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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price
Circuit Court Judge

Case No. 2019-CP-10-02430
Appellate Case No. 2022-000592

Pamela Holliday Wallin; Mark Bennett Holliday; Kingsley K. Holliday; Sara Jane Holliday; and John C. Holliday……...……Appellants,

v.

Ross Samuel Holliday as Personal Representative of the Estate of Warren; Phillip Holliday; Ross Samuel Holliday, individually; Warren Lea Holliday, individually; 2233 Highway 17 North, LLC; 2237 Highway 17 North, LLC; 2805 Highway 17 North, LLC; 1606 Meeting Street, LLC; Bacons Bridge Road, LLC; 4687 Franchise Street, LLC; Zeezrom Properties, LLC; John Doe Leased Vehicle; 1905 North Main Street, Summerville, LLC; 815 Folly Road, LLC; 832 Coleman Blvd., LLC; 2189 Discher Avenue, LLC; New Space Science, LLC; Pirates Plunder, LLC; Sawgrass Technologies, Inc.; Holliday Amusement Company, Inc.; and The Revocable Trust Agreement between Warren P. Holliday as Settlor and as Trustee……...……..Respondents.

RECORD ON APPEAL
VOLUME I

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Attorneys for Respondents

INDEX

VOLUME I

Order for Removal, entered May 10, 2019.....1

Form 4 Order Granting Consolidation and Complex Case Designation, entered August 17, 2020 ……6

Form 4 Order allowing Reply to Petitioner's Memorandum in Opposition to Summary Judgment, entered December 22, 2020……...9

Order Granting Respondents' Motions for Summary Judgment, entered March 3, 2022...12

Order Denying Petitioners' Motion Pursuant to Rule 59, SCRCP, to Alter or Amend Order Granting Summary Judgment, entered April 22, 2022……...29

Summons and Complaint, filed September 19, 2018……33

Respondents' Motion for Removal to Circuit Court, filed November 19, 2018……...57

Motion to Consolidate Cases and Motion for Complex Designation, filed May 28, 2019…….63

Amended Answer, filed February 18, 2020……...70

Reply to Amended Answer and Counterclaims, filed March 2, 2020……..83

Respondents' Motion for Summary Judgment and Memorandum in Support, filed June 2, 2020, *together with all Exhibits that are not duplicative*…….89

Respondents' Motion for Protective Order, filed June 9, 2020……146

Respondent Ross Holliday's Motion for Protective Order, filed July 1, 2020……150

Respondents' Memorandum in Opposition to Petitioners' Motion to Compel Continuation of Deposition of Ross Holliday, filed August 5, 2020……154

Respondents' Amended Motion for Summary Judgment and Memorandum in Support, filed September 1, 2020, *together with all Exhibits except where duplicative*…….159

Respondents' Second Amended Motion for Summary Judgment and Memorandum in Support, filed December 10, 2020, *together with all Exhibits except where duplicative*……..266

VOLUME II

Petitioners' Response and Memorandum of Law in Opposition to Respondents' Motion for Summary Judgment, filed December 11, 2020, *together with all Exhibits except where duplicative*……..…….....424[1]

Petitioner's Letter to the Court Re: Additional Exhibits, dated December 14, 2020, *together with exhibits*…….....…….631

Petitioner's Addendum to Correct Scrivener's Error, filed December 14, 2020….……723

Respondents' Reply in Support of Summary Judgment, filed December 24, 2020, *together with all Exhibits except where duplicative*…….....…….....…….725

Petitioners' Objections and Sur-Reply in Opposition to Respondents' Motion for Summary Judgment, filed December 28, 2020…….……..754

Respondents' Motion for Summary Judgment Pursuant to § 62-7-604, filed May 7, 2021, *together with all Exhibits except where duplicative* ……..…...760

Petitioners' Memorandum of Law in Opposition to Respondents' Motion for Summary Judgment Based on Application of S.C. Code Ann. to § 62-7-604, filed July 21, 2021……...…….....818

VOLUME III

Respondents' Supplemental Memorandum in Support of Their Motions for Summary Judgment, filed September 24, 2021, *together with all Exhibits except where duplicative* ……..…….....840

Respondents' Reply Memorandum in Support of Summary Judgment Pursuant to § 62-7-604, filed October 4, 2021……..……...932

Petitioners' Response and Memorandum of Law in Opposition to Respondents' Motions for Summary Judgment, filed November 12, 2021, *together with all Exhibits except where duplicative* ……....……946

Petitioners' Motion Pursuant to Rule 59, SCRCP to Alter or Amend Order Granting Summary Judgment, filed March 11, 2022, *together with all Exhibits except where duplicative* ……...……...1247

Notice of Appeal, filed May 5, 2022…….…….……...……..…1280

[1] As filed in the Circuit Court, Exhibit 30 included approximately 255 pages of phone records. For brevity, only a portion of Exhibit 30 is included in the Record on Appeal.

VOLUME IV

Transcript of hearing, December 16, 2020……1305[2]

Transcript of hearing, November 17, 2021……...……...1335

Transcript of hearing, April 18, 2022……..1404

Notice of Filing Deposition of Martha Louise Brouthers, filed December 2, 2020,
with transcript pp. 1, 13-19, 30, 56, 59-62, 75, 78-105, 112-115, 119-133, 142-152,
157-165 *except where duplicative*……...……...……...1429

Notice of Filing Deposition of Heyward Carter, filed December 2, 2020,
with transcript pp. 1, 14-17, 42-53, 57 and Exhibits 1, 2, 3, 6, 9, 10, and 11 thereto
except where duplicative...…….…...1513

Notice of Filing Deposition of Aliecia Bores, filed December 2, 2020,
with transcript pp. 1, 9-10, 17-29, 34-35, 37-38, 40-49, 51, 53-55; and Exhibit 1 thereto
except where duplicative……..……..1557

Notice of Filing Deposition of Greg Bosch, filed December 2, 2020,
with transcript pp. 1, 12, 19, 30-33, 35-38, 44-51, 55-66; and Exhibit 1 thereto
except where duplicative……..……..……1594

Notice of Filing Deposition F. Truett Nettles, II, Esquire, filed December 3, 2020,
with transcript pp. 1-19, 32-36, 45-46, 56-59, 62, 66-70, 80-87, 91-103, 110-128,
131, 134-140, 146, 149, 152, 158-159, 162-170, including Exhibits 2-5, 8, 10, 14,
16-20, 22, 26, 28, 29, 30, and 31 thereto *except where duplicative*..…….…....1628

VOLUME V

Notice of Filing Deposition of Ross Holliday Volume I, filed December 3, 2020,
with transcript pp. 48-52, 64-70, and Exhibit B *except where duplicative* …….…….....1780

Notice of Filing Deposition of Ross Holliday Volume II, filed December 3, 2020,
with transcript pp. 8-13, 17-25, 32-40, 53-73, 76-85, 97-100, 105-109,
together with Exhibits C, D, F, G, H, I, L, M, N, O, P, Q, V, and W thereto
except where duplicative……2125

Certificate of Counsel...……..2216

[2] Court Administration informed counsel that the second half of the transcript from this December 16, 2020, hearing, which covered Appellants' arguments in response to Respondents' motions for summary judgment, could not be located in the court reporter's files and, therefore, was not furnished to Appellants for this appeal.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY and JOHN C. HOLLIDAY,

Plaintiff(s)

vs.

ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE,

Defendant(s)

2019-CP - 10- 2480

FILED
2019 MAY 10 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Submitted By: Bijan Ghom and Alice Paylor
Address: Rosen Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

SC Bar #: 103531 and 4380
Telephone #: 843-577-6726
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Conversion (310)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Condemnation (410)
☐ General (130)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Foreclosure (420)
☐ Breach of Contract (140)	Previous Notice of Intent Case #	☐ Products Liability (340)	☐ Mechanic's Lien (430)
☐ Fraud/Bad Faith (150)	20___-NI-_____-_____	☐ Personal Injury (350)	☐ Partition (440)
☐ Failure to Deliver/ Warranty (160)	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Possession (450)
☐ Employment Discrim (170)	☐ Other (299) _____	☐ Assault/Battery (370)	☐ Building Code Violation (460)
☐ Employment (180)		☐ Slander/Libel (380)	☐ Other (499) _____
☐ Other (199) _____		☐ Other (399) _____	

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals

Record on Appeal

- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ Other (799) _____

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) Removal from Probate Court Pursuant to S.C. Code Ann. § 62-1-302
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 5/10/19

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

2019-CP-10-2430

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
IN THE MATER OF;)
PATRICIA A. HOLLIDAY MARITAL TRUST)
ESTATE OF WARREN P. HOLLIDAY)
)
)

IN THE PROBATE COURT
CASE NO. 2017-GC10-0124
CASE NO. 2016-ES10-01673

FILED
2019 MAY 10 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER FOR REMOVAL

THIS MATTER comes before the Court on Respondents Motion for Removal to Circuit Court, pursuant to S.C. Code Ann. § 62-1-302. Present at the hearing were Patricia A. Holliday, Attorney for the Petitioner, Laurel R.S. Blair, Esq., Respondents Ross S. Holliday and Warren L. Holliday, and attorneys for the Respondents, Alice F. Paylor, Esq., Bijan Ghom, Esq., and F. Truett Nettles, II, Esq. Also present at the hearing, was Estate Petitioner Pamela H. Wallin and her attorney, Jessica L. Crowley, Esq., as well as Estate Petitioner Mark B. Holliday and his attorneys, Daniel S. Slotchiver, Esq., Stephen M. Slotchiver, Esq., and Brent Halversen, Esq.

After hearing arguments from the parties regarding Removal of the Cases to Circuit Court, the Court finds that all outstanding issues in both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday shall be removed to Circuit Court pursuant to S.C. Code Ann. § 62-1-302(f).

According to S.C. Code Ann. § 62-1-302(f), if an action described in subsection (d) is removed to circuit court by the probate court, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to circuit court if the probate court finds that the removal of such matters would be in the best interest of the estate or in the interest of judicial economy. S.C. Code Ann. § 62-1-302 (f). Under, S.C. Code Ann. § 61-1-302(d), on motion of a party, or by the Court on its own motion, may remove a case to the

circuit court if it falls under one of its six subsections. The cases before this Court may involve construction of wills, matters involving the external affairs of trusts, and actions in which a party has the right to a jury which involve an amount in controversy of at least five thousand dollars. S.C. Code Ann. § 62-1-302 (d)(2), (4), and (5). As such, this Court finds that matters related to both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday should be removed in order to serve the best interest of the Estate of Warren P. Holliday and in the interest of judicial economy.

Based upon the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that all outstanding issues in both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday shall be removed to the Circuit Court to serve the best interest of the Estate of Warren P. Holliday and in the interest of judicial economy; it is further

ORDERED, ADJUDGED, AND DECREED that jurisdiction is retained as to all other matters involving this estate.

IT IS SO ORDERED.

LENNA S. KIRCHNER
ASSOCIATE JUDGE OF PROBATE
COUNTY OF CHARLESTON

AND IT IS SO ORDERED this 25th day of April, 2019.

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1002430

Pamela Holliday Wallin et al
PLAINTIFF(S)

Ross Samuel Holliday et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Cases 2019CP102430, 2019CP102431, and 2019CP102433 were consolidated, and they are designated complex and assigned to Judge Price.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/16/2020 .

Holliday, Warren P as Settler
Warren P Holliday
Revocable Trust Agreements The
Holliday Amusement Company Inc
Sawgrass Technologies Inc
Pirates Plunder LLC
New Space Science LLC
2189 Discher Avenue LLC
832 Coleman Blvd LLC
815 Folly Road LLC
Holliday, Warren Phillip Estate of
1905 North Main Street Summerville LLC
John Doe Leased Vehicle
Zeezrom Properties LLC
4687 Franchise Street LLC
Bacons Bridge Road LLC
1606 Meeting Street LLC
2805 Highway 17 North LLC
2237 Highway 17 North LLC
Patricia Anne Holliday
2233 Highway 17 North LLC
Mark B Holliday
Patricia Anne Holliday Estate
Holliday, Warren P as Trustee

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Aug 17 3:30 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Aug 17 3:30 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Aug 17 3:30 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Charleston Common Pleas

Case Caption: Pamela Holliday Wallin , plaintiff, et al VS Ross Samuel Holliday , defendant, et al

Case Number: 2019CP1002430

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2020 Dec 22 11:29 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1002430

Pamela Holliday Wallin et al
PLAINTIFF(S)

Ross Samuel Holliday et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defense Counsel Alice Paylor has until Friday December 25 to respond to Plaintiff's Counsel Michael Timbes.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2020 .

Holliday, Warren P as Settler
Warren P Holliday
Revocable Trust Agreements The
Holliday Amusement Company Inc
Sawgrass Technologies Inc
Pirates Plunder LLC
New Space Science LLC
2189 Discher Avenue LLC
832 Coleman Blvd LLC
815 Folly Road LLC
Holliday, Warren Phillip Estate of
1905 North Main Street Summerville LLC
John Doe Leased Vehicle
Zeezrom Properties LLC
4687 Franchise Street LLC
Bacons Bridge Road LLC
1606 Meeting Street LLC
John Kachmarsky
2805 Highway 17 North LLC
2237 Highway 17 North LLC
Patricia Anne Holliday
2233 Highway 17 North LLC
Mark B Holliday
Patricia Anne Holliday Estate
Holliday, Warren P as Trustee

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Dec 22 11:29 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 22 11:29 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Charleston Common Pleas

Case Caption: Pamela Holliday Wallin , plaintiff, et al VS Ross Samuel Holliday , defendant, et al

Case Number: 2019CP1002430

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430 **ORDER GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT**

This matter first came before the Court on December 20, 2020, and subsequently the Court allowed further discovery to proceed before determining the outcome of the pending motion. The

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

motion came back before the Court for a hearing on November 17, 2021.[1] After considering the oral and written arguments of all parties, as well as the deposition testimony and documents submitted, the Court has determined that there is no issue of material fact and summary judgment should be granted as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment is set forth in Rule 56(c), SCRCP, which states that "summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In cases with a higher burden of proof, such as will contests, "the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mis-South Mgmt. Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003).

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." S.C. Code Ann. § 62-3-407. As our Supreme Court has said:

> When the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. The contestants continue to bear the burden of proof throughout the will contest. In determining whether the

[1] Respondents filed an Amended Motion for Summary Judgment on September 1, 2020, arguing that Petitioners' claims of lack of capacity, undue influence, and their other tortious claims must fail based on the evidence in the record. On May 7, 2021, Respondents then filed a Motion for Summary Judgment arguing that Petitioners failed to timely file pursuant to § 62-7-604. The Court heard oral arguments on both these motions on November 17, 2021.

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

> contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants.

Calhoun v. Calhoun, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

FINDING OF FACTS

After a careful review of the briefs, exhibits and extensive oral argument, the Court finds that the following facts are in evidence, are undisputed and are relevant to Respondents' motion.

Warren and Patricia Holliday were married for approximately 50 years. They had four children: Mark Bennett Holliday, Pamela Holliday Wallin, Ross Holliday and Lea Holliday. Mark and Pamela are the primary Petitioners, and Ross and Lea are the primary Respondents.

On October 29, 2008, the decedent Warren Holliday ("Warren") executed a Revocable Trust in which he provided that, on his death, his assets would go to his then wife, Patricia, during her life, and, upon her death, to their four children in equal shares. Article 3 of the Revocable Trust expressly reserved to Warren the right to revoke the trust and provided in pertinent part: "The Settlor [Warren Holliday] shall have and possess, and hereby reserves the right to revoke this Trust … without the consent of the Trustee, or any beneficiary…" At some point in 2012, Ross Holliday became the Trustee.

On December 9, 2013, the Family Court of Charleston County entered an Order of Divorce for Patricia and Warren, incorporating into it a Marital Settlement Agreement which provided for Patricia's support to be paid out of Zeezrom Properties, LLC, an asset of Warren's Revocable Trust. The agreement made no mention of Warren's trust and was signed by Warren in his individual capacity and not as trustee.

On March 21, 2014, Warren executed a new will which allocated 40% of his assets to each of Ross and Lea, 15% to Mark, and 5% to Pamela. On January 7, 2016, Warren executed a codicil

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

to the 2014 will and provided specific bequests to Mark and Pamela of $300,000 and $100,000 respectively, with the remainder of his assets going to Ross and Lea in equal amounts. These estate planning documents were prepared by and executed in the presence of Truett Nettles, Warren's longtime attorney. Mr. Nettles testified that, at the time these documents were signed, Warren was capable of knowing what he owned, who his children were, and to whom he wanted to give his assets. Neither the March Will nor the January Codicil mention the 2008 Revocable Trust.

On September 15, 2016, Warren executed a Revocation to his Revocable Trust in the presence of Truett Nettles, his attorney; Aliecia Bores, an associate in Mr. Nettles' office at the time and currently a lawyer with BB&T Bank; and Greg Bosch, Warren's personal trainer who worked with Warren twice a week for approximately two years. While Mr. Bosch was providing therapy to Warren on September 15, Warren requested that he stay and be a witness to the document that he was going to sign. Warren explained to Mr. Bosch that he wanted his assets to be distributed as set forth in his will and that he wanted Mr. Bosch to be around to testify that "Mr. Holliday knew exactly what he was doing." Warren told Mr. Bosch that he knew Pamela and Mark would not be happy. All of the witnesses present at the time of execution testified that Warren was capable of knowing what he owned, who his children were, and to whom he wanted to give his assets. The medical records of MUSC subsequent to September 15, 2016, further show that Warren was capable of making, and did make, his own decisions.

Nathan Hale and David Goltra, friends of Warren, testified that Warren was upset and disappointed with Pamela and Mark because they took the side of Patricia in the divorce and afterwards. Warren told them that he did not want Pamela and Mark to inherit the business that he had spent his life building.

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Warren died on September 28, 2016, while Mark and Pamela were with him. The Medical University of South Carolina records submitted by Respondents show that Pamela repeatedly told the medical staff that her father makes his own decisions.

Under the 2014 will and 2016 codicil, Warren had named Ross to be his Personal Representative. In accordance with those documents, Ross disbursed the specific devises of money to Mark and Pamela and then disbursed the remainder of Warren's assets to Lea and himself. All disbursements were made by January of 2018.

Almost two years after Warren's death, on September 19, 2018, Mark, Pamela, and Mark's children brought this action seeking to set aside and invalidate only the 2016 trust revocation signed by Warren.

GROUNDS FOR RESPONDENTS' MOTION

Respondents moved for summary judgment as to the validity of the revocation of the revocable trust on numerous legal bases: (1) S.C. Code § 62-7-604(a) requires that an action contesting the validity of a trust that was revocable at the settlor's death be commenced within one year after the settlor's death, and Petitioners' action was filed after that date; (2) the doctrine of laches bars this action; (3) Warren revoked his trust by showing a clear and definite purpose to do so; and (4) Warren had capacity to, and was not subjected to undue influence, when he executed the Trust Revocation on September 15, 2016. The Court concludes that Respondents are entitled to summary judgment as to the validity of the revocation of the trust on each of these independent grounds.

In addition, Respondents moved for summary judgment as to the constructive trust, breach of fiduciary duties and declaratory judgment causes of action, because, if the revocation of the

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

trust was valid, each of these causes of action fail. The Court concludes that Respondents are entitled to summary judgment as to each of these claims.

Last, Respondents moved for summary judgment as to the Intentional Interference with Inheritance cause of action for the following reasons: (1) no South Carolina appellate court has adopted this cause of action; (2) the only evidence is that Warren changed his will in 2014 and 2016, and there is no evidence that anyone influenced Warren to reduce Petitioners' inheritance in those instruments; and (3) the Probate Court did not have subject matter over this tort claim that Petitioners initiated in that court. The Court concludes that Respondents are entitled to summary judgment as to this claim for each of these independent grounds.

CONCLUSIONS OF LAW

I. WARREN'S REVOCATION OF HIS REVOCABLE TRUST IS VALID.

A. THE ACTION TO DECLARE WARREN'S REVOCATION INVALID IS BARRED BY S.C. CODE § 62-7-604(a).

Section 62-7-604(a) of the South Carolina Trust Code, which is modeled after the Uniform Trust Code § 604, provides in pertinent part: "a person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of (1) one year after the settlor's death." This time limit is viewed by some courts as a statute of repose. See, e.g., Bates v. Howell, No. 2016-CV-282518, 2018 WL 10670568, at *2 (Ga. Super. Feb. 26, 2018). This Court concludes that any claim of Petitioners regarding the validity of the 2008 Revocable Trust and the invalidity of the 2016 Revocation, whether legal or equitable[2], had to be filed no

[2] Petitioners argue that their equitable claims cannot be barred by this statute. The Court has determined otherwise. See Bates, 2018 WL 10670568 at *2 (barring undue influence claim under version of UTC § 604); Zeglinski v. Paziuk, No. 7:18-CV-114-FL, 2019 WL 2252145, at *11 (E.D.N.C. May 24, 2019), order vacated in other part on reconsideration, 2019 WL 3851629 (E.D.N.C. Aug. 15, 2019) (barring claim for equitable reformation under version of UTC § 604).

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

later than September 28, 2017, one year after Warren's death. Petitioners filed their Petition on September 19, 2018, well after the required time period had expired.

The Reporter's Comment to Section 604 explains that this "section provides finality to the question of when a contest of a revocable trust may be brought. The section is designed to allow an adequate time in which to bring a contest while at the same time permitting the expeditious distribution of the trust property following the settlor's death." See Reporter's Comment, S.C. Code Ann. § 62-7-604(a). The Comment goes on to explain that a trust may be "contested" on a "variety of grounds," including but not limited to allegations that no trust was in fact created; that undue influence, duress, or fraud was involved in the trust's creation; or that the trust had been revoked or modified. The Comment cites to § 62-7-602, which is titled "Revocation or amendment of revocable trust," showing that Section 604 applies to allegations contesting a trust revocation.

Petitioners argued that they were not contesting the validity of the trust but only the validity of the Revocation of the Trust. However, this argument fails to take into consideration the definitions provided in the South Carolina Trust Code, which applies to § 62-7-604. The Trust Code defines "terms of trust" as including "the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding."[3] § 62-7-103(17). In other words, if the 2016 Revocation is a "term of [Warren's] trust," then the statute applies. It is clear that the Revocation document was a "manifestation of the settlor's intent regarding" the trust's provisions, so therefore

[3] The 2016 Revocation is admissible in a judicial proceeding as a document with independent legal significance. See Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 70, 773 S.E.2d 607, 613 (Ct. App. 2015) ("Signed instruments such as wills, contracts, and promissory notes are writings that have independent legal significance, and are non[-]hearsay.").

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

any determination regarding its validity is subject to the limitations period set forth in § 62-7-604(a).[4]

Petitioners' narrow interpretation ignores the definitions set forth in the statute and the plain language of the statute. Furthermore, I find that Petitioners' interpretation is illogical, and Petitioners fail to explain why the South Carolina Trust Code supposedly would establish a time limit for contests to the validity of an initial trust document as well as amendments, modifications, or restatements to that document, but would inexplicably set no time limit for contests to an instrument revoking those very same documents. Petitioners could not point the Court to a single state that has adopted Uniform Trust Code, § 604, and has interpreted the statute in such a way. The very purpose of Section 604 is to provide for prompt probate administration and to avoid delays in closing estates by establishing a bright line rule for the timely filing of claims, and that purpose clearly applies to this action and would be frustrated if the Court were to accept Petitioners' argument that a loophole exists in the statute. The Court rejects Petitioners' claim that Section 604's statutory purpose is not implicated here simply because Respondent Ross Holliday takes the position the trust no longer exists on the basis the settlor validly revoked it and that he is not trustee. Petitioners' argument again ignores the fact that the terms "trustee" and "trust property" are defined by statute. See S.C. Code Ann. § 62-7-103(19) ("trustee includes original, additional, and successor trustees"); § 62-7-103(11) (property is defined broad enough to include

[4] Other states interpret their versions of this Uniform Trust Code section similarly. See Nat'l Bank v. Rickert (In re Isvik), 741 N.W.2d 638 (Neb. 2007) ("[A] document by which a settlor purports to revoke a revocable trust is a term of that trust."); Ast v. Mesker, 480 P.3d 795 (Kan. Ct. App. 2020); Derringer v. Emerson, 435 F. App'x 4 (D.C. Cir. 2011); In re Beatrice C. Skillen 1995 Tr. Agreement, No. 2018-0612, 2019 WL 4165179, at *1 (N.H. Aug. 15, 2019) (holding that petition to set aside amendments and restatements of the settlor's trust agreement was time barred under UTC § 604); Matter of Elizabeth A. Briggs Revocable Living Tr., 898 N.W.2d 465, 469 (S.D. 2017) (UTC § 604 "plainly impose[s] time limits for commencing judicial proceedings to contest whether the designated trusts and amendments were validly created."); Wintersteen Revocable Tr. Agreement, 907 N.W.2d 785, 790 (S.D. 2018) (holding that challenge to the validity of trust amendment "falls directly within the provisions of" UTC § 604); Herman v. Herman, 934 N.W.2d 874, 876 (N.D. 2019) (applying UTC § 604 to action challenging modification of a trust).

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

anything that *may* be subject of ownership). Thus, even if Ross is claiming that he is no longer trustee of the trust and that the trust no longer has property, Ross is still a "trustee" within the meaning of the statute and the property which Petitioners contend is still in the trust is indeed "trust property" under the statute.

In sum, a trust revocation is a term of the trust, and Petitioners' action challenging the term of the trust is barred by § 62-7-604. Respondents are therefore entitled to summary judgment as to all claims contesting the validity of the Revocation of Trust.

B. THE DOCTRINE OF LACHES BARS THIS ACTION.

To the extent any of Petitioners' equitable claims are outside the purview of § 604, the doctrine of laches bars them. The existence of laches is determined with reference to the analogous Statute of Limitations, which is found in § 62-7-604. Laches is defined as "neglect for an unreasonable and unexplained length of time under circumstances affording opportunity for diligence to do what in law should have been done." Petitioners waited for an unreasonable length of time to bring their claims. They waited until after Ross, as Personal Representative, disbursed their inheritance checks. They have not refunded that money to the estate. Moreover, Petitioners seek to hold Ross liable for the very actions he took as Personal Representative of the Estate by stripping him of the protection that § 604 should afford a trustee.

C. WARREN REVOKED THE TRUST BY DECLARING HIS INTENT AND PURPOSE TO REVOKE IT.

In 2008, when Warren executed the Revocable Trust, S.C. Code § 62-7-602 provided that a revocable trust could be revoked by "any mode sufficiently showing an intention to revoke…" See Reporter's Comment to § 62-7-602(a) and Peoples National Bank of Greenville v. Peden, 229 S.E.2d 163 (S.C. 1956) ("A revocable trust may be revoked in any manner which shows a clear

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

and definite purpose on the part of the settlor of the trust to revoke the same, unless the instrument itself prescribed the manner in which the trust may be revoked, in which event the trust becomes irrevocable, excepting as it be revoked in the manner prescribed in the trust instrument.")

In Warren's Trust, no specific manner was prescribed for revoking the trust which said: "The Settlor shall have and possess, and hereby reserves the right to revoke this Trust…" Thus, there was no requirement that this trust be revoked through a signed revocation. Instead, revocation occurred if Warren, as Settlor, "showed a clear and definite purpose … to revoke the trust." Warren showed a clear and definite purpose to revoke the trust on a number of occasions.

Nathan Hale and David Goltra, friends of Warren, testified that Warren was very upset during and after the divorce with Pamela and Mark, because they took the side of Patricia in the divorce. Warren told them that he did not want Pamela and Mark to inherit the business that he had spent his life building. The evidence is clear that Warren had a clear and definite purpose to revoke the trust that left everything in equal shares to all four of his children.

As another expression of Warren's purpose to revoke the trust, Warren used trust assets to fund the Marital Settlement Agreement and make monthly payments to Patricia. As the leading treatise on Trusts states: "A revocation can occur when a settlor conveys property to a third person that covers the trust property." Bogert's on Trusts, Sec. 1001 n. Warren did that in the Marital Settlement Agreement when he granted Patricia a special interest in Zeezrom Properties, LLC, an asset of the revocable trust.

As uncontradicted testimony shows, Warren expressed to Ross, Truett Nettles and Aliecia Bores his intention to terminate the trust. In addition, Greg Bosch testified that Warren expressed

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

his intention to treat his children differently and that what he signed on September 15, 2016, was intended to do that.

By executing the 2014 will and the 2016 codicil, Warren showed a clear and definite purpose to revoke the trust. In both of these documents, Warren treated his children differently than he had treated them in the trust. The will and codicil directly conflict with the provisions of the Revocable Trust by giving unequal shares to Mark and Pamela and favoring his sons, Ross and Lea. The Will provided that Warren's Personal Representative allocate and distribute "all of his real and personal assets" as set forth in the Will.

Warren revoked the trust by showing "a clear and definite purpose … to revoke the trust." Respondents are entitled to summary judgment that the trust has been revoked.

II. EVEN IF § 62-7-604 DOES NOT BAR PETITIONERS' CLAIMS, THE REVOCATION OF TRUST WAS VALID, BECAUSE WARREN HAD TESTAMENTARY CAPACITY AND WAS NOT SUBJECT TO UNDUE INFLUENCE WHEN HE EXECUTED IT ON SEPTEMBER 15, 2016.

A. TESTAMENTARY CAPACITY

"The capacity required to … revoke … a revocable trust … is the same as that required to make a will." S.C. Code § 62-7-601. Testamentary capacity in South Carolina requires proof of three elements, whether the testator knew: (1) his estate, his assets; (2) the objects of his affection, or his loved ones; and (3) the persons to whom he wished to give his property. In re Estate of Weeks, 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997). South Carolina cases have held that the capacity to know or understand rather than the actual knowledge of understanding is sufficient. Cathcart v. Stewart, 144 S.C. 252, 142 S.E. 498, 502 (1928) ("The test is not whether the grantor's mental powers were impaired, but whether, at the very time of the execution of the deed, he had sufficient capacity to understand in a reasonable manner the nature and effect of the

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

act which he was performing. Mere infirmity of mind or body, not amounting to an incapacity to understand the nature and consequence of the act done, will not render a person incapable of executing a valid deed.")

The burden of proof to invalidate a testamentary document always remains with the contestants of the will. Hairston v. McMillan, 387 S.C. 439, 446-47, 692 S.E.2d 549, 553. (Ct. App. 2010). Respondents provided the testimony of numerous witnesses who support the fact that Warren knew what he owned, who his loved ones were, and to whom he wanted to leave his property at the time of execution of his various testamentary documents. Specifically, there is unrefuted testimony from those persons who witnessed the execution of the estate planning documents at issue that Warren knew what he owned, who his children were, and to whom he wanted to give his assets. In comparison, Petitioners have presented no evidence that Warren did not know what he had, did not recognize his loved ones, or that he did not know to whom he wanted to leave his property at any time prior to his passing.

Petitioners presented the Affidavit of a forensic pathologist, who never saw Warren and was not present at the time of the testamentary act. Her opinion mentions nothing about the elements of testamentary capacity. In Langley v. Lynch, the Court of Appeals found that doctors' affidavits about general incapacity were "insufficient to withstand summary judgment," because "it is contrary to our well-settled law that capacity is presumed when a will is executed." No. 2015-001941, 2017 WL 4621154, at *6 (S.C. Ct. App. May 24, 2017).

Petitioners have failed to present any competent evidence that Warren lacked capacity at the time he executed his 2014 will, his 2016 codicil and/or the Revocation of Trust. Accordingly, there is not a question of material fact as to whether Warren possessed testamentary capacity when

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

he executed his 2014 will, his 2016 codicil and the Revocation of Trust, and the Court concludes that he did have testamentary capacity at those times.

B. UNDUE INFLUENCE

To prove undue influence, a party must present evidence that the alleged undue influence was brought directly to bear upon the testamentary act. In this case, the testamentary act at issue is the execution of the Revocation of Trust. Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "General influence is not enough." Id. Also, an unequal distribution of assets in a will alone is not sufficient to set aside the will for undue influence. Smith *v.* Whetstone, 209 S.C. 78, 90, 39 S.E.2d 127, 132 (1946).

In Swiger v. Smith, 426 S.C. 408, 411, 827 S.E.2d 200, 201 (Ct. App. 2019), the Court of Appeals affirmed the grant of summary judgment in a case in which the appellant argued that "she presented sufficient evidence to the probate court of both undue influence and the existence of a confidential or fiduciary relationship, thus establishing the presumption of invalidity." There was a confidential or fiduciary relationship between Warren and Ross, who was the trustee of Warren's Revocable Trust. However, the Court of Appeals in Swiger determined that the applicable standard of proof in an undue influence case with a fiduciary relationship: "In cases requiring a heightened burden of proof … the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id. at 415, 827 S.E.2d at 203. "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Id. The Court finds that the record does not support a finding of undue influence under even the scintilla of evidence standard.

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

III. PETITIONERS HAVE NOT PRESENTED EVIDENCE SUFFICIENT TO ESTABLISH CLAIMS FOR CONSTRUCTIVE TRUST, BREACH OF FIDUCIARY DUTIES, DEMAND FOR ACCOUNTING AND RECEIVERSHIP, OR DECLARATORY JUDGMENT.

A. CONSTRUCTIVE TRUST

Petitioners' claim that a constructive trust was created over Warren's assets fails, because they have failed to show that Respondents did anything inequitable to obtain legal title to the property. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). As set forth above, Warren wanted Respondents to have the assets that he left to them. Bald accusations that Warren was incapacitated, which go against all the testimony and medical records, do not prove that Respondents did anything inequitable. The mere fact that Respondents ended up with more than Petitioners does not constitute "clear, definite, and unequivocal" evidence sufficient to support imposing a constructive trust. Id. at 530. Moreover, Petitioners are time-barred from contesting the validity of the 2016 Revocation, so they do not have standing as beneficiaries to assert legal title to any assets that may have been held by the 2008 Revocable Trust. Therefore, Respondents are entitled to summary judgment as to Petitioners' claim for constructive trust.

B. BREACH OF FIDUCIARY DUTIES, ACCOUNTING, RECEIVERSHIP

The breach of fiduciary duties accounting and receiver causes of action are barred if the Revocable Trust was validly revoked. Petitioners' accusations of breach of fiduciary duties against Ross as the trustee of Warren's Revocable Trust are also barred S.C. Code Ann § 62-7-603, which provides that the trustee of a revocable trust only owes duties to the Settlor during the life of the Settlor. Thus, even if Petitioners' allegation that the Revocable Trust was valid during the final years of Warren's life is true, they still have no claim against Ross as trustee for his conduct during Warren's life. To the extent that Petitioners claim breach of fiduciary duty for actions after

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Warren's death, those claims fail because Ross did not owe any duty as trustee to Petitioners after the valid 2016 Revocation. Similarly, Petitioners have no standing to demand an accounting or to appoint a receiver for the purported 2008 Revocable Trust, because it was validly revoked in or before 2016. Respondents are entitled to summary judgment as to these causes of action.

C. DECLARATORY JUDGMENT

The declaratory judgment action only seeks to declare the Revocable Trust valid, so Respondents are entitled to summary judgment as to that claim in accordance with the Court's ruling. Further, because the 2016 Revocation is valid, Petitioners are not beneficiaries of the 2008 Revocable Trust. Therefore, they do not have an underlying right to assert a claim under the South Carolina Declaratory Judgment Act.

IV. PETITIONERS' CLAIM FOR INTENTIONAL INTERFERENCE OF INHERITANCE FAILS AS A MATTER OF LAW.

Petitioners have also brought a claim for Intentional Interference with Inheritance against Respondents. South Carolina has not adopted this cause of action, so summary judgment is required on that basis.

As a second ground for summary judgment to Respondents, the evidence is clear that Warren changed the distributions to be made at his death in his will in 2014 and his codicil in 2016. Petitioners have presented no evidence that anyone influenced Warren to reduce Petitioners' inheritance in those instruments. As set forth hereinabove, the only evidence is that Warren did what Warren wanted to do, so there is no evidence of interference.

As a third ground, this action was initiated in Probate Court. The Probate Court did not have subject matter jurisdiction over this tort claim. The fact that the case was removed to the Circuit Court by Respondents does not remedy that defect, because the Circuit Court's jurisdiction

is derivative of the Probate Court's jurisdiction. See, e.g., Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992); see also, Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011).

Respondents are entitled to summary judgment as to the Intentional Interference with Inheritance cause of action.

CONCLUSION

For the reasons set forth in this Order, I conclude that Respondents are entitled to summary judgment as to all of Petitioners' claims and causes of action.

IT IS, THEREFORE, ORDERED that Respondents' Motion for Summary Judgment be granted as to all causes of action.

AND IT IS SO ORDERED.

_____
Honorable Bentley Price,
Judge for the Ninth Judicial Circuit

This _____ day of _____, 2022.
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2022 Mar 03 10:43 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Charleston Common Pleas

Case Caption: Pamela Holliday Wallin , plaintiff, et al VS Ross Samuel Holliday , defendant, et al

Case Number: 2019CP1002430

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Apr 22 3:19 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430 **ORDER DENYING PETITIONERS' MOTION PURSUANT TO RULE 59, SCRCP, TO ALTER OR AMEND ORDER GRANTING SUMMARY JUDGMENT**

The Petitioners filed a motion asking this Court to reconsider its Order entered on March 3, 2022 (the "Order"), granting summary judgment to Respondents. Specifically, Petitioners asked the Court to reconsider: (1) whether the Court should have found that Petitioners' claims were time barred by S.C. Code Ann. § 62-7-604 and/or the doctrine of laches; (2) whether the Court

ELECTRONICALLY FILED - 2022 Apr 22 3:19 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

misapplied the applicable standard of review; (3) whether the Court erred in finding that Warren Holliday had revoked his revocable trust prior to September 15, 2016; (4) whether the Court failed to find material questions of fact regarding Warren Holliday's testamentary capacity when he executed a Revocation of Trust on September 15, 2016; (4) whether the Court failed to find material questions of fact regarding Petitioners' claims of undue influence regarding Warren Holliday's execution of the Revocation of Trust on September 15, 2016; and (5) whether the Court erroneously found that Petitioners remaining causes of action all depended on Petitioners showing of undue influence and, therefore, granted summary judgment as to those claims.

This matter came for a hearing on April 17, 2022. After reviewing the parties' submittals and hearing argument from both Petitioners and Respondents, the Court has determined that Petitioners' motion should be denied.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Circ. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief.).[1] A motion for reconsiderations is not an opportunity to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n. 5 (2008). "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

[1] SCRCP, Rule 59, is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 779 (2004).

After consideration of the issues raised in Petitioners' motion, the Court hereby DENIES Petitioners' Motion Pursuant to Rule 59, SCRCP, to Alter or Amend Order Granting Summary Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW.

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Charleston Common Pleas

Case Caption: Pamela Holliday Wallin , plaintiff, et al VS Ross Samuel Holliday , defendant, et al

Case Number: 2019CP1002430

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE PROBATE COURT CASE NO. ~~2018~~-ES-10-1673 2016
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, ~~WARREN LEA HOLLIDAY,~~ individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	**SUMMONS** (Undue Influence, Intentional Interference with Inheritance, Breach of Fiduciary Duties, Declaratory Relief, Receiver, and Accounting) **(Jury Trial Demanded)**

FILED
18 SEP 19 AM 10:19
PROBATE COURT
CHARLESTON COUNTY

TO RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the below subscribed attorney at their office at 751 Johnnie Dodds Blvd, Mount Pleasant, SC 29464 , within thirty (30) days from the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

By:

Stephen M. Slotchiver, Esquire
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&

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-And-

By:

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S.C. Bar No. 76495
Attorneys for Petitioners

9/19, 2018.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO. 2018-ES-10-_____

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY

Petitioners,

vs.

ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE

Respondents.

COMPLAINT

(Undue Influence, Intentional Interference with Inheritance, Breach of Fiduciary Duties, Declaratory Relief, Receiver, and Accounting)

(Jury Trial Demanded)

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PROBATE COURT
CHARLESTON COUNTY

COMES NOW THE Petitioners, Pamela Holliday Wallin, Mark Bennett Holliday, and John C. Holliday, by and through his undersigned counsel, complaining of the Respondents herein, and respectfully allege and show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Petitioner Pamela Holliday Wallin is a citizen of the State of California and the daughter of Warren P. Holliday (hereinafter, the "Decedent" or "Mr. Holliday").

2. Petitioner Mark Bennett Holliday is a citizen of the State of Utah and is a son of Mr. Holliday.

3. Petitioner Kingsley K. Holliday is a citizen of the State of Utah and is the son of Petitioner Mark Bennett Holliday.

4. Petitioner Sara Jane Holliday is a citizen of the State of Washington and is the daughter of Petitioner Mark Bennett Holliday.

5. Petitioner John C. Holliday is a citizen of the State of Utah and is the son of Petitioner Mark Bennet Holliday.

6. Respondent Ross Samuel Holiday is a citizen of the State of Utah, is a son of the Mr. Holliday, and is the Personal Representative of the Estate of Warren P. Holiday, the Decedent.

7. Respondent Warren Lea Holliday is a citizen of the State of Utah and is a son of the Decedent.

8. The Revocable Trust Agreement Between Warren P. Holliday as Settlor and as Trustee is a trust established by Warren P. Holliday on October 29, 2008

(hereinafter, the "Trust") for the benefit of all issue of the Decedent, including the Petitioners herein.

9. Respondent 2233 Highway 17 North, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

10. Respondent 2237 Highway 17 North, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

11. Respondent 2805 Highway 17 North, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

12. Respondent 1606 Meeting Street, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

13. Respondent Bacons Bridge Road, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

14. Respondent 4687 Franchise Street, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

15. Respondent Zeezrom Properties, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

16. Respondent John Doe Leased Vehicle is an asset of Zeezrom Properties, LLC, and upon information and belief, is an asset of the Trust.

17. Respondent 1905 North Main Street, Summerville, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

18. Respondent 815 Folly Road, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

19. Respondent 832 Coleman BLVD., LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

20. Respondent 2189 Discher Avenue, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, , and upon information and belief, is or was an asset of the Trust.

21. Respondent New Space Science, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

22. Respondent Pirates Plunder, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

23. Respondent Sawgrass Technologies, Inc. is a South Carolina corporation organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

24. Respondent Holliday Amusement Company, Inc. is a South Carolina corporation organized and existing under the laws of the State of South Carolina, and upon information and belief, is an asset of the Trust.

25. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum.

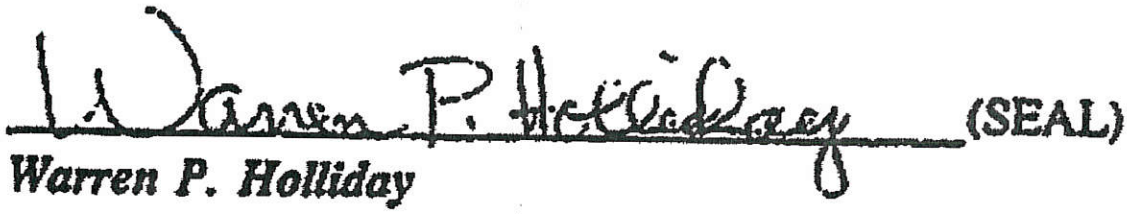
FACTUAL ALLEGATIONS

26. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

27. At all material times described herein, Decedent Warren P. Holliday, Ross Samuel Holliday, and attorney F. Truett Nettles, II formed and maintained a confidential relationship.

28. Sometime in 2008, Warren P. Holliday was diagnosed with untreated Factor Five blood clotting after suffering from a clot which moved up his right leg resulting in massive leg swelling during a private flight. Mr. Holliday was hospitalized in the ICU on several occasions for un-monitored use of the drug Coumadin resulting in near death on at least two occasions. At some point in 2008, Mr. Holliday had internal bleeding from a stomach ulcer causing complications resulting in complete renal failure and the need for nightly home dialysis.

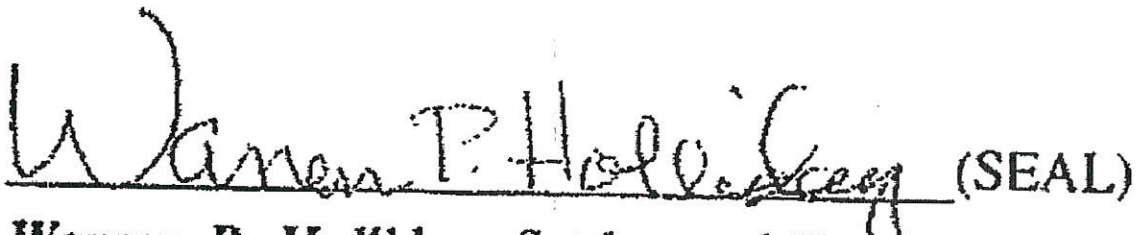
29. On October 29, 2008, Warren P. Holliday gave his Last Will and Testament. A copy of Mr. Holliday's signature appears below:



(SEAL)

Warren P. Holliday

30. That same day, Mr. Holliday established a revocable trust agreement between himself as Settlor and as Trustee According to the terms of The Trust, all of Mr. Holliday's children were equal beneficiaries under the Trust. A copy of Mr. Holliday's signature appears below:



(SEAL)

Warren P. Holliday, Settlor and Tristee

31. On the same day as the execution of Warren P. Holliday's Last Will and Testament and the Trust, Mr. Holliday assigned all of his membership interests in 2233 Highway 17 North, LLC, New Space Science, LLC, Pirates Plunder, LLC, Zeezrom Properties, LLC, Castle King, LLC, Bacons Bridge Road, LLC, Sawgrass Technologies, Inc., and Holliday Amusement Company, Inc. to the Trust.

32. On the same day as the Will, Trust, and Assignments were executed, Mr. Holliday executed a Durable Power of Attorney, naming Respondent Ross Samuel Holliday to manage all of Warren P. Holliday's business and personal affairs. *At this time, in late 2008, Mr. Holliday was incapable of managing his business affairs.* A copy of Mr. Holliday's signature appears below:

Warren P. Holliday (SEAL)

Warren P. Holliday

33. Sometime in 2009 a neurologist at MUSC diagnosed Mr. Holliday with decreased white brain matter. This was later confirmed by radiologist Dr. David Goltra. Sometime in the late summer or early fall, Mr. Holliday received a kidney transplant which required him to take up to 30 anti-rejection drugs per day. It was also during this time that Mr. Holliday required multiple hospitalizations due to falling, bumping his head on doorways and not following doctor's orders as to transplant and blood clot medications and instructions.

34. Sometime in 2010, Mr. Holliday was admitted to the University of Utah Medical School Teaching Hospital. The doctors informed him that the transplanted kidney was nearly dead with almost no function. During this hospitalization, Mr. Holliday was diagnosed with Clostridium Difficile, and was informed his chances did not look good and that burial and the completion of estate planning should be taken care of soon. Eventually, Mr. Holliday was released from the hospital and spent time at various care facilities in Utah, but was very weak from the CDIFF.

35. In February 2011, Respondent Mark Bennett Holliday physically put Mr. Holliday on a private medical flight to South Carolina. At this time, Mr. Holliday could lift none of his extremities including the ability to lift his head. At the time, Mr. Holliday thought he was flying in his private plane to attend a NASCAR race. Upon arrival in South Carolina, Mr. Holliday insisted upon trying to walk up the stairs to get to his second-story bedroom and on several occasions, fell and hit his head. During this time,

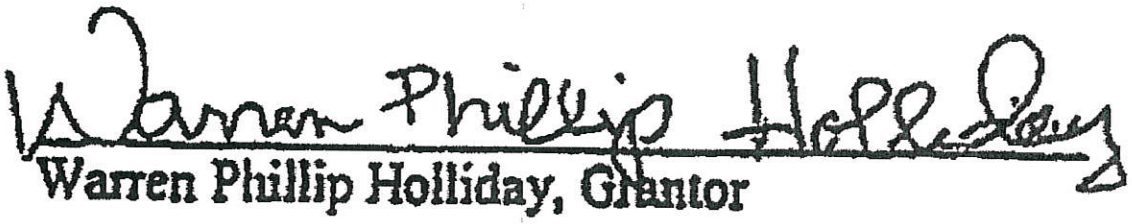
Mr. Holliday was hospitalized several times due to kidney, blood clots, and fall injuries. In approximately April 2011, after spending some time at Sandpiper Rehab, Mr. Holliday was moved to the Sweet Grass Care Facility.

36. From 2012 to 2013, Mr. Holliday continued to suffer falls and issues with attending dialysis three times per week, however was becoming somewhat more mobile. While leaving a morning dialysis sessions, he drove through a parking lot, struck several cars, and drove off, not realizing what had taken place. In April of 2013, Mr. Holliday moved into an apartment in Mount Pleasant and had several incidents where he fell on the kitchen floor with head strikes and severe bleeding lacerations.

37. In May of 2013, Respondent Ross Samuel Holliday acknowledged that Mr. Holliday was sick and in "poor, poor health[1]."

38. On November 14, 2013, attorney F. Truett Nettles represented that Mr. Holliday was, "elderly and in poor health."

39. *On December 9, 2013, Warren P. Holliday divorced Patricia Holliday, after 47 years of marriage.* On July 30, 2013, Mr. Holliday established The Patricia Anne Holliday Marital Trust, providing for his ex-wife. Mr. Holliday's signature to the agreement has been copied here below:



Warren Phillip Holliday, Grantor

[1] Reply to Plaintiff's Objection to Motion for Summary Judgment, 2012-CP-10-8241, P.2

40. Sometime in 2014, Mr. Holiday fell in a Walmart resulting in a severe head strike and was taken by ambulance to the hospital and sustained a detached retina.

41. On March 21, 2014, a dialysis day, Mr. Holliday executed another Last Will and Testament, prepared by attorney F. Truett Nettles, II, altering the previously equal percentages to each of his children to the following: Petitioner Mark Bennett Holliday, 15% Petitioner Pamela Holliday Wallin 5%, Respondent Warren Lea Holliday, 40% and Respondent Ross Samuel Holliday, 40%. Mr. Nettles had never previously been involved with the estate planning of Mr. Holliday's. A copy of Mr. Holliday's signature on the instrument appears below:



WARREN P. HOLLIDAY

42. In 2015, Patricia Holliday brought a Rule to Show Cause motion against Warren Holliday out of her concern for dissipating of assets of Respondent Zeezrom, LLC that were made pursuant to her property settlement and support agreement. *When questioned as to whether Mr. Holliday could provide testimony at the hearing*, Mr. Holliday's *attorney F. Truett Nettles, II stated that Mr. Holliday suffered from several physical disabilities and was incapable of running their business.* Mr. F. Truett Nettles, II conceded that Mr. Holliday had dialysis treatments three days a week and, "[o]n the day of dialysis it's not good. I mean it's very difficult for him to go places. Secondly, *Mr. Holliday doesn't personally run the business or write the checks or make business*

decisions. And given his age and condition he probably doesn't know the answers to any questions so we're in a hard spot here[2]."

43. During this time frame, Mr. Holliday began exhibiting erratic behavior such as screaming at others in public places, and pulling a gun at an employee at a McDonald's drive through window. This behavior was totally out of keeping and not Mr. Holliday's normal behavior. These outbursts and threats increased and continued until his ultimate demise.

44. Petitioner Pamela Holliday began to question the finances and operations of Mr. Holliday's real estate businesses to provide for her mother Patricia Holliday. Shortly thereafter, on January 7, 2016, Mr. F. Truett Nettles, II drafted and Mr. Holliday executed a codicil to his Last Will and Testament bequeathing lump sum payments to Petitioners Mark Bennett Holliday and Pamela Holliday Wallin in the amounts of $300,000.00 and $100,000.00, respectively. A copy of Mr. Holliday's signature from the codicil appears below:



WARREN P. HOLLIDAY

45. On April 25, 2016, Mr. Holliday negligently operated his vehicle in Mount Pleasant and caused injuries to a third party, according to the Complaint.

[2] July 8, 2015 Rule to Show Cause Hearing before Hon. Alice Richter.

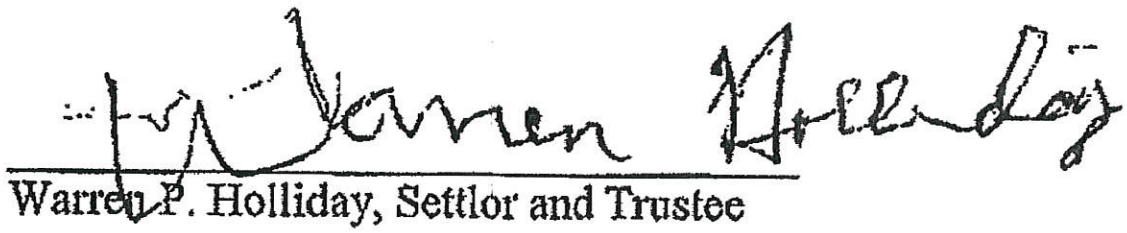
46. From approximately May, 2016 through August, 2016 Mr. Holliday suffered continuous severe exhaustion, and was near complete immobilization due to a failing heart valve and dialysis. At or around August 12th or 13th of 2016, Mr. Holliday underwent a heart valve replacement surgery. Approximately three days later, Mr. Holliday was transferred to Savannah Grace Rehabilitation Center and during this stay minimally participated in physical therapy and rehabilitation.

47. On August 29, 2016 Mr. Holliday was taken to the MUSC ICU during a dialysis session and was diagnosed with an infected prostate abscess.

48. *On September 6, 2016 Respondent Ross Samuel Holliday told family members in text messages that Mr. Holliday was bedridden the chances of recovery were nonexistent, and to make arrangements to if they ever wanted to see their father again.*

49. On Tuesday, September 13, 2016 Mr. Holliday was released from MUSC and went home to 24 hour in-home nursing care.

50. Thereafter, and days before Mr. Holliday passed, attorney F. Truett Nettles, II, prepared and witnessed Mr. Holliday sign a purported "Revocation of Warren P. Holliday Revocable Trust (hereinafter, the "Revocation") to sign on his death bed. A copy of Mr. Holliday's signature is copied herein below:



Warren P. Holliday, Settlor and Trustee

51. On September 28, 2016 Warren P. Holliday died.

52. On June 21, 2017, the mother of the Holliday children filed suit (2017-GC-10-124) against Respondents Ross Samuel Holliday and Warren Lea Holliday and alleged, "Ross Holliday and Warren Lea Holliday are estranged from their mother Patricia Holliday. They isolated their father during his final illness and incapacity, took control of his assets and prevented Patricia from attending his funeral."

53. Respondent Ross Samuel Holliday breached the fiduciary duty created by his confidential relationship with his father by exerting undue influence, coercion, and/or deception on the Decedent, resulting in a purported revocation of the 2008 Trust, leaving Petitioners herein Mark Bennet Holliday and Pamela Holliday Wallin with only probate bequests and depriving them and their issue of their interests in the non-probate assets held under the Trust.

54. At the time of the purported Revocation, Mr. Holliday did not possess the requisite mental capacity to understand, the nature of the Revocation and its effects.

55. Mr. Holliday lacked sufficient mental capacity to reasonably understand the transaction, including the consequences and effects the transaction had upon the individual's rights and interests, and therefore was incapacitated.

56. Since Mr. Holliday did not have the capacity to revoke the Trust, the Revocation was ineffective, and the Trust is still viable.

FOR A FIRST CAUSE OF ACTION: UNDUE INFLUENCE

57. The Petitioners reallege and readopt every allegation set forth in the above Paragraphs 1 through 53 and incorporate the same as if fully restated herein and below.

58. As early as 2008, the Decedent was incapable of managing his own personal and business affairs.

59. On July 8, 2015, Mr. Holliday's attorney and agent F. Truett Nettles, II, an officer of the Court, acknowledged in open court and on the record that he could not make business decisions nor testify under oath.

60. On September 6, 2016 Respondent Ross Samuel Holliday acknowledged Mr. Holliday was on his deathbed and that his death was imminent. Upon information and belief, a week later, Respondent Ross Samuel Holliday through attorney F. Truett Nettles, II prepared and had Mr. Holliday sign the Revocation. As shown above in Paragraph 47, Mr. Holliday's frailty and condition are self-evident in his strained penmanship and Mr. Holiday omitting his middle initial from his signature.

61. Upon information and belief, at the time of the alleged execution of the Revocation of the Trust, the Decedent's physical and mental capacities were severely impaired and weakened as a result of his declining health and the injurious effects of his eight years of compromised health, such decline beginning in 2008.

62. Upon information and belief, the Respondents routinely and repeatedly exhibited a pattern of attempting to convince their father that some of his other children were taking advantage of him, at all materials times.

63. The Decedent was partially and substantially dependent on Respondents Ross Samuel Holliday and Warren Lea Holliday for care and assistance; and as such, a confidential relationship was created between the Decedent and these Respondents.

64. Upon information and belief, Respondent Ross Samuel Holliday arranged for the drafting, procurement, execution and witnessing of the alleged Revocation of the

Trust, with the aide of attorney Truett Nettles, II days before Mr. Holliday's demise and while on his deathbed. At the time of the purported Revocation, it was apparent to Respondent Ross Samuel Holliday that Mr. Holliday's death was imminent, per his own text messages days before the procurement of the purported Revocation.

65. If the Revocation of the Trust was the entire document that the Decedent actually signed, then the Petitioners believe that the Respondent Ross Samuel Holliday used his confidential relationship with the Decedent to exercise undue influence, coercion, or deception in convincing the Decedent to make changes to his prior non-probate bequests, for his own pecuniary benefit, to the detriment of the Trust, its beneficiaries, and the Petitioners herein.

66. Mr. Holliday was in a physically and mentally vulnerable and exploitable condition at the time of the purported Revocation.

67. Respondents Ross Samuel Holliday and Warren Lea Holliday had a large pecuniary interest in seeking to revoke the Trust, to wit, in excess of ten-million dollars ($10,000,000.00).

68. As stated above and herein, Mr. Holliday was incapacitated at the time of the purported revocation, and was in mental and physical distress, as plainly evidenced by signature to the instrument, compared to his previous signatures as set forth above and herein.

FOR A SECOND CAUSE OF ACTION
(Intentional Interference with Inheritance)

69. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and below.

70. Petitioners Pamela Holliday Wallin and Mark Bennett Holliday, and their issue, were beneficiaries of the Trust and had an expected 25% interest each in the corpus of the Trust and as such had an expected inheritance in the non-probate asset.

71. Respondents Ross Samuel Holliday and Warren Lea Holliday through the assistance and aide of attorney F.Truett Nettles, II intentionally interfered with the Petitioners expected inheritance through undue influence, duress and coercion--which was improper and done to advantage themselves to the Petitioners detriment, thereby causing Petitioners damages in the form of lost inheritance, mental anguish, and attorney's fees and costs.

72. The actions of the Respondents Ross Samuel Holliday and Warren Lea Holliday through the assistance and aide of attorney F. Truett Nettles, II are also grounds for the assessment of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duties, SC Code § 62-7-802)

73. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and below.

74. The trustee of Mr. Holliday's Trust, Ross Samuel Holliday, has and had fiduciary duties of care and loyalty to administer the Trust solely in the best interests of its beneficiaries, including Petitioners herein.

75. The trustee has breached his fiduciary duties to its beneficiaries by

squandering the assets of the Trust, engaging in repeated instances of self-dealing, depleted the assets of the Trust and its intrinsic value, and sought to revoke the Trust itself, all contrary and derogatory to the intentions of the Settlor' intent expressed in the Trust document itself.

FOR A FOURTH CAUSE OF ACTION
(Constructive Trust)

76. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and below.

77. As alleged above, Respondents Ross Samuel Holliday and Warren Lea Holliday, through the assistance and aide of attorney F.Truett Nettles, II exerted undue influence on the Decedent to revoke the Trust, for their own pecuniary benefit and to the detriment of the Petitioners herein.

78. As alleged above, Mr. Holliday was incapacitated at the time and place of the attempted Revocation, and was in fact on his deathbed.

79. Furthermore, as alleged above, Respondent Ross Samuel Holliday has breached his fiduciary duties as Trustee. As set forth above and herein, Respondents Ross Samuel Holliday and Warren Lea Holliday have taken control of assets for their own personal use which equitably do not belong to them, and which they cannot in good conscience retain or withhold from the Trust.

80. By operation of law, a constructive trust arose whereby all assets of the Trust now inequitably held or controlled or disposed of by Respondents Ross Samuel Holliday and/or Warren Lea Holliday be returned to the Trust

81. Respondents Ross Samuel Holliday and Warren Lea Holliday must repay and/or transfer all assets of the Trust back to the Trust, including, but not limited to: 2233 Highway 17 North, LLC, 2237 Highway 17 North, LLC, 2805 Highway 17 North, LLC, 1606 Meeting Street, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, Bacons Bridge Road, LLC, 4687 Franchise Street, LLC, Zeezrom Properties, LLC, John Doe Leased Vehicle, 1905 North Main Street, Summerville, LLC, 815 Folly Road, LLC, 832 Coleman BLVD., LLC, 2189 Discher Avenue, LLC, Space Science, LLC, Pirates Plunder, LLC, Sawgrass Technologies, Inc., and Holliday Amusement Company, Inc.

82. Respondents Ross Samuel Holliday and Warren Lea Holliday must be required to repay unto the Trust for the beneficiaries Trust assets which Ross Samuel Holliday and Warren Lea Holliday have taken, removed, or depleted, with appropriate interest.

83. The circumstances described herein and above under which the assets of the Trust have been mismanaged, removed, absconded, depleted, sold, hypothecated and/or pledged makes the trustee's further retention of those assets, or their sales proceeds, inequitable and requires immediate restitution and reimbursement to the Trust.

FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment)

84. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and set forth below.

85. There exists a justiciable controversy as to the rights of the parties with respect to the issues raised in this Complaint, including but not limited to, the ownership

of the Trust, and its assets, which have been named as Defendants and named parties to this action, *to-wit*: 2233 Highway 17 North, LLC, 2237 Highway 17 North, LLC, 2805 Highway 17 North, LLC, 1606 Meeting Street, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, Bacons Bridge Road, LLC, 4687 Franchise Street, LLC, Zeezrom Properties, LLC, John Doe Leased Vehicle, 1905 North Main Street, Summerville, LLC, 815 Folly Road, LLC, 832 Coleman BLVD., LLC, 2189 Discher Avenue, LLC, Space Science, LLC, Pirates Plunder, LLC, Sawgrass Technologies, Inc., and Holliday Amusement Company, Inc.

86. Assuming the Revocation of the Trust was invalid and ineffective due to the incapacity of the Decedent, as alleged and set forth herein, the ownership of these entities are not in the Estate of the Decedent, nor in the name of the beneficiaries of the Estate, but in the name of the Trust.

87. Petitioners respectfully request a declaratory judgment under SC Code §15-53-10 *et.seq.*, defining and declaring the rights of all the parties named herein regarding all equitable issues raised in this Complaint.

FOR A SIXTH CAUSE OF ACTION
(Accounting)

88. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and set forth below.

89. As alleged above, Petitioners assert that the trustee of the Trust has mismanaged, removed, absconded, depleted, sold, hypothecated and/or pledged assets of the Trust and Petitioners demand a full accounting of all assets and Respondents named herein, including but not limited to: 71. 2233 Highway 17 North,

LLC, 2237 Highway 17 North, LLC, 2805 Highway 17 North, LLC, 1606 Meeting Street, LLC is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, Bacons Bridge Road, LLC, 4687 Franchise Street, LLC, Zeezrom Properties, LLC, John Doe Leased Vehicle, 1905 North Main Street, Summerville, LLC, 815 Folly Road, LLC, 832 Coleman BLVD., LLC, 2189 Discher Avenue, LLC, Space Science, LLC, Pirates Plunder, LLC, Sawgrass Technologies, Inc., and Holliday Amusement Company, Inc.

89. Petitioners requests the Court inquire into the matters alleged herein and issue Petitioners a full accounting at Respondents' expense.

FOR A SEVENTH CAUSE OF ACTION
(Receiver)

90. Petitioners hereby incorporate and readopt the allegations of the foregoing paragraphs as if fully restated herein and set forth below.

91. 9As alleged above and herein, the trustee has breached his fiduciary duties to its beneficiaries by squandering the assets of the Trust, engaging in repeated instances of self-dealing, depleted the assets of the Trust and its intrinsic value, and sought to revoke the Trust itself, all contrary and derogatory to the intentions of the Settlor' intent expressed in the Trust document itself.

92. As a result of these actions, the Petitioners believe the assets of the Trust, --its rents and profits-- are in danger of being lost or materially injured or impaired.

93. Petitioners seek the appointment of a third party receiver to hold, preserve and administer the assets of the Trust pending a determination of Petitioners claims herein.

WHEREFORE, Petitioners pray for relief as set forth below together with such further relief as this court deems just against all Respondents named hereto:

a. Determining the Revocation to be invalid and ineffective based upon the undue influence of Respondents and incapacity of the Decedent at the time and place of the attempted Revocation;

b. Setting aside the Revocation and determining a Constructive Trust arose by operation of law over all assets of the Trust and declaring such Trust active and in effect;

c. Administering the remaining non-probate assets of the Estate, after giving due consideration and effect of the nullification of the attempted Revocation;

d. Actual damages

e. Compensatory, Consequential and Special damages;

f. Statutory damages;

g. Restitution;

h. Rescission;

i. Injunctive relief;

j. Dissolution;

k. Partition and reorganization;

l. Receivership of Trust assets;

m. Accounting;

n. Attorneys' fees and costs;

o. Punitive Damages;

p. Granting Petitioners any and all further legal or equitable relief that may be afforded.

DEMAND FOR JURY TRIAL

Petitioners demand a jury trial on all legal counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. *See* Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994).

By: _____

Stephen M. Slotchiver, Esquire
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751 Johnnie Dodds Blvd, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 ext 207
(843) 577-0261 (fax)
steve@slotchiverlaw.com
S.C. Bar No. 65477

&

By: _____

Daniel S. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, LLP
751 Johnnie Dodds Blvd, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531 ext 207
(843) 577-0261 (fax)
dan@slotchiverlaw.com
S.C. Bar No. 15129

-And-

By: _____

Brent S. Halversen, Esquire
Brent Souther Halversen, LLC
751 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, SC 29464
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
S.C. Bar No. 76495

Attorneys for Petitioners

9/19, 2018.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	**MOTION FOR REMOVAL**
	)	
IN THE MATTER OF:	)	
WARREN P. HOLLIDAY	)	CASE NUMBER: 2016-ES-10-1673
(Decedent)	)	

A formal proceeding concerning the above matter was commenced on NOVEMBER 19, 2018. The undersigned hereby moves for removal of this action to the Circuit Court and asserts that this action is removable because it involves the following:

- ☐ Probate of Will
- ☐ Appointment of Personal Representative
- ☐ Construction of Will
- ☒ Title to property in which the Estate of a decedent asserts an interest
- ☒ Internal or external matter involving a trust (excluding "special needs trusts")
- ☒ Action in which there is a right to trial by jury and in which the amount in controversy is at least $5,000
- ☐ Action concerning gifts under the SC Uniform Gifts to Minors Act

This Motion is made no later than ten (10) days from NOVEMBER 19, 2018, the date on which all responsive pleadings were filed. By copy of this Motion, the undersigned is giving notice to interested persons as required by law.

Executed this 19 day of NOVEMBER, 2018.

Signature: _____

Print Name: LIAM D. DUFFY

Address: 151 MEETING STREET, SUITE 400
CHARLESTON, SC 29401

Telephone (Work): 843-577-6726

(Home): _____

(Cell): _____

Email: LDUFFY@RRHLAWFIRM.COM

Relationship to Decedent/Estate: ATTORNEY FOR RESPONDENTS

ORDER FOR REMOVAL

☐ It is hereby ORDERED on the Court's own Motion that this action be removed to the Circuit Court.
- ☐ Jurisdiction is retained as to all other matters involving this case.
- ☐ The related matters of _____ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.

☐ The Motion for Removal is hereby GRANTED. This action shall be removed to the Circuit Court.
- ☐ Jurisdiction is retained as to all other matters involving this case.
- ☐ The related matters of _____ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.

☐ It is hereby ORDERED that the Motion for Removal is DENIED because_____.

Executed this _____ day of _____, 20_____.

_____

FILED
19 NOV 19 PM 3:32
CHARLESTON COUNTY

FORM #109ES (1/2016)
62-1-302

, Probate Court Judge

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO.: 2016-ES-10-1673
COUNTY OF CHARLESTON	)	
	)	
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY,	)	
Petitioners,	)	
v.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY; ROSS SAMUEL HOLLIDAY, individually; WARREN LEA HOLLIDAY, individually; 2233 HIGHWAY 17 NORTH, LLC; 2237 HIGHWAY 17 NORTH, LLC; 2805 HIGHWAY 17 NORTH, LLC; 1606 MEETING STREET, LLC; BACONS BRIDGE ROAD, LLC; 4687 FRANCHISE STREET, LLC; ZEEZROM PROPERTIES, LLC; JOHN DOE LEASED VEHICLE; 1905 NORTH MAIN STREET, SUMMERVILLE, LLC; 815 FOLLY ROAD, LLC; 832 COLEMAN BLVD., LLC; 2189 DISCHER AVENUE, LLC; NEW SPACE SCIENCE, LLC; PIRATES PLUNDER, LLC; SAWGRASS TECHNOLOGIES, INC.; HOLLIDAY AMUSEMENT COMPANY, INC; and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE,	)	**RESPONDENTS' MOTION FOR REMOVAL TO CIRCUIT COURT**
Respondents.	)	

FILED
18 NOV 19 PM 3:32
PROBATE COURT
CHARLESTON COUNTY

Respondents hereby move this Court pursuant to S.C. Code Ann. § 62-l-302(d) for an Order removing the action filed by the Petitioners on September 19, 2018, and all related proceedings pending in the Probate Court to the South Carolina Court of Common Pleas for Charleston County.

Removal to the circuit court is proper for the following reasons:

1. These proceedings involve the Petitioners' attempt to try title concerning property belonging to the estate of the decedent, in which the estate is entitled to assert an interest pursuant to S.C. Code Ann. § 62-l-302(d)(3).

2. The Petitioners' Petition includes an action to set aside a trust revocation in the name of the decedent and an action seeking the imposition of a constructive trust, making removal appropriate under § 62-l-302(d)(4).

3. Respondents would further show that this action is one in which they have a right to trial by jury under 62-l-306(a), and that the matter involves more than Five Thousand Dollars ($5,000), thus qualifying this action for removal pursuant to § 62-l-302(d)(5).

Moreover, the following related actions—each of which arises out of the same set of circumstances—are currently pending either in Charleston County Probate Court or the Charleston County Court of Common Pleas:

1. *Patricia Holliday v. Ross Holliday, et al.*, Case No.: 2017-GC-10-124
   Filed in Probate Court on June 21, 2017
   (Accounting, Breach of Fiduciary Duty, Constructive Trust, Declaratory Judgment, Negligence, Gross Negligence, Restitution)

2. *Patricia Holliday v. Ross Holliday*, Case No.: 2017-CP-10-0872
   Filed in Circuit Court on February 20, 2018
   (Action for Breach of Contract)

3. *Patricia Holliday v. Ross Holliday, et al.*, Case No.: 2016-ES-10-01673-2
   Filed in Probate Court on April 10, 2018
   (Petition for Allowance of Claim)

4. *Pamela Wallin, et al. v. Ross Holliday, et al.*, Case No.: 2016-ES-10-01673-2
   Filed in Probate Court on September 19, 2018
   (Undue Influence, Interference with Inheritance, Breach of Fiduciary Duty, Constructive Trust, Declaratory Judgment, Accounting, Receivership)

5. *Pamela Wallin, et al. v. Ross Holliday, et al.*, Case No.: 2016-ES-10-01673-2
   Filed in Probate Court on October 26, 2018
   (Application for Restraint of Personal Representative)

These actions involve the same parties, issues, and evidence. Respondents therefore submit that it serves the best interests of the Estate of Warren P. Holliday, the interests of justice and

judicial economy, and prevents the risk of inconsistent judgments or rulings to have these related matters removed to the circuit court under S.C. Code Ann. § 62-1-302(f).

WHEREFORE, the Respondents pray for all proceedings related to the Petition of Petitioners filed with the Charleston County Probate Court on September 19, 2018 be removed to the Court of Common Pleas for Charleston County in the Ninth Judicial Circuit.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Alice F. Paylor
Liam D. Duffy
P.O. Box 893
Charleston, SC 29401
(843) 577-6726
apaylor@rrhlawfirm.com
lduffy@rrhlawfirm.com

ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
November 19, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF: CHARLESTON)
)
IN THE MATTER OF:)
Warren P. Holliday)
(Decedent))

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2016-ES-18-1673

On the 19 day of November, 2018, I mailed or delivered the following document(s):

Respondents' Motion for Removal to Circuit Court

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Stephen M. Slotchiver, Esquire	751 Johnnie Dodds Blvd., Suite 100, Mt. Pleasant, SC 29464
Daniel S. Slotchiver, Esquire	751 Johnnie Dodds Blvd., Suite 100, Mt. Pleasant, SC 29464
Brent Halversen, Esquire	751 Johnnie Dodds, Blvd., Suite 200, Mt. Pleasant, SC 29464
Laurel R.S. Blair, Esquire	P.O. Box 999, Charleston, SC 29402
Mark B. Holliday	P.O. Box 805, Draper, UT 84020

SWORN to before me this 19 day of November, 20 18

D. Crowley
Notary Public for South Carolina
My Commission Expires: 5/5/25

Signature: Taylor Davis
Print Name: Taylor Davis
Address: 151 Meeting Street, Suite 400
Charleston, SC 29401
Telephone (Work): 843-577-6726
(Home):
(Cell):
E-mail: tdavis@rrhlawfirm.com
Relationship to Decedent/Estate: Legal Assistant to Alice Paylor, Esquire, Attorney for Respondents

FILED
18 NOV 19 PM 3:32
CHARLESTON COUNTY

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-2430
	)	
Pamela Holliday Wallin, et al.	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
	)	
Ross Samuel Holliday, et al.	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Bijan Ghom, Bar No. 103531 Address: 151 Meeting Street, Suite 400 Charleston, SC 29401 Phone: 843-577-6726Fax 843-724-8036 E-mail: bghom@rosenhagood.comOther: _____	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 5/28/19
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY, Petitioners, v. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430 **MOTION TO CONSOLIDATE CASES AND MOTION FOR COMPLEX CASE DESIGNATION**

FILED
2019 MAY 28 PM 3:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Respondents, with the consent of the parties hereto, by and through their undersigned counsel, file this Motion to Consolidate and Motion for Complex Case Designation in accordance with the South Carolina Rules of Civil Procedure and move this Court as follows:

A. Motion to Consolidate

Pursuant to Rule 42 of South Carolina Rules of Civil Procedure, the parties hereto request to consolidate the above-captioned litigation, *Pamela H. Wallin, Mark B. Holliday et. al. v. Ross S. Holliday as Personal Representative of the Estate of Warren P. Holliday et. al.* (Civil Action No. 2019-CP-10-2430), with *Patricia A. Holliday v. Ross S. Holliday, as Personal Representative of the Estate of Warren P. Holliday et. al.* ("petition for claim" case, Civil Action No. 2019-CP-

10-2431), *Patricia A. Holliday v. Ross S. Holliday as Co-Trustee of the Patricia Anne Holliday Marital Trust et. al.* ("marital trust" case, Civil Action No. 2019-CP-10-2432), and *Pamela H. Wallin and Mark B. Holliday v. Ross S. Holliday as Personal Representative of the Estate of Warren P. Holliday et. al.* ("restraint of PR" case, Civil Action No. 2019-CP-10-2433). As recommended by Judge Kirschner in the Probate Court's hearing to remove this matter along with the other above-mentioned matters, these matters should be consolidated as they all involve the same parties (members of the Holliday family), issues, and evidence. Depending on the outcome of the various legal issues involved in these matters, there is a risk of inconsistent judgments. Moreover, and as mentioned in J. Kirschner's Order (**Exhibit A** attached hereto), matters related to both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday were sufficiently related to be removed in order to serve the best interest of the Estate of Warren P. Holliday and the interest of judicial economy.

B. Motion for Complex Case Designation

Pursuant to the standing Administrative Order 2006-07-26-01 of the Supreme Court of South Carolina and the South Carolina Rules of Civil Procedure, Respondents, by and through their undersigned counsel, hereby move for an Order designating the instant action as a "complex case" and transferring the case to a single Judge to be determined by the Court. In support of this request for a Complex Case Designation, Respondents state as follows:

1. The above-captioned case seeks declaratory relief and other equitable remedies for alleged undue influence, intentional interference with inheritance, and breach of fiduciary duties related to the Estate of Warren P. Holliday. The case involves complex matters of fiduciary duty, interpretation and construction of wills, matters involving the affairs of trusts, risk management and asset management, and other complex matters of South Carolina law.

2. There are several parties in this case, many of whom allege competing claims to certain property of the Estate of Warren P. Holliday. The number of witnesses for Petitioner and Respondents is not yet known but is likely to exceed twenty (20). As this matter is in its infancy, more parties or witnesses may be identified during the course of discovery.

3. Other factors warranting a complex case designation include: the number of fact and expert witnesses that are anticipated to be designated; the number and variety of claims; the extensive written and depositional discovery to be exchanged by and among the parties; the anticipated numerous motions on the pleadings, discovery motions, and dispositive motions to be heard throughout the life of the case(s); the complexity and size of the estate and trust which are the subject of the controversy; and the significant time needed to try this case, which is likely to extend beyond one (1) week.

4. The following Motions are pending in the above-named cases: Mark B. Holliday's Motion to Compel and for Sanctions (11/10/18); Respondents' Motion to Dismiss Mark B. Holliday and For Sanctions (12/5/18); Respondents' Motion to Compel Patricia Holliday's Discovery Responses (1/4/19); Lea Holliday's Motion for Protective Order (1/7/19), which includes Mark B. Holliday's Objection to the same and his Request for Sanctions (3/30/19); Patricia Holliday's Motion to Compel Respondents' Discovery Responses, Patricia Holliday's Motion to Compel Depositions; and Patricia Holliday's Motion for Protective Order.

5. It would best serve the interests of justice, conserve the resources of the Court and the parties, and promote judicial economy to have one Judge assigned to this case due to its size and the complexity of the issues involved, as is more fully set forth above and in the pleadings.

WHEREFORE, the parties respectfully request for the above-named cases to be consolidated and to be designated as "complex case" in accordance with Administrative Order 2006-07-26-01 and the South Carolina Rules of Civil Procedure.

WE SO MOVE:

Alice F. Paylor
Bijan Ghom
Rosen Hagood, LLC
P.O. Box 893
Charleston, SC 29402
(843) 577-6726
apaylor@rosenhagood.com
bghom@rosenhagood.com
ATTORNEYS FOR RESPONDENTS

WE CONSENT:

on behalf of

Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531
ATTORNEYS FOR PETITIONERS

on behalf of

Brent Souther Halversen, LLC
751 Johnnie Dodds Blvd, Suite 200
Mount Pleasant, SC 29464
(843) 284-5790
ATTORNEYS FOR PETITIONERS

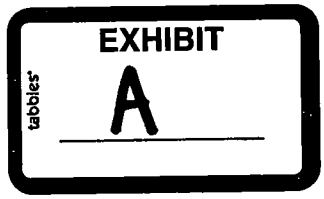
Charleston, South Carolina
May 28, 2019

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2017-GC10-0124
	)	CASE NO. 2016-ES10-01673
COUNTY OF CHARLESTON	)	
	)	
IN THE MATER OF;	)	
PATRICIA A. HOLLIDAY MARITAL TRUST	)	
ESTATE OF WARREN P. HOLLIDAY	)	
	)	**ORDER FOR REMOVAL**
	)	
	)	

THIS MATTER comes before the Court on Respondents Motion for Removal to Circuit Court, pursuant to S.C. Code Ann. § 62-1-302. Present at the hearing were Patricia A. Holliday, Attorney for the Petitioner, Laurel R.S. Blair, Esq., Respondents Ross S. Holliday and Warren L. Holliday, and attorneys for the Respondents, Alice F. Paylor, Esq., Bijan Ghom, Esq., and F. Truett Nettles, II, Esq. Also present at the hearing, was Estate Petitioner Pamela H. Wallin and her attorney, Jessica L. Crowley, Esq., as well as Estate Petitioner Mark B. Holliday and his attorneys, Daniel S. Slotchiver, Esq., Stephen M. Slotchiver, Esq., and Brent Halversen, Esq.

