRK: I object to -- are you
2 asking just about estate-related tax work?

3 MR. TRAXLER: Yeah.

4 MR. TWOMBLEY: I would -- I would
5 agree you should limit your answer to any estate
6 planning tax work.

7 THE WITNESS: I don't -- I don't
8 believe that anyone at McNair represented Paul with
9 respect to estate planning before I represented Paul
10 while at McNair in 2008 or 2009.

11 BY MR. TRAXLER:

12 Q. Do you know if anyone at McNair, prior to
13 your work with CFRC, had done any corporate or
14 business work for Mr. Barringer prior to your
15 involvement?

16 MR. TWOMBLEY: I would instruct you
17 to answer yes or no.

18 MR. SCHRONCE: Same objection from
19 CFRC. You can say yes or no without giving any
20 privilege communications.

21 THE WITNESS: So, Mr. Traxler, can
22 you repeat the question?

23 BY MR. TRAXLER:

24 Q. Sure. Subject to your counsels'
25 objections so you don't have to repeat them every

1 time. I simply want a yes or no to this question:
2 Prior to your work providing legal advice to CFRC, do
3 you know if McNair had provided any corporate or
4 business work for Mr. Barringer?

5 A. Corporate or business work for
6 Mr. Barringer?

7 Q. Yes, sir.

8 A. I don't know the answer to that.

9 Q. When was the first time you did any legal
10 work for CFRC?

11 A. In 2012. I don't -- I believe I did --
12 no. I didn't do any legal work for CFRC before
13 August of 2012.

14 Q. Okay. And that was right after the
15 resignation of Mr. Herring, correct?

16 MR. TWOMBLEY: Object to the form.

17 MR. TRAXLER: I'm sorry. I can't
18 hear you.

19 MS. KIRK: Mr. Twombley and I both
20 objected -- objected to the form.

21 BY MR. TRAXLER:

22 Q. Okay. But I didn't hear Mr. Jolley's
23 answer.

24 A. That was shortly after Mr. Herring
25 resigned.

1 Q. Who do you -- obviously Mr. Barringer is
2 deceased. Do you still represent Merrill Barringer?

3 A. I do not represent Merrill Barringer.

4 Q. When did that representation cease?

5 A. I'm not -- I'm not sure, but I believe it
6 was after this litigation began.

7 Q. Do you know why?

8 A. I think it was due to this litigation and
9 the perception that Ms. Barringer needed separate
10 counsel.

11 Q. Do you still represent Merrill Light?

12 A. I do.

13 MR. MOLSTER: I just advise you yes
14 or no.

15 THE WITNESS: Yes.

16 BY MR. TRAXLER:

17 Q. Do you still send her bills?

18 MR. MOLSTER: Yes or no. Tom, I'm
19 not going very far on this. I'll give you a fair
20 warning.

21 MR. TRAXLER: I'm with you, Chip.

22 THE WITNESS: Yes.

23 BY MR. TRAXLER:

24 Q. And did you send her bills in 2020?

25 A. Yes.

1 MR. MOLSTER: I instruct him not to
2 answer. Thank you.

3 MR. TWOMBLEY: I want to just caution
4 the witness to let the -- Mr. Traxler finish the
5 question and let all the attorneys have an
6 opportunity to hear it and lodge an objection or
7 instruction before you answer.

8 BY MR. TRAXLER:

9 Q. All right. My question was whether he had
10 sent her bills in 2020, and I understand that
11 Mr. Molster has instructed him not to answer that
12 question; is that correct?

13 MR. MOLSTER: If that's directed to
14 me, yes. That's correct. I think we're getting into
15 an area that we should not get into in this case with
16 respect to his representation of Merrill and Randy
17 Light.

18 MR. TRAXLER: Are you instructing him
19 not to answer the question because of a privilege?

20 MR. MOLSTER: I'm instructing him not
21 to answer the question in part -- yes. Because of a
22 privilege. Yes.

23 MR. TRAXLER: All right. I just want
24 to make sure I understood the basis for it.

25

1 BY MR. TRAXLER:

2 Q. How much did you bill Ms. Light for
3 whatever services you provided for her in the year
4 2020?

5 MR. MOLSTER: Same instruction.

6 MR. TRAXLER: And, Mr. Molster, I
7 want to ask him for each year going back to his
8 initial representation. And I assume that if I ask
9 him the question, you are going to instruct him on
10 the basis of privilege not to answer any of those
11 questions for any years; is that correct?

12 MR. MOLSTER: Correct. And so you
13 don't have to go through that process. You're
14 certainly welcome to if you want to make your record,
15 but I'm happy to stipulate to you -- with you that I
16 will give him the same instruction for each question.

17 MR. TRAXLER: More accurately, I've
18 got a sufficient record on that now, can we?

19 MR. MOLSTER: We can.

20 MR. TRAXLER: Okay. Thank you.

21 BY MR. TRAXLER:

22 Q. What kind of legal work have you done for
23 Ms. Light -- Merrill Light this year?

24 MR. MOLSTER: Same instruction.
25

1 MR. TRAXLER: And I want to ask you
2 the same question from the initial year of your
3 representation all the way through the present time.
4 Mr. Molster, do I understand that you're going to
5 direct him not to answer any of those questions on
6 any year because of privilege; is that correct?

7 MR. MOLSTER: Yes, sir. With all due
8 respect.

9 MR. TRAXLER: Certainly.

10 MR. MOLSTER: I'm happy to have the
11 same agreement that we had with respect to the other
12 issue that you don't have to go through each year
13 unless you would like to.

14 MR. TRAXLER: God bless you. That's
15 good enough for me. Thank you.

16 BY MR. TRAXLER:

17 Q. How about -- do you still represent Randy
18 Light? Did you represent Randy Light up until his
19 death?

20 MR. MOLSTER: Yes or no, Mr. Jolley.

21 THE WITNESS: Yes.

22 MR. TRAXLER: And, Mr. Molster, so I
23 understand, if I ask Mr. Jolley the type of legal
24 services he provided each year going back to the
25 initial representation, how much he billed him, how

1 much he collected and all that, each of those
2 questions you are similarly going to instruct him not
3 to answer because of privilege; is that correct?

4 MR. MOLSTER: With all due respect,
5 that is correct. You're welcome to go through those
6 questions, but you certainly don't have to. The same
7 stipulation would apply from my perspective.

8 MR. TRAXLER: That's fine. Does
9 anybody else here, any counsel, anybody, want me to
10 go through every single year and every single
11 question or do we all agree that the record is
12 reserved on that issue?

13 MR. TWOMBLEY: I don't -- I mean, I
14 think whatever questions you need to ask, you ought
15 to ask them. I don't -- quite frankly, I wasn't
16 totally following since it involved another
17 defendant. So if you want to try to explain it to me
18 again, I'll listen carefully and maybe I can agree to
19 it. But I honestly wasn't totally following, Tom.

20 MR. TRAXLER: Mr. Twombley, do you
21 represent or have you ever represented Merrill Light?

22 MR. TWOMBLEY: No. But you --

23 MR. TRAXLER: Are you going to assert
24 a privilege to them?

25 MR. TWOMBLEY: No. But you asked me

1 if I had any -- you know, if I was agreeing. You're
2 trying to make me a party to some type of agreement
3 that I'm not agreeing to.

4 MR. TRAXLER: I just wanted top make
5 sure we have a simple record.

6 MR. TWOMBLEY: I got you.

7 BY MR. TRAXLER:

8 Q. All right. When you were representing the
9 company, you represented the company from August 2012
10 up until when or do you still represent the company,
11 Mr. Jolley?

12 A. I do not -- I no longer represent the
13 company.

14 Q. When did that cease?

15 A. I'm not certain. That occurred, I
16 believe, after this lawsuit was brought.

17 Q. In 2011 -- excuse me. In 2012 -- strike
18 that.

19 2011, when you were doing legal work for
20 Paul and Merrill Barringer, were you also
21 representing Merrill Light and Randy Light? Not in
22 the same legal work necessarily, but at the same time
23 frame providing legal services?

24 MR. MOLSTER: Yes or no, Mr. Jolley.

25 THE WITNESS: Tom, please --

1 Mr. Traxler, please repeat the question.

2 BY MR. TRAXLER:

3 Q. Sure. Reserving your objection,
4 Mr. Molster. In 2011, when you were reviewing the
5 estate planning documents and doing some estate
6 planning work for Paul and Merrill Barringer, were
7 you in that same time frame also providing legal
8 services to Merrill Light or Randy Light?

9 A. Yes.

10 MR. MOLSTER: And, Mr. Jolley, I
11 would just ask that you please limit your question to
12 yes or no, which you obviously just did. Thank you.

13 MR. TRAXLER: Mr. Molster, that's
14 because of privilege, correct?

15 MR. MOLSTER: Yes, sir.

16 BY MR. TRAXLER:

17 Q. Okay. And in 2012, did you represent or
18 do legal work for Merrill Light at various times
19 through 2012?

20 MR. MOLSTER: Same request,
21 Mr. Jolley.

22 THE WITNESS: I didn't --
23 Mr. Traxler, I didn't understand that question.

24 BY MR. TRAXLER:

25 Q. 2012, did you provide any legal services

1 to Merrill Light?

2 A. Yes.

3 Q. All right. Did you provide legal services
4 in 2012 to Randy Light?

5 MR. MOLSTER: Same request,
6 Mr. Jolley. Just a yes or no.

7 THE WITNESS: I don't remember.

8 BY MR. TRAXLER:

9 Q. In 2012, were you on a regular retainer
10 with Merrill Light?

11 A. No.

12 MR. MOLSTER: I instruct you not to
13 answer that, Mr. Jolley.

14 MR. TRAXLER: And if I ask him the
15 same question as to Randy Light, you would impose the
16 same objection, which I assume is all privileged,
17 Mr. Molster?

18 MR. MOLSTER: Correct. Thank you,
19 Mr. Traxler.

20 BY MR. TRAXLER:

21 Q. Were you on retainer with CFRC in --

22 MR. SCHRONCE: I object and instruct
23 the witness not to answer.

24 MR. TRAXLER: Is that on privilege?

25 MR. SCHRONCE: It is.

1 MR. TRAXLER: Okay. And I presume
2 that if I ask Mr. Jolley the same question about
3 whether he was on retainer in subsequent years, y'all
4 would interpose the same objection on the basis of
5 privilege and instruct him not to answer; is that
6 correct?

7 MR. SCHRONCE: That's correct.

8 MR. TRAXLER: Okay. And if I ask
9 Mr. Molster -- Mr. Jolley the questions about Merrill
10 Light and Randy Light and being on retainer with them
11 in each of the years, you would similarly instruct
12 him not to answer, correct?

13 MR. MOLSTER: With all due respect,
14 yes, sir.

15 MR. TRAXLER: Okay.

16 MR. TWOMBLEY: And I would object to
17 the form of the questions regarding being on
18 retainer.

19 THE COURT REPORTER: And I'm having a
20 hard time keeping up with who's speaking because you
21 aren't identifying yourself. So I apologize. I
22 don't know who was just speaking.

23 MR. MOLSTER: This is Charles Molster
24 representing Merrill Light and Randy Light. So any
25 of the questions that have been directed towards

1 Randy Light or Merrill Light and has been an
2 objection or instruction by a lawyer, that has been
3 Charles Molster. I'll try to do better in the
4 future.

5 MR. SCHRONCE: And this is John
6 Schronce on behalf of CFRC. So, similarly, the
7 questions directed towards the company, those were my
8 instructions.

9 THE COURT REPORTER: Thank you.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, when you began to represent
12 CFRC in 2012, tell me how that came about in terms of
13 who contacted you and what the arrangements were for
14 you to start being corporate counsel?

15 MR. SCHRONCE: And I'm going to
16 object to that and instruct the witness not to answer
17 to the extent that is a discussion with -- with
18 corporate employees. Thank you.

19 MR. TRAXLER: Are you telling him not
20 to answer that because of a privilege?

21 MR. SCHRONCE: I am.

22 MR. TRAXLER: Okay.

23 BY MR. TRAXLER:

24 Q. At the time that you were approached about
25 doing legal services by someone associated with CFRC,

1 were you then representing CFRC?

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: Same objection.

