

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Appellate Case No. 2021-000837

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, ...Appellant

v.

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

--and--

Hampton B. Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

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

**RECORD ON APPEAL
VOLUME XV OF XVI**

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Certificate of Counsel

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN GENERAL SESSIONS
14th JUDICIAL CIRCUIT

HAMPTON B. LUZAK,

Petitioner,

vs.

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

MERRILL B. LIGHT, et al,

Respondents.

HEARING BEFORE:

HONORABLE BENTLEY PRICE

DATE:

May 27, 2021

LOCATION:

Beaufort County Judicial Center
102 Ribault Road
Beaufort, SC 29902

REPORTED BY:

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1 P R O C E E D I N G S
 * * *
2 THURSDAY, MAY 27, 2021
 BEAUFORT, SOUTH CAROLINA
3 * * *

4 THE COURT: So just for the record and
5 for The Court's purposes, when you stand,
6 obviously, just give us your full name and the
7 parties in which you represent. We have a ton of
8 people in here, of course.

9 I assume that you-all have had some
10 opportunity to talk and determine -- I know
11 there's not that many because there is different
12 cases and there is the same motions filed in some
13 of the subsequent cases that are different with
14 the exact same motions.

15 Have you all discussed any type of order in
16 which you-all want to go, or are we just going to
17 start with Number 1 and end with Number 46?

18 MS. WALTERS: Good morning, Your Honor. I'll
19 start just to say -- we've discussed and I believe
20 that they agree -- that Ariail Kirk is here on behalf
21 of John Jolley. She's not involved in any of the
22 motions except those involving John Jolley. So we
23 were proposing that she go first, that the motions
24 with regard to John Jolley go first, so she can leave.

25 Then after that, we have the lawyers for CFRC

1 here also. They have a pending motion. For the same
2 reason, perhaps they can go second and they can leave
3 after that is accomplished.

4 THE COURT: That sounds great.

5 MS. WALTERS: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 MS. KIRK: Your Honor, I'm Ariail Kirk. I'm
8 here for the non-party John Jolley.

9 THE COURT: Give me one second. It's
10 going to be a lot of writing today.

11 Yes, ma'am.

12 MS. KIRK: I think to start with, there was a
13 pending motion to file Mr. Jolley's deposition
14 transcript under seal. I wanted to know if you wanted
15 to address that first.

16 THE COURT: Sure. However you want to
17 go. I think everybody concurs that deposition was
18 to be under seal of public record. That was
19 resolved by consent?

20 MS. KIRK: Yes, sir.

21 THE COURT: Karen, are you keeping up with
22 which ones are which? We have to mark them all off.

23 THE CLERK: Yes, if they can give a date that
24 their motion was filed.

25 THE COURT: What date or what number was

1 that motion filed?

2 MR. MACLOSKIE: If Your Honor please, I'm
3 Mike Macloskie for the Plaintiff, Hampton Luzak.
4 The motion was to seal both of them, one of them
5 was filed on October 8, 2020. The other one was
6 filed on October 13, 2020.

7 THE COURT: That's a different motion to
8 seal.

9 MR. MACLOSKIE: Right. It's a different
10 motion to seal.

11 THE CLERK: In the 1998 case? Sorry.

12 THE COURT: No, you ask all the questions you
13 need.

14 MR. MACLOSKIE: The one that involves Ms.
15 Kirk is the -- I'm sorry. It's not on there. Not
16 on there at all. There are two motions to seal.

17 THE CLERK: The date of it is May 18th.

18 THE COURT: Of 2021?

19 THE CLERK: Yes, sir.

20 THE COURT: Motion to seal Jolley's
21 deposition is Number 46, filed 5-18-2021. That
22 Number 46 is consented.

23 THE CLERK: I have a copy here with notes on
24 it. Would you like to have a copy with no objections
25 on the motion?

1 THE COURT: No, I'm okay. I'm just going to
2 rule on all the motions today.

3 MS. KIRK: Your Honor, I appreciate your time
4 this morning. I will try to be brief. I understand
5 you-all have a full day.

6 John Jolley is an attorney here in South
7 Carolina who was deposed for two days in this matter
8 over the course of March 16th and April 21st.

9 We have moved to terminate the deposition due
10 to the time, effort, and the duplicativeness of the
11 deposition. It's just getting out of control as far
12 as the questioning and things.

13 Also, we filed a motion for protective order
14 because Mr. Jolley received a number of instructions
15 during the deposition not to answer under the
16 objection of not waiving attorney/client privilege.
17 No one wants to waive their privilege.

18 It's a pretty straight-forward motion to the
19 extent that Mr. Jolley has been asked by another
20 attorney he represents or -- he either currently
21 represents or represented him in the past, I believe.
22 Once they object, Mr. Jolley has no choice but to
23 honor that objection pursuant to the attorney/client
24 privilege and pursuant to Rule 1.6 of our Rules of
25 Professional Conduct.

1 THE COURT: Are you meaning that they
2 noticed his deposition for a third day, and you
3 are saying they have gotten all of their
4 information they need and they are not going to
5 get any more?

6 MS. KIRK: That is my position. The
7 deposition was noticed originally for March 16th. I
8 cannot remember the exact time. We went into the
9 evening, after 7:00 p.m. that evening. At that time
10 we broke and agreed to reconvene on April 21st.

11 On April 21st is when I ended the deposition
12 and told everybody that I would be moving to
13 terminate.

14 There is the earlier Court opinion on the
15 testamentary exception to attorney/client privilege,
16 which ruled that the Supreme Court would likely adopt
17 the testamentary exception to the attorney/client
18 privilege and authorized Mrs. Barringer's personal
19 representative to produce the decedent's documents and
20 any communications related to the preparation,
21 execution or amendment.

22 Our position is, after the course of two
23 days, everybody should have had sufficient time to ask
24 anything that is covered by this earlier Court order,
25 which is dated August 23, 2017, related to the

1 testamentary exception. Mr. Jolley is a practicing
2 attorney and has taken two days away from his
3 practice.

4 THE COURT: On the April date, the
5 deposition did go forward?

6 MS. KIRK: Yes, sir.

7 THE COURT: Have they noticed it for a
8 third day?

9 MS. KIRK: No, sir.

10 THE COURT: You just put them on notice
11 that you're going to be filing this motion; is
12 that correct?

13 MS. KIRK: That's correct.

14 THE COURT: Anybody want to take
15 Mr. Jolley's deposition for a third time?

16 MR. TRAXLER: Yes, sir. I am Thomas
17 Traxler. I represent the Plaintiff in this
18 matter. I am the attorney doing the examination
19 of Mr. Jolley in this deposition.

20 Judge Price, let me explain to you
21 Mr. Jolley's role, why it takes so long and why this
22 is probably one of the most complex, privileged type
23 of deposition I've ever seen and probably in this
24 courtroom.

25 The history of this litigation, the factual

1 time period goes through 2011 up until Mr. Barringer,
2 the patriarch of the company, died in 2016. 2012 is a
3 pivotal year in which Mr. Barringer redid his will.
4 My client's husband was run out of the company, and
5 she was essentially run out of the family. While all
6 of that was going on, Mr. Jolley was acting as the
7 attorney.

8 In 2011 he -- in 2006 and 2007, he had become
9 the attorney, the estate planner, for Merrill Light
10 the daughter and Randy Light.

11 In 2008, he did some estate review for
12 Mr. and Mrs. Barringer. That's really not all that
13 important right now.

14 In 2011 when Randy Light was in a financial
15 disaster in Texas, lost millions of dollars, all of a
16 sudden Mr. Jolley starts doing a new will and stuff
17 for Merrill Light's parents, Mr. and Mrs. Barringer.
18 He started doing their estate planning.

19 Through the course of 2012 he prepared new
20 wills and trust instruments for Mr. and Mrs.
21 Barringer, naming Merrill Light to some degree in
22 those instruments.

23 In 2012, Kevin Luzak was run out of the
24 company. In July of 2012 after he was run out of the
25 company, Mr. Jolley re-writes the trust agreements and

1 will for Mr. Barringer, cutting my client out.

2 In September of 2012, he facilitates
3 Mr. Barringer giving all of his money, stock, and
4 control and cutting my client out completely.

5 And all through 2013, '14, '15 is re-writing
6 wills and cutting my client out.

7 During this time period, he's representing
8 five clients. This is where our privilege is an issue
9 and really gets complicated. He represents Merrill
10 Light, represents Randy Light, her husband. He
11 represents Mr. Barringer. He represents Mrs.
12 Barringer. Apparently, in August of 2012 he starts to
13 represent the family company.

14 We're asking him questions in the deposition.
15 He has got a ton of information. He is involved in
16 every single thing that goes on that we complain of in
17 this lawsuit. We can argue about what exactly his
18 role was. There is no question he was knee-deep in
19 all of the intermittent details of what was going on.

20 We asked him a question. I'll make up a
21 question. Making this up:

22 "QUESTION: Did you ever have a conversation
23 with Merrill Light about her father's mental capacity?
24 Because Mr. Barringer during the time of all of this
25 has dementia. He's writing and re-writing wills and

1 trusts. He's been diagnosed with dementia.

2 So did you ever have a discussion with
3 so-and-so about his mental capacity?"

4 We get an objection, instruction not to
5 answer the question. Well, it's because of apparently
6 some attorney/client privilege.

7 What we want to do is say:

8 "QUESTION: What privilege is it that you are
9 asserting? Tell us the setting. Tell us who was
10 there. Tell us whether it was discussed later or
11 not."

12 Mr. Jolley is a huge source of information.
13 He might have more information in this case than
14 anybody else. I'm not so sure about that, but it's a
15 lot. Much of the information he has is indeed
16 protected by attorney/client privilege. No question
17 about that. Just because -- and he has five clients.

18 We asked him in the deposition:

19 "QUESTION: Which privilege are you
20 asserting? Sometimes he doesn't know. Sometimes we
21 are not allowed to ask him which privilege he is
22 asserting.

23 It is intensely complicated trying to find
24 out what he knows. He has legitimate privileges that
25 need to be asserted. We have the right to know what

1 the setting was of the communication. We have the
2 right to ask foundational questions to see what the
3 privilege is and whether it has been waived or is
4 indeed a proper privilege.

5 So in the deposition they talk about that he
6 has been deposed for two days. Well, first of all,
7 his deposition is noticed by them. He is one of the
8 pivotal witnesses for the Defendants. They noticed
9 his deposition. This is not a de bene esse
10 deposition. He lives in Hilton Head. He is right
11 here. He has testified he ain't expecting to go
12 anywhere.

13 They noticed his deposition. They started at
14 a little after 10:00 on the first day and asked him
15 questions for literally two-and-a-half hours, which is
16 fine. After lunch we start.

17 As soon as we start asking questions, they
18 start asserting privilege. Every time there is a
19 question about whether there is a privilege or not,
20 they go off the record with Mr. Jolley to discuss
21 whether or not there is a privilege. They come back.
22 They have that right.

23 We have seven lawyers on the other side
24 conferring with him about what he's going to testify
25 to and various ones of them may be asserting the

1 privilege. Then they come back.

2 We start asking more questions. Sometimes
3 they instruct him not to answer. When they instruct
4 him not to answer, I'll say: Tell me who-all was in
5 on this conversation? Tell me the subject matter of
6 the conversation -- which I have the right to know. I
7 don't have the right to know the substance of the
8 conversation, if there is a privilege, but I have the
9 right to know the setting and even the topic of the
10 conversation to make sure that it was truly an
11 attorney/client communication.

12 They start objecting and instructing him not
13 to answer. At the end of day one -- they want you to
14 think that I deposed him for two days, which is not
15 right. At the end of day one -- this is our memo to
16 the Court, our return. They have asked him 2 hours
17 and 29 minutes of questions for their own witness. I
18 have asked him 2 hours and 53 minutes of questions at
19 the end of day one. They were already talking about
20 shutting down the deposition.

21 Were we on the record until 6 o'clock? Yes,
22 sir. If you look at the afternoon transcript, I bet
23 you the bulk of that is them talking, legitimately,
24 because there are a lot of complicated privilege
25 issues.

1 In fact, to give you an idea -- I am not
2 fussing at them. This is a difficult deposition
3 because of all the complicated privilege issues. At
4 the end of day one, the pages of my cross-examination
5 from 1:45 after lunch until we quit little bit after
6 6:00 -- there are 192 pages of transcript. Let's say
7 200 pages; easier number. There are 200 pages of
8 transcript. They have spoke up 648 times during my
9 afternoon questioning.

10 They would have you believe that I have
11 examined him at length. In 200 pages, they have
12 spoken up 648 times. So we had a lot of discussion
13 about resuming the deposition. We resumed it on April
14 1st.

15 On April 1st we resume the deposition, and we
16 run into the very same complicated issues. He was
17 taken off the record about a half-dozen times by the
18 lawyers. They go and they talk to him about what he
19 is going to testify to and then come back and assert a
20 privilege.

21 On the second day of the deposition, the
22 transcript shows that I was asking questions, and they
23 were debating with him, for like 275 pages. Out of
24 275 pages, they spoke up 875 times.

25 Now, I'm not citing that to you to fuss at

1 them. I'm citing that to you because, when he
2 represents five different clients and we get into
3 complicated privilege issues, it takes time.

4 Now on day -- at the end of day one, Ms. Kirk
5 had already told us, she says: "I'm going to limit
6 your time." She initially said half a day. Finally,
7 we worked out an agreement on how long it was going to
8 last.

9 We go into day two, and we have got a huge
10 amount of information in this person that we have got
11 to sort out which is privileged and which is not
12 privileged. It takes time to ferret that out.

13 We have a difficult time trying to decide:
14 Am I going to use my time asking substantive
15 questions, trying to get it out of him before 4:00 and
16 before they walk out, or am I going to ask the
17 foundational questions that I need on privilege or
18 what?

19 The result is, at 4 o'clock in the afternoon,
20 after they have spoken up 875 times, saying, "We ain't
21 coming back" -- excuse me. Ms. Kirk and Mr. Jolley
22 say, "We ain't coming back. We will move for a
23 protective order."

24 THE COURT: That's what you are asking
25 for, is a protective order for Mr. Jolley?

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

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

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

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

14 I'm just telling you, let's see what we can
15 do to fast-track that a little instead of taking
16 15,000 side bars.

17 MS. KIRK: Thank you, Your Honor.

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

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

1 tell me the protected information.

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

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

9 THE COURT: We agree.

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

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

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

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

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

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

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

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

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

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

1 MR. TRAXLER: May I provide a fix for all
2 this?

3 THE COURT: I'm sorry?

4 MR. TRAXLER: May I provide a fix for
5 this?

6 THE COURT: Sure.

7 MR. TRAXLER: This is the right idea. If
8 somebody in any deposition asserts their privilege, he
9 instructs a witness not to answer. The person who has
10 instructed them not to answer has a duty to disclose
11 the name of the person making the communication; who
12 was there; the relationship of those people, and the
13 date and place of the general subject matter of the
14 communication.

15 When a privilege is asserted, that needs to
16 be provided. If that is not satisfactory for me to
17 conclude that is a privilege, then I can ask the
18 foundational questions, as you have said. That will
19 clear it all up for us.

20 THE COURT: Get this to Mr. Jolley's
21 attorney, and make sure she has that information.

22 MS. KIRK: With respect -- take into
23 consideration Rule 1.6 of the South Carolina Rules
24 of Professional Conduct that includes all
25 confidences.

1 MR. GHOM: Your Honor, may I briefly
2 respond to this point about the setting of the
3 attorney/client communication? There is a case --

4 THE COURT REPORTER: I'm sorry, sir. What is
5 your name?

6 MR. GHOM: Bijan Ghom for Merrill Light.
7 There is a case, State v. Adams, 277 SC 115. I quote
8 from the Supreme Court. It says: "We believe that
9 the spirit of this policy," referring to
10 attorney/client privilege, "Dictates that not only is
11 the conversation protected but the entire setting of
12 the confidential confidence must be protected as well.
13 To lend privilege to words spoken and to allow
14 disclosure of the professional questions drawn from
15 the manner of their delivery, all but destroys the
16 substance of the privilege."

17 In some situations, for Merrill Light,
18 because she is communicating with her attorney, John
19 Jolley, in different capacities, depending on what the
20 subject matter is, it reveals the communication.

21 What they were trying to do is side-step the
22 attorney/client privilege. Several times they'll ask
23 the question where our client clearly communicated
24 with her lawyer, off-handedly.

25 And they ask: What capacity was she

1 communicating in, what subject was it?

2 To us, if Jolley reveals the subject, it will
3 derivitabably reveal what the communication was. If she
4 was communicating as a shareholder, we know that she
5 is talking about Hampton Luzak's allegations against
6 the company. In a sense, when you put that together
7 with the time frame, it reveals in some cases more
8 than what the actual communication might reveal.

9 THE COURT: Give me one second.

10 MR. TWOMBLEY: Your Honor, I would like
11 to be heard at the appropriate time.

12 THE COURT: All right, Mr. Twombley.

13 MR. TWOMBLEY: Your Honor, thank you.
14 Ashley Twombley, Counsel for Merrill Barringer.

15 Your Honor, one thing I think it's important
16 to understand is that Mr. Jolley did have numerous
17 clients involved in this dispute. He never
18 represented Hampton Luzak ever in any capacity.

19 So the problem is, as I see it, is that the
20 Plaintiff has spent all this time on these academic
21 questions that might be interesting to resolve, say,
22 between my client and her husband, both of whom
23 Mr. Jolley represented or my client and Ms. Light, who
24 Mr. Jolley also represented.

25 Those issues involving those clients, the

1 plaintiff is not entitled to any of that information.

2 I mean, if Mr. Jolley is representing two or three
3 different people and he has a privileged discussion or
4 meeting with all three of them, they are not entitled
5 to know who was there or what the setting was or even
6 what the subject matter of the discussion is.

7 I think what they would be entitled to know,
8 to make sure that there has been no waiver, was there
9 anyone there you didn't have an attorney/client
10 relationship.

11 Otherwise, if Mr. Jolley has to disclose this
12 person was there and this person was there -- both of
13 whom he represented -- what did you-all discuss, we
14 discussed this, that reveals a tremendous amount of
15 privileged information that respectfully we don't
16 think the plaintiff is entitled to.

17 I would also just remind Your Honor that,
18 back in 2017, Judge Mullen addressed this issue. She
19 addressed it when the Plaintiff sent a subpoena to
20 Mr. Jolley. We went through what documents they were
21 entitled to from Mr. Jolley. There is an order in
22 place on that. That same order, in our opinion, it
23 would apply to documents. It would apply to
24 testimony. It would apply to anything.

25 What they agree and what Judge Mullen found

1 is, obviously, there is an attorney/client
2 relationship there. There is a limited exception
3 dealing with the preparation, execution, and amendment
4 of estate planning documents. That was all they were
5 entitled to get. We have all been following that
6 order for the past five years.

7 For five years every subpoena, every
8 discovery response, every deposition that's been
9 taken, everybody's pulled that order out. We have at
10 least looked at it. If it doesn't involve the
11 preparation, execution, or amendment of estate
12 planning documents, then plaintiff is just, in our
13 opinion, not entitled to that information.

14 Although I do agree that if there is someone
15 there that Mr. Jolley did not represent that would
16 potentially waive the privilege, they should be
17 entitled to that.

18 Along Ms. Kirk's lines, we just want to make
19 sure that we understand, you know, precisely what Your
20 Honor would like us to do. If we misunderstand it and
21 we don't do it, they'll come back and move to sanction
22 all of us because, you know, there was a
23 misunderstanding. We really just want to understand,
24 if we can, precisely what you expect Mr. Jolley to
25 respond to and what he should not. Thank you.

1 MR. MEDLIN: Your Honor, Alan Medlin for
2 the plaintiff. I will pipe in here, because what
3 Mr. Twombly just referred to occurred before
4 Traxler became involved in the case. I just want
5 to clarify the Plaintiff's position on the
6 testamentary exception.

7 We didn't agree with defendant's
8 understanding of the testamentary exception. In fact,
9 that can be demonstrated because we've had
10 meet-and-confer meetings within the last six months or
11 so, trying to work this out among ourselves.

12 We think that Judge Mullen's order was
13 limited in scope to a few particular situations. We
14 think that the testamentary exception, which allows
15 the attorney who was involved in the estate planning
16 to disclose what otherwise might be privileged
17 information, is much broader than the position they
18 take.

19 We've also argued that waiver, among other
20 issues, comes into play when he's got more than one
21 client who are not in a joint defense arrangement
22 talking to each other in one meeting.

23 So just to make clear, we have not agreed --
24 although we've tried to work it out with defendants,
25 and will continue to do so, Your Honor, as to the

1 scope of the testamentary exception and what, in fact,
2 is admissible and what is protected as privileged
3 information. Thank you, Your Honor.

4 THE COURT: Here's what we're going to do
5 at this point. Who is going on vacation the week
6 of July 4th? July 4th is a Saturday. It doesn't
7 really matter because that's when I was going to
8 set his deposition. That's my chambers week.

9 You-all get together, take a look. Maybe I
10 have another chambers week. We can't do it after July.

11 Here's what we are going to do. Get with my
12 office. When you-all set the deposition, I want it
13 done and probably in the next six weeks.

14 You get one bite at the apple, Mr. Traxler.
15 This is it. Ask the questions you need to get asked
16 because you need to get leave from the Court to seek a
17 deposition, as you know again.

18 I'm going to allow it one more time, 9:00 to
19 5:00. I'm going to give you-all my cell phone number.
20 Unfortunately, we're going to have to go question by
21 question. We're just going question by question.
22 This is it. He will sit one more time, and that's
23 going to be it. Next.

24 Have a nice week of July 4th.

25 MS. KIRK: Thank you.

1 MR. RICH: Your Honor, Ryan Rich for
2 non-party Coastal Forest Resources Company. This
3 is the family company Mr. Traxler was referring
4 to.

5 Your Honor, I just have two pro hac
6 motions to which there has been no objection. We
7 have two lawyers from Virginia, Edwin Fuhr and
8 Jonathon Schronce, who would like to be arguing
9 motions for CFRC. We put two pro hac motions
10 before the Court.

11 We would like the Court to grant those so
12 that they can argue on behalf of CFRC.

13 THE COURT: Granted.

14 MR. FUHR: Thank you, Your Honor.

15 Ed Fuhr from Hunton Andrews and Kurth.

16 THE COURT: Say it again for the court
17 reporter.

18 MR. FUHR: Ed Fuhr, F-U-H-R, Hunton, Andrew
19 and Kurth on behalf of Coastal Forest. We are here on
20 our motion to intervene, Your Honor, for a limited
21 purpose; that is, to point out that this Court does
22 not have subject matter jurisdiction to hear any
23 derivative claims such as have been raised by the
24 Plaintiffs in this matter or to award any derivative
25 damages.

1 South Carolina law is very clear that no
2 subject matter jurisdiction when considering the
3 internal affairs of the corporation of another state.
4 Coastal is, in fact, in another state. It's a
5 Virginia corporation. It has articles and bylaws that
6 require that any derivative claims be brought in a
7 Virginia forum. They establish a specific requirement
8 and procedures that must be followed before derivative
9 claims can be pursued. Particularly, you must provide
10 first written notice and demand on the company's
11 board.

12 The company's board is entitled to a number
13 of months to do an investigation and to decide whether
14 those derivative claims, which ultimately are assets
15 of the corporation: How the company wants to address
16 that. Do they want those claims to go forward? Do
17 they not want them to go forward? And to notify the
18 Court. All of that has to take place in Virginia. No
19 other state has subject matter jurisdiction even to
20 consider those claims.

21 In the Front Row decision, South Carolina
22 Supreme Court just a few years ago, in re: There is
23 no subject matter jurisdiction in South Carolina's
24 courts to address the internal affairs, the internal
25 goings-on of corporations that are outside of South

1 Carolina.

2 As Your Honor knows, subject matter
3 jurisdiction cannot be waived. It can be raised at
4 any time. Indeed, it can be through judicial notice.

5 Let me turn to plaintiff's theories in this
6 case. Plaintiff's theory, and especially their damage
7 claims, are very much now derivative claims and
8 requests for derivative damages.

9 What is a derivative claim? A derivative
10 claim can take several different forms. It is an
11 action alleging wrongdoing by agents of the company,
12 officers, and directors of a company.

13 Judge Trenga, Federal judge in the Eastern
14 District of Virginia, he presided over derivative
15 claims that Ms. Luzak brought some five or six years
16 ago involving many of the very same things that are
17 now being litigated in this Court.

18 Judge Trenga found that any claim or
19 allegations of breach of fiduciary duty are derivative
20 claims. That's the only way they can proceed.

21 Ms. Luzak proceeded with the process that I
22 just described, in Virginia. Those claims were heard,
23 and they were dismissed with prejudice. They took it
24 up on appeal with the Fourth Circuit, which was
25 summarily affirmed. Ms. Luzak knows how the

1 derivative process works.

2 What we have now going on here is a rerun of
3 a lot of the same theories, a lot of the same damages,
4 but now they are trying to call them direct claims.
5 Judge Trenga says anything that's related to fiduciary
6 duty claims, that's inherently a derivative claim.

7 Misappropriation. If your claim is that
8 somebody at a company has misappropriated money out of
9 the company and you want to be heard on that, that's a
10 derivative claim.

11 Once again, what you're trying to do when you
12 bring that claim is to say: Company, so-and-so took
13 money they shouldn't have taken from us. Pull it back
14 into the company.

15 I, as a shareholder, benefit pro rata. If I
16 own 50 percent of the company, I am better off because
17 the company had pulled that money in.

18 So any allegations about misappropriation of
19 money, any allegations that monies were
20 inappropriately spent on things, any allegations that
21 a company failed to pursue a business strategy that
22 would have been so much more successful, the company
23 board was negligent or breached its duty, didn't do
24 what it should've done, the company would've been more
25 profitable -- those are all derivative claims. Those

1 are claims the company -- that relate to an asset of
2 the company. You're urging the company board to go
3 out and rectify this wrong, pull these monies back
4 into the company, hold accountable the people that
5 reduced the value of the company and, hence, my pro
6 rata share of the company. Those are derivative
7 claims that can, again, only proceed in Virginia.

8 And the idea is that a company should recover
9 for the injury, and the shareholders benefit pro rata.
10 There are certain tells when claims are derivative.
11 If they talk about, I've been hurt pro rata about this
12 amount, you know they are talking about a derivative
13 claim.

14 The Supreme Court has also said: Anytime
15 somebody is talking about the reduction in their value
16 of shares, that's a derivative claim. That's a claim
17 holding in the Virginia Supreme Court a few years ago.

18 Let's look at the damage theories the
19 Plaintiffs are pursuing in this case. They have an
20 expert, Mr. Alford, who has articulated six categories
21 of damage. At least a couple of them we have no issue
22 with.

23 In terms of testamentary intent, that's not
24 our issue. We're just a company. We have significant
25 shareholders but there are other shareholders who are

1 not even related to this family. There are other
2 shareholders that we are interested in and need to
3 protect. When you look at these damage theories that
4 have been pursued by Mr. Alford and that he's talked
5 about -- let's walk through them.

6 The first one. So their total damages are
7 \$105 million or thereabouts. The first one, which is
8 worth 60 million of it, is a loss-of-control premium
9 that alleges and is calculated based on diminution an
10 value of Ms. Luzak's shares. That's a quintessential
11 derivative claim. As Keith v. Shell Oil, Virginia
12 Supreme Court said, "A depreciation in the value of
13 stock," end quote, is a derivative claim. That's the
14 first element Mr. Alford has in his damages.

15 The second category, worth \$1.6 million, is
16 again based on a dilution based on a sale of stock.
17 This relates to the company's decision to sell some
18 shares to Travis Bryant, the new CEO who replaced
19 Ms. Luzak's husband as CEO of the company.

20 So Mr. Alford said there is a dilution in
21 value of \$1.6 million. Again, that is inherently a
22 derivative claim. And get this: It is the exact same
23 claim that was litigated five years ago as a
24 derivative claim in Virginia. They're trying to get a
25 second bite of the apple by trying to avoid Virginia

1 procedural requirements. It's also part of our res
2 judicata as well as being outside the jurisdiction of
3 This Court.

4 Judge Trenga had said: "Subject claim
5 constitutes a derivative action, not a direct action."

6 The fourth category is for some \$750,000.
7 The Plaintiff is trying to recoup compensation paid to
8 Randy Light. So it relates to an expenditure that the
9 company made that they're saying the company should
10 not have made.

11 Once again, funds that exit the company, if
12 you have a beef about that, that's a derivative claim.
13 You have to go through the Virginia process, you have
14 to go through the Virginia forum. That's \$750,000.

15 The sixth category, which is the fourth.
16 This is Number 6 of Mr. Alford's list, relates to the
17 loss of return from sale of timber lands. \$40 million
18 approximately.

19 This claim is that the company should have
20 done something different from a business strategy with
21 respect to the sale of timber. As a result of the
22 board's decisions, the company is \$40 million poorer.
23 Actually, they're saying it's even more than that.
24 Ms. Luzak's pro rata share is \$40 million poorer.

25 Once again, that is a quintessential

1 derivative claim that this Court does not have
2 jurisdiction to consider and has to be pursued as
3 derivative claims.

4 All of this comes about under the proffer of
5 a civil conspiracy claim in Count 19 that is
6 amorphous, ambiguous, and doesn't spell any of this
7 out. It is clear when you look at these damage
8 claims, that damages are being sought that belong to
9 the company only, their assets of the corporation. If
10 you want the corporation to be sued, there is a
11 process for doing that. There is an exclusive process
12 for doing that. That has not been done in this case.

13 This also informs discovery -- because we're
14 seeing all sorts of discovery requests coming at the
15 company for -- as Mr. Gilreath said in one hearing
16 down in Florida when they tried to enforce a subpoena:

17 "We want every scrap of paper the company
18 has. Every scrap of paper. We want every accounting
19 record. Every accounting record."

20 The Florida Court said, no. We said: Look,
21 these are derivative claims. They can't be relevant
22 to this battle about testamentary estate, intent, and
23 all that. The Florida Court agreed and said no.

24 Now what do we have? We have depositions
25 coming through. They recently took the deposition of

1 the comptroller of the company. I think there was one
2 question that was asked about this estate battle that
3 is going on. Most of it related to expenditures of
4 the company; what did the company spend this money on,
5 who was authorizing the spending, et cetera.

6 They now sent out a Notice, 30(b)(6) notice
7 to the company with some 30 to 40 different items that
8 they want the company to provide the most
9 knowledgeable person to testify. Somebody who has
10 pride in the company.

11 What does it deal with? Every board meeting
12 over the last 11 years, every strategy to do this, to
13 sell this, to buy that, what you spent your money on.
14 Those are all derivative claims. They're all
15 inherently irrelevant to what I understand to be the
16 claims that are going back and forth here. It's
17 imposing a lot of burdens on the company.

18 We would ask to be allowed to intervene for
19 the limited purpose of having this Court declare that
20 this Court does not have jurisdiction to consider
21 derivative claims, and it will not and does not have
22 jurisdiction to award derivative damages such as the
23 four items that I just mentioned from Mr. Alford,
24 their expert in this case.

25 Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. HOGAN: Bill Hogan for the Plaintiff,
3 Hampton Luzak. Your Honor, I will point out in
4 this case our damage claims are against Mrs. Light
5 and her late husband, also Mrs. Barringer on other
6 interference-related issues. They're not against
7 the company. They've not asked anything from the
8 company. The company is not at risk for any
9 damages in any format. Nobody has made any kind
10 of third-party claim against the company. There
11 has been no indemnification claim. The company's
12 assets are not at risk in this case.

13 To the extent that they claim there is some
14 derivative claim or damages in our request for
15 damages, the defendants currently are asserting the
16 derivative defenses. They have done that in prior
17 motions before this Court. I think even on the
18 amended pleading that Ms. Paylor wants to amend, she
19 wanted to add an affirmative defense of derivative
20 claims. The current parties are able to litigate that
21 issue. Adding another party in here, I'll say,
22 complicates the case significantly.

23 Also under the, rule that delays the time for
24 trial for another six months to add another party to
25 the case.

1 THE COURT: He's asking to intervene just
2 for the limited purpose of having me make the
3 decision here today whether those are derivative
4 claims and we can move forward; is that correct?

5 MR. FUHR: Yes, Your Honor. That's exactly
6 correct.

7 THE COURT: So he's in, and he's out.
8 Same day; right? You want to be in today, out
9 tomorrow?

10 MR. FUHR: The sooner the better, Your Honor.

11 THE COURT: We can handle that.

12 Yes, sir.

13 MR. HOGAN: The point of that though is
14 the current defendants are able to assert those
15 defenses for them. Mrs. Luzak is 51 percent
16 shareholder of the company. They obviously
17 coordinate very much, extensively with CFRC. They
18 give advances and positions for them.

19 THE COURT: Let me ask you this. You're
20 also asking me to limit the scope of the discovery
21 as well; correct? You're asking me essentially
22 that -- they sent you all those 30(b)(6) requests
23 and all those things. You're essentially saying,
24 once I determine these are derivative claims,
25 you-all are out and that's it?

1 MR. HOGAN: Correct. In fairness to the
2 other side, we go through the notice to see if
3 there are any requests in there, of our CEO in
4 particular, as to whether he has any knowledge
5 about this estate. That is fair game. You can
6 ask about that. We have no beef with that.

7 All this stuff about companies' actions and
8 operations, spending, business plans, off limits.

9 THE COURT: All right. I assume that the
10 CEO is the 30(b)(6) designee in this case.

11 MR. HOGAN: We haven't identified who it
12 is, but most likely person.

13 THE COURT: Yes, of course. Anything
14 further?

15 MR. HOGAN: Obviously, of course, this
16 motion comes in late. They could have done this
17 years ago.

18 THE COURT: We're here to clean this up
19 because we're about to start the trial. That's
20 why we're trying to get it done. You want to be
21 in. You want me to make the decision, and you be
22 out; right?

23 MR. FUHR: Yes, Your Honor.

24 THE COURT: I'll grant your motion to
25 intervene. I agree that they're derivative

1 claims. Please work with the other side to answer
2 what you can consider -- you-all can agree on are
3 discoverable documents and please work to that
4 extent. Okay.

5 Drive safe or fly safe, whichever one you're
6 doing.

7 MR. FUHR: Thank you, Your Honor.

8 (Off-the-record discussion.)

9 (Mr. Fuhr, Mr. Rich, and Mr. Schronce exited
10 the proceedings.)

11 THE COURT: What's next?

12 MS. PAYLOR: I think MY Merrill Light's
13 motion to amend the answer is next as far as
14 chronologically.

15 THE COURT: Okay.

16 MS. PAYLOR: Since you just granted that
17 motion as to the derivative claims and threw all
18 of them out, we probably don't need our defense.

19 THE COURT: Okay. So is that it?

20 MS. PAYLOR: We have two others. We have a
21 counterclaim against the plaintiff.

22 THE COURT: Is this new?

23 MS. PAYLOR: We have asked to amend to
24 add the defense of failure to mitigate damages.
25 This would actually go to one of the damage claims

1 that you did not just throw out.

2 In addition to all of those, they have a
3 damage claim for Mrs. Luzak's husband's alleged lost
4 compensation. He is not a party.

5 Whenever somebody has an employment case and
6 they're asking for lost compensation, they have to
7 mitigate their damages. We have asked to include the
8 proposed affirmative defense of failure to litigate
9 damages with regard to that claim.

10 MR. TRAXLER: Your Honor, may I step out
11 to retrieve Mr. Fuhr?

12 THE COURT: This is you-all's courtroom for
13 the whole day. You-all can walk in and out, talk
14 amongst yourselves, whatever you want to do. It's all
15 yours.

16 MR. TRAXLER: He needs to be here to be heard
17 on that, if you don't mind me stepping out.

18 THE COURT: To grab who?

19 MR. TRAXLER: Mr. Fuhr.

20 THE COURT: You-all just need to hang
21 tight. Apparently, he is going to be making the
22 argument.

23 MR. TRAXLER: I will not be making the
24 argument as to the subject Ms. Paylor is making right
25 now. I am still trying to absorb what you just ruled.

1 I think you just ruled that the derivative claims were
2 out. I think our side needs to preserve the record on
3 that.

4 He did not move to throw them out, as I
5 understand. He moved to simply intervene. Now all of
6 a sudden my claims are out without being heard on
7 that.

8 THE COURT: That's fine. We'll get back
9 to it. I took it the other way. What would be
10 the limited purpose of intervening if he wasn't
11 asking to have the derivative claims thrown out?
12 What does he want to intervene just to hang out
13 here today?

14 MR. TRAXLER: I understood that he wanted
15 to intervene so that he could then make the motion
16 to do that, not that the motion today would be --
17 not that we would be heard today on whether or not
18 that it would be dismissed. He just wanted to get
19 in the case to make the motion.

20 THE COURT: Why did he make all of that
21 big old long argument about them being derivative
22 claims if he didn't want it heard today?

23 MR. TRAXLER: I understand that. I just
24 want to be able to retrieve him.

25 THE COURT: That is fine, if you want to

1 try to grab him.

2 MR. TRAXLER: Thank you.

3 THE COURT: Sure.

4 MS. PAYLOR: Well, going back to mine, Your
5 Honor, we also -- we did -- the cases are still in
6 question. We did ask to have a defense. Most of
7 their claims for damages were derivative claims. This
8 Court doesn't handle such matters out of
9 jurisdiction.

10 THE COURT: That was as to the
11 business.

12 MS. PAYLOR: Well, they were claimed they
13 were damages against our client. It arose out of
14 things that happened at the business, which he has
15 set forth why they're derivative claims. We would
16 just -- in case they're still in there, just add
17 that. If they're out, we're fine.

18 THE COURT: All right.

19 MS. PAYLOR: We also have a proposed
20 defense. In the recent case of Garrison V. Target
21 Corporation, the Court held that you have to
22 assert as an affirmative defense the statutory act
23 of punitive damages. So we would like to add that
24 as an affirmative defense based on that Court's
25 decision from 2020, Your Honor.

1 THE COURT: That's been pretty standard
2 across the board. You have to do that.

3 MS. PAYLOR: Yes, sir.

4 THE COURT: Did they make you get leave from
5 the Court to do that?

6 MS. PAYLOR: Well, they wouldn't agree to
7 it. We don't think there is any prejudice --

8 THE COURT: There is not.

9 MS. PAYLOR: -- in allowing any of these
10 defenses.

11 THE COURT: I have allowed it in 15 cases.
12 It's just a simple re-amendment, so it's fine.

13 MS. PAYLOR: Thank you.

14 Then we have a proposed counterclaim under
15 the South Carolina Frivolous Civil Proceeding Sanction
16 Act. There are cases. The statute does say it's done
17 by motion, but there are also cases that state that
18 you can bring it in and make the motion after the
19 trial. It's good to go ahead and put them on notice
20 that you are going to be seeking sanctions.

21 THE COURT: You and I just did that one.
22 It was after the case. By law, I can hear that at
23 any time as long as I retain jurisdiction.

24 If you want to put them on notice and put it
25 in there, I have no problem with it. You understand

1 that even if you decide not to do it, you can bring
2 that at any time post-trial. Of course, we'll have
3 another trial like we did last time on the last one
4 that we did.

5 MS. PAYLOR: That's exactly right. We
6 just want to protect our client to the greatest
7 extent possible.

8 THE COURT: That's fine. Put it in there.

9 MS. PAYLOR: Thank you, Your Honor.
10 That's it.

11 THE COURT: So the only one we did decide
12 on was failure to mitigate damages. I'll be happy
13 to hear anybody on that. The other one, she will
14 have to put a punitives cap. The other one is a
15 simple notice that if, in fact, they prevail, that
16 they're coming back after you.

17 MR. HOGAN: Just briefly, Your Honor.
18 Bill Hogan again for Hampton Luzak.

19 THE COURT: Yes, sir.

20 MR. HOGAN: We have no issue with adding in
21 the affirmative defenses that she proposed in there.
22 We don't agree with them substantively, but
23 procedurally we don't. Our issue is with adding the
24 counterclaim in there under the Frivolous Proceeding
25 Sanctions Act. There is a method for doing that. The

1 Legislature sets it out as a post-trial motion and not
2 as a pretrial counterclaim. That's where the
3 Legislature set it out. That's been our objection to
4 adding that in an amendment.

5 The other affirmative defense we have no
6 objection to; just on the counterclaim.

7 THE COURT: So you have no objection for
8 them to assert a counterclaim on failure to
9 mitigate damages and obviously cap on punitive
10 damages? You just are more concerned about it
11 being a post-trial issue, correct?

12 MR. HOGAN: I think the affirmative
13 defenses we have no objection to. Many of their
14 complaints have -- answers have those in. It's
15 the counterclaim under the Frivolous Proceeding
16 Sanctions Act.

17 THE COURT: I see what you're saying.
18 The holding encapsulates just that one cause of
19 action, the frivolous lawsuit act.

20 MS. PAYLOR: Yes, sir. I will use an
21 example. The Plaintiff's complaint. One of her
22 causes of action is for attorney's fees, which she
23 can only get at the end of the trial on a motion.
24 What's good for the goose is good for the gander.
25 We want to have our cause of action.

1 THE COURT: We're splitting hairs again.
2 Just put it in there.

3 MS. PAYLOR: Thank you, Your Honor.

4 THE COURT: What's next?

5 MR. GHOM: Your Honor, just for the record so
6 the record is clear, CFRC's motion which is titled
7 "CFRC's Memorandum in Support of its Motion for
8 Intervention and Protective Relief."

9 If you go to the end, they asked for -- they
10 specifically asked to strike certain -- they ask in
11 their conclusion to dismiss Ms. Luzak's cause of
12 action of civil conspiracy for lack of standing and
13 subject matter jurisdiction. To strike the first,
14 second, fourth, sixth categories of damages identified
15 in Dr. Charles Alford's expert report and to enter a
16 judgement for clarity, Mrs. Luzak's may not litigate
17 any other derivative claims in this action.

18 THE COURT: It was in their motion what
19 you're saying, the same argument he simply just made.
20 It was properly before the Court.

21 Is that what you're wanting the record to
22 reflect?

23 MR. GHOM: Yes, sir.

24 THE COURT: Okay. What's next?

25 MR. TWOMBLEY: Your Honor, I think the

1 next motion is a Motion for Protective Order that
2 my client filed. This is related to the
3 physician's competency certificate. I can provide
4 a little background.

5 In 2012 Mr. Barringer went to his doctor, and
6 his doctor examined him. His doctor's name is
7 Dr. Paul Long. Dr. Long has been his physician for
8 decades. Dr. Long was asked to fill out a certificate
9 attesting to giving his opinion about Mr. Barringer's
10 competency -- to execute estate planning documents or
11 engage in other business transactions.

12 Dr. Long examined Mr. Barringer and filled
13 out a competency certificate that he signed that has
14 the year 2012 on it, but Dr. Long did not put the
15 precise date on it.

16 THE COURT: Meaning like April 12th or
17 May 3rd?

18 MR. TWOMBLEY: Right.

19 THE COURT: It's just the year?

20 MR. TWOMBLEY: Right.

21 THE COURT: You just need it to be past 2011;
22 correct?

23 MR. TWOMBLEY: We don't really need it at any
24 particular point in time, although Dr. Long has
25 testified that he had full capacity in 2012 and 2013.

1 Maybe he would have put some limitations on it in
2 2014.

3 In any event, we have the physician's
4 competency certificate. My office has it as counsel
5 for the estate. We had it in our medical records'
6 folder. There is a long history here, but the
7 plaintiffs, for some reason, for years and years never
8 asked for any of Mr. Barringer's medical records and
9 they never made any efforts to subpoena his medical
10 records. Think about that for a while, Your Honor.

11 We have this \$100 million testamentary
12 capacity lawsuit, the lynchpin of which they say is
13 Mr. Barringer's medical condition and the medical
14 issues he was suffering from.

15 For years they litigate this case. They
16 never send any of the doctor's depositions, subpoenas,
17 they never sent any subpoenas for their medical
18 records. They never asked us to produce the medical
19 records. We believe it's obvious why they didn't do
20 that, because they didn't want that bad evidence. The
21 doctors are pretty clear about their opinion about
22 Mr. Barringer during the disputed time.

23 Be that as it may, they did write us a letter
24 because we produced an unsigned copy of this
25 physician's certificate. They wrote us a letter

1 saying: We want to confirm whether or not you have
2 any signed versions.

3 We wrote them back and said: Yes, we
4 have located the same, and we will be producing
5 it. We told them on day one that we have this
6 signed certificate, that Dr. Long had signed it.

7 We did not follow-up on that letter and
8 actually give it to them. They never followed up on
9 their letter saying: Hey, you told us you had it, and
10 you were going to give it to us, why haven't you given
11 it to us?

12 Fast forward two years. We decide to
13 voluntarily produce all of Mr. Barringer's medical
14 records in the case because, even though they haven't
15 asked for them, we're going to use them to defend the
16 case. In those records is this signed physician's
17 competency certificate from Dr. Long. They raised a
18 huge stink about it. Oh, my gosh, where did you-all
19 get that? Why were you hiding it from us?

20 You know, why would we hide a document that's
21 good for us? This is a certification from the doctor
22 saying the man has capacity to engage in any
23 business.

24 THE COURT: What are you asking me to
25 protect it for?

1 MR. TWOMBLEY: Well, because here's what
2 they've asked. We gave them the certificate.
3 They claim that because it's not dated, they need
4 to know from me when I got it where I got it so
5 they can establish the outer limit of the day that
6 it was signed.

7 They need to know, if you had a signed one in
8 your file, Ashley, in let's just say 2017, then we
9 know Dr. Long didn't sign it in 2018 or '19 or '20.
10 We know he would have signed it by 2017.

11 Of course, obviously now, we've deposed
12 Dr. Long. Dr. Long testified that, yes, he didn't
13 remember the exact day, but it was his. He had no
14 reason to question that it was in 2012, the time it
15 was drafted and it was sent to him.

16 Then they deposed John Jolley. John Jolley
17 testified that he drafted the certificate, sent it
18 out, and he got it back within seven to ten days of
19 the date of the stock transfer, which was September
20 11, 2012. So now we have testimony from John Jolley
21 that conclusively establishes that in September of
22 2012, he had the signed physician's competency
23 certificate in his file. So we know that now.

24 Moreover, moreover, they had a full
25 opportunity to take Dr. Long's deposition. Dr. Long

1 testified: I would have signed that certificate
2 anytime in 2012 for any business, no matter how
3 complicated it was. That's how confident he was of
4 Mr. Barringer's capacity in 2012.

5 In addition, Your Honor, Dr. Long has already
6 testified at a probate court hearing. They had the
7 opportunity to depose him about his opinions about
8 Mr. Barringer. So the point here, Your Honor is that
9 they know what Dr. Long has to say. They know exactly
10 what his opinion is. They've had the full opportunity
11 to take his deposition.

12 So what do they want? They want me to have
13 to tell them when I got the certificate and what I did
14 with it and who I gave it to.

15 THE COURT: Let me ask. Are you still
16 asking for that? So we can save some time, are
17 you-all still asking for that?

18 MR. MACLOSKIE: We certainly are, sir.
19 Mike Macloskie for the Plaintiff.

20 The history is a little bit more detailed
21 than Mr. Twombly is telling the Court. We filed
22 standard interrogatories in this case on June 5, 2017.
23 Among the things, of course, we asked for was all the
24 documents and that kind of thing.

25 It goes back further than that. On August

1 28, 2012, Mr. Jolley emailed the Defendant Merrill
2 Light, an email attaching this certificate of
3 certification of competency, and the message is
4 this:

5 Quote, Merrill, this would be great. Let me
6 know if Dr. Long needs any help or has any questions.

7 On September 22, 2017 -- by the way, the
8 reason that date is important is because it is in
9 close proximity to the transfer of stock out of
10 Mr. Barringer's trust and co-trusted by the
11 defendant, Merrill Light, into Merrill Light's trust.
12 I think the lapse of time was about eight, maybe ten
13 days.

14 On September 22, 2017, Mr. Jolley -- we got
15 the email on that date, 2017, September the 22nd.

16 On October the 6th, 2017, Mr. Gilreath wrote
17 to Mr. Twombly about a lot of discovery issues, and
18 they included this certificate of certification
19 competency. There are apparently no signed versions
20 of this document -- and I would appreciate you
21 confirming that.

22 A month later, November 10, 2017,
23 Mr. Twombly responded: Quote, we have located the
24 same and it will be provided in a supplemental
25 production.

1 February 12, 2020. Production of the signed
2 version of this certification was produced. Not
3 dated. Not notarized.

4 February 18, 2020, Gilreath emails Twombly
5 asking why it has taken two years and five months to
6 produce this saying, Quote: We are also entitled to
7 know who you shared these documents with and when
8 prior to production last week. Please advise.

9 February 21, 2020, Mr. Twombly emails
10 Mr. Gilreath in response confirming receipt of the
11 October 16th email asking about signed versions of the
12 certification and adding this language.

13 Quote: Apparently, we all forgot about that
14 as we never produced the signed version, and your team
15 never brought it to our attention.

16 Gilreath wrote back to Twombly: Never
17 indicated that you had a signed version of the
18 certificate of competency. Never indicated you had
19 the same. Also asking who you shared it with and
20 when.

21 What I'm trying to point out, Judge, is
22 this comes as no surprise. You asked a perfectly
23 legitimate question: Why is it important about
24 when this certificate was originated to establish
25 the outside dates? And why is it necessary to

1 share that kind of information with us?

2 There are several reasons. First of all, in
3 spite of Mr. Twombly's claim that this is work
4 product, that it would be overly burdensome to produce
5 it and that it's not relevant -- well, it is highly
6 relevant. It's a piece of evidence. That
7 certification is a piece of evidence.

8 What happens to that piece of evidence has
9 everything in the world to do with several things. We
10 didn't have the benefit of that signed certificate
11 when we took Merrill Barringer's deposition or Merrill
12 Light's. We had the unsigned version when we took
13 Merrill Light's deposition.

14 She denied any knowledge of it at all in
15 spite of John Jolley's email to her of August 28,
16 2012. So we've got an issue of credibility. Also,
17 we're entitled to it, if for no other reason, no other
18 reason in the world, to prevent on trial some
19 assertions, some allegation that our client, Hampton
20 Luzak, knew about it in a timely fashion.

21 We're entitled to know about it based on
22 credibility. It's evidence. We've got a conspiracy
23 charge in there. It may come to nothing. We're
24 entitled to it now. It is relevant. Bearing in mind
25 something you know better than I do, relevancy is not

1 a high fence to get over at this stage. It will be
2 later on, but it's not now.

3 All of this information is highly relevant.
4 If you look, I will be glad to pass up the same time
5 line that I thought we are now arguing from. Thank
6 you.

7 THE COURT: What specifically are you
8 asking from Mr. Twombly? Let's just get to the
9 bare bones of what you're asking for. You're
10 asking when did he have this information and whom
11 he has shared it with prior to the disclosure to
12 you-all?

13 MR. MACLOSKIE: No. You see, the work --
14 it can't be work product. There was no litigation
15 going on then, not even CFRC in the Eastern
16 District litigation. It's not that. That's what
17 we have been faced with, these boilerplate
18 objections and non-production.

19 THE COURT: Mr. Twombly, what is your
20 response, quickly?

21 MR. TWOMBLY: Your Honor, first of all,
22 what I did with this document when I received
23 it -- my only involvement in this case is as
24 counsel of record for one of the parties.

25 What I did with it, who I decided to give it

1 to, what experts I may or may not have decided to
2 share it with -- that is my work product. They do not
3 need, nor are they entitled to know, what opposing
4 counsel did with the documents after they received
5 them. Think about it. I could then ask them, "When
6 did you all get these documents"?

7 THE COURT: Do you know when you got the
8 document?

9 MR. TWOMBLEY: I know that I got it after
10 I had been retained by my client to represent her
11 in South Carolina litigation, yes, because I
12 didn't know any of these people before then.
13 That's my only connection to this case.

14 Can I ask them: When did you-all get these
15 documents and who did you share them with? That's not
16 work product? Of course that is work product. What I
17 subjectively decided to do with a document in the case
18 and who I decided to share it with is absolutely work
19 product.

20 Your Honor, we do not contend --

21 MR. MACLOSIE: You can't speak for other
22 Defendants.

23 MR. TWOMBLEY: Nobody contends -- this is the
24 first I've ever heard. It's not in any of their
25 papers that Hampton Luzak knew about it. I don't even

1 know how that's relevant to any issue in the case. I
2 don't contend that I'm happy to stipulate to that.

3 MR. TWOMBLEY: Your Honor, I just -- the last
4 thing I want to point out that is so important --

5 THE COURT: When was the communication
6 that you-all two had back and forth concerning it
7 and then you said they never followed up and you
8 just dropped it.

9 When was that communication?

10 MR. TWOMBLEY: That was in 2017.

11 THE COURT: In 2017 they asked for it.

12 MR. TWOMBLEY: I told them I had it.

13 THE COURT: You told them you had it.

14 MR. TWOMBLEY: And I told them I had it and
15 that we will be giving it to you in a supplemental
16 production.

17 THE COURT: And you never did.

18 MR. TWOMBLEY: I did when I made a
19 supplemental production of the medical records.

20 THE COURT: Do you have a copy of that email?
21 I mean, that communication?

22 MR. TWOMBLEY: It's in the documents. There
23 is a letter. I'm happy to point it out to you.
24 Mr. Macloskie just quoted from it where I said: "We
25 have located the same and will be providing it in a

1 supplemental production."

2 THE COURT: Has it been provided in
3 supplemental production? It's in the record now?

4 MR. TWOMBLEY: Absolutely.

5 THE COURT: I will grant your motion for
6 a protective order.

7 Let's move to the next one. All right.
8 What's next?

9 Karen, are you keeping up with these? Are
10 you marking them off?

11 (Off-the-record discussion.)

12 THE COURT: We need to take a break.

13 (A recess transpired.)

14 THE COURT: Everybody ready?

15 MR. MACLOSKIE: Mr. Twombley is not here.

16 THE COURT: That's okay.

17 MR. MACLOSKIE: If Your Honor please,
18 before we get started -- mike Macloskie for the
19 Plaintiff.

20 THE COURT: Yes, sir.

21 MR. MACLOSKIE: I am withdrawing the
22 Plaintiff's motion for sanctions filed on April 27,
23 2021.

24 THE COURT: Thank you very much.

25 All right. Is Number 11 right here?

1 THE CLERK: Correct.

2 THE COURT: What's next?

3 MS. WALTERS: Your Honor, I'm Lee
4 Walters. I'm here also for Merrill Barringer.
5 I'm going to argue the motion about -- we filed a
6 motion to compel production against documents from
7 Wells Fargo and BB&T and Truist Bank.

8 THE COURT: As to whose account?

9 MS. WALTERS: Kevin Luzak. So Your Honor,
10 Kevin Luzak -- you've heard him mentioned before.
11 He's the plaintiff's husband. His name is referenced
12 100 times.

13 THE COURT: I've read all about him being
14 the CEO and everything, correct.

15 MS. WALTERS: You also heard earlier that
16 part of the damages are for seven-and-a-half million
17 dollars. So we issued subpoenas to Truist Bank, Wells
18 Fargo, and BB&T and we agreed with counsel that they
19 would be able to get the documents first.

20 It was our understanding that they would look
21 at them for privileged documents, mark them
22 confidential, and then hand them over to us. They got
23 the Wells Fargo documents that was Wells Fargo's
24 response to our subpoena -- which was over 3,000
25 pages -- and subsequently produced this huge log of

1 all the documents that they were not going to provide
2 to us. So our motion is to compel the remainder of
3 those documents.

4 THE COURT: Of those 3,000, how many were
5 produced to you-all?

6 MS. WALTERS: Well, the first time we got
7 production, it was about 300 of them. They have
8 subsequently produced a few more of those
9 documents.

10 One thing that they have withheld are
11 additional copies of the tax returns. We filed an
12 earlier motion that Judge Mullen granted, giving us
13 unredacted copies. We do have those.

14 We would like to go ahead and get the rest of
15 the Wells Fargo documents and the rest of the BB&T
16 documents.

17 THE COURT: What do you allege being
18 withheld?

19 MS. WALTERS: There are -- they have
20 identified a lot of different categories of
21 documents that they have withheld for whatever
22 reason. They said they're not relevant.

23 THE COURT: Why have they alleged they're not
24 relevant?

25 MS. WALTERS: I don't quite understand why

1 they're not relevant.

2 THE COURT: If they're not relevant, then why
3 would they care if you have it?

4 Who's up?

5 MR. HOGAN: Your Honor, Bill Hogan again
6 for the Luzaks. We held one thing beyond the
7 scope of the subpoena, there are Hampton Luzak's
8 personal assets that are not an issue in this
9 case; checking account statements that show how
10 much they spend on groceries, how much they spend
11 on vet bills, just personal stuff. It's just
12 stuff that's not relevant to this case. It's just
13 highly intrusive.

14 The Lights certainly have't turned over
15 anything like that to us. We just don't think they
16 need to be prying into that and going into that
17 information.

18 THE COURT: Do you want what he spent on
19 his groceries and vet bill?

20 MS. WALTERS: Your Honor, here's the
21 reason. First of all, I don't think they can
22 argue about the scope of the subpoena. We sent
23 the subpoena to Wells Fargo. They determine
24 what's responsive to the subpoena.

25 Remember that Hampton Luzak has alleged

1 seven-and-a-half-million dollars in lost income from
2 her husband, okay. For instance, Mr. Luzak has
3 multiple, multiple entities. These are statements
4 that relate to all of those entities. There is money
5 going from one account to another account. Their tax
6 returns. He advertises that he is an employee or
7 non-employee of, that he manages the LW&J. On his tax
8 return you have LW&J. There is no income from that.

9 THE COURT: Do you-all have a protective
10 order in this case as to all these --

11 MS. WALTERS: We have a confidentially
12 order. We are required to prove mitigation as a
13 defense. I think we're entitled to that discovery
14 and amendment.

15 THE COURT: At this point in time, at
16 this phase of the trial, I agree. We'll determine
17 at trial whether it's going to be relevant at
18 trial or not. At this point in time I will give
19 you the opportunity to review those documents. I
20 will give them 60 days from today's date to
21 produce those documents.

