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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

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

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

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

RECORD ON APPEAL
VOLUME XIV OF XVI

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Certificate of Counsel

1 MR. MOLSTER: I think it's too close.
2 Sorry. You know as well as anybody in this room
3 where the parameters of attorney-client privilege and
4 waivers and sometimes depending on a particular judge
5 on a particular day. I just -- I can't run the risk
6 of somebody is going to decide down the road that
7 it's waived.

8 MR. TRAXLER: I understand.

9 BY MR. TRAXLER:

10 Q. Did you ever have any --

11 MR. TRAXLER: If I asked this
12 question, I apologize, Chip.

13 BY MR. TRAXLER:

14 Q. Did you ever have any discussions at any
15 point in time with Randy Light about Paul Barringer's
16 estate plan or Merrill Barringer's estate plan?

17 MR. MOLSTER: Same instructions.

18 MS. KIRK: Object to form.

19 MR. TRAXLER: And that's, again,
20 based on privilege, right, Chip?

21 MR. MOLSTER: Yes, sir. But I'm
22 happy to talk to him. If you want me to take a break
23 and talk to him and see if I can --

24 MR. TRAXLER: Yeah. Let's take a
25 break and talk to him. Might as well see if we can

1 save ourselves some time.

2 MR. MOLSTER: Let's figure out what's
3 the question. Let me just make sure. If you've got
4 others that you want to give me a glimpse of, I'm
5 happy. The question is: Did he ever -- essentially,
6 did he ever talk to Merrill or Randy about estate
7 planning issues relating to Mr. Barringer and
8 Ms. Barringer?

9 MR. TRAXLER: Did he ever discuss it
10 with him and it will be a follow-up -- there will be
11 a number of follow-up questions.

12 MR. MOLSTER: Okay.

13 MR. TRAXLER: If you want to -- if
14 you want to talk to him about the scope of those
15 conversations, if any, before I get into it, that is
16 fine. You understand, Mr. Jolley, these discussions
17 are only for -- (inaudible.)

18 MS. KIRK: You totally went out
19 there, Tom.

20 MR. TRAXLER: I will remind you,
21 Mr. Jolley, that under the rules you can only discuss
22 your testimony with Mr. Molster -- (inaudible.)

23 MR. TWOMBLEY: Tom, your mic was -- I
24 guess it was some type of issues. It's not how close
25 you are to it. It was just, I guess, a hiccup in the

1 internet feed. So you -- try again, please.

2 MR. TRAXLER: Okay. Let me try this
3 again. Mr. Jolley, you have the right to confer
4 with -- actually, I'm not sure you do, but I'm going
5 to let you do it -- confer with Mr. Molster about
6 whether or not there is a privilege for him to
7 assert. Mr. Molster, I will allow you to confer with
8 him. Right now you don't represent him. I don't
9 know what right you have to consult with him on a
10 privilege, but I'll give you that courtesy if we can
11 shortcut this a little bit.

12 MR. MOLSTER: I appreciate that. I
13 think I do have the right to talk him since he has my
14 client's privileges. They belong to my client.

15 MR. TRAXLER: That's fine. You and I
16 don't need to --

17 MR. MOLSTER: We don't need to debate
18 it. All right. Maybe the way to do this is --
19 Ashley, if you can give Mr. Jolley the dial-in
20 number, dial in, and then Alice and I will dial in
21 and talk to him and then we'll come back as quick as
22 we can and sort this out. You want to give me any
23 look at the future questions or do you want to go --
24 which is fine. You can go question by question, Tom.
25 Whatever you want to do.

1 MR. TRAXLER: I don't think there's
2 any question, Chip, that there have been
3 communications. We've got documents of
4 communications about Paul and Merrill's estate plan
5 with the Lights. You can go into that, if you want
6 to, with him. I would ask that Mr. Twombly and
7 others be out of the room when y'all are having that
8 conversation.

9 MR. MOLSTER: That's fine.

10 MR. TRAXLER: Ariail can be in there
11 if she wants to. But, otherwise, this is a private
12 conversation just to kind of shortcut things.

13 MR. MOLSTER: Okay.

14 THE VIDEOGRAPHER: We are going off
15 record. The time is 4:48 p.m.

16 (Off the record.)

17 THE VIDEOGRAPHER: We are back on
18 record. The time is 5:07 p.m.

19 BY MR. TRAXLER:

20 Q. All right. Mr. Jolley, I think my
21 question to you had been whether you had ever
22 discussed with Merrill Light or Randy Light the
23 estate planning of Paul Barringer or
24 Merrill Barringer?

25 MR. MOLSTER: And could I ask you, do

1 you mind splitting that up between Randy and Merrill
2 for purposes of this exercise, Tom?

3 BY MR. TRAXLER:

4 Q. Did you ever have any discussions with
5 Merrill Light concerning Paul Barringer or
6 Merrill Barringer's estate planning from the time
7 period of 2011 all the way at least to
8 Mr. Barringer's death and the present time with
9 Ms. Barringer?

10 MR. MOLSTER: And we have our
11 agreement?

12 MR. TRAXLER: It doesn't constitute a
13 blanket waiver?

14 MR. MOLSTER: Sir?

15 MR. TRAXLER: Yes.

16 MS. PAYLOR: We're only asking
17 Mr. Barringer.

18 MR. TRAXLER: Y'all are instructing
19 him not to answer with regard to Merrill Barringer?

20 MR. TWOMBLEY: I didn't hear you
21 ask --

22 MS. PAYLOR: That privilege is still
23 there. I mean, she's not dead.

24 MR. MOLSTER: Wait a second. We're
25 not enforcing Ms. Barringer's privilege. That's

1 Ashley's.

2 MR. TWOMBLEY: Well, I think -- I
3 think the question is whether or not he had any
4 discussions with Randy or Merrill Light, correct?

5 MR. MOLSTER: We're limiting it to --
6 right now we're limiting it to Merrill Light. But
7 my -- my -- my understanding of the question is that
8 it was whether or not he ever had any discussions
9 from 2011 through Mr. Barringer's death with
10 Mr. Barringer or Ms. Barringer about
11 Mr. Barringer's -- either Mr. Barringer's estate
12 plans or their estate plans. And I think what Alice
13 is suggesting is that he shouldn't be answering the
14 question with respect to Ms. Barringer, only with
15 respect to Mr. Barringer because of the testamentary
16 exception. And now I've exhausted my knowledge of
17 the testimony exception. But I -- you know, I will
18 let him answer the question with respect to
19 Merrill Light -- subject to our agreement, I'll let
20 him answer the question with respect to Merrill
21 Light, just Merrill Light, and then you all have to
22 sort out whether it includes with -- regarding
23 Mr. Barringer's estate planning or both, and I assume
24 you just want Mr. Barringer's estate planning.

1 BY MR. TRAXLER:

2 Q. My question, Mr. Jolley is: Did you ever
3 have any discussions with Merrill Light at any point
4 in time about -- (inaudible).

5 THE COURT REPORTER: I'm sorry.
6 Someone was --

7 MR. MOLSTER: Subject to our
8 agreement, Mr. Jolley, you can answer yes or no.

9 THE WITNESS: I'm sorry.
10 Mr. Traxler, your question was covered in a flurry of
11 paper -- the sound of paper. So I got part of that,
12 but not all of that.

13 BY MR. TRAXLER:

14 Q. At any point in time, did you ever discuss
15 with Merrill Light the estate planning of Paul
16 Barringer?

17 MR. MOLSTER: Per the agreement, you
18 may answer yes or no.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. How many times? Subject to --

22 MR. TRAXLER: This line of
23 questioning, Chip, will be subject to that agreement.

24 THE WITNESS: Thank you.
25

1 BY MR. TRAXLER:

2 Q. How many times?

3 A. Two or three.

4 Q. And what was the time frame of those
5 conversations?

6 A. My recollection of those conversations
7 would have been in the spring of 2012.

8 Q. Did Mr. Barringer authorize you to discuss
9 his estate planning with his daughter, Merrill Light?

10 A. Yes.

11 Q. Did he place any limitations on that
12 discussion?

13 A. He did not.

14 Q. What was the purpose of him giving you
15 authority to discuss his estate plan with Merrill
16 Light?

17 MR. MOLSTER: Object to the form.

18 BY MR. TRAXLER:

19 Q. You can answer.

20 A. I think he wished for me to talk to
21 Merrill Light about her new roles she might have
22 under his planning.

23 Q. Was there any other purpose of you having
24 discussions with Merrill Light that you can remember
25 about Paul Barringer's estate plan?

1 MR. MOLSTER: Object to the form.

2 MS. KIRK: Object to form.

3 THE WITNESS: I'm sorry. Mr.

4 Traxler, are you still talking about the time period
5 of 2011 through 2015?

6 BY MR. TRAXLER:

7 Q. Yes.

8 A. No. I think that's what Ms. -- I think
9 Ms. Light, as a trustee, had a copy of some of those
10 documents during that time period, but I believe
11 the -- the communication I had with Ms. Light was
12 really in 2012 -- the beginning of 2012. Initially
13 that was related to Mr. -- Ms. Light's role as -- in
14 the new documents.

15 Q. Did you have any discussion with her in
16 2012 about Mr. Barringer's plan beyond her being
17 named in the documents and the role that she would
18 play in those documents?

19 A. Not beyond the fact that those documents
20 were being drafted -- being prepared.

21 Q. Did she ask you why she was being named at
22 all?

23 MR. MOLSTER: Wait a second. I think
24 that's a question that I think she's asking her
25 lawyer. I think that's privileged.

1 BY MR. TRAXLER:

2 Q. Mr. Jolley, were you having these
3 conversations with her as Paul Barringer's lawyer or
4 Merrill Light's lawyer?

5 A. I'm not sure.

6 Q. Well, how did -- these conversations, how
7 did you ever distinguish who you were representing?

8 MS. KIRK: I object to the form.

9 MR. TWOMBLEY: Same objection.

10 MS. KIRK: To the extent --

11 BY MR. TRAXLER:

12 Q. These conversations, subject to their
13 objections, how did they -- how did you know which
14 hat you were wearing?

15 MS. KIRK: To the extent that you're
16 trying to dig into something outside of the
17 testamentary exception, I would instruct him not to
18 answer it.

19 BY MR. TRAXLER:

20 Q. Go ahead and answer it subject to that
21 instruction.

22 MR. MOLSTER: Object to form.

23 THE WITNESS: I -- I think that -- to
24 the extent that Mr. Barringer asked me and authorized
25 and directed me to communicate with Ms. Light about

1 her new roles, I think that would be in my capacity
2 as Mr. Barringer's lawyer.

3 BY MR. TRAXLER:

4 Q. All right. So when you were telling
5 Merrill Light about his estate planning, you were not
6 telling her as your client. You were telling her
7 because you were the lawyer for Mr. Barringer in
8 those conversations. Isn't that fair?

9 MS. KIRK: Object to form.

10 THE WITNESS: I think that's correct.

11 BY MR. TRAXLER:

12 Q. All right. In these conversations, did
13 Merrill Light provide any input as to Mr. Barringer's
14 estate plan?

15 MR. MOLSTER: Same agreement?

16 MR. TRAXLER: Yeah.

17 MR. MOLSTER: Continuing?

18 BY MR. TRAXLER:

19 Q. Let me back up. Did you have a
20 conversation -- did she ever give you any suggestions
21 or recommendations or instructions with regard to
22 Mr. Barringer's estate plan?

23 A. No.

24 Q. She never provided any input in what he
25 ought to do; is that correct?

1 MS. KIRK: Object.

2 BY MR. TRAXLER:

3 Q. Is that what you're telling me?

4 MS. KIRK: He's answered that.

5 THE WITNESS: Mr. Traxler, are you
6 asking again whether Ms. Light gave me input with
7 respect to Mr. Barringer's estate plan?

8 BY MR. TRAXLER:

9 Q. Yes.

10 A. I never saw Ms. Light give any input to
11 Mr. Barringer's estate plan.

12 Q. She never discussed it with you in terms
13 of recommendations or suggestions; is that correct?

14 MR. MOLSTER: Object to form.

15 MS. KIRK: Object again.

16 THE WITNESS: I'm not sure -- I don't
17 understand that question. I need you to rephrase or
18 repeat it for me, please.

19 BY MR. TRAXLER:

20 Q. Did she ever make any suggestions to you
21 as to what Mr. Barringer ought to do with his estate
22 either while he was alive or dead?

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: Objection.

25 MR. TWOMBLEY: Asked and answered.

1 THE WITNESS: Am I now supposed to
2 answer that question?

3 MR. TWOMBLEY: Yeah.

4 MS. KIRK: Yes.

5 MR. TWOMBLEY: Again.

6 THE WITNESS: Yeah. No.

7 BY MR. TWOMBLEY:

8 Q. All right. Did you ever discuss Paul
9 Barringer's estate plans with Randy Light?

10 MR. MOLSTER: Same agreement?

11 MR. TRAXLER: Yeah.

12 THE WITNESS: No.

13 BY MR. TRAXLER:

14 Q. You gave Randy Light the documents on or
15 about July 20 to take to Ms. Light, didn't you? You
16 testified to that earlier in regard to Mr. Twombley's
17 question.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 MS. KIRK: Same objection.

21 THE WITNESS: I believe I...

22 MR. MOLSTER: Same objection.

23 THE WITNESS: I believe I testified
24 that pursuant to Mr. Barringer's direction, that I
25 made the change to his documents and put them at the

1 front desk or arranged for them to be put at the
2 front desk for Mr. Light to pick up pursuant to
3 Mr. Barringer's direction.

4 BY MR. TRAXLER:

5 Q. All right. Let me show you just one
6 document. Look at the notebook you've got there in
7 front of you and I want to look at tab 7, Bates No.
8 0297.

9 MR. MOLSTER: Sorry. Could you give
10 it -- 0297?

11 MR. TRAXLER: Yes.

12 MR. MOLSTER: Does it have anything
13 to do with Merrill Light?

14 MR. TRAXLER: No.

15 MS. PAYLOR: No.

16 THE WITNESS: I'm sorry. I have page
17 0297 in front of me.

18 BY MR. TRAXLER:

19 Q. All right. This is an invoice from McNair
20 Law Firm to Paul Barringer dated December 12, 2013
21 for work that McNair did for Mr. Barringer, correct?

22 A. That is what this looks like.

23 Q. And it's estate planning work that you did
24 for Mr. Barringer or your law firm did for
25 Mr. Barringer, correct?

1 A. Yes, sir.

2 Q. And on July 18, 2012, the first entry
3 shows that you prepared a restatement for Paul
4 Barringer's revocable trust agreement and you had a
5 telephone conference with Randy Light. What was that
6 conference about?

7 MR. TWOMBLEY: Object to the form.
8 Asked and answered.

9 MS. KIRK: Object to the form.

10 BY MR. TRAXLER:

11 Q. What was that conversation?

12 MR. TWOMBLEY: Same objection.

13 MR. MOLSTER: Hold for a second. I'm
14 sorry. I may need to be -- you're asking him about a
15 conversation that Jolley had with Randy Light, his
16 client?

17 MS. PAYLOR: He's already testified
18 about it. He's already testified about it. Not his
19 client.

20 MR. TRAXLER: Okay. How about y'all
21 don't coach him. Okay? You got an objection, just
22 state it. You got an inquiry, state it. But let's
23 not coach Mr. Jolley.

24 MR. MOLSTER: I apologize. I don't
25 think I'm coaching him. I'm just trying to figure

1 out what the question you're asking --

2 MS. PAYLOR: I'm not coaching.

3 MR. MOLSTER: -- whether Mr. Jolley
4 had a conversation with my client/his client, Randy
5 Light; is that correct?

6 MR. TRAXLER: Do you have -- Chip, do
7 you have the documents in front of you?

8 MR. MOLSTER: I'm looking at "Prepare
9 restatement of Paul Barringer's revocable trust
10 agreement, telephone conference with Randy Light."
11 That's a telephone conference between my client --

12 MR. TRAXLER: I'm asking Mr. Jolley
13 what that conversation was about.

14 MR. MOLSTER: Right. And I'm not
15 going to let him answer that question unless you --
16 unless I can talk to him and find out what the answer
17 is. I don't know if it's privileged or not. If it
18 doesn't -- you know, I'm not unreasonable, but I
19 can't let him waive the privilege, even if you give
20 me the agreement, without knowing what the -- whether
21 or not there's a potential -- whether there's
22 attorney-client privilege under that answer.

23 MR. TRAXLER: No. Given the coaching
24 that's going on, Chip, I think I just need to --
25 either you let him answer or assert the privilege and

1 we'll deal with it. Okay?

2 THE WITNESS: Tom, I'm trying to be
3 agreeable here and work with you, but I can't just
4 stumble into a waiver without knowing about it. So I
5 think what the rules provide is that I can talk to
6 the witness to find out whether or not there's a
7 privilege issue that I need to protect. If you want
8 to refuse me that opportunity, you leave me no choice
9 but to instruct him. If that's what you're trying to
10 get --

11 MR. TRAXLER: I'll let you have that
12 opportunity. I'm just worried about whether somebody
13 is going to try to coach him.

14 MR. MOLSTER: Listen, you can ask him
15 about the last conversation I had with him. I'm not
16 trying to coach him. It's about privileges.

17 MR. TRAXLER: You go talk to him and
18 I trust that nobody tries to coach him. You go talk
19 to him about whether to assert privilege or not.

20 MR. MOLSTER: Same procedure as last
21 time. Thank you, Tom.

22 MR. TRAXLER: No problem.

23 THE VIDEOGRAPHER: We are going off
24 the record. The time is 5:20 p.m.

25 (Off the record.)

1 THE VIDEOGRAPHER: We are back on
2 record. The time is 5:23 p.m.

3 BY MR. TRAXLER:

4 Q. All right. Mr. Jolley, the question was
5 what did you talk about -- talk to Randy Light about
6 on July 18, 2012?

7 A. I talked to -- I talked to Randy Light
8 about picking up the document that I had prepared for
9 Mr. Barringer.

10 Q. Otherwise you didn't ever have any
11 conversations with Randy Light about Paul Barringer's
12 estate plan, correct?

13 A. That is --

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 BY MR. TRAXLER:

17 Q. Did I -- did I understand that answer or
18 recall that answer correctly?

19 A. I did not discuss Mr. Barringer's estate
20 plan with Randy Light.

21 Q. Did Mr. Barringer ever give you permission
22 to discuss his estate planning with Randy Light
23 regardless of whether you actually discussed it with
24 Randy Light or not?

25 A. I don't recall Mr. Barringer expressly

1 authorizing me to discuss his estate plan with
2 Randy Light.

3 Q. Did you ever discuss with Merrill Light at
4 any point in time the estate planning for Merrill
5 Barringer?

6 MR. MOLSTER: Object to the form.

7 MR. TWOMBLEY: Yeah. I -- I'm happy
8 to talk about why you think you're entitled to ask
9 that question in this case. If you don't want to do
10 that, I will instruct him not to answer.

11 MR. TRAXLER: Well, part of our cause
12 of action in the lawsuit is that there was an
13 agreement in coordination between Paul Barringer or
14 Merrill Barringer on estate planning, the wills, and
15 all the testamentary instruments. And if they have a
16 coordinated estate planning, I think I have the right
17 to go into what she understood the testamentary
18 intent to be -- or her testamentary intent to be.

19 MR. TWOMBLEY: Tell me the question
20 again.

21 MR. TRAXLER: Did Mr. Jolley ever
22 discuss with Randy Light, Merrill Barringer's estate
23 plan?

24 MR. TWOMBLEY: I don't think that's
25 got anything to do with what you just talked about,

1 but I'll be happy to -- I'll be happy to --

2 MR. TRAXLER: -- not to answer the
3 question.

4 MR. TWOMBLEY: Okay. Well, what I'm
5 going to do is -- I think I'm going to instruct him
6 not to answer.

7 MR. TRAXLER: All right. Is that
8 instruction based on an assertion of a privilege?

9 MR. TWOMBLEY: Yes. I think it's
10 partially based on a privilege. I think it's also
11 partially based on the fact that I don't think that's
12 got anything to do with this case. I don't think
13 you're entitled to go into it.

14 BY MR. TRAXLER:

15 Q. All right. Mr. Jolley, did you discuss
16 the estate planning of Paul Barringer with Mr. Slane?

17 A. Yes.

18 Q. Did Mr. Barringer give you permission to
19 discuss his estate planning with Mr. Slane?

20 A. He did.

21 Q. What was the purpose of you discussing
22 Paul Barringer's estate plan with Mr. Slane?

23 A. Mr. Barringer relied on Robert Slane to
24 give him financial advice, and I believe he wanted me
25 to communicate with Robert Slane so that Mr. Slane

1 and I could help advise Mr. Barringer with respect to
2 his estate planning.

3 Q. Okay. And when did Mr. Slane first get
4 involved in these discussions?

5 A. I think Mr. Slane was involved early on,
6 that is, in 2011, and was involved certainly with
7 these discussions through the signing of these
8 documents in 2012 -- that is, in February of 2012.

9 Q. All right. And were there any limitations
10 put on you by Mr. Barringer as to what you could tell
11 Mr. Slane or not tell him?

12 A. There were no limitations placed on me
13 with communications with Robert Slane.

14 Q. Was Robert Slane an agent of yours in
15 these conversations?

16 MS. KIRK: Object to the form.

17 MR. TWOMBLEY: Same objection. Calls
18 for a legal conclusion.

19 THE WITNESS: I don't believe
20 Robert Slane was an agent of mine.

21 BY MR. TRAXLER:

22 Q. Did you discuss the details of
23 Paul Barringer's estate planning with Mr. Slane as to
24 what you were planning to do?

25 A. Mr. Slane was a part of the conversations

1 about the details of Mr. Barringer's estate plan.

2 Q. All right. And did Mr. Slane make
3 suggestions or ideas as to what his estate plan might
4 look like or what you should consider?

5 A. He did.

6 Q. Okay. And did you send drafts of estate
7 planning documents to Mr. Slane to review prior to
8 their execution?

9 A. I believe --

10 MS. KIRK: Object to form. You can
11 answer it.

12 THE WITNESS: I believe so.

13 BY MR. TRAXLER:

14 Q. Did Mr. Slane ever express any questions
15 to you about the capacity or competency of
16 Mr. Barringer?

17 A. He did not.

18 Q. Did he ever express any opinions to you
19 about diminished mental capacity on the part of
20 Mr. Barringer?

21 MS. KIRK: Object to the form. He
22 just went through that.

23 THE WITNESS: I don't recall that.

24 BY MR. TRAXLER:

25 Q. Did he ever discuss with you whether there

1 was a possibility of undue influence on
2 Mr. Barringer?

3 A. I don't recall that.

4 Q. Did you have the same conversation -- same
5 types of conversation with Mr. Slane about
6 Ms. Barringer's estate plan?

7 MR. TWOMBLEY: Tom, I want to take a
8 break a second and talk to John about whether or not
9 a privilege should be raised in that. And also I
10 wrote down the time, just so I could ask you about
11 it. But back just a moment ago at 5:27, is what I
12 wrote down, can you tell me again what that question
13 was and let me talk with John about whether or not a
14 privilege needs to be asserted so we can kill two
15 birds with one stone? I think you asked him if he
16 ever talked with Randy Light about Ms. Barringer's
17 estate plan -- planning.

18 MR. TRAXLER: Yeah. You can ask --
19 you can also talk to him about Merrill Light at the
20 same time if you want to.

21 MR. TWOMBLEY: Okay.

22 MR. TRAXLER: Y'all don't go in there
23 and coach him. Just ask him what you need to ask him
24 to decide whether you need to assert a privilege.

25 MR. TWOMBLEY: I'm familiar with my

1 obligations.

2 MR. MOLSTER: Can you -- can you --
3 can you elucidate me on what you're talking about
4 Merrill Light?

5 MR. TRAXLER: Yeah. Whether he had
6 discussions with Merrill Light about Merrill
7 Barringer's estate planning.

8 THE WITNESS: Oh, okay. Thank you.

9 MR. TWOMBLEY: I'm just writing down
10 the question so we got it.

11 MR. TRAXLER: Sure.

12 THE VIDEOGRAPHER: We are going off
13 record. The time is 5:30 p.m.

14 (Off the record.)

15 THE VIDEOGRAPHER: We are back on
16 record. The time is 5:34 p.m.

17 MR. TWOMBLEY: Okay. I talked to
18 John about both of these questions, the one you
19 asked -- answered -- asked previously and the current
20 one pending about Mr. Slane, and we're going to let
21 him answer subject to an agreement we're not waiving
22 any privilege. Is that agreed, Tom?

23 MR. TRAXLER: Well, I'm thinking.
24 Yeah. I'll do that.

25 MR. TWOMBLEY: Okay.

1 MR. TRAXLER: All right. So --

2 MR. GILREATH: You have to get back
3 on the record.

4 MR. TRAXLER: Oh, I thought we are on
5 the record, aren't we?

6 MR. TWOMBLEY: We are.

7 BY MR. TRAXLER:

8 Q. All right. Did you have conversations
9 with Mr. Slane about Merrill Barringer's estate
10 planning?

11 A. To the same extent I had conversations
12 about Mr. Barringer. Yes. To the extent -- the same
13 extent I had conversations about Mr. Barringer's
14 planning.

15 Q. And during this time period, this was --
16 was this in 2011 or are we already in 2012?

17 A. I met with and communicated with the
18 Barringers and Mr. Slane really during that period of
19 November 2011 through -- certainly through February
20 through the spring of 2012.

21 Q. And also into 2014, didn't you?

22 A. I'm sorry. I did. I continued to have
23 communications with Mr. Barringer into 2014 -- excuse
24 me, Mr. Slane.

25 Q. All right. And that was with regard to

1 both Mr. Barringer and Ms. Barringer's estate,
2 correct?

3 A. That is correct.

4 Q. All right. Did you -- when you were --
5 started representing Mr. Barringer and Ms. Barringer
6 with their estate planning and doing the documents in
7 2011, did you discuss with each one of them
8 confidentiality? I know you talked about conflicts,
9 but did you talk about confidentially?

10 MS. KIRK: Object to the form.

11 MR. TWOMBLEY: I'll let him answer
12 for each of them pursuant to our agreement. He's not
13 waiving any privilege.

14 MR. TRAXLER: Okay.

15 THE WITNESS: I did speak about
16 confidentiality as a part of my conversation --
17 further conversation about conflict and the privilege
18 with respect to the two of them.

19 BY MR. TRAXLER:

20 Q. Well, you say privilege. Do you mean by
21 that confidentiality or do you make a distinction --
22 or tell me what you talked to them about.

23 A. Well, I think I described to you what I
24 just said to them --

25 MR. TWOMBLEY: Hold on. Same -- same

1 agreement, Tom?

2 MR. TRAXLER: Yeah.

3 BY MR. TRAXLER:

4 Q. You've already discussed with me the
5 conflicts, and I don't need to replot that with you,
6 Mr. Jolley. But, if you would, tell me what you
7 discussed with them in terms of confidentiality or
8 privilege.

9 MS. KIRK: Object to the form, but go
10 ahead.

11 THE WITNESS: I discussed with them
12 that in spite of the conflict -- or potential
13 conflict, that their information remained
14 confidential and I would treat it in a confidential
15 manner.

16 BY MR. TRAXLER:

17 Q. All right. Now, your initial meeting with
18 them in November 2011, was that at your office?

19 A. I believe so.

20 Q. Nobody else was there, I believe you told
21 me, correct?

22 A. Yeah. That sounds right.

23 Q. Did you ever meet with them about their
24 estate planning in their home?

25 A. I did.

1 Q. When?

2 A. During that time period of November 2011
3 through February of 2012.

4 Q. Did you ever discuss the estate planning
5 of Merrill Barringer or Paul Barringer with Victor?

6 A. No.

7 Q. Did you ever share estate planning
8 documents with Victor for Paul or Merrill Barringer?

9 MS. KIRK: Well -- can you -- I
10 object to the form, I think. I'm not sure I
11 understood what you said, though.

12 MR. TWOMBLEY: Yeah. Can you
13 rephrase the question?

14 BY MR. TRAXLER:

15 Q. Did you ever share with Victor Barringer
16 the estate planning documents for Paul Barringer or
17 Merrill Barringer?

18 A. I don't believe so.

19 Q. All right. Now, after you met with them
20 in November of 2011 --

21 MR. TRAXLER: I don't have COVID.
22 Don't y'all worry about that.

23 BY MR. TRAXLER:

24 Q. In 2011, how many times --

25 MR. TRAXLER: I got vaccinated last

1 night and I'm pulsating with antibodies right now.

2 MR. TWOMBLEY: That's -- that's --
3 that's good because if it gets within about 100 feet
4 of Gilreath, I think he's going to blow over. So...

5 MR. TRAXLER: He may be sick for
6 other reasons, but it ain't going to be COVID.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, how many times in 2011 did you
9 meet with Paul Barringer or Merrill Barringer about
10 their estate planning?

11 A. I don't recall the number, Mr. Traxler.

12 Q. All right. But those meetings and that
13 work culminated in documents executed after the first
14 of the year, correct?

15 A. That is correct.

16 Q. February 14 or 13 or 12, I believe?

17 A. I believe that's correct.

18 Q. All right. Walk me through the process of
19 from the initial meeting with them to the execution
20 of those documents. How many times did you meet with
21 them? Where? What was discussed?

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

24 MS. KIRK: I also object to form.

25

1 BY MR. TRAXLER:

2 Q. All right. We'll break it down then.
3 When was the next time you met with them after
4 November 2011?

5 A. I'm not -- I'm not sure.

6 Q. Well, if you look at your invoice, would
7 that tell you?

8 A. It would show me the time -- it would show
9 me, certainly, the times that I billed for time I sat
10 with them.

11 Q. Well, you wouldn't have met with them
12 without billing them, would you?

13 MR. TWOMBLEY: Object to the form of
14 the question. Asked and answered and misstates his
15 testimony.

16 MS. KIRK: Same objection.

17 BY MR. TRAXLER:

18 Q. Okay. You can answer.

19 A. I'm sorry. You're going to have to repeat
20 that question.

21 Q. You would not have met with Mr. or
22 Ms. Barringer about their estate planning without
23 billing them for it, would you?

24 MR. TWOMBLEY: Object to the form of
25 the question. Asked and answered and misstates his

1 prior testimony.

2 MS. KIRK: Same objection.

3 THE WITNESS: I might.

4 BY MR. TRAXLER:

5 Q. You don't know whether you did, huh?

6 A. I know that --

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 MS. KIRK: Same objection.

10 BY MR. TRAXLER:

11 Q. Would it be on your calendar if you met
12 with them?

13 MR. TWOMBLEY: Object to the form of
14 the question.

15 MS. KIRK: I also object to form.

16 BY MR. TRAXLER:

17 Q. You can answer it. Go ahead.

18 A. So generally when I met with Mr. and
19 Ms. Barringer, that would be reflected in my time
20 sheets. And generally to the extent that I met with
21 Mr. and Ms. Barringer, that would be reflected on my
22 calendar.

23 Q. We'll take this meeting by meeting if we
24 need to. How about go to tab 7 for me. Let's look
25 at your invoices, and I'm going to repeat the

1 question: How many times did you meet with
2 Mr. Barringer --

3 A. Okay.

4 Q. -- in 2011 with regard to his estate
5 planning?

6 A. So I'm sorry. You want me to start at tab
7 7?

8 Q. Yes, sir. I want you to look at tab 7,
9 those are the invoices that have been produced to us,
10 to see if that refreshes your recollection as to
11 when -- how many times you met with Mr. Barringer on
12 his estate planning in the year 2011.

13 A. So from this invoice, I see that on
14 11/10/2011 I met with the Barringer's at their home.

15 Q. All right. Let's talk about that one.
16 Who was there?

17 A. My recollection is that the Barringers
18 were there, and I don't remember if Mr. Slane was
19 there at that meeting or not.

20 Q. Was Merrill Light in that meeting?

21 A. I don't believe so.

22 Q. Was Randy Light in that meeting?

23 A. I don't believe so.

24 Q. Mr. Slane in that meeting?

25 A. I don't remember if Mr. Slane was at that

1 meeting or not.

2 Q. All right. You testified that you thought
3 the first meeting in November of 2011 was in your
4 office. Where is that reflected in the invoices?

5 MR. TWOMBLEY: Object to the form.

6 MS. KIRK: Object to the form.

7 THE WITNESS: Yeah. I'm sorry.

8 That's not -- that's not reflected on -- it's not
9 reflected on this invoice.

10 BY MR. TRAXLER:

11 Q. All right. When you met with them in
12 their home on November 10, 2011, what was discussed?

13 A. I'm sorry, Mr. Traxler. In looking at
14 this invoice, I spoke too soon.

15 Q. Okay. If we need to correct the
16 testimony, go ahead.

17 A. So...

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: So you asked how many
21 times I met with the Barringers about their estate
22 planning in 2011, and on the bill reflects that I met
23 with them at their home on November 10th of 2011, and
24 further reflects on December 15th I met with the
25 clients -- with Mr. and Ms. Barringer in my office.

1 Q. All right. Thank you. I'm not trying to
2 trap you, Mr. Jolley. I just want to get clear in my
3 mind do you think your first meeting with them about
4 the estate planning in 2011 was at their home or do
5 you think I'm missing a meeting on the invoice?

6 A. No. I think that it's reflected in
7 this -- this November 10th entry on the bill.

8 Q. All right. So when you discussed with me
9 the initial meeting which you thought was at your
10 office, if I ask you about this November 10 meeting,
11 that's the meeting that you have already told me
12 about. It just occurred most probably at their home.

13 MS. KIRK: I object to --

14 BY MR. TRAXLER:

15 Q. Is that correct?

16 MS. KIRK: I object to the form, but
17 you may answer.

18 THE WITNESS: I think that is
19 correct.

20 BY MR. TRAXLER:

21 Q. Okay. All right. Thank you. How do we
22 know how much time you spent at that meeting?

23 A. This -- how do we know?

24 Q. Yes, sir.

25 A. The -- at the -- I can't tell from this

1 invoice how much time I spent at that meeting.

2 Q. Well, when you send an invoice to Mr. and
3 Ms. Barringer, you wouldn't show how much time you
4 were charging them for on each item, would you?

5 MS. KIRK: Object to the form.

6 THE WITNESS: I think this -- this --
7 as far as I know, this bill reflects what was
8 presented to Mr. Barringer.

9 BY MR. TRAXLER:

10 Q. All right. But my question was: You did
11 not show them how much time you were billing them for
12 for these activities -- each of these activities, did
13 you?

14 MS. KIRK: Object to form.

15 THE WITNESS: This bill doesn't
16 reflect the time spent on each entry.

17 BY MR. TRAXLER:

18 Q. All right. Other than your time sheets
19 from which the data was entered into the computer, is
20 there any way to reconstruct or determine how much
21 time you spent with them on November 10, 2011 in
22 their home?

23 A. At the time, that is, in 2012, I
24 certainly -- if -- if I had requested or
25 Mr. Barringer had requested a detailed bill, we could

1 have produced one. I don't know if there's any -- if
2 that's possible to do now.

3 Q. All right. So when you left the meeting
4 on November 10, 2011, what was the plan on going
5 forward then in terms of what you were going to do?

6 A. I -- I don't recall the detail of what
7 my -- our plan was at the end -- conclusion of this
8 November 10 meeting -- November 10, '11 meeting other
9 than generally I met with them as I do and gather
10 information and talk about what might be a plan that
11 met their objectives.

12 Q. How about do me a favor and see if we
13 can't shortcut this a little bit. Look at the time
14 entries on your invoice after November 10. See if
15 that doesn't refresh your recollection as to what you
16 were doing going forward after the November 10
17 meeting.

18 A. Well, I think what I just described is
19 what I did. That is, I did, in fact, go through and
20 look at the materials that had been presented. I
21 did, in fact, prepare diagrams of the proposed
22 planning. I did, in fact, put in place -- at least
23 prepare, as it's reflected, the lifetime documents
24 for the Barringers. And then I sent -- it looks like
25 I sent drafts of those documents to the Barringers.

1 Q. Okay. And did you share the documents
2 with Mr. Slane?

3 A. I don't know if I shared the -- the
4 lifetime document drafts with Mr. Slane at this
5 point.

6 Q. All right. And the lifetime documents are
7 what?

8 A. Health care powers of attorney, durable
9 powers of attorney, and a declaration of a desire for
10 a natural death.

11 Q. All right. And those documents were
12 executed on December 15, 2011 in your office; is that
13 correct?

14 A. That's -- that's -- yeah. That looks like
15 that appointment on 12/15/2011 was when we reviewed
16 those documents and signed those documents.

17 Q. All right. At that point in time, did you
18 record the durable power of attorney?

19 MR. TWOMBLEY: Object to the form of
20 the question.

21 MS. KIRK: I also object to form.

22 BY MR. TRAXLER:

23 Q. Do you understand what I mean when I say
24 "record the durable power of attorney?"

25 MR. TWOMBLEY: For who? Whose

1 durable power of attorney?

2 BY MR. TRAXLER:

3 Q. We'll start with Paul. When did you
4 record the durable power of attorney for Paul?

5 A. I don't know.

6 Q. Did you ever have -- do you know when you
7 recorded it for her?

8 A. I'm sorry. Do you -- are you referring to
9 Ms. Barringer?

10 Q. Yes.

11 A. I do not know when a power of attorney was
12 recorded for Ms. Barringer.

13 Q. Did you discuss with either of the
14 Barringers that their durable power of attorney was
15 not effective until recorded?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I generally discuss the
20 fact that it's not perfected. It's not of record
21 until recorded.

22 BY MR. TRAXLER:

23 Q. For the jury, tell them what you mean that
24 it's not perfected or a record until recorded.

25 A. That is, before a third-party must rely on

1 the power of attorney, then the power of attorney
2 must be recorded in the county courthouse in South
3 Carolina.

4 Q. All right. And why would you wait and
5 record a durable power of attorney later after --
6 much later after it was executed?

7 MS. KIRK: Object to the form.

8 THE WITNESS: Because we didn't
9 perceive it necessary at that time.

10 BY MR. TRAXLER:

11 Q. You recorded it when you perceived it to
12 be necessary; is that correct?

13 MR. TWOMBLEY: Object to the form of
14 the question.

15 MS. KIRK: I object to that.

16 THE WITNESS: Or when it was
17 convenient for the client.

18 BY MR. TRAXLER:

19 Q. Well, which happened here?

20 A. Mr. Traxler, I don't -- as I've said, I
21 don't remember when the powers of attorney were
22 recorded in this case.

23 Q. Let me get you to go, Mr. Jolley, to tab
24 14 for me. I'm looking at Bates No. 0363.

25 MS. PAYLOR: Could you say that

1 again?

2 MR. TRAXLER: Yeah. 0363.

3 MS. PAYLOR: Thank you.

4 THE WITNESS: I'm sorry. I'm at
5 0353.

6 BY MR. TRAXLER:

7 Q. This is the durable power of attorney for
8 Paul Barringer, correct?

9 A. It is.

10 Q. And this durable power of attorney was
11 executed December 15, 2011, correct?

12 A. So, Mr. Traxler, this is 0372?

13 Q. Right.

14 A. Your question is about this power -- the
15 ending on 372?

16 Q. Yes.

17 A. Yeah. That was executed on 15
18 December 2011.

19 Q. Okay. And I believe if you go back to
20 page 0363, you will see that it was not recorded
21 until May 11, 2012, correct?

22 A. Yes.

23 Q. All right. Why?

24 A. Mr. Traxler, it's not my practice nor --
25 nor is it the practice, I think, of estate planners

1 generally to always record powers of attorney when
2 executed.

3 Q. All right. In this particular case, why
4 was it not recorded then; do you know?

5 A. I do not know.

6 Q. Did you discuss with Mr. Barringer or
7 Ms. Barringer that this could not be used with regard
8 to third-parties until it had been filed of record?

9 A. I believe at the conclusion of the signing
10 I mentioned that we could record it or not.

11 Q. All right. And did you tell them the
12 effect of not recording it right away?

13 A. The effect being that it wasn't -- that
14 third-parties didn't have to rely on it?

15 Q. Yeah. Did you discuss that with them?

16 A. I think, yes, I did. I think I did
17 describe that as why we would consider recording or
18 not recording the power of attorney.

19 Q. So what did they tell you about recording
20 it and when to record it?

21 A. Well, from the fact that I didn't record
22 it in December, I would conclude they didn't -- they
23 told me not to record it.

24 Q. All right. So what happened on or about
25 May 11, 2012 to prompt you to record it?

1 A. I was -- I must have been asked to record
2 it at that point.

3 Q. Do you remember that conversation or
4 communication?

5 A. I do not.

6 Q. Do you recall whether that communication
7 came to you from Paul Barringer or someone else?

8 A. I do not.

9 Q. Was this before or after you had had
10 discussions with Merrill Light about his estate
11 planning?

12 MS. KIRK: Object to the form.

13 BY MR. TRAXLER:

14 Q. Was this before or after you discussed
15 Paul Barringer's estate planning with Merrill Light?

16 A. This was --

17 MS. KIRK: Object to the form, but go
18 ahead and answer.

19 THE WITNESS: This was after I
20 discussed with Merrill Light her role with respect to
21 these documents.

22 BY MR. TRAXLER:

23 Q. All right. Did you tell Merrill Light
24 that she was the alternate agent under the power of
25 attorney?

1 MR. MOLSTER: Pursuant to our
2 agreement, Tom?

3 MR. TRAXLER: Yeah.

4 MR. MOLSTER: Go ahead, Mr. Jolley.

5 THE WITNESS: I believe I told
6 Ms. Light each of the roles that she was being asked
7 to fill in Mr. Barringer's estate planning documents.
8 BY MR. TRAXLER:

9 Q. Okay. After you reported it -- strike
10 that.

11 After it was executed, did you give
12 Merrill Light a copy of it?

13 A. I'm sorry, Mr. Traxler. When you say
14 "it," what -- what do you refer?

15 Q. I'm referring to the durable power of
16 attorney that was executed on December 15, 2011.

17 A. I don't believe so.

18 MR. MOLSTER: Continuing agreement,
19 Tom? I'll shut up if have a continuing agreement.

20 MR. TRAXLER: Yeah. Hold on a
21 second, Chip. I somehow lost everything. I hate to
22 get you excited and hopeful.

23 MR. MOLSTER: Exactly.

24 MR. TRAXLER: We lost all of our --
25 do y'all still see each other?

1 MR. TWOMBLEY: Yeah. We see you.

2 MS. KIRK: We can see you.

3 MR. TWOMBLEY: We see you fine.

4 MR. TRAXLER: There we go. All
5 right. I won't do anything to embarrass myself.

6 MR. MOLSTER: Continuing agreement
7 and I'll pipe down.

8 MR. TRAXLER: Yeah. Yes, sir.

9 MR. MOLSTER: Thank you.

10 THE WITNESS: I don't believe that I
11 gave Ms. Light a copy of the power -- of
12 Mr. Barringer's power of attorney.

13 BY MR. TRAXLER:

14 Q. Did you tell her that she was the
15 alternate agent?

16 A. I already testified that I discussed with
17 her the roles her parents were putting -- putting her
18 in or considering putting her in the documents, but I
19 don't --

20 Q. Excuse me. Go ahead.

21 A. But I don't believe that I otherwise
22 informed Ms. Light that she had, in fact, been placed
23 in those roles.

24 Q. All right. Now, I asked you those
25 questions in connection to the execution. Let me go

1 back and ask you now: Did you give a copy of the
2 durable power of attorney executed in December of
3 2011 to Merrill Light after it was recorded?

4 A. I don't -- I don't remember.

5 Q. All right. So if anybody were to suggest
6 any sinister reasons for delaying the recording of
7 this or it not being recorded until May of 2011, you
8 would not be in a position to challenge or refute
9 that; is that correct?

10 MS. KIRK: Object to the form of the
11 question.

12 MR. MOLSTER: Object to form.

13 MR. TWOMBLEY: Object to the form.

14 MS. PAYLOR: I have 2012.

15 MR. TRAXLER: I'm sorry. You're
16 right. Thank you, Alice.

17 MR. MOLSTER: Still object to the
18 form.

19 MS. KIRK: Yeah. My objection wasn't
20 related to the date.

21 THE WITNESS: So I'm sorry. You're
22 saying -- you're asking me if I can testify about
23 sinister motives about recording the power of
24 attorney?
25

1 BY MR. TRAXLER:

2 Q. No, sir. If you want to testify to that,
3 go right ahead, but I think you're going to have
4 everybody going nuts on your side.

5 A. Okay. I'm not -- I'm sorry I missed the
6 thread of that question.

7 MR. TWOMBLEY: That's assuming he
8 would testify there's some sinister reason. Go
9 ahead.

10 BY MR. TRAXLER:

11 Q. You don't have any recollection as to why
12 this was not recorded until May of 2012; is that
13 correct?

14 MR. MOLSTER: Object to the form.

15 MS. KIRK: Object to the form of the
16 question. You may answer.

17 THE WITNESS: I testified that I
18 discussed with the Barringers whether or not to
19 file -- to record the power of attorney at the time
20 they executed the power of attorney. Beyond that, I
21 don't have any information.

22 BY MR. TRAXLER:

23 Q. I understand that, but you understand this
24 was recorded and things were kind of hot and heavy in
25 terms of running Kevin out -- Kevin Luzak out of the

1 company, right?

2 MS. KIRK: I absolutely object to the
3 form of that question. Mischaracterization of any
4 testimony.

5 MR. TWOMBLEY: Same objection.

6 BY MR. TRAXLER:

7 Q. You understand that it's in that time
8 frame, correct?

9 MR. TWOMBLEY: Object to the form.

10 MS. KIRK: Object to the form.

11 THE WITNESS: I'm not sure of the --
12 I'm not sure what was happening in May of 2012.

13 BY MR. TRAXLER:

14 Q. Do you remember the June 28, 2012 board of
15 directors meeting, don't you?

16 MR. TWOMBLEY: Object to the form of
17 the question. Misstates --

18 MS. KIRK: I also object to the form.

19 MR. TWOMBLEY: -- testimony in
20 evidence.

21 BY MR. TRAXLER:

22 Q. You remember that meeting?

23 A. I...

24 Q. Were you there?

25 A. I'd have to refer to the record to know

1 whether or not -- to remember whether or not I was
2 there at that meeting.