4 MR. SCHRONCE: Same objection. This
5 is John Schronce.

6 BY MR. TRAXLER:

7 Q. You can answer, Mr. Jolley.

8 A. Mr. Traxler, I didn't understand that
9 question.

10 Q. Okay. Subject to everybody's objection
11 that they just gave, when you were approached to be
12 legal counsel to CFRC, and those services started in
13 August of 2012, as I recall, tell me how -- you were
14 not representing CFRC at the time you were approached
15 about starting to represent them, were you? I know
16 that sounds kind of stupid, but that's apparently the
17 way we've got to come at it.

18 MS. PAYLOR: Object to the form.

19 MR. SCHRONCE: Same objection. This
20 is John Schronce.

21 MS. KIRK: Object to form.

22 BY MR. TRAXLER:

23 Q. You can answer. You weren't representing
24 CFRC before they approached you to represent them,
25 weren't you -- were you?

1 A. I didn't represent CFRC before they
2 approached me to represent CFRC.

3 Q. And who approached you to represent CFRC?

4 A. Who approached me with respect to
5 representing CFRC?

6 Q. Yes.

7 A. Travis Bryant.

8 Q. Anyone else?

9 A. No.

10 Q. And when was that?

11 A. My recollection is that it was in August
12 of 2012.

13 Q. What did Travis say -- Travis Bryant say
14 to you?

15 MR. SCHRONCE: I'm going to object on
16 the basis of privilege and instruct the witness not
17 to answer.

18 MR. TRAXLER: Mr. Schronce, he hasn't
19 been retained yet. He doesn't represent CFRC.

20 MR. SCHRONCE: I'm instructing the
21 witness not to answer on the basis of privilege.

22 BY MR. TRAXLER:

23 Q. Okay. Did you have conversations with
24 Travis Bryant before you were retained to be CFRC
25 counsel?

1 A. I did.

2 MR. TRAXLER: Mr. Schronce, you're
3 not going to allow that -- the contents of that
4 conversation -- conversation to be testified to; is
5 that correct?

6 MR. SCHRONCE: You're asking for the
7 substance of his conversation with Mr. Bryant as to
8 how the engagement came about and I'm instructing him
9 not to answer that.

10 BY MR. TRAXLER:

11 Q. Did you sign an engagement letter -- sign
12 an engagement letter with CFRC to be started in
13 August 2012?

14 MR. SCHRONCE: I'm going to object
15 and instruct the witness to answer yes or no.

16 THE WITNESS: I'm not sure.

17 BY MR. TRAXLER:

18 Q. Did you have an engagement letter at any
19 point in time with Paul Barringer?

20 MR. TWOMBLEY: I'm going to instruct
21 him not to answer other than to limit your -- you can
22 answer with respect to estate planning and estate
23 planning only.

24 THE WITNESS: I am not sure if we had
25 an engagement letter with Mr. and Ms. Barringer with

1 respect to estate planning.

2 BY MR. TRAXLER:

3 Q. Did you ever have an engagement letter
4 with Merrill Light?

5 MR. MOLSTER: Sorry. I was AWOL.
6 The question was did you ever have an engagement
7 letter with Merrill Light?

8 MR. TRAXLER: Yes.

9 MR. MOLSTER: Thank you, Mr. Traxler.
10 With all due respect, I instruct the witness not to
11 answer the question.

12 MR. TRAXLER: And that's because of
13 privilege; is that correct?

14 MR. MOLSTER: Yes, sir.

15 MR. TRAXLER: And if I ask the same
16 question about Randy Light, you're going to instruct
17 him not to answer on the grounds of privilege,
18 correct?

19 MR. MOLSTER: I would.

20 BY MR. TRAXLER:

21 Q. Did you ever -- strike that.

22 During the year 2012, did you consider
23 your representation of Merrill Light to be continuous
24 throughout that entire year or only as needed on
25 particular issues?

1 MR. MOLSTER: Thank you. I instruct
2 the witness not to -- with all due represent, I
3 instruct the witness not to answer the question,
4 Mr. Traxler.

5 BY MR. TRAXLER:

6 Q. And during 2012, did you have continuous
7 representation of Randy Light throughout the year or
8 was it only with regard to matters as they came up?

9 MR. MOLSTER: Same instruction.

10 BY MR. TRAXLER:

11 Q. Okay. When you started representing CFRC,
12 did you, at the same time, become a secretary of the
13 corporation?

14 A. After -- I became -- I was named assistant
15 secretary I believe on August 29, 2012.

16 Q. Yes, sir. And did you have any duties or
17 responsibilities as assistant secretary of the
18 corporation beyond those as its lawyer?

19 A. I think primarily my role was as lawyer,
20 and I had the -- and I was to help with the minutes
21 and -- but the primary role was as outside counsel.

22 Q. How do you -- how would you distinguish
23 when you were doing work in 2012 and subsequent years
24 for CFRC whether you were acting as assistant
25 secretary or as corporate counsel?

1 MR. SCHRONCE: I'm going to object to
2 the extent that it calls for privileged
3 communications with corporate officers and employees.
4 BY MR. TRAXLER:

5 Q. Do you understand my question, Mr. Jolley?

6 A. I think your question --

7 Q. I can say it again subject to
8 Mr. Schronce's objection, of course. In 2012, after
9 you became assistant secretary, throughout the
10 balance of your representation of CFRC, how did you
11 know whether what you were doing was as assistant
12 secretary or as its corporate counsel?

13 MR. SCHRONCE: Again, same
14 instruction to the extent that it calls for
15 communications with the client.

16 THE WITNESS: I think that the
17 assistant secretary role was really limited to the
18 preparation of the minutes and -- and, you know,
19 certain ministerial functions associated with the
20 company.

21 BY MR. TRAXLER:

22 Q. Okay. Did you ever talk to Merrill Light
23 as corporate counsel?

24 MR. SCHRONCE: Again, I'm going to
25 object and instruct the witness not to answer.

1 Merrill Light is serving as director of the company.

2 MR. TRAXLER: That's a fair
3 objection. I'll withdraw the question.

4 BY MR. TRAXLER:

5 Q. Did you ever have any conversations with
6 Merrill Light beyond her role as director or officer
7 about being corporate counsel?

8 MR. MOLSTER: Thank you, Tom. I
9 respectfully instruct him not to answer.

10 MR. TRAXLER: On the grounds of
11 privilege?

12 MR. MOLSTER: Yes, sir.

13 BY MR. TRAXLER:

14 Q. Did you ever have any discussion with
15 Mr. Randy Light about being corporate counsel at all?

16 MR. MOLSTER: Same instruction.

17 MR. SCHRONCE: And I'm going to --
18 this is John Schronce. I'm going to object and
19 instruct the witness not to answer. Mr. Light is a
20 director of the company.

21 BY MR. TRAXLER:

22 Q. Do you know how Travis Bryant came to you
23 to approach you to be corporate counsel in 2012?

24 MR. SCHRONCE: I'm going to object
25 and instruct the witness not to answer to the extent

1 you're calling for your communications -- or his
2 communications with Mr. Bryant.

3 BY MR. TRAXLER:

4 Q. When you were assistant secretary of the
5 corporation starting August 29, 2012, what duties did
6 you have as assistant secretary to the corporation?

7 MS. KIRK: Object to form.

8 MR. SCHRONCE: And I would object and
9 instruct the witness not to answer to the extent it
10 calls for privileged communications with company's
11 officers and employees.

12 MS. KIRK: That's also been asked and
13 answered.

14 BY MR. TRAXLER:

15 Q. Okay. I'll rephrase it. What duties does
16 an officer of a corporation have to the corporation
17 in terms of duties of loyalty, fiduciary duties, and
18 the like?

19 MR. SCHRONCE: Object to the form of
20 the question.

21 MS. KIRK: I do too.

22 MR. TWOMBLEY: Yes. Same objection.

23 BY MR. TRAXLER:

24 Q. Okay. Go ahead, Mr. Jolley. You can
25 answer the question.

1 A. I think officers of companies have duties
2 to the company.

3 Q. Do they have a fiduciary duty?

4 MR. TWOMBLEY: Object to the form --

5 MR. SCHRONCE: Object to form.

6 MR. TWOMBLEY: -- of the question.

7 It calls for a conclusion -- legal conclusion.

8 BY MR. TRAXLER:

9 Q. You can answer the question.

10 A. I think that in certain -- in some
11 circumstances they have fiduciary duties.

12 Q. What circumstances would those be?

13 MR. SCHRONCE: And I'm going to
14 object to the form. And, again, to the extent that
15 this calls for communications with the company's
16 directors and officers and employees about their
17 responsibilities. You as corporate counsel, I'll
18 instruct you not to answer.

19 MS. KIRK: And I also object to the
20 form.

21 BY MR. TRAXLER:

22 Q. Subject to that objection, you can go
23 ahead and answer, Mr. Jolley.

24 A. So Mr. Traxler, can you rephrase the
25 question?

1 Q. I think I can. Can you tell me what
2 duties an officer of a corporation has to the
3 corporation in terms of, like, fiduciary duty, duty
4 of loyalty, and the like?

5 MR. SCHRONCE: Same objection.

6 MR. TWOMBLEY: Objection.

7 THE WITNESS: I mean, I -- I -- and I
8 can answer that question now? Is that subject to the
9 objections?

10 BY MR. TRAXLER:

11 Q. Yes.

12 A. I think officers of corporations do have
13 duties to the corporation, including a duty of
14 loyalty and including, I think generally, fiduciary
15 obligations as well.

16 Q. All right. Similarly, would you describe
17 to me what duties you think an officer of a
18 corporation has to the shareholders?

19 MR. SCHRONCE: Again, I'm going to
20 make the same objection. Object to the form. Calls
21 for a legal conclusion. And to the extent that it
22 calls for your communications with the company's
23 directors, officers, and employees about their
24 responsibilities, I'll instruct you not to answer.

25 MS. KIRK: Also object to the form.

1 BY MR. TRAXLER:

2 Q. Okay. Mr. Jolley, you can answer the
3 question.

4 A. So Mr. Traxler, I'm sorry. I'm going to
5 need you to repeat or rephrase that question.

6 Q. Sure. You had answered my questions
7 earlier about duties of an officer to a corporation.
8 I'm now asking you about duties of an officer to
9 shareholders. And I'll narrow it down. In a
10 closely-held corporation?

11 MR. SCHRONCE: And I'll make the same
12 objection.

13 MS. KIRK: Same objection here too.

14 MR. SCHRONCE: You can answer.

15 THE WITNESS: I think the officers of
16 a corporation have duties to the shareholders to
17 properly operate the corporation.

18 BY MR. TRAXLER:

19 Q. Is that the sole extent of the duties of
20 an officer to shareholders that you're aware of in a
21 closely-held corporation?

22 MR. TWOMBLEY: Object to the form.

23 MS. KIRK: Object to form.

24 MR. SCHRONCE: Again, I'm going to
25 make the same objection.

1 MR. MOLSTER: I'm going to join those
2 objections as well.

3 THE WITNESS: So, Mr. Traxler, can
4 you repeat your question?

5 BY MR. TRAXLER:

6 Q. Sure. What duties does an officer of a
7 closely-held corporation have to its shareholders?

8 MR. TWOMBLEY: Object to the form of
9 the question.

10 MR. SCHRONCE: Same objection.

11 MS. KIRK: Object to the form.

12 MR. TWOMBLEY: Calls for a legal
13 conclusion.

14 MR. MOLSTER: Same objection. Legal
15 conclusion. Calls for opinion testimony. You can
16 answer.

17 THE WITNESS: I think -- and you
18 asked the officers of a corporation have an
19 obligation -- they have a duty to, what, act on
20 behalf of the company in accordance with the -- want
21 the best interest of the corporation and its
22 shareholders.

23 BY MR. TRAXLER:

24 Q. All right. And when there is a conflict
25 between the best interest of a corporation and

1 certain shareholders, which duty prevails?

2 MR. SCHRONCE: And I'm going to
3 object. This calls for a legal conclusion and we're
4 getting into calling for communications with counsel.
5 So, again, to the extent that you can answer that
6 without getting into privileged communications. But,
7 otherwise, I instruct you not to answer.