22 MS. WALTERS: Thank you.

23 THE COURT: What's next? Obviously under a
24 protective order.

25 MR. HOGAN: Your Honor, just one point of

1 clarification. We have two protective Orders; one
2 deals with just general discovery where we can mark
3 them confidential. There is another one Judge Mullen
4 entered where you can highlight certain sensitive
5 documents like the estate planning documents, tax
6 returns. We can mark them "For attorney's eyes only."
7 That protective order -- I'm going to ask if we can,
8 in this case, mark them for attorney's eyes only. If
9 they see anything --

10 THE COURT: Your client's going to have
11 to see it.

12 MS. WALTERS: The only problem I have
13 with that, we want to share them with experts.

14 MR. HOGAN: That includes experts. The
15 attorney's eyes and experts.

16 THE COURT: Fair enough. That's what I was
17 intending. Thank you very much for putting that on
18 the record. What's next?

19 MS. PAYLOR: Your Honor, I have a motion for
20 summary judgement I'll be happy to argue.

21 THE COURT: All right.

22 MR. MEDLIN: Your Honor, if I may, this
23 motion for summary judgment is not in the order
24 we've been going. I'm going to argue for our
25 side. I'm happy to do it. It's a complex,

1 involved argument. It's going to take a little
2 bit longer than some of these other motions that I
3 think we've been going down the list.

4 THE COURT: Have we been going down the
5 list, Ms. Karen?

6 THE CLERK: Pretty much.

7 THE COURT: What number are we on?

8 THE COURT REPORTER: I'm sorry, sir. What is
9 your name?

10 MR. MEDLIN: Alan Medlin.

11 THE CLERK: Number 6.

12 MR. MEDLIN: I'm sorry. Alan Medlin for
13 the Plaintiff.

14 THE COURT REPORTER: Yes, sir.

15 MR. MEDLIN: Your Honor, I think the next
16 motion -- I think -- you all correct me if I am
17 wrong -- is involving the Jolley email and various
18 subpoenas.

19 MR. TRAXLER: Yes, Judge. I will argue
20 this. I'm Tom Traxler for the Plaintiff.

21 They provided some redacted Jolley emails and
22 invoices to us -- if I can hand them up -- that we're
23 looking at. One is an email of January 10, 2013 from
24 Mr. Jolley to Mr. Barringer. The other item that we
25 would hand up would be the McNair invoices. Very

1 simply, if I can focus on the email that I gave to
2 Your Honor.

3 The first one, first single sheet, you will
4 see on January 10, 2013, Mr. Jolley writes to PBB,
5 that is Paul Barringer at the company: "Mr.
6 Barringer, please give me a call when you have a
7 moment to discuss a time to meet. I redacted and want
8 to discuss your transfer of voting shares to Merrill
9 Light. John Jolley."

10 This relates to the transfer of shares that
11 occurred back when he gave voting shares that had been
12 redacted. We are entitled to that communication under
13 the testamentary exception.

14 THE COURT: All right.

15 MR. TRAXLER: We are entitled to know
16 what that redaction is.

17 MR. TWOMBLEY: Your Honor, I don't know
18 how Mr. Traxler can determine he's entitled to it.
19 He doesn't know what's behind it. The
20 testamentary exception is involving the
21 preparation, execution, or amendment of estate
22 planning documents. As an officer of the Court, I
23 -- me and my client -- have both provided a
24 privilege log that says conclusively that what is
25 redacted behind this redaction here has absolutely

1 nothing to do with any estate planning document.
2 It is information about an unrelated matter that
3 John Jolley represented Mr. Barringer on. It has
4 nothing to do with the preparation, execution, or
5 amendment of any estate planning document.

6 THE COURT: Come up here real quick.

7 (Off-the-record discussion.)

8 THE COURT: As an officer of the Court,
9 Mr. Trombley has indicated that it is privileged
10 information. We have had a side bar. He's told
11 me what the information is. I agree it is
12 privileged information.

13 And as the officer of the Court, if at some
14 point in time that unredacted form is found and it's
15 not what he indicated it was to me, Mr. Trombley knows
16 how much trouble he's in. Let's move on to the next
17 one.

18 MR. TRAXLER: We have submitted the
19 invoices showing the redaction. You will notice
20 these are the invoices of Mr. Jolley to Mr.
21 Barringer. It shows on their rate "estate
22 planning." So we've got estate planning invoices
23 with time activities redacted. We believe that we
24 are entitled to know what those redactions are or
25 do an in-camera review of them to see if they

1 don't fall within the testamentary exception.

2 THE COURT: All right.

3 MR. TROMBLEY: Your Honor, Mr. Traxler is
4 correct. We are dealing with invoices regarding
5 estate planning. So these invoices do primarily
6 involve estate planning for Mr. Barringer.

7 However, Judge Mullen previously addressed
8 this issue. She entered an order. She said that if
9 it involves the preparation, the execution, or the
10 amendment of an estate planning document, we will be
11 required to give it to them.

12 We went through the invoice line by line. By
13 the way, Your Honor, we did this in 2017. I don't
14 know why they're raising it four years later. I have
15 no idea.

16 In 2017 we went through the invoice. If any
17 entry had anything to do with the preparation,
18 execution, or amendment of an estate planning
19 document, they got it. If there was an entry that
20 didn't have anything to do with the preparation,
21 execution, or amendment of the estate planning
22 document, we redacted it in accordance with Judge
23 Mullen's Order. That's the way things have stood for
24 the past four years.

25 Most of these entries deal with things after

1 estate planning documents were executed. There are
2 various administrative-type things that have to be
3 done after documents were executed. Because these
4 don't deal with preparation, execution, or amendment,
5 we're not required to turn it over. That's consistent
6 with Judge Mullen's Order entered four years ago.

7 THE COURT: That's Judge Mullen's order.
8 Obviously, again, he's arguing that, as an officer
9 of the Court that his redactions are correct and
10 necessary. If we later find out that he is not --
11 they're not correct and necessary, Mr. Twombly
12 understands the ramifications.

13 All right. What's next? We are just
14 going down the list. Sorry.

15 THE CLERK: The plaintiff's motion for
16 judgment on the pleadings and their motion for summary
17 judgment.

18 THE COURT: All right.

19 THE CLERK: January 26th.

20 MR. HOGAN: Your Honor, Bill Hogan for
21 Hampton Luzak again. Judge, this is on their
22 counterclaims. On the counterclaim of
23 Mrs. Barringer for abuse of process she filed
24 against us and the gist of their abuse of process
25 claims is that we sued Ms. Barringer. They claim

1 we did -- that's an abuse of process to do that.

2 We have been through the motion to dismiss. We
3 survived that. We went through summary judgment,
4 lengthy summary judgment, survived that.

5 In this case, we have done nothing outside
6 the parameters of the court proceedings involving that
7 claim, separate lawsuit.

8 One thing we have done was issue discovery
9 requests, interrogatories, document production
10 requests, and depositions. We have done nothing
11 outside the ordinary course of this litigation.

12 The Court has reviewed all of that.
13 Challenges and defenses have been projected on that.
14 There is just nothing that meets the criteria for
15 abuse of process.

16 The Supreme Court in a case that they cite,
17 Flores vs. Syanara, the case that's not applicable to
18 this one at all, lot of differences. They stated in
19 there, it says: "Even if respondents, the defendants,
20 had cause to make some complaints against the
21 plaintiff, the fact that those were properly
22 instituted does not foreclose an action for abusive
23 process if the clients had in fact committed acts
24 outside the normal process that are improper."

25 Everything we've done in this case has been

1 reviewed by the Court. There is no allegation that
2 anything we've done was improper, illegal.

3 THE COURT: What's your concern about it
4 staying in as a counterclaim?

5 MR. HOGAN: Obviously, it's a
6 counterclaim against us. We think it should be
7 dismissed. We have to go through discovery on
8 it.

9 THE COURT: They're going to get two
10 bites at the apple in this case. Of course, if
11 they prevail, then they're going to come right
12 back with a frivolous lawsuit that they've already
13 indicated that they're going to do. My opinion
14 should they take it out? I mean, it's kind of
15 just ancillary at this point.

16 MR. TWOMBLEY: Well, Your Honor, there is
17 two different standards for abuse of process and a
18 frivolous proceedings act. Your Honor, with
19 respect to Mr. Hogan, there is an allegation that
20 they've done something wrong. We outlined that.
21 I'm happy to go through the detail if Your Honor
22 wants to hear what we allege. Yes, we do --

23 THE COURT: Give me an example of just
24 one.

25 MR. TWOMBLEY: Well, in open court six

1 days before they filed this lawsuit -- I will just
2 quote for you. They said: "My client doesn't
3 want to sue her mother. I think it would be a
4 shame if she had to sue her mother just to get
5 some critical information.

6 "It would be a shame for us to have to drag
7 Ms. Barringer in as a party defendant in her
8 individual capacity just to be able to get the
9 documents."

10 So on the day of this hearing, May 22, 2019,
11 they said -- they said what their primary motivation
12 was. We don't have to guess. They said: "We don't
13 want to have to sue her just to get this information."

14 THE COURT: All right. Well, the
15 complaint and the answer aren't coming in as
16 evidence. So what I'm going to do is I'm going
17 to allow it to stay in. Everyone understands that
18 the counterclaims have to be proved, just like the
19 plaintiff's claim, by a preponderance of the
20 evidence. So I'm going to address that, taking
21 that claim out on a motion for directed verdict as
22 to those claims once all the testimony has been
23 heard.

24 We'll just -- at this point in time, I'm
25 going to allow it to stay in. What's next.

1 THE CLERK: What motion is that?

2 THE COURT: I have no idea.

3 THE CLERK: January 26, 2021. January 26th,
4 Plaintiff's motion for judgment on the pleadings and
5 motion to strike. Thank you.

6 THE COURT: What's next, Ms. Karen?

7 MR. TWOMBLEY: I think the next one is
8 Number 7. I will handle it.

9 Your Honor, the Plaintiff in this case
10 has -- if you will just bear with me, this is a
11 really important point. I just want to provide
12 you a brief background.

13 When the Plaintiff filed this lawsuit, she
14 alleges over and over and over that she was supposed
15 to get this stock in the company that her father gave
16 away to somebody else.

17 THE COURT: Correct.

18 MR. TWOMBLEY: She didn't have the
19 father's estate planning documents. She didn't
20 have any of them. I told them from day one, you
21 know, you should wait and see what the documents
22 say. How can you say that she was going to
23 inherit this, that, or the other when you don't
24 know what Mr. Barringer's estate planning
25 documents say?

1 We ultimately produced those documents to
2 them, and guess what? None of the documents say
3 anywhere that Plaintiff Hampton Luzak was ever going
4 to get anything. That is a fundamental, critical
5 point that Your Honor needs to understand, because in
6 most of these will contest cases, you know, Will
7 Number One says, I'll leave everything to Amy, the law
8 clerk. Will Number 2 executed after that says, I
9 revoke Will Number 1 and I'll leave everything to The
10 Honorable Judge Price.

11 So if Amy can prove -- if Amy can prove that
12 the will that leaves everything to you is no good,
13 then there is a will that says Amy gets all of this
14 stuff. The fundamental problem here is none of
15 Mr. Barringer's documents ever said anything of the
16 such. They all say pretty much the same thing, which
17 is, when I die, I will leave everything to my wife.
18 And when she dies, she gets to decide who among the
19 kids get what. Classic power of appointment
20 situation.

21 In the book that a certain law professor at
22 the State University of South Carolina teaches from,
23 this says that this is the classic example of how
24 powers of appointment are used to give the surviving
25 spouse flexibility to deal with things in the future.

1 Who knows what might happen in the future.

2 (Off-the-record discussion.)

3 THE COURT: All right, Mr. Twombley.

4 MR. TWOMBLEY: So, Your Honor, the
5 plaintiffs have to do to deal with that. You can
6 read the documents. They say what they say. They
7 all say what they're telling us they say.

8 So they have come up with this idea that even
9 through all the documents -- when I mean all of them,
10 I mean back to 1998. Even though those documents say
11 that Mrs. Barringer has the right to decide who among
12 the kids gets what, that Mr. and Mrs. Barringer
13 entered into this secret contract with one other,
14 where even though the documents say she can do
15 whatever she would like to do, there is a contract out
16 there where she's agreed not to do that.

17 Well, there is a problem with that theory.
18 There is no evidence of that. There is not a
19 thimble-full of evidence of that.

20 So then they say, well, gosh, what are we
21 going to do? We have to come up with something else.
22 Now what they've done is they say, well, there is an
23 implied agreement by silence. In other words, by
24 virtue of the fact that nothing was said, that that
25 somehow ripens into some type of contractual

1 obligation enforceable under the law.

2 We don't need to debate whether or not that's
3 correct today for the purposes of the motion. Let's
4 just assume that it is. Because what we did is, when
5 they now have gone to you know, like audible Number 4
6 in their lawsuit, we said okay. If you're saying that
7 there is an implied agreement by silence, we want to
8 know what was said before Ms. Barringer was silent,
9 and what was said after Ms. Barringer was silent. For
10 example --

11 THE COURT: At this secret meeting?

12 MR. TWOMBLEY: At these secret meetings,
13 yes. At these secret meetings.

14 So, for example, if someone said -- let's
15 assume Mr. Barringer said, "I have a contract with my
16 wife and she's agreed that she's never going to do
17 what it says in our estate planning documents" and Ms.
18 Barringer sat there and just said, you know -- what
19 their argument is, is that she has agreed to the terms
20 of this contract just by her being silent.

21 What we want to know is what was said before
22 Ms. Barringer was allegedly silent and what was said
23 after Ms. Barringer was allegedly silent.

24 THE COURT: I assume Ms. Luzak would have
25 been present during this conversation?

1 MR. TWOMBLEY: One would think.

2 THE COURT: Mr. Barringer is dead. And
3 did you ask Ms. Barringer this question at her
4 deposition?

5 MR. TWOMBLEY: There is no contract.

6 THE COURT: Did you ask her that
7 question? Did you ask her that same question in
8 her deposition?

9 MR. TWOMBLEY: I did not ask her, and
10 they chose not to ask her that. Why the chose not
11 to ask her that, I don't know. I have no idea.

12 THE COURT: So you want to know what
13 Mr. Barringer said based on Ms. Luzak's presence
14 at this meeting prior to her silence?

15 MR. TWOMBLEY: Prior to her being silent.
16 And as Mr. Medlin described it one day in a
17 hearing, he said that my client, Ms. Barringer,
18 had a duty or responsibility to pipe up. To pipe
19 up.

20 In other words, when things were said under
21 this theory, she has a duty to stand up and say:
22 There is no contract. Why did you say there is a
23 contract, Mr. Barringer? I don't know anything about
24 a contract.

25 Again, whether or not he's right or wrong,

1 all we want him to do is, before Ms. Barringer was
2 silent, before she failed to pipe up, what was said
3 before that and what was said after that.

4 What they've responded to in their discovery
5 is they said she was always silent.

6 THE COURT: You're asking what the other
7 people said, not her?

8 MS. TWOMBLEY: What was said before she
9 was silent and what was said after she was
10 silent.

11 THE COURT: All right. Who's up?

12 MR. MEDLIN: I am, Your Honor. Alan
13 Medlin for the Plaintiff again.

14 THE COURT: All right.

15 MR. MEDLIN: If I may detour for just a
16 minute. We weren't sure if Mr. Fuhr was going to
17 return. Apparently, he's not going to. I am a
18 little uncomfortable raising this outside of his
19 presence, but I do want to raise it for the
20 record.

21 Our understanding of CFRC's motion and even
22 the way he argued it was that CFRC was arguing that
23 this Court does not have subject matter jurisdiction
24 over derivative actions or over CFRC as to derivative
25 actions.

1 We do not believe we brought a derivative
2 action. We do not believe our damages are derivative
3 action damages. When you read Mr. Fuhr's and CFRC's
4 memo -- I do recognize that Mr. Ghom quoted in the
5 last paragraph of prayer. The clear sense of that was
6 that we don't have the power to bring a derivative
7 action against CFRC. We agree with that. We've not
8 bringing a derivative action against CFRC.

9 What that motion does not to us say --
10 because we don't think CFRC, even with the limited
11 ability to intervene, would have the standing to do
12 it, to say that our damage claims are derivative.

13 As to the other defendants whom we are suing
14 individually, I do not believe these are derivative
15 claims. To the extent that your rulings --

16 THE COURT: My ruling only applies to
17 CFRC. He doesn't represent anybody else but CFRC.
18 Period.

19 MR. MEDLIN: Thank you, Your Honor.

20 I do want to talk a little bit more about
21 the history and this will fold in to additional
22 motions that we're going to argue later. I hope
23 it's worth the time to do it.

24 This is a complex litigation case. It is to
25 me, maybe not for everybody else. Down at my level,

1 it's pretty complicated, and it takes a while to
2 explain and get through all of this.

3 So we brought this lawsuit based on an
4 understanding that our client and her husband had that
5 Mr. Barringer meant to treat his children equally as
6 to his voting stock and control of the company.
7 That's really what this is about.

8 And at some point in time after he initially
9 prepared documents that did that in a will and trust,
10 that also in many other documents indicated that
11 intent. In fact, in a prior version of this company
12 before 2004, he had actually given away total control,
13 retaining a little bit of control to his three
14 children in equal shares.

15 So Mr. Twombly's statement that there is no
16 evidence of this treatment of equality, we disagree
17 with significantly. We think we have lots of
18 documentary evidence and we have lots of testimonial
19 evidence about his intent to treat the children
20 equally as to the voting control of the company.
21 That's what this case is about.

22 Now, with The Court's indulgence, I want to
23 get in a little more detail about each of the
24 documents that does this. Beginning in 1998 when we
25 have no reason to believe that Mr. Barringer was

1 incapacitated, being unduly influenced or tortiously
2 interfered with.

3 He, with an estate planning lawyer friend
4 of mine, who in his deposition declared, unasked,
5 that he was the best of the best. He went to a
6 very well-qualified estate planning attorney who
7 prepared documents for Mr. and Mrs. Barringer.

8 And we disagree with Mr. Twombly's statement
9 that this document and all the subsequent documents
10 gave everything to Mrs. Barringer for her life and
11 then gave her the power to decide where it went after
12 that.

13 That to me is an overly simplified statement
14 of what happened. It is common estate planning advice
15 to use the power of appointment that Mr. Twombly
16 referred to.

17 Put it this way. Mr. Barringer had a will.
18 He had a revocable trust executed on the same day.
19 And as typical, some of his probate assets, a
20 substantial part of his probate assets, those that he
21 owned and kept, would pass over into the irrevocable
22 trust which would include any other assets he would
23 put in during his lifetime so that at his death, that
24 was his estate plan. If he owns stock in CFRC, for
25 example, it would pour over into his revocable trust.

1 A revocable trust is really the dispositive document
2 in a sophisticated estate plan like his.

3 That trust took care of Mrs. Barringer for
4 her life. It also takes care of the kids. It also
5 possibly takes care of grandkids for the rest of their
6 lives. Then the language of the documents says -- and
7 we disagree. And I will explain more about that later
8 on today. We disagree to the extent of this.

9 The language does say, I give power to
10 appoint property at her death to my decedents. But if
11 she doesn't do that, then the property including the
12 voting stock, if he owned any at his death, would go
13 equally among his children.

14 Now, the way estate planners -- and the one
15 thing I know a little bit about -- the way estate
16 planners draft those documents, that's his plan to
17 give his children the equal share of his trust.
18 Mrs. Barringer may or may not have the key to change
19 that.

20 Mr. Twombly likes to say -- I understand
21 this -- that Mrs. Luzak was not supposed to get an
22 equal share. I like to say she was supposed to get an
23 equal share. The difference in our viewpoints is
24 simply what, if any, effect that power of appointment
25 has.

1 So beginning in 1998, we have that set up.
2 Now, it also happens that Mrs. Barringer had a
3 reciprocal will in a reciprocal trust. They read
4 exactly the same way. So they're all at the table
5 with the best of the best estate planning lawyer.
6 They're signing these documents in 1998. Presumably
7 they know what's in them.

8 Just for the sake of this argument, we're not
9 conceding that because I'm not sure if they do. I
10 think we have a lot of evidence they didn't understand
11 this is a power of appointment.

12 For the sake of this argument, let's assume
13 they did. They're sitting at a table. Mrs. Barringer
14 knows Mr. Barringer gave her a power of appointment.
15 Mr. Barringer knows Mrs. Barringer gave her -- gave
16 him a power of appointment. Again, reciprocal
17 documents. Each of their wills that they executed
18 that same day sitting at that table expressly declined
19 to exercise the power of the appointment ever again.

20 Now, the arguments that we have about any
21 power of appointment and Mrs. Barringer's ability to
22 control the voting stock are numerous. They are
23 important because, as Mr. Twombly has accused me of
24 on a number of occasions, it would be foolish to try
25 to win this lawsuit when Mrs. Barringer -- when she

1 dies because this is a testamentary power; can give
2 the voting control to Ms. Light anyway.

3 Well, first of all, we don't agree with that.
4 Our damages are focused only to this day. What
5 happens after Mrs. Barringer dies is a whole different
6 story. We have lifetime damages even if she does have
7 the power of appointment and even if she does exercise
8 it in favor of Mrs. Light as to the voting stock. We
9 have a number of arguments that she doesn't have that
10 power.

11 Number one, we don't think that Mr. Barringer
12 knew that he was giving her any power over voting
13 stock. That's a complicated, lengthy argument. I
14 won't waste a lot of the Court's time on that. It's
15 in our briefs. If I may, I'll just incorporate all of
16 that.

17 One of the main reasons we think he didn't
18 know he was giving Mrs. Barringer the power of
19 appointment to appoint his voting stock in that '98
20 trust, because he didn't have any ability to effect
21 control at that time. You have to think of the
22 testator's or settlor's intent at the time of the
23 execution of the document. That's what they're
24 thinking they're doing at that point.

25 We argue he couldn't have thought that he was

1 giving her voting control power because he didn't have
2 it. He had already given it away to his children in
3 that earlier iteration of the company. That changed
4 in 2004 -- that is a longer, complicated story as
5 well.

6 So we don't think he meant to give her the
7 power. Even if he did, then we think that she is not
8 allowed under the law to exercise that power for
9 several reasons.

10 Number one, we think that they had a contract
11 not to revoke. Now, Mrs. Barringer likes to say that
12 the bifurcated action, the second and third causes of
13 action, that case deals with the contract claims.
14 That's a misnomer. It deals with much more than that.
15 It deals with the power of appointment and whether
16 Mrs. Barringer can exercise it.

17 By the way, all we're asking for in that
18 second and third cause of action is to restrain her
19 from doing what we argue she doesn't have the power to
20 do. It's a preemptive attempt to resolve the question
21 now. If it's not resolved now, it will be resolved
22 when she dies and tries to do it.

23 So we have this contract statute, 62-2-701,
24 that tells what you have to have to have a contract.
25 By the way, it applies only to contracts entered into

1 after the effective date of the probate code, July 1,
2 1987. Again, it's just to refine down some of the
3 arguments that Mrs. Barringer has made. It would
4 apply to any contract in this case, unless there is
5 one that occurred before then that we don't know
6 about. We were limited in our ability to go back in
7 our discovery, by the way.

8 So there are several ways that one can prove
9 a contract not to revoke. Again, remember, she has a
10 will that does not exercise the power. Now, she has
11 revoked those wills after Mr. Barringer died to
12 exercise the power; not effective until she dies.
13 She's changed her direction.

14 So the argument under the contract statute
15 would be that she entered into a contract with
16 Mr. Barringer where she would not exercise -- again,
17 we're focusing on the voting stock -- even if he knew
18 she was giving her the power over voting stock that he
19 really didn't have then.

20 So there are three ways to show a contract.
21 And the two main ways that we argue is the material
22 provisions have to be set forth in the documents. In
23 1998 we have a document from Mrs. Barringer where she
24 leaves everything equally to her children, subject to
25 her husband's power of appointment and a document

1 where Mr. Barringer leaves everything equally to his
2 children, subject to her power of appointment.

3 Knowing what they had done, they both signed
4 wills that said: We're not exercising that power.

5 Those are the material provisions of the
6 contract right there. By the way, the statute does
7 not exclude additional evidence, and there is no time
8 limit on when that evidence can arise. That's going
9 to be important in just a minute, Your Honor, if
10 you'll bear with me.

11 Another way under the statute to prove a
12 contract is to simply have a signed writing, and then
13 you can have extrinsic evidence that shows the terms
14 of the contract. Again, there is no time limit in the
15 statute to show that. Wills and trusts are certainly
16 signed rights.

17 Now, under either of those situations, we
18 have a '98 documents. We have documents that both Mr.
19 and Mrs. Barringer executed on February 28, 2012,
20 which is going to be the subject of the summary
21 judgment motion that Ms. Paylor is going to argue, I
22 think.

23 In July of 2012, he created another trust.
24 She was not involved in that.

25 In June of 2014, he executed another will and

1 trust.

2 And February of 2015, he executed another
3 will and trust. In each one of those cases,
4 Mrs. Barringer signed reciprocal documents. And each
5 did appear from the language to give a power of
6 appointment.

7 Again, we argue a couple of things there. We
8 don't think any of those were valid for the reasons we
9 bring in our lawsuit. The defendants argue they are
10 valid. That same issue is coming up as a pattern of
11 conduct. Every time they sit down to do the wills and
12 trusts -- with the one exception of July 20, 2012 when
13 he executed a sole amendment and revocation of this
14 earlier trust -- every time it's symmetrical, it's
15 symbiotic.

16 We argue that all of that demonstrates the
17 intent to have a contract not revoked starting way
18 back 1998 and going up until the time of his death.
19 She didn't dishonor that agreement until after he
20 passed.

21 Also important in our arguments later, Your
22 Honor, is going to be the issue of the fact that each
23 of these subsequent documents, if valid, revoked the
24 1998 document. In fact, when we argue the scheduling
25 order, I'm going to say to Your Honor, why in the

1 world are we having a trial on the '98 documents --
2 which is all they want to limit that to -- when they
3 claim four subsequent sets of documents revoked those
4 documents. They're meaningless. Why are we having a
5 trial about these meaningless documents?

6 In fact, I think they are estopped because
7 they're taking inconsistent positions on that. Again,
8 that will come up more properly in another couple of
9 motions we're going to argue.

10 We have some other arguments. In the Chapman
11 case, it's valid. It hasn't been overturned; issued
12 by the Court of Appeals, dealing with Judge Chapman's
13 family. It says that you can be bound as a power
14 holder not to exercise the power even if there is not
15 a contract. So this takes us outside the statute.
16 You can be bound simply because you a made a promise.

17 If you're in a fiduciary or a confidential
18 relationship, which certainly Mrs. Barringer was with
19 Mr. Barringer, if you promise not to exercise the
20 power, you're bound by that.

21 What Mrs. Barringer nor Mrs. Light likes
22 about this is that case, citing Bulger, the leading
23 expert on trusts, says that promise can be expressed.
24 It can be implied. It can even be implied from
25 silence. That's pretty low bar that we have to show.

1 All we have to show is this pattern of her
2 not ever saying at any time anywhere, that we're aware
3 of, that she disagreed not with the fact that there
4 was a contract not to revoke, as Mr. Twombly stated,
5 but that she disagreed with Mr. Barringer's plan to
6 treat the children equally and that she told him: No,
7 I'm going to exercise my power of appointment. She
8 disagreed with that, whether it was a contract or a
9 promise.

10 By the way, equitable estoppel works the same
11 way, which can also be found from silence. Again,
12 we've got a pretty low bar to show her promise not to
13 do it.

14 In fact, as Ashley was noting in an earlier
15 hearing, my point essentially was that, if he thought
16 there was a promise from her signing all these
17 documents and not exercising the power, she had a
18 responsibility to say to him when they're at these
19 family meetings -- they're not secret meetings.
20 Mrs. Barringer is there. Mrs. Light is there for a
21 lot of these meetings.

22 Anytime estate planning came up, she didn't
23 think that everything was going to go equally to the
24 children because -- again, that was the gist of his
25 estate plan. She should have stood up and said, No,

1 Paul. I'm going to use my power of appointment. I'm
2 going to send it to somebody else.

3 THE COURT: She has to live with that man
4 for the rest of his life. Why should she make him
5 mad? Just keep your mouth shut until he dies and
6 do what you want. That would happen with my wife,
7 trust me.

8 MR. MEDLIN: Well, I'm not going to argue
9 with that on the record, Your Honor. Not talking
10 about your wife, I'm talking about my wife.

11 That's the point. He trusted her.
12 That's what the law says. So here we are --

13 THE COURT: Mr. Medlin, give me one
14 second. I have to give the court reporter a
15 break. Let's do this. Just to dispose of
16 Mr. Twombly's motion so we can move on to the
17 next one when we get back, are you-all going to
18 agree to -- how would they produce that
19 information? Ask their client what was said prior
20 to and after?

21 MR. TWOMBLEY: Right. Mr. Medlin just
22 said --

23 THE COURT: These meetings were
24 meetings.

25 MR. TWOMBLEY: -- Ms. Barringer was at

1 one of these meetings and Ms. Light was. What
2 meetings? We know of no meetings anywhere ever
3 where Mrs. Barringer or Mr. Barringer ever said:
4 No matter what you do in the future, kids, I
5 guarantee you we're going to treat you equally.

6 The thing Mr. Medlin -- one brief response.
7 You see, there is a difference between a plan to treat
8 your kids equally. You might plan today to treat your
9 kids equally, right?

10 THE COURT: Until my daughter makes me
11 mad when she gets 18, gets a tattoo, and marries
12 some Harley guy.

13 MR. TWOMBLEY: There is a difference between
14 a plan to treat them equally and then saying no matter
15 what they do in the future, you are guaranteeing me
16 that despite the expressed terms of the will that says
17 you are empowered to treat them in an equal fashion if
18 you want to. You are guaranteeing me that no matter
19 what they do in the future, that you're going to treat
20 them equally.

21 You're right. The bottom line here is, if
22 she was silent, if she failed to pipe up who was
23 there, what was said before she failed to pipe up,
24 what she said after, or what was said after she failed
25 to pipe up so we can understand this cockamamie theory

1 of implied silence in the context of some type of
2 factual statements that we can be prepared to address
3 at trial. That's all we want, if they have any. The
4 problem, Your Honor, is they don't have any. They
5 don't have anything.

6 THE COURT: Briefly. I have to give the
7 court reporter a break and Ms. Karen has to eat
8 lunch.

9 MR. MEDLIN: Do you want to take a break now,
10 Your Honor?

11 THE COURT: Is your response brief or no?

12 MR. MEDLIN: Hopefully, just a few
13 minutes to that. I would like to actually point
14 to the language in the interrogatories to finish
15 my explanation.

16 Number one, the law actually allows
17 Mrs. Barringer to tell Mr. Barringer, I'm not going to
18 do it. That's what we say she does.

19 Again, the opposite of no evidence; we have a
20 stream of evidence, both documentary and testimonial,
21 from affidavits of Hampton Luzak, from family
22 meetings. They have all of that.

23 That shows that we believe a promise was made
24 as early as 1998. Throw those documents out if the
25 2012 documents are valid. And on and on. We have to

1 address that with each separate document. Most
2 recently valid being the one document that ought to
3 control in this case.

4 We have this whole pattern. This family is
5 involved in complicated, gifting and voting chair
6 agreements and estate planning documents. Mrs.
7 Barringer is right there with them and treats the
8 children equally. So we have this pattern of showing
9 that.

10 THE COURT: Mr. Twombly, what is your --
11 is it an interrogatory?

12 MR. TWOMBLY: Yes, Your Honor.

13 THE COURT: Read it to me.

14 MR. TWOMBLY: Yes. It's simple
15 interrogatories. It just says you contend she was
16 silent. Tell us what was said before and after
17 she was silent.

18 THE COURT: Is there a specific day and
19 time that you're alleging that this transpired?

20 MR. TWOMBLY: Yes.

21 THE COURT: I am asking you.

22 MR. TWOMBLY: Yes. That's what we would
23 like to know.

24 THE COURT: Are you alleging there is a
25 specific date and time that there was a meeting of

1 the minds between Ms. Luzak and the two people
2 that she was present for when her father was
3 discussing all this when she remained silent? Are
4 you just talking about the pattern of these
5 complicated --

6 MR. TWOMBLEY: What they are alleging is
7 that Ms. Barringer, my client, was silent. And
8 what I want to know is: When was she silent? Who
9 was there? What was said before she was silent or
10 what was said after she was silent?

11 THE COURT: How many times are you
12 alleging that this transpired?

13 MR. MEDLIN: Zero. I allege it
14 transpired zero. I'm asking discovery to them by
15 saying: You-all are saying she failed to pipe up.
16 You-all are saying she was silent at an improper
17 time. Tell me when. Tell me where. Who else was
18 there? What's your evidence; basic discovery
19 question. All I want to know is what the facts
20 are that support these claims.

21 Let's just presume, for example, that they
22 say these five people were there. Well, I might want
23 to go depose those five people. Who knows what they
24 might say. All I want to know is when they say she
25 was silent, when she failed to pipe up.

1 THE COURT: Mr. Medlin, I will give you
2 five minutes when we return to address those
3 points. There is about a 99 percent chance
4 you-all are answering that interrogatory. You-all
5 think about it over lunch. We will be back at
6 2:05.

7 MR. MEDLIN: Your Honor, we have answered
8 that interrogatory.

9 THE COURT: I want to see that exact
10 information, and I'll produce it from the Court.

11 MR. MEDLIN: Thank you, Your Honor.

12 (A luncheon recess transpired.)
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PROCEEDINGS CONTINUED

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THE COURT: All right. So you wanted to have a couple more minutes to keep the record straight, Mr. Medlin.

MR. MEDLIN: Yes, Your Honor. Thank you. Again, just going back to the point that it's a seamless wev of time between the '98 documents and the time of Mr. Barringer's death, where she did not speak up and say, "I know this is what you want to do, but I am not going to do it."

I am being asked to prove the negative. I can't prove the negative. I can't prove every single time that she was silent from December 4, 1998 to May 30, 2016.

What we can try to do is, if it's a concern that there were meetings where this was discussed and Mrs. Luzak was present or Mr. Luzak was present even, we can try to answer that, but we can't answer all the time that she was silent from 1998 to 2016, because it's an infinite universe of silence.

THE COURT: Find out from Mrs. Luzak how many of these estate planning meetings that she attended and what information, if any, she may have relevant to this interrogatory prior to the

1 discussion of the power of appointment before and
2 after or if she even recalls any discussion
3 whatsoever of the power of appointment. I think
4 that will satisfy it.

5 MR. MEDLIN: Your Honor, I think that's a
6 much narrower and focused way for us to try to
7 address it.

8 THE COURT: Well, we are going to find out.

9 MR. TWOMBLEY: It's just like Mr. Medlin
10 says. He gave us the hypothetical. I think it's
11 a great hypothetical. He said that Ms. Barringer
12 said, "Paul, I know this is what you want to do,
13 but I am not agreeing to do that. Okay"?

14 Who heard Mr. Barringer say, "This is what I
15 want to do."

16 THE COURT: I hold him to ask Ms. Luzak
17 if she recalls any discussion at any of these
18 estate planning meetings whereby the power of
19 appointment was discussed. If so, what was the
20 nature of that. That is what we have to find out.
21 We will start there.

22 MR. MEDLIN: Your Honor, just to clear
23 the record, I didn't say or sure didn't mean to
24 say that Mrs. Barringer had to say to Paul, "Paul,
25 you said this, and I will not do it."

1 THE COURT: He didn't say that.

2 MR. MEDLIN: She was silent when that was
3 going on.

4 THE COURT: That's correct. I understood
5 what he was saying.

6 MR. MEDLIN: Your Honor, as to Number 5, I
7 think we have answered that. We will answer it again.
8 It's to the provisions of the contract in the '98 --

9 MR. TWOMBLEY: I would like to look at
10 that, Your Honor. Number 5, I asked him a simple
11 question. They've alleged in their claim that
12 there was a contract between Merrill Barringer and
13 Paul Barringer. My simple question is: What are
14 the material terms of that contract?

15 THE COURT: They said it was implied
16 contract though, correct?

17 MR. TWOMBLEY: What are the material terms of
18 the implied contract?

19 THE COURT: Just answer it and say that you
20 are not sure what the implied terms were there, and if
21 Mrs. Luzak knows, answer it. If she doesn't answer
22 and be responsive and say, "She doesn't know."

23 MR. MEDLIN: Your Honor, again, I think
24 we said that. We will say it again. It's not
25 implied, we think it's express in the will.

1 THE COURT: Ask what Ms. Luzak remembers
2 what the express terms of the contract were.

3 MR. MEDLIN: We will handle that.

4 THE COURT: All right. Thank you.

5 MR. MEDLIN: Thank you, Your Honor.

6 THE COURT: All right.

7 Yes, ma'am.

8 MS. PAYLOR: Your Honor, I would like to
9 address the CFRC motion as Mr. Medlin got up there and
10 said that he wasn't seeking any damages from CFRC.

11 That is not what CFRC was arguing about.
12 They knew that they were not seeking any damages.
13 What they were saying was, if there is a derivative
14 claim, it belongs to the corporation and not
15 Mrs. Luzak.

16 She doesn't have a claim as an individual
17 stockholder. She needs to follow the process to
18 develop a relative claim. She has not done that. She
19 did it earlier which resulted in Virginia litigation
20 that she lost. A lot of it are the same allegations
21 that she now has in this case.

22 If you look at last cause of action, the 19th
23 cause of action, she alleges that there was a civil
24 conspiracy between Mr. and Mrs. Light and agents of
25 CFRC to injure plaintiff by selling assets of CFRC.

1 Any assets that were sold by CFRC were sold by board
2 decisions.

3 THE COURT: That's correct. What I am
4 saying, any of their causes of action in this
5 complaint have already been litigated in Virginia.
6 That's the way I took it.

7 MS. PAYLOR: Yes, sir. That's true.

8 THE COURT: That is what I was saying.
9 If it has been litigated in Virginia, it has been
10 litigated.

11 MS. PAYLOR: So it's done. So by res
12 judicata it would be gone.

13 THE COURT: What are the causes of
14 action?

15 MS. PAYLOR: It's the conspiracy cause of
16 action primarily. But the thing is, this Court
17 doesn't have subject matter jurisdiction to hear
18 any claims that are derivative. That has got to
19 be brought in Virginia. That is what they were
20 saying.

21 THE COURT: They also said they already
22 did that.

23 MS. PAYLOR: They have.

24 THE COURT: Those have been litigated.

25 MR. TWOMBLEY: Your Honor, it's not the

1 cause of action. It's the type damages.

2 THE COURT: Gotcha.

3 MR. TWOMBLEY: It's money damages for
4 corporate wrongdoing. If you are trying to get money
5 damages for something somebody at the corporation
6 did -- let's just assume hypothetically that Merrill
7 Light were to settle that case for \$1,000. Why would
8 Hampton Luzak get all of that money? She is only a
9 30-some-odd percent shareholder of the company. That
10 should go to all the shareholders.

11 That is why you have to bring these types of
12 claims derivatively. You have to bring them through
13 the derivative process. The money would belong to the
14 corporation, then it would then flow down to the
15 shareholders' pro rata. What is Ms. Luzak is trying
16 to do is just say, I am just going to end-run that
17 whole derivative process rolled into this.

18 THE COURT: When was she brought into
19 this?

20 MR. TWOMBLEY: I'm sorry?

21 THE COURT: When was CFRC brought into
22 this?

23 MR. TWOMBLEY: They just filed a motion
24 asking the Court that these types of damages that
25 Mr. Peer* went through each one of them. The

1 damages for improperly selling assets. The
2 damages for not following Mr. Luzak's investment
3 advise. The damages for the board hiring Travis
4 Bryan.

5 THE COURT: All of that is out.

6 MR. TWOMBLEY: I think we just wanted to
7 clarify.

8 THE COURT: Okay.

9 MS. PAYLOR: That's fine. When Mr. Medlin
10 got up, we misunderstood what he said. That was our
11 understanding; that all of those claims were out of
12 the case.

13 MR. MEDLIN: Your Honor, we are not suing
14 the corporation, so there is no pot of money that
15 the corporation is going to have to pay that is
16 going to be split up among the shareholders.

17 We didn't sue CFRC. They came in here to
18 intervene today on the issue of whether you have
19 subject matter jurisdiction over derivative actions.
20 By the way, we would disagree as to the issue of what
21 happened in Virginia is res judicata.

22 They raised those arguments in a motion to
23 dismiss and lost them in front of Judge Mullen. That
24 really takes us off track. Here is my understanding
25 of how a derivative action works.

1 A shareholder has a claim. The corporation
2 is supposed to handle that claim. If the shareholder
3 doesn't, then it's derivative to the shareholder to
4 bring this claim. We are not asking the corporation
5 to do anything. We have never asked the corporation
6 to do anything. We are suing individuals. If we win,
7 the money is going to come out of the individuals'
8 pockets and not companies pockets.

9 Let's talk about the illogic of what they are
10 arguing that CFRC apparently was trying to do today.
11 Again, I would say we didn't have fair notice of that
12 because their motion doesn't say that. They are
13 coming to you and saying, "You don't have subject
14 matter jurisdiction over derivative claims."

15 Let's assume for the moment that that is
16 correct. So you don't have subject matter
17 jurisdiction over derivative claims. Then they turn
18 around and say -- according to them -- "Your Honor,
19 you decide if these are derivative claims."

20 How can you do that if you don't have subject
21 matter jurisdiction over it? So not only did we not
22 get proper notice to throw out all the damages that we
23 have against Ms. Light individually and Randy Light
24 individually, but it's illogical to come in here as a
25 company and say, "We are worried about being liable"

1 when we are not suing the company. We have no
2 intentions of suing the company.

3 THE COURT: Mr. Medlin, you said you were
4 suing individuals in the corporation.

5 MR. MEDLIN: No.

6 THE COURT: That is what you said.

7 MR. MEDLIN: We are suing Mrs. Light, who
8 happens to own shares in the corporation in her
9 individual capacity. We are not suing her for what
10 she did with the company to the extent that it bound
11 the company.

12 THE COURT: Ms. Light is still in it. If
13 you are suing her individually, I don't understand
14 what CFRC has to do with any of this.

15 MR. MEDLIN: That's our point, Your Honor.

16 THE COURT: Somebody has to tell me what
17 they have to do with this. They don't have
18 anything to do with it, in my opinion.

19 MR. MEDLIN: We agree. We didn't sue
20 them. They came in here and tried to make their
21 argument for them, which, by the way, they can
22 make one day if they want.

23 THE COURT: I will let them make it.

24 MR. TWOMBLEY: Your Honor, I just want to
25 read, first of all, what was in CFRC's motion.

1 They moved to strike the first, second,
2 fourth, and sixth categories of damages. Let's just
3 assume hypothetically that a board of director of a
4 company steals \$10,000; and that the board of
5 directors and the CEO conspired with one another to
6 steal \$10,000 from the company. That is clearly a
7 derivative claim. The only way that claim can be
8 brought is through a derivative action.

9 One of the shareholders can't say, "I own one
10 share out of 1,000 shares, so I am going to sue the
11 board member individually, and I will sue the CEO
12 individually and I will get my dollar."

13 Then the next shareholder says, "You know
14 what? I own one share, and I am entitled so I am
15 going to bring another lawsuit against the board of
16 director and the CEO and I am going to try to get my
17 dollar."

18 Under that theory, you would have 1,000
19 individual lawsuits trying to collect these damages
20 for this \$1,000 that was allegedly stolen from the
21 company.

22 The point is that that is a derivative claim.
23 Under the law, there is only one way to bring that
24 claim. Number one, you have to follow the derivative
25 statute in the bylaws of the corporation, and that

1 must be done in Virginia. Then a judge can say,
2 "Okay. I am going to enter a judgment, not for
3 \$1,000, for \$500, and every shareholder is then
4 entitled to 50 cents from their damages.

5 under their theory, they bring this case of
6 these corporate wrongdoing and corporate damages -- I
7 mean, failing to follow the investment decisions and
8 hiring the wrong CEO. We can't litigate those claims
9 here.

10 So what the basis of CFRC's motion was
11 clearly was the Court to strike those damages and tell
12 Ms. Luzak, "You cannot seek derivative damages in this
13 will contest case in South Carolina."

14 They will try to upset the wills and change
15 them. She can still try to allege these other things.
16 But as far as corporation wrongdoing, I think that was
17 the point of their motion.

18 THE COURT: You-all can file a brief on
19 that, but my order stands. They intervened. I
20 granted. Those damages are gone.

21 All right is next?

22 MR. MEDLIN: Your Honor, again --

23 THE COURT: I don't want to hear anymore
24 arguments as to that, please. You can file a
25 brief if you would like to pertaining to that, but

1 I have made my ruling on that and I don't like to
2 be questioned anymore.

3 MR. MEDLIN: I am just asking for
4 clarification. The damages are gone as to CFRC?

5 THE COURT: Yes. You can sue Ms. Light
6 all day long.

7 MR. MEDLIN: Thank you.

8 THE COURT: All right. I have no idea what
9 number we are on, Ms. Karen. I lost track a long time
10 ago.

11 THE CLERK: That was a motion to compel.

12 THE COURT: That was the previous one. I
13 granted that one, and they are going to work on that.
14 That was just clarification by Ms. Paylor. So now we
15 are to the next one.

16 MR. TWOMBLEY: The next one, Your Honor,
17 is a motion for protective order that we filed.
18 The long and short of it is, in this previous
19 litigation that you have heard about that were
20 brought in Virginia, where Ms. Luzak resolved many
21 of these claims and lost on them.

22 Mr. Barringer was a party in that lawsuit.
23 He intervened in that lawsuit. He hired a lawyer in
24 Virginia named Bob Skulley to represent him.

25 Mr. Skully's deposition was taken.

1 Obviously, the primary purpose of deposing Mr. Skulley
2 is that he had a lot of interactions with
3 Mr. Barringer, and he can testify about whether or not
4 Mr. Barringer understood things and whether or not he
5 believed that Mr. Barringer had capacity, et cetera,
6 and so on.

7 The Plaintiff in that deposition tried to go
8 further than that. They tried to ask a whole series
9 of questions about the advice Mr. Skulley gave and
10 other questions that we contend violated the
11 attorney/client privilege.

12 I thought that they were going to take the
13 transcript and tell us which questions that they felt
14 Mr. Skulley was required to answer so that Your Honor
15 could look at the question and say, "Yes. He is
16 required to answer it. It's not privileged," or "No.
17 He is not required to answer. It's not privileged."

18 They didn't do that. They didn't file any
19 memo in response. All we're asking for is that the
20 Court protect Mr. Skulley from having to answer any
21 further deposition questions. There is clearly an
22 attorney/client relationship in place. They don't
23 question that. Quite frankly, I am not sure exactly
24 what their beef is about Mr. Skulley and which
25 questions he didn't answer because they didn't file

1 anything in response.

2 THE COURT: Have they noticed his
3 deposition?

4 MR. TWOMBLEY: No.

5 THE COURT: Do you-all plan on noticing
6 his deposition?

7 MR. MEDLIN: We have taken his
8 deposition, Your Honor. Again, it's an issue of
9 privilege and what is protected. If I am
10 recalling correctly, we did agree with Mr. Skulley
11 that once the transcript came out, we would do
12 what normally would be their burden. We would go
13 through and see what questions we wanted him to
14 answer, and then they can move for a protective
15 order on those questions for privilege.

16 I don't know that we have a time limit on
17 that. They are asking to protect Mr. Skulley under
18 that agreement that we had, but if we are going to
19 construe that agreement against us -- because there
20 was no time limit that I can recall. Was there a time
21 limit, guys?

22 MR. TWOMBLEY: I mean, his deposition was
23 in February. At no point in time once I filed
24 this motion -- actually, we filed it in February.
25 No one called me or wrote me and said, "Hey. We

1 are going to get the transcript."

2 I haven't heard anything. I have heard
3 absolutely nothing since the time it was filed. To
4 the best my knowledge, if you wrote me -- you-all are
5 shaking your heads -- and signed. If somebody emailed
6 me, tell me. I am happy to be corrected and say I am
7 wrong, but I am not aware of any email, any letter,
8 any phone call, any nothing from anybody saying "Let's
9 try to work out the Skulley issue."

10 MR. MEDLIN: Well, again, we were not aware
11 of any of it. I don't know that we have any concerns,
12 actually. I would just like an opportunity to discuss
13 that with you.

14 THE COURT: All right. You have 30 days
15 from today's date to notice his deposition or it's
16 over.

17 MR. MEDLIN: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. TWOMBLEY: The next one is the trial
20 dates. When we were in front of you the last time, we
21 were waiting on the Court of Appeals to rule. The
22 Court of Appeals came back and ruled and said the
23 order is not immediately appealable. The plaintiffs
24 are going to request a re-hearing, and they are going
25 going to take it to the Supreme Court of the universe

1 before it's all over. The simple question is, is Your
2 Honor going to allow them to stop the proceedings down
3 here based on this order that now the Court of Appeals
4 has said is not immediately appealable?

5 So I strenuously disagree that Judge Mullen
6 was not going to try Barringer, one, in March. She
7 said, we are going to try part of this case in March
8 of 2021. Then she bifurcated it and cut off this 1998
9 issue so we can try to get that established. We are
10 just asking the Court to please set a trial date on
11 that limited claim. It's a very discrete issue.

12 Judge Mullen said it could definitely be done
13 in less than a week. Judge Mullen said it could be
14 done in less than a couple of days. This case has
15 been pending since 2016, Your Honor.

16 THE COURT: You put in your proposal a
17 "not before" date of August 1st; is that still
18 your position?

19 MR. TWOMBLEY: I was trying to be brief.
20 Whatever Your Honor wants to do. Any reasonable
21 time -- I just feel like, you know, it has been
22 years and years. This is a narrow issue. This is
23 a simple issue.

24 THE COURT: I think you are contending
25 that it's going to take two weeks. Basically,

1 it's same trial twice. I heard all that argument
2 last time whenever I said, "Let's talk about a
3 scheduling order." We went on and on exhaustively
4 about how long it is going to take to try both of
5 these issues. The Court of Appeals is still
6 waiting. I think Mr. Traxler made that argument
7 as well with Mr. Medlin about it.

8 So I certainly know you-all's position, but
9 you think that it can be tried in one or two days just
10 as to the bifurcated 1998 issue?

11 MR. TWOMBLEY: Yes, Your Honor. I would
12 just point out that before you were invited to
13 this case, the plaintiffs made all of these
14 arguments. They extensively briefed them. They
15 argued to Judge Mullen, "Don't bifurcate. It's
16 going to take just as much time. It's going to
17 take forever."

18 I am happy to show you the briefing and point
19 to where they made each and every one of these
20 arguments. Judge Mullen denied them and said, "We are
21 going to have a bifurcated trial on this issues first
22 before any other issue in the case."

23 We just want to go ahead and get that rolling
24 as soon as possible.

25 THE COURT: Yes, sir.

1 MR. MEDLIN: Your Honor, first of all,
2 attached to our memo is the statement of Judge
3 Mullen, which I think took place at the summary
4 judgment hearing on this issue on October 15,
5 2020.

6 THE COURT: That is when she just indicated
7 that she wanted to try it in March of 2021?

8 MR. TWOMBLEY: I think so.

9 MR. MEDLIN: She said, "I want you-all to
10 talk about potentially trying this case" -- like I
11 said, Merrill Barringer's case on the 15th day of
12 March. At the status conference on April 15, 2021,
13 you talked about December. I just point out that
14 Judge Mullen's musings from the bench on October 15
15 before they had even filed a motion to bifurcate --
16 there was no case to try on Mr. Barringer until they
17 filed that on October 23rd, and she didn't grant their
18 order until December 30th.

19 What she said two-and-a-half months before
20 cannot be possibly binding. Your Honor, again, just
21 for the record -- and I know I may be trying
22 everybody's patience here today, but I do want to make
23 our points about the time that this trial will take
24 and the reason to delay it until at least December as
25 you indicated back at our April status conference.

1 THE COURT: I was just asking. I never
2 said a specific date. I have always just asked,
3 "How much time do you need," you-all were just
4 telling me that. I wasn't going to -- I think my
5 exact words were, "I am not going to make a
6 specific finding of anything. You-all are to
7 continue with the discovery, and as soon as we
8 hear back from the Court of Appeals, we will get
9 together and I will come up with a trial date."

10 I am pretty sure that is exactly what I said.
11 I don't know anything about December, because right
12 now you-all are picking between August 30th and
13 September 13th. Those are your two trial dates right
14 now, so it's definitely not going to be in December.

15 MR. MEDLIN: Again, Your Honor, just to --

16 THE COURT: I will give you the week too. I
17 mean, if you-all want the whole week, I will give it
18 to you. You-all are first up August 30th.

19 Put it on there.

20 THE CLERK: Yes, Your Honor.

21 THE COURT: Yes, sir.

22 MR. MEDLIN: For the record, I want to
23 make some points here. First of all, they have
24 claimed that somehow we have agreed that the only
25 issues to discuss are dealing with the power of

1 appointment that comes up under the 1998 will. By
2 their own actions today -- we are getting ready to
3 hear a summary judgment motion where they are
4 telling Your Honor in this argument that that 1998
5 will and trust were revoked by a valid February
6 28, 2012 will.

7 By the way, they take the position in this
8 lawsuit that there was a valid July 20, 2012 trust
9 that revoked the earlier trust and again in 2014 and
10 again 2015. So it is totally moot as to what happened
11 as to the 1998 will and trust if any of those
12 subsequent wills and trusts are valid. So that is one
13 concern.

14 Number two, as I have explained in the
15 earlier argument, the evidence that is going to go
16 into this is in no way limited to 1998. They said
17 that we argued that. We never did. If you look at
18 our second and third causes of action, it simply says
19 that Mrs. Barringer should be restrained from
20 exercising any power of appointment because either she
21 has been contractually obligated not to do it or she
22 has made an enforcement promise not subject to a
23 contract.

24 Just like we discussed in the previous motion
25 that we broke for lunch for, we have to show

1 everything that happened from 1998 until today, in
2 fact, to see whether she has ever admitted that she
3 has power of appointment or not to see if we can do
4 that. We are not limited to 1998. So not only is
5 their argument contradictory, they are judicially
6 estopped, Your Honor. They are saying, "Let's have a
7 trial on the '98 will and trust and only on the '98
8 will and trust." On the other side of their mouth,
9 they are saying, "But it's not valid."

10 THE COURT: Mr. Medlin, you can argue
11 that to the jury all you want. I'm giving you an
12 entire week to argue it. They are only going to
13 take a day or two, but whatever Judge Mullen
14 ordered, I am going to honor it. The only thing I
15 am simply doing is listening to what the Court of
16 Appeals just told us. It's not immediately
17 appealable. She has ordered that phase one of the
18 trial is to go forward, and it's going forward on
19 August 30.

20 How you choose to try your case -- anybody
21 who has ever tried a case with me is going to tell you
22 that I am not going to bring you-all in the back and
23 talk about it. I'm not going to bring you back there
24 and ask you if you are going to settle. I'm not going
25 to bring you back there and yell at you. I'm going to

1 come out here at 10:30 on a Monday, and I am going to
2 say -- I will explain to the jury that we are going to
3 pick them and we are going to have a trial. I do not
4 get involved with any way you-all want to do it. I am
5 happy to help you, assist you in any way prior to that
6 August date. If you want hearings, that's fine, but
7 Judge Mullen ordered something, and I am going to
8 abide by it.

9 MR. MEDLIN: Your Honor, she ordered --

10 THE COURT: The phase one trial.

11 MR. MEDLIN: The bifurcation?

12 THE COURT: Correct.

13 MR. MEDLIN: She did not limit --

14 THE COURT: I am not limiting you to
15 anything. I am telling you that you have one week.

16 MR. MEDLIN: Nor did she set a date.

17 THE COURT: That is what I am saying. I
18 am --

19 MR. MEDLIN: So we just want to point
20 out -- as far as the date and the time that this
21 is concerning -- they have said that the trial
22 will take several weeks. We don't disagree with
23 that. That is the other trial. Again, we have
24 got to make the same arguments, produce the same
25 evidence, look at the same documents. This isn't

1 going to be a one-week trial, Your Honor, unless
2 you cut it short.

3 THE COURT: It's going to be cut short. It's
4 going to be one week. And I am telling you that that
5 is what she ordered. I am not going to go outside of
6 her order. You-all appealed it. It's bifurcated.
7 She ordered it, and I am just honoring it and giving
8 you-all a week. That is all I can do.

9 MR. MEDLIN: Well, again, this is complex
10 litigation, and she never said the trial was going
11 to be limited to a week.

12 THE COURT: My point is that the next time
13 that there is a double term of court in Beaufort
14 County, it's going to be 2024. We were just told by
15 the -- when did she ask for it? In April? So that is
16 it. There are no double terms of Court in the entire
17 State of South Carolina, certainly not in Beaufort
18 County, unless you want to bifurcate it somehow and
19 have a week and then wait for three weeks and then
20 have it another week.

21 I don't know how you would do that. If
22 that's something that you-all want to argue or it's
23 something you-all want to look at, maybe we could do
24 that, but I have never seen it done before.

25 With that being said, it's probably 2021,

1 2022, 2023. Yeah. So we would have to then
2 re-request it for the second part of 2022. So we are
3 looking at another 18 months.

4 MR. MEDLIN: So, Your Honor, if I am
5 inferring correctly, that means that the other
6 trial, which is going to be complicated as well --
7 again, it's not going to disappear because of this
8 case. We are not going to have two or three weeks
9 to try that case for several years either?

10 THE COURT: Because we have already been
11 told to request the weeks, and nobody has
12 requested them. So at this point in time, there
13 is nothing you can do. You can go to Court
14 Administration, I guess, and ask for a separate
15 week. I have never done any of that. If you-all
16 allege that it's going to take that much time,
17 then that is probably something that we need to
18 explore and look at. If you-all want me to look
19 at it and maybe explore the option of bifurcating
20 the trial; meaning, the time period if you think
21 it's going to take more than a week and looking at
22 bringing the jury in this week and then waiting, I
23 guess, two weeks and then bring them back -- I
24 don't know if that is even allowed by the rules.
25 I never heard it before. I mean, I would have to

1 just ask somebody.