After hearing arguments from the parties regarding Removal of the Cases to Circuit Court, the Court finds that all outstanding issues in both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday shall be removed to Circuit Court pursuant to S.C. Code Ann. § 62-1-302(f).

According to S.C. Code Ann. § 62-1-302(f), if an action described in subsection (d) is removed to circuit court by the probate court, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to circuit court if the probate court finds that the removal of such matters would be in the best interest of the estate or in the interest of judicial economy. S.C. Code Ann. § 62-1-302 (f). Under, S.C. Code Ann. § 61-1-302(d), on motion of a party, or by the Court on its own motion, may remove a case to the



circuit court if it falls under one of its six subsections. The cases before this Court may involve construction of wills, matters involving the external affairs of trusts, and actions in which a party has the right to a jury which involve an amount in controversy of at least five thousand dollars. S.C. Code Ann. § 62-1-302 (d)(2), (4), and (5). As such, this Court finds that matters related to both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday should be removed in order to serve the best interest of the Estate of Warren P. Holliday and in the interest of judicial economy.

Based upon the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that all outstanding issues in both the Patricia A. Holliday Marital Trust and the Estate of Warren P. Holliday shall be removed to the Circuit Court to serve the best interest of the Estate of Warren P. Holliday and in the interest of judicial economy; it is further

ORDERED, ADJUDGED, AND DECREED that jurisdiction is retained as to all other matters involving this estate.

IT IS SO ORDERED.

LENNA S. KIRCHNER
ASSOCIATE JUDGE OF PROBATE
COUNTY OF CHARLESTON

AND IT IS SO ORDERED this 25th day of April, 2019.

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA COUNTY CHARLESTON PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY, Petitioners, v. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2019-CP-10-2430 **AMENDED ANSWER**

The Respondents, by and through their undersigned counsel, hereby amends their answer Petitioners' Complaint as follows:

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, modified or explained is hereby denied and strict proof demanded thereof.

2. Respondents admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, and 7.

3. Answering the allegations of Paragraph 8, Respondents admit that the Decedent did establish a revocable trust on October 29, 2008, for the benefit of those stated therein and that Decedent revoked said trust prior to his death and deny all other and/or inconsistent allegations.

4. Answering Paragraphs 9, 10, 11, 12, 13, 14 and 15, Respondents admit that the LLCs referenced in each paragraph are South Carolina limited liability companies organized and existing under the laws of the State of South Carolina and deny that these LLCs are assets of the revoked Trust.

5. Answering Paragraph 16, Respondents admit that Zeezrom has leased a vehicle and deny all other and/or inconsistent allegations.

6. Answering Paragraphs 17, 18, 19, 20, 21, and 22, Respondents admit that the LLCs referenced in each paragraph are South Carolina limited liability companies organized and existing under the laws of the State of South Carolina and deny that these LLCs are assets of the revoked Trust.

7. Answering Paragraphs 23 and 24, Respondents admit that the corporations referenced in each paragraph are South Carolina corporations organized and existing under the laws of the State of South Carolina and deny that these corporations are assets of the revoked Trust.

8. Paragraph 25 states a legal conclusion to which no response is required.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

9. Answering Paragraph 26, Respondents incorporate the above paragraphs as if fully repeated herein.

10. Paragraph 27 states a legal conclusion to which no response is required.

11. Respondents lack sufficient information to admit or deny the allegations of Paragraph 28, and, therefore, deny same and demand strict proof thereof.

12. Respondents admit the allegations of Paragraphs 29, 30 and 31.

13. Answering Paragraph 30, Respondents refer to the terms of the agreement referenced thereon for the terms thereof and deny all other and/or inconsistent allegations.

14. Respondents deny the allegations of Paragraph 31.

15. Answering Paragraph 32: the first sentence -- Respondents admit that Warren Holliday executed a Durable Power of Attorney naming Ross Holliday as his DPOA, refer to the instrument for the terms thereof and deny all other and/or inconsistent allegations; the second sentence -- Respondents deny the allegations; and the third sentence -- Respondents admit that the signature is that of Mr. Holliday.

16. Respondents lack sufficient information to admit or deny the allegations of Paragraphs 33 and 34 and, therefore, deny same and demand strict proof thereof.

17. Answering Paragraph 35: first sentence -- Respondents admit that Lea Holliday, with the assistance of Mark Holliday, put Warren Holliday on a flight in 2011 and deny all other and/or inconsistent allegations; Respondents deny the allegations of the second and third sentences; Respondents lack sufficient information to admit or deny the allegations of the fourth sentence and, therefore, deny same and demand strict proof thereof; and fifth sentence -- admit that, because Patricia Holliday refused to allow her husband to come home to their marital house, Mr. Holliday spent time in Rehab and the Sweet Grass Care Facility.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

18. Answering Paragraph 36: Respondents lack sufficient information to admit or deny the allegations of the first sentence and, therefore, deny same and demand strict proof thereof; Respondents deny the allegations of the second sentence; and, answering the third sentence, Respondents admit that Mr. Holliday moved into an apartment and deny the remaining and/or inconsistent allegations.

19. Answering Paragraph 37, Respondents refer to the referenced transcript to show what was said and deny all other and/or inconsistent allegations.

20. Respondents lack sufficient information to admit or deny the allegations of Paragraph 38 and, therefore, deny same and demand strict proof thereof.

21. Respondents admit the allegations of Paragraph 39.

22. Answering Paragraph 40, Respondents admit that Mr. Holliday tripped in a Walmart while looking at vacuum cleaners, hit his head and was taken by ambulance to a hospital and lack sufficient information to admit or deny that Mr. Holliday "sustained a detached retina."

23. Answering Paragraph 41: First sentence -- Respondents lack sufficient information to admit or deny the allegation that the alleged incident occurred on a "dialysis day," admit that Mr. Holliday did execute a will prepared on Mr. Holliday's instructions by Mr. Nettles, and refer to that will for the terms thereof and deny any other and/or inconsistent allegations; Respondents deny the allegations of the second sentence; and Respondents admit the allegations of the third sentence.

24. Answering Paragraph 42: first sentence – Respondents admit that Patricia Holliday brought a Rule to Show Cause motion, refer to that motion for the terms thereof and deny all other and/or inconsistent allegations; second, third and fourth sentences -- Respondents

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

lack sufficient information to admit or deny the statements attributed to Mr. Nettles and, therefore, deny same and demand strict proof thereof;

25. Respondents deny the allegations of Paragraph 43.

26. Answering Paragraph 44: Respondents admit the allegations of the first sentence; second sentence – Respondents admit that Mr. Holliday instructed Mr. Nettles to prepare a codicil to his will to change the proposed distributions for the benefit of Mark and Pamela, refer to that codicil for the terms thereof and deny any other and/or inconsistent allegations; and Respondents admit the allegations of the third sentence.

27. Respondents lack sufficient information to admit or deny the allegations of Paragraph 45 and, therefore, deny same and demand strict proof thereof.

28. Respondents lack sufficient information to admit or deny the allegations in Paragraphs 46 and 47 and, therefore, deny same and demand strict proof thereof.

29. Answering Paragraph 48, Respondents refer to the text messages for the dates and terms thereof and deny all other and/or inconsistent allegations.

30. Respondents lack sufficient information to admit or deny the allegations in Paragraph 49 and, therefore, deny same and demand strict proof thereof.

31. Answering Paragraph 50, Respondents admit that, upon the instructions of Mr. Holliday, Mr. Nettles prepared and witnessed Mr. Holliday sign a "Revocation of Warren P. Holliday Revocable Trust" and deny all other and/or inconsistent allegations.

32. Respondents admit the allegations of Paragraph 51.

33. Answering Paragraph 52, the Respondents refer to the document referenced in that paragraph for the terms thereof and deny all other and/or inconsistent allegations.

34. Respondents deny the allegations of Paragraphs 53, 54, 55 and 56.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

35. Answering Paragraph 57, Respondents incorporate the above paragraphs as if fully repeated herein.

36. Respondents deny the allegations of Paragraphs 58 and 59.

37. Answering Paragraph 60, Respondents admit the allegations of the first sentence and deny all other and/or inconsistent allegations.

38. Answering Paragraph 61, Respondents admit that Decedent's physical capacities were impaired and weakened but deny the other and/or inconsistent allegations.

39. Upon information and belief, Respondents deny the allegations of Paragraph 62.

40. Answering Paragraph 63, Respondents admit that they cared for and assisted their father and deny all other and/or inconsistent allegations.

41. Answering Paragraph 64, Respondents deny the allegations of the first sentence, in the second sentence, admit that Respondent Ross Holliday believed that the Decedent's death was imminent and deny the other and/or inconsistent allegations.

42. Respondents deny the allegations of Paragraphs 65, 66, 67 and 68.

43. Answering Paragraph 69, Respondents incorporate the above paragraphs as if fully repeated herein.

44. Respondents deny the allegations of Paragraphs 70, 71 and 72.

45. Answering Paragraph 73, Respondents incorporate the above paragraphs as if fully repeated herein.

46. Respondents deny the allegations of Paragraphs 74 and 75.

47. Answering Paragraph 76, Respondents incorporate the above paragraphs as if fully repeated herein.

48. Respondents deny the allegations of Paragraphs 77, 78, 79, 80, 81, 82 and 83.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

49. Answering Paragraph 84, Respondents incorporate the above paragraphs as if fully repeated herein.

50. Respondents deny the allegations of Paragraphs 85, 86 and 87.

51. Answering Paragraph 88, Respondents incorporate the above paragraphs as if fully repeated herein.

52. Respondents deny the allegations of Paragraphs 89 and second paragraph 89.

53. Answering Paragraph 90, Respondents incorporate the above paragraphs as if fully repeated herein.

54. Respondents deny the allegations of Paragraphs 91, 92, and 93.

FOR A SECOND DEFENSE
(Failure to State a Claim)

55. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

56. Petitioners are barred from recovery because the Petition fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE
(Statute of Limitations)

57. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

58. The Petitioners' claims are barred by the applicable Statute of Limitations.

FOR A FOURTH DEFENSE
(Equitable Defenses)

59. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

60. The Petitioners' claims are barred by all equitable doctrines, including but not limited to, waiver, release, estoppel, ratification, laches, and unclean hands.

FOR A FIFTH DEFENSE
(Acceptance & Satisfaction)

61. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

62. Respondents would show that Petitioners' claims, in whole or in part, are barred because the Petitioners accepted monies and other consideration in satisfaction of their claims.

FOR A SIXTH DEFENSE
(Statutory Cap on Punitive Damages)

63. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

64. Petitioners are barred from recovering punitive damages in excess of the statutory cap pursuant to S.C. Code Ann. § 15-32-530.

FOR A SEVENTH DEFENSE
(Failure to Join Indispensable Party)

65. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

66. Petitioners' claims should be dismissed pursuant to SRCP 12(b)(7), 12(h)(2), and 19 due to the failure to join indispensable parties to this action, including but not limited to Patricia Holliday and/or the Patricia Anne Holliday Marital Trust.

FOR AN EIGHTH DEFENSE
(Reservation of the Right to Amend the Answer & Non-Waiver)

67. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

68. Respondents reserve the right to amend this Answer and its affirmative defenses after investigation, discovery and further information are disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and Respondents are not waiving any defenses that may arise during investigation, discovery, and trial of this litigation.

FOR A NINTH DEFENSE
(Reservation of the Right to Raise Claims)

69. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

70. Respondents reserve and do not waive the right to raise claims of any type against any party and/or third parties.

FOR A TENTH DEFENSE AND COUNTERCLAIM
(Declaratory Judgment)

71. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

72. Decedent Warren P. Holliday's executed his Last Will and Testament (the "Will") on March 21, 2014. A true and correct copy of the Will is attached hereto as Exhibit A.

73. On January 7, 2016, Mr. Holliday executed the subsequent First Codicil to his Will. A true and correct copy of the First Codicil is attached hereto as Exhibit B.

74. Both Mr. Holliday's March 21, 2014 Will and the January 7, 2016 First Codicil thereto have been filed with the Probate Court since November 9, 2016 and have been informally probated without challenge or objection by Petitioners. Under S.C. Code Ann. § 62-3-108(A)(2)(c), the time limitation for Petitioners to make such a challenge or contest to the Will and First Codicil has passed.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

75. Mr. Holliday's Will contains a clear statement of his intent: "the bequest to each child is intentionally and purposefully disproportionate and unequal."

76. Mr. Holliday's First Codicil is no different: "Since the execution of that Will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personal and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets."

77. Accordingly, in Item V of the First Codicil to his Will, Mr. Holliday inserted an *in terrorem* or "no contest" clause which states:

> If any person, directly or indirectly, contests or attacks the validity of this instrument, or claims undue influence, fraud, menace, duress or lack of testamentary capacity or otherwise objects to the administration of my estate or any actions taken by the personal representative of my estate, then in that event I specifically disinherit such a person, and such person's descendants and all interests and properties given to or created for the benefit of such person and such person's descendants under this instrument or under my Will shall be forfeited, and such property shall be administered as part of the residue of my estate.

78. Under S.C. Code Ann. 62-3-905, such a provision in a will, like Mr. Holliday's, is enforceable where no probable cause exists for instituting proceeds to challenge the testamentary instrument.

79. Petitioners' current action seeks to set aside Mr. Holliday's September 15, Revocation of his October 29, 2008 Revocable Trust, and thereby, in essence, to also set aside Mr. Holliday's 2014 Will and 2016 Codicil and revert back to his 2008 Revocable Trust. No probable cause exists for Petitioners' current action, as Mr. Holliday's testamentary intent is expressed repeatedly and unequivocally in various documents on file with the Probate Court, all of which are available to Petitioners.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

80. Moreover, Item II of the First Codicil expresses Mr. Holliday's intent to limit Petitioner Mark B. Holliday's distribution from his father's estate to the specific devise of $300,000. Petitioner Mark B. Holliday received a check for that amount from Mr. Holliday's estate on or about December 21, 2017, which he cashed on or about December 29, 2017, and has enjoyed the use and benefit of those funds since that time

81. Item III of the First Codicil expresses Mr. Holliday's intent to limit Petitioner Pamela H. Wallin's distribution from her father's estate to the specific devise of $100,000. Petitioner Pamela H. Wallin received a check for that amount from Mr. Holliday's estate on or about December 14, 2017, which she cashed on or about March 8, 2018, and has enjoyed the use and benefit of those funds since that time.

82. S.C. Code Ann. § 15-53-50 entitles the personal representative of an estate to obtain a declaration "to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

83. Therefore, Respondent Ross S. Holliday, as Personal Representative of the Estate of Warren P. Holliday, seeks a declaration that Petitioners, in filing this Petition without probable cause, have violated Item V of the First Codicil to Warren P. Holliday's Will, and therefore Petitioners' claims are barred.

84. Respondents further request that Petitioners be required by this Court to forfeit and return to the Estate of Warren P. Holliday the distributions they have received in the amounts of $100,000 (Petitioner Pamela H. Wallin) and $300,000 (Petitioner Mark B. Holliday) pursuant to their father's clear testamentary wishes, which they are now challenging in this action.

ELECTRONICALLY FILED - 2020 Feb 18 3:24 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

FOR A TENTH DEFENSE AND COUNTERCLAIM
(Costs and Attorneys' Fees)

85. Respondents reassert and reallege the above allegations as if fully set forth herein verbatim.

86. Respondents are entitled to an award of costs and reasonable attorneys' fees against Petitioners pursuant to South Carolina law, including but not limited to, S.C. Code Ann. §§ 62-3-720 and/or 62-7-1004.

WHEREFORE, having fully responded to the Petition, Respondents pray as follows:

1. The Petition be dismissed with prejudice;
2. The Court enter an Order declaring that Petitioners have violated Item V of the First Codicil to Warren P. Holliday's Will, and therefore Petitioners' claims are barred;
3. Petitioner Pamela H. Wallin be required to forfeit and return to the Estate of Warren P. Holliday the testamentary distribution she has received, in the amount of $100,000;
4. Petitioner Mark B. Holliday be required to forfeit and return to the Estate of Warren P. Holliday the testamentary distribution he has received, in the amount of $300,000;
5. Respondents be granted an award of reasonable attorneys' fees and costs associated with defending this action; and
6. For such other and further relief as the Court may deem just and proper.

SIGNATURE ON THE FOLLOWING PAGE

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
February 18, 2020

ELECTRONICALLY FILED - 2020 Mar 02 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE PROBATE COURT CASE NO. 2016-ES-10-1673
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	**REPLY TO RESPONDENTS' AMENDED ANSWER AND COUNTERCLAIMS** (Jury Trial Demanded)

ELECTRONICALLY FILED - 2020 Mar 02 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COMES NOW THE Petitioners, Pamela Holliday Wallin, Mark Bennett Holliday, Kingsley K. Holliday, Sara Jane Holliday, and John C. Holliday, by and through his undersigned counsel, replying and Answering the allegations of Respondents Amended Answer and Counterclaims filed with this Court on or about February 18, 2020, as follows:

1. Petitioners deny the allegations of Paragraph 71 to the extent those allegations incorporate previous allegations of Respondents' Answer.

2. Petitioners admit the allegations of Paragraph 72 that Mr. Holliday signed the document on the stated date.

3. Petitioners admit the allegations of Paragraph 73 that Mr. Holliday signed the document on the stated date.

4. Petitioners admit the allegations of Paragraph 74 as they do not contest the probate bequests. Petitioners deny any inference, conclusion or extrapolation other than that stated herein.

5. Petitioners admit the allegations of Paragraph 75 that the statement evidences the decedent's intent to re-allocate probate assets disproportionate and unequal: "In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets." Petitioners deny any inference, conclusion or extrapolation other than that stated herein.

6. Petitioners admit the allegations of Paragraph 76 that the statement evidences the decedent's intent to re-allocate probate assets to a sum certain rather than a percentage: "In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather

ELECTRONICALLY FILED - 2020 Mar 02 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

than a percentage of assets." Petitioners deny any inference, conclusion or extrapolation other than that stated herein.

7. Petitioners admit the allegations of Paragraph 77 that the document contains a "no contest" provision, however, Petitioners affirmatively state that they have not contested or objected to the provisions of the document, and as such deny the provision is applicable to the Petitioners as they have not contested the probate bequests under the Will and Codicil.

8. Petitioners admit the allegations in Paragraph 78 that the statute speaks for itself, however deny its applicability to this matter for the reasons set forth above in Paragraph 7.

9. Petitioners deny the allegations of Paragraph 79 as stated. Petitioners admit they seek to set aside the purported revocation of the October 29, 2008 Revocable Trust, but deny they seek to contest the will or codicil of the decedent.

10. Petitioners admit only so much of the allegations of Paragraph 80 that the document evidences the decendant's intent to limit the probate bequest to Mark Holliday to a sum certain of $300,000. Denied that the Codicil ever stated any intention to limit, alter, or change the decendant's previous non-probate bequests.

11. Petitioners admit only so much of the allegations of Paragraph 81 that the document evidences the decendant's intent to limit the probate bequest to Pamela Holliday Wallin to a sum certain of $100,000. Denied that the Codicil ever stated any intention to limit, alter, or change the decendant's previous non-probate bequests.

12. Petitioners admit the statute speaks for itself, as restated in Paragraph 82.

ELECTRONICALLY FILED - 2020 Mar 02 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

13. Petitioners deny the allegations of Paragraph 83 that Item V of the Codicil has any applicability to this matter for the reasons set for above and herein in Paragraph 7.

14. Petitioners deny the allegations of Paragraph 84 that they should be required to forfeit their probate bequests as the Petitioners have not challenged the Will and/or Codicil.

15. Petitioners deny the allegations of Paragraph 85 to the extent those allegations incorporate previous allegations of Respondents' Answer.

16. Petitioners deny that Respondents are due an award of any attorney's fees and costs, as alleged in Paragraph 86.

FIRST AFFIRMATIVE DEFENSE

17. Respondents' action for declaratory judgment should be dismissed as Petitioners have not contested, challenged or objected to the Will and/or Codicil's probate bequests. Petitioners have, however, contested the validity of the purported Revocation, as Mr. Holliday lacked the sufficient capacity to revoke the Trust, was physically and mentally exploitable, and as such, the Revocation was ineffective and the Trust is still viable. Upon information and belief, Respondent Ross Samuel Holliday arranged for the drafting, procurement, execution and witnessing of the alleged Revocation of the Trust, with the aide of attorney Truett Nettles, II days before Mr. Holliday's demise and while on his deathbed. At the time of the purported Revocation, it was apparent to Respondent Ross Samuel Holliday that Mr. Holliday's death was imminent, per his own text messages days before the procurement of the purported Revocation. Respondents Ross Samuel

ELECTRONICALLY FILED - 2020 Mar 02 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Holliday and Warren Lea Holliday had a large pecuniary interest in seeking to revoke the Trust, to wit, in excess of ten-million dollars ($10,000,000.00).

18. If the Revocation of the Trust was the entire document that the Decedent actually signed, then the Petitioners believe that the Respondent Ross Samuel Holliday used his confidential relationship with the Decedent to exercise undue influence, coercion, or deception in convincing the Decedent to make changes to his prior non-probate bequests, for his own pecuniary benefit, to the detriment of the Trust, its beneficiaries, and the Petitioners herein.

SECOND AFFIRMATIVE DEFENSE

19. Respondents second Counterclaim for attorney's fees and costs is not a cause of action and must be dismissed.

WHEREFORE, having fully replied and answered the Respondents Counterclaims, Petitioners request the Respondents counterclaims be dismissed with costs assessed against Respondents.

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ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Respondents hereby move this Court for an order granting them summary judgment on all causes of action in the

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

above-referenced matter. This Motion is based upon the grounds that Petitioners have no evidence to support their claims, the material facts are undisputed, and Respondents are entitled to judgment as a matter of law.

UNDISPUTED FACTS

On October 29, 2008, the now deceased Warren and Patricia Holliday, who were married at the time, each executed a revocable trust agreement prepared by attorney Heyward Carter. In Warren's agreement, he was the Settlor and Trustee. This agreement provided that, on Warren's death, if he predeceased Patricia, the trust's assets, which included Zeezrom, LLC as its primary asset, would go to Patricia during her life and, upon her death, would go to the couple's four children, Mark Bennett Holliday, Pamela Holliday Wallin, Ross Holliday and Lea Holliday, in equal shares. On the same day, both Warren and Patricia executed Powers of Attorney granting their son, Ross Holliday, each party's power of attorney.

On December 9, 2013, after 47 years of marriage, in a divorce proceeding initiated by Patricia, Patricia and Warren were divorced. The parties entered into a Marital Settlement Agreement, which divided all marital assets and provided for the support of Patricia through a marital trust which provided her $16,000 per month in payments from Warren's company, Zeezrom, LLC, as well as a life insurance policy on Warren, payable to her at his death. During the divorce, Ross and Lea Holliday assisted their father who was suffering serious physical health issues, and Pamela and Mark assisted their mother. See Affidavit of Ross Holliday.

Thereafter, Warren executed a will, dated March 21, 2014, in which he allocated 40% of his assets to Ross, 40% to Lea, 15% to Mark and 5% to Pamela. This will did not mention the 2008 revocable trust.[1] On January 7, 2016, Warren executed a First Codicil to that will in which he specifically bequeathed $300,000 to Mark and $100,000 to Pamela, with the remainder going

[1] Respondents presume this is because the will acted to revoke the 2008 Revocable Trust.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

to Ross and Lea in equal amounts. The codicil has an *in terrorem*, or "no contest" clause, which provides that Warren "specifically disinherits" any person (and their descendants) who "directly or indirectly, contest or attacks the validity of this [Codicil], or claims undue influence, fraud, menace, duress or lack of testamentary capacity or otherwise objects to the administration of my estate or any actions taken by the personal representative of my estate…."[2] Affidavit of Truett Nettles.

When Warren learned that the trust might still be valid, he contacted his lawyer, Truett Nettles, and asked him to prepare a revocation of the trust for him to sign. On September 15, 2016, Warren executed a "Revocation of Warren P. Holliday Revocable Trust" at his home in front of four witnesses: Truett Nettles, Aliecia Bores, Greg Bosch and Ross Holliday. See Affidavits of Nettles, Bores, Bosch and Holliday.

On September 23, 2016, while Warren Holliday was at MUSC hospital, Petitioner Pamela Wallin visited him and repeatedly told the medical staff that her father made his own decisions and their questions should be directed to him. See MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection.**" (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). MUSC discharged Warren to his home where he died on September 28, 2016.

[2] Petitioners have violated this clause by objecting to the administration of Warren's estate and actions taken by Ross, his Personal Representative and will have to return the funds previously disbursed to them.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Respondent Ross Holliday filed the last will and codicil to the will, and the Probate Court appointed him as Personal Representative in accordance with the instructions of the will. In accordance with the terms of the will and codicil, Ross handled the estate and disbursed the specific devises of $300,000 and $100,000 to Mark and Pamela respectively. Ross further devised the remainder of the estate 50% to Lea and 50% to Ross in accordance with Warren's directives in his estate planning documents. See Ross Holliday Affidavit.

On September 19, 2018, almost two (2) years after Warren's death, Mark and Pamela filed this action seeking to set aside the revocation of the 2008 trust for incapacity and undue influence and for other relief—all of which depends on a finding that their siblings, Ross and Lea, tortuously interfered with their father's estate plan. This lawsuit asks that the Court ignore the testator's intentions in his 2014 will and 2016 codicil—both of which show that Warren wanted to treat Ross and Lea differently than Mark and Pamela, putting these testamentary documents in direct conflict with the 2008 Trust—and reinstate the 2008 Revocable Trust, so that Mark and Pamela can recover more than their specific bequests.

Mark and Pamela claim that their parents vowed to treat all of the children equally when the 2008 Trust was created. Despite this claim, Mark, as Personal Representative for his mother, who passed away on February 23, 2020, refused Ross and Lea's request for a copy of her estate planning documents, and informed them that they were intentionally not named as beneficiaries by their mother. See Affidavit of Alice Paylor.

LEGAL ARGUMENT

I. WARREN HOLLIDAY POSSESSED THE REQUISITE TESTAMENTARY CAPACITY TO EXECUTE THE 2014 WILL, THE 2016 CODICIL AND THE 2016 REVOCATION OF TRUST.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

S.C. Code § 62-7-601 provides that "[t]he capacity required to create, amend, revoke or add property to a revocable trust … is the same as that required to make a will." § 62-2-502 states that "[a]n individual who is of sound mind and who is not a minor … may make a will."

The Probate Code further establishes the burdens in contested cases in § 62-3-407:

> …Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

In In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454 (Ct.App. 1997), the South Carolina Court of Appeals heard an appeal from the decedent's son that his mother did not have capacity to execute the will filed for probate. The Court stated the applicable law in South Carolina:

> The test of whether the testatrix had the capacity to make a will is whether she knew (1) her estate, (2) the objects of her affections, and (3) to whom she wished to give her property…. However, the legal test for determining whether or not a person has sufficient mental capacity to dispose of her property by will does not include the proviso that she must have a reasonable basis on which to found her like or dislike of the natural objects of her bounty…. Further, the "capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." 94 C.J.S. Wills § 15(c) (1956).

329 S.C. at 263, 495 S.E.2d at 461 [citations deleted].

In an earlier case cited in Weeks, the South Carolina Supreme Court held similarly:

> The fact alone that the testator disposed of property contrary to what others usually consider fair is not sufficient to declare his will void…. "The right to make a will carries with it the right to disregard what the world considers a fair disposition of property. In [an earlier case], we find: 'That a will is unjust to one's relations is no legal reason that it should be considered an irrational act. The law puts no restrictions upon a man's right to dispose of his property in any way his partialities, or pride, or caprice may prompt him.'"

Hellams v. Ross, 268 S.C. 284, 290, 233 S.E.2d 98, 101 (1977).

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

In Lee's Heirs v. Lee's Executors, 4 McCord 183, 17 Am. Dec. 722 (1827), our Supreme Court was asked to invalidate a will executed by a man who believed in witches, devils and evil spirits, wore unusual clothes, slept in a hollow log and exhibited other extreme behavior. The Court found that he had capacity to execute a will, noting that to void a will by insanity, the proponent had to show that the testator was insane at the time of execution of the will despite the fact that the will was unjust to his family. The Court further found that the fact or belief that a will is unjust to the family is not a legal reason to consider its execution an irrational act.

It is well established that the degree of capacity necessary to execute a will is less than the degree of capacity to execute a contract:

> [T]he well established general rule [is] that ordinarily one need not have full mental contractual capacity in order to make a valid will; the criteria are different. Kirkwood v. Gordon, 7 Rich. 474, 62 Am. Dec. 418; Gable v. Rauch, 50 S.C. 95, 27 S.E. 555; Matheson v. Matheson, 125 S.C. 165, 118 S.E. 312. It is said in the note in 27 L.R.A., N.S., at page 54, with digests of many sustaining authorities, as follows: "The rule generally adopted is that a lower degree of capacity than is necessary for the execution of a deed or contract will suffice for the making of a will."

In re Estate of Weeks, *supra;* Banks v. McCollum, 213 S.C. 476, 483-84, 50 S.E.2d 199, 200 (1948). In addition, the Weeks Court cited from 94 C.J.S. Wills §27(a) (1956):

> Not every weakness incident to the ravages of age unfits a person for making a will. So, an aged person is not incapacitated by failing or defective memory, or partial loss of memory, absent-mindedness, nervousness, failure to recognize old friends, relatives, or members of the testator's family, inability to recognize acquaintances, a liking for dwelling on happenings of the past, pain and suffering, vacillating judgment, childishness, untidy habits, slovenliness or untidiness [sic] in dress, eccentricities or peculiarities, as in habit or speech, even though they may indicate a failing mentality, or even delusions or hallucinations if they do not affect the execution of the will….

Indeed, a personal guardian and conservators had been appointed for Mrs. Weeks prior to her execution of the will at issue and the Court found that "a person is not incompetent to make a will because he has been adjudicated to be of unsound mind, or insane…" One of Mrs. Weeks'

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

court appointed examiners testified that he believed that Mrs. Weeks did need guidance in the handling of her day-to-day business affairs but that she was capable of making major decisions concerning her property and was competent to make a will. The Court noted that, at the time of execution of the will, Mrs. Weeks understood and explained that she was leaving her son the sum of $1.00 to indicate that she knew of his existence but chose not to leave him anything. The Court upheld Mrs. Weeks' capacity to execute a will and to disinherit her son.

In the case before the Court, Warren Holliday executed a will on March 21, 2014, a copy of which is attached hereto as Exhibit A, stating in pertinent part:

> The bequest to each child is intentionally and purposely disproportionate and unequal. In administering my estate, and allowing for payment of all lawful liabilities thereof, my Personal Representative shall allocate and distribute assets into four, separate and unequal shares as follows: 5% to my daughter Pamela Giselle Holliday Wallin; 15% to my son Mark Bennett Holliday 40%; to my son Warren Lea Holliday; and 40% to my son Ross Samuel Holliday.

Warren Holliday executed a Codicil to that will on January 7, 2016. It stated in pertinent part:

> In my Will dated March 21, 2014, I made a bequest and devise to each of my four children which were intentionally and purposely disproportionate and unequal. The bequests were based on a percentage share in the assets of my Estate. Since the execution of that Will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personal and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets. I therefore wish to amend ITEM II of my said Will by deleting and revoking it as originally written and by substituting in lieu thereof the following six Items…

Warren Holliday specifically devised $300,000 to Mark Holliday and $100,000 to Pamela Wallin. A copy of this Codicil is attached hereto as Exhibit B. It also contains an *in terrorem*, or "no contest" clause, which provided that any beneficiary who directly or indirectly attacks the validity of the will or otherwise interferes with the administration by the Personal Representative shall receive nothing. The estate distributed the funds bequeathed prior to the bringing of this

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

action. Neither Pamela nor Mark have directly attacked the validity of the Will or Codicil. Instead, in an attempt to get around the *in terrorem* clause in the Codicil, they elected to attack Warren's Revocation of his 2008 revocable trust, which he clearly thought had been revoked by his subsequent will and codicil. In any event, Petitioners have taken numerous actions to interfere with the administration of the estate in accordance with the will by Warren's chosen Personal Representative.

Applying the law to the facts, the Court must look to the testamentary act in question, which was the execution of the revocation of the revocable trust to determine whether Warren had testamentary capacity at that time to revoke the trust. All of the witnesses have given affidavits stating that Warren knew what he owned, that he knew his children, his beneficiaries, and that he knew to whom he wanted to give his assets. See Affidavits of Greg Bosch, Aliecia Bores, Truett Nettles and Ross Holliday. The bar for testamentary capacity is very low as set forth in the legal precedent above. There is no question that Warren possessed legal testamentary capacity to sign the trust revocation on September 13, 2016. The medical records from MUSC after September 15, 2016, when Warren was close to death, clearly show that not only did Warren possess the requisite testamentary capacity, but Petitioner thought so as well. Petitioner Pamela was with her father at MUSC and repeatedly told the caregivers that her father made his own decisions when asked questions about what care should be provided. See, e.g., MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection.**" (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). This same daughter now asserts that her father did not have testamentary capacity *prior* to the times when she told medical personnel that he had capacity to make his own medical decisions. In addition to Pamela's statements which clearly show that she believed he was competent, MUSC's staff made similar statements. See MUSC 07879 ("[H[e is alert and oriented to person, place, and time") (September 19, 2016); MUSC 07906-07911 ("The patient was alert and states he makes his own decisions.") ("Patient alert and answering question appropriately-daughter deferred to the patient-states he makes his own decision") (September 23, 2016); MUSC 07987 ("Mr. Holliday describes life as a test and is unlikely to withdraw from dialysis.") (September 24, 2016); MUSC 07972 ("The patient has been very clear that he does not want to stop dialysis – this is not consistent with his goals of care") (September 25, 2015).

The witnesses to the execution of the revocation document included a disinterested person, Greg Bosch, Warren's personal trainer and massage therapist. He worked with Warren twice a week for around two (2) years. Bosch was present working with Warren on September 15, 2012, when Warren asked him if he would serve as a witness to his revocation of the trust in case anyone ever challenged his will. Bosch has stated under oath that Warren told him that "people are not going to be happy when they find out what I left them" and that Warren wanted him to be able to testify that "Mr. Holliday knew exactly what he was doing." Warren specifically told him that his daughter Pamela would not be happy even though he was not cutting her out, but he was not giving her more because she had a well-off husband who could take care of her. In addition, Warren told him that he did not want his daughter to give any money to his ex-wife and he believed that would occur if he left her more money. Warren told

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

him that he was leaving the bulk of his Estate to two of his three sons, and his third son would not be happy either, but it was his choice to leave it to his two other sons. Bosch Affidavit.

Mr. Bosch had nothing to gain by giving his affidavit, and he certainly knew that Warren Holliday knew his assets, his children and the people to whom he wanted his assets to go, because Warren had told him about them on the day of the execution. None of the Petitioners were present at the execution of the revocation, and they have listed no other witness who was present. Based on the legal precedent set forth above, **there is no question of fact as to whether Warren Holliday had testamentary capacity to execute the trust revocation**, and Respondents are therefore entitled to summary judgment as to the Petitioners' claim in Paragraph 56 of the Complaint that states "Since Mr. Holliday did not have the capacity to revoke the Trust, the Revocation was ineffective, and the Trust is still viable."[3]

Warren Holliday possessed testamentary capacity to execute the trust revocation on September 15, 2016, so Respondents are entitled to summary judgment as to all of Petitioners' claims based on his alleged incapacity (Second through Seventh Causes of Action).

II. THE TRUST REVOCATION IS VALID BECAUSE THERE IS NO EVIDENCE OF UNDUE INFLUENCE ON WARREN HOLLIDAY.

In their claim entitled "First Cause of Action," Petitioners assert "upon information and belief" a number of allegations that have no basis in fact, and there is not even a scintilla of evidence that Warren executed the trust revocation because he was subject to undue influence. Petitioners have presented no evidence to support any of their claims that anyone substituted his will for that of Warren Holliday and somehow forced him to do something that he did not want to do. None of the indicia of undue influence are present in this case, and the allegations are

[3] There is no separate cause of action alleging lack of capacity.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

mere conjecture by the disgruntled children who chose not to spend time with their father at the end of his life.

The South Carolina Court of Appeals has defined what must be proved to establish "undue influence" to set aside a will:

> "The mere existence of influence is not enough to void a will as all influences are not unlawful. For influence to vitiate a will, it must destroy free agency and amount to force and coercion." Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993). "Circumstances must unmistakably and convincingly point to the substitution of another's will for that of the testator." Id. Evidence of undue influence may include "threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." Id. "A contestant must show that the influence was brought directly to bear upon the testamentary act." Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "General influence is not enough." *Id.*
>
> The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence. Howard v. Nasser, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005). If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence. *Id.* "We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, **the contestants of the will still retain the ultimate burden of proof to invalidate the will**." Id. [Emphasis added.]

Hairston v. McMillan, 387 S.C. 439, 446-47, 692 S.E.2d 549, 553. (Ct.App. 2010).

> Our appellate courts have discussed the burden of proof in an undue influence case:
>
> "[I]n cases requiring a heightened burden of proof . . . the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003).

Swiger v. Smith, 426 S.C. 408, 415, 827 S.E.2d 200, 203 (Ct. App. 2019). Thus, Petitioners must submit "more than a scintilla of evidence" to defeat this motion. Because Petitioners do not

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

even have a scintilla of evidence, Respondents are entitled to summary judgment as to the undue influence claim regarding Warren's trust revocation.

In the recent case of Swiger v. Smith, the South Carolina Court of Appeals affirmed the Probate Court's and the Circuit Court's grant of summary judgment to beneficiaries who were accused of exerting undue influence on the decedent. The claims are the same as those made in the present action by Petitioner. The Swiger Court gave a thorough summary of the controlling law in an undue influence case and found that the claimants had failed to produce sufficient evidence to get beyond summary judgment. Petitioners have failed in the present action as well.[4]

Petitioners have presented no evidence to support their assertion that Ross and Lea unduly influenced their father. In fact, Warren showed in his 2014 will and his 2016 codicil which they have not attacked that he did not want to treat his children the same. Further, he told Greg Bosch exactly what was going to happen after his death – that his daughter and his third son would contest what he had done, because they were not treated the same, and it was his intention to treat them differently.

Again, Petitioners were not present at the execution, and the case law requires that the undue influence be exercised on the testamentary act, which in this case was Warren's execution of the trust revocation. Although Ross was Warren's power of attorney and, thus, in a fiduciary relationship with him, all of the witnesses present state that he did not do anything to "force" or "coerce" his father to leave the bulk of his assets to Lea and him. There is no evidence that Ross and Lea kept Pamela and Mark away from their father. The evidence is actually the opposite as it was Ross who text messaged Mark about his father's health and told him to come if he wanted

[4] In an unreported 2017 case, the South Carolina Court of Appeals affirmed the grant of summary judgment in another undue influence action similar to the matter before the Court. Langley v. Lynch, 2017 WL 4621154, a copy of which is attached hereto.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

to see him before he died. Petitioners have no evidence, much less the "mistakable and convincing evidence," required to prevail in their claim.

Respondents are entitled to summary judgment as to the First Cause of Action alleging undue influence.

III. BECAUSE REMAINING CAUSES OF ACTION ARE ALL PREFACED ON EITHER A FINDING OF TORTIOUS CONDUCT OR THAT THE REVOCATION WAS INVALID, RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THOSE CAUSES OF ACTION.

Petitioners' remaining causes of action for Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment can be summarily dismissed if the Court finds that Warren Holliday had testamentary capacity to revoke his Revocable Trust, and did so free of undue influence.

First, *Intentional Interference with Inheritance* (IIWI), which South Carolina has not adopted as a cause of action, requires a (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. Wellin v. Wellin, 135 F. Supp. 3d 502, 517 (D.S.C. 2015) (The U.S. District Court concluded that the South Carolina Supreme Court would adopt such a cause of action). As demonstrated above, Petitioners have not shown a scintilla of evidence to support a finding of tortious conduct—let alone one that interfered with their inheritance.[5] Similarly, Petitioners' *constructive trust* argument fails because they have not shown that Respondents did anything inequitable to obtain legal title to property. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). Bald

[5] Petitioners have spent a great deal convincing this Court that an estate tax return should have been filed. Assuming *arguendo* that this is true, the failure to file a tax return does not help Petitioners meet the elements of an IIWI claim. Furthermore, because Petitioners are not residual beneficiaries (they do not have a share in the remaining assets of the Estate), and have already received the fixed amounts that they are entitled to, Petitioners do not have standing to sue a Personal Representative for improper administration of the Estate. Gordon v. Busbee, No. 2003-CP-02-604, 2008 WL 8994336 (S.C. Com. Pl. May 23, 2008) ("Plaintiffs have no right or standing to make demands or complaints of any sort against the Personal Representative, including the equitable causes of action.").

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

accusations that Mr. Holliday was incapacitated, which go against all of the testimony[6] and medical records, does not prove that Respondents did anything inequitable. The mere fact that Respondents ended up with more than they did is not "clear, definite, and unequivocal" evidence sufficient to support imposing a constructive trust. Id. at 530.

Petitioners' *Breach of Fiduciary Duties* cause of action and their request for a *Declaratory Judgment* (which only seeks to declare the Revocable Trust valid) are barred if the Revocation was valid. Petitioners' odd accusations of breach of fiduciary duties against Ross pursuant to the Revocable Trust is barred by a well-established principle of trust law: the trustee of a revocable trust does not owe duties to the beneficiaries during the life of the Settlor. See S.C. Code Ann § 62-7-603. Thus, even if Petitioners allegation that the Revocable Trust was valid during the final years of Warren's life is true, they still cannot sue Ross (the trustee) for his conduct during the life of Warren Holliday. S.C. Code Ann § 62-7-603 (explaining that the duties of a trustee of a revocable trust are owed exclusively to the settlor).

For these reasons, Respondents are entitled to summary judgment on Petitioners' Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment causes of action.

CONCLUSION

Because Warren Holliday possessed testamentary capacity to revoke his Revocable Trust, and did so free of undue influence, Respondents are entitled to summary judgment as to all Petitioners' claims.

[SIGNATURE ON FOLLOWING PAGE]

[6] Petitioners do not have any personal knowledge of Mr. Holliday's mental capacity at the time of the testamentary acts. Therefore, they cannot possibly use their own testimony to establish that he was incapacitated at the time of execution.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
June 2, 2020

EXHIBIT A

Attest: A True Copy
Deputy Clerk Probate Court
Charleston County, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LAST WILL AND TESTAMENT

IN THE NAME OF GOD, AMEN.

I, WARREN P. HOLLIDAY and most specifically

ITEM I. I direct that all of my just debts and funeral expenses be paid as soon after my decease as may be practicable, and in this connection I direct that my debts, funeral expenses, estate and succession taxes, and the cost of administering my estate be paid out of the residue of my estate.

ITEM II. All the rest, residue and remainder of my estate, real and personal, and mixed, stocks, bonds, chooses in action and mortgages of every nature and description of which I may die seized and possessed, or of, in or to which I may at the time of my death have any right, title, claim, interest, demand or estate whatsoever, either legal or equitable, or over which I may have any power of appointment, I do hereby give, devise and bequeath unto my surviving children PAMELA GISELLE HOLLIDAY WALLIN of Sunnyvale, California, MARK BENNET HOLLIDAY of Draper, Utah, WARREN LEA HOLLIDAY of South Jordan, Utah and ROSS SAMUEL HOLLIDAY of Draper, Utah, the child or children of a deceased child to take his, her or their parents share equally per stirpes. The bequest to each child is intentionally and purposely disproportionate and unequal. In administering my estate, and allowing for payment of all lawful liabilities thereof, my Personal Representative shall allocate and distribute assets into four, separate and unequal shares as follows: 5% to my daughter Pamela Giselle Holliday Wallin; 15% to my son Mark Bennett Holliday; 40% to my son Warren Lea Holliday and 40% to my son Ross Samuel Holliday. My Personal Representative may distribute these bequests in money or in kind, at the sole discretion of the

WPH 1/3

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Personal Representative. In distributing property or assets in kind, my Personal Representative shall have absolute discretion in determining which property or assets go to each separate share, based on the relative, reasonable value of such in kind property or assets.

ITEM III. I give and devise, pursuant to Section 62-2-512 of the South Carolina Probate Code, such items of my tangible personal property as I may stipulate to such person or persons all as may appear in a list or memorandum thereof in my handwriting or signed by me which may be in existence at the time of my decease.

ITEM IV. I do hereby nominate, constitute and appoint my son, ROSS SAMUEL HOLLIDAY to be Personal Representative of this my Last Will and Testament, to serve without bond, and with full power to sell any or all of the residue of my estate as defined above, both real and personal, at public or private sale, without the Order of any Court, at such time and on such terms as she may think best for the proper carrying out of the terms of this Will. If my son ROSS SAMUEL HOLLIDAY shall predecease me or if he should become incapable of administering my estate, I then nominate, constitute and appoint my son WARREN LEA HOLLIDAY to be the successor Personal Representative

I, WARREN P. HOLLIDAY, the Testator, sign my name to this instrument this 21st day of March, 2014, and being duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, that I am well aware of the property and assets together with liabilities which I now possess or may in the foreseeable future, that these four of my children are the only objects of my

WPH 2/3

affections, that I am well aware of the disproportionate and unequal bequests set forth herein, that I have written this document with the advice of legal counsel, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WARREN P. HOLLIDAY

We, Jessica Fongeruasse and Fred Oliver, the witnesses, sign our names to this instrument, and at least one of us, being duly sworn, does hereby declare, generally and to the undersigned authority that the Testator signs and executes this instrument as his last Will and that he signed it willingly and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is of sound mind, and under no constraint or undue influence.

WITNESS

Charleston, SC
RESIDENCE OF WITNESS

WITNESS

Charleston, SC
RESIDENCE OF WITNESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

Subscribed, sworn to, and acknowledged before me by Warren P. Holliday, Testator, and subscribed and sworn to before me by Fred Oliver, the witness, this 21st day of March 2014.

Notary Public for the State of South Carolina
My Commission Expires: 9-22-16

WPH 3/3

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

EXHIBIT B

Attest: A True Copy
Deputy Clerk Probate Court
Charleston County, South Carolina

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FIRST CODICIL

I, WARREN P. HOLLIDAY of Mount Pleasant, South Carolina, do hereby make, publish and declare this instrument as and for a First Codicil to that certain Last Will and Testament made by me on March 21, 2014.

In my Will dated March 21, 2014, I made a bequest and devise to each of my four children which were intentionally and purposely disproportionate and unequal. The bequests were based on a percentage share in the assets of my Estate. Since the execution of that Will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personal and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets. I therefore wish to amend ITEM II of my said Will by deleting and revoking it as originally written and by substituting in lieu thereof the following six Items,

ITEM II. I hereby give, devise and bequeath to my son MARK BENNET HOLLIDAY the sum of Three Hundred Thousand and 00/100 Dollars ($300,000). If my son MARK BENNET HOLLIDAY shall predecease me, then that bequest shall be paid to his surviving child or children who shall take, his, her or their parents share equally *per stirpes*. If this son shall predecease me, leaving no child or children surviving him, this bequest shall lapse and this amount of money shall be included in the residue of my estate.

WPH
1 of 4

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ITEM III. I hereby give, devise and bequeath to my daughter PAMELA GISSELE HOLLIDAY WALLIN the sum of One Hundred Thousand and 00/100 Dollars ($100,000). If my daughter PAMELA GISELLE HOLLIDAY shall predecease me, then that bequest shall be paid to her surviving child or children who shall take, his, her or their parents share equally *per stirpes*. If this daughter shall predecease me, leaving no child or children surviving her, this bequest shall lapse and this amount of money shall be included in the residue of my estate.

ITEM IV. All the rest, residue and remainder of my estate, real and personal, and mixed, stocks, bonds, choses in action and mortgages of every nature and description of which I may die seized and possess, or of, in or to which I may at the time of my death have any rights, title, interest, demand or estate whatsoever, either legal or equitable, I do hereby give, devise and bequeath unto my two sons, ROSS SAMUEL HOLLIDAY and WARREN LEA HOLLIDAY, to share and share alike equally in the residue of my estate. If either of these two sons shall predecease me, then the child or children of that deceased son shall take his, her or their parent's share equally *per stirpes*. If either of the sons predeceases me leaving no child or children surviving him, then this bequest shall lapse and this amount of money shall be included in the residue of my estate.

ITEM V. If any person, directly or indirectly, contests or attacks the validity of this instrument, or claims undue influence, fraud, menace, duress or lack of testamentary capacity or otherwise objects to the administration of my estate or any actions taken by the personal representative of my estate, then in that event I specifically disinherit such a person, and such person's descendants and all interests and properties given to or created for the benefit of such person and such person's descendants under this instrument or under my Will shall be forfeited, and such property shall be

WPH
2 of 4

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

administered as part of the residue of my estate.

ITEM IV. I hereby ratify and confirm all remaining portions and paragraphs of my Last Will and Testament dated March 21, 2014, not specifically amended or modified herein, and such provisions shall remain in full force and effect.

I, WARREN P. HOLLIDAY, the Testator, sign my name to this First Codicil, this 7th day of January, 2016, and being duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as the First Codicil to my Last Will and Testament; that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed; that I am well aware of the property and assets together with liabilities which I now possess or may have in the foreseeable future; that these four of my children are the only objects of my affections; that I am well aware of the disproportionate and unequal bequests set forth herein; that I have written this document with the advice of legal counsel and that I am eighteen years of age or older, of sound mind, and under no constraint, duress or undue influence.

Shirley Ann Robinson

S.

Warren P. Holliday

WARREN P. HOLLIDAY

[Witness Information on Following Pages]
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WPH.
3 of 4

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

We, Shirley Ann Robinson and Stephanie N Adamsky, the witnesses, sign our names to this instrument, and at least one of us, being duly sworn, does hereby declare, generally and to the undersigned authority that the Testator signs and executes this instrument as the First Codicil to his last Will and Testament and that he signed it willingly and that each of us, in the presence and hearing of the Testator, hereby signs this First Codicil as witness to the Testator's signing, and that to the best of our knowledge the Testator is of sound mind, and under no constraint or undue influence.

Shirley Ann Robinson
WITNESS

6304 Brookstone Way, Summerville SC 29486
RESIDENCE OF WITNESS

WITNESS

Ladson, SC
RESIDENCE OF WITNESS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

Subscribed, sworn to, and acknowledged before me by Warren P. Holliday, Testator, and subscribed and sworn to before me by Shirley Ann Robinson, the witness, this 7th day of January, 2016.

Notary Public for the State of South Carolina
My Commission Expires: 12/31/23

WPH
4 of 4

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA COUNTY CHARLESTON PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY, Petitioners, v. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2019-CP-10-2430 **Affidavit of Ross S. Holliday**

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Ross S. Holliday, who, after being sworn, states as follows:

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1. My name is Ross Samuel Holliday and I am over 18 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. Warren P. Holliday and Patricia B. Holliday, my father and mother, were divorced on December 9, 2013, in an action initiated by my mother after 47 years of marriage.
3. When my parents divorced, they entered into a Marital Settlement Agreement which divided all marital assets and provided for the support of Patricia through a marital trust that provided her $16,000 per month in payments from Zeezrom Properties, LLC, as well as a life insurance policy on Warren, payable to her at his death.
4. During the divorce, and in the years after, my brother, Lea Holliday and I assisted our father who was suffering from physical health issues.
5. Pamela and Mark, my other siblings, spent much more time with my mother than my father, assisting her throughout the later years of her life until her recent death.
6. My father was an extremely driven and decisive man. He was a very successful businessman. I worked with him closely and was fortunate enough to learn a lot from him about managing a successful business. I was very close with my father, not only in a father-son relationship, but also professionally.
7. In 2010, my father and mother asked me to help them manage my father's business affairs because he was dealing with physical ailments and underwent several surgeries.
8. Despite my father's physical issues, he always knew what he was doing and had full cognitive capabilities until he died. While I was worried about my father's physical condition, I never saw my father exhibit any signs that he could not understand something. My father always recognized me and his other family members. My father always knew what he owned and was always in control of what he wanted to do.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

9. On March 21, 2014, my father executed a will which allocated 15% of his assets to my brother Mark, 5% to my sister Pamela, with the remaining 80% split between my brother Lea and me. I never asked my father if I was going to inherit anything or what that amount would be. I never told my father to give me that percentage, Warren shared his estate plan with me and the percentages later that year.

10. On January 7, 2016, Warren executed a First Codicil to that will in which he specifically bequeathed $300,000 to Mark and $100,000 to Pamela, with the remainder going to Lea and me in equal amounts. I did not ask my father to do this. He told me that he wanted to do this. My father told me that he didn't want any fighting over his estate and became concerned that Mark would want to fight over the basis for which his percentage was derived. He changed from percentages to fixed amounts for Mark and Pamela in order to avoid fighting and challenges to his estate. Warren told me that he also continued to include the directive that if his will or estate was contested that those individuals were to be removed and not included.

11. I never asked my father to give me the remainder of his estate, nor did I tell him what my siblings should or should not get from his estate. My father was always in control of his estate plan and did what he wanted to do.

12. On September 15, 2016, while visiting with my father, I watched him execute a "Revocation of Warren P. Holliday Revocable Trust" at his home in front of his attorneys, Truett Nettles and Aliecia Bores; and his personal trainer, Greg Bosch. I did not direct him to do this, and he did it of his own free will.

13. On September 15, 2016, my father was aware of what he was doing when he signed the revocation. He interacted with Greg Bosch, his trainer with whom he had been working

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

for about two (2) years. He also communicated with Truett Nettles and Aliecia Bores. Mr. Bosch was already in the home working with my father before my father asked him to stay to serve as a witness.

14. During the September 15 meeting at my father's house, Truett Nettles asked him several questions to confirm that he understood what he was doing, the extent of his property, his family members, and what the purpose of the Revocation was.

15. My father explained to us that he wanted to provide specific amounts to Mark and Pamela, but leave the remainder to Lea and me. He mentioned that he wanted me to continue to operate and manage his properties and businesses.

16. After Mr. Nettles asked my father questions, and my father responded to each of them, Mr. Nettles went through the document with my father. When my father was ready to sign, Mr. Nettles placed the Revocation of the October 29, 2008 Revocable Trust on my father's lap while he was laying down on the bed, and he signed it still lying down having just completed physical therapy. Soon after, Mr. Nettles and Ms. Bores signed the document.

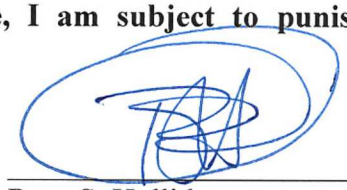
17. My father did not exhibit any signs of confusion or lack of understanding. He knew exactly what he owned, he knew his children and he knew to whom he wanted to leave his estate. No one influenced or coerced my father to sign the document. He signed it, because it was what he wanted to do.

FURTHER THE AFFIANT SAYETH NOT.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

CERTIFICATION IN LIEU OF AFFIDAVIT[1]

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Ross S. Holliday

[1] Pursuant to The South Carolina Supreme Court's Order re Operation of the Trial Courts During the Coronavirus Emergency, dated April 3, 2020.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2016-ES-10-1673
COUNTY CHARLESTON	)	
	)	
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY,	)	
Petitioners,	)	
v.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE,	)	**Affidavit of Aliecia M. Bores**
Respondents.	)	

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Aliecia M. Bores, attorney at law, who, after being sworn, states as follows:

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1. My name is Aliecia M. Bores and I am over 18 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. I have been a practicing attorney for approximately 4 years, primarily in the areas of estate planning and probate law.
3. During the relevant times herein, I was an attorney for the Finkel Law Firm LLC. I have no ongoing relationship with Finkel Law Firm LLC. I am currently an attorney and Personal Trust Specialist at Branch Banking & Trust ("BB&T").
4. During my practice, I have been present for the execution of several estate planning documents by my previous clients and I always had discussions with those clients to determine and confirm their capacity to execute those documents.
5. On September 15, 2016, I was asked by a senior attorney at my firm, F. Truett F. Nettles II to travel to the home of Warren P. Holliday in Mount Pleasant, South Carolina in the afternoon to serve as a witness to the execution of an estate planning document for Warren P. Holliday.
6. When I arrived at the home, Mr. Holliday was undergoing physical therapy with his physical therapist in his bedroom.
7. I waited in the kitchen and living room area with F. Truett Nettles II and Ross Holliday until Mr. Holliday finished his physical therapy.
8. Mr. Nettles and I then joined the physical therapist in Mr. Holliday's bedroom.
9. Ross Holliday was standing behind me in the room during this time.
10. Mr. Holliday was in a hospital gown and lying in on an adjustable bed and was propped up with pillows.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

11. As I stood in the room between the doorway the bed, Mr. Holliday's physical therapist stood to the left side of his bed, and Mr. Nettles was on the right side of the bed and went through several questions related to Mr. Holliday's estate planning:

    a. Mr. Nettles asked Mr. Holliday if he remembered him and introduced me as his associate attorney. Mr. Holliday responded pleasantly and was clearly aware of the purposes for our visit. He was able to convey his thoughts unequivocally and I even remember him joking with me about how it had been a long time since a young woman might have seen his exposed posterior since he was in a hospital gown.

    b. Mr. Nettles asked Mr. Holliday about what we were doing that day. Mr. Holliday responded that he went through a divorce and that Patricia was receiving property through a Marital Trust and that the 2008 Revocable Trust was no longer necessary.

    c. Mr. Nettles asked Mr. Holliday if he knew what property he had. Mr. Holliday was able to clearly and fully explain the extent and nature of his properties.

    d. Mr. Holliday explained that he had a will and a codicil in which he left specific amounts of money to two of his children, Mark Bennett Holliday and Pamela Holliday Wallin but that he wanted the rest and remainder of his estate to be left to his other two children, Ross Holliday and Warren Phillip Holliday.

    e. Mr. Nettles asked Mr. Holliday about his family members and what he wanted to leave each one. Mr. Holliday explained that he had a Will in which he left property to his other two children, but that he wanted to make sure everything else to be left to Ross Holliday and Warren Lea Holliday.

12. Mr. Nettles then placed a legal pad with a document on top that was the Revocation of the October 29, 2008 Revocable Trust.

13. Mr. Nettles went through each section of the document. After Mr. Nettles explained each part of the document, Mr. Holliday read through the entire document.

14. I then observed Mr. Holliday sign the Revocation to the 2008 Revocable Trust while laying on his back and holding the document up above himself, and I signed the document as a witness.

15. There was nothing unusual about Mr. Holliday and he definitely fully comprehended and appreciated what he was doing that day. Apart from his physical ailments, Mr. Holliday was a pleasure to be around and enthusiastically engaged in conversation with us. He was able to carry on conversations without confusion or loss of memory. He was absolutely coherent at all times. At no point did I doubt whether Mr. Holliday had the capacity to execute the Revocation.

FURTHER THE AFFIANT SAYETH NOT.

Aliecia M. Bores
Aliecia M. Bores

Charleston, South Carolina

SWORN to before me this
11th day of April, 2019

Taylor Davis
Notary Public for South Carolina
My commission expires: 4/1/25

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA COUNTY CHARLESTON PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY, Petitioners, v. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2019-CP-10-2430 **Affidavit of F. Truett Nettles, II**

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, F. Truett Nettles, II, attorney at law, who, after being sworn, states as follows:

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

1. My name is F. Truett Nettles, II; I am over 18 years of age; I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. I have been a practicing attorney for approximately 43 years, have practiced in the area of estate planning and probate lawyer, among other areas.
3. During the relevant times herein, I was an attorney for the Finkel Law Firm LLC.
4. During my practice, I have been present for the execution of many estate planning documents by clients, and I always have discussions with those clients to determine and confirm their capacity to execute those documents and to ensure that they are voluntarily executing the documents.
5. In representing Warren P. Holliday in his divorce in 2013, in drafting his Last Will and Testament in 2014 and his Codicil in 2016, Warren and I understood that these new documents would replace and supersede earlier agreements, wills or trusts. In August 2016, I decided that it would be best to draft an specific and explicit Revocation of the 2008 Revocable Trust in order to provide a written record of Mr. Holliday's intentions. I drafted the Revocation of the 2008 Revocable Trust upon instructions from my client, Warren P. Holliday.
6. On September 15, 2016, Aliecia Bores, an associate in my office, and I traveled to the home of Warren P. Holliday in Mount Pleasant, South Carolina in the afternoon to review the proposed revocation of revocable trust with the settlor, Warren Holliday and to serve as a witness to the execution of that document.
7. When I arrived at the home, Warren was undergoing physical therapy with Greg Bosch, his massage therapist and personal trainer, in his bedroom. Ross Holliday, Warren's son and primary caretaker was present and asked that we wait for Mr. Bosch to finish.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

8. When Bosch finished, Ms. Bores and I went into the bedroom with Warren and Mr. Bosch, whom Warren had asked to remain and witness his signing the revocation document.

9. Warren was in a hospital gown and lying in on an adjustable bed and was propped up with pillows.

10. I began by asking Warren several questions that are typical in my estate planning practice:

    a. I asked Warren if he remembered me and knew who I was. Warren replied that he did. I then introduced him to Ms. Bores. Warren jokingly responded by asking Ms. Bores to please excuse his attire. He clearly acknowledged the purpose of our visit.

    b. I asked Warren about what we were doing that day. Warren responded that he went through a divorce and that Patricia was receiving property through a Marital Trust and that the 2008 Revocable Trust that he had set up was no longer necessary.

    c. I asked Warren if he knew what property and other assets that he owned. Warren was able to clearly and fully explain the extent and nature of his properties.

    d. Warren explained that he had a will and a codicil in which he left specific amounts of money to two of his children, Mark Bennett Holliday and Pamela Holliday Wallin, but that he wanted the rest and remainder of his estate to be left to his other two children, Ross Holliday and Lea Holliday.

    e. I again asked Warren about his family members and what he wanted to leave each one. Warren explained that he had a Will in which he left property to his other

two children, but that he wanted to make sure everything else, including his business assets, would go to his sons, Ross and Lea.

11. I then placed a legal pad with a document on top that was the Revocation of the October 29, 2008 Revocable Trust.

12. I went through each section of the document with Warren. After I explained each part of the document, Warren read through the entire document.

13. I then watched Warren sign the Revocation to the 2008 Revocable Trust while laying on his back and holding the document up above himself. I could see that this was a somewhat awkward position in which to sign documents. Ms. Bores and I signed the document as witnesses.

14. I had no concerns that Warren did not understand what he was doing as he exhibited full comprehension of the document being signed and he understood and appreciated what he was doing that day. I have known and represented Warren for many years, and his mind on that day was as sharp as ever. Warren knew exactly what he was doing and we had several conversations about his intentions regarding the same.

15. I met with Warren several times outside the presence of anyone else. If Warren wanted to change his estate plan, he had ample opportunity to do so.

16. After Warren's death, Ross Holliday asked me to represent the estate.

17. I assisted Ross in distributing the proceeds of the estate in accordance with the will.

18. Ross calculated the value of the estate's real property using the capital rate return method and determined that the assets of the estate did not exceed the federal deduction so that no IRS Form 706 would be required to file.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

19. Warren expected that two of his children, Mark and Pamela, would challenge what he decided to leave them. That is why he suggested I include a "no-contest" provision in ITEM V of his Codicil. Despite cashing their inheritance checks, both Mark and Pamela did exactly what their father envisioned that they would do and proceeded to file an undue influence action to get more than what he intended them to have.

FURTHER THE AFFIANT SAYETH NOT.

F. Truett Nettles, II, Esquire

Charleston, South Carolina

SWORN to before me this
29th day of October, 2019

Notary Public for South Carolina
My commission expires: 11/03/2027

HELEN S. JONES
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 11-03-27

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2016-ES-10-1673
COUNTY CHARLESTON	)	
	)	
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY,	)	
Petitioners,	)	
v.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE,	)	**Affidavit of Greg Bosch**
Respondents.	)	

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Greg Bosch, who, after being sworn, states as follows:

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

1. My name is Greg Bosch and I am over 18 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. I have been a massage therapist and trainer since 1991. During this time, I have worked with many physically and/or mentally ill patients.
3. I was the personal trainer and massage therapist for Warren P. Holliday for at or near two years. I saw Mr. Holliday roughly twice a week during this time.
4. I have no claim to the Estate of Warren P. Holliday, nor do I have any relationship with any of Mr. Holliday's family or the parties involved in this Litigation.
5. While Mr. Holliday had physical ailments and issues, he was always completely coherent. During my two years with him, he recognized me every single time that I saw him and we carried on deep and meaningful conversations.
6. On September 15, 2016, I traveled to Mr. Holliday's condo in Mount Pleasant, South Carolina. After we began our training session, Mr. Holliday asked me if I was willing to do him a favor by serving as a witness for him if anyone ever challenged his will. He told me that his attorney was on his way over and that he would like me to serve as a witness for a document that he needed to sign.
7. Mr. Holliday told me that "people are not going to be happy when they find out what I left them." He asked me specifically to testify on his behalf if anyone ever challenges what he gave them and to say that "Mr. Holliday knew exactly what he was doing."
8. On that day, as well as several times over the two years that I knew him, he stated several things concerning his ex-wife:
    a. that his "ex-wife was crazy";
    b. that she "stuck it to him";

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

c. that she "made my life hell and took me to court many times";

d. that "nothing could satisfy her";

e. that he "did not want her to get a penny more than he had to give her."

9. Mr. Holliday said that his daughter will not be happy and will likely challenge what he has done. He said that he was not cutting her out, but that he did not want to give her anymore than he did because she had a well-off husband who could take care of her. But more importantly, he did not want his daughter to give a single penny to his ex-wife, which he believed would occur if he left her more money than he did.

10. Mr. Holliday said that he was leaving the majority of his Estate to two of his three sons. He also said that he had three sons, one of whom would be unhappy, like his daughter, because he was choosing to leave the majority of his Estate to his other two sons.

11. After these conversations occurred, a male and a female showed up, both I later learned were Mr. Holliday's attorneys. They came into Mr. Holliday's bedroom and the male attorney went over a document with him.

12. The male attorney went through each page of the document, with Mr. Holliday and asked him some questions. Mr. Holliday read through and signed the document while lying down in his bed.

13. Once Mr. Holliday signed the document, he told me that if anyone questions my signature, you tell them that this is my signature and that this is what I want.

14. The only people in the room during this process were Mr. Holliday, the two attorneys (who I later found out to be Truett F. Nettles and Aliecia M. Bores), and myself.

15. Ross Holliday was not in the room at this time.

16. Mr. Holliday was fully coherent and knew what he was doing from the day I met him up until the last day I saw him. While his body was fading, his mind was sharp as a tack and he was very good at letting me know exactly how he felt and thought.

17. I saw Mr. Holliday between 2-4 times after September 15, 2016. During one of those meetings, Mr. Holliday again told me that his daughter would contest what he gave her after he was gone. And again, he said that he was "leaving my daughter what I want her to have." During the times I met with him after September 15, as well as in all times prior, Mr. Holliday was fully coherent and capable of making his own decisions.

FURTHER THE AFFIANT SAYETH NOT.

Greg Bosch

Greg Bosch

Charleston, South Carolina

SWORN to before me this
13th day of March, 2019

Notary Public for South Carolina
My commission expires: 2/7/23

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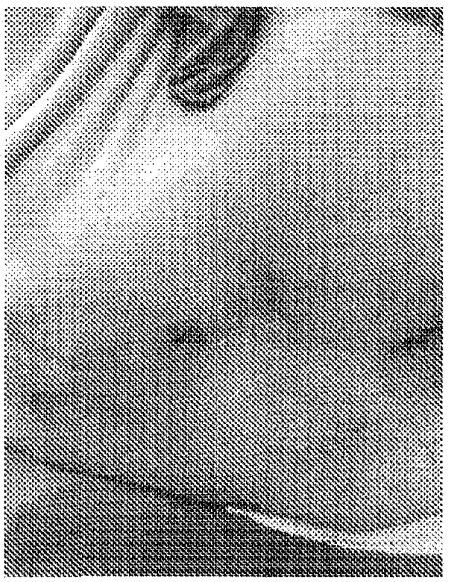
ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ED Provider Notes - ED Notes (continued)

ED Provider Notes by Christine M. Carr, MD at 9/19/2016 11:42 AM (continued)

Head: Normocephalic and atraumatic.
Mouth/Throat: Mucous membranes are dry.
Eyes: Conjunctivae and EOM are normal. Pupils are equal, round, and reactive to light.
Neck: Normal range of motion. Neck supple.
Cardiovascular: An irregularly irregular rhythm present. Tachycardia present.
Pulses:
Femoral pulses are 2+ on the right side, and 2+ on the left side.
Irregularly irregular
Tachycardic in 110s
Pulmonary/Chest: He exhibits no tenderness.
Mild increased respiratory effort
Decreased breath sounds on left
Abdominal: Soft. Bowel sounds are normal. He exhibits no distension. There is no tenderness.
Genitourinary: Rectal exam shows mass (boggy tender prostate). Rectal exam shows no external hemorrhoid and no internal hemorrhoid. Guaiac negative stool. Prostate is enlarged and tender.
Incontinent of stool
Neurological: He is alert and oriented to person, place, and time.
Skin: He is not diaphoretic.
Cold extremities
Prolonged cap refill
Bruising of arms

Well healed small sacral ulcer (see pic)
Psychiatric: He has a normal mood and affect. His behavior is normal.
Nursing note and vitals reviewed.



ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

bacteremia secondary to seminal vesicle abscess. He was transferred to the MICU for hypotension 60s/40s while patient with A fib with RVR.

Palliative care consult for GOC. The patient presently is hypotension requiring vasopressor support. Seen by hematology and cardiology consults yesterday 9/22/16. As patient is s/p TAVR, he needs anticoagulation to prevent thrombus formation of prosthetic valve. Due to his supratherapeutic INR, thrombocytopenia, and risk for DIC, hematology recommends holding aspirin and plavix. The patient has sepsis and it is unclear to what the source might be with recent blood cultures and urine cultures are no growth to date. With his Afib with RVR and rates in the 110-130's, today during our visit he was 90's. The patient does receive dialysis three times per week and was not dialyzed yesterday due to hypotension. The patient also has a large left pleural effusion and there is a consideration for a diagnostic thoracentesis but the patient's INR is 6.29 on 9/22/16.

The above was explained to patient, daughter and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions. He states he wants to go home and is tired of the hospital. We discussed going home on hospice. The patient states he will think about that as he does want to go home. The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection. Also the family would like to have the medications for the BP and heart rate regulated.

The patient agrees to the present code status as he wants the pressors only. Questions from the daughter and caregiver regarding if the patient could go home on the pressors and would that be approved with hospice. Questions also regarding home dialysis. I did explain the patient can go home on medications for his heart rate and BP and I will check into home dialysis.

The patient was alert and states he makes his own decisions.

Code Status: Limited Resuscitation
Advanced Directives: Patient has advance directive, copy not in chart
Surrogate Decision Maker: unknown
Extended Emergency Contact Information
Primary Emergency Contact: Holliday,Ross
United States of America
Home Phone: 801-859-5721
Relation: Son

Symptom and Diagnostic Assessment

PALLIATIVE PERFORMANCE SCALE (PPS)

%	Ambulation	Activity Level/ Evidence of Disease	Self-Care	Intake	Level of Consciousness	Estimated Median Survival in Days		
						(a)	(b)	(c)
100	Full	Normal/ No	Full	Normal	Full	N/A	N/A	108

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

		Disease						
90	Full	Normal/ Some Disease	Full	Normal	Full			
80	Full	Normal with Effort/ Some Disease	Full	Normal or Reduced	Full			
70	Reduced	Can't do normal job or work/ Some Disease	Full	Normal or Reduced	Full	145		
60	Reduced	Can't do hobbies or housework/ Significant Disease	Occasional Assistance Needed	Normal or Reduced	Full or Confusion	29	4	
50	Mainly sit/lie	Can't do any work/ Extensive Disease	Considerable Assistance Needed	Normal or Reduced	Full or Confusion	30	11	41
40	Mainly in Bed	Can't do any work/Extensive Disease	Mainly Assistance	Normal or Reduced	Full or Drowsy or Confusion	18	8	
30	Bed Bound	Can't do any work/Extensive Disease	Total Care	Reduced	Full or Drowsy or Confusion	8	5	
20	Bed Bound	Can't do any work/Extensive Disease	Total Care	Minimal to sips	Full or Drowsy or Confusion	4	2	6
10	Bed Bound	Can't do any work/Extensive Disease	Total Care	Mouth Care Only	Drowsy or Coma	1	1	
0	Death	-	-	-	--			

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

(a) Survival post-admission to an inpatient palliative unit, all diagnoses (Virik 2002).
(b) Days until inpatient death following admission to an acute hospice unit, diagnoses not specified (Anderson 1996).
(c) Survival post admission to an inpatient palliative unit, cancer patients only (Morita 1999).

Palliative Performance Scale (PPS) Result: 40%

History

Social History:

Social History

Social History

- Marital Status: Divorced
  Spouse Name: N/A
- Number of Children: N/A
- Years of Education: N/A

Social History Main Topics

- Smoking status: Never Smoker
- Smokeless tobacco: Never Used
- Alcohol Use: No
- Drug Use: No
- Sexual Activity:
  Partners: Female

Other Topics — Concern

- None

Social History Narrative

Lives in Mt. Pleasant by hisself

Past Medical History: has a past medical history of DVT (deep venous thrombosis); C. difficile colitis; Pseudomonas aeruginosa infection; Thrombocytopenia; Leukopenia; Greenfield filter in place; Obesity; Esophagitis; Foot drop, right; Neuropathy; Cancer; ESRD (end stage renal disease); Clotting disorder; Atrial fibrillation (4/8/2015); Aortic stenosis; Coronary artery disease involving native coronary artery of native heart with angina pectoris; and Secondary hypertension.

Surgical History:

Past Surgical History

Procedure	Laterality	Date
Gastric bypass		
Renal transplant		
Greenfield filter		
Av fistula left upper arm		6/13/2011

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

Ligation collateral vein of av fistula left upper arm 10/29/2013

- Pr colonoscopy flx dx w/collj spec when pfrmd N/A 1/20/2015
  Procedure: COLONOSCOPY; Surgeon: Pinckney Johnstone Maxwell, MD; Location: MUSC ART OR; Service: GI Surgery
- Pr upper gi endoscopy,diagnosis N/A 7/2/2016
  Procedure: EGD ENDO; Surgeon: Jennifer L Seminerio-Diehl, MD; Location: MUSC DDC; Service: Gastroenterology
- Replace aortic valve perq femoral artry approach Unknown 8/10/2016
  Procedure: TRANSCATHETER AORTIC VALVE REPLACEMENT WITH PROSTHETIC VALVE FEMORAL ARTERY APPROACH; Surgeon: John S. Ikonomidis, MD; Location: MUSC ART OR; Service: Cardiac Surgery
- Pr transurethral elec-surg prostatectom 9/8/2016
  Procedure: URO TRANSURETHRAL ELECTROSURGICAL RESECTION PROSTATE, INC CONTROL OF POSTOPERATIVE BLEEDING, COMPLETE (VASECTOMY, MEATOTOMY, CYSTOURETHROSCOPY, URE; Surgeon: Harry St. Clair Clarke, MD PhD; Location: MUSC MAIN OR; Service: Urology

Family History: family history includes Diabetes in his mother; Ulcers in his father.

Medications

• B complex-vitamin C-folic acid	1 capsule	Oral	Daily
• calciTRIOL	1 mcg	Oral	Once per day on Mon Wed Fri
• calcium acetate	667 mg	Oral	With meals
• DAPTOmycin (CUBICIN) 50 mL IVPB	750 mg	Intravenous	Q48H
• darbepoetin alfa	100 mcg	Subcutaneous	Weekly
• folic acid	2 mg	Oral	Daily
• MEROpenem	500 mg	Intravenous	Q24H
• midodrine	10 mg	Oral	before hemodialysis
• pantoprazole	40 mg	Oral	Before bfast & before dinner
• rosuvastatin	10 mg	Oral	Daily

PRN Meds:
PCA Dosing:

Review of Systems

General	fatigue
Eyes	WNL
ENT	WNL
Cardiovascular	No chest pain and does not feel his heart rate change
Pulmonary	SOB with movement

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

Neuro	weakness
Psych	WNL

Physical Exam

BP 83/50 mmHg | Pulse 88 | Temp(Src) 36.3 °C (97.3 °F) (Axillary) | Resp 15 | Ht 190.5 cm (6' 3") | Wt 86.3 kg (190 lb 4.1 oz) | BMI 23.78 kg/m2 | SpO2 100%

System	
General	In NAD, in bed, pleasant and lethargic
Eyes	no scleral icterus
ENT	moist mucus membranes
CV	tachycardic, irregular rhythm and murmur
Respiratory	CTAB, no rales, rhonchi, or wheezing and no increased work of breathing with O2 via nasal cannula
GI	
Neuro	Patient alert and answering question appropriately-daughter deferred to the patient-states he makes his own decision
Musculoskeletal	
Extremities	warm to touch
Skin	no jaundice, no bruising and bruising present
Psych	cooperative with exam and depressed appearing-wants to be at home

Pertinent Labs

Lab Results

Component	Value	Date
WBC	4.81	09/23/2016
HGB	7.6*	09/23/2016
HCT	25.0*	09/23/2016
MCV	104.6*	09/23/2016
PLT	19*	09/23/2016

estimated creatinine clearance is 16.5 mL/min (based on Cr of 4.7).

Lab Results

Component	Value	Date
CREATININE	4.7*	09/23/2016
BUN	23.0	09/23/2016
NA	143.0	09/23/2016
K	3.80	09/23/2016
CL	112.0*	09/23/2016
CO2	31.6	04/15/2014

Radiology

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Consults - Encounter Notes (continued)

Consults by Joan Marie Cain, FNP at 9/23/2016 3:38 PM (continued)

Assessment

Warren P Holliday is a 74 y.o. male admitted with hypotension, labile BP and hypoxia who is presently wanting to be at home. The patient and family were asking about results of testing and explanations regarding hypotension. This was discussed with family and patient. The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. The daughter defers to her father and states he makes his own decisions.

Plan:

Follow up on Monday regarding possible discharge with hospice vs home health vs continued aggressive interventions.

Caregiver and family states the patient continually has a low BP and they want to know about home dialysis vs having to go to the dialysis center.

Plan

1. **Goals of Care In Reference to Complex Decision Making:**
   Understanding of disease / plan: family and patient understanding of dx
   Code Status: limited. Pressors only

2. **Symptom Management:**
   no symptom management needed at this time

3. **Psychosocial Support:**
   Social Work Supportive care counseling
   Pastoral Care Assess and address spiritual needs

4. **Disposition Planning:**
   Planned Location: thinking of home with hospice vs continued aggressive care

5. **Counseled patient and / or family on the following:**
   decision making, goals of care and hospice

I have spent 70 minutes in face to face time with this patient, including floor time, >50% of which has been spent in counseling and/or coordination of care.

Thank you for this consult. Please page me with any questions. Palliative care will continue to follow along with the primary team.

Joan Cain, FNP-BC

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Progress Notes - Encounter Notes (continued)

Progress Notes by Susan R Wilcox, MD at 9/25/2016 6:27 AM (continued)

ESRD:
-Nephrology on board for MWF HD; dialyzed on 9/23 with 1.3 L pulled as patient was volume overloaded on exam.
-Off levophed now, keeping even - will discuss CTAP with contrast with Nephrology team

Recurrent Large Left Pleural Effusion:
-Exudative with lymphocytes and eosinophils when tapped on last admission. Likely secondary immunologic response to unmasked pericardial antigens during recent TAVR.
-Will continue to monitor for now; patient denies shortness of breath and is saturating well on 2L nasal canula. Thoracentesis would be high risk at this time given patient's supratherapeutic INR and thrombocytopenia.

FEN/Prophylaxis: Diet: Cardiac/renal diet. PRN fluid boluses. Replete lytes PRN. DVT ppx contraindicated (supratherapeutic INR)

Dispo/Code status: Patient remains critically ill requiring ICU level care. Pressors only, no shocks, compressions, or intubation.