3 Q. You don't remember when Kevin Luzak was
4 ousted from the company as an officer and as a
5 director?

6 MS. KIRK: I object to the form of
7 that question.

8 MR. TWOMBLEY: Same objection.

9 THE WITNESS: I do -- I do remember
10 that -- what you've -- that Mr. Luzak was removed
11 from the company.

12 BY MR. TRAXLER:

13 Q. And what time frame was that in?

14 A. My recollection is that happened during
15 the summer of 2012.

16 Q. Right. This was all -- so this power of
17 attorney was recorded just before that, right?

18 MS. KIRK: Object to the form of that
19 question.

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: This power of attorney
22 was recorded on May 11, 2012.

23 BY MR. TRAXLER:

24 Q. It was recorded -- it was recorded before
25 Kevin Luzak was ousted from the company as an officer

1 and as a director, correct?

2 MS. PAYLOR: Mr. Traxler?

3 MS. KIRK: Object to the form.

4 THE WITNESS: Mr. Traxler, I do
5 believe that it was later -- I mean, I think it was
6 later near the end of June or July when Mr. -- when
7 those actions happened with respect to the company.

8 BY MR. TRAXLER:

9 Q. All right. Now that -- that refreshes
10 your recollection as to why the durable power of
11 attorney was recorded then, right?

12 MS. KIRK: Object to the form of the
13 question.

14 BY MR. TRAXLER:

15 Q. Go ahead. You can answer. Does that
16 refresh your recollection?

17 A. That does not refresh my recollection.

18 Q. All right. Do you have any recollection
19 whatsoever as to any circumstances that prompted this
20 recording in May of 2011?

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

23 MS. KIRK: Same objection.

24 THE WITNESS: I don't recall the
25 circumstances around the recording of the power of

1 attorney.

2 BY MR. TRAXLER:

3 Q. All right. Now, let's go back to your
4 invoices. Let's go back and look at the next meeting
5 that happened. I believe it's tab 7.

6 MR. MOLSTER: Excuse me, Tom. Do you
7 have a page number that goes with that?

8 MR. TRAXLER: We're at tab 7, and my
9 question to him had been the meetings in 2011, which
10 I think he discussed. I'm asking -- I'm getting him
11 oriented on the invoices. We had been at page 292.

12 MR. MOLSTER: Thank you.

13 BY MR. TRAXLER:

14 Q. My question to you, Mr. Jolley, is: When
15 is the next time you had a meeting with Mr. Barringer
16 about his estate planning?

17 A. It appears my -- it appears my next
18 meeting after December the 15th was a conference with
19 the Barringers and Mr. Slane on the 23rd of February.

20 Q. All right. And Mr. Slane is out of
21 Florida, correct?

22 A. Mr. -- yeah. I believe Mr. Slane -- I
23 mean, Mr. Slane lives and practices in Florida, as
24 far as I know.

25 Q. And he came up here for the meeting?

1 A. I believe so.

2 Q. Is that correct?

3 A. I believe so.

4 Q. All right. And what was the purpose of
5 Mr. Slane at that meeting? The same as before?

6 A. Yes.

7 Q. All right. And do you know how long that
8 meeting lasted?

9 A. I don't remember the length of that
10 meeting.

11 Q. Do you know where it was?

12 A. I don't. I know I had one meeting with
13 Mr. Slane -- I had one meeting with Mr. Slane at the
14 Barringers' home, but I don't know if it was this one
15 or another -- a different meeting.

16 Q. All right. Do you have any recollection
17 of what was discussed or what transpired at the
18 February 23, 2012 meeting?

19 A. So you're asking me -- I'm sorry. I need
20 you to -- oh, you're asking me with respect to this
21 meeting, as reflected on 2/23/12 with the conference
22 with the Barringers and Robert Slane, what the
23 details of that meeting were?

24 Q. Yes, sir.

25 A. Other than going over the proposed

1 documents and the proposed planning, I don't remember
2 the details of that conference.

3 Q. Who was at that meeting other than
4 Mr. Slane and the Barringers and yourself?

5 A. I believe it was only the Barringers and
6 Mr. Slane.

7 Q. All right. No documents were executed at
8 that meeting that you recall; is that correct?

9 A. I think that's correct.

10 Q. The next meeting was when with
11 Mr. Barringer?

12 A. I believe the next meeting was on
13 February 28, 2012.

14 Q. That was the execution of the documents, I
15 believe, that Mr. Twombly was asking you about on
16 direct examination this morning; is that correct?

17 MS. KIRK: I object to the form.

18 THE WITNESS: I'm not -- I mean, the
19 2/28 meeting is a meeting in which I met with the
20 clients and reviewed the documents and ultimately
21 helped them sign them.

22 BY MR. TRAXLER:

23 Q. I'm sorry. Which meeting are you talking
24 about?

25 A. The 2/28/12, the revisions to revocable

1 trust agreements, finalize pour-over wills, assist
2 with document signing.

3 Q. I'm sorry. You're right. I apologize. I
4 was looking at the wrong line. All right. You were
5 doing estate planning for Merrill Light at the same
6 time?

7 MS. KIRK: I object to the form.

8 MR. TWOMBLEY: Same objection.

9 MR. MOLSTER: Just say yes or no,
10 please, Mr. Jolley. And same agreement, Tom?

11 MR. TRAXLER: Yeah.

12 MR. MOLSTER: Thank you.

13 THE WITNESS: I don't remember.

14 BY MR. TRAXLER:

15 Q. Well, you have a time entry the next day
16 on your invoice for review signed originals in
17 preparation for execution for Merrill Light. You see
18 that?

19 A. I do see that.

20 Q. What was that for?

21 A. Beyond what the -- beyond what the
22 language of that time entry says, I don't remember.
23 I mean, I don't independently remember that.

24 Q. All right. You --

25 A. And what that refers to.

1 Q. Excuse me. I didn't meant to cut you off.
2 You were doing the instruments for the Lights -- I
3 mean, the Barringers that were executed in February
4 2012. Did you work in conjunction with both of them,
5 Merrill and Paul Barringer, on the estate planning at
6 the same time?

7 A. Are you asking me if I worked on the
8 preparation of the documents for Merrill Barringer
9 and Paul Barringer at the same time?

10 Q. Yes, sir.

11 A. I did.

12 Q. You did her documents and his documents at
13 the same time, didn't you?

14 A. I did.

15 Q. And their estate -- their testamentary
16 instructions, the will and the revocable trust,
17 reflected each other's terms, didn't they?

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 MS. KIRK: I object as well.

21 THE WITNESS: I believe the documents
22 were mirror images.

23 BY MR. TRAXLER:

24 Q. Yeah. They were united and concerted in
25 their estate planning, weren't they?

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

3 MS. KIRK: Object to the form of the
4 question.

5 THE WITNESS: I think the Barringers
6 had -- I think they were united in want -- in their
7 estate planning. Yes.

8 BY MR. TRAXLER:

9 Q. Yeah. And they both, at that point in
10 time, treated their children equally in these
11 instruments, weren't they?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: My recollection of the
16 documents executed in two thousand -- in February of
17 2012 is that they were treating their children the
18 same under these documents.

19 BY MR. TRAXLER:

20 Q. All right. Give me some sense of how much
21 Ms. Barringer participated in the conversation with
22 you about what her estate plan would look like.

23 A. Ms. --

24 Q. There's one extreme where she sat there
25 and said nothing. There's another extreme where she

1 was the only one talking on behalf of the clients.
2 I'm trying to get some sense of how active she was in
3 those discussions.

4 MR. TWOMBLEY: Okay. I'm going to
5 object to that question and instruct him not to
6 answer. I think that's going beyond your need to
7 probe him about whether or not this make-believe
8 agreement existed or not, and I'm not going to let
9 you get into that. We'll file a motion if we need
10 to.

11 MR. TRAXLER: I'm sorry. I didn't
12 get that last part, Mr. Twombley.

13 MR. TWOMBLEY: I'm instructing him
14 not to answer. I believe that you're going beyond
15 what you need to to probe these claims that you've
16 made about a contract or a promise, and I'm
17 instructing him not to answer.

18 MR. TRAXLER: Is that instruction
19 based on an assertion of a privilege?

20 MR. TWOMBLEY: Yes. The attorney --
21 the attorney-client privilege between Ms. Barringer
22 and her attorney related to legal work he was doing
23 for her.

24 BY MR. TRAXLER:

25 Q. Mr. Jolley, did Ms. Barringer ever express

1 any disagreement with the estate planning that her --
2 that her husband was doing?

3 A. Not to me.

4 Q. Did she ever express any disagreement
5 about having hers as a mirror image of his plan?

6 A. She never -- I never heard Ms. Barringer
7 express anything like that.

8 Q. How much -- what did she discuss with you
9 in terms of their estate plan?

10 MR. TWOMBLEY: Object to the -- I'm
11 going to object and I'm going to instruct you not to
12 answer unless there was any discussion about a
13 contract or agreement or promise that they wouldn't
14 change. If you know anything about that, by all
15 means, tell us.

16 MR. TRAXLER: Are you instructing him
17 not to answer?

18 MR. TWOMBLEY: Yes. Other than if he
19 knows anything --

20 MR. TRAXLER: On the basis of
21 privilege?

22 MR. TWOMBLEY: I'm sorry?

23 MR. TRAXLER: Is this on the basis of
24 privilege?

25 MR. TWOMBLEY: Yes.

1 MR. TRAXLER: Okay.

2 MR. TWOMBLEY: But, again, I do think
3 you can ask him about whether or not he knows
4 anything about a contract or agreement or promise
5 that went back in 1998 through the present time that
6 she wouldn't change her will.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, was there much conversation
9 between Paul Barringer and Merrill Barringer about
10 the estate planning between the two of them in front
11 of you in these meetings?

12 MS. KIRK: I object to the form.

13 MR. TWOMBLEY: I would ask you to
14 answer yes or no. See what the next question is.

15 THE WITNESS: I'm sorry. Can you --
16 can you -- you don't have to restate it. Just repeat
17 the question.

18 BY MR. TRAXLER:

19 Q. Was there much conversation between
20 Paul Barringer and Merrill Barringer in front of you
21 about the estate plan? Not to you, but between each
22 other.

23 A. Yes.

24 Q. And tell me what those discussions were.

25 MR. TWOMBLEY: I'm going to

1 instruct -- well, actually, I think what I'm going to
2 do is take a break and discuss with him whether or
3 not we want to waive -- or whether or not we want to
4 claim privilege related to any of those discussions.
5 So I'm going to exercise my right to talk with him
6 about that and we'll be right back.

7 MR. TRAXLER: All right.

8 THE VIDEOGRAPHER: We are going off
9 record. This is the end of media unit four. The
10 time is 6:11 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: We are back on
13 record. This is the beginning of media unit five.
14 The time is 6:29 p.m.

15 MR. TWOMBLEY: All right. Tom, this
16 is Ashley. It is my opinion that simply because your
17 client has made this claim about a purported contract
18 or other promise that exists, that that in and of
19 itself does not waive the attorney-client privilege
20 and any other privileges that might apply or might be
21 at issue. You weren't involved in the case at that
22 point in time, but, you know, my memory is Judge
23 Mullin ordered Ms. Barringer to produce these
24 documents -- her documents solely because y'all were
25 taking the position that there was some evidence of a

1 contractual agreement in them, which it's our opinion
2 that there is no such evidence and I do not think you
3 can -- we're not waiving any privilege and I'm not
4 agreeing that you can ask any question that you want
5 to.

6 I do think that if you want to ask a
7 general question about the level of Ms. Barringer's
8 involvement in the estate planning process or whether
9 or she not she was involved in general, did she ask
10 questions, did she participate, I think you can ask
11 that without going into the specifics. And I also,
12 obviously, think you can ask him any question about
13 your client's allegations which she made upon
14 information and belief asserting that evidence of
15 some contract could be discerned from a review of
16 Ms. Barringer's documents.

17 So I think you can go into those two
18 issues and nothing else, and I'll take your questions
19 question by question. And, obviously, if you
20 disagree with me, we can, you know, raise it with the
21 court. If you've got a better way to proceed, just
22 let me know.

23 BY MR. TRAXLER:

24 Q. All right. Mr. Jolley, did -- when you
25 were working with Paul Barringer on his estate plan

1 in late 2011, early 2012, I presume as his estate
2 planning lawyer you had to glean from him what his
3 testamentary intent with his documents was, correct?

4 MS. KIRK: I object to the form, but
5 you can answer.

6 THE WITNESS: Yes.

7 BY MR. TRAXLER:

8 Q. And I assume you had to do the same thing
9 with Ms. Barringer and her testamentary intent,
10 correct?

11 MR. TWOMBLEY: Just answer yes or no
12 in general.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. Did you discern any difference whatsoever
16 in the testamentary intent of Mr. Barringer and Ms.
17 Barringer?

18 MR. TWOMBLEY: I'm sorry. Can you
19 repeat the question, Tom?

20 MR. TRAXLER: Can he discern any
21 difference in the testamentary intent of Paul
22 Barringer and Merrill Barringer?

23 BY MR. TRAXLER:

24 Q. You can answer the question.

25 MR. TWOMBLEY: Well, I'd ask that you

1 hold on a minute and let me think about that question
2 and see whether or not I want to instruct you not to
3 answer. I am going to instruct you not to answer
4 that question. However, if any portion of your
5 answer would reveal, mention, or discuss, have
6 anything to do with or otherwise address any
7 contractual agreement between Mr. and Ms. Barringer
8 or promise they made not to revoke their estate plan,
9 you're free to answer. Otherwise, I'm going to
10 instruct you not to answer.

11 BY MR. TRAXLER:

12 Q. Okay. You heard Mr. Twombly. What's
13 your answer?

14 A. I'm sorry. I understood the instruction
15 to not answer unless I had some evidence of this
16 contract or agreement.

17 Q. Okay. And you are going to follow
18 Mr. Twombly's instructions; is that correct?

19 A. I am.

20 MR. TRAXLER: Okay. Mr. Twombly,
21 your objection is based on a privilege; is that
22 correct?

23 MR. TWOMBLY: It's based on
24 privilege. It's based on the confidentiality and
25 protections of -- that Ms. Barringer has in the

1 estate planning process. It's based on the fact that
2 your client has asserted as the reason she's entitled
3 to Ms. Barringer's estate planning documents is that
4 there be evidence of a contract in them, which
5 there's not. And, you know, it's my opinion that you
6 just can't make that type of claim and then run
7 rampant through all of her documents, everything she
8 told her lawyer, everything she said to her husband,
9 you know, simply because your client has got this
10 claim that she can't support with any evidence. And
11 I know you disagree with me, but, you know, we'll
12 have to just take that up in front of the judge. And
13 if he disagrees with my position, then he'll let us
14 know and you can get the questions answered.

15 But I want to make clear -- crystal
16 clear that if Mr. Jolley has any information
17 whatsoever regarding any type of promise or agreement
18 that Ms. Barringer would never change her estate
19 plan, would always treat the kids equally no matter
20 what, he is free to talk -- you can ask him any
21 questions about that that you want, but I don't think
22 you're entitled to go further, respectfully.

23 MR. TRAXLER: I'll let that answer
24 stand for whatever it stands for. We need to see
25 about doing supper -- take a supper break.

1 MS. PAYLOR: Well, let's ask Ariail
2 and the witness what they want to do. It's kind of
3 their -- their call whether they want to keep going
4 tonight.

5 MS. KIRK: How much longer do you
6 have?

7 MR. TRAXLER: Probably need to talk
8 to the court reporter too. We've got a long way to
9 go.

10 MS. KIRK: What does that mean?

11 MR. TRAXLER: I don't know, to be
12 honest with you. I'm not fussing at you, but I think
13 y'all spent more time talking to the witness this
14 afternoon than I have. I know y'all are going to
15 push that back on me. But we've been at it five and
16 a half hours, and I bet if I add up the time I
17 actually got to ask questions, I'm not sure I even
18 get to the amount of time y'all spent this morning.

19 MR. TWOMBLEY: Well, I think the
20 question is how much longer do you think you have?

21 MR. TRAXLER: I don't think we finish
22 today. I just don't see that happening at all. But
23 I'm not going to sit there and say, okay, I've got
24 six hours, and then all of a sudden y'all try to hold
25 me to it. I can tell y'all we don't have enough time

1 tonight to do it. I am willing to come back
2 tomorrow. I can come back Friday. However you want
3 to do it, but we're -- it's not going to finish
4 tonight.

5 I suspect if we -- when we go, I
6 suspect it's another -- it has potential for being
7 another day. But, again, it depends on how much time
8 y'all spend talking to the witness.

9 MS. KIRK: I mean, why in the world
10 would you need two days with a non-party?

11 MR. TRAXLER: Quite frankly, like I
12 said, I don't think -- I may be wrong. I don't think
13 I've spent more time asking questions than y'all did
14 today. Y'all are taking up all the time.

15 MR. TWOMBLEY: Well, I disagree with
16 that.

17 MS. KIRK: Yeah. I would strongly
18 disagree with that to the extent that, you know,
19 there's a lot of fishing going around the privilege
20 issue.

21 MR. TRAXLER: We don't -- we don't
22 need to get into a gaddyack (phonetic) contest on
23 this thing. The long point -- the long and short of
24 it is I have a bunch of hours to go. I suspect
25 another day gets it done or maybe short of a day. I

1 don't think it takes more than a day, but it might.
2 But if I sit here and say, okay, I'm going to get it
3 done in so many hours --

4 MS. KIRK: So you're contemplating a
5 non-party deposition taking potentially three days?

6 MR. TRAXLER: I'm not sure where we
7 get three days.

8 MS. KIRK: Well, you said I might be
9 finished in another day. I might not. So today plus
10 two.

11 MR. TRAXLER: I said may. I mean,
12 it's an important witness. We've got a bunch of
13 documents.

14 MR. GILREATH: He's just the lawyer
15 that did the estate plan.

16 MR. TRAXLER: We've got a lot of
17 stuff to talk about. A lot of documents to go over.

18 MS. KIRK: Well, why don't you start
19 talking and I'll think about what we want to do.

20 MR. TRAXLER: Well, we're going to
21 get supper first.

22 MS. KIRK: How long do you want to
23 break for for that?

24 MR. TRAXLER: Forty-five minutes like
25 we did the lunch break. See if we can get stuff

1 brought in.

2 MR. GILREATH: We can probably get
3 something brought here. Yeah. An hour at the most,
4 we can get what we got -- get delivered needed, gear
5 up, and be ready to go in the wee hours of the night
6 until everybody wants to stop or until we agree what
7 our next stop break is going to be.

8 MS. PAYLOR: Why don't we look at
9 when we can reconvene if we stop.

10 MR. TRAXLER: Alice, I think -- I
11 think reconvening allows -- I think it has much,
12 much, much more likely chance of paring the hours of
13 the deposition down. It's not going to increase it.

14 MS. KIRK: When are you -- when did
15 you -- when would you potentially want to do that,
16 Tom?

17 MR. TRAXLER: I don't know about my
18 side. I'm available Friday.

19 MS. KIRK: Do you want us to stay on
20 the record or do you want to discuss this off the
21 record?

22 MR. TWOMBLEY: I think -- I think we
23 need something --

24 MR. TRAXLER: We could be available
25 Friday.

1 MR. TWOMBLEY: I think it would be
2 helpful to have some indication of how much longer
3 you need to go. I know nobody is going to hold you
4 to it. It's not written in stone. But, I mean,
5 we've got about ten lawyers on this call. We've got
6 a non-party who's got a lawyer. I mean, it just
7 seems as a matter of courtesy, it would be helpful to
8 know if you think you got another two hours, ten
9 hours, what? I mean, I know...

10 MR. GILREATH: We'll let you know
11 when it's over.

12 MR. TWOMBLEY: Well, you know, Jim,
13 if that's the position you want to take, I think you
14 ought to go tell it to Judge Price, is what my
15 opinion is. But it's not my witness, so -- I tell
16 you, this nonsense of you just saying you'll tell us
17 when it's over and then laughing about it.

18 MR. GILREATH: Forget that. My best
19 guesstimate is --

20 MR. TWOMBLEY: It's totally,
21 completely unprofessional, and I think --

22 MS. PAYLOR: Okay. Ashley, he's
23 given us his estimate.

24 MR. TRAXLER: I would be surprised if
25 it didn't finish in another day. I really would. It

1 might very well be done in three-quarters of a day.

2 I don't see it being done in a half a day.

3 MS. PAYLOR: Well, I have a conflict
4 Friday afternoon.

5 MR. MOLSTER: Yeah. I've got a court
6 hearing on Friday in the EBDA. Mr. Gilreath's
7 favorite court. It won't take long, but -- it's
8 Zoom, so I don't have to go there. Well, actually,
9 it may -- I'm not sure if it's Zoom or not, actually.
10 Right now it's still scheduled for in-person.

11 MR. TWOMBLEY: Why don't we just --
12 let's just take a five-minute break so we can talk to
13 Ariail and come up with some type of plan off the
14 record.

15 THE VIDEOGRAPHER: We're going off
16 record. The time is 6:41 p.m.

17 (Off the record.)

18 THE VIDEOGRAPHER: We are back on
19 record. The time is 6:53 p.m.

20 MS. KIRK: Y'all, I talked -- or we
21 checked on April 21st. We're agreeable to, you know,
22 postponing until then to do, you know, a half a day.
23 But we -- I think it's ridiculous with him being a
24 non-party and the testimony that you can elicit being
25 limited to what's available under the testamentary

1 exception going any longer than that. And so I just
2 want you to know I'll be inclined to stop and get a
3 protective order at that point.

4 MR. TRAXLER: Why don't we start it
5 at 8:00 in the morning?

6 MR. GILREATH: Yeah. That's what I
7 say. Let's just reconvene.

8 MR. TRAXLER: Let's just do it
9 tomorrow and we finish when we finish.

10 MR. GILREATH: 8:00 in the morning,
11 9:00. Whatever suits y'all. We ain't putting up
12 with that.

13 MS. KIRK: You ain't putting up with
14 what?

15 MR. TRAXLER: Be quiet, Gilreath.
16 We'll be back here tomorrow morning. What time do
17 you want to start?

18 MS. KIRK: I thought you wanted us to
19 check on the 21st?

20 MR. TRAXLER: We were, but we were
21 just told we get half a day and we might as well just
22 follow the deposition notice and go day-to-day.

23 MR. GILREATH: Y'all noticed it
24 convening from day-to-day. That's what we'll go by.

25 MR. TWOMBLEY: When you say "y'all

1 noticed it," I mean --

2 MR. TRAXLER: What time y'all want to
3 start in the morning?

4 MR. TWOMBLEY: -- you're not
5 referring to Ariail Kirk and her client, are you? I
6 mean, you come on now.

7 MR. TRAXLER: I going to supper or
8 home. You coming back tomorrow?

9 MR. GILREATH: That's what the notice
10 said.

11 MR. TWOMBLEY: Well, just -- just for
12 the record, I think I noticed the deposition. I
13 don't know that that -- because of what's in a notice
14 that that's binding on anybody. I think that's kind
15 of standard language that everybody puts in the
16 notice. I could be wrong about that.

17 MR. GILREATH: It's your language.

18 MR. TRAXLER: Shut up.

19 MR. TWOMBLEY: What did you say, Jim?

20 MR. TRAXLER: Nothing. He didn't say
21 anything. I mean, we got that choice. If Ariail's
22 position is --

23 MS. KIRK: Well, I mean, my position
24 about how long, I think you are, you know, getting to
25 the point of abusing the process isn't going to

1 change whether or not that's March 15th, 16th, 17th,
2 or April 21st.

3 MR. TRAXLER: Well, as I understand
4 it, you -- if we postpone it and resume, you are
5 going to shut it down after half a day; is that
6 correct?

7 MR. TWOMBLEY: I think what she's
8 saying is she's going to shut you down after half a
9 day no matter when you resume.

10 MR. TRAXLER: All right. Well, we're
11 prepared to come back tomorrow and keep going. What
12 time we all want to get back tomorrow? 9:00?

13 MS. KIRK: We're not available to
14 come back tomorrow.

15 MR. TRAXLER: Who is not?

16 MS. KIRK: I'm not.

17 MR. GILREATH: Who is that?

18 MS. KIRK: This is Ariail Kirk.

19 MR. TRAXLER: Well, let's go to
20 supper and come back and we'll keep going. It's
21 going to be tomorrow before we finish anyway. How
22 long y'all want for supper? It's 7:00. What y'all
23 want to do about -- how long you need?

24 MR. MACLOSKIE: I don't need more
25 than ten minutes.

1 MR. TRAXLER: Everybody's getting
2 pissy and sour. We need to get our blood sugar up.

3 MR. FUHR: I've got a plan, guys.
4 This witness -- this is Ed. This witness has been in
5 the saddle now for 11 hours, and I know there's also
6 the breaks and all of that. Now you're going to take
7 a meal break or whatever. So, you know, by the time
8 we get everybody resaddled up, that's going to be
9 8:00 p.m. Say you go to midnight, I mean...

10 MS. KIRK: And, Tom, I'm not trying
11 to be sour, this is Ariail, about tomorrow. I've
12 got a --

13 MR. FUHR: I think to sit in there
14 and take questions from 10:00 a.m. to midnight
15 strikes me as cruel and unusual.

16 MR. TRAXLER: I don't disagree.

17 MR. TWOMBLEY: And I would --

18 MR. TRAXLER: That's why we're ready
19 to come back another day, but --

20 MR. FUHR: Yeah. I agree with you.

21 MR. TWOMBLEY: Well, Tom, I would --
22 Tom, I would suggest --

23 MS. PAYLOR: Well, let's move to for
24 the 21st, April 21st, and see what happens.

25 MR. TWOMBLEY: I mean, there's two

1 issues here. You know, number one, when is a
2 convenient time to reconvene? And hopefully we could
3 all agree on that so nobody has got to file for a
4 protective order tomorrow morning. So if we can
5 agree on a day to reconvene, let's try to do that.

6 The second issue is how much more
7 time everybody gets, and I think that's an
8 independent issue, is it not, than when we reconvene.
9 And I don't think the answer to the second question
10 is impacted by whether we take a 45-minute lunch
11 break tonight and start again or if we start again
12 tomorrow morning.

13 And so, I mean, if what -- it sounds
14 like what y'all are saying is that if we don't agree
15 that y'all get more time, then I guess that Ariail
16 has said she's going to give you, that you're going
17 to then to decline to consider anybody else's
18 schedule and assist on going forward at a time that
19 pleases you without considering anyone else's
20 schedule. I don't think that's proper and we ought
21 to do it -- and if there's a disagreement about how
22 much time you get, then Ariail can file a motion and
23 y'all can file a response and the judge can decide
24 whether or not you get more time. It can all be done
25 in a organized and orderly fashion without, you know,

1 refusing to consider everybody else's schedule.

2 That's just my opinion.

3 MR. MEDLIN: Ariail, you can
4 represent your client however you want. We're not
5 trying to interfere with that. But just for your
6 information, we had two meet and confers on John's
7 deposition. One in December, one a couple of weeks
8 ago. And one of the issues we raised a couple of
9 weeks ago is to make sure that plaintiff got ten and
10 a half hours with the witness because we thought that
11 had been a convention with important witnesses. And
12 we understood and we were told that no, there was no
13 set limit agreed upon for every other deposition.
14 That we get the time we needed to get.

15 So I would ask you, as you think
16 about trying to limit the time with John, he is a
17 critical witness and there is a lot to ask him about.
18 And it would, I think, be nice if everybody could
19 agree that we give this another shot at a time
20 convenient for everybody and see if we can get
21 through with John in the time Tom thinks we can.

22 MS. KIRK: Well, sure, Alan. And
23 it's interesting, you know, that you say that because
24 I think that's pretty much exactly what I proposed.
25 So I'm not really sure where the disconnect here is.

1 MR. MEDLIN: We heard a half a day
2 from you.

3 MS. KIRK: Well, you've already had
4 half a day.

5 MR. MEDLIN: We heard that we get
6 another half a day and that's it.

7 MS. KIRK: I think that would come
8 to --

9 MR. MOLSTER: Let's just be -- sorry
10 to interrupt, but let's be clear that we're going to
11 have some redirect.

12 MR. GILREATH: You talked about half
13 a day. You've got to include in that redirect.

14 MR. TWOMBLEY: And -- and, Alan, I
15 agree we did have some meet and confers, and I agree
16 you did express your opinion that there was, you
17 know, an unwritten agreement about the length of
18 depositions, but --

19 MS. KIRK: And I certainly wasn't a
20 party to any agreement about that.

21 MR. TWOMBLEY: In all -- in all
22 fairness, we did, you know, tell you that we
23 disagreed with you on that, number one. And we also,
24 you know, stated candidly that we didn't represent
25 Mr. Jolley. He had his own attorney and that we

1 couldn't enter into any type of agreement on how much
2 time he would sit for a deposition. And so, you
3 know, I don't know what happened after that with
4 respect to how much time y'all wanted or if there was
5 any discussion with you, Ariail. But I just wanted
6 you to know that we --

7 MS. KIRK: No. I'm not privy to any
8 agreement about time.

9 MR. TWOMBLEY: Yeah.

10 MS. PAYLOR: We don't have an
11 agreement.

12 MS. KIRK: Or a party to one.

13 MR. TWOMBLEY: Yeah.

14 MR. MEDLIN: Yeah. I told you,
15 Ariail, you represent your client however you want.
16 I was just giving you some information on our
17 discussion, and my understanding was that there was
18 no agreement about a ten and a half hour limit
19 because I think that the defendants are looking
20 forward to deposing Kevin for quite a while. And so
21 we were told the depositions take as long --

22 MS. PAYLOR: He's as good as a party.

23 MR. MEDLIN: I understand. But we
24 were talking about John's deposition and, Alice, I
25 believe you said depositions take as long as they

1 need. That's what I heard.

2 MS. PAYLOR: Well, I don't remember
3 that.

4 MR. MEDLIN: You're not -- you're not
5 bound to that. Again, I understand that, but I'm
6 just letting you know what all the parties were
7 talking about outside of your presence.

8 MR. TWOMBLEY: Well, I would propose
9 that if the 21st works for the deponent and his
10 counsel, we come back on the 21st. You see how much
11 you can get through. If there's a disagreement, you
12 know, you need more time, we'll take that up at that
13 time and we'll -- we'll go from there. I mean,
14 again, that's just an option. If anybody's got a
15 better idea other than unilaterally agreeing to each
16 other's position, I'm happy to hear it.

17 MS. PAYLOR: Well, let's reconvene
18 and see if we can finish it in whatever time you give
19 us.

20 MR. TRAXLER: That's probably the
21 better thing to do. Reconvene and whatever time we
22 get, whoever gets shorted, go back to the judge?

23 MR. TWOMBLEY: Yeah.

24 MS. PAYLOR: Yeah.

25 MR. TWOMBLEY: That's what I think.

1 So are we talking about the 13th or the 21st?

2 MS. KIRK: I thought the 21st was the
3 one we checked on.

4 MR. TWOMBLEY: Okay. 21st.

5 MS. KIRK: Do you want me to go check
6 on the 13th?

7 MR. TWOMBLEY: No. I mean, the 21st
8 is fine with me.

9 MS. KIRK: Do you want to go check
10 your calendar?

11 THE WITNESS: For the 13th of April?

12 MS. KIRK: Uh-huh. Do y'all want to
13 go off record while he's checking his calendar?

14 MR. TWOMBLEY: Yeah. That's fine.

15 MS. KIRK: Or do y'all want to stay
16 on the record?

17 MR. FUHR: (Inaudible.)

18 MS. KIRK: I didn't understand any of
19 that.

20 MS. PAYLOR: Well, are we agreeing
21 that we're quitting now, then we can go off the
22 record and just figure out when we're reconvening.

23 MS. KIRK: Well, I'm confused. Do
24 you want me to go check on the -- I thought we were
25 checking on the -- I thought y'all asked for him to

1 check on the 13th?

2 MS. PAYLOR: I think we're all fine
3 with the 21st if he can do that.

4 MR. FUHR: Yeah, the 21st.

5 MS. PAYLOR: I think you said he
6 could do the 21st, right? Why don't we just plan on
7 that. What time do y'all want to start?

8 MR. TRAXLER: 8:00. Is that too
9 early? Alice, you awake by then?

10 MS. PAYLOR: I get up at 5:20. So
11 I'm okay. So you want to do 8:00 on the 21st?

12 MR. MOLSTER: I have a board meeting
13 at 8:00. Can we do it at 9:00?

14 MS. PAYLOR: 9:00? Going once, going
15 twice.

16 MR. MOLSTER: Verify with John --
17 John Jolley.

18 MS. KIRK: He stepped out of the room
19 because he didn't have a calendar in here.

20 MR. MOLSTER: I can make sure
21 Schronce is aware.

22 MR. SCHRONCE: Schronce has a baby --
23 had the baby and put the baby back down by that
24 point.

25 MR. GILREATH: Are we talking about

1 Wednesday, the 21st now?

2 MR. TRAXLER: Yeah.

3 THE WITNESS: Are you asking about
4 the 21st? April the 21st?

5 MS. KIRK: Yeah.

6 THE WITNESS: This 21st is fine with
7 my schedule. April the 21st is fine with my
8 schedule.

9 MS. KIRK: Okay. So -- so...

10 MR. TWOMBLEY: I hereby declare an
11 agreement that we reconvene on April the 21st at
12 9:00.

13 MS. KIRK: And we don't need to
14 file -- I want to be sure we're clear on any motions
15 for protective order with instructions, you know,
16 since we're not ending the deposition. Our time to
17 file that will not be running?

18 MR. TWOMBLEY: Good point. Tom?

19 MR. TRAXLER: You're talking about on
20 the privilege issue?

21 MS. KIRK: Or anything. I don't know
22 what else there is, though.

23 MR. TWOMBLEY: Do you want us to go
24 ahead and file it now or wait?

25 MR. TRAXLER: No. That's okay.

1 We'll start in five days. Yeah.

2 MR. TWOMBLEY: Okay. All right.
3 Everybody have a good night.

4 MR. TRAXLER: We don't have -- we do
5 not have an agreement on how long it's going to be,
6 but we are going to get back together on the 21st at
7 8:00, right?

8 MR. TWOMBLEY: 9:00.

9 MR. TRAXLER: 9:00.

10 MR. TWOMBLEY: Yes. Thank y'all for
11 your help working this out. I think it's a
12 reasonable solution.

13 THE VIDEOGRAPHER: We are off the
14 record. The time is 7:07 p.m. This concludes day
15 one of the video recorded testimony of John Jolley
16 and will be retained by Veritext.

17 (DFT. EXHIBIT 1, Complaint, was
18 marked for identification.)

19 (The witness, after having been
20 advised of his right to read and sign this
21 transcript, does not waive that right.)

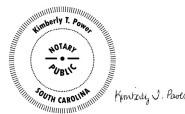
22 (The deposition recessed at 7:07 p.m.)
23
24
25

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto
affixed by official seal this 19th day of March,
2021, at Lexington, Lexington County, South Carolina.



Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

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1 Ariail Kirk c/o John Jolley

2 akirk@jolleylawgroup.com

3 5/10/2021

4 RE: Luzak, Hampton v. Light, Merrill B., Et Al.

5 3/16/2021, John Jolley , Esq. (#4502903)

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 cs-carolinas@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 B., Et Al.

John Jolley , Esq. (#4502903)

E R R A T A S H E E T

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John Jolley , Esq. Date

1 Luzak, Hampton v. Light, Merrill B., Et Al.

2 John Jolley , Esq. (#4502903)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, John Jolley , Esq., do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 John Jolley , Esq.

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

16
17
18 _____
19 NOTARY PUBLIC
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[& - 2011]

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[yeah - zoom]

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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.

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OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT ROA 006262

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

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Deposition of:
John Jolley , Esq.

April 21, 2021

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

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1 STATE OF SOUTH CAROLINA
2
3 COURT OF COMMON PLEAS
4
5 COUNTY OF BEAUFORT
6
7 IN THE MATTER OF: ESTATE OF
8 PAUL BRANDON BARRINGER, II
9
10 HAMPTON BARRINGER LUZAK,
11 Plaintiff,
12 vs. CASE NO. 2016-CP-07-1919
13 MERRILL B. LIGHT, MERRILL U.
14 BARRINGER, as Personal
15 Representative of the Estate
16 of PAUL BRANDON BARRINGER, II,
17 J. RANDOLPH LIGHT, JR., MERRILL
18 B. LIGHT as Putative Trustee of
19 PAUL BRANDON BARRINGER, II
20 Revocable Trust Dated December 4,
21 1998, and MERRILL B LIGHT, as
22 Trustee of the MERRILL BARRINGER
23 LIGHT Revocable Trust,
24 Defendants.
25 (Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE
(Continued)
DATE: April 21, 2021
TIME: 9:23 a.m.
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 9:23 a.m., April 21, 2021.
3 This is media unit one recorded deposition of
4 John Jolley taken by counsel for the defendant in the
5 matter of Hampton Luzak vs. Merrill B. Light, et al.,
6 filed in the Court of Common Pleas, Case No.
7 2016-CP-07-1919.

8 This deposition is being held at the
9 office of Jolley Law Firm, located at 810 Bellawood
10 Road, Columbia, South Carolina 29205. My name is
11 Kevin Ward from the firm Veritext. I'm the
12 videographer. The court reporter is Kimberly Power
13 from the firm Veritext.

14 Counsel will now state their
15 appearances and affiliations for the record.

16 MR. TRAXLER: This is Tom Traxler,
17 and I have with me Jim Gilreath and Bill Hogan and
18 Ellie Thomas. Mr. Gilreath, Mr. Hogan, and I
19 represent the plaintiff.

20 MR. MACLOSKIE: My name is Mike
21 MacLoskie. I'm in Beaufort, South Carolina, and I,
22 along with the previously announced lawyers,
23 represent the plaintiff.

24 MR. MEDLIN: My name is Alan Medlin.
25 I represent the plaintiff, and the plaintiff is also

1 on.

2 MS. PAYLOR: I'm Alice Paylor, and I
3 represent the defendant, Merrill Light, along with
4 Chip Molster and Bijan Ghom.

5 MR. TWOMBLEY: My name is Ashley
6 Twombley, and I represent Merrill Barringer along
7 with Lee Walters. And just so the record is clear,
8 this is a continuation of a deposition that was
9 previously held, and so this is the second day.

10 MS. KIRK: This is Ariail Kirk. I'm
11 here on behalf of the deponent, John Jolley.

12 MR. SCHRONCE: My name is John
13 Schronce. I'm with Hunton, Andrews & Kirth in
14 Richmond, and I also have with me my colleague,
15 Ed Fuhr. We're representing Coastal Forest Resources
16 Company.

17 THE VIDEOGRAPHER: Will the --

18 MR. TRAXLER: We ready to go?

19 THE VIDEOGRAPHER: Will the court
20 reporter please swear in the witness?

21 JOHN JOLLEY, ESQUIRE,
22 being duly sworn, testified as follows:

23 EXAMINATION

24 BY MR. TRAXLER:

25 Q. Okay. Mr. Jolley, thank you for coming

1 today. Let me reintroduce myself. I'm Tom Traxler,
2 and I'll be asking you questions today about -- about
3 this case.

4 MR. TRAXLER: First of all, let me
5 note for the record that we went on the record at
6 9:23. It was scheduled to start at 9:00. The delay
7 was technical issues. All of the lawyers and the
8 witness were here and ready to go at 9:00. So any
9 delay was the result of technical issues and those
10 have been resolved.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, again, if you have any
13 questions about what I'm asking you, I need you to
14 direct your questions to me. I'll be glad to repeat
15 or rephrase or whatever I need to do to help you
16 understand what I'm asking you. During your
17 deposition and any breaks, you're not allowed to talk
18 to anyone about the substance of your testimony. If
19 you have a question as to privilege, you can consult
20 the appropriate lawyers as to privilege. But other
21 than that, your questions are to be directed to me.
22 We in sync on that?

23 A. Yes, sir.

24 Q. Okay. Great. Thank you. Who's in the
25 room with you?

1 A. In the room with me is Mr. Twombley, the
2 videographer, Ariail Kirk, and the court reporter.

3 Q. And Mr. Twombley, who represents
4 Merrill Barringer, is there in the room with you; is
5 that correct?

6 A. That is correct.

7 Q. Okay. And since the last of your
8 deposition -- the first installment of your
9 deposition, have you done anything to prepare for
10 today?

11 A. I have not.

12 Q. Have you talked to anyone about your
13 deposition since we adjourned the last time?

14 A. I have not.

15 Q. Okay. And I'm including in that any
16 questions about procedure, how you're doing, as well
17 as the substance of your testimony.

18 A. The only conversation I've had about this
19 deposition is the date of its schedule, and I have
20 otherwise not communicated about this in any way.

21 Q. Okay. And if I ask you a broad question
22 such as have you discussed the facts of this case
23 with anybody, whether it be gone into it in this
24 deposition or not, your answer would be no; is that
25 correct?

1 A. That is correct.

2 Q. Okay. Thank you. Did you review any
3 additional documents for today?

4 A. I have not.

5 Q. All right. And did you review a
6 transcript or a summary of your deposition after your
7 first day?

8 A. I have not.

9 Q. Okay. So for all practical purposes, you
10 have -- you left the -- the last deposition and you
11 walked into this deposition today, about a month has
12 passed, and haven't done anything to prepare for
13 today's depo; is that correct?

14 A. That is correct.

15 Q. Great. Thank you. Okay. I'm not going
16 to replot what we went through on the first
17 installment. I might end up having to ask you a
18 couple of questions that you've already answered, but
19 simply to -- to set the stage. I want to go back and
20 talk about late 2011 and your meetings with Paul and
21 Merrill Barringer and/or also Robert Slane. And I
22 believe you did -- in December 2011, you had Paul and
23 Merrill Barringer execute a durable power of
24 attorney, health care power of attorney, and living
25 will; is that correct?

1 A. I believe --

2 MS. KIRK: Object to the form of the
3 question.

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Same objection.

6 MR. TRAXLER: Okay. Ms. Paylor, this
7 is Mr. Molster's witness, not yours. I can't have
8 y'all on a tag team. I'm sorry.

9 MR. MOLSTER: I don't think that's
10 right.

11 MR. TRAXLER: I think it is right.
12 You have been -- you were the one who was asserting
13 the privileges to the questions in the last
14 deposition. I can't have y'all on a tag team.

15 MR. MOLSTER: Well, for the record,
16 let's be clear, Tom, that your team, prior to your
17 involvement and since your involvement in this case,
18 have done that many times. So I don't think it's
19 really fair for you to now come in the case and try
20 to set a new rule that has -- when your team has
21 acted --

22 MR. TRAXLER: I believe it was
23 Mr. McBride's deposition where we were asking in the
24 beginning who was going to be handling the witness
25 for that very purpose. So I really need for one of

1 y'all to be the ones to handle the objections and
2 make comments.

3 MR. MOLSTER: Okay. I'd like to
4 finish, if I could, just to make my statement,
5 please.

6 MR. TRAXLER: Sure.

7 MR. MOLSTER: We've also had an
8 agreement, I think from pretty much the beginning
9 prior to your involvement in the case, that an
10 objection for one is an objection for all. That
11 doesn't always go that way. We try not to interfere
12 with your flow of the -- of the deposition, but -- so
13 I just want that on the record as well. So...

14 MR. TRAXLER: For the purposes of
15 this deposition, Chip, I don't have any problem with
16 an objection by one being an objection for all. I
17 can certainly respect that. But in terms of a tag
18 team of objections, I will double check with my side
19 during a break on this thing. But until then, I need
20 for one person to be handling the objections for
21 each -- for each party. Okay?

22 MR. TWOMBLEY: Just -- just for the
23 record, I also agree with Chip, you know. My --

24 MR. TRAXLER: Who's -- who's talking?

25 MR. TWOMBLEY: This is Ashley

1 Twombley.

2 MR. TRAXLER: Okay. I'm sorry.

3 MR. TWOMBLEY: You know, I -- my
4 memory is also, you know, prior to and since your
5 involvement there have been multiple attorneys for
6 the plaintiff who have objected, you know, during
7 depositions. And I also think it's not fair or
8 appropriate, you know, to set a new rule for that
9 procedure now. I know that was prior to you being
10 involved in the case, Tom. Of course, I welcome your
11 co-counsel to tell Chip and I that we're wrong and
12 our memory is incorrect, but that is my memory of how
13 things have worked in the past.

14 MR. TRAXLER: That's fine. Let's do
15 this: How about just one of y'all do the objections
16 right now. During the next -- first break, I will
17 consult with me co-counsel. And if I'm violating
18 some agreement y'all had, I'll back up and do it
19 right.

20 MR. MOLSTER: Alice, why don't you go
21 ahead and take the objections for us until we get to
22 a break. Tom, if I think there's a privilege
23 objection that needs to be made and Alice doesn't --
24 for some reason doesn't catch it, I'm probably going
25 to state it. And I apologize in advance for that,

1 but privilege, as you know, is pretty important.

2 MR. TRAXLER: That fine. I don't
3 want to be difficult about it, Chip. If you need to
4 chime in on something like that, that's fine. I just
5 don't want to be running a tag team of objections
6 going on.

7 MR. MOLSTER: I completely
8 understand, and I think that's fair. Thank you.

9 MR. TRAXLER: Okay. We'll revisit
10 this issue after the break.

11 BY MR. TRAXLER:

12 Q. All right. Mr. Jolley, as I understood
13 correctly, you did a power of attorney -- durable
14 power of attorney, health care power of attorney, and
15 living will for Paul Barringer in December of 2011;
16 is that correct?

17 A. That's my recollection.

18 Q. And did you also do similar documents for
19 Merrill Barringer at the same time?

20 A. That's my recollection. Yes.

21 Q. All right. Do you recall what prompted,
22 if you ever knew, Paul Barringer to come in to see
23 you for those instruments?