2 At this point in time, I think that we
3 discussed it with that date and see if we can move the
4 case and see if we can get it done.

5 MR. MEDLIN: Your Honor, again, I want to
6 make a couple of other points that are in our
7 brief. I would like to briefly discuss them for
8 the record.

9 We have no choice, as we understand it, but
10 to appeal Judge Mullen's ruling, because we are afraid
11 that if we don't, we will be deemed to have waived it
12 as it affects mode of trial. Of course, the Court of
13 Appeals after reviewing the memos decided that it was
14 not immediately appealable. We have filed a petition
15 for a re-hearing. Again, we think we have no choice.

16 If the Court of Appeals does what it
17 typically does with petitions for re-hearings, we will
18 then move on and file a petition with the Supreme
19 Court. If we happen to be right and the Supreme
20 Court, for example, says, "You are right. This does
21 affect the mode of trial, it should not have been
22 bifurcated," then we have wasted a week of the Court's
23 time, because we would have had a trial in the
24 meantime that we had to erase.

25 Number one, they want to have a trial dealing

1 with documents that they claim are revoked.

2 THE COURT: How long is it going to take
3 for the Court of Appeals to rule on their
4 re-hearings? I do them the same day. I either
5 grant them or deny them.

6 How long does it typically take the Court of
7 Appeals?

8 MR. MEDLIN: I don't know, Your Honor. I
9 have learned I can't predict that.

10 THE COURT: I agree with you. I just
11 didn't know how long those typically took.

12 MR. MEDLIN: Right. Number two, we still
13 have discovery to do to be able to fairly present
14 our case. We need to finish some depositions. So
15 to have us do all of that, try a case that may, in
16 fact, be meaningless -- and according to their own
17 position as meaningless -- without having an
18 opportunity to do discovery because; again, at the
19 very earliest we had assumed for the last five
20 weeks that we were looking at December based on
21 the discussion we had back in April.

22 The COURT: Mr. Medlin, I know you don't know
23 my personality. I know people that think that I am
24 very, very patient, and I think I am very patient. I
25 mean, this is a 2016 case. I know it's a ton of

1 money. I get it. I get it's a complex case. I get
2 it, but it's ain't five years coming. It's just not.

3 So we have got to do something. Just stop
4 all of this back and forth between you-all and all
5 these letters and all of this stuff has got to stop.
6 We have got to try this case. Let's pull our pants
7 up, and let's get this thing done. That is my
8 position.

9 I am never going to snuff out anybody's
10 opportunity and abilities to do the right thing, which
11 is to appeal me, which is to appeal Judge Mullen,
12 which is all of those things. I am just trying to get
13 this case moving in the right direction, and it seems
14 to me that nobody wants it to go in the right
15 direction. I mean, you have had, like, three
16 different dates that Judge Mullen has set for trial,
17 and you-all just railroaded right by them like they
18 didn't even exist.

19 I am saying it's time to get something
20 dispositive done in this case, and I'm going to do it.
21 I would just take that for what it's worth for right
22 now.

23 MR. MEDLIN: I appreciate that. And just so
24 you'll know, my client has been anxious to try this
25 case -- not the bifurcated case because he think

1 that's baloney -- but the case as well. Now, again,
2 remember, in complex litigation, we have had a
3 year-and-a-half off for COVID, which --

4 THE COURT: Nobody lost a year-and-a-half. I
5 do not take that argument, and here's why: I sat in
6 this chair with that law clerk in front of this
7 computer every day and did CPNJ motions. I did 1,086
8 of them in Charleston and surrounding counties.
9 Nobody lost anything because of me. Nobody lost
10 anything because of the Court. And people say they
11 lost a year? They lost a year of court time. I get
12 it, whenever you're going to come in here and have the
13 threat of the jury trials, I get that. You lost that.
14 I understand that.

15 But you didn't lose the year at all, because
16 you can still take that position. You can still
17 participate in discovery. You could still do all the
18 things that you normally could do, except for have the
19 threat of trial. Now we have it, and it's time to get
20 going.

21 MR. MEDLIN: Your Honor, there was a
22 period of time that we weren't able to do
23 anything. We did a lot of depositions by Zoom.
24 We were careful about depositions because there
25 are so many elderly witnesses in this case. In

1 fact, they will be showing up in person in the
2 courtroom as well.

3 THE COURT: I will do this for you. I
4 will take it under advisement as to that August
5 date. You-all continue to work for it, but this
6 case is certainly under appeal with the Supreme
7 Court. I am not going to allow it to go forward.
8 Obviously, I can't, but I want to make sure that
9 if something were to transpire and it comes down
10 that that we have that date available.

11 So that's where are going to leave it for
12 right now, but if something changes, it's not going to
13 be a hard and fast date. I will be open to moving it,
14 but we've got to set a date and start telling these
15 witnesses that it's time to get their things together.

16 MR. TRAXLER: Your Honor, I don't mean to
17 argue against what you are saying. I just want to
18 give you a heads-up as to procedurally how I see
19 things unfolding.

20 THE COURT: All right.

21 MR. TRAXLER: We do have a petition for
22 re-hearing before the Court of Appeals. How long that
23 is going to take, I don't know. My experience, which
24 is kind of scant, is that it takes a little while. A
25 petition for cert takes a pretty good amount of time.

1 I understand what you are saying, but to give the
2 Court a heads-up, we are going to find ourselves in
3 the position of having to move before you and the
4 Appeals Court for a supercesuperceded on that. We
5 are not tee-ing it up now, but I just wanted to be
6 fair with the Court to let the Court know what might
7 be coming down the pike. I think it's important that
8 we huddle together and try to figure out a date as to
9 when this can happen. I don't tell you that as a
10 threat. I don't tell you that for any reason other
11 than that I don't want to ambush anybody.

12 THE COURT: All right. It's on the record.

13 MR. TWOMBLEY: Your Honor, there is one
14 point, I think, that you might want to understand.
15 Their entire appeal is premised on the fact that there
16 might be a bench trial before there is a jury trial.
17 Then if there is a bench trial before there is a jury
18 trial, that would deprive them of their right to a
19 jury trial on everything. Your Honor has just said
20 that there is going to be a jury trial August 30.
21 That totally and completely moots out their appeal.
22 If you are going to do a jury trial, they are going to
23 get their right to a jury. They are going to have the
24 opportunity to be heard.

25 No one's mode of trial is being impaired,

1 because their argument is that they get a jury trial
2 on everything. You have said you are going to do that
3 August 30. So, fine. The appeal is moot. If we are
4 going to do a jury trial on the bifurcated claim,
5 that's it. So I would also just point out that if a
6 litigant can just appeal an order and stop everything
7 down below, I mean, that could go on until infinity;
8 because we could be before trial and we could file a
9 motion in limine and you could deny it. We could say,
10 "Well, Judge, we have to appeal that," so that stops
11 the trial.

12 I mean, that's kind of what they are trying
13 to do. So the more important point, though, is that
14 if Your Honor is saying there is going to be a jury
15 trial on August 30 on the bifurcated claims, they are
16 not being deprived of their mode of a jury trial, and
17 the appeal is no longer an issue.

18 THE COURT: For the record, that is the
19 first time I have heard anything about a bench
20 trial.

21 MR. TWOMBLEY: Well, I would love to
22 briefly address that. I think I can do it in less
23 than two minutes.

24 THE COURT: Sure.

25 MR. TWOMBLEY: As I told you when we were

1 in front of you before, I am happy to do a bench
2 or a jury trial on the bifurcated claims. The
3 plaintiffs' argument that they may be deprived of
4 a mode of trial if you do a bench trial first and
5 then you do a jury trial second -- plaintiff is
6 correct that if the first trial is resolved by
7 bench trial, that decides factual issues that are
8 at play in the jury trial.

9 If Your Honor decides the factual issues in a
10 bench trial are later at play in a jury trial, then
11 the plaintiff would, in fact, be deprived of the
12 plaintiffs' right to have a jury determine those
13 facts.

14 So I agree with the premise of plaintiffs'
15 arguments, but here is where it fails. The bifurcated
16 trial is only going to involve what we argued the
17 whole time and what we believe Judge Mullen agreed --
18 the bifurcated trial, the first one, is only going to
19 involve 1998. They have taken the position in
20 discovery that this promise and this contract was in
21 place by December 4, 1998. That is what they have
22 alleged.

23 Now, what Judge Mullen was saying is, look.
24 We can deal with that one little issue; right. We are
25 talking about December 4, 1998. What is their

1 evidence that there was a contract in place before
2 December 4, 1998? Who knows what may have happened
3 after December 4, 1998? I don't think Judge Mullen
4 wanted to resolve any of that. It's too big. It's
5 too complicated.

6 What she said is, we are to eat this
7 elephant one bite at a time. We are going to deal
8 with December 4, 1998. That is going to be what the
9 bifurcated trial is on. Mr. Medlin has always argued,
10 and he argued it to Judge Mullen until they were blue
11 in the face, both of them -- probably Judge Mullen
12 worse. They argued every single fact dealing with
13 what happened before December 4, 1998 is the same
14 facts as what happened until the time of
15 Mr. Barringer's death.

16 THE COURT: Sure. The silence of Mr.
17 Barringer.

18 MR. TWOMBLEY: Well, you see -- in order
19 for this promise or contract to have affected the
20 December 4, 1998 document, Mr. Barringer would
21 have had to rely on it prior to signing the
22 December 4, 1998 document. So what happened after
23 that is irrelevant.

24 So if Your Honor does, in fact, limit the
25 first trial to what happened prior to the time

1 Mr. Barringer executed his December 4, 1998 will and
2 trust and we try that one issue and only that issue --
3 number one, you can do it by bench trial and you will
4 not affect any of their mode of trial, because you are
5 not going to be deciding any issue about what happened
6 after December 4, 1998. There is no appellate issue
7 at all.

8 I will assure you that if you limit the
9 evidence to what they have got to what happened up
10 through December 4, 1998, that trial can be done in a
11 day. It can be done in one day. The reason is is
12 because they don't have any evidence, Your Honor. The
13 reason we know that is because we have asked them that
14 over and over in discovery 100 different ways. All
15 they say is, gobbly-goo gibberish. They have no
16 witness. They have no one who is going to come
17 forward and say they knew about this contract; that
18 they heard about this promise. Hampton Luzak and
19 Kevin Luzak have both executed extensive affidavits.
20 They don't mention the word promise. They don't
21 mention the word contract. Let's put them on the
22 stand and let's have them testify about what they know
23 about prior to December 4, 1998 and that can be done
24 through a bench trial.

25 If Your Honor wants to do it, I am perfectly

1 agreeable to that.

2 And one other point I would like to mention.
3 My client is 89 years old. She is 89 years old. This
4 has been going on for almost six years now. It needs
5 to be resolved while she is around. That is a serious
6 concern of mine and hers, particularly on this alleged
7 theory that she entered into a contract with her
8 husband, never to exactly what her estate planning
9 documents and his estate planning documents say she
10 could do.

11 MR. MEDLIN: Your Honor, there is so much
12 to unwind about what he just said that is off-base
13 that -- I again apologize for trying your
14 patience, but I have got to try to unwind that.

15 Number one, in an answer to an interrogatory
16 asking when is the latest that Mr. and Mrs. Barringer
17 entered into a contract, we said "No later than
18 December 4, 1998." That is when they executed the
19 1998 will and trust. We didn't see anything about a
20 promise before that. I couldn't disagree more with
21 Mr. Twombly's statement. There doesn't have to be a
22 promise before they sit down and sign their documents
23 where one gives the other a power of appointment and
24 the other says, "I am not exercising it."

25 So December 4, 1998 is the first day.

1 Mr. Twombly is right about one thing. If we were
2 going to try what happened before December 4, 1998, it
3 would be a very short trial, but it has nothing to do
4 with anything. The contract came into being on
5 December 4, 1998, and it stayed in place in various
6 iterations, depending on whether there are subsequent
7 documents or not, until Mr. Barringer dies. Then it's
8 a binding contract at that point on her.

9 Again, we have other ways to enforce it with
10 a promise. This notion that somehow this trial is
11 supposed to be about what happened before December 4,
12 1998, is absolutely off-base.

13 THE COURT: What they are saying is that
14 you have alleged in your complaint that there was
15 a meeting of the minds between Mr. and
16 Mrs. Barringer and that Mrs. Luzak knows about
17 that there was some type of agreement between the
18 two that she would not change or honor the power
19 of appointment at this said meeting.

20 They are asking, how do you know that? I
21 understand, Mr. Medlin, you beat it into me. You have
22 successfully done it. Your position is that that is
23 when it started. She was silent then, and then she
24 was out there, there, and there. But you have alleged
25 that on that day, that was the secret meeting. I want

1 to know who knows about this secret meeting, and who
2 is going to come in here and sit there and tell me
3 about this secret meeting.

4 MR. MEDLIN: Your Honor, this argument
5 has nothing to do with the secret meetings that I
6 am talking about. There are several arguments
7 that we have about the power of appointment and
8 why Mrs. Barringer cannot exercise it. One is the
9 existence of a contract not to exercise. That
10 didn't occur at the secret meeting, and it isn't
11 silent. There are documents that create that very
12 contract on December 4, 1998.

13 We have other arguments as well, which South
14 Carolina law allows us to argue; that is, that Mrs.
15 Barringer never again said she would exercise the
16 power of appointment, and her silence is enough to
17 bind her.

18 THE COURT: It goes back to what you said
19 earlier. You are making them prove the negative.

20 MR. MEDLIN: No, no. I'm not making them
21 prove the negative. If they know she said that,
22 all they have to do is produce that and show up.
23 By the way, we didn't get to ask the question in
24 her deposition because they cut it short on that
25 deposition too.

1 So first of all, the idea that this
2 bifurcated case is about what happened before
3 December, 4, 1998 is totally unrelated.

4 THE COURT: I got it. But Mr. Medlin,
5 that's your opinion. You argued it to Judge
6 Mullen, and she made her ruling. It has been
7 appealed. I am going to honor her ruling, and we
8 are moving forward.

9 MR. MEDLIN: Your Honor, may I address
10 something else that Mr. Twombly said?

11 THE COURT: I --

12 MR. MEDLIN: Your Honor, just for the
13 record -- I'm sorry. I know I have the ability to try
14 people's patience.

15 THE COURT: You are not trying my patience.
16 It's just that we have 37 motions, and we are talking
17 about the same thing over and over and over.

18 MR. TWOMBLY: We have waited for six
19 years, Your Honor.

20 THE COURT: We have got to get this case
21 moving. So, no, I do not want you to address anything
22 that Mr. Twombly said. Let's move on; all right?

23 I have ruled on that motion, and we are
24 going to the next one.

25 All right.

1 MS. PAYLOR: Thank you, Your Honor. I am
2 representing Merrill Light, Alice Paylor. We have a
3 motion for summary judgment as to the February 28,
4 2012 testamentary documents. In Causes of Action 7,
5 8, and 9, the Plaintiff states that these documents,
6 the will and trust, are invalid due to Mr. Barringer's
7 lack of capacity, due to undue influence, or due to
8 mistake.

9 Plaintiff has failed to present sufficient
10 evidence to show that there is a genuine issue as to
11 any material fact as to February 28th.

12 MR. MEDLIN: Your Honor, may I?

13 THE COURT: No. She's making an argument for
14 her motion, which I asked her to make.

15 MR. MEDLIN: This would be procedural as to
16 whether we would even go forward with this.

17 MS. PAYLOR: I am going to make that
18 argument right now.

19 THE COURT: Go ahead, Ms. Paylor.

20 MS. PAYLOR: The plaintiff spent the first
21 seven pages of their memo arguing that Judge Mullen's
22 denial -- I made a motion for summary judgment as to
23 all of the causes of action.

24 Mr. Medlin argued just like he did today. He
25 would not address specific documents. He just made

1 this long argument, and Judge Mullen denied my motion.

2 I am coming back here today to start addressing
3 each of the documents in a motion for summary
4 judgment. So today we will look at February, 28,
5 2012. They say that her denial is the law of the
6 case. Let me read to you from several South Carolina
7 Appellate Court cases.

8 This is from Smith v. Breelove(phonetic)at
9 661 Southeastern 2d 67. "The fact that a different
10 trial judge previously denied a motion for summary
11 judgment does not preclude the moving party from
12 renewing its motion once new evidence is gathered."

13 THE COURT: So the discovery has
14 continued on, so you are simply just making a
15 motion?

16 MS. PAYLOR: That's correct, Your Honor.

17 THE COURT: I will be happy to hear your
18 motion. Go ahead.

19 MS. PAYLOR: Thank you, Your Honor. The
20 most interesting thing about Plaintiffs' memo,
21 Your Honor, Your Honor, is that she never once
22 mentions the three requirements for testamentary
23 capacity. This is a professor of probate law. He
24 neglects to tell the Court that to have
25 testamentary capacity, there are only three

1 requirements. One is that you know who your
2 children are.

3 Two, you know generally what your assets are.
4 Three, you know to whom you want to give your assets.
5 It's pretty simple. It's a very low bar. The whole
6 law is about letting people give their assets to the
7 people they want to receive them. They have not
8 given -- they don't even mention that in their whole
9 memo. They don't have a single fact that indicates
10 that Mr. Barringer on February 28, 2012 did not know
11 who his children were. He clearly did. He signed a
12 will where he talked about all three of them in there.
13 Mr. Jolley has testified that he participated in
14 multiple meetings in drafting the testamentary
15 documents that he wanted. He was not a puppet.

16 Merrill Light was not present during any of
17 those meetings that they drafted them. For that
18 reason alone, we are entitled to summary judgement as
19 to the attack to his testamentary capacity on February
20 28th. In her memo she replies exclusively on a
21 contractual capacity case. Gay v. Douglas (phonetic).
22 This is a 2004 case about a woman who had very severe
23 dementia. Her doctor testified that she had the mind
24 of a five- to six-year-old child.

25 The facts are that some kinfolk who had

1 nothing to do with her came to town and basically
2 kidnapped her. They took her to their lawyer and got
3 her to sign a new will leaving everything to those
4 relatives. The case involved a power of attorney.
5 That requires contractual capacity, which is higher
6 than testamentary capacity.

7 The unbelievable part of plaintiff's memo
8 is that they rely on expert testimony given about
9 Mrs. Gaddy in 2004. That is not admissible
10 evidence in this case, Your Honor. They say that
11 the Court related the testimony that a person may
12 have dementia that can lead to Alzheimer's
13 disease. They now want to say that if once
14 somebody has dementia, that can lead to
15 Alzheimer's Disease and that person is forever
16 incapacitated.

17 THE COURT: I thought Mr. Twombly said
18 there was a certificate of competency in 2012,
19 2013, and 2014.

20 MS. PAYLOR: His doctors testified that he
21 was fine. He had testamentary capacity until perhaps
22 October, November of 2015. So that is in there. So
23 they rely on this testimony that is in the Gaddy case.
24 In fact, in our case there is no doctor who has opined
25 or ruled that Mr. Barringer did not have testamentary

1 capacity. Not even their hired expert gave any
2 opinion about his lacking testamentary capacity.

3 In the Gaddy case, the woman was still alive.
4 She was totally demented and not lucid. We have no
5 testimony that Mr. Barringer was totally demented and
6 not lucid in 2012, 2013, 2014, and early 2015.

7 Plaintiffs' total reliance on Paul Barringer
8 being chronically incapacitated from 2011 until his
9 death is not supported by any fact or evidence.

10 Plaintiff is essentially telling this Court
11 that they don't need to prove testamentary capacity on
12 February 28, because Paul Barringer was chronically
13 incapacitated, even though there is no evidence of
14 that. They set forth all of these facts and
15 evidence -- that I know Mr. Medlin is going to go
16 through ad nauseam, all of which occurred, or most of
17 which occurred, after February of 2012 when these
18 documents were signed.

19 What they did is ignore the footnote in the
20 opinion where the Court said, "We in no way suggest
21 that all people suffering from some degree of dementia
22 or Alzheimer's Disease or otherwise invariably lack
23 contractual capacity."

24 "We mulled over the subject of contractual
25 capacity of one suffering dementia should be decided

1 in a fact-driven individualized manner.

2 "There may well be situations where an
3 individual at the onset of Alzheimer's Disease or in
4 the early stages of dementia may retain sufficient
5 capacity to contract."

6 That was not the case in the Gaddy case. The
7 woman was incapacitated.

8 If you look at the affidavits submitted by
9 the plaintiff and her husband, they never say that
10 Mr. Barringer did not know who his children were, what
11 assets he owned, and to whom he wanted to leave his
12 assets. They say that he became unreasonably angry
13 with plaintiff's husband because of what Kevin Luzak
14 planned to do with Paul Barringer's company. That is
15 not chronic incapacity nor testamentary incapacity.
16 That is Paul Barringer exercising his right to make
17 decisions about what his company was going to do.

18 In fact, this man had plenty of capacity. He
19 figured out exactly what plaintiff's husband was
20 planning on doing. He was planning on selling CFRC's
21 assets and using them to make investments out of which
22 Kevin Luzak would personally benefit. Paul Barringer,
23 "Mr. Chronically incapacitated," figured that out.
24 That is what sent him crazy after Kevin Luzak. My
25 client Merrill Light had nothing to do with it.

1 Kevin Luzak talks about business with Paul
2 Barringer. If he thought he was chronically
3 incapacitated, why was he meeting with him and telling
4 him about his plans to diversify the business?

5 The undisputed facts -- and I took these
6 from what they submitted, Your Honor. I was going
7 to take the one before February 28, 2012, since we
8 are only talking about that time frame.

9 Mr. Barringer was running a complex
10 company at that time. He was making his own
11 individual decisions about all of his investments.

12 Even Dr. Sanders never opined that Mr.
13 Barringer lacked capacity.

14 In their affidavits, the only thing that
15 plaintiff says about Mr. Barringer prior to February
16 28, 2012 stated, "At Christmas in 2011 Paul Barringer
17 was having trouble with his memory and he was having
18 trouble speaking." That is not testamentary capacity,
19 Your Honor. She testified in her deposition that the
20 plaintiff attended a family meeting on February 18,
21 with her father, Defendant Merrill Light, and
22 plaintiff's husband Kevin Luzak.

23 At that meeting she said that Mr.
24 Barringer was not upset with her husband about the
25 direction of CFRC and participated in the

1 discussions.

2 That does not show lack of testamentary
3 capacity by either plaintiff nor her husband when
4 Paul Barringer executed his estate planning
5 documents on February 28, 2012. She has no proof
6 of lack of testamentary capacity at the time of
7 the execution or even at that time. In her
8 deposition she was asked:

9 "QUESTION: "Did you allege that anybody did
10 anything improper prior to February 28, 2012?"

11 "ANSWER: "I don't know."

12 "QUESTION: I understand you don't know, but
13 I am trying to find out what is going to be the basis
14 of your claims at a trial, so I am trying to find out
15 if you believe that anybody did anything wrong prior
16 to February of 2012.

17 ANSWER: "I don't know."

18 QUESTION: "I am trying to talk about facts
19 to support allegations. Can you tell us anything
20 today that you believe that anyone did wrong prior to
21 February of 2012?"

22 ANSWER: "I don't know."

23 QUESTION: "You are not able to tell us
24 anything today?"

25 ANSWER: "Right."

1 In Kevin's affidavit in Paragraph 12, he
2 states that starting in early 2011 Paul Barringer
3 needed help with numbers and his memory started to
4 deteriorate while his behavior became erratic. That
5 is not evidence of lack of testamentary capacity.

6 They cite an email from Tom Evans, the chief
7 operating officer for CFRC where he sent an email to
8 Mr. Luzak, who was the CEO at the time and stated that
9 Mr. Barringer was confused and not himself. That is
10 not evidence of lack of testamentary capacity.

11 In a February email Randy Light expressed
12 concern that Paul Barringer was experiencing different
13 health issues that affect his judgment regarding
14 everyday decisions, personally and businesswise. That
15 is not evidence of lack of testamentary capacity.

16 In January of 2012 Randy Light emailed that
17 Paul Barringer was exhibiting irrational behavior.
18 That is not evidence of lack of testamentary capacity.
19 In fact, for most of those things in the deposition of
20 Randy Light, he said that he was talking about
21 Mr. Barringer being concerned about his son Victor
22 Barringer because his company had really gone out of
23 business.

24 None of these statements are evidence that
25 Paul Barringer did not know who his children were, did

1 not know what assets he owned, did not know to whom he
2 wanted to leave his estate.

3 We now have John Jolley's deposition, Your
4 Honor. He testified that prior to execution on
5 February 28, 2012, he met with Mr. Barringer on
6 multiple occasions. He testified that he had no
7 reservations that Mr. Barringer was being unduly
8 influenced or lacked capacity to execute the
9 documents.

10 Robert Slane, who was Mr. Barringer's estate
11 planning guru -- and he is a life insurance agent. He
12 also met with Mr. Jolley and Mr. Barringer on a number
13 of occasions. He said that he had no concerns about
14 Paul Barringer's capacity for being unduly influenced.
15 When asked if Merrill Light was at any of the
16 meetings, he said, "She came one time because she
17 drove him to the office from a doctor's appointment."
18 They said, "What was her participation in the
19 meeting?"

20 His answer was, "None. None. She sat with
21 him." Rebecca Bostick who witnessed the execution at
22 Mr. Jolley's office saw no evidence of confusion or
23 lack of cognition. There is no evidence of lack of
24 capacity.

25 Let's look at the medical evidence. The

1 records and testimony of Dr. Paul Long,
2 Mr. Barringer's long-time treating physician saw him
3 on a very regular basis. Mr. Barringer had been
4 diagnosed with prostate cancer and had radioactive
5 seeds put into him in late 2011. He was having a lot
6 of urinary tract issues, and he was seeing Dr. Long a
7 lot.

8 During this time same time frame, he first
9 complained of having some cognitive issues. Dr. Long
10 testified that he sent Mr. Barringer to the Mind
11 Center, someplace that gave tests to predict whether
12 or not a person may have significant dementia in their
13 future. He said that he gave a 60% chance that Paul
14 Barringer might have some significant dementia in the
15 future, but he said nothing about his current
16 abilities.

17 Dr. Long sent Mr. Barringer to a
18 neurologist, Dr. William Garrett. Dr. Garrett
19 sent a letter, which is in Dr. Long's file. He
20 found that Mr. Barringer had some difficulty with
21 abstract reasoning but didn't have any significant
22 dementia.

23 On January 3, 2012, Paul Barringer visited
24 Dr. Long, and he complained of short-term memory loss.
25 Dr. Long gave Mr. Barringer a mini-mental status exam.

1 He got a perfect score. So Dr. Long testified that he
2 was not worried about his cognition. That was in
3 January of 2012.

4 On January 16 Dr. Long testified that
5 Mr. Barringer visited him and told him that his
6 condition was improved. He had a letter from Dr.
7 Garrett that said that he did not believe that
8 Mr. Barringer had Alzheimer's Disease. Dr. Long
9 agreed with that as well.

10 So we have a neurologist who had seen him as
11 well as Dr. Long. On February 16 and February 27,
12 2012, Paul's Barringer visited Dr. Long complaining
13 about urinary issues, which can cause confusion. No
14 mention was made of dementia, except Dr. Long stated,
15 "He has dementia, but it is mild."

16 At that time Mr. Barringer was driving
17 himself. He was going to doctor's appointment on his
18 own. He was visiting CFRC facilities. He was flying
19 in the plane. He was driving himself when he got
20 there. Hunting. He was still hunting. He was doing
21 everything.

22 Plaintiff has no evidence that Paul Barringer
23 lacked testamentary capacity on February 28, 2012.
24 The defendants are entitled to summary judgment on the
25 seventh cause of action for the February 28, 2012

1 testamentary document.

2 They also claim he was subject to undue
3 influence by my client Merrill Light. They cite all
4 of these cases and they say, okay, you can use
5 circumstantial evidence to prove undue influence. One
6 of the cases they cite is Berg v. Berg. In that case
7 the Court said, "You may use circumstantial evidence,
8 but the circumstances must point unmistakably and
9 convincingly to the fact that the mind of the testator
10 was subject to that of some other person so the will
11 is that of the last and not the former.

12 So they have to prove that Merrill Light
13 substituted her will for Mr. Barringer's. She got
14 him to do things that he didn't intend to do.
15 Your Honor, they cannot do that, because that did
16 not happen.

17 In Calhoun v. Calhoun, the Court discussed
18 the age-long South Carolina policy of the individual's
19 freedom to dispose of his property as he desired.
20 That is why the testamentary bar is so low. They did
21 not find sufficient evidence in that case to submit
22 the question of undue influence to a jury, which is
23 basically what we are asking here. It shouldn't go.

24 They said there was no proof of coercion or
25 interference in any way by the chief beneficiary in

1 the making of the will. Great importance was attached
2 to the fact that the testator had improper opportunity
3 to change it.

4 In the February 28, 2012 will, there was not
5 a chief beneficiary, other than Mrs. Barringer. She
6 was going to get everything. Then if she did not
7 exercise her power of appointment, the assets were to
8 be split evenly between Merrill Light, Hampton Luzak,
9 and Victor Barringer. There is not even a chief
10 beneficiary in that. The plaintiff has no proof of
11 coercion or interference by Merrill Light in the
12 making of Paul Barringer's will. She testified to
13 that, Your Honor. That is what I read to you earlier.

14 Instead of addressing the February 28, 2012
15 documents, plaintiffs' memo pointed to numerous
16 alleged actions, which we dispute, that the Plaintiff
17 claims happened after February 28, 2012, that she
18 believes shows undue influence.

19 She presented no evidence of any alleged
20 undue influence prior to the execution of the February
21 28, 2012 testamentary documents.

22 Although Paul Barringer had previously named
23 his son Victor as his first successor co-trustee, he
24 changed that and named Merrill Light, who was his
25 oldest child and who lived in Hilton Head. She knew

1 where he lived, and she was always available to him
2 and his wife. He made her a co-trustee. This was
3 done on the advice of Robert Swain and John Jolley,
4 his two advisors.

5 There is no evidence that Merrill Light did
6 anything to influence her father to name her as a
7 co-trustee. Instead the only evidence is that she was
8 chosen because she lived near her parents and was
9 available if they needed her. Plaintiff lived in New
10 York City and Jackson Hole, Wyoming. She very
11 infrequently came to Hilton Head.

12 Victor lived in Charlottesville, Virginia and
13 had health issues. All of the evidence, Your Honor,
14 is that Merrill Light was a beautiful daughter and did
15 what her parents wanted her to do. She was always
16 there for them. Even Kevin Luzak recognized that when
17 he told plaintiff, his wife -- he recorded this
18 conversation with his wife. This was after he had
19 been fired.

20 She was upset because Merrill had voted with
21 her father to fire her husband. He said, "She was
22 just doing what her parents wanted her to do" when she
23 voted with her father to fire him.

24 Kevin says, "I am not mad at Merrill at
25 all. Trust me." She had made it clear. She

1 said, "I cannot vote against my father." This is
2 the father who had given each of his children
3 super wealth. They didn't have to work. They had
4 hundreds of millions of dollars in assets.

5 He then said, "I understand exactly why she
6 voted against it, and I frankly expected it." He
7 said, "She's trying to do the best thing she can. She
8 is not trying to hurt me. She is not trying to hurt
9 you. She feels your mother manipulated her into a
10 corner, and there is nothing she can do about it."

11 >Your mother has manipulated her into a
12 corner." She voted with her father because her father
13 wanted her to vote. She had great loyalty to her
14 father.

15 Then they attack Randy Light, her husband,
16 saying he filed bankruptcy. Randy Light never filed
17 personal bankruptcy. That is the most misleading
18 statement. Randy Light got involved in some real
19 estate deals in Texas with some other people. He was
20 not there. Those two people -- it went south. When
21 the economy busted in the early 2010, 2011, in there.
22 He stuck around and did what he had to do. Everybody
23 else left. He did the right thing. He paid off all
24 of his obligations in the summer of 2012.

25 He did borrow money from his wife, who had

1 plenty of money. There is nothing wrong that. For
2 them to say he was desperate for money and would do
3 anything for it, that is just a total fabrication, and
4 they have absolutely no evidence of that. For them to
5 continue to slander this poor guy who is now dead is
6 just beyond me.

7 Kevin Luzak also had a company that went
8 into bankruptcy. They didn't talk about that. He
9 is the greatest guy in the world, according to
10 them. Kevin Luzak never mentioned Randy Light in
11 his discussions about his father-in-law, because
12 Randy Light had no influence over Paul Barringer.
13 Paul Barringer made his own decisions. No one
14 took over his will and told him what to do.

15 They laugh and said, "Paul Barringer was John
16 Wayne." You know where he got that name from? He got
17 that name from a banker he met in late 2011 and early
18 2012. She met Paul Barringer when he was getting
19 ready to move all of his assets from BB&T to Wells
20 Fargo Bank. She testified that man knew everything he
21 owned. He asked questions about all of his
22 investments. This is when he is supposedly
23 chronically incapacitated. She said they nicknamed
24 him in the bank John Wayne because he was such a
25 strong personality, and you knew what he said was what

1 he meant to say. Nobody was going to tell him to do
2 something he didn't want to do.

3 In fact, Paul Barringer himself said
4 Hampton Luzak caused an irreconcilable rift in their
5 family, and he didn't see that there was any way to do
6 anything about it.

7 What they don't talk about is they say
8 they chased Kevin out of the house. Paul
9 Barringer reached out to Hampton Luzak with
10 handwritten letters over the years begging her to
11 come back and be part of the family. She cut them
12 out just like she cut her brother out in 1999.
13 She got mad at Victor Barringer in 1999. Guess
14 what? She has never spoken to him in the 22 years
15 since then.

16 She never responded to her father. She never
17 made any effort to get back with her family. Guess
18 what? It didn't matter. She has had -- she cut him
19 off in June of 2012 and did not see him again until he
20 was totally incapacitated and shortly before his death
21 in 2016.

22 Your Honor, there is absolutely no
23 evidence of undue influence with regard to the
24 creation and execution of the February 28, 2012
25 testamentary documents.

1 Their expert doesn't even say that he was
2 subject to undue influence in February of 2012.

3 The defendants are entitled to summary
4 judgment as to the eighth cause of action with regard
5 to the February 28, 2012 document.

6 The eighth cause of action is the one that
7 says it should be invalid due to undue influence.

8 The ninth cause of action --

9 THE COURT: Hold on. We have to give the
10 court reporter a break. We have been going about
11 an hour and 20 minutes.

12 MS. PAYLOR: Okay. I am almost done.

13 THE COURT: Let's just take a quick break.

14 (A recess was held.)

15 THE COURT: All right. Are you okay,
16 Madam Court Reporter?

17 THE COURT REPORTER: Yes, sir.

18 THE COURT: Are you ready to roll?

19 THE COURT REPORTER: Yes, sir.

20 THE COURT: All right. You may continue.

21 MS. PAYLOR: Thank you.

22 Thank you, Kym, for bearing with us, and I
23 promise you that I am just about finished.

24 The last cause of action is the ninth cause
25 of action, Your Honor, that alleges that the

1 testamentary documents should be set aside due to
2 mistake. So this is what Plaintiffs say with regard
3 to mistake in their memo.

4 "If a testator or seller/donor suffers from
5 mistake, the part of the will resulting from mistake
6 is invalid."

7 Then they talk about the probate code
8 authorizing the reformation of a will that results
9 from mistake.

10 Then they say, "As discussed more fully
11 below, the evidence clearly demonstrates that
12 Mr. Barringer and plaintiffs were the victims of
13 mistake."

14 There is nothing in here that talks about
15 mistake. This is a Supreme Court case, Hanahan v.
16 Simpson, Your Honor. In there they say, "It is the
17 general rule that the litigantee of the will is not
18 affected by a matter of mistake on law or fact unless
19 mistake goes to the identity of the instrument or to
20 fundamental error and where, for example, two wills
21 were drafted for different persons and one person
22 signs that intended for another."

23 Your Honor, they have given no evidence of
24 any mistake. They don't even explain what the mistake
25 is in their memo. She never says what the mistake was

1 or how it should be reformed. The only thing that she
2 claims is that she did not like these documents
3 because her father named Merrill Light as his
4 co-trustee.

5 That was not a mistake, as Mr. Lane and
6 Mr. Jolley have testified. That advised him to do
7 that, and he agreed to it. He named her because he
8 wanted to name her as the co-trustee. In fact, he
9 named Hampton Luzak as the successor to him and then
10 Victor Barringer as the successor to Hampton Luzak.
11 He knew who his children were, and he knew who he
12 wanted to serve as his co-trustee.

13 Your Honor, there is not even a scintilla of
14 evidence that there was a mistake in there. So we
15 would ask for summary judgment on the ninth cause or
16 action with regard to the February 28, 2021 documents.

17 What I invite the plaintiff to do, Your
18 Honor, is to give us a fact that supports their theory
19 that Mr. Barringer did not know who his children were,
20 did not know what his assess were, and did not know to
21 whom he wanted to leave them, and a fact that shows
22 that Mr. Merrill Light exerted undue influence, which
23 is usually through coercion and threat, and that her
24 father was intimidated by her so he did what she
25 wanted him to do. That did not happen, and they know

1 that.

2 Thank you, Your Honor.

3 THE COURT: All right. I gave her 34
4 minutes. I will extend the same courtesy to
5 whoever wants to make the argument. For the
6 record, I have had the opportunity to review the
7 briefs, and I have done so.

8 MR. MEDLIN: Thank you, Your Honor. We will
9 refer to our briefs, and I will try not to get into
10 the detail of our briefs.

11 First of all, as you know this was tried
12 in front of Judge Mullen over three days:
13 November, 16, 17th, 18th. We fleshed out quite a
14 lot of arguments. More than 34 minutes' worth but
15 more issues, including this one.

16 She ruled against the Defendants on December
17 30th. They now excuse their reasoning for being able
18 to argue this again because of new evidence from
19 Mr. Jolley. Well, the new evidence from Mr. Jolley is
20 simply that he thought Mr. Barringer was competent and
21 not subject to undue influence. That is not new
22 evidence. Mr. Jolley would not have executed the
23 wills if he didn't think that that is the case.

24 It's important to note that just because a
25 lawyer thinks that a client is competent and not

1 subject to undue influence, that doesn't mean that the
2 client is competent and not subject to undue
3 influence; otherwise, we would never need to have a
4 case where a lawyer supervises the execution of a
5 will.

6 So there is no new evidence, despite how they
7 tried to manufacture that. They have had access to
8 Mr. Jolley. He represents everybody in this case
9 except our client, and they knew all of that. That is
10 hardly new.

11 They rely on it, yet we haven't a chance
12 to finish deposing Mr. Jolley. In fact, we
13 haven't had a chance to finish deposing at least a
14 couple of other witnesses because of the
15 recalcitrance of CFRC to let us depose them about
16 the estate planning issues, about Mr. Barringer's
17 capacity, undue influence, et cetera. People who
18 work for them. So the summary judgment motion to
19 that extent is really premature. They want to use
20 Mr. Jolley's deposition as an excuse to re-argue
21 it, and yet we don't get a chance to finish
22 deposing Mr. Jolley to see exactly if, in fact,
23 there is new evidence.

24 Then Your Honor, we would also just briefly
25 point out -- as we mentioned before today, we think

1 they are estopped from making this argument. They are
2 alleging in their pleadings that every document after
3 this one is valid, any one of which would revoke this
4 will so that this will isn't any longer valid under
5 their position.

6 They are also taking the position that the
7 '98 will is the valid one, and that means that this
8 one isn't valid. So they are taking inconsistent
9 positions with respect to this summary judgment.

10 Your Honor, I will just point out that in
11 their brief -- I didn't hear Ms. Paylor mention
12 this in her argument. Maybe she did. They argue
13 that Mrs. Light did not have a fiduciary duty to
14 Mr. Barringer. She most certainly did. She was a
15 director of a company for which he was a
16 shareholder. She admitted under oath in her
17 deposition that she owed a fiduciary duty to him.
18 She was a partner in a family partnership.

19 In South Carolina law, Moore v. Moore, a
20 partner owes a fiduciary duty to another partner. And
21 he certainly reposed trust and confidence in her.
22 That's certainly their position, so there is a
23 fiduciary duty. Why that is important for this
24 summary judgment argument is, that flips the burden of
25 proof to them.

1 They have to show that the will and the trust are
2 valid. Typically it's the contestant. In this case
3 because of the fiduciary duty, it's the proponent.
4 Again, we have lots of law cited in our brief that I
5 won't bore the courtroom with at this stage.

6 Let's talk a little bit about the
7 circumstances. Now, we don't disagree that a
8 testator has to have capacity on the day she
9 executes her will or on the day she executes the
10 trust. The cases can't give a snapshot of
11 capacity on that date. For example, I am not
12 aware of any case where somebody looked at the
13 witness or at the testator and said, "Do you know
14 your children," et cetera.

15 It's a question of fact. Every case is
16 different as to whether it's a question of fact. They
17 brought this summary judgment, not us. We don't have
18 to prove that. All we have to prove is that there is
19 a question of fact period. Really the burden is on
20 them to do that.

21 Now, with respect to the capacity. The
22 law is clear. The cases are clear. Again, this
23 only makes sense. You have to look at the facts
24 and circumstances around the time of execution and
25 how far around is a case-by-case basis. They

1 misunderstand or misstate the cases we cited and
2 why we cited them in their brief. We are citing
3 those cases not for the results. In some of those
4 cases the testator was found competent; some not,
5 and simply for the assertion that you have to look
6 at testimony and evidence, both before and after
7 sometimes, the execution of the will to determine
8 if there was capacity, freedom from undue
9 influence or mistake on the date of execution.

10 Now, that is what we have done. We have
11 shown, as she points out, ad nauseam in our brief,
12 innumerable facts that show that over a clear pattern
13 of time Mr. Barringer suffered from serious mental
14 issues from undue influence. We will talk more about
15 that in just a minute. And because this document was
16 not meant to be his, that is the mistake.

17 So we do, in fact, point out that there is a
18 mistake. You have to focus on more than just a date
19 of execution, because nobody, to my knowledge, brought
20 in a psychiatrist that examines the testator on that
21 date, brought in SLED to determine if there was undue
22 influence going on on that date. That depends on
23 facts and circumstances both before and after.

24 As to undue influence, of course that is
25 circumstantial. Very rarely do we have a case --

1 not to my knowledge -- where somebody showed up at
2 the execution ceremony, pointed a gun to the
3 testator's head and said, "Sign this will or I
4 will shoot you." That is undue influence. That
5 doesn't happen in the open. It happens in the
6 dark. That is why you have to show surrounding
7 circumstantial evidence to show undue influence.
8 We have plenty of that.

9 The kinds of factors that we look at for
10 undue influence are the involvement of the
11 perpetrator. Merrill Light has admitted that she was
12 involved in her father's estate planning. She
13 attended a meeting at least one week before with
14 Robert Slane. She was there at execution of the
15 documents. She had constant contact with her parents.
16 Randy Light had constant contact with her parents.
17 They shared counsel. It's the classic scenario in
18 undue influence cases.

19 The perpetrator takes the testator or settlor
20 to their lawyer. Here we are here with Mr. Jolley.

21 THE COURT: So you think that she took
22 him there and Mr. Jolley did something that was
23 incorrect at the direction of her against her
24 father? Is that what you just said?

25 MR. MEDLIN: Yes, I did. Because, again, if

1 he is not competent or he is being unduly influenced,
2 Mr. Jolley wouldn't necessarily know that. He doesn't
3 know what went on in the background. So she is
4 present at meetings both before and during the
5 execution. He has, without question, weakened mental
6 capacity, which is a factor, again, of undue
7 influence.

8 Our medical expert, the people who confirm
9 that people who have dementia are of weakened capacity
10 and therefore subject to undue influence. She had the
11 opportunity, as Ms. Paylor pointed out. They are
12 constantly around. They have the opportunity to
13 convince him to do it. She has propensity and motive,
14 as we will see.

15 Now, one more issue as to the law. This case
16 cites -- and there are other cases that say the same
17 thing -- that if somebody is subject to undue
18 influence and then has the unhampered opportunity to
19 change the will, that dissipates the undue influence.

20 But you have to have the unhampered
21 opportunity to do it. That means that after it
22 happens, you have to have a recapture of your capacity
23 and/or you must be free from the undue influence.
24 Again, the mistake, is rectifiable by South Carolina
25 law. We cite the law in our brief. The mistake is if

1 he signed a document that he didn't mean to sign.

2 Your Honor, I am not in the time allotted to
3 me going to go through all of the facts in our brief.
4 I will go through the ones that are closest in time to
5 the February 28, 2012 will.

6 Let's start with the medical evidence from
7 his doctor's reports, not our expert report, his
8 doctor's report.

9 By the way, our medical expert reviewing
10 their reports did not say that he had incapacity. In
11 fact, she said, I can't say that he did have
12 incapacity within a reasonable degree of medical
13 certainty.

14 Let's use their doctor's reports. November
15 11, he presents to his internal medicine doctor with
16 dementia in the 60-percent range. I will not give
17 cites, Your Honor. They are all in our brief. There
18 is no mention of infection in that. One of the
19 arguments that Dr. Long tried to carry forward for
20 them in his deposition -- and he failed miserably --
21 is that the infection caused the dementia.

22 Mr. Gilreath asked him, if you are cured of
23 your infection and you are still diagnosed with
24 dementia, does that mean that you still have dementia?
25 His answer was, paraphrasing it, of course.

1 There are two separate issues. So he is
2 presenting with dementia in late 2011, according to
3 his own doctor who was protective as much as he could
4 be in his own deposition recently. There is no
5 mention of any kind of urinary tract infection.

6 In December of 2011 he presents to a
7 specialist with a history of dementia. In December,
8 according to Dr. Garrett and according to Dr. Long, we
9 see that he has had difficulty with cognition for the
10 last two years. He has some difficulty with abstract
11 reasoning.

12 In January 2012 we are creeping up to the
13 February 28th date. The reason for his visit to a
14 neurologist, Dr. Garrett, is for short-term memory
15 loss. This is important. If you can't remember what
16 you do short-term, you can't know what you're doing
17 when you are signing a will. You don't have the
18 capacity to understand what the will does.

19 One of the factors Ms. Paylor left out is
20 that it's a crucial factor in determining
21 testamentary capacity.

22 By the way, it's not my job to explain in a
23 brief to the other side what testamentary capacity is.
24 I assume everybody knows that. Testamentary capacity
25 involves understanding what a will does. If you have

1 short-term memory loss and you don't know what just
2 got explained to you, then you don't understand what
3 that will is doing. That is a classic problem.

4 In March shortly after he supposedly signs
5 these documents, he calls the neurologist's office,
6 Dr. Garrett. The note is, he couldn't remember why he
7 called. That is a classic sign. He is calling his
8 neurologist, but he can't remember why he is calling
9 his neurologist.

10 In April of 2012 he has expressive aphasia.
11 He has dementia with significant problems with
12 testing. Again, this is Dr. Long. No mention of
13 infection.

14 In April he has a dramatic decline in memory
15 over the last several weeks. This is Dr. Garrett, the
16 neurologist, quoting his family doctor, Dr. Long.
17 This could go back into February, of course.

18 Early May, he has difficulty following
19 commands, not real complicated commands. Commands
20 like, put two fingers on your left hand to your right
21 ear. He can't do that. Now, he also at that point
22 does have a UTI, but that is treated and nevertheless,
23 they still give him a separate diagnosis of dementia.

24 In May by another doctor, now an expert,
25 he is diagnosed with dementia and likely

1 Alzheimer's. It doesn't matter if he has
2 Alzheimer's or dementia or what, the point is, if
3 you are having mental deficiencies and you don't
4 understand what is in that document and these are
5 complex documents, you do not have testamentary
6 capacity.

7 Also in May it is indicated that he has had
8 trouble forming words for the prior two years. Mr.
9 Barringer himself reported to the doctor that he has
10 had difficulty thinking since late February -- this is
11 when he signed these documents -- or early March. A
12 few months later in August, his short-term memory is
13 bad, again, according to Dr. Long.

14 After that, it doesn't get better. The Gaddy
15 case is not the only case we cited and we didn't cite
16 it for this situation. We just pointed out the Gaddy
17 case for this issue. Dementia does not get better;
18 Alzheimer's does not get better. It's a regressive
19 disease, and he is regressing like crazy.

20 In the ensuing months he scores on the
21 mini-mental test, which is not a difficult test; pick
22 up a piece of paper off of the floor on command. What
23 floor are you on in the hospital, et cetera. Again,
24 this is something that somebody with a low capacity
25 ought to be able to answer. The score is 30.

1 Even when he scores a 24, for example, our
2 expert says, that is substandard for somebody of his
3 intelligence. He was a very intelligent man when he
4 was with it. He scores a zero. He can't even take
5 the test. He scores a four. We will talk more about
6 that in just a minute, because of Dr. Long.

7 He scores a ten. He scores a one. At the
8 time he scored a ten, his neurologist filed an
9 affidavit with the Federal court and said, "He can't
10 testify." He scored zero and four before that when he
11 supposedly intervened in the Federal litigation that
12 he didn't know what he was doing.

13 Then he scores a ten in October, and his
14 neurologist says, "He can't even testify because he is
15 not with it."

16 Now, we have lots of non-medical evidence.
17 Perhaps our best evidence would be from the
18 defendants. We have got emails from Randy Light, and,
19 yes, he did try to explain these emails away. Yes,
20 they did talk about just a piece of these emails. I
21 want to read real quickly what these emails said.

22 February 21, 2011, way back from February 28,
23 2012. "I feel it would be advantageous for the four
24 of us to discuss future plans, present and future,
25 with CFRC. It is evident to Merrill and I that Paul,

1 PVB, is starting to experience different health
2 issues" -- not talking about his son's bankruptcy.
3 Different health issues -- "That affect his judgment
4 regarding everyday decisions personally and
5 business-wise.

6 "It appears that this makes it hard for you
7 to exercise your authority as president" -- this is
8 going to Kevin Luzak -- "of CFRC if he will not
9 listen. Merrill and I" -- the defendants, "have
10 absolutely no say in the operations of CFRC, which PVB
11 has made clear on many occasions."

12 When PVB is competent and thinking clearly,
13 Mr. and Mrs. Light are allowed to have nothing to do
14 with the business, whereas Kevin Luzak was brought in
15 to run the business.

16 "Our fear is PVB is going to attempt some
17 irrational move that will harm the profitability
18 of the company simply to satisfy his desire to
19 underwrite Victor," the other child, "or keep the
20 stockholders" -- he says graveling. He means
21 groveling.

22 Here is a letter to Robert Slane, the
23 insurance agent who poses as a lawyer. "Merrill was
24 asking me if the Barringers are considering her with
25 power of attorney for them in the near future." This

1 is in January of 2012.

2 "Merrill, Randy, Robert Slane are wanting
3 to know if her parents are considering her power
4 of attorney. She is concerned that PVB is
5 starting to show more irrational behavior on
6 certain family issues, which is disturbing to all
7 siblings. A close friend of hers had a similar
8 situation with her older parents, and before power
9 of attorney could be transferred they were
10 declared unsound and the State took control, which
11 was devastating. We really did not think this
12 would ever be the case, but neither did her
13 friends and siblings. Your thoughts.

14 This is an off-the-record discussion
15 simply between Merrill and you and I."

16 There is nothing in this email about
17 being worried about Victor's bankruptcy. It's
18 worried about him becoming being mentally
19 incompetent, and let's hurry up and get a power of
20 attorney, because that is the only reason --

21 THE COURT: When was that?

22 MR. MEDLIN: That is in January of 2012.

23 THE COURT: She was going to let him
24 enter into a power of attorney on his own free
25 will, even though she felt like he had dementia

1 but not to honor what he did some 30 days later?

2 MR. MEDLIN: She is going to let him make
3 her attorney in fact.

4 THE COURT: She is entering into a
5 contractual relationship with him. He apparently
6 has the ability to do that. You-all are arguing
7 that he didn't have the ability to do what he did
8 just 30 days later.

9 MR. MEDLIN: First of all, Your Honor, I
10 apologize. I am not trying to correct the Court.
11 Power of attorney is not a contract.

12 THE COURT: Okay. Do you see what I am
13 saying? He is investing power into her to allow
14 her to run his everyday life. He has to obviously
15 know that that's what he is doing.

16 MR. MEDLIN: No. That is the whole
17 point.

18 THE COURT: What do you mean?

19 MR. MEDLIN: Because she is the one asking,
20 not Mr. Barringer. Mr. Barringer is not saying --

21 THE COURT: Right. So she is going to
22 petition? How is she going to get the POA?

23 MR. MEDLIN: The same way she got the will
24 and the trust and the will and the trust, yes.

25 THE COURT: All right.

1 MR. MEDLIN: All right. Then in May. "I
2 took Paul to Saint Joseph's Hospital." This is
3 Randy Light. "He is progressively getting worse
4 as to where he is and what is going on. I will
5 fill you in with details when I see you."

6 Again, Your Honor, this is a summary judgment
7 motion. The idea that maybe he did have capacity,
8 which is counter-intuitive to what she herself is
9 reporting in this email of January may be one way to
10 look at it.

11 The other way to look at it, which is all we
12 have to create a question of fact is, she is inserting
13 herself into a situation where she can influence him.

14 We have got emails of Tom Evans, whom we
15 are trying to depose. CFRC is stonewalling that.
16 He has been around the company for a very long time.
17 He says in September of 2011 that he is very confused
18 and not himself.

19 John Jolley himself told Mike Hagler that
20 Mr. Barringer was sometimes there and sometimes
21 not.

22 Kevin said in his affidavits, he has
23 trouble with numbers starting in 2011. Memory is
24 starting to deteriorate, 2011. Difficulty
25 following auction bidding, February of 2012.

1 Trouble communicating and forming words, February
2 of 2012. February of 2012, started unfounded
3 accusations that Kevin was stealing a company.
4 You can't steal a company.

5 In the spring of 2012 he wanted to give his
6 share of the company to Kevin. Kevin said, that is
7 absurd. He told his wife and Merrill Light about
8 that, and he stopped it. I wish Merrill Light was
9 provided the same courtesy when he gave her the stop,
10 supposedly when he did.

11 In February he is confused and incoherent at
12 a board meeting. He does not believe he has the
13 capacity to make a will, this is beginning in late
14 2011. He is confused and incoherent at the April
15 board meeting.

16 Now, let's talk about their witnesses.

17 Mr. Jolley has to say what he says or
18 else he is going to have some problems with some
19 ethics issues. We can't impeach Mr. Jolley. In a
20 couple of examples that I will give you very
21 quickly from what we have gotten so far from his
22 deposition. Number one --

23 THE COURT: You believe that Mr. Jolley
24 would lie to protect his bar license under oath?
25 Is that what you just said?

1 MR. MEDLIN: I don't know.

2 THE COURT: I thought this guy was the
3 end-all guru of all estate planning.

4 MR. MEDLIN: That was Mr. McBride. That
5 was in 1998.

6 May I please just for the record, Your Honor.
7 I like John Jolley. I think he is a very good lawyer.
8 He is a former student. I am not saying that John
9 Jolley has ever lied under oath about anything. I am
10 just saying that his deposition testimony is
11 inconsistent in these ways.

12 Number one, he said --

13 THE COURT: I would think you would be
14 reporting that if you think he is making
15 inconsistent or false statements under oath. He
16 is a lawyer.

17 MR. MEDLIN: Maybe I will have to make that
18 decision. I hope I don't have to with Mr. Jolley. I
19 am very fond of him and I have great respect for him.
20 But we are allowed to try to impeach somebody in a
21 summary judgment motion, I think. If not, I will move
22 on. Let me just --

23 THE COURT: You are making some very
24 serious accusations on the record about another
25 attorney.

1 MR. MEDLIN: Every lawyer who executes a will
2 and trust has an ethical obligation not to do so
3 unless they reasonably believe the person is
4 competent.

5 THE COURT: So we can glean from that
6 statement that Mr. Jolley reasonably believed that he
7 had capacity when he executed that will. You are
8 saying that in his deposition, he would have had to
9 have testified that way, because if not, he will be in
10 some big trouble. That is what you just said.

11 MR. MEDLIN: Let's turn it the right way.

12 THE COURT: Okay.

13 MR. MEDLIN: Because he would have thought he
14 was acting ethically when he did that. I don't
15 think -- personally, I am not a witness. I can't say.
16 Again, because this is Mr. Jolley -- somebody I
17 respect and because you are raising the point -- I
18 don't know that he would have prepared a will or a
19 trust for somebody he didn't think was competent. I
20 don't know that.

21 THE COURT: Then what is the point?

22 MR. MEDLIN: I'm going to give him the
23 benefit of the doubt. The point is he could be wrong;
24 otherwise, you wouldn't have will and trust kinds of
25 tests go anywhere if you had an attorney supervise the

1 execution. The answer would be, we trust the
2 attorney. The attorney reasonably believed that.

3 Here is why I think his belief may be
4 wrong; not that he lied, but his belief may be
5 wrong.

6 Number one, he said he never saw
7 Mr. Barringer change in his mental capacity from the
8 time he started representing him -- from 2011 through
9 2015. His mental capacity seriously changed during
10 that time. During that time he is scoring zeros and
11 ones and fours on mini-mentals. What that means is
12 Mr. Jolley -- assuming he is telling the truth, which
13 I do -- is saying that he didn't have the opportunity
14 to really know what is going on. That is what the
15 point is.

16 THE COURT: He is not privy to all of that
17 information. He takes the client as they come. He
18 makes that determination as the client comes. We
19 trust that the lawyer can make that determination as
20 the client comes. Nobody, just like you said earlier,
21 goes into one with a gun or with a SLED agent or with
22 whomever to see if they have testamentary capacity to
23 be able to change the will or effectuate the will.

24 In the opposite of that, no one comes in with
25 pieces of paper and says, Hey. "Look at this. He

1 scored a one because he couldn't pick up a piece of
2 paper." That doesn't happen either.