8 MR. MOLSTER: I impose my same
9 objections as previously.

10 MS. KIRK: And this is Ariail. I
11 object too.

12 MR. MOLSTER: Tom, can I just say
13 same objection? Do I have to repeat them again?

14 MR. TRAXLER: Sure. That's fine.
15 Sure.

16 MR. MOLSTER: I don't want to
17 interrupt the flow of the mojo.

18 MR. TRAXLER: I appreciate it. Thank
19 you.

20 THE WITNESS: Mr. Traxler, I'm going
21 to need you to repeat the question, please.

22 BY MR. TRAXLER:

23 Q. Okay. What duties does an officer have to
24 the shareholders of a closely-held corporation?

25 MR. TWOMBLEY: Same objection.

1 MR. SCHRONCE: Same objection.

2 MS. KIRK: I object too. That's not
3 -- I don't believe that's the most recent question.

4 MR. TRAXLER: That's okay. I'll go
5 with it.

6 THE WITNESS: And Mr. Traxler, the
7 question is what obligation does an officer of a
8 company have in a closely-held corporation to its
9 shareholders?

10 BY MR. TRAXLER:

11 Q. What duties in terms of loyalty, fiduciary
12 duties, and the like to shareholders? And if you
13 don't believe there are any, tell me. I don't care.
14 I just want to hear what you think.

15 MR. MOLSTER: Same objections by
16 Molster.

17 MR. SCHRONCE: Same objection. This
18 is Schronce.

19 MS. KIRK: And this is Ariail Kirk.
20 I also object to the form.

21 THE WITNESS: I think the
22 directors -- I think the directors have an
23 obligation -- or the officers and directors have an
24 obligation to make decisions with respect to the
25 company, you know, pursuant to the corporate law and

1 the obligation to try to, you know, run the company
2 for the benefit of all the shareholders.

3 BY MR. TRAXLER:

4 Q. Okay. Thank you. That would apply
5 whether the shareholders were voting or non-voting
6 stock; is that correct?

7 MR. MOLSTER: Same objection.

8 MR. SCHRONCE: Same objection.

9 MS. KIRK: Object to form.

10 BY MR. TRAXLER:

11 Q. Right? If I named those duties, would you
12 make a distinction between shareholders with voting
13 stock versus non-voting?

14 MR. MOLSTER: Same objections from
15 Molster.

16 MR. SCHRONCE: Same objections.

17 MS. KIRK: Same objection.

18 THE WITNESS: So I -- Tom, is this --
19 are we talking about with respect to officers of the
20 company?

21 BY MR. TRAXLER:

22 Q. Yes, sir. Of the corporation.

23 A. I think the officers of a closely-held
24 company have an obligation to all of the
25 shareholders.

1 Q. Okay. When you came in -- became
2 corporate counsel in August of 2012, what agreements,
3 if any, were there existing between shareholders of
4 CFRC with regard to voting and any particular voting
5 agreement?

6 MR. TWOMBLEY: Object to the form.

7 MS. KIRK: Form.

8 MR. MOLSTER: Object --

9 MR. SCHRONCE: Again, I'm --

10 MR. MOLSTER: Go ahead, John.

11 MR. SCHRONCE: I was going to object
12 and instruct the witness not to answer beyond the
13 existence of an agreement.

14 MR. MOLSTER: I object and instruct
15 you not to answer to the extent it has anything to do
16 with Merrill Light.

17 BY MR. TRAXLER:

18 Q. Any voting agreements in place when you
19 came in?

20 MR. MOLSTER: Same instruction, John.
21 Don't answer the question.

22 MR. SCHRONCE: Same objection.

23 MR. TRAXLER: If it will save
24 everybody some time, if I just repeat it -- I will --
25 I will consider your objection to be continuing.

1 It's up to y'all.

2 MR. MOLSTER: I think we've got to
3 protect -- I'd love to do it, but I think we've got
4 to protect the record.

5 MR. TRAXLER: Okay. That's fair.

6 MR. MOLSTER: I don't mean to, you
7 know, interfere, but I just think we've got to do it.

8 MR. TRAXLER: That's fine.

9 MR. MOLSTER: I apologize.

10 BY MR. TRAXLER:

11 Q. Yes or no: Were there any voting
12 agreements among any of the shareholders at the time
13 that you became corporate counsel in August of 2012?

14 MR. MOLSTER: Same objection. Same
15 instruction.

16 MR. SCHRONCE: Same objection and
17 instruction.

18 MS. KIRK: Same objection.

19 THE WITNESS: Yes.

20 MR. TWOMBLEY: I just want to be
21 clear. I don't know -- Chip, sometimes it's hard to
22 hear what you're saying. So you need to speak up a
23 little bit because I think Chip said --

24 MR. MOLSTER: Yes. John, I instruct
25 you not to answer the question.

1 THE WITNESS: Okay.

2 MR. MOLSTER: I apologize if I wasn't
3 clear. I'm about as close to this microphone I think
4 as I can get, but I can crawl up closer to it, if
5 necessary.

6 MR. TRAXLER: Chip, let me make sure
7 I understand. You are not going to allow him to
8 answer whether there was or was not a voting
9 agreement?

10 MR. MOLSTER: I just think -- I
11 think, Tom, you're trying to pierce the
12 attorney-client privilege. I don't know where
13 exactly, you know, that line is going to be drawn,
14 but I think out of abundance of caution and
15 representation of my client, you know -- listen, if
16 you will agree that it's not a waiver of
17 attorney-client privilege, you're not going to claim
18 some subject matter waiver, I'm happy to consider
19 that and maybe I'll reverse my decision. Are you
20 willing do that?

21 MR. TRAXLER: I'll do that.

22 MR. MOLSTER: All right. John, I'll
23 let you answer the question just yes or no.

24 THE WITNESS: Yes.

25

1 BY MR. TRAXLER:

2 Q. Was it a signed voting agreement?

3 MR. MOLSTER: Same deal?

4 MR. SCHRONCE: Same instruction from
5 CFRC. In the existence of the agreement, we're
6 drawing a line there.

7 THE WITNESS: And the question is
8 whether or not it was signed?

9 BY MR. TRAXLER:

10 Q. Yes, sir.

11 A. Yes.

12 Q. And do you know when that voting agreement
13 was first executed?

14 MR. MOLSTER: Same deal?

15 MR. TRAXLER: Yeah.

16 MR. SCHRONCE: Same objection and
17 instruction.

18 MR. MOLSTER: Same agreement.

19 THE WITNESS: So I'm sorry. The
20 question for me -- and Mr. Molster, how am I -- you
21 instructed me to answer yes or no?

22 MR. MOLSTER: Answer yes or no. Yes.

23 THE WITNESS: Mr. Traxler, can you
24 tell me what the question is again?

25

1 BY MR. TRAXLER:

2 Q. The question was: When was it signed?

3 Yes or no.

4 MR. TRAXLER: He identified that
5 there was a voting agreement in place when he became
6 corporate counsel. I am asking him if it was signed,
7 and I believe he said yes. And now I think I'm
8 asking him when it was signed. What's it dated?

9 MR. MOLSTER: So you think that yes
10 or no is not an appropriate answer? Is that what
11 you're suggesting? I think that's fair. So subject
12 to the same agreement, John, you can testify only --
13 you can answer the question only as to the date, if
14 you know it.

15 THE WITNESS: I don't know it.

16 MR. MOLSTER: All right. John -- I
17 mean, we've been going for over an hour, Tom. Would
18 you mind if we took a break? I think --

19 MR. TRAXLER: Sure. How much time do
20 you need?

21 MR. MOLSTER: I don't know. Is
22 Thursday morning too -- I'm kidding. I don't know
23 how long it's going to take us.

24 MR. TRAXLER: You must have a golf
25 game tomorrow.

1 MR. MOLSTER: I'm taking the fifth on
2 that, Traxler.

3 MR. TRAXLER: That's fine. Hey,
4 stand up and show us your pants.

5 THE VIDEOGRAPHER: We are going off
6 record. The time is 2:54 p.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: We are back on
9 record. The time is 3:15 p.m.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, did you talk to anybody during
12 the break?

13 A. I did not.

14 Q. Did anybody try to talk to you?

15 A. They did not.

16 Q. All right. During your -- from 2011
17 through the present time with regard to any of the
18 Barringers or the Lights or CFRC, did you ever have
19 any of your clients sign any waivers of conflict?

20 MS. KIRK: Object to the form.

21 MR. TWOMBLEY: I will object to the
22 form and instruct him not to answer.

23 MR. MOLSTER: Yeah. This is Molster.
24 I instruct him not to answer with respect to
25 Merrill Light or Randy Light.

1 MR. SCHRONCE: And this is John
2 Schronce. Same instruction for CFRC.

3 MR. TWOMBLEY: Same instruction.

4 MR. TRAXLER: Y'all are objecting on
5 the basis of privilege?

6 MR. MOLSTER: Yes, sir.

7 MR. TRAXLER: Mr. Schronce, is that
8 correct?

9 MR. SCHRONCE: That is correct.

10 MR. TRAXLER: Okay. Thank you.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, when you undertook to
13 represent Paul Barringer and Merrill Barringer back
14 in late 2011, did you discuss possible conflicts of
15 your representation of Merrill Light and Randy Light
16 with them?

17 MR. TWOMBLEY: I'll object and --

18 MS. KIRK: Same objection.

19 MR. TWOMBLEY: -- instruct you not to
20 answer about any of your discussions.

21 MR. TRAXLER: And I assume you're
22 instructing him not to answer on the basis of
23 privilege; is that correct?

24 MR. TWOMBLEY: Correct.
25

1 MR. TRAXLER: Who made that last
2 objection?

3 MR. TWOMBLEY: I did. Ashley.

4 MS. KIRK: This is Ariail Kirk. I
5 also object.

6 BY MR. TRAXLER:

7 Q. Mr. Jolley, do you presently represent any
8 of the Barringers or Lights or the company in
9 connection with this litigation, that is, advising
10 them with regard to the litigation?

11 MR. MOLSTER: Okay. So, Tom, if
12 you'll bear with me. On behalf of Mary -- Merrill,
13 Randy, or anybody whose name ends in Light or Light,
14 I -- assuming that you will agree with me, Tom, it's
15 not a subject matter waiver, I'll let him answer yes
16 or no. Is that okay?

17 MR. TRAXLER: Sure.

18 MR. MOLSTER: Okay. You can answer
19 yes or no for the Lights.

20 MR. TWOMBLEY: Same agreement for
21 Merrill Barringer?

22 MR. SCHRONCE: Tom, can we make that
23 same agreement for CFRC?

24 MR. TRAXLER: Certainly.

25 MR. TWOMBLEY: And for Merrill

1 Barringer?

2 MR. TRAXLER: Sure.

3 MR. TWOMBLEY: Answer yes or no.

4 THE WITNESS: I'm going to need to
5 have the question again.

6 BY MR. TRAXLER:

7 Q. Have you undertook to represent Paul and
8 Merrill Barringer starting in late 2011, did you have
9 any discussions with them about possible conflicts of
10 interest with regards to your representation of the
11 Lights?

12 MS. KIRK: That's --

13 MR. TRAXLER: Subject to their
14 objections.

15 MR. MOLSTER: That was not the
16 question. I think the question was whether or not he
17 was involved in this -- representing anybody in this
18 litigation.

19 MR. TRAXLER: You're right, Chip.
20 I'm sorry. I withdraw that question.

21 BY MR. TRAXLER:

22 Q. Are you representing any of the Lights or
23 Barringers with regard to this litigation?

24 MR. MOLSTER: Subject to our
25 agreement. Same deal.

1 MR. TRAXLER: I agree with all of you
2 on that.

3 THE WITNESS: I'm sorry. I am not
4 representing.

5 BY MR. TRAXLER:

6 Q. And are you representing CFRC with regard
7 to this litigation? Subject to the same agreement.

8 A. No. I'm not representing CFRC.

9 Q. Okay. Thank you. Do you ever socialize
10 with the Lights?

11 MR. MOLSTER: Object to the form.

12 MR. TWOMBLEY: John, if you lean
13 back, I think it will -- it will help with the --

14 THE WITNESS: Oh, I'm sorry. Can you
15 see?

16 MS. KIRK: Object to the form of the
17 question.

18 THE WITNESS: So do I ever socialize
19 with the Lights?

20 BY MR. TRAXLER:

21 Q. Yes, sir.

22 A. I don't know what you mean, "socialize."

23 Q. Do you ever use the word "socialize?"

24 A. Mr. Traxler, I do use the word
25 "socialize."

1 Q. When you use the word "socialize," what do
2 you use it to mean?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. KIRK: Object to the form.