24 A. So, Mr. Traxler, when you refer to those
25 instruments, are you referring to the durable power

1 of attorney, the health care power of attorney, those
2 lifetime documents?

3 Q. Yes, sir.

4 A. That -- I mean, Mr. and Ms. Barringer
5 certainly contacted me in the fall about updating the
6 estate plan, but specifically what prompted them to
7 decide to do the update, I'm not aware.

8 Q. Did you have any conversations with
9 anybody other than Paul or Merrill Barringer about
10 doing their life care plans as you refer to those
11 documents?

12 MS. KIRK: Object to the form.

13 THE WITNESS: I -- my -- did I
14 communicate -- I'm sorry. Mr. Traxler, can you
15 repeat that question?

16 BY MR. TRAXLER:

17 Q. Yes, sir. Other than conversations with
18 Paul and Merrill Barringer, did you have
19 conversations with anyone else about doing life care
20 plans for Paul and Merrill Barringer?

21 MS. KIRK: Object to the form.

22 THE WITNESS: I don't believe so.

23 MR. TRAXLER: Can we have Zoom set up
24 where it highlights who is speaking? Because I can't
25 tell who is making the objections and who's speaking.

1 Who were those objections from?

2 MS. KIRK: This is Ariail Kirk. They
3 were from me.

4 MR. TRAXLER: Okay. You're not
5 lighting up. Sorry. I'm just trying to figure out
6 who is who. Bear with me. Okay.

7 BY MR. TRAXLER:

8 Q. I'm sorry. What was the answer to your
9 last question about conversations with other people,
10 Mr. Jolley?

11 A. I said I don't believe so. I don't recall
12 any other question -- any other conversations about
13 that.

14 Q. Okay. Prior to meeting with them leading
15 up to those life care instruments, were you ever made
16 aware of any questions about Paul Barringer's mental
17 capacity or physical health?

18 A. If you -- during the period of our doing
19 the planning in the fall of that year, I was not
20 aware of any -- any issues with respect to
21 Mr. Barringer's incapacity or capacity.

22 Q. Okay. And I believe you testified before,
23 if I'm not mistaken, correct me if I'm wrong, that
24 you were not aware or did not have any concerns of
25 your own in that time frame; is that correct?

1 MR. TWOMBLEY: Object to the form.

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: Ashley Twombley.

4 MS. KIRK: Ariaail Kirk.

5 BY MR. TRAXLER:

6 Q. All right. Mr. Jolley, how about if you
7 would take the notebook of exhibits. I think you
8 have that in front of you.

9 A. Yes, sir.

10 Q. How about flip over in tab one, page 5 for
11 me. This is an e-mail -- some e-mails between Robert
12 Slane and Merrill Light or maybe Randy Light. I'm
13 not sure which. Are you with me?

14 A. This is -- I'm sorry. Behind tab --
15 tab -- this is the document that says J. Jolley Dep
16 0005.

17 Q. Yes, sir.

18 A. I see an e-mail from Robert Slane.

19 Q. All right. Do you recall seeing this
20 e-mail before?

21 A. I recall seeing this e-mail in preparing
22 for this deposition.

23 Q. Do you recall having received the e-mail
24 before preparation of the deposition?

25 A. I don't remember. No. I do not recall

1 that.

2 Q. All right. Do you know whether the e-mail
3 address with the domain aol.com belongs to Randy
4 Light or Merrill Light?

5 A. I'm sorry, Mr. Traxler. Can you ask that
6 question again?

7 Q. Sure. You see that the -- about halfway
8 down where it says original message from Robert Slane
9 to Merrill L-I-G. Do you see that?

10 A. I do see that.

11 Q. Do you know if that is the e-mail address
12 for Merrill Light or Randy Light?

13 A. I don't. I mean, it appears to be Merrill
14 Light's e-mail address, but I'm not certain whether
15 or not to what extent that is only Merrill's or if
16 Randy and Merrill use that e-mail together.

17 Q. All right. Right above it you see an
18 e-mail from Merrill sent November 11, 2011 at 8:48
19 a.m. to Robert Slane, correct?

20 A. I do see in the middle of this page it
21 looks like an e-mail from Merrill to Robert Slane,
22 yeah, dated November 11 at 8:48 a.m.

23 Q. All right. And it appears that Merrill
24 Light is writing to Robert Slane on November 11,
25 2011. It says, "If you would, please, how did your

1 meeting go yesterday with Mr. and Ms. B?" Do you see
2 that?

3 A. I do see that.

4 Q. All right. And right above it, Robert
5 Slane replies to Merrill at 8:51 a.m. on the same
6 date. "It went excellent. We got a lot done.
7 Little Merrill is going to be named successor party
8 with decision-making authority for, one, health care
9 power of attorney, two, financial power of attorney,
10 three, executor, four, trustee. John Jolley was
11 great. He managed to get from Paul different boxes
12 of records to start to go through and discard
13 unneeded or duplicate records." Do you see that?

14 A. I do see this.

15 Q. Did I read it correctly?

16 A. It appears like you've read it -- you read
17 it correctly.

18 Q. Okay. The second line of the e-mail is,
19 "Removal of corporate trustee." Do you see that?

20 A. I do.

21 Q. Do you remember conversations with Merrill
22 or Randy or with Robert Slane about removal of the
23 corporate trustee?

24 A. Do I remember? I -- I don't know that I
25 remember what this reference is to. I remember

1 having conversations about removing corporate
2 trustees, but I don't know what this subject is.

3 Q. Was this removal of corporate trustees
4 from Paul Barringer's irrevocable trust?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 MS. KIRK: Object to the --

8 MS. PAYLOR: Object to the form.

9 MS. KIRK: And Ariail Kirk also
10 objecting to the form of the question.

11 BY MR. TRAXLER:

12 Q. Go ahead. You can answer it.

13 A. Yeah. I'm not sure at this point that
14 that's -- that this -- that's what this reference is.

15 Q. What else could it reference?

16 MS. KIRK: Object to the form of the
17 question.

18 MR. TWOMBLEY: Same.

19 THE WITNESS: Mr. Traxler, I'm not
20 sure what else it could refer to. I'm not sure if
21 Mr. Barringer had named a corporate trustee or there
22 was a corporate trustee involved in some other way.

23 BY MR. TRAXLER:

24 Q. Was there ever -- were you ever involved
25 in discussions about removal of a corporate trustee

1 of a trust of Paul Barringer?

2 A. I believe so.

3 Q. And which trust was that?

4 A. There -- I believe it was the Paul B.
5 Barringer, II family trust.

6 Q. All right. Who was that corporate trustee
7 prior to any discussion of removal? Was it BB&T?

8 A. That -- it's hard for me to track with the
9 changes in banks and successor banks in the last 10
10 or 15 years who it was. I do remember dealing with
11 the bank that I believe was BB&T.

12 Q. All right. And was BB&T ultimately
13 removed as trustee of that trust?

14 A. I believe that we helped arrange for BB&T
15 to be replaced as trustee.

16 Q. And who was the replacement trustee?

17 A. I don't remember.

18 Q. Was Merrill Light a beneficiary of that
19 trust -- a beneficiary at the time?

20 A. My recollection is that each of the
21 children of Paul Barringer had a separate trust for
22 their benefit, and so Merrill Barringer -- Merrill
23 Barringer Light would have been a beneficiary of one
24 of those trusts.

25 Q. And how about her children -- Merrill

1 Light's children?

2 A. I believe -- my recollection is those
3 trusts are for -- are for -- have been -- were
4 created for the benefit of Paul and Ms. -- and
5 Merrill Barringer's children and grandchildren. So
6 Merrill Light's children would have at least been
7 remainder beneficiaries of those trusts.

8 Q. In 2011, did you have a conversation with
9 Randy Light or Merrill Light about making Merrill
10 Light a co-trustee of that trust?

11 MR. TWOMBLEY: Object to the form of
12 the question. Ashley Twombley.

13 MS. KIRK: Ariail Kirk. Same
14 objection.

15 THE WITNESS: I don't remember.

16 BY MR. TRAXLER:

17 Q. Well, this e-mail is talking about removal
18 of the corporate trustee, and I believe we've talked
19 what that was about. It looks like that you were
20 great, according to the e-mail. Tell me how you were
21 great in regard to the removal of the corporate
22 trustee.

23 MR. TWOMBLEY: Object to the form --

24 MS. PAYLOR: Object to the form.

25 MR. TWOMBLEY: -- of the question.

1 Mistakes his testimony.

2 MS. KIRK: Object to the form of the
3 question. This is Ariail Kirk. Misstates his
4 testimony and the document.

5 BY MR. TRAXLER:

6 Q. Okay. Go ahead, Mr. Jolley. What did you
7 do? What did you do?

8 A. I -- I believe this e-mail refers to our
9 going -- the process of our going through an estate
10 planning update with Mr. and Ms. Barringer.

11 Q. Were you aware that Randy Light and
12 Merrill Light in earlier 2011 were working to remove
13 from the trustee from Paul Barringer's trust to make
14 Merrill a co-trustee?

15 MR. TWOMBLEY: Object to the --

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: -- form of the
18 question.

19 MS. KIRK: Ariail Kirk. Same
20 objection.

21 MR. TWOMBLEY: Ashley Twombley.

22 BY MR. TRAXLER:

23 Q. That was a bad question, Mr. Jolley. I'll
24 withdraw that one. I misstated it.

25 Are you aware in earlier 2011 that Randy

1 Light and Merrill Light were working to remove
2 corporate trustee and to make an individual trustee
3 at the law firm a trustee of that trust?

4 MR. TWOMBLEY: Same objection.

5 MS. PAYLOR: Object to the form.

6 MS. KIRK: Same objection. Ariail
7 Kirk.

8 THE WITNESS: Mr. Traxler, I don't
9 remember that.

10 BY MR. TRAXLER:

11 Q. Are you aware of an e-mail or are have you
12 seen an e-mail from Randy Light to Kevin Luzak that
13 BB&T was too difficult in distributing his trust
14 money and that he and Merrill Light were working on
15 moving Paul Barringer's irrevocable trust from
16 Merrill Light to an individual co-trustee at your law
17 firm?

18 MS. KIRK: Object to the form.

19 BY MR. TRAXLER:

20 Q. Are you aware of that e-mail?

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: Same objection.

23 THE WITNESS: Mr. Traxler, I don't
24 remember that e-mail. I don't remember seeing that
25 e-mail.

1 BY MR. TRAXLER:

2 Q. Did anybody at your law firm ever become a
3 trustee for any trust that Paul Barringer set up
4 either primary or successor or co-trustee?

5 A. I believe so.

6 Q. Which ones?

7 A. So, I'm sorry, Mr. Traxler. Which ones?
8 Are you asking about which lawyer or are you talking
9 about which trust?

10 Q. Both.

11 A. William Rose, Rip Rose, was named as
12 trustee of -- I believe Mr. Rose was named as a
13 trustee or a successor trustee of a trust created by
14 Mr. Barringer.

15 Q. What else?

16 A. I'm sorry, Mr. Traxler.

17 Q. What else? What other trust and what
18 other lawyers in your firm?

19 A. Mr. Traxler, are you saying that since
20 2012? What time period are you talking about?

21 Q. 2011/2012 to right now.

22 A. I'm not sure about the timing, but my --
23 but my recollection is Mr. Rose was named a successor
24 trustee.

25 Q. Of which trust?

1 A. I believe the Paul B. Barringer, II family
2 trust, although I'm not certain without a reference
3 to those records.

4 Q. All right. Let me go back to this e-mail
5 of Slane's that said Jolley page 5. I don't see Paul
6 Barringer copied on this. Do you know why he wasn't?
7 I mean, if you don't, that's fine.

8 MS. PAYLOR: Object to the form.

9 MS. KIRK: Object to the form.

10 Ariail Kirk.

11 THE WITNESS: I don't know why he
12 wasn't.

13 BY MR. TRAXLER:

14 Q. Well, what was Merrill Light's involvement
15 in her father's health care power of attorney,
16 financial power of attorney, being executor, being
17 trustee beyond being named in those? What was her
18 involvement --

19 MS. PAYLOR: Object to the form.

20 BY MR. TRAXLER:

21 Q. -- in relation of these documents?

22 MS. KIRK: Ariail Kirk. Same
23 objection.

24 THE WITNESS: I don't believe that
25 Merrill Light was involved in the preparation of the

1 documents.

2 BY MR. TRAXLER:

3 Q. Well, how about in terms of the general
4 estate planning that led to those documents? I mean,
5 we have an e-mail from Slane to her talking about
6 things went great. Here's what you're going to be.

7 A. Mr. --

8 MS. PAYLOR: Object to the form.

9 BY MR. TRAXLER:

10 Q. How involved was Merrill Light in the
11 estate planning with regard to the family care --
12 family care documents?

13 MS. KIRK: Object to the form.

14 Ariail Kirk.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I believe that Mr. and
17 Ms. Barringer talked to or discussed what they were
18 doing with their daughter and son-in-law, but I don't
19 know why they -- I don't know why Mr. Barringer
20 wasn't copied on this e-mail.

21 BY MR. TRAXLER:

22 Q. Why should I not -- why should I not draw
23 a conclusion from this e-mail that Robert Slane and
24 you and Merrill Light were working in concert with
25 regard to Paul Barringer's estate?

1 MS. KIRK: Object to the form of the
2 question.

3 MS. PAYLOR: Object to the form.

4 MS. KIRK: Ariaail Kirk.

5 THE WITNESS: Mr. Traxler, I can't
6 tell you what conclusions to draw.

7 BY MR. TRAXLER:

8 Q. Well, can you tell me why that conclusion
9 would be wrong?

10 MS. PAYLOR: Object to the form.

11 MR. KIRBY: Object to form.

12 THE WITNESS: I think that conclusion
13 would be wrong because Mr. and Ms. Barringer were --
14 directed all of their estate planning choices.
15 That's why your conclusion would be wrong.

16 BY MR. TRAXLER:

17 Q. And at this point in time, you were not
18 aware of any diagnosis of dementia; is that correct?

19 A. That's my recollection.

20 Q. And you were not aware of any family
21 concerns about dementia or Mr. Barringer losing it;
22 is that right?

23 MR. KIRBY: Object to the form.

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Mr. Traxler, is this

1 still during 2011?

2 BY MR. TRAXLER:

3 Q. Yes, sir.

4 A. Then my answer is yes, I was unaware of
5 that.

6 Q. Were you aware that in February of 2011 --
7 earlier in 2011 Randy Light e-mailed Kevin Luzak? It
8 was evident to Merrill and him that Paul Barringer
9 was experiencing different health issues that
10 affected his judgment regarding everyday decisions
11 and business-wise?

12 MS. KIRK: Object to the form.

13 BY MR. TRAXLER:

14 Q. Are you aware --

15 MS. PAYLOR: Objection.

16 BY MR. TRAXLER:

17 Q. -- of that e-mail?

18 A. I certainly don't recall that e-mail or
19 don't recall seeing an e-mail as you described.

20 Q. Did Randy Light, Merrill Light, or anyone
21 else raise similar issues or concerns with you in
22 2011?

23 A. Not that --

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: No, sir.

1 BY MR. TRAXLER:

2 Q. Merrill -- Randy Light also e-mailed Kevin
3 in that February 2011 e-mail that his and Merrill's
4 fear was that Paul is going to attempt some
5 irrational move that will harm the profitability of
6 the company simply to satisfy his desire to
7 underwrite Victor or keep the stockholders groveling.
8 Actually, he said groveling. Are you familiar with
9 that?

10 MS. KIRK: Object to the form.

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: I'm not familiar with
13 that.

14 BY MR. TRAXLER:

15 Q. Did anybody ever express that thought or
16 that concern in 2011 to you?

17 A. Not that I recall.

18 Q. All right.

19 MR. KIRBY: Bill, you're a little
20 bit -- your volume is a good bit lower than everybody
21 else's. I don't know if you can, I don't know, get
22 closer to the microphone or if there's anything
23 blocking it. You're substantially less loud than
24 anybody else.

25 MR. TRAXLER: Okay. I'm sorry. Was

1 that to --

2 THE WITNESS: Tom.

3 MR. TRAXLER: -- me or to whom?

4 THE WITNESS: Tom.

5 MS. KIRK: To you. I'm sorry. It
6 says Bill Hogan. I'm sorry.

7 MR. TRAXLER: Now, I don't know. I'm
8 trying to figure out how to do the microphone, but at
9 the same time be able to use my notebook. Is that
10 Ariaail who is asking that?

11 MS. KIRK: It was.

12 MR. TRAXLER: Yeah. Let's see if we
13 can't do this a little bit better. I'll try to
14 keep -- keep that in mind, Ariaail. And if it gets to
15 be a problem, if you stay on video, raise your hand
16 or interrupt me or something. Okay?

17 MS. KIRK: Okay. Thank you.

18 MR. TRAXLER: Thank you.

19 BY MR. TRAXLER:

20 Q. Mr. Jolley, in 2011 when you were doing
21 the life care plans for Paul and Merrill Barringer,
22 were you aware that Tom Evans on September 9, 2011
23 e-mailed Kevin Luzak that he and Ed and Billy noticed
24 that Paul was very confused and not himself to the
25 point that they were concerned for him? Were you

1 aware of that e-mail?

2 MS. PAYLOR: Object to the form.

3 MS. KIRK: Object to the form.

4 Ariaail Kirk.

5 THE WITNESS: I was not aware -- I am
6 not aware of that e-mail.

7 BY MR. TRAXLER:

8 Q. Did Tom Evans ever express any such
9 concerns to you about Paul Barringer in 2011?

10 A. Not that I recall.

11 Q. So Randy Light, Merrill Light, Tom Evans,
12 and Ed and Billy were all concerned in 2011 that Paul
13 didn't know what he was doing or was going to make
14 irrational decisions, you weren't aware of that?

15 MS. KIRK: Object to form.

16 MS. PAYLOR: Object to the form.

17 Misstates the evidence.

18 THE WITNESS: I'm unaware of that.

19 BY MR. TRAXLER:

20 Q. All right. Were you aware on December --
21 of November 23, 2011, Dr. Long had diagnosed him with
22 dementia?

23 MS. PAYLOR: Object to the form.

24 MS. KIRK: Object to the form.

25 THE WITNESS: I was unaware of that.

1 BY MR. TRAXLER:

2 Q. This was prior to you meeting with him --
3 or just after you meeting with him about his estate
4 planning, correct?

5 MS. KIRK: Object to the form of the
6 question.

7 BY MR. TRAXLER:

8 Q. November 23.

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: That sounds like the
11 time period during which I was meeting with him.

12 BY MR. TRAXLER:

13 Q. And you didn't have any concerns yourself,
14 did you?

15 A. I had considerable interaction with
16 Mr. Barringer and, no, I did not have concerns.

17 Q. Did he tell you that he had problems?

18 MS. KIRK: Object to the form of the
19 question.

20 THE WITNESS: Mr. Barringer did not.

21 BY MR. TRAXLER:

22 Q. Did he tell you that on December 2, 2011
23 Atlanta Radiology diagnosed him with dementia?

24 MR. TWOMBLEY: Object to the form --

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: -- of the question.

2 MS. PAYLOR: Object to the form.

3 MR. TWOMBLEY: Misstates the
4 evidence.

5 THE WITNESS: Mr. Barringer did not
6 tell me that.

7 BY MR. TRAXLER:

8 Q. At any time prior to the execution of the
9 February 28, 2012 documents, did Mr. Barringer ever
10 tell you that he had seen one or more doctors about
11 confusion or memory loss or dementia or Alzheimer's,
12 however you want to call it?

13 MS. KIRK: Object to the form.

14 THE WITNESS: I don't recall
15 Mr. Barringer ever saying anything like that.

16 BY MR. TRAXLER:

17 Q. And you don't recall anybody else saying
18 anything prior to February 28, 2012, correct?

19 A. That is correct.

20 Q. And what would you have done if somebody
21 had told you those things that I just recited to you?

22 MS. KIRK: Object to form.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: I interacted with
25 Mr. Barringer quite a bit, and I would say I spent

1 quite a bit of time with Mr. Barringer in the fall of
2 '11 up to the signing of those documents in
3 February -- I think February of 2012, and my
4 interactions with Mr. Barringer didn't, in fact,
5 reveal any kind of confusion that you described. So
6 if I was aware of a diagnosis of moderate or severe
7 dementia, I might have taken steps to do something
8 else.

9 BY MR. TRAXLER:

10 Q. What steps would those have been?

11 A. Well, if -- if -- they might include
12 having, what, a certificate of capacity executed.

13 Q. What else? Anything else?

14 A. I think that's probably what I would --
15 and, of course, I would have -- I did interview
16 Mr. Barringer, but communicate with Mr. Barringer
17 about the issue.

18 Q. Mr. Barringer first came to you whether
19 as -- earlier when you reviewed his 1998 estate
20 planning documents or in 2011, would he have
21 completed an intake form at your law firm?

22 MS. KIRK: Object to the form.

23 THE WITNESS: We -- Mr. Barringer
24 might have completed an intake form.

25 BY MR. TRAXLER:

1 Q. And would that intake form be preserved
2 normally by the law firm under its retention policy?

3 MR. TWOMBLEY: Object to the --

4 MS. KIRK: Object to the form.

5 MR. TWOMBLEY: -- form of the
6 question.

7 THE WITNESS: If Mr. Barringer had
8 completed an intake form, then I believe that intake
9 form would be preserved by the law firm.

10 BY MR. TRAXLER:

11 Q. And did that intake form ask for any sort
12 of medical or psychological or mental health
13 treatment or examination?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: Mr. Traxler, I don't
17 recall Mr. Barringer completing an intake form. The
18 intake form that I use certainly has the question
19 about health.

20 BY MR. TRAXLER:

21 Q. All right. Now, in 2011 leading up to the
22 February 28, 2012 documents -- leading up to the
23 execution, how much time did you spend with
24 Paul Barringer reviewing what he wanted to do and the
25 documents themselves? So if we take the initial

1 conference, that time all the way up to execution,
2 what does that total time look like that you spent or
3 anyone at your law firm spent with him on the estate
4 plan and explaining documents?

5 A. Mr. Traxler, I don't recall how much time
6 we spent.

7 Q. And I realize it could be a guesstimate,
8 but can you give my your best guesstimate?

9 MS. KIRK: Object to the form.

10 MS. PAYLOR: Object to the form.

11 THE WITNESS: I suspect that we spent
12 between five and 15 hours, is what I would estimate.

13 BY MR. TRAXLER:

14 Q. All right. Did you send him any executive
15 summaries or some summaries or synopsis of what his
16 estate plan was other than forwarding to him diagrams
17 from Robert Slane?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I don't recall sending
20 Mr. Barringer executive summaries.

21 BY MR. TRAXLER:

22 Q. All right. How about any other
23 explanation of the documents?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I don't recall any

1 other documents explaining the documents.

2 BY MR. TRAXLER:

3 Q. Am I correct in understanding that all you
4 recall is, and I don't mean to trivialize this, would
5 be conversations with him?

6 A. My -- what I do recall is -- is meeting
7 with the Barringers, discussing their estate plan,
8 preparing diagrams. I think Mr. Slane prepared a
9 diagram and I prepared a diagram that was really
10 intended to be a most -- a summary review of what the
11 proposed planning -- proposed update would be, and
12 then I recall meeting with the Barringers after they
13 had the drafts to review them and then ultimately
14 reviewing and helping them execute the documents.

15 Q. Bear with me one minute while I find my
16 cheat sheet here. If you would look at tab nine of
17 the exhibit notebook, Mr. Jolley.

18 MS. PAYLOR: Can you give us the
19 page?

20 MR. TRAXLER: Let's start with 319.
21 That's in the top right-hand corner, J. Jolley Depo
22 319.

23 BY MR. TRAXLER:

24 Q. Are these your handwritten notes?

25 A. These certainly appear to be my

1 handwritten notes.

2 Q. Okay. And those are notes, I presume,
3 that you took from some conversation with them of
4 some sort on January 30, 2012; is that correct?

5 A. That certainly -- that appears to be
6 correct.

7 Q. Okay. And I think I can read all of it.
8 I assume the last line says trust protector; is that
9 correct?

10 A. I believe that is correct.

11 Q. Okay. And if I flip over to the next
12 page, 320, that appears to be notes that you took on
13 some sort of conversation on 2/23/12; is that
14 correct?

15 A. That appears to be correct.

16 Q. All right. And on 321 you have -- is that
17 your handwriting?

18 A. That -- that appears to be my handwriting.

19 Q. Okay. Do you know when that was taken or
20 written down and for what purpose?

21 MS. KIRK: Are y'all referring to
22 page 0321?

23 MR. TRAXLER: Yes.

24 THE WITNESS: Mr. Traxler, I can't
25 tell you a date that these notes were taken.

1 BY MR. TRAXLER:

2 Q. Okay. That's fine. Going over next to
3 322. These are notes from May 1, 2014; is that
4 correct?

5 A. Appears to be correct. Yes.

6 Q. That's your handwriting; is that correct?

7 A. That is my -- most of it is my
8 handwriting.

9 Q. What is not?

10 A. Well, I think that there -- it looks to me
11 that there are some notes from -- I think there are a
12 couple of notations here from Becky Bostic.

13 Q. Which ones are those?

14 A. I think if you look at the portion where
15 it's lined and it says "Shared to Hampton" and then
16 with the arrow "In trust for Wade." And then I think
17 that the income/discretionary SPOA wide arrow issue,
18 I think that is a note of Becky Bostic. And I
19 believe at the bottom of the page when you see MBL as
20 trustee, not Victor as trustee, if you see the arrow
21 below where it says "appoint successor," that arrow
22 and the appoint successor I believe are Ms. Bostic's
23 notes.

24 Q. Why would she come and add notes to your
25 notes?

1 A. I think that what would have happened is
2 that after I met with the Barringers or spoke with
3 Barringers, then I would be explaining to Becky how
4 we were going to prepare drafts and those -- her
5 notes would be what she reduced to writing my
6 explanation or my further details.

7 Q. All right. Other than the moment when the
8 February 28 documents were executed in 2012, did
9 anybody ever sit in on any of your meetings with Paul
10 and Merrill Barringer pertaining to -- well,
11 pertaining to anything?

12 A. Mr. Traxler, are you asking if anyone ever
13 sat in with an appointment with myself with Mr. and
14 Ms. Barringer?

15 Q. Let me -- let me put a time frame on that
16 and help narrow this down. From the fall of 2011
17 through the execution of the documents in
18 February 2012, when you met with the Barringers, was
19 there anyone else there other than the Barringers?

20 A. At least one of those meetings
21 Robert Slane attended. And certainly to the extent
22 we did any executions, my witnesses would have
23 attended. I'm not sure -- I'm not sure if, you know,
24 I had meetings with the Barringers alone in reviewing
25 and -- and assisting with the signing of documents,

1 but I -- so that's who I think was involved in those
2 appointments.

3 Q. Would Becky Bostic have been involved in
4 the conferences other than witnessing the execution?

5 A. I think Becky generally would have come in
6 at the time when we were -- her primary exposure to
7 the Barringers at that point would have been simply
8 in witnessing documents.

9 Q. Okay. So if I wanted to round up the sum
10 total of witnesses to your conversations with the
11 Barringers from the fall of 2011 through
12 February 2012 to hear what all was said in those
13 conversations, it would be you, and the Barringers,
14 and Mr. Slane?

15 MS. KIRK: Object to the form.

16 BY MR. TRAXLER:

17 Q. What's the universe of those witnesses?

18 A. Well, as I said -- wait. I'm sorry. I'm
19 not sure I understand the question of what's the
20 universe --

21 Q. Sure. I'll rephrase it. Starting in the
22 fall of 2011 through the execution of the
23 February 2012 documents, if I want to know the
24 universe of witnesses who heard your conversations
25 with the Barringers about their estate planning and

1 these documents, who would that universe of witnesses
2 be?

3 MS. KIRK: Object to the form.

4 THE WITNESS: So, Mr. Traxler, I'm
5 not trying to be obtuse, but I'm not sure I
6 understand what you mean the universe. Are you just
7 simply asking me who might have been present while I
8 spoke with the Barringers?

9 BY MR. TRAXLER:

10 Q. Yes. Or on a joint telephone call.
11 However it was done.

12 A. So I generally think what I just described
13 is -- is correct. That is myself, Mr. Slane, my
14 witnesses. I am not -- I am not sure if the
15 Barringers communicated with the Lights about these
16 matters or -- and I can't be certain that the Lights
17 weren't privy to the Barringers' conversations about
18 this.

19 Q. All right. So as far as you're concerned,
20 you have identified all of the witnesses to your
21 conversations with the Barringers in that time frame
22 that you can recall at this time; is that correct?

23 MS. KIRK: Object to the form.

24 MR. TWOMBLEY: Object to the form.

25 THE WITNESS: Mr. Traxler, I think

1 that's right.

2 BY MR. TRAXLER:

3 Q. Okay. Now, in February of 2012 estate
4 planning documents, what were those documents? Do
5 you recall what all they signed in February 2012?

6 A. Well, so the process of doing the estate
7 planning with the Barringers, the update included, of
8 course, the meetings with them in the fall through
9 the execution of those documents and we did, in fact,
10 execute the lifetime documents, the health care
11 power, the durable power in 2011. So in 2012, my
12 suspicion -- my recollection is that it would be
13 revocable trusts and pour-over wills.

14 Q. All right. And you did -- did you do a
15 revocable trust for both Paul and Merrill Barringer,
16 separate trusts for each one of them?

17 A. I believe so. Yes, sir.

18 Q. And a separate will for each one of them;
19 is that correct?

20 A. I believe so. Yes, sir.

21 Q. And were their revocable trust and their
22 wills mirrored images of each other?

23 A. I think --

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Object. We've been

1 through all this. I mean, we're literally just going
2 back through questions he's already asked and
3 answered back on the 16th of March.

4 MR. TRAXLER: Thank you.

5 BY MR. TRAXLER:

6 Q. At that point in time, did Merrill and
7 Paul Barringer express any negative opinion or
8 thoughts to you about his daughter, Hampton Luzak?

9 A. At the time the documents were executed in
10 February of 2012?

11 Q. Yes, sir.

12 A. I don't recall Mr. Barringer expressing
13 negative feelings about Ms. Luzak at that point.

14 Q. Did Merrill Barringer at any point --
15 point prior to February 2012 express any negative
16 opinions about Hampton Luzak?

17 MR. TWOMBLEY: I'm going to object to
18 the --

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: -- question, and I'm
21 also going to instruct him not to answer unless you
22 want to talk about why you think that's relevant and
23 you're entitled to go into it during this deposition.

24 MR. TRAXLER: Okay. Well, we can
25 discuss that later. Are you instructing him not to

1 answer?

2 MR. TWOMBLEY: If you are not going
3 to talk with me about why you think it's relevant and
4 appropriate for you to ask the question during the
5 deposition, yes. I have no choice.

6 MR. TRAXLER: Well, I mean, they
7 certainly turned on Hampton later. I'm just trying
8 to figure out when it started.

9 MR. TWOMBLEY: Well, Ms. Barringer,
10 you know, the validity of her estate planning
11 documents is, in my opinion, not an issue in the
12 case. You know, she's -- there's no testamentary
13 exception to the attorney-client privilege and, you
14 know, if you -- again, if you think you're entitled
15 to get into her privileged discussions with her
16 lawyer when there's not an exception, again, I'm
17 happy to hear you out. But, otherwise, I'm
18 instructing him not to answer.

19 BY MR. TRAXLER:

20 Q. All right. Did -- up to and including the
21 time of the execution of the February 2012 documents,
22 Mr. Jolley, did you ever hear Paul Barringer express
23 any negative comments about Kevin Luzak?

24 A. Yes.

25 Q. What did you hear and when did you hear

1 it?

2 A. So, Mr. Traxler, this is a hard question
3 for me to answer, not only because of the question
4 about negative -- or the question about any negative
5 comments. Mr. Barringer did, what --

6 MS. KIRK: Can I -- one -- one quick
7 second. Mr. Traxler, I want to be sure you're asking
8 him in the limited context of as it relates to
9 meeting with Mr. Barringer about his estate planning
10 documents versus, you know, a meeting that could have
11 been held for a different entity.

12 MR. TRAXLER: My question is broader
13 than meetings. Up to and including the time of the
14 February -- execution of the February 2012 documents,
15 did Mr. Jolley ever hear Paul Barringer say anything
16 negative or critical of Kevin Luzak?

17 MS. KIRK: Okay. And I'll object to
18 that to the extent -- or I'll instruct him not to
19 answer to the extent you're asking about something
20 that's not communications related to the estate
21 planning preparation, execution, or amendment.

22 BY MR. TRAXLER:

23 Q. Okay. Can you answer that question,
24 Mr. Jolley?

25 MS. KIRK: I instructed it -- okay.

1 MR. TRAXLER: I'm sorry. Are you
2 instructing him not to answer it?

3 MS. KIRK: To the extent that it
4 exceeds the testamentary exception.

5 BY MR. TRAXLER:

6 Q. Okay. Go ahead, Mr. Jolley. Can you
7 answer that question?

8 MR. SCHRONCE: And, Tom, this is John
9 Schronce. Just to be clear, you're talking about up
10 to and including February of 2012?

11 MR. TRAXLER: Yes.

12 THE WITNESS: So I'm going to need to
13 consult with my lawyer to make sure I understand, I
14 mean, as described the testamentary exception. I
15 can't answer that. I don't have anything to add
16 unless I should talk --

17 BY MR. TRAXLER:

18 Q. Let me see if I can save us a little bit
19 of time. When you were doing the estate planning
20 work for Paul and Merrill Barringer that culminated
21 in February 2012 documents, during that process did
22 Paul Barringer ever express any negative or critical
23 comments to you about Kevin Luzak?

24 A. Yes.

25 Q. What did he say?

1 A. He said that Kevin was a New York Wall
2 Street guy, and he said that he thought Kevin's,
3 what, taste and spending were lavish.

4 Q. Do you recall anything else that you
5 consider to be negative about Kevin Luzak or critical
6 of him that Paul Barringer said to you during the
7 estate planning time period?

8 A. I only can remember what Mr. Barringer
9 deemed negative about Mr. Luzak in that he
10 communicated to me. I don't know of anything else.

11 Q. Prior to your estate planning work -- roll
12 the clock back. Prior to that time period, did you
13 ever hear him say anything negative to you about
14 Kevin Luzak?

15 MS. KIRK: Tom, I don't understand
16 what -- are you saying before John ever did work
17 for -- I don't understand what you're asking.

18 MR. TWOMBLEY: And this is Ashley. I
19 thought the question was prior to the time you
20 started doing estate planning work, which if that's
21 the question as framed, then that necessarily would
22 not involve anything subject to the testamentary
23 exception, in my opinion. But do you want to try to
24 rephrase the question, Tom?

25 MR. TRAXLER: I think the question

1 was pretty good. I asked him about what was going on
2 with -- during the estate planning period. Now I'm
3 rolling the clock back forward and asking Mr. Jolley
4 if prior to all of 2011, did he ever hear Paul
5 Barringer say anything negative about Kevin Luzak?

6 MR. TWOMBLEY: I will instruct him
7 not to answer that question because it involves a
8 time period when John was not doing estate planning
9 work for Mr. Barringer and, in my opinion, does not
10 fall within the testamentary exception to the
11 attorney-client privilege. I invited you to ask
12 another question, but you didn't do that. So I'm
13 compelled to object and instruct him not to answer.

14 MR. TRAXLER: And you're not lighting
15 up. Is this Ashley Twombley, the lawyer for Merrill
16 Barringer, instructing Mr. Jolley not to testify into
17 matters to Mr. Barringer; is that right? Is that
18 you, Ashley?

19 MR. TWOMBLEY: Yes. It's me. And
20 it's -- again, it's my understanding that you asked
21 him the question about prior to the time that he
22 started doing estate planning work for Mr. Barringer
23 and, you know, respectfully, it's my opinion that
24 that does not fall within the exception. But, you
25 know, if you want to talk about it, I'm happy to hear

1 you out so we can try to get it resolved today. But
2 if you don't want to do that --

3 MR. TRAXLER: I just -- excuse me.
4 I'm sorry. I just want to make sure I got the record
5 straight. You represent Merrill Barringer, but you
6 are asserting some sort of privilege on behalf of her
7 in instructing the witness not to answer a question
8 about Paul Barringer? Do I understand that
9 correctly?

10 MR. TWOMBLEY: Well, I'm not sure
11 exactly what you understand, but I am instructing him
12 to not answer that question and the record will
13 reflect that I invited you to rephrase it or ask it a
14 different way.

15 MR. TRAXLER: Okay. That's fine. I
16 just want to make sure we understood. Thank you.

17 BY MR. TRAXLER:

18 Q. During the estate planning process in the
19 fall of 2011 through February 2012, did you ever hear
20 Mr. Barringer express any negative or critical
21 comments about Randy Light?

22 A. No.

23 Q. Do you know whether Mr. Barringer was
24 aware of the financial bankruptcies and problems of
25 Randy Light at that time?

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

3 MS. KIRK: Object to the form.

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Misstates the
6 evidence.

7 THE WITNESS: I'm -- I have no
8 information about that.

9 BY MR. TRAXLER:

10 Q. Now, when the February 2012 documents were
11 executed, Merrill Light was named as co-trustee of
12 Paul Barringer's revocable trust; is that correct?

13 A. That's my recollection.

14 Q. And her other co-trustee was Paul
15 Barringer; is that correct?

16 A. That is my recollection.

17 Q. And under that trust document, would she
18 as a co-trustee have the right to act independently
19 of the other co-trustee or did they have to act in
20 unison together?

21 A. My recollection is that either could act
22 alone.

23 Q. And did the trust -- revocable trust
24 agreement of Paul Barringer provide that Merrill
25 Light would appoint her successor co-trustee?

1 A. I'm not -- I don't remember, Mr. Traxler.

2 Q. Were there ever any discussions that --
3 about naming Hampton Luzak, the other daughter, as
4 some sort of trustee, either co-trustee at the offset
5 or successor trustee?

6 A. There were certainly conversations with --
7 the Barringers and I discussed who should serve as
8 trustees and we -- in that conversation we certainly
9 discussed each of the Barringer children as potential
10 trustees or successor trustees.

11 Q. And why was Hampton Luzak not included in
12 some sort of trustee position?

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: Same objection. Ariail
15 Kirk.

16 THE WITNESS: Mr. Traxler, I'm not
17 sure that -- I mean, I don't recall that the
18 Barringers communicated to me their rationale for not
19 including Hampton in the succession of trustees.

20 BY MR. TRAXLER:

21 Q. And when you drew the revocable trust
22 agreement putting Merrill Light as a co-trustee, were
23 you also her lawyer at that time?

24 MS. KIRK: Object to the form of the
25 question.

1 THE WITNESS: I believe I separately
2 represented Ms. Light with respect to her estate
3 planning at that time.

4 BY MR. TRAXLER:

5 Q. So when the revocable trust was done in
6 February 2012, you represented Paul Barringer and
7 Merrill Barringer, correct?

8 A. Yes, sir.

9 Q. You also represented Merrill Light during
10 that time period, didn't you?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: I believe -- I believe
14 so.

15 BY MR. TRAXLER:

16 Q. You also represented Randy Light during
17 that time period, right?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I'm not sure about
20 whether I represented him specifically at that time,
21 but I certainly represented Randy with respect to
22 estate planning matters generally during this time.

23 BY MR. TRAXLER:

24 Q. And you did not represent, at any point in
25 time, Hampton, did you?

1 A. I did not represent Hampton Luzak.

2 Q. Did you represent Kevin Luzak?

3 A. I did not represent Kevin Luzak.

4 Q. All right. Why is Merrill Light your --
5 you also did legal work for her, named as co-trustee
6 to the exclusion of Hampton?

7 MR. TWOMBLEY: Object to the --

8 MS. PAYLOR: Object to the --

9 MR. TWOMBLEY: -- form of the
10 question. Asked and answered.

11 MS. KIRK: Ariail Kirk. Same
12 objection.

13 THE WITNESS: Mr. Barringer and
14 Ms. Barringer chose who they wished to serve as
15 trustees. Those documents that we executed reflect
16 their choices.

17 BY MR. TRAXLER:

18 Q. Did they discuss with you why?

19 MR. TWOMBLEY: Object to the form of
20 the question and asked and answered.

21 MS. KIRK: Same objection. Ariail
22 Kirk.

23 MR. TWOMBLEY: He just testified to
24 that.

25 MR. TRAXLER: Are you instructing him

1 not to answer?

2 MR. TWOMBLEY: No. Nobody instructed
3 him not to answer.

4 MS. KIRK: He's already answered it a
5 couple of times.

6 THE WITNESS: Yes, sir. Mr. Traxler,
7 it's the same answer, that is, I don't recall the
8 Barringers communicating, that is Paul and Merrill
9 Barringer, communicating to me why they chose to
10 have -- to not have Hampton as a trustee or in the
11 succession as a trustee.

12 BY MR. TRAXLER:

13 Q. Okay. And so it is the same Merrill Light
14 who was working in coordination with you and Robert
15 Slane as we saw in your deposition Exhibit No. 5,
16 correct?

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

19 MS. KIRK: Object to the form. And I
20 didn't even hear all of it.

21 MR. TRAXLER: I'm sorry. Somebody --
22 was that you speaking, April? I didn't follow you.
23 Ariail. Excuse me.

24 MS. KIRK: Yes. I didn't hear the
25 second half of the...

1 BY MR. TRAXLER:

2 Q. Okay. Go back, Mr. Jolley, to your page
3 No. 5 under tab one. This is the e-mail between
4 Robert Slane and Merrill Light. You with me?

5 A. I'm turning there. You said page 5?

6 Q. Yes, sir.

7 A. I see page -- page 5 is in front of me.

8 Q. All right. The Merrill Light that you put
9 as co-trustee is the same Merrill Light that these
10 e-mails were written to and from, correct?

11 MR. TWOMBLEY: Object to the form of
12 the question. Misstates his testimony.

13 MS. KIRK: Ariail Kirk. Same
14 objection.

15 BY MR. TRAXLER:

16 Q. Okay. You can answer, Mr. Jolley.

17 A. Mr. Traxler, I think there's only one
18 Merrill Light, and I do think she is the little
19 Merrill or Merrill referred to.

20 Q. Okay. Now, when you executed -- or prior
21 to the time or at the time of the execution of the
22 will and the trust agreements in February 2012, did
23 you discuss the powers of appointment in the trust
24 with Mr. Barringer?

25 A. Prior to the execution of the revocable

1 trust in 2012, the powers of appointment contained in
2 the trust are, in fact, something that I discussed
3 with both of the Barringers.

4 Q. Where -- where were you when you discussed
5 it?

6 A. We certainly discussed it at the time that
7 we, what, prepared the drafts and when we reviewed
8 the drafts together and certainly ultimately as we
9 reviewed and signed the documents.

10 Q. And how did you describe to them the power
11 of appointment and the trust?

12 A. Mr. Traxler, I -- I -- I don't recall the
13 details of how I described the power of appointment.
14 The dispositive provisions of the trust I described
15 and discussed with the Barringers. I generally
16 describe these powers of appointments as being a
17 power to redirect, that is, the person who is the
18 donee of the power or the -- the donee of the power
19 having the authority to redirect who takes under the
20 terms of the document.

21 Q. At the time you did the execution of the
22 revocable trust in February 2012, did you explain to
23 Mr. Barringer that Merrill Light would have the right
24 to act independently of him in disposing of assets
25 subject, of course, to her fiduciary duties?

1 MS. KIRK: Object to the form.

2 BY MR. TRAXLER:

3 Q. Did you explain any of that to him?

4 A. I certainly discussed with Mr. Barringer
5 the fact that each of the trustees would be able to
6 act independently.

7 Q. And when you did the February 2012
8 documents, it was his and Merrill Barringer's intent
9 to treat both daughters equally; is that correct?

10 MS. KIRK: Object to the form.

11 MS. PAYLOR: Object to the form.

12 MR. TWOMBLEY: Same objection.

13 THE WITNESS: Mr. Traxler, I believe
14 the 2012 documents do, in fact, represent the intent
15 of Mr. Barringer.

16 BY MR. TRAXLER:

17 Q. And Ms. Barringer, correct?

18 A. Well, I'm sorry. I believe that
19 Ms. Barringer's documents certainly reflected her
20 intent and --

21 MR. TWOMBLEY: I would instruct you
22 not to answer any questions about Ms. Barringer and
23 her estate planning documents. I'm happy to talk,
24 you know, now or at another time about, Tom, why you
25 think you're entitled to go into that in this case

1 when there is no testamentary exception if you would
2 like to do that. But, otherwise, I would instruct
3 him not to answer.

4 BY MR. TRAXLER:

5 Q. When you drew up the health -- the life
6 care documents, power of attorney, health care power
7 of attorney, and living will, was Merrill Light named
8 as the successor agent?

9 MS. KIRK: Object to the form.

10 THE WITNESS: Mr. Traxler, I'd have
11 to go back and look at the documents to confirm that,
12 but that is my recollection.

13 BY MR. TRAXLER:

14 Q. Okay. Thank you. Was any of this ever
15 discussed by you, the estate planning, with Hampton
16 Luzak at or around the time the estate planning was
17 one and the documents were executed?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I don't believe so. I
20 don't -- I don't believe I had a conversation with
21 Ms. Luzak.

22 BY MR. TRAXLER:

23 Q. All right. Now, shortly after the
24 execution of the documents in late February 2012, I
25 believe you had Merrill Light sign the trust

1 instrument as co-trustee, correct?

2 A. I'd have to refer to the document, but,
3 yeah, that -- that is my recollection.

4 Q. Okay. Prior to her signing that document,
5 did you have any discussions with her about her
6 father's estate plan?

7 MS. KIRK: Object to the form of the
8 question.

9 THE WITNESS: I don't believe I had
10 any conversations with Ms. Light about the details of
11 Mr. Barringer's estate plan.

12 BY MR. TRAXLER:

13 Q. All right. Did you have any conversations
14 with her about his estate plan or the business or his
15 health or his condition prior to the February 28,
16 2012 documents?