3 MR. MEDLIN: That is exactly the point,
4 Your Honor.

5 THE COURT: Exactly. Mr. Jolley alone
6 would make that determination.

7 MR. MEDLIN: The point is, what Mr. Jolley
8 thought -- unlike what they want to propose -- is not
9 gospel. He wouldn't necessarily know those things.
10 So we just can't say that because he supervised the
11 execution of the will, that is the end of the story.
12 He must be competent. He must be free from undue
13 influence, because he may not know the full story.
14 That is exactly the point.

15 Thank you, Your Honor.

16 THE COURT: I am talking about what you were
17 referencing earlier about -- the attorney has to make
18 the call, the determination. If you are saying that
19 Mr. Jolley is testifying that he has seen no change
20 whatsoever every single time that he had been with Mr.
21 Barringer, or whatever the case may be, that he has
22 seen no change whatsoever, then he has no reason -- I
23 understand your point -- he had no reason to believe
24 that anything had changed to that extent.

25 But that is the point though. We have to

1 rely on the attorney to be able to make that
2 assessment at the time, and he has.

3 MR. MEDLIN: It's not gospel, is my point.

4 THE COURT: I am not saying that it is
5 gospel. I am saying, what is the point of us relying
6 on the attorney if we can't rely on the attorney?

7 MR. MEDLIN: We rely on the attorney only
8 to the extent that the attorney knows what the
9 attorneys knows and doesn't base --

10 THE COURT: All the attorney has to know
11 is those three little issues that Ms. Paylor just
12 set out. It's not a very high bar that he has to
13 be able to go through.

14 Does he know who his kids are? Does he know
15 what he has? Does he know what he is giving away?
16 That is it. He may have even felt that he is kind of
17 slipping. My grandmother has Alzheimer's. My mom is
18 slipping, but I still let my kids stay there for the
19 weekend.

20 My point is that, again, you have already
21 argued earlier as to the same thing. The bar is very
22 low. Mr. Jolley could very well have thought he had
23 some issues. But because the bar is so low, he
24 certainly went forward and said, hey. I think that he
25 is able to have testamentary capacity.

1 MR. MEDLIN: My point about the bar being
2 low was not a discussion of testamentary capacity,
3 Your Honor. But I agree it's not a very high bar.
4 I am not disputing that. I just didn't say that
5 in that regard.

6 Mr. Jolley and Mr. Barringer manipulated the
7 date of a stock transfer to a date that didn't matter
8 in time. There is an argument that a stock transfer
9 occurred on September 11, 2012. We know for sure that
10 it didn't get transferred on the company records until
11 2013. Yet in his deposition, Mr. Jolley said, we
12 picked December 31, 2012 because it helped with some
13 accounting issues, and Mr. Barringer filed a tax
14 return on that.

15 The point is, it's impeachable. The same
16 thing with Dr. Long. Dr. Long had access to
17 Dr. Carter's records about the neurological report
18 back in May of 2012. He can't even touch his own ears
19 with his fingers. He has his own record saying that
20 he believe that Mr. Barringer had dementia. He argues
21 in his testimony that you can't diagnose Alzheimer's
22 during somebody's lifetime, yet he diagnoses people
23 with Alzheimer's during his lifetime.

24 He argued against the validity of his own
25 testing. He argued with Mr. Gilreath during the

1 deposition that before on the mini mental it must
2 have been a mistake. He gave the test. His
3 office gave that test.

4 He testified that mental state can fluctuate,
5 which is what can happen with any kind of dementia.
6 That is why we have to get the evidence around the
7 time and not just on that very date, unless we have
8 it, which would be extraordinarily unusual. Most
9 importantly, in my mind is he started Mr. Barringer on
10 Alzheimer's medications in 2011 and increased them in
11 January of 2012.

12 As to undue influence. The facts --

13 THE COURT: You have six minutes. I will
14 give both sides equal time. I will give her five
15 minutes to respond.

16 MR. TWOMBLEY: I set a timer. It's four, but
17 if you want to give him six, that's fine.

18 MR. MEDLIN: I will take the six.

19 The medical evidence, if you are in weakened
20 capacity, you are more susceptible to undue influence.
21 We have shown with these emails propensity and motive.
22 Randy Light was involved intimately in bankruptcy.
23 They were not personal bankruptcies, but he was
24 accused of a lot of bad stuff by his partners. There
25 were multi-million dollar bankruptcies. He had to

1 write an email to a banker saying, my wife is very
2 furious about me losing all of this money.

3 There was a lot of pressure on that. Guess
4 what? Randy and Merrill Light did not tell Mr.
5 Barringer about these serious bankruptcy situations
6 and these failed businesses. You don't appoint
7 somebody like Randy Light with his business history to
8 run a company like CFRC, which is what they claim Mr.
9 Barringer did.

10 You have got the presence. You have
11 fiduciary duty. You have close proximity. You have
12 got Kevin's and Hampton's affidavit. They thought
13 that the Lights were unduly influencing. They
14 deceived Mr. Barringer. That is what kicked all of
15 this off into thinking Kevin was stealing the company.
16 They took advantage of Mr. Barringer's dementia to
17 turn him against Kevin. Of course, Hampton was upset
18 that that happened.

19 Merrill Light gave old board presentations to
20 Mr. Barringer around this time. He did not remember
21 it. It confused him, and that made him think that
22 Kevin was trying to steal the company. Merrill Light
23 has admitted she was aware of cognitive problems yet
24 did nothing. We have an independent director, the
25 late great lawyer, Mike Hagler from Augusta saying

1 that there was coaching going on at a meeting where
2 Kevin was fired.

3 There is classic secrecy here. Merrill Light
4 hid the fact that she was the co-trustee under the
5 trust. They want to be validated. Again, it's sort
6 of a classic secrecy. Importantly, there is a change
7 in power. This document was a significant change in
8 pattern -- I meant to say pattern, not power, Your
9 Honor. I apologize -- which is, again, one of the
10 circumstances that we look at for undue influence;
11 that is, that before Merrill Light, who was not a
12 trustee became a co-trustee, importantly, with
13 independent powers. She could act without Mr.
14 Barringer. That is a significant change in his estate
15 planning pattern.

16 Again, if he didn't know what he was signing,
17 he is making a mistake as well.

18 Again, we have got an issue with the
19 inability to finish Mr. Jolley's deposition yet. And
20 Mr. Traxler has filed a 56F affidavit saying how
21 crucial it is, so we think. In any event, this is
22 premature.

23 Just want to make sure I address all of Ms.
24 Paylor's points. I sure don't want to finish early,
25 Your Honor.

1 One other classic factor in undue influence.
2 Hampton was kept from communicating with her father.
3 It wasn't her choice. Mrs. Barringer said, a quick
4 call on the landline. Call me on my cell. She is the
5 one who blocked that. It wasn't her choice to do
6 that.

7 Did I get it done in time?

8 THE COURT: Nice. Thank you very much.

9 Anything briefly, Ms. Paylor?

10 MS. PAYLOR: Just very briefly. According to
11 Mr. Medlin, every witness who was with Mr. Barringer
12 is either a liar or mistake. Nobody is telling the
13 truth. His clients weren't with them.

14 They had nothing to do with it. He brings up
15 his power of attorney. Merrill Light never was his
16 power of attorney. Never.

17 She heard that they were going to give her
18 some role, and she was trying to find out what it was.
19 That is all that was about.

20 All of his medical evidence is the
21 self-reported testimony from Mr. Barringer to his
22 doctors saying he had short-term memory loss. He had
23 some confusion.

24 He talked about the showing of opportunity or
25 motive. The cases say that alone does not create an

1 issue of fact and undue influence, unless they can
2 show that the influence was actually used, a threat
3 was made, or the person was coerced. It doesn't get
4 past summary judgment, Your Honor.

5 THE COURT: I said, "tricked," and they
6 said, yes. When I asked, I said, "What did she
7 do? Was he tricking her?" He said, "Yes. That
8 is how she was able to do it. She was tricking
9 him."

10 MS. PAYLOR: I met my client. I can
11 promise you she did not.

12 You know, the cases where undue influences is
13 found is cases where they have a baby monitor watching
14 the testator and they don't let anybody come to see
15 them. Mr. Barringer lived on his own. He went to
16 lunch with his friends. He drove around. He talked
17 to everybody. He had unhampered opportunity to go
18 back and visit John Jolley, whom he hired. He hired
19 him in 2008 to do work for him.

20 Merrill Light didn't have anything to do with
21 his hiring of John Jolley. He had already been there.
22 There is no case that has found undue influence
23 without coercion or threat. There is no evidence that
24 Merrill Light tricked her father.

25 I can promise you, she would never have --

1 Paul Barringer couldn't be tricked. I don't care if
2 he did have less capacity than he had at full
3 throttle. He was still a brilliant man, as every one
4 of his doctors testified.

5 Most of the stuff he talked about was way
6 past May of 2012. He talks about the zero in a
7 mini mental. That was in late 2015. This has to
8 do with February 28, 2012. There is absolutely no
9 evidence of lack of capacity, undue influence, or
10 mistake. Thank you.

11 THE COURT: When did he get a zero?

12 MR. MEDLIN: He got a zero in the summer of
13 2015. That was just part of my explanation, Your
14 Honor, about how he devolved but.

15 THE COURT: That is not what your argument
16 was. I took it as -- when you were talking about
17 going to the neurologist and that he was reporting he
18 was getting a one, you brought it up not once, not
19 twice, but three times the fact that he couldn't take
20 his right hand and touch his left temple.

21 You never told me that was in 2015. You were
22 talking about this was all around of the time of 2012.

23 MR. MEDLIN: No. I told you when it was. It
24 was May of 2012 when he couldn't do that. A few
25 weeks, not a few years. The one which is another

1 situation where I said that he got worse down the
2 road.

3 Your Honor, everything that I focused on and
4 mentioned to you up to not being able to touch the
5 ear, that is all in the spring of 2012.

6 THE COURT: All right. So what other
7 outstanding motions are there for today?

8 MS. PAYLOR: That is it.

9 THE COURT: Karen, does wrap up every
10 single Luzak v. Light motion that is pending?

11 THE CLERK: There are some that may be
12 moot or that were decided on that I don't have
13 written down.

14 THE COURT: Do you-all know any that are
15 pending?

16 MS. PAYLOR: No. There were some that
17 got overlapped today.

18 THE COURT: All right. Mr. Twombly, any
19 outstanding motions in this case?

20 MR. TWOMBLEY: I think we've talked about all
21 of them. I have a couple questions about the rulings,
22 but I think we have covered all of the motions.

23 THE COURT: We will get it sorted out.

24 Any outstanding motions as to the Plaintiff?

25 MR. MEDLIN: No, sir.

1 THE COURT: All right. All right. I am
2 going to grant your motion for summary judgement.
3 Madam Court Reporter, I want a copy of the
4 transcript, the last part of it.

5 Hopefully we got all of that sorted out.
6 We will see you-all soon when we get everything
7 sorted out.

8 MS. PAYLOR: I will get you a proposed order,
9 Your Honor.

10 THE COURT: Sounds great. You all have a
11 wonderful day.

12 (The hearing was concluded.)

13 * * *

14 **END OF TRANSCRIPT**

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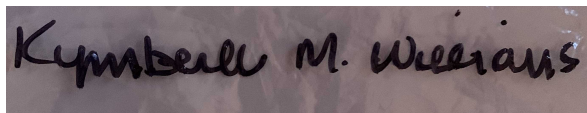
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CERTIFICATE OF REPORTER

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

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

This, the 7st day of June, 2021.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Kymberlee M. Williams".

KYMBERLEE M. WILLIAMS, CSR/RPR

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN GENERAL SESSIONS
14th JUDICIAL CIRCUIT

HAMPTON B. LUZAK,

Petitioner,

vs.

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

MERRILL B. LIGHT, et al,

Respondents.

HEARING BEFORE:

HONORABLE BENTLEY PRICE

DATE:

July 2, 2021

LOCATION:

BEAUFORT COUNTY JUDICIAL CENTER
102 RIBAUT ROAD
BEAUFORT, SC 29902

REPORTED BY:

KYMBERLEE WILLIAMS, CSR/RPR

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PROCEEDINGS

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PROCEEDINGS CONCLUDED

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CERTIFICATE OF REPORTER

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EXHIBITS

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(NONE OFFERED)

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PROCEEDINGS

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FRIDAY, JULY 2, 2021

BEAUFORT, SOUTH CAROLINA

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(The following proceedings were held in open court.

All parties were present.

* * *

THE COURT: All right. So we have some motions to reconsider and some other matters to get to, if I'm not mistaken. What did I do with that roster? Here it is.

MR. TWOMBLEY: Your Honor, just for the Court's convenience, we made a couple of binders. I have all the motions in them, in a list if that would be helpful.

THE COURT: All right. If it's a list, maybe I won't have to go through the whole roster. Here it is. Problem solved.

All right. Before we get started, obviously, we'll need to address the motion to recuse. And then, of course, I would have to make any motions to reconsider if I did decide to recuse myself because, obviously, those will just sit out there forever. So all that's going to need to be determined here today.

What I would like to do first is I would like to make the record clear on some issues that have been brought

1 to my attention. So what I'm going to do is kind of give
2 you a procedural aspect of what transpired. There has been a
3 lot of to-do about the letter that I sent. What was the
4 intent of the Court after the last hearing was that I had
5 felt personally as the Court misled. All right.

6 I immediately asked for that transcript at the
7 end of that hearing because of that feeling, and I waited to
8 discuss what had transpired in that hearing with what I felt
9 to me was misrepresentations to the Court. Going so far as
10 to -- I even told Amy that, when I left -- I said I felt like
11 they were just trying to bully me by misrepresenting certain
12 things to me, and I just was not appreciative of it at all.

13 So what I decided to do, what I thought was in
14 the best interest of everyone was to write a private,
15 personal letter. I didn't think that anything needed to be
16 placed in the record. I didn't think that was fair. I was
17 trying to be judicious about it, but I wasn't going to allow
18 that behavior to continue.

19 So what I did was I wrote a letter indicating
20 that I didn't want that behavior to continue. That behavior
21 was also towards the Court. In doing so, I guess when Ms.
22 Luzak found out that I had set a court date, she was so
23 excited about it that she decided to ask me to recuse myself.
24 Apparently, she has done an affidavit. I'm not sure if she
25 prepared it or who prepared it. I would like to review it.

1 I would like to answer the questions that she may have
2 concerns about.

3 First, the first is his assumption in the letter
4 about me, my counsel, my case are erroneous and without
5 foundation. These unfounded assumptions demonstrate his
6 prejudice and prejudging of me and my case. That seems to be
7 the underlying theme of her affidavit that goes throughout.

8 Again, it's just exactly what she indicates.
9 It's just she assumes. There's nothing that I stated in that
10 letter, which Ms. Paylor pointed out, is not in the record.
11 Everything I simply said is in the record. I simply was just
12 indicating how we were going to move forward. All right. So
13 that's her first concern.

14 As far as I know, the only admonishment of my
15 counsel by a court in this case was Judge Mullen's
16 reservation of sanctions against Mrs. Barringer; she says as
17 a stick. I'm not sure what that means.

18 Despite her counsel's promise at that hearing to
19 respond to the interrogatories, she filed essentially the
20 same answer as before, yet Judge Price summarily denied my
21 follow-up Request to Compel at the May 27th, '21 hearing,
22 taking away the stick that Judge Mullen had reserved. Never
23 did Judge Mullen accuse me or my counsel of ethical
24 improprieties or threaten sanctions against us.

25 One, that's a ruling. So I made a decision, and

1 unfortunately, she just wasn't happy about that.

2 The second, she assumes that I have threatened
3 sanctions. Nowhere in that letter have I threatened anyone
4 with sanctions whatsoever. The word is not even in the
5 letter anywhere. I looked. I wanted to make sure. I was
6 like: Oh, goodness, did I threaten him? I looked, and I did
7 not. So her assumption as to that is unfounded.

8 Judge Price's assertion that I have been
9 improperly delaying any trial is simply false. Judge Mullen
10 never set a trial date for either the consolidated case or
11 the bifurcated issue. Of course she didn't. They appealed
12 it. It was up on appeal. She couldn't set a trial date.
13 Once the appeal came back, I set a trial date. So that's
14 completely unfounded there as well.

15 I believe that the Defendants have been the cause
16 for the delay. I'm not going to read that one. Everybody
17 says that one.

18 The letter's assertion that I have used my
19 resources to cause my attorneys to toe an ethical line is
20 patently false. That also kind of dovetails into her
21 position at a later portion of the affidavit where she talks
22 about her unlimited resources.

23 What I mean by that is, and what I meant by that,
24 and what I was trying to avoid putting on the record when it
25 came to that, was the constant, constant filing of motions

1 and letters and every which way they could turn to try to,
2 what I feel, has been a delay in the case.

3 Mr. Traxler, I don't know you. I have been
4 assured that you are one of the top lawyers, without a doubt.
5 That your involvement in these cases is usually pretty
6 essential. So I don't fault you for any part and parcel of
7 that. The concern comes in that while Judge Mullen's appeal
8 was -- pardon me. While Judge Mullen's Order was up on
9 appeal, you were then hired into the case; is that not
10 accurate? How soon before were you -- that's the information
11 I need to get from you.

12 How soon before that were you hired?

13 MR. TRAXLER: I was hired -- I'm sure most of my
14 co-counsel can correct me.

15 THE COURT: No, sir. I'm simply just trying to
16 get information.

17 MR. TRAXLER: Yes, sir. I was brought into the
18 case and filed my Notice of Appearance prior to the Notice of
19 Appeal being filed.

20 THE COURT: All right. At what juncture did you
21 tell them that you had some type -- I don't even know what
22 your conflict was. I never asked anyone.

23 What juncture did you inform them that you had a
24 conflict and that Judge Mullen would have to recuse herself
25 if you came onto the case?

1 I don't want to know anything you said to
2 anybody. I just want to know, did they know that in bringing
3 you on the case would conflict her out?

4 MR. TRAXLER: When I was approached to get
5 involved in this case, no one knew I had any connection with
6 Judge Mullen. Period.

7 THE COURT: Fair enough. That's all I'm asking.

8 MR. TRAXLER: We put that in the affidavit that
9 we had filed with the Court.

10 THE COURT: Okay.

11 MR. TRAXLER: Let me amplify on that to address
12 any concerns.

13 THE COURT: Absolutely. Yes, sir.

14 MR. TRAXLER: I was approached by -- Mr. Medlin,
15 Mr. Gilreath, and Mr. Hogan and I had been against each other
16 in probate litigation two or three years earlier. We knew
17 what each other could do or not do. I was supposed to come
18 in, and when I was supposed to come in, nobody knew I had a
19 connection.

20 THE COURT: That's great. That's exactly the
21 information I was seeking. I appreciate it, Mr. Traxler.
22 That was my concern. I wanted to make sure that we had that
23 for the record. All right. Thank you very much.

24 All right. Number 8, Judge Price's statement
25 threatening a firm response if I want to exercise my due

1 process rights regarding clarification and correction has
2 chilled my ability to prosecute this case.

3 No, it doesn't. I just thought that it was a
4 push-back on me when Mr. Medlin was making his arguments
5 where he said: "I hate to keep correcting the Court, but I
6 just have to."

7 What I meant by a firm response was, I'm not
8 going to let that to happen anymore. I don't need to be
9 corrected. If I want to ask a question, please just give me
10 the answer. I don't need to have ancillary comments made to
11 myself when I'm simply just trying to learn and trying to
12 assist and trying to help. That's exactly what I said in my
13 letter. That's exactly what I intend to do.

14 Again, I have not threatened anyone. I've not
15 said that any sanctions would be imposed. I just said that
16 if someone wants to treat the Court that way, they're going
17 to receive a firm response. That's very obvious. That's
18 what's in the letter.

19 Judge Price thinks that he understands my
20 position without explaining what the position is. Yet I feel
21 threatened if I ask -- my position is, is that the case is up
22 for trial. We're going to move forward with the trial.
23 That's what I meant by knowing what their position is.

24 The only concern that I had when I was discussing
25 their position is that the Plaintiff, even after being told

1 that I would uphold Judge Mullen's Order that the case would
2 be bifurcated, we spent almost an hour saying that we have
3 had discussions with Judge Mullen. Judge Mullen said this
4 thing could be tried in a couple of days. I have no reason
5 not to believe her. She spent three years on this case.

6 Then all of a sudden, I get involved in the case.
7 I'm excited because I'm getting you-all up first up on the
8 trial document. Then the argument, which has already been
9 made twice, I think, before Judge Mullen, is that this case
10 can't be tried in three to five days.

11 So that was the whole basis of her bifurcation.
12 It was to say: We need to settle this issue before we have
13 this three-week-long trial, because Mr. Twombly has argued
14 to me a thousand times that -- well, I shouldn't say a
15 thousand. Every time he has an opportunity to argue that, if
16 you let us argue and try that case, that will probably
17 enforce a settlement. It will probably resolve the case. My
18 excitement was: Let's get this case resolved.

19 So the argument that it was going to take two to
20 three weeks, and I was indicating that I could put this case,
21 I mean it would be in -- I don't remember what I said now.
22 In 2022. Yes, ma'am. Thank you. It was, again, just an
23 argument for no other sake of an argument but to delay.

24 I would assume that when I tell the Plaintiff
25 that her case is excitedly going to be called for trial in

1 August, that the first response would be like, great, there
2 will be a resolution to this action and maybe a settlement to
3 this action. That's not what I got.

4 I got affidavits saying that I was unethical,
5 that I was -- I need to recuse myself, that I have prejudged
6 the case. The record doesn't reflect any of that.

7 The way I felt whenever I received all the
8 information was that I had some stake in this case. I have
9 nothing to do with this case. This means nothing to me. I
10 don't make any extra money off this case than any of the
11 other cases that I'm dealing with. So the fact that you
12 would think that I prejudged or I had some bias to the case
13 is so unfounded because what I did was assist the client in
14 getting your case heard.

15 It's like I did the opposite. I did exactly what
16 I thought was in the best interest of the Plaintiff, which is
17 to have her case heard. So I set it for trial, and I even
18 told the Defendants that I'm going to handle everything.
19 This is as to everybody; all pending -- the discovery will
20 cease on July 30th. On August 12, 2021, commencing at 10:00
21 a.m., I will be hearing all outstanding motions. On August
22 30, 2021, the case will commence, and she gets her day in
23 trial. This is what I get in response. I don't know what
24 else to say. I don't know how else to take it.

25 So I hoped that the private letter would have

1 sufficed. Any information that I received from this case or
2 any prejudged information, as I indicated in my letter, was
3 after my review of the transcript of the last arguments that
4 were made before me that I thought were extremely misleading.
5 I looked up and there's 1,030 filings in this case. I can't
6 imagine how many hours of hearings. I did pass Judge Mullen
7 once before and she said, in three-and-a-half years I would
8 be embarrassed to tell you. That's the quote that she gave
9 me.

10 All right. I am denying your motion to recuse.

11 You can make your arguments if that's what you
12 want to do. Mr. Traxler said that he was okay with me
13 relying on the briefs. So I have reviewed all the briefs. I
14 just wanted to put that on the record.

15 Now, the only other issues that we have are
16 motions to reconsider my prior Orders.

17 MR. TRAXLER: If you would allow me to make a
18 couple of preparatory remarks to protect ourselves on the
19 record.

20 THE COURT: Mr. Traxler, I will be happy to hear
21 from you. Again, I just needed to put that on the record,
22 because that's everything I was trying to avoid by the
23 letter. I thought that needed to be in there.

24 MR. TRAXLER: Yes, sir. I'm not going to argue
25 that issue.

1 THE COURT: All right.

2 MR. TRAXLER: I just need to say a couple of
3 preparatory things.

4 THE COURT: That will be fine.

5 MR. TRAXLER: First of all, for the record, I'm
6 Tom Traxler, co-counsel for the Plaintiff, along
7 with Alan Medlin, Bill Hogan, and Mike MacCloskie. Also with
8 us is Della Ballard, who is our Supreme Court Counsel in the
9 other appellate matters. She is here, if any questions arise
10 with regard to our motion before the Supreme Court.

11 THE COURT: That will become moot because I'm
12 reassigning the case. So that will be a non-issue.

13 MR. TRAXLER: Yes, sir. Mr. Gilreath is not
14 here.

15 THE COURT: I do want to make sure the record is
16 clear. I'm not recusing myself. I'm just reassigning the
17 case for some other reasons that I need to do. I will put
18 that on the record.

19 The case will be reassigned. Here's why. I am
20 the chief administrative judge for five counties. In doing
21 so, I receive 60 to 80 emails a day, people begging me to
22 help them move their cases along. I'm traveling and
23 statusing conferences. Every single week I'm going to
24 Beaufort, Allendale, everywhere that I've got to go to ensure
25 these people get their cases on the roster.

1 The chief was very, very, very clear with us that
2 nobody is to get date certain. He wants these courtrooms
3 open, and he wants these cases moved. I have done nothing in
4 the past six or seven months but to abide by his motion. And
5 I hope that these clerks would admit that I have done
6 everything I could do to clear these dockets, try these
7 cases, have these motions heard. So to be quite honest with
8 you, I just don't have the time to devote to this one.

9 So as the chief administrative judge, I feel as
10 though this is just going to detract from my abilities to
11 assist other plaintiffs that would like to have their cases
12 called to trial. So I feel like I would like to use my
13 resources to help and benefit those that want my help and
14 benefit.

15 So this will be reassigned to Bobby Bonds by the
16 end of the day. He has the time, and he's such a great guy.
17 You absolutely could not find a nicer guy. And I'm sure
18 you-all know him.

19 MR. TRAXLER: Yes, sir. I just wanted to state
20 for the record, with our motion before the Supreme Court, us
21 disagreeing over jurisdiction, assignment, and the like, I
22 don't want our participation today to constitute acquiescence
23 of jurisdiction or waiver of any of our arguments under the
24 pending motions. I just wanted to put up front so that
25 nobody could say later that we didn't say anything.

1 THE COURT: Completely fair.

2 MR. TRAXLER: Thank you.

3 Like I said, Mr. Gilreath is not here today
4 because of health reasons. We are not abandoning any of the
5 arguments we set forth in our motions. As I indicated to
6 you, we've set it out as clearly in writing as we can. If I
7 poorly argue it, it is simply repeating what we have said.
8 So on the motion to recuse and on the motions to reconsider,
9 we stand on our writings, our submission that have been given
10 to the Court, and unless we need to respond to a motion by
11 somebody, we have no further argument to give you.

12 THE COURT: That's very fair, Mr. Traxler. I
13 appreciate your doing that.

14 All right. So number one has been taken care of.

15 Plaintiff's Motion to Reconsider and Amend Order
16 granting CFRC's Motion for Intervention and Protective Order
17 as to Derivative Damages.

18 Is there anyone here want to argue that one?
19 You just want to rest on your briefs?

20 MR. TRAXLER: Yes, sir.

21 THE COURT: All right. Fair enough. I
22 appreciate that.

23 MR. FUHR: Good morning, Your Honor.

24 THE COURT: We're still in the morning. We're
25 still close enough to call it morning.

1 MR. FUHR: Your Honor, we're also happy to rely
2 on our brief in opposition. The one thing I have to add,
3 going to the context between their argument that they're not
4 making a derivative claim and that's duplicitous all over the
5 place, one other thing that I came across last night. Their
6 responses to the request for admission that were served in
7 this case. I would hand this up so it's in the record so
8 that wherever this case goes --

9 THE COURT: We need to make sure all of the
10 record is clear. That's in the record, though?

11 MR. FUHR: It is not yet in the record. I just
12 wanted to hand it up and have this submitted for the file. I
13 am not sure what your procedure is here.

14 THE COURT: If you could get one of the local
15 attorneys to e-file that for you, please. That would be
16 great. We need to make sure that this stays in the record.

17 MR. FUHR: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. FUHR: Thank you.

20 THE COURT: Yes, sir. Thank you so very much.

21 All right. Plaintiff's Motion to Reconsider,
22 Amend to Vacate Court's Letter -- Plaintiff's Motion to
23 Reconsider and Amend Protective Order for CFRC, dated June 7,
24 2021. So that's the Jolley privilege?

25 MR. TWOMBLEY: Yes, sir. I think that's the

1 motion that CFRC filed on the position of conversations
2 between Mr. Jolley and the officers and directors of CFRC
3 were privileged because he was company counsel. Somebody
4 else -- that's not my motion. That's what the motion is.

5 MR. TRAXLER: That's correct. It's my motion,
6 and I have no additional oral argument.

7 THE COURT: Thank you very much. I appreciate
8 that.

9 MR. FUHR: Nor do we. Thank you.

10 THE COURT: Thank you very much.

11 Did you get that, madam court reporter?

12 THE COURT REPORTER: Yes, sir.

13 THE COURT: Plaintiff's Motion to Reconsider and
14 Amend Order on Motions entered June 7, 2021, omnibus.

15 MR. TRAXLER: I am the moving party, and I have
16 no oral arguments in addition to our submissions.

17 THE COURT: All right. For the record, I have --
18 I believe you submitted those, because I believe you
19 contacted Amy on Wednesday. So you submitted those well in
20 advance. I've taken a look at all of the motions to
21 reconsider. Obviously, I heard extensive argument concerning
22 the original motions; therefore, I am going to deny the
23 reconsiderations.

24 Is there anything from the Supreme Court that I
25 need to address as to their -- I understood that they were

1 going to need to take, from that standpoint, take over as the
2 original jurisdiction to reassign the case. Now that I'm
3 reassigning the case, does that simply become moot, or do I
4 need to address anything concerning that?

5 MR. TRAXLER: I'll let Ms. Ballard address that.

6 THE COURT: I just want to make sure that I don't
7 need to do something that I'm doing something correctly.

8 MS. BALLARD: Thank you, Your Honor. Desa
9 Ballard.

10 THE COURT: How are you?

11 MS. BALLARD: I'm joining the party late.

12 THE COURT: How are you?

13 MS. BALLARD: I'm well. It's good to see you,
14 again.

15 THE COURT: Good to see you. Did you come from
16 Columbia?

17 MS. BALLARD: No, I came actually from Savannah
18 this morning. We have a house down there that we enjoy on
19 the holidays.

20 THE COURT: Good. Are you staying the whole
21 week?

22 MS. BALLARD: I think the reason I was brought
23 into this case is because I have the background of having
24 spent four years at the Supreme Court understanding how the
25 court system operates.

1 THE COURT: Please. I would love to learn it.

2 MS. BALLARD: The chief administrative judge
3 process was all very new back then. It was 1983 through '87
4 that I was at the court. Court administration was brand new.
5 We had, like, three people there.

6 THE COURT: Wow.

7 MS. BALLARD: We had -- a process was established
8 that has been followed since then because of the fact that
9 the Court is a unified judicial system under Article 5,
10 Section 1 of the Constitution. Any matter related to the
11 administration of the Courts falls within the purview of the
12 Chief Justice and the Court.

13 Our concern was that the 2006 administrative
14 Order, which set up the complex case designation, and the
15 chief administrative judge Order issued in 2019, which is the
16 one that is in effect now, does not specifically give the
17 chief administrative judge the authority to assign a
18 successor judge to a case that has already been designated as
19 complex. The 2006 Order describes the process.

20 The only thing in the 2019 Order, Your Honor, is
21 if a trial has begun in a complex case -- and if a trial has
22 begun in a complex case and the chief administrative judge, I
23 believe Item 18 in the chief administrative judge's Order,
24 allows you to assign a successor judge after the successor
25 judge certifies to the parties and to the Court that he's

1 familiar with the record; he or she is familiar with the
2 record.

3 Other than that, anything administrative --
4 assigning judges, determining the successor judges, anything
5 other than what is spelled out of the chief administrative
6 judge Order of 2019 -- has to be done by the chief justice,
7 not this Court.

8 I would hand up a case that I actually found last
9 night. This is Graham v. the State of South Carolina. If
10 you'll see, this was a criminal case, Your Honor, that was
11 mid-case, and there became a dispute about who should be
12 presiding over the case.

13 So it went to the Supreme Court. Justice
14 Picciones was the chief justice at that time. He said:
15 Okay, since we don't know, here's what we're going to do. He
16 assigned Judge Henderson to do certain things. He
17 assigned -- let's see. I think he assigned another judge to
18 do something else, but he then, second paragraph: It is
19 hereby ordered that the Honorable Roger E. Henderson be
20 vested with exclusive jurisdiction over the petitioner's
21 motion for re-sentencing in the above-captioned matter.

22 Anything that doesn't fall specifically within
23 the authority granted to you by the chief administrative
24 judge has to go to the chief justice for reasons that no one
25 knows. And I didn't know it existed until I looked into it

1 in this case.

2 There is a gap between the authority spelled out
3 in the 2006 administrative Order and the authority vested in
4 you by the 2019 administrative Order. So I believe, and I
5 believe the case law backs me up, that in the absence of a
6 specific provision in the chief administrative judge Order
7 from 2019, that a chief administrative judge does not have
8 the authority to appoint a successor judge in a case that has
9 already been designated complex. That has to go, if you look
10 at 4-A, B, C, and D, at the bottom of the chief
11 administrative judge Order, those require the chief justice
12 to step in. It's an administrative matter. It has nothing
13 to do with the motion to recuse.

14 THE COURT: Right, because -- that's all -- I
15 have haven't ever changed jurisdiction in this case, meaning
16 I didn't assign it to myself.

17 MS. BALLARD: That is the problem.

18 THE COURT: Oh, I messed up.

19 MS. BALLARD: No, I think --

20 THE COURT: She recused herself. So it just fell
21 on the roster. I've just handling everything. I assumed --
22 please, I'm asking you your advice. Correct me where I am
23 wrong.

24 MS. BALLARD: Okay.

25 THE COURT: That as the chief administrative

1 judge, upon her recusal I would then have to reassign the
2 case because she recused herself. That's the gap?

3 MS. BALLARD: That's the gap between the two
4 Orders.

5 THE COURT: All right.

6 MS. BALLARD: And when there is a gap between the
7 two Orders, the only solution is the chief has to make it.

8 THE COURT: Just tell him I would like to have it
9 reassigned to Bobby Bonds.

10 MS. BALLARD: I'll be happy to make that
11 submission with the court, Your Honor.

12 THE COURT: Can we do that? Thank you so very
13 much. That will just solve all the problems. Tell him to
14 fix that gap. Tell him I said so. Just kidding.

15 MS. BALLARD: It won't be the first time I have
16 told the court how to do something. Usually they listen.

17 THE COURT: I don't tell the Court to do
18 anything. When the chief speaks, believe me, I listen.

19 MS. BALLARD: I will convey that message, Your
20 Honor. Thank you so much.

21 THE COURT: Thank you very much. I really
22 appreciate you helping me with that. Do I need to submit
23 anything to the chief, or you'll be able just to relay, say
24 that Judge Price was the chief and asked that it be
25 reassigned to Bobby Bonds because he's working so hard in the

1 other five counties?

2 MS. BALLARD: I will take care of that. I will
3 copy you and all shall be well.

4 THE COURT: Have a wonderful rest of your
5 vacation.

6 MS. BALLARD: Thank you, Your Honor.

7 MR. TWOMBLEY: Your Honor, may I be heard before
8 MS. BALLARD leaves?

9 MS. BALLARD: I'm not leaving.

10 MR. TWOMBLEY: Okay. All right. Great. I just
11 want to put a couple of things on the record. I may have
12 misunderstood how the procedural posture -- and correct me,
13 if I have. The Plaintiff, to the best of my knowledge, has
14 not filed any motion before Your Honor asking Your Honor to
15 take any action with respect to the assignment of a judge.

16 THE COURT: Well, they did because they
17 petitioned the Supreme Court to have them do it.

18 MR. TWOMBLEY: Well, they did petition the
19 Supreme Court, that is correct. They didn't petition the
20 Supreme Court. They filed a motion. There is a motion
21 before the Supreme Court on this issue.

22 They have not filed anything -- there is no
23 filing, there's no motion on record in this case, in this
24 circuit court on this issue, number one.

25 Number two, I do agree that they should have

1 filed a motion before the circuit court. In fact, that's
2 what we have argued in our response to the motion they filed
3 with the Supreme Court, which is that if they wanted the case
4 assigned, they should have filed a motion down here in the
5 circuit court and asked Your Honor, as the chief
6 administrative judge, to assign the case, at which point in
7 time you could assign it to yourself or you could assign it
8 to another judge. They didn't do that.

9 This issue of do you have the authority to assign
10 it to someone or not is not before the Court today. In my
11 opinion, there's been no motion filed. To the best of my
12 knowledge, I didn't know -- while I welcome her, I didn't
13 know that Ms. Ballard was Counsel of record in this case in
14 the circuit court. I was only aware of her involvement in
15 the Supreme Court case.

16 I just say that because I feel like we're being a
17 little bit blindsided here. There's no motion pending,
18 there's no Notice that this issue was going to be argued in
19 any way, shape, or form today. And, you know, we just think
20 it's improper, and I want to put that on the record.

21 Finally, last point, briefly, is that I just feel
22 very strongly that the Plaintiff's argument here today --
23 this is the genesis of what we told the Supreme Court -- is
24 extremely disingenuous. Everyone knew clearly that Your
25 Honor was assuming jurisdiction of these cases in February.

1 The Plaintiff has repeatedly reached out to the
2 Court. The Plaintiff has repeatedly sought guidance and
3 assistance from the Court. The Plaintiff has filed motions
4 with the Court. The Plaintiff has argued motions to Your
5 Honor.

6 The Plaintiff has never taken the position, not
7 one single time, that Your Honor did not have jurisdiction on
8 these cases. The Plaintiff never took the position that a
9 different procedure needed to be followed. They worked with
10 Your Honor 100 percent full stop until you entered a ruling
11 that they didn't like.

12 And once you entered a ruling they didn't like,
13 for the first time after months and months and months and
14 months of a course of performance of them working with Your
15 Honor assuming jurisdiction of the cases, they now say that
16 Your Honor shouldn't have done it, and that you made a
17 mistake.

18 Quite frankly, I just think that it's awful. I
19 think it's awful that a litigant can work with the Court for
20 months and months and months and then go back and cry some
21 type of technical deficiency in the past.

22 I don't think Ms. Ballard, with all due respect,
23 is correct. We think the Rules clearly provide that this
24 goes back to the Chief Administrative Judge, which is Your
25 Honor.

1 Most importantly, there's just no motion here
2 before the Court pending, requesting that Your Honor take any
3 action in this regard. That's what I wanted to say. Thanks.

4 MS. BALLARD: Your Honor, may I respond briefly?

5 THE COURT: Yes, ma'am

6 MR. HOGAN: My Notice of Appearance, Your Honor.

7 THE COURT: That's fine. I trust you.

8 MS. BALLARD: I have not appeared in this Circuit
9 Court case.

10 THE COURT: You're talking about for this. Got
11 you. You are talking about circuit court.

12 MS. BALLARD: I'm filing my Notice of Appearance
13 to bless my arguing before you today.

14 MR. TWOMBLEY: Has this been filed though?

15 MS. BALLARD: No, I just handed it to the clerk.

16 MR. TWOMBLEY: So my statement --

17 MS. BALLARD: I will have my office e-file it as
18 I'm driving back.

19 MR. TWOMBLEY: I understand, but my statement was
20 correct, that I did not know Ms. Ballard was even Counsel in
21 this Circuit Court case. She has not filed a Notice of
22 Appearance. And I'm being handed and shown this at the same
23 time Your Honor is, which is in the middle of this hearing
24 after she's given an argument on this issue that's not before
25 the Court. It's unfair; it's improper.

1 MS. BALLARD: Very briefly, Your Honor. The
2 reason there's not a motion before the Court is because this
3 Court doesn't have jurisdiction to appoint a successor judge.
4 As I said, the 2006 administrative Order sets the procedure
5 for the initial appointment of a complex case and the initial
6 appointment of the judge.

7 The 2019 administrative Order covers everything
8 except the circumstance. So a motion before you to assign
9 the case to you or someone else -- you would have not had
10 jurisdiction to do even if we had asked. So as I said
11 before, I think it lies exclusively with the chief justice
12 because there is what I call a hiccup; there's something that
13 doesn't match up.

14 And as I've done for almost 40 years, when you
15 don't know, you ask the chief justice.

16 THE COURT: I appreciate you making the record
17 accurate, Ms. Ballard. Thank you so much.

18 MS. BALLARD: Thank you.

19 THE COURT: All right. Anything further?

20 MR. TRAXLER: I want to make sure. We had four
21 motions filed. I believe you talked about three, but I
22 understand you are denying all four.

23 THE COURT: That's correct.

24 MR. TRAXLER: I want to make sure that our not
25 arguing our material does not constitute an abandonment of

1 those arguments. It is all set out in writing. We rely upon
2 those writings. That is all we have for the Plaintiff.

3 THE COURT: That's certainly fair, yes, sir.

4 MR. TRAXLER: Thank you.

5 THE COURT: All right. Anything further?

6 MS. PAYLOR: Yes, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. PAYLOR: I argued a motion for summary
9 judgment that you verbally granted at the hearing, and I
10 submitted an order. It has not been signed, so I just wanted
11 to make sure --

12 THE COURT: I read it. You sent it in Word. I
13 read it and I said, that's fine. Did we not tell you e-file
14 it yet?

15 MS. PAYLOR: We did e-file it.

16 THE COURT: I know I signed everything.

17 MS. PAYLOR: Do you want us to e-file it again?
18 I know my secretary did, because we got that message.

19 THE COURT: Let madam clerk check to see if it
20 got e-filed. I apologize. You-all know I sign them quickly.

21 THE CLERK: Which case did you file it in?

22 MS. PAYLOR: Pardon?

23 THE CLERK: Do you know which case you filed it
24 in?

25 MS. PAYLOR: Probably the 1919 case.

1 THE COURT: Never mind. It's in Amy's queue.

2 MS. PAYLOR: I just wanted to make sure.

3 THE COURT: Sorry, that's our fault.

4 MS. PAYLOR: Thank you, Your Honor.

5 THE COURT: Do you have something we didn't sign?

6 MR. TWOMBLEY: It's a question. If Your Honor is
7 going to reassign the case.

8 THE COURT: I can't reassign it. She's saying
9 that the chief will have to deal with that.

10 MR. TWOMBLEY: We preserve all arguments and we
11 abandon nothing and we will continue to fight. I
12 respectfully disagree and anything else I can say to note my
13 disagreement with that. The trial date is what I'm really
14 concerned with. You said August the 30th. Is the fact that
15 it's going to be re-assigned -- how does that affect the
16 August 30th trial date?

17 THE COURT: I will tell you this: If another
18 judge makes an order, I have never gone against it. I don't
19 think you will either. It's the order of the Court.

20 MR. TWOMBLEY: Thank you.

21 MS. PAYLOR: Thank you, Your Honor.

22 THE COURT: You're welcome. All right. Thank
23 you all so very much. Hope you have a wonderful July 4th
24 week. If you all need something else, just reach out. Ms.
25 Ballard, thank you so very much. If you need something from

1 me, please just let me know, and I will be happy to handle
2 it.

3 MS. BALLARD: Thank you very much.

4 (The proceedings were concluded at 11:47 a.m.)

5 * * *

6 END OF TRANSCRIPT

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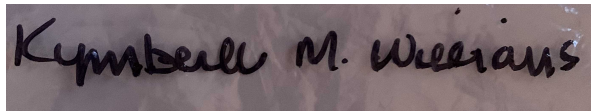
25

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, County of Beaufort, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 2nd day of July, 2021.

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

This, the 8th day of July, 2021.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Kymberlee M. Williams".

KYMBERLEE M. WILLIAMS, CSR/RPR



Deposition of:
John M Jolley , Esq.

July 19, 2021

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

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

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

8 vs. C/A NO. 2016-CP-07-1919

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

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

20 HAMPTON B. LUZAK,
21 Plaintiff,

22 vs. C/A NOS. 2019-CP-07-01253
23 AND 2019-CP-07-01294

24 MERRILL U. BARRINGER,
25 Defendant.

CONFIDENTIAL

18 VIDEO
19 DEPOSITION OF: JOHN M. JOLLEY - Volume III

20 DATE: July 19, 2021

21 TIME: 9:07 A.M.

22 LOCATION: Jolley Law Group
23 810 Bellwood Road
24 Columbia, SC

25 TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Wanda K. Cecil
Certified Court Reporter

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15 ALSO PRESENT:

16 Hampton B. Luzak
Ellie Thomas
17 (Appearing By Zoom)
18 Bruce Balmer, Videographer
19
20
21
22
23
24

25 (INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: We are going on the
2 record at 9:07:40 on Monday, July 19, 2021. This is
3 Media -- Volume III, Media Unit 1 of the video
4 recorded deposition of John M. Jolley, Esquire.

5 Will the court reporter please swear in
6 the witness?

7 JOHN M. JOLLEY,
8 being first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, we've met before obviously
12 and I'm Tom Traxler representing Hampton Luzak in
13 this lawsuit and will be asking -- resuming asking
14 you questions today. Did you do anything since the
15 last deposition on April 21st to prepare for this
16 deposition today?

17 A. I reviewed the -- my deposition
18 transcript.

19 Q. Okay. From both prior days?

20 A. Actually, yes, from both prior days.

21 Q. Okay. And was that annotated by
22 anybody, marked up, highlighted or -- in any
23 fashion?

24 A. No, sir.

25 Q. Have you discussed this deposition, the

1 substance of your testimony with anybody --

2 (Unintelligible.)

3 BY MR. TRAXLER:

4 Q. -- since we were last together?

5 A. I have not.

6 THE COURT REPORTER: Excuse me. We --
7 somebody said something on the computer.

8 (No response.)

9 THE COURT REPORTER: Maybe it wasn't
10 something I was supposed to hear.

11 MR. TRAXLER: Okay.

12 THE COURT REPORTER: Thank you.

13 BY MR. TRAXLER:

14 Q. Did you review any additional documents
15 beyond the transcripts from the last two
16 depositions?

17 A. I have not.

18 Q. Okay. Great.

19 MR. TWOMBLEY: Chip is -- can you
20 confirm Chip's on? He just said e-mailed and said
21 the link's not working.

22 THE WITNESS: I can -- I can see Chip.

23 MR. TWOMBLEY: Okay. Maybe I'm late on
24 that e-mail. Sorry.

25 MS. PAYLOR: We're having a hard timing

1 hearing Ashley and Tom. I don't know if they have
2 microphones on or what, but --

3 MR. SCHRONCE: It's very muffled.

4 MS. PAYLOR: It's hard to hear anybody.

5 MR. TRAXLER: All right. This is Tom.
6 Can you hear me better?

7 MS. PAYLOR: You're in an echo.

8 MR. TRAXLER: I don't know how that
9 would be. I got the microphone almost in my mouth.

10 MR. TWOMBLEY: Yeah. That's the --

11 MS. BALLARD: I can hear you.

12 MR. TWOMBLEY: -- microphone --

13 MS. BALLARD: I can hear you okay.

14 MR. TWOMBLEY: -- from the video, not
15 really from the Zoom, the link that they're
16 listening through, so it's a --

17 MR. GILREATH: I think that was better,
18 Tom, from my standpoint.

19 MS. PAYLOR: Okay.

20 MR. TRAXLER: Ashley is right. The
21 microphone that I am using is for the video. It is
22 not the Zoom microphone.

23 THE COURT REPORTER: And I'm not
24 figuring out who is talking because there's so many
25 of you guys.

1 MS. PAYLOR: I'm Alice Paylor and I will
2 identify myself if I say anything. Thank you.

3 THE COURT REPORTER: Thank you.

4 MR. TWOMBLEY: All right. Let's try
5 this again. Before the record -- before we went on
6 the record, we discussed the lack of air
7 conditioning here. We are supposed to start this
8 deposition at nine o'clock. We are going to see how
9 far we can go. Hopefully have the air conditioning
10 fixed soon, but we are going to go.

11 If you ever get in the position, Mr.
12 Jolley, where you're particularly uncomfortable,
13 tell me and we'll -- we'll do whatever.

14 Q. All right. We talked about a lot of
15 things in the last couple of depositions and I'm
16 going to try to structure my questions today to see
17 what I can do to help us minimize some privilege
18 discussion. And there are going to be a number of
19 questions where I'm going to ask you for a simple
20 yes or no and then we're going to step a little bit
21 more carefully through some privilege issues. All
22 right? And again, if you don't ever understand what
23 I'm asking you, don't hesitate to tell me. Okay?

24 A. Okay.

25 Q. Great. And I want to go back to the

1 summertime of 2012 and follow up on some questions,
2 matters that happened after the June 28, 2012
3 meeting where Kevin Luzak was fired as an officer of
4 the company. We oriented in that time okay?

5 A. I think so.

6 Q. Okay. Were you aware of a letter that
7 Hampton Luzak wrote to her father and to her sister
8 and Mike Hagler and to Kevin, June -- July 6, 2012?
9 And in my notebook, it is Tab 28, Jolley Deposition
10 Bates Number 813, a letter of July 6, 2012.

11 All right. And what we are doing also
12 for the record is we have a different court reporter
13 than last time and the earlier court reporter
14 apparently has the exhibit notebook. So we have
15 agreed for Mr. Jolley to use Ms. Kirk's notebook of
16 exhibits. She doesn't think it's marked; but Mr.
17 Jolley, if he sees a document that is -- has her
18 notes or markings on it, then he will give us a
19 heads up; but otherwise, we will use her notebook as
20 the substitute exhibit notebook.

21 Is that all right with everybody?

22 (No response.)

23 MR. TRAXLER: Alice?

24 MS. PAYLOR: I'm trying to find it.

25 That was something that wasn't in your original

1 book; is that correct?

2 MR. TRAXLER: Okay. But my -- my point
3 is --

4 MS. PAYLOR: I'm looking for it. Go
5 ahead.

6 MS. KIRK: Oh, this isn't in the
7 notebook?

8 MR. HOGAN: It was sent out as an
9 exhibit, Tab 28.

10 MR. TRAXLER: Tab 28, Bates Number 813.
11 Let me show you a copy of it, Mr. Jolley.

12 MS. KIRK: I might not have that.

13 MR. TRAXLER: All right. If you don't
14 have it, Mr. Jolley, then I will wait.

15 Let me go back to what I was saying.
16 The court reporter is a different one than had the
17 exhibit notebook from the last two depositions. Mr.
18 Jolley is going to use Ms. Kirk's copy of the
19 exhibit notebook. She doesn't think it has any
20 markings in it. If it does, Mr. Jolley, if he see
21 one, will notify us; but we are going to let him use
22 her notebook as a substitute for the exhibit
23 notebook. Is that all right?

24 MS. PAYLOR: Okay with me.

25 MR. SCHRONCE: No objection from me,

1 Tom.

2 MR. TRAXLER: Ashley, you okay?

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

4 MR. TRAXLER: Okay. Ashley agrees.

5 Okay.

6 MS. KIRK: And I believe, Tom, that that
7 notebook ends at Page 802.

8 MR. TRAXLER: All right.

9 Q. Do you recall --

10 A. That is correct.

11 Q. Do you recall Hampton Luzak sending a
12 letter in July of 2012 after Kevin was removed as an
13 officer for the company complaining about it?

14 A. I don't recall a letter. I don't recall
15 seeing a letter from Ms. Luzak that you're
16 describing.

17 Q. Okay. Do you recall receiving Brad
18 Herring's resignation letter?

19 A. I -- I do remember seeing Brad
20 Herring -- yeah. I do remember seeing Brad
21 Herring's resignation letter.

22 Q. And when do you recall that you would
23 first have seen it?

24 A. I think shortly after the time Mr.
25 Herring resigned.

1 Q. Okay. Let me get you to go to Tab 1 and
2 it's Bates Number 79 at the top right-hand corner.

3 A. You said Tab 1, Bates 79?

4 Q. Yes, sir.

5 A. (Complying.) I see Bates Number 79.

6 Q. Do you recall when -- approximately when
7 you would have first seen that?

8 A. I -- well, I'm cc-ed on the letter and I
9 expect I would received it shortly after Mr. Herring
10 sent it; but I don't recall beyond that.

11 Q. Did you do anything in response to
12 getting that letter?

13 A. I don't remember doing anything in
14 response to Mr. Herring's letter.

15 Q. Okay. This is going to be one of those
16 yes or no questions.

17 A. Oh.

18 Q. Did you discuss it with anyone that you
19 recall?

20 A. No.

21 Q. Okay. Did -- this is a different way of
22 coming at it, but just to make sure. Did anyone
23 discuss it with you that you recall?

24 MS. PAYLOR: Tom, you're going to have
25 to talk up. I can't hear anything you're saying.

1 BY MR. TRAXLER:

2 Q. Did -- did anybody discuss the Brad
3 Herring letter at Bates Number 79 with Mr. Jolley?

4 A. That I recall, no.

5 Q. Okay. So I presume if I ask you the
6 question, if you rendered anybody any legal advice
7 with regard to this letter, your answer would be
8 likewise no; is that correct?

9 MS. KIRK: Object to form.

10 MR. TWOMBLEY: I would just instruct the
11 witness to answer yes, no, I don't know, I don't
12 recall, whatever your -- you know, before you go
13 into any detail or substance.

14 MR. TRAXLER: That's fair.

15 THE WITNESS: I don't recall.

16 BY MR. TRAXLER:

17 Q. Okay. If you go to Tab 83 -- I'm sorry,
18 Bates Number 83, same tab.

19 MS. PAYLOR: Yeah. Tom, what notebook
20 are you in with him? I'm sorry, I missed all that.

21 MR. TRAXLER: I am in the exhibit
22 notebook, Tab 1, Jolley Dep 0083.

23 Q. This is a letter of July 12, 2012 from
24 Mike Hagler with a copy to you. Do you recall
25 receiving this letter?

1 A. I do recall seeing this letter.

2 Q. Did you discuss the letter with anyone?

3 Yes or no.

4 A. Yes.

5 MR. MOLSTER: Tom, can we just -- if we
6 let him answer that question on behalf of Randy
7 and/or Merrill, do you agree -- yes or no -- yes or
8 no, without instruction or having to meet with him,
9 will you agree that it's not a subject matter
10 waiver?

11 MR. TRAXLER: Yeah. I will agree,
12 throughout this deposition, if I ask him a yes or no
13 question about whether he discussed it with someone
14 and who he discussed it with without going into
15 substance, I will agree to an ongoing stipulation
16 that that does not constitute a blanket waiver.

17 MR. MOLSTER: Thank you.

18 MR. TWOMBLEY: And also, just to
19 clarify. I mean the, yes, no, I don't know, I don't
20 recall, any of those responses, you will agree to
21 that?

22 MR. TRAXLER: Yeah. And I would agree
23 that to extend it further to facilitate things, if
24 he says yes, then I would say with whom; but then I
25 would not -- and I would agree that that answer

1 would not constitute a blanket waiver of privilege.

2 MR. TWOMBLEY: Okay.

3 MR. TRAXLER: So we can move through
4 this thing a little bit faster perhaps.

5 MR. TWOMBLEY: Okay.

6 MR. TRAXLER: Okay? Anybody not agree
7 with that?

8 (No response.)

9 BY MR. TRAXLER:

10 Q. Okay. Who did you discuss this letter
11 with, if anybody?

12 A. My recollection is I discussed this
13 letter with Mr. Barringer and Mr. and Ms. Light and
14 then I discussed it with lawyers in my firm.

15 Q. When you discussed it with Mr. Barringer
16 and Ms. Light, was that in one conversation where
17 they were together or are these separate
18 conversations?

19 A. I think it was in one conversation.

20 Q. Was it in person or by telephone or
21 otherwise?

22 A. I don't -- I don't remember whether it
23 was in person. I -- I think it was in person.

24 Q. Okay. Do you recall when that was?

25 A. Not beyond shortly after receiving the

1 letter.

2 Q. Okay. And who initiated that phone call
3 or that communication, I should say?

4 A. I don't remember.

5 Q. Okay. What was the purpose of the
6 communication with you?

7 MS. PAYLOR: Object because that calls
8 for attorney/client privilege. I instruct him not
9 to answer.

10 MR. TRAXLER: Okay. Anybody else
11 asserting an attorney/client privilege as to that
12 conversation?

13 MR. TWOMBLEY: Well, if it involved Paul
14 Barringer, I'd make the same objection.

15 BY MR. TRAXLER:

16 Q. All right. Which privilege -- are you
17 able to answer that question in light of these
18 instructions?

19 A. No.

20 Q. Okay. Which client privilege keeps you
21 from testifying to that?

22 MR. TWOMBLEY: Object and I instruct him
23 to answer. It's not -- it's not his determination.
24 It's ours.

25 THE COURT REPORTER: I have --

1 MS. PAYLOR: Same objection.

2 THE COURT REPORTER: I have Hampton
3 Luzak wanting to be admitted.

4 MR. TRAXLER: Yes.

5 MR. SCHRONCE: And, Tom, this is John
6 Schronce again. I am having difficulty hearing both
7 of you, but especially now Ashley. So if both of
8 you can speak up, that would -- that would help me.

9 MS. BALLARD: I can't hear Ashley at
10 all. This is Desa.

11 MR. TRAXLER: All right. I'll try --
12 I'll try to do better. Did y'all hear that?

13 MS. PAYLOR: Yes.

14 MR. TRAXLER: Okay.

15 MR. SCHRONCE: Thank you.

16 BY MR. TRAXLER:

17 Q. What did -- was anyone else in on that
18 conversation other than yourself, Merrill Light and
19 Paul Barringer?

20 A. Yes.

21 Q. Who else?

22 MR. TWOMBLEY: I would -- I would ask
23 you -- if it's -- I mean, I don't want to tell him
24 what to -- what to say; but I -- can you ask him if
25 it was anyone other than a client or a lawyer in his

1 firm and let him answer yes or no to that?

2 BY MR. TRAXLER:

3 Q. Was the other person or people in that
4 communication members of your firm?

5 A. Yes.

6 Q. Was there anybody else beyond members of
7 your firm, Paul Barringer and Merrill Light?

8 A. No.

9 Q. Okay. Was legal advice sought from you
10 by CFRC about what to do in response to this letter
11 if anything?

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

14 MS. KIRK: Object to the form.

15 MR. SCHRONCE: Same objection and --

16 MS. PAYLOR: Same objection.

17 MR. SCHRONCE: -- Tom, as to form, can
18 we agree that an objection by one is an objection to
19 all?

20 MR. TRAXLER: Yeah.

21 THE WITNESS: Mr. Traxler, can you
22 repeat the question?

23 BY MR. TRAXLER:

24 Q. Yes. Did CFRC seek any legal advice
25 from you in response to this letter?

1 A. I don't believe so.

2 Q. Okay. If you look down at the next to
3 last paragraph on Page 1, it starts and it reads: I
4 have personally observed behavior in at least two
5 board meetings and in my call with Paul two weeks
6 ago which suggests that there are issues with his
7 mental capacity. Hampton's letter now offers
8 confirmation of my observations.