6 MR. MOLSTER: Same objection.

7 BY MR. TRAXLER:

8 Q. You can answer.

9 A. Mr. Traxler, if you are asking me if I've
10 ever had a meal with any of those people, then in
11 some instances I would consider that to be
12 socializing, and in that -- subject to that, I have
13 certainly had a meal with some of the people you
14 mentioned.

15 Q. Well, actually, my question was: Do you
16 presently? Maybe I did not use that word, but I used
17 the present tense. Do you socialize with the Lights?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: Same.

20 BY MR. TRAXLER:

21 Q. Have you had dinners with the Lights in
22 2021?

23 A. No.

24 Q. And when I say "Lights," I mean Merrill or
25 Randy. Do you agree with that? I'm sorry. Randy is

1 deceased. When I'm talking about dinner with the
2 Lights, it would be with them together or separately.
3 Okay?

4 A. I have not socialized or had dinner with
5 Ms. Light in 2021.

6 Q. How about 2020 with each one of them?

7 A. In 2020, no.

8 Q. How about 2020 -- 2019?

9 A. No.

10 Q. 2018?

11 A. No.

12 Q. Do you recall from 2011 to the present
13 time whether you ever had dinner with Merrill Light?

14 A. I have. Yes, I recall.

15 Q. Tell me what you recall.

16 A. I recall in -- I recall having dinner with
17 Ms. Light and others in 2012 or 2013.

18 Q. How many times?

19 A. One time.

20 Q. What was the occasion?

21 A. My recollection is that either the night
22 before or the night after a board meeting, I was
23 invited to dinner with the directors of the company.

24 Q. All right. Have you had dinner with
25 Merrill Light since 2011 other than that?

1 A. No, sir.

2 Q. Have you had dinner with Randy Light other
3 than that?

4 A. No, sir.

5 Q. Have you had dinner with Paul Barringer
6 since 2001 up until his death other than that?

7 A. No, sir.

8 Q. Have you had dinner with Merrill Barringer
9 from 2011 up until now other than that?

10 A. No, sir.

11 Q. Was anybody at that dinner other than
12 board members?

13 A. No.

14 Q. What was the purpose of the dinner?

15 A. It was a social event to -- for -- with
16 the members of the board and myself.

17 Q. And what did you discuss?

18 MR. SCHRONCE: And I will object and
19 instruct the witness not to answer to the extent it
20 calls for privileged communications about the
21 company's business.

22 MR. MOLSTER: Same instruction with
23 respect to Merrill Light and Randy Light.

24 MR. TWOMBLEY: And same instruction
25 with respect to Paul Barringer as a director of the

1 company.

2 BY MR. TRAXLER:

3 Q. Okay. Subject to their objections, what
4 did y'all talk about?

5 A. I don't recall the substance of any -- any
6 conversation at the dinner. It was simply a meal
7 that we ate together and we -- at that time.

8 Q. Was Hampton there?

9 A. No. Ms. Luzak was not there.

10 Q. Was Kevin Luzak there?

11 A. No. Mr. Luzak was not there.

12 Q. Was this after Mr. Luzak had been run off
13 by the company?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Object to form.

17 BY MR. TRAXLER:

18 Q. Did you understand my question?

19 A. It was after Mr. Luzak was gone from the
20 company.

21 Q. Okay. Was that dinner before or after
22 voting stock was given to Merrill Light's revocable
23 trust, September 11, 2012?

24 MS. KIRK: Object to the form.

25 MR. TWOMBLEY: Object to the form.

1 You can answer, if you know.

2 THE WITNESS: My recollection it was
3 after September of 2012.

4 BY MR. TRAXLER:

5 Q. Did y'all talk about Hampton?

6 A. We did not talk about Hampton.

7 Q. Did you talk about Kevin?

8 A. We did not talk about Kevin.

9 Q. Did you hear anybody say anything about
10 Hampton or Kevin at that dinner?

11 A. I did not.

12 Q. When you worked at the McNair Law Firm and
13 you were doing legal work from 2011 up until you left
14 on behalf of the parties in this litigation, I assume
15 the billing was handled by a software billing system
16 inside of McNair; is that correct?

17 MS. KIRK: Object to the form.

18 BY MR. TRAXLER:

19 Q. Do you understand the question?

20 A. We did have billing software at McNair.

21 Q. Okay. And when you recorded time, did you
22 input it into the computer yourself or how did you
23 record it?

24 A. I generally -- well, sometimes I inputted
25 it myself directly and sometimes I wrote down my

1 entries and they were entered into the billing
2 program.

3 Q. Who would enter the time that you manually
4 put down?

5 A. Someone in -- either my administrative
6 assistant or one of my paralegals.

7 Q. Do you know what the archive or policy is
8 of McNair with regard to maintaining billing records?

9 A. I do not. No, no.

10 Q. Do you know what the policy was with
11 respect to preserving your time sheets when you
12 manually put down your time?

13 A. Are you asking me if I know the policy or
14 knew the policy of McNair with respect to that?

15 Q. Yeah.

16 A. I did not.

17 Q. Do you know what happened to them?

18 A. I do not.

19 MR. TWOMBLEY: Object to the form of
20 the question.

21 MS. KIRK: Object to the form.

22 BY MR. TRAXLER:

23 Q. Do they still exist?

24 MR. TWOMBLEY: Object to the form of
25 the question.

1 MS. KIRK: Object to the form.

2 BY MR. TRAXLER:

3 Q. You can answer.

4 A. I'm sorry, Tom. Which question do you
5 want me to answer?

6 Q. Do your time sheets where you manually
7 wrote down your time at McNair still exist?

8 MR. TWOMBLEY: Same objection.

9 MS. KIRK: Object to form.

10 THE WITNESS: I don't know.

11 BY MR. TRAXLER:

12 Q. Do you know if they existed when you left
13 the law firm?

14 MR. TWOMBLEY: Objection.

15 THE WITNESS: I do not.

16 BY MR. TRAXLER:

17 Q. Do you know why they were not produced in
18 response to the subpoena?

19 MS. KIRK: Object to the form.

20 THE WITNESS: I do not.

21 BY MR. TRAXLER:

22 Q. Were all of your meetings with -- were all
23 your meetings with Paul Barringer reflected in the
24 billing?

25 MS. KIRK: Object to the form of the

1 question.

2 MR. TWOMBLEY: Can you repeat the
3 question, Tom?

4 MS. KIRK: And can you also
5 specify -- yeah. Repeating works.

6 BY MR. TRAXLER:

7 Q. The question was: Were all of your
8 meetings with Paul Barringer reflected in your
9 billings?

10 MR. TWOMBLEY: Answer yes or no.

11 THE WITNESS: No.

12 BY MR. TRAXLER:

13 Q. Why not?

14 A. Because I didn't always mark down or enter
15 my time.

16 Q. Did you have meetings with Paul Barringer
17 that might be reflected on your calendar?

18 A. Yes.

19 Q. Do you know how many were not marked down
20 on your calendar?

21 A. No.

22 Q. When you would have a conversation with a
23 client -- any client, whether it be these particular
24 parties or not, would there be memos to the file with
25 regard to that meeting?

1 MS. KIRK: Object to form.

2 THE WITNESS: Not always.

3 BY MR. TRAXLER:

4 Q. Did you always do handwritten notes for
5 all your meetings?

6 A. I did not.

7 Q. What would determine whether you
8 maintained notes or memos or not?

9 A. To some degree, the substance of the
10 meeting.

11 Q. Help me understand how that would be a --
12 a factor in deciding whether to do notes or a memo?

13 MR. TWOMBLEY: Object -- object to
14 the form of the question.

15 MS. KIRK: I also object to the form.

16 BY MR. TRAXLER:

17 Q. Go ahead. You can answer.

18 A. If I had a short telephone conference, for
19 instance, or a short meeting with a client, I might
20 not take notes nor reflect it in my time entry.

21 Q. If you sat down with a client and advised
22 them on documents, would that be reflected in your
23 billing?

24 A. Typically.

25 Q. Were you billing -- would you bill your

1 clients typically for estate planning work on a flat
2 fee or an hourly rate?

3 A. I billed Mr. Barringer on an hourly rate.

4 Q. Did you bill Ms. Barringer on an hourly
5 rate?

6 A. I did.

7 Q. Did you bill Merrill Light on an hourly
8 rate?

9 MR. MOLSTER: Objection. Wait, wait
10 for a second, please, Mr. Jolley. Okay. So you're
11 asking whether he billed her on an hourly rate. If I
12 allow him to answer yes or no, will you agree it's
13 not a subject matter waiver?

14 MR. TRAXLER: Yeah, I agree. That's
15 fine.

16 MR. MOLSTER: You may answer yes or
17 no, please, Mr. Jolley.

18 THE WITNESS: I billed Merrill Light
19 on an hourly rate.

20 BY MR. TRAXLER:

21 Q. Subject to the same agreement, if you
22 want, did you ever do flat rate work for Merrill
23 Light on any item?

24 MR. MOLSTER: Okay. John, just yes
25 or no. Subject to the same agreement.

1 THE WITNESS: No.

2 BY MR. TRAXLER:

3 Q. Did you ever -- same agreement. Did you
4 ever do any flat rate work for Randy Light?

5 MR. MOLSTER: Okay. John, same
6 agreement.

7 THE WITNESS: No.

8 BY MR. TRAXLER:

9 Q. Did you ever do any flat rate work for
10 Paul Barringer?

11 MR. TWOMBLEY: Same agreement?

12 MR. TRAXLER: Yeah.

13 THE WITNESS: No.

14 BY MR. TRAXLER:

15 Q. Did you ever do any flat rate work for
16 Merrill Barringer?

17 MR. TWOMBLEY: Same agreement? Same
18 agreement?

19 MR. TRAXLER: Yes. I'm sorry. Yes.
20 Excuse me.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Did you ever do any flat rate work for
24 CFRC?

25 A. No.

1 MR. SCHRONCE: Same agreement?

2 MR. TRAXLER: Yes. Certainly.

3 THE WITNESS: Sorry. No.

4 BY MR. TRAXLER:

5 Q. So is it fair to say all of the work from
6 late 2011 through the present time for the Barringers
7 or Lights or CFRC would be on an hourly rate? Is
8 that a fair conclusion for me to call?

9 MS. KIRK: Object to form.

10 MR. TRAXLER: Same agreement.

11 THE WITNESS: Yes.

12 BY MR. TRAXLER:

13 Q. All right. And so if there was a meeting
14 or discussion of any substance, it would normally be
15 reflected in your billing, would it not?

16 MR. TWOMBLEY: Object to --

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: -- the form of the
19 question. Misstates his testimony.

20 MR. MOLSTER: Yes or no.

21 THE WITNESS: The question again,
22 Mr. Traxler, please.

23 BY MR. TRAXLER:

24 Q. With the agreement, would -- if you did
25 any substantive work for any of the parties in this

1 litigation, it would have been reflected in your
2 billings, wouldn't it?

3 MR. TWOMBLEY: Object to the form of
4 the question. Completely misstates his testimony.

5 MS. KIRK: I also object to the form.

6 MR. TRAXLER: I'll go with that
7 question. I don't care.

8 BY MR. TRAXLER:

9 Q. Go ahead.

10 MR. TWOMBLEY: What do you mean?
11 You're saying you're withdrawing it and you don't
12 care, but now you want him to answer it?

13 MR. TRAXLER: I want him to answer
14 the question I just asked him.

15 MR. MOLSTER: No. He didn't say he
16 was withdrawing, Ashley. He said, "I'll go with that
17 question."

18 MR. TWOMBLEY: Okay. I'm not sure --

19 BY MR. TRAXLER:

20 Q. Again, subject to the agreement, you can
21 answer this yes or no. If you did any substantive
22 work for any of the Barringers or Lights or CFRC from
23 2011 on, would it not be reflected in your billing?

24 MS. KIRK: Same objection.

25 THE WITNESS: I think the bulk of my

1 substantive work would have been reflected in my
2 billing, but I had communications with the people you
3 mentioned that weren't necessarily reflected in my
4 billing.

5 BY MR. TRAXLER:

6 Q. Okay. And did you bill them in increments
7 of a tenth of an hour, quarter of an hour, or what
8 increment? Same agreement.

9 A. We -- we billed -- we kept track of time
10 in tenth of an hour, but I generally didn't track
11 time or bill clients for less than three-tenths of an
12 hour.