Andrew McNulty, MD
Date: 9/25/2016
Pager: 15328

Patient seen and examined on morning rounds and throughout the day on 9/25 as indicated by clinical status. The patient's data has been reviewed, and the plan discussed with the residents. I have read and agree with the note above. Issues to emphasize:

Patient continues to have ongoing septic shock, on norepi at 1mcg/min. He could not tolerate HD on Friday, and therefore could not have a full run.The patient has been very clear that he does not want to stop dialysis - this is not consistent with his goals of care.

He is still delirious, possibly from metabolic encephalopathy. He is somnolent, with intermittent moments of clarity.

Cx have been all negative, but cx were all collected while on broad spectrum Abx. WBC 6.23, temp 35.5. Appreciate ID input. On daptomycin and meropenem.

He had a recent TAVR - discussed anticoagulation with Cardiology, Hematology. The plan it that we will only reverse if he is bleeding.

I discussed his case with Dr. Sturdivant, and we both agree that he is at the end of his life. The patient very much wants to go home, but he will not accept stopping HD, (as would be part of hospice care) as this is not consistent with his values. Will discuss with Case Management regarding options. At this time, the patient is far from being well enough to go home without hospice, without a goal of dying at home.

The patient's conditions contribute to complex critical care decision making and to the high probability of acute clinically significant deterioration. I, as the critical care physician, spent 55 minutes directly providing critical care time, exclusive of time for procedures.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Progress Notes - Encounter Notes (continued)

Progress Notes by Rachel L. Sturdivant, MD at 9/24/2016 12:11 PM (continued)

12:12 PM 9/24/2016

Nephrology
Pager 15410

Nephrology Attending Attestation

I have seen and examined the patient with Dr.Rodriguez on 9.24.16, and I confirm the history, physical, assessment and plan.

Mr. Holliday is my dialysis patient at DCI East Cooper. He has significantly deteriorated this year, and he has not recovered after his TAVR as hoped. His recurrent hospitalizations complicated by prostatic/seminal vesicle abscess, sepsis, recurrent pleural effusion and sacral decubitus as well as coagulation abnormalities contribute to a very complex case. His hypotension is limiting dialysis as well. Mr. Holliday describes life as a "test" and is unlikely to withdraw from dialysis.

I had a 30 minute conversation with his daughter about his overall prognosis. Having been on dialysis for several years, and having watched his decline, I doubt that he will regain funcitonal status even with the best of care. Hospice decisions are often overwhelming for dialysis patients when they are asked to give up dialysis - the time frame for survival is too concrete and unacceptable to many patients. As he has financial resources, it is reasonable for us to inquire with our dialysis company about whether he could pay for a private dialysis nurse at home so that he could obtain his last request to go home. If that alternative is not availble, he may prove over time to not tolerate dialysis which may ease his decision making. We will follow along with his care with you and assist as necessary. Currently he is on levophed and would not tolerate a transfer to home. Family states that he will not go to a SNF/NH/rehab upon discharge.

Rachel L. Sturdivant, MD, FNKF
Clinical Associate Professor of Medicine
Division of Nephrology

Electronically Signed by Rachel L. Sturdivant, MD on 9/24/2016 5:43 PM

Progress Notes by Nandita Nadig, MD at 9/24/2016 6:34 AM

Author: Nandita Nadig, MD | Service: MED-GENERAL INTERNAL MEDICINE | Author Type: Physician
Filed: 9/24/2016 1:16 PM | Date of Service: 9/24/2016 6:34 AM | Status: Signed
Editor: Nandita Nadig, MD (Physician)
Related Notes: Original Note by Benjamin W Barnette, MD (Resident) filed at 9/24/2016 7:42 AM

Critical Care Progress Note
Medical University of South Carolina

Patient Name: Warren P Holliday
Age: 74 y.o.
Sex: male
MRN: 000086027
Date: 9/24/2016
Admission Date: 9/19/2016

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY CHARLESTON	)	CASE NO. 2019-CP-10-2430
	)	
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY,	)	
Petitioners,	)	
v.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE,	)	**Affidavit of Alice F. Paylor**
Respondents.	)	

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Alice F. Paylor, attorney at law, who, after being sworn, states as follows:

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1. My name is Alice F. Paylor and I am over 18 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.
2. I have been a practicing attorney for approximately 43 years. During the relevant times herein, I was an attorney for the Rosen Hagood, LLC.
3. On March 24, 2020, in my capacity as attorney for my clients, Ross and Lea Holliday, I wrote to Mark Holliday, who is acting as Personal Representative of the Estate of Patricia B. Holliday, to request a copy of Patricia B. Holliday's Revocable Trust, which was created on or near October of 2008. See Exhibit A, Emails Between Alice Paylor and Mark Holliday.
4. On March 31, 2020, Mark Holliday denied my request, but invited my clients to furnish information entitling them to a copy of the trust documents at which time he would reconsider their request. See Exhibit A, Emails Between Alice Paylor and Mark Holliday.
5. On April 7, 2020, I informed Mark Holliday that my clients were in possession of the Trust from October of 2008, which listed Ross and Lea as beneficiaries of the Trust. See Exhibit A, Emails Between Alice Paylor and Mark Holliday.
6. On April 8, 2020, Mark Holliday responded with a reference to an August 4, 2017 amendment and restatement of the Trust but did not provide a copy of the same. He also stated that Patricia Holliday had removed Ross and Lea as beneficiaries. See Exhibit A, Emails Between Alice Paylor and Mark Holliday.

FURTHER THE AFFIANT SAYETH NOT.

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

CERTIFICATION IN LIEU OF AFFIDAVIT[1]

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

s/ Alice F. Paylor
Alice F. Paylor, Esquire

[1] Pursuant to The South Carolina Supreme Court's Order re Operation of the Trial Courts During the Coronavirus Emergency, dated April 3, 2020.

EXHIBIT A

ELECTRONICALLY FILED - 2020 Jun 02 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

From: Mark Holliday
Sent: 04/08/2020 03:01 PM
To: Alice Paylor
CC: Truett Nettles; Ross Holliday; Lea; Bijan Ghom
BCC:

Attachments:

Priority: Normal
Request: None
Security: Normal
Deliver After 0 days(s)
Subject: Re: Patricia Holliday's estate

Dear Alice:

This is a follow up to your initial and subsequent requests for information regarding mom's trust. Based upon your latest email, your clients have provided you with a copy of the 2008 Trust resulting in a fulfillment of that request.

Your question relating to whether mom's trust was modified is answered in the affirmative. On August 8, 2017, a Certificate of Trust (COT) was recorded at the Charleston County RMC Office likely in Book 657 at Page 997. This COT references an August 4, 2017 amendment and restatement of mom's 2008 Revocable Trust.

The COT answers the question as to whether your clients are trustees as claimed in your email below. The COT references my designation as the Successor Trustee and provides for a second alternative of which your clients are not designated as successors. Thus, neither of your clients are a trustee of mom's trust.

Likewise, your clients are not beneficiaries of mom's trust. *As a result of the litigation between your clients and our mother, she executed an amended Trust Agreement completely removing them as beneficiaries. This should be no surprise to your clients as a result of the aggressive steps they took against their mother including but not limited to their ultimately unsuccessful claim filed in the Charleston County Court of Common Pleas for a portion of life insurance death benefits.*

This information should satisfy your inquiry regarding the designated trustee and your clients beneficiary status in connection with mom's trust. Let me know if you feel otherwise and requests for information relating to the designation of the trustee and your clients beneficiary status will be considered.

Regards,
Mark

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From: Alice Paylor <apaylor@rosenhagood.com>
Sent: Tuesday, April 7, 2020 12:21 PM
To: Mark Holliday
Cc: Truett Nettles; Ross Holliday; Lea; Bijan Ghom
Subject: RE: Patricia Holliday's estate

Thank you, Mark.

My clients have a copy of Patricia's trust from October of 2008, and they are beneficiaries, trustees, etc. If there have been amendments, they need to see them in order to determine whether they are still beneficiaries. Thank you.

AliceR

Alice Paylor

|*Attorney at Law*|

151 Meeting Street, Suite 400
Charleston, SC 29401
|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8105
|direct fax| (843) 266-2223
apaylor@rosenhagood.com <mailto:apaylor@rosenhagood.com>
V-Card <https://protect-us.mimecast.com/s/GlPjCPN9lZU0mWyU03RVE?domain=nam02.safelinks.protection.outlook.com>
www.rosenhagood.com <https://protect-us.mimecast.com/s/8ZyBCR60noUGlE7hO9hq-?domain=nam02.safelinks.protection.outlook.com>
Our website and email have changed.
Please change your records accordingly.
<https://protect-us.mimecast.com/s/q_-TCVOkrPH2K3OhQnpsY?domain=nam02.safelinks.protection.outlook.com>

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From: Mark Holliday <mbenholliday@outlook.com>
Sent: Tuesday, March 31, 2020 1:43 PM
To: Alice Paylor <apaylor@rosenhagood.com>
Cc: Truett Nettles <TNettles@FinkelLaw.com>; Bijan Ghom <bghom@rosenhagood.com>; Lea <leaholliday@hotmail.com>
Subject: Re: Patricia Holliday's estate

Dear Alice:

Thank you for the heart felt condolences about my mother's passing. At this time, the request for a copy of mom's trust is declined. Ross and Lea are invited to furnish information entitling them to a copy of trust documents at which time the decision to decline the request will be reconsidered.

Regards,

Mark

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From: Alice Paylor <apaylor@rosenhagood.com <mailto:apaylor@rosenhagood.com>>
Sent: Tuesday, March 24, 2020 9:06 AM
To: Mark Holliday
Cc: Truett Nettles; Bijan Ghom; Lea
Subject: Patricia Holliday's estate

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Dear Mr. Holliday:

I am informed that your mother has passed away. I am truly sorry for your loss and I wish you and your family well in this difficult time. I hope you will accept my sincere sympathies.

As you know, I represent your brothers, Ross and Lea. I am in possession of the application for informal probate of your mother's will and your role as Personal Representative of her Estate and Trustee of her Revocable Trust. I am writing you to request a copy of Patricia B. Holliday's Revocable Trust, which was created on or near October of 2008. As you may know, § 62-7-813 of the South Carolina Trust Code governs the trustee's duty to inform and report, which includes providing a copy of the trust document in these circumstances.

Sincerely,

Alice F. Paylor

Alice Paylor

|*Attorney at Law*|

151 Meeting Street, Suite 400
Charleston, SC 29401
|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8105
|direct fax| (843) 266-2223
apaylor@rosenhagood.com <mailto:apaylor@rosenhagood.com>
V-Card <https://protect-us.mimecast.com/s/oFqGCXD0woU4N2pf7uTtI?domain=nam02.safelinks.protection.outlook.com>
www.rosenhagood.com <https://protect-us.mimecast.com/s/PCObCYEnxvhDZMGuj9j0f?domain=nam02.safelinks.protection.outlook.com>
Our website and email have changed.

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ELECTRONICALLY FILED - 2020 Jun 09 11:55 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENTS' MOTION FOR PROTECTIVE ORDER**

TO: COUNSEL FOR PETITIONERS

YOU WILL PLEASE TAKE NOTICE THAT pursuant to South Carolina Rules of Civil Procedure 26(c) and 30(d), Respondent Ross Samuel Holliday ("Ross Holliday") and Respondent

ELECTRONICALLY FILED - 2020 Jun 09 11:55 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Warren Lea Holliday ("Lea Holliday") by and through their undersigned counsel, hereby move for an Order preventing Petitioners from taking in-person depositions on June 16-17, 2020 at the Slotchiver and Slotchiver law office. Alternatively, if the Court rules that the depositions must go forward, the depositions should be conducted virtually, and limited to the topics concerning the *testamentary acts* of the testator. Counsel for Respondents did confer with counsel for Petitioners prior to filing this motion.

On June 2, 2020, Respondents filed a Motion for Summary Judgment that Petitioners do not have the requisite evidence to prove lack of capacity or undue influence to invalidate the Decedent's testamentary act of signing a Revocation of his Revocable Trust prior to his death in September of 2016. Respondents filed affidavits for all persons who witnessed the testamentary act in support of Decedent Warren Holliday's testamentary capacity and that he was willingly signing the document. Petitioners' counsel became very upset and said that they had not taken deposition discovery of the Respondents. Because the case law is so clear on the burden of proof for Petitioners to prevail in an undue influence and/or lack of capacity case, Respondents' counsel informed them that the facts were clear without the depositions and refused to withdraw the motion, which is set to be heard during the week of June 22, 2020.

On June 5, Petitioners' counsel sent a letter noticing the depositions in person at their law offices for June 16 and 17 (less than two weeks from the date of notice). According to Petitioners' letter, the reason for the deposition notices—after nearly two years of litigation—was due to Respondents' Motion for Summary Judgment. Petitioners' deposition notices, as evidenced by the accompanying written discovery, are aimed at harassing and annoying Respondents about issues that have nothing to do with Respondents' Motion for Summary Judgment. Respondents' summary judgment motion attaches affidavits of all persons who were present during the

ELECTRONICALLY FILED - 2020 Jun 09 11:55 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

testamentary act of executing the Revocation. South Carolina law is clear that, if Petitioners do not have any evidence of incapacity and/or undue influence *at the time* of the testamentary act, then they are legally barred from pursuing their claims of incapacity and/or undue influence. Hairston v. McMillan, 387 S.C. 439, 445, 446-47, 692 S.E.2d 549, 552-53. (Ct.App. 2010) (Will contestants must prove incapacity at the time the will was executed and must show that the alleged undue influence was brought directly to bear upon the testamentary act.) Because affidavits have been presented by every witness to the testamentary act, and they all state under oath that Warren Holliday knew his estate and his loved ones and was doing what he wanted to do with his assets, Petitioners' burden now have the burden of presenting more than a scintilla of evidence that he did not have capacity or was unduly influenced at the time of the testamentary act. If Petitioners have no such evidence, Respondents are entitled to summary judgment, which would end this matter and stop the continuing harassment by Petitioners.[1]

More importantly, as Petitioners well know, Ross Holliday is recovering from several rounds of major surgery, putting him in the most at-risk group for COVID-19. Requiring anyone, including both Petitioners, let alone a person in the highest at-risk group, to fly from his home in Utah to attend a deposition during the pandemic is dangerous and unnecessary considering the technology available, and the fact that the Supreme Court of South Carolina has expressly authorized the use of remote communication technology to minimize the risk to the public, litigants, and lawyers. See South Carolina Supreme Court Orders dated 4-22-20 and 4-30-20. [2]

[1] Throughout this litigation, Petitioners have muddied the waters with accusations that Respondents have improperly administered the Estate of Warren Holliday—specifically, the failure to file an Estate tax return. This is a red herring. Petitioners have **already received** their inheritance and, if the testator had capacity to make the estate changes that he made, then Petitioners do not even have standing to address maladministration.

[2] If the Court finds that Respondents depositions should be done *virtually* prior to hearing Respondents' Summary Judgment Motion, the depositions should be limited to the issues in Respondents' Motion (the testamentary acts).

ELECTRONICALLY FILED - 2020 Jun 09 11:55 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

CONCLUSION

For the foregoing reasons, Respondents move for an Order preventing the in-person depositions of Respondents until after the Court has ruled on Respondents' Motion for Summary Judgment. In addition, so long as Ross Holliday is under medical orders to stay at home and so long as there is a pandemic exposing everyone to great risk by flying or being in public, Respondents move for an Order allowing them to appear by virtual deposition from their homes in Utah. Should the Court determine that Petitioners are entitled to deposition discovery prior to ruling on the Motion for Summary Judgment, Respondents request a protective order that the virtual depositions be limited to questions about Decedent's capacity at the time he executed the Revocation and to any influence at the time of the execution.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
June 9, 2020

ELECTRONICALLY FILED - 2020 Jul 01 11:23 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENT ROSS HOLLIDAY'S MOTION FOR PROTECTIVE ORDER**

TO: COUNSEL FOR PETITIONERS

YOU WILL PLEASE TAKE NOTICE THAT pursuant to South Carolina Rules of Civil Procedure 26(c) and 30(d), Respondent Ross Samuel Holliday ("Ross Holliday") by and through

ELECTRONICALLY FILED - 2020 Jul 01 11:23 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

his undersigned counsel, hereby moves for an Order preventing Petitioners from taking a deposition that exceeds the limitations set forth by his primary care physician, Dr. Kotwal. Attached hereto as Exhibit A, Dr. Kotwal has put forth several restrictions on Ross Holliday due to his medical condition. Ross cannot sit for more than 2-3 hours at a time and needs a walking break every hour.

Counsel for Respondents advised Petitioners' counsel of these limitations, but Petitioners' counsel would not consent. Despite this Court's Order requiring Petitioners' counsel to limit questioning to the issue of incapacity and undue influence, Petitioners' counsel insists that Ross Holliday needs to be deposed "all day." The applicable law requires Petitioners to prove incapacity and/or undue influence *at the time* of the testamentary act. Swiger v. Smith, 426 S.C. 408, 417, 827 S.E.2d 200, 204-05 (Ct. App. 2019); see also Hairston v. McMillan, 387 S.C. 439, 445, 446-47, 692 S.E.2d 549, 552-53. (Ct. App. 2010) (holding that will contestants must prove incapacity at the time the will was executed and must show that the alleged undue influence was brought directly to bear upon the testamentary act); and Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976) ("A contestant must show that the influence was brought directly to bear upon the testamentary act.")

Petitioners' counsel's claim that they need to depose Ross Holliday all day in spite of this Court's Order limiting the topics to the testamentary act is disingenuous. Ross has given an affidavit concerning his knowledge of the testamentary act, and three (3) hours is more than sufficient time to permit cross examination on his sworn statements submitted in support of summary judgment.

ELECTRONICALLY FILED - 2020 Jul 01 11:23 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

CONCLUSION

For the foregoing reasons, Respondent moves for an Order requiring Petitioners' counsel to abide by the medical limitations put forth by Ross Holliday's physician. Specifically, Ross Holliday should not be deposed for more than three (3) hours in a single day and he must be allowed a break to walk around each hour.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
July 1, 2020

EXHIBIT A

ELECTRONICALLY FILED - 2020 Jul 01 11:23 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

GRANGER MEDICAL CLINIC

11724 S State St
Draper, UT 84020
Phone: 801-576-2000

Ross Holliday
14051 S Sage Hollow Drive
Draper UT 84020

Date of Birth: (

To Whom it May Concern:

Ross Holliday is under my care for his primary care needs. He has been advised against long distance travel, including air travel, because of medical reasons. He should also not be sitting for more than 2-3 hours at a time. He would also need a walking break every hour in view of his current medical condition.

Please feel free to get in touch with me if you have any questions or concerns.

Sincerely,

Pinky Kotwal MD

ELECTRONICALLY FILED - 2020 Aug 05 3:51 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONERS' MOTION TO COMPEL CONTINUATION OF DEPOSITION OF ROSS HOLLIDAY**

On June 18, 2020, all parties attended a status conference with Judge Bentley Price, who is assigned to this complex case, to discuss the fact that Respondents had filed a Motion for

ELECTRONICALLY FILED - 2020 Aug 05 3:51 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Summary Judgment seeking judgment because Petitioners have no evidence supporting their claims that the decedent, Warren Holliday, lacked testamentary capacity and/or was subjected to undue influence when he executed a testamentary document, the Revocation of the Warren Holliday Revocable Trust. Despite the fact that this case is almost two years old, and the fact that Rule 56 allows for Respondents to have their Motion for Summary Judgment heard, Petitioners objected to the Court hearing the motion because they wanted to take certain depositions. Specifically, Petitioners stated that they would like the opportunity to question the testamentary witnesses about their affidavits. At the status conference, Judge Price provided Petitioners 45 days to conduct discovery solely on the issues of incapacity and/or undue influence.

Subsequently, Petitioners noticed four (4) depositions in Charleston and the deposition of Ross Holliday in Utah, where Mr. Holliday resides. Because Petitioners insisted that they needed at least a full day to depose Mr. Holliday, who has serious health issues and, according to his doctor, cannot sit longer than 3 hours in a day, Respondents moved for a Protective Order. On July 13, 2020, Judge Price heard Respondents' motion and ordered that Mr. Holliday be deposed via Zoom for no longer than three hours, with leave for the Petitioners to request an additional deposition if they needed more time. See Order dated 7-13-20 ("It is limited to three hours.").

On July 28, 2020, Petitioners took the depositions of Greg Bosch, Aliecia Bores and Truett Nettles. Counsel for Respondents reminded counsel for Petitioners that questions should be limited to those related to testamentary capacity and/or undue influence. However, Petitioners' counsel strayed far afield in Mr. Nettles' deposition. On July 30, 2020, Petitioners took the deposition of Martha Brouthers, the sister of Warren Holliday's now deceased ex-wife.

ELECTRONICALLY FILED - 2020 Aug 05 3:51 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Ms. Brouthers had no relevant information concerning Mr. Warren Holliday's testamentary capacity and/or any undue influence as she had not seen nor communicated with Mr. Holliday during the last six months of his life, and he had executed the testamentary document on September 15, 2016, and died on September 26, 2016.

On August 4, 2020, Petitioners took the deposition of Ross Holliday for three (3) hours in accordance with the Court's Order. Again, Respondents' counsel reminded Petitioners' counsel about the limits of discovery, but Petitioners' counsel went forward and failed to ask questions concerning Warren Holliday's capacity and/or being subjected to undue influence when he executed the testamentary document. Instead, Petitioners chose to spend one hour of their time asking Ross Holliday about a 2004 promissory note, which was the subject of other litigation in which the Court (The Honorable Deadra Jefferson) granted summary judgment to Ross Holliday against his mother, Patricia Holliday. The remaining time was spent trying to get a detailed medical history from Mr. Holliday, which he refused to provide; the automobiles owned by Ross from 2010 to the present (even though it was evident that Petitioners' counsel already had this information); the real property owned by Ross from 2004 to the present; his relationship with his siblings, Mark and Pamela (not close); whether his father had given him money and/or had participated in investments with him over the years; all of the LLC's with which Ross had been involved over his life; and other questions which have nothing to do with whether Warren Holliday had testamentary capacity and/or was subjected to undue influence on September 16, 2016, the day he executed the Revocation of Revocable Trust.

After the deposition, Petitioners' counsel contacted Respondents' counsel to set a time to reconvene the deposition of Ross Holliday, and Respondents' counsel refused, because

ELECTRONICALLY FILED - 2020 Aug 05 3:51 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Petitioners' counsel had blatantly ignored the requirements for discovery as set by Judge Price on June 18, 2020.

As set forth in the Motion for Summary Judgment, the applicable law requires Petitioners to prove incapacity and/or undue influence ***at the time*** of the testamentary act. Swiger v. Smith, 426 S.C. 408, 417, 827 S.E.2d 200, 204-05 (Ct. App. 2019); see also Hairston v. McMillan, 387 S.C. 439, 445, 446-47, 692 S.E.2d 549, 552-53. (Ct. App. 2010) (holding that will contestants must prove incapacity at the time the will was executed and must show that the alleged undue influence was brought directly to bear upon the testamentary act); and Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976) ("A contestant must show that the influence was brought directly to bear upon the testamentary act."). Despite this being the controlling law, Petitioners continue to try to besmirch the reputation of the Respondents by digging into irrelevant matters concerning business dealings among them and their father, Warren Holliday. Moreover, despite this being a capacity and/or undue influence case, Petitioners continue to ignore the fact that Warren Holliday at all relevant times, knew what he owned, who his children were, and who he wanted to leave his assets to. Warren Holliday, a strong and capable man, had every right to make his own decisions, which he made every day of his life.

Respondents are entitled to a hearing on their Motion for Summary Judgment pursuant to Rule 56 and, most importantly, are entitled to a judgment as a matter of law because Petitioners have no evidence, much less the required scintilla, to prove their claims of incapacity and/or undue influence.. Apparently, Petitioners' request to depose Ross Holliday, which was purportedly made in order to ask him about the statements in his affidavit made in support of summary judgment, was disingenuous since Petitioners failed to even ask Ross Holliday one question about his affidavit, or about his father's capacity. Therefore, Petitioners waived their

right to question him about these issues at this time, and certainly should not be permitted more time before Respondents' Motion for Summary Judgment is heard.

For the foregoing reasons, Respondents ask the Court to deny Petitioners' Motion to Compel and to set the pending Motion for Summary Judgment for hearing as soon as possible. If said motion is granted, it will resolve all of Petitioners' claims, and Respondents are entitled, pursuant to Rule 56, to have their Motion heard and to move forward with their lives in accordance with the wishes of their father.

Respectfully submitted,

By: s/ Alice F. Paylor
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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
August 5, 2020

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ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENTS' AMENDED MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Respondents hereby move this Court for an order granting them summary judgment on all causes of action in the

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

above-referenced matter. This Motion is based upon the grounds that Petitioners do not have any evidence to support their claims, the material facts are undisputed, and therefore, Respondents are entitled to judgment as a matter of law.

UNDISPUTED FACTS

On October 29, 2008, the now deceased Warren and Patricia Holliday, who were married at the time, each executed a revocable trust agreement prepared by attorney Heyward Carter. In Warren's agreement, he was the Settlor and Trustee. This agreement provided that, on Warren's death, if he predeceased Patricia, the trust's assets, which included Zeezrom, LLC as its primary asset, would go to Patricia during her life and, upon her death, would go to the couple's four children, Mark Bennett Holliday, Pamela Holliday Wallin, Ross Holliday and Lea Holliday, in equal shares. On the same day, both Warren and Patricia executed Powers of Attorney granting their son, Ross Holliday, each party's power of attorney.

On December 9, 2013, after 47 years of marriage, in a divorce proceeding initiated by Patricia, Patricia and Warren were divorced. The parties entered into a Marital Settlement Agreement, which divided all marital assets and provided for the support of Patricia through a marital trust which provided her $16,000 per month in payments from Warren's company, Zeezrom, LLC, as well as a life insurance policy on Warren, payable to her at his death. During the divorce, Ross and Lea Holliday assisted their father who was suffering serious physical health issues, and Pamela and Mark assisted their mother. See Affidavit of Ross Holliday.

Thereafter, Warren executed a will, dated March 21, 2014, in which he allocated 40% of his assets to Ross, 40% to Lea, 15% to Mark and 5% to Pamela. This will did not mention the 2008 revocable trust.[1] On January 7, 2016, Warren executed a First Codicil to that will in which he specifically bequeathed $300,000 to Mark and $100,000 to Pamela, with the remainder going

[1] Respondents presume this is because the will acted to revoke the 2008 Revocable Trust.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

to Ross and Lea in equal amounts. The codicil has an *in terrorem*, or "no contest" clause, which provides that Warren "specifically disinherits" any person (and their descendants) who "directly or indirectly, contest or attacks the validity of this [Codicil], or claims undue influence, fraud, menace, duress or lack of testamentary capacity or otherwise objects to the administration of my estate or any actions taken by the personal representative of my estate…."[2] See Exhibit B.

When Warren learned that the trust might still be valid, he discussed it with his lawyer, Truett Nettles, and asked Mr. Nettles to prepare a revocation of the trust for him to sign. See Deposition of Truett Nettles, p. 117-118. On September 15, 2016, Warren executed a "Revocation of Warren P. Holliday Revocable Trust" at his home in front of four witnesses: Truett Nettles, Aliecia Bores, Greg Bosch and Ross Holliday. See Exhibit C; see also Depositions of Bosch, Nettles and Bores; Affidavits of Bosch and Holliday.

On September 23, 2016, while Warren Holliday was at MUSC hospital, Petitioner Pamela Wallin visited him and repeatedly told the medical staff that her father made his own decisions and their questions should be directed to him. See MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection.**" (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). MUSC discharged Warren to his home where he died on September 28, 2016.

[2] Petitioners have violated this clause by objecting to the administration of Warren's estate and actions taken by Ross, his Personal Representative and will have to return the funds previously disbursed to them.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Respondent Ross Holliday filed the last will and codicil to the will, and the Probate Court appointed him as Personal Representative in accordance with the instructions of the will. In accordance with the terms of the will and codicil, Ross handled the estate and disbursed the specific devises of $300,000 and $100,000 to Mark and Pamela respectively. Ross further devised the remainder of the estate 50% to Lea and 50% to Ross in accordance with Warren's directives in his estate planning documents. See Ross Holliday Affidavit.

On September 19, 2018, almost two (2) years after Warren's death, Mark and Pamela filed this action seeking to set aside the revocation of the 2008 trust for incapacity and undue influence and for other relief—all of which depends on a finding that their siblings, Ross and Lea, tortuously interfered with their father's estate plan. This lawsuit asks that the Court ignore the testator's intentions in his 2014 will and 2016 codicil—both of which show that Warren wanted to treat Ross and Lea differently than Mark and Pamela, putting these testamentary documents in direct conflict with the 2008 Trust—and reinstate the 2008 Revocable Trust, so that Mark and Pamela can recover more than their specific bequests.

Mark and Pamela claim that their parents vowed to treat all of the children equally when the 2008 Trust was created. Despite this claim, Mark, as Personal Representative for his mother, who passed away on February 23, 2020, refused Ross and Lea's request for a copy of her estate planning documents, and informed them that they were intentionally not named as beneficiaries by their mother. See Affidavit of Alice Paylor.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

LEGAL ARGUMENT

I. WARREN HOLLIDAY POSSESSED THE REQUISITE TESTAMENTARY CAPACITY TO EXECUTE THE 2014 WILL, THE 2016 CODICIL AND THE 2016 REVOCATION OF TRUST.

S.C. Code § 62-7-601 provides that "[t]he capacity required to create, amend, revoke or add property to a revocable trust … is the same as that required to make a will." § 62-2-502 states that "[a]n individual who is of sound mind and who is not a minor … may make a will."

The Probate Code further establishes the burdens in contested cases in § 62-3-407:

> …Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

In In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997), the South Carolina Court of Appeals heard an appeal from the decedent's son that his mother did not have capacity to execute the will filed for probate. The Court stated the applicable law in South Carolina:

> The test of whether the testatrix had the capacity to make a will is whether she knew (1) her estate, (2) the objects of her affections, and (3) to whom she wished to give her property…. However, the legal test for determining whether or not a person has sufficient mental capacity to dispose of her property by will does not include the proviso that she must have a reasonable basis on which to found her like or dislike of the natural objects of her bounty…. Further, the "capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." 94 C.J.S. Wills § 15(c) (1956).

329 S.C. at 263, 495 S.E.2d at 461 [citations deleted].

In an earlier case cited in Weeks, the South Carolina Supreme Court held similarly:

> The fact alone that the testator disposed of property contrary to what others usually consider fair is not sufficient to declare his will void…. "The right to make a will carries with it the right to disregard what the world considers a fair disposition of property. In [an earlier case], we find: 'That a will is unjust to one's relations is no legal reason that it should be considered an irrational act.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

> The law puts no restrictions upon a man's right to dispose of his property in any way his partialities, or pride, or caprice may prompt him.'"

Hellams v. Ross, 268 S.C. 284, 290, 233 S.E.2d 98, 101 (1977).

In Lee's Heirs v. Lee's Executors, 4 McCord 183, 17 Am. Dec. 722 (1827), our Supreme Court was asked to invalidate a will executed by a man who believed in witches, devils and evil spirits, wore unusual clothes, slept in a hollow log and exhibited other extreme behavior. The Court found that he had capacity to execute a will, noting that to void a will by insanity, the proponent had to show that the testator was insane at the time of execution of the will despite the fact that the will was unjust to his family. The Court further found that the fact or belief that a will is unjust to the family is not a legal reason to consider its execution an irrational act.

It is well established that the degree of capacity necessary to execute a will is less than the degree of capacity to execute a contract:

> [T]he well established general rule [is] that ordinarily one need not have full mental contractual capacity in order to make a valid will; the criteria are different. Kirkwood v. Gordon, 7 Rich. 474, 62 Am. Dec. 418; Gable v. Rauch, 50 S.C. 95, 27 S.E. 555; Matheson v. Matheson, 125 S.C. 165, 118 S.E. 312. It is said in the note in 27 L.R.A., N.S., at page 54, with digests of many sustaining authorities, as follows: "The rule generally adopted is that a lower degree of capacity than is necessary for the execution of a deed or contract will suffice for the making of a will."

In re Estate of Weeks, *supra;* Banks v. McCollum, 213 S.C. 476, 483-84, 50 S.E.2d 199, 200 (1948). In addition, the Weeks Court cited from 94 C.J.S. Wills §27(a) (1956):

> Not every weakness incident to the ravages of age unfits a person for making a will. So, an aged person is not incapacitated by failing or defective memory, or partial loss of memory, absent-mindedness, nervousness, failure to recognize old friends, relatives, or members of the testator's family, inability to recognize acquaintances, a liking for dwelling on happenings of the past, pain and suffering, vacillating judgment, childishness, untidy habits, slovenliness or untidiness [sic] in dress, eccentricities or peculiarities, as in habit or speech, even though they may indicate a failing mentality, or even delusions or hallucinations if they do not affect the execution of the will….

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Indeed, a personal guardian and conservators had been appointed for Mrs. Weeks prior to her execution of the will at issue and the Court found that "a person is not incompetent to make a will because he has been adjudicated to be of unsound mind, or insane…" One of Mrs. Weeks' court appointed examiners testified that he believed that Mrs. Weeks did need guidance in the handling of her day-to-day business affairs but that she was capable of making major decisions concerning her property and was competent to make a will. The Court noted that, at the time of execution of the will, Mrs. Weeks understood and explained that she was leaving her son the sum of $1.00 to indicate that she knew of his existence but chose not to leave him anything. The Court upheld Mrs. Weeks' capacity to execute a will and to disinherit her son.

In the case before the Court, Warren Holliday executed a will on March 21, 2014, a copy of which is attached hereto as Exhibit A, stating in pertinent part:

> The bequest to each child is intentionally and purposely disproportionate and unequal. In administering my estate, and allowing for payment of all lawful liabilities thereof, my Personal Representative shall allocate and distribute assets into four, separate and unequal shares as follows: 5% to my daughter Pamela Giselle Holliday Wallin; 15% to my son Mark Bennett Holliday 40%; to my son Warren Lea Holliday; and 40% to my son Ross Samuel Holliday.

Warren Holliday executed a Codicil to that will on January 7, 2016. It stated in pertinent part:

> In my Will dated March 21, 2014, I made a bequest and devise to each of my four children which were intentionally and purposely disproportionate and unequal. The bequests were based on a percentage share in the assets of my Estate. Since the execution of that Will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personal and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets. I therefore wish to amend ITEM II of my said Will by deleting and revoking it as originally written and by substituting in lieu thereof the following six Items…

Warren Holliday specifically devised $300,000 to Mark Holliday and $100,000 to Pamela Wallin. A copy of this Codicil is attached hereto as Exhibit B. It also contains an *in terrorem*, or

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

"no contest" clause, which provided that any beneficiary who directly or indirectly attacks the validity of the will or otherwise interferes with the administration by the Personal Representative shall receive nothing. The estate distributed the funds bequeathed prior to the bringing of this action. Neither Pamela nor Mark have directly attacked the validity of the Will or Codicil. Instead, in an attempt to get around the *in terrorem* clause in the Codicil, they elected to attack Warren's Revocation of his 2008 revocable trust, which he clearly thought had been revoked by his subsequent will and codicil. In any event, Petitioners have taken numerous actions to interfere with the administration of the estate in accordance with the will by Warren's chosen Personal Representative.

Applying the law to the facts, the Court must look to the testamentary act in question, which was the execution of the revocation of the revocable trust to determine whether Warren had testamentary capacity at that time to revoke the trust. All of the witnesses have given affidavits stating that Warren knew what he owned, that he knew his children, his beneficiaries, and that he knew to whom he wanted to give his assets. See Affidavits and Depositions of Greg Bosch, Aliecia Bores, Truett Nettles and Ross Holliday. The bar for testamentary capacity is very low as set forth in the legal precedent above. There is no question that Warren possessed legal testamentary capacity to sign the trust revocation on September 13, 2016. The medical records from MUSC after September 15, 2016, when Warren was close to death, clearly show that not only did Warren possess the requisite testamentary capacity, but Petitioner thought so as well. Petitioner Pamela was with her father at MUSC and repeatedly told the caregivers that her father made his own decisions when asked questions about what care should be provided. See, e.g., MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The**

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection." (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). This same daughter now asserts that her father did not have testamentary capacity *prior* to the times when she told medical personnel that he had capacity to make his own medical decisions. In addition to Pamela's statements which clearly show that she believed he was competent, MUSC's staff made similar statements. See MUSC 07879 ("[H[e is alert and oriented to person, place, and time") (September 19, 2016); MUSC 07906-07911 ("The patient was alert and states he makes his own decisions.") ("Patient alert and answering question appropriately-daughter deferred to the patient-states he makes his own decision") (September 23, 2016); MUSC 07987 ("Mr. Holliday describes life as a test and is unlikely to withdraw from dialysis.") (September 24, 2016); MUSC 07972 ("The patient has been very clear that he does not want to stop dialysis – this is not consistent with his goals of care") (September 25, 2015).

The witnesses to the execution of the revocation document included a disinterested person, Greg Bosch, Warren's personal trainer and massage therapist. He worked with Warren twice a week for around two (2) years. Bosch was present working with Warren on September 15, 2012, when Warren asked him if he would serve as a witness to his revocation of the trust in case anyone ever challenged his will. Bosch has stated under oath that Warren told him that "people are not going to be happy when they find out what I left them" and that Warren wanted him to be able to testify that "Mr. Holliday knew exactly what he was doing." Warren specifically told him that his daughter Pamela would not be happy even though he was not cutting her out, but he was not giving her more because she had a well-off husband who could

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

take care of her. In addition, Warren told him that he did not want his daughter to give any money to his ex-wife and he believed that would occur if he left her more money. Warren told him that he was leaving the bulk of his Estate to two of his three sons, and his third son would not be happy either, but it was his choice to leave it to his two other sons. Bosch Affidavit and Deposition.

Mr. Bosch had nothing to gain by giving his affidavit, and he certainly knew that Warren Holliday knew his assets, his children and the people to whom he wanted his assets to go, because Warren had told him about them on the day of the execution. None of the Petitioners were present at the execution of the revocation, and they have listed no other witness who was present. Based on the legal precedent set forth above, **there is no question of fact as to whether Warren Holliday had testamentary capacity to execute the trust revocation**, and Respondents are therefore entitled to summary judgment as to the Petitioners' claim in Paragraph 56 of the Complaint that states "Since Mr. Holliday did not have the capacity to revoke the Trust, the Revocation was ineffective, and the Trust is still viable."[3]

Warren Holliday possessed testamentary capacity to execute the trust revocation on September 15, 2016, so Respondents are entitled to summary judgment as to all of Petitioners' claims based on his alleged incapacity (Second through Seventh Causes of Action).

II. THE TRUST REVOCATION IS VALID BECAUSE THERE IS NO EVIDENCE OF UNDUE INFLUENCE ON WARREN HOLLIDAY.

In their claim entitled "First Cause of Action," Petitioners assert "upon information and belief" a number of allegations that have no basis in fact, and there is not even a scintilla of evidence that Warren executed the trust revocation because he was subject to undue influence. Petitioners have presented no evidence to support any of their claims that anyone substituted his

[3] There is no separate cause of action alleging lack of capacity.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

will for that of Warren Holliday and somehow forced him to do something that he did not want to do. None of the indicia of undue influence are present in this case, and the allegations are mere conjecture by the disgruntled children who chose not to spend time with their father at the end of his life.

The South Carolina Court of Appeals has defined what must be proved to establish "undue influence" to set aside a will:

> "The mere existence of influence is not enough to void a will as all influences are not unlawful. For influence to vitiate a will, it must destroy free agency and amount to force and coercion." Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993). "Circumstances must unmistakably and convincingly point to the substitution of another's will for that of the testator." Id. Evidence of undue influence may include "threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." Id. "A contestant must show that the influence was brought directly to bear upon the testamentary act." Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "General influence is not enough." *Id.*
>
> The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence. Howard v. Nasser, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005). If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence. *Id.* "We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, **the contestants of the will still retain the ultimate burden of proof to invalidate the will**." Id. [Emphasis added.]

Hairston v. McMillan, 387 S.C. 439, 446-47, 692 S.E.2d 549, 553. (Ct. App. 2010).

Our appellate courts have discussed the burden of proof in an undue influence case:

> "[I]n cases requiring a heightened burden of proof . . . the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003).

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Swiger v. Smith, 426 S.C. 408, 415, 827 S.E.2d 200, 203 (Ct. App. 2019). Thus, Petitioners must submit "more than a scintilla of evidence" to defeat this motion. Because Petitioners do not even have a scintilla of evidence, Respondents are entitled to summary judgment as to the undue influence claim regarding Warren's trust revocation.

In the recent case of Swiger v. Smith, the South Carolina Court of Appeals affirmed the Probate Court's and the Circuit Court's grant of summary judgment to beneficiaries who were accused of exerting undue influence on the decedent. The claims are the same as those made in the present action by Petitioner. The Swiger Court gave a thorough summary of the controlling law in an undue influence case and found that the claimants had failed to produce sufficient evidence to get beyond summary judgment. Petitioners have failed in the present action as well.[4]

Petitioners have presented no evidence to support their assertion that Ross and Lea unduly influenced their father. In fact, Warren showed in his 2014 will and his 2016 codicil which they have not attacked that he did not want to treat his children the same. Further, he told Greg Bosch exactly what was going to happen after his death – that his daughter and his third son would contest what he had done, because they were not treated the same, and it was his intention to treat them differently.

Again, Petitioners were not present at the execution, and the case law requires that the undue influence be exercised on the testamentary act, which in this case was Warren's execution of the trust revocation. Although Ross was Warren's power of attorney and, thus, in a fiduciary relationship with him, all of the witnesses present state that he did not do anything to "force" or "coerce" his father to leave the bulk of his assets to Lea and him. There is no evidence that Ross and Lea kept Pamela and Mark away from their father. The evidence is actually the opposite as

[4] In an unreported 2017 case, the South Carolina Court of Appeals affirmed the grant of summary judgment in another undue influence action similar to the matter before the Court. Langley v. Lynch, 2017 WL 4621154, a copy of which is attached hereto.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

it was Ross who text messaged Mark about his father's health and told him to come if he wanted to see him before he died. Petitioners have no evidence, much less the "unmistakable and convincing evidence," required to prevail in their claim.

Respondents are entitled to summary judgment as to the First Cause of Action alleging undue influence.

III. BECAUSE REMAINING CAUSES OF ACTION ARE ALL PREFACED ON EITHER A FINDING OF TORTIOUS CONDUCT OR THAT THE REVOCATION WAS INVALID, RESPONDENTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THOSE CAUSES OF ACTION.

Petitioners' remaining causes of action for Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment can be summarily dismissed if the Court finds that Warren Holliday had testamentary capacity to revoke his Revocable Trust, and did so free of undue influence.

First, *Intentional Interference with Inheritance* (IIWI), which South Carolina has not adopted as a cause of action, requires a (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. Wellin v. Wellin, 135 F. Supp. 3d 502, 517 (D.S.C. 2015) (The U.S. District Court concluded that the South Carolina Supreme Court would adopt such a cause of action). As demonstrated above, Petitioners have not shown a scintilla of evidence to support a finding of tortious conduct—let alone one that interfered with their inheritance.[5] Similarly, Petitioners' *constructive trust* argument fails because they have not shown that Respondents did anything inequitable to obtain

[5] Petitioners have spent a great deal convincing this Court that an estate tax return should have been filed. Assuming *arguendo* that this is true, the failure to file a tax return does not help Petitioners meet the elements of an IIWI claim. Furthermore, because Petitioners are not residual beneficiaries (they do not have a share in the remaining assets of the Estate), and have already received the fixed amounts that they are entitled to, Petitioners do not have standing to sue a Personal Representative for improper administration of the Estate. Gordon v. Busbee, No. 2003-CP-02-604, 2008 WL 8994336 (S.C. Com. Pl. May 23, 2008) ("Plaintiffs have no right or standing to make demands or complaints of any sort against the Personal Representative, including the equitable causes of action.").

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

legal title to property. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). Bald accusations that Mr. Holliday was incapacitated, which go against all of the testimony[6] and medical records, does not prove that Respondents did anything inequitable. The mere fact that Respondents ended up with more than they did is not "clear, definite, and unequivocal" evidence sufficient to support imposing a constructive trust. Id. at 530.

Petitioners' *Breach of Fiduciary Duties* cause of action and their request for a *Declaratory Judgment* (which only seeks to declare the Revocable Trust valid) are barred if the Revocation was valid. Petitioners' odd accusations of breach of fiduciary duties against Ross pursuant to the Revocable Trust is barred by a well-established principle of trust law: the trustee of a revocable trust does not owe duties to the beneficiaries during the life of the Settlor. See S.C. Code Ann § 62-7-603. Thus, even if Petitioners allegation that the Revocable Trust was valid during the final years of Warren's life is true, they still cannot sue Ross (the trustee) for his conduct during the life of Warren Holliday. S.C. Code Ann § 62-7-603 (explaining that the duties of a trustee of a revocable trust are owed exclusively to the settlor).

For these reasons, Respondents are entitled to summary judgment on Petitioners' Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment causes of action.

CONCLUSION

Because Warren Holliday possessed testamentary capacity to revoke his Revocable Trust, and did so free of undue influence, Respondents are entitled to summary judgment as to all Petitioners' claims.

[6] Petitioners do not have any personal knowledge of Mr. Holliday's mental capacity at the time of the testamentary acts. Therefore, they cannot possibly use their own testimony to establish that he was incapacitated at the time of execution.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
September 1, 2020

Exhibit A
(Last Will and Testament)

See Duplicate Exhibit* found at ROA pages 104-106

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit B
(First Codicil)

See Duplicate Exhibit* found at ROA pages 107-110

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA	)	**REVOCATION**
	)	**OF**
COUNTY OF CHARLESTON	)	**WARREN P. HOLLIDAY REVOCABLE TRUST**

This Revocation is made and executed this 15th day of September, 2016 by Warren P. Holliday of Mount Pleasant, South Carolina, who is the Settlor and the initial Trustee.

WHEREAS, the Settlor executed the Revocable Trust Agreement between Warren P. Holliday as Settlor and as Trustee on October 29, 2008 with the purpose and intent to provide for himself, his former wife Patricia Anne Holliday and his children Pamela G. Wallin, Mark Bennett Holliday, Ross Samuel Holliday and Warren Lea Holliday; and

WHEREAS, the former wife Patricia Holliday was granted a divorce from the undersigned Settlor by Order of the Family Court for the Ninth Judicial Circuit, County of Charleston, South Carolina, case number 2013-DR-10-02434 filed in that Court on December 9, 2013 and any and all further obligations of the Settlor to Patricia Holliday are satisfied and set forth in the Family Court Order and The Patricia Anne Holliday Marital Trust which provides the former spouse with all support provided in the divorce decree; and

WHEREAS, the Settlor executed his most recent Last Will and Testament on March 21, 2014 and, subsequently, a First Codicil dated January 7, 2016 and the Settlor has provided specifically for each of his children Pamela G. Holliday, Mark B. Holliday, Ross S. Holliday and Warren L. Holliday in these testamentary documents; and

WHEREAS, the purpose and intent of the Warren P. Holliday Revocable Trust have been accomplished or superceded by the above divorce decree and testamentary documents and the Settlor desires to revoke The Warren P. Holliday Revocable Trust.

NOW, THEREFORE, the undersigned Settlor, pursuant to his power and authority as Settlor and Trustee, hereby states and declares that:

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

1. **Revocation**. The Warren P. Holliday Revocable Trust dated October 29, 2008 is hereby revoked in its entirety pursuant to the Settlor's right and authority as set forth in Article III of the Trust.

2. **Disposition of Corpus**. Any and all property or monies contributed by the Settlor to the Warren P. Holliday Revocable Trust shall be transferred and paid to the undersigned Settlor and Trustee Warren P. Holliday. If any further document or instrument is required to effect such disposition of trust assets, I hereby authorize my son Ross Samuel Holliday to execute such documents pursuant to the Durable Power of Attorney which I have previously granted to him.

IN WITNESS WHEREOF Warren P. Holliday, as Settlor and Trustee of the Warren P. Holliday Revocable Trust, has set his hand and affixed his seal on the date first above written.

WITNESSES:

Alicia M. Bares

Warren P. Holliday, Settlor and Trustee

Subscribed, sworn to, and acknowledged before me by Warren P. Holliday, Settlor, and subscribed and sworn to before me by Alicia M. Bares, the witness, this 14th day of September, 2016.

Notary Public for the State of South Carolina
My Commission Expires: 2-28-2026

TRUETT NETTLES, II NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 02-28-2026

Exhibit

(Affidavit of Greg Bosch)

See Duplicate Exhibit* found at ROA pages 125-128

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit

(Affidavit of Alice F. Paylor together with Exhibit A to that Affidavit)

See Duplicate Exhibit* found at ROA pages 138-145

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit
(Affidavit of Ross Holliday)

See Duplicate Exhibit* found at ROA pages 111-115

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit
(Affidavit of F. Truett Nettles, II)

See Duplicate Exhibit* found at ROA pages 120-124

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit
(MUSC Medical Records)

See Duplicate Exhibit* found at ROA pages 129-137

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

VERITEXT LEGAL SOLUTIONS

Deposition of:

Aliecia Bores , Esquire

July 28, 2020

In the Matter of:

Holliday, Pamela et al v. Holliday, Ross Samuel et al

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-102430
COUNTY OF CHARLESTON

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. SARA JANE HOLLIDAY and JOHN C. HOLLIDAY,

Petitioners,

v.

ROSS SAMUEL HOLLIDAY, Personal Representative of the Estate of WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, et al.,

Respondents.

VIDEOTAPED DEPOSITION OF ALIECIA BORES

DATE: July 28, 2020

TIME: 11:57 a.m. - 1:03 p.m.

LOCATION: 171 Church Street
Charleston, South Carolina

TAKEN BY: Attorney for Petitioners

REPORTED BY: Elizabeth Drumm, CCR, RPR
Registered Professional Reporter
Notary Public, South Carolina

VIDEOGRAPHER: Christopher Mills

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

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Also Present: Mark Holliday
Mary Ellen Holliday
Martha Brouthers

THE VIDEOGRAPHER: We are now on the record. Today's date is July the 28th, 2020. The time is approximately 11:57 a.m. This is the video deposition of Aliecia Bores. The location is 171 Church Street, Charleston, South Carolina. This deposition is taken in the matter of Pamela Holliday, et al versus Ross Samuel Holliday, et al.

Would counsel please introduce themselves for the record.

MR. SLOTCHIVER: Dan Slotchiver and Brent Halversen for the Petitioners.

MS. PAYLOR: Alice Paylor for the Respondents.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

Thereupon,

ALIECIA BORES

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I'm shaking. Yes, I do.

EXAMINATION

BY MR. SLOTCHIVER:

Q All right. Ms. Bores, my name is Dan Slotchiver. We met a few moments ago.

A Mm-hmm.

Q And I'll be taking your deposition today. I know that you're a lawyer. I don't know if you've ever had your deposition taken before.

A I have not.

Q All right. Well, have you attended depositions before?

A I have.

Q Okay. I know this is a little outside the field that you -- you work in the trust department now; correct?

A Yes, I do.

Q Okay. So the same rules apply. Just to briefly go over them, try to answer the questions orally. If you nod your head or say uh-huh or huh-uh, the problem is the court reporter can't get it down. We have a videographer, so we can match it eventually, but we're trying to make sure we have equal records. Okay?

A Understood.

Q And if you do at any time nod your head or say uh-huh or huh-uh or do anything else that doesn't give an accurate record, I'm going to ask you to restate your answer, not to be fussing at you, but just to make sure we have an accurate

record.

A Okay.

Q Certainly we all recognize that today in the COVID times, that this is a challenge, that we are taking the deposition where I'm wearing a mask and you're wearing a mask and if at any time you don't understand me, if I come across mumbled, please tell me and I'll be happy to restate the question. Okay?

A Okay.

Q Is there anything preventing you from giving your deposition today?

A No, sir.

Q All right. Do you have any questions before we begin?

A No.

Q All right. I don't believe it's going to last very long, but if at any time you need a break for any reason whatsoever, just tell me and we'll be happy to give you a break. Fair enough?

A Yes.

Q I know a little bit about you, but not a whole lot about you. So let me ask you some background questions first.

A Okay.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 6

Q Where are you from?
A I'm originally from Monroeville, Ohio. I moved to Charleston, South Carolina right after undergrad and have been here since.
Q Where did you go to law school?
A I'm sorry.
Q Where did you go to law school?
A Charleston School of Law.
Q Okay. And when did you graduate?
A 2014.
Q Okay. You probably would have been in a class with my associate Andrew McCumber?
A We were in the same class, yes.
Q Got it. Okay. Where do you live?
A Do you want my address?
Q Just the area of Charleston.
A West Ashley.
Q Okay. And are you married or single?
A Single.
Q Do you belong to any churches or organizations that -- and the reason I'm asking you is if we have a jury, I just want to know if anyone on the jury belongs to the same church, organization or group that you belong to.
A I belong to a gym.

Page 7

Q Okay. Fair enough.
A I don't know if that counts, but...
Q Sure. It depends on which gym. Some of them are mega gyms and have cult followings and other ones are just small gyms.
A Some do.
Q What's the gym?
A Exemplar Fitness.
Q Okay. I know Exemplar Fitness. Jason Flutem; correct?
A Yes, sir.
Q Okay. What have you done, if anything, in preparation for the deposition today?
A I read through my deposition -- or my affidavit.
Q Have you spoken to anybody in preparation?
A I met with Alice via Zoom video to talk about today, what to kind of expect and that was essentially it. I know her partner also was on the call. Is it Bijan?
Q Right, Bijan. Okay.
A And that was extent of it. It was a quick call.
Q What did she anticipate or tell you that you should anticipate today?

Page 8

A That you would ask me a lot of questions.
Q Well, that's a pretty fair statement. Did she tell you about what particular questions I would probably ask you, what the topics were?
A No. She said that you would ask me a lot of questions and said to listen to the questions so that I understood what exactly you were asking.
Q That's good advice. Exactly what I would want you to do. Fair enough.
When you graduated law school, where was your first place of employment?
A With the Circuit Court, so Doyet Early.
Q What kind?
A Clerkship.
Q Right. Okay. And after that, where did you go to work?
A The Finkel Law Firm.
Q Okay. And who in particular did you work with at the Finkel Law Firm? I don't know the make-up, but I know there's Jerry Finkel and a bunch of lawyers, but were you assigned a particular lawyer to work with or did you --
A I wouldn't say that I was assigned a particular lawyer to work with. There was a few lawyers at the firm that I would say took me under their wing to show me the ropes and help me along. I was a brand new attorney and I think you can remember how it is when you get out of law school, you pretty much don't have any idea what you're doing.

Page 9

Q I remember that from a long time ago, yes, absolutely. And nothing is better than lawyers who take you under their wing. Who were those lawyers?
A One was Magalie Creech, another one was Shawn O'Connor, --
Q Okay.
A -- Truett Nettles and I think those were the three that really just kind of helped me along.
Q What type of law were you focused on?
A Trust and estate and probate work.
Q Okay. Do you have an LLM?
A No, I do not.
Q Okay. And which one of the lawyers at the Finkel firm did trust and estates and probate work?
A None of the other attorneys specifically did trust and estate work. I was the only attorney

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 10

that did trust and estate work there. There were other attorneys in the office that did some trust and estate work.
Q Okay. How long were you at the Finkel firm?
A Oh, gosh, I would -- four to five years, I would have to count my years. I can do that if you'd like.
Q No, that's a good enough estimate. And after you left there, where did you go? Is that when you joined the bank?
A Yes, I joined BB&T.
Q And have you worked BB&T since?
A Yes, sir.
Q And you work in the trust department at the BB&T?
A Yes, I do.
Q When you were at the Finkel firm, did you ever develop a probate practice?
A Did I develop a probate practice?
Q Yes.
A Meaning that I developed my own practice and had my own clients and was not being fed work?
Q Did you have a -- did you end up that the majority of your business was spent dealing with

Page 11

probate issues? And if so, we'll talk about what kind of probate issues, or was that more of a desire to get into that area?
A I would say the majority of the work that I did was probate and estate work, yes.
Q Okay. Did you write wills? Did you do probate administration? Did you do will contests or...
A I wrote several wills, trusts and I did probate, several estates, yes.
Q And where did you obtain training for writing the wills and the trusts and handling the probate work or did you learn as you went along?
A I would say a lot of that came from Jerry Finkel, a lot of it came from Truett Nettles. Several of the attorneys went through things with me. There was another part-time attorney, Melinda was her name, and she did a lot of estate work and so when she would come in, I would talk with her about things.
Q What I've seen from Truett -- and my understanding is he really doesn't do a lot of probate type work.
MS. PAYLOR: Object to the form.
Q Is that correct?

Page 12

A Truett is a general practitioner. He practices in several areas, including trust and estate work.
Q Okay. I have pulled off of the Finkel firm website a breakdown or I guess it's an advertisement of what Truett does. And I'll represent to you that nowhere in there does it reference any probate or trust or estate work. Are you aware of that?
A I was not aware of that, but I would say that that makes sense considering all of the trust and estate work was essentially being -- going to me so that I could build my trust and estate practice.
Q Well, this was printed off yesterday. You've been gone for several years. It still doesn't show me trust or estate work.
MS. PAYLOR: Object to the form.
Q Did you ever know Truett to write wills?
A Yes.
Q Did you ever know Truett to create trusts?
A Yes.
Q Other than with Mr. Holliday?
A Yes.
Q How often -- to your knowledge, how

Page 13

active was his practice in the probate and estate world?
A I don't know how active his practice was. I had worked with him on other occasions on other estates.
Q He would bring you in to handle the estate or to handle the trust matters and he would work with you on it; is that correct?
MS. PAYLOR: Object to the form.
A No.
Q Let me rephrase that. I'm trying to understand if he's a general practitioner why -- or if he does trust and estate work, why would he bring you to in to do the trust and estate work.
MS. PAYLOR: Object to the form.
A He never brought me in to do the trust and estate work. He allowed me to learn and assist him on the work that he had.
Q Okay. Can you tell me about how it is that you came to give an affidavit in this case?
A Yes. I witnessed the execution of an estate planning document for Warren P. Holliday.
Q Okay. What was the document?
A Revocation of his revocable trust.
Q Okay. We'll come back to that in a

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 14

moment, but how did you come to give the affidavit? Did someone reach out to you to give an affidavit?
A I believe the attorney's office reached out to me.
Q Which attorney's office?
A Alice Paylor's office.
Q Okay. And what was -- how did it come about that they -- what did they say when they reached out to you? How did it come about to address the fact that you would give an affidavit?
A I believe that they had said that there was being a contestment of the revocation.
Q I'm sorry, repeat that.
A That y'all were contesting the revocation.
Q Okay. Did they ask you to provide them an affidavit stating what you saw and what you observed?
A Yes.
Q Did you create the affidavit?
A Yes.
Q Did you create it in your own office?
A I can't do work in my office that is work outside of BB&T. So no, I did not create it in the BB&T office.

Page 15

Q Did you -- in other words, what I'm trying to understand is did you create it or was it typed up by Alice's office?
A I believe that it was initially typed up by Alice's office from what I told them I recalled and then it was sent to me to review and revise it based on my memory of the events.
Q Okay. And did you revise it?
A Yes, I did.
Q Okay. Do you have a copy of the initial draft that was sent to you?
A Possibly. I don't know.
Q Okay. Would you have received it via e-mail?
A Possibly.
Q Okay. How else would you have received it if it wasn't e-mailed?
A I assume it was e-mailed. I don't know if I have a copy of it.
Q And do you know who would have sent it to you?
A Likely the attorney's office.
Q Would you be willing to check and see if you can find it and provide it to us?
A Sure.

Page 16

Q Okay. Were there significant changes that you made?
A No.
Q Do you remember offhand what they were?
A I think words. There were grammar issues, which I think are still in there, but I think that I changed grammar issues.
Q Okay. Did they send it to you after you spoke with them or did they send it to you before you spoke with them with the anticipation that it was accurate as to what happened?
A No, they sent it to me after they spoke with me.
Q Okay. And then you revised it and you sent it back?
A Yes.
Q And then they -- did they actually type up the final version for you to sign?
A No.
Q The witness to the document looks like Tayea Davis maybe. Does that ring a bell? I'll show you a copy. Let me start with that, let me hand you a copy of the affidavit. Is this a copy of the affidavit?
A Yes.

Page 17

Q Who is the witness?
A I don't know.
Q Do you know where this document would have been signed?
A I don't recall. I may have went in their office because this isn't a name that I recognize, so that would be my guess.
Q Okay. Tell me generally what happened on the day that you went over -- how did it become that you would go over to Warren Holliday's house? Just walk me through generally what happened.
A Truett had asked me if I would be a witness to the execution of an estate planning document and I said yes. We drove to Mr. Holliday's house in separate cars. I followed Truett there. And we got there, we met with Ross outside. We went inside and talked briefly in the kitchen and in the living room for a little bit, waiting for Mr. Holliday because he wasn't ready for us yet.
Q Okay. Well, let's start. So when you arrived with Truett, did you know who -- had you worked with Mr. Holliday before?
A No.
Q Had you reviewed his file prior to going over there to be a witness?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 18

A No.
Q Did you know anything at all about Mr. Holliday prior to going over there to be a witness?
A No.
Q Okay. That makes it easy. When you got there, you met Ross. Is that the first time you'd ever met Ross?
A Yes.
Q Okay. Did you -- and you met him outside of the condo?
A Yes.
Q Did you talk with him about what you were doing and why you were there and what the document was going -- what the document was that you were going to get his father to sign?
A No.
Q What was the conversation with him?
A Hi, how are you, this is Aliecia, she works with me at the Finkel Law Firm, shaking hands, those types of things.
Q Okay. Nothing about the document?
A No.
Q So even at that point you still had no idea other than it was to sign a revocation and be a witness?

Page 19

A Correct.
Q Okay. When you went into the house, you saw that Mr. Holliday was still undergoing physical therapy, correct, or massage therapy?
A I didn't see that, I was told that.
Q Okay. You were told by who?
A Ross.
Q Okay. Was anybody else in the house at that time other than you, Mr. Nettles, Ross, the massage therapist, Mr. Bosch, and -- which the massage therapist is Mr. Bosch, and Mr. Holliday, Warren Holliday?
A I don't recall seeing anyone else.
Q Okay. It's not that big of a place; is it?
A No.
Q Okay. If there was somebody else, you would have seen them unless they were hiding somewhere?
A Likely, yes.
Q Okay. Number four of your affidavit it states: I have been present for the execution of several estate planning documents by my previous clients and I've always had discussions with those clients to determine and confirm their capacity to

Page 20

execute those documents. Do you see that?
A Yes.
Q Now with reference to Mr. Holliday, he was not technically a client of yours; correct?
A Mr. Holliday was a client of the firm.
Q He was a client of the firm, but not a client of yours?
A None of the clients were personally mine. They were all clients of the firm and knew that the attorneys were somewhat interchangeable.
Q Had you ever -- and I believe you testified that you had never had a conversation with Mr. Holliday or met Mr. Holliday before the day you went to his home; correct?
A I don't recall having --
Q So you don't --
A -- any conversations with him prior to that.
Q So would it be fair to say that you don't know what he was like the day before, the week before, the month before, you just know what he was like on this particular day?
A Correct.
Q Okay. And is it your -- is it your statement that you had a discussion with him to

Page 21

confirm his capacity or is that more of a background --
A With Ross?
Q No, with Warren Holliday.
A My statement on number four is that when meeting with my clients in the execution of an estate planning document, that I always confirm that they, in fact, did have capacity to execute the documents.
Q Understood.
A That particular statement was not regarding Mr. Holliday at number four.
Q Okay. That was -- that was your general practice?
A Yes, sir.
Q Okay. But with Mr. Holliday, you didn't -- you weren't able to do this or you didn't do this with Mr. Holliday because he wasn't your client, he was a firm client?
A No.
Q Is that correct?
A No, that's not correct.
Q So you did have a conversation with him?
A With Mr. Holliday?
Q Warren Holliday.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 22

A Yes.
Q All right. So your testimony is you did have a conversation with him in order to determine his capacity to execute the documents?
A The conversation was between Truett, myself and Mr. Holliday, and his responses allowed me to see that he did have capacity.
Q Okay. What is the standard for you to determine if someone does have capacity? What type of questions were asked and what type of responses are necessary?
A Typically when meeting with clients, I would ask them -- I would always check an ID and see who they were. Most of the time I knew them pretty well so, you know, there wasn't anybody suddenly that came in that I didn't understand or know who they were. I would ask them if they understood what we were doing that day. Typically I would review the entire document with them and then would ask them did they have any questions or was there anything that they didn't understand or wanted to go over again.
I would then ask them if they understood what kind of property that they have and what this will or trust was doing with that property. And

Page 23

typically I would have them repeat to me what was happening, so that I knew that they understood what was happening. And then I often asked them about their family members to make sure that, you know, if we had named a son or daughter or a husband, whoever that might be, that they knew who they were and those items were going to that person for a reason.
Q Okay. And is that the type of stuff you would have done that day with Mr. Holliday?
A Yes.
Q Okay. And let me ask you about that. When you would ask him if he understands what he is doing and he would say yes; correct?
A Can you repeat that?
Q You would ask him if he understood -- you would tell him what the document was?
A Who?
Q Mr. Warren Holliday.
A I wasn't asking Mr. Holliday questions, Truett Nettles was.
Q All right. And all I'm trying to understand is is it your testimony that you were going -- that you have an opinion that Warren Nettles -- excuse me, that Warren Holliday, let me get the words right, had the capacity to execute the

Page 24

documents? Is that your opinion? Or are you just giving your -- or were you just there as a witness to the documents? And then you relied on Warren -- on Truett Nettles to testify as to whether or not Warren Holliday had the capacity?
MS. PAYLOR: Object to the form.
A I'm not relying on Truett Nettles for anything. I was in the room, I witnessed Mr. Holliday and I, as a witness to the revocation of the trust, felt that he had the capacity to execute that document.
Q Okay. And this is based on your -- on Truett Nettles having read in the document and asked if he understood and Mr. Holliday said yes?
MS. PAYLOR: Object to the form.
A There were other things that he said that made me believe that he had capacity. It wasn't simply Truett reading the document and then Warren saying yes. There were other things that were discussed, which led me to believe that he did, in fact, have capacity.
Q Okay. What were those other things?
A There were several things.
Q Okay.
A He initially, when we sat down, he

Page 25

introduced me to make sure that Warren knew who I was. Warren immediately knew why we were there. Truett asked him if he knew why we were there.
Q What did he say?
A He said yes, that he did know and he explained to me that -- or I guess to the room you could say, because I don't think it was directed towards me specifically, but to the room that he had previously been divorced and that a marital trust was set up for his ex-wife. For that reason, she apparently did not need to get whatever was in this trust and so he wanted to revoke the trust.
Q Okay. What else besides that?
A Truett asked him several questions. He asked him who his family members were. He explained to me who his family members were. He explained to me that he had a will and a codicil and that he was leaving specific amounts of money to two of his children, Pamela and Mark, and that everything else was supposed to be left to Ross and Lee.
Q Anything else?
A There were other things. He also stated that -- I guess, you know, Truett did ask him, you know, why we were there and he again just stated he knew exactly why we were there. He went through all

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 26

of his property with us. I didn't have any questions or concerns about his capacity.
Q Well --
A He was very much aware of what we were doing and he was very much aware of his surroundings. The man was cracking jokes with me.
Q Were you aware of what properties Mr. Holliday owned?
A Before that time?
Q Yes.
A I was not aware of all the properties that he had, no.
Q Okay. So when Mr. Holliday testified or told you guys about the properties he had, how did you know he was right?
A I don't think that I have to match up his bank accounts side by side. I don't believe that that's what determines whether or not somebody has capacity, if they give me a list of their accounting items, a financial sheet, and I match them up side by side. The man knew what he had.
Q How do --
A That was clear.
Q My question to you is how do you know he had what he had if you don't know what he had?

Page 27

A I don't know what he had, you're correct.
Q Okay. So the fact that he answered about the properties that he owned, if you can't match it to what he owned, then that's not -- you would agree that's not really a good test to see if he was competent?
A I wouldn't agree that was a standard. I followed the standard, period.
Q The standard is to ask if you know what you own and the answer is yes --
A He didn't answer yes. He explained what property he had.
Q How do you know if he was right?
MS. PAYLOR: Object to the form.
A It's not my job to determine if he can match up each line item that he has.
Q So let me give you an example. If he said I own a Ferrari, a Mercedes, a Lamborghini, three houses at Kiawah and two houses in the South of France, if you don't know if he's right or wrong as long as he gives that response, it's okay?
MS. PAYLOR: Object to the form.
Q If she objects to form, you can still answers.

Page 28

A I'm sorry?
Q If she objects to the form, it's just a technical thing, you can still answer the question.
I'm trying to figure how it is -- where the test is. If you don't know what he has and he testifies he knows something and you say it's not your job, then what if he said to you I have a Lamborghini, a Mercedes, a Ferrari, two houses in Kiawah and a house in the South of France, if that's his response and he says it in a manner where it seems to be correct, is that sufficient?
MS. PAYLOR: Object to the form.
A I listened to Mr. Holliday. He went through what property he had and I believed he had capacity. I don't know what else to say other than that.
Q Well, whether or not he listed what properties he had, you don't know, you just know that he listed some properties?
A Did I have a financial statement for him, no, I did not.
Q You never met him before; had you?
A No.
Q Were you aware of the medicines -- are you aware of the medicines he was taking that day?

Page 29

A No.
Q Are you aware of the fact that he had been transported home early from dialysis because he was having complications that day?
A Yes, I am.
Q Were you aware of that?
A Yes.
Q And that he had to take an ambulance back to the home?
A Yes.
Q Are you aware that he was taking, among other medicines, Oxycodone?
A No.
Q Okay. Are you aware that some medicines create confusion in people, --
MS. PAYLOR: Object to the form.
Q -- whether they show it or not?
A I don't think that I have the knowledge base to answer that question.
Q Okay. Have you ever in your practice dealt with people that have Alzheimer's, dementia type problems?
A Yes.
Q Okay. Have you noticed -- and I'll reference this is what I've noticed, but have you

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 30

noticed that people with those situations oftentimes have phenomenal long-term memory, but horrible short-term memory?

MS. PAYLOR: Object to the form.

A I have not noticed that, no.

Q Okay. Would it be fair to -- Okay.

And just to be clear, when you say here under number four, the test that you use to determine that he had the capacity was he testified as to properties that he claimed he owned, he testified as to who his family members were, he testified that he had a will and a codicil, when I say testified, he told you, he told you that he was revoking the trust because he was divorced and his wife didn't need it anymore and he told you he was giving specific gifts to his children, Mark and Pamela, that is the basis that I wrote down from what you said, that is the reason why you believe that he had capacity?

A I could see the man too. He didn't seem as though he was I would say out of it or anything to that sort.

Q But you never met him before?

A I see people every day. You can tell when somebody really is not there. You can look at

Page 31

me right now and you can clearly tell I'm here. I can tell you're right there. You can tell when somebody's mind isn't there. His mind was there.

Q Have you had any training to give that opinion or is that just on your life experiences?

A That is my life experience, yes.

Q And what year -- you said you graduated law school in what year?

A 2014.

Q And you took the bar when?

A I think 2014, '15. I don't recall the exact date.

Q Okay. And this will was -- this revocation was signed in September of '16. So you had been practicing law for about a year, a year and a half at that time?

A If that's the time-frame, then that would be correct. I don't know the exact date.

Q And you first clerked for a judge, how long did you clerk for the judge?

A A year.

Q Okay. So what -- I mean, the document was signed September 15th of 2016. If you graduated 2014, did you graduate in the fall, in the spring or the winter, if you recall? I know charleston does

Page 32

it both ways.

A I graduated the normal time, whatever that is.

Q Okay. So if you graduated the normal time in 2014, which would have been the spring, it's my understanding, --

A Okay.

Q -- then you would have taken the bar in I think it's around August or September --

A Mm-hmm.

Q -- of 2014. You would have passed the bar; correct?

A Mm-hmm.

Q And you found out in October?

A Yes.

Q Of 2014?

A Yes.

Q You then go to work. You had a clerkship lined up with the judge?

A Yes.

Q So you worked for him for a year?

A Yes.

Q Until 2015, the fall of 2015. So you had been practicing law for about a year, less than a year when this took place?

Page 33

MS. PAYLOR: Object to the form.

Q If that's the time-frame.

A What exactly are you asking me? How long I had been practicing law?

Q How long you had been practicing law and dealing with clients in the estate world at the time that you executed or that you witnessed the execution of the document and formed your opinion that he was of good mindset to sign the document. It seems like it's about a year.

A I don't recall the exact dates. I can get you a resume if that would help and you can see exactly when I started working at the Finkel Law Firm and started handling trust and estate work.

Q If you could, that might help. If you don't mind, that would be helpful.

Okay. Were there other times that you would travel with or together with or in separate cars with Truett Nettles to witness estate planning documents?

A Yes.

Q Okay. I'm looking at number six and I want to make sure I'm following this correctly. When I arrived at the home, Mr. Holliday was undergoing physical therapy with his physical

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 34

therapist in his bedroom; correct?
A Yes.
Q I waited in the kitchen and living area, living room area with F. Truett Nettles, II and Ross Holliday until Mr. Holliday finished his physical therapy; right?
A That is what it says, yes.
Q Okay. Mr. Nettles and I then joined the physical therapist in Mr. Holliday's bedroom. So you actually went into the bedroom; correct?
A Correct.
Q Ross Holliday was standing behind me in the room during this time; correct?
A Ross Holliday escorted me in along with Truett and introduced us, yes.
Q Okay. And then from that point forward, your attention was focused on Mr. Holliday and Truett; --
A Yes.
Q -- correct? I'll tell you that Mr. Bosch, who we spoke to earlier, I asked him if he saw Truett Nettles -- not Truett, excuse me, if he saw Ross Holliday in the room and he said he was walking back and forth outside the room. I said Would you have seen it, meaning you, and he said no,

Page 35

she wouldn't have seen it because her back was to him. Is that a fair statement?
A Yes.
Q Okay. Would you agree with that statement?
MS. PAYLOR: Object to the form.
A Yes, I would not have seen Ross Holliday because I was looking at Warren Holliday.
Q Right.
A Yes.
Q So whether Ross was standing at the doorway, walking back and forth behind the doorway or had walked outside --
A Well, he couldn't have been standing at the doorway because he would have been standing on me then.
Q Wait, wait. Whether he was standing right behind you or had walked away or walking back and forth, you don't know?
A I would know if he was standing directly behind me, certainly because I would feel him. You can feel when someone is standing directly behind you.
Q Do you have any reason to dispute the fact that he was behind you walking back and forth

Page 36

by the doorway?
MS. PAYLOR: Object to the form.
A I don't know what he was doing while I was watching Mr. Holliday.
Q Fair enough. You have no reason to dispute that, you just don't know if it's true?
MS. PAYLOR: Object to the form.
A Again, I don't know where he was at while I was staring at Mr. Holliday.
Q Okay. C, when we talk about -- I'm sorry, 11-C on the affidavit, Mr. Nettles asked Mr. Holliday if he knew what property he had. Mr. Holliday was able to clearly and fully explain the extent and nature of his properties. I believe we've covered that.
A I'm sorry, what are you asking?
Q I believe we've covered that a few minutes ago; correct?
A Covered what?
Q We covered what this means.
A What what means?
Q That he was able to explain the extent and nature of his properties.
A Yes.
Q Okay.

Page 37

A It is my opinion that he was able to explain to me his property, yes.
Q And your opinion is given despite the fact that you were not aware of what properties he actually had; correct?
MS. PAYLOR: Object to the form.
Q Just for clarity for the record.
A For clarity for the record, I did not review a financial statement or review any of Warren P. Holliday's assets prior to the execution of the revocation.
Q Okay. Did you maintain notes or a list of the items that he told you were his properties?
A No.
Q Have you ever gone back at any point to confirm whether or not the list that he told you was an exhaustive list of all of his properties?
A No.
Q Let's go to number 15. The first sentence says: There was nothing unusual about Mr. Holliday and he definitely fully comprehended and appreciated what he was doing that day.
Let me ask you about that first, the first part. Would you agree with me that in order to know if there was nothing unusual, you would have

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 38

to know what was usual?
MS. PAYLOR: Object to the form.
A No, I wouldn't agree to that.
Q Well, when you use the word unusual, what does it mean to you?
A Anything out of the ordinary in which I would expect when doing what we were doing, which was the revocation of an estate planning document.
Q But in order to know what was out of the ordinary, wouldn't you have to know what was the ordinary?
MS. PAYLOR: Object to the form.
A In order to do that, I would have to get to know each of my clients, I guess, on the basis where I visit with them weekly to know what their ordinary course of business is. So no, I did not know what was ordinary for Mr. Holliday. As an individual, there was nothing that seemed out of the ordinary when meeting with him that set off alarm bells for me.
Q Okay. That clarifies it. Thank you. And you said: And he definitely fully comprehended and appreciated what he was doing that day.
How is it that you can testify that somebody else definitely fully comprehended and

Page 39

appreciated what he was doing unless you are that person?
A I can testify that it is my opinion that he fully understood what he was doing that day. That opinion is based on talking with Mr. Holliday and observing him.
Q What did he say to you that made you -- that makes you so comfortable that he fully comprehended and appreciated what he was doing?
A Those items were discussed previously. Would you like me to go through them again?
Q I want to understand, yes, please.
A So go through each one of them again?
Q Is it the same items you said before?
A Yes.
Q That he knew why he was there, that he knew who his family members were, that he didn't -- that he wanted to make revocation because he wasn't married, that he had a will and codicil and that he left specific gifts to his children, Mark and Pamela and that was his desire?
A I don't know that I would state it exactly as your notes say, so I can repeat all of it if you would like.
Q I believe that's what we discussed, but

Page 40

sure, please repeat it.
A Again, when we met with Mr. Holliday, Truett asked him several questions. Some of those questions included what were we doing there that day. He stated to me that he previously had been divorced and that he wanted to revoke his revocable trust because it was no longer needed because she was being taken care of by a marital trust that was set up.
Truett also asked him if he knew what property he had. He did, in fact, tell us what property he had. Truett also asked him if he knew what the purpose of our visit was and he said again that yes, he did and that he had already set up a will and codicil which would take care of his kids. He stated that two of his children would be getting specific amounts, that being Mark and Pamela, and that everything else was to be left to his other two children, Ross and Lee. He was very clear about that.
Q When you've done estate planning in the past for clients, do you usually -- who do you meet with in order to do the estate planning? Say you're going to meet with an elderly gentleman who is married and has children, do you meet with him and

Page 41

his children to discuss it or do you meet with him privately to discuss it?
A Typically I would meet with the whole family and then I would meet with the individual privately.
Q Okay.
A I like them to feel comfortable and meet with me together. I felt a lot of times that they felt better having, you know, their children with them initially, but then I would meet with the individual separately that would be executing any documents, yes.
Q Are you familiar with the term undue influence?
A Yes.
Q Okay. What does it mean to you?
A That an individual placed influence over another individual which somehow affected the outcome that they would have made.
Q Is that one of the reasons that you generally would want to meet with a client individually without the family members around to make sure that there was no undue influence?
A That is one of the reasons I would meet privately with them. I also would like to give the

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 42

individual a chance to tell me in their own words what was going on in previous meetings with clients. A lot of times the children would want to do all the talking for mom or dad, which is great, you know, it gives with me plenty of information; however, I need to sit with the individual that is executing the documents and make sure that they understand exactly what's happening and that it is their desire to do certain things.

Q Do you have any personal knowledge as to whether or not Truett Nettles ever sat down individually with Warren Holliday without Ross Holliday present to discuss what he wanted to be done in his testimonial capacity other than -- ever? Do you have any personal knowledge of that?

A He had to have that day. I guess I'm confused about what you're asking. Truett was in the room during this time asking Mr. Holliday questions.

Q The document had already been drawn by the time Truett had arrived; correct?

A The document had been drawn up, yes.

Q Are you aware of any time prior to your arrival at the condo -- do you have personal knowledge of Truett ever meeting with, talking with,

Page 43

conversing with, e-mailing with, texting with or in any way communicating with Warren Holliday about Warren Holliday's desires outside of the presence of Ross Holliday?

A Are you asking prior to the day of the execution of the document?

Q Correct.

A I don't have any knowledge of that, no.

Q Okay. Are you familiar with the term of art called a confidential relationship?

A Somewhat, yes.