9 Did you agree with that statement when
10 you read it?

11 A. I have -- I don't have any idea about
12 Mr. Hagler's -- and I agree that what you read was
13 what Mr. Hagler put in his letter, but I don't have
14 any basis for knowing the substance of what Mr.
15 Hagler asserts in that letter.

16 Q. Because you were not at that board
17 meeting?

18 A. I cer -- no, I don't believe so. Oh,
19 I'm sorry.

20 Q. You were there, weren't you --

21 MS. KIRK: Object to the --

22 BY MR. TRAXLER:

23 Q. -- June 28th in your office?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I don't --

1 MR. TWOMBLEY: You can answer.

2 THE WITNESS: I'm not sure what two
3 board meetings Mr. Hagler is referring to.

4 BY MR. TRAXLER:

5 Q. But you were -- the June 28, 2012 board
6 meeting was at your office; correct?

7 A. I don't -- I -- I expect it was, but I
8 don't remember that independently of the documents
9 at this point.

10 Q. And you don't recall independently as
11 you sit here today what transpired or what was going
12 on at that board meeting; is that correct?

13 A. We can look at the documents to refresh
14 my recollection, but with -- but I don't remember
15 the June 28th board meeting without having --
16 looking -- looking at the documents relating to that
17 meeting.

18 Q. If I told you that there was a -- that
19 the -- some of the directors were in your office
20 participating by telephone and it was a telephonic
21 board meeting, would that refresh your recollection?

22 A. I do remember a meeting in which that --
23 I mean, I think there were more than one meeting
24 that that would describe; but, yeah. I -- I think
25 they had several meetings in our office where some

1 of the directors attended by telephone.

2 Q. And you were there, were you not?

3 A. I think I was there for a part of those
4 meetings.

5 Q. Did you see behavior by Mr. Barringer at
6 that board meeting that would suggest issues with
7 his mental capacity?

8 A. I did not.

9 Q. Did you provide any -- strike that.
10 That's all right.

11 THE COURT REPORTER: I've admitted Ellie
12 Thomas.

13 MR. TRAXLER: That's fine.

14 Q. When you had the telephone conversation
15 with Paul Barringer and Merrill Light or however
16 that conversation was with members of your firm
17 there, who were you representing in that
18 communication? Were you representing Paul Barringer
19 or Merrill Light or both?

20 MS. KIRK: Object to the form.

21 THE WITNESS: Both.

22 BY MR. TRAXLER:

23 Q. And you were representing Merrill Light
24 in her individual capacity?

25 MR. TWOMBLEY: Object to the form --

1 MS. KIRK: Object.

2 MR. TWOMBLEY: -- of the question.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. TRAXLER:

6 Q. And were you representing her for the
7 purposes of providing legal advice to her
8 individually, separate from Paul Barringer?

9 MS. KIRK: Object to the form.

10 THE WITNESS: No.

11 BY MR. TRAXLER:

12 Q. Were you representing Paul Barringer in
13 that communication?

14 A. I was.

15 Q. So you were representing two clients at
16 the same time in the same conversation; is that
17 correct?

18 A. That is true.

19 MS. KIRK: Object to the form.

20 BY MR. TRAXLER:

21 Q. And did you at that time perceive their
22 interests in that communication to be exactly the
23 same?

24 MR. TWOMBLEY: Object to the form of the
25 question and I'm going to instruct you not to

1 answer. I don't you're entitled to what he may or
2 may not have perceived.

3 MS. PAYLOR: Same objection.

4 MR. TRAXLER: Well, he's representing
5 two different people and I think I'm entitled to
6 know if he was representing both or -- both and how
7 he was representing each and how he's reconciling
8 potentially divergent interests and conflicting
9 interests in that communication.

10 MR. TWOMBLEY: Well, I think if one of
11 those people was your client, you might have an
12 argument; but I don't think you have any standing or
13 any grounds to argue about, you know, what clients'
14 interests are that were not your client and whether
15 or not they diverged at any point in time.

16 BY MR. TRAXLER:

17 Q. Okay. At that point in time, you were
18 not representing any -- you were not representing
19 CFRC in any capacity; is that correct?

20 MS. KIRK: Object to the form.

21 THE WITNESS: That is correct.

22 BY MR. TRAXLER:

23 Q. Okay. And I think I asked you this
24 question, I apologize. It'll be subject to their
25 instruction. Well, strike that. Strike that.

1 You, in this communication, were
2 communicating with Paul Barringer individually as
3 your client, as well as communicating with Merrill
4 Light individually as your client; is that correct?

5 MS. KIRK: Object to the form.

6 MS. PAYLOR: Tom, you need to speak up.

7 MR. TRAXLER: Okay.

8 MS. PAYLOR: You keep falling off and I
9 cannot hear what you're saying.

10 THE WITNESS: That is correct.

11 MS. PAYLOR: Can you repeat that?

12 MR. TRAXLER: He -- he confirmed that he
13 was representing Paul Barringer individually and
14 Merrill Light individually in that communication.

15 MS. PAYLOR: Thank you.

16 MR. TRAXLER: All right.

17 Q. All right. Mr. Jolley, let me get you
18 to flip over to Tab 8, Bates Number 313, if you
19 would please.

20 A. (Complying.) I'm at 313.

21 Q. Okay. And this is a privilege log that
22 was produced to us setting forth documents that were
23 withheld because of privilege; right?

24 A. Yes, sir.

25 Q. All right. You look at the second

1 entry, it says July 3, 2012, John Jolley as the
2 author, and you apparently wrote an e-mail to
3 Merrill Light pertaining to legal issues with regard
4 to CFRC ownership. What was that e-mail about?

5 MS. KIRK: Object to the form.

6 MR. TWOMBLEY: Yeah, I don't -- I -- I
7 don't -- I think that's privileged. I don't think
8 you're entitled to go into what his e-mail is about.

9 MR. TRAXLER: Are you asserting
10 privilege?

11 MR. TWOMBLEY: Well, I just want to make
12 sure Alice and them heard.

13 MR. TRAXLER: Alice, Ashley is trying to
14 prompt you.

15 MS. PAYLOR: What -- what was the
16 question? I'm sorry. I'm really having a hard time
17 hearing.

18 MR. TWOMBLEY: Well, I'm doing the best
19 I can without yelling at you.

20 MS. PAYLOR: You can yell at me.

21 MR. TRAXLER: Well, I'd like to; but I'd
22 rather do it off the record.

23 Go to Bates 313 under Tab 8.

24 MS. PAYLOR: I'm there.

25 MR. TRAXLER: All right. I asked Mr.

1 Jolley what that e-mail about was on July 3, 2012
2 and Ashley wants you to assert a privilege.

3 MS. PAYLOR: Well, it says subject
4 matter. E-mail re: legal issues re: CFRC ownership.
5 I don't think you're entitled to anything other than
6 that.

7 MR. TRAXLER: Are you instructing him
8 not --

9 MS. PAYLOR: So I will instruct him not
10 to answer.

11 BY MR. TRAXLER:

12 Q. All right. All right. Let me get you
13 to go back to Tab 1, 87 -- Page 87.

14 MR. GILREATH: What page? What page?

15 MR. TRAXLER: 87.

16 MR. GILREATH: Thank you.

17 MR. TWOMBLEY: It's asking me to sign in
18 the box. I don't --

19 MS. KIRK: Okay. Well, it shouldn't do
20 that.

21 THE WITNESS: I'm sorry. I'm at Bates
22 87.

23 MR. TRAXLER: Yes, sir.

24 MS. KIRK: 87? Okay.

25 BY MR. TRAXLER:

1 Q. This is an e-mail down at the bottom
2 that starts off from Travis to Randy Light. And
3 then Randy Light sends it to you pertaining to
4 reorganization. Why would you be communicating with
5 Randy Light about that?

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

8 MS. PAYLOR: Tom, I object. I object
9 and I'd like for you to explore whether Randy Light
10 was his client.

11 BY MR. TRAXLER:

12 Q. Was Randy Light your client on or about
13 August 1, 2012?

14 A. I believe so.

15 Q. All right.

16 MS. PAYLOR: I object to him answering
17 that question. Calls for attorney/client privilege.

18 MR. TRAXLER: Well, this e-mail has been
19 produced. I have a right to go into it.

20 Q. Why were you communicat --

21 MS. PAYLOR: I can't --

22 MR. TRAXLER: Are you telling him not
23 to --

24 MS. PAYLOR: What did you say? I'm
25 sorry.

1 MR. TRAXLER: Are telling him not to
2 answer questions about the e-mail?

3 MS. PAYLOR: I believe you asked him a
4 question about why he did something.

5 MR. TRAXLER: Right. Are you
6 instructing him not to answer questions about this
7 e-mail?

8 MS. PAYLOR: If you are going to ask him
9 questions about a statement in that e-mail that has
10 been produced, I think he can answer that.

11 MR. TRAXLER: All right. So are you
12 instructing him not to answer?

13 MS. PAYLOR: Tell me the question again.

14 MR. TRAXLER: Why was he communicating
15 with Randy Light on or about August 1, 2012 about
16 this e-mail?

17 MS. KIRK: I object to the form of the
18 question.

19 MR. TRAXLER: I just want to know if
20 somebody is going to tell him not to answer. All
21 right.

22 MS. PAYLOR: I instruct him not to
23 answer.

24 MR. TRAXLER: Okay.

25 MS. PAYLOR: He said he was his client.

1 I instruct him not to answer.

2 MR. TWOMBLEY: Are you writing a memo to
3 the J. Jolley depo?

4 MR. TRAXLER: Yeah.

5 MR. TWOMBLEY: Page 7 to Jolley dep.

6 BY MR. TRAXLER:

7 Q. When you did the July 20, 2012
8 Restatement of the Revocable Trust for Paul
9 Barringer -- you recall that, don't you?

10 A. I -- I remember his -- the document.
11 Yes.

12 Q. Okay. And I believe that -- do you
13 recall what the main change was in the July 20, 2012
14 trust?

15 A. I -- I think the main -- I don't -- I
16 should look at the document to make sure.

17 Q. All right. Look at the document. It's
18 going to be in --

19 MR. HOGAN: Sixteen.

20 BY MR. TRAXLER:

21 Q. -- Tab 16, July 20. Be the second
22 instrument.

23 MS. KIRK: Can you give us the Bates
24 number?

25 MS. PAYLOR: What's the page number?

1 MR. TRAXLER: We're going.

2 MR. HOGAN: 443.

3 MS. PAYLOR: 442?

4 MR. TRAXLER: 443, I believe. Hold on
5 just a second.

6 THE WITNESS: I think this binder has a
7 highlight on the date.

8 MR. TRAXLER: That's okay. I don't
9 care, unless somebody cares.

10 MR. HOGAN: 443.

11 MR. TRAXLER: Yeah.

12 Q. If you go to Bates Number 447, the
13 specific distribution of voting shares and let's see
14 if that doesn't refresh your recollection of where
15 he provided, upon the death of the latter, the
16 shares would go to -- CFRC, the voting shares would
17 go to Merrill Light; is that correct?

18 MS. KIRK: Object to the form.

19 THE WITNESS: That is correct.

20 BY MR. TRAXLER:

21 Q. All right. At the time that y'all --
22 you did the -- that instrument, did you discuss with
23 Paul Barringer the fact that Merrill Barringer would
24 be able to give away all of the voting control --
25 all -- all of his voting stock in CFRC?

1 A. Ah. . .

2 Q. Did you discuss with him that Merrill
3 Barringer, if she was the last to die, would be able
4 to give away voting control of the company?

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

7 MS. KIRK: Same objection.

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: I need you to restate that
10 question, Mr. Traxler.

11 BY MR. TRAXLER:

12 Q. Okay. Did you explain to Mr. Barringer
13 that with this change that, if Mrs. Barringer was
14 the last to die, she would be able to give voting
15 control of the company to Merrill Light?

16 A. I discussed with --

17 MR. TWOMBLEY: Object -- object to the
18 form of the question.

19 MS. PAYLOR: I object to the form.

20 MS. KIRK: Same objection.

21 BY MR. TRAXLER:

22 Q. I'm sorry. What? I need you to go
23 ahead and answer.

24 MR. HOGAN: I think he's waiting for a
25 prompt.

1 THE WITNESS: Yeah. I am waiting for a
2 prompt from you.

3 MR. TRAXLER: I'm sorry.

4 THE WITNESS: I'm sorry. We dis -- did
5 we discuss -- I'm still having trouble with your
6 question.

7 BY MR. TRAXLER:

8 Q. All right. At the trust, July 20,
9 2012 --

10 A. Uh-huh.

11 Q. -- did Merrill Barringer, was she given
12 the power of appointment over Paul Barringer's
13 voting shares that were in the revocable trust?

14 MR. TWOMBLEY: Are you talking about the
15 one that gave them away, Tom?

16 THE WITNESS: I'm sorry. I -- I do
17 believe that, in this document, Mr. Barringer
18 continued to give Mrs. Barringer the power of
19 attorney to redirect where the shares would go. And
20 if Mr. Barringer was the surviving spouse, this
21 would operate to have those shares passed to Merrill
22 Light.

23 BY MR. TRAXLER:

24 Q. Okay. Did you explain to Mr. Barringer
25 at the time he executed this document or just before

1 that he was giving that power of appointment to Ms.
2 Barringer to dispose of the voting stock that way if
3 she was to survive him?

4 MS. KIRK: Object to the form.

5 MS. PAYLOR: You need to speak up, Tom.
6 I'm not hearing.

7 THE WITNESS: At the time of this
8 amendment, we discussed the change being this
9 provision regarding the voting shares passing to
10 Merrill Light. And the power of appointment existed
11 in the earlier documents and I -- and we -- and we
12 talked about that with the earlier documents. I
13 don't independently recall if we specifically talked
14 about that with relate -- in regard -- in regard to
15 this document.

16 BY MR. TRAXLER:

17 Q. Okay. Do you recall the transfer of his
18 voting stock, Mr. Barringer's voting stock into his
19 revocable trust on or around May 7, 2012?

20 A. I recall. Yes, I do.

21 Q. Okay. At that time, you assisted in
22 that transfer; is that correct?

23 A. I did.

24 Q. And did you explain to Mr. Barringer at
25 that time that effectively voting control of the

1 company would go according to his revocable trust?

2 A. As a part of the planning we did in
3 the -- in the -- in, I guess, February. It was --
4 it was executed in February. I had conversations
5 with Mr. Barringer and Mrs. Barringer about all of
6 those details and part of that was that we would do
7 funding. We would encourage them to fund their
8 revocable trusts. I don't recall whether or not I
9 had a specific conversation with Mr. Barringer in
10 May about whether or not that would say that Mrs.
11 Barringer had control of the voting shares.

12 Q. Okay. Do you know if you discussed with
13 him that the transfer of his voting shares would
14 effectuate a granting of control to whoever got
15 those shares?

16 MS. KIRK: Object to the form.

17 THE WITNESS: At the time of the gift,
18 we did discuss that transfer being irrevocable and
19 that whoever received them -- transferring those to
20 Ms. Light would result in Ms. Light having
21 controlling interest.

22 BY MR. TRAXLER:

23 Q. Okay. But I'm not talking about later.
24 I'm talking about the May 7 transfer of his voting
25 shares into his revocable trust. Did you discuss

1 with him that however that stock went in the
2 revocable trust that would affect control of the
3 company or could affect control of the company?

4 MS. KIRK: Object to the form.

5 THE WITNESS: Not at the time of the
6 transfer of the shares to his revocable trust in
7 May.

8 BY MR. TRAXLER:

9 Q. Okay. Did you have that discussion with
10 him when he executed the July 20, 2012 restatement
11 to the trust, that that disposition of the voting
12 stock as provided for would effect -- effectively
13 give control of CFRC to Merrill Light?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Same objection.

16 MS. PAYLOR: Object.

17 THE WITNESS: We discussed the fact that
18 Merrill would have control based on that transfer of
19 the voting stock.

20 BY MR. TRAXLER:

21 Q. And with regard to the July 20, 2012
22 restatement; is that correct?

23 A. We did.

24 Q. Okay.

25 MR. TWOMBLEY: Tom, I hate to interrupt

1 you. If anybody can hear me, for some reason the
2 exhibit documents that have been sent to me by
3 Andrea for me to use during the deposition today,
4 the Bates stamp on the upper right-hand corner is
5 cut off and I cannot see them. So if anyone has the
6 capability to send those documents to me in a PDF so
7 I can view them, I would greatly appreciate it. I
8 apologize to have to ask folks to do that, but all I
9 can say --

10 MS. PAYLOR: I will try to do it right
11 now.

12 MR. TWOMBLEY: -- is I'm looking at
13 these documents and I cannot see the Bates stamp on
14 the upper right-hand corner. I think they've been
15 cut off by accident.

16 MR. TRAXLER: Would it help you if I
17 also gave you the Bates number at the bottom right?

18 MR. TWOMBLEY: No. Unfortunately, it
19 wouldn't; but you can go ahead. I'm all right now.
20 I'm looking on Ariail's computer.

21 MS. PAYLOR: Ashley, I just sent it to
22 you. I hope you got it.

23 MR. TWOMBLEY: Okay. All right. Thank
24 you.

25 BY MR. TRAXLER:

1 Q. All right. Let me switch gears a little
2 bit, Mr. Jolley. I believe you became corporate
3 counsel and started doing legal work for CFRC in
4 August of 2012. Do I recall that correctly?

5 A. Yes.

6 Q. And you became assistant secretary on
7 August 29, 2012; correct?

8 A. I think it was before August 29, but I'm
9 not certain of that.

10 Q. Okay. Fair enough. And I believe you
11 testified before that you were first approached by
12 Travis Bryant about being -- the possibility of
13 being corporate counsel; is that correct?

14 A. Yes.

15 Q. Do you recall when he approached you?
16 Was it in August or before?

17 A. I think it was before.

18 Q. Okay. Can you narrow the time frame for
19 me?

20 A. Travis -- Travis mentioned this to me,
21 raised the issue with me after a meeting in my -- in
22 our offices on Hilton Head.

23 Q. Okay. And what were -- when were those
24 meetings and what were they about? Not the
25 substance of it, just the conver -- the topic.

1 A. I believe it --

2 MR. SCHRONCE: Tom, I'm sorry. John,
3 before you answer. I could not hear that question.

4 MS. KIRK: Yeah. I just want to remind
5 everybody that -- and John, as the witness, that
6 there's a delay when you're listening over this, so
7 we've just got to give everybody a second to be sure
8 they can process the question.

9 BY MR. TRAXLER:

10 Q. All right. John said -- correct me if
11 I'm wrong. Mr. Jolley said that Travis first
12 approached him after a meeting that was at Mr.
13 Jolley's office at Hilton Head. Is that correct,
14 Mr. Jolley?

15 A. That is correct.

16 Q. And my question to him was, without
17 going into the substance of the meeting, what was
18 the meeting about and the time frame? So if you'd
19 go ahead and answer that Mr. Jolley.

20 A. I believe it was after a board of
21 directors meeting that occurred in our office --
22 offices on Hilton Head.

23 Q. All right. Do you recall when that
24 board meeting was?

25 A. I -- I don't recall without some

1 independent recollection -- refreshment.

2 Q. Was this a meeting subsequent to Kevin
3 Luzak being fired as an officer?

4 A. Yes, it was.

5 Q. All right. And Mr. -- was Mr. Bryant in
6 town for that board meeting? In Hilton Head for
7 that board meeting?

8 A. Yes, sir.

9 Q. And that is when he raised the prospect
10 to you of becoming corporate counsel; is that
11 correct?

12 MS. KIRK: Object to the form.

13 THE WITNESS: That is correct.

14 BY MR. TRAXLER:

15 Q. And -- but you did not start doing legal
16 work for CFRC until sometime in August; is that
17 correct?

18 A. I'm not -- I'm not sure of the precise
19 time, but I think that is correct.

20 Q. All right. All right. Let me get you
21 to go to Page -- Tab 94 -- Tab 1, Page 94.

22 A. (Complying.) I'm at 94.

23 MS. KIRK: Hang on a second. That's
24 longer.

25 MR. TRAXLER: Ariail, if you're on a

1 PDF, have the Bates number, something like that, if
2 you put 94 up at the top, it will take you straight
3 to it if that will help you any. See what I'm
4 talking about?

5 MS. KIRK: Huh-uh. Oh, you mean the
6 actual page number up here?

7 MR. TRAXLER: Yeah.

8 MS. KIRK: Is that what you're saying?

9 MR. HOGAN: Yeah. It should be the
10 same.

11 MR. TRAXLER: Yeah. It should be right
12 at the same. You with me?

13 MS. KIRK: I'm on it.

14 BY MR. TRAXLER:

15 Q. Okay. This is an e-mail that was sent
16 to you by Mike Hagler, is that correct, August 3 of
17 2012?

18 A. August 3 of 2012. It looks like an
19 e-mail from Mike Hagler sent to myself and several
20 other lawyers.

21 Q. All right. And you knew Mr. Hagler from
22 before?

23 A. I only knew Mr. Hagler from this limited
24 interaction in the summer of 2012.

25 Q. Okay. And do you know why this was sent

1 to you?

2 A. I'm not sure why this was sent to me.

3 Q. Well, do you know if it was sent to you
4 in your capacity as attorney for Paul Barringer or
5 Merrill Barringer or Merrill Light or Paul
6 Barringer -- Randy Light?

7 MR. TWOMBLEY: Object to the form.

8 MS. KIRK: Same objection.

9 THE WITNESS: I don't.

10 BY MR. TRAXLER:

11 Q. All right. Down in the next to the last
12 paragraph it says, I urge Merrill's lawyer to
13 reconsider her position and try to convenience
14 Paul's lawyer the above is sound. Were you Merrill
15 Light's lawyer at that time?

16 A. Yes.

17 Q. Do you know, are you -- did you
18 understand yourself to be her lawyer as referred to
19 in that e-mail?

20 A. I -- I don't remember what I considered
21 at the time, but I do think this was address -- this
22 was sent to me in that role.

23 Q. Okay.

24 A. In that capacity.

25 Q. Was that sent to you in any other

1 capacity as of -- for example, as an attorney for
2 anyone else copied on this?

3 MS. KIRK: Object to form.

4 THE WITNESS: I think it was sent to me
5 as Paul's lawyer as well.

6 BY MR. TRAXLER:

7 Q. All right. Anybody else's lawyer?

8 A. I'm not sure, but I think that's the --
9 those were -- I think was sent to me in that
10 capacity.

11 Q. Did you urge Merrill to reconsider her
12 position as represented in that e-mail?

13 MR. TWOMBLEY: Object to the form. I
14 would --

15 MS. PAYLOR: I instruct him not to
16 answer. That's attorney/client privilege.

17 BY MR. TRAXLER:

18 Q. Did you do anything in response to this
19 e-mail, Mr. -- Mr. Jolley?

20 MR. TWOMBLEY: Objection.

21 MS. PAYLOR: I object. I instruct him
22 not to the answer to the extent that it involves an
23 attorney/client communication.

24 BY MR. TRAXLER:

25 Q. Okay. Mr. Bar -- Mr. Jolley, let me get

1 you to go to Tab 13, Bates Number 351, the minutes
2 of August 3 shareholders.

3 A. 351. Yes, sir. I'm at 351.

4 Q. All right. Were you at that meeting?

5 A. I -- I believe I was at this meeting.

6 Q. Did you prepare these minutes?

7 A. I do not believe that I prepared these
8 minutes.

9 Q. Do you know who prepared them?

10 A. No.

11 Q. You do corporate work, don't you?

12 A. I do --

13 MS. KIRK: Objection to the form.

14 MR. TWOMBLEY: Same objection.

15 THE WITNESS: I do some corporate work,
16 yes.

17 BY MR. TRAXLER:

18 Q. Do you know whether a stockholder has to
19 have any sort of capacity to issue a proxy?

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. TRAXLER:

23 Q. What -- what kind of capacity?

24 MR. TWOMBLEY: Object to the form of the
25 question.

1 MS. KIRK: Same objection.

2 THE WITNESS: I think a shareholder has
3 to have contract capacity to issue a proxy.

4 BY MR. TRAXLER:

5 Q. Did you consider Paul Barringer to have
6 contract capacity as of August 3, 2012?

7 A. Yes.

8 Q. Okay. Was Paul Barringer at the
9 meeting?

10 A. I don't remember if Paul Barringer was
11 at this meeting.

12 Q. So you would not know why he was not at
13 this meeting; is that correct?

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

16 MS. KIRK: Same objection.

17 THE WITNESS: If --

18 MR. TWOMBLEY: I would also -- the
19 question is why wasn't Paul at that meeting?

20 MR. TRAXLER: Uh-huh. I asked if Paul
21 was at the meeting. He said he didn't remember.

22 MR. TWOMBLEY: And then the next
23 question is why was he not at the meeting?

24 MR. TRAXLER: I said, I assume you would
25 not know why he wasn't there, if he wasn't there.

1 MR. TWOMBLEY: Okay.

2 THE WITNESS: I'm sorry. As I look at
3 these minutes and the documents, I think that does
4 refresh my recollection that Mr. Barringer was not
5 at this meeting.

6 BY MR. TRAXLER:

7 Q. Because if we look at Page 354, we see
8 second -- third line down, Paul Barringer as
9 trustee, his stocks were voted by Merrill Light as
10 trustee; is that correct?

11 A. That is what that reflects. Yes, sir.

12 Q. And this -- this would tell you that he
13 was not at the meeting, wouldn't it?

14 A. I think -- yes, sir.

15 Q. Okay. Do you know why he was not at the
16 meeting?

17 MR. TWOMBLEY: I would -- I don't know
18 what his answer to that is. I don't know whether --

19 MR. TRAXLER: I'll strike the question.

20 Q. Did you ever have any conversations with
21 Paul Barringer about whether he was going to be at
22 the meeting or not?

23 MR. TWOMBLEY: Answer yes or no.

24 THE WITNESS: Yes.

25 BY MR. TRAXLER:

1 Q. And when was that conversation with
2 regard to this meeting? Day or two before, at the
3 meeting or what?

4 A. I'm sorry. Before the meeting. Within
5 several days before the meeting.

6 Q. Okay. And was anybody else in that
7 conversation?

8 MR. TWOMBLEY: Non-clients? Is that --
9 you limiting it to that?

10 MR. TRAXLER: Not -- not right now.

11 Q. Was anybody else in on that conversation
12 with Paul Barringer?

13 MR. TWOMBLEY: Yes or no.

14 THE WITNESS: Yes.

15 BY MR. TRAXLER:

16 Q. Okay. Anybody else involved in that
17 conversation besides you and Mr. Barringer and other
18 lawyers?

19 MR. TWOMBLEY: Yes or no.

20 THE WITNESS: Yes.

21 BY MR. TRAXLER:

22 Q. And who else was involved? Who else was
23 a party to that conversation?

24 A. Merrill Barringer Light.

25 Q. Okay. And why was she in the meeting or

1 in that conversation?

2 MR. TWOMBLEY: Object to the form and I
3 would --

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: -- instruct him not to
6 answer.

7 MS. PAYLOR: Instruct him not to answer.

8 BY MR. TRAXLER:

9 Q. What was the purpose of the
10 conversation?

11 MS. PAYLOR: Object to the form.
12 Instruct him not to answer.

13 BY MR. TRAXLER:

14 Q. What was the topic of the conversation?

15 MR. TWOMBLEY: Yeah. I would -- I
16 would -- same -- same instruction. I -- I -- just
17 on behalf of Paul Barringer, I would let him answer
18 was there anything other than legal advice sought
19 and given, which I think would allow you to confirm
20 that the substance of that conversation was
21 privileged. If you'd like to ask that question, I
22 would agree to allow him to answer it.

23 MR. TRAXLER: Okay. But y'all
24 understand, all I want to do is ask him the topic of
25 the conversation and I have not yet asked him about

1 the substance of the conversation? All I want is
2 the topic. What was it about? Y'all instructing
3 him not to answer that question?

4 MR. TWOMBLEY: Well, I don't know if I
5 understand the difference between the topic and what
6 it was about. I mean, wouldn't the topic be what it
7 was about? I mean, that's the same thing, isn't it?

8 MR. TRAXLER: I want -- well, he can
9 very simply say, you know -- you know, what we were
10 talking about without telling me who said what or
11 who did what. That's -- that's perfectly fair. I
12 am entitled to know the topic of the conversation
13 and explore the settings for it. And then we can
14 determine whether or not there is a privilege or, if
15 there was one, whether it's been waived. I have the
16 right to know the topic of the conversation. It is
17 perfectly fair --

18 MS. PAYLOR: Tom --

19 MR. TRAXLER: It's perfectly fair for me
20 to say --

21 MS. PAYLOR: -- if you can --

22 MR. TRAXLER: -- did if you ever discuss
23 with Paul Barringer such and such a topic? And I
24 have a right to that answer and the details, the
25 setting. I don't necessarily have the right to the

1 substance of that conversation, but I absolutely
2 have a right to a topic.

3 MR. TWOMBLEY: Well, I'm not sure I
4 agree with you fully on that; but I think you can
5 get what you're trying to get by asking him was the
6 topic anything other than legal advice sought and
7 rendered.

8 BY MR. TRAXLER:

9 Q. Was the topic other than -- anything
10 other than legal advice?

11 A. No.

12 MR. TRAXLER: All right. But again, I
13 going to renew it. Y'all are instructing him not to
14 tell me what the topic of conversation was; is that
15 correct?

16 MS. PAYLOR: If it involves when he gave
17 his legal advice, yeah, I'm instructing him not to
18 answer.

19 MR. TWOMBLEY: And the problem I got,
20 Tom, I'm not trying to be difficult with you; but I
21 honestly don't know how Mr. Jolley might answer. I
22 mean, for example, what if he said the topic was the
23 murder of Jimmy Hoffa and where the body was buried?
24 I mean, that would fully and completely disclose
25 matters that are clearly privileged.

1 MR. TRAXLER: Uh-huh.

2 MR. TWOMBLEY: On the other hand, you
3 know, if he said the topic was, you know, I don't
4 know, something just -- something a lot more
5 generic --

6 I've got them now. I've got them now.

7 MS. KIRK: You do? Oh.

8 MR. TWOMBLEY: I've got them now.

9 MS. KIRK: Just get --

10 MR. TRAXLER: All right. All I need to
11 know is --

12 MR. TWOMBLEY: All right.

13 MR. TRAXLER: -- for the purposes of our
14 12:30 phone call with Judge Price, are y'all telling
15 him not to answer? I have briefed this. We have
16 been through this before. Y'all just tell me yes or
17 no whether you're instructing him not to answer
18 about the topic. I'm ready to move on.

19 MS. KIRK: I guess I'm confused, too,
20 about what the topic means, because I felt like you
21 kind of already gave him the topic as the August
22 3rd.

23 MR. TWOMBLEY: And he said it was
24 nothing other than legal advice, so I'll stand by my
25 objection.

1 MR. TRAXLER: All right.

2 MS. KIRK: I'm confused about what
3 you're asking to be honest.

4 MR. TRAXLER: I asked him what the topic
5 was where he and Paul Barringer and Merrill Light
6 talked and y'all instructed him not to answer.
7 We'll make a record on that.

8 Q. All right. Now, Mr. Jolley, I'm going
9 back to 354. You had a proxy from Merrill Light to
10 vote one share for her; is that correct?

11 A. I had --

12 MR. GILREATH: Tom, what page did you
13 just say?

14 MS. PAYLOR: 354.

15 MR. TRAXLER: Yeah. 354.

16 THE WITNESS: So --

17 MR. GILREATH: 354? Is that up at the
18 top? All right.

19 THE WITNESS: I -- I was granted a proxy
20 for one share as reflected on 354.

21 BY MR. TRAXLER:

22 Q. All right. And was that so that you
23 could participate in the board meeting or
24 shareholder meeting?

25 MS. KIRK: Object to the form.

1 THE WITNESS: Yes.

2 BY MR. TRAXLER:

3 Q. Okay. And Merrill Light was able to
4 exercise or -- excuse me.

5 Merrill Light was able to vote Paul
6 Barringer's trust shares because she was co-trustee;
7 is that correct?

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

10 THE WITNESS: Yes.

11 BY MR. TRAXLER:

12 Q. And we understand that the February 28,
13 2012 restatement of the trust made her co-trustee
14 with independent powers; correct?

15 A. That's my recollection. I can look back
16 at the document, but that's certainly my
17 recollection.

18 Q. If you'll just take that as an
19 assumption for me for right now --

20 A. Okay.

21 Q. -- for purposes of the question. That
22 would include the right to vote that stock for him;
23 correct?

24 A. Yes, sir.

25 Q. And if she had that right to vote that

1 stock for him, would it have been necessary for her
2 to have his proxy to do so?

3 MS. KIRK: Object to the form.

4 BY MR. TRAXLER:

5 Q. Or the proxy of his revocable trust?

6 A. I -- I don't know that a proxy would
7 have been required.

8 Q. Okay. When Mike Hagler resigned from
9 the board of directors, do you remember that?

10 A. I -- I remember that Mr. Hagler
11 resigned. I don't remember the details of when he
12 did that.

13 Q. Okay. Well, let's -- we assumed it was
14 in August 2012 time frame, if you would for me.

15 A. Okay.

16 Q. Do you recall having any
17 conversations -- this is a yes or no question. Do
18 you recall having any conversations with anybody
19 about his resignation or threatened resignation?

20 A. Yes.

21 Q. And who did you have such conversations
22 with?

23 MR. TWOMBLEY: Just the names.

24 THE WITNESS: Paul Barringer, Merrill
25 Light and the lawyers for Paul Barringer and Merrill

1 Light.

2 BY MR. TRAXLER:

3 Q. Okay. And did you have those
4 conversations with Paul Barringer in your capacity
5 as his individual lawyer, in his individual
6 capacity?

7 A. I --

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: I object to the form and
10 instruct you not to answer in what capacity he had a
11 discussion with Paul Barringer.

12 MR. TRAXLER: Well, I need to know if
13 it's an individual privilege of Mr. Barringer or if
14 he's going to claim some sort of corporate file
15 privilege. That's all. So all I want to know is,
16 is he asserting the privilege because Paul Barringer
17 was his client in that conversation.

18 MR. TWOMBLEY: Well, you know, the thing
19 is I don't that Mr. Jolley is necessarily asserting
20 any privilege. I mean, the question would be
21 whether or not, you know, the clients were going to
22 assert it.

23 MR. TRAXLER: Okay. If you assert --

24 MR. TWOMBLEY: Okay. Can you just
25 rephrase it? Let me just hear it one more time.

1 BY MR. TRAXLER:

2 Q. When you had conversations with Mr.
3 Barringer when Mr. Hagler resigned or threatened to
4 resign, were you having those conversations with Mr.
5 Barringer as your client in his individual -- as an
6 individual client of yours?

7 Can he answer that?

8 MR. TWOMBLEY: I think you can answer
9 yes or no.

10 THE WITNESS: My communications with Mr.
11 Barringer were in his -- in my capacity as his
12 lawyer.

13 BY MR. TRAXLER:

14 Q. Okay. And when you had Merrill Light in
15 those discussions, were you also representing Mrs.
16 Light in those discussions as her individual lawyer?

17 A. In my communications with Mrs. Light, I
18 was representing her indiv -- as her lawyer.

19 Q. Okay. Was there any other client that
20 you represented in those communications?

21 A. I don't remember.

22 Q. Who else might you have represented in
23 those conversations?

24 A. I don't -- I don't think anyone else. I
25 think that's -- those are the only two clients I

1 represented with respect to those communications.

2 Q. And how many communications did you
3 have?

4 A. One or two.

5 Q. Okay. In person or telephone?

6 A. I don't -- I don't remember the detail
7 of that. I met -- I met with them both in person
8 and had telephone conversations.

9 Q. Were the other lawyers involved in the
10 conversation in your law firm?

11 A. The other lawyers involved were from my
12 law firm.

13 Q. Okay. Did you or anybody from your law
14 firm make any notes of that meeting or conversation,
15 excuse me?

16 A. Oh, I don't have any idea.

17 Q. All right. When Paul Barringer
18 transferred -- excuse me. When Paul Barringer
19 Revocable Trust transferred all of his voting stock
20 to Merrill Light, he did keep one share; correct?

21 MS. KIRK: Object to the form.

22 THE WITNESS: Yes, sir.

23 BY MR. TRAXLER:

24 Q. That is his revocable trust kept one
25 share; correct?

1 A. Yes. My recollection is he retained his
2 trust. He, as trustee of his trustee, retained one
3 share.

4 Q. Why?

5 A. So he that he could remain a
6 shareholder.

7 Q. Okay. And why was that important?

8 MR. TWOMBLEY: Object to the form of the
9 question and I -- I think I'm instructing him not to
10 answer why it may have been important to Mr.
11 Barringer.

12 MR. TRAXLER: Well, this was part of his
13 estate planning and gift giving, wasn't it?

14 MR. TWOMBLEY: Well, why he retained a
15 share was part of his estate planning? I --

16 MR. TRAXLER: Why he gave --

17 MR. TWOMBLEY: I don't agree with that.

18 MR. TRAXLER: Why he gave what he gave?
19 What was his intent and why? It's part of his
20 estate planning, gift giving.

21 MR. TWOMBLEY: Well, I don't agree with
22 that, one that he kept. I don't know.

23 MR. TRAXLER: Are you instructing him
24 not to answer?

25 MR. TWOMBLEY: Will you repeat the

1 question again?

2 BY MR. TRAXLER:

3 Q. Why did Mr. Barringer's Revocable Trust
4 retain one share of voting stock when he transferred
5 the other shares to Merrill Light's Revocable Trust
6 in 2012?

7 MR. TWOMBLEY: Tom, I think he answered
8 that. He said because he wanted to remain a
9 shareholder.

10 MR. TRAXLER: Right.

11 MR. TWOMBLEY: And then the next
12 question was, why was that important to him?

13 MR. TRAXLER: Right.

14 MR. TWOMBLEY: I think I will object and
15 instruct him not to answer that one. And on that
16 one, you know, I also don't know what his answer
17 would be. I'd be happy to discuss it with him to
18 see if -- you know, what his answer would be and
19 whether or not I believe that would. . .

20 MR. TRAXLER: All right. Why don't
21 y'all go off the record and have that brief
22 discussion?

23 MR. TWOMBLEY: Okay.

24 THE VIDEOGRAPHER: This is the end of
25 Media Unit 1 in the video deposition of John M.

1 Jolley. We're going off the record at 10:03:22.

2 (A recess transpired.)

3 THE VIDEOGRAPHER: This is the beginning
4 of Media Unit Number 2 of the video recorded
5 deposition of John M. Jolley. We're going on the
6 record at 10:07:45.

7 MR. TWOMBLEY: Yeah. This is Ashley
8 Twombley, counsel for Merrill Barringer and the
9 estate. John and I had a private discussion about
10 whether or not it was appropriate to raise privilege
11 in response to that question and I am going to
12 instruct him not to answer. I do not believe why
13 Mr. Barringer wanted to keep something relates to
14 the preparation, execution of an estate planning
15 document and I am instructing him not to answer the
16 question. We can take it up with Judge Price.

17 MR. TRAXLER: All right. Okay. You --
18 you understand that I think he is obligated to
19 answer that under the testamentary exception; right?

20 MR. TWOMBLEY: I understand that's your
21 position. Yes.

22 MR. TRAXLER: Okay. Thank you.

23 Q. After the -- I want to focus on the
24 stock transfer of September 11, 2012. Mr. Barringer
25 executed the assignment of shares that are behind

1 Tab 4, Bates Number 279 and the stock power; is that
2 correct?

3 A. Your quest -- I'm sorry. Can you ask --

4 Q. Sure.

5 A. -- that question again? I'm at 279.

6 Q. Yes, sir. Mr. Barringer executed the
7 assignment of shares at that tab, along with the
8 stock power at Page 281; is that correct?

9 A. Yes, sir.

10 Q. To effectuate transfer of the voting
11 shares, except for one, from his revocable trust to
12 the Merrill Light Revocable Trust; correct?

13 A. Yes, sir.

14 Q. All right. When that was executed, were
15 you there?

16 A. No, sir.

17 Q. Why?

18 A. I don't re -- I don't recall why I was
19 not there. I'm not sure. I don't recall.

20 Q. Do you know if it was executed in your
21 office?

22 A. I -- I don't know that the assignment of
23 shares was executed in my office; but the stock
24 power was witnessed by one of our employees, so --

25 Q. Sharon Potts?

1 A. Sharon Potts. So I certainly believe
2 the stock power was executed there and I believe --
3 I suspect, although I can't be sure, that the
4 assignment of shares was executed at the same time.

5 Q. Okay. After Mr. Barringer executed the
6 assignment of shares, who retained it?

7 A. The assignment of shares was given to
8 me.

9 Q. All right. And did you ever give
10 possession of it back to Mr. Barringer?

11 A. No.

12 Q. And the stock power that Mr. Barringer
13 signed, when he signed it, who got it?

14 A. Same answer.

15 Q. Okay. So you had it?

16 A. Uh-huh.

17 Q. So Mr. Barringer did not hold either one
18 of these documents; is that correct?

19 MS. KIRK: Object to the form.

20 THE WITNESS: Once Mr. Barringer gave
21 the -- once I received the documents, Mr. Barringer
22 didn't get them back.

23 MR. TRAXLER: All right.

24 THE WITNESS: If that's the question.

25 BY MR. TRAXLER:

1 Q. And you had Merrill Light sign the
2 assignment as assignee, is that correct, for her
3 trust?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Same objection.

6 THE WITNESS: I mean, yes. Mrs.
7 Barringer -- Mrs. Light signed as trustee of her
8 trust as the assignee.

9 BY MR. TRAXLER:

10 Q. And after she signed as assignee, you
11 retained or your office retained both documents; is
12 that correct?

13 A. Yeah. That -- as I said, once I -- when
14 the documents came to me, no one ever -- I mean, I
15 had them from then forward.

16 Q. Okay. And what was the purpose of
17 having the assignee sign the assignment?

18 A. Just to evidence her acceptance of the
19 transfer.

20 Q. All right. And I don't want to re-plow
21 what we talked about before; but in your opinion,
22 did she become the owner -- beneficial owner of
23 those shares of stock at that time?

24 A. I --

25 MR. TWOMBLEY: Object to the form.

1 MS. KIRK: Same objection.

2 THE WITNESS: I believe that she became
3 the beneficial owner of the shares at that time.

4 BY MR. TRAXLER:

5 Q. Was she entitled to the distri --
6 distribution on those shares subsequent to September
7 11, 2012?

8 MR. TWOMBLEY: Object to the form.

9 MS. KIRK: Same objection.

10 THE WITNESS: I'm not sure, Mr. Traxler.
11 I -- I think that there's a question about when it's
12 recorded in the record books of the company.

13 BY MR. TRAXLER:

14 Q. Okay. I didn't re -- I didn't phrase
15 that too well. This is a corporation; right?

16 A. Yes, sir.

17 Q. Okay. And I had LLC in mind, so I used
18 the term distribution. So make sure I'm in sync
19 with you, after --

20 MS. PAYLOR: Tom, you got to speak up.

21 BY MR. TRAXLER:

22 Q. After --

23 MS. PAYLOR: Tom, you got --

24 MR. TRAXLER: Okay.

25 Q. After the assignment of September 11,

1 2012, was Merrill Light's Revocable Trust entitled
2 to any dividends paid out on the basis of those
3 shares after that date?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Same objection.

6 THE WITNESS: I believe so.

7 BY MR. TRAXLER:

8 Q. Okay. And tell us again why there was a
9 delay in recording these shares on the stock ledger
10 and corporate records at CFRC?

11 MS. KIRK: Object to the form.

12 THE WITNESS: I think there was a --
13 we -- I think we were waiting to get the share
14 certificate from Mr. Barringer, but some of it was
15 because I don't perceive the recording of the shares
16 in the book as being an important step in the -- a
17 critical step in the transfer.

18 BY MR. TRAXLER:

19 Q. After the assignment on September 11,
20 2012, who was entitled to vote those shares?

21 A. I believe that upon recording in --
22 well, certainly once they're recorded in the book,
23 the -- Mrs. Light became -- was the person who could
24 vote those shares.

25 Q. Okay. But prior to being recorded on

1 the corporate books, who had the right to vote those
2 shares after September 11th?

3 MR. TWOMBLEY: Object to the form.
4 Calls for a legal conclusion.

5 MS. KIRK: Same objection.

6 THE WITNESS: I'm not --

7 MS. PAYLOR: I'll object.

8 THE WITNESS: I'm not sure.

9 BY MR. TRAXLER:

10 Q. Well, you were corporate attorney during
11 that time period, weren't you?

12 A. I was.

13 Q. Were you ever -- I don't want to know
14 the advice, but were you ever asked for advice about
15 that?

16 A. I'm sorry. Was I ever asked for advice
17 about whether or not when the -- when the voting
18 shares, those shares could be voted by Mrs. Light?

19 Q. Yes.

20 A. I was not asked for advice about that.

21 Q. Okay. Do you know who voted -- do you
22 know when the -- these shares were recorded on the
23 corporate records in the name of Merrill Light's
24 Revocable Trust?

25 MS. KIRK: Object to the form.

1 THE WITNESS: I think that the -- I
2 mean, the answer is yes.

3 BY MR. TRAXLER:

4 Q. When?

5 A. I believe they -- the stock certificates
6 reflect 12/31/2012, but the record book is updated
7 on and those share certificates were signed in
8 January of 2013.

9 Q. Okay. When were they, those shares, for
10 lack of a better expression, registered on the
11 corporate records as belonging to Merrill Light's
12 Revocable Trust?

13 A. I don't recall. I mean, it was
14 certainly by the time the share certificates were
15 issued and signed.

16 Q. Let me get you to go to Tab 1, Page
17 17 -- Bates Number 179, Mr. Jolley.

18 A. (Complying.)

19 Q. This is an e-mail from Stephanie Chapman
20 at CFRC to you; is that correct?

21 A. Yes, sir.

22 Q. Okay. Would you take a quick second and
23 read that, please?

24 A. (Complying.)

25 MS. BALLARD: Tom, what page number was

1 that?

2 MR. TRAXLER: 179.

3 MS. BALLARD: Thank you.

4 THE WITNESS: Yeah. I've -- I'm sorry.
5 I've read it.

6 BY MR. TRAXLER:

7 Q. All right. When she talks about I have
8 updated our shareholder listing to reflect the
9 recent gifting of shares by Paul Barringer, did you
10 understand that to mean the shares that he
11 transferred in September of 2012 to Merrill Light's
12 trust?

13 A. I do believe that that's what this
14 refers to.

15 Q. Okay. And does that tell you that the
16 corporate records were updated to reflect that in
17 April of 2013?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: Same objection.

20 THE WITNESS: No.

21 BY MR. TRAXLER:

22 Q. All right. Let's look at the preceding
23 document.

24 A. Uh-huh.

25 Q. Bates Number 178, an e-mail from Travis

1 Bryant to John Jolley, dated April 15, 2013. Take a
2 second and read that, Mr. Jolley.

3 A. Yes, sir.

4 Q. And that's where Travis says, who would
5 receive the -- who should receive the distribution
6 for Paul's 28,000 shares. It's really 38,000 and
7 some change, wasn't it?

8 A. I don't recall the --

9 Q. Okay.

10 A. -- precise number of shares, but I think
11 that's right.

12 Q. All right. And Travis Bryant is asking
13 you, who is to receive the distributions or
14 dividends on those shares; correct?

15 A. That is correct.

16 Q. And doesn't he say, we did not record a
17 transfer on our side of this? And I held Paul's
18 check for his tax distribution to ensure that it
19 went to the right place. And then we go back to the
20 e-mail you just read from Stephanie Chapman. The
21 next day she says, I have updated our shareholder
22 listing.

23 So the transfer was not registered on
24 the corporate books until April of 2013; is that
25 right?

1 A. I don't --

2 MR. TWOMBLEY: Object --

3 MS. KIRK: Object to the form.

4 MR. TWOMBLEY: -- to the form of the
5 question.

6 THE WITNESS: I do not think that's
7 right.

8 BY MR. TRAXLER:

9 Q. Why?

10 A. Because the -- as Mr. Bryant notes in
11 his e-mail, it says, we did not record a transfer on
12 our side for this. And at the time of this
13 transaction, I -- I had all of the corporate books
14 in my possession at my office at Hilton Head. So it
15 was -- I certainly believe that prior to April, we
16 had updated the corporate records to reflect the
17 transfer; but there was a disjoint between the time
18 of the -- updating the corporate records to reflect
19 that and that communication between Travis Bryant
20 and his office with respect to distributions and the
21 shareholders.

22 Q. Did you also maintain the stock ledger
23 in your office for CFRC during that time period?

24 A. I'm sorry. That is in fact what I was
25 referring to, yes.

1 Q. Okay. So if you had the stock ledger,
2 how would the CFO or anybody at CFRC know who -- to
3 whom to make a distribution?

4 MS. KIRK: Object to the form.

5 THE WITNESS: I believe that that had
6 been communicated to Mr. Bryant prior to the
7 April -- to these April e-mails.

8 BY MR. TRAXLER:

9 Q. So -- but the corporation pays out
10 dividends based on shareholders of record date, do
11 they not?

12 A. I believe that's correct.

13 Q. And the record date means the
14 shareholders shown on the corporate ledger, stock
15 ledger as of the date dividends are determined;
16 correct?

17 A. That --

18 MS. KIRK: Object to the form.

19 THE WITNESS: That sounds correct.

20 BY MR. TRAXLER:

21 Q. Okay. And so at the date the dividends
22 were declared, apparently the transfer to Merrill
23 Light was not on the stock ledger as of record date;
24 correct?

25 MS. KIRK: Object to the form.

1 MR. TWOMBLEY: Same objection.

2 BY MR. TRAXLER:

3 Q. That question make sense? It's kind of
4 convoluted.

5 A. I -- I lost it. I think I know what you
6 said, but I'd rather you explain.

7 Q. Want to try again?

8 A. Yes, please.

9 Q. Yeah. Absolutely. Sure. So when the
10 corporation, CFRC, was to make dividends based on
11 shares, it would look to the shareholders on the
12 stock ledger as of the record date; correct?

13 MS. KIRK: Object to the form.

14 THE WITNESS: That is correct.

15 BY MR. TRAXLER:

16 Q. And record date means shareholders of
17 record as of that date, that's whose name goes on
18 the dividend checks; correct?

19 A. That is correct.

20 Q. How, if you had the stock ledger, was
21 CFRC after September 11, 2012 to know to whom to
22 make those dividends payable?

23 MS. KIRK: Object to the form.

24 THE WITNESS: I think I had -- I think
25 that Mr. Bryant knew in December certainly that the

1 books reflected a transfer as of 12/31.

2 BY MR. TRAXLER:

3 Q. All right. But Travis is saying on Page
4 178, the April 15 e-mail, we did not record a
5 transfer on our side for this. I held Paul's check
6 for his tax distribution to ensure that it went to
7 the right place. So he didn't know who to send it
8 to, did he?

9 A. Accord -- no, not according to this
10 e-mail.

11 Q. And who did he make that tax
12 distribution check -- who did he send it to
13 ultimately? Do you know?

14 A. I do not know.

15 Q. Do you know if Merrill Light ended up
16 with it?

17 A. I do not know.

18 Q. Do you know if Merrill Light got
19 dividends based on the voting shares of Paul
20 Barringer after September 11 and before April of
21 2013?

22 A. I do not know.

23 Q. There are several distributions, weren't
24 there?

25 A. I --

1 MS. KIRK: Object to the form.

2 THE WITNESS: I believe so.

3 BY MR. TRAXLER:

4 Q. All right. And you don't -- you don't
5 know who they went to?

6 A. I mean, no, I don't specifically know
7 who they went to.

8 Q. All right. If they went to Paul
9 Barringer, he would not have been entitled to them
10 after September 11, would he?

11 MS. KIRK: Object to the form.

12 BY MR. TRAXLER:

13 Q. Except for his one share?

14 A. I -- I think that's correct.

15 Q. All right. Do you know if they went to
16 him?

17 MS. KIRK: Object to the form.

18 THE WITNESS: I know that some
19 distributions went to him during that time period.

20 BY MR. TRAXLER:

21 Q. Do you know if -- but Merrill Light's
22 Revocable Trust would have been entitled to those
23 dividends; correct?

24 A. As of the record date, yes, sir.

25 Q. Yeah. As of the record date of each

1 dividend; correct?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I. . .

4 BY MR. TRAXLER:

5 Q. So let me give you a hypothetical. Not
6 a hypothetical. But after September 11, 2012,
7 before the corporate records were updated to show
8 Merrill Light's Revocable Trust as the owner, title
9 owner, if there was a check for a dividend made
10 payable to a shareholder of record date and Paul
11 Barringer's Revocable Trust was still that record
12 shareholder, that check would be made out and given
13 to him; correct?

14 MS. KIRK: Object to the form.

15 THE WITNESS: I think that's correct.

16 BY MR. TRAXLER:

17 Q. Do you know of any adjustment made
18 between Paul Barringer's Revocable Trust and Merrill
19 Light's Revocable Trust to reflect her beneficial
20 ownership of those dividends?

21 MS. KIRK: Object to form.

22 THE WITNESS: I am unaware of any
23 adjustments that you described.

24 BY MR. TRAXLER:

25 Q. All right. And for any meetings after

1 September 11 of shareholders of CFRC, but before the
2 transfer to Merrill Light was shown on the stock
3 ledger, who was -- who actually voted those shares?
4 Do you know?

5 A. I don't know.

6 Q. Well, you were assistant secretary at
7 that point. Wasn't that your job?

8 MS. KIRK: Object to the form.

9 THE WITNESS: Yes, Mr. Traxler. My
10 recollection from 2012 to 2021 is a little fuzzy.

11 BY MR. TRAXLER:

12 Q. Well, at any of the shareholder
13 meetings, did Paul Barringer ever vote more than his
14 one share after September 11?

15 MS. KIRK: Object to the form.

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

18 THE WITNESS: I mean, we can look at the
19 records; but I don't independent -- I don't remember
20 to what extent, you know. I think typic -- I'm not
21 sure. I don't remember specific votes from
22 shareholder meetings.

23 BY MR. TRAXLER:

24 Q. Did Mr. Barringer ask you to hold on to
25 the stock assignment and stock power?

1 A. He did not.

2 Q. Did anybody ask you to hold on to it
3 before recording it?

4 A. No, sir.

5 Q. And why wasn't the gift tax return done
6 until three years later?

7 MS. KIRK: Object to the form.

8 MR. TWOMBLEY: Same objection.

9 THE WITNESS: I think that was a
10 mistake.

11 BY MR. TRAXLER:

12 Q. By whom?

13 A. I think that was a mistake in
14 communication. We -- we believed, I believed that
15 the gift tax return had been prepared and filed by
16 Mr. Barringer's CPA.

17 Q. Did you have any communications -- you
18 talking about Bobby Davis?

19 A. I think Bobby Davis was the CPA at the
20 time.

21 Q. Did you have any discussions with Bobby
22 Davis about the gift tax return prior to it being
23 filed three years later?

24 A. I -- I did not have any communications
25 with Bobby Davis that I recall about that.

1 Q. Did you render legal advice to Mr.
2 Barringer about doing a tax return at the time of
3 the assignment of shares in September in 2012?

4 MR. TWOMBLEY: Answer yes or no.

5 THE WITNESS: You're going to have to
6 repeat that. I'm sorry.

7 BY MR. TRAXLER:

8 Q. Mr. Barringer does the assignment on
9 September 11.

10 A. Uh-huh.

11 Q. Did you at or around that time have any
12 conversations with Mr. Barringer about needing to do
13 a gift tax return?

14 A. I certainly told Mr. Bar --

15 MR. TWOMBLEY: Just answer yes or no.

16 THE WITNESS: Yes.

17 BY MR. TRAXLER:

18 Q. Okay. Was it your responsibility to see
19 that a gift tax return had been done?

20 MS. KIRK: Object to the form.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Had you been responsible prior for tax
24 returns -- gift tax returns for Mr. Barringer?

25 A. I don't believe so.

1 Q. Let me get you to go to Tab 1, Page 10,
2 if you would please, Mr. Jolley.

3 A. (Complying.)

4 MS. PAYLOR: What's the page number,
5 please?

6 MR. TRAXLER: Ten.

7 Q. Give you a minute, Mr. Jolley, to
8 familiarize yourself with that e-mail -- e-mail
9 thread.

10 MR. TWOMBLEY: That's the one on Page
11 10?

12 MR. TRAXLER: Yeah.

13 THE WITNESS: I -- I see this.

14 BY MR. TRAXLER:

15 Q. Now, this is September -- I mean, this
16 is 2011.

17 A. Yeah.

18 Q. This is not in the time frame of --

19 A. Uh-huh.

20 Q. -- the gifting of shares?

21 A. Yes, sir.

22 Q. I guess my first question is, do you
23 recall what gifts Paul and/or Merrill Barringer had
24 done in 2011 to trigger a gift tax return?

25 A. I don't recall.

1 Q. And do you recall ballpark-ish what the
2 annual exclusion was back then?

3 A. I would guess it was around \$12,000.

4 Q. All right. So any gifts over 12,000 or
5 split gifts over 24,000, thereabouts, would trigger
6 a gift tax return, would it not?