13 MR. MOLSTER: May I interpose an
14 observation, Tom?

15 MR. TRAXLER: Sure.

16 MR. MOLSTER: You would have been
17 extremely unpopular at Winston and Strawn, Mr.
18 Jolley. I withdraw that.

19 MR. TRAXLER: We'll talk later, Chip,
20 about how many hours a day there are.

21 MR. MOLSTER: We're going to find out
22 when we get to the pearly gates.

23 BY MR. TRAXLER:

24 Q. All right. Mr. Jolley, you testified for
25 Mr. Twombly as to your understanding of testamentary

1 capacity. Let me switch gears along that line, if
2 you would, please, sir. What kind of capacity does a
3 grantor or settlor of a revocable trust need to have
4 in order to execute a valid revocable trust?

5 MR. TWOMBLEY: Object to the form.

6 THE WITNESS: I believe that the -- I
7 believe that the settlor of a revocable trust must
8 have testamentary capacity. However, I concluded
9 that Mr. Barringer, his capacity certainly exceeded
10 testamentary capacity.

11 BY MR. TRAXLER:

12 Q. And in order to enter a contract, what
13 type of capacity must a party to a contract have for
14 it to be a valid contract?

15 MR. MOLSTER: Object to the form.

16 MS. KIRK: Tom, I'm sorry. This is
17 Ariail Kirk. You're coming through really garbled
18 and it's hard to understand what you're saying.

19 MR. TRAXLER: I'm sorry.

20 MS. KIRK: If it's an audio issue or
21 if there's something blocking it. Just your words
22 are -- they don't sound right.

23 MR. TRAXLER: No. We're just letting
24 you hear what I want you to hear.

25 MS. KIRK: Maybe so.

1 MR. TRAXLER: See if this sounds a
2 little bit better, Ariail.

3 MS. KIRK: Thank you. I appreciate
4 it.

5 MR. TRAXLER: Sure.

6 BY MR. TRAXLER:

7 Q. Mr. Jolley, my question to you was: What
8 kind of capacity a party to a contract has to have in
9 order to enter into a valid contract?

10 MR. MOLSTER: Object to the form.

11 MS. KIRK: I also object to the form,
12 but you can answer.

13 THE WITNESS: I think what we
14 generally refer to as contract capacity.

15 BY MR. TRAXLER:

16 Q. What is that?

17 A. The parties to the agreement must be able
18 to understand the terms of the agreement and have the
19 capacity to understand that they are entering into
20 that agreement.

21 Q. Is that the full -- your full
22 understanding of contractual capacity?

23 MR. MOLSTER: Same objection.

24 MR. TWOMBLEY: Same objection.

25 MS. KIRK: Object to form.

1 THE WITNESS: I think generally that
2 is my understanding of the contract capacity.

3 BY MR. TRAXLER:

4 Q. All right. Describe for me the capacity
5 to determine -- (inaudible).

6 MR. TWOMBLEY: We lost you on that,
7 Tom.

8 THE WITNESS: Mr. Traxler, I didn't
9 get any of that.

10 BY MR. TRAXLER:

11 Q. Okay. We'll try it again. What capacity
12 does a vendor of a gift have to have in order to make
13 it a valid gift?

14 THE WITNESS: Object to the form.

15 MS. KIRK: Object to form.

16 BY MR. TRAXLER:

17 Q. You can answer.

18 A. I believe that the donor of a gift needs
19 to have contract capacity.

20 Q. All right. In order to revoke a will,
21 what kind of capacity must a testator have to revoke
22 his or her will?

23 MR. SCHRONCE: Same objection.

24 MS. KIRK: Object to form.

25 THE WITNESS: I'm not sure I've

1 considered what capacity a settlor -- a testator
2 would have to be required to revoke the terms of a
3 will, although I believe it would be testamentary
4 capacity.

5 BY MR. TRAXLER:

6 Q. All right. And what capacity must the
7 settlor of a trust have to revoke a revocable trust?

8 MR. MOLSTER: Same objection.

9 THE WITNESS: I believe the same
10 standard applies, that is, testamentary capacity.

11 BY MR. TRAXLER:

12 Q. All right. Is a mistake a basis for
13 invalidating a will, a mistake on the part of the
14 testator?

15 MR. TWOMBLEY: Object to the form of
16 the question.

17 MS. KIRK: Object to form.

18 THE WITNESS: Yes.

19 BY MR. TRAXLER:

20 Q. What kind of mistake provides a basis for
21 invalidating a will?

22 MR. TWOMBLEY: Object to the form of
23 the question.

24 MR. MOLSTER: Objection.

25 MS. KIRK: Object to form.

1 MR. TWOMBLEY: Now you can answer it.

2 THE WITNESS: I think the -- a
3 mistake of fact by the testator could be the basis
4 for invalidating a will.

5 BY MR. TRAXLER:

6 Q. Would you -- you would agree with me,
7 wouldn't you, it's just not any fact. It would be a
8 material fact, material disposition, in the will?

9 MR. TWOMBLEY: Object to the --

10 MS. KIRK: Object to form.

11 MR. TWOMBLEY: -- form of the
12 question.

13 BY MR. TRAXLER:

14 Q. Or do you think that the mistake about
15 getting fact material provides a basis for
16 invalidating a will?

17 MS. KIRK: Also object to the form.

18 THE WITNESS: I think the fact would
19 have to be material.

20 BY MR. TRAXLER:

21 Q. All right. So if a testator has a
22 material -- mistake of a material fact with regard to
23 entering into the will that affects the disposition
24 or the terms of that will, that would be a basis for
25 invalidating the will, correct?

1 MR. TWOMBLEY: Object to the form --

2 MS. KIRK: Object to form.

3 MR. TWOMBLEY: -- of the question.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: I think a mistake as to
6 a material fact could enter into the analysis of the
7 validity of the will.

8 BY MR. TRAXLER:

9 Q. All right. And a mistake of material fact
10 by a settlor would likewise provide a basis for
11 invalidating a revocable trust, would it not?

12 MS. KIRK: Object to the form.

13 MR. TWOMBLEY: Same -- same
14 objection.

15 THE WITNESS: I'm not sure to what
16 extent the rules are with respect to wills. They
17 don't always apply with respect to trusts, but I
18 believe a material fact would be a basis with respect
19 to a trust.

20 BY MR. TRAXLER:

21 Q. Okay. And a mistake of fact with regard
22 to a contract, would that provide a basis for
23 invalidating the contract?

24 MR. MOLSTER: Same objection.

25 MR. TWOMBLEY: Same objection.

1 MS. KIRK: Same objection here as
2 well.

3 THE WITNESS: I suppose.

4 BY MR. TRAXLER:

5 Q. All right. And would a mistake of
6 material fact be a basis for invalidating a gift?

7 MR. MOLSTER: Same objection.

8 MR. TWOMBLEY: Same objection.

9 MS. KIRK: Same objection.

10 THE WITNESS: I'm not sure with
11 respect to a gift, although I suspect the analysis is
12 the same.

13 BY MR. TRAXLER:

14 Q. Is fraud on the -- fraud on the testator a
15 basis for invalidating a will?

16 MR. MOLSTER: Same objection.

17 MR. TWOMBLEY: Same objection.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I think fraud could be
20 a basis for invalidating a will.

21 BY MR. TRAXLER:

22 Q. And could, likewise, fraud on the settlor
23 of a revocable trust be a basis for invalidating the
24 revocable trust?

25 MS. KIRK: Object to form.

1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: I believe so.

3 BY MR. TRAXLER:

4 Q. And would fraud in the inducement of a
5 contract be a basis for voiding the contract?

6 MS. KIRK: Object to the form.

7 MR. MOLSTER: Same objection.

8 THE WITNESS: I believe so.

9 BY MR. TRAXLER:

10 Q. We're all back to law school 101, I
11 believe. Would fraud be a basis for invalidating a
12 gift?

13 MS. KIRK: Object to the form.

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I suspect. I believe
16 so.

17 BY MR. TRAXLER:

18 Q. And to shortcut things a little bit, would
19 you agree with me that duress and coercion provides a
20 basis for invalidating a will and also a revocable
21 trust, a contract, and a gift?

22 THE WITNESS: Object to the form.

23 And just to be clear, my objection to form, almost
24 every time, includes seeking opinion testimony from a
25 lay witness.

1 MR. TRAXLER: I'm sorry. I didn't
2 hear the last part.

3 THE WITNESS: I apologize. I just
4 want to make it clear for the record that my
5 objection to form includes an objection to -- because
6 I think the questions are seeking an opinion from
7 Mr. Jolley, who is not an expert, but a lay witness.

8 MS. KIRK: This is Ariail Kirk. I
9 have the same objection.

10 MR. TWOMBLEY: Same objection.

11 BY MR. TRAXLER:

12 Q. I'll let everybody have that objection,
13 but go ahead. You can still answer the question.
14 All right. We'll go one by one. Is coercion or
15 duress a basis for invalidating a will?

16 MR. MOLSTER: Same objection.

17 MS. KIRK: Same objection.

18 MR. TWOMBLEY: Same for me.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. Is fraud or coercion a basis for
22 invalidating a revocable trust?

23 MR. MOLSTER: Same objection.

24 THE WITNESS: Yes.

25

1 BY MR. TRAXLER:

2 Q. Is fraud or coercion a basis for
3 invalidating a contract?

4 MR. MOLSTER: Same objection.

5 THE WITNESS: Yes.

6 BY MR. TRAXLER:

7 Q. And is fraud or coercion a basis for --
8 excuse me, coercion or duress a basis for
9 invalidating a gift?

10 MR. MOLSTER: Same objection.

11 MS. KIRK: Same objection.

12 THE WITNESS: Yes.

13 BY MR. TRAXLER:

14 Q. Have you ever done any estate planning for
15 any client that you thought was -- had diminished
16 mental capacity to such an extent that they did not
17 have testamentary capacity?

18 MS. KIRK: I object to the form.

19 MR. TWOMBLEY: Yeah. I would caution
20 you not to disclose anybody's name. Just answer in
21 general.

22 BY MR. TRAXLER:

23 Q. No, no, no. And Mr. Twombley or whoever
24 it was is right. I don't want you expose details of
25 clients. I just want to know if you have ever run

1 into someone who wanted to do a will or estate
2 planning who lacked capacity?

3 A. Yes.

4 Q. And how many times have you run into that
5 situation?

6 A. Mr. Traxler, that would be very hard for
7 me to judge.

8 Q. Okay. I understand. Can you give me your
9 best thought, though?

10 A. Several times each year I encounter
11 perspective clients or clients whose capacity is what
12 doesn't meet -- in my estimation and my opinion, they
13 don't reach -- they don't have testamentary capacity.

14 Q. When you're meeting with somebody to do a
15 will or any estate planning, do you have a checklist
16 with regard to things like capacity and undue
17 influence and things that can invalidate the
18 instrument you're doing?

19 A. I do not.

20 Q. And if you suspect that a testator does
21 not have testamentary capacity, what do you do?

22 MS. KIRK: I object to the form. And
23 I -- hold on a second. And I -- I want to be clear
24 that you're not asking him for details about anybody.

25 MR. TRAXLER: No, I'm not. No.

1 THE WITNESS: Mr. Traxler, depending
2 on where I am in the engagement and the level of,
3 certainly, my perception of their impairment, that
4 would dictate what I would do.

5 BY MR. TRAXLER:

6 Q. All right. Suppose you're already on the
7 cuff for signing and executing the agreement and then
8 all of a sudden you have concerns about their
9 testamentary capacity, what do you do?

10 A. I don't help them sign.

11 Q. You make that judgment all by yourself?

12 A. Do I make --

13 MS. KIRK: Object to form.

14 BY MR. TRAXLER:

15 Q. I mean, we know that you sent the
16 certification of competency to Dr. Long. Apparently
17 you've done that, I presume, before because you used
18 a cookie cutter form. I don't mean that
19 derogatorily. I understand how we do things.

20 MS. KIRK: I object to the form.

21 BY MR. TRAXLER:

22 Q. When you have somebody getting ready to
23 sign and you have a question about their capacity,
24 you don't just turn them away, do you?

25 MR. TWOMBLEY: Object to the form of

1 the questions and statements.