MS. PAYLOR: Object to the form.

Q What do you understand about the term of art of confidential relationship as it applies to probate and the drafting of wills and trusts?

MS. PAYLOR: Object to the form.

A I don't know that I have a knowledge base when it applies to the drafting of a will. Maybe you should explain it to me.

Q I'm just asking if you as an estate planner are familiar with it.

MS. PAYLOR: Object to the form.

Q If you are not, it's okay. I'm just wondering. Okay.

A I'm not.

Page 44

Q When were you first made aware that there was a revocable trust -- that Warren Holliday had a revocable trust? When was the first time you learned about that?

A The day that we went to go get it revoked.

Q And who told you about the fact there was a revocable trust?

A I believe that Truett Nettles did because he -- before we went to go there, I believe he told me that we were doing a revocation of the revocable trust.

Q Did you read or discuss the trust or the revocation documents before arriving at Warren Holliday's home?

A Can you repeat that slower?

Q Did you read the trust or revocable document before you arrived at the home?

A Did I read Mr. Holliday's revocable trust agreement?

Q The documents that were prepared, did you review -- did you read, I'm sorry. It's hard with this. Did you read the revocable trust document or did you read the revocation document prior to arriving at the home of Warren Holliday?

Page 45

A No.

Q And I believe you've already told me that you never spoke to Warren Holliday prior to the time that you arrived at his home on the day the revocation was signed?

A Correct.

Q Do you have any knowledge as to how many times, if any, Warren Holliday and Truett Nettles met prior to the revocation?

A I do not.

Q Did anybody ever discuss with you, prior to the time that you went for the signing of the revocation, Warren Holliday's medical condition?

A Can you repeat that?

Q Prior to the date that you went to Warren Holliday's home, had you read any portion of Warren Holliday's medical records or did anybody ever discuss with you any information about Warren Holliday's medical condition?

A I believe Truett told me that we were going to this individual's home because he could not come to us.

Q That was the extent of it to your recollection?

A I've never reviewed -- previewed

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 46

documents or anything of the sort.
Q Are you aware that just a week prior to the trust revocation being signed that Ross Holliday told his siblings that Warren Holliday refused to get out of bed, was not participating in physical therapy and was facing the end of his mortality?
A No.
Q If you had been aware of that, would you have dug a little deeper to make sure he was competent and able to sign the document?
A No.
Q Have you discussed your testimony or the case or the facts with Truett Nettles?
A No.
Q At any time since the revocation was signed, the same answer?
A Repeat the question.
Q Have you at any time since the revocation was signed discussed the matter -- any matters dealing with Warren Holliday -- with Warren Holliday, the revocation, his death, the lawsuit, anything at all with Truett Nettles?
A Yes.
Q Okay. And when was that and what did you discuss?

Page 47

MS. PAYLOR: Object to the form. She was a lawyer in her office and that did come up with attorney/client privilege and that --
MR. SLOTCHIVER: Are you representing her in this case?
MS. PAYLOR: I'm representing my client so --
MR. SLOTCHIVER: Are you representing her in the case? Otherwise, I'm asking for no speaking objections. She can speak for herself. That's what the rules require. She's a witness in the case on this matter and I don't know of any privileges that would apply to get past it if a you're witness to the case.
THE WITNESS: What's your question?
MR. SLOTCHIVER: Would you repeat the question please?
(Thereupon, the referred to question was read back by the court reporter as above recorded.)
THE WITNESS: I don't have any idea of dates or specific items discussed. I was working at the Finkel Law Firm for a period of time before going to BB&T and the suit I think

Page 48

was brought during the time that I was at the Finkel Law Firm.
MR. SLOTCHIVER: Okay. Let's go off the record for a moment please.
THE VIDEOGRAPHER: Off the record at 12:48.
(Thereupon, a brief recess was taken.)
THE VIDEOGRAPHER: On the record at 12:55.
BY MR. SLOTCHIVER:
Q Okay. Before I forget, I would like to take -- the affidavit you're holding in front of you, that is a copy of the affidavit you signed; correct?
A Yes.
MR. SLOTCHIVER: Let's mark that as an exhibit to her deposition please.
THE REPORTER: Do you want to do Number 1 or 2?
MR. SLOTCHIVER: Do Number 1. We'll keep them separate.
THE REPORTER: Pass that to me please, Aliecia.
(Thereupon, Exhibit 1 was marked for Identification.)

Page 49

BY MR. SLOTCHIVER:
Q Just a few follow-up, then we're going to be done in five minutes, I think.
Would you agree with me that if a person -- if you know a person -- as a lawyer, if you know a person is represented by counsel, that you cannot reach out and speak directly to that person?
MS. PAYLOR: Object to the form.
A Can you repeat that question?
Q Would you agree with me that if you know a person to be represented by counsel, you cannot reach out and speak directly to that person?
MS. PAYLOR: Object to the form.
A If I know a person to be represented by counsel, I can't reach out and speak directly to that person; is that what you said?
Q Correct, yes.
MS. PAYLOR: Object to the form.
A In what regard? Am I involved in this litigation? Am I a friend? Am I a family member?
Q If you, serving in your capacity as a lawyer, know a person to be represented by a lawyer in a litigation matter with which you are involved in, would you agree with me that it's not proper for

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 50

you to reach out to that person?
MS. PAYLOR: Object to the form.
A I would not reach out to the person if I was in the litigation, is that what you're saying?
Q Yes.
A And representing the individual? I guess I'm confused about where exactly you're going with --
Q If you're on the opposite side of a case where somebody is represented by counsel, would you agree with me that you cannot reach out and speak to that person who is represented by counsel?
MS. PAYLOR: Object to the form.
A Can you give me an example?
Q I can repeat it to you. If you're involved in a case and representing a party and you know the other side of the case is represented by a lawyer, would you agree with me that you cannot reach out and speak to that person who is represented by a lawyer, you have to go through their lawyer.
A So would I reach out to their client; is that what you're asking me?
Q Correct.
A No, I would not reach out to their

Page 51

client, I would reach out to the lawyer.
Q Okay. You stated earlier that you knew Mr. Holliday had come from dialysis on that day, correct, on the day that he signed the revocation in your presence at his condo?
A I believe that Ross may have said that when we were in the kitchen.
Q Was there any more discussion about that?
A No.
Q Did he tell you that Mr. Holliday had to come home early from dialysis that day because he wasn't feeling well?
A I don't remember specific details like that.
Q Do you know why it was relevant for him to have told you that he had been in dialysis that day?
A No.
Q But there was no follow-up that you recall?
A By who, me?
Q By you or by Truett Nettles about the fact that he had --
A I didn't know what conversations Truett

Page 52

had with him. There was no follow-up by me.
Q Did Truett and Ross have a private conversation at the home prior to the time that Truett and you walked into the room to talk to Mr. Holliday about the revocation?
A Not that I'm aware of, but I don't listen to everything that's always said when people are just saying, you know, hi, how are you, how's your family been, those types of things.
Q Would you agree with me that if you want to have a gentleman sign a document, it would be germane that they show that he's healthy on the day that he signs it?
MS. PAYLOR: Object to the form.
A He looked perfectly fine to me. I wouldn't say that he was in good health, but was his mind there? Absolutely.
Q How was he positioned at the time that he signed the revocation?
A In terms of was he in a bed?
Q In terms of did he sign it in his lap, did he sign it in the air, did he ask somebody to give him a hard document to place underneath it?
A Mr. Holliday was in a hospital bed I believe because it could move up and down. He had

Page 53

pillows behind him to prop him up and he had -- when he reviewed the document, I do recall Truett giving him a legal pad. He didn't have anything on his lap to sign with.
Q Okay.
A I remember him reviewing everything with the document being placed on the legal pad and I remember him using the legal pad to sign the document as a hard surface.
Q Okay. And when he signed it on the legal pad, was the legal pad on his lap or was it in up in the air?
A It was somewhat in the air. I wouldn't say that it was above his head, but his lap area wasn't really -- he wasn't going to bend over. Does that make sense? So he was propped up.
Q Okay. He was propped up.
A And in order to sign on his lap, I think he would have had to have bent over and he didn't do that.
Q So he signed somewhat not on his lap, but not all the way up in the air?
A Correct.
Q Okay. And the last thing, when -- I'll represent to you that when Mr. Bosch testified, he

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said that Truett and you came into the room, that Truett -- that Mr. Holliday asked if the documents contain what he wanted and show them to me, and Truett showed him and said read these particular paragraphs. Mr. Bosch didn't know what paragraphs they were, but he said Truett pointed then him to the paragraphs and then apparently Mr. Holliday read those paragraphs. Is that your recollection?

A My recollection is that Truett went through each section of the document and explained to him what each section was for and then Mr. Holliday read through the document on his own.

Q So did Truett read each document to him and then explain it or did he just explain this is generally going to say X, Y, Z and you can read it on your own? I'm just trying to understand exactly how that transpired.

A I don't believe he read it word for word to Mr. Holliday because Mr. Holliday was able to do that on his own. I believe he went through each paragraph and explained what the purpose of each of those paragraphs was for, what they were accomplishing, and then Mr. Holliday read through the document on his own.

Q Okay. When you say Mr. Holliday was

able to do it on his own, that's based on the discussions we had earlier about your opinion that he was able to do it based on --

A Well, he stated that he read through the document, so...

Q The fact that someone states it doesn't mean that they read it and understood it; does it?

MS. PAYLOR: Object to the form.

A You're correct.

Q Okay. Thank you very much. I have nothing further.

MS. PAYLOR: I have no questions.

THE VIDEOGRAPHER: This concludes our video deposition. The time is 1:03. We are off the record.

MR. SLOTCHIVER: I didn't ask you if you want to read and sign.

(Thereupon, an off-the-record discussion was had.)

THE WITNESS: I would like to read it.

(Thereupon, the deposition concluded at 1:03 p.m.)

CERTIFICATE OF REPORTER

COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA)

I, Elizabeth Drumm, Registered Professional 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.

WIT[illegible] FFICIAL SEAL this 8th day of Aug[illegible] rleston, County of Charlest[illegible]

Elizabeth L. Drumm NOTARY PUBLIC SOUTH CAROLINA

ELIZABETH DRUMM, RPR, CCR
South Carolina Notary Public
My Commission Expires:
May 28, 2029

I N D E X

ALIECIA BORES PAGE

Examination by Mr. Slotchiver 3
Reporter's Certificate 56

E X H I B I T S

IDENTIFICATION PAGE

Exhibit 1 (affidavit) 48

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Aliecia Bores
Alieciambores@gmail.com
August 10, 2020
RE: Wallin,, Pamela Holliday, Et Al v. Holliday, Ross Samuel, Et Al
7/28/2020, Aliecia Bores , Esquire (#4196197)

The above-referenced transcript is available for review.

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

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

Return completed errata within 30 days from receipt of testimony.

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

Yours,
Veritext Legal Solutions

Wallin,, Pamela Holliday, Et Al v. Holliday, Ross Samuel, Et Al
Aliecia Bores , Esquire (#4196197)

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Aliecia Bores, Esquire Date

Wallin,, Pamela Holliday, Et Al v. Holliday, Ross Samuel, Et Al
Aliecia Bores, Esquire (#4196197)

ACKNOWLEDGEMENT OF DEPONENT

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

_____ _____
Aliecia Bores, Esquire Date
*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20___.

_____
NOTARY PUBLIC

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Deposition of:

Greg Bosch

July 28, 2020

In the Matter of:

Holliday, Pamela et al v. Holliday, Ross Samuel et al

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-102430
COUNTY OF CHARLESTON

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. SARA JANE HOLLIDAY and JOHN C. HOLLIDAY,

Petitioners,

v.

ROSS SAMUEL HOLLIDAY, Personal Representative of the Estate of WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, et al.,

Respondents.

VIDEOTAPED DEPOSITION OF GREG BOSCH

DATE: July 28, 2020

TIME: 10:22 a.m. - 11:48 a.m.

LOCATION: 171 Church Street
Charleston, South Carolina
TAKEN BY: Attorney for Petitioners
REPORTED BY: Elizabeth Drumm, CCR, RPR
Registered Professional Reporter
Notary Public, South Carolina
VIDEOGRAPHER: Christopher Mills

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

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Also Present: Mark Holliday
Mary Ellen Holliday
Martha Brouthers

THE VIDEOGRAPHER: We're now on the record. Today's date is July 28th, 2020. The time is approximately 10:22 a.m. This is the video deposition of Greg Bosch, the location is 171 Church Street, Charleston, South Carolina. This deposition is taken in the matter of Pamela Holliday, et al versus Ross Samuel Holliday, et al.

Would counsel please introduce themselves for the record.

MR. SLOTCHIVER: Dan Slotchiver representing Pamela Holliday and Mark Holliday.

MR. HALVERSEN: Brent Halversen representing Pamela Holliday and Mark Holliday, Petitioners.

MS. PAYLOR: Alice Paylor representing the Respondents, Lee Holliday and Ross Holliday.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

Thereupon,

GREG BOSCH

having been first duly sworn or affirmed, was examined and testified as follows:

EXAMINATION

BY MR. SLOTCHIVER:

Q Mr. Bosch, we met a few minutes before the deposition began. My name is Dan Slotchiver. This is going to be an effort and we'll do our best we can because everybody in the room is wearing face masks including you and it might make for some muffled responses. So if it does, I'm going to ask you to repeat yourself and if you don't understand me clearly, please ask me to repeat myself. Fair enough?

A Fair enough.

Q Okay. Have you ever had your deposition taken before?

A Yes.

Q Okay. How many times?

A Once.

Q Was that in South Carolina?

A Yes, it was with her.

Q With Ms. Paylor?

MS. PAYLOR: He's never had his deposition taken before.

Q Okay. I'm going to ask that you answer the questions. There will be no speaking objections. He can answer as he sees fit and we can

deal with that later on, but I just want to get the response from you. Okay?

A Okay, sir.

Q Okay. Well, let me tell you the ground rules just to make sure we're on the same page because if you haven't had it taken before, as Ms. Paylor suggested, then I want to make sure that you understand the rules of the deposition.

A Right, because I don't.

Q Okay. Well, let me go through them with you because they're pretty simple. Okay. At least I think they're pretty simple.

I'm going to ask you a series of questions. I'm going to ask you to answer them honestly and truthfully to the best of your ability. Okay?

A Yes, sir.

Q I'm going to ask that you answer all of the questions audibly. If you nod your head or if you say uh-huh or huh-uh, the court reporter can't take it down. It will be on the video, but we'll have records that are a little inconsistent with each other.

A All right.

Q So I want to make sure we have a clear

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 6

record because at some point in the future we may use your deposition for a variety of purposes, whether it be in trial or motions or something else, so we just want to have an accurate record. Okay?
A Okay.
Q If you do answer something and it's not audible or if you do shake your head one way or the other, I'm going to ask you to rephrase it or restate it. And I'm not doing that to chastise you, I'm just doing it to make sure we have a clear record. So I want to tell you in advance don't think I'm trying to beat up on you, I just want to make sure we've got a clear record. Is that fair enough?
A Yes, sir.
Q Okay. Is there anything that is preventing you from giving your deposition today such as health issues, God forbid, COVID issues, medical or alcohol or anything else that would impair your ability to be able to give your response today as opposed to rescheduling it for another day?
A No.
Q Okay. I don't believe the deposition will take that long today, but like I said, it's not a memory test, but I want to ask you to tell me what

Page 7

you recall, and if you don't know, feel free to say I don't know. Okay? Fair enough?
A Fair enough.
Q Any questions before we begin?
A No, sir.
Q All right. So, Mr. Bosch, tell me about your background. Where are you from?
A I was born in South Bend, Indiana, grew up in High Point, North Carolina, went to the College of Charleston for a year and a half. So that's where I'm from.
Q Okay. How old are you?
A I'm 50.
Q Sorry?
A Fifty.
Q Okay. And it's hard to tell, judging anybody with these masks covering our faces.
How long have you lived in Charleston? Is it since the College of Charleston days?
A I left Charleston to go to Florida for a while and I studied massage therapy down there and I studied with a kinesiologist in Sarasota. So I haven't been here completely since college.
Q When did you relocate to the Charleston community?

Page 8

A So I went away to massage therapy school in '91. I came back in '92 and, you know, worked here for a while and then I moved to Mississippi for two to three years and then came back here in 2000 and I've been here since.
Q Are you married?
A No.
Q Have you been married?
A No.
Q Do you have any children?
A No.
Q Do you belong to -- and I'm asking this for jury purposes, not because I want to delve into your personal life necessarily, but do you belong to a church or any organizations?
A I belong to Elevation Church, Charlotte, North Carolina.
Q Okay. Is it located in Charlotte?
A Well, they have a number of campuses, but the one I go to is in Valentine.
Q Okay. Have you ever lived in North Carolina since '92?
A No. I dated a girl that was living in Charlotte and we started going to the church there. I've been there for three years now.

Page 9

Q Okay. Where do you live here?
A Saint George, South Carolina.
Q What's your address?
A 308 South Metts Street, 29477.
Q Okay. And let me ask you a personal question once again. We ask everybody these questions. For purposes of delving into -- as part of your deposition, but have you ever been arrested for anything?
A No.
Q Okay. Have you ever been sued before?
A No.
Q Have you ever sued anybody before?
A No.
Q Okay. Who do you currently work for?
A I'm self-employed.
Q Okay. Have you been self-employed the majority of your career as a massage therapist?
A Yes.
Q Okay. What's the name of your business?
A Bosch Wellness.
Q And how do you generally get referrals?
A Word of mouth. I don't advertise. I just get my clients through word of mouth.
Q Are you licensed -- well, first of all,

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 10

does South Carolina require a license to perform massage therapy?
A Yes.
Q Are you licensed in the State of South Carolina?
A I am.
Q And how long have you been licensed in the State of South Carolina?
A Since -- I want to say it was 2001, 2002 maybe. It's been a while.
Q Okay. Do you undergo training, continued training?
A Yes.
Q Is there a required continued training every year?
A There is.
Q Okay. And have you ever lost your license for any reason?
A No.
Q Okay. Ever been suspended?
A No.
Q You stated a few minutes ago that you thought you gave a deposition to Ms. Paylor. I'm assuming that you met with her?
A Yes, I think it was -- maybe it was an

Page 11

affidavit. I'm not real familiar on these terms, so I think it was just an affidavit of what I gave her.
Q Okay.
A But like I said, I'm not -- I don't know a whole lot of the legal jargon here so...
Q That's okay. Well, I represent two of the children of Mr. Holliday. And in that capacity I'm asking you questions and I want to find out about your involvement.
A Sure.
Q Who have you met with in preparation for the deposition today?
A Alice.
Q Okay. And when is the last time you met with her before today?
A Well, we had a phone conference, it was Friday.
Q Okay. And this is fair game. Okay? What did you guys discuss?
A Just preparation for, you know, coming in here.
Q And you got a -- I don't really understand what preparation means.
A She just said that you guys would ask me these questions, did we talk, did we meet and just

Page 12

be prepared to give this answer.
Q What answer did she say be prepared give?
A That we met, that we spoke and that you would ask me these questions.
Q Okay. And what questions did she suggest to you that she thought we would ask?
A If we had met or spoke or had any preparation before this.
Q Okay. So we covered that. What about the substance of what you would testify to, did you discuss the substance of what you planned to testify to?
A She just told me to tell the truth.
Q Okay. Did you review the affidavit you provided?
A I did.
Q When you met with her?
A Yes.
Q Is that the last time you seen it, was Friday or did you look at it before then and afterwards?
A Well, we looked at it Friday and then I looked over it yesterday and then this morning.
Q Did you discuss any of the particular

Page 13

paragraphs in the affidavit with her?
A No.
Q Tell me about the affidavit. Did you write the affidavit yourself?
A I went in and gave -- you know, kind of similar to this, sat down and spoke and -- you know, they asked me to basically tell the story of what I knew, so they it typed it up.
Q Who is they?
A Alice.
Q Did Alice personally meet with you before the affidavit was signed?
A Yes. Yes, Alice was there.
Q Was Truett Nettles present?
A No.
Q Do you know Truett Nettles?
A I do. Yeah, he was there the day Warren signed the --
Q Okay. Have you spoken with Truett Nettles since the document was signed?
A No.
Q You haven't spoken to him or seen him since the date?
A No, sir.
Q And I'm talking have you spoken -- I'm

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 14

not talking about the affidavit, I'm talking about since the document was signed in your presence. Have you spoken or seen Truett Nettles since that time?
A No, sir, I have not.
Q Who else was present with you when this affidavit was signed or created?
A Aliecia Bores.
Q All right. Aliecia was present with you when you met with Alice to talk about the facts that created --
A No. No, Aliecia was not. When I met with her, Aliecia was not present.
Q All right. Who was present with you when you met with Alice Paylor in order to discuss what happened so that the affidavit could be created?
A I believe his name was Bijan.
Q Okay. Bijan Ghom I believe.
A Yes.
Q Anybody else?
A No.
Q All right. Did they hand you a prepared affidavit and ask you if it was correct?
A No.

Page 15

Q Were there any draft affidavits?
A No.
Q From the time you met with them until the time the affidavit was created, how many days passed?
A Can you repeat the question?
Q From the time you met with them and went over the information you had until the affidavit was created and signed, how many days -- how many days went by?
A I don't remember.
Q Okay. Was it signed the same day you met with them or was it several days later?
A Well, no, they printed it up, you know, the information that I gave them and then we signed it.
Q All the same day?
A Right.
Q Okay. Well, let me ask you some questions about it.
A Sure.
Q And before we go there, let's talk about the family a little bit. You had worked with Mr. Holliday for quite some time; correct?
A Yes, sir.

Page 16

Q I want to talk about two time periods. Okay? One is on the day that Truett Nettles and Aliecia Bores came over to the house and a document was signed. That's one time period. And the other time period is everything you know before then. Okay? So let's start with everything you know before that date. Okay?
Before that date, did you know who the children were of Warren Holliday?
A Yes.
Q Had you met each of the kids before that date?
A Two of them.
Q Which two?
A Ross and his daughter, I don't remember her name.
Q Pamela?
A Yes, Pamela.
Q Did you ever have an occasion to speak to Ross or Pamela on the telephone in that first time period or was every occasion you saw them at the house?
A Well, Pamela had come with Warren for therapy one time.
Q Right.

Page 17

A And then I saw her -- actually did therapy on her one time and then I met Ross at Warren's condo. I saw him there like maybe two or three times.
Q Where was the therapy usually provided?
A Well, it was -- I had a studio set up at the place where I was living in Mount Pleasant at the time. So I started out seeing him there for most of the sessions at my place, but then, you know, toward the end, the last few months, I would go to his condo in Mount Pleasant.
Q How did Warren get from his condo to your facility for treatment?
A He would drive his car.
Q He would drive himself?
A Yes.
Q Okay. And would that be the case every time he came to your facility was he drove his own car?
A Yes.
Q And then when he was no longer able to drive his car is when you started going to his condo?
A Correct.
Q Okay. When you -- other than Pamela

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 18

coming to a therapy with him -- and I assume that was at the studio?
A Correct.
Q Did any of the other -- any of his other children ever come to a therapy at your studio?
A No.
Q Okay. And when you started going to his home to give him therapy, you said you met Ross two or three times?
A Correct.
Q Okay. Did you ever meet Lee?
A Not -- no.
Q Did you ever meet his other son --
A No.
Q -- who is sitting here today?
A No.
Q Mark or Ben?
A No.
Q Was Mr. Holliday proud of his children? We're talking the time period up until the date the document was signed? Did he ever boast about his children, their successes, their families?
A Some he did and some he didn't.
Q And who did he boast about?
A Ross.

Page 19

Q Anybody else?
A No.
Q Do you understand that Ross was generally running everything for him, taking care of everything for him?
A No.
Q You did not know that?
A No.
Q Did he ever boast about his grandchildren?
A No.
Q Did he ever really talk about his children much in that first time period or was the substance of his talking about his children more on the date that he signed the revocation?
A You know, he -- yes, he talked a little bit, but not a lot.
Q Okay. I mean, and it's natural, you're not his therapist -- you're not his mental therapist, you're his physical therapist?
A Well, yeah, I was his massage therapist and personal trainer.
Q Right. Okay. So he really didn't talk much about any of the kids during that time period up until the date when the revocation was done; is

Page 20

that a fair statement?
A Well, you know, I mean, he did, you know, talk a little bit about some of the kids.
Q What kind of stuff would he talk about?
A Well, he -- you know, he would say what they did, you know, where they lived and some of the stuff that, you know, they had done and just --
Q Did he show any exuberance towards any of the children or any disdain towards any of his kids or was it more just I have four kids and this is who they are and this is what they've done and this is where they live?
A Well, he would sit and talk about Ross being very intelligent and a smart business person.
Q Okay.
A And --
Q Did he ever say he loved one of the kids more than the others?
A No, he didn't say he loved anyone more than the other during that time period.
Q Okay.
A You know, he said that there were -- you know, everybody kind of had their own differences and strengths of things that, you know, about each one of them, but he didn't -- he didn't elaborate a

Page 21

whole lot on that until the second time period.
Q Okay. Which is at what time? And back on the first time period when you say he would talk, everybody had their strengths and weaknesses, I mean, that's really based on experience, the same with every family, every family has got its own issues one way or another?
A True.
Q Okay. Nothing that you took as meaning a like or a preference for one or the other, other than one was maybe smarter than the others?
MS. PAYLOR: Object to the form.
A I don't know that he necessarily said that one was smarter than the other, it just -- and I don't know that he was trying to distinguish that he -- you know, that he was showing favoritism towards any of them, but, you know, it's just he would -- Ross would be the one that he would talk about the most and, you know --
Q Well, let me ask you differently. If we take away what you learned in the second period, if we just took that away as if it never happened, would there be any way for you -- if I were to ask you without that information there, do you have any opinion as to whether or not he liked or disliked

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 22

any of his children more than one another, what would your answer be?
A Well, he did have favoritism for two more than two others.
Q We're talking about what you learned on the second time period; right?
A No, but I'm just telling you during that time period, he was more -- I could sense that he was closer to two than he was to the other two.
Q Which two was that?
A Lee and Ross.
Q Now, do you know which ones worked in the same business as him?
A Which ones worked in --
Q Which ones did the same business as him? Which one worked with him? Which one of the children worked with him; do you know?
A No, I didn't -- at that point I didn't know.
Q Would it your surprise you to learn that both Ross and Lee did work with him --
MS. PAYLOR: Object to the form.
Q -- and the other two were independent?
MS. PAYLOR: Object to the form.
Q You can still answer when she makes that

Page 23

objection. It's for the record. Would that surprise you to learn that?
A No.
Q Okay. Is that new information?
A I mean, it's -- I didn't know the inner workings of any of that. So does it surprise me? No, it does not surprise me.
Q And I didn't expect that you necessarily would know the inner workings of it, but the reason I'm asking is because that, would you agree with me, the fact that he works with the two of them on a regular basis would maybe be why he talks about them and seems to favor them more than the two that he doesn't work with?
MS. PAYLOR: Object to the form.
Q I'll give you an example. I work in a -- I have a large family. Okay? I have lots of siblings. Some of us work together with my father, some of us don't. I would imagine that the ones that work with my father are the ones that he probably talks about more because he talks to, he sees, he works with, we're interacting with him, but I don't think that means he loves us any more than he loves the ones that don't work in the firm or don't live here.

Page 24

MS. PAYLOR: Object to the form.
Q Okay? Would you think it would be the same type of scenario with reference to Mr. Holliday, the ones he talks about are the ones he works with, but that doesn't mean he likes or dislikes the other ones any more?
MS. PAYLOR: Object to the form.
A I can't answer that because I don't know.
Q So you don't know. Fair enough.
One of the statements you made, Mr. Bosch, is that Mr. Holliday from the time period that you had worked with him was always completely coherent?
A That's correct.
Q What does that mean?
A Well, he could state his name, he was aware of where he was, he was aware of the decisions he was making, he was coherent.
Q How do you know he was aware of the decisions he was making?
A Well, he looked me in the eye and he spoke to me the same way that he always spoke to me.
Q Okay. Are you referring to decisions in general or are you referring to decisions about the

Page 25

treatment that he wanted?
A Both.
Q So are you opining that he was coherent to make business transactions?
MS. PAYLOR: Object to the form.
A He was.
Q Okay. Do you have any medical training?
A Well, I'm a massage therapist, licensed massage therapist, --
Q I understand.
A -- personal trainer.
Q Did you graduate college?
A No.
Q Have you had any training on cognitive abilities?
A No.
Q Okay. Would you agree with me that at most the comment that you have that he was completely coherent is what they would call a layman's statement?
MS. PAYLOR: Object to the form.
Q You're not holding yourself out as an expert; are you?
A No.
Q You don't know and you never spoke about

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 26

deep complex business situations with him; did you?
A No.
Q Okay. So your conversations generally were limited to how he was feeling; correct? The treatment that you suggested you perform on him; right?
A Correct.
Q I mean, those types of things or maybe some family conversation?
A Correct.
Q So within the confines of that world, you believe he was completely coherent?
A Correct.
Q If we go outside of that world, would you agree that you have no idea if he was coherent?
MS. PAYLOR: Object to the form.
Q Because you wouldn't have that ability; would you?
MS. PAYLOR: Object to the form.
A Yeah, for what I was there for and what I could see, he was -- he was coherent.
Q And it's not that I'm trying to be nitpicky, but when you have an affidavit that states something, I really need to understand what was meant. I know it was drafted by lawyers for Ross

Page 27

and Lee after they spoke to you, but some of the words have certain precision. So I'm not trying to attack you on it, I'm just trying to understand what was meant.
A Sure.
Q Okay? And by the way, one thing I meant to tell you is this. If at any point you want a break because you've never done this before, you want to smoke a cigarette, you want to go to the bathroom, you want to do anything, you're welcome to, just tell me and we'll be happy to give you a break. Okay?
A Yeah.
Q There's no time limit on how long we can go.
A Okay.
Q So back to what we just discussed a moment ago, so when you said you -- you said he recognized you every time?
A Correct.
Q And then you said we carried on deep and meaningful conversations, but I assume what you meant by deep and meaningful conversations was surrounding how he was feeling and the treatment you were going to provide on that day?

Page 28

A Correct. For the treatment and for -- we talked about a lot of stuff, you know. He was an interesting guy and, you know, he would sometimes stay after and just talk and share his wisdom with me. So it was more than just like come in, get your treatment, leave and go. It was much more personable in terms of --
Q How often, if you recall, if ever, did you treat him or meet with him after he had completed dialysis?
A Well, he was getting dialysis, you know, quite frequently so --
Q I'm talking the same day.
A Yeah, there were times where I would see him the same day.
Q Okay. Would you agree that on the days he had dialysis before he met with you, that he did not exhibit the same amount of physical and mental acuteness? He'd be drained?
A Well, he might be drained a little bit physically, but he was never drained mentally.
Q He was never drained mentally based on the parameters that we've discussed a moment ago; correct?
MS. PAYLOR: Object to the form.

Page 29

A You know, he was --
Q I want to make sure -- we talked earlier, Mr. Bosch, about the fact that you don't have a college degree in psychology, you don't have any studies in cognitive abilities and you stated a little while ago that the opinions you've given about him being coherent was predicated on the limited world of how do you feel and what treatment am I going to give you. Is it now your testimony that when you say that he was never tired or he was never drained mentally, are you limiting it to that same world that you've spoken about or are you expanding it?
MS. PAYLOR: Object to the form.
A I'm just saying he was always mentally there for the things that we were doing to communicate this -- you know, more pressure, less pressure, my energy's up, my energy's down, you know.
Q Okay. That's fair enough and that helps me understand. Thank you.
Let's talk about September 15th, 2016. Do you remember that day?
A I do.
Q Okay. You went to his condo; correct?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 30

A Correct.
Q And when you arrived, Mr. Holliday was there together with his son, Ross?
A Correct.
Q Ross let you in the door?
A Yes.
Q Okay. And I understood that -- I understand that Ross hung around while the therapy was being given. It's his dad. He's watching?
A The few times that Ross was there, he would be not in the room with us, but, you know, in the condo.
Q Was he not in the room that day when you were giving him therapy?
A Ross was not -- was not in the room that day, no.
Q Was he standing right outside of the room?
A He was in the kitchen.
Q It's not a big condo; is it?
A I don't know. It's --
Q In other words --
A I don't know what's big.
Q -- if you needed to call Ross or Mr. Holliday wanted to call Ross, he could call Ross

Page 31

from his bedroom and Ross would hear him and come into the door; correct?
A I believe so.
Q Okay. You say: Mr. Holliday asked you if you were willing to do him a favor by serving as a witness for him, if anyone changed -- or challenged -- I said it wrong. I'll read it again.
Mr. Holliday asked me if I was willing to do him a favor by serving as a witness for him if anyone ever challenged his will.
Did you understand that he was changing his will on that day?
A I did.
Q Okay. And who told you he was changing his will? Was that something he told you?
A He did.
Q And what is a will?
A A will is, you know, a document that details what you leave people when you pass away.
Q Now, Mr. Bosch, I want to be very careful with you and I want to make sure that I understand terminology and there's no mistake. Okay?
A Okay.
Q So is that a summary of what he told you

Page 32

or is that really verbiage that you recall of what he told you?
MS. PAYLOR: Object to the form.
A Can you be a little clearer?
Q Sure. Mr. Holliday asked me if I was willing to do him a favor by serving as a witness for him if anyone ever challenged his will.
A That was verbatim.
Q That was verbatim. Okay.
So he precisely said challenged his will?
A Correct.
Q Okay. And did he precisely tell you that he was going to be rewriting his will?
A He did.
Q Okay. And that he wanted you to be a witness to him rewriting his will that day?
A Correct.
Q Okay. And then you said he told me that his attorney was on his way over and that he would like me to serve as a witness for a document that he needed to sign?
A That's correct.
Q And the document he's referring to is?
A His will.

Page 33

Q Okay. Was he writing a new will on that day? Is that your understanding?
MS. PAYLOR: Object to the form.
A The way I understand it he told me he was making changes to his will.
Q Okay. All right. He was changing his will. Okay. Was Ross still in the condo, to your knowledge, when Mr. Holliday made that comment to you?
A He was in the kitchen.
Q How do you know he was in the kitchen? Can you see him from the bedroom?
A That's just where I -- where I was sitting in the, you know, in the room, I had to go use the bathroom. And when I went out to use the bathroom, he was standing in the kitchen.
Q When was that in the time-frame of what took place that day? Was that before therapy, during therapy, after therapy? When was that conversation?
A It was during the therapy.
Q During the therapy. Do you know where Ross was sitting at the time that this comment was made to you by Mr. Holliday about doing him a favor?
A Like I said, he was in the kitchen.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 34

Q How do you know he was in the kitchen at that time-frame?
A Because that's where I saw him when I went out to go to the bathroom.
Q Is the fact that you saw him last in the kitchen several moments earlier, does that mean that he could not have moved rooms?
A He could have gone to a different room, but that's the last place I saw him.
Q Okay. Well, that's --
A And I could not see him from where I was in the room of -- you know, if he had gone into the bathroom or the other bedroom, it's possible, but when I had gone to the bathroom, he was in the kitchen.
Q Okay. So you don't know where he was at the time this conversation took place, you just know where he was the last time you saw him?
A Well, I have a pretty good idea where he was.
Q Do you know if he came and talked to his father in between the time you went to the bathroom and the time you came out?
A No.
Q He did not or you do not know?

Page 35

A No, did not go talk to his father.
Q How do you know?
A Because I heard him talking on the phone when I went in to use the bathroom. When I came back out, he was still talking on the phone after that.
Q All right. And once again, this is a smaller condo, noise travels, so you would have heard?
A Yes.
Q Correct?
A Correct.
Q You mention a comment in your affidavit that Mr. Holliday made some comments about his ex-wife. Were those verbatim? There are quotes around them.
A Yeah.
Q His ex-wife is crazy, stuck it to him, made my life hell and took me to the court many times, nothing could satisfy her.
A It's all verbatim.
Q Did not want her to get a penny more than he had to give her?
A That's true.
Q All right. So those in quotes in the

Page 36

affidavit. Okay? The other comment you said was verbatim is not in quotes, but it's still verbatim to your recollection, the one about doing him a favor.
A Well, that's what he asked me.
Q Okay. Was Lee also present in the condo on that day?
A He was not.
Q How do you know?
A Well, I didn't see him.
Q Okay. Mr. Holliday, I'm reading your affidavit, it says his daughter will not be happy and will likely challenge what he has done. Did you and him discuss that at all?
A Well, yeah, he told me that, but, you know, when he asked me to sign this thing, you know, he said that, you know, if anybody challenges this, I want you to tell them that I have set aside everything to the penny where I want it to go and, you know, he said my -- I was like, Mr. Holliday, who would ever challenge you? He said my daughter. My daughter will challenge me and she will not like it.
Q And I'm asking you only -- only because it just seems like there was an agenda of comments

Page 37

he wanted to make to you. Did it come across that way? I want you to do me a favor. I want you to protect it from challenge. My daughter is going to challenge me. I want to make sure that you stand up for me if that happens. It sounds like he was really worried about it.
A Yeah.
Q And he wanted to make sure that you were put on notice to be there and protect him?
MS. PAYLOR: Object to the form.
Q Is that kind of how it came across?
A I can't say that he -- he was very adamant about what he wanted and, you know, he just -- he wanted it a certain way and he said please, he said testify on my behalf for -- this is my will and he said I have it down to the penny. He said some people won't like it, but he said this is how I want it. So I'm just telling you what he told me.
Q Do you know whether or not either Lee or Ross put him up to making these comments to you?
A No. You know, he told me this is what he wanted.
Q I understand that. But do you know whether or not they told him to say that to you?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 38

MS. PAYLOR: Object to the form.
A I don't know. I can't answer that.
Q You don't know either way?
A Yeah, I don't know, you know.
Q Okay. Do you understand the significant amount of monies that are going to go -- that would go to Ross and --
A I have no idea of any of the monies at all. He never told me other than the --
Q Okay.
A -- fact that he had it down to the penny to every person that he wanted to have money.
Q If you were told that the swing went millions and millions and millions of dollars to the benefit of Ross and Lee by making this change, would that surprise you?
MS. PAYLOR: Object to the form.
Q You don't know?
A I have no idea. I have no idea of any of that.
Q Fair. Fair enough. I hate when my mask fogs up my glasses.
Okay. You say more importantly, he did not want his daughter to give a single penny to his ex-wife, which he believed would occur if he left

Page 39

her more money than he did. Do you remember that conversation?
A Yes, he told me that on more than one occasion.
Q Okay. So do you know where he got the idea that if he gave money to the daughter, she might give it to mom and, therefore, don't give it to the daughter?
MS. PAYLOR: Object to the form.
A I don't where he got the idea from, but that's just he told me what he really believed.
Q Okay. But that's what he told you?
A That's what he told me.
Q Whether he believed it or not, you don't know; do you?
MS. PAYLOR: Object to the form.
A Well, I mean no, he --
Q He told you?
A He believed that that's what would happen.
Q Is it your testimony that you knew what he believed or is it your --
MS. PAYLOR: Object to the form.
Q -- testimony that you know what he represented to you?

Page 40

MS. PAYLOR: Object to the form.
A I'm just telling you what he told me.
Q Okay. You don't know what he believed, you just know what he told you; correct?
MS. PAYLOR: Object to the form.
A I believe he told me what he believed. You know, what he said was what he believed is the way I understood it because he was so adamant about it. I mean, he didn't just kind of dance around this point, he made it very clear.
Q Right. Do you know if the reason he made it clear is because he was pressured to do it because it benefited other parties or anyone else?
MS. PAYLOR: Object to the form.
A No, he told me no one had pressured him. He was making his own decision and he said if anybody asks you to try to say this, he says I want you to make sure that people know that this is my decision and my decision alone.
Q So he told you that nobody pressured him?
A Yeah. Well, he just made it very clear that this was his will and this is what he wanted and no one -- you know, he didn't mention anything about anybody pressuring him other than the fact

Page 41

that he was adamant that it get changed the way he wanted it.
Q A moment ago you said he told me nobody pressured him. Did he use the word pressured?
A He didn't use that word, pressured. And he didn't -- he didn't say someone is pressuring me to do this.
Q How would you know if somebody was or wasn't pressuring him?
MS. PAYLOR: Object to the form.
A I don't know. I mean, I wasn't with him all the time. So I couldn't tell you what happened when I left other than the fact what he asked me to do for him in representing him on his will.
Q Right. So you know what he told you, you just -- you don't know if someone pressured him before you came or not or after he left or not, you have no idea; correct?
MS. PAYLOR: Object to the form.
A Well, I -- I --
Q I want to make sure you understood.
A I want to just tell you he very clearly stated his point that this was his wishes and his will and there was nobody else in that room, but the two other attorneys and myself.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 42

Q Well, we're going to --
A It was just --
Q We're going to come to that in a second. Okay?
MS. PAYLOR: Let him finish his statement.
Q He did, I believe. If you didn't, then you can finish.
Okay. So, Mr. Bosch, just to be clear, you don't know if he was pressured to make this statement or not; is that a true statement?
MS. PAYLOR: Object to the form.
A It doesn't seem like he was pressured.
Q That wasn't my question, sir.
Do you know whether he was or was not pressured?
MS. PAYLOR: Object to the form.
A I don't know how to answer that because I'm just telling you what I know.
Q Okay.
A I don't know anything about any of the pressuring.
Q If you cannot answer that, that you don't know, then I'm going to ask you what evidence you have, what information you have that he was not

Page 43

pressured.
A Because he told me that if anybody objects to his signature, to tell them that I'm in my own right mind and these are my decisions and my choices and this is what I want. So for somebody to be that adamant and that clear, to continually put it there, I mean, I wasn't there -- I was just there to carry out his wishes and say what he wanted, you know.
Q If he was threatened five minutes before you arrived, how would you know?
MS. PAYLOR: Object to the form.
A I would have no idea.
Q So you don't know if he was threatened or not?
A I can't answer that. I don't know.
Q Okay. Now, you make a statement that the only people in the room during the process -- I guess there's a process of signing the document, the will?
A Correct.
Q Were Mr. Holliday, the two attorneys, who you later learned to be Truett Nettles and Aliecia Bores and yourself?
A Correct.

Page 44

Q You already told me you've never seen or spoken with Truett Nettles since that date; is that correct?
A Correct.
Q Have you seen or spoken to Aliecia Bores since that date?
A I have not.
Q Okay. Do you know who Aliecia Bores -- you know she's an attorney; correct?
A Correct.
Q All right. Would it surprise you to learn or would it -- strike that.
Would it potentially refresh your recollection -- I'm going to read you a section of an affidavit from Aliecia Bores. Okay? And I'm going to reference to you that in the affidavit she states who was present when the will was signed. Okay? And I'll read you paragraph by paragraph starting on paragraph five. The rest of it is just background about her, but if you want me to read it, I'll be happy to read it all.
MS. PAYLOR: No.
Q All right. On September 15th, 2016, I was asked by a senior attorney at my firm, F. Truett F. Nettles, II to travel to the home of Warren P.

Page 45

Holliday in Mount Pleasant, South Carolina in the afternoon to serve as a witness to the execution of an estate planning document for Warren P. Holliday.
Does that seem consistent with what you understand?
A Yes, sir.
Q When I arrived at the home, this is number six, Mr. Holliday was undergoing physical therapy with his physical therapist in his bedroom; is that correct?
A Yes, sir.
Q Number seven, I waited in the kitchen and living room area with F. Truett Nettles, II and Ross Holliday until Mr. Holliday finished his physical therapy. Okay? You agree with that so far?
A Correct.
Q So at this point we know that you were in the bedroom with Mr. Holliday and the three of them are in the living/room kitchen area?
A Correct.
Q All right. Number eight: Mr. Nettles and I then joined the physical therapist in Mr. Holliday's bedroom?
A Yes.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 46

Q Ross Holliday was standing behind me in the room during this time. So her testimony is that Ross Holliday was behind her in the room.
MS. PAYLOR: Object to the form.
Q Not in the living room or the kitchen, but in the bedroom.
MS. PAYLOR: Object to the form.
Q Could it be that he was there and you just don't recall, that you didn't see him behind her? Because this is an affidavit, that I'll tell you was drafted, I'm assuming by the same law firm, but I'm not positive and it was drafted about a month after yours was signed. And so I'm asking you, sir, because I know that your focus on that day was to treat Mr. Holliday; correct?
A Yes, sir.
Q I'm assuming that you never witnessed a legal document before?
A No.
Q And that you were just trying to do what Mr. Holliday asked you to do?
A Correct.
Q Is it possible that you and Mr. -- and I know that this document, the affidavit that you signed, which we'll admit into evidence in a moment,

Page 47

I'll show it to you in a second, was one that was created by Ross and Lee Holliday's attorneys after you spoke to them at their office; correct?
A (Witness nods).
Q Yes? I'm sorry, you've got to answer audibly.
A I'm sorry, I didn't know if you were going to keep going there, so...
Q So is it possible that Ross actually was in the bedroom and you just don't remember?
A Well, I was on -- if the bed was situated here, the door was here, I was standing here, Aliecia was here and Mr. Nettles was over here, so the door was here.
Q And just for the record -- well, it's on the video, go ahead.
A So Ross -- where Ross was, there was like the living room and kind of den area and then there was the kitchen. Ross, from where she stood at the door, Ross was behind her, but it was -- but he wasn't like right in the doorway.
Q Okay. Was he within -- he was within your vantage point, you could see him?
A At times. At times I could -- I could see him outside of the room, but he never was in the

Page 48

room from -- you know, from the position where I stood, I could see Aliecia, I could see the door and, you know, I saw Ross walk by, you know, but what she's saying is true from her vantage point, he was behind her, --
Q He was behind her.
A -- but it was not --
Q But behind her in the room?
A I don't recall ever seeing him in the room and I just -- I don't -- I didn't see that.
Q And so I'm just asking what you know. It's fine. I'm just trying to figure out -- but you do remember he wasn't in the room, he was right outside the room where you could see him walk by during the time that they were talking to Mr. Holliday?
A Right. I could see him -- I could see him walk by.
Q And if you could see him walk by, then Aliecia could see him walk by?
A Well --
Q If she turned around?
A -- she had her back -- she never once -- she never once had eye contact with him. Her head was, you know, would be in the back of us. She was

Page 49

looking at Mr. Holliday and so I don't ever recall seeing Ross interacting with anybody.
Q So Mr. Holliday was on the -- you were furthest against the other side of the bed from where Aliecia was; correct?
A Aliecia was at the foot of the bed and I was on the far left side where the windows are.
Q Mr. Holliday, he was in the bed; correct?
A He was in the bed.
Q So he could see everything going on?
MS. PAYLOR: Object to the form.
A No. I don't -- you know, he was laying down flat. He sat up to sign the document, but mostly he was laying down flat, so he --
Q Could he have seen Aliecia?
A Yes, he could see Aliecia, he could see myself and he could see the other gentleman.
Q Could he see Ross go back and forth?
A Probably not from his vantage point.
Q Is that based on something scientific or is that based on your guess?
MS. PAYLOR: Object to the form.
A Well, you know, I had a different vantage point from where he is, you know, where --

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 50

he doesn't have the angle on the door to see where Ross was, so, you know, if you go back in and look at the bedroom, I mean, he's, you know...
Q He was lying in a bed.
A Mm-hmm.
Q His bed can see -- if you're sitting up in the bed, you can see out the door; correct?
MS. PAYLOR: Object to the form.
A You can see out the door --
Q Okay.
A -- into the den.
Q So if Ross is walking back and forth by the door, he would be able to see him if he wanted to?
MS. PAYLOR: Object to the form.
A Not really, because he was more over -- he was -- it wasn't right outside the door. It was more over at the angle from where I was standing and could see him.
Q Why was it -- why was it that you specifically placed into the affidavit that Ross was not in the bedroom?
A Why did I do that?
Q Why was it placed in the affidavit when you knew very well that he was right outside the

Page 51

door?
MS. PAYLOR: Object to the form.
A Well, he wasn't in there. He was not in the room.
Q But who made the decision to make the statement in the affidavit that Ross was not in the bedroom?
A I don't know. That's -- that's not accurate. I didn't see -- I never saw Ross in the room at all.
Q But he was right outside the room based on your testimony and, therefore, my question to you is who made the decision to put into your affidavit that Ross was not in the room at this time?
A Well, I told them Ross was not in the room.
Q Did you tell them that Ross was just outside of the room?
MS. PAYLOR: Object to the form.
Q And that Ross was walking back and forth?
A Well, I just told them he was not in the room because he wasn't in the room. If he was walking by outside of the room, we can say that, but I didn't see him in the room.

Page 52

Q Okay. Number 16, I think we've covered this, tell me if it's something different than we talked about before.
A Yes, sir.
Q Mr. Holliday was fully coherent and knew what he was doing from the day I met him up until the last time I saw him. While his body was fading, he mind was sharp as a tack. He was very good at letting me know exactly how he felt and thought. I think we've covered that; haven't we?
A Yes.
Q And that's within the parameters of what you were doing for him?
A Correct.
Q Okay. And the last statement you have: I saw Mr. Holliday between two to four times after September 15th. During one of those meetings, he again -- Mr. Holliday again told me his daughter would contest what he gave her after he was gone and again he had said he was leaving my daughter what I want to, what I want her to have.
During the times I met with him after September 15th, as well as all times prior, Mr. Holliday was fully coherent and capable of making his own decisions.

Page 53

When you say he was fully coherent and capable of making his own decisions, is that within the parameters of what we discussed earlier?
A Yes, sir.
Q When you came to the home to see Mr. Holliday after the 15th, who would let you in the door?
A Well, sometimes he had a keeper that would let me in.
Q When you said two to four times, was it Ross that would let you in?
A No. I didn't see Ross thereafter. I -- you know, the times that I saw him thereafter, there was a lady, I don't recall her name, but she was like maybe a nurse and she would open the door and let me in.
Q Do you understand that he declined quickly after the date that this purported will was signed --
MS. PAYLOR: Object to the form.
Q -- in front of you?
A I -- you know, I saw him, you know, physically decline, but to the last day that I saw him, he was mentally sharp.
Q Okay. Let me show you a copy of the

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 54

affidavit that I've been looking at and ask you if this is the affidavit that you signed. If it is, we'll mark it into Evidence. Do you need a copy, Alice?

MS. PAYLOR: No.

A My glasses keep fogging up. Okay. Yes.

Q I'm sorry?

A Yes, this is --

MR. SLOTCHIVER: Let's mark that as an exhibit.

(Thereupon, Exhibit 1 was marked for Identification.)

BY MR. SLOTCHIVER:

Q Mr. Bosch, a few more questions and then we're going to take a quick break and we'll finish up. Okay?

A Yes, sir.

Q Are you aware of what Warren Holliday did on September 15th prior to your coming to the home?

A Am I aware of what he did?

Q Yes.

A No.

Q Are you aware that he had dialysis, had to terminate it early that day because he couldn't

Page 55

handle it? He was too exhausted and had an ambulance take him home?

A I did not know that.

Q Did you notice him a little more exhausted that day than normal when you saw him?

A Not particularly.

Q A little less mentally acute on that day?

A He was not less acute that day. I mean, not less -- he was mentally sharp that day.

Q Did you maintain any written records of your treatment of Warren Holliday?

A I don't have any records. I kept some at the time, but I didn't keep them after his passing.

Q Did you maintain any notes of any conversations that you had with Mr. Holliday?

A No, I did not make notes of our conversations.

Q Are you aware of what medicines Mr. Holliday was taking at any time that you were treating him in particular on the date this document was signed?

A No.

Q Are you aware that some pain medicines

Page 56

create psychological effects?

MS. PAYLOR: Object to the form.

A Yes, I'm aware of that.

Q How were you paid for the treatment that you -- were you paid cash or check? How were you paid?

A He would pay me in cash.

Q Have you ever e-mailed or texted with either Ross or Lee Holliday ever?

A Yes.

Q Okay. Do you have copies of those e-mails or texts?

A Copies of them?

Q Yes, sir. Have you maintained them?

A I think I have them. I've got a new phone, but I think they're still on there.

Q Okay. Who is your cell phone provider?

A AT&T.

Q Okay. And do you still have the same phone that you had back in 2016?

A Yes. I got it -- I just recently got a new work phone for another business that I have, but I still have the phone that I had with --

Q Okay. So would you be able to locate those and provide them to us, any e-mails or texts

Page 57

that you had with Lee or Ross?

A Yes.

Q Would they have been with Lee or with Ross or both?

A Both.

Q Okay. If you cannot provide them, then I would ask that you would allow us to take it and to give it to a service that can pull them off and at the same time protecting all of your privacies. It would only be for purpose of those. And if requested, I would be happy -- sometimes what we do is we get the court to order it so that way, it's a person appointed by the court, and that way your privileges are all intact. Because I don't want to see what you've texted other people or conversations with other people, all I want to know is the conversations or e-mails you've had with Ross or with Lee.

A Okay.

Q Is that fair enough?

A Sure, yes.

Q Anybody else that you've spoken to with reference to Mr. Holliday other than Ross or Lee or your conversations with Ms. Paylor or Bijan?

A Just Nathan Hale.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 58

Q And what conversations have you had with Nathan Hale? Who is Nathan Hale?
A He was the one that introduced me to Warren.
Q Who is he?
A He was Warren's -- I think they were business partners together.
Q Have you spoken to Mr. Hale about the deposition you're giving today?
A Yes.
Q Okay. In writing or orally?
A Probably both. I think probably both.
Q Okay. We'll come back to that in a moment. Let me finish up the questions I had here first.
Oh, the e-mails you typed, were they -- Let me ask you this. Were you e-mailing and texting with Ross and/or Lee before this document was signed?
A That was after.
Q Was it after Mr. Holliday passed away?
A Yes.
Q Okay. Did Mr. Holliday to your knowledge wear glasses?
A Yes.

Page 59

Q Do you recall if he was wearing them on that day?
A He was.
Q Did he have hearing aids?
A Yes.
Q Do you know if he was wearing them on that day?
A I believe he was. I don't remember one hundred percent sure.
Q And I'm glad you said that because I'm just trying to get what you know for sure. If you don't know, say I don't know or I don't recall, like you just did.
A I don't recall.
Q Okay.
A But I know he was wearing his glasses.
Q When the lawyers came and met with Mr. Holliday, were you in the room the whole time?
A Yes.
Q Did they -- and people do it in all different ways. I'm just trying to understand. Did they summarize what the documents were and have him sign it? Did they literally read verbatim what the document was and have him sign it? Which one did they do under those two or neither?

Page 60

A Well, Truett was the one that spoke and he told Mr. Holliday to read certain sections of the papers he brought. And I guess they had had a conversation before and Warren said, you know, I just want to make sure you've got everything down here right and he said that he did and then, you know, Warren signed the papers.
Q Okay. Well, let me -- that raises two questions. Okay? Number one, do you recall specifically which sections he read or what they were about?
A No, I wasn't privy to that.
Q Okay. You were there, but you weren't paying attention to it?
A No, I was paying attention, but I didn't -- I couldn't see what was on the paper and I don't know the dialogue that they had when they spoke -- I guess they had a conversation about what they wanted to do.
Q We're going to come back to that in a second. So I take it that Truett didn't read the document to him, he just said, Mr. Holliday, read these particular sections?
A He didn't read the whole document to him.

Page 61

Q So Truett did not read the document, he just told Mr. Holliday to read certain sections of it?
MS. PAYLOR: Object to the form.
Q Is that what you're -- I'm not -- I'm trying to make sure I understood what you said.
A Yeah. He -- you know, Warren asked him if he had, you know, made the changes and he said he had and he said, you know, where -- you know, are these the sections, and so Warren then read those sections and then he signed it.
Q Warren read them out loud?
A He did not read them out loud.
Q Okay. Did Truett read any sections out loud?
A I don't remember.
Q Okay. You just remember him referring Warren to read certain sections?
A Correct.
Q And to your knowledge, did Warren appear to have read those sections?
A Yes, he did read those sections.
Q And which sections, you can't say because --
A I don't know.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 62

Q Okay. Fair enough. One thing you said that threw me off, but a lot of things throw me off just in general because I'm learning things.
But you said they had a conversation before, but when I read your affidavit, it appeared they just arrived, and when I read Aliecia Bores' affidavit, it appeared they went straight in and went straight to having the document signed.
A Yeah, that was -- that was pretty much it. They did go -- I mean it wasn't a lot that -- you know, he showed him this one section and boom, he signed it, so...
Q So whatever conversation they would have had before then would have been before -- it would have been sometime before you arrived at the home?
A Correct.
MS. PAYLOR: Object to the form.
Q Okay. And what was said in the conversation -- okay. I got it, I got it.
Let me take a -- let's go off the record for just a quick break.
THE VIDEOGRAPHER: Off the record at 11:30.
(Thereupon, a brief recess was taken.)
THE VIDEOGRAPHER: On the record at

Page 63

11:39.
BY MR. SLOTCHIVER:
Q Mr. Bosch, how much in advance did you generally schedule your appointments with Mr. Holliday?
A It varied. You know, sometimes a day in advance, sometimes a week in advance.
Q When he was at his home, did you schedule them farther in advance than you did when he was coming to your facility?
A Well, I was -- you know, it was not a lot towards the -- you know, most of the majority of the work was done at my place.
Q And I'm talking about during the time-frame that it had moved over to the condo.
A Well, I don't remember.
Q Okay. Fair enough. And you may have answered this, and if you did I apologize, but how many times was Ross present during your sessions?
A I recall like twice.
Q And once would have been including -- once would be on this day?
A Right.
Q Okay. You don't have any notes to reflect one way or the other; correct?

Page 64

A Any what?
Q You don't have any notes to reflect one way or the other?
A Oh, no, no.
Q Did Ross let you know in advance that he was planning to be there on this particular date?
A No. I -- you know, like I had -- you know, I didn't know Ross was going to be there the day that he was there.
Q Was that the first time that he was at one of the treatments or was that the second time?
A Well, that was at his house -- or I mean the condo.
Q At the condo, right.
A So it was like two times that I saw him.
Q Was that the first or the second?
A Was what the first or the second?
Q You said there were two times that you saw Ross at one of the therapy sessions that you recall. What I'm asking is September of 2016, when the document was signed, this purported will --
A I had seen him one time before that.
Q Okay. That's what I was trying to understand. So on this particular day, just to make sure I have it straight, the only people in the

Page 65

condo were Mr. Holliday and you and Ross, and then subsequent to that arrived Truett Nettles and Aliecia Bores?
A Correct.
Q There was no nurse there that day?
A I don't recall. There could have been, but I don't recall the nurse being there.
Q It's not referenced in your affidavit.
A I don't remember seeing her.
Q Okay. We talked about it's a small apartment. You would have seen her if she was there; correct?
A Yes, I didn't see her that day, as best I can recollect. If she was in some other part of the place, I don't know, but I didn't see her in the --
Q You didn't see her in the apartment that day?
A I didn't.
Q It's a small apartment. You could hear somebody talking on the phone when you're in the bathroom?
MS. PAYLOR: Object to the form.
A Yes, I mean, unless she was in a bedroom working or she was in the basement, yeah, it had a

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 66

basement down there. I don't know if she could have --
Q Actually a basement's okay.
A Well, I don't know.
Q Any reason why she would be in the basement?
A No.
MS. PAYLOR: Object to the form.
A No idea, no clue.
Q She certainly wasn't anywhere within -- if you weren't able to see her, then she would not have been anywhere within earshot of Mr. Holliday; correct?
A Correct.
Q Okay. Is that the only time that you've ever gone to Mr. Holliday's condo when there was not a nurse practitioner present?
MS. PAYLOR: Object to the form.
A It must be because all the other times there was a nurse practitioner there.
Q Okay. I will represent to you that from what we've learned is there seems to be a discrepancy on how Mr. Holliday was positioned when he signed the document. And if you know, I'm going to ask you to tell me, if you don't know, then tell

Page 67

you don't recall or you don't know. But I've heard he was lying down and I've heard he was sitting up, and I'm not sure which one it was and it may make a difference for us. So I'm asking you if you have any recollection as to how he was sitting or laying or positioned at the time that he actually signed the document.
A Well, I'll just tell you what I saw. He was lying down and he sat up to sign the document.
Q Okay. So he did sit up to sign the document?
A He did sit up to sign the document.
Q Okay. When he sat up, did he sign it in his lap or did he sign it up in the air?
A No. He, it was like in his lap and he leaned forward and signed it.
Q Okay. And when Mr. Nettles came in, did he represent -- I know he talked to him about the document. Did he say I brought the changes to the will for you to sign or something to that effect?
MS. PAYLOR: Object to the form.
A I don't recall. I don't remember those specific words.
Q Anything else that you recall that we have not discussed today? I know I've been asking

Page 68

questions and maybe there's something else that you recall. I just want to know what you're going to testify to if you come to trial.
A I mean, I've pretty much told you what I know.
Q And the e-mails and texting that you had with Ross and Lee, what was the basis -- I know we'll see them eventually, but just while I have you here so I don't have to bring you back again and ask more questions, what was the gist of what they were asking you?
A Well, Ross had some health issues and so I guess he was laid up in the hospital and he got a bed sore. So anyway, it was -- it was based around trying to help him recover from his time in the hospital.
Q Nothing about his father?
A I don't recall anything about his dad, it was more --
Q Nothing about I want you to be a witness in the case, will you testify for what you know?
A No, no.
Q Nothing about would you please speak to my lawyer about this case because there is a contest that's been filed?

Page 69

A No. He didn't -- I don't recall him saying that.
Q The records will show?
A Yes.
Q What about Lee, what was Lee calling you for or texting you for?
A Lee was just trying to, I guess, talk to me on behalf of Ross, I guess, about his health situation, you know, just telling me a little bit about the situation and, you know, that -- that he was having some health issues.
Q Are you and Lee and Ross friendly?
A I wouldn't say that. I don't have -- I don't have -- you know, I saw Ross those two times before his dad passed away. You know, I hadn't -- I didn't have a friendship with them, if that's what you're asking.
Q You said there was another business you had besides the massage and personal training. What's the other business?
A Well, I started a company that makes rotational equipment that analyzes the kinetic chain and rotation.
Q All right. Thank you, sir. I have nothing further.

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MS. PAYLOR: Thank you, Mr. Bosch. I'll walk you out and grab Aliecia.

THE VIDEOGRAPHER: This concludes our video deposition. The time is 11:48. We are off the record.

(Thereupon, the deposition concluded at 11:48 a.m.)

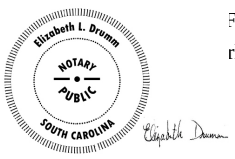
CERTIFICATE OF REPORTER

COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA)

I, Elizabeth Drumm, Registered Professional 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.

WIT[illegible] FFICIAL SEAL this 8th day of Aug[illegible] rleston, County of Charlest[illegible]



ELIZABETH DRUMM, RPR, CCR
South Carolina Notary Public
My Commission Expires:
May 28, 2029

I N D E X

GREG BOSCH PAGE

Examination by Mr. Slotchiver 4
Reporter's Certificate 71

E X H I B I T S

IDENTIFICATION PAGE

Exhibit 1 (affidavit) 54

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430



Deposition of:

F. Truett Nettles , II, Esquire

July 28, 2020

In the Matter of:

Holliday, Pamela et al v. Holliday, Ross Samuel et al

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

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STATE OF SOUTH CAROLINA — IN THE PROBATE COURT
CASE NO.: 2019-CP-102430

COUNTY OF CHARLESTON

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. SARA JANE HOLLIDAY and JOHN C. HOLLIDAY,

Petitioners,

v.

ROSS SAMUEL HOLLIDAY, Personal Representative of the Estate of WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, et al.,

Respondents.

VIDEOTAPED DEPOSITION OF F. TRUETT NETTLES, II

DATE: July 28, 2020

TIME: 1:59 p.m. - 6:30 p.m.

LOCATION: 171 Church Street
Charleston, South Carolina

TAKEN BY: Attorney for Petitioners

REPORTED BY: Elizabeth Drumm, CCR
Registered Professional Reporter
Notary Public, South Carolina

VIDEOGRAPHER: Christopher Mills

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

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Also Present: Mark Holliday
Mary Ellen Holliday
Martha Brouthers

THE VIDEOGRAPHER: We are now on the record. Today's date is July the 28th, 2020. The time is approximately 1:59 p.m. This is the video deposition of Truett Nettles, II. The location is 171 Church Street, Charleston, South Carolina. This deposition is taken in the matter of Pamela Holliday, et al versus Ross Samuel Holliday, et al.

Would counsel please introduce themselves for the record.

MR. SLOTCHIVER: This is Dan Slotchiver, I represent the Petitioners.

MR. HALVERSEN: Brent Halversen on behalf of the Petitioners.

MS. PAYLOR: Alice Paylor on behalf of the Respondents.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

Thereupon,

F. TRUETT NETTLES, II

having been first duly sworn or affirmed, was examined and testified as follows:

EXAMINATION

BY MR. SLOTCHIVER:

Q Mr. Nettles, you and I know each other, Dan Slotchiver. We've been working, I guess against each other on this case for a little bit of time. And I know you are a practicing attorney, and just because the Supreme Court requires it, I'm going to briefly go over the rules of a deposition, although I know you know the rules of a deposition.

I'm going to ask that you put up with my muffled voice because I'm wearing a face mask while I'm asking you questions due to COVID, and I apologize. If you don't understand anything, please let me know and I'll be happy to repeat it.

I'm going to ask that you answer any questions I pose to you orally. If you nod your head or shake your head or say un-huh or huh-uh, the problem is that the court reporter won't be able to put that down correctly in the transcript. Although we do have a video here, I want to make sure that the two align perfectly to the best we can. If at any time I see you nod or say uh-huh or huh-uh, I will correct you, not to chastise you, but just to make sure we have a good record. Okay?

A Yes.

Q Any reason that you're not able to give a deposition today, any reason we should reschedule for a different day?

A No.

Q Okay. Understanding that we're going to proceed, it seems like the best place to start off would be in what I would almost consider a recapitulation of some of the information, which is a letter that you have written to Jessica Crowley on February 5th, 2018.

(Thereupon, Exhibit 1 was marked for Identification.)

Q If I can show you a copy that I've marked as Exhibit One to your deposition.

MS. PAYLOR: Have you got one for me?

MR. SLOTCHIVER: I do.

MS. PAYLOR: Thank you.

BY MR. SLOTCHIVER:

Q Take your time and let me know when you're ready to talk about it.

A Okay. I'm ready.

Q Okay. Well, let me ask you have you not read this letter in preparation for your deposition today?

A No, I have not.

Q When is the last time you would have read this letter?

A Probably when I wrote it.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 6

Q Okay. Have you done anything in preparation for your deposition today?
A Yes. I reviewed my affidavit that I signed in a motion for summary judgment and I reviewed the affidavits of Ms. Bores and Mr. Bosch and Ross Holliday.
Q Did you review your communications with Ross Holliday or with Warren Holliday?
A Do you mean go through like phone messages or e-mails or something?
Q Sure.
A No, I did not.
Q Did you review your billing entries with him?
A I did look at my billing to Mr. Warren Holliday for August and part of September 2016.
Q Any other billing that you looked at?
A No.
Q And I guess just while we're at this point, who do you represent today in the Holliday family?
A The Respondents.
Q Who in particular? Do you represent Ross Holliday?
A Yes.

Page 7

Q Do you represent Lee Holliday?
A Yes.
Q Have you previously represented Warren Holliday?
A Yes.
Q Have you previously represented Patricia Holliday?
A I have in the past many years ago, yes.
Q Okay. Have you ever represented either of my clients, the other two children of Warren Holliday?
A I do not recall ever representing Pamela or Ben.
Q Okay. Having taken a few moments to read this document, which we've marked as Exhibit Number One, to the best of your recollection, is everything that's stated in this document correct and truthful?
A Yes.
Q Just a couple of questions I wanted to ask you. It says that under the first and second big paragraph, it says on the first page: The Warren P. Holliday revocable trust was created in 2008. The trust instrument was prepared by T. Heyward Carter, Junior, Esquire. He is a tax

Page 8

attorney here in Charleston. I have referred Warren to Heyward for any complex tax issue or sophisticated estate planning. Do you see that portion of the letter?
A Yes.
Q When was it that you would have referred Mr. Holliday, Mr. Warren Holliday to Heyward Carter?
A Probably a few months before he actually went to see Heyward.
Q Would he have you told you that he was going to see Heyward for purposes of creating a trust or was it just for general estate work?
A I referred him for just general advice on how to do his estate planning and I didn't suggest, and I don't know if he went there to have a trust created. I don't know.
Q Is it -- it says here that you -- on the next page that -- at the top of the page, the first full sentence: I was not aware of the existence of the trust. In the summer of 2016 both Warren and Ross mentioned to me that this trust still existed on paper.
I'm surmising from this that the first time you learned of the existence of the trust was in the summer of 2016.

Page 9

A That's correct.
Q Okay. And prior to that -- it's not just this trust, you didn't know any -- well, strike that.
Okay. I want to hand to you what I'm going to mark as Exhibit Two, which is a copy of a privilege log that you have submitted.
(Thereupon, Exhibit 2 was marked for Identification.)
Q Understanding it's labeled privilege log, I've got some questions, but I anticipate that the privilege would still attach unless you're waiving it at this point.
A I am not waiving it.
Q Okay. So I just want to confirm that -- and if you would look at each of the dates that are applicable to the privilege log, which go back to the time period prior to the death of Mr. Holliday, that none of these communications or none of the privileged communications dealt with direct communications between yourself and Warren Holliday. And if any of them do, would you please identify which ones?
A Would you repeat your question now?
Q Sure. If you would please take a look

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 10

at the privilege log that is now labeled as Exhibit Two and let me know if any of these entries, any of the privileged communications which you are objecting to providing, if any of them pertain to communications directly between you and Warren Holliday. I will represent to you on the face, they don't appear to based on the description you've given, but I just wanted to confirm that they do not deal with communications between yourself or your law firm and Warren Holliday.

A No, the entries that I see from the beginning of this log in June 2015 through September 9, 2016, I do not see e-mails to Warren Holliday.

Q Is it -- you've been practicing law, sir, for how many years?

A I haven't added up lately, 43, 44 years.

Q And do you normally practice in a billable environment? And I ask because as it relates to the way that bills are addressed. But do you normally represent people in a billable capacity where you keep track of your hours and you bill them for time and hours that you spend on their cases?

A I do that for some clients.

Q Okay. When you do that for clients,

Page 11

would you agree with me that it's important to document communications so that you can accurately reflect what work has been provided?

A Yes.

Q And when you list a name that you speak to, whether you've spoken to on a particular bill, is it important that you include the names so that you have an accurate document? In other words, by way of example, if you write, let's look at the June 4, 2015 e-mail communication to Ross Holliday re: Provide Toporek with accounting/report of payments from trust, I'm assuming that this -- that if you had also communicated with Warren Holliday on this occasion, his name would have been written there?

A I never e-mailed to Warren. I don't know that he ever did that with anybody.

Q That wasn't the question though. The question is: If you write e-mail communications to Ross Holliday, would it be fair to assume that Warren Holliday was not included in that e-mail?

A I don't know if Warren Holliday saw a copy of that e-mail. He didn't have an e-mail address that I knew of.

Q Okay. Let's change it then. Would it

Page 12

be fair to say that if you say e-mail communication to Ross Holliday, that if you had included Lee Holliday, you would have written Lee Holliday in that caption?

A Yes.

Q Okay. And to your knowledge, Warren Holliday did not have an e-mail; correct?

A I don't recall ever seeing one, no.

Q Okay.

A I don't know.

Q So when you would communicate with Warren Holliday, you would do it by regular mail?

A And telephone.

Q And you would track those on your billing statements and your communication logs; correct?

A I didn't bill for every telephone conversation with Warren Holliday or some of my other clients.

Q Did you keep notes about communications you had with your client?

A It depends on if there was anything substantial discussed with the client, then I would probably bill for it, but if I said I'm coming to your office at 2:30 and he said that will be fine

Page 13

and I hung up, I'm not going to bill for that.

Q So if it was substantial, you would have a written document and bill for it; if it wasn't substantial, then you would probably just waive it as a courtesy because you don't want the client complaining about you billing for that two-second phone call?

A That's my general practice.

Q Okay. Fair enough. Let's back it up then for a moment and take a look at a much earlier communication with Mr. Holliday, which was July 10th of 2002. I'm going to show you a copy of a communication representing the wills that you had provided for him and his then wife Patricia.

(Thereupon, Exhibit 3 was marked for Identification.)

Q I've marked that as Exhibit Number Three. Do you recall that communication?

A I see it now. I had forgotten about this, but that's fine, 2002.

Q Okay. And back then you were representing both Warren and Patricia for purposes of creating their wills; correct?

A Yes.

Q And you actually drafted their wills,

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 14

correct?
A Yes.
Q And when you drafted that will, it left -- it devised the estate evenly among their four children; correct?
A As I recall, I haven't looked at that will in many years, but I think each person, each testator left it to the surviving spouse, and if they were not survived by a spouse, then to the four children equally.
Q Okay. Now you stated a few moments ago that you don't recall Warren having an e-mail. Is it fair to say that you generally communicated with Ross, his son, about legal matters pertaining to Warren Holliday?
A I would say that I communicated with Ross in the last two or three years of Warren's life. I communicated with Ross about business matters and I communicated with Warren about personal matters.
Q And your notes and bills will reflect that?
A If I bill for it, yes.
Q And you said you billed for anything significant or substantial?

Page 15

A Oh, I billed Mr. Warren Holliday for drafting the revocation of the revocable trust and I billed him for going out to his home to witness it.
(Thereupon, Exhibit 4 was marked for Identification.)
Q Let me show you a document that we marked as Exhibit Four and ask you if you recall seeing this before. It appears to be an e-mail sent to Ross Holliday from you back in April of 2013, three years before the death. What was this dealing with?
A The marital trust for Patricia Ann Holliday.
Q So the marital trust came out of the divorce action between Warren Holliday and his wife; is that correct?
A You'll see that my e-mail to Alan Toporek is dated April 15, the same day I also wrote -- got a response from Ross. Hold on. Let me check. Yeah. The divorce didn't finally happen until December of that year. So in that time-frame, we were negotiating a divorce settlement, the marital trust and things like that.
Q So you were dealing with Ross and he was advising you what to do with reference to the

Page 16

divorce between his mom and his dad?
A No.
Q Is there an e-mail similar to this between you and Warren Holliday?
A No. I told you before he did not have an e-mail.
Q Well, is there a letter similar to this between you and Warren Holliday? Because if there is, I'll tell you I haven't seen it.
A I don't recall.
Q I see very -- Okay. Would it be true that 95 -- and we'll go through it, but 95 percent of all communications or more that are documented in your file dealing with Warren Holliday actually went through Ross Holliday?
A Many of them did, yes.
Q Was Ross Holliday communicating to his father about what you discussed with him?
A I assume.
Q Did you rely on Ross to advise you as to what his father would want?
A No.
Q How would you know what Warren Holliday would want if you didn't communicate with Warren Holliday?

Page 17

A I did communicate with Warren Holliday.
Q Okay. In writing?
A I'd have to go back to my file. I don't recall.
Q Okay. We're going to go through it, but I'm just representing to you I haven't seen it.
A Well, that's okay. Then there's not a letter.
Q And I haven't seen it in your bills.
A That's fine.
Q Would you agree with me that 95 percent of all interactions that you've had with Warren Holliday were done with Ross Holliday present or on the phone also at the same time?
A I would say that 95 percent of the communications with Ross had to do with Zeezrom Properties. And if you look at that privilege log, that's what we were talking in every one of those.
Q Did this document I just provided you, Number Four, have to do with Zeezrom Properties?
A No, it had to do with the marital trust, which was part of the divorce between Warren and Patricia.
Q So in this one, you're consulting with Ross about what to do or if the document is

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 18

sufficient that Alan Toporek sent over dealing with the marital trust?
A Well, I sent -- it appears that I sent the same draft to Ross and then to Alan and it appears that Ross and I had -- I had explained to him before that what we were doing with the preferred membership interest for the marital trust and I sent him that to show him what Warren was doing with the marital trust.
Q Was anything precluding you from sending a letter to Warren Holliday?
A No.
Q Was anything precluding you from reaching out to Warren Holliday and discussing this with him?
A Oh, no.
Q I'm looking at here in the letter it says: Truett, I am fine with it. It doesn't say his father's fine, but he says he's fine with it; correct?
A I can read it, yes.
Q Okay. But you would agree with me, I have read it and feel that it covers what we discussed. Do you see that portion?
A Yes.

Page 19

Q Is there any reference to Warren Holliday being consulted about it or agreeing to it or even knowing about this communication?
A That's probably what we discussed. That his dad was willing to have this marital trust, and the way we -- the way I designed it was to make the marital trust a preferred member of Zeezrom, and then I told Ross that's what we're doing and I sent him a draft of -- and I guess this was from the marital trust.
Q So is it fair to say that for the most part Ross was running the show for his dad as far as the divorce, getting it done, the marital trust, the revocation, all of that kind of stuff, Ross was your contact guy?
A No.
Q Okay. But Ross was the person you communicated with?
A I frequently sent him documents by e-mail. And, you know, if you look at this log, I was sending him a lot of business things.
Q I understand you were sending him business things, but I'm in particular concerned in questioning you today about the stuff separate from Zeezrom, but dealing with the communications

Page 20

pertaining to his dad, estate planning, those types of things.
A And your question is?
Q Those communications were generally done through Ross as opposed to Warren; is that correct?
A Well, do you mean did the instructions about what to do in the divorce, did they come from Ross?
Q Yes.
A No.
Q Do you have anywhere to document that they came from his father?
A My memory. Warren visited my office a few times during that divorce, like between this April thing, he came by. I was at the time practicing with Grim/Cab. He came by there a couple of times to sign the marital settlement and the trust agreement and the Zeezrom member agreement and he came by my office to do all of those things --
Q Well, we'll go through --
A -- and we talked.
Q We'll go through your billing entries in a little bit, but I believe you testified that if it was anything significant, you would have written it down in your bill. And I'll represent to you that

Page 21

there are very little billing you've done with Warren Holliday. The bills to Warren Holliday were predicated on conversations with Ross Holliday.
A I did not conduct that divorce based on instructions from Ross Holliday.
Q Okay.
MS. PAYLOR: I'm going to remind counsel that discovery in this matter today is limited to undue influence and capacity.
MR. SLOTCHIVER: I'm very familiar.
MS. PAYLOR: I'm not so sure that's where you're going right now.
MR. SLOTCHIVER: I'm very familiar with that.
BY MR. SLOTCHIVER:
Q Okay. Let me show you another document, which is --
MR. SLOTCHIVER: I can assure you I understand that and I believe we're working well within the confines of that.
BY MR. SLOTCHIVER:
Q This is an April 15th, 2013 document from you -- or from Ross Holliday to you. Let me mark this as Exhibit Five.
(Thereupon, Exhibit 5 was marked for

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 22

Identification.)
A Thank you.
Q Okay. In this letter it says -- or in this e-mail, it looks like you've written -- you wrote to Ross and said among other things: I'm forwarding the draft to Toporek. Warren had not had a chance to review the trust yet. He was feeling low. I told him it is just a draft. I want to send it to Toporek to keep Patricia calm. What is that information based on?
A Facts.
Q How do you know that Warren hadn't reviewed it? How do you know that he was feeling low?
A Because I talked to him. I drafted the trust as part of our overall effort to reach -- you know, to do a marital settlement, you know, a marital trust. And I drafted up the marital trust and I had a draft of it at this point and I had discussed with Warren, you know, what -- this is what we're going to do, we're going to have this marital trust, it's going to be a preferred member and all that. But at this point on April 15, 2013, I had drafted it, but I hadn't shown it to Warren yet because he was feeling low.

Page 23

Q Why was it important for you to tell this to Ross?
A I asked him to just look at it to see if he knew of anything that would affect it one way or another.
Q Were you representing Ross in this or were you representing Warren Holliday?
A I was representing Warren Holliday, but a lot of the things I did with Ross, if you go back to that log, were Warren's business that Ross was managing, because Ross had a power of attorney from Warren and Patricia and he was doing a lot of business, all of the business stuff.
Q Well, I've read the power of attorney. It certainly doesn't give him unlimited, unfettered access to affect gifts or fiduciary powers; correct?
A I haven't read it lately, but Ross never tried to do that with me, so that's okay.
Q But here you're checking with Ross, you're checking with Ross to tell him something that you apparently, from your own testimony, had already discussed with his father. So what was the benefit to let Ross know what you discussed with his father if the whole goal was to accomplish what you wanted to for Warren?