7 MS. KIRK: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. TRAXLER:

10 Q. Okay. But you don't recall what gifts
11 they did to trigger a gift tax return?

12 A. No, sir.

13 Q. Okay. But in this one, you assumed the
14 responsibility for contacting Bobby Davis about the
15 gift tax return?

16 MS. KIRK: Object to the form.

17 BY MR. TRAXLER:

18 Q. Is that correct?

19 A. I did.

20 Q. And do I understand that it was
21 different with the gifting of the shares to Merrill
22 Barringer in 2012?

23 MS. KIRK: Objection to form.

24 BY MR. TRAXLER:

25 Q. Excuse me. Merrill Light. Excuse me.

1 A. Yes.

2 Q. So the lateness of the gift tax return
3 in 2012 was not your fault; is that correct?

4 MS. KIRK: Object to form.

5 MR. TWOMBLEY: Object to the form.

6 THE WITNESS: I don't believe so.

7 BY MR. TRAXLER:

8 Q. Okay. Whose fault was it?

9 MS. KIRK: Object to the form.

10 BY MR. TRAXLER:

11 Q. Who dropped the ball?

12 A. I'm not sure.

13 Q. Did you ever have any discussions with
14 Mr. Barringer about that?

15 MR. TWOMBLEY: Yes or no.

16 THE WITNESS: About what?

17 BY MR. TRAXLER:

18 Q. Getting the gift tax return done,
19 whether it was right at the time of the transfer or
20 three years later.

21 MR. TWOMBLEY: Yes or no.

22 THE WITNESS: No.

23 BY MR. TRAXLER:

24 Q. Okay. Did you have any conversations
25 with Travis Bryant about it?

1 A. I don't recall.

2 Q. Did you have any conversations with
3 Bobby Davis about it?

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

5 Q. Okay. And I can refer you to the memo
6 to the file of Bobby Davis about conversations with
7 you. Would that refresh your recollection?

8 A. I mean, I can read the memo --

9 Q. Sure.

10 A. -- but I don't remember.

11 Q. All right. Let's go to the very last
12 document under page -- under Tab 1. It's Page
13 Number 249. Take a minute to familiarize yourself
14 with that.

15 A. (Complying.) Okay.

16 Q. All right. You -- does this refresh
17 your recollection about conversations with Mr.
18 Davis?

19 A. I -- I mean, I read it and I don't
20 object to what Mr. Davis has said; but I don't
21 remember that conversation.

22 Q. All right. Mr. Barringer had reported
23 to Mr. Davis in 2012 that he made no reportable tax
24 gift -- gifts that year. Were you aware of that?

25 MR. TWOMBLEY: Object to the form of the

1 question.

2 MS. KIRK: Same objection.

3 THE WITNESS: I was not aware of that.

4 BY MR. TRAXLER:

5 Q. Okay. Did -- and you participated in
6 coming up with the valuation with Mr. Davis to use
7 on the gift tax return for the stock?

8 MS. KIRK: Object to the form.

9 THE WITNESS: I mean, I don't remember
10 how the -- how the valuation -- I -- I see that Mr.
11 Davis said that we discussed that, but that's all
12 that -- I mean, that's all I remember. I don't --
13 this is all that I know about that.

14 BY MR. TRAXLER:

15 Q. Do you have any recollection of which or
16 what appraisal or valuation you used in order to
17 come up with a value of the stock that was gifted?

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

20 THE WITNESS: No.

21 BY MR. TRAXLER:

22 Q. At the time, were you of the opinion
23 that voting stock had the same value -- fair market
24 value as non-voting stock in CFRC?

25 MR. TWOMBLEY: Object to the form.

1 MS. KIRK: Same objection.

2 THE WITNESS: Was I of the effect -- was
3 I of the -- I'm sorry. Ask that -- can you
4 repeat --

5 MR. TRAXLER: Sure.

6 THE WITNESS: -- the question?

7 BY MR. TRAXLER:

8 Q. Sure. As of 2012 when the stock was
9 gifted, did you think that the value of the voting
10 stock per share was the same value of non-voting
11 stock per share?

12 MR. TWOMBLEY: I would object and
13 instruct you not to answer. I think what he thought
14 in his mind as he was advising clients is not -- you
15 can't go into it. It's privileged. I instruct him
16 not to answer unless you want to try to reword.

17 MR. TRAXLER: No. But, you know, you
18 got in here -- Mr. Davis has in here, we both agreed
19 that the March 31, 2012 valuation of \$4.62 per share
20 should be used -- should be the value used on the
21 2012 gift tax return. I have the right to go into
22 those conversations that lead to this memo and that
23 valuation. But are you telling him not to answer?

24 MR. TWOMBLEY: Well, I think he said
25 several times he didn't remember any of this.

1 Didn't even remember the conversation.

2 MR. TRAXLER: All right. But I'm asking
3 him if he was of the opinion that voting stock per
4 share had the same value as non-voting. Are you
5 instructing not to answer that question?

6 MR. TWOMBLEY: Yes. And I think --

7 MR. TRAXLER: On what basis?

8 MR. TWOMBLEY: Of the attorney/client
9 privilege, work product privilege. I don't -- and
10 most importantly because it does not fall within
11 Judge Mullins' order and does not relate to the
12 preparation, execution or amendment of an estate
13 planning document.

14 And just for the record, you know, I'm
15 having to make these calls, you know, kind of, you
16 know, in the -- in the heat of the deposition. I'm
17 happy to reflect on them and talk with my
18 co-counsel, you know, at the break, see if we can
19 revisit any of these; but -- and I'm happy to hear
20 anything, you know, you want to tell me to, you
21 know, try to get me to change my mind.

22 BY MR. TRAXLER:

23 Q. Do you recall if the valuation that you
24 and Mr. Davis agreed to was based on the valuation
25 of non-voting stock or voting stock?

1 MR. TWOMBLEY: Object to the form.
2 Assumes facts not in evidence.

3 MS. KIRK: Same objection.

4 THE WITNESS: No.

5 BY MR. TRAXLER:

6 Q. Do you recall what the basis was for
7 coming up with a value of \$4.62 per share?

8 A. No.

9 Q. Why would he -- why were you offering an
10 opinion on the value of the stock?

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

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: I'm going to instruct you
15 not to answer and I also object as to the form of
16 the question. Assumes facts not in evidence.

17 MS. KIRK: Same objection.

18 MR. TRAXLER: Well, it says, we both
19 agreed on the valuation. Are you not going to allow
20 him to testify as to the basis for that?

21 MR. TWOMBLEY: I think he's said
22 numerous times he doesn't even remember the
23 conversation. Said he doesn't remember anything
24 about it.

25 MR. TRAXLER: All right. But my

1 question is why would he as a lawyer be offering an
2 opinion on the value of stock? Are you tell --

3 MS. KIRK: Which assumes he offered an
4 opinion on it.

5 MR. TRAXLER: It says, we both agreed.

6 MS. KIRK: That is --

7 MR. TRAXLER: Okay.

8 MS. KIRK: Those are two different
9 things in my world.

10 MR. TRAXLER: Okay. That's fine. We
11 can deal with that one later; but the question right
12 now is, are you instructing this witness not to
13 answer that question?

14 MR. TWOMBLEY: What's the question
15 again?

16 MR. TRAXLER: My question is, why was he
17 offering an opinion on the value of the stock?

18 MR. SCHRONCE: And Tom, this is John
19 Schronce. I apologize. I'm just -- I'm having
20 trouble hearing you --

21 MR. TRAXLER: Okay.

22 MR. SCHRONCE: -- on this question.

23 MS. PAYLOR: I agree. I didn't hear it
24 either.

25 MR. TRAXLER: Well, the question to Mr.

1 Jolley was, why was he as a lawyer offering an
2 opinion on the value of the stock?

3 MR. TWOMBLEY: I am instructing him not
4 to answer. I do not think that falls within the
5 preparation, execution of an estate planning
6 document. I also think, for the record, that a lot
7 of these questions have to deal with matters that
8 have already been litigated, fully explored in a
9 separate lawsuit by Hampton Luzak and they're not
10 appropriate to go into this -- into during, you
11 know, this deposition.

12 And so I just wanted to put that on the
13 record. I wanted to do it earlier, but I just did
14 it now not to interrupt the flow. But, yes, I
15 instruct him not to answer on the ground that that
16 has nothing to do with the preparation, execution or
17 amendment of an estate planning document, which is
18 the order that's been in place for four or five
19 years. I forget how many.

20 MS. KIRK: And I objected to the form of
21 the question because it assumes things that are not
22 in evidence.

23 BY MR. TRAXLER:

24 Q. All right. Mr. Jolley, let me get you
25 to go to Tab 1, Page 163.

1 A. (Complying.)

2 MS. PAYLOR: What was the number,
3 please?

4 MR. TRAXLER: 163.

5 MS. PAYLOR: Thank you.

6 MR. TRAXLER: Uh-huh.

7 Q. When you've had a chance to look at that
8 and familiarized yourself with it, Mr. Jolley, just
9 let me know, please.

10 A. (Complying.) Okay.

11 Q. All right. In the middle, it says --
12 you write, not really. Let's discuss. I think
13 that -- is it pronounced Congur or Conger?

14 A. I think it's Conger, but --

15 Q. Okay. Fine. I think the Conger
16 transfers weren't technically correct. What were
17 the Conger transfers that you were referring to
18 there?

19 A. I think this is reporting to transfers
20 that occurred before I was involved, but I do think
21 there -- some Conger family member transferred some
22 shares.

23 Q. And you believe that the transfer would
24 occur at the delivery to the corp?

25 A. I -- I think that once the transfer

1 documents were delivered to the corporation that the
2 equitable ownership of the shares occurred.

3 Q. But Mr. Bar -- but you write, it was
4 Paul's understanding the transfer would occur upon
5 delivery; right?

6 MS. KIRK: Object to the form.

7 MR. TRAXLER: And it's not that
8 important, but -- I'll -- I'll remove that question.

9 Q. Tell me what Conger transfers you're
10 talking about here.

11 A. I don't recall which Con -- I mean, as I
12 said, I think they were transfers of Mr. Conger's --
13 some of Mr. Conger's shares, but I don't recall the
14 details of that at all.

15 Q. Do you know if they were transfers
16 between Congers or whether it was between CFRC and
17 Congers?

18 A. I don't have any recollection of that.

19 Q. Okay. That's fair. Now, when the
20 transfer was done to Merrill Light's Revocable Trust
21 in September of 2012, around that time period or any
22 time thereafter -- this is a yes or no question --
23 did you have any discussions with anyone where the
24 topic was whether to disclose it to Hampton or not?

25 A. I don't recall.

1 Q. All right. As you -- this is a yes or
2 no question. As you sit here today, do you have any
3 information as to why it was not disclosed to
4 Hampton at or about the time of the transfer?

5 A. No.

6 Q. Do you know if it was disclosed to
7 Hampton -- Hampton at or about the time of the
8 transfer? Yes or no.

9 A. No.

10 Q. Do you know -- if I asked you this, I
11 apologize. Do you know when it was first disclosed
12 to her by anybody?

13 A. No.

14 Q. But there were no conversations that you
15 recall where that was a topic of discussion, whether
16 it be with your clients or other people, Travis
17 Bryant, CFRC, anybody else; is that correct?

18 A. I don't recall any conversations like
19 you described.

20 Q. And you certainly would not have had
21 occasion to tell Hampton; is that correct?

22 A. I did not communicate with Ms. Luzak.

23 Q. Okay. Let me go to 17 -- Tab, 1 Page
24 175.

25 A. (Complying.)

1 Q. This is a letter from you, I believe,
2 transferring the stock certificate representing the
3 transferred stock to Merrill Light's trust; is that
4 correct?

5 MS. KIRK: Object to the form.

6 MR. TRAXLER: What's wrong with the
7 form?

8 MS. KIRK: Huh?

9 MR. TRAXLER: What's wrong with the
10 form?

11 MS. KIRK: I think misstates what it is
12 when you used your word transfer.

13 BY MR. TRAXLER:

14 Q. Okay. Fair -- fair enough. What is
15 Page 175?

16 A. Looks like a cover letter in which I
17 sent the stock certificate, Number 16, to Ms. Light.

18 Q. And is that stock certificate, Number
19 16, the stock certificate that reflects the transfer
20 of stock from Paul Barringer's Revocable Trust to
21 Merrill Light's Revocable Trust in September of
22 2012?

23 A. I think this reflects the -- those
24 shares that you mentioned being and the certificate
25 represents those shares in Mrs. Light's rev trust.

1 Q. All right. I think I understood that
2 answer. But these are the same shares transferred
3 in September; correct?

4 A. Yes, sir.

5 Q. Okay. Why was it not until March 1,
6 2013 that those -- that certificate was sent to Ms.
7 Light?

8 A. Because the stock certificates weren't
9 issued and signed. We sent them -- once they were
10 returned, they were sent to Mrs. Light.

11 Q. Okay. But Mr. Barringer had signed them
12 in September of 2013, hadn't he?

13 MR. TWOMBLEY: Object to the form.

14 THE WITNESS: Mr. Barringer had signed
15 those transfer documents in September of 2012. Yes,
16 sir.

17 BY MR. TRAXLER:

18 Q. Okay. But when did he sign the
19 documents to -- the shares themselves or did he?

20 MS. KIRK: Object to the form, I think.

21 THE WITNESS: I'm not sure to answer --
22 I understand that question, Mr. Traxler.

23 BY MR. TRAXLER:

24 Q. The stock certificates that had been
25 issued in the name of Paul Barringer's Revocable

1 Trust. Did he or his -- did he sign those stock
2 certificates over as part of the assignment to
3 Merrill Light's trust?

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

5 Q. Would that have been necessary to
6 effectuate the transfer on the corporate records?

7 A. I do not believe so.

8 Q. So why do we see e-mails from Travis
9 Bryant to you hollering for the signed stock
10 certificates from Paul Barringer in January of 2013?

11 MR. TWOMBLEY: Object to the form.

12 MS. KIRK: Same objection.

13 THE WITNESS: My recollection was that
14 Mr. -- Mr. Bryant was looking for the certificates
15 that reflected the transfer of Mr. Barringer to Mrs.
16 Light's trust.

17 BY MR. TRAXLER:

18 Q. I'm sorry. Say that again. You lost
19 me.

20 A. No. I said, I think Mr. Bryant was
21 asking about the certificate that reflected -- I
22 guess really certificates that reflected the
23 transfer of these shares from Mr. Barringer to Mrs.
24 Light's Revocable Trust.

25 Q. Was he looking for the stock

1 certificates themselves or the assignment of shares
2 and the stock power documents?

3 A. I think he was --

4 MR. TWOMBLEY: Object to the form.

5 THE WITNESS: I think he was looking for
6 the stock certificates. The stock certificates from
7 the company issuing the shares to Merrill Barringer
8 Light's rev trust.

9 BY MR. TRAXLER:

10 Q. Okay. Do you recall Mr. Bryant kind of
11 getting after you a little bit in January of 2013 to
12 get the signed stock certificates by Paul Barringer
13 to him?

14 MS. KIRK: Object to the form.

15 THE WITNESS: I remember Mr. Bryant
16 getting after me a little bit, but my recollection
17 is that it was for the certificates issued to Mrs.
18 Light.

19 BY MR. TRAXLER:

20 Q. Okay. Were you also having
21 conversations with Randy Light in January 2013 about
22 getting the transfer effected?

23 A. Yes.

24 Q. Why was he involved? I know he's her
25 husband, but what was his role?

1 A. I --

2 MR. TWOMBLEY: I'll -- well --

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I think. . .

5 MR. TWOMBLEY: I just think you should
6 describe in as few words as possible what his role
7 was so that then we can take each question one by
8 one.

9 THE WITNESS: Well, Mr. Light was, of
10 course, Mrs. Light's husband.

11 MR. TRAXLER: Right.

12 THE WITNESS: And, at the time, he was
13 also a director of the company.

14 MR. TRAXLER: All right.

15 THE WITNESS: At least that's my
16 recollection.

17 BY MR. TRAXLER:

18 Q. All right. Looking at Tab 1, Page 147.

19 A. (Complying.)

20 MS. KIRK: 147?

21 MR. TRAXLER: Yeah. 147.

22 Q. Not very long, Mr. Jolley. Just tell me
23 when you've read it.

24 A. (Complying.) I have read it.

25 Q. Okay. And this is from Randy Light to

1 you, January 21, 2013; correct?

2 A. That's what is appears to be, yes, sir.

3 Q. And he says, just following up to
4 confirm that you have PBB -- that's Paul Barringer;
5 right?

6 A. Uh-huh.

7 Q. -- squared away regarding his stock
8 certificates or signing the lost waiver; correct?

9 A. That is what this says, yes, sir.

10 Q. All right. Go back to the e-mail or the
11 page just before that on Page 146. And part way
12 down -- well, down at the bottom, it starts with an
13 e-mail from Randy Light, I believe using Merrill
14 Light's AOL address, to you and to Becki Bostick;
15 correct?

16 A. That is what that looks like.

17 Q. And he's asking you when the shares were
18 recorded; correct?

19 A. Yes.

20 Q. Those are the voting shares that he
21 transferred -- Mr. Barringer transferred in
22 September 2012; correct?

23 A. I think that's what he's referring to,
24 yes.

25 Q. And then you said right above that, on

1 January 7, the transfer paperwork was sent to the
2 Havana address. I need to get with Travis regarding
3 this one. Is this simply a follow up or is there
4 something else? And he responds above that, it's a
5 follow up to the question Merrill had. This all
6 pertains to the transfer of stock in September;
7 correct?

8 A. Yes, sir.

9 Q. All right. If the tran -- assignment,
10 transfer of the stock powers were sufficient in and
11 themselves to effectuate the transfer, why was it
12 necessary to have Paul Barringer's signature on
13 anything else, including the stock certificates?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Object to the form.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I think -- the transfer
18 documents, I believe, were sufficient. However, we
19 certainly preferred and looked for the original
20 certificate.

21 MR. HOGAN: Eighteen.

22 BY MR. TRAXLER:

23 Q. Let me get you to go to Tab 18, if I
24 could, Mr. Jolley.

25 MS. PAYLOR: What page?

1 MR. TRAXLER: 663.

2 MS. PAYLOR: Thank you.

3 THE WITNESS: (Complying.) 663. Yes.

4 BY MR. TRAXLER:

5 Q. All right. Tell me what 663 is.

6 A. 663 is a cover letter in which I sent
7 stock certificates to Mr. Bryant for signatures.

8 Q. Now, look at the following pages, 664,
9 665, 666, 667. Were they enclosed with that letter?

10 A. I believe so.

11 Q. And was 669, the assignment of shares,
12 670 and 671, 672, also part of that enclosure to the
13 letter? And --

14 A. I don't think 671 and 672 were a part of
15 that enclosure, because those reflect Mr. Bryant and
16 Mr. Evans' signatures.

17 Q. So on January 24 of 2013, were you
18 sending the enclosed stock certificates for Mr.
19 Barringer to sign?

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Mr. Barringer had not signed the stock
24 certificate for assignment, had he? Look at 667.

25 A. 667. That -- 667. 667. Oh, these are

1 different. Sorry. 667. No, he didn't sign the
2 stock power on the back of the certificate.

3 Q. Do you know if Mr. Barringer ever signed
4 the assignment shown on 667 for the transfer of the
5 shares to Merrill Light's trust?

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

8 THE WITNESS: I don't know if Mr. Bar --
9 I don't --

10 MS. KIRK: Same objection. You can
11 answer. I'm sorry.

12 THE WITNESS: I don't know if Mr.
13 Barringer ever signed the stock power on the back of
14 the certificate as reflected in 667.

15 BY MR. TRAXLER:

16 Q. All right. Did you ever -- if I asked
17 you this question, I apologize. Do you ever recall
18 yourself getting a stock certificate signed by Paul
19 Bryant?

20 A. I'm sorry?

21 Q. Did you ever get a -- I'm sorry.
22 Screwed that one all up. Let's start over again. I
23 think the heat's getting to me.

24 Do you ever recall having Mr. Barringer
25 sign the stock certificate over to Merrill Light's

1 trust?

2 A. I don't recall that.

3 Q. All right. So if you e-mailed Mr. -- if
4 you e-mailed -- I take that back.

5 So tell me why it takes from September
6 11 to January 24 to handle this.

7 A. As I think I already testified, this
8 was -- this was not something I perceived to be
9 critical to the transfer and I neglected to -- to
10 complete the transfer. Was a period when we were --
11 we were hoping to have the original stock
12 certificate, but. . .

13 Q. Why were the stock certificates into
14 Merril Light's trust dated December 31, 2012?

15 A. That's the date that I discussed with --
16 well, that's the date that we chose to put in the
17 record book and on the stock certificate.

18 Q. Why? Why that date?

19 A. I think that it was because Mr.
20 Barringer and Mr. Bryant didn't want to change the
21 record -- the reporting or the treatment of the
22 shares. They wanted to make that effective as of
23 12/31.

24 Q. Why?

25 A. Because I think Mr. Bryant perceived

1 that it would be simpler and less trouble for the
2 company to not have to re -- to change the effect
3 during that fourth quarter of 2012. And I don't
4 believe Mr. Barringer perceived this to be a big
5 deal.

6 Q. But CFRC is on a fiscal year of
7 September 30th, is it not?

8 A. Yes, sir, I believe so.

9 Q. So it would not have affected the fiscal
10 years for CFRC, would it?

11 MS. KIRK: Object to the form.

12 THE WITNESS: I don't think -- I don't
13 know the answer to that. I don't know what that
14 was. I did have a conversation -- well, I don't
15 think it would have affected the fiscal year end of
16 2012 for CFRC.

17 BY MR. TRAXLER:

18 Q. Okay. But the tax return reflects a
19 gift date of December 31, 2012. The stock
20 certificates are dated December 31, 2012. Tell me
21 all the reasons why you understand that date was
22 used for the gift tax return and also for the stock
23 certificates into Merrill Light's trust.

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Same objection.

1 THE WITNESS: With respect to the gift
2 tax implications, we, sir, I believe and believed
3 that the transfer occurred in 2012. I'm -- at the
4 time we discussed it, Mr. Bryant and myself
5 discussed it, we thought it would be simplest to
6 reflect the 12/31 date for the transfer on the
7 books.

8 BY MR. TRAXLER:

9 Q. But -- but why? I mean, what difference
10 does it make? Made a difference in K-1s, didn't it?

11 A. Yeah, I -- that was what I understood
12 from my communi -- my conversations with Mr. Bryant.

13 Q. All right. So was the idea that
14 December 31, 2012 was used as the effective date of
15 transfer in order to simplify the handling of K-1s
16 for Mr. Barringer and Merrill Light?

17 MS. KIRK: Object to the form.

18 THE WITNESS: I don't know specifically,
19 but certainly the paperwork with re -- with respect
20 to the company and with respect Mr. Barringer and
21 Mrs. Light.

22 BY MR. TRAXLER:

23 Q. And so the K-1s for that year, we would
24 expect to reflect all the distributions to Paul
25 Barringer in his name, even between September 11 and

1 12/31/2012; correct?

2 A. I think --

3 MR. TWOMBLEY: Object to the form.

4 MS. KIRK: Same objection.

5 THE WITNESS: Yeah, I think that is
6 correct.

7 BY MR. TRAXLER:

8 Q. Okay. Even though he transferred on
9 September 11; right?

10 A. Yes, sir.

11 MR. TRAXLER: Okay. Let's take a break.
12 We've been going a little while.

13 MS. KIRK: Sure.

14 MR. TWOMBLEY: Sure.

15 MR. TRAXLER: Let's take a 30-second
16 break.

17 THE VIDEOGRAPHER: This is end of Media
18 Unit 2 of the video deposition of John M. Jolley.
19 We're going off the record at 10:55:37.

20 (A recess transpired.)

21 THE VIDEOGRAPHER: This is the beginning
22 of Media Unit Number 2 -- 3. This is a continuation
23 of the video deposition of John M. Jolley. We're
24 going on the record at 11:13:27.

25 BY MR. TRAXLER:

1 Q. All right, Mr. Jolley. When did you --
2 if you had possession of the stock register or
3 ledger, when did you or somebody at your office make
4 the change after the transfer of the voting stock
5 from Mr. Barringer's trust to Ms. Light's trust?

6 A. I'm -- I think that would have been in
7 December or in January. December of 2012 or January
8 of 2013. I'm not -- I don't know for certain.

9 Q. Was there any reason to wait on a signed
10 stock certificate with the assignment on the back of
11 the certificate signed by Mr. Barringer to make that
12 entry?

13 A. I do not believe there -- no.

14 Q. Do you know -- do you recall when the
15 transfer was noted on the stock ledger?

16 A. I -- I don't.

17 Q. Do you know anything about it being
18 changed?

19 A. No.

20 Q. If it was --

21 MR. TWOMBLEY: Object to the form.

22 BY MR. TRAXLER:

23 Q. -- corrected, amended, changed, whatever
24 to December 31, 2012, would you have any information
25 about that?

1 A. No.

2 Q. Okay. Were the auditors of -- did CFRC
3 have auditors, outside auditors?

4 A. I believe so.

5 Q. Were they told of the stock transfer?

6 A. I don't know.

7 Q. Whose responsibility would it have been
8 to report the stock transfer, if at all necessary,
9 to the outside auditors?

10 A. I would expect that the what -- the
11 management of CFRC would have reported that to the
12 outside auditors.

13 Q. And as of September 2012 to the end of
14 the year, who would that have been in particular?

15 A. Who would -- who would the management
16 be?

17 Q. Yes, sir. Who had the responsibility
18 for reporting the transfer with regard to the
19 outside auditors?

20 MR. TWOMBLEY: Object to the form.

21 MS. KIRK: Object to the form.

22 MR. TWOMBLEY: Legal conclusion.

23 THE WITNESS: Yeah. I'm not sure. Mr.
24 Bryant is who I communicated with.

25 BY MR. TRAXLER:

1 Q. Okay. And was it reported to the
2 outside auditors what the decision was with regard
3 to using the December 31, 2012 as the transfer date
4 on the gift tax return and on the corporate records?

5 MR. TWOMBLEY: Same objection.

6 MS. KIRK: Same.

7 THE WITNESS: I don't know.

8 BY MR. TRAXLER:

9 Q. Do you think that was a material issue
10 as far as outside auditors would be concerned?

11 MR. TWOMBLEY: Object to the form of the
12 question. I would also -- if you're asking for his
13 mental impressions about what he thought was
14 important and was not important, I'll instruct him
15 not to answer.

16 BY MR. TRAXLER:

17 Q. You -- you get auditor's inquiries all
18 the time, don't you, for your clients?

19 A. My firm certainly gets auditors and
20 inquiries.

21 Q. Yeah. Do you ever respond to them or
22 help formulate the responses?

23 A. I don't think that I -- no, I don't.
24 No.

25 Q. Did you receive such an inquiry from the

1 outside auditors for CFRC for 2012?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I don't remember.

4 BY MR. TRAXLER:

5 Q. And I presume you wouldn't remember
6 whether you prepared any of the responses or edited
7 any of them; is that correct?

8 A. That is correct. I don't recall any of
9 that.

10 Q. All right. I'm not going to re-plow the
11 e-mail that we have talked about, but I need to get
12 our attention back to it for a time frame.

13 A. Okay.

14 Q. I need you to look at 10 -- Tab 1, Page
15 109.

16 Alice, can y'all hear me better now?

17 MS. PAYLOR: Yes, thank you. Much
18 better.

19 MR. SCHRONCE: Thank you.

20 MR. TRAXLER: I wish I say I could say I
21 had something it do with that, but. . .

22 MS. PAYLOR: No. This is -- this is
23 fine. This is perfect.

24 MR. TRAXLER: If I had my way, I'd cut
25 you off completely; but it won't let me do that.

1 Q. All right. Page 109. We've talked
2 about this before, Mr. Jolley.

3 A. I -- I do see this e-mail. September
4 20, 2012.

5 Q. Okay. Do you know why Paul Barringer
6 was not copied on that?

7 A. No.

8 Q. Okay.

9 MS. PAYLOR: Object to the form.

10 BY MR. TRAXLER:

11 Q. At that point in time -- and this is an
12 e-mail from Randy Travis to -- to you starting
13 September 20, 2012. This was after the stock
14 transfer, was it not?

15 MR. TWOMBLEY: Object to the form.

16 MS. KIRK: Object to the form.

17 THE WITNESS: Yes.

18 BY MR. TRAXLER:

19 Q. Okay. How many shares of stock did Mr.
20 Balance own as of September 20, 2012?

21 A. I think Mr. Barringer had one share.

22 Q. Okay. Did you discuss this -- yes or
23 no. Did you discuss this e-mail at any point in
24 time with Merrill Light?

25 A. No.

1 Q. Did you ever discuss it with Paul
2 Barringer? Yes or no.

3 A. I don't remember.

4 Q. Did you discuss it with anyone at all?

5 A. Yes.

6 Q. And with whom?

7 A. Mr. Bryant.

8 Q. Did you have discussions with Mr. Bryant
9 beyond this e-mail? Were y'all e-mailing?

10 A. I'm sorry. Are you asking me whether or
11 not I had conversations with Travis Bryant about
12 this subject --

13 Q. Yes.

14 A. -- beyond e-mail?

15 Q. Yes, sir.

16 A. Yes.

17 Q. And what was -- what was the topic of
18 it, this e-mail?

19 A. I think that this e-mail came up in
20 another conversation with Mr. Bryant.

21 Q. Okay. I don't want you to tell me the
22 substance of that conversation; but I need you to
23 give me the setting of when, where, who was
24 participating.

25 A. My recollection is that it was a

1 telephone call, which Mr. Bryant and I had
2 regularly; but a telephone call with Mr. Bryant.

3 Q. All right. And were you serving as
4 corporate counsel for CFRC in that conversation?

5 A. I believe so.

6 Q. And when was that with respect to this
7 particular e-mail? Shortly thereafter?

8 A. Shortly thereafter.

9 Q. Did you have any other conversations
10 with Mr. Bryant about that?

11 A. No.

12 Q. Okay. And pay attention, Ed. What was
13 that conversation?

14 MR. SCHRONCE: What was the
15 conversation?

16 BY MR. TRAXLER:

17 Q. What was the conversation?

18 MR. SCHRONCE: Okay. Hold on. So
19 you're asking for the substance of the conversation,
20 Tom?

21 MR. TRAXLER: I am.

22 MR. SCHRONCE: Okay. Well, I'm
23 objecting and instructing him not to answer on the
24 basis of the corporation's privilege.

25 MR. TRAXLER: I thought you might.

1 That's why I wanted to make sure you heard me.

2 MR. SCHRONCE: You know, I was -- I was
3 giving you ever chance to fix it, Tom.

4 THE COURT REPORTER: Wait. Was that Ed
5 or Mike?

6 MR. TRAXLER: That was John Schronce.

7 MR. TWOMBLEY: John Schronce.

8 THE COURT REPORTER: Got you. Okay.

9 THE WITNESS: That was Johnathon
10 Schronce.

11 BY MR. TRAXLER:

12 Q. All right. Let me get you to look at
13 Page 105, Mr. Jolley. Tell me when you've had a
14 chance to familiarize yourself with that.

15 A. (Complying.) I -- I see it.

16 Q. And Becki Bostic is a paralegal in your
17 office; is that correct?

18 A. That is correct.

19 Q. Okay. And from Becki Bostic to Travis
20 Bryant on October 11, 2012, she says, Mr. Bryant,
21 attached please find a very rough draft of the
22 employment agreement for your review. John will be
23 forwarding to you a memo on -- regarding shareholder
24 oppression, as well as a recent case later this
25 afternoon. Do you recall that?

1 A. Do I recall this e-mail or do I recall
2 what they're referring to in the e-mail?

3 Q. What they are referring to.

4 A. I do recall that.

5 Q. Okay. And did you do a memo on
6 shareholder oppression?

7 MR. TWOMBLEY: I would object to the
8 form and I would -- well, you're just asking him if
9 he did a memo?

10 MR. TRAXLER: Right.

11 MR. SCHRONCE: John, I'd -- I'd tell you
12 to -- to answer yes or no, then pause.

13 MR. TWOMBLEY: I guess, yes, no or I
14 don't know, I don't recall.

15 MR. SCHRONCE: Yes, no, I don't know, I
16 don't remember.

17 THE WITNESS: No.

18 BY MR. TRAXLER:

19 Q. You don't recall it?

20 MR. TWOMBLEY: Yes, no, I don't recall.

21 THE WITNESS: I'm sorry. Let's hear the
22 question again, Tom, please.

23 MR. SCHRONCE: Same instruction.

24 BY MR. TRAXLER:

25 Q. All right. Did you prepare or handle a

1 memo on shareholder oppression in this time frame?

2 A. That sounds like a different question to
3 me.

4 Q. Okay.

5 A. That answer is yes.

6 Q. Okay. And who was that memo for?

7 A. That memo was for the board of
8 directors.

9 Q. Of CFRC?

10 A. Of CFRC.

11 Q. And who had requested such a memo?

12 A. I don't believe that anyone had
13 requested that memo.

14 Q. What prompted you to do a memo on
15 shareholder oppression?

16 MR. SCHRONE: Okay. John, let's stop
17 there. You are -- I think you are now calling for
18 privileged communications between company's officers
19 and directors and Mr. Jolley for purposes of
20 soliciting legal advice.

21 MR. TRAXLER: Well, let me -- I'll
22 rephrase the question.

23 Q. Did anybody associated with CFRC request
24 any work from you with regard to shareholder
25 oppression law?

1 MR. SCHRONCE: Keep this yes or no,
2 Tom -- John.

3 THE WITNESS: No.

4 BY MR. TRAXLER:

5 Q. Did you do your memo on shareholder
6 oppression on your own initiative without request
7 from someone?

8 MR. TWOMBLEY: I am going to object and
9 instruct him not to answer. I think that gets into
10 his mental impressions and why he's decided to do
11 certain things or not do them. And to the extent
12 that in any way involves Paul Barringer in any
13 capacity, then I am instructing you not to answer.

14 MR. SCHRONCE: And I would offer that
15 same instruction for the company, Tom -- John.

16 MS. PAYLOR: Same for Merrill.

17 MR. MOLSTER: Same for Merrill Light.

18 BY MR. TRAXLER:

19 Q. Tell me what you understand shareholder
20 oppression to mean.

21 MR. SCHRONCE: I think, John, to the
22 extent that you can answer this without divulging
23 communications with CFRC's officers and directors in
24 your capacity as corporate counsel, you can answer
25 that. And to the extent that requires you to

1 divulge that information, do not answer.

2 MS. KIRK: To the extent that he's just
3 asking for legal conclusions, I object to the form;
4 but you can answer.

5 MR. SCHRONCE: I'd make the same
6 objection on that basis.

7 MR. TWOMBLEY: And I would -- I think
8 I'm going to just instruct you not to answer. I
9 mean, I just think it's kind a back end way to
10 getting around to what he was thinking and what was
11 his thought process related to, you know, the work
12 that he did. I don't think you're entitled to go
13 into that. If you want to try to rephrase it.

14 MR. TRAXLER: All I'm asking him is,
15 irrespective of the memo, what does he understand
16 the concept of shareholder oppression to mean.
17 That's all I'm asking him.

18 Q. I'm not asking for any communication
19 with anybody, not asking for any substance or
20 anything. I just want to know what you understand
21 that concept to mean.

22 MR. TWOMBLEY: Well, with the proviso
23 that that's just a general question, totally
24 unrelated to this e-mail or what was happening in --
25 at this point in time with the parties involved in

1 this litigation, other than the fact that it's a
2 legal conclusion, I think he can answer.

3 MR. TRAXLER: Go ahead.

4 MR. SCHRONCE: And I -- I agree with
5 that that it calls for a legal conclusion; but, you
6 know, to the extent that you can answer without
7 divulging privileged communications or your mental
8 impressions developed as a result of those, you can
9 answer.

10 THE WITNESS: I think shareholder
11 oppression is what I would typically or generally
12 describe as the management or those in control
13 treating all of the shareholders in a fair and
14 equitable manner. And that specifically oppression
15 is that there would be what, a danger that those in
16 control would not treat those out of control in a
17 fair manner.

18 BY MR. TRAXLER:

19 Q. Okay. And at the time of the memo --
20 of this e-mail of October 11, 2012, do you recall
21 who the minority shareholders of CFRC were? We got
22 Paul Barringer, right, one share voting stock?

23 A. Uh-huh. Yes.

24 Q. Okay. Let me back up. When we talk
25 about minority shareholders and oppression, are we

1 talking about minority shareholders of voting stock
2 or do you include in that non-voting stock?

3 A. I think that would include voting --

4 MR. SCHRONCE: Well, hold on, John.

5 THE WITNESS: Excuse me.

6 MR. SCHRONCE: Subject to the same
7 objections --

8 MR. TRAXLER: Sure.

9 MR. SCHRONCE: -- and instructions --

10 MR. TRAXLER: Sure.

11 MR. SCHRONCE: -- that we had for the
12 prior question, Tom.

13 MR. TRAXLER: Sure. Go ahead.

14 MR. SCHRONCE: John, you can -- you can
15 answer accordingly.

16 THE WITNESS: I think oppression would
17 refer to both voting members and non-voting members.

18 MR. TRAXLER: All right.

19 THE WITNESS: Voting shareholders and
20 non-voting shareholders.

21 BY MR. TRAXLER:

22 Q. And in determining whether somebody was
23 majority or minority shareholders, would you add up
24 their total shares of voting and non-voting or only
25 voting? Because you used the reference of control

1 and I'm trying to get straight in my own mind about
2 that.

3 MS. KIRK: Same objection.

4 MR. TWOMBLEY: I -- yeah. I -- I would
5 object. You know, again, I think if this question
6 is based on some hypothetical company, you know, not
7 CFRC and the work he was doing at the time, you can
8 answer if you're able. But I think if it's related
9 to CFRC and the work that he was doing at the time,
10 his opinion on how you count votes or don't count
11 them, I -- I think that's privileged.

12 BY MR. TRAXLER:

13 Q. All right. For the purposes of -- that
14 you earlier gave to me by way of answer of your
15 understanding of the concept of oppression,
16 shareholder oppression, would you include a minority
17 shareholder's non-voting and how would you determine
18 that? Make sense?

19 A. I'm not sure that it does. Tell me --
20 I'm going to need you to repeat that question.

21 Q. Sure. You talked to me about what you
22 understood share -- minority -- excuse me,
23 shareholder oppression was and you talked about
24 control and the like; right?

25 A. Yes.

1 Q. Okay. When you are -- would be
2 determining under that concept who a minority
3 shareholder was, would you include those -- would
4 you add up their shares of non-voting and voting or
5 look only at voting?

6 MS. KIRK: Same objection.

7 MR. SCHRONE: John, same objections and
8 instructions. To the extent that you can answer
9 without divulging privileged communications or your
10 mental impressions developed as a result of that as
11 corporate counsel, you can answer.

12 THE WITNESS: I think, for my analysis
13 of control, I would limit that to voting.

14 BY MR. TRAXLER:

15 Q. All right. If we use that, who were the
16 minority shareholders of voting stock at CFRC in
17 October 2012?

18 A. I'm sure I can't recite all of those
19 shareholders; however, Ms. Luzak, Mr. and Mr.
20 Barringer and I believe the Congers had some voting
21 shares.

22 Q. All right. Merrill Light would not be a
23 minority shareholder, would she, under that
24 definition?

25 A. I -- yeah. That is correct.

1 Q. Because, by the transfer of stock in
2 September of 2012, she had gained majority control;
3 correct?

4 A. That is correct.

5 Q. All right. Now, this memo --
6 This is where you want to pay attention,
7 John.

8 This memo --

9 MR. SCHRONCE: And I'm here.

10 MR. TRAXLER: Good.

11 Q. This memo on shareholder oppression, who
12 was the client that you prepared it for? That's all
13 I want to know, just the name.

14 MR. SCHRONCE: I -- I object and say
15 asked and answered.

16 MS. KIRK: Yeah.

17 MR. SCHRONCE: He's already said that he
18 prepared it for the board of directors.

19 BY MR. TRAXLER:

20 Q. You prepared it for the board of
21 directors of CFRC; is that correct?

22 A. That is correct.

23 Q. You did not prepare it for Paul
24 Barringer individually; correct?

25 A. I did not pre -- that is correct. Yes.

1 Q. You did not prepare it for Merrill Light
2 individually; correct?

3 A. Yes.

4 Q. Yes, I'm correct?

5 A. Sorry. These are your questions.

6 Q. I know. That's why I'm saying, bear
7 with me.

8 A. So the answer is that is correct.

9 Q. Okay. And it was not prepared for the
10 Congers; correct?

11 A. No, it was not prepared for the Congers.

12 Q. Okay. So your client, to the extent
13 they assert an attorney/client privilege with regard
14 to this memo, was CFRC; correct?

15 A. My client with respect to the memo was
16 CFRC.

17 Q. Okay. Did you bill for that memo?

18 A. Yes.

19 Q. Okay. Did you deliver the memo?

20 A. Yes.

21 Q. To whom did you deliver it?

22 A. To the members of the -- to the
23 directors of the company.

24 Q. Did you distribute it to them by e-mail
25 or hand delivery or U.S. mail or how else?

1 A. I -- I hand delivered copies of the
2 members (sic) to the board of directors. I don't
3 know if I also sent copies in other methods, but I
4 gave them each a copy of the memo.

5 Q. Did you give anyone outside of your law
6 firm and the board of directors a copy?

7 A. No.

8 Q. Did someone in your law firm assist you
9 with research or preparation of the memo?

10 A. Yes.

11 MR. TWOMBLEY: Object. Yes or no.

12 BY MR. TRAXLER:

13 Q. Did anyone outside of your law firm, in
14 terms of a lawyer, assist in the research or
15 preparation of the memo?

16 A. I don't think so.

17 Q. Did anyone from Troutman Sanders assist
18 in that?

19 A. I don't believe so.

20 Q. Did any lawyer on behalf of Merrill
21 Light assist in that?

22 A. No.

23 Q. Did any lawyer for Paul Barringer
24 individually assist in that?

25 A. No.

1 Q. Okay. And this memo on shareholder
2 oppression, by this e-mail, was really from Becki
3 Bostick exactly one month to the day after the
4 transfer of control from Paul Barringer's trust to
5 Merrill Light's trust on September 11, 2012;
6 correct?

7 A. This is dated October 11th. That is
8 correct. Yes.

9 Q. Had you before on behalf of CFRC done
10 any research or given any advice where the topic was
11 shareholder oppression before this?

12 MR. SCHRONE: John, you can answer yes,
13 no, I don't know, I don't remember.

14 THE WITNESS: Yes.

15 BY MR. TRAXLER:

16 Q. When?

17 A. I don't remember specifically when.

18 Q. Give me your best estimate.

19 A. At one of the board of directors
20 meetings.

21 Q. What year?

22 A. Prior to this Oct -- before October 12,
23 2012.

24 Q. Before or after the transfer on
25 September 11, 2012?

1 A. I don't remember whether it was before
2 or after September 11 --

3 Q. Okay.

4 A. -- 2012.

5 Q. Do you know if it was before or after
6 Kevin Luzak was ousted on June 28, 2012?

7 A. It was after Mr. Luzak left the company.

8 Q. Was it before or after July 20, 2012
9 when the revocable trust was amended?

10 A. I think it was after that.

11 MR. TRAXLER: All right. Wake up, John.

12 Q. What was the sub --

13 MR. SCHRONCE: I object.

14 BY MR. TRAXLER:

15 Q. What was the substance of the memo?

16 MR. SCHRONCE: All right. I would
17 object and instruct you not to answer, John, on the
18 basis of attorney/client privilege and work product.

19 BY MR. TRAXLER:

20 Q. Did you provide this memo in any
21 connection with the EDVA litigation?

22 A. I'm sorry. E -- is that Eastern
23 District --

24 MR. SCHRONCE: You're --

25 THE WITNESS: -- of Virginia?

1 MR. TRAXLER: Yes, I'm sorry.

2 MR. SCHRONCE: You're asking him did he
3 provide it?

4 MR. TRAXLER: In conjunction with that
5 litigation. I'll rephrase the question.

6 Q. Did you provide the earlier advice on
7 shareholder oppression before, during or after the
8 litigation in the Eastern District of Virginia?

9 MR. TWOMBLEY: Object to the form.

10 MR. SCHRONCE: You are just asking about
11 the timing, Tom? I'll let him answer that.

12 MR. TRAXLER: That's all I'm asking,
13 John.

14 MR. TWOMBLEY: And I -- I would object
15 to the form of the question.

16 MR. TRAXLER: Okay.

17 MR. SCHRONCE: And then I'll make that
18 same objection. Again, I think I said earlier,
19 I'm -- I think we've stipulated, objection for all
20 is an objection for all for form. I just want to
21 make sure that's still --

22 MR. TRAXLER: Yeah.

23 MR. SCHRONCE: -- holding true.

24 MR. TRAXLER: I don't have a problem
25 with that. That's fine.

1 THE WITNESS: So I think this is before
2 the litigation in the Eastern District of Virginia.

3 BY MR. TRAXLER:

4 Q. And was your client then also CFRC, the
5 board of directors?

6 MS. KIRK: Object to the form.

7 THE WITNESS: Was my client -- was my
8 client when, Tom?

9 BY MR. TRAXLER:

10 Q. The earlier advice that you gave with
11 regard to shareholder oppression that you talked
12 about, was your client in that earlier work CFRC or
13 its board?

14 A. Yes.

15 Q. Okay.

16 MR. SCHRONCE: Object to the form and
17 also asked and answered.

18 MS. KIRK: Yeah.

19 MR. SCHRONCE: Just give me a second,
20 John.

21 MR. TRAXLER: Yeah.

22 THE WITNESS: Sorry.

23 MR. TRAXLER: I just needed to make sure
24 I got it. Thank you.

25 Q. Let me get you to look at Tab --

1 Document 124. Tab 1, Page 124.

2 A. (Complying.) Okay. I'm at 124.

3 Q. Okay. You see where it talks about the
4 distribution of 42 percent of the net profits to the
5 shareholders?

6 A. I do see that.

7 Q. Okay. Were you familiar with the --
8 whether it was a standard practice to distribute
9 such a percent of net profits to the shareholders,
10 whether it be for tax reimbursement or what?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Where are you asking him to
13 read from?

14 MR. TRAXLER: I'm in the middle of Page
15 124, where the board had determined in accordance
16 with the practice of the board to distribute 42
17 percent of the net profits.

18 Q. Was that consistent with the general
19 practices of CFRC that you were familiar with?

20 A. That's what I understood.

21 Q. Okay.

22 MR. SCHRONCE: I'm going to object to
23 the form --

24 THE COURT REPORTER: Wait.

25 MS. KIRK: Hold on. Hold on.

1 THE COURT REPORTER: Y'all can't talk at
2 the same time.

3 MR. SCHRONCE: And, John, if you can --
4 I know I'm -- I'm stuck on video; but if you can
5 just pause for a second to let me object before you
6 answer, I'd appreciate it.

7 THE WITNESS: Certainly. I'm sorry, Mr.
8 Schronce.

9 MS. KIRK: So is there an outstanding
10 question with an objection? I'm confused about
11 what. . .

12 MR. TRAXLER: No.

13 MS. KIRK: Okay.

14 MR. SCHRONCE: Yeah. I think if we can
15 reboot that sequence, Tom, that might help the
16 record.

17 MR. TRAXLER: I'll take the boot I got,
18 John. Thank you.

19 MR. SCHRONCE: All right. I'm always
20 here to offer the boot.

21 By MR. TRAXLER:

22 Q. Okay. Get you to go to Page 131.

23 A. (Complying.)

24 Q. Let you read that for a second and
25 familiarize yourself with it.

1 A. (Complying.) Okay.

2 Q. Did you provide advice with regard to or
3 was there a \$100,000 transfer from the revocable
4 trust?

5 A. I -- I don't know. I'm sorry.

6 Q. Pointing to the right of the address
7 lines.

8 MR. TWOMBLEY: I'm sorry. Can you
9 repeat the question?

10 MS. KIRK: Are you asking him to read
11 the handwriting?

12 BY MR. TRAXLER:

13 Q. Yeah. We can start with that. Read the
14 handwriting there, John, right opposite to the right
15 of the addressees.

16 A. It looks like a \$100,000 payment to VAB
17 for -- and I don't know if that's --

18 Q. Split dollar?

19 A. It could be. I'm sorry. It says
20 something Bryant for split dollar and then it says
21 5,000,000 trust.

22 Q. Were you involved in giving -- providing
23 advice with regard to that?

24 MR. TWOMBLEY: Answer yes or no.

25 THE WITNESS: Yes.

1 BY MR. TRAXLER:

2 Q. Was a distribution made of \$100,000 from
3 the Mr. Barringer's Revocable Trust?

4 MR. TWOMBLEY: Answer yes or no.

5 THE WITNESS: I don't know.

6 BY MR. TRAXLER:

7 Q. All right. Let me get you to go to Tab
8 13, Page 358 and 359.

9 A. 358.

10 Q. Go to 358. That's all I want.

11 A. (Complying.) Okay. So I'm at 358.

12 Q. Okay. These are shareholder minutes of
13 February 26, 2013?

14 A. Yes, sir.

15 Q. Did you prepare them?

16 A. I believe so.

17 Q. And you were assist -- as assistant
18 secretary?

19 A. I believe so.

20 Q. Okay. Is there any record of this
21 meeting beyond the minutes here? Would you have any
22 notes, records or know of anybody who does of this
23 meeting other than these minutes?

24 A. I don't have any independent
25 recollection. I don't any recollection of anything

1 beyond this, these minutes.

2 Q. You recall how Merrill Light voted Paul
3 Barringer's shares? And I'm referring to the 38,000
4 shares.

5 A. So I'm sorry, Mr. Traxler. What was the
6 question?

7 MS. PAYLOR: Object to the form.

8 MR. TRAXLER: I'll -- I'll rephrase the
9 question.

10 Q. Do you recall how Paul Barringer's
11 shares were voted?

12 A. I don't.

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: I object to the form as well.

15 BY MR. TRAXLER:

16 Q. I'm looking for what capacity. Did
17 Merrill Light vote them and, if so, in what
18 capacity?

19 A. I -- I don't recall. I mean, I can
20 read. I see the minutes, but I don't recall beyond
21 what the minutes reflect.

22 Q. Well, if the -- well, strike that.

23 The only share that Paul Barringer had,
24 voting shares as of February 26, 2013 was the one
25 voting share; correct?

1 A. That is correct.

2 Q. Otherwise they belonged to Merrill
3 Light's trust; right?

4 A. I believe so. Yes, sir.

5 Q. Okay. Why was Travis Bryant sold one
6 share of voting stock?

7 (Unintelligible.)

8 BY MR. TRAXLER:

9 Q. Do you recall?

10 THE COURT REPORTER: Wait, somebody
11 objected and I didn't hear them.

12 MR. TRAXLER: I'll rephrase the
13 question.

14 Q. You recall Travis Bryant being sold one
15 share of voting stock?

16 A. Yes.

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. All right. You were corporate sec --
20 corporate counsel at that time; correct?

21 A. Yeah. I represented -- yes. Outside
22 counsel to CFRC at that time.

23 Q. Okay. And do you know why Travis Bryant
24 was sold one share of voting stock?

25 A. Yes, sir.

1 MR. SCHRONCE: Object.

2 MS. PAYLOR: Object to the form.

3 MR. SCHRONCE: You can answer yes or no,
4 I don't know, I don't recall, John.

5 MR. TWOMBLEY: Yeah. That's my position
6 as well.

7 THE WITNESS: Yes.

8 BY MR. TRAXLER:

9 Q. And do you know that -- how do you know
10 that? Who told you that? I just want names.

11 MR. TWOMBLEY: I would --

12 MR. TRAXLER: I want to know how he
13 knows and then we're going to explore whether it's
14 privileged or not.

15 MR. TWOMBLEY: Well, I don't know that
16 you're entitled to find how he knows or who he
17 talked with about that.

18 MR. TRAXLER: Sure I can. He can simply
19 say I know because so and so told me in capacity as
20 corporate counsel. Then we'll deal with that
21 however he knows it. It could be that some third
22 party called him up and told him. I don't know.

23 MR. TWOMBLEY: Well, I think the
24 question would -- an appropriate question would be,
25 did you -- did you learn it from anybody other than

1 your, you know, client at the time?

2 BY MR. TRAXLER:

3 Q. Did you learn it from anybody other than
4 a client?

5 A. No.

6 Q. Which client did you learn it from?

7 MR. TWOMBLEY: Object to the form and
8 instruct you -- object and instruct you not to
9 answer to the -- to the extent it has anything to do
10 with Paul Barringer in any capacity.

11 BY MR. TRAXLER:

12 Q. All right. Other than Mr. Barringer, do
13 you recall who -- who gave you that information?

14 A. Is the question is who gave me that
15 information? Do I recall that? Yes.

16 Q. Okay. Other than Paul Barringer, who
17 gave -- if it's Paul Barringer, don't tell me. If
18 it's somebody else, tell me.

19 MR. TWOMBLEY: Yeah. I mean, I think
20 that this is going to potentially reveal privileged
21 information based on the way you instruct the --

22 MR. SCHRONCE: I think you can get to
23 identities of individuals or -- or that it was done
24 in his capacity as corporate counsel, Tom; but
25 beyond that.

1 MR. TRAXLER: That's fine.

2 MR. TWOMBLEY: But John Schronce, maybe
3 we should talk about this; but I don't think he's
4 entitled to find out.

5 MR. TRAXLER: Y'all don't need to talk.

6 Q. Was it somebody to tell you this in your
7 capacity as corporate counsel?

8 A. It was.

9 Q. Was it somebody with the company?

10 A. It was.

11 Q. Okay. Anybody else? Did you have any
12 conversations with anybody else outside a company
13 employee or officer or director?

14 A. No.

15 MR. TRAXLER: All right. That wasn't so
16 hard. All right. We have got a conference call
17 with Judge Price in 15 minutes. How y'all want to
18 handle this?

19 THE VIDEOGRAPHER: We're still on the
20 record.

21 MR. TRAXLER: Yeah.

22 MR. TWOMBLEY: Well, I made a list of
23 the issues, so you can tell me if it comports with
24 your list. Number 1.

25 MR. SCHRONCE: And I'm -- I'm happy to

1 talk about any of those, Tom.

2 MR. TRAXLER: I'm sorry. What?

3 MR. SCHRONCE: I'm happy to compare
4 notes as to the company and --

5 MR. TRAXLER: Sure. Sure.

6 MR. SCHRONCE: -- our position.

7 MR. TRAXLER: All right.

8 MR. TWOMBLEY: John, I got -- I got a
9 list I was going to go through them. Is that all
10 right with you?

11 MR. SCHRONCE: That's fine with me.

12 MR. TWOMBLEY: All right. The first one
13 was which client --

14 MR. SCHRONCE: Do we need to excuse
15 Mr. -- Mr. Jolley?

16 MS. PAYLOR: Yeah. Why --

17 MS. KIRK: That's what I was going to --

18 THE COURT REPORTER: Wait, wait, wait.

19 THE VIDEOGRAPHER: We're still on the
20 record.

21 THE COURT REPORTER: And only one at a
22 time.

23 MR. TRAXLER: Y'all want to excuse John
24 Jolley for this?

25 MS. KIRK: I think it makes sense to.

1 MR. TRAXLER: That's okay.

2 MS. KIRK: That's up to you.

3 MR. TRAXLER: I think that's
4 appropriate. Sure.

5 MS. KIRK: And if we can go ahead and
6 excuse him, let him go and get something to eat.

7 MR. TRAXLER: Yeah. Go get some lunch.

8 THE VIDEOGRAPHER: May I go off the
9 record?

10 MR. TRAXLER: No. We're not going to go
11 off the record --

12 THE VIDEOGRAPHER: Okay.

13 MR. TRAXLER: -- for this discussion. I
14 can't do that any more.

15 You can go to lunch if you want to.

16 (The witness left.)

17 MR. TRAXLER: All right. What's your
18 first one, Ashley?

19 MR. TWOMBLEY: All right. John, can --
20 can you hear me?

21 MR. SCHRONCE: I can.

22 MR. TWOMBLEY: Okay. The first one that
23 I wrote down was, which clients is Mr. Jolley
24 asserting a privilege on behalf of? And my opinion
25 is that Mr. Jolley is not asserting any privilege.

1 I think lawyers for the various clients are and I
2 don't think you're entitled to ask nor know Mr.
3 Jolley's opinion about which clients may have a
4 privilege there and which ones don't.

5 MR. TRAXLER: Well, my question was with
6 regard to discussions about the Hagler letter. And
7 he said he talked to Paul and to Merrill. And he
8 was instructed not to answer. And I have the right
9 to ask him which privilege keeps him from
10 testifying.

11 MR. TWOMBLEY: Okay. But I don't think
12 any privilege is keeping him from testifying. I
13 mean, it's the --

14 MR. TRAXLER: Well, which instruction
15 keeps him from testifying?

16 MR. TWOMBLEY: I don't know if he knows.
17 I mean, isn't he going to honor any one he gets?

18 MR. TRAXLER: No, not necessarily. If
19 y'all say, if it pertains to Paul or Merrill or your
20 relationship as attorney/client, don't answer, I
21 have a right to know which privilege keeps him from
22 testifying, which instruction. All I want to know
23 is, okay, is it Paul's privilege that keeps you from
24 testifying? Is it Merrill?

25 MR. TWOMBLEY: Well, I -- I think I

1 instructed him not to answer --

2 MR. TRAXLER: You did.

3 MR. TWOMBLEY: -- so it's definitely --
4 it's definitely for Paul.

5 MR. FUHR: All right. This is -- this
6 is Ed. Let me make a suggestion here. I presume
7 some of the instructions that have been given on the
8 way -- this morning are ones, Tom, that you probably
9 agree with and -- but maybe -- maybe not. And is
10 the best way to proceed here is identify which of
11 them you want to go seek relief from Price on to see
12 if he will direct the witness to answer? I assume
13 it's a smaller subset and can more efficiently go
14 through it that way rather than just going through
15 every -- every instruction. But, you know, y'all do
16 it however you want; but I think that'd be more
17 efficient.

18 MR. TRAXLER: Well, there is. I had
19 proposed that we simply look at the transcript and
20 see if we can't work it out and just raise it as we
21 would normally raise it. But if y'all want to deal
22 with Judge Price, then -- I mean, that's a quagmire
23 every time instructing; but I -- I think I've got a
24 list of about six of them.