2 MS. KIRK: I also object.

3 THE WITNESS: So if -- to the extent
4 that someone lacked testamentary capacity, I would
5 not assist them in implementing a plan, executing
6 their plan. So --

7 BY MR. TRAXLER:

8 Q. If you had a question in your mind about
9 whether they had capacity or not, would you take any
10 step to resolve that issue?

11 A. It depends. I might consult with the
12 people that they have in their lives in terms of --
13 to the extent that they have existing documents and
14 they have, for instance, an agent under health care
15 power of attorney or under a durable power of
16 attorney. We -- I might ask to -- I might ask for
17 the doctor certificate in that instance. I also
18 would consider a conversation with the client about
19 whether or not a guardianship or conservatorship was
20 appropriate in those circumstances.

21 Q. All right. Would you ever send somebody
22 to be evaluated by a doctor that you did not have a
23 concern about?

24 MR. TWOMBLEY: Object to the --

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: -- form of the
2 question.

3 THE WITNESS: So I need to hear that
4 question again.

5 BY MR. TRAXLER:

6 Q. Would you ever send a client to a doctor
7 or outside for evaluation if you had doubts about
8 their capacity?

9 MS. KIRK: Same objection.

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 BY MR. TRAXLER:

13 Q. I'll rephrase it. That's not the right
14 question. Excuse me. Would you ever send somebody
15 to -- for an outside evaluation unless you had doubt
16 about their capacity?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: I wouldn't -- I
21 wouldn't send someone for outside evaluation if I
22 didn't -- if I thought they had capacity.

23 BY MR. TRAXLER:

24 Q. That wasn't my question. Would you send
25 somebody out for outside evaluation if you had doubts

1 about mental capacity?

2 MS. KIRK: Object to form.

3 THE WITNESS: Without -- Mr. Traxler,
4 I'm sorry. Without having doubts about their
5 incapacity. It sounds like the question I just
6 answered, and I may be obtuse, but I'll need help
7 with that question.

8 BY MR. TRAXLER:

9 Q. Let me make this statement. I'm going to
10 ask you if you agree with it. You do not send
11 clients for outside evaluation with regard to
12 capacity unless you have doubts about that capacity;
13 is that correct?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: That is not correct.

17 BY MR. TRAXLER:

18 Q. Why not? Why is it incorrect?

19 A. In some instances, because of our desire
20 to be defensive about -- I might suggest they get
21 another opinion about their -- a professional opinion
22 about -- another professional opinion about their
23 capacity.

24 Q. Kind of a CYA evaluation?

25 MR. TWOMBLEY: Object to the form.

1 THE WITNESS: If you mean CYA by
2 covering my -- it's protecting me, then the answer is
3 no.

4 BY MR. TRAXLER:

5 Q. Okay. The outside evaluation so you'll
6 have it in the file in the future if necessary?

7 MS. KIRK: Object to the form.

8 THE WITNESS: One of my obligations
9 is to try to effectuate the intent of my clients. To
10 the extent that we seek outside opinion to try to
11 bolster and protect those instruments or documents
12 that will help effectuate the intent of my client.
13 That doesn't mean I have a concern about their
14 capacity.

15 BY MR. TRAXLER:

16 Q. All right. Does the law with regard to
17 undue influence require that the undue influence be
18 exercised in the room at the time the instrument is
19 being executed?

20 MS. KIRK: Object to form.

21 MR. TWOMBLEY: Same objection.

22 THE WITNESS: No.

23 BY MR. TRAXLER:

24 Q. Undue influence can happen anywhere, any
25 time, correct?

1 MR. TWOMBLEY: Object to the form --

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: -- of the questions.

4 THE COURT REPORTER: Can you repeat
5 the question? You broke up a little bit at the
6 beginning.

7 BY MR. TRAXLER:

8 Q. Undue influence can occur any time,
9 anywhere. It does not necessarily occur at the time
10 of the execution of the instrument; is that correct?

11 MR. TWOMBLEY: Object to the --

12 MS. KIRK: Object to form.

13 MR. TWOMBLEY: -- form of the
14 question.

15 THE WITNESS: Yes.

16 BY MR. TRAXLER:

17 Q. Have you ever seen an undue -- a client
18 that you thought was unduly influenced?

19 A. Yes.

20 Q. And how did you know that?

21 MS. KIRK: I want to, again, make
22 sure we're clear that this is a general question, not
23 going after any sort of particular encounter with a
24 client.

25 MR. TRAXLER: That's correct.

1 THE WITNESS: I made sure that I met
2 with the client alone. I made sure that I
3 interviewed the client not only alone, but at
4 multiple times. I made sure that I had -- that I was
5 assured that the documents prepared or the plan
6 requested by the client reflected their wishes prior
7 to helping them sign any of those documents.

8 BY MR. TRAXLER:

9 Q. How many times have you found -- have you
10 seen where you concluded that they were unduly
11 influenced?

12 MS. KIRK: I'm going to --

13 MR. TRAXLER: And I contend with
14 these line of questions I am not seeking the
15 identification of any particular clients or anything
16 like that.

17 BY MR. TRAXLER:

18 Q. The question is: How many clients have
19 you had where you have concluded that they were
20 unduly influenced?

21 A. I think I -- Mr. Traxler, my practice is
22 to avoid those instances when undue influence can
23 result in documents not reflecting my client's
24 wishes.

25 Q. I understand that, but what have -- what

1 have you done -- do you remember any instance where
2 you did not have a client sign documents because you
3 thought the client was unduly influenced?

4 A. I didn't get to the signing conference
5 before -- from my conclusion that someone was being
6 unduly influenced.

7 Q. Okay. At that point in time, did you
8 cease to represent the client with regard to those
9 instances?

10 MS. KIRK: I object to the form.

11 THE WITNESS: Not in --

12 BY MR. TRAXLER:

13 Q. What did you do? What did you do?

14 A. Mr. Traxler, if I perceive a client to be
15 being unduly influenced or in danger of being unduly
16 influenced, I take those steps -- some of those steps
17 I've described to you to try to determine what the
18 client's intent was rather than what the person
19 attempting to unduly influence them was or is.

20 BY MR. TRAXLER:

21 Q. Have you ever refused to proceed with the
22 execution of any instrument because you thought the
23 client was unduly influenced?

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: Asked and answered.

2 MS. KIRK: He's answered that.

3 MR. TRAXLER: No. He hasn't answered
4 the question.

5 BY MR. TRAXLER:

6 Q. The question is: Have you ever turned
7 anybody away because of undue influence?

8 MS. KIRK: That's a different
9 question.

10 BY MR. TRAXLER:

11 Q. Okay. It's a different question. Go
12 ahead.

13 A. Yes. I have turned away clients because I
14 thought they were being unduly influenced.

15 Q. Can you give me a guesstimate as to how
16 many?

17 A. Several times each year.

18 Q. Okay. Did you ever suspect -- suspect
19 undue influence on Paul Barringer by anybody at any
20 point in time from 2011 through his death?

21 A. I did not.

22 Q. Did you ever perceive any undue influence
23 on Merrill Barringer at any time from 2011 to the
24 present time?

25 MR. TWOMBLEY: Can you repeat the

1 question?

2 MR. TRAXLER: Yes. Has he ever
3 suspected undue influence on Merrill Barringer, the
4 mother, at any time since 2011?

5 MR. TWOMBLEY: Yeah. I'm going to
6 instruct him not to answer that unless you can tell
7 me why you want to know that in the context of this
8 lawsuit. If you don't want to tell me, that's fine.
9 I'll just rest on my instruction and we can move on.

10 MR. TRAXLER: Are you instructing him
11 not to answer --

12 MR. TWOMBLEY: Yes.

13 MR. TRAXLER: -- on the basis of
14 privilege?

15 MR. TWOMBLEY: Yes. Unless you --

16 MR. TRAXLER: Okay. That's fine.
17 That's fine. Just make your motion and we'll move
18 on.

19 MR. TWOMBLEY: Okay. Let the record
20 reflect I was willing to talk about it, but you
21 didn't want to do that. So now we'll move on.

22 BY MR. TRAXLER:

23 Q. Okay. Do you think a person who is
24 suffering from dementia is more susceptible to undue
25 influence?

1 MS. KIRK: Object to the form.

2 THE WITNESS: I think it depends.

3 BY MR. TRAXLER:

4 Q. On what?

5 A. On to what extent they're suffering from
6 dementia.

7 Q. All right. Let's talk about full-blown
8 Alzheimer's. Is that person more susceptible to
9 undue influence?

10 MS. KIRK: Object to the form.

11 THE WITNESS: I think to the extent
12 that someone is fully incapacitated, then, yes,
13 they're more susceptible to undue influence.

14 Q. All right. We're going to come back to
15 this later. But with regard to this question, did
16 you ever see a change yourself from 2011 until
17 Paul Barringer's death of his cognitive abilities?

18 A. Of his cognitive abilities?

19 Q. Yes, sir.

20 MR. MOLSTER: Object to the form.

21 THE WITNESS: I did -- from 2011
22 through 2015?

23 BY MR. TRAXLER:

24 Q. Yes.

25 A. I did not.

1 Q. So he was -- his cognitive abilities
2 remained static, unchanged, from your work with him
3 in 2011 until he died; is that correct?

4 MS. KIRK: Object to the form.
5 That's asked and answered.

6 MR. TWOMBLEY: Same objection.

7 BY MR. TRAXLER:

8 Q. Go ahead.

9 A. Do you want -- am I supposed to answer
10 that question again?

11 Q. Yes, sir. Answer the question.

12 A. I didn't see a change in Mr. Barringer's
13 cognitive ability during that time period.

14 Q. Did you see any change in any of his
15 mental capacities during that time period, whether we
16 call it cognitive abilities or otherwise?

17 MR. TWOMBLEY: Object to the form.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I'm sorry. You said
20 not cognitive ability -- cognitive impairment, but
21 you said mental abilities? Is that what this
22 question is?

23 BY MR. TRAXLER:

24 Q. I'll rephrase it. You answered the
25 question with regard to his cognitive abilities.

1 A. Yes.

2 Q. I'm trying to figure out whether or not
3 you attach a particular meaning to the term
4 "cognitive abilities." So my question is: Did you
5 observe any change in his mental capacity from 2011
6 until he died?

7 MR. MOLSTER: Object to the form.

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: Same objection.

10 THE WITNESS: I think throughout that
11 time period, Mr. Barringer's mental capacity well
12 exceeded the capacity necessary.

13 BY MR. TRAXLER:

14 Q. All right. But that's not my question.
15 Did you see any change to that capacity starting late
16 2011 through his death?

17 MR. MOLSTER: Same objection.

18 MR. TWOMBLEY: Same objection.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- I didn't see
21 Mr. Barringer having mental impairment throughout
22 that time period.

23 BY MR. TRAXLER:

24 Q. That's not my question, Mr. Jolley. My
25 question very simply is: Did you see any change, one

1 way or the other, in his mental capacity from late
2 2011 until he died?

3 MS. KIRK: Object to the form. And
4 he's asked and answered.

5 MR. TWOMBLEY: Same objection.

6 THE WITNESS: I didn't see a
7 difference in his cognitive abilities during that
8 time period.

9 BY MR. TRAXLER:

10 Q. All right. In your mind, are cognitive
11 abilities the same and synonymous with mental
12 capacity?

13 MR. MOLSTER: Object to the form.

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: You're asking me if I
17 think cognitive ability is the same as capacity?

18 BY MR. TRAXLER:

19 Q. I'm sorry. We've got some background
20 noise, Mr. Jolley. You broke up on me. Can you
21 answer that question again?

22 A. Yeah. I need -- I'm sorry. I need you to
23 repeat the question for me, Mr. Traxler.

24 Q. Did you make any distinction in your mind
25 between the term "cognitive abilities" and "mental

1 capacity?"

2 MR. TWOMBLEY: Object to the form.

3 MS. KIRK: Object to form.

4 THE WITNESS: Cognitive abilities
5 and -- and -- I don't think I draw a distinction
6 between cognitive ability and mental capacity
7 generally.

8 BY MR. TRAXLER:

9 Q. So it would not be incorrect for me to say
10 that you believe that you did not see any change in
11 his mental capacity from late 2011 until he died; is
12 that correct?