17 A. I'm sorry, Mr. Traxler. I need you to
18 repeat that.

19 Q. Sure. Let's take the February 2012 --
20 when they signed the documents.

21 A. Yes, sir.

22 Q. Up to that point in time, had you ever had
23 any conversations with Merrill Light about her father
24 and his estate plan or his health or his mental
25 condition?

1 A. I don't -- I'm not certain about the
2 timing, but I have had -- I did have a
3 conversation -- at least a conversation with
4 Ms. Light about her father's plan, although I'm not
5 suggesting that she -- that I told her all the
6 details of that plan.

7 Q. But you did tell her what her role was
8 going to be under the documents and what that would
9 entail, correct?

10 A. I discussed that with her. I believe that
11 was what had already been discussed.

12 Q. All right. So let me ask you this
13 question. I think we can leave February 2012 alone
14 for a little while. At that point in time, was there
15 any reluctance on the part of Paul Barringer to treat
16 his daughter, Hampton Luzak, equally with his
17 daughter, Merrill Light?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: Same objection.

20 THE WITNESS: I think in February of
21 2012, I think that Mr. Barringer did treat his
22 daughters the same, and he -- and there was no
23 expression of his unwillingness to do that.

24 BY MR. TRAXLER:

25 Q. All right. And as far as you knew at that

1 point in time, did you have any reason to think he
2 loved one differently than the other?

3 MR. TWOMBLEY: Object to the form.

4 MS. KIRK: Object to the form.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: I'm sorry, Mr. Traxler.
7 I don't -- I don't have any --

8 BY MR. TRAXLER:

9 Q. If you don't remember, that's fine. If
10 you don't remember, that's fine. Just say so.

11 A. Well, I don't have any indication of
12 Mr. Barringer's love for one daughter versus the
13 other.

14 Q. Okay. That's fine. Thank you. Now,
15 you're aware that in June 28, 2012, there was a board
16 meeting where Kevin Luzak was removed as officer,
17 correct?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I believe that is
20 correct.

21 BY MR. TRAXLER:

22 Q. All right. What happened between
23 February -- the execution of the February 2012
24 documents and June 28, 2012 to make Paul Barringer
25 turn on Kevin Luzak?

1 MS. PAYLOR: Object to the form.

2 MS. KIRK: Same objection.

3 BY MR. TRAXLER:

4 Q. You can answer.

5 A. So I am -- I certainly wasn't privy to all
6 of the interactions between Mr. Barringer and the
7 world, certainly not with Mr. Luzak. Mr. Barringer
8 believed that his son-in-law -- he expressed to me
9 that his son-in-law was, what, taking over the
10 company and not respecting Mr. Barringer and had
11 suggested that Mr. Barringer no longer was mentally
12 competent.

13 Q. All right. Is that the sum total of what
14 you would testify to as to what caused Paul Barringer
15 to turn on Kevin Luzak between February 2012 and the
16 board meeting on June 28, 2012?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Same objection.

19 BY MR. TRAXLER:

20 Q. And I want to be fair to you, Mr. Jolley.
21 I really don't want to hear something else for the
22 first time in the court room. So I want to make sure
23 I've given you a fair chance to answer that question.

24 A. Yeah.

25 MR. TWOMBLEY: And I just want to

1 object to the form of the question.

2 MR. TRAXLER: That's fine.

3 MS. KIRK: Same objection.

4 BY MR. TRAXLER:

5 Q. Take me through that, if you would,
6 please, sir.

7 A. Mr. Traxler, take you through what?

8 Q. What happened between February 2012 to
9 June 28, 2012 to make Paul Barringer turn on Kevin
10 Luzak?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: So, I'm sorry,
14 Mr. Traxler. I don't -- I don't think I can testify
15 to what happened between Mr. Barringer and Mr. Luzak.
16 I certainly would and will testify about what was
17 communicated to me and how Mr. Barringer interacted
18 with me and what -- and what he communicated to me.
19 But I, of course, was generally not privy to those --
20 to their interaction.

21 BY MR. TRAXLER:

22 Q. Well, what did you understand happened to
23 make Mr. Barringer sour on Kevin Luzak by the end of
24 June?

25 MS. KIRK: Object to the form.

1 MS. PAYLOR: Object to the form.

2 BY MR. TRAXLER:

3 Q. You can answer it.

4 A. So, Mr. Traxler, what I just described a
5 minute ago is what I understood. Mr. Barringer
6 described to me that his son-in-law was taking over
7 the company, that he was no longer -- and that he had
8 said that Mr. Barringer was no longer competent. So
9 what was expressed to me is that's why there was a
10 breakdown between Mr. Luzak and Mr. Barringer.

11 Q. Well, we've talked about some e-mails
12 where Randy Light talked about that there were
13 problems like that with Mr. Barringer. Did
14 Mr. Barringer turn on Randy Light?

15 MS. KIRK: Object to the form.

16 MR. TWOMBLEY: Same objection.

17 THE WITNESS: I'm unaware of
18 Mr. Barringer turning on Mr. Light.

19 BY MR. TRAXLER:

20 Q. Did you ever hear Mr. Barringer say
21 anything negative at all at any point in time about
22 Randy Light?

23 MS. KIRK: Object to form.

24 THE WITNESS: I don't recall
25 Mr. Barringer saying anything negative about Randy

1 Light.

2 BY MR. TRAXLER:

3 Q. Did he ever talk to you about his
4 bankruptcies?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 MS. KIRK: That's also asked and
8 answered.

9 MR. TWOMBLEY: Yeah. And misstates
10 the evidence.

11 BY MR. TRAXLER:

12 Q. No. The question before was limited to
13 that time frame. I'm asking now about any time ever
14 did Mr. Barringer discuss with you about Randy
15 Light's financial problems or bankruptcies?

16 MS. PAYLOR: Object to the form.

17 MS. KIRK: Object to form.

18 THE WITNESS: No.

19 BY MR. TRAXLER:

20 Q. Was Mr. Barringer aware of --

21 THE COURT REPORTER: Excuse me, Mr.
22 Traxler.

23 BY MR. TRAXLER:

24 Q. -- his financial problems or bankruptcies?

25 MS. PAYLOR: Object to the form.

1 MR. TWOMBLEY: Tom -- Tom, the court
2 reporter is asking you to stop for one second. She's
3 got -- she's got to attend to something.

4 MR. TRAXLER: Y'all want to take a
5 break?

6 MS. PAYLOR: Yeah.

7 MR. TRAXLER: Okay. We'll take a
8 quickie break. Mr. Jolley, be careful about talking
9 to people.

10 THE WITNESS: Thank you, Mr. Traxler.

11 THE VIDEOGRAPHER: We are off the
12 record at 10:32 a.m.

13 (Off the record.)

14 THE VIDEOGRAPHER: We are back on
15 record. It is 10:43 a.m.

16 BY MR. TRAXLER:

17 Q. Okay. Mr. Jolley, you didn't talk to
18 anybody during the break, did you?

19 A. I did not.

20 Q. All right. Mr. Jolley, I was asking you
21 questions about how things evolved between
22 February 28, 2012 documents and the board meeting on
23 June 28, 2012 when Kevin Luzak was ousted from the
24 company as an officer. During the break or at any
25 time, did you have any further thoughts on that, any

1 further answer as to what caused Mr. Barringer to go
2 sour on Kevin Luzak?

3 MS. KIRK: Object to the form, and
4 that's been asked and answered --

5 MS. PAYLOR: Object to the form.

6 MS. KIRK: -- quite a few times.

7 BY MR. TRAXLER:

8 Q. Go ahead. Any other information that's
9 come to you?

10 A. No, Mr. Traxler.

11 Q. Okay. Were you aware that during 2012
12 Mr. Barringer continued to see doctors for the
13 purposes of evaluation and/or treatment of dementia?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I was not aware of that
17 at the time.

18 BY MR. TRAXLER:

19 Q. When did you become aware of it?

20 A. I think the first time I became -- well, I
21 understood -- and I don't know who told me. But in
22 the summer of 2012, I understood that Mr. Barringer
23 had been sick. But in terms of seeing medical
24 records or have any information about that, the first
25 time I saw that was in the materials presented to me

1 as a part of this litigation.

2 Q. How was it you became -- you first became
3 aware of medical records pertaining to the issues of
4 his dementia?

5 MS. KIRK: Object to the form.

6 THE WITNESS: The first time I saw
7 medical records with respect to Mr. Barringer's
8 medical records are what was presented to me in the
9 binder in preparation for this deposition.

10 BY MR. TRAXLER:

11 Q. Okay. When was the first time you had
12 anyone comment to you about any concerns about
13 dementia with Mr. Barringer?

14 A. During the summer of --

15 Q. Excuse me. Go right ahead. I apologize.

16 MR. SCHRONCE: And, Tom, I'm going to
17 jump in here. This is John Schronce. To the extent
18 that you are calling for any communications that John
19 may have had as company counsel in connection with
20 providing legal advice to the company, I would object
21 him not to respond. To the extent he can do so
22 without getting into those communications, that's
23 fine.

24 MS. KIRK: And I just object to the
25 form.

1 BY MR. TRAXLER:

2 Q. Can you answer that question, Mr. Jolley?

3 A. Uh-huh. In the -- and I don't know the
4 specific date it was. But in the summer of 2012 when
5 I was contacted about the company and Mr. Barringer
6 as a shareholder of the company, then he -- that was
7 the first time I was aware that anyone had suggested
8 that he lacked capacity.

9 Q. Okay. Well, my question was broader than
10 capacity. When was the first time you had anyone
11 comment to you, however they did it, with questions
12 concerning his mental capacity whether it resulted in
13 incapacity or not?

14 A. I'm sorry.

15 MS. KIRK: Object to the form.

16 MR. SCHRONCE: And -- and, Tom, I'll
17 make my same objection, and I am fine if we can agree
18 to just have that as a standing objection and
19 qualification for this line of questioning.

20 MR. TRAXLER: Sure.

21 THE WITNESS: I'm sorry, Mr. Traxler.
22 I'm going to need you to ask me that again.

23 BY MR. TRAXLER:

24 Q. Okay. What I need to know, Mr. Jolley, is
25 when you first became aware that there were questions

1 concerning Mr. Barringer's dementia or medical
2 capacity?

3 MS. PAYLOR: Object to the form.

4 MS. KIRK: Object to form.

5 THE WITNESS: I was first aware of
6 that when I was contacted in the summer of 2012.

7 BY MR. TRAXLER:

8 Q. By whom?

9 A. I -- I think Mr. Barringer and Ms. Light.

10 Q. Why did they contact you? What was that
11 all about?

12 MR. MOLSTER: Objection. I'm sorry,
13 Tom. I think you're getting into a privileged area
14 here with Merrill Light, and so I think we're going
15 to instruct him not to answer questions with respect
16 to any conversations he had with Merrill Light.
17 Whether or not those conversations relate to the
18 testamentary exception is way beyond my pay grade.
19 I'll defer to Mr. Twombly on that.

20 MR. TRAXLER: Okay. Well, Chip, let
21 me -- let me explore the setting pertaining to these
22 communications a little bit.

23 BY MR. TRAXLER:

24 Q. Did they call you, Mr. Barringer and
25 Ms. Light?

1 MR. MOLSTER: Excuse me one second.
2 John, we're going to go slow here, question by
3 question. I'm going to have to -- Alice and I are
4 going to have to try to figure out -- I mean, it's
5 hard -- very hard to do by Zoom, and I appreciate
6 your tolerance of this, Tom. But we would normally
7 be sitting in a room with each other -- next to each
8 other and we could have these communications. Doing
9 it this way is difficult, but compelled by the COVID
10 situation. So if Tom will agree that us allowing you
11 to answer the question yes or no is not a waiver of
12 the attorney-client privilege, then we're going to
13 allow you to answer that question yes or no. Is that
14 okay with you, Tom?

15 MR. TRAXLER: Let me just ask him a
16 more general question.

17 BY MR. TRAXLER:

18 Q. Do you understand the questions pertaining
19 to privilege that Mr. Molster is raising?

20 MS. KIRK: Object to form.

21 BY MR. TRAXLER:

22 Q. What I really want to know is why did they
23 call you and in what capacity? Why did they call you
24 and what was the capacity which they were calling
25 you?

1 MR. MOLSTER: I'm instructing him not
2 to answer that.

3 MS. KIRK: And that's the issue.

4 BY MR. TRAXLER:

5 Q. Where was the conversation, Mr. Jolley?

6 MR. TWOMBLEY: And I'm going to --
7 before you go any further, I just want to caution the
8 witness that if these conversations that you had were
9 not related to the preparation, the execution, or
10 amendment of Mr. Barringer's estate planning
11 documents, then I'm instructing you not to answer
12 that question. So...

13 MR. TRAXLER: All right.

14 MR. MOLSTER: So -- so, Tom, let me
15 just clarify. If I let him answer the question when,
16 you agree that's not a waiver of the attorney-client
17 privilege?

18 MR. TRAXLER: As to that question,
19 yes.

20 MR. MOLSTER: Okay.

21 MR. TRAXLER: But I think Ashley --
22 Mr. Twombley has already instructed him not to
23 answer, so what difference does it make?

24 MR. MOLSTER: Okay.

25 MR. TWOMBLEY: Well, if your question

1 is limited to when, I think he already testified it
2 was the summer of 2012. So if you've got another
3 question that you want to ask or if you want to talk
4 about it, I'm happy to do that.

5 BY MR. TRAXLER:

6 Q. All right. When in the summer of 2012 was
7 the conversation?

8 MR. MOLSTER: Same agreement, Tom?

9 MR. TRAXLER: Yeah.

10 MR. TWOMBLEY: Same for me as well.

11 MR. TRAXLER: Sure.

12 MR. TWOMBLEY: Just answer when in
13 the summer of '12, if you remember.

14 THE WITNESS: I'm sorry. I don't
15 remember the specific date.

16 BY MR. TRAXLER:

17 Q. Was it by telephone?

18 MR. MOLSTER: Same agreement?

19 MR. TRAXLER: Yeah.

20 THE WITNESS: The initial
21 conversation you are asking me about?

22 BY MR. TRAXLER:

23 Q. Yes, sir. The one you just testified to.

24 A. It was by telephone.

25 Q. All right. And who was on the telephone

1 call?

2 MR. MOLSTER: Same agreement?

3 MR. TRAXLER: Yeah.

4 MR. TWOMBLEY: Same for me?

5 MR. TRAXLER: Yeah.

6 MR. SCHRONCE: The same for the
7 company as well, Tom?

8 MR. TRAXLER: Sure.

9 THE WITNESS: Ms. Light.

10 BY MR. TRAXLER:

11 Q. Was she calling you about her father?

12 MR. MOLSTER: Objection. Instruct
13 him not to answer.

14 BY MR. TRAXLER:

15 Q. Was she calling you as your client?

16 MR. MOLSTER: Instruct him not to
17 answer.

18 BY MR. TRAXLER:

19 Q. What hat were you wearing? By that I mean
20 in this conversation, did you represent Paul
21 Barringer or did you represent Merrill Barringer or
22 did you represent Merrill Light or did you represent
23 Randy Light or did you represent their children or
24 did you represent the company?

25 MR. MOLSTER: Instruct him not to

1 answer. Sorry. Instruct him not to answer.

2 MS. KIRK: I object to the question.

3 MR. TWOMBLEY: Yeah. I object to the
4 form. And if it doesn't relate to the preparation,
5 execution, or amendment of an estate planning
6 document, I too instruct you not to answer.

7 MR. TRAXLER: And y'all are telling
8 him not to answer in which capacity as lawyer for
9 whom he was talking to her? He can answer that
10 question.

11 MR. TWOMBLEY: Yes. I just don't
12 think it's -- I just don't think it's --

13 MR. MOLSTER: It's inscriptively -- I
14 think it's too inscriptively intertwined with his
15 provision of legal services to clients -- my client.

16 MR. TRAXLER: Okay.

17 MR. TWOMBLEY: And also my -- and
18 also I don't think it's related to the preparation,
19 execution, or amendment of estate planning documents.
20 So, therefore, it would not fall within the
21 exceptions outlined by the court.

22 BY MR. TRAXLER:

23 Q. Well, was this conversation, Mr. Jolley,
24 before or after the July 2012 documents were
25 executed?

1 MS. KIRK: Object --

2 MR. MOLSTER: Do we have the same
3 agreement that if he answers that question, it's not
4 a waiver?

5 MR. TRAXLER: Yes.

6 MS. KIRK: I object to the question
7 because he's already answered that.

8 MR. TRAXLER: What was the answer?

9 MR. TWOMBLEY: I think he said he
10 didn't remember the date.

11 MR. TRAXLER: I'm asking him if this
12 conversation with Merrill Light was before or after
13 the execution of the June 2012 documents.

14 MR. MOLSTER: So that's a one-word
15 answer for you, John, from my perspective. I can't
16 speak for Ashley and the company.

17 MR. TWOMBLEY: My position is if it
18 doesn't relate to the preparation, execution, or
19 amendment of Mr. Barringer's estate planning
20 documents, I mean, respectfully, Tom, I mean, I
21 just -- I just don't think you're entitled to go into
22 it as far as when it was, who was on the call, what
23 they talked about, you know. I just, again,
24 respectfully, I just think those are privileged
25 matters that you're not entitled to go into it with.

1 Now, if it's a conversation with just Ms. Light,
2 then, you know, of course, I can't instruct him not
3 to answer that. But if -- but, you know, if it goes
4 any further, then I just respectfully take the
5 position that it's not within the exception and
6 you're not entitled to go into it.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, were you involved in the
9 restatement of Mr. Barringer's revocable trust on or
10 about July 20, 2012?

11 A. I was involved in the restatement of
12 Mr. Barringer's trust. The date, I can refer to it
13 in the documents, but that's -- and those dates sound
14 right. But, yes, I was involved in that.

15 Q. Was this conversation with Merrill Light
16 on the telephone before or after that execution of
17 that document?

18 MR. MOLSTER: Same agreement?

19 MR. TRAXLER: Yeah.

20 THE WITNESS: So I --

21 MR. MOLSTER: Go ahead and answer,
22 John, please.

23 THE WITNESS: Yes.

24 MS. PAYLOR: That was a good answer.

25 MR. TRAXLER: That was a very good

1 answer and very nice timing.

2 BY MR. TRAXLER:

3 Q. The question was: Was the conversation
4 before or after July 20, 2012 of the restatement of
5 the revocable trust?

6 A. Before.

7 Q. Okay. Was it before or after the June 28,
8 2012 board meeting?

9 MR. MOLSTER: Same agreement?

10 MR. TRAXLER: Yeah.

11 MS. KIRK: Hold on. I just want to
12 make sure of something.

13 THE WITNESS: And so I'm sorry,
14 Mr. Traxler, what was the last question?

15 BY MR. TRAXLER:

16 Q. Okay. Do you remember the board meeting
17 on June 28, 2012? Do you remember hearing about
18 that?

19 A. Yes.

20 Q. This was where Kevin Luzak was ousted as
21 an officer, correct?

22 MS. KIRK: Object to the form.

23 MR. TWOMBLEY: Object to the form.

24 THE WITNESS: That sounds right.

25 That's my recollection.

1 BY MR. TRAXLER:

2 Q. Okay. Was the conversation with
3 Merrill Light that we've been talking about before or
4 after that meeting on June 28th?

5 A. One-word -- one-word answer, before.

6 Q. Okay. Did Mr. Slane ever have any
7 conversations with you about Mr. Barringer's mental
8 status?

9 MS. KIRK: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. TRAXLER:

12 Q. When?

13 A. Not -- I'm not sure when. I know that it
14 wasn't until after -- it was after July of 2012.

15 Q. Let me get you -- I'm sorry. Did I cut
16 you off?

17 A. July of 2012. It wasn't...

18 Q. All right. Let me get you to go to in
19 your exhibit notebook to tab one, page 28. Are you
20 copied in any fashion on this e-mail?

21 A. I'm sorry, Mr. Traxler. I'm looking at J.
22 Jolley Dep 0028, and what was the question?

23 Q. Yes, sir. Yes, sir. Were you copied on
24 that e-mail -- those e-mails?

25 A. I -- I don't see that I was copied on this

1 e-mail.

2 Q. Do you recall seeing it prior to your
3 deposition -- preparation for your deposition?

4 A. I don't recall.

5 Q. All right. Do you see the e-mail in the
6 middle from Randy to Robert Slane dated January 3,
7 2012 at 4:24 p.m.?

8 A. I do see this.

9 Q. Okay. And you see the paragraph -- the
10 second paragraph that says, "Robert, comma." Do you
11 see that?

12 A. I do.

13 Q. Would you read that out loud, please?

14 A. "Robert, Merrill was asking me if
15 Barringers are considering her with power of attorney
16 for them in the near future. She is concerned that
17 PBB is starting to show more irrational behavior on
18 certain family issues, which is disturbing to all
19 siblings. A close friend of hers had a similar
20 situation with her older parents and before power of
21 attorney could be transferred, they were declared
22 unsound and the state took control, which was
23 devastating."

24 Q. This concerns Merrill (inaudible) --

25 THE COURT REPORTER: I need him to

1 repeat that.

2 MS. KIRK: We lost you completely.

3 MR. MOLSTER: Objection. Instruct
4 him not to answer with respect to -- I think it's
5 fair game with respect to Slane. I don't think it's
6 fair game with respect of Merrill or Randy or anybody
7 else.

8 MS. KIRK: Tom, this is Ariail Kirk.
9 I don't think the court reporter or the witness or I
10 could hear that. So I don't have any idea what you
11 just asked.

12 MR. TRAXLER: I'm sorry, Ariail. I
13 couldn't hear what you were saying.

14 MS. KIRK: We -- I don't think
15 anybody here in Columbia could hear that question.
16 So I don't -- I don't even know what you asked. I
17 don't think it's going to be reflected on the record
18 either because I don't think the court reporter could
19 hear it.

20 MR. TRAXLER: All right. My question
21 was: Did Merrill or Robert Slane or anybody else
22 address those concerns that Mr. Jolley just read out
23 loud to Mr. Jolley?

24 MR. MOLSTER: Okay. And I instruct
25 him not to answer with respect to anybody other than

1 Mr. Slane. Well, certainly with respect to Merrill
2 or Randy Light.

3 BY MR. TRAXLER:

4 Q. Go ahead, Mr. Jolley.

5 MR. MOLSTER: Do you understand the
6 instruction, John?

7 THE WITNESS: No. I don't understand
8 the question or the instruction. I'm really not
9 trying to be difficult.

10 BY MR. TRAXLER:

11 Q. Okay. Let's back up. We'll take it one
12 at a time. Did Mr. Slane ever pass on those
13 sentiments or thoughts to you?

14 A. I -- as I just said a minute ago, I
15 didn't -- I don't recall anything from Robert Slane
16 with respect to these issues prior to at least July
17 of 2012.

18 Q. All right. Did you ever have any
19 conversations with Merrill Light other than as her
20 lawyer about this issue with respect to her father?

21 MR. MOLSTER: All right. So I think
22 that I need to talk to him. I'm going to instruct
23 him not to answer unless you want me to talk to him
24 offline.

25 BY MR. TRAXLER:

1 Q. Well, no. Very simply, Mr. Jolley, did
2 you ever have any conversation with Merrill Light
3 along the lines of this e-mail other than in an
4 attorney-client relationship with her?

5 MR. MOLSTER: So I need to talk to
6 him about whether or not he had an attorney -- make
7 sure he's clear on whether or not he had an
8 attorney-client relationship with her before I'm
9 going to just willy-nilly let him answer that
10 question.

11 BY MR. TRAXLER:

12 Q. Do you understand the question,
13 Mr. Jolley?

14 MR. MOLSTER: I instruct you not
15 to -- John, I instruct you not to answer unless and
16 until Tom and I can come to some conclusion on this.

17 THE WITNESS: Okay.

18 MR. TRAXLER: So you are not going to
19 answer, and you're instructing him not to answer?

20 MR. MOLSTER: Correct. I'm willing
21 to work it out with you, but I can't just willy-nilly
22 let -- let him answer the question.

23 MR. TRAXLER: All right. Let's --
24 why don't you go talk to him briefly and let's see if
25 we -- Chip, we'll take a break and go off the record

1 while you talk to him briefly, come back and tell me
2 whether he's going to testify. While you're
3 talking -- if he's going to assert the privilege, I
4 would want to know the circumstances of the
5 conversation and why it was in an attorney-client
6 relationship.

7 MR. MOLSTER: It's going to take me a
8 minute. I've got to go -- Ashley -- well, how -- how
9 are we going to communicate with -- I guess maybe,
10 John, let me give you my -- or Ariail, let me give
11 you my cell phone. My cell phone doesn't work where
12 I am right here. So I have to go up to the top of
13 the hill so I can get a signal, but my cell phone
14 number is 703 --

15 MR. TRAXLER: Chip, I love a muse. I
16 mean, you're somewhere where you've got to go the top
17 of a hill during the deposition?

18 MR. MOLSTER: And stand on one foot.

19 THE VIDEOGRAPHER: We are off the
20 record. It is 11:03 a.m.

21 (Off the record.)

22 THE VIDEOGRAPHER: We are back on
23 record. It is 11:10 a.m.

24 MR. TRAXLER: All right.

25 Mr. Molster, are you going to instruct him not to

1 answer the question?

2 MR. MOLSTER: Could you just repeat
3 it one more time?

4 MR. TRAXLER: Well, Madam Court
5 Reporter, could you read the question back?

6 THE COURT REPORTER: It's a lot of
7 colloquy. Give me just a moment.

8 MR. MOLSTER: Well, let me just cut
9 through -- cut through it. Yes. I mean, it was a
10 privilege communication after my consultation with
11 Mr. Jolley. So I will instruct him not to answer
12 that.

13 BY MR. TRAXLER:

14 Q. All right. Mr. Jolley, after that
15 conversation, what did you do?

16 MS. KIRK: I object to the form of
17 the question.

18 BY MR. TRAXLER:

19 Q. Let me rephrase it. As a result of that
20 conversation, did you do anything?

21 MS. KIRK: I object to the form of
22 that question. Are you asking him what he did based
23 upon a privileged conversation for a client?

24 THE WITNESS: Yep. Yep.

25 MR. MOLSTER: And I'm just going to

1 instruct him -- John, I just instruct you not to
2 provide any information to Mr. Traxler that would be
3 protected by your attorney-client relationship with
4 Merrill Light or Randy Light. Does that make sense
5 to you?

6 THE WITNESS: I think so. After that
7 conversation, what did I do?

8 MS. KIRK: To the extent that you did
9 something that is privileged or was work product for
10 your client, I would instruct not to discuss it with
11 Mr. Traxler.

12 THE WITNESS: So okay. I'm not
13 exactly sure how I can answer this.

14 MR. TWOMBLEY: Well, under the rules,
15 I think you're entitled to talk with your lawyer
16 about -- you know, I mean, she'll have to tell you.
17 But I think when a witness is not clear how to
18 respond or whether the response would reveal a
19 privilege, that's the very purpose of the rule to
20 allow you to talk with your lawyer about it. So I
21 don't know if Tom disagrees, but maybe you would
22 agree he could talk to Ariail about what his answer
23 might be and she can help counsel him on whether or
24 not he should disclose the answer. But I, you
25 know -- that's just --

1 MR. MOLSTER: And then from my
2 perspective, I just want to be clear that we're not
3 waiving any attorney-client privilege with respect to
4 Randy or Merrill Light, and I'm asking you not to
5 disclose any information that would be protected by
6 the attorney-client privilege between those --
7 yourself and those folks. And if you need to consult
8 with me in connection with your consultations with
9 your lawyer, I am available to do so. Maybe the
10 better thing to do rather than going back up to the
11 top of the hill is that they give us -- we can
12 continue on the Zoom without anybody else not
13 hearing. I don't know how -- I'm trying to figure
14 out a better way to do it. I'm not sure you need me
15 for this one. But, you know, going forward,
16 obviously we'll going question by question.

17 MR. TRAXLER: Somebody tell me what
18 he's going to do. Is he going to answer the question
19 or not?

20 MR. MOLSTER: I think he's going to
21 talk to Ariail.

22 MS. KIRK: Right. So are you ready
23 to go off?

24 MR. TRAXLER: If he wants to consult
25 about whether that answer involves privileged

1 communications, that's right.

2 MS. KIRK: Okay.

3 MR. MOLSTER: We are asserting the
4 privilege to the maximum --

5 THE VIDEOGRAPHER: We are now off
6 record. It is 11:14 a.m.

7 (Off the record.)

8 THE WITNESS: We are back on record.
9 It is 11:18 a.m.

10 MS. KIRK: I'm going to instruct the
11 witness not to answer based on privilege.

12 MR. TRAXLER: Did Mr. Twombly
13 participate in that conference just now?

14 MS. KIRK: Are you asking the
15 question or are you asking me?

16 MR. TRAXLER: Asking you, Ariail.

17 MS. KIRK: No, sir.

18 MR. TRAXLER: Was Mr. Twombly in on
19 that privileged conference?

20 MS. KIRK: No, sir.

21 MR. TRAXLER: Okay. Was anybody else
22 other than you and Mr. Jolley?

23 MS. KIRK: No, sir.

24 MR. TRAXLER: Okay. Thank you.

25 BY MR. TRAXLER:

1 Q. Mr. Jolley, going back to that telephone
2 conversation that we've been talking about with
3 Merrill Light in the summer of 2012, did you discuss
4 that conversation with anyone else?

5 MS. KIRK: I object to that question
6 as well and instruct him not to answer to the extent
7 that it involves attorney work product or privileged
8 communications.

9 MR. MOLSTER: And same for me on
10 behalf of Merrill Light, John.

11 MR. TRAXLER: The question very
12 simply is: Did he discuss it with anyone else?

13 MS. KIRK: I understand the question.
14 I think that that --

15 MR. TRAXLER: I don't know how that
16 could possibly be privileged.

17 MR. MOLSTER: Sure. If he talked to
18 Betsy -- Becky Bostic about it or somebody else in
19 his office.

20 MR. TRAXLER: Well, I haven't asked
21 him who yet. I haven't asked him who. All I did was
22 ask him if he talked to anybody. How can that
23 possibly be privileged?

24 MR. MOLSTER: That could be
25 attorney-client and work product to the extent you're

1 getting into the substance of it. So my instruction
2 to John is please do not reveal any attorney-client
3 privileged information. And if you have concerns
4 about what those parameters are, I'm happy to discuss
5 it, and Ariail is obviously right there and she can
6 discuss it with you as well.

7 MR. TRAXLER: Ariail, are you
8 instructing him not to answer that question?

9 MS. KIRK: Yes, sir.

10 MR. TRAXLER: Okay. And I think I've
11 asked you this question -- and I assume you're
12 instructing him, Ariail, not to answer that question
13 on the grounds of privilege; is that correct?

14 MS. KIRK: Yes.

15 MR. TRAXLER: And are y'all going to
16 instruct him not to answer any of my questions about
17 who he talked to, the setting, the purpose of the
18 like so we can determine whether or not it's truly
19 privileged or not; is that -- is that correct? Or do
20 you want me to plow through every one of those
21 questions or is this a special record in y'all's
22 opinion?

23 MS. KIRK: I didn't hear you. I'm
24 sorry. What was the last thing you said?

25 MR. TRAXLER: Is this a sufficient

1 record that y'all are going to instruct him not to
2 answer any questions about his capacity in that
3 conversation with Merrill Light, who he talked to,
4 the setting so that I can explore whether it's really
5 privileged or not or do I need to ask him each one
6 those questions and y'all independently assert a
7 privilege as to them?

8 MR. MOLSTER: I think it's question
9 by question myself. I mean --

10 MR. TRAXLER: Okay. Some of this is
11 going to be repetitive.

12 MR. MOLSTER: Tom, I'm not trying to
13 be hard to get along with. I just don't know any
14 other way to do it.

15 MR. TRAXLER: Well, I understand
16 that, Chip, but I have an absolute right to know the
17 setting and the contact. The judge has the right to
18 know why it's privileged, who he talked to, and the
19 setting. He is wearing multiple hats, representing
20 multiple people in multiple capacities, and it's not
21 a privilege of one. It's a privilege of all. So I
22 have the right to know what's going on, how he -- who
23 he talked to, in what capacity. I have the right to
24 know whether he disclosed those contents to anybody
25 where it's not privileged. But y'all are telling him

1 not to answer any of those questions?

2 MS. KIRK: That's not the question
3 you asked him, Tom. You didn't ask him did you, you
4 know, have non-privileged actions or conversations
5 following.

6 MR. TRAXLER: No, Ariail. I --

7 MS. KIRK: You asked him generally
8 everybody he talked to.

9 MR. TRAXLER: Y'all instructed him
10 not to answer. I didn't get to ask that next
11 question.

12 MR. MOLSTER: Well, I think try that
13 next question and let's see how we do.

14 MR. TRAXLER: Well, are y'all now
15 allowing him to answer the question as to whether he
16 talked to anybody about the substance of that
17 conversation?

18 MS. KIRK: I am not allowing him to
19 answer that question as it relates to every person in
20 the world, including his staff.

21 MR. TRAXLER: Well, it very simply is
22 did he talk to anybody about the conversation, and
23 y'all have told him not to answer.

24 MS. KIRK: Correct.

25 MR. TRAXLER: Are you now allowing

1 him to answer the question? It's not --

2 MS. KIRK: No.

3 MR. TRAXLER: -- that hard.

4 MR. MOLSTER: So to be clear, I don't
5 think I have an objection or instruction if you ask
6 him whether he had -- whether he disclosed the
7 information that he got from Merrill Light to anybody
8 who in his judgment was not covered by the
9 attorney-client privilege. That's what you're trying
10 to get to whether there's a waiver issue.

11 MR. TRAXLER: Ultimately, we get
12 there. I just right now want to ask him the
13 question: Did he talk to anybody about the
14 conversation?

15 MR. MOLSTER: Well, Ariail has
16 instructed him not to answer that.

17 BY MR. TRAXLER:

18 Q. Okay. When you had -- did you have
19 follow-up conversations with Merrill Light pertaining
20 to the same substance, whatever it was?

21 MR. MOLSTER: If I let him answer
22 that yes or no, do you agree it's not a waiver --
23 waiver of attorney-client?

24 MR. TRAXLER: I'll agree to that.
25 Sure.

1 THE WITNESS: Yes.

2 BY MR. TRAXLER:

3 Q. How many times?

4 MR. MOLSTER: Same agreement?

5 MR. TRAXLER: Yes. I will agree,
6 Chip, that to the extent he testifies to these
7 answers, I will be construe that to be a waiver.

8 MR. MOLSTER: Thank you.

9 THE WITNESS: I'm not certain how
10 many times.

11 BY MR. TRAXLER:

12 Q. Okay. Give me your best guess, if you
13 would.

14 MR. MOLSTER: Object to form.

15 MS. KIRK: Object to form.

16 THE WITNESS: Five to ten times.

17 BY MR. TRAXLER:

18 Q. All right. And when was the last
19 conversation pertaining to that substance?

20 A. I -- I -- I'm not certain.

21 Q. Was the last conversation with you that
22 you had with her about that substance before or after
23 the purported stock transfer on September 11, 2012?

24 A. Before.

25 Q. Okay. But you can't otherwise give me a

1 more narrow time frame; is that correct?

2 MR. MOLSTER: Object to the form.

3 THE WITNESS: I generally can't say
4 more specifically than that.

5 BY MR. TRAXLER:

6 Q. All right. Were you speaking to her as an
7 officer or director of the corporation or as an
8 individual client?

9 MS. KIRK: Object to the form.

10 MR. MOLSTER: So I don't know whether
11 we need to consult on this. And, Johnathan, I don't
12 know whether you need to do anything on behalf of the
13 corporation.

14 MS. KIRK: Do we -- is there a time
15 period you're asking about?

16 MR. TRAXLER: I'm sorry. I didn't
17 hear the question.

18 MS. KIRK: Is there a specific time
19 period you're asking about?

20 MR. TRAXLER: The time period that
21 we've been testifying -- that he's been testifying to
22 about these conversations with Merrill Light that
23 y'all are basing a privilege on. And my question
24 very simply is: Is that privilege based upon
25 attorney-client privilege with her individually or is

1 it a privilege pertaining to the corporation?

2 MR. MOLSTER: Well, so I'm
3 instructing John not to answer -- to provide any
4 information that's going to be protected by
5 attorney-client privilege. If we need to consult on
6 this question, we can do so or you can talk to Ariail
7 and I don't know whether John Schronce needs to weigh
8 in or not.

9 MR. TRAXLER: All right. So y'all
10 are instructing him not to answer the question?

11 MR. MOLSTER: That's not what I said.

12 BY MR. TRAXLER:

13 Q. Okay. You can answer the question, then
14 Mr. Jolley, unless somebody tells you not to.

15 MR. SCHRONCE: And, again, to the
16 extent this involves his role as corporate counsel
17 and implicates privileged communication, I instruct
18 him not to answer. But, again, Ariail, if that's
19 something that you want us to talk over, we can do
20 that.

21 MR. TRAXLER: I just want to know who
22 gets to assert the privilege? Whose privilege is it?
23 That's all I want to know right now.

24 MR. MOLSTER: You know what? I'm not
25 sure it's fair to ask a lawyer that question. It's

1 really a legal -- it's really a legal question.

2 MR. TRAXLER: No. No, it's not.

3 Either he was talking to her as his client or he was
4 talking to her as a director of the company. There's
5 a big difference. When he wears multiple hats, he --
6 he creates this issue. It's a very fair question as
7 to who the privilege belongs to.

8 MR. MOLSTER: Well, to the extent it
9 belongs to Merrill Light, I instruct you not to
10 answer.

11 MR. TRAXLER: All right. That's not
12 the question, Chip. My question was: When he was
13 talking to her, was he talking to her as his
14 individual client or was he talking to her as a
15 director of the company?

16 THE WITNESS: If you were talking to
17 her as your individual client, I instruct you not to
18 answer the question.

19 MR. TWOMBLEY: And didn't Schronce
20 say object if he was talking in the capacity of
21 officer? So it seems to me they got both bases
22 covered.

23 MR. TRAXLER: I'm sorry, Ashley. I
24 couldn't hear you.

25 MR. TWOMBLEY: Well, I mean, I was

1 just commenting it seems like Ariail -- I mean, Chip
2 has objected on behalf of her individually and then
3 the corporation has objected. So either way -- I
4 mean, I'm just trying --

5 MR. SCHRONCE: (Inaudible.)

6 MR. TWOMBLEY: -- I'm just trying to
7 move us along from this.

8 MR. SCHRONCE: -- and sort this out.

9 MR. TRAXLER: I understand that. But
10 I think Judge Price is entitled to know, as we are,
11 as to whether or not he is refusing to answer the
12 question on the basis of attorney-client privilege of
13 her individually or the corporate privilege. I have
14 a right to know that.

15 MR. MOLSTER: I respectfully
16 disagree. I just don't think it's a fair position to
17 put him in. So with respect to Merrill Light's
18 portion of it, I instruct him --

19 MR. TRAXLER: All right.

20 MR. MOLSTER: I just don't think I
21 have a choice.

22 BY MR. TRAXLER:

23 Q. All right. So you're going to refuse to
24 answer the question; is that correct, Mr. Jolley?

25 MS. KIRK: He's not refusing to

1 answer. He's been instructed not to. Those are
2 substantively different things.

3 MR. TRAXLER: I'm sorry. I just want
4 to make sure that we're -- the way we are leaving
5 this is that he is being instructed not to answer.
6 If that's the case, I will honor that and move on.

7 MS. KIRK: I believe that's clear.

8 MR. TRAXLER: Okay. That's fine.

9 BY MR. TRAXLER:

10 Q. Mr. Jolley, let me get you to go to tab
11 one, page 61, please. I'll give you a minute to read
12 that. When you've had a chance to read it, if you'll
13 just let me know.

14 A. I have -- this is J. Jolley Dep page 0061,
15 the e-mail from Anne Surrentt to myself.

16 Q. Yes.

17 A. I've read it.

18 Q. All right. Do you remember this e-mail?

19 A. I remember being -- I remember the folks
20 at Wells Fargo reaching out to me.

21 Q. And do you recall what the discussion was
22 regarding an amendment he would like to initiate as
23 it relates to his late mother's trust?

24 A. I don't. I mean, I -- no. I don't
25 remember.

1 Q. Did you do or were you involved in any
2 amendments to his late mother's trust?

3 A. I don't believe that I was involved in any
4 amendment of his late mother's trust.

5 Q. Okay. Let me get you to go to page 63, an
6 e-mail from Robert Slane to Paul Barringer and copied
7 to you.

8 MR. TWOMBLEY: Did you say 63, Tom?

9 THE WITNESS: Tom, did you say --
10 Mr. Traxler, did you say page 63?

11 BY MR. TRAXLER:

12 Q. Yes.

13 A. I have the e-mail in front of me.

14 Q. Have you read it?

15 A. I have now read it.

16 Q. Okay. It says in the middle of that
17 e-mail that the two of us would like to come by and
18 visit you -- with you regarding some specific
19 recommendations on how to title certain assets to
20 minimize the probate cost of your and Merrill's
21 estate. Do you recall that?

22 A. Do I recall the meeting or do I -- I mean,
23 I see this e-mail and I don't really recall the
24 substance of -- I see the e-mail and -- and I don't
25 recall.

1 Q. Do you recall any follow-up action on
2 that, a meeting with Mr. Barringer?

3 A. I certainly met -- I recall meeting with
4 Mr. Barringer talking about funding his trust.

5 Q. Which trust?

6 A. So I'm sorry. I recall meeting with the
7 Barringers discussing funding -- Mr. Barringer
8 discussing funding his revocable trust.

9 Q. And how -- when were those conversations?
10 MR. TWOMBLEY: Are you just asking
11 for the date?

12 MR. TRAXLER: Yes.

13 MR. TWOMBLEY: If you remember.

14 THE WITNESS: I don't remember.

15 BY MR. TRAXLER:

16 Q. Was it shortly after this e-mail?

17 A. I would -- I believe it was shortly after
18 this e-mail.

19 Q. Okay. And the meeting did, in fact,
20 occur, correct?

21 A. As I said, I certainly -- I remember
22 meeting with Mr. Barringer and discussing my
23 recommendations -- our recommendations to fund his
24 revocable trust.

25 Q. And where did you meet with him?

1 A. I -- I don't remember if it was at
2 Mr. Barringer's house or at my office.

3 Q. Who was present?

4 A. I believe that Mr. Slane was present at
5 that meeting.

6 Q. And what was discussed?

7 MR. TWOMBLEY: I'm going to instruct
8 you not to answer the question unless it deals with
9 the preparation, execution, or amendment of
10 Mr. Barringer's estate planning documents. If it
11 does not, then I'm instructing you not to answer
12 because it does not fall within the testamentary
13 exception of the attorney-client privilege.

14 BY MR. TRAXLER:

15 Q. All right. You heard that. To the extent
16 it related to what Mr. Twombley said, he tells you
17 not to answer it, can you answer the question?

18 A. I have nothing to add.

19 Q. Did it result in any changes to the estate
20 plan of Mr. Barringer?

21 MR. TWOMBLEY: No. Just so the
22 witness is clear, the question is did it result in
23 any changes to his estate plan, which I interpret to
24 mean, Tom, you can clarify, did any documents -- any
25 dispositive documents get changed. Is that right?

1 MR. TRAXLER: Mr. Twombly, I really
2 would prefer that you not coach him.

3 MR. TWOMBLEY: Okay. Well, then I
4 just instruct him not to answer the question. I just
5 instruct him not to answer the question. I'm trying
6 to help get to the bottom of it so you can get the
7 information you need, but also protect the privilege
8 at the same time. But if you don't want me to do
9 that, then I have no choice but to instruct him not
10 to answer. So I instruct you not to answer,
11 Mr. Jolley, and we can move on.

12 MR. TRAXLER: All right. He is not
13 allowed to answer the question as to whether those
14 conversations resulted in the estate plan; is that
15 correct?

16 MR. TWOMBLEY: In light of the fact
17 that you have, you know, suggested that I'm coaching
18 him by trying to talk about it, yes, I'm not allowing
19 him to answer. Again, I'm happy to talk about it,
20 but, you know, you don't want to do that. So that's
21 fine. That leaves me no choice. I instruct you not
22 to answer.

23 MR. TRAXLER: Why don't you just let
24 him answer yes or no as to whether it resulted in
25 changes?

1 MR. TWOMBLEY: Maybe I was going to
2 do that. But in the discussion, you suggested I was
3 coaching him and I should, you know, not proceed with
4 discussion. So you can't have it both ways, Tom. If
5 you want to talk about it, I'm happy to talk about
6 it.

7 MR. TRAXLER: That's all right. If
8 he's going to -- you're instructing him not to
9 answer, that is fine. Is that on the basis of
10 privilege?

11 MR. TWOMBLEY: Yes. And work -- and
12 work product.

13 BY MR. TRAXLER:

14 Q. All right. Mr. Jolley, was there any
15 litigation that you anticipated at that time?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 MS. KIRK: Same objection.

19 BY MR. TRAXLER:

20 Q. Were you anticipating any litigation at
21 that time, Mr. Jolley, subject to their objections?

22 MR. TWOMBLEY: What time?

23 MR. TRAXLER: April 2012.

24 THE WITNESS: No.

25

1 BY MR. TRAXLER:

2 Q. All right. Let me refer you to page No.
3 65 of your documents.

4 MS. KIRK: What page was that, Tom?

5 MR. TRAXLER: 65.

6 BY MR. TRAXLER:

7 Q. When you've had a chance to read that,
8 Mr. Jolley, just let me know, please.

9 A. I have had a chance to read page 65.

10 Q. Okay. And who is Anne Surret?

11 A. Ms. Surret is the -- a relationship
12 manager at Wells Fargo. She's the e-mail that you
13 asked me about just a minute ago.

14 Q. All right. And was this -- this e-mail
15 says, "Anne, I sat down with Mr. Barringer, et
16 cetera." Was this the meeting referenced back on
17 page 63 in the April 2 e-mail from Robert Slane to
18 Paul Barringer? Flip back a couple pages and see if
19 I made the connection correctly.