25 MS. KIRK: Let's go over those.

1 MR. TRAXLER: Okay. And the first one
2 was, what kept him from testifying about discussions
3 of the Hagler letter? Okay. We know what that
4 looks like. And y'all correct me if I'm wrong, but
5 I think he said he discussed it with Merrill Light
6 individually -- excuse me, discussed it with Merrill
7 Light and Paul Barringer. Merrill Light's lawyer
8 and Paul Barringer's lawyer instructed him not to
9 answer the question. And I have the right, I think,
10 to ask him which privilege and instruction keeps you
11 from testifying.

12 MR. TWOMBLEY: Okay. I -- so if that's
13 the question, I'll let him testify. I objected and
14 instructed him not to answer.

15 MR. TRAXLER: Yes. That's all I'm
16 asking.

17 MR. TWOMBLEY: Merrill Light's lawyer
18 objected and instructed him not to answer. And the
19 question is which one is he following?

20 MR. TRAXLER: Yes.

21 MR. TWOMBLEY: It's either one, two or
22 both.

23 MR. TRAXLER: Yeah. But the only
24 question I had is --

25 MS. PAYLOR: I don't I --

1 MR. TRAXLER: -- which privilege are
2 you -- keeps you from testifying?

3 MR. TWOMBLEY: Okay.

4 MR. TRAXLER: And we had that a bunch of
5 times last time.

6 MR. TWOMBLEY: Okay. Okay. I'll --

7 MR. TRAXLER: Okay.

8 MR. TWOMBLEY: If I misunderstood that
9 one then, you know, I apologize.

10 MR. TRAXLER: That's okay.

11 MR. TWOMBLEY: But I think it's phrased
12 slightly different now. Whose objection is he
13 honoring by declining to testify.

14 MR. TRAXLER: You okay with that, Alice
15 and Chip?

16 MS. PAYLOR: Yes.

17 MR. TRAXLER: Okay.

18 MR. MOLSTER: I'm okay. Thank you.

19 MR. TRAXLER: Okay.

20 MR. MOLSTER: Don't waive our right.
21 You agree it's no waiver; right?

22 MR. TRAXLER: Yeah.

23 MR. HOGAN: An air condition work van
24 just showed up.

25 MS. KIRK: Air Breeze.

1 MR. TRAXLER: All right. The next one I
2 have on my notes is with regard to Tab 1, Page 87.

3 MR. TWOMBLEY: What conflicts of
4 interest did you perceive?

5 MR. TRAXLER: No. Alice refused to
6 allow him to testify as to the e-mails at all. I
7 said, why in the world was Randy Light having this
8 communication with you, going over this with you?
9 And she told him not to answer.

10 MR. TWOMBLEY: I didn't write that one
11 down, so I can't speak to that one.

12 MR. TRAXLER: How about it Alice or
13 Chip?

14 MR. MOLSTER: What's the e-mail?

15 MR. TRAXLER: It's --

16 MS. PAYLOR: It's between Randy,
17 Merrill -- well, it's between Randy actually. Well,
18 it's from Travis to Randy and Merrill --

19 MR. MOLSTER: August 1st; right?

20 MS. PAYLOR: -- correct? And then it
21 says -- then he forwards it to John --

22 MR. MOLSTER: To Jolley.

23 MR. MOLSTER: -- Jolley.

24 MR. MOLSTER: Right.

25 MS. PAYLOR: So you're asking John

1 Jolley what conversations he had regarding this; is
2 that right?

3 MR. TRAXLER: Yeah. I was asking him
4 why would he be having these conversations with
5 Randy Light, because Randy is not on the board at
6 that time. So we've got a -- the question is why --

7 MR. MOLSTER: He is -- he is the husband
8 of his client, so I think that qualifies as an
9 agent, so I think we stick to our guns.

10 MS. PAYLOR: He said he was representing
11 Randy at the time. I did ask him that.

12 MR. TRAXLER: Oh, yeah. He --

13 MS. PAYLOR: He said was --

14 MR. TRAXLER: He was representing Randy.

15 MS. PAYLOR: So --

16 MR. TRAXLER: The question is, why was
17 he discussing this with Randy?

18 MS. PAYLOR: That's asking for a
19 legal --

20 MS. KIRK: And I think I objected.

21 MS. PAYLOR: -- if he discussed it with
22 him.

23 MS. KIRK: There's no evidence he
24 discussed it --

25 MS. PAYLOR: I think that's clearly

1 privileged.

2 MS. KIRK: -- just that he forwarded an
3 e-mail.

4 THE COURT REPORTER: And y'all are
5 talking on top of each other and I'm not getting it.

6 MS. PAYLOR: I'm sorry.

7 MR. MOLSTER: You guys stop. We'll
8 stop.

9 MR. TRAXLER: All right. So y'all are
10 going to -- y'all are going to have him not answer
11 why he would be getting this e-mail and having
12 discussions with Randy Light about this; is that
13 correct?

14 MR. MOLSTER: Correct.

15 MR. TRAXLER: Okay.

16 MR. TWOMBLEY: You mean --

17 MS. PAYLOR: He got the e-mail because
18 Randy sent it to him.

19 MR. TRAXLER: I understand. I was
20 asking --

21 MS. PAYLOR: So --

22 MR. TRAXLER: -- why Randy was sending
23 it to him and what the purpose of it was. If the
24 purpose of it was to give legal advice and
25 representation, then that might shut me down. If

1 the purpose of it was to screw Hampton, I have a
2 right.

3 MR. TWOMBLEY: Any question --

4 MS. PAYLOR: Well --

5 MS. KIRK: Do you want to ask --

6 MR. TWOMBLEY: -- that can be answered
7 do you want to screw Hampton, I'll let him answer.

8 MS. PAYLOR: You can certainly ask him
9 was the purpose to screw Hampton.

10 MR. TRAXLER: Y'all know -- y'all know
11 I'm be facetious.

12 MR. TWOMBLEY: Y'all don't you just ask
13 him was -- is there any purpose other than your role
14 as a lawyer and his role as a client?

15 MR. TRAXLER: Because I don't want to be
16 suggesting answers to him. I want him to tell me
17 straight up why was he having this conversation with
18 Randy Light.

19 MS. KIRK: He didn't have a conversation
20 with Randy Light.

21 MR. TRAXLER: Well, why --

22 MS. KIRK: He forwarded him an e-mail.
23 He can't tell you why Randy did something.

24 MR. TRAXLER: All right. Y'all going to
25 say no?

1 MS. PAYLOR: I agree.

2 MR. TRAXLER: Y'all going to decline to
3 let him answer?

4 MS. PAYLOR: Well, he can't know why
5 Randy sent it to him.

6 MR. TRAXLER: All right.

7 MS. PAYLOR: How would he know?

8 MR. TRAXLER: All right. Y'all are
9 going to refuse to allow him to answer that
10 question; is that correct? I just want to make
11 sure. I don't want to get on the phone call with
12 Judge Price and raise an issue, then somebody says,
13 well, that's not an issue.

14 MR. TWOMBLEY: Well, I don't have a dog
15 in --

16 MR. TRAXLER: You don't have a dog in
17 that fight. You be quiet.

18 MR. MOLSTER: No. We have. We're
19 sticking our guns.

20 MR. TRAXLER: Make a note in the record
21 that was --

22 MR. MOLSTER: Conversations with his
23 lawyers --

24 MR. TRAXLER: -- made with a smile on my
25 face. I'm sorry. What did you say?

1 MR. MOLSTER: Conversations --
2 conversations with his lawyer, we think are
3 privileged.

4 MR. TRAXLER: All right. No matter what
5 the conversation was; is that correct?

6 MR. MOLSTER: No. Of course not.

7 MR. TRAXLER: Okay.

8 MS. PAYLOR: But you want -- I mean, I
9 think you could ask the question, you know, was --
10 was he seeking legal advice? And if he was, then,
11 yeah, it privileged, period. Because he doesn't --
12 well, if he knows. He's probably not going to know,
13 remember, whatever.

14 MR. TRAXLER: Number 3 I've got is toxic
15 of conversation of --

16 MR. TWOMBLEY: No. The next one is what
17 conflicts of interests did you perceive? Did you
18 perceive any conflicts of interest?

19 MR. TRAXLER: What was that with regard
20 to?

21 MR. TWOMBLEY: I think representing Paul
22 and Merrill at the same time.

23 MR. TRAXLER: Uh-huh. Okay.

24 MR. TWOMBLEY: Maybe the company and
25 Paul. I'm not sure. But --

1 MR. SCHRONCE: That -- that was -- that
2 was a Paul and Merrill question. I do remember that
3 one.

4 MR. TRAXLER: Okay.

5 MR. SCHRONCE: That was not a conflict
6 question.

7 MR. TRAXLER: Okay.

8 MR. TWOMBLEY: You going to withdraw
9 that one or no?

10 MR. TRAXLER: Yeah. I don't remember
11 what it was. You got a note on it?

12 MR. HOGAN: No.

13 MR. TRAXLER: I'll withdraw that one.
14 Well, we don't need to raise that at noon. We don't
15 need to raise that at noon.

16 MR. TWOMBLEY: Okay.

17 MS. PAYLOR: We're on a roll.

18 MR. TRAXLER: And I asked -- the next
19 one I've got on my list is I asked him if he knew
20 why Paul Barringer wanted to keep one share and
21 remain a shareholder. And, Ashley, you told him not
22 to answer that question.

23 MR. TWOMBLEY: That's right.

24 MR. TRAXLER: Okay.

25 MR. HOGAN: Met with Paul Barringer,

1 talked to John Jolley several days before August 3
2 about why Paul Barringer did not attend the
3 shareholder meeting. And you asked what was the
4 topic of the conversation.

5 MR. TRAXLER: Give me that again, Bill.

6 MR. HOGAN: He testified he talked to
7 Paul Barringer several days before August 3 --

8 MR. TRAXLER: Right.

9 MR. HOGAN: -- 2012. Paul Barringer did
10 not attend the shareholder meeting and you asked
11 what was the topic of the conversation.

12 MR. TRAXLER: Okay.

13 MS. PAYLOR: So was that Number 3 that
14 you remembered?

15 MS. KIRK: I think Number 3 is why did
16 Mr. Barringer want to keep one share and remain a
17 CFRC shareholder?

18 MS. PAYLOR: Okay. Well, I've got that.
19 Okay.

20 MS. KIRK: So I think whatever y'all
21 were --

22 MR. MOLSTER: Why was it important --

23 MS. KIRK: -- might be Number 4.

24 MR. MOLSTER: Why was it important to
25 him? Wasn't the question, why -- why was it

1 important to him?

2 MR. TRAXLER: Yeah. Why was it -- why
3 was it important to him to remain a shareholder with
4 a voting share.

5 MR. MOLSTER: Right.

6 MR. TWOMBLEY: Yeah. And just so we're
7 clear on why did Mr. Barringer attend the
8 shareholder meeting, I stand by that objection.

9 MR. TRAXLER: And you understand I just
10 want the topic of that conversation, not the
11 substance of it?

12 MR. TWOMBLEY: Well, the question was
13 why didn't you attend the shareholder -- why didn't
14 Mr. Barringer attend the shareholder meeting?

15 MR. TRAXLER: And he said he had talked
16 to Mr. Barringer shortly before the meeting. And I
17 said, okay, tell me the topic of that conversation.

18 MR. TWOMBLEY: Yeah. I --

19 MR. TRAXLER: I didn't ask him the
20 substance.

21 MR. TWOMBLEY: I'm not going to let him
22 answer that. I think it's privileged.

23 MR. TRAXLER: Okay.

24 MR. TWOMBLEY: I'm happy, you know, to
25 have a dialogue about it.

1 MR. HOGAN: Sounds like that is the
2 topic.

3 MR. TRAXLER: Huh?

4 MR. HOGAN: Sounds like that is the
5 topic.

6 MS. KIRK: I agree with that.

7 MR. TWOMBLEY: I agree with Bill.

8 That's just --

9 MS. KIRK: Topic is the shareholders
10 meeting.

11 MR. TRAXLER: And Ashley would not allow
12 Mr. Jolley to testify about whether in his opinion
13 voting stock in 2012 had the same value as
14 non-voting. Goes to the Bobby Davis memo where they
15 agreed on the price or the value.

16 MR. TWOMBLEY: And I think --

17 MR. TRAXLER: Or why he was even
18 offering an opinion.

19 MS. KIRK: I objected on that because he
20 didn't actually offer an opinion. He just didn't
21 object to one.

22 MR. TRAXLER: Well, they agreed to it.
23 The question is, well, then why was he participating
24 in the valuation of stock for a gift tax return?

25 MR. TWOMBLEY: I just don't think -- I

1 mean, why he's subjective deciding in his capacity
2 as a lawyer to comment on various things? I mean, I
3 just -- I think that's totally his mental
4 impressions about his role as counsel for clients.
5 I -- you know, respectfully, I just don't think
6 you're entitled to go into it.

7 MS. KIRK: And I think he testified that
8 he didn't recall any of it and that he didn't create
9 the valuation.

10 MR. TRAXLER: Okay. I can let that one
11 go. Okay. Come at that a different way.

12 MR. HOGAN: Yeah.

13 MR. TRAXLER: And the next one I've got
14 is the memo on shareholder oppression.

15 MR. TWOMBLEY: Yeah. Why did he prepare
16 it? Who asked him to prepare it? I think he did
17 testify --

18 MR. TRAXLER: No. I asked him who
19 initiated him doing that work and that's where you
20 shut him down, I think. So my question to him was,
21 at whose behest or request were you doing this work?

22 MR. SCHRONCE: Tom, I think he testified
23 that he -- he did so for the board.

24 MR. TRAXLER: Yeah. I just think
25 there's somebody in particular who called him.

1 That's all.

2 MR. TWOMBLEY: Which one of the board?

3 MS. PAYLOR: I thought he said he didn't
4 do it at anybody's request.

5 MR. SCHRONCE: I think he -- I think he
6 said that.

7 MR. TRAXLER: Is that right?

8 MR. TWOMBLEY: I think he did say that,
9 too.

10 MR. TRAXLER: Okay.

11 MS. KIRK: So are you withdrawing that
12 one?

13 MR. TRAXLER: Yes.

14 MR. HOGAN: I recall you asked him, do
15 you recall having an opinion on the value of voting
16 stock versus non-voting stock in the gift tax
17 return. You have that as one?

18 MR. TRAXLER: Yeah. That all related to
19 the -- yeah. I'll withdraw that. I can deal with
20 that one otherwise.

21 MR. HOGAN: Okay.

22 MR. TRAXLER: So. . .

23 MR. HOGAN: Twelve o'clock.

24 MS. KIRK: So we're going to the judge
25 with one, two, three?

1 MS. PAYLOR: I think we agreed to one,
2 that we would let you ask whose privilege was it
3 or --

4 MR. TRAXLER: Yeah.

5 MS. PAYLOR: -- whose instruction was he
6 following.

7 MS. KIRK: Okay. So it's just two,
8 three and four?

9 MR. TRAXLER: The Randy Light.

10 MS. KIRK: Page 87.

11 MR. TRAXLER: The topic of the
12 conversation that he -- where he discussed with Paul
13 Barringer not attending the August 3 meeting?

14 MS. KIRK: Uh-huh.

15 MR. TRAXLER: Why --

16 MS. PAYLOR: Well, why isn't the topic
17 not attending the August 3 meeting? I don't quite
18 get that.

19 MR. TRAXLER: I just want to know what
20 the topic of the conversation was. That's all.

21 MS. PAYLOR: I think you've got it, not
22 attending the meeting.

23 MR. TRAXLER: That's fine. Just tell
24 him that -- just tell me that.

25 MS. KIRK: I think that's in there, too.

1 MR. TRAXLER: I tell you what. Y'all
2 let me reserve my rights to that and we'll see at
3 4:30 if they need to be raised as to those two or
4 three that are remaining.

5 MS. KIRK: Okay. Do we want --

6 MR. TWOMBLEY: Which is the one you want
7 to reserve your right to?

8 MR. TRAXLER: You're going to let him
9 testify about whether that conversation with Paul
10 Barringer and Merrill light, which privilege he's
11 not testifying and which instruction. All right.

12 MR. TWOMBLEY: Right. And just -- my
13 memory is I objected and Alice objected. So it's --

14 MS. PAYLOR: Right. Right.

15 MR. TWOMBLEY: -- one of the two; right?

16 MR. TRAXLER: Yeah. Yeah. That was
17 about the Hagler -- the Hagler memo.

18 MR. TWOMBLEY: Okay.

19 MR. TRAXLER: Alice is not going to let
20 him testify about the e-mail of August 1, 2012 that
21 is Page 87, where I was saying why would you be
22 sending this to. I want to know the circumstances
23 and what his involvement with Randy Light was in
24 that regard. And it may be --

25 MS. PAYLOR: And we testified he was his

1 client already.

2 MR. TRAXLER: I understand that, Alice.
3 He has not testified about why. Not every single
4 conversation --

5 MS. PAYLOR: Okay.

6 MR. TRAXLER: -- you have with your
7 client is privileged.

8 MS. PAYLOR: Okay. He talked about the
9 weather probably. What do you think?

10 MR. TRAXLER: I don't know. That's why
11 I want to ask him.

12 MR. MOLSTER: Do you get to bill for
13 that?

14 MR. TRAXLER: Do what?

15 MS. PAYLOR: Well, let me -- let me ask
16 you this. What if you say, was the topic -- was the
17 con -- did the conversation have anything not
18 related to the seeking of legal advice -- seeking or
19 giving of legal advice?

20 MR. TRAXLER: I'll do that.

21 MS. PAYLOR: That okay, Chip?

22 MR. MOLSTER: I think that's fine.

23 MS. PAYLOR: Okay. So there you go. We
24 resolved that.

25 MR. TRAXLER: All right.

1 MR. TWOMBLEY: All right. I have a new
2 topic.

3 MR. TRAXLER: Okay.

4 MR. TWOMBLEY: Are we being opposed by
5 having to stay in this room with no air
6 conditioning? And will you do a memo, please, Tom
7 Traxler?

8 MR. MOLSTER: Can we get a memo? Can we
9 get a memo on that? Anybody ask him for that memo?

10 MR. TRAXLER: Do I get to bill it? I
11 don't think John billed his.

12 MR. MOLSTER: Pro bono.

13 MS. PAYLOR: He probably didn't. He
14 probably --

15 MR. TRAXLER: All I know is that for --
16 as long as Ariail keeps sitting -- as hot as it is
17 here, it germinates more questions.

18 MR. TWOMBLEY: Yeah.

19 MS. PAYLOR: Tom --

20 MR. TWOMBLEY: Let's go -- let's take a
21 break and so --

22 MR. TRAXLER: Can somebody send an
23 e-mail to the judge?

24 MS. KIRK: Yeah. Let's e-mail Amy.

25 MR. TRAXLER: Amy and tell her we don't

1 need a 12 o'clock conference.

2 MR. TWOMBLEY: Alice, why don't you do
3 that?

4 MS. PAYLOR: We're on break then?

5 MR. TWOMBLEY: And then I'm going to the
6 more important task, which is talk to the AC man.

7 THE VIDEOGRAPHER: May I go off the
8 record?

9 MR. TRAXLER: Yes.

10 MS. KIRK: Alice, are you going to
11 e-mail Amy?

12 THE VIDEOGRAPHER: This is the --

13 MS. PAYLOR: Do what now?

14 MS. KIRK: Will you e-mail Amy and tell
15 her that --

16 MS. PAYLOR: I will.

17 MS. KIRK: -- we're just going to hold
18 it until 4:30 or 4, whatever it says.

19 MS. PAYLOR: I'll do it. I will do it.

20 MR. MOLSTER: Are we breaking -- are we
21 breaking for lunch?

22 MS. KIRK: I hope so.

23 MR. TRAXLER: Yeah. We're going off the
24 record.

25 MR. TWOMBLEY: How long you need?

1 MR. TRAXLER: Off the record, now.

2 THE VIDEOGRAPHER: This is the end of
3 Media Unit 3 of the video deposition of John Jolley.
4 We're going off the record at 12:04:22.

5 (A luncheon recess transpired.)

6 THE VIDEOGRAPHER: This is the beginning
7 of Media Unit Number 4. This is a continuation of
8 the video deposition of John M. Jolley. We're going
9 on the record at 13:07:19.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, let me get you to go to Tab
12 1, Page 212. I believe this is an e-mail from Cindy
13 Sprouse to Merrill Light or Randy Light, dated
14 February 3, 2015. Have you had a chance to review
15 that?

16 A. I have.

17 Q. Okay. It says in the middle, I
18 understand that Merrill Barringer and Merrill will
19 be seeing John Jolley soon and I think it best to
20 confer with John about making this move. What
21 did -- did she have -- Merrill Barringer or Merrill
22 Light have a conversation with you about that?

23 A. I don't recall having a conversation
24 with them about that.

25 Q. Okay. Starting in 2000 -- January 1 of

1 2012, were there any other transfers or gifts other
2 than the ordinary presents at Christmas and the like
3 from Paul or Merrill Barringer to Merrill Light or
4 Randy Light from 2000 --

5 MS. PAYLOR: Object to the form.

6 BY MR. TRAXLER:

7 Q. -- 2012 through Mr. Barringer's death?

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

9 BY MR. TRAXLER:

10 Q. Are you aware of any?

11 A. No.

12 Q. Okay. So -- all right. Let me get you
13 to go to Tab 1, Page 70, 70. This is a letter, I
14 believe, of May 17, 2012 from you to the Barringers?

15 A. Yes.

16 Q. And my question to you is what did this
17 letter transmit?

18 A. I think at the time of this letter we
19 sent copies of the documents that they had updated,
20 the estate planning documents they had updated.

21 Q. These would be the estate planning
22 documents of February 2012?

23 A. I believe they were the documents of
24 February 2012; but they might have included the
25 lifetime documents from, what, December of '11.

1 Q. All right. Let me get you to go to Tab
2 1, Page 204.

3 A. (Complying.) I see 204.

4 Q. This is an e-mail from Randy Light to
5 you, May 12, 2014; correct?

6 A. This -- it looks like an e-mail from
7 Randy Light to me dated May 12, 2014. Yes.

8 Q. And it says, once the Barringers have
9 executed the new documents you discussed last week,
10 please forward copies to Wendy Brewer at Wells
11 Fargo. Who is Wendy Brewer? Do you recall?

12 A. I do not.

13 Q. What new documents was this referring
14 to?

15 A. I -- I have no recollection.

16 Q. So the estate planning documents -- I
17 want to make sure I've got my arms around everything
18 in 2012 -- would have been the estate planning
19 documents dated or executed February 28, 2012;
20 correct?

21 A. I think they're the documents executed
22 in December, the lifetime documents, and then the
23 will and trust executed in February. Yes.

24 Q. Okay. And then you had a stock transfer
25 of Paul Barringer's stock, voting stock to a

1 revocable trust around May 7th of 2012; correct?

2 A. That sounds right.

3 Q. And the other documents would have
4 been -- the next ones would have been the estate
5 planning documents of July 20, 2012; correct?

6 A. That's my recollection.

7 Q. And then you had the stock transfer of
8 September 11, 2012; correct?

9 A. That's sounds correct. Yes.

10 Q. Were there any other estate planning
11 documents that you prepared or assisted in for Paul
12 or Merrill Barringer in 2012 other than what I just
13 mentioned?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Yes or no.

16 THE WITNESS: No.

17 BY MR. TRAXLER:

18 Q. Okay. So I've got the whole universe of
19 2012 far as you can remember?

20 A. Yes.

21 Q. Okay. Do you remember preparing the
22 will for Mr. Barringer of June 12, 2014 that's under
23 Tab 15?

24 A. Fifteen?

25 Q. It's Page 395.

1 A. I -- I don't -- I mean, I remember this
2 is -- I see that this is Mr. Barringer's will and I
3 certainly was involved in the preparation of Mr.
4 Barringer's will.

5 Q. And you did his -- redid his -- the
6 third amendment and restatement of his revocable
7 trust in that same time period; correct?

8 A. That's my recollection.

9 Q. All right. If you go to Tab 16, Page
10 472.

11 A. (Complying.) Okay.

12 Q. This was a will where Hampton's share
13 was allocated to Wade; is that correct?

14 A. Are you --

15 MS. KIRK: Object to the form.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I think this is the trust
18 in which the modification was as you described.

19 BY MR. TRAXLER:

20 Q. Okay. And under this modification --
21 this is dated June 12, 2014; am I correct on that?

22 MR. TWOMBLEY: I object to the form of
23 the question about what the document did.

24 THE WITNESS: Yeah. June. This says
25 June 12, 2014.

1 BY MR. TRAXLER:

2 Q. Okay. And under this instrument, did
3 Hampton have any residual interest in the trust or
4 its assets?

5 A. (Reviewing.) I mean, other than -- I
6 mean, it looks like Ms. -- there is a share provided
7 that is in default of the exercise of the power of
8 appointment. There is a share provided for Hampton
9 Barringer Luzak that would be governed by Article
10 10, that would be for the benefit of Hampton. That,
11 I think, ended up being for the specific benefit of
12 Wade Hampton Luzak.

13 Q. Okay. So my question was, under this
14 third amendment, as a result of its execution, did
15 Hampton have any residual interest or any interest
16 at all in the revocable trust and its assets?

17 A. No, not as executed. I don't think so.

18 Q. And this is the first time that she was
19 cut out of the trust completely, wasn't it?

20 MS. KIRK: Object to the form.

21 MR. TWOMBLEY: Object to the form.

22 THE WITNESS: I believe so.

23 BY MR. TRAXLER:

24 Q. Okay. Tell me how this -- this third
25 amendment to the trust came about in terms of who

1 contacted you and walk me through that process
2 leading up to the revision of the trust agreement
3 and its execution.

4 A. Mr. Barringer or Mr. and Mrs. Barringer
5 together would have instructed me to make this
6 change to update the document in this way.

7 Q. And do you recall that conversation?

8 A. I don't recall that conversations. I
9 mean, I recall specifically discussing that with --
10 this change with Mr. Barringer. I don't recall
11 specifically when that occurred, other than before
12 the execution of this document.

13 Q. Did Mr. Barringer give you any
14 indication as to why he wanted to change it?

15 A. Yes.

16 Q. Which was what? What did he tell you?

17 A. Mr. Barringer had determined -- said
18 that he believed he wasn't going to reconcile with
19 Hampton Luzak at that point.

20 Q. Did he tell you anything else?

21 A. He wanted to provide the share that
22 would have otherwise passed to Hampton Luzak to pass
23 to the benefit -- for the benefit of Wade Hampton
24 Luzak.

25 Q. Okay. And I want you to answer this

1 question just yes or no for me, if you would please.
2 Are you aware of anything that happened in 2013 and
3 the first half of 2014 between Hampton and Mr.
4 Barringer or between whomever to all of a sudden
5 lead him to that conclusion in June of 2014?

6 MS. KIRK: Object to the form.

7 MR. TWOMBLEY: Same objection.

8 THE WITNESS: No.

9 BY MR. TRAXLER:

10 Q. Was there any precipitating event that
11 you were familiar with that triggered that?

12 A. No.

13 Q. And he never related anything to you as
14 to his reason for doing that, other than he did not
15 think there would be a reconciliation?

16 MR. TWOMBLEY: Object to the form.

17 BY MR. TRAXLER:

18 Q. Is that correct?

19 MS. KIRK: Same objection.

20 THE WITNESS: I think that is correct.

21 Yes.

22 BY MR. TRAXLER:

23 Q. Okay. And you assisted in the
24 preparation of the fourth amendment, I believe, and
25 the execution of it. Let me rephrase that. The

1 fourth amended and restatement of the trust
2 agreement at Page 504; is that correct?

3 A. That is correct.

4 Q. Okay.

5 MR. TWOMBLEY: What page, Tom?

6 MR. TRAXLER: 504.

7 MR. TWOMBLEY: Okay. Sorry.

8 BY MR. TRAXLER:

9 Q. And the effect of this change was to cut
10 Wade out also; correct?

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

13 MS. KIRK: Same objection.

14 THE WITNESS: No.

15 BY MR. TRAXLER:

16 Q. Okay. Tell me what the change of the
17 fourth amendment was.

18 A. In the fourth amendment, Wade -- on Page
19 509, there's a gift to Wade Hampton Luzak in the
20 amount of \$50,000.

21 Q. All right. What was the change in the
22 fourth amendment beyond that?

23 A. Are you -- with respect to Wade Hampton?

24 Q. Yeah. Wade Hampton or -- or Hampton, if
25 any.

1 A. Yeah. And I think, at that point, that
2 Ms. Luzak and her family was taken out of Mr.
3 Barringer's plan.

4 Q. Okay. And --

5 A. Other than as to the \$50,000 gift.

6 Q. And the date of that was -- fourth
7 amendment where Wade is reduced to \$50,000 is
8 February 5, 2015?

9 A. February 5, 2015. Yes.

10 Q. Okay. What do you recall Mr. Barringer
11 telling you as to why he wanted to make that change?

12 A. I recall that Mr. Barringer had
13 indicated that Wade would otherwise receive plenty
14 of assets and that he wasn't going to -- didn't want
15 to provide for him under the plan, other than the
16 \$50,000.

17 Q. Okay. I'm sorry. I'm not following
18 that. Tell me that again, please.

19 A. Why don't you repeat your question, Mr.
20 Traxler?

21 Q. Okay. What did Mr. Barringer tell you
22 as to why he wanted to make this change in the
23 fourth amendment?

24 A. Mr. Barringer indicated that Wade
25 Hampton Luzak would receive plenty of other assets

1 and, beyond the \$50,000 gift, he no longer wished to
2 provide for Wade Hampton in his documents.

3 Q. Did he ever discuss his feelings toward
4 Wade Hampton -- excuse me, for Wade -- strike that.

5 Did he ever discuss with you his
6 feelings about Wade any time prior to 2014?

7 A. Yes.

8 Q. What -- what feelings did he express
9 about Wade?

10 A. Mr. Barringer indicated that he had --
11 they had a good relationship with Wade Hampton
12 Luzak.

13 Q. And did he ever tell you that had
14 changed between him and Wade?

15 A. No.

16 Q. Had Wade done anything to make him mad,
17 irritate him?

18 A. I -- I have no idea what Wade had done
19 or not done.

20 Q. Did you ask him?

21 A. I presume you mean did I ask Mr.
22 Barringer?

23 Q. Yeah.

24 A. I -- I discussed with Mr. Barringer his
25 rationale, but I didn't specifically ask him if Wade

1 had done something to make Mr. Barringer mad.

2 Q. Well, do you know of any reason for him
3 making this change other than to get back at Hampton
4 and Kevin through their son?

5 MS. KIRK: Object to the form.

6 THE WITNESS: I'm not sure that I delved
7 into Mr. Barringer's motives to the depth that
8 you're asking about. We discussed the fact that,
9 again, Wade was going to receive plenty of assets
10 and that Mr. Barringer didn't want to include him in
11 the plan anymore.

12 BY MR. TRAXLER:

13 Q. And that's the full extent of the
14 conversations with Mr. Barringer that you can recall
15 as to why he was reducing Wade down to what he did
16 in the fourth amendment; correct?

17 A. That's the full extent of what Mr.
18 Barringer told me about why Wade was being reduced
19 in that document.

20 Q. Okay. Did anybody ever have a
21 conversation with you where the topic was or a topic
22 was Paul's relationship with Wade, whether that
23 conversation be with Merrill Barringer, Merrill
24 Light, Randy, Hampton, Kevin, anybody?

25 A. Yes.

1 Q. Who -- who did you have the conversation
2 with?

3 A. I had general -- let's see. A general
4 conversation with Mr. Barringer, with Mrs. Barringer
5 and with Merrill Light. I'm not suggesting that all
6 of those conversations were at the same time.

7 Q. Okay. But you just -- did you have any
8 conversations with Paul Barringer about Wade other
9 than what you've already related to me in the last
10 few minutes?

11 A. No.

12 Q. Okay. Tell me what -- when you had
13 conversations with Merrill Barringer where Wade came
14 up, about when was that and about how many were
15 there?

16 MR. TWOMBLEY: Tom, I want -- I don't
17 have any idea what he's going to say and I don't
18 want to -- I don't -- I don't think you are entitled
19 to go in necessarily to conversations between Mrs.
20 Barringer and Mr. Jolley unless they somehow deal
21 with the preparation, execution or amendment of Mr.
22 Barringer's estate planning documents, so --

23 MR. TRAXLER: Okay.

24 MR. TWOMBLEY: -- you --

25 MR. TRAXLER: But we're not quite there

1 yet, I don't think.

2 MR. TWOMBLEY: Well --

3 MR. TRAXLER: I understand your concern.
4 I'll tell you -- I'll tell you when I think you
5 ought to object.

6 MR. TWOMBLEY: Well, I'll -- I'll tell
7 you I'm going -- I'm going to object when I want to;
8 but, you know, rephrase the question and I'll --
9 I'll do the best I can. And I'm happy to talk to
10 you and have a dialogue about it.

11 BY MR. TRAXLER:

12 Q. Your conversations with Merrill
13 Barringer where Wade came up, do you recall about
14 how many there were?

15 MR. TWOMBLEY: Please state a number
16 or -- I mean, if you recall.

17 THE WITNESS: Two or three.

18 BY MR. TRAXLER:

19 Q. Okay. And just the time frame, that's
20 all I want. About when? If you need to refer to
21 the year, that's sufficient for right now.

22 A. I would say between 2012 and 2014.

23 Q. Okay.

24 A. I don't mean to be vague.

25 Q. And were those conversations, those two

1 or three conversations, were they in your office?

2 A. I think one was in my off --

3 MR. TWOMBLEY: Just yes -- yes or no.

4 THE WITNESS: Yes.

5 BY MR. TRAXLER:

6 Q. Okay. And where were the other one or
7 two? What setting?

8 A. At the Barringers' home.

9 Q. Okay. Now when you had the one in your
10 office in the 2012 to 2014 time frame, about where
11 would that have fit?

12 A. I don't --

13 MS. KIRK: Object to the form.

14 THE WITNESS: I don't understand that
15 question, Tom -- Mr. Traxler.

16 BY MR. TRAXLER:

17 Q. Yeah. Was it closer to 2012 or '14?
18 Can you help me understand in that span?

19 A. I think there were several conversations
20 over that time frame which related to Wade.

21 Q. Okay. I'm talking about in your office,
22 the one that you mentioned.

23 A. And I don't recall --

24 Q. Okay.

25 A. -- specifically where, whether that --

1 where the -- when that meeting occurred.

2 Q. Okay. And who all was present when you
3 had the conversations in your office with Ms.
4 Barringer where Wade came up?

5 A. You mean Mr. and Mrs. Barringer?

6 Q. Was it related to their estate planning?

7 A. It was related to their estate planning.

8 Q. Okay. And every time you did a will for
9 Mr. Barringer, did you do also a will for Mrs.
10 Barringer?

11 A. I don't recall.

12 Q. Okay. Whose estate planning were you
13 doing when you were talking to Mr. and Mrs.
14 Barringer in your office where Wade come up?

15 A. I was representing Mr. and Mrs.
16 Barringer with respect to their estate planning.

17 Q. Okay. What did they tell you with
18 regard to Wade?

19 MR. TWOMBLEY: I'm going to instruct you
20 not to answer anything that Ms. Barringer told you
21 about her documents and the way she wanted her
22 estate to be passed or be handled. I don't -- I
23 don't think Mr. Traxler is entitled to go into that,
24 so I'd ask that you limit your response. I mean, if
25 she said something about Mr. Barringer's documents,

1 tried to influence Mr. Barringer in any way, I think
2 he's entitled to go into that; but if she said
3 anything about her documents, I'm instructing you
4 not to answer. Okay?

5 MR. TRAXLER: And he might be right if
6 Mr. Barringer wasn't there; but with Mr. Barringer
7 there, I think I have a right to go into it. He is
8 a third party for the purposes of her. And so I
9 think I have a right to go to it -- go into that.
10 As a -- as a third party, there was no privilege.

11 MS. KIRK: So you're taking the position
12 that when you go with your wife to see a lawyer
13 there's no privilege as to this because you've got a
14 wife?

15 MR. TRAXLER: Unless -- yes. I think
16 that's entirely right. Yes.

17 MR. TWOMBLEY: Does that apply between
18 Hampton Luzak and Kevin Luzak when they go to a
19 lawyer?

20 MR. TRAXLER: Do you instruct him not to
21 answer?

22 MR. TWOMBLEY: No. I mean, we might be
23 able to reach an agreement; but I believe y'all have
24 consistently taken that position.

25 MR. TRAXLER: Are you instruct -- are

1 you instructing him not to answer?

2 MR. TWOMBLEY: I am.

3 BY MR. TRAXLER:

4 Q. Okay. Did you --

5 MR. TWOMBLEY: Are you willing to make
6 an agreement that there's no privilege for Paul and
7 Merrill in the same way there'd be no privilege for
8 Kevin and Hampton?

9 MR. TRAXLER: We'll discuss it.

10 Q. The conversations in the home, who were
11 present when Wade came up?

12 A. Mr. and Mrs. Barringer.

13 Q. Anybody else?

14 A. Not that I recall.

15 MR. TRAXLER: You going to have him
16 assert the privilege on the same basis?

17 MR. TWOMBLEY: What's the -- what's the
18 question?

19 MR. TRAXLER: The question would be --

20 Q. Well, why were you there? What were you
21 talking about? Were you there as a lawyer doing
22 legal work?

23 A. I was.

24 Q. Okay. In regard to their estate
25 planning for both of them?

1 A. I was. Yes.

2 MR. TRAXLER: Okay. I would have the
3 same question. You going to have the same
4 instruction?

5 MR. TWOMBLEY: Yeah. I mean, I think
6 anything having to do with Mr. Barringer's
7 documents, what Mr. Barringer was going to do, why
8 he wanted to do it, anything Ms. Barringer may have
9 said about that, I think he's -- if it relates to
10 the preparation, execution or amendment of Mr.
11 Barringer's estate planning documents, I think he's
12 entitled to go into it. If it's regarding Ms.
13 Barringer's estate planning documents, I do --

14 MR. TRAXLER: Okay.

15 MR. TWOMBLEY: -- respectfully do not.

16 BY MR. TRAXLER:

17 Q. Okay. Did you have -- do you recall any
18 of the conversations with Mr. Barringer and those
19 other than what you've already told me?

20 A. No.

21 Q. And did Mrs. Barringer contribute to the
22 conversations about Wade to assist you in planning
23 Mr. Barringer's documents?

24 MR. TWOMBLEY: You understand the
25 question?

1 BY MR. TRAXLER:

2 Q. If Mrs Barringer made comments about
3 Wade to assist you in the preparing of the estate
4 documents for Mr. Barringer?

5 A. I mean, Mrs. Barringer --

6 MR. TWOMBLEY: I either want to make --

7 MR. TRAXLER: You probably need to talk
8 to him off the record to see if there's anything --

9 MR. TWOMBLEY: Yeah. I don't want to
10 coach -- I don't want to be accused of coaching him,
11 but I'm happy to tell him what I'm thinking about
12 right now or I can talk to him off the record.

13 MR. TRAXLER: Talk to him off the
14 record. See if it's something so important you want
15 to assert the privilege.

16 MR. TWOMBLEY: Yeah.

17 THE VIDEOGRAPHER: Do we have an
18 agreement to go off the record?

19 MS. KIRK: Yes.

20 MR. TRAXLER: Yes.

21 THE VIDEOGRAPHER: We're going off the
22 record at 13:29:53.

23 (A recess transpired.)

24 THE VIDEOGRAPHER: We're back on the
25 record at 13:33:01.

1 MR. TWOMBLEY: This is Ashley Twombley.
2 I had a brief discussion with Mr. Jolley in response
3 to the specific question that is pending. I'm going
4 to let him answer it subject to our agreement that,
5 you know, allowing him to answer any questions,
6 that's not a waiver.

7 MR. TRAXLER: All right.

8 Q. Go ahead, Mr. Jolley. What did Mrs.
9 Barringer tell you about -- what comments did she
10 make about Wade in those meeting?

11 MR. TWOMBLEY: That wasn't the pending
12 question. That wasn't the pending question and I'm
13 not going to let him answer that question.

14 MR. TRAXLER: Okay.

15 MR. TWOMBLEY: It was my understanding
16 the question was, did Ms. Barringer say anything
17 about Wade within the context of Mr. Barringer
18 changing his documents or that had any impact on Mr.
19 Barringer changing his documents, which I thought
20 the purpose of which was to ascertain did she
21 encourage Mr. Barringer to make the change, did she
22 say anything to influence him into making that
23 change or anything along those lines. And I -- I
24 would allow him to answer that question yes or no.

25 MR. TRAXLER: I thought you were going

1 out to check with him on the substance of the
2 comments to see if it was worth objecting to, but
3 apparently I misunderstood that so -- okay.

4 MR. TWOMBLEY: I'm -- I'm not following
5 you.

6 MR. TRAXLER: I thought you were going
7 to talk to Mr. Jolley to see what those
8 conversations were, to see about Wade, to see if it
9 was worth even objecting to; but apparently I
10 misunderstood what you were doing, so that's fine.
11 We can move on.

12 MR. TWOMBLEY: Well, just so the record
13 is clear. I want to make sure it doesn't perceive I
14 did anything wrong. I mean, what I went to do was
15 ask him about this specific question and --

16 MR. TRAXLER: I'm not accusing you of
17 doing anything wrong.

18 MR. TWOMBLEY: Okay.

19 MR. TRAXLER: I just -- I just
20 misunderstood what you were doing.

21 MR. TWOMBLEY: Okay. That's fine. Go
22 ahead.

23 BY MR. TRAXLER:

24 Q. After all that, there's somewhere a
25 question about whether or not Mrs. Barringer's

1 comments about Wade were made in assisting you with
2 regard to the estate planning for Paul Barringer?

3 Did I say that correctly?

4 MR. TWOMBLEY: I think so.

5 MR. TRAXLER: Okay.

6 THE WITNESS: No.

7 BY MR. TRAXLER:

8 Q. Okay. Was it done in connection with
9 her estate planning?

10 MR. TWOMBLEY: I'm going to object and
11 instruct you not to answer.

12 MR. TRAXLER: Well, I have a right to,
13 again, know what a topic was without knowing the
14 substance of the conversation. Are you telling him
15 or telling me that he cannot even answer if it was a
16 topic?

17 MS. KIRK: I think you already --

18 MR. TWOMBLEY: I don't think so.

19 MR. TRAXLER: Okay.

20 MR. TWOMBLEY: I mean, I -- you know,
21 I -- you know, it's -- it's -- to me, you're -- and
22 I -- you're -- you're doing a good job. I mean, by
23 the time you ask, well, who was there, where were
24 you, what was the topic, you know, I mean, you kind
25 of get down to where, you know, you can kind of

1 figure out, you know, the substance of the --

2 MR. TRAXLER: Okay.

3 MR. TWOMBLEY: -- communication. I just
4 don't think that's proper.

5 BY MR. TRAXLER:

6 Q. When you had conversations with Merrill
7 Light about -- where Wade came up. You remember
8 that, telling me that?

9 A. I do.

10 Q. And tell me the setting where those
11 conversations occurred.

12 A. I --

13 Q. You talked to Merrill Light; right?

14 A. I did talk to Merrill Light.

15 Q. Where?

16 A. I think it was in the lobby of our
17 office.

18 Q. Okay. And what was the purpose of the
19 conversation with her? Not -- not what you're
20 talking about, but the purpose of talking to her.

21 MR. TWOMBLEY: Alice, I --

22 MS. PAYLOR: I object to that. I think
23 that calls for attorney/client privilege.

24 BY MR. TRAXLER:

25 Q. Were you talking to her as her attorney?

1 A. I mean, yes.

2 Q. Okay. And was that conversation in
3 connection with her seeking legal advice or
4 representation from you?

5 A. I mean, it's certainly part of my
6 representation of Ms. Light.

7 Q. Okay. Was anybody else present when you
8 had that conversation?

9 A. Ah. . .

10 Q. Other than people in your lawyer firm.

11 A. No.

12 Q. Okay. When Merrill Light was made
13 co-trustee of Paul Barringer's trust, revocable
14 trust in February of 2012, did you ever have a
15 conversation with anybody where a topic of the
16 conversation was whether to disclose that to Hampton
17 Luzak or not? I just want to know yes or no.

18 MS. KIRK: Objection to the form.

19 MR. TWOMBLEY: Yeah. I'm going to --
20 I'm going to object and instruct you not to answer
21 that with respect to Paul Barringer or with respect
22 to Merrill Barringer.

23 MS. PAYLOR: Well, I object with regard
24 to Merrill Light.

25 MR. TRAXLER: All right.

1 Q. Are you able to answer that question
2 with regard to the instructions?

3 MS. PAYLOR: I instruct him not to
4 answer with regard to Merrill Light.

5 MR. TWOMBLEY: Same for Paul Barringer
6 and Merrill Barringer.

7 BY MR. TRAXLER:

8 Q. Okay. Which instruction keeps you from
9 being able to answer that question? Is it the
10 objection from Merrill Light or the objection from
11 Paul and Merrill Barringer?

12 MR. TWOMBLEY: Or all of the above or
13 any combination.

14 THE WITNESS: So, I'm sorry. I'm going
15 to need you to repeat that because I've lost the
16 thread of that. I appreciate what the instructions
17 were, I think.

18 MR. TRAXLER: Right.

19 THE WITNESS: I need you to repeat that
20 question for me.

21 MR. TRAXLER: Okay. The -- I forgot.
22 Can you read it back to me? You can't?

23 THE COURT REPORTER: If I can find it.

24 MR. TWOMBLEY: I think it was failure to
25 dis -- you know -- well, I forget now.

1 MR. TRAXLER: I want to make sure
2 because I always get jumped when I don't word it
3 exactly the same.

4 THE COURT REPORTER: Y'all are going to
5 have to stop talking so I can go find it.

6 MR. TRAXLER: I will quit talking.

7 (The Court Reporter read the question
8 commencing on page 183 line 13.)

9 MR. TRAXLER: To Hampton Luzak?

10 THE COURT REPORTER: It's got to come up
11 on my screen.

12 MR. TRAXLER: Okay.

13 THE COURT REPORTER: And it's not --
14 yeah. To Hampton Luzak.

15 MR. TWOMBLEY: And I'm instructing you
16 not to answer if there were any such conversations
17 with Merrill Barringer or Paul Barringer.

18 MS. PAYLOR: I'm instructing you not to
19 answer if there were any conversations with Merrill
20 Light.

21 BY MR. TRAXLER:

22 Q. Can you answer that question in light of
23 those instructions?

24 A. Uh. . .

25 Q. Merrill Light is telling you -- if I can

1 speak for Ms. Paylor. She's telling you not to
2 answer if it involves an attorney/client
3 communication with Merrill Light. Mr. Twombly is
4 telling you not to answer that if it involves
5 communications with Paul or Merrill Barringer. And
6 I'm trying to figure out which of those applies or
7 maybe both.

8 A. I think I -- I can't. And you're asking
9 me which privilege applies?

10 Q. Yes -- yes, sir.

11 A. Well --

12 MS. PAYLOR: How -- I've got --

13 MR. TWOMBLY: I just want to make sure
14 the witness understands that -- I'm happy to shut
15 up, Tom. And I'm trying -- I'm honestly trying to
16 help. But I think from the witness' standpoint,
17 he's just listening to the instructions and he's not
18 going to answer. I mean, I don't think he's done an
19 analysis of -- of which one.

20 MR. TRAXLER: Okay.

21 MS. KIRK: Either one obligates him.

22 MR. TRAXLER: Let me ask you this
23 question. I'll withdraw that question.

24 Q. Did you ever have any discussions with
25 Paul Barringer about whether to disclose to Hampton

1 Luzak or not that Merrill Light was made co-trustee
2 of his trust in 2012? Yes or no.

3 MR. TWOMBLEY: I'm going to instruct you
4 not answer that. I think it's too specific. I
5 don't think that's -- that's not a topic. That's a
6 sub, sub, sub topic. I mean, that's a specific
7 question. I just don't respectfully think you are
8 entitled to get that. If I'm wrong, I'm sure the
9 judge will tell me and you'll get -- he'll be
10 required to answer. But I just don't think you can
11 drill down to that level of specificity with an
12 exact question and then just say, well, that's just
13 the topic and I just want to know if y'all talked
14 about it.

15 MR. TRAXLER: All I want --

16 MR. TWOMBLEY: I may be wrong, but --

17 MR. TRAXLER: Yeah. All I want to know
18 is, did he have a discussion on whether -- about
19 disclosing or not disclosing. I'm not asking him at
20 all about what they talked about. Did the topic
21 even come up to disclose or not disclose? That's
22 all.

23 MR. TWOMBLEY: Yeah, but I disagree
24 because --

25 MR. TRAXLER: Okay.

1 MR. TWOMBLEY: -- if he answers the
2 question and says, yes, we talked about it, then you
3 would know that they had had a discussion about this
4 topic, about whether or not to disclose it. So I
5 mean, yes, I would give you the fact they're not
6 getting to exactly what the discussion was; but I
7 mean, I just respectfully believe that's too much
8 detail and that it is beyond just inquiring as to
9 the topic of the conversation and will stand by my
10 instruction.

11 THE VIDEOGRAPHER: Counselor, before you
12 go -- after you make your note, your microphone has
13 fallen off its clip.

14 MS. PAYLOR: If that was somebody asking
15 a question, I couldn't hear it.

16 MR. TWOMBLEY: No. It was the court
17 reporter just saying there's a technical issue with
18 the microphone, so y'all just standby one moment,
19 please.

20 MS. PAYLOR: Oh, okay.

21 MR. TWOMBLEY: Tom, we can chat at the
22 next break and maybe you can convince me
23 differently, but. . .

24 MR. TRAXLER: I hope I got that right.

25 Q. If I ask you -- ask you the same

1 question about conversations with Merrill Light.
2 Did you have any conversations with Merrill Light
3 about whether to disclose or not disclose to Hampton
4 the appointment of Merrill Light as co-trustee,
5 February 2012?

6 MR. MOLSTER: Hold on.

7 MS. PAYLOR: Instruct him not in answer.

8 MR. TRAXLER: Okay.

9 Q. As assistant secretary of CFRC -- well,
10 strike that.

11 You weren't assistant secretary or legal
12 counsel as of August 3, were you?

13 MS. KIRK: Object to the form.

14 BY MR. TRAXLER:

15 Q. Of 2012. Excuse me.

16 A. I'm not --

17 MR. FUHR: Object to the form.

18 MR. SCHRONE: I'm not sure I'm
19 following the question, Tom. You asking as 2012 or
20 as of August? I -- I didn't follow.

21 MR. TRAXLER: I just asked him to
22 confirm that he was not corporate counsel or
23 legal -- or assistant secretary as of February 3,
24 2012?

25 MR. HOGAN: August 3.

1 MR. TRAXLER: August 3. Excuse me.

2 MR. SCHRONCE: Okay.

3 MR. TRAXLER: That's all right. I don't
4 need to ask that question. I know the answer to it.

5 Q. You've been through the notebook of
6 exhibits before you, have you not?

7 A. I mean, I've been through it in this
8 deposition.

9 Q. And you went through it to prepare for
10 your deposition, didn't you?

11 A. Yeah. Actually I did, yes.

12 Q. Okay. Are you aware of any letters,
13 correspondence, executive summaries pertaining to
14 the estate planning for Paul or Merrill Barringer
15 other than what you see in that notebook?

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

18 MS. KIRK: Yeah.

19 THE WITNESS: No.

20 BY MR. TRAXLER:

21 Q. At the time you received the diagrams
22 and documents from Robert Slane -- do you remember
23 those, back in the estate planning of 2012?

24 A. I remember diagrams that Mr. Slane -- I
25 think Mr. Slane prepared some and I think I prepared

1 some.

2 Q. Did you review them at the time you got
3 them?

4 A. Did I review Mr. Slane's diagram?

5 Q. Yes.

6 A. I believe so.

7 Q. Did you see or recall seeing anything
8 inaccurate about it that you needed to clarify or
9 correct?

10 MR. TWOMBLEY: Object to the form of the
11 question.

12 MS. KIRK: Same objection.

13 THE WITNESS: I think it was a summary,
14 so I didn't -- but I didn't see anything with
15 respect to the summary or diagram that needed to be
16 corrected.

17 MR. TRAXLER: Okay.

18 THE WITNESS: Or I don't recall that
19 anyway.

20 BY MR. TRAXLER:

21 Q. Do you recall looking at the diagram and
22 saying, this does not accurately set out of what the
23 Barringer estate planning was?

24 MS. KIRK: Object to the form.

25 MR. TWOMBLEY: Object to the form of the

1 question.

2 THE WITNESS: No.

3 BY MR. TRAXLER:

4 Q. When you were doing the estate planning
5 for the -- Mr. Barringer in 2012, did you ever have
6 any discussions with him about protecting the stock
7 of the company beyond his children, Merrill Light
8 and Hampton? That is tie it up in a trust or any
9 other vehicle that would restrict the
10 transferability?

11 MS. KIRK: Object to the form.

12 THE WITNESS: Not that I recall.

13 BY MR. TRAXLER:

14 Q. Did Mr. Barringer in 2012 ever express
15 any concern to you about Randy Light one day perhaps
16 getting Merrill Light's stock?

17 MR. TWOMBLEY: Again, I would just -- if
18 any of these discussions took place related to Mr.
19 Barringer's estate planning --

20 MR. TRAXLER: That's all I'm asking.

21 MR. TWOMBLEY: Okay. Yeah.

22 THE WITNESS: Not that I recall.

23 BY MR. TRAXLER:

24 Q. Did you raise the question with him
25 about protecting stock beyond the children,

1 protecting it from spouses, creditors or the like?

2 A. I don't -- I don't recall.

3 Q. Well, you relayed to me before Mr.
4 Barringer's concern about Kevin Luzak, right, in
5 2012?

6 MS. KIRK: Object to the form.

7 THE WITNESS: Yes.

8 BY MR. TRAXLER:

9 Q. Yeah. Starting in the spring of 2012
10 on, he did not want Kevin to be running the company;
11 correct?

12 MS. KIRK: Object to the form.

13 THE WITNESS: I don't -- I don't know
14 when that began.

15 BY MR. TRAXLER:

16 Q. I understand that, but those
17 conversations were in 2012; correct?

18 A. Yes, sir.

19 Q. Okay. And did he ever express similar
20 concern about perhaps one day Randy Light getting
21 ahold of Hampton's -- Merrill Light's stock?

22 A. Not to me.

23 Q. Okay. Is there any provision in the
24 estate planning that you did that would have
25 prevented Merrill Light from giving her stock after

1 she got it to Randy Light?

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

4 MS. KIRK: Same objection.

5 THE WITNESS: I don't think so.

6 BY MR. TRAXLER:

7 Q. Okay. So after the transfer of
8 September 11, 2012, Merrill Light would have had the
9 right to transfer this -- her stock, her voting
10 stock to Randy Light; is that correct?

11 A. I believe so.

12 MS. PAYLOR: Object to the form.

13 BY MR. TRAXLER:

14 Q. And was that ever -- that was never
15 discussed with Mr. Barringer in his estate planning
16 in 2012?

17 MS. KIRK: Object to the form.

18 THE WITNESS: Mr. Traxler, is this going
19 back to Randy -- whether or not I discussed that
20 Merrill could transfer it to Randy?

21 BY MR. TRAXLER:

22 Q. When you're -- when you were working
23 with Mr. Paul Barringer in 2012 on his estate
24 planing, whether it be February or the end of 2012,
25 did you ever discuss with him protecting Merrill

1 Light's stock from getting into Randy's hands?

2 A. No.

3 Q. Okay. And after the transfer of the
4 stock in September of 2012, is there any reason why
5 Merrill Light could not have transferred those
6 voting shares to Randy?

7 A. I don't think so.

8 Q. And if she had dropped dead after -- if
9 she had dropped dead after that transfer, Randy
10 would have had, as far as you know, an elective
11 share?

12 MS. KIRK: Object to the form.

13 MR. TWOMBLEY: Same objection. Did you
14 say -- go ahead.

15 THE WITNESS: So I'm trying -- so let me
16 think about how to answer that. So --

17 MS. KIRK: Are you asking what --

18 THE WITNESS: So --

19 MR. TRAXLER: If after --

20 MS. KIRK: -- her documents said?

21 THE WITNESS: Absent anything else, at
22 Merrill Light's death, her surviving spouse would
23 have had an elective share claim.

24 BY MR. TRAXLER:

25 Q. And does the elective share work where

1 you get -- the surviving spouse gets a third of each
2 asset?

3 MS. KIRK: Object to the form.

4 THE WITNESS: An elective share is a lot
5 more complicated than what you just described, but
6 it is true that the sur -- a surviving spouse may
7 have a claim for a third of certain assets of a
8 decedent's -- owned by a decedent or controlled by a
9 decedent.

10 BY MR. TRAXLER:

11 Q. Okay. And if Randy Light and Merrill
12 Light had divorced after she had received the stock
13 in September 2012, then he would have had whatever
14 marital rights South Carolina law provide him in
15 that stock; correct?

16 MS. PAYLOR: I couldn't -- I could not
17 hear the rest of your question. You died off.

18 BY MR. TRAXLER:

19 Q. If Randy Light and Merrill Light had
20 divorced after the transfer of 2012, then he would
21 have had whatever martial rights in that stock that
22 South Carolina would have afforded him?

23 MS. PAYLOR: Can you say it one more
24 time? I'm sorry.

25 BY MR. TRAXLER:

1 Q. After the transfer of stock in 2012 from
2 Paul Barringer to Merrill Light, if she, Merrill
3 Light, and Randy had divorced, then he would have
4 had whatever martial rights in that stock that South
5 Carolina law would have provided him; correct?

6 MS. PAYLOR: Object to the form.

7 MS. KIRK: Object to the form.

8 MR. TRAXLER: Okay.

9 MR. TWOMBLEY: Same objection.

10 THE WITNESS: I think Randy would have
11 had marital rights, although I believe this -- I
12 don't believe that property that -- that those
13 shares would be marital property.

14 BY MR. TRAXLER:

15 Q. You don't do divorce work, do you?

16 A. I do not.

17 Q. Okay. When you did the February 2012
18 will and trust, why were Paul and Merrill not set up
19 as co-trustees where they would have to act together
20 as opposed to independently? Did you have that
21 discussion with Paul?