13 MR. TWOMBLEY: Object to the form.

14 MR. MOLSTER: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: Yes.

17 MR. TRAXLER: Anybody need a break?

18 MR. TWOMBLEY: No.

19 THE VIDEOGRAPHER: We do have about
20 15 minutes.

21 MR. TRAXLER: Oh, you're getting
22 ready to run out of tape, aren't you, Madam Court
23 Reporter?

24 MS. KIRK: She said she's got 15
25 minutes.

1 MR. TRAXLER: Okay. That's fine.

2 BY MR. TRAXLER:

3 Q. Okay. Let me focus on Paul Barringer and
4 your work with him, Mr. Jolley. I believe you said
5 you reviewed documents for him I think around 2008
6 and 2009, estate planning documents, correct?

7 A. Yes.

8 Q. Okay. And were those his will and the
9 trust that he set up back in '98?

10 A. I believe they were.

11 Q. Okay. And those instruments were drawn --
12 prepared by what lawyer, do you know or remember?

13 A. I think those documents were prepared by
14 Neal McBride in Charlotte.

15 Q. Have you ever had any conversations with
16 Mr. McBride?

17 A. Not with respect to this client.

18 Q. How about with regard to any of the
19 Barringers or the company or the Lights?

20 A. I have not.

21 Q. All right. The only thing you have that
22 he was involved in would have been those executed
23 documents, correct?

24 MS. KIRK: Object to the form.

25

1 BY MR. TRAXLER:

2 Q. And those memos, documents, other than
3 those, correct?

4 MS. KIRK: Object to form.

5 THE WITNESS: I don't recall any
6 documents from Mr. McBride other than the documents
7 in place from 1998.

8 BY MR. TRAXLER:

9 Q. All right. And those documents that you
10 reviewed in '98 treated Merrill Light and Hampton
11 Luzak equally, did it not -- did they not?

12 MR. TWOMBLEY: Object to the form.

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Misstates his
15 testimony.

16 THE WITNESS: I don't remember what
17 the document -- what Mr. McBride's documents said
18 from 1998.

19 BY MR. TRAXLER:

20 Q. All right. But no change -- you didn't do
21 any change to the documents, correct?

22 MS. KIRK: Object to the form.

23 MR. TWOMBLEY: Object to the form of
24 the question.

25

1 BY MR. TRAXLER:

2 Q. Excuse me. That's a good objection.

3 At that time, you did not do any changes
4 to his estate plan; is that correct?

5 MR. TWOMBLEY: Objection.

6 MS. KIRK: Object to form.

7 THE WITNESS: I didn't make any
8 change to those documents in '08 or '09 or assist
9 Mr. Barringer with making any changes during that
10 time.

11 BY MR. TRAXLER:

12 Q. That's right. And why not?

13 A. Because Mr. Barringer -- because
14 Mr. Barringer -- we did the review and, at that
15 point, Mr. Barringer didn't go forward at that point
16 with any additional planning with me.

17 Q. Did he have any particular thoughts or
18 plans in mind that he wanted you to review those
19 documents for or was it simply kind of a checkup as
20 to what he had?

21 A. I think it was a checkup based on the fact
22 that Mr. Barringer was now -- was then a resident of
23 South Carolina and the documents previously had been
24 prepared when Mr. Barringer -- they were in 1998, of
25 course, and that they were -- when Mr. Barringer was

1 a resident of another jurisdiction.

2 Q. And how did he get to you?

3 A. I believe that he got to me by -- I think
4 that he spoke to Rip Rose and he got me -- he got my
5 name and interacted with me from that recommendation
6 or that referral.

7 Q. And tell us who Rip Rose is.

8 A. Rip Rose is a lawyer -- was a lawyer at
9 McNair.

10 Q. Did he -- did Mr. Barringer come to you
11 because of Merrill Light?

12 MR. TWOMBLEY: Object to the form.

13 MS. KIRK: Object to the form.

14 THE WITNESS: I don't know. I don't
15 have any basis for knowing why Paul Barringer came to
16 me beyond what I've said.

17 BY MR. TRAXLER:

18 Q. And when you met with Mr. Barringer, was
19 he there with Ms. Barringer?

20 A. He was there with -- well, I believe in --
21 I'm sorry. Tom, are you asking me during '08 and
22 '09?

23 Q. Yes.

24 A. During that time, I believe that I only
25 met with Mr. Barringer.

1 Q. Did you review Ms. Barringer's documents
2 at that time?

3 A. I believe I reviewed their -- their
4 collective documents at that time.

5 Q. And were there documents in terms of being
6 the dispositive provisions and the appointment of
7 fiduciaries in the company?

8 A. I don't remember.

9 Q. Were they -- do you recall whether they
10 were executed at the same time?

11 MS. KIRK: Object to form.

12 THE WITNESS: I don't recall that.

13 BY MR. TRAXLER:

14 Q. All right. So, Mr. Barringer, as I
15 understand it, essentially just came in and said,
16 "How about take a look at these things and see if
17 they still do what I want them to do or need to be
18 changed because of tax law." Is that a
19 fair understanding?

20 MS. KIRK: Object to the form.

21 MR. MOLSTER: Object to the form.

22 THE WITNESS: Mr. Barringer provided
23 me the documents and asked me to review them.

24 BY MR. TRAXLER:

25 Q. For what purpose?

1 MR. MOLSTER: Object to the form.

2 THE WITNESS: Mr. Barringer asked me
3 to review the documents to tell him what they said
4 and to see, yes, what changes might need to be made.

5 BY MR. TRAXLER:

6 Q. Okay. And you did not recommend any
7 changes; is that correct?

8 A. I don't remember if I recommended changes.
9 I know that we did a review of the documents and
10 discussed his then current documents.

11 Q. All right. Had you done legal work for
12 Merrill Light prior to that time?

13 MS. KIRK: Object to the form.

14 MR. MOLSTER: And wait a second.
15 Same agreement?

16 MR. TRAXLER: Sure. Yeah.

17 MR. MOLSTER: Yes or no, please,
18 Mr. Jolley.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. Had you done Randy --

22 MR. TRAXLER: Same agreement, Chip.

23 BY MR. TRAXLER:

24 Q. Had you done legal work for Randy Light
25 prior to that initial meeting with Mr. Barringer?

1 MR. MOLSTER: Okay.

2 THE WITNESS: Yes.

3 BY MR. TRAXLER:

4 Q. When did your legal work for Merrill Light
5 first begin?

6 MR. TRAXLER: Same agreement.

7 MR. MOLSTER: Okay.

8 THE WITNESS: 2006 or '07.

9 BY MR. TRAXLER:

10 Q. Okay. Would the same answer -- we have
11 the same agreement. Would your answer be the same
12 with regard to Randy Light?

13 A. It would be.

14 Q. Okay. Did you do legal work within the
15 same year of when Paul Barringer came to you in 2008
16 or 2009 in that -- within a year of that meeting,
17 would you have done legal work for Merrill Light?

18 MR. TRAXLER: Same agreement, Chip.

19 MR. MOLSTER: Okay. Okay, Ashley?

20 MR. TWOMBLEY: Yes.

21 BY MR. TRAXLER:

22 Q. That's kind of a convoluted question.
23 Could you follow that, Mr. Jolley?

24 A. I think --

25 Q. Let me start over again. Okay?

1 A. Okay.

2 Q. I did kind of screw that one up. Same
3 agreement. I'm sure that Mr. Molster would stipulate
4 that.

5 MR. TRAXLER: But the same agreement,
6 Chip.

7 MR. MOLSTER: All right.

8 BY MR. TRAXLER:

9 Q. You met with Mr. Barringer in the
10 2008/2009 time frame. Had you done legal work for
11 Merrill Barringer within -- Merrill Light within a
12 year prior to that initial meeting?

13 A. I don't know.

14 Q. I'm sorry. What did you say?

15 A. I said I don't know.

16 Q. Okay. And with the same agreement, I'm
17 going to ask you the same question with regard to
18 Randy Light. What would your answer be?

19 A. My answer would be the same. I don't
20 know.

21 Q. All right. Did Paul Barringer ever get to
22 the point where, in your opinion, he was incompetent
23 to run the company?

24 MS. KIRK: Object to the question.
25 It's already been answered.

1 MR. TRAXLER: No, it hasn't. That
2 question has never been asked.

3 MR. GILREATH: No, ma'am.

4 BY MR. TRAXLER:

5 Q. Go ahead.

6 A. The question is -- so I'm sorry,
7 Mr. Traxler. Ask --

8 Q. At any point in time, in your opinion, did
9 Mr. Barringer become incompetent where he couldn't
10 run -- shouldn't run the company?

11 MR. MOLSTER: Object to the form.

12 MR. SCHRONCE: And I'm going to
13 object and instruct the witness not to answer to the
14 extent that there is -- this invokes confidential
15 communications with officers, directors, and
16 employees of the company.

17 MR. TRAXLER: And this is on the
18 basis of privilege, correct?

19 MR. SCHRONCE: That is correct.

20 BY MR. TRAXLER:

21 Q. Okay. Was there ever -- subject to
22 Mr. Schronce's objection, was there a point in time,
23 in your opinion, where Mr. Barringer became
24 incompetent to run the company?

25 A. Is that during the time period of 2011

1 through 2015?

2 Q. Until he died. Yes, sir.

3 MS. KIRK: What was John Schronce's
4 objection? I'm sorry. I didn't hear it.

5 MR. SCHRONCE: I'm objecting and
6 instructing the witness not to answer to the extent
7 that his answer calls for confidential communications
8 with the directors, officers, and employees of CFRC.

9 BY MR. TRAXLER:

10 Q. Go ahead. You can answer it now.

11 A. I have no way of knowing all the way to
12 Paul Barringer's death about his capacity to run the
13 company.

14 Q. Okay.

15 A. During --

16 Q. Your last involvement with him was when?

17 A. My last involvement with Mr. Barringer or
18 the company?

19 Q. With Mr. Barringer.

20 A. I don't know precisely when my last
21 involvement with Mr. Barringer was.

22 Q. Give me your best guess.

23 A. 2015.

24 Q. Okay. At that point in time, was he
25 competent to run the company, in your opinion?

1 MR. MOLSTER: Object to the form.

2 MR. SCHRONCE: Same objection and

3 instruction, Tom.

4 MR. TRAXLER: Sure.

5 BY MR. TRAXLER:

6 Q. Was he competent to run the company?

7 A. Throughout my interaction with
8 Mr. Barringer, I believed he was competent to run the
9 company.

10 Q. Was he competent to run the day-to-day
11 business operations of the company?

12 MR. SCHRONCE: Same objection and
13 instruction.

14 MS. KIRK: Object to the form.

15 THE WITNESS: I don't know.

16 BY MR. TRAXLER:

17 Q. Why?

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: Mr. Traxler, are you
21 asking me whether or not Mr. Barringer was competent
22 to be involved in Havana with the day-to-day
23 operations of the company?

24 BY MR. TRAXLER:

25 Q. Yes, sir. In 2015 when you saw him last.

1 A. I suppose that if Mr. Barringer -- I
2 didn't -- I'm sorry. That feels like a hypothetical
3 question in that sense. I -- throughout my
4 interactions with Mr. Barringer, I believe he had the
5 capacity to run the company.

6 Q. On the day-to-day operations?

7 MS. KIRK: Object to the form.

8 MR. SCHRONCE: Objection and
9 instruction.

10 MR. MOLSTER: Form.

11 THE WITNESS: Mr. Traxler, my --

12 BY MR. TRAXLER:

13 Q. Yes, sir. Yes, sir. I'm sorry. Go
14 ahead.

15 A. Mr. Barringer wasn't -- I don't believe
16 was involved in the day-to-day operations of the
17 company. I believe that they looked to the
18 professional management of the company for that.

19 Q. But my question was whether he ran the
20 company or the day-to-day operations or not, was he
21 competent to do?

22 MS. KIRK: Object to the --

23 MR. SCHRONCE: Same objection and
24 instruction.

25 MS. KIRK: Object to --

1 MR. SCHRONCE: Also asked and
2 answered. He's already said that Mr. Barringer did
3 not run the company on a day-to-day basis.