20 A. I'm not sure, but it appears to be.

21 Q. Okay. When you say I sat down with
22 Mr. Barringer, his financial advisor, who is the
23 financial advisor?

24 A. I believe this reference is to
25 Robert Slane.

1 Q. All right. And also present was daughter,
2 Merrill Light, as co-trustee, correct?

3 A. Yes.

4 Q. All right. And y'all discussed various
5 funding items, right?

6 A. That's what this e-mail says. Yes.

7 Q. What were those funding items?

8 MR. TWOMBLEY: I object and instruct
9 you not to answer unless it relates to the
10 preparation, execution, or amendment of
11 Mr. Barringer's estate planning documents.

12 MR. TRAXLER: Okay. This is an
13 e-mail to a third-party. Are you telling me I can't
14 go into the substance of those communications?

15 MR. TWOMBLEY: Well, that wasn't your
16 question. I thought your question was what was
17 discussed at the meeting.

18 MR. TRAXLER: It was. We got the
19 meeting that was discussed with Anne Surret and
20 Robert Slane -- and Robert Slane were there both.
21 Are you telling me that that is a privileged
22 conversation?

23 MR. TWOMBLEY: Yes. I believe it
24 was. I mean, these are agents of Mr. Barringer or
25 people are acting in his direction. I mean, why --

1 why wouldn't it be?

2 MR. TRAXLER: Okay. So are you
3 instructing Mr. Jolley not to answer the question as
4 to what the various funding items were that he
5 referred to in this e-mail?

6 MR. TWOMBLEY: Correct.

7 BY MR. TRAXLER:

8 Q. All right. It also says, "One of the
9 items we discussed was the progress that had been
10 made in transferring Barringer's BB&T accounts
11 (three) to Wells Fargo." Do you recall that issue?

12 A. Do I -- I don't recall the specifics of
13 those three accounts, but I recall Mr. Barringer's,
14 what, transferring assets from BB&T to Wells Fargo.

15 Q. And were those individual accounts that
16 Mr. Barringer had or trust accounts?

17 A. I -- I don't recall that.

18 Q. And why was the transfer from BB&T to
19 Wells Fargo?

20 MR. TWOMBLEY: I'm going to object to
21 the form and -- well, let me just think about it a
22 minute. Are you asking John if he knows why?

23 MR. TRAXLER: Yep.

24 MR. TWOMBLEY: I mean, I don't know
25 what his answer is going to be. So, I mean, I would

1 have to talk to him about what his answer is going to
2 be before I can allow him to answer it, if you would
3 like me to do that.

4 MR. TRAXLER: I don't think the
5 substance of his answer is based -- reflects on
6 privilege. His answer is going to be what it is. It
7 has nothing to do with privilege.

8 MR. TWOMBLEY: Well, I mean, that's
9 totally not correct, Tom. I just respectfully
10 disagree with you. What if his testimony is, well, I
11 had a privileged discussion with Mr. Barringer
12 wherein he asked me for legal advice about X and I
13 advised him based on my opinion that the right thing
14 to do was Y. I mean, that would totally and
15 completely be privilege and you wouldn't be entitled
16 to go into it, in my opinion. So I don't know what
17 his answer is, and I don't know what else to do other
18 than talk to him about it.

19 If you -- you know, I -- these are
20 some interesting law school questions, in my opinion.
21 But it's an interesting way to spend the rest of the
22 time you have on the deposition, but, you know, I
23 either have to talk with him or if you want to
24 withdraw the question, that's fine. If you don't,
25 then I'm instructing you not to answer, but I will

1 talk with him privately to determine what he knows
2 and whether or not his response would reveal any
3 privileged information.

4 MR. TRAXLER: I will follow your
5 instructions to him not to answer the question and
6 let that stand.

7 BY MR. TRAXLER:

8 Q. All right. Mr. --

9 MR. TWOMBLEY: Well, and I just want
10 to make sure I don't know what his answer is. His
11 answer may not be privileged, but I don't know. And
12 so I can't just hope that it's not and allow him to
13 answer it.

14 BY MR. TRAXLER:

15 Q. Okay. Mr. Jolley, it says, the last
16 sentence, "Ultimately I suspect we will want two of
17 the accounts to be titled in the name of Paul's
18 revocable trust and one to be titled in the name of
19 Merrill Barringer's revocable trust." Do you recall
20 that conversation?

21 A. I don't recall that conversation.

22 Q. Do you recall what the reason would be to
23 have two accounts titled in his revocable trust and
24 one in Merrill Barringer's revocable trust?

25 MR. TWOMBLEY: You know, I'm either

1 going to, A, talk with John about that and find out
2 what his answer is to determine whether or not I need
3 to instruct him not to answer or you can withdraw the
4 question.

5 MR. TRAXLER: I'm not going to
6 withdraw the question. I'll just honor your
7 instruction not to answer and move on.

8 MR. TWOMBLEY: Well, just so I'm not
9 improperly accused of, you know, instructing him not
10 to answer a question that's not privileged, then I
11 will take this opportunity to talk with John about
12 what his answer is and whether or not it is, in fact,
13 privileged. So we'll take a break.

14 MR. TRAXLER: No. We don't need to
15 take a break. I'll stand with what you said, and
16 I'll let you talk to him during the regular break and
17 then we can revisit the issue.

18 BY MR. TRAXLER:

19 Q. Mr. Jolley, I need you to turn to page 67,
20 if you would, please, sir. This is an e-mail from
21 Robert Slane to Travis Bryant with you copied on it.
22 I'll give you a minute to read that.

23 A. I've read the e-mail.

24 Q. Okay. Do you recall receiving this
25 e-mail?

1 A. Not beyond reading it here. I don't
2 recall that. No.

3 Q. All right. Mr. Slane says to Travis
4 Bryant with a copy to you, "Per our conversation last
5 week, we want to do the following: Retitle Paul's
6 CFRC stock to his revocable trust." Do you see that?

7 A. I do.

8 Q. Was that part of the earlier discussions
9 with Paul Barringer to retitle his stock to his
10 revocable trust?

11 A. Was -- you're asking me if -- if -- if
12 this recommendation to retitle the stock was a part
13 of an earlier conversation?

14 Q. Yes.

15 A. I think that e-mail -- this e-mail
16 reflects that.

17 Q. Yeah. And we talked about earlier e-mails
18 about retitling assets. Would that include -- would
19 that be included in this retitle of the CFRC stock?

20 MS. KIRK: Object to form.

21 THE WITNESS: Well, the CFRC stock
22 was certainly one of Mr. Barringer's assets and it's
23 titling would be a subject of conversation. Yes.

24 BY MR. TRAXLER:

25 Q. And that was ultimately accomplished, was

1 it not?

2 A. I believe so. Yes.

3 Q. All right. This is kind of a lead up to
4 that, correct?

5 MS. KIRK: Object to form.

6 THE WITNESS: I'm not sure. A lead
7 up to the transfer of the stock -- I mean, as it
8 says, it would -- it would be that the goal as
9 described here would be to transfer those shares to
10 Paul's revocable trust.

11 BY MR. TRAXLER:

12 Q. That was ultimately done in May, was it
13 not?

14 A. I believe so. Yes, sir.

15 Q. Okay. So this is all a lead up to him
16 retitling the stock and putting it in his revocable
17 trust, correct?

18 MR. TWOMBLEY: Object to the form.

19 MS. KIRK: Object to form.

20 THE WITNESS: I mean, I think this
21 was -- these are events that preceded the transfer of
22 the stock. Yes.

23 BY MR. TRAXLER:

24 Q. All right. And this was all part of that
25 process or are you telling me that these April

1 e-mails are totally disconnected to the May transfer
2 of the stock?

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

5 MS. KIRK: Same objection.

6 THE WITNESS: I'm not telling you
7 that, and I'm not trying to be coy.

8 BY MR. TRAXLER:

9 Q. Okay. So when we looked at the earlier
10 e-mails, whether or not it led to a change of his
11 estate planning, it did, didn't it?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: If you -- if when you
16 describe a change to his estate planning being
17 something other than a change to the documents, his
18 -- the documents that he executed as a part of his
19 estate plan, then this would not be a part of that.
20 I think this is outside of the fact a change to his
21 documents.

22 BY MR. TRAXLER:

23 Q. But this is an estate -- a change to what
24 he wanted in terms of the disposition of his assets,
25 correct?

1 MS. KIRK: Object to the form.

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

4 THE WITNESS: No.

5 BY MR. TRAXLER:

6 Q. Okay. Why not? Let me back up and
7 rephrase. I withdraw that question.

8 Did he move -- did he move the stock from
9 his name individually to his revocable trust in May
10 2012?

11 A. That's my recollection.

12 Q. Okay. So he took it from his name to a
13 revocable trust where he and his daughter, Merrill
14 Light, were trustees, correct?

15 A. That is correct.

16 Q. And Merrill Light had the right to
17 unilaterally handle the assets of that trust,
18 correct?

19 MS. KIRK: Object to the form.

20 THE WITNESS: Merrill Light was a
21 trustee of that trust and could act independently.
22 That is correct.

23 BY MR. TRAXLER:

24 Q. And Merrill Light -- (inaudible.)

25 A. I'm sorry, Mr. Traxler. That didn't come

1 through. Can you repeat the question?

2 Q. Merrill Light was your client during this
3 time period as well, correct?

4 MS. KIRK: Object to the form.
5 That's been asked and answered a ton of times. I
6 feel like we're getting a lot of the same questions
7 over and over again.

8 THE WITNESS: Mr. Traxler, in
9 April -- April of 2012, and then I do believe that
10 Ms. Light was an estate planning client of mine.

11 BY MR. TRAXLER:

12 Q. Right. And you and Mr. Slane and
13 Ms. Light were working together to accomplish this;
14 is that correct?

15 MR. TWOMBLEY: Object to the form.

16 MS. KIRK: Object to the form. And,
17 Tom, I mean, I feel like we're going over the same
18 stuff over and over again and you're just asking it a
19 different way. And I told y'all before that we
20 weren't going to just -- I think it's abusive and,
21 you know, really takes advantage of the deposition
22 and violates our rules to just continue to have a
23 non-party lay witness ask the same questions over and
24 over again and have such a complete disregard for his
25 time. How much longer do you plan on doing this?

1 MR. TRAXLER: First of all, we are --
2 as to what we talked about before. We're going to
3 take this systematically and chronologically. He has
4 not answered this question before. He's not answered
5 this particular question before. It's not in the
6 April, May, June 2012 time frame.

7 Right now -- let's see. Last time, I
8 believe if I add it up, the amount of time I got to
9 ask him questions was about two hours and 53 minutes.
10 I believe y'all spent more time with the witness last
11 time talking to him on direct and in conference than
12 I did. And we started here at about 9:30, so I think
13 I'm well under five hours of questioning for somebody
14 who is y'all's main witness -- or one of y'all's main
15 witnesses. Excuse me. So forgive me. I'm trying
16 not to duplicate things, but there are some questions
17 that will have to be asked at various time periods
18 that are going to sound like the same question that I
19 asked for an earlier time period. I'm sorry.

20 MS. KIRK: Yeah. I've got you
21 questioning him for over four hours on the 16th of
22 March and you've been going all day today so far.

23 MR. TRAXLER: No, no. If you add up
24 the time last time when I got to ask him questions, I
25 was at two hours and 53 minutes, I believe, and y'all

1 were right around two and a half hours of asking him
2 questions. The other time in the afternoon was spent
3 with y'all taking him off the record and conferring
4 with him. If you think that a judge is going to be
5 impressed that y'all sat him down with me having
6 little time to ask questions -- y'all do what you've
7 got to do, but I'm asking these questions very
8 efficiently. It's just he's a major witness, and I'm
9 going to ask these questions as we move through the
10 chronology.

11 MR. TWOMBLEY: I thought Ariail told
12 us last time that she would give us a half a day. Do
13 you have any sense on how much more time that you
14 have?

15 MR. TRAXLER: I should be finished
16 today. I suspect to be finished today. Our
17 expressed agreement on the record, we've all got the
18 transcript, was at the end we had no limit on the
19 time.

20 MS. KIRK: I'm sorry. We what?

21 MR. TRAXLER: We had no agreement on
22 how long today would last.

23 MR. TWOMBLEY: I -- I understand
24 that, but I thought that Ariail told us what -- what
25 her position was on time.

1 MR. TRAXLER: All right. Y'all go
2 ahead. Precious time now. The very question -- the
3 very simple question to him was during this time
4 frame in April and May of 2012, when this was going
5 on about retiling the stock to the revocable trust,
6 was he not still then representing Merrill Light?

7 MR. TWOMBLEY: And he's answered
8 that.

9 MR. TRAXLER: Y'all had questions for
10 him back in --

11 MS. KIRK: I think he's answered that
12 countless times, but regardless.

13 BY MR. TRAXLER:

14 Q. All right. Go ahead, Mr. Jolley.

15 A. And the question was at this point was I
16 representing Ms. Light with respect to estate
17 planning, and the answer is yes.

18 Q. During this time period, Mr. Jolley,
19 leading up to June 28, 2012, you were not aware of
20 any treatment by the doctors of Mr. Barringer; is
21 that correct?

22 A. That's my recollection.

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: I object to the form, and
25 that's been answered and answered.

1 MR. TRAXLER: Yeah. You're probably
2 right on that one.

3 BY MR. TRAXLER:

4 Q. All right. Mr. Jolley, do you remember a
5 board meeting of CFRC at your law firm on April 25,
6 2012?

7 A. I was unaware of a board meeting at my law
8 firm in April of 2012, that is, at the time in April
9 of 2012.

10 Q. Okay. Was anybody from your law firm
11 involved in that meeting?

12 A. I have no idea.

13 Q. Do you know how it came about that it was
14 at your office?

15 A. My -- my belief is that Kevin Luzak
16 arranged that.

17 Q. All right. So you weren't present at all,
18 correct?

19 A. That is correct.

20 Q. Do you know who was present at that board
21 meeting?

22 A. No, sir.

23 MS. PAYLOR: Object to the form.

24 BY MR. TRAXLER:

25 Q. Did you ever hear any allegations against

1 Kevin Luzak or actions he did at that meeting
2 allegedly such as throwing Paul Barringer or Merrill
3 Light out of the meeting?

4 MS. KIRK: I object to the form of
5 the question, and I think this is another, you know,
6 dicey sort of privilege issue.

7 MR. SCHRONCE: Yeah. And -- and,
8 Tom, I'll jump in here. This is John Schronce. To
9 the extent that this involves communications that he
10 had later, information he was provided at later as
11 company counsel in connection with providing legal
12 advice in that capacity, I instruct him not to answer
13 that. To the extent he can answer without getting
14 into that, I think that's fine.

15 MR. TRAXLER: All right.

16 MR. MOLSTER: The same instruction on
17 behalf of Merrill Light. If you can answer the
18 question without regard to any communications that
19 you had with Merrill Light as her lawyer.

20 BY MR. TRAXLER:

21 Q. Let me rephrase the question so we can
22 step through this carefully and make a record. Did
23 you ever hear of an allegation made against Kevin
24 Luzak that he threw either Paul Barringer or Merrill
25 Light out of that board meeting? Did you ever hear

1 of an allegation?

2 MR. MOLSTER: And same instruction
3 for Merrill Light. If you got that communication
4 from Merrill Light or any of her agents, please do
5 not provide the information. I instruct you not to
6 answer.

7 MR. SCHRONCE: And -- and same
8 instruction from the company.

9 MR. TWOMBLEY: And unless it relates
10 to the execution or preparation or amendment of
11 estate planning documents, same for Mr. Barringer.
12 BY :

13 Q. All right. Can you answer the question,
14 Mr. Jolley?

15 A. I cannot.

16 Q. Okay. And because of which privilege? Is
17 it because it is an attorney-client privilege with
18 Paul Barringer or an attorney-client privilege with
19 Merrill Barringer or attorney-client privilege with
20 Merrill Light or with Randy Light or with the
21 company?

22 MR. MOLSTER: I'll give you that same
23 instruction with respect to Merrill Light and Randy
24 Light. If it's -- if it's because of those
25 privileges, I instruct not to answer.

1 BY MR. TRAXLER:

2 Q. My question very simply is: Which
3 privilege are you asserting?

4 MS. KIRK: And I'm going to instruct
5 him not to answer that. It's attorney-client
6 privilege. I mean, we've told you that.

7 MR. SCHRONCE: And does it make
8 sense, Ariail, maybe we should confer on this issue.

9 MS. KIRK: Sure. That's fine.

10 MR. MOLSTER: Why don't we do it the
11 next break?

12 MS. KIRK: Okay.

13 MR. MOLSTER: Make sense, Tom?

14 MR. TRAXLER: Yeah. That's fine.

15 BY MR. TRAXLER:

16 Q. Same question with regard to allegations
17 of Kevin Luzak throwing books or papers at anybody,
18 my question specifically is: Were you ever made
19 aware of an allegation that Kevin Luzak had thrown
20 books or papers at somebody at that board meeting?

21 MR. MOLSTER: Same instruction.

22 MS. KIRK: Tom, did you say throw
23 papers?

24 MR. TRAXLER: I'm sorry. What?

25 MS. KIRK: I'm sorry. I didn't hear

1 you. Did you say throw papers?

2 MR. TRAXLER: Yeah. Throw books or
3 papers.

4 MS. KIRK: Okay.

5 THE WITNESS: Based on those
6 instructions, I can't answer that question.

7 BY MR. TRAXLER:

8 Q. And if I asked you based on what
9 privilege, you would also be instructed not to answer
10 that question?

11 MR. TRAXLER: Is that correct, Chip?

12 MS. KIRK: I believe that's something
13 that we would have to talk about too.

14 MR. MOLSTER: Yeah. We'll talk about
15 that.

16 MR. TRAXLER: Okay.

17 BY MR. TRAXLER:

18 Q. Mr. Jolley, did at any point in time, did
19 Paul Barringer talk to you about his reaction to that
20 meeting of what happened?

21 MR. SCHRONCE: And, again, this is --
22 this is John Schronce. I would have the same
23 instruction. Mr. Barringer is a director of the
24 company. To the extent that you are calling for
25 communications that Mr. Jolley may have had with him

1 in that capacity when he was serving as corporate
2 counsel, I believe that would call for privileged
3 information.

4 MR. TRAXLER: Are you instructing
5 him, John, not to answer the question?

6 MR. SCHRONCE: To the extent that
7 your question calls for him to divulge those
8 privileged communications, yes. If he can answer
9 without getting into that, that's fine.

10 BY MR. TRAXLER:

11 Q. All right. Can you answer that,
12 Mr. Jolley?

13 MS. KIRK: And also you said just --
14 your question just related to Mr. Barringer; is that
15 correct?

16 THE WITNESS: Yes.

17 MS. KIRK: Okay. So I would instruct
18 him unless it relates to the communications,
19 preparations, and execution or amendment of estate
20 plannings document, that he cannot answer it.

21 BY MR. TRAXLER:

22 Q. Mr. Jolley, in April of 2012, you weren't
23 corporate counsel, were you?

24 A. In April 2012, I was not corporate
25 counsel.

1 MR. SCHRONCE: And, Tom, just for the
2 record -- just for the record, what we're talking
3 about here is there may well be communications later
4 in time when he was serving as corporate counsel. If
5 you are asking him about communications that he may
6 have had during the time that he is serving as
7 corporate counsel about events that may have preceded
8 that, he is still being asked for his -- for his
9 legal advice. So that's what we're -- that's what
10 we're getting at here.

11 MR. MOLSTER: Same instruction --
12 same instruction with respect to Merrill Light.

13 BY MR. TRAXLER:

14 Q. Did you have any conversations with
15 Paul Barringer about that board meeting prior to
16 becoming corporate counsel?

17 MR. MOLSTER: Same instruction with
18 respect to Merrill Light.

19 MS. KIRK: Same objection here.

20 BY MR. TRAXLER:

21 Q. Okay. My question is: Did you have any
22 conversations with Paul Barringer about that meeting
23 prior to Mr. Jolley becoming corporate counsel?

24 MR. TWOMBLEY: And I would --

25 MR. MOLSTER: Same instruction with

1 respect to Merrill Light.

2 MR. TWOMBLEY: Yeah. And if any of
3 those discussions related to the communications about
4 the preparation, execution, or an amendment of an
5 estate planning document, you can answer. If they
6 dealt with any other matter, then I instruct you not
7 to answer.

8 THE WITNESS: Based on those
9 instructions, I cannot answer.

10 BY MR. TRAXLER:

11 Q. So any communications with Mr. Barringer
12 would have been in some sort of attorney-client
13 capacity; is that correct?

14 A. That --

15 MR. TWOMBLEY: Answer yes or no.

16 THE WITNESS: Yes.

17 BY MR. TRAXLER:

18 Q. Okay. Thank you. Let's talk about the
19 May transfer of Mr. Barringer's stock that we talked
20 about earlier, Mr. Jolley. Okay?

21 A. Okay.

22 Q. Were you involved in that?

23 A. I believe we were involved in asking that
24 the -- helping Mr. -- I think we were involved in
25 getting Brad Herring to transfer the shares.

1 Q. Tell me your role in that.

2 MR. MOLSTER: To the extent that any
3 of this involves privileged communications with
4 Merrill Light or Randy Light, John, I instruct you
5 not to answer.

6 THE WITNESS: I think my only
7 involvement was in assisting Mr. Barringer in
8 communicating or conveying the documents to Mr. --
9 communicating to Travis Bryant and/or Brad Herring.

10 BY MR. TRAXLER:

11 Q. Robert Slane?

12 A. I'm sorry?

13 Q. Robert Slane?

14 MR. MOLSTER: Same instruction.

15 THE WITNESS: I don't believe that I
16 communicated with Robert Slane about the transfer of
17 the shares to the revocable trust.

18 BY MR. TRAXLER:

19 Q. Okay. And what was the purpose of
20 Mr. Barringer transferring his voting shares to the
21 trust?

22 MR. TWOMBLEY: I'm going to instruct
23 you not to answer. I'd like to talk with the witness
24 about whether or not the answer to that question
25 raises -- warrants an instruction not to answer or

1 not. So I would ask you to either let me talk to him
2 or withdraw it, one or the other.

3 MR. TRAXLER: No. I won't withdraw
4 it. I'll let you talk to him.

5 MS. KIRK: Are we going to do it now
6 or roll it in with the others?

7 MR. TRAXLER: You want to roll it on
8 into lunch or go on break now and go ahead and talk
9 to him? What's y'all's -- what's y'all's pleasure?

10 MS. KIRK: I wasn't planning on
11 taking lunch since we were just doing a half day.

12 MR. TRAXLER: I wasn't planning on a
13 half day. Let's take a lunch break if you want to.
14 And, Ashley, why don't you -- whoever it is that
15 needs to talk to Mr. Jolley about that question and
16 the other privileged matters, but nothing else.
17 Let's go ahead and do that and take a lunch break.

18 MS. KIRK: Well, Tom, can we talk for
19 a minute about how much more privileged stuff you're
20 going to try to get into? Because I don't see any
21 point in carrying this deposition forward any longer
22 if every question is going to end up with a privilege
23 and we're going to have to go to court one way or
24 another anyway. I just think this has complete
25 disregard for John's time and away from his business.

1 MR. TRAXLER: I have got to make a
2 record so that Judge Price can see what they were
3 answering and not answering, and y'all don't think
4 I'm entitled to go into the setting of each
5 communication to establish whether it was privileged
6 or not. I don't know how else to do it.

7 MS. KIRK: I also don't think you're
8 entitled to tie up a person away from his job for
9 multiple days, you know. I mean, I don't think
10 that's reasonable for a non-party, and he's, you
11 know -- he's not being compensated as an expert or
12 anything. He's a lay -- you know, a lay witness in
13 the case.

14 MR. TRAXLER: Well, first of all --

15 MS. KIRK: Or a fact witness.

16 MR. TRAXLER: Except for the
17 privilege issues, we might be through by now.
18 Secondly, y'all noticed the -- the other side of the
19 deposition. We didn't start until 10:00.

20 MS. KIRK: We started at 9:00 both
21 days.

22 MR. TRAXLER: Y'all spent more time
23 talking to him than I am.

24 MR. TWOMBLEY: Well, I mean, Tom, I
25 think the reason is because you're asking all these

1 questions that go into these privileged issues about
2 discussions with --

3 MR. TRAXLER: I understand that.

4 MR. TWOMBLEY: -- people other than
5 Mr. Barringer --

6 MR. TRAXLER: I understand --

7 MR. TWOMBLEY: Wait a minute. Will
8 you please -- will you please let me finish what I
9 was saying?

10 MR. TRAXLER: Yeah. I'm sorry. I
11 apologize.

12 MR. TWOMBLEY: You interrupted Ariail
13 and now you're interrupting me. And I'm just saying,
14 respectfully, I mean, you're taking the deposition of
15 a lawyer about work he did for -- for clients and,
16 you know -- I mean, we agree and we've allowed him to
17 testify about things that fall within the exception
18 to the attorney-client privilege, but it's not our
19 fault that you're, you know -- and I'm not trying to
20 be rude, but, I mean, you're just repeatedly going
21 into all these sensitive issues that are on the line
22 of whether or not he's required to answer them or not
23 and, you know, I just -- again, you know, is it
24 possible the judge is going to make him answer some
25 of these questions after a thorough analysis of

1 privilege? Maybe. But, I mean, is that -- you know,
2 as Ariail said, we've already been here one full day
3 and now it's, you know, 12:00 on the second day and,
4 you know, it -- it just seems problematic for -- for
5 me, but, you know, that's up to Ariail what she wants
6 to do.

7 MR. TRAXLER: Can I talk now?

8 MR. TWOMBLEY: Sure.

9 MR. TRAXLER: Can I talk now?

10 MR. TWOMBLEY: Sure.

11 MR. TRAXLER: Okay. Well, first of
12 all, like I said, I mean this politely, y'all have
13 really done more talking than I have. I understand
14 y'all got the privilege issue to look after. We're
15 all candid. I acknowledge that Mr. Jolley wears
16 multiple counsel hats complicates the situation
17 dramatically. But y'all tell me how to do this more
18 expeditiously? But on all of these questions and all
19 of these areas, we are going to have to have the
20 judge decide it. Now, the judge is going to want to
21 know, as I'm going to explore, in what setting did
22 Mr. Jolley have these communications. Who did he
23 talk to, who did he maybe talk to further about it,
24 and the like. In order for Judge Price to resolve
25 the privilege issues, he's going to have to know the

1 setting of each communication, and he is going to
2 have to know which hat or privilege Mr. Jolley is
3 asserting. And y'all tell me how on each one of
4 these areas I can accomplish that in a very
5 expeditious way so that y'all don't say in front the
6 judge, Traxler didn't make a record. Y'all tell me.
7 I'm wide open to suggestions on how to expedite this,
8 but this is almost like somebody always leaves the
9 realm. You've got to go into it and make him assert
10 it. Y'all tell me how to do it.

11 MS. KIRK: I think answering -- or
12 asking questions once would help speed things up
13 immensely.

14 MR. TRAXLER: Well, I understand
15 that, but there are -- I don't repeat very many
16 questions at all. There are nuance differences in
17 the questions, and I simply want to -- all I want to
18 do is make the record. If he asserts a privilege,
19 okay, whose privilege is it and tell me why he is
20 asserting it. I want to know who all was involved to
21 see if the privilege is waived or really exists.

22 MR. TWOMBLEY: Well, that's the
23 thing. I mean, Mr. Jolley may not even know that.
24 It's not his privilege. I mean, it's the various
25 clients' privilege.

1 MR. TRAXLER: I understand that.
2 That's why I keep asking y'all what's the privilege,
3 whose privilege is being asserted, and why.

4 MR. TWOMBLEY: Well, no.
5 Respectfully, you're not asking us. You're -- you're
6 asking him, and I think you've spent a lot of time
7 asking him what his opinion is about whose privilege
8 it was and I -- you know.

9 MR. TRAXLER: Before we take a lunch
10 break -- y'all can talk about this over the lunch
11 break. Y'all tell me how I can protect the record
12 because Judge Price is going to have to make a
13 decision on all of these assertions, each and every
14 one of them. You tell me how I can make the record
15 to prove or not prove a waiver or if the privilege
16 does exist. I have been trying to ask y'all what's
17 the privilege. I did finally ask him who all was
18 involved, who did he talk to, and y'all won't even
19 let him answer those. You tell me --

20 MS. KIRK: He's telling you it's
21 attorney-client privilege. You're just -- I guess
22 don't believe it.

23 MR. TRAXLER: No, I don't. I have a
24 right to explore it. If Mr. Jolley says I talked to
25 Paul Barringer about this topic or I talked with him

1 in his capacity as director of the company, nobody
2 else was involved, yada, yada, dah, okay, that's very
3 routine up. Then we talk about whether there's a
4 waiver or not. Heck fire. I can't even find out the
5 basis for the privilege. I really, really don't
6 think, guys, that Judge Price is going to react well
7 if y'all won't tell me the basis for the privilege
8 other than if it pertains to so and so, I assert the
9 privilege and tell him to answer.

10 MR. TWOMBLEY: Well, you know, I
11 don't -- I don't know what Judge Price will do, but I
12 think he's not going to react very well to how much
13 time has been spent on these, you know, law school
14 type privileged questions that don't deal with, you
15 know, the meat of the case and whether or not
16 Mr. Barringer had capacity and whether or not he was
17 being unduly influenced at various times. And, I
18 mean, those --

19 MR. TRAXLER: (Inaudible.)

20 MR. TWOMBLEY: -- are the issues in
21 the case.

22 MR. TRAXLER: Ashley, somebody please
23 tell me how they think I can best make a record.

24 MS. KIRK: I think if you just ask
25 him what the court has, you know, already indicated

1 would be allowed. Communications related to the
2 preparation, execution, or amendment to estate
3 planning documents. The cast is allotted a fishing
4 net for, you know, what did you ever do for anybody
5 else at any period of time without a time frame is
6 very difficult to --

7 MR. TRAXLER: No, it's not. If he
8 has a privileged conversation as corporate counsel,
9 but there are participants in that conversation who
10 are not associated with the corporation, that's not
11 privileged. So I need -- that's why I have to ask
12 all these questions. This is the problem with
13 Mr. Jolley wearing so many different hats at the same
14 time. So if he has a conversation and -- a
15 conversation with Merrill Light about Merrill Light's
16 estate plan or something personal with Merrill Light,
17 but Travis Bryant is involved, that's --

18 MS. PAYLOR: Can we take this off
19 record? I mean, why are we having this conversation
20 in front of the witness?

21 MR. MACLOSKIE: No.

22 MS. PAYLOR: In front of the witness,
23 I think --

24 MR. MOLSTER: It shouldn't be in
25 front of the witness.

1 MR. TRAXLER: Take the witness off.
2 Mr. Jolley, go to lunch. But, Alice, I'm afraid I
3 learned in the McBride thing -- deposition not to go
4 off the record like this.

5 MR. MOLSTER: This shouldn't be in
6 front of the witness.

7 MR. TRAXLER: That's fine. I agree
8 with you. That's fair. We can send Mr. Jolley to
9 lunch to come back at 1:00. Does that work?

10 MS. KIRK: You can -- you can send
11 Mr. Jolley to lunch if you want to, but I don't know
12 that we'll be back at 1:00.

13 MR. TRAXLER: I think Chip makes a
14 fair point that Mr. Jolley doesn't need to hear this
15 conversation.

16 MR. TWOMBLEY: Well, that doesn't
17 mean we're going off the record.

18 MR. MOLSTER: I was just echoing
19 Alice, who is brilliant.

20 MS. KIRK: Mr. Jolley is stepping out
21 of the room.

22 MR. MOLSTER: Can y'all stipulate to
23 that?

24 MS. PAYLOR: Who said that?

25 THE VIDEOGRAPHER: Counsel, I have

1 about ten minutes left before a media switch.

2 MR. TRAXLER: So in all seriousness,
3 guys, I don't really have a problem that if
4 Mr. Jolley has a conversation that's privileged
5 because it's a corporate communication, he's
6 corporate counsel, I can understand that. But when
7 he has Randy Light involved in that conversation,
8 theoretically, that privilege does not exist. That's
9 exactly the problem that he has wearing so many hats,
10 and that's why I have to delve into each scenario,
11 and that's why I'm trying to figure out -- y'all
12 won't even tell me whose privilege is being asserted
13 and why. And it is very laborious. But if y'all
14 could tell me how to make the record before Judge
15 Price and expedite this, God knows I'm all for it.

16 MR. FUHR: Tom, this is Ed. I mean,
17 one of the challenges -- I mean, just think of it. I
18 mean, you're right about the multiple hats, but the
19 multiple hats don't just belong to Jolley. Right?
20 It also belongs to these individuals.

21 MR. TRAXLER: Right. Who's talking?

22 MR. FUHR: The rules are officers and
23 directors of the company, some are involved in
24 fixation of the estate, and I think the question as
25 to whose privilege it is, I mean, look, I think that

1 ultimately is a valid inquiry and the judge is going
2 to look into it. The challenge that I suspect the
3 various lawyers have here on call is that without
4 having a ping-pong session with the witness to find
5 out what the answer to the question is, that would
6 allow then the lawyers to say, okay, yeah, this isn't
7 a company privilege here because there's nothing
8 here. It's only, at most, maybe Paul's privilege or
9 Merrill's privilege. So we could do it that way, but
10 it's going to require a lot of ping-ponging.

11 MR. TRAXLER: Sure.

12 MR. FUHR: You know, go back and
13 forth. So that would be the way to do it and get the
14 information that ultimately I'm afraid the court, you
15 know, could -- you know, could want to have, but
16 there's no efficient way to do it short of having
17 these conversations. Maybe the thing to do is every
18 20, 30 -- every 30 minutes, all right, now it's going
19 to be a sidebar where folks talk to Jolley and find
20 out questions one, then, 15 and 18 and then let you
21 go circle back. I don't know. This is a challenging
22 process for sure.

23 MR. TRAXLER: It really is. And it
24 gets back to people fussing at me because it takes so
25 long, but this is why, you know. The way to do it is

1 every time there's a question for privilege, go off
2 the record and confer, but that means for a God awful
3 long deposition. I swear -- and I don't know how
4 else to do it. I hate -- you know, if we say, okay,
5 we're going to take a break every 30 minutes and then
6 come back, then I say, okay, let me go ask these
7 questions and I get a course of asked and answered,
8 you know, I don't know how -- I don't know how to
9 solve this. It is by its very nature of -- because
10 of his multiple hats and it intensely is a tedious
11 deposition. God knows I don't like it. I would
12 rather be outside playing with my new granddaughter.

13 MS. KIRK: Well, we're not holding
14 you here, Mr. Traxler.

15 MR. MOLSTER: Congratulations on your
16 granddaughter.

17 MR. TRAXLER: Thank you. I've
18 forgotten what handling a newborn was like.

19 MR. TWOMBLEY: Tom, would you
20 agree --

21 MR. TRAXLER: I called the college
22 fund granddaddy.

23 MR. TWOMBLEY: Tom, would you agree
24 to put your questions in writing?

25 MR. TRAXLER: No. I can't do that.

1 MR. TWOMBLEY: Well, I mean, you
2 know --

3 MR. TRAXLER: We've got an awful --

4 MR. GILREATH: Let's go eat.

5 MR. TRAXLER: We've got an awful lot
6 to wade through that happened in the summertime and
7 the like. We've got the September transfer and all
8 that that involved. We've got the subsequent
9 instruments. We are in something hot and heavy that
10 will involve questions of corporate privilege in the
11 mid-2012 time period. I understand that. I just
12 can't afford to go in front- of Judge Price and say,
13 Mr. Traxler, prove to me that there is a waiver or
14 whatever. I can't -- I can't even get him to tell me
15 who the parties in the conversation were and in what
16 capacity.

17 MR. FUHR: Tom, I think one -- at
18 least a couple of instances when the question is
19 phrased in a way that includes a litany of people and
20 the company, then the easy answer -- or the answer it
21 sounds like from the witness many times is, okay, I
22 can't answer because it involves one of them. But I
23 wonder, rather, if you sliced it more narrowly by
24 each individual, you would be able to have did you --
25 were you wearing a hat as Merrill's counsel in that

1 conversation with Travis? Answer: No. Okay. So
2 you know now it's not Merrill's privilege, and Jolley
3 would be able to say no, I know it wasn't that.

4 MR. TRAXLER: Ed, can I interrupt
5 you?

6 MR. FUHR: Yeah. Absolutely.

7 MR. TRAXLER: I've tried that on who
8 the conversation was with, where the privilege is,
9 you know. An example, I think, was the conversation
10 with -- Jolley had with Merrill Light in the summer
11 of 2012. I tried to slice that to find out who was
12 involved in that, what the nature of the privilege
13 was like. And all I did was get to narrow it down to
14 it was before or after this date. So I'm not able to
15 slice and dice like you are thinking because that's
16 exactly what I'm going to do.

17 And, you know, again, if John told me
18 he had a conversation with Merrill Light in her
19 capacity as corporate director, then we've got a
20 corporate privilege issue to deal with. If it is in
21 her capacity as his individual client, then that's
22 different. I certainly have the right to know who
23 all was involved in that conversation, who all had
24 conversations and was discussed with to see if there
25 is, in fact, a privilege or if it has been waived.

1 But I'm shut down at the threshold of the question of
2 what privilege. And I really, really, really want to
3 do this the best way we can, guys. I have no desire
4 to camp out asking all these tedious questions, and
5 I'm really asking for help from you guys as to how to
6 do it.

7 MR. TWOMBLEY: Well --

8 MS. KIRK: I do think putting the
9 questions in writing so they could be grouped
10 together would be helpful and that would reduce the
11 need to --

12 MR. TRAXLER: Why would y'all
13 defer -- why can you not say -- let him zero in --
14 you know, I'll let you know when I'm asking a
15 substantive question. You will know it, but why
16 can't y'all let me ask who else was in on the
17 conversation, who did he discuss it with?

18 MS. KIRK: Why can't you ask was
19 there anyone -- I don't know.

20 MR. TRAXLER: Okay. You muted on me,
21 Ariail, I think, or somebody did. Who was speaking?

22 MS. KIRK: No. I just feel like
23 he's -- when he's told you it's an attorney-client
24 conversation, he's already answered that.

25 MR. TRAXLER: Okay. Who's the

1 client?

2 MR. TWOMBLEY: The problem is, Tom,
3 the answer to a lot of these questions, we don't know
4 what the answer is. And back to the point Ed was
5 trying to make, you know, we -- we would need to, in
6 my opinion, stop, talk to Mr. Jolley. Okay. Do you
7 remember this conversation? Who else was there?
8 What was the nature of it? Were you providing legal
9 advice to whom? Then we would have to make it our
10 assessment. Well, we think that's privilege or we
11 think it's not privilege. Or if it was privilege,
12 then it was waived. But, I mean, unless we talk to
13 him about that, you know, we -- we may not know the
14 answer.

15 MR. TRAXLER: (Inaudible.)

16 MR. TWOMBLEY: I'm sorry?

17 MR. TRAXLER: I'm not fussing at all.
18 This is the reality of this type of deposition. Last
19 time we started -- I started asking questions at
20 1:45. We quit a little after 6:00, I believe it was.

21 MS. PAYLOR: 7:30.

22 MS. KIRK: Yeah. It was after 7:00.

23 MS. PAYLOR: It was after 7:00.

24 MR. TWOMBLEY: My only -- my only
25 issue, though, is Tom --

1 MR. TRAXLER: Here's my point. From
2 1:45 to whenever we shut down, I was actually asking
3 questions for two hours and 53 minutes, as I recall.

4 MR. TWOMBLEY: Well, Tom, I --

5 MR. TRAXLER: The rest of the time
6 was spent y'all conferring. Tell me how -- tell me
7 how to expedite that process.

8 MR. TWOMBLEY: I understand that.
9 The problem is, in my opinion, that about 90 percent
10 of the questions, or probably even more, 95 percent
11 of the questions that are relevant to the substantive
12 matter of the legitimate issues in the case, there's
13 no privilege at all. And, in my opinion, instead of
14 spending 95 percent of the time on the things that
15 are perfectly relevant and not privileged and that
16 Mr. Jolley would have information to, we're spending
17 95 percent of the time on the 5 percent of the
18 questions that there may or may not be a privilege
19 to. And so, you know, it's in my opinion, you know,
20 are there legitimate privilege issues? Yes. But are
21 there 1,000 other questions that you might want to
22 ask Mr. Jolley that are relevant to the claims and
23 defenses in this lawsuit that we've not spent, you
24 know -- that you've not spent much time on at all.

25 And so, in my opinion, it's more of a

1 time allocation and a resource allocation. And, you
2 know, I'm sure you could come up with three more days
3 of questions that, you know, the legal scholars could
4 debate whether or not the answer may or may not be
5 privileged. But, you know, it's costing an
6 incredible amount of time and effort to -- to -- to
7 do that and, you know, it's just not, in my opinion,
8 respectfully, it's just not that important. It's
9 just not that relevant. It's just -- it's far less
10 relevant than the other issues in the case.

11 And so, you know, I agree there are
12 serious questions that, you know, have to be
13 answered. But, you know, I don't agree we should be
14 spending, you know, any time doing that or if we
15 spend time on it, a lot less.

16 MR. TRAXLER: Okay. Well, I'm sorry
17 that I have to disagree. We have allegations of what
18 my case --

19 MS. KIRK: Let me ask you this,
20 Mr. Traxler: Do you have any questions left related
21 to --

22 MR. TRAXLER: -- to what we think are
23 the proper territory. Sorry. I can't let those
24 conversations go unprobed. And if there's a
25 privilege in my way, that's fine. Narrow it down to

1 the privilege and see if there's a waiver and move
2 on.

3 MS. KIRK: Mr. Traxler, do you have
4 any questioning left related to Mr. Barringer's
5 estate planning documents, their communications
6 related to them, their preparation, their execution,
7 or their amendment?

8 MR. TRAXLER: Yeah.

9 MS. KIRK: Can we get through those
10 first quickly?

11 MR. TRAXLER: No. Tell me how you
12 envision that happening here. I don't see it, but
13 tell me how you envision that happening?

14 MR. TWOMBLEY: You had just asked --

15 MS. KIRK: You had asked those
16 questions. I don't know what's difficult.

17 MR. TRAXLER: How do I get back to
18 the communications I need to know about?

19 MR. TWOMBLEY: Well, I guess the
20 judge can then decide whether or not you really need
21 to know about them.

22 MR. TRAXLER: I appreciate y'all's
23 input, but I -- I believe I need to make that
24 assessment.

25 MR. TWOMBLEY: Well, that's your --

1 MR. TRAXLER: I'm willing -- I'm open
2 to ideas. Tell me how you envision it going by
3 asserting the privileges to the various agreements
4 and the like, how do I circle back and examine him
5 about these communications?

6 MS. KIRK: I'm not sure I understand
7 what you're asking.

8 MR. FUHR: My suggestion here, guys,
9 is let's go ahead and take that break and let, you
10 know, the lawyers can do some pow wow during that
11 time and, you know, maybe right before we reconvene,
12 see if anybody has any great new insights that alter
13 this or whether we just plow on. I'm not sure right
14 now, so maybe some sidebar will help. I don't know.

15 MR. TRAXLER: Yeah. That will be
16 fine. Let's probably come back at 1:00. We'll
17 resume at 1:00. Does that suit y'all? Does it give
18 you enough time? Somebody said that's not enough
19 time?

20 MS. KIRK: No. 1:00 is fine.

21 MR. TRAXLER: Okay.

22 THE VIDEOGRAPHER: We are off the
23 record. It is 12:25 p.m.

24 (Off the record.)

25 THE VIDEOGRAPHER: We are back on

1 record. It is 1:06 p.m.

2 BY MR. TRAXLER:

3 Q. Mr. Jolley, you didn't talk to anybody
4 about the substance of your deposition over lunch,
5 did you?

6 A. I did not.

7 Q. Okay. Thank you.

8 MR. TRAXLER: I don't want to belabor
9 this conversation, but did anybody have any brilliant
10 insight or suggestion as to how to expedite this
11 deposition in light of all the privilege issues that
12 we discussed before the break?

13 MS. KIRK: Mr. Traxler, my only
14 thought is for you to, you know, get whatever
15 questions you've got that are actually related to
16 the, you know, execution of the documents and
17 Mr. Barringer's capacity or any allegations you've
18 got about undue influence. Go ahead and ask those so
19 that you've got those done. And whatever we need to
20 go to the judge with, we'll do that. I don't -- you
21 know, we're not going to stay here forever, you know.
22 If you want to take another hour or so, but I would,
23 you know, propose to get to the actual issues first.

24 MR. TRAXLER: Okay. Well, obviously
25 I can get through what you consider to be the actual

1 issues and your time frame, but I'm going to see what
2 I can do to expedite this. Anybody else have any
3 suggestion --

4 MS. KIRK: Thank you.

5 MR. TRAXLER: -- on how to facilitate
6 this deposition in light of all the privilege issues?

7 MR. TWOMBLEY: Well, my idea was for
8 you to put your questions in writing and y'all
9 rejected that. So...

10 MR. TRAXLER: Right. Okay. Let's go
11 on -- let's go on forward.

12 BY MR. TRAXLER:

13 Q. Mr. Jolley, at any time between 2011 and
14 and the commencement of this lawsuit in 2016, did you
15 represent Merrill Light as a co-trustee or as a
16 fiduciary of any sort to Paul Barringer?

17 MR. MOLSTER: Hold on for a second.
18 I'm going to have to talk to him before I allow him
19 to answer that question. You want me to do that?

20 MR. TRAXLER: I don't know. Help me
21 understand, Chip, how that requires a conversation?
22 I don't know --

23 MR. MOLSTER: You know, his
24 representation of them, they will be privileged, Tom.
25 It's clear you don't agree with our views on

1 privilege, but, again, I'm not going to waive it.
2 I'm not going to let him answer. Talk to him at a
3 break, if you want.

4 MR. TRAXLER: Yeah. We'll come back
5 and revisit that issue. And earlier, Mr. Twombly, I
6 had asked him the question about allegations of
7 kicking Paul Barringer or Merrill Light out of the
8 April board meeting, and I was going to ask him which
9 privilege he was asserting and y'all were going talk
10 to him during a break. Did you have that
11 conversation?