Page 24

A In 2015, in 2014, in 2013, 2012, Ross was running Zeezrom Properties and this marital trust involved an interest in Zeezrom and I sent this, a copy to Ross, just to find out if I was doing anything that was going to interfere with Zeezrom's business. You know, I asked for him to just look at it and tell me if he sees anything that he thinks is not working or not proper.
Q Where is that communication asking him to look at it to see if he sees anything that's not working or not proper?
A Here is the e-mail I sent him at 1:11 p.m. on April 15, 2013.
Q And what does it say about if anything is not working or not proper?
MS. PAYLOR: Object to the form.
A As I read my e-mail to Ross, I'm responding to some -- he did some editing or check -- proofreading for me. At 1:20 p.m. that day in Exhibit Four, he says two items were grammatical in nature.
Q I'm just trying to understand is Ross running it or is Warren running it, because you're asking Ross for advice about what you're doing for Warren and it appears to me like Ross is running it

Page 25

like he's running Zeezrom and I'm trying to understand if that is correct.
A It is not correct.
Q Okay.
(Thereupon, Exhibit 6 was marked for Identification.)
Q Number Six is an e-mail exchange between you and Alan Toporek and Heyward Carter. Let me know when you're ready.
A Okay.
Q It appears that Heyward is concerned about a potential conflict and wants to make sure that that's not an issue and he wants the consent of Warren and Patricia because he had done work for both of them; is that correct?
A Yes.
Q Do you agree with that appearance of a conflict?
A Well, they were getting a divorce.
Q I understand that. And he had done some work for them before. Did you agree with the fact that they had -- that Heyward has a potential conflict getting involved between the two of them?
MS. PAYLOR: Object to the form.
A I think with consent of both parties he

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 26

could review the trust.
Q Okay. So there was a conflict which could be waived by having consent?
A Well, obviously there was a conflict.
Q Okay.
A I don't know if there was a conflict for Heyward Carter. He -- out of an abundance of caution, he wanted it in writing that both clients consented before he did that, before he even looked at the trust.
Q Well, you, yourself, seem to agree that there was a conflict and that you only waived part of it when you responded.
(Thereupon, Exhibit 7 was marked for Identification.)
Q Here's a copy of -- thank you. I'll show you a response. I'm sorry. I messed it up.
MS. PAYLOR: Is that Seven? Is that Exhibit Seven?
Q That's Number Seven, yes.
So in your response, you consented only under certain conditions about the fees that are going to be paid, but you certainly didn't suggest there's no conflict.
MS. PAYLOR: Object to the form.

Page 27

A Would you restate the question? I was reading. I'm sorry.
Q Sure. In this document it appears that you acquiesced to the fact there is a conflict, you haven't said there's no conflict. And, in fact, you said: By consenting to review of the marital trust by Heyward Carter, my client is not agreeing to pay half of Heyward's usual and substantial fees; correct?
A Well, I hadn't recalled that until I read Exhibit Seven, but apparently it was Alan Toporek's idea to have Heyward Carter review the marital trust, and what I'm telling Alan and Heyward is that Warren consents to let Heyward Carter read the draft marital trust.
Q And waives any conflict?
MS. PAYLOR: Object to the form.
A I don't know what you mean by that question.
Q Well, this was all prefaced on the fact that Heyward's saying I can't do it, I've got a conflict unless you all agree.
A Well, my client, Warren Holliday, did agree to let Heyward Carter review the draft marital trust.

Page 28

Q And I guess the conflict was because he had previously represented both of them in the past?
A Yes, and --
MS. PAYLOR: Object to the form.
A -- they were getting a divorce.
Q How was that different from the fact that you had previously represented Patricia Holliday with finances and Warren Holliday with finances?
MS. PAYLOR: Object to the form.
A I hadn't represented Patricia Holliday personally in anything for preceding, I don't know, a long time, five, ten years.
Q But you had represented her before?
A Oh, yes.
Q Is there -- what's the time limit for when the conflict runs?
A I don't think it's lifetime.
MS. PAYLOR: Object to the form. This doesn't have anything to do with --
MR. SLOTCHIVER: Please, no speaking objections.
MS. PAYLOR: I'm just telling you --
MR. SLOTCHIVER: I heard you. There's a rule about speaking objections. Please do not

Page 29

do speaking objections.
MS. PAYLOR: I'm just telling you -- I wasn't objecting, I'm saying you're not sticking to the Judge's --
MR. SLOTCHIVER: I am very much sticking to --
THE REPORTER: You're not sticking to --
MS. PAYLOR: He's not sticking to the Judge's order on a limitation of discovery.
MR. SLOTCHIVER: Let's put this on the record. I am very much sticking to the Judge's order on the limitation to discovery. I'm going to ask you not to have speaking objections again because it's not appropriate, it's not right under the rules. If you think I'm not following the Judge's order, then there are plenty of things you can do, but I can assure you, I've already said it once and I'll say it again on the record I'm sticking to the Judge's order. I don't have to explain to you my methodology, but I can assure you that I'm sticking to the Judge's order.
BY MR. SLOTCHIVER:
Q Okay. Let me show you what I'll mark as Exhibit Number Eight.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 30

(Thereupon, Exhibit 8 was marked for Identification.)
Q I believe this deals again with the marital trust matter; am I correct? Is this back dealing with the marital -- the divorce matter?
A Well, I haven't read the whole thing yet but --
Q Sure.
A -- this is during the divorce proceedings and --
Q This is part of your representation of Warren Holliday against his wife, or his wife --
A Yes.
Q -- against him?
A Yes.
Q Okay. Can you tell me why Ross Holliday was copied on this e-mail?
A Well, let me read it and we'll see.
Q Sure.
A Okay. I reviewed it.
Q Okay.
A I will tell you there's a misstatement in this letter. I think it's the second to the last sentence. If Warren predeceases Patricia, Warren can device -- it should say if Patricia predeceases

Page 31

Warren, Warren can devise the beneficial interest or he can create a successor trust for his children. That was just a misstatement.
Q Okay. Either way, can you please explain to me why it is that Ross Holliday is being copied on this e-mail?
A He was -- the source of funds for $16,000 a month was Zeezrom. And Ross Holliday was running Zeezrom. And Ross Holliday and Pamela were going to be the trustees of the marital trust.
Q Okay.
A So I felt like it was probably best to let them know what we're designing here and what we're trying to accomplish.
Q Was Pamela copied on this?
A She was represented by Alan Toporek. You will have to talk to him about that.
Q And at any time, did you ever send written communication to Warren Holliday about this?
A About the marital trust?
Q About this document, what this document Number Eight says.
A No, this is a discussion with Heyward Carter. I mean, I did get Warren's permission to let Heyward Carter look at my draft of the marital

Page 32

trust.
Q Understood, but my question to you and I don't want to beat a dead horse, so I apologize if I ask for other documents, but if you're in a pattern of sending documents to Ross, which are e-mails giving you information, did you ever at any time send a copy of that same information you thought was relevant enough to disclose to Ross, did you ever at any time send those communications to Warren?
A I did not do any e-mails to Warren that I recall.
Q The only letter that I've seen that you sent to Warren was after the 2002 will was drawn. Everything else I've seen have been e-mails that you sent to Ross. Am I mistaken?
A Well, if it was about Zeezrom business, I did send everything to Ross.
Q I'm talking about things dealing with Warren Holliday. Even the divorce issues seemed to be sent by e-mail to Ross. I haven't seen where you sent them and mailed them.
A I sent a lot of things to Ross Holliday just to keep him informed of what his dad was doing with Zeezrom.
Q Where is the documentation of letters

Page 33

that you sent to Warren Holliday to keep him informed as to what you're doing on his behalf as opposed to keeping Ross informed of what you're doing on his behalf?
MS. PAYLOR: Object to the form.
A I don't know. You have the file I believe. I just don't have them in front of me.
Q I don't have any, I'll represent to you.
A Well, I don't either. I mean, I don't know.
Q So if they're not in my file that you provided, then they don't exist; is that fair?
A I believe that I have given you a copy of all of my communications that were not privileged.
Q Okay. And the privilege log we've discussed earlier today; correct?
A Yes.
Q And you told me the privilege log dealt with issues pertaining to Ross or Lee or Zeezrom, but not pertaining to Warren Holliday. We talked about that at the beginning of the deposition; right?
A Yes.
Q So is it your testimony then that if you

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 34

didn't provide it to us through discovery, then it doesn't exist?
MS. PAYLOR: Object to the form.
Q And I'm referring in particular to written communication to Warren Holliday.
A Well, I don't think I would have given you copies of letters to my client. If they're not in the privilege log, then I probably didn't write a letter or I didn't charge him for it.
Q We can go back to the privilege log. We discussed that earlier and you told me that nothing in the privilege log dealt with Warren Holliday personally, it dealt with business. If you want, we can go back and look at it. I believe it's Number Two.
A Yes.
Q Because if it's incorrect, I may want to revisit that. It is Number Two.
A Yes.
Q Okay. Does anything in the privilege log deal with communications to Warren Holliday? I believe you testified earlier that you were -- that part of your practice was you would write down who you were writing in your privilege log and you said none of these referenced Warren Holliday.

Page 35

A That's correct.
Q Okay. So then would it be fair -- is it your representation today that nothing in the privilege log references communications to Warren Holliday?
A You're right, there are no e-mails to Warren Holliday.
Q Or mails or mailing?
A Right. I don't see letters either.
Q Okay. And if the letters did exist to Warren Holliday, you would have provided them in the same capacity, in the same manner that you provided the e-mails; correct?
MS. PAYLOR: Object to the form.
A State that again please.
Q You previously provided to us the e-mails that you had, the e-mail communications that you had that were not privileged; --
A Yes.
Q -- correct?
A Yes.
Q And if you had letters that were written, you would have either put them in the privilege log or you would have provided them to us; is that correct?

Page 36

A Yes. That was my intent.
Q Okay. So if I don't have any letters, then they don't exist? That's all I'm trying to find out.
A As far as I know, yes.
Q Okay. I'll show you a copy of a letter --
(Thereupon, Exhibit 9 was marked for Identification.)
Q -- from Heyward Carter to Alan Toporek that you were copied on. This is Exhibit Number Nine.
MS. PAYLOR: There's somebody's notes on them.
MR. SLOTCHIVER: I don't know, that's how I had it. That's the way that we got it.
MS. PAYLOR: Okay. Just letting you know if this might have been something that you didn't want him to see.
BY MR. SLOTCHIVER:
Q Mr. Nettles, it might be easier if I tell you what I was going to ask you instead of you reviewing the whole document. Have you seen this document before?
A I don't recall, but yes, it was sent to

Page 37

me.
Q Okay. And when you got documents pursuant to the case you were involved in, you would have read documents you would have received such as this one from Heyward Carter?
A Yes.
Q Okay. Do you see in the first paragraph where it references the financial arrangement agreement?
A Yes.
Q Were you aware of the financial arrangement agreement? I mean, it's referenced here.
A I know, but I'm trying to recall when I first learned about the financial arrangements. I don't know that I had seen that before.
Q Well, this would have been back in 2000 -- at the very least, you would been aware of the fact that they were working on the financial arrangement agreement back in 2013.
MS. PAYLOR: Object to the form.
Q Is that fair?
A That's not my understanding.
Q Well, the letter is dated May 16th of 2013; correct?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 38

A That is the date of this letter from Heyward Carter to Alan Toporek.
Q Okay. And in that letter that was also copied to you, it's references the fact that he's working on the financial arrangement agreement; right?
MS. PAYLOR: Object to the form.
A Well, I'm not sure what you're talking about. There was a financial arrangement agreement drafted by Heyward Carter I think in, I'm not sure, 2012 maybe.
Q Okay.
A That was discussed in his deposition. I believe it was in this case.
Q Correct.
Okay. Let's mark that as Number Nine. I think we already have and we'll move on to Number Ten.
(Thereupon, Exhibit 10 was marked for Identification.)
Q I'll show you a copy of that financial arrangement agreement that I believe you're referencing. Here's Exhibit Number 10. Is this the agreement that you're referring to? I believe it's dated 2012.

Page 39

A So what's the question? Is this what?
Q You mentioned that you believe there was a financial arrangement agreement that was done in 2012. Is this a copy of that agreement to your knowledge?
A This looks like the only one I've ever seen.
Q Okay. Fair enough. Would you look at the third page of this agreement under business affairs and on the third line from the bottom, I'll read it into the record: Ross, as trustee of the revocable trusts, shall have the authority to manage such companies and businesses and to invest and reinvest the income and gain therefrom in the best interests of the owner of such asset or the revocable trust owning such asset as the case may be.
A Well, I'm sorry. I lost where you were. Are you reading the last sentence?
Q The last -- I guess it would be the last sentence. It starts with Ross, as trustee.
A Okay. I've read it.
Q So you would agree with me that earlier in the deposition, when we started and in Exhibit One, the letter that you had written to Jessica

Page 40

Crowley, where you referenced that you were not aware of the existence of the trust as you testified until 2016, actually you did have knowledge of the existence of the trust back several years earlier?
MS. PAYLOR: Object to the form.
Q Because it's referenced right here in the financial arrangement agreement, which was reference in not only document Ten, but Nine?
A I did not receive or have in my file a copy of the financial arrangements agreement dated in 2012 at the time of the divorce.
Q When did you for the first time see it?
A About two months before Warren died.
Q You were aware of it though, because it was referenced in the letter that Alan Toporek sent and carbon copied to you talking about the financial arrangements agreement.
A I don't know that I received a copy of this.
Q Well, we just went through -- Number Nine was the letter from Heyward Carter copied -- I said it wrong. It was from Heyward Carter to Alan Toporek, copied to you referencing the financial arrangement agreement that was part of the review for purposes of the divorce and then you mentioned

Page 41

there was a 2012 one and I showed it to you, which was Exhibit Number Ten. Is it your testimony that despite that reference in Heyward's letter, that you've never seen this until 2016?
A That's correct.
Q Okay.
(Thereupon, Exhibit 11 was marked for Identification.)
Q I'm going to show you what's been marked as Exhibit Number 11, which is a letter to Ross regarding the final marital settlement. An e-mail, excuse me, not a letter, an e-mail to Ross.
Can you tell me please why it is that that e-mail was sent to Ross as opposed to a letter being sent to Mr. Warren Holliday?
A I probably kept Ross informed about what we were doing with Zeezrom and the marital trust because he was the trustee. And all of that arose out of the marital settlement agreement, and so I asked my legal assistant, Ms. Fougerousse, to send a copy of these things, the marital agreement and the trusts.
Q But you did not send a copy of that to Warren Holliday; correct?
A Not by e-mail.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 42

Q Okay. Fair enough. Let's look at Number 12. Let's look first at the date. This was May 29th, 2013, Number 11; correct?
A Yes.
(Thereupon, Exhibit 12 was marked for Identification.)
Q All right. Let's look at Number 12. It appears to be a letter from you to Alan Toporek, a letter, not an e-mail, dated May 29th, 2013, the same day. Would that have been the letter that was sent to Ross via e-mail?
A That appears to be.
Q Can you look at the carbon copy line at the back of the letter and tell me who's copied?
A Ross Holliday.
Q If you want to send it in the mail, was there any reason not to also send a copy to Warren Holliday, if it's his case and he's the person who's leading you and instructing you on how to handle this matter?
A I think I sent a lot of paperwork to Ross. Most of my communications with Warren were either in person or by phone.
Q We'll come to your billing records in a few minutes and look at those, but --

Page 43

A All right.
Q Certainly you did not send this letter to Warren, but you did send it to Ross --
A Yes.
Q -- via mail? Okay.
Now here is a letter -- let's see, here's a letter that actually did go to Warren Holliday, or at least a copy of it did.
(Thereupon, Exhibit 13 was marked for Identification.)
Q I'm going to show you a letter that you wrote to Alan Toporek and you copied Warren on it.
A What's the question?
Q Well, is there a reason why this letter went to Warren instead of Ross and what made this occasion significant to send something to Warren as opposed to the other communications that were sent to Ross?
A Well, Warren signed these documents in my office at Grimball & Cabaniss and I was then forwarding them to Patricia's attorney, Mr. Toporek.
Q Okay.
A And so I think --
Q So --
A I just don't recall why Jessica would

Page 44

send this one to Warren and an earlier one to Ross.
Q Well, this one you said Warren had signed, so he was familiar with it; correct?
A Oh, yeah, he signed it in my office.
Q What written documentation do we have to show that Warren was familiar with all the other communications and the merits of the communications that you had with Ross about his case, his divorce?
MS. PAYLOR: Object to the form.
A Would you restate that for me?
Q Sure. You stated that Warren had signed this document in your office; right?
A The marital settlement agreement and the trusts.
Q So he was certainly familiar with this based on the fact that he signed it; correct?
A Yes.
Q What written communication do we have that shows that Warren was familiar with all of the other matters we've discussed today dealing with his divorce where the only communication was sent to Ross?
A You're asking me what other letters I sent to Warren?
Q No, sir. I'm asking what objective

Page 45

evidence we have of Warren's knowledge of the other communications or the facts contained in those communications.
A Well, I have testified that Warren and I discussed the way to go through this divorce and he agreed -- he negotiated directly with Patricia about $16,000 and I came up with the idea of the preferred membership in Zeezrom and he approved it and I drafted it. And I think this looks -- today this is the first time I saw that I mailed a copy of the marital settlement agreement and the marital trust to Warren.
Q And I understand your testimony. I'm not questioning that. I'm just asking about what -- other than your testimony about it, what objective evidence do we have that Warren was apprised of that information?
MS. PAYLOR: Object to the form.
A Well, I don't know everything you have. I think Warren was informed -- I mean, everything I did was what he wanted me to do.
Q I understand your testimony. What I'm asking in particular though is what objective evidence do we have? Do we have a letter that went to him? Do we have a recording from him? Do we

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 46

have anything to show that he actually was advised by way of example? I know Ross was appraised because got Ross got e-mails. What objective evidence do we have that Warren had information?

MS. PAYLOR: Object to the form.

A I have not looked back through this file today or recently except in response to your discovery.

Q Okay.

A So that's all there is as far as I know.

Q Okay. Number 14.

(Thereupon, Exhibit 14 was marked for Identification.)

Q I'm going to show you an e-mail dated September 27th, 2013 from you to Ross asking for help with the financial declaration. And my question to you is why was this sent to Ross?

A Because Ross handled all the financial affairs of Warren and I explained to Ross that this is part of the divorce. The parties put in financial statements, and I wanted Ross's assistance because he handled all of Warren's financial affairs.

Q It looks like Ross kind of just ran Warren's affairs. Is that generally a blanket

Page 47

correct statement?

A No.

Q Okay.

A Ross did run all of Warren's financial affairs pursuant to that agreement that you just showed me.

Q Well, this is your -- you're getting Ross to help you with reference to the divorce.

A It's a document, it's based on financial records of Warren Holliday, and Ross had all of those records.

Q Okay. Let me show you Number 15.

(Thereupon, Exhibit 15 was marked for Identification.)

Q It's another e-mail from you to Ross dealing with the insurance. Why was this sent to Ross? Because he dealt with the financial issues?

A State that again please, sir.

Q Why was this document sent to Ross without any corresponding communication to Warren?

A I suspect that Ross was making the premium payments on that policy. And Ross would know how much was paid or how much was due or whatever. If I called Warren and asked him about that, he would say call Ross.

Page 48

Q Had Warren advocated all responsibilities related to the divorce to Ross?

A No.

Q Okay.

A Financial affairs, which I've said to you three or four times.

Q Well, I'm looking at the bottom of that same document. Warren does not agree to change ownership of the life insurance policy. Where did you get that information from?

A Tell me where to look again.

Q The same document, Number 15.

A Yes, which part?

Q At the bottom it says: Alan, Warren does not agree to change ownership of the life insurance policy. Where did you get that information from? Was that from Ross or from Warren?

A Warren.

Q When?

A Well, prior to writing this e-mail.

Q How do you know that?

MS. PAYLOR: Object to the form.

A I wasn't lying to Alan Toporek when I wrote this.

Page 49

Q I know, but I'm not suggesting that. I'm asking if Warren told you that or if Ross told you that, and regardless of the answer, I'm going to ask you how do you know that, is there any document to support that?

A I don't know if there's a document to support it.

Q Could it be that Ross told you Warren doesn't want --

A I do not recall Ross saying that to me.

Q Well, Ross was the one handling all the financial affairs for Warren; correct?

A Yes.

Q So could Ross have been the one that told you?

A No. If I said to Alan on September 27th, 2013 that Warren does not agree to something, that is a true statement based on my communications with my client, Warren Holliday.

Q And what if Ross had said to you Warren doesn't agree to it? Because can't actually write Alan and say, Alan, Ross doesn't agree to it.

A That's true.

Q So I'm just trying to figure out how -- I know this is seven years ago. I'm just, without a

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 50

note to reflect, without anything that I can show and I don't see any billing entries where you talked to Warren, I'm trying to figure out how you know definitively it was Warren that told you as opposed to Ross that told you or is that just your speculation?

A That's my memory.

Q You have a specific recollection of talking to him about it?

A No, but my memory is when I was talking with Alan, that was based on what Warren had told me.

(Thereupon, Exhibit 16 was marked for Identification.)

Q Here's an e-mail sent October 3rd, 2013 from you to Ross Holliday, once again dealing with the divorce matter and to some extent the life insurance. Do you remember that? Or take a few minutes to read it.

A Okay. Questions?

Q Okay. The first one is just to confirm, at this point you were stating that Warren is in default under the terms of the agreement that was signed; is that correct?

A As to life insurance, yes.

Page 51

Q Okay. Why are you writing Ross about this as opposed to Warren about this?

A Because the money to pay those premiums would come from the business that Ross runs.

Q Wouldn't it be normal for you to reach out to your client and say, hey, you've got a problem, you're under default, let's find a way to fix it?

A Well, I did discuss the life insurance thing with Warren, but it was a question of how much money do we have to get it current, and there was this ownership issue and I was just sharing all of that with Ross.

Q When did you discuss it with Warren? I don't see any notes to reflect that or billing to reflect that.

A I'm not sure. I think I recall speaking to Warren about the ownership of the policy, but in terms of being in default, I probably directed that at Ross since he was the one who made the premium payments.

Q Please give me your thoughts on the life insurance. If we agree this afternoon, I can draft an addendum, are you now following the lead of Ross as to how to handle this case as opposed to

Page 52

following the lead of Warren?

MS. PAYLOR: Object to the form.

A No. I expected Warren to discuss it -- I mean expected Ross to discuss it with his father and let me know what they wanted to do.

Q Do you know if they ever discussed it?

A I would have to go back through the file and see what happened next.

Q I can tell you I can't see any reference to any discussion that you had with Warren or any confirmation that he had told you that he had discussed it with his dad.

A Well, that doesn't mean it didn't happen.

Q I will go further and tell you that I can't find anything in your entire file to show a single circumstance when Ross said to you I will talk to dad about this, dad tells me to tell you to do this anywhere in the file. Do you recall anything different than what I'm telling you? Because I've looked at it, I can't find it.

A Well, that's just not my understanding. You can have yours.

Q Why was it important to you or how was it relevant to you in dealing with Warren to make

Page 53

the statement on the last full paragraph of the first section -- I'll read the statement to you. If Patricia predeceases Warren and her will leaves everything to Pamela, Warren might change his will accordingly if he wishes.

What did that have to do with life insurance and what did that have to do with getting the divorce?

A Well --

Q What was the purpose of making that comment or suggestion to Ross?

A I was just explaining to Ross what I had been discussing with Toporek, that if we make Patricia the owner of the policy, she could change the beneficiaries --

Q Why was that --

A -- and that might affect what Warren would want to do with his own estate.

Q Why was that important, to pass that information to Ross? What was the benefit of Ross having that in dealing with this particular issue?

A Well, I was expecting Ross to discuss this with his dad --

Q Okay.

A -- about, you know, cure the arrearage

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 54

on the life insurance and comply with it. As a matter of fact, we did do an addendum to the marital settlement agreement, which changed the amount of the life insurance, but we did not change ownership of the life insurance policy.

Q I've seen different documents in the file, my review of Mr. Holliday, that seemed to question at times his health, his mental capacity, his -- just him in general, the things that he's going through. Did any of those things play a role in why you did not call Mr. Holliday --

MS. PAYLOR: Object to the form.

Q -- and discuss this directly with him?

A I never had any question about Warren Holliday's mental capacity.

Q Was Warren --

A I don't know where you got that from.

Q Was Warren Holliday ready, willing, and able to speak with you whenever you wanted to?

A No. Some days, when he would go for dialysis, for instance, for a few hours after that, he just wanted to go lay down and he didn't want to talk. And then other times, the afternoon or evening before he went to dialysis, he was tired and not feeling very well. And so sometimes I did not

Page 55

communicate with him if he wasn't feeling well, but it was not ever because of a lack of mental or cognitive capacity.

Q How would you know if it was a good day or a bad day with him? Or would you call him and he would say it's not a good day?

A Sometimes I would call Ross and say where is your dad today, when is his treatment, how is he, can I talk to him or can I go see him or whatever, or can he come see me sometimes.

Q You would rely in part on Ross to tell you whether it was a good time to talk to his dad?

A Oh, yeah, I called Ross to find out how his dad was feeling --

Q Okay.

A -- before I just called up Warren on the phone.

Q What blocked you on this day from calling Mr. Holliday and talking to him directly?

A I was sending this to Ross for him to go talk with his dad about it.

Q Why didn't you call his dad directly? You told me that you anticipated that Ross would speak to his father. What precluded you from reaching out to Mr. Holliday directly in order to

Page 56

guarantee that you knew what his father wanted and that his father was appraised of the situation? His father was your client; correct?

A Yes. I did talk to him about the life insurance. I just -- I don't recall whether I talked to Warren before or after I sent that e-mail to Ross.

Q Your testimony today is that you spoke to him on the same day?

A I don't recall.

Q Please give me your thoughts on the life insurance. If we agree this afternoon I can draft an addendum, this is a letter, an e-mail sent to Ross, not to Warren Holliday.

A Yes.

Q Do you have any --

A But that doesn't mean that Ross has the sole authority to make that decision. I'm telling Ross this is what you can discuss with your dad.

Q But this --

A Whatever the finances are, you guys let me know, I'll draft an addendum if necessary.

Q I think you and I have this -- the disconnect is I can't see why it is that you -- I'm trying to look for objective evidence of you

Page 57

speaking directly -- or subjective evidence of you speaking directly to Warren Holliday about these matters or -- you know, as opposed to relying on Ross Holliday to do it for you.

MS. PAYLOR: Object to the form.

Q And if you relied on Ross Holliday, that's okay. I'm just trying to understand.

MS. PAYLOR: Object to the form.

A So is that a question?

Q So is there any objective evidence to show that you spoke to Warren Holliday about these matters, a timetable, a note, anything to refresh your recollection?

A I haven't looked at that file lately. There may or may not be a note in there.

Q If I --

A The way I read this, I was explaining this to Ross and I wanted him to talk it over with Warren.

Q Okay. Well, let's go to Number 17 then.

THE REPORTER: I would like a ladies room break.

MR. SLOTCHIVER: Sure.

THE VIDEOGRAPHER: Off the record at 3:22.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 58

(Thereupon, a brief recess was taken.)
THE VIDEOGRAPHER: On the record at 3:31.
(Thereupon, Exhibit 17 was marked for Identification.)
BY MR. SLOTCHIVER:
Q I'm going to show you what I've marked as Exhibit Number 17, which is a document, a copy of an e-mail that you sent to Ross Holliday forwarding him an e-mail that you got from Alan Toporek regarding the life insurance. And the e-mail you sent to Ross: Ross, please call me this morning about strategy. Thanks. Do you see what I'm referring to?
A I'm sorry. I was reading this. Restate the question.
Q Sure. It says Ross, this e-mail at the top section Number 17, it says: Ross, please call me this morning about strategy. Thanks.
A Yes.
Q Was it normal for you to strategize with Ross about how you handled the divorce between his mother and his father?
MS. PAYLOR: Object to the form.
A It was not unusual for me to tell Ross

Page 59

what was going on in the divorce because I wanted to make sure that Warren could afford to do whatever we were agreeing to.
Q That wasn't my question though. My question was: Was it normal for you to strategize with Ross, not to inform Ross, but to strategize with Ross, about how to handle the divorce between his mother and father?
A That's not what I'm doing. That's not what I said.
Q Let's read the verbiage. Please call me this morning about strategy. Thanks. What was the strategy you were referencing about?
A I was going to tell him what I thought we should do. I was not seeking Ross' approval for anything or direction for that matter.
Q You wanted to strategize with him?
A I wanted to tell him what was going on in the divorce so that whatever we -- whatever we did to resolve the dispute would be something that Warren's finances could handle, that he could afford to do.
Q At what point on October the 4th, 2013 did you reach out to Warren to strategize with him about this matter or to inform him about the

Page 60

communication that you had from Alan Toporek saying that they were going to move before the court to, as it says, to revoke the agreement? When were you going to advise that to Warren or did you advise Warren?
A It looks like the hearing was scheduled that morning. I'm saying that based on what Alan is telling me in the e-mail from about 45 minutes earlier and I think I forwarded this to Ross. I'm trying to remember if Ross was at the divorce hearing. I just don't recall. I don't know.
Q I want to be clear. For purposes of the divorce, your client was Warren Holliday; correct?
A Yes.
Q And nowhere do you have any written instrument advocating all authority and decision making and strategy dealing with the divorce to go to Ross; correct?
A I don't think that ever happened.
Q Okay. You don't think you ever had it in writing?
A I don't think that ever happened. You can think what you want.
Q Well, I just -- every communication I see is to Ross, not to Warren.

Page 61

A Warren didn't have an e-mail.
Q Warren could have been called on the telephone; correct?
A That's true. He had a cell phone.
Q And a lot of times people will -- what I've seen in general practice, and tell me if you disagree with this, but a lot of times what I get is I get an e-mail and then the next day I get it in the hard mail. The problem with today's world, people e-mail me and send it in the regular mail.
A Okay.
Q You never did that with Warren?
A Anything that I sent to Warren, I probably would not have shown you because it's privileged.
Q Well, the privilege doesn't apply for purposes of this hearing right now. That's exactly why we're here taking your deposition. You were his lawyer and we're asking you about the communications that you had with him. That's what you're testifying to.
Are you telling me there's a privilege log that goes above and beyond what's been referenced in Exhibit Number Two?
A No, no.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 62

Q I want to be sure for the record. Exhibit Number Two, you said anything -- you would not have shown me those communications. Exhibit Number Two, we've testified to twice, to make sure I'm clear, that none of it deals with communications with Warren.
A Yes.
Q And you said there's no other communications that exist other than what we've been given.
MS. PAYLOR: Object to the form.
Q Am I wrong about that?
A I am saying that I talked to Warren frequently if it's either in person or on the phone.
Q And you testified that when you talked to Warren, you would have billed it if it was anything of any significance?
MS. PAYLOR: Object to the form.
A Well, yes, when he came into my office to sign documents, I charged him for that. Sometimes I would get messages from Ross from Warren and I would respond, but when it -- this Exhibit 17, I am not asking Ross to determine the strategy of what Warren's going to do.
Q Okay. Fair enough. Then let's go to

Page 63

Number 18.
(Thereupon, Exhibit 18 was marked for Identification.)
Q 18 is an e-mail between you and Ross, June 4th, 2015. I'm sorry, if you'll pass that down please. Do you remember sending this e-mail?
A Let me read it please. All right. Question?
Q Have you looked at that e-mail since you wrote it?
A I don't recall looking at this since I wrote it.
Q All right. So it looks to me, and I'm going to paraphrase, like the first paragraph is basically saying -- it's an e-mail to Ross and it's basically saying Ross, there's a -- the lawyer for your mother, Alan Toporek, brought a complaint and a rule to show cause --
THE REPORTER: For your what?
Q I'm sorry. It's an e-mail from you to Ross, I'm paraphrasing it. Ross, the lawyer for your mother, Alan Toporek, brought a complaint and a rule to show cause dealing with accountings. She's entitled to them. That's basically what the first paragraph says in a roundabout way.

Page 64

MS. PAYLOR: Object to the form.
Q Correct?
A It says what it says, yes.
Q Okay. And the second paragraph, let's talk about that one. We'll discuss this further on Monday. When you say we'll discuss it further on Monday, you're referring to you and Ross; correct?
A It sounds to me like Ross is coming to town and that's what I'm talking about there.
Q Okay. Let's read the second sentence says then. Do you want to tell Warren? I don't want to get him angry or stressed, however, it is his case and he will have to go to the hearing unless he is incapacitated.
Why would you not -- why would you question his son about whether or not to tell your client something pivotal about his case, which could lead to a rule to show cause? It could be financial, it could be incarceration. Why would you not be reaching out to your client to discuss this?
A Just what I said there. If Ross had told me we'll write a check today, we'll, you know, wire it to the insurance company or to Toporek and resolve this matter so we don't have to go to court, well, then I probably wouldn't have made a big deal

Page 65

out of it and gone to Warren at all, if Warren had the money to take care of it. As it turned out, we didn't have enough cash in the business to cure the arrearage on the insurance, that's what the rule to show cause was about, and so we ended up -- we did have to go to court.
Q My question to you is why is it that you're asking your client's son if you should tell your client about a significant matter that could affect him. Why did you not reach directly to your client to discuss it with him?
A Well, I just wanted to know from Ross, you know, how is Warren feeling, is he okay. And if we can deal with this with just writing a check, well, then let's not bother him.
Q Mr. Nettles, that's not what your letter says though. It says do you want to tell Warren? In other words, do you want to even tell him?
MS. PAYLOR: Object to the form.
Q Why are you asking his son if we should tell him?
MS. PAYLOR: Object to the form.
A I'm asking Ross basically should I talk with Warren at this point in time. I frequently asked Ross how is your dad doing, can we do this now

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 66

or later. And, you know, I said -- when I said do you want to tell Warren, that means do you want to be the one who tells him that his wife has filed another lawsuit or do you want me to tell him.

Q Well, it looks to me, and tell me if I'm wrong, that you agree with the position that Alan Toporek was taking, he was correct and -- is that right?

It's not that she filed another lawsuit that she's crazy and she's coming after you, it's -- the way I read the first paragraph is you're saying Ross, they're right and they filed it and we have a duty to do these things?

A Well, there were two things going on here. They were demanding an accounting of Zeezrom and Patricia did not have any legal interest in the Zeezrom company. The marital trust itself had a preferred membership in Zeezrom Properties, LLC. Patricia was the beneficiary of that trust, but Alan was telling me if you don't give us this accounting information, we're going to take you to court on the life insurance issue. And I was explaining to him, she, as beneficiary, does have a right to an accounting of the trust, but let's say if the trust corpus was one hundred shares of Microsoft, the

Page 67

beneficiary of the trust does not have a right to an accounting of Microsoft. So what I was telling him to do was give me an accounting of all the payments that the company made to the preferred member, the marital trust.

Q That's what you were telling Ross to do?

A I was telling him to give me that information so I could give it to --

Q Where does that say it on this document? Where does it say give me an accounting of all that information so I can get it? Because that's not -- I'll read the paragraph. We will discuss this further on Monday. Do you want to tell Warren? I don't want to get him angry or stressed; however, it is his case and he will have to go to court unless he is incapacitated.

A Yes.

Q Where is it that you're saying to Ross give me all of this information so I can provide it?

A In the preceding paragraph I was explaining to him what Toporek was demanding on behalf of Patricia.

Q And where is it in the preceding paragraph when you say Ross, can you get me documents?

Page 68

MS. PAYLOR: Object to the form.

A That was my sense of what I was doing. That all she could get would be the disbursements -- well, actually the money coming into the trust and the money going out to her, that was what she had a right to an accounting of.

Q I agree with you that you appear to be stating in the first paragraph that what she's entitled to is X, Y, Z. What I don't see where in the first paragraph you said please give me this information so I can send it to them.

A Well, I was explaining to him what Toporek was demanding and Ross had all the records. He was the trustee.

Q Did you -- do you want to tell Warren? I don't want to get him angry or stressed. How often did you not tell Warren things because you didn't want to get him angry or stressed and instead go through Ross?

A I don't recall ever not telling Warren anything. I always informed my client of what was happening in his case and what did he want to do with it.

Q You informed him directly always or through Ross?

Page 69

A Well, sometimes I might ask Ross to discuss it with his father and e-mail me or call me or whatever, but...

Q I've gone through your e-mails and I can't find an e-mail where you asked Ross to discuss something with his father and to e-mail you or to call you.

A Well, I don't think I had to necessarily say that outright.

Q Okay.

A I was dealing with Ross mostly on the financial side of things.

Q But this is dealing with Ross in the divorce of his mom and his dad that we've been talking about for the last hour; correct?

MS. PAYLOR: Object to the form.

A Right. Ross did not negotiate the marital settlement with his mother, Warren Holliday did, and I put it in writing and all the parties signed it. So your idea that Ross is calling the shots is bullshit.

Q Well, my idea or my questions to you are predicated on all the communications between you and Ross and the lack of communications with you and Warren Holliday. And that's why I can't understand

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 70

how it is that everything goes through Ross, and it's okay, it's your testimony, but Warren Holliday was aware of everything when you, yourself, have admitted there's no objective evidence that you ever spoke to Warren, but there is plenty of objective evidence that you spoke to Ross, and that's why I'm asking these questions.

MS. PAYLOR: Object to the form.

A It was easier to keep records of e-mails than it was phone calls, I'll admit that. And I may have not have written down every phone call I made to every client.

Q I don't see -- I haven't seen any records of phone calls between you and Warren Holliday, not one.

A Well, that doesn't mean I never talked to him.

Q Okay. The last section of this is also something I wanted to ask you about. It is his case and he will have to go to court unless he is incapacitated. Why were you concerned that he would be incapacitated?

A They scheduled the rule to show cause hearing on the day he usually goes to dialysis, and I don't remember if it was scheduled the morning

Page 71

before his afternoon dialysis or if it was the afternoon after his morning, I don't know. I asked the court to continue the rule to show cause hearing because of his dialysis schedule.

Q Was it --

A And I think --

Q Go ahead.

A I don't recall if it was continued or not. Ultimately though the family court judge wanted Warren present in court and so he did appear in the rule to show cause hearing.

Q Would it be fair to say that on the day Warren would have dialysis, it's not good?

A He doesn't feel well, yeah.

Q That wasn't -- my question is --

MS. PAYLOR: Object to the form.

Q -- is it fair to say on the day of dialysis, it's not good?

MS. PAYLOR: Object to the form.

A Are you reading that?

Q I'm asking it.

MS. PAYLOR: Object to the form.

A Well, I've never had dialysis, so I don't know, but my impression from talking to Warren is that he feels pretty low going in because he said

Page 72

the end of his period of time of night, you know, he needs to have dialysis, but then after he has dialysis, he also doesn't feel real good and I don't remember the phrase he used, something like washed out or something like that.

Q Okay. So the days he has dialysis are not great days for him?

A He's not like dying and he might end up going to the store or something, but he doesn't feel good.

Q Is the concern that if he were to testify on the day that he had dialysis, his recollection or memory may not be as good as on a day when he had his full strength?

A No, that's not the point. What I'm talking about is the day of dialysis is he feels weak and tired and he doesn't -- he really doesn't like to do much of anything on that particular day.

Q Okay. There are other days when he's better?

A Physically, yes.

Q You believe that he's weaker physically, but mentally he's perfectly the same on days of dialysis?

A Absolutely.

Page 73

Q So you could have reached out to him on any day he had dialysis and spoken to him?

A Oh, yes, I could have.

Q Do you remember telling the court that on days he has dialysis he's not good?

A I think I probably said that in my request for a continuance.

Q You don't limit it to the morning or the afternoon, just the day?

A I don't have my motion in front of me, I don't know. I don't recall.

Q If you had said it was the morning or the day or the afternoon, would you have said something that you do not believe to be correct?

MS. PAYLOR: Object to the form.

A I don't think I would misrepresent something to the court.

Q Let me show you Exhibit 19 --

(Thereupon, Exhibit 19 was marked for Identification.)

Q -- which is an e-mail that you sent to Alan Toporek on July 7th, 2015. Now this is an e-mail copy to Ross again; correct?

A This e-mail to Alan Toporek is copied to Ross, yes.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 74

Q So you were copying the son of your client and showing that to the opposing counsel on this, and I understand you're talking about Ross, but I wanted to look at the bottom paragraph.
A Of my e-mail?
Q Yes. If you think that you and I could appear tomorrow and put something on the record, I would like to let Warren go home and go to bed after dialysis, as he usually does.
So Warren's exhausted after the dialysis; correct?
A That's my understanding.
Q Okay. And he goes straight to bed after dialysis?
A That's what he would like to do.
Q What was Dave and Michele's role in this case?
A If you're talking about the divorce and the rule to show cause, --
Q Yes.
A -- I think it was Alan Toporek.
Q Do you remember Dave and Michele raising a concern to you about a conflict of interest in you representing both Ross and representing Warren Holliday?

Page 75

A Yes.
(Thereupon, Exhibit 20 was marked for Identification.)
Q Let me show you Exhibit 20.
A Thank you.
Q Would it be fair to say that you disagreed with his assertion that there was a conflict?
A I remember having this conversation. If you will give me a minute, I'll be happy to read this.
Q Sure. And I'm going to ask you very narrow questions, so you can read it all, but you don't need to for purposes of my questions.
A Okay.
Q You would agree with me that Dave and Michele raised an issue with you representing both Warren and Ross?
A Well, I don't see it all here, but from my response, it looks like he was saying there's a conflict between some of the people in the room and that neither Alan Toporek nor myself should represent anybody. That's my understanding or recollection of what David was talking about.
Q And your response in the second, partial

Page 76

response, on the second line of the first page of paragraph 20 is: I see no reason why I cannot give legal advice and even represent Ross Holliday.
A Where is that, which one?
Q The second line of the first paragraph.
A Of which e-mail?
Q The first page of Number 20, the part that begins with David, I disagree -- well, let's take it --
A Yes.
Q I disagree with your statement that neither you, Alan or I can represent the parties Warren and Patricia and also represent co-trustees if there's no conflict or potential thereof between Warren and Ross. I see no reason why I cannot give legal advice and even represent Ross Holiday.
A Yes.
Q Okay. And at that point you were, in fact, representing Ross Holliday?
A Well, to the extent he was a trustee, yes.
Q And you were, in fact, representing Warren Holliday?
A Yes.
Q And you had some concerns about Warren's

Page 77

health; correct?
A His physical health, yes.
Q How about his mental health?
A I never had any concern about Warren Holliday's mental health.
Q Okay.
(Thereupon, Exhibit 21 was marked for Identification.)
Q Okay. Let me show you Exhibit 21, an e-mail to Alan Toporek. This was copied to Ross Holliday; correct?
A Apparently.
Q And like all the other documents we've looked at today, there was no copy of this sent to Warren Holliday?
A He does not have e-mail.
Q There was no copy sent to him via mail so you would have a copy of what was sent through e-mail; correct?
A I don't recall.
Q If it was, it would be in the file?
A Well, the e-mail would be in the file. I don't know if I told my secretary put that in an envelope and send it to Warren, I don't think there would be anything from me.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 78

Q Is it your testimony today that -- we talked about this --
A I'm not saying this one went to Warren in the mail, I just don't know.
Q Was it a routine for your secretary to take copies of the e-mails and stick them in the mail to somebody?
A Sometimes.
Q Who was your secretary at the time?
A In 2015 I had just moved from Grimball & Cabaniss to the Finkel Law Firm and I don't recall who was my paralegal that week.
Q So you may have theoretically had a paralegal potentially send a copy of an e-mail in the mail to Warren Holliday, you don't know who the paralegal is who was working for you at the time, you don't know if you did it, but if you did do it, you would not have kept a copy of it because if you did keep a copy of it, it would be in your file?
THE REPORTER: Do you want me to write this down?
Q I do.
A Would you repeat the question?
Q Sure. So what you're telling me is you don't know if a copy of the e-mail may have been

Page 79

sent to the client, if it was sent to the client, I can't verify it because you don't know who your paralegal was at the time, and if it was sent to the client, you can't represent to me that there was not a copy of that communication kept in the file because if it was kept in the file, we would have a copy of it and we know it's not contained in the privilege log because we've discussed that. Is that a fair and accurate representation of what you have advised me?
A That's got a lot of conditions in it --
Q Sure. It's got --
A -- but I'm not testifying that I mailed a copy of this e-mail to Warren Holliday. I don't know.
Q It has no conditions in it, Mr. Nettles, I'm just representing what you told me and I'm asking if that's correct.
MS. PAYLOR: Object to the form.
Q We can break it down. Do you have any recollection of advising a secretary to ever e-mail -- to ever mail to Warren Holliday a copy of an e-mail that you sent to Ross?
A I think I sent things to Ross. I don't know if it was e-mails or documents or, you know,

Page 80

pleadings or the marital trust drafts, I don't know. I think he had a fax at his office at Holliday Amusement, but I didn't want to do this divorce stuff that way.
Q So just to be clear, you have no recollection of ever sending any copies of the e-mails you sent to Ross to Warren Holliday?
A I cannot say with certainty that I never did. I can say, sitting here today, I don't know which ones I may have done that on. I don't know.
Q Do you have recollection with specificity of having ever done that?
A No.
Q Okay.
A Do you want me to read this Exhibit 21?
Q Yes, please.
A All right.
Q Did you author this e-mail?
A I sure did.
Q And was this e-mail like the others sent to Ross Holliday?
A A copy.
Q Was a copy once again not sent to Warren Holliday?
A I don't know if Warren got a copy of

Page 81

this.
Q Are you aware of a copy being sent to Warren Holliday?
A No.
Q Okay. I want to address or direct your attention in particular to paragraph five of the document.
A Yes.
Q I believe earlier today on a couple of occasions you've told me you're not aware of any concern about Warren Holliday's mental health and I want to read this paragraph with you.
Warren Holliday is not in good health. Did I read that correctly?
A Yes.
Q He is on dialysis three days a week. A hotly contested hearing in family court would be too stressful physically and mentally. Your words, correct?
A Yes.
Q Warren does not keep track of monthly business or financial matters. If you were to cross examine him aggressively, he would not be able to testify fully about legal or financial matters. He is not trying to hide anything, he simply doesn't

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 82

know the details of current financial matters.
Is all of what you've written there, was all written in a truthful manner?
A Yes.
Q The person with answers to any questions you might have would be Ross Holliday; correct?
A Yes, I wrote that.
Q I would request that you and I agree that Ross can appear at any hearing in family court and testify about Warren's present business, asset and current operations; correct?
A Yes.
Q If you want to be difficult, maybe that's your assignment, I may consult with Warren's treating physician and get an expert opinion of his ability to endure a judicial proceeding.
This paragraph suggests to me that you are worried about his mental health as well as his physical health; am I incorrect?
A You are incorrect.
Q This suggests to me that you're even willing to go to a doctor to get a doctor to write a letter because why else would you suggest going to a doctor?
A Well, I don't know, as it turns out, I

Page 83

didn't go to a doctor, but my sense of it was that if he had to go to a contested family court hearing on the day he went for dialysis, it would make him very tired and weak, and I don't think that he would ever go insane or lose his mind or lose his mental capacity, but the stress of a contested court hearing could make him ill, like just faint or have a drop in blood pressure, and blood pressure was one of his problems.
Q Days when he had dialysis are not good days for him; correct?
A Right.
Q Okay.
(Thereupon, Exhibit 22 was marked for Identification.)
Q I'm going to hand you 22, which is a letter from you to Ross Holliday on December 28th, 2015, an e-mail. Once again this e-mail was not sent to Warren Holliday, to your knowledge; is that correct?
A That is correct.
Q Okay. Can you explain -- the verbiage I'm curious about and I'm asking you to explain to me is the portion that says: I'll work on the will codicil later today. Then I'll look at change in

Page 84

the trustee and give you an opinion as to whether Warren can do it and what litigation we might expect.
Why are you having this conversation with Ross instead of having this conversation with Warren?
A Well, I may have had a conversation with Warren, I don't recall, but I was talking with Ross because he was the trustee in the marital trust.
Q Okay. What about the codicil portion?
A I told him that I was going to be doing a codicil because Warren wanted to change his bequest to Ben and Pamela from a percentage of his estate to a specific amount of money.
Q Now you understand, or would you agree with me, that changes and reductions of the beneficial interest that would otherwise go to Ben and Pamela would be beneficial financially to Ross?
A And Lee, yes.
Q And Lee. So did you not believe that there was an issue in talking to the person who was going to gain from that in telling them your dad is looking at doing a codicil to give you more money?
A Well, that's not what I said.
Q Why would you have a conversation with

Page 85

him whatsoever about his dad's wishes with his will or his codicil? Why was it necessary to discuss that with Ross?
A I don't know. He may have asked me a question or I may have just told him I'm working on that for Warren.
Q If he asked you a question, wouldn't that be private information that belonged to your client and not something that Ross should be privy to, what his dad wants to do with his estate, unless his dad wants to tell him?
A Well, yes.
Q So if he asked you a question, you disclosed private information that he shouldn't have been told?
A Well, I -- you know, if he tells me he had a discussion with his dad about something and he wanted to know what I thought about it, I'd probably tell him.
Q Where is there any indicia that he had a conversation with you, telling you that his dad told him about the codicil?
A Well, obviously it seems to me in this e-mail he knew about the codicil because I said I'll work on the will codicil later today. So at that

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 86

point he knows about the codicil. Now how he knows, I don't recall.
Q Could he perhaps have been the one who told you dad wants to do a codicil, would you do it?
A Ross sometimes conveyed messages from his dad.
Q Okay.
A But I don't recall that on the codicil thing. Because I do recall talking directly with Warren about that.
Q Well, we'll come back to that because I looked into your records, but...
So it could be that Ross is the one that suggested you do the codicil or told you that his father wanted to do the codicil, to change the gifts?
A I do not recall that. I do not recall that request coming from Ross.
Q Do you deny it or do you not recall it?
A I do not recall that Ross told me to write a codicil.
Q Could Ross have told you that his father wanted to do a codicil to change the gifts that went to his other two siblings?
A He might at some point have said that,

Page 87

but of course I would not draft a codicil and get it signed by Warren if Warren didn't know about it or want it.
Q You wouldn't draft it and get it signed by Warren?
A I wouldn't do either one if I didn't think Warren was the person who had this idea. As a matter of fact, I talked to Warren about this and it was his idea. He told me this.
Q I want to back you up. If you didn't think it was Warren, what would the knowledge be that you would use to determine if it was Warren's idea or Ross' idea?
A I have no suspicion or knowledge that it's Ross' idea. I heard it from my client, Warren.
Q Do you have a note or a document or a letter or anything confirming that Warren is the one that told you he wanted to redraft his will as opposed to Ross?
A I don't recall. If you have everything and it's not there, then I don't have that. I also don't have anything from Ross telling me to do it.
Q Well, we've got an e-mail you have with Ross discussing that you're going to work on a will codicil, which I guess arguably could lead one to

Page 88

believe that you'd have a conversation with him about doing a will codicil and that's why you're e-mailing him unsolicited and telling him I'll work on it --
MS. PAYLOR: Object to the form.
Q -- and that's what I'm trying to understand.
A Well, all I said is that there is going to be a will codicil and this is in December 2015 and that I told him I would be working on that. So it appears to me Ross already knew there was going to be a codicil that Warren wanted to do.
Q Just for the record, what you have here does not say there is going to be a will codicil. I believe the record, if we read it correctly, I'll work on the will codicil later today.
A Yes.
Q It looks like you're reporting back to him that you're working on the will codicil, and I'm asking you if that's what you're doing.
MS. PAYLOR: Object to the form.
A I'm not reporting back to Ross on that.
Q Let me show you what I'm assuming is your penmanship, but I don't know. I'll mark this as Exhibit 24.

Page 89

(Thereupon, Exhibit 24 was marked for Identification.)
Q And if you haven't seen this document, tell me, but I'm assuming it's your penmanship. Is that your penmanship?
A Yes.
Q Okay. Do you remember seeing this document?
A Well, that is my handwriting.
Q Okay. So this I'm assuming was notes that you took regarding the will?
A Yes.
Q Okay. So this would have been at some point before the will was redone or created? Before the will was created.
A Well, this date on here doesn't make any sense. I didn't do that in March of last year. Warren was dead.
Q I'm assuming that's a '16, because I was trying to figure that out also.
A I think it's '14, but I --
Q Maybe it's '14. Yeah, it's not my handwriting, but that's why I was asking. Is it your handwriting?
A That is my handwriting and that date

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 90

would be consistent because his will that we did after the divorce was dated I believe March 26th, 2014. That would be about two and a half months after the divorce.
Q Okay. Can you tell, looking at this document, who gave you this information?
A I was talking with Warren.
Q Can you tell, looking at this document, who gave you this information?
A I was talking with Warren.
Q I heard your answer. My question though was: Can you tell, looking at this document, who gave you this information?
A Warren.
Q How can you tell that by looking at the document?
A It says tele with Warren.
Q Okay. Where does it say that?
A After 3/20/14.
Q Okay. I couldn't read that word before. Okay. Who else was present?
A I don't think -- it was just me and Warren.
Q Okay. The reference to Heyward Carter, why was that present?

Page 91

A I don't know.
Q Heyward Carter is the one that had drafted the trust, correct, that we talked --
A Yes.
Q -- about earlier?
A Yes.
Q And Heyward Carter's the one that had written you a letter earlier referencing the arrangement which referenced the trust. Could it be in there because he was advising you of the trust and you knew you had to go back to Heyward and talk about the trust?
A No, because I did not know about the trust in 2014.
Q What other reason would you have written down Heyward Carter, if you know?
A I don't know. It could be an estate planning question about taxes. I don't know.
Q What did Warren understand his estate value to be at that point, if you know?
A Well, I didn't know the exact -- I didn't set up all the LLCs for each of his properties owned by Zeezrom. He did that I think with his accountant McGuire. It was on McGuire's suggestion that he do it. And so I didn't set all

Page 92

of those up and I didn't even have copies of exactly how many properties he owned.
Q Well --
A I knew there were several and then when we got in the divorce, I learned that all of those LLCs were owned by Zeezrom as a holding company.
Q Did you discuss with him in creating the will what assets he owned and what the values of those assets were?
A I don't know that we talked about the values that much. We did talk about what have you got here now. You've got a house that you've paid for, you've got Zeezrom and all of those properties, you've got Holliday Amusement and you've got some stock in a company called Sawgrass and I remember asking him do you have any stocks and bonds or other stuff and he said no, that's it.
Q Well, so to your knowledge, Warren then would not have known what the value of his estate would have been, he just knew what different assets were that he owned, but not the value?
A Well, I didn't ask him, so I don't know if he had them appraised or if he knew what they would appraise for, I don't know that.
Q Well, I believe you -- earlier we showed

Page 93

you the letter that you had written to Alan Toporek referencing that if you called him on the stand, he won't know the value of any of this stuff, you've got to go through Ross to determine that?
A Right. As I told you more than once today, Ross Holliday handled all of the business affairs of Holliday Amusement and Zeezrom and if you asked Warren on any particular day what is the cash balance in your Zeezrom account, he wouldn't know that.
Q Do you know if Warren had any idea what the value of his estate was? That's why I'm -- I know you testified Ross handled the financials and that he knew he had Zeezrom in different properties. My only question to you is did he have any idea whether it was worth $10 or $100 or $1,000,000 or $100,000,000?
A I never asked Warren that question so...
Q So you don't know?
A I don't know.
Q Okay.
(Thereupon, Exhibit 25 was marked for Identification.)
Q I'll show you Number 25 and ask you -- I believe this is -- I don't want to cover your

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 94

handwriting. I believe this is your handwriting again. I'll ask you to confirm it, if you will. Is this your handwriting?
A Yes.
Q Moving to about two-thirds down the page, it says: First something will Pamela blank dollars, Ben blank dollars.
Is this referring to your having a discussion, I guess, about how much money he wants to give to Pamela and how much money he wants to give to Ben?
A Yes.
Q Okay. And present at that meeting was Warren?
A Yes.
Q And also present at the meeting was Ross?
A Yes.
Q Okay. Why would you have a meeting with Ross and Warren to discuss his estate planning when it had an absolute impact on how much money Ross would get? Would that not raise any suspicions?
A No.
Q Okay. Did you ever ask Ross to leave the room?

Page 95

A No.
Q Would you agree with me that if you had four siblings that are going to get everything and the share of two goes down, the share going to the other two goes up?
A Well, I would agree with you if the specific dollar bequest to Ben and Pamela was less dollars than would have been in their percentage bequest, yes, that would -- I got that far in math.
Q How do you know what dollars would have been in the percentage bequest if Mr. Holliday didn't know how much value he had if he never discussed it with you?
A No, I never asked him what's the total amount of all of your property.
Q Well, let's use an analogy. If Ben was to receive ten percent of $100,000,000, that's $10,000,000; correct?
A Yes.
Q If he's to receive ten percent of $1,000 it's $100; correct?
A You're good, yeah.
Q Okay. So to make the correlation from there, which you referenced a moment ago, if the numerical value is less than the percentage, it

Page 96

might give you some concern. How do you get there without knowing what the difference would be if you never discussed the numbers with Mr. Holliday?
A I didn't -- that was not my concern. My concern was Warren anticipated this lawsuit before he died and so he said if I leave them a percentage of my estate, they will litigate with the estate over how much that is, they'll fight over it. So he said I think it would be less litigation if I just give them a specific amount of money.
Q Was that a conversation you had with him on this day when these notes were drafted?
A Well, we had talked about it before, but yes, that was one of the topics discussed that day.
Q In front of his son, who benefits from the lowered amount?
A Yes, Ross was there.
Q Okay. Are you familiar with the term confidential relationship as it applies -- as a term of art?
MS. PAYLOR: Object to the form.
A I'm not sure what -- I know what the word confidential means and I know what relationship means.
Q But as a term of art, are you familiar

Page 97

with it as it applies to probate?
A I'm not sure I know that.
Q Okay. It's not a trick question. I promise, I just didn't know if you knew what it was.
So we talked about the codicil and that you would not have drafted it if it wasn't for the fact that you had spoken to Warren about it.
A Well, here is -- on Exhibit 25, we were meeting in my office on December 17, 2015, and then I did thereafter draft a codicil and it was dated as I recall sometime in January 2016.
Q Okay. So I want to go on the record. I may have messed up the exhibit numbers and there may be no 23, if we want to take a quick break and check or we can check later.
MS. PAYLOR: Let's move on.
A You're right, there is no 23.
Q All right. So I apologize for that.
So let's go to Number 26, an e-mail from you to Ross Holliday, January 5th, 2016.
(Thereupon, Exhibit Number 26 was marked for Identification.)
Q We spoke a few minutes ago about how you would not have drafted the codicil without Warren telling you that he wanted it drafted, but I'm

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 98

looking at this document from you to Ross: See draft codicil attached. If this is what Warren wants, let me know.
MS. PAYLOR: Object to the form.
Q Why are you asking Ross if this is what your client wants if Ross isn't the one that told you to begin with that that's what he wants? And if you knew it's what he wants, why are you asking him if it's what he wants?
MS. PAYLOR: Object to the form.
Q Yeah, that question was roundabout, I'm happy to rephrase it.
A I think I was sending this to Ross because Warren did not have an e-mail as far as I knew and I wanted him to show this to his dad. It appears to me that Ross may have been in Charleston at this time because I'm talking about a more complete opinion tomorrow. I'm assuming that if the codicil is -- I was very confident this is what Warren told me to do, but I wanted him to show it to his dad so that if either one of them saw typos or if Warren said no, I want to change the numbers or do anything, I would want Warren to see it and let me know ahead of time.
Q So let's break it down for a little bit.

Page 99

You were sending a copy of this document to Ross to see -- so that he can show it to Warren, but it doesn't say anywhere show it to Warren. Would you agree with that?
A It says if this is what Warren wants, let me know.
Q I understand. It doesn't say show it to Warren; does it?
A Well, that's what I intended.
Q And it says let me know if this is what Warren wants, not make sure this is what -- that this meets his approval. Let me know if this is what Warren wants.
MS. PAYLOR: It says what it says.
Q It says what it says. And I'll agree with that, Ms. Paylor.
And the last of it: Warren can change trustees. I'll give you a more complete opinion tomorrow.
The mere fact that you say I'll give you a more complete opinion tomorrow suggests to you that Ross was in town?
A I think -- and I don't have it in front, I think my affidavit says what day he signed the codicil. Was it January 6th, 2016?

Page 100

Q I don't have -- I've got a copy of it, but unsigned, so I don't have it in front of me.
A Well, I think --
Q Here we go, I've got a copy of your affidavit.
A I think the codicil was in January 2016.
Q All right. Either way, the fact that he was in town or out of town, how does that make any --
A Well, obviously I'm expecting him, Ross, because he gets it in the e-mail, he can show it to Warren and say is this okay, and that's what I wanted Ross to do.
Q Ross isn't always in town; is he?
A No. He lives in Draper.
Q And you're able -- if you want to, you will be able, because of the mental capacity that you testified of Mr. Holliday having, you could go meet with Mr. Holliday even if Ross is not in town?
A Sure. And Warren did come to my office several times without Ross.
Q It just happens to be that when the will codicil was signed and when the revocation of the trust was signed, Ross happened to be in town on those days; correct?

Page 101

MS. PAYLOR: Object to the form.
A He was there on those days.
Q And Ross happened to be present when those documents were signed, both of them?
A Yes.
Q Okay. The next one is 27.
(Thereupon, Exhibit 27 was marked for Identification.)
Q Let me show you a copy of an e-mail that you sent to Ross in February of 2016 and marked as Exhibit 27.
A Yes.
Q So this is an e-mail sent to Ross; correct?
A Yes.
Q And I'm assuming based on your -- correct me if I'm wrong, based on your earlier testimony, the reason this is sent to Ross is because it deals with financial matters for Warren, and Ross handles the financial matters?
A Yes.
Q Okay. And once again, this wasn't sent to Warren, to your knowledge, because you were dealing with Ross?
A I don't know.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 102

MS. PAYLOR: Object to form.
A I kind of doubt it.
Q Okay. You don't have any knowledge that it was sent to Warren; correct?
A This e-mail?
Q This e-mail, just like all the other e-mails we've talked about.
A Right. I don't recall that specifically.
Q Just to be clear, I believe you testified you don't recall any e-mails specifically ever being sent, copied and sent to --
A I do recall putting documents in envelopes and sending them to Warren's address. I just don't recall whether that was contracts or pleadings or -- I did other things for Warren.
Q Okay. One of the comments I wanted to ask you about is with reference to the life insurance, you make the statement: I don't know how she is getting her information now that Martha no longer handles accounting at your office.
Was it your assumption that Martha would have been providing her the information?
A I don't know that. I don't know what Martha and Patricia talked about, but Martha was

Page 103

basically office manager at Holliday Amusement and a lot of this information -- and I think a lot of checks from the checking account were signed by Martha. So I mean, she may have been actually signing some premium checks, I don't know.
Q Anything that you're aware of that would make you believe that any information provided by Martha would not be accurate?
MS. PAYLOR: Object to the form.
A I don't know what she said to Patricia. I do know that Martha had -- you know, it was her job. She was doing this for Warren and she wrote checks for him and handled a lot of bookkeeping and things like that.
Q To your knowledge, did Martha and Warren have a very good relationship?
A Well, brother and sister-in-law has its ups and downs, but she worked for him for some time.
Q So to your knowledge, did the two of them have a very good relationship?
A They had a long relationship, and so if that's an indication of goodness, then it was a good relationship.
Q Anything you've ever been told by Warren Holliday to make you believe that they did not have

Page 104

a very good relationship?
A I don't really recall. There was -- I don't recall the circumstances under why Martha stopped working at the Holliday office. I really don't remember what that was about.
Q Okay. But my question to you is: To your knowledge, is there anything that you've ever been told that indicated to you that Warren Holliday did not have a very good, loving, trusting relationship with Martha?
A I don't know what was behind his decision to not have her work there anymore. It may be because the Holliday business was not going well. I don't know.
Q And I'm not asking you to speculate, I'm just asking were you ever told by Warren Holliday of any issue that he had with Martha that would make their relationship less than a strong, working, friendly, family relationship? I'm not asking you to speculate, but did he ever say anything bad or ill will or negative about her to your knowledge?
A I'm not real sure. I was -- this was in February. But even before, I was talking to Warren and I learned that Martha would no longer be working in the office, but I just don't recall if that was

Page 105

good or bad. I really -- I just don't recall.
Q I understand that you don't know if that was good or bad and certainly Martha can talk about what it was -- what the relationship was. I'm asking you do you have any recollection of Warren ever telling you, as his counsel for many, many years, that he had any issue with Martha to make her less than a loving -- a loving relationship, a loving person, understanding she knew him since she was I think six years old, a much younger child. He was more like a brother to me is what it seemed, but regardless of that, are you personally aware of any statement by Warren Holliday negative towards Martha?
A I just have a vague recollection that he terminated her employment and he --
Q Do you know why?
A Well, he wasn't happy about something, but I just don't know what it was.
Q Other than that, are you aware of any -- circumstances unknown, other than the termination, are you aware of anything he's ever said negative or did he ever say anything negative about Martha to your knowledge?
A I don't recall right now, but he -- they

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 106

came to an agreement for her to not work there and it was I think Warren's idea.
Q But you don't know the circumstances as to why?
A No, I don't.
Q So my question to you, once again, is are you aware of any conversation you ever had with Warren Holliday that led you to believe or where he represented to you that he had anything less than a loving, kind relationship, trustworthy relationship with Martha? That's the question. I understand there may be circumstances you don't know about, but I want to know are you aware of anything based on your communication with Mr. Holliday.
A Well, this Exhibit 27 seems to me that -- I didn't make up that idea that Martha was giving information about Warren's business to her sister, Patricia. And I suspect the reason I said that in this e-mail is because somebody suggested to me that Martha was giving inside information to her sister Patricia.
Q Was the somebody Ross or Lee?
A I don't think so. I think it was -- I think that's something to do with why she no longer worked there.

Page 107

Q Do you know that with certainty?
A Well, apparently that's what I was thinking on the day that I wrote that memo, that that's what happened.
Q Well, I asked you earlier if she was, in fact, giving out information and you said I don't know.
A Well, I don't know the details of it.
Q Well, my question to you -- and I'm going to ask you I think for the fifth time, okay, and I would like to have a yes or no answer, if you would -- because we can go around and around all night long, I want to get an answer is: Are you personally aware of any conversation you ever had with Warren Holliday where he said anything disparaging to you about Martha that would lead you to believe they had anything less than a loving, kind relationship?
A Yes.
Q When and what was the comment?
A I've told you five times I don't remember the exact details.
Q You actually haven't told me at all that I recall about --
A I don't have a day or an e-mail or a

Page 108

letter or a bill, I just -- I was thinking that when I wrote this e-mail.
Q And I'm not arguing with you, Mr. Nettles, I understood what you said to me was well, maybe it was someone told me that maybe she had been giving inside information or maybe -- you said, maybe it was that she left under good circumstances or maybe it was bad circumstances, I don't know.
MS. PAYLOR: Object to the form.
Q I believe that's what you had testified to under oath a few minutes ago.
MS. PAYLOR: Object to the form.
Q So my question to you is if you are aware of a comment, please tell me what the comment was.
A I don't recall the specifics of it. I just recall that -- I believe that separation of business affairs between Martha and Warren was Warren was not happy about something. I don't know what.
Q Okay. Whether it was her or maybe -- you said earlier maybe it was the downturn?
A It could have been because I don't know the details of it.
Q So let's assume it was the downturn for

Page 109

purposes of conversation. If it was the downturn that he wasn't happy about, and therefore, he had to separate from Martha, then would that be the only reason that you're aware of any potential issue between him and Martha?
A No.
Q Then what else?
A As this exhibit indicates, there's also this issue of information going to Patricia. I didn't make that up.
Q And this is the exhibit of the document that you sent to Ross Holliday, not to Warren Holliday?
A This is Exhibit 27.
Q That you sent to Ross Holliday, not Warren Holliday; correct?
A Right. Warren doesn't have an e-mail.
Q But Warren has a mailbox and can receive mail?
A Well, yes, --
MS. PAYLOR: Object to form.
A -- that's true.
Q And you sent him e-mail before?
A What?
Q And you said you sent him mail before?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 110

THE REPORTER: I'm going to need a break.
MR. SLOTCHIVER: Okay. We're almost done, we can take a break.
THE VIDEOGRAPHER: Off the record at 4:49.
(Thereupon, a brief recess was taken.)
THE VIDEOGRAPHER: On the record at 4:57.
(Thereupon, Exhibit 28 was marked for Identification.)
BY MR. SLOTCHIVER:
Q I'm going to show you a document that appears to be an e-mail from Heyward Carter to you dated August the 29th regarding Warren's revocable trust. We've marked that as Number 28.
Is that the first day that you learned about the revocable trust?
A I think so.
Q Do you know what precipitated that e-mail?
A I think that was when I was -- I had gotten a copy of the financial arrangements where Warren and Patricia both turned all their business affairs over to Ross, but then I got the financial

Page 111

arrangements and I believe we have an exhibit when that came in to me, but he's saying -- Heyward is telling me here: In addition to the financial arrangements, there's a trust and I'll send you a copy. And I think he did and that's when I decided that I wanted to do the revocation of the revocable trust.
Q Okay. And I was just wondering what it was that precipitated Heyward Carter to send that to you.
A I think he just took it upon himself to tell me that when we were talking about the financial arrangements. So financial arrangements was 2012, but all of Warren's will and trust and power of attorney and stuff like that was 2008.
Q Right.
A So Warren -- I mean, Heyward tells me here, you know, there's a trust. I'll send you a copy.
Q So your recollection is he took it upon himself to send you a copy of it in connection with the --
A Some discussion we were having about I guess the financial arrangements or -- I don't know.
Q Okay. Nobody asked you to reach out to

Page 112

him or anything, to Heyward to find out about it? Did Mr. Holliday call you or anybody else reach out to you to ask you to do it?
A I do not recall Warren telling me that.
Q Okay. Let me show you a document. We'll mark this as Number 29.
(Thereupon, Exhibit 29 was marked for Identification.)
Q And the date on that last document, I'm sorry, sir?
A August 29, 2016.
Q Okay. So here is an e-mail from you to Ross with a carbon copy to Heyward Carter. Do you recall that? Are you ready?
A Hold on. Now what's the question?
Q Okay. Well, I want to make sure I'm reading this correctly. This is an e-mail that you're sending to Ross; correct?
A Yes.
Q You're asking how Warren's doing?
A Yes.
Q Was there a reason to ask that? Because I don't usually see that in your e-mails.
A Well, he had been out of the hospital on a heart valve replacement or a transplant about two

Page 113

weeks and I was concerned about his recovery.
Q I discussed the trust revocation with Heyward Carter as you requested. I take it the you is referring to Ross?
A Yes.
Q Okay. So Ross asked you to discuss a trust revocation with Heyward Carter. That's your testimony or that's what you wrote here?
A Well --
Q It's what it says; correct?
A Yes.
Q Okay. Attached is a draft revocation which I have prepared. So you're sending to Ross a copy of a draft revocation which will change his inheritance by, depending on the value, but millions of dollars; correct?
MS. PAYLOR: Object to the form.
A No, I disagree.
Q You disagree as to the change of his inheritance or you disagree as to the value?
MS. PAYLOR: Object to the form.
A The changes in the inheritance.
Q Okay. When a revocation of the trust comes forward, how much was Ross going to get before the revocation versus how much Ross gets after the

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 114

revocation?
MS. PAYLOR: Object to the form.
A I think before and after the revocation, Ross was going to get one half of the estate residuary.
Q Before and after?
A Yes.
Q Nothing changed for Ross? He was getting the same amount whether there was a revocation or not?
A Yes, the will and the codicil say what they say.
Q Well, the trust revocation, Mr. Nettles, this is a trust revocation that changes the terms of the trust; correct?
MS. PAYLOR: Form.
A It changes the terms of revocable trust, I think it just revokes it.
Q Okay. When you change the terms of the revocable trust, how did that impact Ross?
MS. PAYLOR: Object to the form.
A I was of the opinion at that time, and maybe I'm wrong, but I think the bequest to Ross didn't change. I think Ross -- I think the will and the codicil were the last expressions of Warren's

Page 115

intent.
Q By changing, by revoking the trust, what monies flowed through the will that would not have flowed through the will had the trust not been revoked?
MS. PAYLOR: Object to the question.
A I don't know. I don't understand.
MS. PAYLOR: Object to the form.
Q I understand. You handled a revocation of the trust. Why did you revoke the trust if it wasn't going to change anything?
A I thought, after talking with Heyward Carter, and he didn't want to give me any legal advice, but he said it would be best to make it real clear that Warren intended for his will and codicil to supersede what he did back in 2008.
Q Had you not changed, revoked the trust, then the majority of the monies that were owned by Mr. Holliday would have been in the trust, not in the estate; correct?
A I haven't -- I don't know the answer to that question. I haven't researched it.
Q Did you not know the answer to the question at the time that you went to Mr. Holliday to handle the revocation of the trust?

Page 116

A My thinking at that point was it would be best to remove any questions to specifically revoke the revocable trust of 2008.
Q Did you -- so you're not familiar, as you sit here today, with the law as it applies to the effect of what happened by revoking the trust as opposed to what would happen if the trust was not revoked?
MS. PAYLOR: Object to the form.
Q Is that your testimony?
A I haven't exactly researched that, no, I have not.
Q How could you advise your client as to the revocation of the trust if you couldn't advise him as to the effect of it because you didn't know?
MS. PAYLOR: Object to the form.
A Well, I did discuss this particularly on the day that Warren signed it, that to remove any doubt or questions, it would be good to specifically revoke the revocable trust.
Q Did you explain to him the effect -- well, let's back it up then.
So you have a will that was in place at the time the trust was in place; correct?
A Well, I didn't know about the trust when

Page 117

I wrote the will and the codicil.
Q Fair enough. When you wrote the will and codicil, you were not aware of the trust?
A Right.
Q But the will only included those assets that were not in the trust because they cannot include assets that are in a trust; correct?
A Well, --
MS. PAYLOR: Object to the form.
A -- I don't know. I really don't know the answer to that question. I thought --
Q Okay. If you don't, that's fine.
A When I wrote the will, I represented to Warren that this disposes of all of your properties.
Q And it did, but for those properties in the trust.
A Well, I didn't tell him but for the properties in your trust because I didn't know about a trust.
Q Did Warren know about the trust?
A When I mentioned to him that I think we should do a revocation of that, his -- the impression I got in talking to Warren was he thought the divorce and the new will and the codicil all just superseded or did away with all of that earlier

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 118

stuff, and I said well, maybe, maybe not, let's just do this.
Q Was it your idea to revoke the trust or was it Warren's idea to revoke the trust?
A It was my idea.
Q Okay. So you went -- do you understand that the significant -- that there is a significant difference in what would have flown through the trust versus what would have -- at the time if it was still in existence versus what would go through the estate?
A Well, actually I didn't know when I did the revocation how much, if any, property he had actually put into the trust, I didn't know that. I think he -- I don't know. I just don't recall that.
Q Had you --
A But I do know that his intent was to leave things according to his will. And if that earlier document still had any legal effect, then it was my judgment it would be best to specifically revoke that.
Q His intent is based on your testimony; correct?
A No, it's based on his expressions to me.
Q He specifically said to you: I want to

Page 119

take all of my properties that are in the trust and put them all in my estate?
A No, he did not mention the trust to me.
Q But he was aware of the trust?
A Well, he knew that he signed a trust. I'm not sure that Warren understood the legal import of all of those things.
Q Did Warren understand the legal import of revoking the trust if you weren't able to explain to him what was in the trust and whether or not it was applicable at the time that he revoked it?
A What I said to Warren was that if the revocable trust still has legal effect, then I think we should revoke it and that's what this document is that I've prepared for you.
Q And when you said that to Warren, you were also with Ross?
A Ross was in the house.
Q Okay. So had you ever reviewed the revocable trust prior to having that conversation with Warren?
A Is that what I said -- I thought I -- did I send it to Ross earlier? I thought that was one of these exhibits. No.
Q You had sent to Ross a copy of the

Page 120

revocation, but I didn't see where you sent to Ross a copy of the trust. My question to you was --
A Oh, okay.
Q -- had you reviewed a copy of the trust prior to creating the revocation.
A Well, immediately prior, yes, but I didn't see the trust until -- like when I read that trust within a day or two, I drafted a revocation.
Q Did you ever know what was inside the trust before you created the revocation?
A No, it was kind of general. It looked like Warren had given a lot, if not everything.
Q When you say it was general, when I asked you do you know what was inside the trust, your response was it was general. What does that mean?
A Well, I think he said the attached property or something like that, but I didn't see any -- I don't recall seeing any specific bequest or not bequest, but transfers to the trust.
Q Was there any urgency other than the fact that Ross was in town at that point and would be leaving to go back to Utah?
A Do you mean to do the revocation?
Q Sure, as opposed to going back to

Page 121

Heyward Carter, who had drafted the trust to begin with.
A Well, Heyward Carter told me he was not going to do that because of his prior representation of Patricia and Warren. That's why I decided that we were going to do this revocation.
Q You are not a trust lawyer; correct?
A That's true.
Q And there are lawyers who handle trusts on a regular basis throughout this community; correct?
A Yes.
Q You felt it important enough to send Warren Holliday to a trust lawyer, Heyward Carter, prior -- or at the time that he had issues, so that if he wanted to do a trust or something, he could; correct?
A Yes.
Q All right. Did you consider the fact that since you don't have a depth of knowledge as to trusts, since you didn't know what was in the trust, since you didn't know if the trust was revocable, active or not -- I said didn't know if the trust was active or not, and you didn't know the effect of what would happen if you did do the trust, if you

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 122

revoked it versus you didn't, did you consider the fact or discuss with Warren the fact that maybe he should get a trust lawyer to do this?
MS. PAYLOR: Object to the form.
A I don't think I suggested that.
Q If you could do it over again now, would you have sent him to a trust lawyer so they could fully advise him as to what he was doing and the impact of what he was doing so that he could understand the depth of how this would affect him?
MS. PAYLOR: Object to the form.
A No, I don't think so. I think Warren understood what he wanted to do with his property and who he wanted to leave it to. And if I told him that it was my legal opinion that we should have this revocation to eliminate any dispute, he said okay and he signed it.
Q And the result of that revocation enhanced your other client Ross and your other client Lee perhaps as much as four to five million dollars apiece?
MS. PAYLOR: Object to the form.
A Well, at that time I was only representing Warren.
Q And Ross. You testified repeatedly you

Page 123

were representing Ross at that time.
A About what?
Q Ross was your contact to Zeezrom?
A Well, Ross managed Zeezrom for Warren Holliday. The fact that I have a client and I talk to one of that client's agents or employees doesn't mean I represent the agent or employee, I represent my client.
Q But it did benefit Ross and Lee; correct?
A What did?
Q The revocation of the trust.
A I don't know the answer to that question because I was doing this as a precaution.
Q So you don't know the answer -- you don't know the answer to it, you don't know the effect of it, you don't know what Mr. Holliday's assets were, it was your recommendation that he cancel -- that he revoke the trust and Ross was present?
MS. PAYLOR: Object to the form.
A Here's --
Q Is that correct?
MS. PAYLOR: Object to the form.
A Repeat the question.

Page 124

MR. SLOTCHIVER: If you can read it back please.
(Thereupon, the referred to question was read back as above recorded.)
MS. PAYLOR: Object to the form.
A Can I just have her give me those one at a time and I'll answer yes or no to each of them?
Q Sure.
(Thereupon, the referred to question was read back by the court reporter as above recorded.)
THE WITNESS: To what?
(Thereupon, the previous to question was read back by the court reporter as above recorded.)
BY MR. SLOTCHIVER:
Q I think the question was you don't know the answer to the effect of the revocation of the trust.
A Okay.
Q That's correct; right?
A Well, I was doing this as a precaution.
Q Understood, but you don't know the effect of the revocation?
A Yes, it revokes the revocable trust.