4 MR. TRAXLER: I'm sorry. Is that
5 objection from you, Chip?

6 MR. SCHRONCE: No. It was from
7 John Schronce.

8 MR. TRAXLER: I'm sorry. What was --
9 what was the comment? I didn't get it.

10 MR. SCHRONCE: Okay. First of all,
11 same instruction to the extent that it calls for
12 privileged communications.

13 MR. TRAXLER: Sure, sure.

14 MR. SCHRONCE: Secondly, asked and
15 answered because he's already testified to
16 Mr. Barringer's role as of 2015.

17 MR. TWOMBLEY: I think he also said
18 he didn't know.

19 BY MR. TRAXLER:

20 Q. That's not my question. The question is:
21 No matter what he was doing, was he competent to run
22 the day-to-day business operations of CFRC in 2015
23 when you last saw him?

24 MS. KIRK: I have objected to that as
25 well because I believe it's been answered.

1 MR. SCHRONCE: And same instruction
2 and objection.

3 BY MR. TRAXLER:

4 Q. Okay. Now you can answer.

5 A. I think that throughout in all of my
6 interactions with Paul Barringer, he was competent to
7 run the day-to-day operations of the company.

8 Q. Okay. Thank you. Thank you. Thank you.
9 Let's see.

10 MS. KIRK: Five minutes on the tape.
11 You want to...

12 MR. TRAXLER: Yeah. I'll take a
13 break now. This will probably be a good place. I
14 can go to my car and get another 32 notebooks.

15 THE VIDEOGRAPHER: We are going off
16 record. This is the end of media unit three. The
17 time is 4:12 p.m.

18 (Off the record.)

19 THE VIDEOGRAPHER: We are back on
20 record. This is the beginning of media unit four.
21 The time is 4:31 p.m.

22 BY MR. TRAXLER:

23 Q. Mr. Jolley, during the break, did you talk
24 to anybody?

25 A. I did not.

1 Q. Okay. Thank you. When you met with
2 Paul Barringer in 2011, do you recall when your first
3 meeting with him was?

4 A. I believe it was in November of 2011.

5 Q. And was that, in your opinion, the first
6 contact you had had with him since your review of his
7 estate planning documents in 2008 or 2009?

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: I would ask that you
10 only answer with respect to estate planning if you
11 had any other contact with him.

12 THE WITNESS: That was the -- between
13 2009 and November of 2011, that was the only contact
14 I had.

15 BY MR. TRAXLER:

16 Q. I'm sorry. I apologize. The first
17 contact is in 2009 -- was in November of 2011; is
18 that correct?

19 A. The first contact with respect to estate
20 planning matters from 2009. The next contact with
21 Mr. Barringer was in that fall of 2011, I believe
22 November of 2011.

23 Q. Did you do any other legal work for him in
24 that time period?

25 MR. TWOMBLEY: I would just instruct

1 you to answer yes or no.

2 MS. KIRK: Is everybody else on?

3 Okay. Nevermind.

4 THE WITNESS: The question was: Did
5 I do any other legal work for Paul Barringer between
6 2009 and the beginning of my representation of him in
7 estate planning matters of November 2011?

8 BY MR. TRAXLER:

9 Q. Yes, sir.

10 A. No.

11 Q. Did you do any legal work for Merrill
12 Barringer during that same time period?

13 MR. TWOMBLEY: Same objection.
14 Actually, I'm going to instruct him not to answer as
15 to -- as to any part of that question. I think it's
16 privileged, her documents. She's not deceased.
17 There's no testamentary exception of the
18 attorney-client privilege. So I instruct you not to
19 answer.

20 BY MR. TRAXLER:

21 Q. Did you meet with Merrill Barringer at any
22 time between -- strike that.

23 Did you see Merrill Barringer at any time
24 between 2009 and November 2011?

25 A. Yes.

1 Q. Where did you see her?

2 A. I saw her at Sea Pines Country Club.

3 Q. Okay. Any other time?

4 A. I saw her at another restaurant on the
5 island.

6 Q. All right. Did you talk to her on the
7 telephone at any time between 2009 and November 2011?

8 A. No.

9 Q. All right. Tell me how it came about that
10 Mr. Barringer came to see you in November of 2011 for
11 estate planning work.

12 A. Mr. Barringer contacted my office, made an
13 appointment to sit down with me.

14 Q. All right. And you saw him in
15 November 2011, correct?

16 A. I did.

17 Q. All right. And who was in that meeting?

18 A. I had Mr. Barringer and Ms. Barringer.

19 Q. All right. And how long -- do you know
20 how long you met with them?

21 A. I don't remember.

22 Q. Would that be reflected in the time sheets
23 if they still exist at McNair?

24 A. I think it would be reflected in the time
25 entries.

1 Q. It would be reflected in the invoices to
2 Mr. and Ms. Barringer, correct?

3 A. Yeah. I think so.

4 Q. All right. Nobody else in the meeting?

5 A. No. In that meeting -- that meeting it
6 would -- Mr. Slane may have -- may have been
7 involved, but I think the answer is that initial
8 meeting I just met with Mr. and Ms. Barringer.

9 Q. All right. Tell me what was discussed in
10 that meeting.

11 MR. TWOMBLEY: I'm going to let him
12 answer that question with respect to -- well, I think
13 you're entitled to an answer for Mr. Barringer. But
14 for Ms. Barringer, I'm going to let him answer
15 subject to agreement we're not waiving any type of
16 privilege or protection. Okay?

17 BY MR. TRAXLER:

18 Q. All right. Go ahead.

19 A. We discussed their existing planning, and
20 we discussed what their objectives were for their
21 planning going forward, and he discussed generally
22 the assets in their estate.

23 Q. All right. Did Ms. Barringer participate
24 much in the conversation?

25 A. Yes. Ms. Barringer and Mr. Barringer

1 participated in the conversation.

2 Q. When you discussed Mr. Barringer's estate
3 planning, did you have Ms. Barringer step out of the
4 room?

5 A. Initially, I met with Mr. and
6 Ms. Barringer and we talked about their estate
7 planning generally in that information gathering
8 point in the representation.

9 Q. All right. But when you talked to
10 Mr. Barringer about what Mr. Barringer wanted to do,
11 did you have Ms. Barringer leave the room?

12 A. I did not have Ms. Barringer leave the
13 room in that meeting.

14 Q. And when you talked to Ms. Barringer about
15 her estate planning, did you put Mr. Barringer out of
16 the room?

17 A. I did not.

18 Q. Did you discuss with them the possible
19 conflicts of interest in representing them both with
20 respect to estate planning?

21 MS. KIRK: I object to the form. You
22 also -- it went out. So you need to repeat it.

23 BY MR. TRAXLER:

24 Q. Okay. When you met with Mr. and
25 Ms. Barringer the first time in November of 2011, did

1 you discuss with them potential conflicts of interest
2 representing them both?

3 MR. TWOMBLEY: Object to the form.

4 MS. KIRK: Object to the form.

5 THE WITNESS: I discussed -- yeah. I
6 did in the fall of 2011, I discussed a potential
7 conflict of interest.

8 BY MR. TRAXLER:

9 Q. Did you have them sign a conflict waiver?

10 MS. KIRK: Object to form.

11 THE WITNESS: I thought they signed
12 an engagement letter that included a waiver of
13 conflict of interest.

14 BY MR. TRAXLER:

15 Q. And if they had signed one, is there any
16 reason to think that would not have been produced
17 pursuant to the subpoena sent to McNair?

18 MR. TWOMBLEY: Object to the form --

19 MS. KIRK: Object to form.

20 MR. TWOMBLEY: -- of the question.

21 THE WITNESS: I don't -- I don't
22 think so.

23 BY MR. TRAXLER:

24 Q. As far as you know, when you left McNair
25 and went to your own firm, that letter of engagement

1 would have existed?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I don't know to the
4 extent that letter of engagement existed.

5 BY MR. TRAXLER:

6 Q. During that initial meeting, were you
7 representing both Mr. Barringer and Ms. Barringer?

8 A. I was.

9 Q. What kind of potential conflicts did you
10 disclose to them?

11 A. Well, I --

12 MS. KIRK: Object to form.

13 BY MR. TRAXLER:

14 Q. Go ahead. You can answer.

15 A. I discussed the fact that in any
16 representation where I represented spouses that there
17 was a potential conflict of interest. And that by
18 engaging me to represent the two of them with respect
19 to their estate planning, they waived that -- any
20 privilege amongst the three of us. And that if at
21 any time in the future a conflict of interest arose
22 between Mr. and Ms. Barringer, I would be unable to
23 represent either party adversely to the other.

24 Q. In that initial meeting, was Merrill Light
25 there?

1 A. No.

2 Q. Did you ever discuss that meeting with
3 Merrill Light?

4 A. I didn't discuss that meeting with
5 Merrill Light.

6 Q. Do you know if anybody did?

7 A. I sus-- I do not know that.

8 Q. Okay. What do you suspect?

9 MS. KIRK: Object to the form.

10 MR. TWOMBLEY: Same -- same
11 objection.

12 MR. MOLSTER: Wait. Whoa, whoa,
13 whoa. Object to the form. If you're talking about
14 Merrill Light and conversations with Mr. Jolley, I'm
15 going to instruct him not to answer unless, A, we
16 have an agreement and, B, I get a chance to talk to
17 him before he answers the question. Can you say the
18 question again? I apologize for being distracted.

19 MR. TRAXLER: He had testified
20 that -- I asked him about communication with
21 Merrill Light, and I think the question was had they
22 discussed the meeting with Merrill Light. He started
23 off to say "I suspect," but then he said, I don't
24 recall" or something to that effect. My question to
25 him is: Is he aware of anybody discussing that

1 November 2011 meeting in his office, having that
2 discussion with Merrill Light?

3 MR. MOLSTER: And I'm going to still
4 instruct him not to answer. If you want me to take a
5 break and talk to him about it, I'm willing to do it.
6 But on the current record, I'm going to instruct him
7 not to answer.

8 MR. TRAXLER: On the basis of
9 privilege?

10 MR. MOLSTER: Yes, sir. I mean,
11 you're asking him about conversations he had with his
12 client, right? I'm not --

13 MR. TRAXLER: He already answered the
14 question that he did not discuss that meeting with
15 Merrill Light.

16 MR. MOLSTER: So then what are we
17 doing?

18 BY MR. TRAXLER:

19 Q. All right. Let me back up. Mr. Jolley,
20 did you ever discuss that meeting with Paul and
21 Merrill Barringer with Merrill Light?

22 MR. MOLSTER: Yes or no. Subject to
23 our agreement, yes or no?

24 MR. TRAXLER: Yeah.

25 MR. MOLSTER: Okay. You with us,

1 Mr. Jolley?

2 THE WITNESS: I -- no.

3 BY MR. TRAXLER:

4 Q. No, you did not discuss that meeting with
5 her?

6 A. I did not discuss that meeting with
7 Merrill Light.

8 Q. Did you discuss that meeting with
9 Randy Light?

10 MR. TRAXLER: Same agreement, Chip,
11 if you want to.

12 MR. MOLSTER: Okay. Go ahead.

13 THE WITNESS: I did not.

14 BY MR. TRAXLER:

15 Q. Do you know if Paul Barringer or Merrill
16 Barringer discussed the substance of that meeting
17 with either Randy Light or Merrill Light?

18 MR. TRAXLER: Same agreement?

19 MR. MOLSTER: Same agreement?

20 MR. TRAXLER: Yeah.

21 THE WITNESS: I don't know.

22 BY MR. TRAXLER:

23 Q. Now, you started to answer the question
24 with "I suspect." What were you suspecting?

25 MR. MOLSTER: Same agreement?

1 MR. TRAXLER: Yes.

2 MR. MOLSTER: I need to talk to him
3 about this. You're talking about whether or not he
4 had a conversation with Merrill Light?

5 MR. TRAXLER: Well, with anybody. He
6 started to say "I suspect," and then he said "I don't
7 know." And I'm asking him what he was getting ready
8 to say.

9 MR. MOLSTER: I'm not going to let
10 him answer it unless I talk to him first to find out
11 what's behind door No. 3.

12 MR. TRAXLER: That is based on
13 privilege, correct?

14 MR. MOLSTER: Yes, sir.

15 MR. TRAXLER: Okay. That's fine.

16 BY MR. TRAXLER:

17 Q. Did you ever discuss any estate planning
18 of Paul Barringer at any point in time with
19 Merrill Light?

20 MR. MOLSTER: I'm going to instruct
21 him not to answer. I can talk to him, if you like.
22 I can take a break and talk to him, if you like.

23 MR. TRAXLER: Well, I think the
24 question -- he can answer yes or no. I don't have to
25 have an agreement with you. It's not a waiver.