22 MR. TWOMBLEY: Object to the form.

23 MS. KIRK: Object to the form.

24 MR. TWOMBLEY: I don't know the answer
25 to that. I don't know that necessarily relates to

1 the preparation, execution or amendment. Now you're
2 getting into the substance of a provision and how it
3 operates and whether or not -- but I guess that
4 would relate to the preparation of it, so I'm asking
5 you just to listen carefully to the question that's
6 answered (sic) and only answer that question.

7 Sorry, Tom.

8 BY MR. TRAXLER:

9 Q. When you did the February 12, 2012 will
10 and trust, why did you or why did Paul Barringer not
11 make him and Merrill Light co-trustees where they
12 have to act together jointly as opposed to being
13 able to act independently?

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Same objection.

16 THE WITNESS: So that Paul Barringer and
17 Merrill Light would not be required to act with
18 respect to any action on behalf of the trust.

19 BY MR. TRAXLER:

20 Q. Tell me that again. I didn't -- I
21 didn't follow that.

22 A. You asked why they could act
23 independently rather than jointly?

24 Q. Right.

25 A. And my answer is because that would have

1 required them both to act jointly on behalf of the
2 trust.

3 Q. Okay. Did you discuss that with Paul
4 Barringer, whether they should act jointly or
5 independently?

6 A. I did.

7 Q. Okay. And what did he tell you?

8 A. Mr. Barringer decided to have the
9 documents prepared where either could act alone.

10 Q. Did -- did he indicate to you why?

11 A. Mr. Barringer generally indicated that
12 he wanted Merrill Light to be able to assist him
13 with a company, taking care of some of his business
14 affairs.

15 Q. What was in the revocable trust in
16 February 2012 that she was then having control over?
17 Do you know?

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

20 MS. KIRK: Same objection.

21 BY MR. TRAXLER:

22 Q. Do you know what was in the trust?

23 A. At the time of the planning or --

24 Q. At the time of the execution of the
25 documents --

1 A. I don't --

2 Q. -- in February 2012.

3 A. I don't recall specifically.

4 Q. Now, you answered this question somewhat
5 a little bit before, Mr. Jolley. Let me ask you
6 this very quickly. You had indicated before that
7 when Paul Barringer signed the assignment of shares
8 and stock power in September of 2012 that you kept
9 the document; correct?

10 A. I think I said that, when I got the
11 documents, that I kept them from there forward.

12 Q. Okay. When did you -- that's my
13 question. When did you get them?

14 A. I'm -- I'm not certain when those
15 document -- when the transfer doc -- when I received
16 the transfer documents.

17 Q. Would it have been in September of 2012?

18 A. I certainly believe so, yes.

19 Q. Okay. Paul Barringer, I believe you
20 testified earlier and if I mischaracterize this,
21 just correct me; but I believe you testified before
22 that Paul Barringer in 2012 was complaining that
23 Kevin Luzak had challenged his competency and also
24 wanted to take the company in a direction that Paul
25 Barringer did not want it to go in. Did I fairly

1 state that?

2 MS. KIRK: Object to the form.

3 THE WITNESS: Yes.

4 BY MR. TRAXLER:

5 Q. Or we can use your words, whichever.

6 A. No. I think that's fair. That's a fair
7 recital of my testimony.

8 Q. Okay. And were you aware of what Kevin
9 Luzak had proposed for the direction of the company
10 in terms of diversification in 2012?

11 A. In --

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

14 THE WITNESS: Just generally aware?

15 MR. TRAXLER: Yeah. Yes, sir.

16 THE WITNESS: Yes. Generally -- I was
17 generally aware at -- in 2012. Yes.

18 BY MR. TRAXLER:

19 Q. Okay. Tell me kind of what you
20 understood if you would, Mr. Jolley, so that I can
21 get in the same sync with you.

22 A. In the summer of 2012, I was --
23 generally related to me that Mr. Luzak wanted to
24 either sell timber or forest lands or sell some kind
25 of product based by timber -- backed by timber and

1 forest lands.

2 Q. And Mr. Barringer thought that was
3 incorrect?

4 MS. KIRK: Object to the form.

5 THE WITNESS: Mr. Barringer thought
6 that's what Kevin was doing.

7 MR. TRAXLER: Right.

8 THE WITNESS: I think Mr. Barringer did
9 not want CFRC to go in that direction.

10 BY MR. TRAXLER:

11 Q. Did you ever study or look at the plans
12 that Mr. Luzak had put together that Mr. Barringer
13 was referring to?

14 A. I did not.

15 Q. Did you ever have conversations with
16 Travis Bryant about it?

17 MR. SCHRONCE: Hold on.

18 MR. TRAXLER: Before you became --
19 before you became corporate counsel.

20 MR. SCHRONCE: Okay. That's fine.

21 BY MR. TRAXLER:

22 Q. Before you became corporate counsel, did
23 you have any conversations with Tom Evland or Travis
24 Bryant or anyone associated with CFRC about those
25 plans?

1 A. No.

2 Q. Okay. Did Mr. Barringer ever discuss
3 with you whether Mr. Luzak was to get fees out of
4 that arrangement?

5 MR. TWOMBLEY: I'm going to just object
6 and instruct the witness that, if you had any
7 discussions with Mr. Barringer related to the
8 preparation, execution or amendment of his estate
9 planning documents that included that topic, I -- I
10 think Mr. Traxler is entitled to get into that. But
11 if you had some other discussions about them that
12 did not relate to the preparation, execution or
13 amendment, I'd instruct you not to answer.

14 MR. SCHRONCE: And Tom, this is John
15 Schronce, I think that last question did not have a
16 qualifier that -- that you're -- you're only asking
17 about his time before becoming corporate counsel,
18 so --

19 MR. TRAXLER: That's correct.

20 MR. SCHRONCE: -- that's a modification
21 that you would make. To the extent you were asking
22 for his communications with Paul Barringer as
23 director and with Mr. Jolley serving as corporate
24 counsel, I -- I think those are off limits.

25 MR. TRAXLER: Okay. Before you were

1 corporate counsel. Let me come back and reframe the
2 question a little bit.

3 Q. Before you became corporate counsel, did
4 you have enough of an understanding of what Mr.
5 Luzak's proposal was to know whether or not he was
6 to get any compensation or fees from -- in that
7 proposal? I'll -- this is a yes or no question.

8 A. No.

9 Q. You had no understanding about that?

10 A. I think you said enough understanding;
11 but that's correct. No.

12 Q. Okay. During the time of -- from April
13 until -- from April 2012 on, did you ever hear
14 anyone correct Mr. Barringer about his understanding
15 of Kevin Luzak's plans for the company?

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. This is a yes or no question. Did you
20 ever hear anybody correct him or correct him on what
21 Kevin's plans really were?

22 MS. KIRK: Object to the form.

23 THE WITNESS: I'm not sure what we mean
24 by correct, but I -- the answer would be no.

25 BY MR. TRAXLER:

1 Q. Do you know whether Paul Barringer
2 was -- well, strike that. That would be -- that
3 would be privileged.

4 Did you ever observe Randy Light or
5 Merrill Light trying to influence Paul Barringer in
6 2012 with regard to any of his estate planning?

7 A. No.

8 Q. Did anyone ever complain to you or
9 observe to you in 2012 that Paul -- that Merrill
10 Light or Randy Light were attempting to influence
11 Paul Barringer in his estate planning?

12 A. No.

13 Q. Okay. When was the first time you had a
14 conversation -- I just want the date, time frame.
15 When is the first time you had a conversation with
16 Merrill Light that she was to receive Paul
17 Barringer's voting stock?

18 MS. PAYLOR: I couldn't hear the
19 question. Can you state that again?

20 BY MR. TRAXLER:

21 Q. When was the first time that Mr. Jolley
22 had a conversation with Merrill Light about her
23 receiving Paul Barringer's voting stock? And I'm
24 simply asking him for the time frame.

25 A. Summer of 2012.

1 Q. Okay. And did you tell her that in
2 conjunction with your work on Paul's estate
3 planning?

4 A. I didn't tell her at all.

5 Q. Oh, I'm sorry. Who? When -- when was
6 that conversation when you first discussed with her
7 about him giving her the stock?

8 A. I'm sorry. Did you ask me where?

9 Q. Okay. I can do that one. Yeah.

10 A. I --

11 Q. Let me start this over.

12 A. Okay.

13 Q. When was the first time you had any
14 conversation with Merrill Light about her receiving
15 her father's voting stock? The time frame.

16 A. So I'm sorry. Conversation with Merrill
17 Light about that, probably Fall of 2012.

18 Q. And was it before or after the transfer
19 on September 11?

20 A. I think it was around the time of the
21 transfer.

22 Q. Was it around the time that you got her
23 the certificate of competency?

24 MR. TWOMBLEY: Object to form of the
25 question. Misstates the evidence.

1 MS. KIRK: Same objection.

2 THE WITNESS: I mean, I think it was in
3 the -- that fall, in September of 2012.

4 BY MR. TRAXLER:

5 Q. Okay. And what was the occasion for you
6 having that conversation with her? Were you in an
7 attorney/client relationship or were you acting as
8 Paul's estate planner or what?

9 MR. TWOMBLEY: Object to the form of the
10 question. It assumes he's got to choose.

11 MS. KIRK: Same objection.

12 THE WITNESS: I think that in that
13 context, it -- I was Mr. Barringer's attorney.

14 BY MR. TRAXLER:

15 Q. Okay. So what did you tell Merrill
16 Light in that conversation?

17 A. I think it was limited to saying that
18 her father was going to transfer or wanted to
19 transfer the stock, the voting shares to Merrill
20 Light.

21 Q. And what did Merrill Light say to you in
22 response?

23 A. I think her response was really whatever
24 dad wanted.

25 Q. Okay. Did you explain to her why her

1 father wanted her to have the stock?

2 A. I did not explain to Merrill. I don't
3 recall explaining to Merrill Light why her father
4 wanted her to have the stock.

5 Q. Okay. This is going to be a yes or no
6 question. Did you ever explain to her why her
7 father wanted her to have the stock?

8 A. I didn't. No.

9 Q. Okay. Did you -- when you were doing
10 the estate planning and talking to Mr. Barringer in
11 the September 11, 2012 time frame leading up to him
12 signing the stock power and the assignment, did you
13 question him about why he wanted to favor one child
14 over another?

15 MR. TWOMBLEY: Object to the form of the
16 question. Asked and answered.

17 MS. KIRK: Same objection.

18 THE WITNESS: Yeah. I didn't question
19 him.

20 BY MR. TRAXLER:

21 Q. Did you give him any advice other than
22 being a scribe to implement what he wanted to do?

23 MS. KIRK: Object to the form of the
24 question.

25 THE WITNESS: Yes.

1 BY MR. TRAXLER:

2 Q. And I didn't mean to downgrade being a
3 scribe, but you and I both know --

4 A. I understand what you --

5 Q. -- than you can advise a client and
6 probe him and question him or you can simply
7 implement what the client said. And I'm trying to
8 figure out what your role and communications were
9 with Mr. Barringer during that time. So can you
10 help me understand that?

11 A. And I think the question was did I
12 counsel him?

13 Q. Yeah.

14 A. And the answer yes.

15 Q. And what kind of counseling did you give
16 him?

17 A. I told Mr. -- what did I tell Mr.
18 Barringer? I told Mr. Barringer that if he made --
19 that the gift -- that such a transfer would be
20 irrevocable. I told Mr. Barringer that, of course,
21 I thought this was something that would cause Ms.
22 Luzak to be upset. And I counseled him that the
23 transfer would result in Ms. Light being -- having
24 control of the company.

25 Q. And what did he say in response to the

1 that?

2 A. Mr. Barringer directed me to take steps
3 to help him transfer the shares in the company to
4 Merrill Barringer Light.

5 Q. Did he tell you whether he had had
6 conversations with anybody else about this transfer?

7 A. He -- I -- I don't recall him telling me
8 of any other conversations.

9 Q. Do you -- let me focus specifically.
10 Did he discuss any conversations with Robert Slane
11 with you at that time frame or in connection with
12 that transfer?

13 A. I don't think so.

14 Q. Did he indicate -- well, strike that.
15 All right. If y'all will give me a few
16 minutes.

17 MR. TWOMBLEY: Okay.

18 MR. TRAXLER: Let's take a break, go off
19 the record for a few minutes, if you would, please.

20 THE VIDEOGRAPHER: This is the end of
21 Media Unit Number 4 of the video deposition of John
22 M. Jolley. We're going off the record of 14:07:06.

23 (A recess transpired.)

24 THE VIDEOGRAPHER: This is the beginning
25 of Media Unit Number 5. This is a continuation of

1 the video deposition of John M. Jolley. We're going
2 on the record at 14:25:55.

3 BY MR. TRAXLER:

4 Q. Just a little bit more, Mr. Jolley. In
5 2012 -- and I'm going to ask you a yes or no
6 question. Okay? 2012 time period --

7 A. Uh-huh.

8 Q. -- did you ever have any discussions
9 with Merrill Barringer about how Kevin Luzak was
10 running the company, CFRC? Yes or no.

11 A. No.

12 Q. And the same time frame. Did you have
13 any such conversations with Merrill Light, yes or
14 no, as to how Kevin Luzak was running the company?

15 MS. PAYLOR: I instruct him not to
16 answer if he was giving her -- if they were talking
17 in the context of attorney/client and he was -- she
18 asked advice or he gave it.

19 BY MR. TRAXLER:

20 Q. Did you have any conversations with
21 Merrill Light about how Kevin Luzak was running the
22 company outside what Ms. Paylor just indicated?

23 MR. SCHRONE: And Tom, I'd jump in to
24 the extent you're asking about his time as corporate
25 counsel as well, because Merrill Light was a

1 director.

2 MR. TRAXLER: Okay.

3 Q. Prior to your becoming corporate counsel
4 at CFRC in 2012, did you have any conversations with
5 Merrill Light about how Kevin Luzak was running the
6 company outside of an attorney/client relationship
7 with her individually?

8 A. No.

9 Q. Did you have any conversations with her
10 in 2012 about how Kevin was or had run the company
11 outside of an attorney/client relationship with --
12 whether with her individually or as corporate
13 counsel? You follow me?

14 A. Sounds like the same question to me, so
15 I must have missed something.

16 Q. I take it back.

17 MS. PAYLOR: Same objection.

18 BY MR. TRAXLER:

19 Q. After you became corporate counsel at
20 CFRC in August of 2012, did you have any
21 conversations with Merrill Light about how Kevin was
22 running the company outside of an attorney/client
23 relationship with her individually or as corporate
24 counsel?

25 A. No.

1 Q. Okay. Did you have any such
2 conversations with Randy Light before he went on the
3 board August 3 of 2012 about how Kevin Luzak was
4 running the company outside of an attorney/client
5 relationship?

6 A. No.

7 Q. Did you ever have any discussions with
8 anyone in 2012, before you became corporate counsel,
9 with how Kevin Luzak was running the company outside
10 of an attorney/client relationship?

11 A. No.

12 MR. TRAXLER: Okay. All right. That's
13 all I have. Thank you. Subject to any recross.

14 MR. TWOMBLEY: All right. I want to
15 look at one document, then I'm going to have to talk
16 to my crew. We'll just take another break. Okay.
17 All right. I need to talk to my crew, so I'll -- we
18 can stand down for a couple of minutes.

19 MR. TRAXLER: All right.

20 THE VIDEOGRAPHER: Can we go off the
21 record?

22 MS. KIRK: Yes.

23 THE VIDEOGRAPHER: We're going off the
24 record at 14:29:04.

25 (A recess transpired.)

1 THE VIDEOGRAPHER: We're back on the
2 record at 14:43:28.

3 EXAMINATION
4 BY MR. TWOMBLEY:

5 Q. Mr. Jolley, I just had a few follow-up
6 questions for you.

7 MS. BALLARD: I'm sorry. Who's
8 speaking?

9 MR. TWOMBLEY: This is Ashley Twombley.

10 MS. BALLARD: Thank you.

11 BY MR. TWOMBLEY:

12 Q. Earlier in the deposition, I can't
13 remember if it was Day 1, 2 or 3, you were asked
14 some questions about the voting agreement amongst
15 the Barringers. Do you recall that?

16 A. I do. Yes.

17 Q. Okay. Do you know how that agreement
18 operates and what dates trigger different things
19 within the agreement?

20 A. Do I know now? Did I know then? I'm
21 not sure I --

22 Q. Okay. Well --

23 A. I think in both those instances the
24 answer is no.

25 Q. Okay.

1 A. Sorry.

2 Q. All right. Okay.

3 A. I'm not trying to be coy.

4 Q. Okay. All right. You were asked some
5 questions about the type of mistake that a decedent
6 might make when executing a will or a trust and
7 whether or not that type of mistake was sufficient
8 to invalidate the document. Do you remember that
9 general topic?

10 A. I do.

11 Q. Okay. Do you know what the case law
12 says about what type of mistake is needed to
13 invalidate a will or a trust?

14 A. I mean, I've looked at that in the past;
15 but I wouldn't say that I could presently recite
16 what would constitute -- what would cause that to
17 happen, what would cause a will to be invalidated or
18 a trust to be invalidated.

19 Q. Okay. Are you aware of any mistakes
20 that Mr. Barringer made at any point in time related
21 to the execution of any of his estate planning
22 documents or the September 11, 2012 stock transfer?

23 A. No.

24 Q. Are you aware of any instance where Mr.
25 Barringer signed one document by mistake, but

1 actually meant and intended to sign a different
2 document?

3 MR. TRAXLER: Object to the form.

4 THE WITNESS: No.

5 BY MR. TWOMBLEY:

6 Q. Are you aware of any evidence that Mr.
7 Barringer intended for his documents to provide for
8 one type of result, but they mistakenly provided for
9 a different result?

10 MR. TRAXLER: Object to the form.

11 THE WITNESS: No.

12 BY MR. TWOMBLEY:

13 Q. What if any evidence do you have that
14 Paul Barringer was mistaken as to the contents of
15 his February 2012 will and trust?

16 A. None.

17 Q. What if any evidence do you have that
18 Paul Barringer was mistaken as to the contents of
19 his July 12 trust amendment?

20 A. None.

21 Q. What if any evidence do you have that
22 Paul Barringer was mistaken as to the contents of
23 the stock power and assignment that he executed on
24 September 11, 2012?

25 A. None.

1 Q. Same question for the June 2014 estate
2 planning documents?

3 A. None.

4 Q. And then the February 2015?

5 A. None.

6 Q. When Ms. Luzak's lawyers asked you
7 questions about the competency certificate that Mr.
8 Long or that Dr. Long signed in 2012, they -- some
9 of those questions suggested that you, quote, sent
10 Mr. Barringer out for an evaluation. Can you tell
11 us what if any role you played in sending Mr.
12 Barringer out for any type of medical evaluation,
13 other than preparing the certificate?

14 A. I -- I didn't send Mr. out -- Mr.
15 Barringer out for a medical evaluation.

16 Q. I may be confused on this. I just want
17 to make sure I've got the record straight. In
18 between 2012 -- well, let me -- let me start at a
19 different place. I apologize.

20 I think you testified that the last time
21 you saw Mr. Barringer would have been in February of
22 2015. Is that -- is that consistent with your
23 memory?

24 MR. TRAXLER: Object to the form.

25 BY MR. TWOMBLEY:

1 Q. When was the last time you saw Mr.
2 Barringer?

3 A. I think it was in February of 2015.

4 Q. Okay.

5 A. At the time of the -- the execution of
6 those documents in 2015.

7 Q. Okay. In between 2012 and 2015, did you
8 notice any change whatsoever in Mr. Barringer's
9 cognitive condition?

10 A. Yes.

11 Q. Okay. Can you just describe what you
12 saw?

13 A. My experience with Mr. Barringer was
14 that between the fall of 2012, certainly through '14
15 and '15, that Mr. Barringer appeared to, what,
16 recover and to be sharper than I had experienced
17 when I met with him during the summer and fall of
18 2012.

19 Q. And then how about through the 2015 time
20 frame, when he regained his sharpness, to use your
21 words, did that ever change through February of
22 2015?

23 A. My -- my experience with Mr. Barringer
24 was that throughout that time frame he was -- had
25 great clarity and -- now -- and understood and

1 had -- and understood what was going on and was
2 certainly in charge of his own affairs and thoughts,
3 and I -- and I felt comfortable with him. I felt
4 very comfortable with Mr. Barringer.

5 Q. Okay. Are you aware of a requirement
6 under South Carolina law that an individual who is
7 challenging a decedent's will or trust based -- or
8 gift based on undue influence must show that the
9 undue influence was brought to bear upon the
10 testamentary act?

11 MR. TRAXLER: Object to the form.

12 THE WITNESS: I mean, I think that's a
13 correct statement; but I'm not sure I could point
14 out where in the law that that was evidenced.

15 BY MR. TWOMBLEY:

16 Q. Okay. So just so the record is clear.
17 The answer is, yes, you -- you are aware of that
18 requirement?

19 MR. TRAXLER: Object to form.

20 MS. KIRK: Object.

21 THE WITNESS: Yes.

22 BY MR. TWOMBLEY:

23 Q. What if any requirement are you aware of
24 with respect to undue influence and a testamentary
25 act?

1 MR. TRAXLER: Object to the form.

2 MR. TWOMBLEY: Since there was an
3 objection to that previous question.

4 THE WITNESS: Can you repeat the
5 question, Mr. Twombley?

6 BY MR. TWOMBLEY:

7 Q. And I had previously asked you if you
8 were aware of a requirement under South Carolina law
9 that a contestant of a will and trust show that
10 undue influence was brought to bear upon the
11 testamentary act. And you said you were aware of
12 that and you couldn't remember exactly where it came
13 from in the law, but you were generally aware of
14 that.

15 MR. TRAXLER: Is there a question?

16 BY MR. TWOMBLEY:

17 Q. Well, my question is do you remember you
18 said that?

19 A. Yes.

20 MR. TRAXLER: Object to the form.

21 BY MR. TWOMBLEY:

22 Q. Okay. And so what is your understanding
23 of when undue influence must be shown related to a
24 testamentary act?

25 MR. TRAXLER: Object to the form.

1 THE WITNESS: My understanding is that
2 the undue influence, what, must replace the will of
3 the -- the testator, sabor (phonetic) or donor at
4 the time of -- at the time of the act, at the time
5 of the -- the gift or creation of the instrument.

6 BY MR. TWOMBLEY:

7 Q. Okay. I believe it was on Day 1 you
8 were asked some questions about the subpoena that
9 the McNair Law Firm received for some of its files.
10 Do you remember that?

11 A. I do.

12 Q. Okay. It was my understanding that you
13 were not responsible for reading the subpoena and
14 then determining what was responsive to it. Is that
15 a fair characterization?

16 MR. TRAXLER: Object to the form.

17 THE WITNESS: Yes.

18 BY MR. TWOMBLEY:

19 Q. Okay. Would you turn to your notebook,
20 I believe it's Tab 1; but it's John Jolley 11, 12,
21 13, 14, and 15.

22 A. I'm sorry. Those are Bates Numbers 11
23 through 15?

24 Q. Yeah. Top right-hand corner. J. Jolley
25 dep 11 through 15.

1 A. (Complying.) Okay. Yes.

2 Q. Okay. Tell me again what these
3 documents are that are attached to your letter of
4 December the 6th, 2012?

5 A. Well, the cover letter really describes
6 drafts of the lifetime documents; but it also
7 includes diagrams, the summary diagrams of the plan.
8 Some were prepared, I believe, by Mr. Slane and I
9 think some prepared by me in my -- in my office.

10 Q. Okay. You said summary diagrams of the
11 plan?

12 A. Uh-huh.

13 Q. When you say summary diagrams of the
14 plan, the plan at what point in time?

15 A. Well, these were intended to aid Mr. and
16 Mrs. Barringer in their review of the doc -- of the
17 draft when they were presented, but generally to get
18 their -- to confirm that the plan as designed was in
19 accordance with their wishes.

20 Q. Okay.

21 A. Doesn't, of course, contain all the
22 particulars, just a summary of that.

23 Q. Okay. The documents, the testamentary
24 documents that had been prepared by Mr. McBride in
25 1998 -- when I say testamentary documents, I mean

1 wills and trusts for Mr. and Ms. Barringer -- were
2 those wills and trusts revocable or -- or could they
3 be changed?

4 A. Yes.

5 Q. Okay. And the ones that you did for Mr.
6 Barringer and Ms. Barringer in February of 2012,
7 could -- could those be changed?

8 A. Yes.

9 Q. Is there anything about these documents
10 that -- in your opinion that suggests or implies
11 that those documents could not be changed?

12 MR. TRAXLER: Object to the form.

13 THE WITNESS: I don't believe so. I
14 think quite the contrary. They're revokable
15 documents.

16 BY MR. TWOMBLEY:

17 Q. Do you know of any reason why Merrill
18 Barringer might want to trick her husband into doing
19 something that he otherwise didn't want to do?

20 MR. TRAXLER: Object to the form.

21 THE WITNESS: No.

22 BY MR. TWOMBLEY:

23 Q. You know anybody who'd want to say such
24 a thing?

25 MR. TRAXLER: Object to the form.

1 THE WITNESS: Not really.

2 BY MR. TWOMBLEY:

3 Q. In between, I think, August of 2012 when
4 you became company counsel and whenever you ceased
5 to no longer be company counsel, are you aware of
6 any disputed vote among the CFRC board of directors?
7 And by disputed vote, I mean where one director
8 wanted to vote one way and another director wanted
9 to vote a different way.

10 MR. TRAXLER: Object to the form.

11 THE WITNESS: No.

12 BY MR. TWOMBLEY:

13 Q. Okay. What if any law or other
14 requirement are you aware of that would have
15 required Merrill Light to advise her or inform her
16 sister, Hampton Luzak, that she had been asked to
17 serve as co-trustee of her father's trust?

18 MR. TRAXLER: Object to the form.

19 THE WITNESS: I'm not aware of anything.

20 BY MR. TWOMBLEY:

21 Q. What if any law or other requirement are
22 you aware that would have required Paul Barringer to
23 disclose to his daughter that -- his daughter,
24 Hampton Luzak, that his other daughter, Merrill
25 Light, had been asked to serve as co-trustee of his

1 revocable trust?

2 A. I'm not of aware of anything requiring
3 that.

4 MR. TRAXLER: Object to the form.

5 BY MR. TWOMBLEY:

6 Q. The same questions relate to the
7 transfer of the voting stock. What if any
8 requirement are you aware of that would have
9 required Merrill Light to inform Hampton or Paul
10 Barringer to inform Hampton?

11 MR. TRAXLER: Same objection.

12 THE WITNESS: Yeah. I'm unaware of any
13 requirement they notify Ms. Luzak.

14 BY MR. TWOMBLEY:

15 Q. I'm sure this question will draw an
16 objection; but that's -- that's okay, I want to ask
17 it. Do you have any idea in the world what Mr.
18 Traxler is talking about when he asked you if
19 disclosures were made to auditors of the company
20 about the transfer of shares or something along
21 those lines?

22 A. I -- I don't know anything about that.

23 MR. TRAXLER: See, Ashley, I did not
24 object.

25 MR. TWOMBLEY: You didn't want to draw

1 attention to how bad that question was.

2 MR. TRAXLER: That question stands on
3 its on, speaks for itself.

4 MR. TWOMBLEY: I think I might be done.
5 I just want to take five minutes --

6 MR. TRAXLER: Okay.

7 MR. TWOMBLEY: -- to talk to my folks.

8 MR. TRAXLER: All right.

9 THE VIDEOGRAPHER: We're going off the
10 record at 15:11:17.

11 (A recess transpired.)

12 THE VIDEOGRAPHER: We're back on the
13 record at 15:22:34.

14 MR. TWOMBLEY: I don't have anything
15 else.

16 MR. TRAXLER: Alice? Chip?

17 MS. PAYLOR: I don't have any questions.

18 MR. MOLSTER: No. Thank you.

19 MR. TRAXLER: All right. I don't have
20 anything further either.

21 THE VIDEOGRAPHER: Can we conclude the
22 deposition?

23 MR. TRAXLER: Not quite yet.

24 THE VIDEOGRAPHER: Okay.

25 MR. MOLSTER: That's a wrap?

1 MR. TRAXLER: I don't think there's any
2 reason to do a 4:30 conference when Judge Price.
3 That doesn't mean I agree with y'all's assertions of
4 privilege. Don't think I have acquiesced in that,
5 but I will leave this deposition with him not
6 answering the questions that he did not answer
7 today. Does that make sense? So --

8 MS. KIRK: So I don't need to file a
9 motion for protective order?

10 MR. TRAXLER: Right. No.

11 MS. KIRK: And --

12 MR. TRAXLER: Not for today. You filed
13 one for the earlier days; but for today's deposition
14 questions, privilege has been asserted. You
15 instructed him not to answer. You don't need to
16 file for a protective order for today's. That
17 doesn't mean that I agree with it. I'm not going to
18 come at you for not having filed such a motion. I
19 will simply allow him not to answer those questions
20 because of the privilege asserted. But I don't want
21 anything on the record to constitute an acquiescence
22 by me that the privilege was properly asserted.

23 MS. KIRK: Okay. So what about the
24 first two days? You're distinguishing the third day
25 from the first two.

1 MR. TRAXLER: Well, we've still got the
2 first two days. You filed your motion on that. I
3 don't know how that's going to get dealt with.

4 MS. KIRK: Well, my understanding was
5 today was your chance to re-ask those so -- or to
6 bring anything up else that you wanted to, so we
7 need to go through that. I'd like to -- I'd like to
8 get as much, you know, wrapped up and done this
9 afternoon as we can.

10 MR. TRAXLER: Well, as I understood it
11 from the transcript of what he said, that he was
12 going to stand by as privilege questions popped up
13 today.

14 MS. KIRK: Uh-huh.

15 MR. TRAXLER: That's paraphrasing.

16 MS. KIRK: Uh-huh.

17 MR. TWOMBLEY: Well, I thought that he
18 allowed y'all to reconvene the deposition and that
19 he wanted, you know, you to re-ask the questions for
20 us to try to work on. You know, I think he did give
21 you some clarity about the setting. I think we've
22 allowed a little more leniency on that.

23 MR. TRAXLER: Uh-huh.

24 MR. TWOMBLEY: But, you know, I --
25 respectfully, I don't understand where that leaves

1 us. Like what? I mean, are we going to have to
2 face in the future some day that -- that, you know,
3 that the assertions weren't proper? And that, you
4 know, I mean, the assertion is not to -- not to
5 answer. And I mean, today is the day we're supposed
6 to get all that resolved and so -- I mean, we've got
7 a judge who's given us his personal cell phone
8 number for us to. . .

9 MR. TRAXLER: That's -- I mean, we've
10 got 41 instances at least.

11 MS. KIRK: Forty-one?

12 MR. TRAXLER: That I identified and I
13 think all of your instructions to -- not to answer
14 the questions in the first two days, I would be --
15 venture to say there's twice that, but I may be
16 wrong in that guesstimate. But I don't know those
17 get resolved. But clearly what I understood from
18 the judge, and I'll get the transcript to refresh
19 this, is he's given me -- us another day, nine to
20 five, make the most of it. He would be available as
21 questions arose with -- with regard to privilege. I
22 never understood and I don't think it's in the
23 transcript where he says and, at that time, we will
24 address all past privilege issues.

25 MS. KIRK: My understanding was that, if

1 you wanted to ask something that we thought was
2 privileged, you had to do it today. And if there
3 was an issue that we could not work out amongst
4 ourselves, he was making his cell phone number
5 available. So my belief is that, if there's
6 anything outstanding with regard to coverage, we do
7 need to have a phone call with Judge Price.

8 MR. TRAXLER: Well, there's about 80 of
9 them, so. . .

10 MS. KIRK: That's fine.

11 MR. TRAXLER: Okay.

12 MS. KIRK: I mean --

13 MR. TRAXLER: I mean, I --

14 MS. KIRK: I mean, how else do you
15 anticipating getting before the court? I'm confused
16 about -- I'm confused about what you're proposing.

17 MR. TRAXLER: I am -- well, just as a
18 practical matter, I propose that we sit down and
19 look at those where I think I really need answers to
20 them and then let it be raised with the court to the
21 extent we cannot resolve it. It was not my
22 understanding nor do I believe that it was Judge
23 Price's intent that he was going revisit 40-plus
24 privilege issues, in addition to those today. What
25 he started out doing was saying, I'll give my cell

1 phone. He said how about doing it the week of July
2 5th, 4th, whatever.

3 MS. KIRK: Uh-huh.

4 MR. TRAXLER: Because he going to be in
5 chambers and I think you had a --

6 MS. KIRK: Right.

7 MR. TRAXLER: -- vacation
8 understandably, Ariail. So he said, okay, here's
9 what I'm going to do. I will have my phone on
10 standby and, as privilege issues arise, call me.
11 I'm paraphrasing. And that's where we are. There
12 are no privilege issues that have been asserted
13 today that I have got to have a ruling on, but there
14 are a whole bunch of questions on a whole bunch of
15 other topics on Days 1 and 2.

16 MS. KIRK: Okay.

17 MR. TRAXLER: Now, I'm willing to sit
18 down with y'all and see if we can resolve some of
19 those; but that was not his intent today. He was
20 saying that, as questions of privilege pop up, call
21 me. Then he got in this murder trial.

22 MS. KIRK: Right. So I mean, I don't
23 think there's any point is us fighting about it; but
24 I disagree with what his intent was. And I believe
25 his intent was that John would only be subjected to

1 another full day. I mean, I've already spent five
2 full days on this. John has been here for three.
3 And for us to get everything taken care of today.
4 So if you've 41 objections, I think we ought to just
5 go through them now and see what we can do.

6 MR. TRAXLER: Well, I've got 41 that I
7 identified in my return to y'all's motion for
8 protective order.

9 MS. KIRK: Right.

10 MR. TRAXLER: Okay? There's a whole lot
11 more. I mean, y'all didn't articulate on them, as
12 to which ones in your motion you wanted protection
13 on; but there are a whole lot more than I believe
14 the 41 that I pulled out. And they were attached to
15 my return to y'all's motion for protective order.

16 MS. KIRK: Well, he's ruled on the CFRC
17 protective order issues.

18 MR. TRAXLER: He did.

19 MS. KIRK: He's granted all those. So
20 all we're talking about now are --

21 MR. TWOMBLEY: Well, let's just -- let's
22 excuse the witness.

23 MS. KIRK: That's fine.

24 MR. TWOMBLEY: He's been tied up long
25 enough, so I think you can be excused, Mr. Jolley.

1 MR. TRAXLER: That's fine.

2 (The witness left.)

3 MR. TRAXLER: And, you know, I'll just
4 say that I was -- you know, I thought that, you
5 know, part of the point of reconvening today was not
6 just to give y'all a third day. I mean, I
7 understood that part of the point of reconvening
8 today was to allow you to hone in on these, the
9 objections that you thought were improper and to --

10 MR. TRAXLER: Uh-huh.

11 MR. TWOMBLEY: -- you know, allow us to
12 give you a little more leniency on the setting and
13 that for -- you know, at the end of the day,
14 whatever we couldn't agree or disagree on, you know,
15 that we would call the judge at 12 and then call the
16 judge at 4:30. But I -- respectfully, Tom, I don't
17 think what Judge Price was thinking is that we would
18 end this deposition today and then we would come
19 back to him three weeks in the future with a long
20 list of objections from either Day 1, 2 or 3 and not
21 ever having called the judge to tell him about them.
22 But I mean, I -- you know, Alice or Chip? What does
23 everybody else -- what's their thought?

24 MS. PAYLOR: I'm looking at what he said
25 and he thinks this is it as far as I can tell. He

1 says, here's what we are going to do. Get with my
2 office when you all set the deposition. I want it
3 done and probably in the next six weeks. You get
4 one bite at the apple, Mr. Traxler. This is it.
5 Ask the questions you need to get asked, because you
6 need to get leave from the court to seek a
7 deposition, as you know.

8 I'm going to allow it one more time,
9 nine to five. I'm going to give you all my cell
10 phone number. Unfortunately, we're going to have to
11 go question by question. We're just going question
12 by question. This is it. You will sit one more
13 time and that's going to be it. So I mean, I agree
14 with -- with Ashley. I thought y'all were going to
15 ask all the questions that you needed to get asked
16 and --

17 MR. TRAXLER: Well, why should I --

18 MS. PAYLOR: -- we're done.

19 MR. TRAXLER: Why should I use up the
20 limited time I got rehashing 40, 50, 60, 70
21 questions that y'all have already asserted the
22 privilege on when I got this limited time and how do
23 you think we do that when the deposition ends at 5
24 o'clock and we don't get him on the phone until
25 4:30?

1 MR. TWOMBLEY: Well, there's only one
2 good reason I think we should do that.

3 MS. PAYLOR: It's -- it's an hour and a
4 half left right now. But what -- what I'm saying
5 is, you -- we've worked out pretty much everything
6 today because, you know, we've given you more
7 flexibility. So, you know, if you'd asked those
8 questions that you wanted that were similar to
9 these, you would have gotten your answers.

10 MR. TWOMBLEY: Well, why don't we -- you
11 know, back to what I was going to say before. I
12 mean, I think the reason why you should do that is
13 because I think that's what the judge said we were
14 required to do.

15 MR. TRAXLER: No. His contemplation
16 was -- I said we weren't through. And he said, I am
17 going to give you one more day. And I said, here,
18 we've got there privilege issues. And I proposed to
19 him that, if you're going to assert the privilege,
20 there were certain things y'all had to identify, the
21 setting for foundational questions. And then if I
22 was satisfied with the privilege, we'd move on. If
23 I wasn't, I could ask the foundational questions.

24 He said, okay, I'm going to give you one
25 more day. And it is -- it was his anticipation that

1 he was going to be on constant standby with his cell
2 phone to answer privilege questions as they came up.
3 There was never a discussion of, okay, Mr. Traxler,
4 you got one more day to retry this or re-plow this.
5 It was we ain't through.

6 One of the reasons we aren't through is
7 because there are a lot of objections and
8 instructions, you know. Y'all got generous and
9 said, you know, a lot of that is legitimate. It's
10 just a long deposition. And he said, okay. I'll
11 give you one more day. Make it count, make it count
12 for all its worth. Y'all --

13 MR. TWOMBLEY: Call me, we'll go
14 question by question.

15 MR. TRAXLER: Yeah.

16 MR. TWOMBLEY: We got to resolve it.

17 MR. TRAXLER: Yeah.

18 MR. TWOMBLEY: I mean, I --

19 MS. KIRK: How do you propose we resolve
20 it if we don't talk to him at 4:30? That's what I'm
21 having a whole lot -- I don't understand.

22 MR. TRAXLER: Well, I'm not sure. I'm
23 not sure. I mean, like I said, I've identified 41
24 things. I have not gotten any feedback nor did
25 y'all have to on those. Quite frankly, I expected

1 at the May 27th hearing that we would be going into
2 those issues as laborious as it -- as it was. I
3 mean, that's the problem with instructing a witness
4 not to answer is that you dump it on the judge. You
5 know, we can --

6 MS. KIRK: He's answered some of these
7 though.

8 MR. TRAXLER: -- ask the judge to rule.

9 MS. KIRK: Like he was instructed not to
10 answer the question about whether Mr. Barringer ever
11 expressed disappointment with Kevin Luzak and
12 (unintelligible). I mean, y'all went over that a
13 bunch today.

14 MR. TRAXLER: But the main thing is --

15 MR. TWOMBLEY: Let the court reporter
16 fix her tape.

17 MR. TRAXLER: Okay.

18 MS. KIRK: I think a lot of these he
19 ended up being able to answer phrased differently.

20 MR. TRAXLER: Well, what y'all were
21 doing last time was not allowing him to testify as
22 to whose privilege it was he was asserting. I can't
23 use the extra day that he gave to me to re-plow
24 everything from those two days, all the instructions
25 not to -- not to answer. I can't do that and I

1 don't think that's at all his intent. And quite
2 frankly, we got sidetracked because of we were
3 expecting him to be available question by question
4 if we needed to. He can't because he's in a murder
5 trial. We understand that.

6 MS. PAYLOR: But you haven't needed to
7 get anything from him either, because he gave us two
8 times, 12 o'clock and 4:30, and you didn't take
9 advantage of either. You haven't taken advantage of
10 the 4:30 one yet. Maybe we want to talk to him
11 about this. That's up to you.

12 MR. TRAXLER: Well, I didn't do the
13 12:30 one because, you know, I thought, okay, I
14 don't need the resolution of those privilege issues.
15 I can live without that, let's move on. That was
16 the idea. Had no idea that y'all would be taking
17 the position that the -- all the instructions before
18 would have to be revisited today.

19 MS. KIRK: Well, I mean, if they're not
20 revisited today, when did you anticipate them being
21 revisited?

22 MR. TRAXLER: I don't know.

23 MR. TWOMBLEY: On a fourth day?

24 MR. TRAXLER: A judge would have to
25 decide what of these needed to be answered and how

1 they would be answered.

2 MR. TWOMBLEY: Well, I -- I mean, all I
3 know to do is just -- you know, you can maintain
4 your position and we'll maintain ours and we'll see
5 what the judge has got to say, I mean. But I mean,
6 I want to go on the record. I mean, I -- I clearly
7 thought that the purpose of today was not only just
8 to give you more time to do a third day of the
9 deposition, but to give us the time to narrow down
10 and hone in on what the specific disputes were. You
11 know, kind of like we did. Where we made a little
12 list and then we went through them at a break and we
13 said, you know, I'll agree to this, we'll agree to
14 that.

15 MR. TRAXLER: That's right.

16 MR. TWOMBLEY: We kind of went -- went
17 through everything. And so now to be faced with the
18 prospect there's going to be another hearing and
19 another motion, you know, and then Mr. Jolley
20 potentially has to come back for a fourth day of
21 deposition questioning. You know, I -- of course, I
22 do not know what Judge Price was thinking; but I
23 will be shocked if he says that's what his intent
24 was.

25 MR. TRAXLER: Yeah.

1 MR. TWOMBLEY: So. . .

2 MR. TRAXLER: But y'all remember your
3 motion was Ariail's motion to terminate because it'd
4 gone on long enough for a non-party witness. I said
5 no. We've got some other stuff we got to do and
6 it's taking a long time because of all of this. And
7 I think it was clear that his intent was I could
8 finish up asking the substantive questions. And to
9 resolve any privilege issues that arose today, he
10 would be on standby on his telephone to resolve
11 them.

12 MS. KIRK: I understood differently.
13 But I mean, I guess us going back and forth about
14 how we understood it doesn't get us any closer to
15 figuring out what we're going to do going forward.

16 MR. TRAXLER: Well, we can get him on
17 the phone at 4:30 and ask him if he wants to follow
18 through and how he wants to follow through. .

19 MS. KIRK: Yeah. And we've got an hour
20 now or not quite an hour until 4:30. Do you want to
21 go through the questions and see if we can work any
22 of them out between now and then.

23 MR. MACLOSKIE: Hello? Come in?

24 MR. TRAXLER: Who is that?

25 MS. KIRK: I don't know.

1 MR. MACLOSKIE: It's me. Can you hear
2 me?

3 MR. TRAXLER: Yeah. But we don't know
4 who you are.

5 MR. MACLOSKIE: My name is Mike, Mike
6 Macloskie. I --

7 MR. TRAXLER: Okay.

8 MR. MACLOSKIE: I've -- I've been in
9 kind of like my monk, my Trappist monk posture. If
10 you look at -- if you look at Page 25 of his
11 transcript, the transcript is clear. It says
12 nothing about cleaning up any prior deposition
13 testimony or privilege questions.

14 This is exactly what it says. You get
15 one bite at the apple, Mr. Traxler. That is it.
16 Ask the questions you need to get asked because you
17 need to get leave from the court to seek a
18 deposition as you know again. I'm going to allow it
19 one more time, nine to five. I'm going to give you
20 all my cell number. Unfortunately, we're going to
21 have to go question by question. We're just going
22 question by question. That is it. He will sit one
23 more time. That's going to be it. Next, have a
24 nice 4th of July.

25 Anybody that reads that and incorporates

1 in that some invitation to bring before him at 4:30
2 this afternoon all of the privilege questions that
3 came out of the first two days, I'm asserting
4 respectfully is badly mistaken.

5 MS. PAYLOR: I agree with you. I don't
6 think -- I think --

7 MR. MOLSTER: I agree with that, too.

8 MS. PAYLOR: I thought he would bring
9 those up today.

10 MS. KIRK: I agree with Alice.

11 MR. MACLOSKIE: No.

12 MR. TWOMBLEY: I agree with Alice.

13 MS. PAYLOR: No. I don't think there's
14 any question.

15 MR. TRAXLER: Well, let's get him on the
16 phone.

17 MS. PAYLOR: He wanted you to ask your
18 questions.

19 MR. MACLOSKIE: And he did.

20 MS. PAYLOR: And he told us how he was
21 going to interpret and we modified our position
22 and --

23 MR. MACLOSKIE: Well, what did you
24 think?

25 MS. PAYLOR: -- that's the way I

1 interpreted it.

2 MR. MACLOSKIE: For this part of the
3 deposition, not the prior -- the prior two days.

4 MS. KIRK: So that was just going to be
5 held in abeyance indefinitely?

6 MR. TRAXLER: I think a judge was going
7 to have to rule on how these were going to be dealt
8 with and, to the extent that we would get responses,
9 how we would get those responses.

10 MS. KIRK: And so why wasn't that ruled
11 on in June?

12 MR. TRAXLER: He declined it
13 specifically.

14 MS. KIRK: Because he thought we were --
15 you were going to ask him today and we were going to
16 try to work it out.

17 MR. TRAXLER: No. He didn't say it was
18 moot. He just said -- he didn't say, I've dealt
19 with it. He said, I decline to rule.

20 MR. TWOMBLEY: Well, would you. . .

21 MS. KIRK: I mean, a number of those,
22 you've asked today.

23 MR. TRAXLER: Yeah.

24 MS. KIRK: So --

25 MR. TRAXLER: Some of these are follow

1 ups.

2 MS. KIRK: I mean, I don't think we're
3 really fighting about -- instead of fighting about
4 what we think the judge said, can we try to figure
5 out which -- what issues we actually have?

6 MR. GILREATH: Well, why -- let me throw
7 something in here. Why don't -- the burden is, if I
8 understand the rule right -- and I've kept my mouth
9 quiet pretty good today. Why don't y'all just
10 file -- y'all got to file a motion for a protective
11 order, if I understand it right. So why don't y'all
12 just file whatever motion you've got to do?

13 MS. PAYLOR: She did. She already filed
14 it and he granted it.

15 MR. GILREATH: We're talking -- no.
16 We're talking about today.

17 MR. TRAXLER: No, he did not grant the
18 motion.

19 MR. GILREATH: We ain't talking about
20 all that other stuff.

21 MS. PAYLOR: That's what his order was,
22 you get another day.

23 MR. TWOMBLEY: All right.

24 MR. TRAXLER: Well, as to Merrill
25 Light's motion for protective, et cetera, this court

1 declines to make any specific ruling on whether
2 responding to a particular question would require
3 his to disclose confidential and privileged
4 information. If the undersigned is informed by
5 counsel of the date of the upcoming deposition,
6 he'll try to make hisself available to address
7 issues related to privilege. That's what the order
8 says clearly.

9 MR. GILREATH: Well, my -- my call on it
10 would be the monkey is on y'all's back. Y'all are
11 doing all the durn objecting. So get out there and
12 file your motion for a protective order and we'll
13 find a judge somewhere that'll hear --

14 MS. KIRK: I know you know people.

15 MR. GILREATH: -- it. Judge Bond or Bib
16 Bad Leroy Jones, whoever.

17 MR. TWOMBLEY: All right. Tom, let me
18 talk to my folks a minute.

19 MS. PAYLOR: Well --

20 MR. TRAXLER: Okay.

21 MS. PAYLOR: -- why doesn't Tom go
22 through his 45 and see which of those he still wants
23 to pursue?

24 MS. KIRK: I'm trying.

25 MR. MACLOSKIE: Hello?

1 MR. GILREATH: He called and never shut
2 up.

3 MR. TRAXLER: Turn your microphone off,
4 Gilreath, before I tell you to shut up again.

5 MR. TWOMBLEY: Let me -- let me talk to
6 my group and Ariail and I will be back in five
7 minutes, see if we can't --

8 MR. TRAXLER: Okay.

9 THE VIDEOGRAPHER: Do you want me to go
10 off the record?

11 MR. TRAXLER: Yes.

12 MS. KIRK: Yes.

13 MR. TWOMBLEY: Yes.

14 THE VIDEOGRAPHER: Do you want me to end
15 the deposition yet?

16 MS. KIRK: No.

17 THE VIDEOGRAPHER: We're going off the
18 record at 15:42:55.

19 (A recess transpired.)

20 THE VIDEOGRAPHER: We're back on the
21 record at 16:27:38.

22 MR. TRAXLER: All right. This is Tom
23 Traxler and I think we have resolved a solution on
24 these privilege issues. I had attached Exhibit A to
25 my return to the various motions for a protective

1 order pertaining to privilege and raised a number of
2 matters where our witness, Mr. Jolley, had been
3 instructed not to answer.

4 We have talked and we have worked out a
5 solution to that. I am going -- I and the
6 plaintiff's counsel are going to review the Exhibit
7 A to see if we cannot pare it down and I suspect
8 that we will be able to significantly pare it down.
9 We'll submit it to the defense counsel and to Ms.
10 Kirk. They will review it. We will talk it out and
11 the anticipation is that Mr. Jolley would be
12 providing sworn written answers to the pared down
13 questions. If they result -- if the answers result
14 in some further follow-up questions, we'll just have
15 to work it out with defense counsel. And if there
16 is --

17 MS. KIRK: Yeah. If it results in
18 follow-up questions, I'm not waiving anything.

19 MR. TRAXLER: No. Nobody is waiving
20 anything.

21 MS. KIRK: Objections or --

22 MR. TRAXLER: Everybody is maintaining
23 their position and their arguments as -- as we've
24 asserted on the record in this thing. Nobody is
25 waiving anything. And if any relief from the court

1 needs to be sought in that regard, the burden will
2 be on the plaintiffs to make that motion to seek
3 that relief. But the idea is we want to see if we
4 can't pare this down, see if y'all can't give us the
5 written answers. Hopefully that will resolve it.
6 If it doesn't, then the burden is on me to pursue it
7 further with the court if I so choose.

8 MS. KIRK: Okay. Would you --

9 MR. TRAXLER: And with that -- excuse
10 me. With that Judge Price will be notified today
11 that we are in the process of resolving this and we
12 do not need him and we'll be back in touch with him
13 if something pops up. But your -- all your -- and
14 Ariail, you do not need to file any motion for a
15 protective order or anything like that. Nobody
16 needs to file anything in this regard. And
17 hopefully in the next few days, I'll give you a
18 pared down list and we can have a serious discussion
19 about what's -- about working it out.

20 MR. TWOMBLEY: I just have a couple of
21 points of clarification.

22 MR. TRAXLER: Sure.

23 MR. TWOMBLEY: Number 1 is that we
24 maintain our position that you were to re-ask those
25 questions on Exhibit A today and that we were to use

1 the 12 o'clock and 4:30 conference call with the
2 judge to address those. I understand you have a
3 different opinion on that, but we -- we maintain our
4 opinion on that.

5 MR. TRAXLER: If I can interrupt you, we
6 reserve our rights as to our opinion and our
7 position.

8 MR. TWOMBLEY: Okay.

9 MR. TRAXLER: Nobody is losing anything.

10 MR. TWOMBLEY: I got you. I understand.
11 The second thing that I want agreement on is that
12 the deposition today is currently over. I am not
13 going to agree not to talk to Mr. Jolley. We've got
14 a trial coming up on August the 30th. I have not
15 spoke to him at all for the past however many months
16 this has been going on. It's been un -- prejudicial
17 to my preparation of the case for my client and, you
18 know, I won't talk to him about how or if he should
19 obviously answer any of these questions; but I want
20 the right to be able to have general discussions
21 with him about his testimony and preparing for
22 trial.

23 MR. TRAXLER: As long as you're not
24 formulating his written answers or influencing him,
25 that's fine with me.

1 MR. TWOMBLEY: Okay.

2 MR. TRAXLER: His written answers to
3 what we're talking about.

4 MR. TWOMBLEY: I understand.

5 MR. TRAXLER: Sure.

6 MR. TWOMBLEY: Okay. That's fine with
7 me. Alice, Chip and somebody from the --

8 MS. PAYLOR: Okay with -- okay with me.

9 MR. MOLSTER: Yeah. That's fine. My
10 only message would just to be just to let the judge
11 know that we're attempting to resolve this as
12 opposed to saying we're resolving it. I think we
13 will resolve it. It will definitely --

14 MS. PAYLOR: I thought we were going to
15 say we're attempting to resolve it.

16 MR. MOLSTER: Yeah. All right. Well,
17 John, will definitely take a look at the new list
18 and attempt to work it up in good faith; but I think
19 we ought out just -- rather than say, you know,
20 we've resolved it; but we are.

21 MR. HOGAN: That --

22 MR. MOLSTER: We can say we're working
23 diligently on the result.

24 MS. KIRK: Alice, are you going to be --

25 THE COURT REPORTER: Wait. Don't talk

1 at the same time.

2 MR. SCHRONCE: Sorry.

3 MS. KIRK: Alice, are you planning to
4 e-mail Judge Price?

5 MS. PAYLOR: Do what now?

6 MS. KIRK: Are you sending the e-mail
7 or -- I just want -- I just want to be --

8 MS. PAYLOR: I will --

9 MS. KIRK: -- sure I get copied on it.

10 MS. PAYLOR: I will send him one. I'm
11 just going to say, we finished the deposition.
12 There are still some open issues that we are working
13 on trying to resolve. We do not need his time
14 today. How about something like that?

15 MR. TRAXLER: That's fine.

16 MR. MOLSTER: And we'll be back in
17 touch.

18 MS. KIRK: That suits me.

19 MR. TRAXLER: That's fine.

20 MR. TWOMBLEY: Fine.

21 MR. TRAXLER: Hopefully he won't have to
22 hear from us on this issue again.

23 MR. SCHRONCE: Fine with me.

24 MR. MOLSTER: That's fine with me as
25 well.

1 MR. GILBREATH: Agreed.

2 MR. TRAXLER: Put in there --

3 MS. PAYLOR: Okay.

4 MR. TRAXLER: -- that Tom Traxler was
5 eminently reasonable.

6 MR. MOLSTER: Yeah. For the first time.
7 This is a red letter day.

8 MR. TRAXLER: It's a good thing I can't
9 see who is saying that.

10 MR. TWOMBLEY: All right, everybody.
11 Have a good night.

12 MR. TRAXLER: Thank y'all. Thank y'all
13 for working this out with us.

14 MS. PAYLOR: All right. I'm going to
15 send it. I'll send that right now --

16 MR. TRAXLER: Thanks everybody. Okay.

17 MS. PAYLOR: Bye.

18 THE VIDEOGRAPHER: May I close --

19 MR. SCHRONCE: See y'all.

20 THE VIDEOGRAPHER: May I close the --

21 MS. KIRK: Yes.

22 THE VIDEOGRAPHER: -- deposition or
23 close the --

24 MR. TRAXLER: We can close the record,
25 the deposition and everything.

1 MS. KIRK: Close it all. Pack it up.

2 THE VIDEOGRAPHER: This concludes Volume
3 3 of today's testimony given by John M. Jolley,
4 esquire. The total number of media unites used was
5 five and will be retained by Veritext Legal
6 Solutions. We're going off the record at 16:33:25.
7 (Off-the-record conference.)

8 THE COURT REPORTER: Who gets copies of
9 what?

10 MR. HOGAN: Gilreath Law Firm.

11 THE COURT REPORTER: Gilreath?

12 MR. HOGAN: Yeah. A copy.

13 MR. TWOMBLEY: And Ashley Twombley, I'll
14 take one for the defendants. Transcript and video.

15 MR. HOGAN: Same for me.

16 (Off-the-record conference.)

17 THE COURT REPORTER: Mr. Traxler, do you
18 get the original or is that with you guys?

19 MR. TRAXLER: He gets that and he's also
20 the one that gets the bill.

21 THE COURT REPORTER: Okay.

22 MR. TWOMBLEY: Well, I think I noticed
23 the deposition, so the original can come to me.

24 MR. TRAXLER: Okay. There you go.

25 THE COURT REPORTER: All right.

1 MR. TRAXLER: Forgot you did that.
2 (The witness, after having been advised
3 of his right to read and sign this transcript, does
4 not waive that right.)
5 (The deposition was concluded at 4:33
6 p.m.)
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CERTIFICATE OF REPORTER

I, Wanda K. Cecil, Certified 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 my official seal this 27th day of July, 2021 at Columbia, Richland County, South Carolina.



Wanda K. Cecil
Certified Court Reporter
My Commission expires
December 28, 2026

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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 Proffered)

BOA 007086
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1 To: JOHN M. JOLLEY

2 Re: Signature of JOHN M. JOLLEY

3 Date Errata due back at our offices: 30 days

4

5 Greetings:

6 The deponent has reserved the right to read and sign.

7 Please have the deponent review the deposition

8 transcript, noting any changes or corrections on the

9 attached Errata.

10 Once the Errata is signed by the deponent and notarized,

11 please mail it to the address below. When the signed

12 Errata is returned to us, we will seal and forward to the

13 hiring attorney for filing with the court.

14 We will also send copies of the Errata to all ordering

15 parties.

16 If the signed Errata is not returned by the date

17 above, the original transcript may be filed with the

18 court without the signature of the deponent.

19

20 Please send completed Errata to:

21 Veritext Production Facility

22 20 Mansell Court

23 Suite 300

24 Roswell, GA 30076

25 770-343-9696

ROA 007086

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ERRATA

I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that

___There are no changes
___The following changes are noted:

Pursuant to the governing rules of Civil Procedure, any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.

Page	_____	Line	_____	Change	_____

Reason for Change _____					
Page	_____	Line	_____	Change	_____

Reason for Change _____					
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DEPONENT'S SIGNATURE

22 Sworn to and subscribed before me this ____ day of
_____, _____.

23

24 NOTARY PUBLIC

25 My commission expires: _____