12 MR. TWOMBLEY: I did not talk to him.

13 MR. MOLSTER: Yeah. We didn't do
14 that.

15 MR. TRAXLER: All right.

16 MR. MOLSTER: So can we roll that one
17 to the next break? Sorry. We were trying to figure
18 out the broader question.

19 MR. TRAXLER: Yeah. That will be
20 fine.

21 MR. TWOMBLEY: Yeah. I'm sorry, Tom.
22 We -- we spent the time kind of talking more globally
23 about a way to deal with, you know, privilege, in
24 general. So I apologize that we didn't get to that.

25

1 BY MR. TRAXLER:

2 Q. All right. Mr. Jolley, we discussed
3 earlier about Paul Barringer trading -- or, excuse
4 me, transferring his voting shares into a trust in
5 May 2012, correct? Do you remember that?

6 A. I remember talking about the transfer to
7 his revocable trust. Yes.

8 Q. Okay. And I think you answered this
9 question, but briefly can you tell me your
10 involvement in that again, just what role you had?

11 MR. MOLSTER: Please don't divulge
12 any attorney-client privilege information regarding
13 Merrill Light or Randy Light.

14 MR. TWOMBLEY: And I object based on
15 asked and answered.

16 MS. KIRK: Same objection.

17 BY MR. TRAXLER:

18 Q. Can you answer that, Mr. Jolley?

19 A. I think my only involvement was in
20 facilitating communication from Mr. Barringer to
21 Mr. Bryant and Mr. Herring.

22 Q. And do you know who prepared the stock
23 certificate to title it in the name of his trust?

24 A. I believe Mr. Herring.

25 Q. Okay. And the -- his voting shares were

1 initially transferred into his irrevocable trust
2 instead of his revocable trust, were they not?

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

5 MS. KIRK: Object to the form.

6 THE WITNESS: I don't -- I don't
7 think that's correct.

8 BY MR. TRAXLER:

9 Q. Okay. Tell me -- tell me what you
10 understand happened. Was it just a straight transfer
11 to his revocable trust?

12 MS. KIRK: Object to the form.

13 THE WITNESS: My recollection was
14 that the initial -- what Mr. Herring -- the initial
15 certificate that was prepared referred to an
16 irrevocable trust and that that was an error. I
17 believe the only transfer that occurred was from
18 Mr. Barringer individually to the trustee of his
19 revocable trust.

20 BY MR. TRAXLER:

21 Q. Okay. And the certificate that was
22 initially done to the irrevocable trust was
23 certificate No. 13; do you know?

24 A. I don't know.

25 Q. Okay. Do you know if that stock

1 certificate in the name of irrevocable trust ever
2 left the corporation?

3 A. I don't --

4 Q. I'm sorry. What was your answer, Mr.
5 Jolley?

6 MR. TWOMBLEY: I objected to the form
7 of the last question.

8 MR. TRAXLER: Okay. I'm sorry. It
9 got -- it got garbled just a little bit, Ashley.

10 BY MR. TRAXLER:

11 Q. Go ahead, John. Mr. Jolley.

12 A. I don't know.

13 Q. Okay. Was the stock then ultimately
14 issued to his revocable trust?

15 A. That's my recollection.

16 Q. Okay. Tell me what you understand as to
17 what happened and why with regard to the initial
18 certificate to the irrevocable trust, then the
19 transfer to the revocable trust?

20 MS. KIRK: Object to the form.

21 THE WITNESS: Mr. Traxler, my
22 impression certainly was that --

23 MR. TWOMBLEY: No. I'm going to
24 instruct the witness if he -- I don't know what he
25 knows about that. I don't know what his answer might

1 be. I don't know when and in what capacity he may
2 have gained information related to the transfer and
3 what happened with respect to that. And, most
4 importantly, I mean, I don't think it falls within
5 the testamentary exception to the attorney-client
6 privilege. I mean, it's possible that he could say,
7 well, I gave Paul Barringer some advice about all of
8 that, you know, three weeks later and that would
9 clearly be privileged, in my opinion. So, I mean, I
10 don't know what his answer is, and so I either have
11 to talk to him about it or instruct him not to
12 answer.

13 BY MR. TRAXLER:

14 Q. Mr. Jolley, did you have conversations
15 with Paul Barringer about that transfer?

16 MR. TWOMBLEY: Answer yes or no,
17 please.

18 THE WITNESS: So I'm sorry. The
19 question is whether or not I had a conversation about
20 the transfer of his stock to the trust?

21 BY MR. TRAXLER:

22 Q. Yes.

23 A. And the revocable trust?

24 Q. Either one.

25 A. I did speak to Mr. Barringer about the

1 transfer of his stock of CFRC to his revocable trust.

2 MS. KIRK: Is there somebody trying
3 to get in? I think --

4 THE WITNESS: Do I need to do
5 something here?

6 MS. KIRK: We'll just let the court
7 reporter --

8 THE COURT REPORTER: Admit all.
9 Thank you.

10 MS. KIRK: Okay. Sorry.

11 BY MR. TRAXLER:

12 Q. When did you have that conversation with
13 Mr. Barringer about the transfer of his voting shares
14 to the trust?

15 MR. TWOMBLEY: I thought -- I thought
16 he said yes, and now the question is when.

17 MR. TRAXLER: Yeah.

18 MR. TWOMBLEY: Is that right?

19 MR. TRAXLER: He answered the
20 question yes, and then I asked him when.

21 MR. TWOMBLEY: Okay. I'm sorry. I
22 may have misheard you. So if you know when, you can
23 state the date.

24 THE WITNESS: I don't remember when.
25

1 BY MR. TRAXLER:

2 Q. Was it before or after the transfer?

3 A. It was before the transfer.

4 Q. All right. What were those conversations?

5 MR. TWOMBLEY: I instruct you not to
6 answer that question. Privilege.

7 BY MR. TRAXLER:

8 Q. Did you have those questions one-on-one
9 with Mr. Barringer or were others involved?

10 MR. TWOMBLEY: You can answer.

11 THE WITNESS: Others were involved.

12 BY MR. TRAXLER:

13 Q. Mr. Robert Slane?

14 A. I believe Mr. Slane -- that a conversation
15 about the transfer of those shares to Mr. Barringer's
16 revocable trust, I do believe that Mr. Slane was --
17 was a part of that conversation.

18 Q. Okay. And were these conversations
19 separate from the conversation that we saw in the
20 e-mails that we looked at just before lunch?

21 A. I don't --

22 MS. KIRK: Object to the form.

23 THE WITNESS: I don't believe so.

24 BY MR. TRAXLER:

25 Q. Okay. So when you talk about

1 conversations with Mr. Barringer about the transfer
2 where others were involved, do you think it's those
3 same conversations in the April e-mail that we looked
4 at before lunch?

5 MS. KIRK: Object to the form.

6 THE WITNESS: I believe so.

7 BY MR. TRAXLER:

8 Q. Okay. Did you ever have a conversation
9 with Mr. Barringer just the two of y'all about the
10 transfer of his voting shares to the trust?

11 A. I don't recall.

12 Q. All right. So the conversations where
13 others were involved, what did Mr. Barringer tell
14 you?

15 MR. TWOMBLEY: I'm sorry. What --
16 what did Mr. Barringer tell you?

17 MR. TRAXLER: Yes.

18 MR. TWOMBLEY: Yeah. I instruct him
19 not to answer.

20 MR. MOLSTER: Sorry. And if the
21 other person is Merrill Light, I instruct you not to
22 answer.

23 BY MR. TRAXLER:

24 Q. Was Merrill Light involved in the
25 conversation?

1 MR. MOLSTER: Yes or no. If I let
2 him answer yes or no, you won't claim it's a
3 privileged waiver?

4 MR. TRAXLER: That's correct.

5 MR. MOLSTER: You can answer yes or
6 no, John --

7 THE WITNESS: No.

8 MR. MOLSTER: -- with respect to
9 Merrill Light.

10 BY MR. TRAXLER:

11 Q. She was not?

12 A. Not that I recall.

13 Q. Who was in on -- who was in on the
14 conversation?

15 MR. TWOMBLEY: Just a name.

16 THE WITNESS: I -- my -- what I
17 remember is that I spoke with Mr. Barringer.
18 Mr. Slane was involved in that conversation and,
19 perhaps, Ms. Barringer. In fact, I would suspect
20 Ms. Barringer.

21 BY MR. TRAXLER:

22 Q. And if the initial certificate in the name
23 of the irrevocable trust was prepared on or about May
24 7, 2012, when do you think the conversation with
25 Mr. Barringer and Mr. Slane occurred?

1 MR. TWOMBLEY: Just the date, if you
2 know it.

3 THE WITNESS: I don't know.

4 MR. TRAXLER: Did I hear somebody --
5 did I hear somebody say something?

6 MR. TWOMBLEY: I said just the date,
7 if you know it, cautioning the witness not to reveal
8 any privileged information in response to the
9 question.

10 BY MR. TRAXLER:

11 Q. Okay. Do you recall?

12 A. I don't recall the specific date.

13 Q. Do you recall about how many days it was
14 before? Are we talking weeks, months, days, hours?
15 Give me some reference, if you can.

16 A. I don't -- I don't recall when.

17 Q. Okay. Were you aware that on April 30,
18 2012, Dr. Long called Dr. Garrett, the doctor for
19 Mr. Barringer, commented that Paul Barringer had had
20 a dramatic sign in memory in less of a week? Were
21 you aware of that at the time of this stock transfer?

22 MS. KIRK: Object to the form. He's
23 answered that as well.

24 THE WITNESS: I was -- I was not
25 aware.

1 BY MR. TRAXLER:

2 Q. Were you aware that he had -- was
3 hospitalized before the preceding of the transfer?

4 A. Are you asking about if was I aware at the
5 time?

6 Q. Were you aware at the time of transfer of
7 the stock on or about May 7, 2012, were you aware
8 that he had just been hospitalized days prior to
9 that?

10 A. I don't believe I was aware of that. I
11 certainly don't recall that.

12 Q. Were you aware of Randy Light e-mailing
13 Kevin Luzak on May 13, 2012 that Paul was
14 progressively worse as to where he is and what's
15 going on?

16 MS. KIRK: Object to the form.

17 BY MR. TRAXLER:

18 Q. Were you aware of that?

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: No.

21 BY MR. TRAXLER:

22 Q. Were you aware of that concern that Randy
23 Light or Paul, whether he knew about that e-mail or
24 not?

25 MS. KIRK: Object to the form.

1 THE WITNESS: I'm sorry, Mr. Traxler.
2 You're going to have to ask that one again.

3 BY MR. TRAXLER:

4 Q. Were you aware of that concern of Randy
5 Light about Paul Barringer, whether you had gotten
6 that e-mail or not?

7 A. I don't --

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: I don't recall. I
10 don't think so.

11 BY MR. TRAXLER:

12 Q. And when the stock certificate was issued
13 in the name of the irrevocable trust, whose confusion
14 was that?

15 MS. KIRK: Object to the form.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I believe that was Mr.
18 Herring.

19 MR. TRAXLER: I need you and Mr.
20 Molster to decide which one of y'all are going
21 object. I really don't want a tag team. I checked
22 with my side.

23 MR. MOLSTER: I think we're --

24 MR. TRAXLER: We're not aware of any
25 agreement that counsel can tag team on objections.

1 MR. TWOMBLEY: And just so the record
2 is clear, I don't think anyone ever said there was an
3 agreement. I think what we said was that the past
4 practice at depositions is --

5 MR. TRAXLER: Okay. Okay. Well, one
6 person for each client needs to be the one to object.

7 MR. MOLSTER: Well, what we've tried
8 to do -- because we're doing this because of COVID,
9 Tom.

10 MR. TRAXLER: Sure.

11 MR. MOLSTER: Otherwise we'd be in
12 the room together. We're not in the room together.
13 So I think we're entitled to have a little latitude
14 on -- I've been to handling the privilege
15 instructions and objections, and she's been handling
16 the form objections. You know, if that's a big
17 problem, you know -- you know, I don't think it's
18 intrusive. I don't think we're tag teaming. I
19 haven't made any form objections. I've limited my
20 objections to privilege. You want to make a big deal
21 about it, you know, we can do it. But I would prefer
22 to continue the way we're doing it, and I don't think
23 it's at all disruptive to you taking the deposition
24 respectfully submitted.

25

1 BY MR. TRAXLER:

2 Q. All right. So my question back to you,
3 Mr. Jolley, was whose confusion caused the stock
4 certificate to be issued in the name of the
5 irrevocable trust?

6 MS. KIRK: Object to form.

7 MS. PAYLOR: Object to the form.

8 THE WITNESS: I believe

9 Mr. Herring's.

10 BY MR. TRAXLER:

11 Q. And do you know who Mr. Herring got his
12 instructions from?

13 A. I --

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I don't recall.

16 BY MR. TRAXLER:

17 Q. Do you think Paul Barringer in May of 2012
18 knew the difference between his irrevocable and his
19 revocable trust?

20 MS. PAYLOR: Object to the form.

21 MS. KIRK: I object to the form as
22 well.

23 THE WITNESS: In all of my
24 interactions with Mr. Barringer, he would certainly
25 have known the difference between an irrevocable and

1 a revocable trust.

2 BY MR. TRAXLER:

3 Q. All right. Do you know whether the stock
4 certificate issued in the name of the irrevocable
5 trust was issued in his name as trustee or Merrill
6 Light as trustee or the name of the trust or were
7 they both named trustees; do you know?

8 A. I don't remember.

9 Q. If Merrill Light was not shown as a
10 co-trustee on the stock certificate, do you know why?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: I don't recall.

14 BY MR. TRAXLER:

15 Q. Did anybody ever have any discussions with
16 Hampton that you know of, Hampton Luzak, about her
17 sister -- excuse me, about Paul Barringer
18 transferring his voting shares to the revocable
19 trust?

20 A. I don't know of any communications with
21 Ms. Luzak.

22 Q. And if Ms. Luzak says that she was not
23 aware of Merrill Light -- of the transfer, you got
24 any reason to disagree with that?

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: Tom, I don't think
2 anything disagrees with that. I don't know why we
3 have to spend time asking Mr. Jolley about that.

4 MR. TRAXLER: Okay. Thank you.

5 BY MR. TRAXLER:

6 Q. How about it, Mr. Jolley?

7 A. I have no reason to doubt Ms. Luzak about
8 that.

9 Q. All right. At the end of the deposition
10 on the first day, I had asked you about why the
11 durable power of attorney executed by Mr. Barringer
12 back in December of 2011 was not recorded until May
13 of 2012, and I believe your testimony was you did not
14 know. As we sit here now, do you know why it was not
15 recorded until May of 2012?

16 MS. KIRK: Object to the form.

17 THE WITNESS: Mr. Traxler, you're
18 asking me why it wasn't recorded when it was
19 executed?

20 BY MR. TRAXLER:

21 Q. Okay. We can start with that one.

22 A. Because we didn't see the -- we frequently
23 don't record powers of attorney when executed.

24 Q. All right. Do you know why it was
25 recorded in May of 2012?

1 A. I do not.

2 Q. Did you play any role in that?

3 A. Well, I suspect my office recorded the
4 power of attorney.

5 Q. And did anybody have any conversations
6 with you about the need to record it so that
7 third-parties could rely upon Ms. Barringer's agency
8 under that conduct?

9 MS. KIRK: Object to form.

10 MR. MOLSTER: I instruct him not to
11 answer with respect to Merrill Light.

12 THE WITNESS: I don't recall.

13 BY MR. TRAXLER:

14 Q. You don't recall anybody telling you
15 anything about circumstances of it being recorded?

16 A. Mr. Traxler, I think I've been consistent
17 in saying that I don't recall the circumstances in
18 recording the power of attorney in the spring of
19 2012.

20 Q. Did -- do you recall if you had a
21 conversation with Merrill Light about recording it?

22 MR. MOLSTER: Hold on for a second.
23 Tom, you agree no waiver if I let him answer yes or
24 no?

25 MR. TRAXLER: Yeah, I'll agree.

1 MR. MOLSTER: Go ahead, John. Yes or
2 no.

3 THE WITNESS: And the question was do
4 I recall? The answer is no.

5 BY MR. TRAXLER:

6 Q. And you don't recall any conversations
7 with anybody that would have prompted you to record
8 it, correct?

9 MR. TWOMBLEY: Third time now.

10 MS. KIRK: Yeah. Object to the
11 repetitive questioning.

12 THE WITNESS: I don't -- I don't
13 recall anyone with regard to the filing of --
14 recording the power of attorney.

15 BY MR. TRAXLER:

16 Q. Are you aware of Merrill Light giving Paul
17 Barringer a PowerPoint presentation and other
18 material in June of 2012 about Kevin Luzak's plan for
19 diversification of the company?

20 MR. MOLSTER: Objection.

21 MS. PAYLOR: Object to the form.

22 MS. KIRK: Object to the form.

23 MR. MOLSTER: Instruct him not to --
24 instruct him not to answer.

25 MR. TWOMBLEY: I don't know if it's

1 got anything to do with any discussions with
2 Mr. Barringer, I would too unless it relates to the,
3 you know, preparation, execution --

4 MR. TRAXLER: Ashley, you're breaking
5 up on me. I can't hear you. I'm sorry.

6 MR. TWOMBLEY: You can go ahead.

7 MR. TRAXLER: Ashley, I'm sorry. I
8 couldn't hear you -- what your comments were or your
9 objection.

10 MR. TWOMBLEY: I just said to the
11 extent it involves communications with Mr. Barringer
12 that aren't related to the preparation, execution, or
13 amendment of his estate planning documents, then I
14 would instruct him not to answer.

15 BY MR. TRAXLER:

16 Q. All right. You're not going to answer,
17 Mr. Jolley? Are you going to follow those
18 instructions?

19 A. Based on the instructions I've received,
20 I'm not going to answer.

21 Q. All right. Now, let's talk about the
22 June 28th board meeting of CFRC. Where were you when
23 that -- do you remember that board meeting?

24 A. At this point, I can't -- I'd have to look
25 at documents. I would have to have my recollection

1 refreshed here. I don't remember specifically the
2 June 28th board meeting.

3 Q. Do you -- if I told you that this was the
4 meeting where Kevin Luzak was removed as officer of
5 the corporation, would that refresh your
6 recollection?

7 A. I certainly remember during the summer --
8 that sounds -- that all sounds correct to me. Yes.

9 Q. Okay. Was there a board of directors
10 meeting on or about June 28, 2012 at your office with
11 Paul Barringer and Merrill Light being present?

12 A. I believe there was -- I believe there
13 was. Yes.

14 Q. All right. And you were there at that
15 meeting; is that correct?

16 A. I don't independently remember to what
17 extent I was at that meeting.

18 Q. Well, were you there in the room with Paul
19 Barringer while the meeting was occurring?

20 A. I believe I was in the meeting at -- I
21 was. I'm sorry. Mr. Traxler, I don't remember
22 specifically that meeting and whether or not I was in
23 the room with him.

24 Q. Have you heard a recording of that board
25 meeting?

1 A. I have not heard a recording of that board
2 meeting.

3 Q. Have you heard about a recording of that
4 board meeting?

5 A. I think --

6 MS. KIRK: Object to the form.

7 THE WITNESS: I think I've heard
8 about a transcript of a recording.

9 BY MR. TRAXLER:

10 Q. All right. Have you read the transcript?

11 A. I feel like I've certainly had -- I
12 certainly know a little bit about -- I think I've
13 read a portion of the transcript.

14 Q. Do you, as you sit here today, have
15 independent recollection of being at that board
16 meeting?

17 A. I mean, if this is the board meeting -- I
18 don't -- I don't think I was present at the --
19 throughout that meeting. I think I was called in at
20 the end of that meeting.

21 Q. All right. And that was a telephone board
22 meeting, was it not?

23 A. Mr. Traxler, I think that there were
24 some -- I think that at least several of the
25 directors were present in our office, and I think

1 some people otherwise attended by phone.

2 Q. All right. And who all was present in
3 your office during that meeting?

4 A. I think Ms. -- Mr. Barringer, Ms. Light,
5 and I believe Travis Bryant, but I'm not sure whether
6 Travis attended via telephone.

7 Q. Was Merrill Barringer there?

8 A. I don't recall. I don't believe -- I
9 don't believe -- I don't believe Ms. Barringer ever
10 attended a board meeting.

11 Q. All right. And what part of the board
12 meeting were you in? Give me some idea. You said
13 you were there for part of it or that was my
14 impression. Help me understand that.

15 A. Yes. So I --

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. Go ahead.

20 A. I think all of my involvement was
21 involved -- was -- in the board meeting was walking
22 in at the end of the meeting and talk -- and really
23 helping them turn off the telephone for the -- those
24 attending via telephone.

25 Q. Was Rick Rose there?

1 A. No. No, sir.

2 Q. All right. Was Randy Light there?

3 A. I don't believe that Randy Light was
4 there. As I said, I think it was only Mr. Barringer,
5 Ms. Light, and I -- like I said, I think Travis
6 Bryant attended in person. Otherwise, I think the
7 people attended telephonically.

8 Q. Did you see people coaching Mr. Barringer
9 on what to say and what to do?

10 A. I have never seen people coaching
11 Mr. Barringer on what to say or what to do.

12 Q. Mr. Jolley, did you ever hear anybody say
13 something to the effect of, all right, let's keep him
14 focused?

15 MS. KIRK: Object to the form.

16 THE WITNESS: I don't think so.

17 BY MR. TRAXLER:

18 Q. All right. I want you to do me -- you got
19 a pencil and paper in front of you?

20 A. I don't.

21 Q. All right. I want you to do me a favor.
22 I'm going to hold up something and I want you to read
23 it aloud to me, please, if you would. I'm not asking
24 you to testify to. I just want you to read it aloud.
25 Can you read that?

1 A. I can see this.

2 Q. Yes, sir. Would you read it aloud for me,
3 please?

4 A. The piece of paper you're holding up says,
5 "All right. Let's get him to stay focused."

6 Q. Okay. Thank you very much. Did you ever
7 have any conversations with others later about what
8 happened at that board meeting?

9 MS. KIRK: Object --

10 MR. MOLSTER: Instruct you not to
11 answer with respect to Merrill Light.

12 MR. TWOMBLEY: Same with respect to
13 Paul Barringer.

14 MR. SCHRONCE: This is John Schronce.
15 I object to the extent you're getting into
16 communications he may have had later when he became
17 corporate counsel. To the extent that you can answer
18 without getting into that, then that's fair game.

19 BY MR. TRAXLER:

20 Q. And, Mr. Jolley, were you -- were you in
21 part of that board meeting, who were you representing
22 at that board meeting?

23 MS. KIRK: Object to the form. And
24 you're mischaracterizing what he's already testified
25 to greatly.

1 MR. TRAXLER: I'm sorry, Ariail. I
2 couldn't understand you.

3 MS. KIRK: I objected to the form of
4 your question because it mischaracterizes everything
5 he's testified to up until now.

6 BY MR. TRAXLER:

7 Q. You were -- you were a part of that board
8 meeting, were you not?

9 MR. MOLSTER: Sorry. What was the
10 question?

11 MS. KIRK: I mean, you've already
12 asked him that and he's answered it.

13 BY MR. TRAXLER:

14 Q. Okay. Who were you representing when you
15 were in there?

16 MR. MOLSTER: Objection. Instruct
17 him not to answer with respect to Merrill Light.

18 MS. KIRK: Do you want the court
19 reporter to read back his involvement -- the
20 involvement he had at that board meeting?

21 MR. TWOMBLEY: I mean, didn't he just
22 say he showed up and turned the phone off?

23 BY MR. TRAXLER:

24 Q. Let me ask -- I'll -- I'll withdraw the
25 question. Were you representing anybody when you

1 were in that board meeting?

2 MR. MOLSTER: Same objection and
3 instruction --

4 MS. KIRK: Object to the form.

5 MR. MOLSTER: -- with respect to
6 Merrill Light.

7 BY MR. TRAXLER:

8 Q. Okay. Are you going to answer or not
9 answer the question, Mr. Jolley?

10 A. Based on the instructions I've received
11 and what I understand the answer, I can't answer that
12 question.

13 Q. Because of a privilege; is that correct?

14 MR. TWOMBLEY: I object to the form
15 of the question. I don't think it's the witness' job
16 to follow the instructions and not articulate the
17 basis for it.

18 MS. KIRK: I would agree.

19 MR. TRAXLER: All right. So who all
20 is asserting the privilege to that question and
21 instructing him not to answer?

22 MR. TWOMBLEY: Well --

23 MR. TRAXLER: Mr. Molster, I
24 understand you did. How about you, John Schronce --
25 Schronce?

1 MR. SCHRONCE: Yeah. I believe my
2 objection was to the prior question just because
3 there was no time limitation when you asked for
4 conversations regarding the June 28 meeting. So your
5 question would have enveloped potentially
6 conversations he had about that meeting subsequently
7 when he was corporate counsel. You were asking him
8 now who he is representing. I am not asserting an
9 objection to that question.

10 MR. TRAXLER: But, Mr. Molster, you
11 are, correct?

12 MR. MOLSTER: Correct.

13 MR. TRAXLER: And how about you --
14 the rest of all? Mr. Twombley?

15 MR. TWOMBLEY: Well, my -- my answer
16 is I don't know what his -- his answer would be and
17 whether or not it would be privileged. And based
18 upon prior questions in this deposition, I've got to
19 instruct him not to answer.

20 MR. TRAXLER: Okay. And Ms. Kirk,
21 are you instructing him not to answer?

22 MS. KIRK: Yes. I'm instructing him
23 to follow the instructions he's already received.

24 MR. TRAXLER: Okay. And what
25 privilege are you instructing him not to answer

1 because of -- let me rephrase that. What's the
2 privilege you're asserting?

3 MS. KIRK: Excuse me? I'm asking him
4 to honor the instructions that he has received from
5 people asserting privileges.

6 MR. TRAXLER: Okay. I just want to
7 make sure.

8 BY MR. TRAXLER:

9 Q. Mr. Jolley, did you know Mike Haigler or
10 Haigler?

11 A. Did I know him?

12 Q. Yes, sir.

13 A. My only knowledge of Mr. Haigler was --
14 the answer is yes.

15 Q. How do you pronounce his last name?

16 A. I believe it's Haigler, but...

17 Q. Okay. Did you ever tell Mr. Haigler that
18 sometimes Paul Barringer was, quote/unquote, there
19 and sometimes, quote/unquote, not?

20 A. No.

21 Q. How much during this time period were you
22 in communication with Victor Barringer?

23 MS. KIRK: Object to the form.

24 THE WITNESS: I don't believe I had
25 -- I have had very little communication with Victor

1 Barringer, and I don't believe I had any conversation
2 with -- or communication with Mr. Victor Barringer.

3 BY MR. TRAXLER:

4 Q. What was the reason for the removal of
5 Kevin Luzak as an officer of CFRC?

6 MS. KIRK: Object to the form.

7 MR. TWOMBLEY: I object to the form
8 and instruct him not to answer the question unless I
9 can talk to him about it. I mean, I don't know
10 what -- if he knows what the answer is. I don't know
11 if he would have gained that knowledge through a
12 privileged conversation with, you know,
13 Mr. Barringer. I just don't know what the answer is.

14 MR. TRAXLER: All right. You want to
15 go confer with him, that's fine.

16 MR. TWOMBLEY: Okay.

17 MS. KIRK: Are you doing it now or
18 are we deferring?

19 MR. TWOMBLEY: No. Let's do it now.

20 THE VIDEOGRAPHER: We are going off
21 record. It is 1:39 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: We are back on
24 record. It is 1:41 p.m.

25 MR. TWOMBLEY: All right. So we went

1 off the record for about 90 seconds, and I did talk
2 with Mr. Jolley and he does not have any
3 non-privileged information to share. So I am
4 instructing him not to answer based on the grounds of
5 attorney-client privilege and work product.

6 MR. TRAXLER: And which client is
7 that?

8 MR. TWOMBLEY: That's on behalf of
9 the estate of Paul Barringer through Merrill
10 Barringer as personal representative.

11 MR. TRAXLER: Okay. Does anybody
12 else assert the privilege -- attorney-client
13 privilege?

14 MR. TWOMBLEY: Well, I --

15 MS. PAYLOR: Merrill Light. Merrill
16 Light does.

17 MR. MOLSTER: I'm sorry. I was on
18 mute. Merrill Light does.

19 MR. TRAXLER: Okay. And that's based
20 on attorney-client relationship between Mr. Jolley
21 and Merrill Light as a client; is that correct?

22 MR. MOLSTER: Can I get the question
23 again? I apologize. I had an interruption.

24 MR. TRAXLER: Yeah. Why was Kevin
25 Luzak removed?

1 MR. MOLSTER: Yeah. To the extent
2 that he's got -- had discussions with Merrill Light
3 about that, yes.

4 BY MR. TRAXLER:

5 Q. Okay. Mr. Jolley, when did you learn that
6 Kevin Luzak was going to be removed, if you knew
7 ahead of time?

8 MR. TWOMBLEY: I would instruct you
9 not to answer that question if it's based on a
10 privileged conversation that you had with
11 Mr. Barringer.

12 MR. MOLSTER: Ditto for Ms. Light.

13 BY MR. TRAXLER:

14 Q. Okay. Can you answer the question?

15 A. As I've been instructed, I cannot.

16 Q. All right. Did you ever have any
17 discussions after that June 28, 2012 board meeting
18 with anyone as to why Kevin Luzak was fired?

19 MR. TWOMBLEY: You can --

20 MR. MOLSTER: Same instruction with
21 respect to Merrill Light.

22 MR. TWOMBLEY: Well, I was going to
23 let him answer yes or no, Chip. Is that all right
24 with you?

25 MR. MOLSTER: Yeah. He can say yes

1 or no, if -- if Tom will agree it's not a waiver.

2 MR. TWOMBLEY: Yeah.

3 MR. TRAXLER: I do. Go ahead.

4 MR. SCHRONCE: And same agreement and
5 instruction, Tom, for the hundred company because now
6 we're talking about after the -- after the meeting.

7 MR. TRAXLER: After the board
8 meeting.

9 MR. SCHRONCE: Okay. Yes or no is
10 fine, John.

11 THE WITNESS: Yes or no to the
12 question of -- what was the question, Mr. Traxler?

13 BY MR. TRAXLER:

14 Q. Did you ever have any conversations with
15 anyone after the June 28, 2012 board meeting as to
16 why Kevin Luzak was fired?

17 A. Yes.

18 Q. Who were those conversations with?

19 THE WITNESS: So I instruct him not
20 to answer with respect to Merrill Light or Randy
21 Light.

22 MR. TWOMBLEY: Well, Chip, I -- I
23 will let him answer. If there was a conversation
24 with Mr. Barringer, you can say Mr. Barringer, but
25 nothing else and then we'll take the next question.

1 BY MR. TRAXLER:

2 Q. Did you have a conversation with
3 Mr. Barringer after the June 28, 2012 board meeting
4 as to why Kevin Luzak was fired?

5 MR. TWOMBLEY: Yes or no.

6 THE WITNESS: Yes.

7 BY MR. TRAXLER:

8 Q. Okay. How many conversations?

9 MR. TWOMBLEY: This -- this is the
10 last one I'm letting him answer. Assuming you still
11 agree it's not a waiver of privilege, I'll let him
12 answer how many, if he remembers.

13 THE WITNESS: Mr. Traxler, can -- can
14 you tell me what time period you're referring to? I
15 know you've said that we start on June 28th.

16 MR. TWOMBLEY: John, I'm just going
17 to instruct you to answer the question that was
18 asked.

19 THE WITNESS: Okay.

20 MR. TWOMBLEY: And, Tom, correct me
21 if I'm wrong, but I think the pending question is do
22 you know how many times you would have talked with
23 Mr. Barringer about why Kevin was fired. Is that
24 right, Tom?

25 MR. TRAXLER: Yes.

1 MR. TWOMBLEY: Okay.

2 MR. TRAXLER: After the board

3 meeting.

4 MR. TWOMBLEY: If you -- if you
5 remember the times, you can say.

6 THE WITNESS: I do not. No.

7 BY MR. TRAXLER:

8 Q. Do you have any sense of how many times?

9 A. I do not.

10 Q. Was anyone present in those conversations
11 other than Mr. Barringer?

12 A. Yes.

13 Q. Who?

14 A. I'm not sure that I can answer that
15 without revealing attorney-client privilege.

16 MR. TWOMBLEY: All right. We're
17 going to take a break at the witness' request.

18 MR. TRAXLER: I'll withdraw that --
19 I'll withdraw that question. Hold on a second.

20 BY MR. TRAXLER:

21 Q. Was anybody in on the conversations
22 between you and Mr. Barringer after the board meeting
23 other than Merrill Light?

24 A. Yes.

25 Q. Okay. Did you ever have any such

1 conversations with Mr. Barringer after that board
2 meeting with others present other than Travis Bryant
3 and Merrill Light?

4 A. Yes.

5 Q. All right. Who?

6 MR. MOLSTER: Objection. Instruct
7 not to answer with respect Merrill or Randy Light.

8 MR. TWOMBLEY: Well, I want to -- I
9 want to talk to him about what his answer is. I
10 don't know. I think I know, but -- and I don't think
11 it's privileged. But, you know, unless you let me
12 talk to him and confirm what I think I know, I can't
13 let him answer, which I'm happy to do. I don't think
14 it will take but about 30 seconds.

15 MR. TRAXLER: Okay. Go ahead and ask
16 him.

17 THE VIDEOGRAPHER: We are off the
18 record. It is 1:47 p.m.

19 (Off the record.)

20 THE VIDEOGRAPHER: We are back on
21 record. It is 1:50 p.m.

22 MR. TWOMBLEY: So I discussed with
23 Jolley what his answer was to that question, and I
24 think he's got a limited non-privilege response.

25 THE WITNESS: My conversations were

1 limited to lawyers at my firm and other lawyers with
2 whom we consulted.

3 BY MR. TRAXLER:

4 Q. Did you hear my question, Mr. Jolley?

5 A. I'm sorry. I thought I answered. I
6 didn't hear -- the last question I heard, I answered.

7 Q. Okay. We had some disconnect. I asked --
8 I think the question pending to Mr. Jolley is what
9 other -- who were those other lawyers that he just
10 referred to representing?

11 MR. TWOMBLEY: I'm instructing him
12 not to answer who the other lawyers were.

13 BY MR. TRAXLER:

14 Q. I was asking him who they were
15 representing. You're telling him not to answer that
16 question?

17 MR. TWOMBLEY: Oh, I'm sorry. I
18 didn't know you were asking who they were
19 representing. I thought -- well, why don't you ask
20 him if they were representing anybody other than
21 Merrill -- Merrill Light and Paul Barringer?

22 MR. MOLSTER: Or the company.

23 BY MR. TRAXLER:

24 Q. The question I want is: Who were those
25 other lawyers that you were talking to representing

1 when you talked to them?

2 MR. TWOMBLEY: I'm going to instruct
3 you not to answer. But if they want to ask you were
4 the other lawyers representing anybody other than
5 Paul Barringer, Merrill Light, or the company, I
6 would agree to allow you to answer.

7 MR. MOLSTER: Same position. Thank
8 you.

9 BY MR. TRAXLER:

10 Q. What were the names of the other lawyers
11 that you were talking to, Mr. Jolley?

12 MR. TWOMBLEY: I am instructing him
13 not to answer that question.

14 BY MR. TRAXLER:

15 Q. When did you have -- when did you have
16 those discussions, Mr. Jolley?

17 A. I don't recall the specific dates of those
18 conversations.

19 Q. Okay. Were they before or after you
20 became corporate counsel to the company?

21 A. Before.

22 Q. Did you talk -- did you call Mike Haigler
23 two days or so before the June 28, 2012 board
24 meeting?

25 A. I don't believe that I spoke with

1 Mr. Haigler.

2 Q. All right. Let me get you to go to the
3 tab one, document page No. 75 of the written
4 notebook, please. Are you familiar with this e-mail?

5 A. I remember this e-mail now that I've
6 looked at it.

7 Q. All right. And the bottom -- the original
8 message was from Victor Barringer to you and others
9 on July 1, 2012 at 9:25 a.m., right?

10 A. I see that e-mail. Yes, sir.

11 Q. Okay. And it says in the second
12 paragraph, "I think we need to put the following in
13 front of him prior to a next meeting with Merrill or
14 my father," and he is referring to Mike Haigler
15 referenced in the subject line, does he not?

16 MS. KIRK: Object to form.

17 THE WITNESS: I think he is referring
18 to Mr. Haigler.

19 BY MR. TRAXLER:

20 Q. All right. Mr. Barringer was not an
21 officer or director of CFRC, was he?

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

24 MS. KIRK: Same objection.

25 THE WITNESS: I don't believe

1 Mr. Barringer was --

2 BY MR. TRAXLER:

3 Q. I'm sorry. Let me rephrase the question.
4 He pointed out to me that I screwed it up. At the
5 time of the July 1, 2012 e-mail from Victor Barringer
6 to you, he was not an officer or director of CFRC,
7 was he?

8 A. I don't --

9 MR. TWOMBLEY: Object to the form.

10 THE WITNESS: I don't believe so.

11 BY MR. TRAXLER:

12 Q. All right. What was the purpose of this
13 e-mail?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: What's the question
16 again? Can you repeat the question, please?

17 BY MR. TRAXLER:

18 Q. Yeah. I'll rephrase it and make it a
19 little bit better. What did you perceive the purpose
20 of this e-mail to be when you got it?

21 A. I thought this was Victor's perspective on
22 what should happen.

23 Q. Okay. Did you have conversations with
24 Victor Barringer about Kevin Luzak?

25 A. I -- I've had very, very limited

1 conversations with Victor. I know this e-mail -- I
2 remember receiving this e-mail. I may have had a
3 very brief conversation on the phone with
4 Mr. Barringer, that is, Mr. Victor Barringer.

5 Q. Did you ever discuss with Victor Barringer
6 why Kevin Luzak was fired from the company?

7 MS. KIRK: Object to form.

8 THE WITNESS: I would never -- I did
9 not -- I didn't give any information to Victor
10 Barringer about Kevin Luzak.

11 BY MR. TRAXLER:

12 Q. All right. Did you ever discuss Mike
13 Haigler with Victor Barringer?

14 MS. KIRK: Object to form.

15 THE WITNESS: My recollection is that
16 this e-mail was not something that I solicited or had
17 any -- it came as a surprise to me when it came to
18 me, and then I think the only conversation I had with
19 Victor is one in which he generally said these same
20 things.

21 BY MR. TRAXLER:

22 Q. You were not corporate counsel for CFRC at
23 this date, were you?

24 A. I do not believe so. No, sir.

25 Q. Okay. So what did you understand the

1 reason to be for Victor Barringer e-mailing you
2 directly about things that needed to be put in front
3 of Haigler at the next meeting with Merrill or my
4 father in that -- that bullet point? What did you --

5 MR. MOLSTER: Excuse me. Are you
6 done?

7 MR. TRAXLER: Yeah.

8 MR. MOLSTER: I'll repeat my
9 instruction with respect to Merrill Light or Randy
10 Light not to answer with respect to any
11 communications to the extent that's responsive.

12 MS. KIRK: And I just object to form.

13 MR. TWOMBLEY: I mean, I think you're
14 asking for his thoughts and impressions about his
15 representation of a client. I'm happy to talk about
16 it with you, but I don't --

17 MR. TRAXLER: Are y'all instructing
18 him not to answer?

19 MR. TWOMBLEY: Yes.

20 BY MR. TRAXLER:

21 Q. All right. The first bullet point
22 paragraph number in the e-mail to you on July 1, 2012
23 talks about putting it in front of Haigler prior to
24 the next meeting with Merrill and her father, any and
25 all documents reflecting related party transaction

1 between Kevin, CFRC, and any other profit or
2 non-profit that Kevin is associated with and Mike or
3 his law firm. Did I read that correctly?

4 A. That appears to be correct.

5 Q. All right. What did you understand him to
6 be wanting you to do?

7 MR. MOLSTER: Same instructions.

8 MS. KIRK: Object to form.

9 THE WITNESS: I mean, Mr. Traxler, I
10 think this e-mail speaks for itself for what
11 Mr. Barringer thought should happen.

12 MR. TWOMBLEY: Will you clarify which
13 Mr. Barringer?

14 BY MR. TRAXLER:

15 Q. Were you aware of or questioned about
16 related party transactions between Kevin, CFRC, and
17 any other profit or non-profit entity?

18 MR. MOLSTER: Same instructions.

19 THE WITNESS: I am not aware.

20 BY MR. TRAXLER:

21 Q. Did you pick up the phone and call Victor
22 Barringer and ask him what in the world he was
23 talking about with regard to that first paragraph?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I did not pick up the

1 phone and call Mr. Victor Barringer.

2 BY MR. TRAXLER:

3 Q. Did you e-mail him or have any
4 communication with him about that?

5 A. I think I just testified that Mr. Victor
6 Barringer had called me and said basically the same
7 kind of things he said here and that I listened to
8 him, but otherwise didn't communicate with him.

9 Q. How did you leave it? Did you tell him
10 yes, you were going to do or no, you weren't going to
11 do it or you were going to look into it or what?

12 A. I believe the only thing I said was that I
13 would -- you know, thanks for giving me the
14 information.

15 Q. Did you ask him if he had any information
16 about any related parties -- related party
17 transactions that he was referring to?

18 A. I don't recall that as being a part of the
19 conversation.

20 Q. Was he having any duty to any of the
21 shareholders, your clients, to investigate what he
22 was talking about?

23 MS. KIRK: Object to the form of the
24 question. That completely misstates the earlier
25 testimony.

1 MR. TWOMBLEY: Sounds like it called
2 for a privilege --

3 MR. MOLSTER: And I give the
4 instruction with respect to Merril Light and Randy
5 Light.

6 BY MR. TRAXLER:

7 Q. You can answer it?

8 MR. TRAXLER: Unless you're telling
9 him not to.

10 MS. KIRK: He can't answer it to the
11 extent that --

12 MR. TWOMBLEY: What was the question
13 again? Can you repeat it? This poor court reporter
14 over here, she deserves some type of medal.

15 MR. MOLSTER: We all do.

16 MR. TRAXLER: How did you -- how did
17 you leave it with Mr. Barringer as to what you were
18 going to do and not do in --

19 MR. TWOMBLEY: Tom -- Tom, hold on --
20 hold on one second, please. The court reporter was
21 reading the question and then you started talking.

22 MR. TRAXLER: Oh, I'm sorry.

23 (The record was read as requested.)

24 MR. TWOMBLEY: Yeah. I don't have
25 any objection to the question that -- did he have

1 any -- you know, what did you say to Victor
2 Barringer, basically is what it's saying again, but
3 go ahead.

4 THE WITNESS: I don't recall the
5 specifics of this very short conversation -- the very
6 short conversation with Victor Barringer. I
7 generally put Mr. Victor Barringer off and didn't
8 communicate with him about these things.

9 BY MR. TRAXLER:

10 Q. Did you discuss paragraph No. 2 with
11 Victor Barringer?

12 A. That's -- that's my same answer,
13 Mr. Traxler.

14 Q. And how about paragraph No. 3?

15 A. Same answer.

16 Q. All right. The e-mail above it from
17 Victor Barringer to Lewis McHenry copied to PBB --
18 and I believe that's Paul Barringer, is it not?

19 MR. MOLSTER: So can we just -- I'm
20 sorry, Tom, to interrupt. To correct the record, I
21 think the e-mail above it is actually from Victor to
22 his father and then there's the one to Lewis.

23 MR. TRAXLER: Okay. Okay. You're
24 right. I did not see that one in between. Thank
25 you, Chip.

1 BY MR. TRAXLER:

2 Q. The very top one, Mr. Jolley, from Victor
3 Barringer to Lewis McHenry copied to Paul Barringer,
4 correct, and also Merrill Light or some Light person?

5 A. It -- I'm sorry?

6 Q. Did you see the very top --

7 A. I see --

8 Q. -- that e-mail to Lewis McHenry?

9 A. I see the very top and it does appear to
10 be an e-mail from Victor Barringer to the people you
11 described.

12 Q. Okay. And who is Lewis McHenry?

13 A. I have no idea.

14 Q. Is he one of the lawyers that you talked
15 to about the reason why Kevin Luzak was fired at the
16 June 28, 2012 meeting?

17 MR. TWOMBLEY: If I agree to let him
18 answer that yes or no, will you agree that it's not a
19 waiver as to the prior questions on this topic?

20 MR. TRAXLER: Yeah.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Okay. Did you receive this e-mail, the
24 one from Victor to Lewis McHenry?

25 MS. KIRK: Object to the form.

1 THE WITNESS: I don't -- I don't
2 believe so.

3 BY MR. TRAXLER:

4 Q. Did Victor Barringer ever express any
5 sentiments to you similar to "crush him to where only
6 the charred bones remain"?

7 A. My -- I've already described all of my
8 conversations with Victor Barringer and all of my
9 communications with Victor Barringer.

10 Q. Are you aware of any efforts by anyone
11 associated with CFRC or any of the shareholders to
12 crush Mike Haigler to only where charred bones
13 remained?

14 MS. KIRK: Object to the form.

15 MR. MOLSTER: Instruct not to answer
16 with respect to Randy --

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. Did you have conversations with Merrill
20 Light about crushing Mike Haigler to where only the
21 charred bones remained?

22 MR. MOLSTER: Of course not.
23 Instruct you not to answer.

24 MR. TRAXLER: You're instructing him
25 not to go into that, Chip; is that correct?

1 MR. TWOMBLEY: Chip, why don't you
2 let him answer pursuant to an agreement --

3 MR. MOLSTER: -- he had with his
4 client. Of course, I know.

5 MR. TWOMBLEY: Chip, would you
6 consider allowing him to answer it with an agreement
7 that it doesn't waive any privilege? Because I think
8 we all know what the answer is.