Page 125

Q But you don't know what that changed other than it revoked the revocable trust?
MS. PAYLOR: Object to the form.
A Well, that's exactly what Warren wanted and that's what I recommended and that's what we did.
Q Well, actually you testified that's what you told Warren that he should do and he agreed to do; correct?
A Yes.
Q Okay.
A Because he agreed, because he wanted his will and his codicil to govern what happened to his estate.
Q And that's what -- that's your testimony today; correct?
MS. PAYLOR: Object to the form.
A Well, he could have asked me this two years ago and the answer would have been the same.
Q And Ross was present in the room?
MS. PAYLOR: Object to the form.
A No, he was in the building.
Q A little while ago you said he was there.
A I said -- you said he was at the

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 126

residence or something, yes. He was not in the room when I was dealing with Warren to get him to sign the revocation.

MR. SLOTCHIVER: Okay. Can you go to the next one on the list?

(Thereupon, the referred to question was read back by the court reporter as above recorded.)

A Okay, stop. I do know the effect, the effect is to revoke the revocable trust.

Q Well --

A What's the next question? Let me answer the question.

MS. PAYLOR: Let him --

Q It's my deposition and I'll ask it the way I want to ask it. Okay?

A Okay.

Q And we'll go through the questions, but I want to ask you -- if you want to stop and do piecemeal, I'd like to ask you questions about each one when you can answer. Otherwise we're going to get lost forever. That said, if you still want to go through all of them and come back, we can, but I think if we can go through each one, you'll answer and I'll ask you a question and go to the next one,

Page 127

it might move us quicker.

A But that question has like five or six things that I was answering, and I couldn't answer them with yes or no because some of them were yes and some of them were no.

Q The only thing I was going to ask you was on that question: Do you know what the effect would have been to Warren Holliday had he not revoked the trust --

MS. PAYLOR: Object to the form.

Q -- to his properties when he died?

A I think in looking -- after talking with Heyward Carter, I looked at the South Carolina Trust Code about revocations and I believe -- I don't recall now, but I believe what I found was that a trust should be specifically revoked. And so if Warren wanted his will and codicil to govern how his estate was going to be administered and assets disbursed, then we should specifically revoke the 2008 revocable trust.

Q When you looked at the trust code, was that after his death?

A No, that was when I was drafting the revocation.

Q Did you discuss with Mr. Holliday that

Page 128

you had looked at the trust code and that if you do revoke it, this will be the effect, if you don't revoke it, this will be the effect?

A I don't think I went into it in that depth, --

Q Okay.

A -- I just told him that I think you should do this if you want -- and this is one of the things I discussed with him that day he signed it. If you want your will and your codicil to be the way your estate goes, then I recommend that you sign this revocation of the 2008 revocable trust.

Q So you never discussed this with him prior to drafting the revocation?

A I don't recall. I'm sure -- I don't know if I told Ross to tell him or if I talked to him.

MR. SLOTCHIVER: All right. What's the next one? If you want to read them, I'll be happy to mark them down.

(Thereupon, the referred to question was read back by the court reporter as above recorded.)

MR. SLOTCHIVER: Okay. I can pick it up from there.

Page 129

BY MR. SLOTCHIVER:

Q I believe we discussed that. I think the next one then was: You don't know what his assets were at the time he did the revocation?

A Well, I didn't know the value of them. I knew that Zeezrom owned several commercial properties, eight or ten, and that he was on the board of directors and had some stock in that company called Sawgrass and he owned the home he lived in and he had some money in the bank and that was -- and the life insurance. That was about it.

Q Did Mr. Holliday know what his assets were, to your knowledge, or did you rely on Ross?

A Well, he knew that he owned Zeezrom that owned these companies and he knew which ones, yes, because, I don't know, six months before Warren died we discussed the sale of 2189 Discher Avenue and Warren was very aware of the property and the history of it and there was this offer and he was very knowledgeable about that kind of stuff.

Q Okay.

A But on any given day, he didn't know what the balance was in the Zeezrom account.

Q I believe you testified that when you did the new will, you never discussed with him what

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 130

his assets were, you just discussed with him what he wanted each person to get. We talked about that earlier today.
A Well, I did not list out all his assets in the will, that's true.
Q Nor did you discuss it with him was your testimony earlier.
A Well, I represented him for 30 years. I knew what he owned and he knew what he owned.
Q You knew every asset that he owned?
A Yes, I think probably so. As a matter of fact, I have subsequently represented Ross as the personal representative of the estate and I haven't seen anything that surprised me.
Q I believe you testified earlier -- well, the record speaks for itself.
Let's do this, let's take a look at your bills. This is Exhibit 30.
(Thereupon, Exhibit 30 was marked for Identification.)
Q It's a complete copy of the bills that have been provided to me by -- well, through discovery. And why don't we do them page by page because that will probably be easier than to ask you to read all of them.

Page 131

A Okay.
Q It appears to me the first page goes back to the work that you did in 2002 for Warren Holliday and then the will you created also for Patricia Holliday; is that correct?
A Yes.
Q And it looks like you've done a -- you've made sure that you documented who you were working for and what you were doing in creating these highlights, so you could accurately reflect it and show it to your client for billing purposes.
A Yes, I mean that's what's in this bill.
Q Okay. Let's go to the next section of billing, which starts July 10th, 2015, and this has a variety of communications, e-mails forward, things like that. Can you show me anywhere on this page referencing billing from 6/2/15 through 6/23/15 where you had a conversation with Warren Holliday?
A I do not see one.
Q Okay. Do you see documents here where you had communications with Ross Holliday?
A Yes.
Q Okay. Let's go to the next billing cycle, which was August 10th of 2015. There's a --

Page 132

we can start with the August 10th billing cycle as opposed to the sheet, but there's a full sheet with bills from 7/16/15 to 7/27/15. Do you see anywhere that you had communications with Warren Holliday? And I'll direct you there's one at 7/7/15.
A Yes, I see that one.
Q Any other one besides that one?
A That's it for that bill period.
Q And on that one you had with Warren Holliday, was anybody else present with him at the time you spoke with him?
A On the 7th of July 2015?
Q Correct.
A It looks like Ross was there.
Q So, so far, there's no communications directly with Warren that we see in the billing?
A No. Ross was there to tell us, me and Warren, what was the status of the life insurance and how much money did the company have.
Q In all the communications you had here with anybody from the Holliday family, up until this point, up until the date of this bill would have been with Ross or on the one occasion with Ross and Warren together?
MS. PAYLOR: Object to the form.

Page 133

Q Is that correct?
A I'm sorry, please state that again.
Q All of the communications you've had with anybody in the Holliday family on this July 10th, 2015 bill would have been either with Ross and Warren on the one occasion, the 7/7/15, or with Ross, if it's a communication with the Holliday family; is that correct?
A I think so. I believe I understand your question.
Q Okay. Let's go to the next billing, August the 10th. Between 8/16/15 and 8/22/15 I see six communications with Ross Holliday and none with Warren Holliday; is that correct?
A Let me look. Okay. What's the question?
Q On the communication of 8/6/15 through 8/22/15 on the bill labeled August 10th, 2015, would you agree with me that all the communications with anybody from -- that there were no -- excuse me, that there were no communications with Warren Holliday and that there were six communications with Ross Holliday?
A Well, I did communicate with Warren Holliday when he went to court and --

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 134

Q I'm not asking -- I'm asking about the bill. On the bill where you referenced what you did, is there any reference to a communication with Warren Holliday on the bill of August the 10th, 2015?
A I do not see an e-mail to Warren Holliday.
Q Do you see any reference to any communication whatsoever with Warren Holliday?
A No.
Q Would you admit to me that on that bill of August 10th there are several references to billings for telephone conferences with Ross Holliday, but no references -- and telephone conferences with Alan Toporek? So you do bill telephone conferences, but there are no references to telephone conferences with Warren Holliday; is that correct?
A That is correct.
Q Okay. On the next page of that bill referencing 8/24 through 8/31, would you agree with me that there are six references to Holliday -- to telephone conferences or e-mails with Ross Holliday and only one reference to a conference with Warren Holliday, which is 8/27/15, the second from the

Page 135

bottom?
I think I misspoke. There were seven telephone conferences with Ross or seven communications with Ross separate from the one with his father.
MS. PAYLOR: Can I suggest that the bills speaks for themselves?
MR. SLOTCHIVER: I understand. I want to go through this and make sure we're not missing anything.
MS. PAYLOR: You'll have that opportunity when you use it because the bills speak for themselves.
MR. SLOTCHIVER: If he wants to -- well, I want to go through it a little bit longer.
A The only thing I see here is that one telephone conversation with Ross and he was calling to ask how much would it cost to make a motion to reconsider.
BY MR. SLOTCHIVER:
Q Are you looking at --
A How long would that take.
Q Are you looking at the page that references 8/24/15 through 8/31/15?
A No, I was looking at September 10th.

Page 136

I'm sorry. I thought you were finished with August 10th.
Q No, I'm looking at 8/24, August 24.
A Yes.
Q Would you agree with me that the only reference to any communication with Warren Holliday is the communication, the second from the bottom, appearance at family court at the hearing on the rule to show cause?
A Yes.
Q And that the only reference to Warren Holliday on this particular one, Ross Holliday was present also?
A Yes.
Q But separate from that billing, there were one, two, three, four, five, six, seven other billings to Ross Holliday?
A Well, those may have been from Ross when I asked him for financial information.
Q All right. Well, let's just go through them and I'll read from the top, fourth one down: E-mail to Ross, the next one telephone conference with Ross, the next one telephone conference with Ross, the next one e-mail from Ross, the next one e-mail from Ross, the next one telephone conference

Page 137

with Ross and the last one e-mail to Ross.
Regardless of what they're about, would you agree with me that your communications on these days were with Ross, not with Warren and if it was with Warren, Ross was present?
A Well, first of all, I wish you would ask me questions one at a time, but the first part of your question is I was getting financial information from Ross and I talked to him about what I needed and he sent me some things and I responded.
Now, to get to the second part of your question, Ross came with Warren to the family court hearing about life insurance and after the hearing, we have sat out on a bench outside the courtroom and talked for a while.
Q My question to you is would you agree with me that seven out of the eight communications with Ross did not include Warren Holliday during this billing period --
A Yes.
Q -- and only once did you meet with Warren Holliday during this billing period according to your records, and on the one time you met with him on 8/27/15, Ross was present?
A Yes.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 138

Q On the next billing period, pages October 9th, 2015 under it September 10th, 2015, and there's a reference to a telephone conference with Warren regarding the Judge's decision.
A On September 1?
Q September 1.
A Yes.
Q I will represent to you that from my review of the file, that is the only communication from this point forward that I can find where you spoke to Warren Holliday outside of the presence of Ross Holliday.
MS. PAYLOR: Object to the form.
Q Based on your recollection, do you have any reason to dispute that?
A Well, before I agree to it, I would like to look at it.
Q Sure.
MS. PAYLOR: I found one.
Q You did?
MS. PAYLOR: Yes.
A And your question was there were no further communications with Warren?
Q With warren independent of Ross.
MS. PAYLOR: Can I show him one and we

Page 139

can move on? 1/7/16.
MR. SLOTCHIVER: What day?
MS. PAYLOR: Hmm?
MR. SLOTCHIVER: What day?
MS. PAYLOR: 1/7/16 and 1/8/16 it says conference with client.
THE WITNESS: Wait, 1/8.
MS. PAYLOR: '16, and 1/7/16 also there's another entry.
THE WITNESS: Okay. Other than what Ms. Paylor said, that's right.
BY MR. SLOTCHIVER:
Q Can you show me anywhere in your billing where you notate a telephone call that you had or a meeting you had with Warren Holliday where he requested the will, codicil or he requested the revocation of the trust? In advance of the will, codicil and in advance of the trust, if that makes sense.
A You're asking me if I billed for that or if I see a record of it?
Q If there's anywhere that you can show me a record that you communicated with or spoke to or billed Mr. Holliday for time you spent speaking to him and where he requested, where you discussed the

Page 140

will or where you discussed the codicil in advance -- or excuse me, where you discussed the codicil or you discussed the revocation of the trust in advance of showing up to have him sign it.
MS. PAYLOR: 12/17/15.
A Well, it looks like I had a three-party telephone conversation with Ross and Warren on December 17, 2015 and then I drafted the codicil and then Warren came in to sign it.
Q Okay. So there was never one without Warren being present and Ross being present? Excuse me.
A I don't think Ross was there when Warren signed it.
Q Ross was not there?
A I don't see that he was and I don't recall him being there.
Q Ross was present when you discussed it?
A Yes.
Q Okay.
A That was about two weeks prior. And he was present on the telephone. I don't know if he was actually...
Q Was there a reason why you wanted Ross to participate or why Ross wanted to participate

Page 141

when you discussed his father's testamentary plans?
A No, I think Warren wanted him --
Q I want to ask you --
A -- wanted Ross there.
Q I want to ask you what you know and not what you think.
MS. PAYLOR: Object to the form.
A I think Warren wanted Ross on the call.
Q I want to ask you what you know, not what you think. With respect to you, I'm not asking for speculation. I want to know what you know. If you think, that's one thing. If you know for sure --
A I understood that Warren wanted Ross in on that conversation.
Q Who did you understand that from?
A Warren.
Q Where is your notation to reflect that?
A I don't know that I have one.
Q And why would Warren want Ross present?
A Well, now you just admonished me --
MS. PAYLOR: Object to the form.
A -- for speculating. Now you want me to --
MS. PAYLOR: Object to the form.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 142

Q Well, I asked you if he told you. You don't know?
MS. PAYLOR: Object to the form.
A Let me think and see if I can figure out why Warren --
MS. PAYLOR: Object to the form.
Q I'm not asking to you think. If you don't know, I don't want to think and figure it out, I want to know if you know.
A I don't recall Warren telling me why he wanted Ross on that phone call.
Q Okay. Let's talk about your affidavit for a few minutes.
A Can I have a copy?
Q Sure. This is Number 31.
(Thereupon, Exhibit 31 was marked for Identification.)
MR. SLOTCHIVER: Alice, this might be the one I do not have a copy of it for you.
MS. PAYLOR: I have it.
BY MR. SLOTCHIVER:
Q Okay. Let's go to number four of your affidavit.
A Okay.
Q Who drafted this affidavit for you?

Page 143

A I don't know if I drafted it or if I just discussed it with Bijan Ghom, and I think we went through a couple of drafts of this. I wanted to add things or change wording.
Q Where would the drafts be?
A I may have some in my file. Sometimes I don't keep drafts all the time, I do sometimes.
Q Would you have mailed the drafts or e-mailed the drafts back and forth?
A Well, we might have just discussed it on the phone and I marked it up and called -- I've done this with other lawyers. Instead of sending them a redline, I'll just -- if I have a few comments, I'll say let's do this, this and this and I'll just do it on the phone.
Q At the end of the day, was the verbiage words that you used or that they created for you to use?
A I think generally this is my language.
Q Okay. For example, paragraph four: During my practice, I have been present for the execution of many estate planning documents of my clients and I always have discussions with those clients to determine and confirm their capacity to execute those documents and ensure that they are

Page 144

voluntarily executing documents; is that your language?
A Yes.
Q That's not something they created, it's something that you created?
A No, I remember talking about that. I changed some of the words to make it that way.
Q Okay. What kind of discussions can you have with a client to confirm their capacity? What's important to you? What are the factors you're looking for to confirm capacity?
A Well, for testamentary documents and trusts, it's generally they know what property they have, they know who are the persons of their affection and what -- you know, who they like and then who they want to give parts of their estate to.
Q Okay. Your belief was that Mr. Holliday knew what property he had?
A Yes.
Q But not that he knew the value of the property?
A Well, I don't think he'd had them appraised. They had a value to him, but I don't know that he -- I don't recall -- the only one we know for sure when Warren died and when he signed

Page 145

that revocation was we had a contract for 2189 Discher and I think -- I don't recall, 1.5 mil, something like that. It closed after Warren's death.
Q In order for Warren to understand the comparison of what he would be giving his children under a flat amount versus a percentage, wouldn't he have to understand the value of his property?
MS. PAYLOR: Object to the form.
A Well, he made that decision. I didn't give him the values and I didn't calculate what the percentage would be in dollars, but in his mind, he was treating them this way to try to prevent discord in the future. And now whether in his mind he thought that five percent equals $100,000, that was Pamela's numbers, I don't know how he -- if he calculated it that way.
Q Well, you understand -- you've been involved in enough hearings in this case to recognize the fact there's a huge discrepancy on what this estate may be worth.
A Well, actually --
MS. PAYLOR: Object to the form.
A -- I don't think so.
Q Okay. You don't believe that there's a

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 146

discrepancy in what the case is -- what the value is worth?
A Well, I believe that your clients would like to say that the PR in Warren's estate understated the value of it, but I don't think so.
Q Mr. Nettles, isn't it true that in open court during a rule to show cause, you, as an officer of the court, stated and I will quote, and this is July 8th of 2015: Now there are adequate assets and revenue to do that for the foreseeable future. As a matter of fact, I think the net value of the real estate holdings is close to $20,000,000. Your words; correct?
A Yes.
Q In open court; correct?
A Yes.
Q Representing your client; correct?
A Yes.
Q As an officer of the court?
A Yes.
Q And you take what the words you say in front of court to be serious and they must be truthful to your knowledge; correct?
A To my knowledge.
Q Okay. So if the value of Zeezrom a year

Page 147

earlier was $20,000,000, how did the value of Zeezrom plummet down to under $5,000,000?
MS. PAYLOR: Object to the form.
A Because I didn't have them appraised and I didn't know what the value of each property was. I estimated Warren's estate to be almost $20,000,000 because I thought they were worth a lot.
Q Actually you testified in court --
A I was not testifying, I was speaking to the court.
Q -- that the net value of the real estate holdings alone is close to $20,000,000.
A That's what I said.
Q Not the gross, the net.
A Yes. Well, there were no mortgages on anything.
Q Okay.
A I admit this, I overstated the value of the estate.
Q How do you know -- you state also: And to ensure that they are voluntarily executing the documents.
A Yes.
Q I'm reading your affidavit.
A Yes.

Page 148

THE REPORTER: And to ensure what?
Q And to ensure that they are voluntarily executing the documents.
A Yes.
Q How do you ensure that somebody is voluntarily executing a document?
A Well, I talk with them, make sure this is what you want to do, this is what you told me, this is what I wrote down. Now is this what you want to do? And I have that conversation. If I ever had an inkling that I thought somebody was uncertain what they wanted to do, I'd probably stop and pull back and we'd have to have a discussion about it.
Q Had you had a chance -- and I don't know if you've done it as part of this litigation, but up until the time when this was signed, did you -- or up until the time that you met with Warren Holliday to do the revocation, have you ever had the chance to participate in a will contest case?
A Yes.
Q Had you ever been involved in a case dealing with undue influence?
A Yes.
Q What do you understand undue influence

Page 149

to be?
A The use of force or coercion at the time of the signing to get to do the testator's -- something contrary to the testator's will.
Q If somebody had threatened Mr. Holliday an hour before you arrived, how would you know? What did you do to ensure that that did not take place?
MS. PAYLOR: Object to the form.
A In my discussion with Warren on the day he signed the revocation, I had no indication that he was under any kind of duress or undue influence from anybody.
Q I understand your testimony. My question to you is what did you do to ensure that he was voluntarily executing the document?
A I went over -- first of all, I asked him questions about his capacity and then I went over what his will and codicil said and he acknowledged all of that. And I said well, we have this 2008 thing, and as we've talked about, I want you to sign this revocation to make sure that things go according to your last will and testament and not to that 2008 document.
Q A lot of estate lawyers have a litany of

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 150

questions that they ask to try to see if someone is competent. What questions did you use to determine if he was competent?
A Well, basically do you understand what what's in your estate and you're going to be leaving to people. And we discussed that sometimes.
Q Did you do it with Mr. Holliday?
A Oh, yeah.
Q What did he tell you?
A He talked pretty clearly about, you know, Zeezrom was his biggest asset at that point in time and the home he lived in, that was like 400 something thousand.
Q Did he tell you what the value of Zeezrom was?
A No.
Q Okay. So you just knew he owned a company called Zeezrom that had assets?
A Yeah. He set up Zeezrom and he purchased all of the properties that are owned by Zeezrom and he knew what he owned.
Q How do you know he knew what he owned? Did he specifically --
A Excuse me?
Q Did he specifically tell you the

Page 151

properties that he owned, which companies were involved in it and the values of it?
A Well, first of all, I did not ask him what the values of each property were. Okay? Second of all, I did not make him list all of the LLCs owned by Zeezrom.
Q Did you have a checklist to make sure that when he told you the properties he owned, he covered everything?
A No.
Q Okay. Did you discuss that in advance with Aliecia Bores so that she could be in charge to make sure that he adequately knew the assets that he owned?
A Well, I did talk with her about what questions I was going to ask. And I did ask him to -- are you aware of what will be in your estate, and he discussed it. He did not value it, but he did identify all of his major assets. Now he did not mention jewelry or personal property as I recall.
Q What assets did he mention?
A Zeezrom and its holdings --
Q What did he --
A -- and his home.

Page 152

Q In particular I'm asking, not just Zeezrom. I want to know did he talk about what was within Zeezrom.
A Well, yes. He knows that Zeezrom is a holding company and Zeezrom owns all of the LLC commercial properties.
Q Did he mention what which LLC commercial properties he owned?
A I didn't query him on that because he's known it for years and he knew it that day.
Q Well, you didn't quiz him on it --
A No, I didn't give him a test on it.
Q -- so you assumed he knew it that day?
MS. PAYLOR: Object to the form.
A Well, he demonstrated -- excuse me. Well, he demonstrated a thorough knowledge of his assets.
Q How did he demonstrate a thorough of his assets --
A Because --
Q If I can finish. -- if he didn't tell you what the assets were that he owned?
A Well, I didn't ask him to list out every LLC owned by Zeezrom, but when Warren and I talk about Zeezrom, we know what we're talking about.

Page 153

Warren knows what he's talking about and I know what Warren's talking about.
Q Okay. How did you confirm -- how did you ensure that he was voluntarily executing the documents and that he wasn't coerced or threatened to sign them other than him telling you that he knew what his assets were?
A Well, I asked him what do you want to do with your goods, your estate, and he said, you know, he wanted to do what he said in his will and his codicil.
Q How do you know he wasn't coerced or threatened to say that?
A Well, I saw no indication that he was under any kind of duress or influence at that point in time.
Q Okay. And understanding your testimony that you saw none, that's different than taking steps to ensure that it did not happen.
A Well, that's why I discussed it with him to see if I could determine any ambivalence or doubt on his part.
Q What training have you had to determine and -- to determine and ensure that somebody is voluntarily executing a document?

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 154

MS. PAYLOR: Object to the form.
A Well, I've had the issue come up in litigation, but I am not a psychologist, so...
Q And I pulled up your - whatever from the internet when I punched in your name. We can mark it as an exhibit, Number 32.
(Thereupon, Exhibit 32 was marked for Identification.)
Q And I can't reference anywhere in here that it refers to you generally being an estate probate or trust lawyer. Sorry, is that 32 or is that 34?
A 32.
Q Okay. Is that correct? You don't advertise or put on your website that you do estate planning or trust work?
A Well, let me see if I have areas of practice.
Q There is on both of those documents.
A Well, I need to go back and look at this again because it says medical malpractice and personal injury and I don't do that kind of stuff. I am in a dental malpractice case right now, but it says probate because -- I don't market myself as an estate planner, but when one of my clients, a

Page 155

businessman comes and says can you write a will for me and my wife and I say well, you know, if it's real simple, yeah.
Q Mr. Nettles, I'll suggest to you that the laundry list that you're apparently looking at on page three of this document, page four, is the Finkel laundry list.
A Okay.
Q I'm referring to what you, under your list --
A And where is that?
Q Well, let's go through it together. On page two --
A I see it. Hold on. Is this page two of six?
THE REPORTER: I'm going to need a break.
MS. PAYLOR: It speaks for itself. How much longer do you have?
MR. SLOTCHIVER: I don't know. We're almost done, but I'm not done. Let's take a break, that's fine.
THE VIDEOGRAPHER: Off the record at 6:00 p.m.
(Thereupon, a brief recess was taken.)

Page 156

THE VIDEOGRAPHER: On the record at 6:08 p.m.
BY MR. SLOTCHIVER:
Q So what I've handed you in this exhibit is -- they're attached. There's two different electronic -- I don't know if biography is the right word. One is from the Finkel firm and the second one is what I pulled off of lawyers.com and in the Finkel Firm page, on the second page of that document, there is a listing called areas of practice.
A Wait a minute. I'm looking for that.
Q So the very second page.
A Yeah.
Q Area --
A Oh, I see it. I see it.
Q Areas of practice, and it shows business law, commercial litigation and bankruptcy. Do you see that?
A I see it.
Q Identify -- go further out of the Finkel law document, I come to lawyers.com.
A Yes.
Q And lawyers.com references that there are more and it says business law, commercial law,

Page 157

bankruptcy and six more areas of practice.
A Yes.
Q And when I go to the page two of six on that document, it shows areas of law, business law, commercial law, bankruptcy, commercial collections, mediation and arbitration, business formation, dissolution and acquisition, commercial real estate and construction; correct?
A Yes.
Q Nowhere in these areas does it list probate or trusts or estate planning; correct?
A Correct.
Q Okay. And I'm not suggesting that that's not part of your practice based on your testimony, but I would assume that you are responsible for what's listed on these different flyers?
A Well, actually on the Finkel thing, I hadn't seen that before. I would probably expand that to be --
Q Okay.
A -- about like lawyers.com.
Q Okay.
A But other than that, I don't really do marketing.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 158

Q Would it be fair to say based on the absence of probate, estate trusts and based on your comment that you sent Mr. Holliday to Heyward Carter for complex matters, that trust, probate, estate work is a minimal part of your practice, not a major part of your practice?
A Yes.
Q Okay. Then I'm done with this document. I want to talk to you for a little bit more about your affidavit, then we'll try to wrap this up.
A You promise?
Q I promise. It's -- Okay. Do you recall how it was that you were set up to go to meet Warren Holliday for purposes of having him sign the revocable trust?
MS. PAYLOR: Object to the form.
Q I'm not asking about who contacted you to create the revocation of the trust -- I'm sorry, revocation of the trust, I'm asking you who set it up for you to go to his house on September 16th -- or September 15th of 2016. Was that a communication you would have had with Ross, who I understand was home and in the --
A Probably I would ask Ross first, how is

Page 159

Warren, I want to get him to sign a document, is he, you know, feeling pretty good. I don't want to go wake him up and throw a legal document in front of him. So Ross said, well, as a matter of fact, I'm here in Charleston and he's getting physical therapy right now, why don't you come and when he gets through, we can do that. And I said fine, I'm on the way.
Q Do you recall having that conversation? Because I don't see that on your billing entry.
A I may not have billed for it, but yes, I had that conversation.
Q Okay. So Ross was in town and you had already spoken to Ross previously based on the billing records that we have about doing the revocation of the trust, so you made arrangements to go and meet with Mr. Holliday?
A Yes.
Q Okay. And were you aware of the fact that Mr. Holliday had dialysis that day prior to coming to the house?
A All I knew about was that his physical therapist guy was there.
Q Okay.
A This was in the afternoon. So he may

Page 160

have done dialysis earlier in the day. I didn't know that.
Q Okay. Is that knowledge to you now? If it's true, it's new knowledge?
A Right. I didn't know about it at the time.
Q All right. Would it surprise you to learn that not only had he done dialysis that day, but he had cut it short because he wasn't feeling well and had the ambulance bring him home?
A I don't know about that.
Q Okay. Is that something that you believe to be a routine occurrence that would happen to Mr. Holliday when he was receiving dialysis?
MS. PAYLOR: Object to the form.
A Well, there were problems with dialysis that I didn't know about the details of it.
Q You knew that it made him exhausted?
A Well, yes, since he had been on dialysis, he was usually real tired after he went through that.
Q What time was your meeting with him that day?
A I don't recall. It was in the afternoon.

Page 161

Q Okay. So we know that in the morning he went to dialysis now, I'm representing to you.
A Okay.
Q I don't believe it's disputed. That he wasn't feeling well and had the ambulance take him home.
A All right.
Q He then had the massage therapist come over.
A Okay.
Q And was finishing massage therapy when you arrived; is that correct?
A Yes.
Q Was it you that asked Ross to have the massage therapist there as a witness?
MS. PAYLOR: Object to the form.
A No.
Q How was it that -- how many witnesses do you need in order to handle a revocation?
A Two.
Q Who was the witness going to be?
A Me and Aliecia Bores.
Q Okay. So it was never planned for the massage therapist to be there?
A No.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 162

Q Okay.
A It was planned by Warren, but not by me.
Q Was it planned by Warren or planned by Ross or do you know?
MS. PAYLOR: Object to the form.
A The only thing I know is what Mr. Bosch said.
Q Okay. Now have you spoken to Mr. Bosch?
A No.
Q Have you spoken to him since that day you went to the home?
A No.
Q So when you say the only thing you know is what he says, you mean based on the affidavit he wrote?
A Yes.
Q Okay. Do you remember arriving at the home?
A Yes.
Q Did you arrive together or separate from Aliecia Bores?
A Well, we drove separate cars, but we -- she was following me.
Q What happened when you arrived at the home? Did you go straight in? Were you greeted?

Page 163

A Ross Holliday was out front --
Q Okay.
A -- outside.
Q Okay.
A I think he was going to flag me down if I went driving by the house.
Q Who was in the home other than Ross, you, Aliecia Bores, Mr. Holliday and Greg Bosch?
A That's what I recall, however, there was usually a caretaker person.
Q And that's why I asked you because I asked Greg Bosch and Aliecia Bores and I'll tell you if there was a caretaker that day, neither one of them saw a caretaker that day.
A I don't recall seeing one, but I know that --
Q There usually was one?
A -- he had one, yes.
Q Do you know why on this day there would not have been one, assuming there was not?
A Well, maybe she was there and just not in the living room or whatever.
Q Well, we asked them about that also and they said that, you know, she could be in the basement, they don't know why she would be in the

Page 164

basement --
A Yes.
Q -- or she could be in the other room, but they didn't see her and it's a small apartment and they think they would have seen her if she was there.
MS. PAYLOR: Object to the form.
A I agree that it was not a big house.
Q So theoretically someone could have been there, if they were, you didn't see them?
A Right. I do not recall seeing the caretaker.
Q Was it unusual to you to go to a house -- strike that. Never mind.
So when you arrived, Warren, as I understand it, was still undergoing physical therapy?
A Yes.
Q Okay. And when he was done, your affidavit says that: When Bosch finished, Ms. Bores and I went into the bedroom with Warren and Mr. Bosch, whom Warren had asked to remain and witness his signing the revocation document, do you see that on paragraph eight?
A Yes, I do.

Page 165

Q Okay. And is your testimony that Warren had asked him, is that based on what you were told or what you read from Mr. Bosch?
A No, that's what -- Warren introduced me to him. I think he said, I asked him to stay around for this or something like that.
Q Okay. And I will tell you we've had testimony from -- about Ross being in the condo at the same time from both Aliecia Bores and from Greg Bosch and about his walking -- her affidavit says that when she walked in, he was behind her. Her testimony is that once she walked in, she wasn't paying attention to him, she was paying attention to Mr. Holliday. Greg Bosch testified that he was on the other side of the bed and he saw Ross walking back and forth by the door.
MS. PAYLOR: Object to the form.
Q Do you have any recollection where Ross was at the time?
A Well, he was not walking back and forth in the bedroom. I know that.
Q Outside of the door of the bedroom is what Greg Bosch testified to.
MS. PAYLOR: Object to the form.
A Well, I think that's where he was.

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 166

Q Okay. Fair enough. And my understanding is that from the vantage point of Mr. Holliday laying in the bed, he could see the room, he could see you, he could see Greg Bosch next to him, he could see Aliecia Bores by the door; correct?
A Yes.
Q And he could see behind her and he'd be able to see Ross going back and forth by the door?
MS. PAYLOR: Object to the form.
A I think he would be able to see Ross when Ross was --
Q Walking back and forth?
A Yes.
Q You weren't paying attention to that yourself?
A You're right. Just like Ms. Bores, I was carrying on a conversation with Warren.
Q Okay. You say -- moving to number ten: I began asking Warren several questions that are typical in my estate planning practice. I asked him if he remembered who I was. He replied he did. I introduced him to Ms. Bores.
Let's move down. On C, and I think we've clarified this through other questions and

Page 167

answers we've gotten, but I want to make sure your answer hasn't changed. I asked Warren if he knew what property and other assets he owned and Warren was able to clearly and fully explain the extent and nature of his properties.
I think you and I have discussed pretty good about his response of what he explained when it came to his properties; is that correct? Do you stand by your previous testimony?
A Yes.
Q Okay. You state that you watched --
A Where are we?
Q Number 13, I'm sorry. Number 13, you watched Warren sign the revocation to the 2008 revocable trust while laying on his back and holding the document up above himself. I could see that this was a somewhat awkward position in which to sign it.
Can you demonstrate what you mean? I'm not asking you to lie down, but if you can demonstrate --
A Warren was in his bed and there were several pillows. So he wasn't flat on his back. He was kind of sitting up and I handed him the document, the revocation, on top of a legal pad and

Page 168

he held it up like this and I said right there above your printed name and he said okay, and he wrote his name like from this position like that.
Q Okay. Number 14, I'll spend a few moments with this one to make sure I totally understand it.
THE REPORTER: I can't hear you.
Q I'm sorry. I apologize. I don't like the masks.
I had no concerns that Warren did not understand what he was doing as he exhibited full comprehension of the documents being signed. What -- how did he exhibit full comprehension?
I'm always thinking about the case where someone says I know what they meant. I'm like how do you know what they meant if you're not inside their head.
MS. PAYLOR: Object to the form.
Q I want to understand what you mean when you said he exhibited full comprehension of the document being signed.
A Well, in my discussion with Warren that day at that time, I told him -- I discussed with him the will, the codicil, the 2008 revocable trust and this revocation and I asked him questions and we

Page 169

talked about it and he never exhibited any doubt about what we were doing and what his intent was and this is what he wanted to do.
Q All right. So just to be clear, is your statement that he exhibited full comprehension, is that predicated on the fact that he never exhibited any doubt?
MS. PAYLOR: Object to the form.
A Well, one way I determined that he comprehended the document was our discussion and the several questions and he also -- I watched him read it and then he signed it.
Q Well, the next thing you say is that: He understood and appreciated what he was doing that day. How do you know what he understood?
A I'm not a mind reader, you're right about that.
Q Okay. And I ask you part of these because Mr. Bosch's testimony was a little bit different about what happened at the will signing. And I'll represent to you that what he said was that Warren asked if what he wanted was in the documents and you said yes and you showed him particular paragraphs to read and then he read them. And so I'm trying to understand how all of these reconcile

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 170

and maybe that's what happened. Is that your recollection also?
A Well, I did go over specific sections of the revocation, and then after I pointed them out to him, I asked Warren to read them and then I said now do you have any questions and we went from there.
Q Okay. All right. Let me talk to my co-counsel for a moment, then we're going to be done. Okay?
THE WITNESS: I'm holding my breath.
THE VIDEOGRAPHER: Off the record at 6:26.
(Thereupon, a brief recess was taken.)
THE VIDEOGRAPHER: On the record at 6:30.
MR. SLOTCHIVER: Mr. Nettles, I have no further questions for you unless there's anything that you recall that we have not discussed that you want to address, otherwise, I'll pass the deposition over to Ms. Paylor to ask you any questions that she may have.
MS. PAYLOR: I have no questions.
BY MR. SLOTCHIVER:
Q Anything else that we failed to address

Page 171

that you believe germane that we should be talking about today?
A No.
Q Okay. Thank you very much.
THE VIDEOGRAPHER: This concludes the video deposition. The time is 6:30. We're off the record.
THE REPORTER: Ms. Paylor, do you want a copy?
MS. PAYLOR: Yes.
THE REPORTER: Copy of all three?
MS. PAYLOR: Yes.
THE REPORTER: And Mr. Slotchiver, are you ordering?
MR. SLOTCHIVER: Are we ordering? Yes.
THE REPORTER: All three?
MR. SLOTCHIVER: Oh, yes.
THE VIDEOGRAPHER: Do you want the video for all three?
MR. SLOTCHIVER: I think we will. We want videos of all three of the depositions; correct? I don't know. Let's hold off on the videos. I'm going to start with the written.
(Thereupon, the deposition concluded at 6:30 p.m.)

Page 172

CERTIFICATE OF REPORTER

COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA)

I, Elizabeth Drumm, Registered Professional 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 [illegible] eof.
WI[illegible]FFICIAL SEAL this 9th day of Aug[illegible]rleston, County of Charlest[illegible]

Elizabeth L. Drumm NOTARY PUBLIC SOUTH CAROLINA

ELIZABETH DRUMM, RPR, CCR
South Carolina Notary Public
My Commission Expires:
May 28, 2029

Page 173

INDEX

F. TRUETT NETTLES PAGE

Examination by Mr. Slotchiver 3
Reporter's Certificate 173

EXHIBITS

IDENTIFICATION PAGE

Exhibit 1 (2/1/18 Crowley letter) 5
Exhibit 2 (privilege log) 9
Exhibit 3 (7/10/02 Nettles letter) 13
Exhibit 4 (e-mail chain) 15
Exhibit 5 (4/15/13 Ross Holliday e-mail) 21
Exhibit 6 (e-mail chain) 25
Exhibit 7 (4/29/13 Nettles e-mail) 26
Exhibit 8 (e-mail chain) 29
Exhibit 9 (5/16/13 Carter letter) 36
Exhibit 10 (Financial Arrangements Agreement) 38
Exhibit 11 (5/29/13 Fougerousse e-mail) 41
Exhibit 12 (5/29/13 Nettles letter) 42
Exhibit 13 (8/12/13 Nettles letter) 43

ELECTRONICALLY FILED - 2020 Sep 01 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

E X H I B I T S

IDENTIFICATION	PAGE
Exhibit 14 (9/27/13 Nettles e-mail)	46
Exhibit 15 (e-mail chain)	47
Exhibit 16 (e-mail chain)	50
Exhibit 17 (10/4/13 Nettles e-mail)	58
Exhibit 18 (6/4/15 Nettles e-mail)	63
Exhibit 19 (7/7/15 Nettles e-mail)	73
Exhibit 20 (e-mail chain)	75
Exhibit 21 (6/23/15 Nettles e-mail)	77
Exhibit 22 (e-mail chain)	83
Exhibit 23 (mistakenly omitted)	
Exhibit 24 (handwritten note)	88
Exhibit 25 (handwritten note)	93
Exhibit 26 (1/5/16 Nettles e-mail)	97
Exhibit 27 (e-mail chain)	101
Exhibit 28 (8/29/16 Carter e-mail)	110
Exhibit 29 (9/7/16 Nettles e-mail)	112
Exhibit 30 (legal billing statement)	130
Exhibit 31 (affidavit)	142
Exhibit 32 (Finkel website)	154

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

COUNTY OF CHARLESTON STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430
PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	)	**RESPONDENTS' SECOND AMENDED MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Respondents hereby move this Court for an order granting them summary judgment on all causes of action in the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

above-referenced matter. This Motion[1] is based upon the grounds that none of Petitioners were present on September 15, 2016 when decedent Warren Holliday executed the Revocation at issue was executed, nor have they listed any other witness who was present that support incapacity.[2] Instead, all of the evidence shows that Warren Holliday acted as if the 2008 Revocable Trust ceased to exist after his divorce to Patricia Holliday, and he made the final changes to his estate plan accordingly. Similarly, Petitioners do not have any evidence of undue influence as they have no admissible evidence of restricted visitation, coercion, or threats made to Warren Holliday to influence his testamentary acts. Because Petitioners do not have any evidence to support their claims, and the material facts are undisputed, Respondents are entitled to judgment as a matter of law.

UNDISPUTED FACTS

On October 29, 2008, the now deceased Warren and Patricia Holliday, who were married at the time, each executed a revocable trust agreement prepared by attorney Heyward Carter. In Warren's agreement, he was the Settlor and Trustee. This agreement provided that, on Warren's death, if he predeceased Patricia, the trust's assets, which included Zeezrom, LLC as its primary asset, would go to Patricia during her life and, upon her death, would go to the couple's four children, Mark Bennett Holliday, Pamela Holliday Wallin, Ross Holliday and Lea Holliday, in equal shares. See Exhibit A, 2008 Revocable Trust. On the same day, both Warren and Patricia executed Powers of Attorney granting their son, Ross Holliday, each party's power of attorney.

---

[1] Respondents initially filed their Motion for Summary Judgment and Memorandum in Support of the same on June 2, 2020. Due to the evolution of the case, Respondents filed an Amended Motion for Summary Judgment and Memorandum in Support of the same on September 1, 2020. Because the case has further developed since September 1, particularly the completion of Ross Holliday's deposition, Respondents now file this Second Amended Motion for Summary Judgment and Memorandum in Support of the same. To avoid any confusion, the Court can now ignore Respondents' prior filings regarding summary judgment and place its focus on this filing.

[2] Because Petitioners were not there at the time of execution, they cannot meet their burden to show that Warren Holliday lacked the requisite testamentary capacity. See, e.g., Ballenger v. City of Inman, 336 S.C. 126, 132, 518 S.E.2d 824, 827–28 (Ct. App. 1999) (finding that a daughter's testimony that her mother lacked capacity did not meet her burden to prove her mother lacked capacity to execute deed).

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

On December 9, 2013, after 47 years of marriage, in a divorce proceeding initiated by Patricia, Patricia and Warren were divorced. The parties entered into a Marital Settlement Agreement, which divided all marital assets and provided for the support of Patricia through a marital trust which provided her $16,000 per month in payments from Warren's company, Zeezrom, LLC[3], as well as a life insurance policy on Warren, payable to her at his death. During the divorce, Ross and Lea Holliday assisted their father who was suffering serious physical health issues, and Pamela and Mark assisted their mother. See Exhibit B, Affidavit of Ross Holliday; Exhibit C, Deposition of Ross Holliday (Day 2), p 25.

Thereafter, Warren executed a will, dated March 21, 2014, in which he allocated 40% of his assets to Ross, 40% to Lea, 15% to Mark, and 5% to Pamela. See Exhibit D. This will did not mention the 2008 Revocable Trust.[4] On January 7, 2016, Warren executed a First Codicil to that will in which he specifically bequeathed $300,000 to Mark and $100,000 to Pamela, with the remainder to be split equally between Ross and Lea. See Exhibit E. The Codicil has an *in terrorem*, or "no contest" clause, which provides that Warren "specifically disinherits" any person (and their descendants) who "directly or indirectly, contest or attacks the validity of this [Codicil], or claims undue influence, fraud, menace, duress or lack of testamentary capacity or otherwise objects to the administration of my estate or any actions taken by the personal representative of my estate…."[5] Id.

When Warren learned that the Trust might still be valid, he discussed it with his lawyer, Truett Nettles, and asked Mr. Nettles to prepare a Revocation of the Trust for him to sign. See

[3] The same Zeezrom that Petitioners contend has been in the Revocable Trust since the Trust's creation in 2008.

[4] Respondents presumed the trust was no longer valid because the will acted to revoke the 2008 Revocable Trust. See Ross Holliday Deposition, pp. The disposition of property in the 2008 Revocable Trust directly conflicts with the disposition set forth in the 2014 Will.

[5] Petitioners have violated this clause by objecting to the administration of Warren's estate and actions taken by Ross, his Personal Representative and will have to return the funds previously disbursed to them.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Exhibit F, Deposition of Truett Nettles, p. 117-118. On September 15, 2016, Warren executed a Revocation of Warren P. Holliday Revocable Trust at his home in front of four witnesses: Truett Nettles, Aliecia Bores, Greg Bosch, and Ross Holliday. See Exhibit G; see also Exhibit H, Deposition of Greg Bosch; Exhibit F, Deposition of Nettles; Exhibit I, Deposition of Aliecia Bores; Exhibit C, Deposition of Ross Holliday.

On September 23, 2016, while Warren Holliday was at MUSC hospital, Petitioner Pamela Wallin visited him and repeatedly told the medical staff that her father made his own decisions, and their questions should be directed to him. See Exhibit J, MUSC Records, MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection.**" (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). MUSC discharged Warren to his home where he died on September 28, 2016.

Respondent Ross Holliday filed the last will and codicil to the will, and the Probate Court appointed him as Personal Representative in accordance with the instructions of the will. In accordance with the terms of the will and codicil, Ross handled the estate and disbursed the specific devises of $300,000 and $100,000 to Mark and Pamela, respectively. Ross further devised the remainder of the estate 50% to Lea and 50% to Ross in accordance with Warren's directives in his estate planning documents. See Ross Holliday Affidavit (included in Exhibit C).

On September 19, 2018, almost two (2) years after Warren's death, Mark and Pamela filed this action seeking to set aside the Revocation of the 2008 Revocable Trust for incapacity

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

and undue influence and for other, related relief. [6] This lawsuit asks that the Court disregard the testator's intentions in his 2014 will and 2016 codicil—both of which show that Warren wanted to treat Ross and Lea differently than Mark and Pamela, putting these testamentary documents in direct conflict with the 2008 Trust—and reinstate the 2008 Revocable Trust, so that Mark and Pamela can recover more than their specific bequests.

Mark and Pamela claim that their parents vowed to treat all of the children equally when the 2008 Trust was created. Despite this claim, Mark, as Personal Representative for his mother, who passed away on February 23, 2020, refused Ross and Lea's request for a copy of her estate planning documents, and informed them that they were intentionally not named as beneficiaries by their mother. See Exhibit K, Affidavit of Alice Paylor.

LEGAL ARGUMENT

I. Warren Holliday possessed the requisite testamentary capacity to execute the 2014 Will, the 2016 Codicil, and the 2016 Revocation of Trust.

South Carolina law highly disfavors "restrictions upon a man's right to dispose of property in any way his partialities, pride, or caprice may prompt him." Hellams v. Ross, 268 S.C. 284, 290, 233 S.E.2d 98, 101 (1977). S.C. Code § 62-7-601 provides that "[t]he capacity required to create, amend, revoke or add property to a revocable trust … is the same as that required to make a will." § 62-2-502 states that "[a]n individual who is of sound mind and who is not a minor … may make a will."

The Probate Code further establishes the burdens in contested cases in § 62-3-407:

> …Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

[6] All of the other requested relief depends on a finding that Ross and/or Lea tortuously interfered with their father's estate plan.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

In In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997), the South Carolina Court of Appeals heard an appeal from the decedent's son that his mother did not have capacity to execute the will filed for probate. The Court stated the applicable law in South Carolina:

> The test of whether the testatrix had the capacity to make a will is whether she knew (1) her estate, (2) the objects of her affections, and (3) to whom she wished to give her property…. However, the legal test for determining whether or not a person has sufficient mental capacity to dispose of her property by will does not include the proviso that she must have a reasonable basis on which to found her like or dislike of the natural objects of her bounty…. Further, the "capacity to know or understand, rather than the actual knowledge or understanding, is sufficient." 94 C.J.S. Wills § 15(c) (1956).

329 S.C. at 263, 495 S.E.2d at 461 [citations omitted].

In an earlier case cited in Weeks, the South Carolina Supreme Court held similarly:

> The fact alone that the testator disposed of property contrary to what others usually consider fair is not sufficient to declare his will void…. "The right to make a will carries with it the right to disregard what the world considers a fair disposition of property. In [an earlier case], we find: 'That a will is unjust to one's relations is no legal reason that it should be considered an irrational act. The law puts no restrictions upon a man's right to dispose of his property in any way his partialities, or pride, or caprice may prompt him.'"

Hellams v. Ross, 268 S.C. 284, 290, 233 S.E.2d 98, 101 (1977).

In Lee's Heirs v. Lee's Executors, 4 McCord 183, 17 Am. Dec. 722 (1827), our Supreme Court was asked to invalidate a will executed by a man who believed in witches, devils, and evil spirits; wore unusual clothes, slept in a hollow log, and exhibited other extreme behavior. The Court found that he had capacity to execute a will, noting that to void a will by insanity, the proponent had to show that the testator was insane at the time of execution of the will despite the fact that the will was unjust to his family. The Court further found that the fact or belief that a will is unjust to the family is not a legal reason to consider its execution an irrational act.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

It is well established that the degree of capacity necessary to execute a will is less than the degree of capacity to execute a contract:

> [T]he well established general rule [is] that ordinarily one need not have full mental contractual capacity in order to make a valid will; the criteria are different. Kirkwood v. Gordon, 7 Rich. 474, 62 Am. Dec. 418; Gable v. Rauch, 50 S.C. 95, 27 S.E. 555; Matheson v. Matheson, 125 S.C. 165, 118 S.E. 312. It is said in the note in 27 L.R.A., N.S., at page 54, with digests of many sustaining authorities, as follows: "The rule generally adopted is that a lower degree of capacity than is necessary for the execution of a deed or contract will suffice for the making of a will."

In re Estate of Weeks, *supra;* Banks v. McCollum, 213 S.C. 476, 483-84, 50 S.E.2d 199, 200 (1948). In addition, the Weeks Court cited from 94 C.J.S. Wills §27(a) (1956):

> Not every weakness incident to the ravages of age unfits a person for making a will. So, an aged person is not incapacitated by failing or defective memory, or partial loss of memory, absent-mindedness, nervousness, failure to recognize old friends, relatives, or members of the testator's family, inability to recognize acquaintances, a liking for dwelling on happenings of the past, pain and suffering, vacillating judgment, childishness, untidy habits, slovenliness or untidiness [sic] in dress, eccentricities or peculiarities, as in habit or speech, even though they may indicate a failing mentality, or even delusions or hallucinations if they do not affect the execution of the will….

Indeed, a personal guardian and conservators had been appointed for Mrs. Weeks prior to her execution of the will at issue and the Court found that "a person is not incompetent to make a will because he has been adjudicated to be of unsound mind, or insane…" One of Mrs. Weeks' court appointed examiners testified that he believed that Mrs. Weeks did need guidance in the handling of her day-to-day business affairs but that she was capable of making major decisions concerning her property and was competent to make a will. The Court noted that, at the time of execution of the will, Mrs. Weeks understood and explained that she was leaving her son the sum of $1.00 to indicate that she knew of his existence but chose not to leave him anything. The Court upheld Mrs. Weeks' capacity to execute a will and to disinherit her son.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

In the case before the Court, Warren Holliday executed a will on March 21, 2014, a copy of which is attached hereto as Exhibit D, stating in pertinent part:

> The bequest to each child is intentionally and purposely disproportionate and unequal. In administering my estate, and allowing for payment of all lawful liabilities thereof, my Personal Representative shall allocate and distribute assets into four, separate and unequal shares as follows: 5% to my daughter Pamela Giselle Holliday Wallin; 15% to my son Mark Bennett Holliday 40%; to my son Warren Lea Holliday; and 40% to my son Ross Samuel Holliday.

Warren Holliday executed a Codicil to that will on January 7, 2016. It stated in pertinent part:

> In my Will dated March 21, 2014, I made a bequest and devise to each of my four children which were intentionally and purposely disproportionate and unequal. The bequests were based on a percentage share in the assets of my Estate. Since the execution of that Will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personal and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets. I therefore wish to amend ITEM II of my said Will by deleting and revoking it as originally written and by substituting in lieu thereof the following six Items…

Warren Holliday specifically devised $300,000 to Mark Holliday and $100,000 to Pamela Wallin. A copy of this Codicil is attached hereto as Exhibit E. It also contains an *in terrorem*, or "no contest" clause, which provided that any beneficiary who directly or indirectly attacks the validity of the will or otherwise interferes with the administration by the Personal Representative shall receive nothing. The estate distributed the funds bequeathed prior to the bringing of this action. Neither Pamela nor Mark have directly attacked the validity of the Will or Codicil. Instead, in an attempt to get around the *in terrorem* clause in the Codicil, they elected to attack Warren's Revocation of his 2008 Revocable Trust, which he clearly thought had been revoked by his subsequent will and codicil. In any event, Petitioners have taken numerous actions to interfere with the administration of the estate in accordance with the will by Warren's chosen Personal Representative.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Applying the law to the facts, the Court must look to the testamentary act in question, which was the execution of the Revocation of the Revocable Trust to determine whether Warren had testamentary capacity at that time to revoke the trust. All of the relevant witnesses have testified that Warren knew what he owned, that he knew his children, his beneficiaries, and that he knew to whom he wanted to give his assets. See Affidavits and Depositions of Greg Bosch, Aliecia Bores, Truett Nettles and Ross Holliday. The bar for testamentary capacity is very low as set forth in the legal precedent above. There is no question that Warren possessed legal testamentary capacity to sign the trust revocation on September 13, 2016. The medical records from MUSC after September 15, 2016, which describe Warren's state when he was close to death, unequivocally show that not only did Warren possess the requisite testamentary capacity, but Petitioner thought so as well. Petitioner Pamela was with her father at MUSC and repeatedly told the caregivers that her father made his own decisions when asked questions about what care should be provided. See, e.g., MUSC 07906 ("The above was explained to patient, daughter, and caregiver. They were appreciative of the explanations and the patient is able to make all of his own decisions…**The daughter states it is up to her father but she would like to see what the final reports are regarding the testing for the source of infection.**" (emphasis added); MUSC 07911 ("The patient is aware he can go home with hospice if he chooses and states he will think about doing this over the weekend. **The daughter defers to her father and states he makes his own decisions.**") (emphasis added). This same daughter now asserts that her father did not have testamentary capacity *prior* to the times when she told medical personnel that he had capacity to make his own medical decisions. In addition to Pamela's statements that she believed he was competent, MUSC's staff made similar statements. See MUSC 07879 ("[H[e is alert and oriented to person, place, and time") (September 19, 2016); MUSC 07906-07911 ("The patient

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

was alert and states he makes his own decisions.") ("Patient alert and answering question appropriately-daughter deferred to the patient-states he makes his own decision") (September 23, 2016); MUSC 07987 ("Mr. Holliday describes life as a test and is unlikely to withdraw from dialysis.") (September 24, 2016); MUSC 07972 ("The patient has been very clear that he does not want to stop dialysis – this is not consistent with his goals of care") (September 25, 2015).

The witnesses to the execution of the revocation document included a disinterested person, Greg Bosch, Warren's personal trainer and massage therapist. He worked with Warren twice a week for around two (2) years. Bosch was present working with Warren on September 15, 2012, when Warren asked him if he would serve as a witness to the execution of the Revocation in case anyone ever challenged his will. Bosch has stated under oath that Warren told him that "people are not going to be happy when they find out what I left them" and that Warren wanted him to be able to testify that "Mr. Holliday knew exactly what he was doing." Warren specifically told him that his daughter Pamela would not be happy even though he was not cutting her out, but he was not giving her more because she had a well-off husband who could take care of her. In addition, Warren told him that he did not want his daughter to give any money to his ex-wife and he believed that would occur if he left her more money. Warren told him that he was leaving the bulk of his Estate to two of his three sons, and his third son would not be happy either, but it was his choice to leave it to his two other sons. See Bosch Affidavit and Deposition.

The testimony of Mr. Bosch, who does not have a dog in this fight, unequivocally supports Warren Holliday's capacity to perform testamentary acts because, on the day of the execution, Mr. Holliday told him about his plan for his estate and the reasoning behind it. None of the Petitioners were present at the execution of the revocation, and they have listed no other

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

witness who was present that will support incapacity. Petitioners, who have no knowledge of his capacity at the time of execution, can not meet their burden by merely stating that they believe he was incapacitated. See, e.g., Ballenger v. City of Inman, 336 S.C. 126, 132, 518 S.E.2d 824, 827–28 (Ct. App. 1999) ("We agree with the master that Rookard's testimony was inconclusive regarding her mother's capacity to understand the petition for annexation. We find Ballenger failed to meet her burden of proving Kelly's lack of capacity to sign the petition for annexation."). Based on the legal precedent set forth above, **there can be no question of fact as to whether Warren Holliday had testamentary capacity to execute the trust revocation**, and Respondents are therefore entitled to summary judgment as to the Petitioners' claim in Paragraph 56 of the Complaint that states "Since Mr. Holliday did not have the capacity to revoke the Trust, the Revocation was ineffective, and the Trust is still viable."[7]

Warren Holliday possessed testamentary capacity to execute the trust revocation on September 15, 2016, so Respondents are entitled to summary judgment as to all of Petitioners' claims based on his alleged incapacity (Second through Seventh Causes of Action).

II. Prior to the execution of the September 13, 2016 Revocation, Warren Holliday's intent to revoke the 2008 Revocable Trust was manifested in multiple ways.

South Carolina Section 62-7-602 governs the available methods to revoke or amend a revocable trust created ***after*** January 1, 2014. See S.C. Code Ann. § 62-7-602(a). For revocable trusts created ***prior*** to January 1, 2014, like the 2008 Revocable Trust at issue, "any mode sufficiently showing an intention to revoke" is effective so long as the terms of the trust grant the settlor the authority to revoke it. See Reporter's Comment, S.C. Code Ann. § 62-7-602(a) (citing Peoples National Bank of Greenville v. Peden et al., 229 S.E. 2d 163 (S.C. 1956)); see also Restatement (Third) of Trusts § 63 (2003) ("[A] definitive manifestation by the settlor during life

[7] There is no separate cause of action alleging lack of capacity.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

of his or her intention that the trust is thereby revoked is sufficient."); see, e.g., Macfarlane v. First Nat'l Bank of Miami, 203 So.2d 57, 60 (Fla. 3d DCA 1967) ("No magic art is necessary to revoke a trust .... [A]ny mode sufficiently manifesting an intention of the trustor to revoke is effective") (citing Restatement (Second) of Trusts). Article 3 of the 2008 Revocable Trust at issue expressly states that the Settlor has the right to revoke or modify the terms of the Trust. See Exhibit A, 2008 Revocable Trust, p. 3. As demonstrated below, Warren Holliday's terminated the 2008 Revocable Trust in more ways than one.

First, the 2014 Will, the validity of which Petitioners do not contest, directly conflicts with the 2008 Revocable Trust. The relevant provision, Item II, which comes immediately after the section that directs payment of taxes, debts, and expenses, is inserted below verbatim because its language is so clear that there can be no question Warren Holliday did not want the 2008 Revocable Trust to exist, and further, that he believed it had terminated.

> All the rest, residue and remainder of my estate, real and personal, and mixed, stocks, bonds, chooses in action and mortgages of every nature and description of which I may die seized and possessed, or of, in or to which I may at the time of my death have any right, title, claim, interest, demand or estate whatsoever, either legal or equitable, or over which I may have any power of appointment, I do hereby give, devise and bequeath unto my surviving children PAMELA GISELLE HOLLIDAY WALLIN of Sunnyvale, California, MARK BENNET HOLLIDAY of Draper, Utah, WARREN LEA HOLLIDAY of South Jordan, Utah and ROSS SAMUEL HOLLIDAY of Draper, Utah, the child or children of a deceased child to take his, her or their parents share equally per stirpes. The bequest to each child is intentionally and purposely disproportionate and unequal. In administering my estate, and allowing for payment of all lawful liabilities thereof, my Personal Representative shall allocate and distribute assets into four, separate and unequal shares as follows: 5% to my daughter Pamela Giselle Holliday Wallin; 15% to my son Mark Bennett Holliday; 40% to my son Warren Lea Holliday and 40% to my son Ross Samuel Holliday. See Exhibit D, Last Will and Testament Warren P. Holliday, p. 1.

The provision above likely needs no explanation. Warren Holliday's 2014 Will directs the Personal Representative to allocate and dsitribute **all of his real and personal assets** (and even goes beyond that to delineate every type of property that he may have) to each child based on the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

specific percentage that he selected. By contrast, the 2008 Revocable Trust gives his property to his wife for her life, and then to his children equally. It would be utterly illogical for Warren Holliday to draft a Will specifically giving his children a fixed percentange of his assets if he believed the 2008 Revocable Trust was still in existence because the Trust would have the opposite result of what he directed in his 2014 Will as it would split the assets equally between the children after Patricia's death.

A second example of Warren's intent to revoke the Trust is his divorce settlement with Patricia Holliday and the related property agreement. See Bogert's The Law of Trusts and Trustees § 1002 ("Where the settlor does not fix any definite term for the trust, the assumption is that the trust was intended to last only until the trust purpose is accomplished."). The settlor's purpose is to be determined by the court from a consideration of the language of the instrument and, if the language is ambiguous or incomplete, from the circumstances of the settlor and the beneficiaries at the time the trust was created. Id. If the main object of the trust has been attained, the trust will not be continued in order to achieve an incidental or minor purpose. Id.

The purpose of the 2008 Revocable Trust was to provide for Patricia Holliday. It is undisputed that Patricia and Warren went to attorney Heyward Carter to have revocable trusts drafted as part of their estate plan. See Exhibit L, Deposition of Heyward Carter. Naturally, when Patricia and Warren Holliday obtained a divorce, the entire purpose of Warren's 2008 Revocable Trust was no longer necessary. It is a well accepted principle of trust law that a trust which designates a spouse as a beneficiary is terminated upon divorce. See, e.g., Estate of Coleman, 129 Cal. App. 4th 380, 28 Cal. Rptr. 3d 282 (3d Dist. 2005) (citing Bogert's The Law of Trusts and Trustees § 1001). In fact, the Marital Settlement Agreement of Warren and Patricia Holliday is a clear manifestation of Warren's intention for the termination of the 2008

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Revocable Trust. See Exhibit M, Order of Judge Jefferson.[8] Not only is this consistent with trust law, but any other result would be impractical because Warren Holliday used property that was purportedly in the 2008 Revocable Trust to fund the Marital Trust of Patricia Holliday. See Restatement (Third) of Trusts § 61 (2003) ("For example, if the settlor transfers property in trust for the support of a designated beneficiary for life and then for the benefit of another or others absolutely, the inference from the terms of the trust is that the settlor intended the trust to terminate on the life beneficiary's death even though that time of termination or distribution is not stated in specific language."); see also Bogert's The Law of Trusts and Trustees § 1001 n. 26 ("A revocation can occur when a settlor conveys property to a third person that covers the trust property.").

As a third reason, a settlor can revoke a revocable trust by communicating his intention to terminate the trust to his trustee. State Bank of Parsons v. First Nat. Bank in Wichita, 210 Kan. 647, 504 P.2d 156 (1972) (holding that the settlor's act of telling the trustee that he wished to terminate the trust "just as soon as practicable" was sufficient to revoke the trust). Warren's lawyer, Truett Nettles, testified that Warren believed the 2008 Revocable Trust had been terminated in the divorce, and that he told Ross Holliday (his trustee) that he wanted it to be terminated. See Deposition of Truett Nettles, p. 117-118 ("[T]he impression I got in talking to Warren was he thought the divorce and the new will and the codicil all just superseded or did away with all of that earlier stuff."). Ross Holliday testified similarly. See Deposition of Ross (Day 2), p. 32 ("I thought, and I think my father thought, that the trust with the divorce was void and null.").

[8] The Honorable Judge Jefferson ruled that the Marital Settlement Agreement of Patricia and Warren Holliday barred Patricia from recovering anything of value from Warren Holliday because the Marital Settlement Agreement disposes of all issues regarding the property of Warren and Patricia Holliday.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

In addition to the 2016 Revocation, Warren Holliday manifested his intent to revoke the 2008 Revocable Trust in at least three ways. A finding that the 2008 Revocable Trust is still valid would go against every document signed by Warren Holliday that concerned his property since his divorce with Patricia Holliday. Because all the documents and evidence in the case show Warren Holliday intended to revoke the 2008 Revocable Trust, Respondents are entitled to summary judgment as to all causes of actions regarding the Trust's existence.

III. Petitioners cannot meet their burden on their undue influence claim because they do not have a shred of evidence that Respondents unmistakably and convincingly substituted their will for Warren's.

In their claim entitled "First Cause of Action," Petitioners assert "upon information and belief" a number of allegations that have no basis in fact, and there is not even a scintilla of evidence that Warren executed the trust revocation because he was subject to undue influence. Petitioners have presented no evidence to support any of their claims that anyone substituted his will for that of Warren Holliday and somehow forced him to do something that he did not want to do. None of the indicia of undue influence are present in this case, and the allegations are mere conjecture by the disgruntled children who chose not to spend time with their father at the end of his life.

The South Carolina Court of Appeals has defined what must be proved to establish "undue influence" to set aside a will:

> "The mere existence of influence is not enough to void a will as all influences are not unlawful. For influence to vitiate a will, it must destroy free agency and amount to force and coercion." Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993). "Circumstances must unmistakably and convincingly point to the substitution of another's will for that of the testator." Id. Evidence of undue influence may include "threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." Id. "A contestant must show that the influence was brought directly to bear upon the testamentary act." Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "General influence is not enough." *Id.*

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

> The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence. Howard v. Nasser, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005). If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence. *Id.* "We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, **the contestants of the will still retain the ultimate burden of proof to invalidate the will**." Id. [Emphasis added.]

Hairston v. McMillan, 387 S.C. 439, 446-47, 692 S.E.2d 549, 553. (Ct. App. 2010).

> Our appellate courts have discussed the burden of proof in an undue influence case:
>
> "[I]n cases requiring a heightened burden of proof . . . the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003).

Swiger v. Smith, 426 S.C. 408, 415, 827 S.E.2d 200, 203 (Ct. App. 2019). Thus, Petitioners must submit "more than a scintilla of evidence" that Respondents unmistakably and convincingly destroyed the free will of the testator and supplanted their own to defeat this motion. Because Petitioners do not even have a scintilla of evidence, Respondents are entitled to summary judgment as to the undue influence claim regarding Warren's trust revocation.

In the recent case of Swiger v. Smith, the South Carolina Court of Appeals affirmed the Probate Court's and the Circuit Court's grant of summary judgment to beneficiaries who were accused of exerting undue influence on the decedent. The claims are the same as those made in the present action by Petitioner. The Swiger Court gave a thorough summary of the controlling

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

law in an undue influence case and found that the claimants had failed to produce sufficient evidence to get beyond summary judgment. Petitioners have failed in the present action as well.[9]

Petitioners have presented no competent evidence to support their assertion that Ross and Lea unduly influenced their father. In fact, Petitioners have failed to put forth any evidence that Respondents influenced their father to revoke the trust, let alone *unduly* influenced him to do so. There is no evidence that Respondents even asked their father to revoke the Trust; instead, all the evidence shows that Warren did not want to treat his children the same, and revoking the Trust was means to that end. Ironically, as both Greg Bosch and Warren's lawyer, Truett Nettles, testified, Warren had the foresight to realize exactly what was going to happen after his death – his daughter and his third son would contest his decisions because they were not treated the same.

Again, Petitioners were not present at the execution, and the case law requires that the undue influence be exercised on the testamentary act, which in this case was Warren's execution of the trust Revocation. Petitioners have not presented *any* evidence of restricted visitation, coercion, or threats made to Warren to influence his decisions. Although Ross was Warren's power of attorney and, thus, in a fiduciary relationship with him, all of the witnesses present state that he did not do anything to "force" or "coerce" his father to leave the bulk of his assets to Lea and him. There is not a single case in South Carolina where a court found undue influence solely because a fiduciary relationship existed between the testator and the beneficiary; there must be some evidence of a restricted visitation, coercion, or a threat.[10] See Gordon v. Busbee, 397 S.C.

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[9] In an unreported 2017 case, the South Carolina Court of Appeals affirmed the grant of summary judgment in another undue influence action similar to the matter before the Court. Langley v. Lynch, 2017 WL 4621154, a copy of which is attached hereto.

[10] Motive or opportunity alone, if proved, does not justify submitting a question of undue influence to a jury unless there is additional evidence that such influence was actually utilized to procure the testamentary act in question. In re Last Will and Testament of Smoak, 286 S.C. 424, 334 S.E.2d at 809; see also Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976); Howard v. Nasser, 364 S.C. at 289, 613 S.E.2d at 69. As the South

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012) ("While the fiduciary may have the burden to offer some evidence to establish a lack of undue influence, or in this case the validity of the transfers, the ultimate burden of proof remains with the complaining party unless the fiduciary offers no evidence to rebut the relevant presumption.") (emphasis added). There is no evidence that Ross and Lea kept Pamela and Mark away from their father. The evidence is actually the opposite as it was Ross who text messaged Mark about his father's health and told him to come if he wanted to see him before he died. Petitioners have no evidence, much less the "unmistakable and convincing evidence," required to prevail in their claim.

Respondents are entitled to summary judgment as to the First Cause of Action alleging undue influence.

IV. Because all of the remaining causes of action are all prefaced on either a finding of tortious conduct or that the Revocable Trust was not revoked, Respondents are entitled to summary judgment as to those causes of action.

Petitioners' remaining causes of action for Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment can be summarily dismissed if the Court finds that the 2008 Revocable Trust was revoked (whether by the 2016 Revocation, the 2014 Will, or through Warren's actions manifesting his intent to revoke), and did so free of undue influence.

First, *Intentional Interference with Inheritance* (IIWI), which South Carolina has not adopted as a cause of action, requires a (1) the existence of an expectancy (2) an intentional interference with that expectancy through tortious conduct (3) a reasonable certainty that the expectancy would have been realized but for the interference and (4) damages. Wellin v. Wellin, 135 F. Supp. 3d 502, 517 (D.S.C. 2015) (The U.S. District Court concluded that the South

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Carolina Court of Appeals recently stated, "to send the issue of undue influence to the jury, the contestant must show more than general influence – there must be additional evidence that such influence was actually utilized." Swiger v. Smith, 426 S.C. 408, 827 S.E.2d 200 (Ct. App. 2019) (internal quotations omitted).

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Carolina Supreme Court would adopt such a cause of action). As demonstrated above, Petitioners have not shown a scintilla of evidence to support a finding of tortious conduct—let alone one that interfered with their inheritance.[11] Similarly, Petitioners' *constructive trust* argument fails because they have not shown that Respondents did anything inequitable to obtain legal title to property. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). Bald accusations that Mr. Holliday was incapacitated, which go against all of the testimony[12] and medical records, do not prove that Respondents did anything inequitable. The mere fact that Respondents ended up with more than they did is not "clear, definite, and unequivocal" evidence sufficient to support imposing a constructive trust. Id. at 530.

Petitioners' *Breach of Fiduciary Duties* cause of action and their request for a *Declaratory Judgment* (which only seeks to declare the Revocable Trust valid) are barred if the Revocable Trust was validly revoked. Petitioners' accusations of breach of fiduciary duties against Ross pursuant to the Revocable Trust is barred by a well-established principle of trust law: the trustee of a revocable trust does not owe duties to the beneficiaries during the life of the Settlor. See S.C. Code Ann § 62-7-603. Thus, even if Petitioners allegation that the Revocable Trust was valid during the final years of Warren's life is true, they still cannot sue Ross (the trustee) for his conduct during the life of Warren Holliday. S.C. Code Ann § 62-7-603 (explaining that the duties of a trustee of a revocable trust are owed exclusively to the settlor).

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[11] Petitioners have spent a great deal convincing this Court that an estate tax return should have been filed. Assuming *arguendo* that this is true, the failure to file a tax return does not help Petitioners meet the elements of an IIWI claim. Furthermore, because Petitioners are not residual beneficiaries (they do not have a share in the remaining assets of the Estate), and have already received the fixed amounts that they are entitled to, Petitioners do not have standing to sue a Personal Representative for improper administration of the Estate. Gordon v. Busbee, No. 2003-CP-02-604, 2008 WL 8994336 (S.C. Com. Pl. May 23, 2008) ("Plaintiffs have no right or standing to make demands or complaints of any sort against the Personal Representative, including the equitable causes of action.").

[12] Petitioners do not have any personal knowledge of Mr. Holliday's mental capacity at the time of the testamentary acts. Therefore, they cannot possibly use their own testimony to establish that he was incapacitated at the time of execution.

For these reasons, Respondents are entitled to summary judgment on Petitioners' Intentional Interference with Inheritance, Breach of Fiduciary Duties, Constructive Trust, and Declaratory Judgment causes of action.

CONCLUSION

Because Warren Holliday possessed testamentary capacity to revoke his Revocable Trust, and did so free of undue influence, Respondents are entitled to summary judgment as to all Petitioners' claims.

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ATTORNEYS FOR RESPONDENTS

Charleston, South Carolina
December 10, 2020

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

STATE OF SOUTH CAROLINA	)	REVOCABLE TRUST AGREEMENT
	)	BETWEEN
	)	WARREN P. HOLLIDAY AS SETTLOR
	)	AND
COUNTY OF CHARLESTON	)	AS TRUSTEE

THE WARREN P. HOLLIDAY REVOCABLE TRUST

This Agreement is made and executed this 29th day of October, 2008, by Warren P. Holliday of Mt. Pleasant, South Carolina, as the Settlor and as the initial Trustee.

Background

The Settlor is married to Patricia Anne Holliday ("Patricia"), and his children are Pamela G. Wallin ("Pamela"), Mark Bennett Holliday ("Ben"), Ross Samuel Holliday ("Ross") and Warren Lea Holliday ("Lea").

The initial Trustee of this Trust shall be Warren P. Holliday. Should he be unable to serve or to continue to serve and the Settlor not be capable of appointing a successor Trustee, then the Settlor hereby designates his son, Ross, as successor Trustee in his place and stead. Should Ross not be able to serve or to continue to serve, then the Settlor hereby designates his son, Lea, as the alternate or successor Trustee; his daughter, Pamela, is designated as second alternate or successor Trustee; his son, Ben, is designated as third alternate or successor Trustee.

ARTICLE 1

Administration during the Life of the Settlor

The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal during the lifetime of the Settlor as follows:

1.1 Payments of Trust Principal and Income. The Trustee shall pay to or apply for the benefit of the Settlor so much of the net income or principal or both, whether the whole or lesser amount, as the Trustee in his sole discretion determines. The Trustee may pay from the principal of the Trust to any person other than the Settlor such amounts as shall be directed by the Settlor pursuant to an instrument filed with the Trust records.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

1.2 Withdrawals of Trust Principal. The Settlor may at any time and from time to time, withdraw all or any part of the principal of this Trust, free of trust, by delivering an instrument in writing duly signed by the Settlor to the Trustee, describing the property or portion thereof desired to be withdrawn. Upon receipt of such instrument, the Trustee shall thereupon convey and deliver to the Settlor, free of trust, the property described in such instrument.

1.3 Trust Administration. No beneficiary other than the Settlor or the Settlor's legal representatives shall have the right to question the acts or failures to act of the Trustee so long as the Settlor is alive and not disabled or incapacitated.

1.4 Settlor's Incapacity. In the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the written opinion of two licensed physicians or psychiatrists (one of whom is the Settlor's regular physician and the other of whom is appointed by the majority vote of the Settlor's wife and children), deemed to be physically or mentally incapable of managing her own affairs, then and in that event, and if the Settlor is then married, the Trustee may in addition to the payments of income and principal for the benefit of the Settlor, pay to or apply for the benefit of the Settlor's wife such sums from the net income and from the principal of this Trust as in his sole discretion shall be necessary or advisable from time to time for the health, comfortable maintenance and welfare of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

1.5 Authorization to Make Gifts after the Settlor's Incapacity. The Trustee, in his sole discretion, after the Settlor's incapacity or after in the Trustee's judgment reasonable doubt exists regarding the Settlor's capacity, may make gifts to continue a gift program which the Settlor previously commenced for use of the available federal gift tax annual exclusion, including consent gifts by the Settlor's wife, if the Settlor is then married. Such gifts may be made outright or in trust.

1.6 Powers of Attorney in Fact. The Settlor's attorney in fact is expressly authorized to make additions to the Trust.

ARTICLE 2
Additions to the Trust

At any time while this Trust is being administered, the Settlor and, with the consent of the Trustee, any other persons, firms, or corporations, including fiduciaries, may add life insurance policies and/or other property both real and personal, to this Trust by gift, Will, or otherwise. All such additional policies

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

and property shall be held and administered in accordance with the terms and provisions of this Agreement.

ARTICLE 3

Reserved Rights and Powers

The Settlor shall have and possess, and hereby reserves the right to revoke this Trust, or by supplemental agreement to modify the terms of this Trust and of the gifts hereunder from time to time without the consent of the Trustee, or any beneficiary, provided, however, that the duties, powers, and liability of the Trustee hereunder shall not be substantially changed without written consent of the Trustee.

ARTICLE 4

Provision for Bequests and Estate Administration Expenses

At the death of the Settlor, the then serving Trustee shall make available to the Personal Representative of the Settlor's estate such amounts or the whole of the Trust estate as the Personal Representative shall request for the payment of estate administration expenses as well as taxes and such other funds as may be required to satisfy such bequests as may have been made under the Settlor's Last Will and Testament. Tax obligations shall be apportioned as directed in the Settlor's Last Will and Testament.

ARTICLE 5

Gift of Credit Shelter Amount in Trust

5.1 Creation of the Trust. If the Settlor's wife, Patricia, shall survive the Settlor, the Trustee shall hold such fractional share of the Trust Estate (the "Credit Shelter Amount") of which the numerator is a sum equal to the largest amount that can pass free of Federal estate tax by reason of any tax referred to in §2001(b)(2) of the Internal Revenue Code and the applicable credit amount (the "unified credit") and the state death tax credit (provided the state death tax is not computed by reference to the state death tax credit) allowable to the Settlor's estate but no other credit and after taking account of (i) the Settlor's prior adjusted taxable gifts and any reduction in them pursuant to Treasury Regulation §25.2701-5, (ii) taxable gifts under the Settlor's Will, (iii) property passing outside of the Settlor's Will which is includable in the Settlor's gross estate which does not qualify for the marital or charitable deduction, and (iv) charges to principal that are not allowed as deductions in computing the Settlor's Federal estate tax, and of which the denominator is the value of the Trust Estate. For the purpose of establishing the fractional share disposed of by this Article, the values finally determined in the federal estate tax proceedings relating to the Settlor's estate shall be used. Furthermore, for purposes of determining the fractional share, the Federal estate tax payable because of the Settlor's death shall be computed as if: (i) there were no credit except (a) the credit for state death taxes to such extent as state death taxes would not thereby be incurred or increased and (b) the unified credit; (ii) there were no disclaimer of any property (or interests therein) that, but for such

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

disclaimer, would otherwise qualify for the marital deduction; and (iii) there were no failure to elect under §2056(b)(7) of the Internal Revenue Code to qualify any property for the marital deduction. The Settlor recognizes that the numerator of such fraction may be zero (0), in which case no property may be disposed of by this Article and that the numerator may be affected by the Settlor's Personal Representative's actions in exercising tax elections.

5.2 Trust Property and Distributions of Trust Income and Principal . The Trustee shall hold, manage, invest and reinvest the property directed to be held pursuant to this Article as a separate Trust, shall collect the income, and may pay or apply so much or all or none of the net income and/or principal of this Trust to or for the benefit of the Settlor's wife, Patricia, so much or all or none of the net income and principal of this Trust as the Trustee shall determine to be necessary or advisable for her reasonable health needs, education and her maintenance in the manner of living to which she is accustomed. It is the Settlor's intention that this power which is being granted to the Trustee in the immediately preceding sentence shall be a power limited by an ascertainable standard, as defined in Treasury Regulations §20.2041-1(c)(2) of the Internal Revenue Code, and such power shall not be a general power of appointment.

5.3 Allocation of GST Exclusion to this Trust . The Trustee, with the Settlor's Personal Representative, shall consider whether to make an allocation of so much or all of the Settlor's available generation-skipping transfer tax ("GST") exemption under §2631(a) of the Internal Revenue Code of 1986, as amended (the "Code") to this Trust to give it an inclusion ratio of zero (0) for generation skipping transfer tax purposes.

5.3.1 Available GST Exemption . The term "available GST exemption" means an amount equal to the generation-skipping transfer tax exemption provided in Code §2631(a) that has not been allocated by the Settlor (or by operation of law) to property transferred by the Settlor during the Settlor's lifetime or to the property passing under the Settlor's Will. For this purpose, if the Settlor dies without filing a gift tax return which is required to be filed and which has a due date (including extensions) after the Settlor's death, then the Settlor shall be deemed to have allocated the Settlor's GST exemption to all the property with respect to which the Settlor is the transferor (as defined in Code §2652(a)) that (i) may at some time be subject to the Federal generation-skipping transfer tax, (ii) is required to be reported in that gift tax return, (iii) is to or for the benefit of the Settlor's issue, and (iv) does not qualify for any other exemption or exclusion from the generation-skipping transfer tax; provided, however, that the Settlor shall not be deemed to have allocated the Settlor's GST exemption to any Trust if the entire Trust principal may, at any time, either be required under the terms of the governing instrument to be paid to a child of the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Settlor (other than as an invasion of principal in the discretion of the Trustee), or be subject to Federal estate tax by reason of the death of a child of the Settlor.