9 MR. TRAXLER: Well, that's okay.
10 I'll let it go.

11 MR. MOLSTER: Tom, will you agree
12 that I'll let him answer if you don't -- it's not a
13 waiver of privilege?

14 MR. TRAXLER: All right.

15 MS. KIRK: Or, Tom, can you just ask
16 him if he's ever heard that?

17 MR. TRAXLER: Well, I've asked him
18 what I want to ask him. Thank you, though.

19 MR. TWOMBLEY: Well, let the record
20 reflect --

21 MR. MOLSTER: So are you declining my
22 offer to let him answer the question if you --

23 MR. TRAXLER: Yes, I am.

24 BY MR. TRAXLER:

25 Q. Did you ever have any (inaudible) with

1 Mr. Barringer about his opinion about Kevin Luzak
2 after the June 28, 2012 board meeting?

3 MS. KIRK: Tom, that was real garbled
4 and didn't come through.

5 BY MR. TRAXLER:

6 Q. Okay. After the June 28, 2012 board
7 meeting, did you ever have any conversations with
8 Paul Barringer about his attitude or opinion of Kevin
9 Luzak?

10 MR. TWOMBLEY: I --

11 MR. MOLSTER: Instruct him not to
12 answer with respect to Merrill Light and Randy Light.

13 MR. SCHRONCE: And, Tom, is that
14 including the time in which Mr. Jolley served as
15 corporate counsel?

16 MR. TRAXLER: Yes.

17 MR. SCHRONCE: Okay. I think we need
18 to at least confer with him. Or, John, if you can
19 answer without getting into conversations you may
20 have had with Mr. Barringer in your capacity as
21 corporate counsel and his capacity as director,
22 that's fine. But to the extent that the question
23 calls for that, I instruct you not to answer.

24 MR. TRAXLER: Okay. John, let me
25 back up and come at it a different way and see if we

1 can --

2 MR. SCHRONCE: The time period, Tom,
3 just to be clear, I think if you can clarify that a
4 bit, it might help the cause here.

5 MR. TRAXLER: Sure.

6 BY MR. TRAXLER:

7 Q. After the board meeting, but before you
8 becoming corporate counsel, did you have any
9 conversations with Paul Barringer about his opinion
10 of Kevin Luzak?

11 MR. MOLSTER: Same instruction for
12 Randy and Merrill.

13 MR. TWOMBLEY: Okay. The question is
14 did he have any conversation with Paul Barringer, and
15 I would instruct you, unless you had some
16 non-privileged conversation with him outside of your
17 role as his lawyer or related to the preparation,
18 execution of estate planning documents, I would
19 instruct you not to answer.

20 BY MR. TRAXLER:

21 Q. Did you have a conversation?

22 A. Based on that --

23 MR. TRAXLER: Are you still
24 instructing him not to answer?

25 MR. TWOMBLEY: Yeah. I put my

1 instruction on the record.

2 BY MR. TRAXLER:

3 Q. Okay. After you became corporate counsel,
4 did you have any discussions with Paul Barringer
5 about his opinion of Kevin Luzak?

6 MR. MOLSTER: Same instructions.

7 MR. TWOMBLEY: John, did you hear
8 that question?

9 MR. SCHRONCE: And -- and, Tom, I can
10 agree to a yes or no if you will agree that is not a
11 waiver.

12 MR. TRAXLER: Sure. I agree.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. How many conversations did you have, tell
16 me about when they were, and who all was present?

17 MR. SCHRONCE: Same agreement, Tom?

18 MR. TRAXLER: Yeah.

19 MR. MOLSTER: Same agreement for
20 Merrill as well?

21 MR. TRAXLER: Sure.

22 MR. MOLSTER: Thank you.

23 MR. TWOMBLEY: And I guess same
24 agreement for Mr. Barringer --

25 MR. TRAXLER: Yeah.

1 MR. TWOMBLEY: -- individually.

2 THE WITNESS: I'd estimate five

3 times.

4 BY MR. TRAXLER:

5 Q. All right. Was there ever anyone present
6 in those conversations other than you and Paul
7 Barringer?

8 MR. TWOMBLEY: Yes or no.

9 MR. SCHRONCE: Same agreement, Tom?

10 MR. TRAXLER: Yeah. I'll have the
11 same agreement with each one of you on these
12 questions.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. Okay. Who else was in attendance during
16 those conversations with Paul Barringer, subject to
17 the same agreement?

18 MR. MOLSTER: Just names, John.

19 THE WITNESS: Merrill Light, Travis
20 Bryant, Randy Light, Tom Evans maybe. I'm not sure
21 about that. I think that's -- and let's see. This
22 is during the period. And then I think other lawyers
23 in my firm.

24 BY MR. TRAXLER:

25 Q. And were each of those individuals you

1 named in all of the conversations you had with Paul
2 Barringer about Kevin Luzak as I just asked you?

3 MR. SCHRONCE: Same agreement?

4 MR. TRAXLER: Yeah, same agreement
5 everybody.

6 THE WITNESS: Mr. Traxler, can you
7 repeat that question for me?

8 BY MR. TRAXLER:

9 Q. I had a hard time the first time. Let me
10 see if I can do it better.

11 MS. KIRK: It's an audio issue, Tom.

12 MR. SCHRONCE: You're breaking up a
13 little bit. Your audio is not as clear as it was.

14 MS. PAYLOR: You might need to get
15 closer to the microphone.

16 MR. TRAXLER: Okay. The problem is
17 my notebook keeps banging around. All right. Can
18 you hear me a little bit better now?

19 THE WITNESS: Yes.

20 MR. TWOMBLEY: Much better.

21 BY MR. TRAXLER:

22 Q. Okay. Mr. Jolley, I believe you indicated
23 that a number of conversations that you had with Paul
24 Barringer after you became corporate counsel, those
25 conversations were about Kevin Luzak. And I had

1 asked you about how many and, if I recall correctly,
2 you said about five, as best you could recall. The
3 exact number is not important to me. Now I've asked
4 you who was present in the conversation, and you
5 named those names for me. My question now is: Were
6 those individuals who you just named in on each of
7 those conversations with Paul Barringer that you --
8 that you can recall?

9 A. No.

10 Q. Okay. Give me some idea -- well, how many
11 of the conversations were just with Paul Barringer?

12 A. I would say --

13 Q. Exact number is not -- the exact number is
14 not important to me, Mr. Jolley. I'm just trying to
15 get a sense of the setting of each one of these
16 conversations.

17 MS. KIRK: And this is the continuing
18 agreement, correct?

19 MR. TRAXLER: That's correct. Yes.

20 THE WITNESS: Several. One or two or
21 maybe even three.

22 BY MR. TRAXLER:

23 Q. Were these conversations where Randy Light
24 was involved --

25 MR. MOLSTER: Same agreement?

1 Q. -- before or after he became -- came onto
2 the board of directors?

3 MR. TRAXLER: Yeah, same agreement.

4 THE WITNESS: Yeah. My recollection
5 is only after.

6 BY MR. TRAXLER:

7 Q. All right. Are you aware of anybody
8 within the corporation conducting any investigation
9 of Kevin Luzak as he requested?

10 MS. KIRK: Object to the form.

11 MR. SCHRONCE: Yeah. I'm going to
12 object and, again, I think a yes or no and -- and do
13 not go beyond that, John.

14 THE WITNESS: No.

15 BY MR. TRAXLER:

16 Q. Do you recall if the topic was ever
17 discussed by the corporation about whether to do an
18 investigation of Kevin Luzak?

19 MR. SCHRONCE: And I'm going to
20 object and -- and I guess a yes or no. I will first
21 object to the form of the question. And beyond that,
22 a yes or no is okay, John, but don't go beyond that.

23 THE WITNESS: Yes.

24 BY MR. TRAXLER:

25 Q. After the board of directors meeting on

1 June 28, 2012, did you ever have any discussions with
2 Paul Barringer about his opinion of Hampton Luzak?

3 MR. SCHRONCE: And, Tom, I'll ask you
4 just for clarification here, are you talking June 28
5 and thereafter or are you limiting that to before he
6 became corporate counsel?

7 BY MR. TRAXLER:

8 Q. That's fair. Between the June 28 board
9 meeting and you becoming corporate counsel, did you
10 have any conversations with Paul Barringer --

11 A. Mr. Traxler, I think we lost your audio
12 there for a second.

13 Q. Okay. Between the board meeting on
14 June 28, 2012 and you becoming corporate counsel, did
15 you have any conversation with Paul Barringer about
16 his opinion or feelings toward Hampton Luzak?

17 MR. TWOMBLEY: Yeah. I'm going to
18 object and instruct him not to answer unless it
19 related to the preparation and execution of estate
20 planning document.

21 BY MR. TRAXLER:

22 Q. Can you answer?

23 A. As -- as instructed, I cannot answer.

24 MR. TRAXLER: Okay. Ashley, would
25 you let him answer the question with simply a yes or

1 no, that's all the question was, subject to an
2 agreement that it doesn't constitute a waiver?

3 MR. TWOMBLEY: Did he have any
4 discussions with Mr. Barringer about Mr. Barringer's
5 feelings toward Ms. Luzak?

6 MR. TRAXLER: Yes. Between the time
7 of the board meeting and becoming corporate counsel?

8 MR. TWOMBLEY: No. I will not let
9 him answer that.

10 MR. TRAXLER: Okay. Let me --

11 MR. TWOMBLEY: For the record, unless
12 it relates to the preparation or execution of an
13 estate planning document.

14 BY MR. TRAXLER:

15 Q. At any time after you -- after the board
16 meeting, did you ever have any conversations with
17 Paul Barringer about his feelings toward Hampton
18 Luzak? And I'm broadening it from the board meeting
19 on to the present time.

20 MS. KIRK: Object to the form.

21 MR. SCHRONCE: John, you can answer
22 yes or no on that.

23 THE WITNESS: So, Mr. Traxler, I'm
24 still having a hard time hearing that. Can you
25 repeat it, please?

1 BY MR. TRAXLER:

2 Q. Yeah. After the June 28, 2012 board
3 meeting, did you have any conversations with Paul
4 Barringer where he expressed feelings of sentiments
5 toward Hampton Luzak?

6 MR. TWOMBLEY: I want to -- I want to
7 talk to Mr. Jolley about what his answer is before I
8 allow him to answer that question. So I'm going to
9 go off the record.

10 MR. TRAXLER: Ashley, let me ask you
11 this to facilitate things. If he says no, okay. If
12 he says yes, then why don't you let me ask the
13 questions about when and the circumstances and have
14 it narrowed down a little bit more. I'm just trying
15 to save time.

16 MR. TWOMBLEY: Well, I was trying to
17 save time too. So I was just thinking my way was
18 going to save more time than your way was, but I
19 don't know who is right about that. But I think I --
20 well, it's your -- it's your call, but I was trying
21 to save time too.

22 MR. TRAXLER: Sure. How about just
23 let him answer yes or no, and that doesn't constitute
24 a waiver.

25 MR. TWOMBLEY: Okay.

1 BY MR. TRAXLER:

2 Q. Did you have conversations after the June
3 board meeting with Paul Barringer about his feelings
4 about Hampton Luzak?

5 A. Yes.

6 Q. All right. Ballpark time when?

7 A. I would -- I would say multiple times.

8 MR. TWOMBLEY: All right. That's it.

9 BY MR. TRAXLER:

10 Q. Was it in connection with any preparation
11 of estate planning documents for Mr. Barringer?

12 A. Yes.

13 Q. Okay. Which estate planning documents?

14 A. Those documents that Mr. Barringer
15 executed after July of 2012.

16 Q. All right. Did you have such
17 conversations with him in connection with the
18 reported transfer of voting stock to his revocable --
19 from his revocable trust to Ms. Light's revocable
20 trust in September of 2012? Were any of those
21 conversations in connection with that transfer?

22 MS. KIRK: Object to form.

23 MR. MOLSTER: Yes or no. No waiver
24 -- no waiver agreement?

25 MR. TRAXLER: I agree.

1 MR. MOLSTER: Yes or no, John.

2 THE WITNESS: I think the answer is
3 no.

4 BY MR. TRAXLER:

5 Q. All right. So when is the first time in
6 connection with any estate planning documents did you
7 have a conversation with Mr. Barringer about his
8 feelings towards Hampton after the June board
9 meeting?

10 A. I -- I -- I can't tell you the specific
11 times of that. I had -- there you go.

12 Q. Well, what did he tell you?

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Is this -- I want to
15 talk with Mr. Jolley about his answer and whether or
16 not we need to raise a privilege, and I think the
17 best, quickest way to do it is just give me 30
18 seconds with him and we'll...

19 MR. TRAXLER: Okay. Go talk to him.

20 THE VIDEOGRAPHER: We are off the
21 record. It is 2:18 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: We are back on
24 record. It is 2:28 p.m.

25 MR. TWOMBLEY: All right. I don't

1 know if -- is Mr. Molster back?

2 MR. MOLSTER: I'm back.

3 MR. TWOMBLEY: I think we're waiting
4 just one second for Mr. Molster to get back on. So
5 I -- I feel comfortable telling you what the, I
6 guess, results are of the conference on all of these
7 issues. So with respect to the first issue that I
8 wrote down, and I'm sorry if this is not the first
9 one you wrote down, but it was --

10 MR. TRAXLER: Ashley, can you hold on
11 just a minute until we get Chip back on?

12 MR. TWOMBLEY: Sure.

13 MS. PAYLOR: I'm on.

14 MR. TRAXLER: Okay. Alice, do you
15 want us to wait for Chip?

16 MS. PAYLOR: Not for -- not for
17 Ashley to tell you what he's found.

18 MR. TRAXLER: Okay. Go ahead,
19 Ashley.

20 MR. TWOMBLEY: I -- I feel
21 comfortable subject to being killed by Chip. But in
22 any event, the first issue of Kevin Luzak allegedly
23 kicking Mr. Barringer and Merrill Light out of the --
24 out of the room, you asked -- I instructed John not
25 to answer and so did Chip, and you asked which

1 privilege applied. And the privilege is Paul
2 Barringer's individual attorney-client privilege, and
3 also Merrill Light's individual attorney-client
4 privilege.

5 MR. TRAXLER: All right.

6 MR. TWOMBLEY: Okay. The second
7 question about Mr. Barringer's feelings about Hampton
8 Luzak after June 28th, it's my understanding from
9 Mr. Jolley that those communications did come with
10 respect to the change in Mr. Barringer's estate
11 planning documents. So we're not going to raise
12 privilege on those and allow him to answer it.

13 And then the third issue of did he
14 ever represent Merrill Light as co-trustee, his --
15 well, he's going -- subject to -- I think Chip is
16 going to say subject to you agreeing there's no
17 waiver, he's going to allow John to answer that
18 question.

19 MR. MOLSTER: Hey. I'm back. So I
20 missed a little bit of that, but yeah. I got the
21 part about the question as to whether or not he
22 represented her as co-trustee or in a fiduciary
23 capacity.

24 MR. TWOMBLEY: Yeah. And then No. 2,
25 the feelings about Mr. Barringer, that's not your

1 issue. And then the first one, which privilege is
2 applied related to the discussions about Kevin Luzak
3 allegedly kicking Paul Barringer and Merrill out of a
4 meeting. I told him I'm raising Mr. Barringer's
5 individual privilege on behalf of the estate and
6 you're raising an individual privilege for Merrill
7 Light.

8 MR. TRAXLER: Let me ask this to that
9 point about the -- what he had heard about the
10 allegation that Kevin Luzak had kicked Paul Barringer
11 and/or Merrill Light out of the board meeting. And
12 Merrill Light is asserting her attorney-client
13 privilege, as well as Paul Barringer is asserting
14 attorney-client privilege; is that correct?

15 MR. TWOMBLEY: Correct.

16 MR. MOLSTER: Yeah. We're back --
17 I'm sorry. Are we back on the record?

18 MR. TRAXLER: Yeah. Aren't we?

19 MR. TWOMBLEY: I think so. Yeah.

20 MS. PAYLOR: I think we went on
21 already.

22 MR. MOLSTER: Okay. Sorry.

23 BY MR. TRAXLER:

24 Q. Mr. Jolley, in connection with that
25 allegation about Kevin Luzak kicking Paul Barringer

1 and/or Merrill Light out of the board meeting, was
2 that a conversation that you had with Merrill Light
3 and Paul Barringer at the same time or were they
4 separate conversations?

5 MR. MOLSTER: You agree it's a
6 non-waiver?

7 MR. TRAXLER: Yeah.

8 MR. MOLSTER: -- if we let him
9 answer?

10 MR. TRAXLER: Yeah.

11 MR. MOLSTER: Ashley, are you okay
12 with letting him answer?

13 MR. TWOMBLEY: Yeah. Subject to
14 agreement non-waiver.

15 THE WITNESS: Together.

16 BY MR. TRAXLER:

17 Q. Okay. So you were having this
18 conversation in your capacity as Paul Barringer's
19 lawyer with Merrill Light present, and you were
20 having your conversation with her in your
21 attorney-client relationship with him present,
22 correct?

23 MS. KIRK: I object to the form.

24 MR. TRAXLER: Okay.

25 MR. MOLSTER: Yeah. Object to the

1 form.

2 MR. TRAXLER: Is that correct?

3 MR. MOLSTER: And I want -- you want
4 the agreement? I mean, I'm not going to let him
5 answer without the agreement.

6 MR. TRAXLER: Yeah. That's fine.

7 MR. MOLSTER: And I also think it's a
8 legal conclusion.

9 MR. TWOMBLEY: Tom, I don't really
10 want to -- I mean, I want to ask him -- I don't have
11 any -- the foggiest idea what John Jolley may say in
12 response to that question, and I don't know if it
13 might reveal some privileged information or not. I
14 mean, I'm sorry, but I just -- I mean...

15 MR. TRAXLER: Okay. Are you
16 instructing him not to answer? I'll move on.

17 MR. TWOMBLEY: Well, I mean, I want
18 to ask him what his answer is and I -- you know.

19 MR. TRAXLER: Y'all were just out
20 there.

21 MR. TWOMBLEY: Whether or not the
22 answer would reveal a privileged communication or
23 his --

24 MR. MOLSTER: You didn't ask that
25 question, Tom.

1 MR. TRAXLER: I'm going to ask -- I'm
2 going to ask another question.

3 THE WITNESS: Because we didn't have
4 that question.

5 MR. TWOMBLEY: Okay. Well, try
6 again.

7 MR. TRAXLER: You instructed it.
8 I'll move on to another question.

9 MR. TWOMBLEY: Well, I'm not
10 instructing him.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, did you ever represent Merrill
13 Light as co-trustee?

14 MR. MOLSTER: Okay. So we have the
15 agreement?

16 MR. TRAXLER: That's fine. Yeah.

17 MR. MOLSTER: Okay. Go ahead, John.
18 Yes or no or whatever your answer is.

19 THE WITNESS: Mr. Traxler, you asked
20 me -- I need you to repeat the question.

21 BY MR. TRAXLER:

22 Q. Did you ever represent Merrill Light as
23 co-trustee?

24 A. As co-trustee of Paul Barringer's trust?

25 Q. Yes.

1 A. I did not.

2 Q. Did you ever represent Merrill Barringer
3 when she served as any fiduciary for Paul Barringer?

4 MR. MOLSTER: You mean Merrill Light?
5 Do you mean Merrill Light?

6 MR. TRAXLER: I'm sorry. I screwed
7 up. You're right. Thank you, Chip.

8 MR. MOLSTER: Same agreement?

9 MR. TRAXLER: Yeah.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, did you ever represent Merrill
12 Light in any fiduciary capacity for Paul Barringer --
13 where she served in a fiduciary capacity for Paul
14 Barringer?

15 A. I don't believe so.

16 Q. Okay. Tell me -- going back to the
17 question before we broke, Mr. Jolley, tell me what
18 conversations you had with Paul Barringer about his
19 feelings about Hampton Luzak after the June 28, 2012
20 board meeting where he expressed his feelings about
21 her?

22 A. Mr. Barringer, in multiple meetings,
23 described to me his attitude and feelings about
24 Ms. Luzak.

25 Q. What did he say?

1 A. I would -- Mr. Barringer at the -- near
2 the time of this, that is, in the summer of 2012,
3 this is after the board meeting, I think,
4 Mr. Barringer said he was disappointed and -- with
5 Ms. Luzak and he hoped for a reconciliation with
6 Ms. Luzak.

7 Q. I think you told me when, but I did not
8 pick up on it. When did that conversation happen?

9 A. That would have been after the board
10 meeting in which Mr. Luzak was removed.

11 Q. Okay. Was it in 2012?

12 A. I have had -- that -- the first meeting
13 about -- the first conversation we had about that was
14 in 2012. Yes.

15 Q. Okay. Give me the circumstances of that.
16 When it was, where it was, and what was said?

17 A. I had several meetings with Mr. Barringer,
18 whether in person or on the telephone, in which he
19 described, what, his hope for reconciliation with
20 Hampton Luzak and that was in the context -- and then
21 over time we had additional conversations in years
22 after 2012 in which he described, what, the progress
23 or lack thereof in a reconciliation with Ms. Luzak.

24 Q. Okay. But right now I want to focus on
25 2012. Did he indicate to you why he was disappointed

1 or had such feelings about Hampton Luzak in 2012?

2 A. He generally expressed to me that he was
3 disappointed that Ms. Luzak had sided, in his mind,
4 with her husband, Kevin Luzak.

5 Q. Did he have -- did he express to you any
6 other reason for having or bad feelings toward
7 Hampton Luzak other than what you just said?

8 MS. KIRK: Object to the form.

9 THE WITNESS: And -- and we're still
10 talking about in 2012?

11 BY MR. TRAXLER:

12 Q. Yes, sir.

13 A. No. Generally he was disappointed -- he
14 said he was disappointed in Hampton, what, supporting
15 the allegations of her husband.

16 Q. And what were the allegations of her
17 husband as you understood it?

18 A. Mr. Barringer was, what, particularly
19 aggrieved at the -- one, the perception that he
20 lacked capacity and, two, that Mr. Luzak was running
21 the company in a way that was inconsistent with
22 the -- with the company's vision.

23 Q. All right. What did you understand from
24 Mr. Barringer, Hampton Luzak had done with regard to
25 his capacity?

1 MS. KIRK: Object to the form.

2 THE WITNESS: Well, Mr. -- I mean,
3 what did he -- he tried to -- I mean, Paul believed
4 that -- expressed to me anyway that he believed Kevin
5 had tried to take over the company and keep Paul from
6 being involved.

7 BY MR. TRAXLER:

8 Q. But how does that relate --

9 MS. KIRK: You totally went out, Tom.

10 BY MR. TRAXLER:

11 Q. I'm sorry. What does that have to do with
12 Paul Barringer's negative feelings toward Kevin with
13 regard to his capacity? I understand that you said
14 that he felt all -- or Kevin was maybe trying to take
15 the company or something or not going in the proper
16 direction, but your first comment was that he was
17 upset with Kevin about Kevin's allegations or
18 whatever pertaining to his competency or capacity.
19 I'm trying to understand that better or did I
20 misunderstand you?

21 MS. KIRK: Object to the form.

22 THE WITNESS: I'm not sure you
23 misunderstood me. I think Mr. Barringer was -- you
24 asked me about Ms. Luzak, and he told me that he was
25 disappointed that she was supporting her husband in

1 what Paul, I think, perceived to be an unfounded
2 allegation about his capacity and the direction of
3 the company.

4 BY MR. TRAXLER:

5 Q. Did he cite any particulars of what he
6 thought Kevin had done with regard to his capacity?

7 A. I don't -- I'm not -- in this context, I
8 don't -- I'm not sure that he did cite any
9 particulars.

10 Q. Did he have similar feelings about Randy
11 Light in light of all the e-mails that Randy Light
12 had written about his capacity?

13 MS. KIRK: Object to the form.

14 MR. MOLSTER: Wait a second. I
15 instruct you not to answer with respect to
16 conversations -- any attorney-client communications
17 you had with Randy or Merrill or any joint
18 representation.

19 BY MR. TRAXLER:

20 Q. Okay. But my question is: In a
21 conversation with Paul Barringer about his feelings
22 toward Hampton, did he ever express any negative
23 feelings about Randy Light, especially when we
24 consider the e-mails that Randy Light was writing
25 about Paul's mental problems?

1 MS. KIRK: Object to the form.

2 MR. MOLSTER: I don't think -- yeah.
3 I think that's too close to attorney-client
4 privilege.

5 MR. TRAXLER: That's your not client.

6 MR. MOLSTER: You're asking a
7 question about my client. Randy Light is my client.

8 MR. TRAXLER: Was it your position,
9 Chip, is that if your client is the subject of
10 somebody else's discussion that that discussion
11 somehow is privilege?

12 MR. MOLSTER: I think you're asking a
13 a question about a conversation between Paul
14 Barringer and his lawyer, right, about something that
15 is not covered by the testamentary exception. Right?
16 My understanding -- and I've got to defer to Ashley
17 on that, but you're asking -- that -- that -- that --

18 MR. TWOMBLEY: I think what you ought
19 to ask, subject to an agreement, is whether or not
20 there were any such discussions about Randy Light and
21 the e-mails he sent, and I would let him answer yes
22 or no and then we'll go from there.

23 MR. TRAXLER: I kind of like my
24 question the way I asked it. All I need to know
25 is -- I want to make sure I understand Chip Molster's

1 objection, and he is objecting because his client,
2 Randy Light, was the subject of conversations between
3 two other people.

4 MR. TWOMBLEY: I think -- I think
5 Chip clarified that's not what he was doing.

6 MR. MOLSTER: One of them is a
7 lawyer. Right? And the other one is his client. Go
8 ahead, Ashley.

9 MR. TWOMBLEY: Well, I don't think
10 that's what Chip was doing. I think Chip corrected
11 himself and responded to your question that just
12 because Randy was the subject of a conversation that
13 wouldn't lead to a privilege. But what I'm saying --

14 MR. TRAXLER: All I want to do, guys,
15 is make sure we've got a clean record on this thing.
16 Is there a privilege being asserted to him in
17 instruction to Mr. Jolley not to answer the question?
18 And if so, who's making it and on what basis?

19 MR. TWOMBLEY: Okay. This is Ashley
20 Twombley, and I am instructing him not to answer that
21 question based on the attorney-client privilege. I
22 don't think it has anything to do with -- if there
23 was any such conversation, I don't think it had
24 anything to do with the preparation or execution of
25 an estate planning document. What I'm -- what I'm

1 offering as a suggestion and alternative way where
2 you may be able to get the information which you
3 maybe be entitled to is whether or not there ever was
4 any conversation, yes or no, about the prior e-mails
5 that Randy Light had sent where, as you say, they
6 question Mr. Barringer's capacity. We object to the
7 form and that characterization of the e-mails. But,
8 you know, y'all are always very reluctant to take any
9 of my suggestions since -- you may not start now, but
10 that's just my offer. I mean, I do have a good one
11 every now and then, Tom. So, I mean, once in a while
12 it might be worth giving it a consideration.

13 MR. TRAXLER: Oh, certainly. I truly
14 do give everybody's opinion a consideration. Trust
15 me. Mr. Molster, I'm going to make sure I got your
16 objection correct. Are you asserting a privilege?

17 MR. MOLSTER: No. I think I
18 articulated it correctly.

19 BY MR. TRAXLER:

20 Q. Okay. And, Mr. Jolley, you're not going
21 to answer that question based on Mr. Twombly's
22 instruction; is that correct?

23 A. That is correct.

24 Q. Okay. Now, I think you answered it, but I
25 want to make sure. Paul Barringer, in these

1 conversations in 2012, did not provide you any
2 further details as to what Kevin Luzak was doing with
3 regard to challenging his capacity; is that correct?

4 MR. TWOMBLEY: Object to the form of
5 the question. Misstates his testimony.

6 MS. KIRK: Same objection.

7 BY MR. TRAXLER:

8 Q. Okay. If I misstated it, let's go back.
9 Give me all the details that Paul Barringer cited
10 that Kevin Luzak had done to challenge his capacity
11 in 2012 and before?

12 MR. TWOMBLEY: Object to the form of
13 the question.

14 MS. KIRK: Object to the form.

15 THE WITNESS: So, Tom -- I'm sorry.
16 Mr. Traxler, you're asking me for any -- to recit any
17 time in which Mr. Barringer, what, suggested there
18 was some evidence of Kevin Luzak -- you're going to
19 have to repeat that question. I'm not sure I
20 followed that, Tom.

21 BY MR. TRAXLER:

22 Q. Yeah. Sure, sure. Let me back it up and
23 make sure we're -- we're in sync. You earlier to --
24 say that Mr. Barringer expressed disappointment in
25 2012 with respect to Kevin Luzak as Kevin challenging

1 his competency or capacity. Did I understand that
2 correctly?

3 A. I think I testified that he was
4 disappointed, yes, but in Ms. -- his daughter,
5 Ms. Luzak, and that was -- and, yes, that was based
6 on his -- Kevin's challenge of Mr. Barringer's
7 capacity.

8 Q. Okay. Did Mr. Barringer, in this
9 conversation, give you any details as to what Kevin
10 had done with regard to the challenges with his
11 capacity?

12 A. And -- and when you asked me this question
13 before, you were saying after the board meeting; is
14 that right?

15 Q. No, sir. Well, we can start that. After
16 the board meeting in 2012, did he give you any
17 details about Kevin's challenges to his capacity?

18 A. I don't -- I don't believe so.

19 Q. Prior to the board meeting in 2012, did he
20 give you any details into Kevin's challenges to his
21 capacity?

22 MR. TWOMBLEY: And, John, I'm going
23 to -- you know, since the net has gotten wider here
24 I -- I would just caution you to limit your testimony
25 just to conversations that would have related to the,

1 you know, preparation, execution, or amendment of his
2 estate planning documents. Otherwise, I would raise
3 privilege and instruct you not to answer.

4 THE WITNESS: So my answer to that
5 question is going to be barred by privilege.

6 BY MR. TRAXLER:

7 Q. So other than what you have told me, you
8 are not going to give me any further details as to
9 exactly what Kevin Luzak supposedly did with regard
10 to challenging Paul Barringer's capacity in 2012; is
11 that correct?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: Mr. Traxler, beyond
16 Mr. Barringer's statements about what happened, he
17 didn't give me -- I'm not sure what specific answers
18 or what support Mr. Barringer would have provided.

19 BY MR. TRAXLER:

20 Q. Great. Thank you. That's all I wanted to
21 know. Thank you very much. Now, with respect to
22 Mr. Barringer's attitude toward Hampton Luzak in
23 2012, his disappointment, you cited Kevin's -- Mr.
24 Barringer's disappointment in Kevin and how he wanted
25 to run the company or where to take the company. Did

1 I understand that correct or did have I misstated
2 that?

3 MS. KIRK: Object to form.

4 BY MR. TRAXLER:

5 Q. Because I want you to give me the details
6 of that as best you can.

7 A. Yeah. I mean, the details are that
8 Mr. Barringer really told me that he was disappointed
9 about Hampton and beyond -- and Hampton taking the
10 position adverse to Paul Barringer and in taking the
11 position of Kevin Luzak.

12 Q. And what was his problem with Kevin Luzak
13 beyond those challenges of his capacity?

14 A. I'm not sure. I'm not sure what
15 Mr. Barringer -- I don't know what else his --
16 Mr. Barringer's problems with Mr. Luzak were.

17 Q. Did Mr. Barringer, during these
18 conversations, ever complain about Kevin Luzak and
19 how he was running CFRC?

20 MR. TWOMBLEY: Object to the form of
21 the question. Misstates his testimony.

22 MS. KIRK: Same objection.

23 MR. TWOMBLEY: I mean, diametrically
24 opposed to what he said.

25 MR. TRAXLER: I don't believe I said

1 that's what his testimony was. It was a simple
2 straight up question.

3 THE WITNESS: I'm sorry, Mr. Traxler.
4 Can you repeat the question a little louder for me?

5 BY MR. TRAXLER:

6 Q. Sure. During these conversations with
7 Paul Barringer in 2012, did he ever express to you
8 disappointment in Kevin Luzak and how he was running
9 the company or the direction he might have taken the
10 company?

11 MR. TWOMBLEY: And I'm respectfully,
12 Tom -- I mean, now these questions are encompassing
13 an entire year of 2012. And so I have to limit John
14 to only respond if there were discussions related to
15 the preparation and execution and amendment of estate
16 planning documents about Mr. Luzak. Otherwise, I
17 would instruct you not to answer.

18 MR. TRAXLER: Mr. Twombley, is it
19 your opinion that those conversations are allowed
20 only if they directly related to preparation of
21 estate planning documents or are they allowed if they
22 affect the estate planning intentions of
23 Mr. Barringer?

24 MR. TWOMBLEY: I don't know what that
25 means.

1 MR. TRAXLER: Okay. So what are you
2 telling this witness to do or not do with regard to
3 the pending question?

4 MR. TWOMBLEY: Well, what I'm
5 instructing the witness to do is what I think is
6 consistent with the court's ruling, which is that if
7 there were communications with Paul Barringer related
8 to the -- his -- changing his estate plan and they
9 involved Kevin Luzak, then I think the plaintiff is
10 entitled to discover that information and you're
11 allowed to answer. But if there were other unrelated
12 conversations about Mr. Luzak --

13 MR. TRAXLER: Let me -- let me see if
14 I can allay your concerns a little bit, Mr. Twombley.

15 MS. KIRK: Mr. Traxler, can you get
16 closer? We're having trouble hearing you again.

17 MR. TRAXLER: Yeah. Thank you for
18 reminding me.

19 BY MR. TRAXLER:

20 Q. Mr. Jolley, you relayed conversations with
21 Paul Barringer and his disappointment or negative
22 feelings for Hampton because of her situation with
23 Kevin. Did that attitude affect his estate planning
24 into the future?

25 A. Yes.

1 Q. All right. Tell me what he told you that
2 Kevin had done or not done that he found to be
3 unacceptable?

4 MS. KIRK: Object to the form.
5 BY MR. TRAXLER:

6 Q. What had Kevin done? What had Kevin done?

7 A. I think that what I said before is still
8 my answer, that is he, what, related to me that Kevin
9 had challenged his competency and of -- and wanted to
10 take the company and run the company without Paul.

11 Q. Okay. Did he provide you any more detail
12 or information about Kevin wanting to run the company
13 without Paul?

14 A. Not in the context of his estate planning.

15 Q. Did you perceive his perception -- did you
16 understand his perception of what Kevin wanted to do
17 about running the company without Paul to be true?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: I would -- I would
20 instruct you not to answer. I think that goes to
21 Mr. Jolley's thoughts and mental impressions. I
22 don't think it goes to communications with
23 Mr. Barringer, and I instruct you not to answer.

24 BY MR. TRAXLER:

25 Q. Mr. Jolley, I assume that if a client

1 comes into you and wants testamentary instruments and
2 you proceeded to them to have some wrong ideas about
3 some material issues, you've got to deal with that,
4 don't you?

5 MS. KIRK: I object to the form. I'm
6 not even sure what you asked.

7 MR. TRAXLER: Well, he testified in
8 the last deposition that material -- a mistake of
9 material fact is a basis for voiding the will, isn't
10 it?

11 MR. TWOMBLEY: Object to the form of
12 the question.

13 MS. KIRK: I also object to that
14 question.

15 MR. TWOMBLEY: Calls for a legal
16 conclusion.

17 BY MR. TRAXLER:

18 Q. So what do you do if a client comes in and
19 you see the person is making a significant mistake
20 about a material fact, what do you do?

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

23 MS. KIRK: Same objection.

24 THE WITNESS: Mr. Traxler, I think,
25 one, I satisfy myself that the client has sufficient

1 understanding and, two, I try to help effectuate my
2 client's intent.

3 BY MR. TRAXLER:

4 Q. Okay. So what did you do in this
5 particular occasion when he made that statement about
6 Kevin?

7 MS. KIRK: Object to the form.

8 THE WITNESS: At that time,
9 Mr. Barringer was generally treating his daughters
10 the same. So other than satisfying myself of
11 Mr. Barringer's competency, my impression was his
12 competency was certainly -- I didn't take any action
13 with respect to Mr. Luzak.

14 BY MR. TRAXLER:

15 Q. You had already changed Paul's revocable
16 trust by July 20th of 2012, hadn't you?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 BY MR. TRAXLER:

21 Q. Didn't you?

22 A. I assisted Mr. Barringer in updating his
23 revocable trust in July of 2012. That is correct.

24 Q. That's right. And that was to give the
25 CFRC stock directly to Merrill Light upon the death

1 of him -- the latter of him and his wife, right?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I don't remember
4 whether that transfer in that document was at --
5 would have been at his death or at the death of the
6 surviving spouse, but that amendment does, in fact,
7 provide for the shares to go to Merrill Light.

8 BY MR. TRAXLER:

9 Q. To the exclusion of Hampton Luzak,
10 correct?

11 MS. KIRK: Object to the form.

12 THE WITNESS: That is correct.

13 BY MR. TRAXLER:

14 Q. Okay. And this occurred, what, about
15 three weeks right after the board of directors
16 meeting on June 28, 2012; is that correct?

17 MS. KIRK: Object to the form.

18 THE WITNESS: You can -- I mean, that
19 does sound -- the dates sound correct. Yes.

20 BY MR. TRAXLER:

21 Q. All right. These conversations that you
22 were having with Paul Barringer when he was
23 explaining his feelings about Hampton, did they
24 precede the second amendment and restatement of the
25 trust agreement on July 20, 2012?

1 MS. KIRK: Object to the form.

2 THE WITNESS: Mr. Barringer certainly
3 expressed his disappointment before the execution of
4 that amendment.

5 BY MR. TRAXLER:

6 Q. That's what led to that amendment, isn't
7 it?

8 A. It's part of what led to that amendment.
9 Yes.

10 Q. What else led to the amendment?

11 A. Mr. Barringer's desire to ensure the
12 company wasn't run by Mr. Luzak.

13 Q. And he did that by keeping it away from
14 Hampton, correct?

15 MS. KIRK: Object to the form.

16 THE WITNESS: I think that -- he
17 wanted Merrill Light to be -- have control.

18 BY MR. TRAXLER:

19 Q. To the exclusion of Hampton Luzak,
20 correct?

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

23 MS. KIRK: Object to form.

24 MS. PAYLOR: Object to form.

25 MR. TWOMBLEY: Misstates the

1 evidence.

2 BY MR. TRAXLER:

3 Q. You can answer it.

4 A. The transfer was only to Merrill --
5 Merrill Light and not to Hampton Luzak. That is
6 correct.

7 Q. And prior to that, Hampton Luzak was to
8 share equally, correct --

9 MR. TWOMBLEY: Object --

10 Q. -- under the power of appointment, right?

11 MR. TWOMBLEY: I'm sorry.

12 MS. PAYLOR: Object to the form.

13 MR. TWOMBLEY: I apologize, Tom. I
14 objected before you finished the question. I
15 apologize. Can you repeat it?

16 BY MR. TRAXLER:

17 Q. Sure. The -- prior to the June -- second
18 amendment and reinstatement on July 20, 2012, Hampton
19 Luzak and Merrill Light were treated equally,
20 correct?

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

23 MS. KIRK: Same objection.

24 MR. TWOMBLEY: Misstates the
25 evidence.

1 MS. PAYLOR: Object to the form.

2 BY MR. TRAXLER:

3 Q. Were they treated equally prior to that?

4 A. I think under the February 28 document,
5 the -- subject to power of appointment, the
6 daughters, that is, Hampton Luzak and Merrill Light,
7 were treated the same.

8 Q. All right. Let me get you to -- well, let
9 me ask you this. No. Let's go ahead and go to it
10 now. I need for you to go to the tab 16, page 443.

11 A. I'm at J. Jolley Dep 0443.

12 Q. All right. This is the second amendment
13 and restatement of trust agreement that had --

14 A. I'm sorry, Mr. Traxler. You broke up
15 there.

16 Q. Sure. This is the second amendment and
17 trust agreement dated July 20, 2012; is that correct?

18 A. This is the second amendment and
19 restatement dated July 20, 2012.

20 Q. All right. You prepared this document,
21 correct?

22 A. That is correct.

23 Q. Tell me about the subject of
24 Paul Barringer leading up to this document. How did
25 the conversation relate to this document? And walk

1 me through the progression of this conversation.

2 MS. KIRK: Tom, I didn't hear any of
3 that.

4 MR. TRAXLER: I asked him to take me
5 through the progression of Paul Barringer that led to
6 the drafting and execution of this document.

7 MR. TWOMBLEY: This is Ashley
8 Twombley. I would object to the form. I think we
9 spent almost 30 or more minutes during the first day
10 of deposition about this document, the circumstances
11 that led to it, why Ms. Barringer -- Mr. Barringer
12 wanted to do it. I think it's repetitive.

13 MS. KIRK: Yeah. And we're really,
14 you know, coming up on two full days of deposition
15 testimony, Tom. Are you getting ready to wrap it up?

16 MR. TRAXLER: I'll -- I'll withdraw
17 that question and ask something a little bit more
18 particular on that.

19 BY MR. TRAXLER:

20 Q. Go to page 470. It was executed -- excuse
21 me, page 469. It was executed by Paul Barringer as
22 settlor and as individual trustee, correct?

23 A. That is certainly what 469 reflects. Yes,
24 sir.

25 Q. Yeah. And 470 showed that it was executed

1 before a notary of Alabama on July 20, 2012; is that
2 correct?

3 A. That is what page 470 reflects.

4 Q. All right. And I believe the next page,
5 471, reflects that it was signed by Merrill Light in
6 Beaufort County on that same day, correct?

7 MS. KIRK: Object to the form. I
8 mean, we've gone through all of this ad nauseam, Tom.
9 I mean, I don't -- I think it's abusive to sit here
10 and rehash questions that we've already spent so much
11 time on. I mean --

12 MR. TRAXLER: That's fine. This is
13 going to be very limited.

14 BY MR. TRAXLER:

15 Q. Am I correct in that statement,
16 Mr. Jolley?

17 MR. MOLSTER: I'm sorry. Can I hear
18 the question again?

19 BY MR. TRAXLER:

20 Q. Yeah. The second amendment restatement,
21 page 471, shows that it was executed by Merrill Light
22 on July 20, 2012.

23 MR. MOLSTER: Thank you.

24 BY MR. TRAXLER:

25 Q. Am I looking at that correctly?

1 A. I'm sorry.

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

4 MS. KIRK: You just want him review
5 page -- you're on page 471?

6 MR. TRAXLER: Yeah.

7 BY MR. TRAXLER:

8 Q. 471, does it not reflect that Merrill
9 Light signed it on July 20, 2012?

10 A. 471 reflects this acknowledgment of the
11 notary acknowledging Merrill Barringer Light's
12 execution of this document on July 20, 2012.

13 Q. Okay. And that's the Becky Bostic's
14 notary?

15 A. That's Becky Bostic's signature.

16 Q. Okay. You may have told me this before,
17 but how was it executed the same day in South
18 Carolina as it is in Alabama?

19 MS. PAYLOR: Asked and answered.

20 MS. KIRK: Yeah. I mean, really,
21 Tom, like, there's no point in us continuing to do
22 this. I mean --

23 MR. TRAXLER: Okay. Are you going to
24 tell him not to answer?

25 MR. TWOMBLEY: Well, Tom, I think

1 we -- I thought we spent a significant amount of time
2 on this exact same issue at the first deposition.

3 MR. TRAXLER: We might have. That's
4 all I want to ask him about. If he testified before,
5 I apologize.

6 MS. KIRK: Tom, I don't know what's
7 happened in the past, like, five or ten minutes, but
8 we only get about every, like, third or fourth word
9 of yours doesn't come through.

10 MR. TRAXLER: Okay. It may be me
11 flipping pages, Ariail. I'll try to stop that.

12 MS. KIRK: Okay.

13 BY MR. TRAXLER:

14 Q. All I want to know about this particular
15 document right now is: Do you have an understanding
16 as to how it was executed in South Carolina and in
17 Alabama on the same day?

18 MS. KIRK: I object to the form.

19 BY MR. TRAXLER:

20 Q. If you know, tell me. If you don't know,
21 tell me that.

22 A. I -- I suspect it was in counterpart --
23 executed in counterpart, but I don't know.

24 Q. Okay. Now, we got sidetracked on that.
25 We were talking about conversations with Paul

1 Barringer in 2012 where he expressed negative
2 feelings about Hampton. I want to come back to that.
3 Did those feelings affect his decision to transfer
4 voting stock from his revocable trust to her
5 revocable trust in September 20, 2012 -- 2012?
6 Excuse me. I kind of screwed that up. You want me
7 to say that again?

8 MS. KIRK: Yes.

9 THE WITNESS: Please.

10 BY MR. TRAXLER:

11 Q. Okay. We talked about Paul Barringer's
12 feelings toward Hampton. You've answered that
13 question for me. Those feelings that you testified
14 to, did they pertain to or affect his decision to
15 transfer the stock from his revocable trust to
16 Merrill Light's revocable trust in September 2012?

17 A. I think so.

18 Q. How? Tell me what you know about that and
19 why you -- why you think so.

20 A. As I -- I think as I mentioned before,
21 Mr. Barringer wanted to make sure that Ms. Light
22 had -- would have control of the company and not
23 Ms. Luzak and certainly Mr. Luzak by and through
24 Hampton Luzak.

25 Q. Tell me how he was -- (inaudible) --

1 revocable trust with Paul and Merrill Light as
2 co-trustees? Why was it necessary to transfer it to
3 Merrill Light's trust?

4 MS. KIRK: Tom, we still didn't get
5 all that.

6 MS. PAYLOR: Object to the form.

7 MR. TRAXLER: I'm sorry. What did
8 you say?

9 MS. KIRK: This is Ariail speaking.
10 We're still not getting every word you're saying.
11 It's like every third or fourth word just goes out.

12 MR. TRAXLER: I'm not sure what I can
13 do because I quit flipping pages and I'm about to
14 swallow this microphone.

15 MR. MOLSTER: Don't swallow the
16 microphone.

17 MR. TRAXLER: If y'all want to see my
18 tonsils, I guess I could stick that thing down my
19 throat and see if y'all can hear me a little bit
20 better. Raise your hand, Ariail, if there's a
21 problem and I'll stop mid-sentence and go back.
22 Okay?