5.3.2 GST Exemption not Available. Should the amount of the Settlor's available GST exemption be less than that amount, if any, which is required to fund this Trust pursuant to §5.1, above, then the Trustee shall exercise the power granted to him in this instrument and under state law, to separate the Trust created under this Article into two Trusts, so that one such Trust has an inclusion ratio for GST tax purposes of zero (0) and the other such Trust has an inclusion ratio of one (1).

5.4 Consideration of Other Assets. In exercising his discretion, the Trustee may, but need not, take into consideration any other income, funds or assets of such beneficiary or the obligation of another person to provide for his or her support, and the Trustee's determination as to the amount of any such payment or application, if any, and as to the advisability thereof, shall be final and conclusive upon all persons interested or who may become interested hereunder.

5.5 Order of Distribution. The Settlor requests, but does not direct, that the Trustee consider not making distributions of income or principal from this Trust to the Settlor's wife until the principal and income of the Trust or Trusts established for her benefit under Article 6 shall have been exhausted in their entirety. The Settlor realizes that the possibility of achieving this goal will be dependent upon the degree of liquidity within the various Trusts and on the various tax characteristics of the Trust assets.

5.6 Distributions Upon Trust Termination. Upon Patricia's death, the Trust(s) provided for under this Article shall be divided into equal shares of such number that there shall be one share for each such child of the Settlor as shall then be surviving and one such share, collectively, for the issue of any other child of Settlor who shall have died prior thereto leaving one or more lineal descendants then surviving and such shares shall be paid over and distributed subject to the provisions of Section 7.2, below, and of Article 9, below. Notwithstanding the previous sentence, however, if this Trust shall have been held as two separate Trusts or Shares (an Exempt and a Non-Exempt Trust) pursuant to §5.3.2 above, or as one Trust but with respect to which no part of the Settlor's GST exemption shall have been allocated, the Exempt Trust or Share for each child (or issue of a child, as the case may be) shall be paid over pursuant to the provisions of Section 7.2, below, and of Article 9, below, and the Non-exempt Trust or Share for each child (or issue of a child, as the case may be) shall be paid over pursuant to the provisions of Section 7.3 and of Article 8.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ARTICLE 6

The QTIP Trust

6.1 Creation of the Trust. If the Settlor's wife, Patricia, survives the Settlor, the Trustee shall hold all of the rest, residue and remainder of this Trust, property coming from the Settlor's Estate, and any other property received by the Trustee, IN TRUST, to be administered and distributed subject to the following provisions:

6.2 Distributions of Trust Income. During Patricia's lifetime, the Trustee shall pay over all of the net income of this Trust to her, not less frequently than quarter-annually, and any income accrued but undistributed at her death shall be distributed to her estate.

6.3 Distributions of Trust Principal. During Patricia's lifetime, the Trustee shall also pay to her so much or all of the principal as the Trustee may determine for her reasonable health needs, support in her accustomed manner of living, and maintenance in reasonable comfort, taking into consideration to the extent the Trustee may deem advisable any of her other income or resources. It is the Settlor's intention that the power granted to the Trustee in the immediately preceding sentence shall be a power subject to an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2) of the Internal Revenue Code, and such power shall not be a general power of appointment.

6.4 Qualified Terminable Trust Property. The Settlor's Personal Representative and the Trustee shall consider making an election to qualify some part or all of the gift under this Article for the marital deduction allowable in determining the federal estate tax on the Settlor's estate. The determination of the Settlor's Personal Representative and Trustee with respect to the exercise of such election shall be conclusive upon all affected persons. None of the powers granted in this Trust shall be exercised in a manner that would cause any property held in this Trust which would otherwise qualify for the federal estate tax marital deduction not to so qualify.

6.4.1 QTIP Election. The property held by this Trust is intended to qualify as "Qualified Terminable Interest Property" as defined in Code Section 2056, if, and to the extent, the Settlor's Personal Representative so elects in a timely manner as provided in Internal Revenue Code Section 2056(b)(7), and it is the Settlor's express intention that this Trust give to the Settlor's spouse the degree of beneficial enjoyment of the Trust property which principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of the Trust.

6.4.2 The §2652(a)(3) Election. If the Settlor's Personal Representative exercises the special election provided in Code Section 2652(a)(3), as to a fractional amount of property held in

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

this Trust which is equal to the Settlor's remaining GST exemption amount after all prior allocations, the Trustee shall set apart property constituting that part in a separate Marital Trust (the "Exempt Marital Trust") such that it has an inclusion ratio of zero (0) with the then remaining Trust property thus constituting the "Non-Exempt Marital Trust", which shall have an inclusion ratio greater than zero (0).

6.4.2.1 Payments from Separate Trusts. The Settlor requests that, to the extent possible, payments of principal to the Settlor's wife, Patricia, not be made from the Exempt Marital Trust until the Non-Exempt Marital Trust has been exhausted.

6.4.2.2 Payments of Death Taxes. Upon Patricia's death, all death taxes chargeable to the Exempt Marital Trust shall, to the extent possible, be paid from the Non-Exempt Marital Trust.

6.4.3 Unproductive Property. The Settlor's wife may at any time make any nonproductive property productive, or, by written notice, may require any then Trustee other than herself either to make any nonproductive property of this Trust productive or to convert such nonproductive property to productive property within a reasonable time.

6.5 Qualified Plan Assets. If this Trust is the recipient of any benefits from either a qualified retirement plan under Section 401(a) of the Internal Revenue Code or a qualified individual retirement account under Section 408(a) of the Internal Revenue Code ("qualified account"), the Trustee shall direct that the account balance as of the date of the Settlor's death in such qualified account be distributed at least quarter-annually in an amount equal to the greater of (a) the net income of such qualified account or (b) the minimum distribution required under section 401(a)(9) of the Internal Revenue Code determined on the basis of the Settlor's wife's life expectancy, redetermined annually (if permitted by the plan). The Trustee shall allocate and add the net income received from such qualified account to the income of the Trust. The Trustee shall distribute such income, including any income earned by the Trust on the undistributed portion of any such benefits to the Settlor's wife in convenient installments at least quarter-annually. The Trustee shall distribute annually, the net income of the Trust, or if greater, the amount distributable under the qualified account payment method described above, in such a manner as to qualify for the federal estate tax marital deduction, and the Trustee is authorized and directed to administer the Trust consistent with this intent.

6.6 Disclaimed Property. The Settlor's wife shall have the right, by an acknowledged instrument delivered to the Settlor's Personal Representative within nine months of the Settlor's death, to

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

disclaim any interest or interests in all or a specific portion of the Trust, in which event the property constituting such disclaimed portion shall be added to and become a part and subject to the provisions of the Trust established under Article 5, above, subject to the provisions of §5.3.2, such that any amounts disclaimed which are not exempt for GST purposes shall be added to and become part of a separate "Non-Exempt" Trust, subject to the provisions of Article 5. The Settlor's wife shall not have any power to direct the beneficial enjoyment or power of appointment or disposition (whether testamentary or inter-vivos) over any such disclaimed property (or portion of any trust to which such disclaimed property is added), except to the extent that any such power is limited by an ascertainable standard as required in Treasury Regulation §25.2518-2(e)(2).

6.7 Trust Termination and Distribution. Upon the death of the Settlor's wife, Patricia, the then remaining Trust principal shall be distributed: (i) except to the extent the Settlor's wife's Will contains a direction (specifically referring to this Trust) for the payment of transfer and death taxes from property other than the Trust, first to the Settlor's wife's legal representatives, in an amount equal to the amount of any increased transfer and death taxes (other than generation-skipping taxes) payable by reason of the Settlor's wife's death resulting from the inclusion of some or all of this Trust in the Settlor's wife's gross estate for Federal estate tax purposes (subject to §6.4.2.2 of this Article); (ii) all amounts which have been set apart in a separate Exempt Marital Trust pursuant to §6.4.2 shall be paid over to the Trustee for the benefit of the Settlor's issue then living, per stirpes, subject to the Trust provisions of Section 7.2, below, and of Article 9, below; (iii) an amount from any Non-Exempt Marital Trust or Share of this Trust which is equal to the lesser of (a) the entire Non-Exempt Marital Trust, or (b) the amount of the Settlor's wife's unused GST exemption after all prior allocations of her exemption have been made by the representatives of her estate and by law shall be paid over, to the Trustee, for the benefit of the Settlor's issue then living, per stirpes, subject to the Trust provisions of Section 7.2, below and of Article 9, below; and (iv) the balance shall be paid over, to the Trustee, for the benefit of the Settlor's issue then living, per stirpes, subject to the Trust provisions of Section 7.3, below and of Article 8, below. The Trustee may rely upon and treat as correct any written request or direction from the Settlor's wife's legal representatives concerning the amount distributable under clause (i) and (iii) of the preceding sentence.

ARTICLE 7
Residue

7.1 Residuary. If the Settlor's wife does not survive him, or if the Settlor's wife does survive him but at her death some Trust(s) shares are to be distributed according to this Article, all the rest, residue and remainder of the Trust property and estate property, real and personal, of whatever nature and wherever situated, including any property before mentioned but not effectively disposed of shall be divided into two parts. The first part shall be such fractional share of the residue as is equal to the Settlor's unused GST exemption after all prior allocations of the Settlor's exemption have been made (the Exempt Share)

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

and the second part (if any) shall be all the rest, residue and remainder of the Trust (the Non-Exempt Share). The Exempt Share shall be held and administered by the Trustee, in Trust, in the manner dictated by §7.2, below. The Non-Exempt Share shall be paid over and distributed in the manner dictated by §7.3. below.

7.2 The Exempt Share. This Trust shall be divided into equal shares of such number that there shall be one share for each child of Settlor as shall then be surviving and one such share, collectively, for the issue of any other child of Settlor as shall have died prior thereto leaving one of more lineal descendants then surviving (which shares shall be held as a single Trust then divided into separate Trusts, per stirpes, at such time as the youngest then living grandchild attains the age of twenty-one (21)), and the share for each child (or the shares for the issue of each such predeceased child, as the case may be) shall thereupon continue to be held by the Trustee, in a separate Trust, for the benefit of such child (or issue of each such predeceased child, as the case may be), subject to the Trust provisions of Article 9, below.

7.3 The Non-Exempt Share. This Trust shall be divided into equal shares of such number that there shall be one share for each child of Settlor as shall then be surviving and one such share, collectively, for the issue of any other child of Settlor as shall have died prior thereto leaving one of more lineal descendants then surviving (which shares shall be held as a single Trust then divided into separate Trusts, per stirpes, at such time as the youngest then living grandchild attains the age of twenty-one (21)), and the share for each child (or the shares for the issue of each such predeceased child, as the case may be) shall thereupon continue to be held by the Trustee, in a separate Trust, for the benefit of such child (or issue of each such predeceased child, as the case may be), subject to the Trust provisions of Article 8, below.

ARTICLE 8
Non-Exempt Trust

8.1 Establishment of Trust. The Trustee shall hold such property as is directed to be held pursuant to this Article as a separate Trust for the benefit of each child or issue of a deceased child, as the case may be, entitled to receive that share (the child or other issue of the Settlor for whose benefit a separate Trust exists is referred to the "Primary Beneficiary"), subject to the following provisions of this Article.

8.2 Distributions of Income and Principal. The Trustee shall pay to or apply for the benefit of the Primary Beneficiary, so much or all or none of the net income and principal of this Trust (even to the extent of its exhaustion) as the Trustee shall determine to be necessary or advisable from time to time for the Primary Beneficiary's maintenance in health and reasonable comfort, support in his or her accustomed manner of living, and education, including college and professional education. It is the Settlor's intention that this power which is being granted to the Trustee in the immediately preceding sentence shall be a power subject to an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2) of the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Internal Revenue Code, and such power shall not be a general power of appointment. It is the Settlor's desire that no beneficiary receive a distribution from this Trust unless the Trustee shall determine, in the Trustee's sole discretion, that such beneficiary, if capable of earning his or her own living, is exerting reasonable efforts to support himself or herself. If all then serving Trustees are also Primary Beneficiaries of Trusts held pursuant to the provisions of this Article 8, a Special Trustee, appointed by a Trust Protector appointed pursuant to the provisions of Article 20, below, shall determine if such Trustee/beneficiary, if capable of earning his or her own living, is exerting reasonable efforts to support himself or herself.

8.3 Death of the Primary Beneficiary. Upon the death of the Primary Beneficiary, the Trust for such Primary Beneficiary under this Article shall terminate, and the principal and any accumulated income of the Trust shall be distributed as follows:

8.3.1 General Power of Appointment. If the Primary Beneficiary has issue surviving at the time of his or her death, the Trust for such Primary Beneficiary under this Article 8 shall terminate and the principal and any accumulated income of the Trust shall at that time be paid over and delivered by the Trustee either absolutely or in trust to or for the benefit of the persons and objects and in such proportions and in further trust or otherwise, with the same or other or additional Trustee, and with the same or another situs, as the Primary Beneficiary shall appoint by Will duly admitted to probate expressly referring to this general power of appointment; provided, however, that the Primary Beneficiary may only exercise this power of appointment in favor of: (a) the issue of the Primary Beneficiary, (b) the spouse of the Primary Beneficiary, provided, that any appointment in favor of a spouse may confer no greater interest or benefit than a right to the income from the Trust assets (or use of its non-income producing property) until the spouse's death, or (c) the creditors of the Primary Beneficiary's estate. To the extent the Primary Beneficiary does not effectively exercise this general power of appointment, the unappointed property shall be divided among the Primary Beneficiary's then living issue, per stirpes, each share to be held by the Trustee in Trust, for the benefit of the person for whom the share is set apart, subject to the provisions of this Article 8; and to the extent that the Primary Beneficiary has no then living issue, the Trust Estate shall be:

8.3.2 Primary Beneficiary Without Issue. Paid over and distributed per stirpes among the then living issue of the Settlor's most remote descendant who is an ancestor of the deceased Primary Beneficiary and who has issue then living, or if none;

8.3.3 Per Stirpes Distribution. Paid over and distributed per stirpes among the Settlor's then living issue;

subject, except in the case of the exercise of the power given herein to appoint, to the trust

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

provisions of this Article.

8.4 Trustees Protected. Any exercise by the Trustee of the discretionary powers, which are made in good faith, shall be fully protected and shall be binding and conclusive upon all persons interested in this Trust.

ARTICLE 9
Exempt Trust

9.1 Establishment of Trust. If the Settlor's children or any issue of the Settlor's children are entitled to receive any part or share of any Trust under this Trust, that part or share shall be held by the Trustee, in Trust, as a separate Trust for the benefit of each such child or issue of a child, as the case may be, entitled to receive that share (the child or other issue of the Settlor for whose benefit a separate Trust exists is referred to the "Primary Beneficiary").

9.2 Distributions of Income and Principal . The Trustee shall hold, manage, invest and reinvest the Trust property, and collect the income therefrom, and pay to or apply for the benefit of the Primary Beneficiary or one or more of his or her issue, so much or all or none of the net income and principal of the Trust as the Trustee (other than a beneficiary of such share) may at any time and from time to time in the exercise of absolute discretion, deem advisable and for whatever reason the Trustee deems appropriate and in such amounts or proportions (and, if determined by the Trustee, subject to the provisions of this Article), whether equal or unequal even to the exclusion of any one or more eligible persons. It is the Settlor's desire that no beneficiary receive a distribution from this Trust unless the Trustee shall determine, in the Trustee's sole discretion, that such beneficiary, if capable of earning his or her own living, is exerting reasonable efforts to support himself or herself. If all then serving Trustees are beneficiaries of a Trust held pursuant to the provisions of this Article 9, a Special Trustee, appointed by the Trust Protector appointed pursuant to the provisions of Article 20, below, shall determine if, when and to whom any distributions (including the amount thereof) are to be made from the share of which the Trustee/beneficiary is a beneficiary, and shall determine if such Trustee/beneficiary, if capable of earning his or her own living, is exerting reasonable efforts to support himself or herself

9.3 Death of the Primary Beneficiary. Upon the death of the Primary Beneficiary, the Trust for such Primary Beneficiary under this Article shall terminate, and the principal and any accumulated income of the Trust shall be distributed as follows:

9.3.1 Pursuant to a Limited Power of Appointment. Such property shall be distributed to or in trust for such one or more persons and objects, and in such proportions and in further trust or otherwise, as such Primary Beneficiary shall appoint by Will duly admitted to probate expressly referring to this limited power of appointment, provided that the power of appointment shall not

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

be exercisable to any extent in favor of the Primary Beneficiary, the Primary Beneficiary's estate, the Primary Beneficiary's creditors or the creditors of the Primary Beneficiary's estate and shall only be exercisable in favor of (i) the issue of the Primary Beneficiary, or (ii) the spouse of the Primary Beneficiary, provided, that any appointment in favor of a spouse may confer no greater interest or benefit than a right to the income from the Trust assets (or use of its non-income producing property) until the earlier of the spouse's death or remarriage; and to the extent that such Primary Beneficiary does not effectively exercise this power of appointment, the unappointed property shall be:

9.3.2 Power of Appointment not Exercised. Divided among the Primary Beneficiary's then living issue per stirpes, each share to be held by the Trustee, in trust, for the benefit of the person for whom the share is set apart, subject to the provisions of this Article; and to the extent that the Primary Beneficiary has no then living issue, the Trust Estate shall be:

9.3.3 Primary Beneficiary Without Issue. Paid over and distributed per stirpes among the then living issue of the Settlor's most remote descendant who is an ancestor of the deceased Primary Beneficiary and who has issue then living, or if none;

9.3.4 Per Stirpes Distribution. Paid over and distributed per stirpes among the Settlor's then living issue;

subject, except in the case of the exercise of the power given herein to appoint, to the trust provisions of this Article.

9.4 Trustees Protected. Any exercise by the Trustee of the discretionary powers, which are made in good faith, shall be fully protected and shall be binding and conclusive upon all persons interested in this Trust.

ARTICLE 10

Disabled Persons and Their Property

10.1 Disabled Person. A "disabled person" is a minor or a person who (i) has been determined to be legally incapacitated to act on his or her own behalf by a court of competent jurisdiction, or as to whom any such court has appointed a guardian to act on his or her behalf, (ii) in the written opinion of two licensed physicians or psychiatrists appointed by the Trustee is deemed to be physically or mentally incapable of managing his or her affairs although a judicial declaration of the incapacity may not have been made, or (iii) as to whom the Trustee has creditable and current evidence that such individual has

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

disappeared, is unaccountably absent, or is being detained under duress in such a manner as to be unable effectively and prudently to attend to his or her own financial best interests. The incapacity shall be deemed to continue until the court order or circumstances have been revoked or become inapplicable.

10.2 Title To Property Vested. Whenever under this Agreement any property is to be distributed to a person under a disability (a "disabled person"), title to that property shall vest in the disabled person, but payment may be deferred and held by the Trustee, who shall apply so much or all or none of the principal and income as they may determine, in the exercise of their sole and absolute discretion (without regard to the other income or other resources of the disabled person), for the disabled person's comfort and welfare. When the disability ceases, the property and any accumulated income shall be delivered to the disabled person or to his or her legal representatives. Any income accumulated shall be added to and accounted for as part of the principal.

10.3 Distributions for Disabled Person's Benefit. In case the income or principal payment under any Trust created hereunder or any share thereof shall become payable to a disabled person, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee, in his sole and absolute discretion, deems best: (1) directly to the disabled person; (2) to the disabled person's parent, guardian, custodian under the applicable state Uniform Gifts to Minors Act, committee, conservator, or to an individual with whom the disabled person resides; (3) to an appropriate relative or friend for the care, support and education of the disabled person; or (4) by the Trustee using such amounts directly for the disabled person's care, support and education. The receipt of the distributee shall constitute a full and sufficient discharge to the Trustee. The powers for the management of Trust assets granted to the Trustee in this Agreement shall be applicable to any property dealt within this Article.

ARTICLE 11

Removal, Appointment and Succession of Trustee

11.1 Resignation Procedure. Any Trustee or Special Trustee (hereinafter "Fiduciary") at any time serving hereunder may resign at any time by written notice to another then acting Co-Fiduciary (if there is one) with respect to the affected Trust, or, if none, to the then beneficiary or one of the then beneficiaries of such Trust, setting forth the effective time and date of such resignation on or before such effective time. Notwithstanding the previous sentence, the resignation of a Fiduciary acting alone shall only be effective upon the appointment and qualification of a successor Fiduciary.

11.2 Appointment of Successor Trustee and Co-Trustees. Subject always to the Settlor's right to remove and replace the Trustee, and to the extent that a successor Trustee has not been named by the Settlor herein above, any Trustee (including any substitute or successor Trustee) shall have the right at any

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

time after qualifying as Trustee to appoint a successor Trustee to act in the place of the appointing Trustee, either immediately or in the future upon any stated contingency. Any such appointment may be changed from time to time prior to the date it becomes effective. If any initial Trustee or any such successor, for any reason, fails or ceases to act without having appointed a Trustee who succeeds the former Trustee, any remaining Trustee may appoint another Trustee to act in the former Trustee's place. In addition, the Trustee or Trustees acting at any time (acting jointly and unanimously if more than one) shall have the right to appoint one or more Co-Trustees. If any beneficiary who may be acting as a Trustee should resign, such beneficiary may at any time re-assume his or her position as Trustee and shall have the right to remove any successor Trustee he or she may have previously appointed in his or her place.

11.3 Disability of a Fiduciary. The determination that a Fiduciary is a disabled person shall be made by a Trust Protector, appointed pursuant to the provisions of Article 20, below.

11.4 Delegation of Ministerial Acts Each Fiduciary hereunder is authorized, by acknowledged instrument filed with such Fiduciary's Co-Fiduciary or Co-Fiduciaries, to delegate to such other Co-Fiduciary or Co-Fiduciaries, or any one of them, such Fiduciary's duties with respect to general ministerial acts, specifically including the signing of checks, the execution of tax returns and the execution of instruments of contract, sale or conveyance with respect to the Trust assets, including the opening of checking, brokerage or similar accounts. This authority to delegate ministerial duties does not permit a Fiduciary to delegate fiduciary powers, authorities or discretions conferred upon such Fiduciary under this Agreement, the purpose of this delegation authority being intended solely to facilitate the administration of the Trust through the delegation of non-discretionary duties. Upon written assurance by any Fiduciary that such Fiduciary has been delegated such ministerial duties, any third parties shall accept the signature of such Fiduciary as binding upon the Trust, shall not require further authorization of any other Fiduciary, and shall be indemnified and held harmless to the extent of the Trust assets on account of any loss, liability or expense arising out of the acceptance of the signature of any Fiduciary as the basis of any transfer, withdrawal or other transaction.

11.5 Termination of Trustee Powers. An outgoing Fiduciary, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Fiduciary ceases for any reason to be a Fiduciary hereunder, there shall be delivered to such Fiduciary's successor or to another then acting Fiduciary hereunder all of the assets (Trust or otherwise) which were in the possession of such Fiduciary and there shall be made available to each successor Fiduciary a complete financial record and inventory of assets affected thereby. With respect to any properties thus transferred by the outgoing Fiduciary or by such Fiduciary's representative, such Fiduciary shall stand and be discharged of all further duties and obligations.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

11.6 Successor Fiduciary Powers and Authority. Each successor Fiduciary, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Trustee. Title to the entire property (of the Trust or otherwise) shall automatically vest in any successor Trustee without the necessity of any conveyance. The assumption of authority by a successor Trustee shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Fiduciary or to such Fiduciary's legal representative). Any corporation into which any corporate Fiduciary acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Fiduciary hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this Agreement.

11.7 Exoneration from Liability for Acts of Prior Fiduciaries. Each successor Fiduciary shall be exempt from any liability in any way related to the prior actions or omissions of the previous Fiduciaries and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Fiduciary.

11.8 Fiduciary Settlements. The Primary Beneficiary of any Trust created hereunder or, if none, any individual who is at the time (a) a beneficiary entitled to receive income distributions from any Trust created hereunder, and (b) not then serving as a Fiduciary, may at any time or from time to time settle any Fiduciary's or former Fiduciary's accounts and to the extent permissible by law each settlement shall be binding and conclusive upon all persons who may be interested in the Trust, whether directly or contingent, born or unborn, infant or adult. If the person herein designated with the power to consent to settlements is a disabled person, such power shall only be exercised by his or her guardian or other legal representative.

ARTICLE 12

Trustee Provisions

12.1 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustee shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but shall make available a statement of receipts and disbursements and an investment review of the assets of the Trust at least annually to each person then entitled to income from any Trust.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

12.2 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

12.3 Notice to Disabled Parties. If a person under a disability is a party to any legal proceeding relating in any manner to any Trust created by this Agreement, service of process upon the disabled person shall not be required if another individual, not under a disability, is a party to the proceeding and has the same interest as the disabled person.

ARTICLE 13
Trustee's Powers

It is the Settlor's intention in specifying the following powers to give broad discretion and flexibility to the Trustee. In the administration of the Trusts established under this Agreement, the Trustee shall have all of the powers granted by law to Trustees under §62-7-704 of the South Carolina Probate Code, which powers shall not be revoked or reduced if said statute should hereafter be repealed or restrictively amended. However, in no event, shall any power be exercised or interpreted in any fashion which shall not give to the Settlor's wife as the sole beneficiary of any Trust qualifying for the marital deduction the degree of beneficial enjoyment of the Trust property which principles of the law of Trusts accord to a person who is unqualifiedly designated as the life beneficiary of the Trust. In addition to, but not in limitation of, the powers conferred by law or elsewhere in this Agreement, the Trustees shall have with respect to all property which shall at any time be held in any Trust under this Agreement, the following powers exercisable in his sole and absolute discretion without authorization by any court:

13.1 Investments and Reinvestments. To invest or reinvest in such securities or other property, real or personal (whether within or without the United States), and to retain any property received by him for such periods as she determines, including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust, even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments. The Settlor requests that the Trustees honor the wishes of the Trust beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustees determine that such wishes are clearly in contradiction to the purposes and terms of any such Trust.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

13.2 **Non-Traditional Investments**. In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to acquire and retain investments not regarded as traditional for Trusts. The Trustees may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership.

13.3 **Management and Holding of Assets**. To invest and reinvest all or part of the assets of any trust created hereunder in any common trust fund of any corporate Trustee; to employ a bank, trust company, or securities brokerage firm located anywhere within the United States, at the discretion of the Trustees but at the expense of the Trust, as custodian or agent; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustees may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustees shall be under no obligation to inspect or verify such stock or securities nor shall the Trustees be responsible for any loss by such bank, trust company, or securities brokerage firm.

13.4 **Consolidation and Division of Assets**. To hold and administer the Trusts created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this Trust, the Trustees shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

13.5 **Special Powers Relating to Estates**. The Trustees are specifically authorized, in addition to the other powers conferred upon them in this agreement, to (i) make loans to the Personal Representatives of the Settlor's or the Settlor's husband's estate, and (ii) purchase from such estate (and continue to hold such assets) assets that might otherwise be imprudent investments.

13.6 **Borrowing**. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable, and each such loan shall be payable only out of assets of the Trust.

13.7 **Lending**. To lend all or any portion of the funds of any Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by,

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustees may in their discretion impose.

13.8 **Receipts, Disbursements and Allocations**. To allocate receipts and disbursements between income and principal in such manner as the Trustees (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply with respect to any Trust which qualifies for the marital deduction during the life of the Settlor's husband. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such allocation shall follow state law, and (ii) in the discretion of the Trustees (other than any beneficiary).

13.9 **Distributions**. Without the consent of any beneficiary, the Trustees (other than any beneficiary) may make distributions in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary (including any Trust) and without making pro-rata distributions of specific assets.

13.10 **Occupancy and Use**. Except as may be otherwise specified elsewhere in this Agreement as to any specific property, the Trustees shall have the power to permit any person having an interest in the income of any Trust created hereunder to occupy real property, or to use personal property, held by any such Trust upon such terms as the Trustees deem proper, whether rent free or for the payment of taxes, insurance, maintenance and ordinary repairs, or other expenses, or upon such terms and conditions as the Trustees determine.

13.11 **Unproductive, Wasting and Personal Use Assets**. In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to invest and reinvest the Trust funds without regard to the production of current income subject, however, to the requirements under Article 6, above, as to qualification for the marital deduction and the requirement that the Settlor's husband at all times have the same degree of beneficial enjoyment of the Trust property which principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of the Trust. The Trustees should invest and reinvest the Trust funds in assets which are expected to produce a reasonable rate of appreciation or are expected to produce substantial personal enjoyment for the Trust's beneficiaries. Such assets may include, but are not limited to, personal use real estate, personal property such as works of art and antiques, undeveloped real estate, discounted debt obligations, and remainder interests whether such interests will produce current enjoyment and benefits or enjoyment and benefits after any term of years or the deaths of one or more individuals, which terms or deaths may not be expected to occur within the term of this Trust.

13.12 **Related Party Transactions**. To sell to or purchase from, at fair market value at the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

time of such purchase, property of any character from any Trust the Settlor may have established and to retain such property so long as the Trustees hereunder may deem advisable, whether or not such property is of the class in which Trustees are authorized by law or any rule of court to invest; and to make loans to, or borrow from, any such Trust or Trusts upon such terms and conditions as the Trustees deem advisable.

13.13 Management of Closely Held Businesses. In connection with (a) the continuation of operation of any business or investment interests owned by the Settlor prior to her death which become a part of any Trust under this Agreement (whether by purchase by the Trustees or bequest under the Settlor's Will or otherwise), or (b) the establishment of any new business or investment, the Trustees are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by her in respect of the operation of the business) without regard to her being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which the Settlor could have exercised.

13.14 Division or Combination of Trusts. In the event that the Trustees determine that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for administrative, liability, environmental, or other reasons), the Trustees shall have the power to divide any such Trust into further trusts or shares. The Trustees shall also have the power to combine any such Trust created hereunder with any other Trust, whether created by the Settlor or another person, if the terms of the trusts are substantially the same and the Trustees are the same.

13.15 Voting Trusts and Self Interested Voting of Securities. To enter into a voting trust agreement; to transfer any stock or securities to the Trustees under a voting trust agreement; and, generally, to exercise all the rights and powers as are or may be lawfully exercised by persons owning securities or other property. To vote for themselves, or for any officer or employee of a corporate Trustee, to be a director or officer of any Corporation in which any Trust may be interested, or to be a member of any committee related in any way to such corporation, and any officers or employees of any corporate Trustee may serve as such directors, officers or committee members, and receive proper remuneration for such services, and may exercise free and untrammelled discretion with respect to all matters concerning the affairs of such corporation (or any other entity or property).

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

13.16 GST Planning - Division of Trusts . To divide property in any Trust having an inclusion ratio (as defined in Internal Revenue Code §2642(a)(1)) of neither one nor zero (0) into two separate Trusts representing fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero (0) or to divide this Trust into separate shares or trusts prior to the receipt of any particular transfer of assets and to direct that such assets pass to one share (or trust) or another. In addition to the power to divide Trusts, if the Trustees (other than any beneficiary) shall determine that a division of Trusts shall not be recognized by the Internal Revenue Service for Chapter 13 purposes (or for any other reason shall not accomplish the Trustees' planning goals), the Trustees (other than any beneficiary) shall have the power to appoint property from this Trust to a new Trust having the same or similar provisions and the same beneficiaries. The Settlor recognizes that the power to appoint is a broader power than the power to separate Trusts and the power may permit the Trustees to transfer assets without liabilities, to modify Trust provisions, or otherwise to effect substantial changes to the Trust Estate. In particular, the Settlor recognizes and expects that this appointment power may be exercised to appoint assets away from a Trust created hereunder (prior to their becoming part of the Trust Estate) which may not have the same Generation Skipping Transfer Tax characteristics as the then existing Trust Estate.

13.17 GST Planning - Powers of Appointment: With respect to all or any part of the principal of any Trust, by an instrument filed with the Trust records, the Trustees (other than any beneficiary) shall have the power: (a) to create lifetime or testamentary powers of appointment, both limited and general (within the meaning of Internal Revenue Code §§ 2514 and 2041), in any beneficiary; (b) as to lifetime limited powers of appointment and as to testamentary limited and general powers of appointment, to eliminate any power for all or any part of the principal as to which a power previously existed; and (c) to divide the Trust principal into two fractional shares based upon the then proportion of the Trust that would be includible in the gross estate of the beneficiary holding the power if he or she died immediately before the division, and each part shall be administered as a separate Trust unless the Trustees (other than any beneficiary) shall, in their discretion, thereafter combine the separate Trusts into a single Trust. In authorizing such action, it is the Settlor's hope (but not direction) that a general power will be kept in effect when the Trustees (other than any beneficiary) believe the inclusion of the property in the beneficiary's gross estate may achieve a significant savings in transfer taxes by having an estate tax rather than a Chapter 13 tax imposed on the property subject to the general power, or income tax benefits deemed by the Trustees (other than any beneficiary), in the exercise of their sole and absolute discretion, to be significant. Any such appointment power granted, however, shall be for the sole purpose of effecting the Settlor's dispositive objectives set forth in this Agreement.

13.18 GST Planning - Addition and Distribution Powers: Chapter 13 of the Internal Revenue Code may require that any trust created under this instrument be treated as being comprised of separate shares or trusts for purposes of such Chapter (such as would be required should there be separate transferors to any trust created hereunder). In the event

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

that there are such separate shares or trusts, the Trustees shall have the power to direct that additions to, or distributions from, any trust created hereunder (which trust may be deemed to be comprised of the separate shares or trusts) shall be to, or from, as the case may be, either of such separate share or trust. By way of example, should a taxable lapse of a withdrawal right cause separate shares to be created with respect to any trust, and should the party permitting the lapse not apply his or her GST exemption to such lapsed amount, the Trustees may direct that future distributions to a skip-person from such trust be made from the separate share or trust created by the lapse which, because of its being a deemed addition by a transferor other than the Settlor, may have an inclusion ratio other than zero (0).

13.19 **GST Planning - Special Powers**: In addition to all other powers conferred upon the Trustees (other than any beneficiary) elsewhere in this Agreement, the Trustees (other than any beneficiary) are authorized to take any and all action the Trustees (other than any beneficiary) in their sole and absolute discretion deem necessary, after consulting with an attorney who regularly practices in the areas of estate planning and probate, to minimize or eliminate any generation skipping transfer (hereafter called GST) tax that may be due upon the distribution, transfer, or passing of any property to any individual, trust or fiduciary under the terms of this Agreement or any Trust or share created by this Agreement. Said authority shall include, but not be limited to, the power to allocate (or to request the appropriate party to allocate, as the case may be) so much of the Settlor's unused GST exemption, as said term is defined in §2631(a), as the Trustees (other than any beneficiary) deem appropriate to minimize or eliminate any GST tax. In no event may a discretionary beneficiary of any Trust hereunder participate in any decision to make any distributions pursuant to this provision to avoid or minimize GST tax.

13.20 **Non-Exempt Trusts**: It is the Settlor's request that distributions which, if made inter vivos by an individual, would not be treated as taxable gifts by reason of §2503(e), relating to the exclusion of certain transfers for educational or medical expenses (or such similar or successor provision), be made by the Trustees from any such Trust created hereunder as may have an inclusion ratio greater than zero (0), such payments to be made directly to the payee organization or person on behalf of the beneficiary of this Trust rather than be distributed to the beneficiary or to his parents or guardians for payment by them. In addition, it is the Settlor's request that any portion or portions of any Trust established hereunder which may be appointed to any qualified charitable organization be appointed first from any trust or trusts having an inclusion ratio greater than zero (0). In specifying this direction it is the Settlor's request that the Trustees seek to make the appropriate use of any available generation skipping tax exclusions as may be available, with specific attention being given to the qualification of such payments under §2611(b) of the Internal Revenue Code, as amended.

13.21 **Power to Deal With Environmental Hazards**. To use and expend any Trust income and principal to (i) conduct environmental assessments, audits, and site monitoring to determine compliance with any environmental law or regulation thereunder; (ii) take all appropriate

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

remedial action to contain, cleanup or remove any environmental hazard including a spill, release, discharge or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation thereunder; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance, or by a private litigant; (iv) comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Trustees under this paragraph may be charged against income or principal as the Trustees (other than a beneficiary) shall determine.

13.22 **Segregation of Problem Property**. To set aside as a separate Trust, to be held and administered upon the same governing terms as any other Trusts which the Settlor may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law.

13.23 **Power to Disclaim**. The Trustees shall have the power to disclaim any power which, in the sole discretion of such Trustees, will or may cause any such Trustees to be considered an "owner" or "operator" of property held in any Trust created under this Agreement as those terms are defined in the Comprehensive Environmental Response, Liability, and Compensation Act, (CERCLA), as amended from time to time, or which shall otherwise cause any Trustees to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The power to disclaim as contained in this Section shall apply to any power, whether actually set forth in this Agreement, incorporated by reference herein, or granted or implied by an statute or rule or law.

13.24 **Exoneration from Liability**. The Trustees shall not be personally liable to any beneficiary of any Trust created under this Agreement, or to any other party interested in any Trust created under this Agreement, for any claim against the Trust for the diminution in value of Trust property arising from the compliance by the Trustees with any federal, state, or local law, rule, or regulation including (1) the reporting of, or other response to the contamination of Trust property by substances or materials prohibited or regulated by federal, state, or local law or that are known to pose a hazard to the environment or to human health, (2) the reporting of or other response to violations of any federal, state, or local law or that are known to pose a hazard to the environment or human health, or (3) other matters relating to environmental laws.

13.25 **Uneconomical Trusts**. If at any time after the death of the Settlor any Trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date of the Settlor's death), as determined by the Trustees, of One Hundred Thousand ($100,000) Dollars or less, the Trustees (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Primary

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Beneficiary, or if none, to the person or persons then entitled to receive or have the benefit of the income therefrom, or to the legal representative of such person. If there is more than one income beneficiary, the Trustees shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated, to such beneficiaries, per stirpes.

13.26 Limitations. Notwithstanding the foregoing, nothing in this Agreement shall be construed as permitting a beneficiary who may also be a Trustee of any Trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this Agreement upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE 14
Definitions

14.1 Executor, Trustee, Fiduciary. Whenever the word "Executor", "Trustee", "Fiduciary", and/or "Personal Representative", or any modifying or substituted pronouns therefor are used in this Agreement, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the executor, personal representative, fiduciary, or Trustee named herein and to any successor or substitute executor, fiduciary, Trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon my executor, fiduciary, Trustee and/or personal representative originally named herein.

14.1.1 Special Trustee. The term "Special Trustee" shall mean a fiduciary whose duties, powers, and responsibilities are limited to those specifically vested in such position, either by the term of the instrument appointing such fiduciary, or by the terms of this instrument. A Special Trustee shall have no responsibility for administration, investments, etc., that result generically to a Trustee, and shall have no liability relating to the general administration or management of the Trust, including the performance of Trust assets, other than liability for authority and powers specifically granted to such Special Trustee.

14.2 Children, Issue, etc. The terms "children", "issue", "descendant", or words of similar import shall include (a) legally adopted children or their issue, as the case may be, but, in the case of an adopted person, only if the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the adopted person's minority, and (b) persons conceived before the death of such child's parent, but born thereafter.

14.3 "Per Stirpes". The phrase "per stirpes" as used herein is used as it was defined under South Carolina law prior to the adoption of the South Carolina Probate Code on July 1, 1987. Thus, the

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

term "per stirpes" as used herein is intended to describe the division of shares at each generation regardless of whether there is surviving issue representing that generation. The term "per stirpes" with reference to the issue of any individual shall mean that the stock begins with the children of such individual and that no distribution at any generational level shall be "per capita". If no issue representing a generation are surviving, the number of shares for that generation shall equal the number of predeceased issue of that generation leaving surviving issue. If issue representing a generation are surviving, the number of shares for that generation shall equal the number of issue of that generation surviving, plus the number of predeceased issue of that generation leaving surviving issue.

ARTICLE 15
No Power of Alienation

With the exception of any powers or discretions which may be exercised by a beneficiary solely in a fiduciary capacity, no beneficiary of any Trust created under this Agreement shall under any circumstances have any power of alienation, either voluntary or involuntary, of any property (whether income or principal) at any time constituting any part of the Trust of which he or she is beneficiary prior to actual receipt thereof by the beneficiary; nor shall any beneficiary have any power to encumber the income or principal of the Trust of which he or she is beneficiary or any part thereof; nor shall any beneficiary have any control of the principal or income of the Trust of which he or she is beneficiary, or any part thereof, until after actual receipt by the beneficiary; and no part of the principal or income of the Trust of which he or she is beneficiary shall ever be subject to the claims of the creditors or spouse of any beneficiary.

ARTICLE 16
Fiduciary Limitations

16.1 Limitations on Tax Sensitive Powers. After the death of the Settlor, no particular Trustee or other Fiduciary shall possess, or participate in the exercise of, any power given such Fiduciary by this Agreement or by law to make any determination with respect to:

16.1.1 Legal Obligations. Any payment or application which would discharge any legal obligation of such particular Fiduciary personally; or

16.1.2 §2041(b)(1)(A) Powers - Power of Appointment Limitations. Any power to consume, invade or appropriate property for the benefit of, such particular Fiduciary personally (neither the preceding portion of this paragraph nor any otherwise applicable rule of law shall limit such particular Fiduciary's possession or participation in the exercise of any power (or severable portion thereof) granted in this Agreement to such Fiduciary personally to consume, invade or appropriate property for the benefit of such Fiduciary which is limited by an ascertainable standard

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

relating to the health, education, support or maintenance of such Fiduciary personally); or

16.1.3 §25.2511-1(g)(2) Powers - Taxable Gift Limitations. Any transfer of, or power to transfer, property to or for the benefit of another person, if such Fiduciary personally has any beneficial interest in the property subject to the determination (neither this subparagraph nor any otherwise applicable rule of law shall limit such particular Fiduciary's possession or participation in the exercise of any fiduciary power (or severable portion thereof) granted in this Agreement to such Fiduciary to make any payment to, or expenditure for the benefit of such other person, the exercise or non-exercise of which is limited by a reasonable fixed or ascertainable standard which is set forth in this Agreement).

16.2 Additional Fiduciary Limitations. All powers given to the Trustees and other Fiduciaries in this Agreement are exercisable only in a fiduciary capacity. Notwithstanding any other provisions of this Agreement, no Fiduciary who is a beneficiary hereunder or who is obligated to support a beneficiary hereunder shall ever participate in (i) the exercise of, or decision not to exercise, any discretion over payments, distributions, applications, appointments or accumulations of income or principal by the Fiduciary(ies), (ii) the exercise of discretion to allocate receipts or expenses between principal and income, (iii) the exercise of any discretion with respect to an insurance policy held hereunder, (iv) holding property as custodian for a minor or as donee of a power during minority, or selecting any such custodian or donee, (v) decisions to exercise tax options, (vi) any decision to retain or invest in unproductive or underproductive property (which does not produce an appropriate value in beneficial use for the appropriate beneficiary in lieu of income), or (vii) the exercise of any power to amend or affect beneficiaries' powers of withdrawal over additions, which may be in excess of the limitations imposed by the preceding Section of this Article, nor may such Fiduciary remove and replace any Fiduciary with any other Fiduciary who is a related or subordinate party to such removing Fiduciary within the meaning of §672(c) of the Internal Revenue Code unless (a) the Fiduciary being appointed has a substantial adverse interest to the appointing Fiduciary or (b) the powers of the Fiduciary being replaced are subject to the limitations contained in the preceding Section of this Article. In the event that there arises a need to exercise a discretion or power which all of the then acting Fiduciaries are prohibited from exercising, that discretion or power may be exercised by a Special or an Independent Trustees or Fiduciary, after being duly appointed as such, by a Trust Protector appointed pursuant to the provisions of Article 20, below.

ARTICLE 17
Termination of Trusts

Notwithstanding any other provision of this Agreement to the contrary, each Trust established hereunder shall terminate not later than twenty-one (21) years after the death of the survivor of the Settlor's wife and the Settlor's issue living (or in being) on the date of the Settlor's death, or the date this Agreement

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

becomes irrevocable, if earlier, or such earlier time as may be required by the South Carolina Uniform Statutory Rule Against Perpetuities, and at such time the property shall be distributed to the income beneficiaries thereof, unless otherwise herein disposed of at that time.

ARTICLE 18

Survivorship

No person hereinabove named or described in this Trust shall be deemed to have survived the Settlor unless he or she is living on the thirtieth (30th) day after the day of the Settlor's death.

ARTICLE 19

Jurisdiction, Governing Law and Trust Removal

19.1 Jurisdiction and Governing Law. Except as provided in the next Section of this Article, all questions pertaining to the construction, validity and effect of this Agreement and the Trust hereby created shall be determined in accordance with the laws of the State of SOUTH CAROLINA.

19.2 Trust Removal. The Trustees of any Trust existing under this Agreement may at any time and from time to time (i) declare that the construction and effect of all or any portion of the Trust shall from that date be determined in accordance with the law of a different jurisdiction; provided, the designated jurisdiction must be a jurisdiction (a) where a portion of the Trust property or its indicia is located or is to be removed and (b) under the laws of which the Trust (or the portion of the Trust) would not be invalid or revocable, (ii) change the situs of the Trust, and (iii) pay or transfer the whole or any part of the Trust's income and principal to the Trustee or Trustees for the time being of any irrevocable Trust with the same or similar provisions under which the beneficiary or beneficiaries of the Trust under this Agreement (and no other person or persons) are the beneficiary or beneficiaries to be held by the Trustee or those Trustees as an addition to the property held in that Trust (freed and discharged from the trusts, powers and provisions of this Agreement) whether or not the Trustee or Trustees of that Trust are domiciled or resident in SOUTH CAROLINA or the United States (or in such other place to which this Trust shall have been previously removed), or whether or not the Trust is governed by the laws of SOUTH CAROLINA or the United States (or by such other place to which this Trust shall have been previously removed), and the receipt of such Trustee or Trustees shall constitute full discharge of the Trustee.

ARTICLE 20

Power in Trust Protector to Amend

20.1 Appointment of the Trust Protector. Should a need arise for a Trust Protector and should a Trust Protector not then be serving, or should there arise circumstances under which it is apparent to the Trustee or to a majority of the then beneficiaries of any Trust created hereunder that the Settlor's intentions in creating any Trust created under this Agreement may be better served by a modification of any such Trust, then a Trust Protector shall be chosen to consider whether the Trust should be amended. The Trust Protector

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

shall be chosen by a majority of the following three votes: (i) the Trustee shall have one vote; (ii) an attorney experienced in the trust or tax fields, who is not related or subordinate (within the meaning of §672(c) of the Internal Revenue Code) to the Trustee or to any beneficiary, who shall be chosen by agreement of the Trustee and the beneficiaries shall have one vote; and (iii) the beneficiaries of the affected Trust who are sui juris, collectively, voting by a majority of those casting votes, shall have one vote. In the event that (i) the Trustee and the beneficiaries are unable to agree upon an attorney experienced in the trust or tax fields, who is not related or subordinate (within the meaning of §672(c) of the Internal Revenue Code) to the Trustee or to any beneficiary, to vote on the appointment of a Trust Protector, or (ii) there is no Trustee then serving or able to vote (including because of incompetence or other disability), the law firm of Evans, Carter, Kunes & Bennett, P.A., or its successor entity, shall select such attorney (including an attorney associated with Evans, Carter, Kunes & Bennett, P.A., or its successor entity) to vote on the appointment of the Trust Protector.

20.2 Extraordinary Authority. Because the Settlor recognizes that he may not be able to anticipate developments and changes which may occur during the term of Trusts created under this instrument, he wishes to give the Trust Protector extraordinary power and authority over the modification of the Trusts created herein and the distribution of the Trust assets at a time prior to, or later than, that which has otherwise been provided for herein. These broad powers are granted for the purpose of permitting the Trust Protector to effect the dispositive objectives set forth in this instrument.

20.2.1 Authority to Amend. The Trust Protector shall have the power, by an instrument filed with the Trust records, to amend the dispositive or administrative provisions of any Trust created under this instrument (including the provisions relating to the Trustee); provided, (i) that the Settlor's descendants (or their estates) shall benefit from any dispositive amendment, (ii) that no power of amendment shall be effective to extend the period for the vesting of any property under the Trust beyond the period for vesting defined elsewhere in this instrument, (iii) that any such amendment shall be for the sole purpose of effecting the Settlor's dispositive objectives as set forth in this instrument, and (iv) that no power of amendment shall be effective which would prevent any gift made under this instrument which is intended to qualify for the marital deduction from so qualifying.

20.2.2 Authority to Terminate or Extend. In exercising the special powers granted in this instrument, the Trust Protector is requested, but not directed, to consider the wishes of the affected Trust or Trusts then beneficiary(ies). The Settlor wishes for the Trust Protector to feel comfortable exercising these broad powers, including the power to terminate any Trust and distribute the assets, or to extend the term of the Trust, even for multiple generations, and direct that the Trust Protector shall be free from challenge or liability for exercising such powers. Such power shall even include the power to distribute assets to certain beneficiaries and to retain other assets in trust for the benefit of other beneficiaries.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

20.3 Appointment and Removal of Trustees. Should the need arise, the Trust Protector shall have the power to remove any Trustee and Special Trustee at any time, with or without cause, and may appoint a successor Trustee or Special Trustee to fill any vacancy in the office of Trustee, or Special Trustee, as the case may be, however caused. The Trust Protector may only serve as Trustee after having resigned as the Trust Protector.

20.4 Liability. No personal liability shall attach to the Trust Protector except for gross negligence or willful wrongdoing. The Trust Protector shall have no responsibilities as a Trustee with respect to such Trust other than the responsibilities which directly relate to those powers specifically relating to the powers which are vested in the Trust Protector alone as described in this Article. The Trust Protector of any Trust shall be treated for all purposes as a "special trustee" whose powers, duties, and responsibilities are thus limited to those specifically vested in such position (and none, such as responsibility for administration, investments, etc., that result generically to a trustee).

20.5 Written Requirements. No exercise of any power, designation of successor, resignation, or other action of the Trust Protector shall be effective until such action shall be manifest in writing, signed by the person or persons authorized to take such action and delivered to the Trustees or, in the case of the exercise of the power to appoint a Trustee for any Trust for which there is no then serving Trustee, to the person designated as Trustee.

20.6 Successor Trust Protectors. All provisions of this instrument relating to the Trust Protector shall apply to the original Trust Protector and to all subsequent Trust Protectors.

ARTICLE 21
Beneficial Lapses on Contest

The Settlor has carefully considered the dispositions which are directed in this instrument and the discretionary powers granted to the Trustee herein. If any beneficiary in any manner, directly or indirectly (including pursuing an action to determine whether there is probable cause to contest the Settlor's testamentary instruments), contests this instrument or any of its provisions, or the Settlor's Will or any of its provisions, such assets as would have passed to such beneficiary (either at the time of the Settlor's death or at some point in the future) shall pass to the remaining beneficiaries of the Trust, in the same shares and proportions and in trust or outright as are dictated in this instrument, excluding the beneficiary (and his or her issue) initiating or participating in such contest.

Furthermore, the Trustee is specifically instructed to consider instituting a tort action for interfering with the Settlor's desires against any person who may institute legal proceedings challenging the validity of the disposition of any assets under this instrument, any life insurance policy beneficiary designation, any employee benefit plan or individual retirement account designation, any jointly titled property and any other

kinds of assets that might be included in the Settlor's gross estate or might pass to any beneficiary on account of his death.

ARTICLE 22

Headings

The headings contained in the various Articles are for informational purposes only and shall not be deemed to control interpretation of the provisions of this Agreement.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

EXECUTION

IN WITNESS WHEREOF, Warren P. Holliday, as Settlor and as Trustee, in acceptance of this Trust, has set his hand and affixed his seal.

WITNESSES

(SEAL)

Warren P. Holliday, Settlor and Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Warren P. Holliday, as Settlor and as Trustee, sign, seal and as his act and deed, deliver the within named Warren P. Holliday Revocable Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS 29th
day of October, 2008.

(SEAL)

Notary Public for South Carolina
My Commission Expires: Jan 3, 2017

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

REVOCABLE TRUST AGREEMENT
OF
WARREN P. HOLLIDAY

EXHIBIT A
DESCRIPTION OF PROPERTY CONTRIBUTED
$5.00 CASH



ACCEPTED:

Warren P. Holliday, Trustee

Date: October 29, 2008

ELECTRONICALLY FILED - 2021 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Certification of Trust

Pursuant to S. C. Code 62-7-1013[1]

Settlor:	Warren P. Holliday
Name of Trust:	The Warren P. Holliday Revocable Trust
Date of Trust:	October 29, 2008
Current Trustee:	Warren P. Holliday
Address of Trust:	1209 Manor Lane, Mt. Pleasant, SC 29464

The undersigned trustees do hereby confirm the existence of the within described Trust and do hereby certify the following:

1. The undersigned Warren P. Holliday is the initial trustee of the trust. The successor Trustees are Ross Samuel Holliday, Warren Lea Holliday, Pamela G. Wallin, and Mark Bennett Holliday, in that order.

2. The Trust is in full force and effect and has not been revoked, terminated or otherwise amended in any manner which would cause the representations in this Certification of Trust to be incorrect.

3. The Trust is revocable. Warren P. Holliday has the right to revoke the Trust at any time.

4. The above designated Trustee is fully empowered to act for said Trust and is properly exercising the trustee's authority under this Trust.

5. The signature of the sole Trustee is required for any action taken on behalf of the Trust.

6. The proper manner for taking title to Trust property other than real property is:

   Warren P. Holliday, Trustee of The Warren P. Holliday Revocable Trust, dated October 29, 2008

7. To the undersigned's knowledge, there are no claims, challenges of any kind, or cause of action alleged, which contest or question the validity of the Trust or the trustee's authority to act for the Trust.

8. The trustee is authorized by the Trust Agreement to exercise the following powers:

In the administration of any Trust created hereunder, the Trustee shall have all of the powers granted by law, including but not limited to the powers granted to Trustees by the Uniform Trustee Powers Act (S.C. Code Sections 62-7-815 and 816), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. It is the Settlor's intention to give broad discretion and flexibility to the Trustee. However, in no event, shall any power to be exercised or interpreted in any fashion which shall not give to the

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[1] Pursuant to South Carolina Code §62-7-1013(g), a person who enters into a transaction in reliance upon a certification of trust may enforce the transaction against trust property as if the representations contained in the certification were correct. In addition, pursuant to South Carolina Code §62-7-1013(f), a person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if a court determines that the person did not act in good faith in demanding the trust instrument.

Settlor's husband as the sole beneficiary of any Trust qualifying for the marital deduction the degree of beneficial enjoyment of the Trust property which principles of the law of Trusts accord to a person who is unqualifiedly designated as the life beneficiary of the Trust.

Without limiting the foregoing, the Trustee shall have the following powers:

1. **Investments and Reinvestments**. To invest or reinvest in such securities or other property, real or personal (whether within or without the United States), and to retain any property received by him for such periods as she determines, including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust, even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments. The Settlor requests that the Trustees honor the wishes of the Trust beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustees determine that such wishes are clearly in contradiction to the purposes and terms of any such Trust.

2. **Non-Traditional Investments**. In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to acquire and retain investments not regarded as traditional for Trusts. The Trustees may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership.

3. **Management and Holding of Assets**. To invest and reinvest all or part of the assets of any trust created hereunder in any common trust fund of any corporate Trustee; to employ a bank, trust company, or securities brokerage firm located anywhere within the United States, at the discretion of the Trustees but at the expense of the Trust, as custodian or agent; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustees may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustees shall be under no obligation to inspect or verify such stock or securities nor shall the Trustees be responsible for any loss by such bank, trust company, or securities brokerage firm.

4. **Consolidation and Division of Assets**. To hold and administer the Trusts created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this Trust, the Trustees shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

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5. **Special Powers Relating to Estates**. The Trustees are specifically authorized, in addition to the other powers conferred upon them in this agreement, to (i) make loans to the Personal Representatives of the Settlor's or the Settlor's husband's estate, and (ii) purchase from such estate (and continue to hold such assets) assets that might otherwise be imprudent investments.

6. **Borrowing**. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable, and each such loan shall be payable only out of assets of the Trust.

7. **Lending**. To lend all or any portion of the funds of any Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustees may in their discretion impose.

8. **Receipts, Disbursements and Allocations**. To allocate receipts and disbursements between income and principal in such manner as the Trustees (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply with respect to any Trust which qualifies for the marital deduction during the life of the Settlor's husband. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such allocation shall follow state law, and (ii) in the discretion of the Trustees (other than any beneficiary).

9. **Distributions**. Without the consent of any beneficiary, the Trustees (other than any beneficiary) may make distributions in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary (including any Trust) and without making pro-rata distributions of specific assets.

10. **Occupancy and Use**. Except as may be otherwise specified elsewhere in this Agreement as to any specific property, the Trustees shall have the power to permit any person having an interest in the income of any Trust created hereunder to occupy real property, or to use personal property, held by any such Trust upon such terms as the Trustees deem proper, whether rent free or for the payment of taxes, insurance, maintenance and ordinary repairs, or other expenses, or upon such terms and conditions as the Trustees determine.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

11. **Unproductive, Wasting and Personal Use Assets.** In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to invest and reinvest the Trust funds without regard to the production of current income subject, however, to the requirements under Article 6, above, as to qualification for the marital deduction and the requirement that the Settlor's husband at all times have the same degree of beneficial enjoyment of the Trust property which principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of the Trust. The Trustees should invest and reinvest the Trust funds in assets which are expected to produce a reasonable rate of appreciation or are expected to produce substantial personal enjoyment for the Trust's beneficiaries. Such assets may include, but are not limited to, personal use real estate, personal property such as works of art and antiques, undeveloped real estate, discounted debt obligations, and remainder interests whether such interests will produce current enjoyment and benefits or enjoyment and benefits after any term of years or the deaths of one or more individuals, which terms or deaths may not be expected to occur within the term of this Trust.

12. **Related Party Transactions.** To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any Trust the Settlor may have established and to retain such property so long as the Trustees hereunder may deem advisable, whether or not such property is of the class in which Trustees are authorized by law or any rule of court to invest; and to make loans to, or borrow from, any such Trust or Trusts upon such terms and conditions as the Trustees deem advisable.

13. **Management of Closely Held Businesses.** In connection with (a) the continuation of operation of any business or investment interests owned by the Settlor prior to her death which become a part of any Trust under this Agreement (whether by purchase by the Trustees or bequest under the Settlor's Will or otherwise), or (b) the establishment of any new business or investment, the Trustees are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by her in respect of the operation of the business) without regard to her being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which the Settlor could have exercised.

14. **Division or Combination of Trusts.** In the event that the Trustees determine that it is more feasible or advisable to administer the Trust or any shares or interests

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

created hereunder as separate trusts or shares (whether for administrative, liability, environmental, or other reasons), the Trustees shall have the power to divide any such Trust into further trusts or shares. The Trustees shall also have the power to combine any such Trust created hereunder with any other Trust, whether created by the Settlor or another person, if the terms of the trusts are substantially the same and the Trustees are the same.

15. **Voting Trusts and Self Interested Voting of Securities** . To enter into a voting trust agreement; to transfer any stock or securities to the Trustees under a voting trust agreement; and, generally, to exercise all the rights and powers as are or may be lawfully exercised by persons owning securities or other property. To vote for themselves, or for any officer or employee of a corporate Trustee, to be a director or officer of any Corporation in which any Trust may be interested, or to be a member of any committee related in any way to such corporation, and any officers or employees of any corporate Trustee may serve as such directors, officers or committee members, and receive proper remuneration for such services, and may exercise free and untrammelled discretion with respect to all matters concerning the affairs of such corporation (or any other entity or property).

16. **GST Planning - Division of Trusts**. To divide property in any Trust having an inclusion ratio (as defined in Internal Revenue Code §2642(a)(1)) of neither one nor zero (0) into two separate Trusts representing fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero (0) or to divide this Trust into separate shares or trusts prior to the receipt of any particular transfer of assets and to direct that such assets pass to one share (or trust) or another. In addition to the power to divide Trusts, if the Trustees (other than any beneficiary) shall determine that a division of Trusts shall not be recognized by the Internal Revenue Service for Chapter 13 purposes (or for any other reason shall not accomplish the Trustees' planning goals), the Trustees (other than any beneficiary) shall have the power to appoint property from this Trust to a new Trust having the same or similar provisions and the same beneficiaries. The Settlor recognizes that the power to appoint is a broader power than the power to separate Trusts and the power may permit the Trustees to transfer assets without liabilities, to modify Trust provisions, or otherwise to effect substantial changes to the Trust Estate. In particular, the Settlor recognizes and expects that this appointment power may be exercised to appoint assets away from a Trust created hereunder (prior to their becoming part of the Trust Estate) which may not have the same Generation Skipping Transfer Tax characteristics as the then existing Trust Estate.

17. **GST Planning - Powers of Appointment**: With respect to all or any part of the principal of any Trust, by an instrument filed with the Trust records, the Trustees (other than any beneficiary) shall have the power: (a) to create lifetime or testamentary powers of appointment, both limited and general (within the meaning of Internal Revenue Code §§ 2514 and 2041), in any beneficiary; (b) as to lifetime limited powers of appointment and as to testamentary limited and general powers of appointment, to eliminate any power for all or any part of the principal as to which

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

a power previously existed; and (c) to divide the Trust principal into two fractional shares based upon the then proportion of the Trust that would be includible in the gross estate of the beneficiary holding the power if he or she died immediately before the division, and each part shall be administered as a separate Trust unless the Trustees (other than any beneficiary) shall, in their discretion, thereafter combine the separate Trusts into a single Trust. In authorizing such action, it is the Settlor's hope (but not direction) that a general power will be kept in effect when the Trustees (other than any beneficiary) believe the inclusion of the property in the beneficiary's gross estate may achieve a significant savings in transfer taxes by having an estate tax rather than a Chapter 13 tax imposed on the property subject to the general power, or income tax benefits deemed by the Trustees (other than any beneficiary), in the exercise of their sole and absolute discretion, to be significant. Any such appointment power granted, however, shall be for the sole purpose of effecting the Settlor's dispositive objectives set forth in this Agreement.

18. **GST Planning - Addition and Distribution Powers**: Chapter 13 of the Internal Revenue Code may require that any trust created under this instrument be treated as being comprised of separate shares or trusts for purposes of such Chapter (such as would be required should there be separate transferors to any trust created hereunder). In the event that there are such separate shares or trusts, the Trustees shall have the power to direct that additions to, or distributions from, any trust created hereunder (which trust may be deemed to be comprised of the separate shares or trusts) shall be to, or from, as the case may be, either of such separate share or trust. By way of example, should a taxable lapse of a withdrawal right cause separate shares to be created with respect to any trust, and should the party permitting the lapse not apply his or her GST exemption to such lapsed amount, the Trustees may direct that future distributions to a skip-person from such trust be made from the separate share or trust created by the lapse which, because of its being a deemed addition by a transferor other than the Settlor, may have an inclusion ratio other than zero (0).

19. **GST Planning - Special Powers**: In addition to all other powers conferred upon the Trustees (other than any beneficiary) elsewhere in this Agreement, the Trustees (other than any beneficiary) are authorized to take any and all action the Trustees (other than any beneficiary) in their sole and absolute discretion deem necessary, after consulting with an attorney who regularly practices in the areas of estate planning and probate, to minimize or eliminate any generation skipping transfer (hereafter called GST) tax that may be due upon the distribution, transfer, or passing of any property to any individual, trust or fiduciary under the terms of this Agreement or any Trust or share created by this Agreement. Said authority shall include, but not be limited to, the power to allocate (or to request the appropriate party to allocate, as the case may be) so much of the Settlor's unused GST exemption, as said term is defined in §2631(a), as the Trustees (other than any beneficiary) deem appropriate to minimize or eliminate any GST tax. In no event may a discretionary beneficiary of any Trust hereunder participate in any decision to make any distributions pursuant to this provision to avoid or minimize GST tax.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

20. **Non-Exempt Trusts**: It is the Settlor's request that distributions which, if made inter vivos by an individual, would not be treated as taxable gifts by reason of §2503(e), relating to the exclusion of certain transfers for educational or medical expenses (or such similar or successor provision), be made by the Trustees from any such Trust created hereunder as may have an inclusion ratio greater than zero (0), such payments to be made directly to the payee organization or person on behalf of the beneficiary of this Trust rather than be distributed to the beneficiary or to his parents or guardians for payment by them. In addition, it is the Settlor's request that any portion or portions of any Trust established hereunder which may be appointed to any qualified charitable organization be appointed first from any trust or trusts having an inclusion ratio greater than zero (0). In specifying this direction it is the Settlor's request that the Trustees seek to make the appropriate use of any available generation skipping tax exclusions as may be available, with specific attention being given to the qualification of such payments under §2611(b) of the Internal Revenue Code, as amended.

21. **Power to Deal With Environmental Hazards** . To use and expend any Trust income and principal to (i) conduct environmental assessments, audits, and site monitoring to determine compliance with any environmental law or regulation thereunder; (ii) take all appropriate remedial action to contain, cleanup or remove any environmental hazard including a spill, release, discharge or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation thereunder; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance, or by a private litigant; (iv) comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Trustees under this paragraph may be charged against income or principal as the Trustees (other than a beneficiary) shall determine.

22. **Segregation of Problem Property**. To set aside as a separate Trust, to be held and administered upon the same governing terms as any other Trusts which the Settlor may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law.

23. **Power to Disclaim**. The Trustees shall have the power to disclaim any power which, in the sole discretion of such Trustees, will or may cause any such Trustees to be considered an "owner" or "operator" of property held in any Trust created under this Agreement as those terms are defined in the Comprehensive Environmental Response, Liability, and Compensation Act, (CERCLA), as amended from time to time, or which shall otherwise cause any Trustees to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The power to disclaim as contained in this Section shall apply to any power, whether

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

actually set forth in this Agreement, incorporated by reference herein, or granted or implied by an statute or rule or law.

24. **Exoneration from Liability**. The Trustees shall not be personally liable to any beneficiary of any Trust created under this Agreement, or to any other party interested in any Trust created under this Agreement, for any claim against the Trust for the diminution in value of Trust property arising from the compliance by the Trustees with any federal, state, or local law, rule, or regulation including (1) the reporting of, or other response to the contamination of Trust property by substances or materials prohibited or regulated by federal, state, or local law or that are known to pose a hazard to the environment or to human health, (2) the reporting of or other response to violations of any federal, state, or local law or that are known to pose a hazard to the environment or human health, or (3) other matters relating to environmental laws.

25. **Uneconomical Trusts**. If at any time after the death of the Settlor any Trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date of the Settlor's death), as determined by the Trustees, of One Hundred Thousand ($100,000) Dollars or less, the Trustees (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Primary Beneficiary, or if none, to the person or persons then entitled to receive or have the benefit of the income therefrom, or to the legal representative of such person. If there is more than one income beneficiary, the Trustees shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated, to such beneficiaries, per stirpes.

26. **Limitations**. Notwithstanding the foregoing, nothing in this Agreement shall be construed as permitting a beneficiary who may also be a Trustee of any Trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this Agreement upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

IN WITNESS THEREOF: the undersigned, being the trustee, does hereby execute this Certificate of Trust this 29th day of October, 2008.

Witnesses:

Trustee:

Warren P. Holliday, Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Sandra H. Jenkins, do hereby certify that Warren P. Holliday, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this
29th day of October, 2008.

(SEAL)
Notary Public for South Carolina
My Commission Expires: Jan. 3, 2017

Exhibit
(Affidavit of Ross Holliday)

See Duplicate Exhibit* found at ROA pages 111-115

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

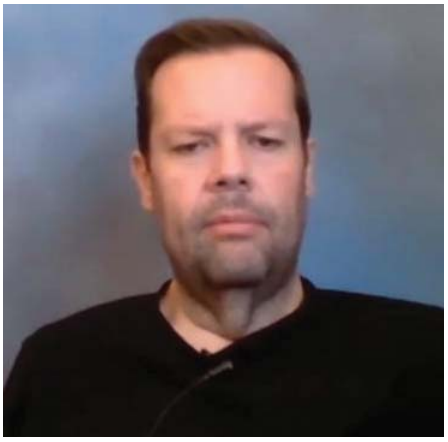
EXHIBIT C

PAMELA HOLLIDAY WALLIN

vs

ROSS SAMUEL HOLLIDAY

Case No. 2019-CP-10-2430



ROSS SAMUEL HOLLIDAY

August 04, 2020

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IN THE COURT OF COMMON PLEAS

CHARLESTON COUNTY, STATE OF SOUTH CAROLINA

-ooOoo-

PAMELA HOLLIDAY WALLIN, et al.,	)	
Petitioners,	)	Case No. 2019-CP-10-2430
v.	)	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, et al.,	)	
Respondents.	)	

Video Deposition of ROSS SAMUEL HOLLIDAY
VOLUME I

Taken on August 4, 2020
At 10:05 a.m.

At ADVANCED REPORTING SOLUTIONS
3507 North University Avenue
Suite 350
Provo, Utah 84604

Reported by: Deirdre Rand, RPR, CSR, CCR

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A P P E A R A N C E S

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(Appearing via videoconference)

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Also present:

PAMELA HOLLIDAY WALLIN (via video)
MARK BENNETT HOLLIDAY (via video)
WARREN LEA HOLLIDAY (in person)

Videographer:

ALYCE LARGIN, Utah Legal Video Svcs

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I N D E X

WITNESS PAGE

ROSS SAMUEL HOLLIDAY

Examination by Mr. Halversen..... 5

-ooOoo-

E X H I B I T S

EXHIBIT DESCRIPTION PAGE

A Photographs of House 62
B Photocopies of bank statements 103
(REDE 2 to 332)

-ooOoo-

P R O C E E D I N G S

ROSS SAMUEL HOLLIDAY,
called as a witness, testified as follows:

THE VIDEOGRAPHER: This is the recorded deposition of Ross Holliday. Today's date is August 4, 2020. The time is 10:05. This is the case of Pamela Holliday Wallin versus Ross Samuel Holliday, et al.

This deposition is taking place at Advanced Reporting Solutions in Provo, Utah.

Will the court reporter please swear in the witness -- oh, actually, will counsel please state who they are and who they represent, starting with plaintiffs' counsel.

MR. HALVERSEN: Brent Halversen. I'm here on behalf of the Petitioners, along with Dan Slotchiver and Steve Slotchiver.

MS. PAYLOR: Alice Paylor. I'm on, along with Bijan Ghom, on behalf of the respondents.

(The witness was sworn to tell the truth, the whole truth, and nothing but the truth by the certified court reporter.)

EXAMINATION

BY MR. HALVERSEN:

Q. Mr. Holliday, can you hear me okay?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 6

A. Yeah, I can hear you fine.
Q. Okay.
For purposes of this afternoon going forward in our discussion, try to wait until the end of my question, because there might be a little bit of a lag, and I will try to do you the same courtesy. Okay?
A. Okay.
Q. And if I remind you to slow down, it's only because of the lag. Okay?
A. Okay.
Q. Okay. So it is now 12:07 Eastern Standard Time. The judge has allowed us three hours today to take your deposition. So at 3:07, we will be adjourning pursuant to the court's order.
Your doctor has also provided us with a note that says if you would like to take a walking break every hour, you're afforded that right. And so if you would like to let us know -- or we'll try to let us know after an hour -- if you would like to take a break, or if before then you would like to take a break, I don't have any objections to that. I'm not here to make you feel uncomfortable. I understand you have health issues. Okay? So just let me know if you want to take a break. Is that fair?
A. Yep.

Page 7

Q. Okay.
Let's talk about -- since we're on the topic of your health, what is the status of your health?
A. That's -- I'm not sure how to even go about answering that right now.
Q. Okay. Well, let me -- I know that you had some --
A. I just -- I spent some time -- I spent six months in a hospital, a number of months in ICU in a medically-induced coma, and I'm in the process of trying to continue to heal up. I have some additional surgeries that I have to have done here in the very near future. And that's where I'm at medically.
Q. You definitely look different than the last time I saw you here in Charleston.
How much weight have you lost?
A. I don't know. A substantial amount.
Q. What exactly -- what surgeries coming up do you -- are you planning on having or needing?
A. I'm going to take a more limited approach on my medical stuff. So I don't care to get into the particulars as to my personal medical issues, other than to say I just have some upcoming surgeries that will be necessary.
Q. Okay. So you're not answering the question?

Page 8

A. Well --
Q. You're not going to answer the --
MS. PAYLOR: Well, the --
THE WITNESS: I'm not in a doctor's visit, I'm in a deposition. So let's make sure we're clear.
MS. PAYLOR: The scope is limited to undue influence and lack of capacity. And everybody has a right to privacy with regard to their health issues, and he is asking for that right of privacy. He's told you in general. Let's move on.
MR. HALVERSEN: I didn't know my deposition was limited to questioning the deponent about his mental and physical status. I believe his mental and physical status will relate to his ability to profer truthful questions -- answers to my questions.
If you would like to instruct the witness not to answer the question, I would please ask you to do that.
BY MR. HALVERSEN:
Q. Mr. Holliday, I'm simply asking you what surgeries you have upcoming, and what is the status of your health. I'm not getting into details about it. You just told me you're going to have surgeries. What surgeries do you plan on having?
A. Ones in an operating room at the hospital.

Page 9

Q. Well, I figured that. What -- I mean, what do you need? What is the -- what surgery do you need for your present medical condition?
A. I think I've been clear. I --
Q. No, you haven't been clear. You have not been clear?
MS. PAYLOR: Okay --
THE WITNESS: Yeah, I've been clear that I'm not going to do a medical exam with you today.
MR. HALVERSEN: Alice, are you instructing him not to answer the question?
MS. PAYLOR: Well, he doesn't want to answer it and I don't think it's germane to what we're here for.
If you want to ask him if he's mentally capable to answer questions, I think you can certainly ask that. I don't know what surgery he's going to have in the future has anything to do with you or your clients, and he clearly does not feel comfortable giving you and your clients that information.
MR. HALVERSEN: Alice, please, no more speaking objections. This is my deposition. If you want to instruct --
MS. PAYLOR: You asked me a question.
MR. HALVERSEN: Please, no more speaking

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 10

objections.
BY MR. HALVERSEN:
Q. Please, Mr. Holliday, will you simply ask my basic -- answer my basic question as to the status of your current health?
A. Yeah, I gave it to you. I'm in recovery. I'm trying to get better, build stamina, build strength, and trying to get healthier, but I do have ongoing medical needs that are unresolved.
Q. Okay. So you're not willing to share that with me; is that correct?
A. That is correct.
Q. Okay.
Are you currently serving as the personal representative in this case?
A. I don't believe that I am.
Q. Do you believe that you're going to be able to return to that function at any point in the near future?
A. Potentially.
Q. Okay. After your surgeries?
A. I'm not sure when.
Q. Okay.
What did you do to prepare for your deposition today?
A. Just thought about -- just thought through the

Page 11

chronology and the history of a lot of events that have transpired.
Q. Did you review any documents?
A. Documents that we have previously provided to you.
Q. Which documents?
A. Just affidavits, sworn statements.
Q. Which affidavits?
A. Just the ones that I've signed and provided to you and to the courts.
Q. Have you reviewed any other documents besides the affidavits you just referenced to me?
A. Just legal documents.
Q. Okay. What kind of legal documents?
A. Affidavits, depositions, things of that nature.
Q. Okay. Which depositions did you review?
A. Specifically, ones -- the one in the case regarding my mother that we -- that we won that lawsuit.
Q. Which lawsuit are you referring to?
A. There was a lawsuit that was filed by Patricia Holliday against me.
Q. Okay. And you said you won that lawsuit? Is that your testimony?
A. Yeah.

Page 12

Q. Is that lawsuit not on appeal?
A. No, not that I'm aware of.
Q. So you reviewed your deposition from -- is that the -- is that what we've called the note case?
A. Yes.
Q. You reviewed your deposition from that case.
What other legal documents or depositions have you reviewed in preparation for your deposition today?
A. None others.
Q. Okay.
A. Nope.
Q. Other than this -- I'm sorry. Go ahead.
A. I said nothing.
Q. Okay. So nothing else other than the affidavits and the deposition that you provided.
Have you reviewed any other documents other than the ones I just referenced?
A. I don't believe so, no.
Q. Okay.
Could you please state your full name for the record?
A. Ross Samuel Holliday.
Q. And what is your date of birth?
A. January the 8th, 1974.
Q. And your place of birth?

Page 13

A. Charleston, South Carolina.
Q. And where did you go to high school?
A. I went to Wando High School, in Mount Pleasant.
Q. What year did you graduate?
A. 1992.
Q. Do you have any relatives by blood or marriage that live in Charleston County?
A. Extended family, yes.
Q. Who are they?
A. Just aunts, uncles, on my mom's side of the family.
Q. Could you provide their names for me?
A. I don't have all their names.
Q. Do you remember any of their names as you sit here today?
A. Yeah, but I don't know who all still lives in Charleston or who doesn't. I was just answering it generally.
Q. Okay. I understand you might not know if someone has moved, but as to your present understanding as to who lives here, who are they?
A. I think Martha Brouthers, my mom's sister, still lives there. I don't know that, but I think that. I'm not sure if she lives in Charleston County,

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 14

specifically.
You asked specific to Charleston County; is that correct?
Q. Yes, sir.
A. Yeah. I think some of the other ones live actually in counties other than Charleston County.
Q. Okay.
Anyone else?
A. No.
Q. Do you have any friends that live in Charleston County?
A. Yes.
Q. Who are they?
A. People -- just people that I've known, went to high school with.
Q. Okay. Can you give me any names of those people?
A. Yeah, you want to tell how many you would like? I mean, I'm not quite sure --
Q. I don't know, how many friends do you have?
A. Plenty. I mean, I don't know. I mean, I grew up there, participated in activities, went to church, went to school. So just -- yeah.
Q. I guess let me -- if I could help you. Just friends that you stay in contact today with.

Page 15

A. Yeah. There's some that I stay in contact with.
Q. And I'm asking you for the names of those people, sir.
A. Yeah. Alex Billups.
Q. How do you spell that?
A. Alex, A-l-e-x, Billups.
Q. How do you spell the last name?
A. B-i-l-l-u-p-s.
Q. Okay. Anyone else, or is that it?
A. Yeah, the members of the Evans family that we went to church with.
Q. Okay. What are their first names?
A. There's -- I mean, it's -- there's a bunch of them. And mainly, it's through --
Q. Can you tell me one?
A. Yeah. Betsy Evans.
Q. Anyone else?
A. No. That's all.
Q. Okay.
Any other friends that you keep in contact with that live in Charleston County, or have we named them all?
A. I think --
MS. PAYLOR: Object to the form.