23 MS. KIRK: Okay.

24 MR. TRAXLER: All right. Thank you.

25

1 BY MR. TRAXLER:

2 Q. Now, my question to you, Mr. Jolley, was
3 if the stock was already in the revocable trust where
4 he was a co-trustee along with Merrill Light and it
5 was protected from Hampton, why was there a need to
6 then transfer it to the trust?

7 MS. PAYLOR: Object to --

8 MS. KIRK: I object to the form too.

9 MR. TRAXLER: You couldn't hear me,
10 Ariail?

11 THE COURT REPORTER: We -- you went
12 out after you said, "Why was there a need to then
13 transfer it to," and then we could not hear.

14 MR. TRAXLER: Can -- can -- can you
15 hear me now?

16 BY MR. TRAXLER:

17 Q. The question to you, Mr. Jolley, is if the
18 voting stock that Paul Barringer had was already in
19 his revocable trust along with Merrill Light being
20 co-trustee, why was there a need to transfer it over
21 to Merrill Light in her revocable trust?

22 A. Mr. Barringer directed me --

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: Object to the form.

25 THE WITNESS: I'm not sure the answer

1 to that beyond what Mr. Barringer directed me to do.
2 Mr. Barringer wanted to make the transfer.

3 BY MR. TRAXLER:

4 Q. I thought you just said he wanted to make
5 sure that it was protected so that Kevin wasn't
6 running it, right?

7 A. That is correct.

8 Q. All right. So help me understand how, if
9 it was already tied up in his trust with Merrill
10 Light as co-trustee and Paul Barringer as co-trustee
11 and Hampton was not to get any of it, how Hampton or
12 Kevin could then end up running the company?

13 MS. KIRK: Object to the form.

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: Mr. Traxler, the only
16 thing I can say is that I believe Mr. Barringer
17 believed that the most predictable and certain answer
18 to that was to transfer the stock to Ms. Light at
19 that time.

20 BY MR. TRAXLER:

21 Q. Did you have -- how long did you talk to
22 him about this?

23 A. How long did I talk to Mr. Barringer about
24 this trust agreement or the transfer?

25 Q. About transferring -- about transferring

1 the stock to Merrill Light's revocable trust in
2 September of 2012?

3 A. I had several conversations with
4 Mr. Barringer about this. Mr. Barringer was
5 emphatic. And what's the total duration of those
6 conversations specifically about that, perhaps 40
7 minutes, an hour. I'm not -- that's very hard for me
8 to estimate.

9 Q. All right. Did you have Merrill Light or
10 someone secure a certificate about his competency
11 from a doctor prior to the stock transfer?

12 MS. KIRK: I mean, Tom, you went all
13 over this in March. I mean, this is just getting --
14 it's very just wasteful of time and resources.

15 MR. TRAXLER: Okay.

16 MR. MOLSTER: I'm going to object and
17 instruct him not to answer to the extent that it
18 would disclose any attorney-client privileged
19 communications with Merrill Light.

20 BY MR. TRAXLER:

21 Q. Did you communicate with Merrill Light
22 about having to verify the competency or capacity of
23 her father to do the stock of transfer?

24 MS. KIRK: Object to the form.

25 MR. MOLSTER: Will you -- can we have

1 an agreement on non-waiver if I let him answer yes or
2 no?

3 MR. TRAXLER: Yes.

4 MS. PAYLOR: I think he answered it.

5 THE WITNESS: Yeah. I certainly feel
6 like I've answered this. I mean, we prepared a
7 certificate of competency and we may have given it
8 to -- it may have -- I don't know. I don't know the
9 answer to that. I don't remember the answer to that
10 other than -- well, I don't remember the answer to
11 that.

12 Q. Do you recall what prompted the concern to
13 get that certificate?

14 MR. MOLSTER: Same agreement?

15 MR. TRAXLER: Yeah.

16 THE WITNESS: I think the concern was
17 the allegation by -- that had been communicated to me
18 that there had been an assertion that Paul lacked
19 capacity.

20 BY MR. TRAXLER:

21 Q. Who expressed that concern to you?

22 MS. KIRK: Object to the form.

23 MR. MOLSTER: Same agreement?

24 MR. TRAXLER: Yes.

25 THE WITNESS: Mr. Barringer certainly

1 talked to me about that.

2 BY MR. TRAXLER:

3 Q. Did he express concern about his own
4 capacity?

5 MS. KIRK: Object to the form. You
6 can answer.

7 BY MR. TRAXLER:

8 Q. Maybe I misunderstood your last answer.

9 A. I spoke with Mr. Barringer about the
10 allegations of his incapacity.

11 Q. Okay. Did you discuss the allegation of
12 his incapacity with anybody else?

13 A. Yes.

14 Q. Who?

15 MR. MOLSTER: Same instructions with
16 respect to Merrill Light or Randy Light.

17 MR. TWOMBLEY: I don't know what his
18 answer is. I don't know if it's privileged. So I
19 either have to talk to him about this or instruct him
20 not to answer. I would like to talk to him about it
21 and get to the bottom of it.

22 BY MR. TRAXLER:

23 Q. Did this relate to his decision to
24 transfer his voting stock to Merrill Light?

25 MR. MOLSTER: Same instruction.

1 MS. KIRK: What?

2 THE WITNESS: I didn't follow the
3 question, Mr. Traxler.

4 BY MR. TRAXLER:

5 Q. I'll withdraw it. When -- tell me what
6 your involvement was with regard to the transfer of
7 the stock presumably around September 11, 2012?

8 MR. MOLSTER: Same instruction with
9 respect to communications with Randy or Merrill
10 Light.

11 MS. KIRK: And, Tom, can you
12 articulate how this isn't exactly what we went over
13 with on March 16th? I mean, I feel like we're just
14 going back to the same transcript from that
15 afternoon.

16 MR. TWOMBLEY: I think we also talked
17 about it today as well.

18 MR. TRAXLER: I'm sorry. Say that
19 again, Ariail.

20 MS. KIRK: I mean, can you explain to
21 me, you know, are we not just going down the exact
22 same line of questioning you've already been down a
23 couple of times. This seems very familiar to what
24 I've read in the transcript from the afternoon of
25 March 16th and what I recall from it.

1 BY MR. TRAXLER:

2 Q. Okay. Tell me what your involvement --

3 MS. KIRK: I don't think you get to
4 ask questions --

5 Q. -- was, Mr. Jolley --

6 MS. KIRK: -- four or five times.

7 Q. -- in the transfer?

8 MR. MOLSTER: Same instruction, John,
9 with respect to Randy and Merrill Light and
10 attorney-client communications that you may have had
11 with them.

12 BY MR. TRAXLER:

13 Q. Okay. Go ahead and answer.

14 THE COURT REPORTER: Mr. Traxler, we
15 were unable to hear your question because Ms. Kirk
16 was objecting.

17 MR. TWOMBLEY: And also just --
18 just -- just for the record -- now we've got an
19 ambulance going by. So I'm recommending that we take
20 a five-minute break and maybe do some consolidation
21 and come back in five minutes. Is that okay, Tom?

22 MR. TRAXLER: Yeah, that's fine.

23 THE VIDEOGRAPHER: We are off the
24 record. It is 3:14 p.m.

25 (Off the record.)

1 THE VIDEOGRAPHER: We are back on
2 record. It is 3:34 p.m.

3 MS. KIRK: Mr. Traxler, this is
4 Ariail Kirk. I'm willing to give you until about
5 4:00 and then we're going to -- you know, if you're
6 not done, we're going to move for a protective order
7 because I think this is just getting out of control
8 and duplicative and kind of abuse of the discovery
9 process. But if you've got some questions you want
10 to fit in, you know, we're here.

11 MR. TRAXLER: I want you to
12 understand that all of your earlier comments that I
13 had plowed this ground before was wrong. You are
14 misremembering. That was direct examination where
15 you said we had got into the 20 -- July 20 document
16 before, went into 9/11 before. So all of that that
17 you put onto me, I think if you check the transcript
18 you will see that it was direct examination by
19 Mr. Twombly and not by me. So I am not replowing
20 new ground as you suggested. The only reason I tell
21 you that is if that changes your mind about the dep
22 time, that's entirely up to you. But you're
23 absolutely incorrect to say that I am replowing
24 ground that I went through last time.

25 MS. KIRK: Well, I'll -- I'll check

1 on that, but are you suggesting that you should be
2 able to re-ask all the questions that Mr. Twombly
3 already asked?

4 MR. GILREATH: Absolutely.

5 MR. TRAXLER: Yes, ma'am.

6 MS. KIRK: I mean, I don't know that
7 I understand why it matters to us whether you asked
8 the question or whether Mr. Twombly asked it or
9 whether Alice Paylor asked it. I don't understand --
10 I don't understand the significance of that.

11 MR. TRAXLER: I don't think I've ever
12 seen the judge rule that I can't go into matters
13 raised by the other side before. But if you want to
14 try it, that's fine. But I understand your -- let's
15 move on.

16 MR. GILREATH: Go ahead and try that.

17 MR. TRAXLER: No. Be quiet, Billy.

18 BY MR. TRAXLER:

19 Q. All right. Let's talk about the July --
20 excuse me, September 11, 2012 transfer of voting
21 shares. I think I had asked you the question, and
22 I'm not sure I got an answer from you, about your
23 involvement in that transfer. Would you walk me
24 through that, please, Mr. Jolley?

25 MR. SCHRONE: And, Tom, this is John

1 Schronce. You know, we're now in a period of time
2 where Mr. Jolley is serving as corporate counsel. So
3 I think probably what makes sense to do here, if it's
4 okay with you, is to proceed question by question if
5 we have your agreement that there is not a subject
6 matter waiver when we allow him to answer a question.

7 MR. TRAXLER: That's fine.

8 MR. MOLSTER: And, John -- Tom, can I
9 just clarify? Are you talking about September 11 --

10 MR. TRAXLER: Yes.

11 MR. MOLSTER: -- 2012. I think you
12 may have said July. Go it.

13 MR. TRAXLER: Okay. Whenever I said,
14 I'm talking about stock transfer on September 11,
15 2012.

16 MR. MOLSTER: I'm familiar with it.

17 MR. TRAXLER: We all are.

18 BY MR. TRAXLER:

19 Q. Mr. Jolley, what was your involvement in
20 that?

21 A. Pursuant to Mr. Barringer's -- Paul
22 Barringer's request, we prepared the transfer
23 documents for Mr. Barringer's signature.

24 Q. All right. And I believe -- if I could
25 get you to go to tab 18, page 616.

1 MR. TRAXLER: Ariail, can you hear
2 me?

3 MS. KIRK: I think so. What's tab?

4 MR. TWOMBLEY: 18, 616.

5 THE WITNESS: 616.

6 MR. MOLSTER: What's the number? 6
7 what?

8 MS. KIRK: 616.

9 MR. MOLSTER: Thank you.

10 BY MR. TRAXLER:

11 Q. And I believe this is the stock power that
12 you prepared. And if you look at the next page, 669
13 and 670, you also prepared those; is that correct?

14 A. I'm sorry, Mr. Traxler. Hang on one
15 second. Okay. So J. Jolley Dep 668. Yes. I think
16 we -- we prepared this stock power for Mr. Barringer.

17 Q. All right. And along with the assignment
18 of shares that follows starting on page 669; is that
19 correct?

20 A. That is correct.

21 Q. All right. Why did Mr. -- strike that.
22 Who did you represent with regard to this
23 transfer?

24 A. I think --

25 MR. MOLSTER: Now, if I let him

1 answer that question with respect to Merrill Light
2 and/or Randy Light, you'll agree it's not a subject
3 matter waiver?

4 MR. TRAXLER: Yeah. I'll agree to
5 that to all -- all of you.

6 BY MR. TRAXLER:

7 Q. Who did you represent, Mr. Jolley?

8 A. I represented Paul B. Barringer with
9 respect to this.

10 Q. Did you represent anyone else?

11 A. I don't believe I represented anybody
12 else -- well, with respect to the preparation of the
13 stock power or with respect to the assignment of
14 shares.

15 Q. Did you discuss this transfer with Merrill
16 Light before September 11, 2012?

17 MR. MOLSTER: Same agreement?

18 MR. TRAXLER: Yeah.

19 THE WITNESS: I discussed this --

20 MR. MOLSTER: Let me -- let me be
21 careful here, John.

22 THE WITNESS: Yeah. Sure.

23 MR. MOLSTER: So I understood -- I
24 understand your answer with respect to the stock
25 power and the assignment of shares. But if you had a

1 conversation with Merrill in your capacity as her
2 lawyer either for as her estate planning lawyer or
3 any other capacity if you had an attorney-client
4 relationship, then I instruct you not to answer. If
5 you had a -- if you had a conversation with her
6 solely in your -- in your role as counsel for Paul
7 Barringer, then I think subject to the agreement with
8 Tom, I'm inclined to let you answer that question. I
9 defer to Ashley a little bit on that as well. But do
10 you understand my instruction and are you able to
11 make that -- that discernment, if you will? It's
12 probably a conversation I shouldn't be having in
13 front of Mr. Traxler, but I'm going to do it anyway
14 in the interest of expediency unless we need to take
15 a break.

16 MR. TRAXLER: I've only got till 4:00
17 according to Ms. Kirk.

18 THE WITNESS: Yeah. I mean, I think
19 I can -- I think I can answer that, Chip. I think I
20 understand that -- I think I understand that
21 instruction.

22 MR. MOLSTER: Thank you.

23 THE WITNESS: And so --

24 BY MR. TRAXLER:

25 Q. Go ahead and answer it.

1 A. Mr. Traxler, if you would repeat the
2 question, I'll try to.

3 Q. Did you discuss this stock transfer with
4 Merrill Light prior to September 11, 2012?

5 A. The answer is yes.

6 Q. And what did you tell her?

7 MR. MOLSTER: Continued agreement?

8 MR. TRAXLER: Yeah.

9 THE WITNESS: I think my interaction
10 or my communication with Ms. Light with respect to
11 this transfer was limited to communicating to her
12 what her father's wishes were and that he was
13 proceeding with the transfer.

14 BY MR. TRAXLER:

15 Q. What did she say to you?

16 A. I mean, beyond -- I believe Ms. Light said
17 that, of course, it was up to her dad.

18 Q. Did you have any other conversations with
19 her?

20 A. Not that I can recall.

21 Q. All right. Did you have any conversations
22 with Hampton Luzak about it?

23 A. I didn't. I did not.

24 Q. All right. And I know you've been into
25 this somewhat before in other instances, but the

1 document says it was for good and valuable
2 consideration by looking at the assignment of shares
3 on page 669, correct?

4 A. The assignment of shares does, in fact,
5 quote, "Now, therefore, for good and valuable
6 consideration."

7 Q. And there was not any good or valuable
8 consideration; is that correct?

9 MS. KIRK: Object to the form.

10 THE WITNESS: I don't believe that
11 Ms. Light provided -- no. I mean, I guess I don't --
12 I don't think she provided any -- I mean, she didn't
13 pay anything for the shares, if that's what you're
14 asking.

15 BY MR. TRAXLER:

16 Q. All right. Do you know of anything she
17 gave up or anything she gave up in exchange for the
18 shares?

19 MS. KIRK: Object to the form.

20 BY MR. TRAXLER:

21 Q. The bottom line, Mr. Jolley, this was a
22 gift, wasn't it?

23 A. This was a gift.

24 Q. Okay. And so a gift means that there was
25 nothing given in exchange for it, right?

1 A. Yes, Mr. Traxler.

2 Q. Okay. And nobody -- you never discussed
3 this or anybody discuss it with Hampton, correct?

4 MS. KIRK: Object to the form.

5 THE WITNESS: It is correct that I
6 didn't discuss this gift with Ms. Luzak.

7 BY MR. TRAXLER:

8 Q. Was the assignment of shares and the stock
9 power form executed on September 11, 2012 as shown?

10 A. That's certainly my recollection.

11 Q. All right. And after -- was Merrill Light
12 there when it was signed?

13 A. I am not sure who was present when
14 Mr. Barringer signed this document -- these
15 documents.

16 Q. And were you still doing legal work for
17 Merrill Light at the time?

18 A. At the time, I represented Ms. Light in
19 her estate planning.

20 Q. Got it. And also Randy Light?

21 A. I'm not sure if I represented Randy Light
22 with respect to estate planning at that time.

23 Q. All right. After the stock power and the
24 assignment of shares were executed by Mr. Barringer
25 and the assignment of shares by Merrill Light as

1 trustee, what did you do with them?

2 A. What did I do with these two documents,
3 that is, the stock power and the assignment of
4 shares?

5 Q. Yes.

6 A. I believe they were in the file that I
7 maintained for CFRC.

8 Q. Did you consider them to have been
9 delivered to Merrill Light by doing that?

10 MR. TWOMBLEY: Object to the form of
11 the question. It calls for a legal conclusion.

12 MS. KIRK: Same objection.

13 THE WITNESS: I believe that the --
14 Ms. Light signing as assignee certainly constituted
15 delivery.

16 BY MR. TRAXLER:

17 Q. Okay. And after these documents were
18 signed by Mr. Barringer and Ms. Light on
19 September 11, 2012, who owned that stock?

20 MR. TWOMBLEY: Object to the form.
21 Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 THE WITNESS: I believe that
24 Mr. Barringer signed all the documents necessary to
25 effectuate the transfer.

1 BY MR. TRAXLER:

2 Q. So was Merrill Light the owner of that
3 stock after the documents were executed on
4 September 11?

5 A. At the time, I believe --

6 Q. Go ahead.

7 A. At the time, I believe that we had to --
8 that the document -- the corporate records would have
9 to be reflected. But, yes, the transfer had occurred
10 to Ms. Light.

11 Q. All right. This was done the fiscal year
12 of CFRC is September 30, is it not?

13 A. I don't remember that, Mr. Traxler.

14 Q. Was the date or the timing of this
15 transfer in any way related to the end of the fiscal
16 year of CFRC?

17 A. I don't believe so.

18 Q. All right. So when did, in your opinion,
19 did Merrill Light become the owner of this stock?

20 MR. TWOMBLEY: Object to the form of
21 the question. Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: I think Mr. Barringer
25 completed his part of the transaction when he signed

1 this -- these documents.

2 BY MR. TRAXLER:

3 Q. All right. And if a shareholder's meeting
4 had been held the next day, who would have had the
5 right the next day to vote those shares?

6 MS. PAYLOR: Object to the form.

7 MS. KIRK: Object to the form of the
8 question.

9 THE WITNESS: I think the stock
10 record book would -- would be determinative for that.

11 BY MR. TRAXLER:

12 Q. All right. Do you consider a transfer of
13 stock to be effective upon assignment and delivery or
14 upon recording on the corporate books or at some
15 other time?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 MS. PAYLOR: Object to form.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- your question is
21 do I believe that the transfer was effective as of
22 the recording of the books or the signing of the
23 transfer documents? Is that what the question is?

24 BY MR. TRAXLER:

25 Q. Or if you are of the opinion it was some

1 other date, whatever date you think.

2 A. I believe Mr. Barringer certainly
3 completed his -- his part of the transfer when he
4 signed those documents, and I think it has to be
5 perfected by being recorded on the record -- in the
6 stock record.

7 Q. Well, that didn't occur until 2013,
8 correct?

9 MS. KIRK: Object to form.

10 THE WITNESS: I think the record was
11 updated to reflect 12/31, but the share certificates
12 reflected the January '13 as you indicate.

13 BY MR. TRAXLER:

14 Q. Well, Mr. Barringer also represented to
15 the IRS that it happened on December 31, 2012, didn't
16 he?

17 MS. KIRK: Object to the form.

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: In the -- I'm sorry.

20 BY MR. TRAXLER:

21 Q. (Inaudible) tax returns.

22 A. I would expect that Mr. Barringer did, in
23 fact, on his gift tax return that the transfer was
24 reflected as of 12/31/2012.

25 Q. Okay. Again, your -- is it your -- I want

1 to make sure I'm right about this. When do you think
2 that Merrill Light became the owner of those shares
3 of voting stock?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Same objection.

6 MS. PAYLOR: Object to the form.

7 THE WITNESS: I believe that Merrill
8 Light became the owner once those shares were
9 registered in the stock record.

10 BY MR. TRAXLER:

11 Q. Okay. Up until that point in time, is it
12 your opinion that Mr. Paul Barringer was the owner of
13 those shares?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I think Mr. Barringer
17 had given up his -- didn't have the ability to take
18 the shares back at the signing -- signed those
19 transfer documents.

20 BY MR. TRAXLER:

21 Q. My question was: Do you think that he was
22 the owner of those shares until they were recorded on
23 the corporate books?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I think with respect to

1 the company, he was treated as the owner until it was
2 registered on the books.

3 BY MR. TRAXLER:

4 Q. Okay. But you do -- you do corporate work
5 some, don't you?

6 A. I do corporate work --

7 MS. KIRK: Object to the form.

8 THE WITNESS: I do corporate work
9 some.

10 BY MR. TRAXLER:

11 Q. I'm not asking you what the corporation
12 thought. I am asking you, in your opinion, did the
13 stock transfer to Merrill Light upon the execution of
14 these documents or upon reporting on the corporate
15 records?

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: I really viewed this as
19 a completed gift with respect to Mr. Barringer at the
20 time he signed the transfer documents subject to
21 recording on the books.

22 BY MR. TRAXLER:

23 Q. All right. And if Merrill Light had paid
24 him money for the stock on September 11th and had
25 taken the assignment on September 11th, would your

1 answer still be the same?

2 MS. KIRK: Object to the form.

3 MS. PAYLOR: Object to the form.

4 MR. TWOMBLEY: Same objection. And I
5 would also note there's already been a whole entire
6 lawsuit about this issue. Not only a deposition, but
7 an entire lawsuit.

8 BY MR. TRAXLER:

9 Q. Okay. What's the answer, Mr. Jolley?

10 A. So Mr. -- you're going to have to repeat
11 the question, Mr. Traxler.

12 Q. Sure. If Merrill Light had paid money to
13 Paul Barringer on September 11, 2012 for that stock
14 as opposed to it being a gift, would that change your
15 answer as to her becoming the owner of the stock upon
16 recording on the corporate records?

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

19 MS. KIRK: Same objection.

20 MS. PAYLOR: Object to form.

21 THE WITNESS: I think --

22 MR. TWOMBLEY: Hypothetical.

23 THE WITNESS: I think to the extent
24 that Ms. Barringer had purchased the shares --

25 MR. TWOMBLEY: Ms. Light.

1 THE WITNESS: Sorry. I do -- I think
2 to the extent that Ms. Light had purchased the shares
3 versus having the shares gifted to her, then I think
4 that the transfer would still have been made at the
5 time of the exchange subject to the company's books
6 being updated to reflect the transfer.

7 MR. TRAXLER:

8 Q. Okay. Well, Ms. Kirk has said that you
9 are leaving in about ten minutes, so there's
10 something I really just kind of wanted to ask you out
11 of sequence and then we'll come back. How about go
12 back to tab one, page 109.

13 A. I see J. Jolley Dep 109.

14 Q. Yes, sir. You want to read those e-mails
15 and I have a couple of questions for you.

16 A. I'm sorry. You want me to read this --
17 the -- the e-mail?

18 Q. Yes. The two e-mails that are on there,
19 if you would read them to yourself. Then I'll ask
20 you questions about them.

21 A. Okay.

22 MR. MOLSTER: So, Tom, we previously
23 asserted privilege objections to these e-mails. We
24 understand that Judge Noland didn't agree with us,
25 but we would have a standing objection to questions

1 regarding these e-mails. Can we -- may we just
2 continue to have a standing objection as opposed to
3 having to make it every time you ask a question?

4 MR. TRAXLER: Sure. That's fine.

5 MR. SCHRONCE: If we can agree to
6 make that objection standing for everybody.

7 MR. TRAXLER: Yeah. I'll agree to
8 that.

9 BY MR. TRAXLER:

10 Q. All right. Mr. Jolley, have you had a
11 chance to read them?

12 A. I have.

13 Q. Do you remember these e-mails or this
14 e-mail -- e-mails?

15 A. Yeah, yeah. I'm sorry, I do.

16 Q. In the bottom e-mail, the original one
17 that Randy Light asked if PBB, Paul Barringer, could
18 give away \$5 million this year, if he has not
19 already, how about PBB writing a check to Merrill as
20 a gift and CFRC paying PP -- PBB equivalent taking
21 into consideration any taxes or, quote -- excuse me,
22 any taxes, quote, for services over the last,
23 question mark, couple of years, close quote. Read
24 out loud what your response was.

25 A. I said, "Sorry, Randy. I now see what PBB

1 would be writing the check for. I expect Travis and
2 I will be on the telephone today or tomorrow and we
3 can discuss. Safe travel to you and MBL."

4 Q. Is what Randy Light is asking legal?

5 MR. MOLSTER: Tom, I'm just --

6 MS. PAYLOR: Object to the form.

7 MR. MOLSTER: I'm going to interpose
8 an objection. You are incomplete on reading Randy's
9 e-mail. You left out the last paragraph about
10 whether or not it makes sense and it was an early
11 morning idea, which I think, in fairness, ought to be
12 included.

13 MR. TRAXLER: How about if you want
14 to state an objection, that's fine.

15 MR. MOLSTER: I'm stating an
16 objection.

17 MR. TRAXLER: That's fine.

18 BY MR. TRAXLER:

19 Q. Okay. Read the last -- read the last
20 paragraph of Randy's e-mail, if you want to.

21 A. The third paragraph of Randy's e-mail
22 says, "Does this make any sense? Had the idea early
23 this morning, so do not hold this against me if it is
24 off the charts."

25 Q. All right. Was it off the chart?

1 A. I think it was a silly e-mail, and I
2 think -- so, yes, in that sense, off the charts.
3 Yes.

4 Q. Okay. And as of September 20, 2012, did
5 Paul Barringer still own stock in CFRC?

6 MS. KIRK: Object to the form.

7 THE WITNESS: If I remember
8 correctly, Mr. Barringer had a single share of stock
9 at this point.

10 BY MR. TRAXLER:

11 Q. That's right. Did you understand this to
12 be a distribution on stock or compensation to him?

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Same objection.

16 THE WITNESS: Mr. Traxler, I -- I
17 don't believe that either myself or Travis Bryant
18 gave this e-mail very much consideration. Both of us
19 dismissed it out of hand.

20 BY MR. TRAXLER:

21 Q. All right. Did you discuss it with
22 Merrill Light?

23 A. No. I don't recall discussing it with
24 Merrill Light.

25 Q. And how was it that Paul Barringer gave

1 away \$5 million this is year?

2 MS. KIRK: Object to form.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I believe Randy's
5 e-mail refers to the fact that in this year, the
6 exemption against gift and state taxes was \$5
7 million.

8 BY MR. TRAXLER:

9 Q. All right. And when he says how about PPB
10 writing a check to Merrill as a gift, did you
11 understand that to be Merrill Light?

12 A. As I said, we dismissed -- I dismissed
13 this, but, yes, I would have expected that to be the
14 Merrill referred to as being Merrill Light.

15 Q. That's right. Because if it had gone to
16 Merrill Barringer, then it would have been subject to
17 a marital deduction and we wouldn't have to worry
18 about exemption, would we?

19 MS. KIRK: Object to the form.

20 THE WITNESS: It's certainly true
21 that a gift to the wife would be subject to marital
22 deduction.

23 MR. FUHR: I was trying to place an
24 order on line. I can't get it, so I just thought I'd
25 call you.

1 MR. TWOMBLEY: I think you're off
2 mute.

3 MR. FUHR: (Inaudible.)

4 MS. PAYLOR: Ed, you need to mute
5 yourself.

6 MR. MOLSTER: Ed, you're checking --
7 BY MR. TRAXLER:

8 Q. At the time this -- Randy wrote this
9 e-mail to you on September 20, 2012, he was on the
10 board of directors, was he not?

11 A. I believe so at that point.

12 Q. All right. Thank you very much. Y'all
13 hold on one second. We've got a blower outside.
14 We're getting somebody to turn it off.

15 MR. MOLSTER: Yeah. We're paying
16 that guy.

17 MR. TWOMBLEY: Add him to the list.

18 MR. TRAXLER: There was a concrete
19 truck out there earlier today. Now we have the
20 landscapers, apparently.

21 MR. TWOMBLEY: You wait until the
22 roofers show up for the next deposition.

23 MR. MOLSTER: I'm trying to help the
24 Greenville economy.

25 THE VIDEOGRAPHER: Can we go off

1 record real quick?

2 BY MR. TRAXLER:

3 Q. Mr. Jolley, let's go back and pick up
4 where we were. And I'm talking about the
5 September 11 transfer of voting stock of Paul
6 Barringer's revocable trust to Merrill Light's
7 revocable trust. Did you not state in your affidavit
8 given in the -- this litigation that the stock
9 transfer occurred on September 11 as opposed --

10 A. Mr. Traxler, you broke up again.

11 Q. Okay. I'm sorry. Let me get you to go to
12 tab six, page 286.

13 A. I'm sorry. I'm on page 286.

14 Q. Okay. Read -- this is your affidavit that
15 you signed on July 16, 2018, correct?

16 A. It is my affidavit, and I did sign it on
17 July 16, 2018.

18 Q. Okay. Did you not state in paragraph 11
19 that the stock transfer occurred to Merrill Light on
20 September 11, 2012?

21 A. No. 11 does in fact say that the
22 September 20, 2012 e-mail did not relate to the
23 September 11, 2012 transfer of the stock from Paul
24 Barringer to Merrill Light which had occurred on
25 September 11, 2012.

1 Q. The expected transfer was September 11,
2 2012, not when it was recorded on the corporate
3 books, correct?

4 A. That is correct.

5 MS. KIRK: Object to the form.

6 BY MR. TRAXLER:

7 Q. What was your involvement with respect to
8 gift tax return? Did you advise Mr. Barringer he
9 needed to do one?

10 MS. PAYLOR: Object to the form.

11 MS. KIRK: Object to the form. And,
12 Tom -- Tom, are you close to wrapping up or are we
13 going to be breaking -- or ending it anyway?

14 MR. TRAXLER: I've got -- I've got
15 several more hours, Ariail.

16 MS. KIRK: Okay.

17 BY MR. TRAXLER:

18 Q. So y'all didn't need to advise
19 Mr. Barringer that he needed to file a gift tax
20 return?

21 A. I don't recall whether I specifically
22 advised Mr. Barringer whether he had to file a gift
23 tax return. Those...

24 MS. KIRK: All right. Mr. Traxler, I
25 think we're going to go ahead and stop the

1 deposition. He's been, you know, working for y'all
2 essentially since, I don't know, 5:30 or 6:00 a.m.
3 this morning and this is two complete days.

4 MR. TRAXLER: Well, we disagree with
5 that. But if you're going to have him leave, we'll
6 just have to take it with the court, I reckon.

7 MS. KIRK: What part of that do you
8 disagree with?

9 MR. TRAXLER: Be quiet. Be quiet.
10 All right. You leaving?

11 MS. KIRK: Can you tell us --

12 MR. MOLSTER: And just to -- Tom,
13 just --

14 MS. KIRK: -- what part you disagree
15 with?

16 MR. MOLSTER: -- clarify we reserve
17 all of our rights with respect to redirect of
18 Mr. Jolley, not waiving any of my rights.

19 MR. TRAXLER: Well, I understand
20 that. I'm going to consider this deposition to be
21 over. And I assume when I get through, you will have
22 your side. And then when you get through, I'll see
23 if I have any more.

24 MS. KIRK: I mean, in all
25 seriousness, Bill -- I mean, not Bill, Tom, I mean,

1 do you -- do you think you need, like, another day?

2 MR. TRAXLER: I don't think I'll need
3 another day.

4 MS. KIRK: Well, you said that last
5 time and that clearly wasn't the case.

6 MR. TRAXLER: I would like to think
7 that I could get it done in half a day. But, again,
8 we did a whole lot better on privilege this
9 afternoon. Y'all let me zero in on things that were
10 finely tuned. Your privilege objections, I
11 understand that. It was a lot better this afternoon.
12 My best guess here -- I hate to do this because
13 everybody seems to hold you to it as if there's a
14 covenant with God, I think probably a half day is
15 sufficient.

16 MR. TWOMBLEY: Another half a day?

17 MR. TRAXLER: Yeah.

18 MR. TWOMBLEY: I mean, I just think,
19 you know -- I mean, it's Ariail's call. I mean,
20 that -- that...

21 MS. KIRK: Let me ask you a question,
22 Tom. What is your position on -- I know before we
23 had agreed. Do you want me to move for a protective
24 order on privilege or just on the, you know,
25 deposition exceeding the reasonable amount of time

1 and effort I think it should take?

2 MR. TRAXLER: I'm not sure, Ariail, I
3 understood your question. Would you mind repeating
4 it?

5 MR. TWOMBLEY: I think the question
6 is, and I have the same question, is do you want us
7 to go ahead and immediately file a motion for a
8 protective order in accordance with the rules on the
9 instructions not to answer. Or, in the alternative,
10 what we've done in the past is that Bill Hogan agreed
11 to hold that deadline in abeyance, review the
12 transcript, and then we would try to see, you know --
13 he could let us know question on page, you know, 6,
14 7, 9, and 10, we want answers to those. You've got
15 to go ahead and file the motion. So --

16 MS. KIRK: I just want to be clear I
17 know what we need to file with regard to.

18 MR. TRAXLER: Yeah. Let me talk to
19 my side.

20 MR. TWOMBLEY: That's fine. We don't
21 have any problem with that. We just -- I don't want
22 to be caught in a five-day rule. I mean,
23 otherwise --

24 MR. TRAXLER: No, no, no, no. I'm
25 not going to -- get y'all to do something like that.

1 MS. KIRK: Can we take a break so
2 that we can get that on the record so we know exactly
3 what we need to do?

4 MR. TRAXLER: Yeah. I've got -- I'm
5 trying to determine whether we ought to go ahead and
6 take that up before the judge and then come back and
7 wrap it all up under the rulings or how we handle
8 that. I just want to consult with my side on the
9 most efficient way to do that.

10 MS. KIRK: Yeah. So I was just
11 saying can we take a break, go off the record, and
12 then come back and you can tell us what you want.

13 MR. TRAXLER: I can tell you right
14 now that until I tell you otherwise, and I don't
15 think time and five days or whatever it is, does not
16 start to run until I let you know one way or the
17 other. Does that make sense?

18 MS. KIRK: That's fine.

19 MR. TWOMBLEY: That's fine with me.

20 MR. TRAXLER: I don't want anybody to
21 be caught short or -- spite what y'all might think of
22 me, I don't use the rules of civil procedure as
23 swords.

24 MR. MOLSTER: We don't think you do
25 that, Tom.

1 MR. TWOMBLEY: We're not worried
2 about you.

3 MR. TRAXLER: Hey, you've already
4 told me -- you already heard -- I can't listen to
5 everybody at one time.

6 MS. KIRK: Tom, if you have another
7 proposal for how to work this out, I don't know. I
8 just -- I just don't think it's fair or reasonable or
9 in the spirit of the rules to keep, you know, an
10 attorney in the case that can only testify to limited
11 things, you know, three days in -- not in a row, but
12 three days of deposition or even more.

13 MR. TRAXLER: What I will do is add
14 up again the time that I spent literally being able
15 to ask questions.

16 MS. KIRK: Tom, I get that, but he
17 still has to sit here no matter whether y'all are
18 bickering or if you're asking a question. I mean,
19 that doesn't change the amount of --

20 MR. TRAXLER: I was pleading with you
21 at lunchtime to help me find a solution around y'all
22 having to confer with him on every question.

23 MR. GILREATH: But you're sitting in
24 here complaining about something that we went into
25 that Ashley went into and apparently under the

1 impression that's binding on us. That's just --

2 MS. KIRK: I don't think it's
3 binding. But I do think if he's been asked the
4 question, he's answered it. I don't know why it
5 matters who asked it.

6 MR. GILREATH: It makes a lot of
7 difference to us, ma'am.

8 MR. TRAXLER: Let's -- let's -- let
9 me talk outside --

10 MS. KIRK: I will completely concede
11 that I don't remember exactly, you know, word for
12 word. I couldn't recite the transcript to you
13 sitting here. I mean, I fully admit that.

14 MR. TRAXLER: In all fairness, I'm
15 trying to be objective about it, Ashley went into it
16 a lot on direct examination talking about how the
17 documents came to light. I didn't go in -- if I did,
18 it was not but a question or two. So I was not
19 reploting old ground. Just admit, Ariail, go back
20 and look at the transcript.

21 MS. KIRK: I'll be happy to.

22 MR. TRAXLER: I understand what the
23 confusion is, but right now we've got to figure out
24 the best way forward. Let me talk to my side and I
25 will let you know by tomorrow what I think is the

1 best way to proceed.

2 MR. MACLOSKIE: Tom, let's talk right
3 now.

4 MR. TRAXLER: You want to do it right
5 now?

6 MR. MACLOSKIE: Yeah. Let's talk
7 right now. Don't -- don't -- nothing about tomorrow.
8 Let's talk right now.

9 MR. TRAXLER: Okay. All right.
10 We'll go off. I'll be back in a few minutes.

11 MS. KIRK: Okay.

12 THE VIDEOGRAPHER: We are off the
13 record. It is 4:07 p.m.

14 (Off the record)

15 THE VIDEOGRAPHER: We are back on
16 record. It is 4:17 p.m.

17 MR. TRAXLER: Chip, are we back on
18 the record?

19 MR. MOLSTER: Yes, sir.

20 MR. TRAXLER: Hold on a second. I've
21 got my sound cut off again. My -- my bad. Hold on.
22 Okay. Now I can hear you. Thank y'all for bearing
23 with me on that. I'm trying to figure out going
24 forward. Chip, without holding you to it, do you
25 have any estimate as to how much time of redirect you

1 would need, you and Ashley and whoever else?

2 MR. MOLSTER: Alice really runs this
3 show, Tom. I just carry her bag. But I think we
4 would be at least an hour. We'd probably be an hour.

5 MS. PAYLOR: An hour. Yeah. An hour
6 or less.

7 MR. TRAXLER: How about you, Ashley?
8 You got any sense of it?

9 MR. TWOMBLEY: I mean, I was thinking
10 my time would be combined with Alice's.

11 MR. TRAXLER: Okay.

12 MR. MOLSTER: So maybe we need two
13 hours.

14 MR. TWOMBLEY: I don't think we need
15 two hours. My position is we would jointly need an
16 hour, but --

17 MR. TRAXLER: Okay.

18 MR. TWOMBLEY: I mean, like you say,
19 I'm not signing it in stone, I mean, particularly
20 with direct haven't -- or the cross hasn't ended.

21 MR. TRAXLER: And like I said this
22 afternoon, I thought it went better with privileged
23 being a little bit better defined. Ariail, my
24 thought is that I would like to go ahead and set it
25 -- I would think that I could get it done in a half a

1 day.

2 MS. WALTERS: Huh-uh. No.

3 MR. TRAXLER: No? No?

4 MS. WALTERS: No.

5 MR. TRAXLER: Okay.

6 MS. WALTERS: No.

7 MR. TRAXLER: Who is that talking?

8 MR. GILREATH: Who is talking?

9 MS. KIRK: I think that -- I don't
10 know who was talking. But, I mean --

11 MR. TRAXLER: That was Lee.

12 MS. KIRK: Okay.

13 MS. WALTERS: Sorry. My bad. I was
14 redirecting the dog.

15 MR. MOLSTER: You were talking to the
16 other dogs?

17 MR. TRAXLER: You got Gilreath lying
18 on the floor. Can he get up now?

19 MS. PAYLOR: My dog is asleep over
20 here. I don't have to redirect him.

21 MR. TRAXLER: Ariail, my thought is
22 to reconvene, and I promise you I will do everything
23 I can to get it in a half a day, and I think that's
24 realistic, I let them do their redirect or whatever
25 they've got to do. I would like to go ahead and do

1 that. And your time to move for a protective order
2 on the privileged issues would not start until the
3 deposition is over with and then only when -- once
4 you get the transcript.

5 MR. TWOMBLEY: Well, I think we're
6 going to -- the time to file the motion will be for
7 the -- for us and --

8 MR. TRAXLER: Yeah, yeah.

9 MS. KIRK: Well, one thing to me --

10 MR. TRAXLER: But Ariail --

11 MS. KIRK: It makes sense to have
12 everything heard at the same -- I didn't -- I just
13 thought that maybe from a, you know, kind of judicial
14 economy standpoint, it makes sense to have everything
15 heard at the same time.

16 MR. TRAXLER: Yeah. My thought is
17 whenever we come back after his ruling on the
18 privilege issues, I can't imagine we don't get to ask
19 some of the questions. It seems kind of endless. I
20 was just trying to consolidate it.

21 MS. KIRK: Yeah. That's my concern,
22 that it sounds endless. That's why I just didn't
23 know if it would be better to have both issues before
24 the judge in a single hearing. Obviously from our
25 perspective, a single hearing is preferable to

1 multiple.

2 MR. TRAXLER: Well, can you go ahead
3 and let me have about another half a day and then let
4 Ashley and Alice and Chip know -- do whatever they
5 need to do? Let's hold off on raising the privilege
6 issue before the judge until that is done.

7 MS. KIRK: I don't know how to do
8 that, I mean, to protect my client. I think that we
9 need the guidance from the court, and I also think
10 that, you know, the amount of time he has had away
11 from his job and everything is just getting
12 completely excessive. And I think your point that
13 things just seem endless is exactly how I feel. I
14 would 100 percent agree with you on that.

15 MR. TWOMBLEY: This is Ashley. I
16 mean, I would like to review the transcript and, I
17 mean, I think y'all might benefit from doing that as
18 well. But --

19 MS. KIRK: And that's probably true
20 of me as well if I'm having trouble remembering who
21 asked what.

22 MR. TWOMBLEY: And it's 4:30 and, you
23 know -- anyway. I just think that's -- that's what
24 we ought to do and, I mean, I think Ariail's position
25 was she was going to give you -- give us a half day

1 today.

2 MS. KIRK: Last time. I've already
3 gone over what I said.

4 MR. TWOMBLEY: We started at 9:00 or
5 9:15 or whatever the time says and, you know, now the
6 time is 4:22. And I know you've got all these, so...

7 MS. KIRK: I just feel like the
8 efficient thing to do is to go ahead and get some
9 guidance.

10 MR. TRAXLER: Well, what I would like
11 to do is get back together. If you're telling me no,
12 then file your motion.

13 MS. KIRK: Okay. I'll do that.

14 MR. TRAXLER: I will agree that the
15 time period for filing for a protective order with
16 regard to the privilege starts to run when the
17 transcript is received.

18 MS. KIRK: Okay.

19 MR. TRAXLER: It's really not fair to
20 put everybody in a deadline today. Let's wait until
21 the transcript comes in. If you're telling me no
22 more time, then we'll just take it up with the court.

23 MS. KIRK: Okay.

24 MR. TRAXLER: We're ready to go. If
25 he says no, then that's it, I guess.

1 MS. KIRK: Okay. Thank you. We
2 will -- we will go to the court.

3 MR. TRAXLER: Hold on a second. I've
4 got people chirping at me in here. I'll be right
5 back.

6 MR. MOLSTER: I want to chirp at you
7 too before we get off the record.

8 MR. TRAXLER: All right. Ariail, I
9 guess I need -- what I need from you is a definitive
10 statement that you're shutting this deposition down
11 and not bringing him back. And if so, the basis for
12 that.

13 MS. KIRK: What? I'm sorry. I can't
14 hear you.

15 MR. TRAXLER: Okay. Are you shutting
16 the deposition down and refusing to allow us to come
17 back and ask him questions? And if so, the basis for
18 that?

19 MS. KIRK: Yes. I'm going to move
20 under Rule 30(D) to terminate the examination because
21 we've done it for two complete days. I feel like
22 that it's, you know, become unreasonable and
23 oppressive to the deponent, and I will be moving for
24 a protective order regarding the same.

25 MR. TRAXLER: Okay. Fine. Thank

1 you. Thank you very much. I guess we have no
2 witness to ask questions of, so --

3 MR. MOLSTER: May I ask one question,
4 which is right now the judge wanted to know if we
5 could meet for motions on April 28th or 29th, and
6 we've got conflicts on the 29th.

7 MR. TRAXLER: Hey, let's go -- let's
8 go off the record.

9 MS. PAYLOR: They -- they sent --
10 they sent an e-mail while we were in here, Chip.

11 MR. TWOMBLEY: Guys, I'm going to get
12 the court reporter to go off. Alice?

13 MS. KIRK: Hang on one second, y'all.

14 MR. TWOMBLEY: The court reporter is
15 going to go off the record --

16 MR. MOLSTER: That's fine.

17 MR. TWOMBLEY: -- and shutting down
18 all the equipment.

19 MR. MOLSTER: I didn't need that
20 conversation on the record. I was just trying to
21 sort out my --

22 THE VIDEOGRAPHER: This ends today's
23 deposition of John Jolley. The time is 4:25 p.m. We
24 are now off the record.

25 (The witness, after having been

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advised of his right to read and sign this
transcript, does not waive that right.)

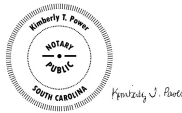
(The deposition concluded at 4:25 p.m.)

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto
affixed by official seal this 26th day of April,
2021, at Lexington, Lexington County, South Carolina.



Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

I N D E X

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REQUESTED INFORMATION INDEX
(No information requested.)

E X H I B I T S
(No exhibits.)

1 Ariail B. Kirk c/o John Jolley
2 akirk@jolleylawgroup.com

3 5/3/2021

4 RE: Luzak, Hampton v. Light, Merrill B., Et Al.
5 4/21/2021, John Jolley , Esq. (#4506758)

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 cs-carolinas@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 B., Et Al.

John Jolley , Esq. (#4506758)

E R R A T A S H E E T

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John Jolley , Esq. Date

1 Luzak, Hampton v. Light, Merrill B., Et Al.

2 John Jolley , Esq. (#4506758)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, John Jolley , Esq., do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 John Jolley , Esq.

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

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[& - 28]

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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.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT ROA 006611

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