Page 16

You can answer.
THE WITNESS: I think we're good.
BY MR. HALVERSEN:
Q. Okay.
Where did you go to college?
A. I went to Brigham Young University.
Q. What year did you graduate?
A. I think 1999.
Q. Okay. Why did you graduate in 1999 and not 1996, which was your class year?
MS. PAYLOR: Object to the form.
THE WITNESS: I spent two years doing service work outside of the United States from '94 to '96.
BY MR. HALVERSEN:
Q. Okay. And after you graduated from BYU, what was your first job?
A. I went and worked at Ford Motor Company.
Q. What was your major at BYU?
A. International relations, in the honors program.
Q. Before this point in time, had you ever worked in your father's business?
A. Yes.
Q. Doing what?
A. When I was younger, I helped load pool tables,

Page 17

video games, helped move those around to different locations at Holliday Amusement.
Q. And what was Holliday Amusement?
A. Video game -- video games and jukeboxes. They were put in restaurants and bars.
Q. What about video poker machines?
A. Yeah.
Q. Holliday Amusement provided those to bars and restaurants?
A. Yes.
Q. When did they stop providing video -- or video poker to bars and restaurants?
A. I don't know exactly when.
Q. Did any of your other siblings help out with Holliday Amusements before they were -- started working on their own?
A. My brother, Lea Holliday, he worked there extensively.
Q. Is Lea older or younger than you?
A. He's younger.
Q. How much younger?
A. Two years.
Q. When did -- or what did Lea do -- work for them -- for your dad that you didn't during this time?
A. Sorry, can you repeat that? I couldn't quite

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 18

hear it.
Q. Sure.
Did Lea do the same kind of jobs that you did during -- when you were growing up, helping to move the machines?
A. He was more involved. He did that kind of stuff, but he did a lot of other things there.
Q. What else did he do?
A. He helped manage some of the locations and made client visits and -- and just, you know, helped my dad in the business a lot more. I primarily worked there when I was in high school, in the summers.
Q. What about -- do you call our client Mark or do you call him Ben?
A. Well, I've typically always called him Ben, until he changed his name to go by Mark when he -- later on. But I've always called him Ben.
Q. When did he change his name?
A. It was kind of timed to when he was in law school. He decided it -- he wanted to go by Mark. And then there was the issue with him -- he shot a guy in Tucker, Georgia, and I think he kind of wanted a fresh start and changed his name. There was a whole civil suit with it.
Q. So your understanding of why he changed his

Page 19

name was having to do with the gunshot incident?
A. I think -- yeah, that's what I was -- that's what I was told.
Q. Okay. But you always called him Ben?
A. I always called him Ben.
Q. Okay.
Did Ben work in the family business when he was growing up?
A. He was quite a bit older than me. I mean, not while I was there. If so, very limited.
Q. Did you get along with Ben when you were growing up?
A. Typical sibling relationship. Some days, yes, some days, no.
Q. And when did it change?
MS. PAYLOR: Object to the form.
THE WITNESS: I just think over time. Probably more once he was college age.
BY MR. HALVERSEN:
Q. Okay. So would you agree with me you got along with him well when you were kids, or growing up, or not so much?
A. I wouldn't say well, no, I would not.
Q. It was never well?
A. It was just kind of okay. He spent most of

Page 20

his time at Camden Military school. I wasn't close to him, because he didn't live with us for a lot of years. And there's a six-year gap. I just really wasn't around him that much.
Q. Okay. I understand that.
But when you were around him, did you guys get along?
A. Typical sibling relationship.
Q. Okay. So it sounds like you all were not that close.
A. We aren't now.
Q. I'm aware of that. I'm talking about growing up.
A. No, because he wasn't -- we weren't that close because he didn't live there for a number of years. He just wasn't around.
Q. What's your age difference?
A. I think it's six years.
Q. What about Pamela? Did you always get along with Pamela?
A. Better.
Q. Was it similar because she was not around as well?
A. No, but she was eight years older than me. So, you know, she had left to go college before I was 10

Page 21

years old. So I -- you know, there's a pretty big age gap there. I think it's almost eight years.
Q. Were you ever close with Pamela?
A. Yeah.
Q. And when was that?
A. Just in general. I was closer to Pamela than to Ben.
Q. Well, are you close to Pamela now?
A. No.
Q. When did you stop being close to Pamela?
A. I think at the time of -- really it was kind of more formalized at the time of my parents' divorce.
Q. Would you agree with me that before that time, that you felt like you had a close relationship with your sister?
A. I don't know if I'd say close, but it was a positive relationship. It was something I would say was good, but we weren't close, no.
Q. Okay. I mean, you all stayed in touch with each other?
A. A limited basis. We live far apart.
Q. What about Ben? Did you stay in touch with Ben before your parents' divorce?
A. Not that much.
Q. How often did you see each other, you and Ben,

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 22

before your parents' divorce?
A. Not very often. He lived in other parts of the country. After his divorce, he moved to Utah, and when he moved to Utah, I didn't see him very often.
Q. Okay. How far apart do you live from Ben right now?
A. He -- probably only about a mile away. He moved up into my -- kind of my general neighborhood area, to the town where I live, a number of years ago.
Q. Is that Draper?
A. Yes.
Q. How long have you lived in Draper?
A. I've lived there since about 2004.
Q. And you've never spent any time with Ben in Draper since you've been there in 2004?
A. I'm not sure when he moved back from Boston, but very little. I mean, two, three times, tops. But he made it clear he did not want to have a relationship when he came back.
Q. And did you want to have a relationship with him, or was it just he didn't want to have a relationship with you?
A. I think he didn't want to have a relationship with me.
Q. Why?

Page 23

A. You'd have to ask him.
Q. I'm asking you.
A. Yeah. I --
MS. PAYLOR: Object to the form.
THE WITNESS: I really don't know.
BY MR. HALVERSEN:
Q. So in the timeframe that you all lived a mile apart, you only saw each other two or three times? Is that what you told me?
A. No. I actually saw him -- the two or three times was when he was actually living in South Jordan, Utah. That's after he kind of first moved back to Utah. And outside of that, I think the only time I saw him was at my brother's wedding reception. Yeah. Yeah, very limited.
Q. What about any other family events where you would see Mark -- or Ben and Pamela?
A. There really weren't a lot of those, so no.
Q. Did you not join a -- I'm sorry.
A. No, there weren't a lot of family events.
Q. Did you not come home for holidays or vacations?
A. Didn't seem like we were always there at the same time. My brother and sister spent less time back in Charleston than I did and my brother Lea did.

Page 24

Q. What about for Christmas holidays or Thanksgiving, was there a time when the whole family was back in Charleston?
A. No. Not in the last 15, 20 years, no.
Q. Okay. And just so I'm -- I wanted to focus in on, you know, when you guys were -- say, before that. I mean, growing up is what I'm getting at.
Would they come home when they were in college?
A. Yeah.
Q. So there were periods of time when everybody was at home, correct?
A. Yeah. I'd say from kind of early college and -- time period, yes.
Q. And then I assume as people started getting jobs and having careers and families, then was it less so that everybody came back at the same time? Is that fair?
A. Right. Everybody was spread out across the country.
Q. Okay.
So I know you live in Draper now. What is your address?
A. 14051 Sage Hollow Drive.
Q. And how long have you lived there?

Page 25

A. Since 2006.
Q. Okay. So we started talking about you went to BYU and you graduated in '99, and then your first job was at Ford Motor Company.
What did you do for them?
A. I worked in their finance division.
Q. And what did you do in the finance division?
A. I went through a number of job rotations there for about three years. I worked in the parts, service and warranty area for a period of time, and then I later went and worked in product development on the Ford Explorer.
Q. And that was in Michigan?
A. Yes.
Q. And what is -- you're married now, correct?
A. I am married.
Q. What's your wife's name?
A. Kelley.
Q. Is that Kelley Anne, or does she just go by Kelley?
A. She goes by Kelley.
Q. Is her middle name Anne?
A. Yes.
Q. And did you meet Kelley at BYU, or how did you meet Kelley?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 26

A. I met her when I was in college at BYU.
Q. And then did you both move to Michigan to the Ford Motor Company?
A. Yes.
Q. Did she work while you were at -- working at the Ford Motor Company or was it just you?
A. Yeah, she worked.
Q. What did she do?
A. She worked for a hospitality company that did corporate leasing.
Q. And why did you leave the Ford Motor Company?
A. I was there for about three years. So I started in August of '99, and I was there for three years.
Q. And my question was why did you leave?
A. I went to graduate school.
Q. And when did you start graduate school?
A. It would have been fall of 2002.
Q. Okay. And that was at Arizona State?
A. Arizona -- no. At the time, it was -- it's called Thunderbird School and -- in Glendale, Arizona. It's since been merged with Arizona State in the last few years, but when I was there, it was a separate school, on its own.
Q. So you started at Thunderbird in the fall of

Page 27

2002. What did you do between when you left the Ford Motor Company in August of '99, until the fall of 2002?
A. No, I started at Ford in 1999 and I left the summer of 2002. And I started in the fall of 2002 at Thunderbird.
Q. Oh, okay. I'm sorry.
And so how long were you at Thunderbird?
A. About a year and a half.
Q. What year did you graduate?
A. 2003. Dec -- wait --
Q. Would that have been in the --
A. -- December -- December 2003.
Q. Okay.
And then starting -- after you graduated, where did you -- did you stay in Arizona or did you leave?
A. I stayed for a little bit, yeah. A few months.
Q. What did you do before you left?
A. Well, I graduated in December, and then I left by kind of March, April timeframe, and was working in Utah.
Q. What did you do before -- for work before you arrived in Utah, while you were still in Arizona?
A. I didn't. I just had finished school, and

Page 28

there was about a two-month gap after I graduated.
Q. Did you do work at a driving range in Arizona before you went back to Utah?
A. No.
Q. Were you trying to purchase a driving range in Arizona at any time?
A. No.
Q. Who paid for your tuition at Thunderbird?
A. My dad helped me with the tuition part of it.
Q. Did he pay for all of it?
A. Tuition, I think he probably paid for all of it.
Q. Did he pay for your tuition at BYU?
A. Yes.
Q. So what prompted you to move to Utah after being in an Arizona business school?
A. I was looking at a business here in Utah, and made a decision to purchase that business -- a portion of that business. And so that's what precipitated moving to Utah, was to pursue a business opportunity.
Q. And was that Holmes Homes?
A. Yes.
Q. And how did you find out about Holmes Homes?
A. My -- some of the family members and the principals in that business, they knew some of our

Page 29

family. Specifically, they reached out to my father and asked him if he wanted to invest in their business.
Q. Was that Michael and Patrick Holmes?
A. Michael was the father. It was mainly Spencer and Patrick Holmes that had reached out to my father.
Q. And how did they know -- I mean, how did they know your dad?
A. Spencer was a missionary for the Church of Jesus Christ of Latter-Day Saints, and he was assigned to the Columbia South Carolina Mission, and he was -- I think he even lived right in Mt. Pleasant for about six months. And so, you know, he knew my father from that. And my older brother, Mark, as you call him -- Ben -- he knew Patrick Holmes. A lot of my family members kind of knew the Holmes family. He was -- Ben was roommates with Patrick for a period of time and they all knew him. I actually did not know them that well.
Q. Did your father know any of the Holmes family before Mark went to BYU with Patrick?
A. I don't know. I mean, Patrick was at -- I don't know. I'm not sure when my dad knew members of their family. I mean --
Q. I'm just trying to find out when or how it was that you got the connection to the Holmes. Was it some kind of an introduction --

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 30

A. No, they --
Q. -- that Mark had made or --
A. No. They reached out to my father.
Q. Okay.
A. And then my father asked me to look at it -- look at it as a business opportunity, asked me if it would be something that I was interested in.
Q. And what were they approaching your dad about?
A. Making an investment into their business.
Q. How much -- for what kind of an investment were they looking for? Were they looking for an equity involvement or were they looking for a capital involvement?
A. I think both. They were just kind of looking for cash infusion, potentially through equity, to kind of help their business. Their father -- the father was ready to retire, and he was looking to exit the business.
Q. Do you have any understanding at that point in time how much money they were looking as an investment from your father?
A. Not in the original -- not in the early part, no.
Q. Was it smaller or larger than the amount that your father eventually loaned to you?

Page 31

A. I don't know -- I don't know originally what they asked. My father asked me to go and evaluate the business, because my background was valuation of small- to medium-sized businesses, and he asked me to go and value their business and figure out what it was worth.
Q. Where did you get a background in evaluation of small- to medium-sized businesses?
A. At Thunderbird.
Q. Okay.
So what was your -- what evaluation did you do of Holmes Homes?
A. I just went through their financials, did an operational analysis, just trying to understand where they were at. See, you know, what they were growing, what they were -- trying to figure out what their cost to capital was, and -- just an overall valuation of the business, financially and operationally.
Q. And how much money was Holmes Homes making at the time you were doing your due diligence?
A. They struggled after the 9/11 attacks, like a lot of businesses. So they were -- when I was looking at them in early 2004, they were making a little money, but not a lot of money. But they were kind of just starting to kind of grow again at that point.
Q. And what kind of business did they have? What did they do? Where was their market share?
A. They --
MS. PAYLOR: Object to the form.
THE WITNESS: They construct residential houses.
BY MR. HALVERSEN:
Q. Any particular kind of residential houses? Are they focused on a certain segment of the market, or all kinds?
A. Single-family homes and townhomes, kind of multifamily.
Q. Okay.
So they had -- according to you, they had a downturn after 9/11, and then you performed your analysis -- it would have been in 2004?
A. Yeah.
Q. And how much money were they making at the time?
A. I really don't remember the exact amount. They were profitable, but they weren't making a lot of money yet.
Q. And so I think we all know that you became -- I guess you were a -- became a partner in the entity. Is that correct?
A. Yes.

Page 33

Q. And that was with the $2 million investment?
A. Yes.
Q. And that investment came from your father?
A. Most of the cash came from my father.
Q. Where did the rest of it come from, if it did not all come from your dad?
A. From me.
Q. From who?
A. From me, myself.
Q. Okay. How much of it came from you?
A. A very small portion.
Q. Can you give me an idea? Are we talking about a hundred thousand or 50,000 --
A. Probably 50 -- around that $50,000. I had a little bit of money left over from school.
Q. That you used as your own capital contribution to Holmes?
A. Yeah.
Q. How much did you dad borrow from NBSC for the investment in Holmes?
A. Two million dollars.
Q. And was all of that $2 million put into Holmes Homes in 2004?
A. Yes.
Q. Why was it that if Holmes had approached --

Page 34

the Holmeses had approached your dad for an investment, how is it that you became the investor as opposed to your dad directly?

A. My father was going to kind of make -- when he had kind of made the decision that he was willing to look at it, that he was going to do it, in the process of helping kind of do some due diligence for my father, it became clear that, because he would own a third of the company, he was going to have to be a personal guarantor on all of the construction loans, and at the time, that was, you know, 30, 40 million dollars.

And my father decided that he just did not want to, you know, at his age, you know, being on the line for personal guarantees of that amount of money. And so he made the decision to say that, you know, he wasn't going to do it, and he asked me if it was something that I was interested in, if I wanted to be involved. And the Holmes family asked if I would then be more involved, and so that was -- that's kind of -- it kind of morphed and changed at that point.

Q. And when you say "morphed and changed," that then it turned into -- instead of him being an investor, you became the person who was actually doing the investment and having the loan from your dad; is that accurate?

Page 35

A. Say that last part again. Sorry.

Q. Yeah. Sure.

So it morphed, meaning it initially was going to be your dad as the investor, but because of the debt that would have been associated with his investment, he decided that instead of that, you would actually take on the role of the investor, with him supplying you the money, and then I assume you taking on any debt or liabilities yourself, personally. Is that accurate?

A. Yeah. It was a decision that I made that I was willing to go forward in the deal. It's not that -- you know, any other reason than that.

Q. Did you make any representations to your dad as to whether this venture was going to be profitable or not?

A. I could see that the housing market was on an upswing. And so, yeah, I felt that there was a chance for greater future profitability in the business.

Q. And then what was -- did you have any kind of thing in writing as to what your arrangement would be with your dad if it became profitable?

A. No, not specifically in writing, but we had both agreed that if it did well, that, you know, there -- I would make sure that he would be able to participate in that in some form or fashion.

Page 36

Q. Did you say that you would split the profits with him?

A. Yes.

Q. And did your father loan you the money based on those representations?

A. Not necessarily specific to that. He thought it was something that made sense for me, it was a better fit for me than for him, and that's why ultimately, you know, he gave me the money to be able to make the investment myself.

Q. Did you pass on any of the results of your due diligence that you performed to your father?

A. Sure. I called him and I spoke with him specifically about what I, you know, kind of had found and what my findings were.

Q. And what was -- did you have any kind of agreement with your dad as to how you would be paying back the $2 million?

A. Just as the business started to do well, we would do that. So he -- I -- you know, I updated him and just told him what was going on in the business as it went. And then in 2005, you know, he asked that I would start paying him back, and I started making payments.

Q. So there was no formal schedule for the

Page 37

repayment of the debt, it sounds like?

A. No, because we weren't sure, you know, how quickly and to what level the profitability would ultimately happen in the business. It was -- we had hoped and expected it to, but we weren't exactly sure as to how that would play out on timing.

Q. And I know you previously testified that there was about approximately -- according to your testimony, about $800,000 that was paid back from 2005 to 2007. Is that accurate?

A. Yes.

Q. Is that the extent of the cash that you paid back to your father for the loan?

A. No.

Q. Okay. Was there other cash that you paid back to your father for the loan besides the 800,000?

A. Yes. I think there was about $370,000. There was another portion of cash that was paid to him, and then there were obviously -- when his health failed, he and my mother asked me to get more actively involved in their business affairs. They were having a lot of problems. And, you know, I worked for a period of time in kind of helping them get things financially arranged and to ultimately pay that back that NBSC note.

Q. Okay. And I understand what you're saying,

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 38

but what I'm trying to find out is specifically cash from you to your dad to pay back that money.

You previously testified there's approximately 800,000, correct?

A. Yeah.

Q. Between 2005 and 2007, right?

A. That was a portion of it, yes.

Q. Okay.

And then you just said there was $370,000 you also paid back. Is that true?

A. Yes.

Q. And where did that $370,000 come from?

A. A piece of property that we sold.

Q. Who sold?

A. That -- I sold it.

Q. Whose property was it?

A. It was mine.

Q. Did you purchase it?

A. No.

Q. Was it given to you?

A. It was.

Q. Who was it given to you by?

A. My younger brother, Lea Holliday.

Q. So where did he get it from?

A. He received it -- I'm -- he didn't -- I'm

Page 39

trying to think. He basically either purchased it or received it direct from somebody else. I don't remember the individual's name.

Q. Is this the CSX Railroad property?

A. Yes.

Q. Do you recall --

A. Well, that's who I sold it to. It wasn't -- we didn't get it from CSX Railroad.

Q. Right.

But you know it -- so Lea -- who was the original owner, your father?

A. No. Lea Holliday was the original owner of the property.

Q. Do you know how he bought it?

A. I don't.

Q. Was it gifted to him by your dad?

A. No.

Q. Do you know what Lea's cost basis was on the property?

A. It was a long time ago, so probably pretty low, but I don't know the exact amount.

Q. Okay.

So Lea got the property and then he gifted it to you, correct?

A. Yes.

Page 40

Q. And then you were the seller of that property, correct?

A. I was the what? I'm sorry, I couldn't hear you.

Q. You were the seller of that property?

A. Correct.

Q. And that yielded about $370,000 in cash; is that true?

A. Correct.

Q. Okay. So that $370,000 was not from your money, correct?

MS. PAYLOR: Object to the form.

THE WITNESS: No, it was my property. I owned it. I was on title. I sold my property, that I was on title, to CSX Railroad. So it was my cash, and it became my property, and I returned those funds to my father.

BY MR. HALVERSEN:

Q. What did you pay for that property you say that you owned?

A. I said it was gifted to me from my brother.

Q. Okay. So it's your testimony that that $370,000 to pay back the loan from your dad came from you?

A. Yes.

Page 41

MS. PAYLOR: Object to the form.

THE WITNESS: Yes.

BY MR. HALVERSEN:

Q. What was your cost basis on the property?

A. It was gifted, so zero.

Q. Okay.

What about the balance that was owed on the NBSC loan, who paid for that?

A. That was paid through operating activities of Zeezrom Properties for a period of time. There were payments that were made. And then ultimately, I aided my father in selling a piece of property that he owned individually that was not a part of Zeezrom Properties, and at that time we used those proceeds to pay off the remaining balance.

Q. Okay. One of those properties was 1808 Meeting, correct?

A. Correct.

Q. What was the other property?

A. It was -- there were some parcels surrounding 1808 Meeting Street. It was more than one parcel of property, but the main address was 1808 Meeting.

Q. Did you have any ownership interest in 1808 Meeting at that time?

A. No.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 42

Q. Who owned 1808 Meeting at that time and the related parcels?

A. My father.

Q. So with regard to the -- the $2 million note, I saw in your previous testimony you indicated that that had been marked paid in full.

Do you recall that testimony?

A. Yes.

Q. When did you get that? Was that the original note?

A. Well, my father was -- my father and I were resolved back in 2011, but after the divorce, and due to my mother's litigious nature, when we sold 1808 Meeting Street and made the final payment to NBSC, my father marked "paid in full" on the note.

Q. Okay. So I just want to be clear what you're talking about. You said in 2011 you were resolved. What does that mean?

A. So my parents -- my father became ill. He had kidney failure. He was sick, on dialysis, had a kidney transplant that failed. It caused him to be hospitalized for an extended period of time.

My mother and father asked if I would go back to South Carolina in late 2010 and throughout 2011 to aid and assist them in my father's businesses.

Page 43

So at that time, coming out of the housing collapse of 2008 through 2012, basically, they had, on multiple occasions, assured me that we were resolved, that I didn't owe them any additional money, but they did ask if I would help them in their business affairs, and so I jumped in to do that.

Q. Okay. Were there any witnesses to those conversations or was it just with your mom and your dad?

A. There were family members that knew that -- what I was doing. Specifically, my younger brother, Lea Holliday, he was aware. He was in those conversations. A number of those conversations happened at the hospital and when he was in care facilities. I can't say for certain if other siblings knew, but Lea Holliday, he was involved in those conversations extensively.

Q. Other than Lea, was there any other witnesses to those conversations with your parents?

A. I don't recall.

Q. Okay.

So -- and I think what you said before was starting -- or about the time that the 1808 Meeting sold, your father gave you a copy of the note, or the original -- I'm not sure what you said; tell me which one it was -- and then it had marked "paid in full" on it?

Page 44

A. Yeah, that is correct.

Q. Was it an original or was it a copy?

A. He had -- I think he kept the original and gave me a copy of it so that we both -- we both had one.

Q. Were there any -- was there any witnesses to the satisfaction?

A. I don't know who witnessed -- no, I'm not sure when he wrote "paid in full," but -- if there was a witness to that, but there were certainly people who knew it. His attorney, Truett Nettles, he was aware of it.

Q. Okay. Did Truett have anything to do with that satisfaction?

A. No, but he -- you know, he became aware of it. My dad had shared that with him.

Q. Did your dad -- was there any stamp on the document or was it just hand scribbled on there in your dad's penmanship, saying satisfied?

A. It just said that it was paid in full.

Q. Was it a stamp or was it a handwriting?

A. Well, no, he wrote it.

Q. Okay.

Did he have a date on it or just wrote "paid in full"?

A. He just wrote "paid in full."

Page 45

Q. And it's your testimony he gave that to you --

A. Yes.

Q. -- when the 1808 closed and the NBSC loan was paid down?

A. Correct.

Q. And what did you do with that document?

A. Well, I told you my father retained one and I retained one.

Q. And where did you put it, your copy?

A. I had it with me, and I've not been able to find my copy.

Q. Do you remember --

MR. SLOTCHIVER: It is 1:07. Based on the doctor's note, I wanted to bring that to your attention.

BY MR. HALVERSEN:

Q. It's 1:07, Mr. Holliday, if you would like to take a break or anybody would like to take a break --

A. Yeah. I just -- sorry. I was just checking my phone. It's been a while. I actually do want to get up and walk around. Just -- I need about five minutes, just to kind of do that, if that's okay.

Q. Take however long you'd like. I'm not here to make you uncomfortable. Okay?

A. Okay. I'm going to take this microphone off. I'm going to go walk for a second, and I'll be back.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 46

THE VIDEOGRAPHER: Off the record, 11:07.
(Whereupon a short break was taken.)
THE VIDEOGRAPHER: This is the beginning of media 2. We're back on the record. The time is 11:14.
BY MR. HALVERSEN:
Q. Mr. Holliday, before our break, I think I was trying to find out from you what happened to the copy of the note which you testified your father wrote "paid in full" on.
Do you recall where you put the document after he gave it to you?
A. I just -- I took it with me, but I don't recall where.
Q. Did you bring it back to Utah or did you leave it at the business office here in Charleston?
A. I think I left it -- I think I left it in Charleston, probably in the business office.
Q. Have you made any effort to look for that document?
A. Yes, in the past.
Q. What did you do to look for it?
A. Sorry. Say that again.
Q. What did you do to look for it?
A. I looked for it. I just went through some of the records. But we had moved, so that was problematic.

Page 47

Q. Right. And I'm asking you where -- what records did you look and where were they?
A. Just in the office records, just that we had.
Q. When did you look for it? Recently or...
A. When my mother initiated the lawsuit.
Q. Okay. And where did you physically look for the document?
A. I looked in just the stuff that we moved. We -- obviously, when we sold 1808 Meeting Street, that business moved. And so we had stuff boxed up, and I just looked through boxes of old business records.
Q. Where were the boxes of old business records?
A. We moved to a new location, Franchise Street, up in north Charleston.
Q. Are those boxes that you looked in for the note still there on -- in the Franchise Street location?
A. Some of them are. A lot of it's been thrown out, shredded, junked. A lot of it was old stuff. I'm not --
Q. What kind of records were in there other than the document which you were looking for?
A. I don't know. Just literally papers, old stuff, leases, old -- some old leases. Just different -- just some of my dad's old business records.
Q. Were there any financial records in there?

Page 48

A. No, not that I recall, as I was looking for the note.
Q. Did you ever tell your father that the $2 million investment could be highly profitable?
A. Yeah. No, I mean, the expectation is it was going to make money.
Q. Would you agree that that representation you made to your father was false?
MS. PAYLOR: Object to the form.
THE WITNESS: No. I think the business was profitable. What was unforeseen was the largest real estate collapse since the Great Depression. Nobody was able to know that, back in 2004, that that would happen in 2008.
BY MR. HALVERSEN:
Q. Your father made a $2 million investment with you for Holmes Homes, correct?
A. Yeah. Yes.
Q. And you paid him back 800,000 between 2005 and 2007, correct?
A. I've -- no, I -- we -- I've answered this already. Provided him $800,000 in cash, and then I paid, through the sale of the CXS Railroad piece, and I provided additional services for them. I more than paid up for well in excess of $2 million in value to him.

Page 49

Q. Can you quantify that as to what his ROE is on his $2 million investment?
MS. PAYLOR: Object to the form.
THE WITNESS: Well, I would say considering the fact that he was so sick and he was dealing with complex IRS issues and businesses issues, I saved a real estate portfolio that was worth 5 million -- you know, 4 or 5 million dollars, by helping to lease it up, get it optimized, and get it working.
So, you know, there's millions of dollars worth of value that ultimately flowed through to my father, and ultimately to my mother. So I don't know. You can run the numbers and tell me what you think that's worth.
BY MR. HALVERSEN:
Q. Okay. So is it your testimony that you provided your father a return on investment of millions of dollars, for the $2 million note that he made to you?
A. I didn't say that.
MS. PAYLOR: Object to the form.
THE WITNESS: I didn't say that. What I said was I paid him back cash, I provided him services, and I also shored up and enhanced his real estate portfolio that --
BY MR. HALVERSEN:

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 50

Q. Okay. Would you agree with me --
A. -- was tremendously valuable for him --
Q. Okay.
A. -- and my mother.
Q. Would you agree with me -- I'm sorry. Would you agree with me that the cash portion that you repaid to him was only either 1.1, according to you, or 1.2 of the $2 million investment?
MS. PAYLOR: Object to the form. Asked and answered.
MR. HALVERSEN: Please no speaking objections.
THE WITNESS: I would say that no, there was more than that, because I did a number of leasing things, I didn't take commissions. If you -- I would have a hard time quantifying. But I basically re-leased the entire -- all the properties, re-leased them, you know, didn't take commissions, allowed all that, you know, excess value to go directly to my father.
So that's real cash dollars that I chose not to take that were -- that's deferred cash that went directly to him and his -- ultimately, his balance sheet, if you will. So it's --
BY MR. HALVERSEN:
Q. I understand what you're telling me, that there was cash that you paid back of 1.1 or 1.2.

Page 51

And then you're telling me you also had provided services, correct?
A. Yeah.
Q. And all I'm asking you is, for the cash portion only that you repaid for the $2 million, it was only 1.1 or 1.2 million. Is that not true?
MS. PAYLOR: Object to the form.
THE WITNESS: I mean, I'm not trying to wordsmith here, but you've got to understand, whether it's cash that was wired or cash that I chose not to charge him, it was a net increase on his side. So, you know...
BY MR. HALVERSEN:
Q. So, Mr. Holliday, my question is pretty simple. I'm just trying to find out how much cash that you physically paid or transferred from your bank accounts --
A. In terms of a physical transfer, probably the -- closer to the 1.2.
Q. Right. Just cash, correct?
A. In terms of physically transferred. That's how you defined it.
Q. Yes.
And I understand your testimony that you provided lots of value to your dad's business over and above the 1.1 or 1.2 million in dollars in cash. Correct?
A. Correct.
Q. Why did you call, in your first deposition, the $2 million note an estate planning document?
A. Because it was never intended to be a note, per se. It was an estate -- it was an estate document that my father and I put together so he would have a record of having the $2 million.
Q. Well, those were your words you chose; those were not my words. You said an estate planning document.
A. That's right. That's what I would -- yeah, that what I said, that's what I meant.
Q. But why was it an estate planning document? Was it because you were representing to your dad that you were going to make a bunch of money, and that money would all go to the family?
MS. PAYLOR: Object to the form.
THE WITNESS: No, it was not an estate document for that purpose.
BY MR. HALVERSEN:
Q. Well, was it an estate planning document for what purpose, then?
A. Just documenting that I had received

Page 52

Page 53

$2 million.
Q. Does that mean you would get less than 2 million -- 2 million less when your father's affairs were wound up upon his demise?
A. No.
Q. Then what did it mean?
A. It was a documentation of him providing me $2 million to buy a business.
Q. I get that. I understand that. And you went to business school. It's a note, it's a loan.
But why is that term, an estate planning document -- how did that operate to affect your father's estate?
MS. PAYLOR: Object to the form.
THE WITNESS: It was something in the event that if my father passed away, we would have something on a piece of paper.
BY MR. HALVERSEN:
Q. Okay. Memorializing that that money had gone from him to you, correct?
A. Correct.
Q. What happened to the interest in Holmes Homes?
A. I -- the real estate collapse had started in 2008. I exited the business formally in 2010.
Q. So were you making money from Holmes Homes

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 54

between 2005 and 2010?
A. I was making a base, small amount of money after the real estate collapse started in 2008 and '9.
Q. How much?
MS. PAYLOR: Object to the form.
THE WITNESS: I don't know specifically how much, but a whole lot less starting in 2008 as opposed to the previous years of '06 and '07.
BY MR. HALVERSEN:
Q. How much did you make from Holmes Homes in 2006 and 2007?
A. I don't know the exact amount.
Q. How did they pay you?
A. I had kind of a monthly salary, and then when we were profitable, we took profit distributions.
Q. Where was your bank account at the time?
A. Zions Bank.
Q. Did you file tax returns with the federal government and state of Utah in 2006 and 2007?
A. Yes.
Q. Do you still keep copies of those returns?
A. No.
Q. Does your CPA have copies of those returns?
A. I don't know.
Q. Who is your CPA?

Page 55

A. At the time, Ken Butler.
Q. When was he your CPA from? What years?
A. Since when I moved back to Utah. Starting in -- around 2004.
Q. 2004 to what year was he your CPA?
A. Currently.
Q. Oh, I'm sorry. I thought that he was not your current CPA.
A. No. No. He was my CPA beginning when I moved back to Utah in 2004, until present.
Q. Okay.
So as we sit here today, you have no idea of how much you were making in -- when you first started working out of business school for Holmes Homes after your dad made the $2 million investment in you?
MS. PAYLOR: Object to the form.
THE WITNESS: You asked me specifically about '06 and '07.
BY MR. HALVERSEN:
Q. Okay. So you -- as it pertains to 2006 and 2007, as you sit here today, you have no idea how much money you were making; is that true?
MS. PAYLOR: Object to the form.
THE WITNESS: I made a salary and we took profit distributions. Those profit -- the overwhelming majority of the profit distribution was then sent to Warren Holliday.
BY MR. HALVERSEN:
Q. Okay. So --
A. So I told you I paid him about $800,000 in cash. So I know for sure there was about -- there was $800,000 that went to him through profitability in Holmes Homes.
Q. And those were after-tax dollars you were sending to your dad?
A. Yes.
Q. And -- but as you sit here today -- I understand what you're telling me -- you got salary and draws from Holmes Homes, but you don't have any -- you can't tell me how much you actually were making specifically in salaries and draws in that period of time?
A. Well, I don't know about draws, but we had a salary. No, I know the general amount, I just can't tell you the exact amount of the profitability of the business during those actual years, was what -- that's what you asked me.
Q. I'm not asking you, for the record, for a specific amount. I'm just asking you for a feel for what you were making for -- in terms of salary, in terms of draws, in the period of time from 2005 to 2007.

Page 56

Page 57

A. Salary -- you said 2005 to 2007?
Q. Yes.
A. Is that what said?
Q. Yes, sir.
A. During that time period, the salary was probably somewhere in the 12 to -- 12-, maybe $15,000 a month.
Q. Okay. And how did that change over --
A. Probably slightly under -- slightly under $200,000 a year.
Q. In salary?
A. Yes.
Q. And how did that change, or did it stay the same, for the years 2006 and 2007?
A. You know, it would go up a little bit, you know, each year, but I don't -- I don't recall the specific amount.
Q. Okay. I'm not asking you for the specific amount. Did it go up to 300 or 400?
MS. PAYLOR: Object to the form.
THE WITNESS: I'm not sure that it did.
BY MR. HALVERSEN:
Q. It could have?
A. I'm not --

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 58

MS. PAYLOR: Object to the form.
THE WITNESS: I'm not sure.
BY MR. HALVERSEN:
Q. Okay.
Did it go down?
MS. PAYLOR: Object to the form.
THE WITNESS: Everything went down in 2008 and '9.
BY MR. HALVERSEN:
Q. My question was as to 2006 and 2007. You told me it was -- in 2005 it was 200,000 a year.
My question is, what was the salary in 2006 and 2007?
A. Probably very --
MS. PAYLOR: Object to the form.
THE WITNESS: 2006 --
BY MR. HALVERSEN:
Q. Pardon?
A. 2006 and '7 is probably very similar to '05. It may have changed slightly, but I don't know the exact amount.
Q. Okay. Thank you.
What about draws? What kind of draws were you taking in 2005, 2006, 2007?
A. Define what you mean by "draw."

Page 59

Q. A distribution.
A. Oh, yeah. There were distributions when we were profitable. We would take those, and that money went to Warren Holliday.
Q. Okay.
Did all of your distributions go to your dad?
A. Probably the overwhelming majority of it.
Q. Do you have -- if you -- if that 800,000 -- if the overwhelming majority of that was from distributions, do you have any idea of how much you kept from distributions that did not go to your dad?
A. Yeah, not -- I'm not sure exactly, but I would say maybe a hundred to no more than $150,000. But I can't say for sure.
Q. When did you build your house on South Sage Hollow Drive?
A. I started construction in 2005 and finished it up at the very end of 2005, kind of that December, January -- December 2005, January 2006.
MR. HALVERSEN: I'm going to try to share an exhibit. We'll see how it works.
Can everybody open that?
MS. PAYLOR: Open what?
MR. HALVERSEN: If you go to the "Chat" feature -- the "Chat" button, there should be an

Page 60

exhibit PDF.
MS. PAYLOR: I don't have anything.
MR. HALVERSEN: Madam Court Reporter, can you see it?
THE REPORTER: Yes, we can see it on our screen in our chat.
MS. PAYLOR: My chat screen is blank.
THE WITNESS: It requires a download.
MS. PAYLOR: Can you just email it to me?
MR. HALVERSEN: Sure.
Bijan, did you get it? Well, it is too large for me to email.
MS. PAYLOR: Do you want to tell me what it is? And maybe I have it.
MR. HALVERSEN: I don't think you have it.
MS. PAYLOR: Well, if I didn't have it, then I could not have gone over it with my client beforehand. So we should have an opportunity to look at that with no one else present.
MR. HALVERSEN: That's certainly allowed by the rules.
Let me see if I can share a link to the document with you, and maybe you can get it that way.
Okay, Alice, what's your email address to send it to?

Page 61

MS. PAYLOR: apaylor@rosenhagood.com. No Y in Hagood. H-a-g-o-o-d.
MR. HALVERSEN: Okay. I just sent you a link. You should get a notification about it.
MS. PAYLOR: I love our spam filter. It says this is a potentially harmful file.
MR. HALVERSEN: Well, Alice, you know me by now.
MS. PAYLOR: I'm just telling you what it's said. It was pretty funny.
All right. It's pictures of something. Is that right?
MR. HALVERSEN: That's correct.
MS. PAYLOR: All right.
Does Ross have it in front of him?
THE WITNESS: The screen that I'm looking on is about a ten-inch notebook, at best, but -- so I -- and you have to download it. But they do have paper copies in a stack over here. I'd probably rather just look at the paper copies, to be honest. There -- I've put my glasses on. The other ones are pretty small.
BY MR. HALVERSEN:
Q. Okay. Well, I'll represent to you that it's pictures of your house.
MS. PAYLOR: Why don't you let him see them.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 62

BY MR. HALVERSEN:
Q. Sure. Go ahead and look at them.
A. Is this it? This is Exhibit A?
Q. Yes. Yes.
A. Okay.
(Exhibit A was marked for identification.)
MR. HALVERSEN: Alice, do want to talk to your client about these pictures?
MS. PAYLOR: Yes.
Ross, you want to leave the room and I'll call you on your cell phone?
THE WITNESS: Yes.
MR. SLOTCHIVER: Why don't we go off the record. How long do you want, Alice? Do you think ten minutes? Five minutes?
MS. PAYLOR: I don't need ten minutes. I'll probably be pretty quick. But yeah, I want to talk to him.
MR. HALVERSEN: Okay.
MR. SLOTCHIVER: We'll go off the record for a few minutes.
THE VIDEOGRAPHER: Off the record, 11:42.
(Whereupon a short break was taken.)
THE VIDEOGRAPHER: Back on the record, 11:46.
BY MR. HALVERSEN:

Page 63

Q. You've had a chance to talk your lawyer about this exhibit?
A. Yes.
Q. Did you discuss anything else besides this exhibit?
A. No.
Q. Okay.
A. Other than that you're wasting my time, but you know...
Q. Okay. Well, the court has ordered you to be here. Okay? And I'm sorry you feel that way, but I'm simply asking you questions that the law allows me to ask you.
MS. PAYLOR: Object to the form, if that was a question.
BY MR. HALVERSEN:
Q. Mr. Holliday, where did you get the money to buy this house?
A. I took out a mortgage and we built the house.
Q. Did you have to put down a down payment for the house?
A. I had probably enough equity in doing it where I wasn't really required to put one down.
Q. Is it your testimony you didn't put a down payment down for this house?

Page 64

A. I don't remember. I mean, this was 2004. I mean, it was 18 years ago. I don't remember, but --
Q. Did you take out a mortgage for the home?
A. Yes.
Q. How much was the mortgage?
A. Oh, probably about a million dollars.
Q. How big is this house?
A. Eight -- probably about 8,500 square feet. Somewhere in the 8,000-square-foot range.
Q. And you built the house?
A. Yes.
Q. And how old were you when you moved into the house?
A. I don't know. I told you I moved in it in 2006.
Q. Thirty years old?
A. Well, if you want to do the math. 2020. Going back to 2006 was 14 years ago. I'm 46 years old. So 32.
Q. Okay. I was close.
So it's your testimony that you did not put any down payment down to build the house?
A. I'm not giving testimony to that fact. I'm not sure whether I put some down payment down or used my builder margin as the required equity for it. I'm just

Page 65

not -- it's been a long time. I'm not sure.
Q. What does builder equity mean?
A. The profit that a builder would normally make in building a home. Since I wasn't building it for someone else, that would have been retained inside the value of the home.
Q. Okay. I understand what you're saying.
Were you -- at this point in time after your father made you the loan, had you acquired any other assets in the 2005 to -- or 2004 to 2010 timeframe?
MS. PAYLOR: Object to the form.
THE WITNESS: Yeah, I mean, be specific. What specifically would you -- what type of assets are you referring to?
BY MR. HALVERSEN:
Q. Any kind of assets that you acquired after you got the loan. Vehicles, real estate, boats, planes, anything.
MS. PAYLOR: Object to the form.
THE WITNESS: Yeah, I bought vehicles. Yes.
BY MR. HALVERSEN:
Q. Okay. How many vehicles did you buy after your father made you the $2 million loan?
A. I have no idea. I know I can only drive one at a time, though.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 66

Q. Okay.

How about a 2004 Lexus LS, did you buy that?

A. I don't know if I bought that or if the business bought it.

Q. What business?

A. My business.

Q. Okay.

A. Holmes Homes.

Q. But at one point in time did you have -- purchase a 2004 Lexus LS?

A. I don't remember the model year of it, but I have had a Lexus before.

Q. Did you buy it new?

A. Yes.

Q. How about a 2004 Toyota Land Cruiser?

A. Yes.

Q. Did you buy that new?

A. Yes.

Q. Who drove that Lexus LS?

A. Primarily me.

Q. Who drove the Toyota Land Cruiser 2004?

A. My wife and I did.

Q. How about the 2004 Lincoln Navigator, who bought that?

A. That was actually a business partner had that

Page 67

vehicle. I didn't buy that vehicle for myself.

Q. Okay.

Was it -- was that vehicle not registered in your name?

A. I purchased it because when I left Ford Motor Company, I still received a substantial discount for a brief period of time. And so my business partner, Patrick Holmes -- I bought it, and he and his family drove it.

Q. Did you ever drive it?

A. Not that I -- no, not that I really recall. Not more than once or twice.

Q. Okay. Did you ever --

A. It really wasn't my vehicle. I bought it, but it wasn't mine, per se.

Q. It was never registered to you?

A. It may have been, but it wasn't mine, it wasn't kept at my house. It was not my primary vehicle.

Q. And it was -- that was -- the Holmes were using that as their primary vehicle?

A. I believe so, yeah.

Q. How about any other vehicles after 2005 that you purchased?

A. I have no idea. If you want to ask me about specific ones to jog my memory, I'm glad to answer that,

Page 68

but I -- I don't know.

Q. How about a 2009 Cadillac Escalade?

A. I have had an Escalade before.

Q. Did you -- how many have you had before, one or two?

A. I don't know the exact number, but I've had more than one.

Q. Do you remember when you bought the first one?

A. I don't.

Q. Could it have been 2009?

A. Could have been. I really don't know.

Q. How about a 2011 Nissan Titan?

A. Could have been, yeah. I don't know model -- I mean, I don't remember the model years.

Q. Did you buy all of these vehicles new?

A. For the most part, yeah.

Q. How about a 2012 Toyota Sequoia?

A. Yes. Worst car I ever owned.

Q. How about a 1996 Harley Softail?

A. Yeah. Yes.

Q. When did you buy that?

A. In 1996.

Q. Do you still have it?

A. No.

Q. How about the Porsche twin-turbo Cayenne?

Page 69

A. What about it?

Q. When did you buy that?

A. Like I said, I don't know the exact model year. It seems like you know them, so why don't you tell me? What model year was it?

Q. Unfortunately, it doesn't work that way.

A. Okay.

Q. I'm asking you the questions.

A. Well, I don't know.

Q. How about -- did you ever purchase an Audi?

A. I believe it's Audi. Yes, I had an Audi for a period of time.

Q. When did you buy your Audi?

MS. PAYLOR: Object to the form.

THE WITNESS: I have no idea.

BY MR. HALVERSEN:

Q. How about Ford Raptor?

A. Yes.

Q. Do you remember when you bought that?

A. Probably two -- almost two years ago.

Q. How about a Ford King Ranch?

A. No, never had one of those.

Q. When did you buy the Jeep Wrangler?

MS. PAYLOR: Object to the form.

THE WITNESS: About a year ago.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 70

BY MR. HALVERSEN:
Q. How about a Volvo?
MS. PAYLOR: Object to the form.
THE WITNESS: Some of these vehicles are -- belong to my kids. I don't know on the Volvo. Probably three years ago.
BY MR. HALVERSEN:
Q. That was for Olivia?
A. Yes.
Q. Have you owned any boats?
A. Sorry, say that again.
Q. Have you ever owned any boats?
A. I had a boat a while back, 10, 12 years ago.
Q. When did you get rid of it?
A. During the housing downturn. Didn't have a lot of time to use it.
Q. How much did the boat cost?
A. I don't know.
Q. Any other -- any motorbikes other than the Harley, or ATVs?
A. Yeah, I think there was like a four-wheeler.
Q. When did you buy that?
A. Sometime in the 2000s -- or sometime between 2000 and 2010. I really don't remember exactly.
Q. Okay. We've covered -- I think we've covered

Page 71

motor vehicles.
Are there any other motor vehicles that you've purchased other than the ones we've referenced?
A. I'm not sure.
Q. How about real estate?
A. I buy a lot of real estate. That's what my job is.
Q. I understand that you're a homebuilder. Correct?
A. Yeah, but I buy lots, I buy land, I buy real estate.
Q. And I really want to just focus for right now on real estate that you purchased before your dad died.
What real estate have you purchased -- and I'm not talking about as part of doing your business buying property, developing it for somebody else. I'm talking about real estate that you either bought and retained an interest in at some point in time since you moved to Utah, until your dad died, other than the Sage Hollow property.
A. I mean, there's -- most of it is all tied to my business.
Q. Okay.
So if I were to look in the property records, I wouldn't find any other real estate you own other than

Page 72

the Sage Hollow property in Draper, which you built, which we've talked about?
MS. PAYLOR: Object to the form. Object to the form.
THE WITNESS: No. I told you I have bought different properties, but they're used primarily for business purposes in Utah.
BY MR. HALVERSEN:
Q. Okay.
So none of those are ones that you currently own? Just for the record, is -- the only property that you presently own, is that the house you live in, Exhibit A?
A. I live in -- yeah, the pictures of Exhibit A reflect the house that I live in.
Q. And you don't own any other real estate?
A. No, I do. I told you. But I do for business purposes. You asked if it was personal.
Q. Okay.
Did you purchase any of that real estate from 2004 to 2016?
A. Yes.
Q. Do you still own -- have any ownership interest in any of that real estate?
A. Yes.

Page 73

Q. What are the properties?
A. Well, you said through 2016. I'm not sure -- but I have an office building in Draper. It's the one in the exhibit where my brother drove by and flipped us off out of the window.
Do you remember that exhibit? That was the property there on Fort Street. I don't remember if that was purchased in 2016, 2017. I'm not sure.
Q. Okay.
Other than the Fort Street properties, do you own any other real estate that you acquired an interest in between 2004 and 2016?
A. I'm not sure about that date range, but we do have properties for business purposes, yes.
Q. Okay. And I'm asking you to tell me what they are.
A. I've told you. I said they're lots. We buy lots, we buy land, we develop land. We build houses on the lots and on the land.
Q. Okay. And I only want to know what it is you've ever owned, acquired an interest in, from 2004 to 2016.
MS. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. I know it's lots and land, but can you give me

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 74

a little bit better description, like the XYZ subdivision, or the townhomes on MLK Boulevard? Do you have a name, address, anything? Property description?

A. Yeah. I mean --

MS. PAYLOR: Object to the form.

THE WITNESS: I mean -- yeah, we buy land for business purposes, we build houses on it. We've done that in South Jordan, we've done that in Bluffdale. We've done custom home projects in the past during that time period. I mean, I'd be hard-pressed to tell you every single one, or even -- I mean, I didn't come prepared with a list of addresses and parcel numbers today.

BY MR. HALVERSEN:

Q. Well, I understand you wouldn't know the parcel numbers, but I'm just asking for the subdivisions which you're referencing, the names.

A. Yeah, so we -- I told you South Jordan. We build in a neighborhood called Daybreak. We have a subdivision in Bluffdale that was called -- I can't even remember the name of it now -- Westgate I think is what it was called officially on the plat. So... Yeah.

Q. Okay. Well, maybe I can get a little bit better idea of -- as to where these properties are that you acquired some interest in by asking you some

Page 75

questions about the various LLCs that you appear to be associated with.

MS. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Q. So what is -- and I'm just going to start with Roscoe Holdings, LLC.

A. It's an investment company, but it's pretty much kind of sat dormant.

Q. When did you form it?

A. I don't know. Two years ago. I'm not sure when.

Q. What was the purpose of forming Roscoe Holdings?

A. To potentially have a holding company for future investments.

Q. Does it hold any assets presently?

A. I don't think so, no. It's pretty much dormant.

Q. Are there any other members of Roscoe Holdings, LLC, other than yourself?

A. No.

Q. How about OIK Investments, LLC?

A. No. That's not a going concern. That's not a -- it doesn't exist anymore.

Q. When did you form OIK Investments?

Page 76

A. I don't know.

Q. Do you know what the purpose was for OIK Investments?

A. There was a little bit of ownership in a restaurant.

Q. Did you acquire an interest in a restaurant?

A. Yes.

Q. When did you acquire that interest?

A. I'd say -- I don't -- two thousand -- it could have been 2016.

Q. How much did you pay for the interest?

A. There's probably about 80 to -- maybe 80 to a hundred thousand dollars.

Q. Is that -- do you still have that presently, that interest in this LLC?

A. No.

Q. Were there other members of that LLC other than yourself?

A. In OIK Investments?

Q. Yeah.

A. Yes, my brother, Lea Holliday, and I had ownership in it.

Q. Did he contribute anything to the LLC?

A. Sorry, I couldn't hear you.

Q. Did Lea contribute anything to the LLC?

Page 77

A. Yeah.

Q. What did he contribute?

A. Money. We bought an interest in a restaurant.

Q. Okay.

It's 2:07, the two-hour mark. Would you like to take a break or would you like to keep going?

A. Yeah, I would like to get -- walk around for a little bit.

MR. HALVERSEN: Okay. We'll go off the record.

THE VIDEOGRAPHER: Off the record, 12:07.

(Whereupon a short break was taken.)

THE VIDEOGRAPHER: Back on the record, 12:14.

BY MR. HALVERSEN:

Q. Mr. Holliday, I'm going through the list of LLCs that I've found which you may have some kind of involvement in, and the next one I would like to ask you about is a company called Chocolate Holdings, LLC.

When did you form that company?

MS. PAYLOR: Object to the form.

THE WITNESS: Three, four years ago.

BY MR. HALVERSEN:

Q. Okay. And what does that company do?

A. It's used to sometimes hold land, lots, that we will build on.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 78

Q. Does that entity own some of the real estate that we were just discussing a few minutes ago?

MS. PAYLOR: Object to the form.

THE WITNESS: It may have. I'm not sure. It was created around the time of the Bluffdale subdivision, Westgate.

BY MR. HALVERSEN:

Q. Okay.

How about COA Investments, LLC? When did you form that entity?

A. I don't know. A few years back. I'm not sure the exact year.

Q. Was it before 2016?

A. I'm not sure.

Q. What was the purpose of COA Investments?

A. It held the -- an ownership interest of a firearm safety and training company.

Q. Are there any other members of that business or just you?

A. My brother, Lea Holliday, and I are -- we own that together.

Q. Is it still functioning?

A. Yes.

Q. Does that company have anything to do with Operator Suppressor Systems?

Page 79

A. No.

Q. Does COA Investments have any bank accounts?

A. I don't think so.

Q. How about Element Capital, LLC, when did you form that?

A. 2010-ish. 2010 through '12. I don't -- somewhere in that timeframe.

Q. Was that your first home building venture after you winded up your interest with Holmes Homes?

A. No, it wasn't the first.

Q. What was the first venture after Holmes Homes?

A. Just Element Homes -- a company called Element Homes. And we -- that was used for construction purposes after Holmes Homes, after I exited there.

Q. And why did you form Element Capital in addition to Element Homes?

A. In the event that we were going to take investor money to do construction and development projects.

Q. And how did you capitalize Element Homes?

A. Just started it up myself with -- yeah.

Q. Did you make any capital contributions to Element Homes?

A. I'm sure to get it started, probably a nominal amount, yes.

Page 80

Q. Did your father make any contributions to Element Homes to get it started?

A. I don't recall.

Q. Does Element Homes have any other members?

A. Yes.

Q. Who?

A. Lea Holliday is involved in that business with me, my brother.

Q. Does Element Homes still operate?

A. It was -- no. It exists, but we're not running -- it was more for remodels and custom homes, and we're doing a lot less of that kind of work today. So it exists, but it's not doing really a lot of that kind of work.

Q. When did you start doing work for -- with Element Homes?

A. 2010-ish, 2011, after I left Holmes Homes.

Q. And how long did Element Homes operate for?

A. It still exists. It's just we're not actively doing construction projects in it. So 2010 until present.

Q. How about HHH Real Estate, LLC?

A. What about it?

Q. When was it formed?

A. That would have been early, mid 2000s.

Page 81

Q. Did you contribute any money to start the company?

A. I'm sure I did.

Q. Do you know how much?

A. No.

Q. Did your father contribute any money to HH Homes, LLC?

A. It's HH Real Estate -- HHH Real Estate. It's not HHH Homes.

No, he did not contribute any money to it.

Q. Does HHH Real Estate have any other members?

A. It does.

Q. Who were the other members?

A. Patrick Holmes and Spencer Holmes.

Q. Did HHH Real Estate operate before 2010 or after?

A. Before.

Q. All right. And I take it that you no longer did business with this entity after your relationship with the Holmes ended in 2010?

A. It's the last part of business that I have with them.

Q. Are you still -- when's the last time you did business with them, with HHH Real Estate?

A. Well, it had some land that was in it, but I'm

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 82

not actively involved in it. I don't direct and manage that business.

Q. How much of an interest do you have in this company?

A. In HHH Real Estate, a third, 33 percent, plus or minus.

Q. Do you have any understanding of what assets HHH Real Estate has presently?

A. Yes.

Q. What is that understanding?

A. It's -- it owns part of a subdivision and owns part of a company called Oquirrh West, and that's a -- just a residential subdivision.

Q. And where is that?

A. It's in Utah.

Q. Where in Utah?

A. In West Jordan, Utah.

Q. Okay. How about PSR Sandy, LLC?

A. What about it?

Q. When did you form it?

A. Early, mid 2000s.

Q. And what was the purpose for forming it?

A. To hold an office building that we built for Holmes Homes. Or that -- we didn't build it, but an office building that we were going to move our offices into and own.

Q. Did you contribute any capital to this company?

A. No.

Q. Did your father contribute any capital to this company?

A. No.

Q. Are there any other members to PSR Sandy, LLC?

A. At the time, it was Patrick and Spencer Holmes.

Q. And when did PSR Sandy, LLC stop operating?

A. Four, five years ago.

Q. What was the last transaction that PSR Sandy, LLC was involved in?

A. It was an office building in Sandy, Utah, that Holmes Homes -- their offices are in that building.

Q. Do you still retain an interest in PSR Sandy?

A. No. The entity is -- it's done, it's over.

Q. Did you sell your interest or were you cashed out of your interest?

A. It owns some ownership interest in an office building, and they sold the office building, so the entity no longer had a need to exist.

Q. Were you given any kind of financial consideration for that transaction?

Page 84

A. Yes.

Q. How much?

A. It was a few hundred thousand dollars. I don't remember the exact amount, but I want to say three or four hundred thousand dollars.

Q. And when was that transaction?

A. I would guess probably five, six years ago.

Q. Is 12682 Fort Street, LLC the Fort Street properties we were talking about before?

A. Yes.

Q. Is that the owner of that?

A. Yes.

Q. And when was the business formed?

A. Around the time that I bought the property. I don't remember exactly. It was about the same time. Probably four -- three, four years ago.

Q. Are there any other members of this entity?

A. No.

Q. How about Element Real Estate Group, LLC?

A. No. That's -- it was -- that was never an active business or entity.

Q. How about Homebuilders, LLC?

A. Sorry, which one?

Q. Homebuilders, LLC.

A. That's not mine. That's a -- that's a company

Page 85

that -- a nonprofit -- Salt Lake Homebuilding Association and the Utah Homebuilding Association, that's their entity. I'm not a -- I don't own anything. I'm not -- I was the president of the Homebuilding Association, but I was -- I don't own that entity, I'm not involved in it --

Q. Okay.

A. -- on an equity level.

Q. What about Utah Property Preservation, LLC?

A. That was created but never used.

Q. What about Bravo 18, Inc.?

A. That was an affiliate company to Operator Suppressor Systems, a military tech firearm business.

Q. All right. I'm going to come back to that in a minute.

What about HMS Properties, LLC?

A. HMS?

Q. Yes, sir.

A. That does not sound familiar to me.

Q. Okay. How about Operator Suppressor Systems, Inc., did you form that company?

A. It may have been formed before me, but I became involved with it. Yep.

Q. Were you a part owner or investor in this company?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 86

A. I was an investor in the business.
Q. How much did you invest in OSS?
A. Probably about a million dollars.
Q. From when to when?
A. 2010 to 2013.
Q. And are there any other owners of Operator Suppressor Systems, Inc.?
A. Yes.
Q. Who are they?
A. Russ Oliver.
Q. And where does he live?
A. I think he -- I think he may live in Draper still. I'm not sure. I haven't -- I'm not sure.
Q. Did you say Grayberg?
A. Draper, Utah.
Q. Oh, Draper. I'm sorry.
What about -- any other owners?
A. The business -- no, there's not. There was some individuals that were involved in it temporarily in the beginning, the early stages, but they kind of came in exited quickly. And I really wasn't involved a whole lot with that part of it, so I don't really know who they were or are.
Q. And what was the purpose for -- of Operator Suppressor Systems?

Page 87

A. It was -- there was some patented technology to protect U.S. soldiers who -- from hearing loss. It basically worked to suppress the sonic sound that comes out of firearms.
Q. Silencer?
A. Some people call them that. That's kind of passe. Nobody really uses that word. That's like a Hollywood word from movies. But they're called sound suppressors.
Q. And where did the $1 million investment you put in come from?
A. Some funds that I had, some funds my father had. We decided to do it.
Q. How much of the money came from you versus how much came from dad, of the 1 million?
A. It was less than a million dollars, but it was -- he was probably six, eight hundred thousand dollars of it.
Q. And how much was your contribution?
A. Probably a hundred to $200,000.
Q. And did you ever tell your father that he would have or you would have stock certificates that represented your ownership interest in the company?
A. Say that one more time.
Q. Did you ever tell your father that he would have stock certificates that would represent your ownership interest in this company?

Page 88

A. Well, I think it's understood if you own a company, you're going to have some stock ownership.
Q. But my question is, did you ever tell your father that he would have stock certificates in this company?
A. Well, that's why I asked you to clarify it, because one time you said my father, one time you didn't, now you're saying my father again. You've actually asked two different questions in three different formats, so that why I wanted clarity.
No, I did not tell my father that he would have -- specifically Warren Holliday would have stock certificates.
Q. Okay.
Did OSS ever issue stock certificates for the ownership interest you all had?
A. That I had, yes.
Q. So you got stock certificates for the hundred to two hundred you invested?
A. I had stock certificates for the ownership that I had in the company. Warren Holliday did not.
Q. Why did he not get stock certificates and you did?

Page 89

A. Because at that point, he was getting older and not trying to grow any kind of business complexity, but he wanted to participate in it with me. He thought it was a good idea, and he thought that we should do it and that we should come together and put some money in it.
Q. Was it his idea for the investment or was it yours?
A. No, it was mine.
Q. Did you represent to your father that the investment would be profitable in OSS?
A. It was a startup company. I mean, we hoped to. But, you know, it really wasn't a business. It was really we patented a technology and tried to see where it could go. It was kind of exploratory.
Q. My question was, sir, did you ever represent to your father that this would be profitable?
A. We --
MS. PAYLOR: Object to the form.
THE WITNESS: We hoped it would be. That's the very nature of why you put money in something.
BY MR. HALVERSEN:
Q. My question is, did you ever represent to him that --
A. I just told you yes.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 90

Q. No, I don't think you did.
A. Well, I -- well, it's being recorded, thankfully, so that's good news.
But yes.
Q. Yes, you did?
A. Yes.
Q. Okay.
Did OSS ever return any monies to you or your father for the million dollar investment that you all made?
A. We ended up -- the business grew and we made a decision to exit the business because we didn't want to continue to have to put a lot of money into it. And so the business was ultimately sold and we took our investment back.
Q. Okay. So is it your testimony that your original contributions were a hundred percent returned to you and your father?
A. Pretty -- yeah, pretty -- it was really -- it was very close. I mean, there was some transaction costs associated with the sale and stuff, but it was pretty close to what went in came back out.
Q. When did the -- when did that investment come back to you all?
A. I think the business was sold -- I don't --

Page 91

I'm pretty sure it was sold around 2014 -- either 2013, 2014.
Q. Do you have any documents that you can reference to show that that money was actually returned to you and your father?
A. Sure. From when we sold it, there would be.
Q. Where did the money go? What bank accounts did it go into?
A. I don't know specifically, but it just -- the money went back to my father and I. I'm not sure specifically which account numbers it went to.
Q. Well, what bank accounts could it have gone to? What bank accounts did your father have in 2014?
A. He had --
MS. PAYLOR: Object to the form.
THE WITNESS: He had personal and business accounts.
BY MR. HALVERSEN:
Q. Okay. Where were those personal and business accounts?
A. 2014, I don't know. He had a number of banking stuff, so I don't know. I mean, there's Synovus Bank, Wells Fargo. Synovus took the place of NBSC. I think that's what they merged into. So NBSC, Synovus, Wells Fargo.

Page 92

Q. Any other bank accounts that you're aware of that your father had in 2014?
A. I -- no.
Q. Okay.
So if we look at the Wells Fargo account or the NBSC account for 2014, we should see his money being returned -- his investment being returned from the OSS sale; is that correct?
MS. PAYLOR: Object to the form.
THE WITNESS: I'm not sure exactly which accounts, but money was returned to he and I.
BY MR. HALVERSEN:
Q. And I understand you might not know which particular account it went to -- I believe that's your testimony -- but can you tell us where the money came from?
A. Well, there was a transaction. The business was purchased by an individual -- a guy, an individual, outside of Utah who came in.
Q. Was there a closing?
A. He purchased the business, or his companies purchased it, and they gave us a portion of the money, and then they --
Q. Was there a closing?
A. There was a closing, yeah.

Page 93

Q. Do you know who did the closing?
A. We just -- we did it. He and I did it. He had his attorney, and they drafted documents.
Q. Who was the lawyer?
A. It was the guy-who-bought-it's personal attorney. He's... Yeah.
Q. Do you know where he was?
A. He's from Texas, but I don't -- I don't even recall the guy's name, but he was from Texas.
Q. Would your CPA, Ken Butler, have some kind of information about this money being returned to you?
A. I don't know.
Q. Do you know where the hundred or two hundred thousand dollar investment that you got returned -- where that money would have gone?
A. It would have -- I don't know if it would have come into one of my business accounts or one of my personal accounts. I'm not sure.
Q. What were your business and personal accounts in 2014?
A. I mean, we had various ones.
Q. Can you list them for me?
A. I had a personal account -- no, I can't list all of them. I have --
Q. Why can't you?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 94

A. I have -- for business purposes, I run all my books separate and everything. I probably have 10 or 15 banking accounts. I have no ability to list them all out individually.

Q. Okay.

Well, who do you -- who did you do business with -- business banking with in 2014?

A. I would think primarily Wells Fargo at that time.

Q. And where did you do your personal banking in 2014?

A. Primarily Wells Fargo.

Q. What about the Zions Bank company, when did you do business with them?

A. Long time ago. I haven't had business banking with those guys in -- I don't even know when. It's been a long time.

Q. Do you have any records of the closing for the sale of your shares for OSS?

A. Yes.

Q. If your attorney asked you to produce that, is that something you could find and turn over to her?

A. I would think so.

MS. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Page 95

Q. Did OSS return a profit to you and your father?

A. No. It was a startup business. We grew it and grew it, and just any time it was making any money, the business -- the money just stayed in to grow the business. It literally went from one person to 20, 30 employees.

So it -- the goal wasn't to be profitable, the goal was to grow the business. And so that's what we did. It did not return profits. We just chose to grow it.

Q. One thing I did not understand from your testimony about OSS is, why did your father not get stock certificates and you did?

A. There were a few reasons. Part of it was in that 2010 timeframe, he had undergone kind of kidney failure, and just was trying not to create a lot of, you know, business, legal entanglements.

Then the other issue, probably the more important one, is, in order to have a firearm-oriented company, a military company, you have to register with the state department, you have to register with the United States military, the Bureau of Alcohol, Tobacco and Firearms, the ATF, in order to get a federal firearms license. And so if you -- to own over a

Page 96

certain percentage, you have to be listed on that federal firearms license, and you have to give them audit rights, and they have to -- because you are serializing weaponry for military grade purposes.

It just -- it really wasn't conducive -- he was not in a position, having experienced kidney failure, to be able to participate in those kinds of audits and those things. So he wanted to be involved in the business, but he just didn't want to -- he didn't have the ability to deal with a lot of that.

You have to do quite a bit to sell into the U.S. military and to deal with those kinds of issues. That was probably the bigger reasoning for him personally.

Q. Do you have any proof that your father was repaid this amount, the investment into OSS?

A. I mean, he was paid back. I mean, "proof," meaning...

Q. Meaning a document that you can show us that his money was returned? I understand you're telling me that.

A. Yeah.

Q. Is there some kind of document you can show us that shows that he was repaid his investment?

A. I'd have to go look and see.

Page 97

Q. Okay. If your attorney asked you to do that, could you find that?

A. I could go look and see, yeah.

MS. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Q. What about Bravo 18, Inc.? What -- you said earlier -- referenced that that was an affiliated company to OSS. Was there an investment made in that company?

A. Let me clarify that. I don't know if it was a direct affiliate to OSS, but it was like a sister company. Operator Suppressor Systems made sound suppressors. Bravo 18 actually made some custom firearms.

We had some military groups that asked us if we could make them some very specific types of firearms, and so that was done in a different entity than the sound suppressors. And at their request, that's why that was set up.

Whether it was officially an affiliate and owned by Operator Suppressor Systems or whether or not it was just a separate company -- I mean, they were housed in the same building. They were two different entities that built two different products, but they were somewhat similar in the sense that they were, you

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 98

know, involved in military and law enforcement.
But I want to be clear. I'm not sure that it was exactly an affiliate, per affiliate rules, but that was the relationship.
Q. Did you get a K-1 from Bravo 18?
A. I would think that there was a K-1 or that somehow it flowed up through taxes -- through my taxes, yes.
Q. Did your father get a K-1 from Bravo or -- Bravo 18 or from Operator Suppressor Systems?
A. No, because he wasn't an owner. He was not --
Q. Okay. Only you would?
A. -- an official equity owner.
Q. You were the only equity owner of those companies?
A. No. I told you Russell Oliver also -- Russ Oliver was.
Q. Right. And you were an owner as well, correct?
A. Correct.
Q. Were there any other businesses that you and your father invested in besides the ones we mentioned already, which I believe were Holmes and Operator Suppressor Systems?
A. Nothing of a formal nature. Informally, I

Page 99

mean, there were stuff that -- I'm just trying to think for a minute. Give me a second to think about that.
Not -- I don't think in terms of equity, but there's things that, you know, he and I talked about that we decided to kind of move ahead and do work with.
Q. Anything off the top of your head or --
A. Well, like OIK, the restaurant, you know, we -- I talked to him about that. That -- he and I and Lea, we decided to do it. He thought it was fine --
Q. But did --
A. -- it was advisable. You know, we were always kind of that mindset that we talked about business stuff together.
Q. But did your father make an investment in the OIK entity?
A. Not him personally, no, I don't think so.
Q. Or any business that he had an ownership interest in?
A. Could have. Yeah, could have.
Q. Do you remember how much that contribution was?
A. I think you asked me that earlier. What did I tell you earlier?
Q. I wasn't aware you told me that your father made a membership interest in OIK.

Page 100

A. You keep changing the questions. I don't know if this is part of your schtick, but what you did is you asked me if Warren Holliday -- and I just told you that Warren Holliday, personally, did not; I said maybe his businesses.
See, you keep doing that, and it's getting a little frustrating. You're making it hard to follow you, because you ask a question, and then it feels like you're intentionally changing it or deflecting it, and --
Q. Well --
A. -- it's creating difficulty in trying to answer you in a concise fashion. I'd ask you to stop doing that.
Q. Well, I'll tell you what, to be fair, if there's some question that you don't understand what I'm asking --
A. That's what I'm doing right now. I'm telling you I don't understand them, because you repeat them with slightly different adjectives and points.
Q. Okay. Well, and I -- what I'm going to try to do is rephrase it so you can hopefully understand the question.
So the question is, did your father or the entity he was associated with make any investments or

Page 101

capital contributions or any kind of contribution to OIK?
A. I think we may have done that through one of the businesses, but not him personally.
Q. Okay. And do you have any memory as to the amount of that contribution?
A. Well, that's what I was referencing back previously. You asked me that, how much money went into OIK Investments and into this restaurant, and I told you I thought it was kind of in that eighty, ninety thousand dollar range.
Q. Okay. Well, I apologize. I didn't know that -- clarify that, for the record, that you had meant that that was an investment that was made by your father. I thought you said previously that --
A. I didn't say that. I said that eighty to ninety thousand dollars went in to buy the ownership interest. What I'd said was some of that money could have come from one of Warren Holliday's businesses.
Q. Okay.
A. But I can't say more than that. That's... I'm just trying to answer the question as best that I can for you.
Q. Okay. And I understand what you're telling me.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 102

MR. HALVERSEN: Alice, I just sent you a link to an exhibit. Did you receive it, Alice?
MS. PAYLOR: I got the email. It still hasn't opened up.
MR. HALVERSEN: Okay. I guess it's downloading.
MS. PAYLOR: I guess.
MR. HALVERSEN: Well, just tell us when you've got it.
And Madame Court Reporter, the new documents that you received this morning, the printed out -- they're bank records, I'd like to mark those as our next exhibit.
MS. PAYLOR: Let me ask you a question. Do I have these somewhere else?
MR. HALVERSEN: Since they're Wells Fargo's subpoena responses that we have previously provided to you, the answer is yes.
MS. PAYLOR: Well, that's all I asked you. You previously provided. You had not provided the other, that's why I asked.
MR. HALVERSEN: That's correct.
MS. PAYLOR: It's still not open.
THE REPORTER: Mr. Halversen, this is the court reporter. Just for clarification, do you want to

Page 103

mark this next document as Exhibit B?
MR. HALVERSEN: Yes, ma'am.
THE REPORTER: Thank you.
(Exhibit B was marked for identification.)
MS. PAYLOR: Okay, I think have it now.
MR. HALVERSEN: Okay.
MS. PAYLOR: It's just one page?
MR. HALVERSEN: No. It should be like 300 pages.
MS. PAYLOR: Okay. Well, it's downloading. I don't know how long it will take. I have the first page.
MR. HALVERSEN: Let me try emailing it, see if that's any quicker.
Okay. I just emailed it.
BY MR. HALVERSEN:
Q. And so the documents, Mr. Holliday, the --
MR. HALVERSEN: I'm not asking questions yet. I just want to make sure he's got what we're all going to be looking at.
BY MR. HALVERSEN:
Q. Is -- the top page says Wells Fargo PMA?
A. I don't see any document on the screen.
MR. HALVERSEN: I think -- Madame Court Reporter, these are the documents that I think you

Page 104

printed out this morning that I sent to Pennie at the -- your agency.
THE REPORTER: For clarification, we said that those were not sent in time to be printed out in a paper format, and they are only available in a digital format that can be shared on the computer.
MR. HALVERSEN: Oh, okay. Well, Pennie said they were going to try to get them to you, but I guess they didn't. Okay. Let's see.
MS. PAYLOR: I never got another -- I never got an email from -- another email. And this has still not downloaded, anything but page 1.
MR. HALVERSEN: Okay. Well, you know, I think if you download the Zoom feature either now or next time we do this, then you should be able to get the documents in the chat forum.
Let me try something else. Let me try sharing my screen.
Can you see that?
MS. PAYLOR: I can.
THE WITNESS: Yes.
MR. HALVERSEN: Okay. Are we all good? Can we continue with this?
MS. PAYLOR: Yeah. I mean, I can't see the witness anymore, but...

Page 105

MR. HALVERSEN: Well, I'm trying to do my best to accommodate you, Alice. I don't know what else I can do.
MS. PAYLOR: Well, that's fine. Does he have it in front of him?
THE WITNESS: I can see -- like I said, this is pretty small. This is -- but I see where it says "Wells Fargo PMA," but I only see -- I can see a date of January 31. Now it's scrolled slightly, I can see where it says -- "contents" is the last thing I can see on the bottom of the page.
BY MR. HALVERSEN:
Q. Okay. Let me see if I can zoom it in a little more.
Does that help?
A. Well, that enlarged it, like blew it up. But yes, I mean, maybe.
Q. All right. Let me take you to page -- it says at the...
All right. I'm going to go -- start off with page -- where it says at the top REDE Page 36 of 332, and it's page 35 of the 331 PDF.
Can everyone see that?
A. Yes.
MS. PAYLOR: Yep.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 106

BY MR. HALVERSEN:
Q. Okay.
And just tell me if you can't see something or if you -- whatever, okay?
I will represent to you that this is a subpoena response we received from Wells Fargo for banking records for the Warren Holliday Revocable Trust account.
Are you familiar with this account?
A. Yeah, this was Warren's personal checking account.
Q. Okay.
And this first -- do you recall when you first opened the account?
A. No.
MS. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. Did your dad have any other bank accounts besides this one?
A. I'm sure he did.
Q. Are you aware of where the other bank accounts were besides -- I think you referenced NBSC --
A. I think you asked me this. Did you ask me this question already?
Q. I may have.

Page 107

A. Yeah. So that -- I told you that, potentially, he had banked with NBSC, which became Synovus, and Wells Fargo. I think we already went through this.
Q. Okay. Just confirming.
What about Holliday Amusements, do you know where their bank account was held at?
A. One of those three banks. But I think it changed over time, so I don't -- are you asking about a specific time period? What are -- what do you want to --
Q. I don't know what the time period is. So if you know what the time period is, yes, I would like for you to tell us that.
MS. PAYLOR: Object to the form.
THE WITNESS: Yeah, you've got to be more specific. I mean, Holliday Amusement was a --
BY MR. HALVERSEN:
Q. Sure.
A. -- 30-, 40-year-old company. I'm sure they --
Q. Okay.
A. Before I was almost even born -- it existed before I was born. So I can't tell you where they banked in the '60s or '70s or even '80s, when I was a child. All I can tell you is when I have more of an involvement.
So if you want to be more specific, I'm happy to try to give you as much information as I can.
Q. Well, I'm -- I'd be happy to give you more specific information. I wasn't aware that that account was around for that long.
So as far as you are aware --
A. I didn't say that. See, once again, there you go. I didn't say that.
Q. Okay.
When -- you just tell me what you know. Okay, sir? When did Holliday Amusements have a bank account at any given bank that you're aware of? And I'm asking for the name of the bank.
MS. PAYLOR: Object to the form.
THE WITNESS: So will I answer it now a third time. They banked, I told you, with NBSC. They had banked -- and I think that --
BY MR. HALVERSEN:
Q. When?
A. In the 2000s.
Q. Okay. Did that ever change?
A. At some point it changed to Wells Fargo, but I told you I wasn't exactly sure what year that was.
Q. Okay.

Page 108

Page 109

All right, sir, let's move to page 40.
MS. PAYLOR: You can stop sharing the screen with me now. I have it. I got it from you finally.
MR. HALVERSEN: Okay.
BY MR. HALVERSEN:
Q. Ross, do you need me to share the screen for you to see these?
A. Well, I don't have a paper copy or anything else. So if you need me to specifically look at something, I would say --
Q. Okay. I'll keep it open.
A. It's up to you, if you need me to look at something for reference.
Q. Okay. I do need you to look at it.
So RED page 40 of 332, which in this PDF from Wells Fargo is page 39 of 331.
And it says August -- at the top, it says August 1, 2012 to August 31, 2012. Do you see that?
A. Yep.
Q. Okay.
So it says "Transaction history." It says 8/22, online transfer to business checking capital contribution to HH.
Do you have any understanding of where that $3,000 was going to?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 110

A. HH is Holliday Holdings, and --
Q. Okay. That reminds me, I never asked you about Holliday Holdings. Because I think you formed Holliday Holdings in Utah. Correct?
A. Correct.
Q. What was the purpose of Holliday Holdings?
A. It is an umbrella company to hold my ownership interest in different, you know, businesses that I owned.
Q. Okay. Did any of these other entities -- were they owned by Holliday Holdings?
A. Some of them were, yes.
Q. Okay.
So at this point in time do you know what that business checking capital contribution was for to Holliday Holdings for three grand?
A. I can't say that I do.
Q. Okay.
Let's go to the next one. The next ledger entry says August 28th, online transfer, and says reference number, to Way2Save Checking, Toyota payment, $1,200.
Is that a payment for your vehicle?
A. It's probably -- yeah, it's probably an automotive reimbursement for, like, vehicle expense.

Page 111

Q. Okay. Would that have been the 2012 Toyota Sequoia?
A. It could have been.
MS. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. I couldn't hear you, Mr. Holliday.
A. I said it could have been.
Q. Okay.
A. I'm not sure, but could be.
Q. And the vehicle was in Utah, correct?
A. Yes.
Q. So how is there work being done in Utah with regard to that vehicle that had anything to do with money coming out of your dad's trust account?
MS. PAYLOR: Object to the form.
THE WITNESS: I'm looking at it. Who's to say it was a business vehicle? It was my father's personal account, and the Toyota was a -- I believe a personal vehicle.
BY MR. HALVERSEN:
Q. Okay. Is that your car or your wife's car?
A. It was both of ours. I drove it frequently and often.
Q. Did Kelley work for your dad?
A. No.

Page 112

MR. HALVERSEN: So it's 3:07. The court has limited us to your -- three hours because of your health condition, so we're going to adjourn the deposition here, and we'll just either come to an agreement on when we can talk to you again or we'll have to go back to the court. But for today, we're done.
MS. PAYLOR: Thank you.
MR. HALVERSEN: Madame Court Reporter?
THE REPORTER: Yes.
MR. HALVERSEN: Could you hold all of those exhibits in your possession, except for the -- or whatever we've -- whatever I printed out -- you printed out and I sent you, could you retain those for me, please?
THE REPORTER: Yes, I will.
THE VIDEOGRAPHER: Can we get the orders on the record for video and --
THE REPORTER: Oh, yes.
So we need to know -- Mr. Halversen, do you want to order this transcript at this time?
MS. PAYLOR: Yes.
MR. HALVERSEN: Yes, we would like to order the transcript.
THE REPORTER: Okay. And the video?
MR. HALVERSEN: I think we'll hold off on the

Page 113

video for now.
THE REPORTER: Okay. And --
MS. PAYLOR: I would like a copy.
THE REPORTER: A copy of the transcript and the video?
MS. PAYLOR: No. Just the transcript.
THE REPORTER: Okay. Very good.
Let's see, you don't have the copy to the chat, so I will email you. But Mr. Halversen, in the chat there is a link to our order form. If you click on that, it makes it very simple to order that transcript exactly the way you want it to come to you.
MR. HALVERSEN: In the chat room?
THE REPORTER: In the chat, there is a link.
THE VIDEOGRAPHER: Okay. I'm going to go off.
THE REPORTER: The video is going to go off.
THE VIDEOGRAPHER: It's the end of the deposition. We're off the record. The time is 1:08.
THE REPORTER: But just so I also know --
MR. HALVERSEN: I don't see the link. I'm sorry. Where is it?
THE REPORTER: Well -- and also, if you just want to tell me, do you want it to come in an electronic form?
MR. HALVERSEN: Yeah, e-tran is fine. And I

would just like you to hold those exhibits and don't share them with anyone except for me.

THE REPORTER: Very good.

And then Ms. Paylor, do you just need an e-tran or do you need a paper copy?

MS. PAYLOR: E-tran is fine. E-tran is fine.

THE REPORTER: Very good. Thank you.

(Deposition adjourned at 1:09 p.m.)

Case: PAMELA HOLLIDAY WALLIN, ET AL. vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ET AL.
Civil No. 2019-CP-10-2430
Reported by: Deirdre Rand, RPR, CSR, CCR
Date taken: August 4, 2020
Deponent: ROSS SAMUEL HOLLIDAY, VOLUME I

WITNESS CERTIFICATE

I, ROSS SAMUEL HOLLIDAY, HEREBY DECLARE:

That I am the witness in the foregoing transcript; that I have read the transcript and know the contents thereof; that with these corrections, I have noted this transcript truly and accurately reflects my testimony.

PAGE-LINE	CHANGE-CORRECTION	REASON
_____	_____	_____
_____	_____	_____
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_____	No corrections were made.	

I, ROSS SAMUEL HOLLIDAY, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be true and correct.

_____
ROSS SAMUEL HOLLIDAY, Deponent

SUBSCRIBED AND SWORN to at _____
_____, this _____ day of _____, 20___.

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NOTARY PUBLIC

REPORTER'S CERTIFICATE

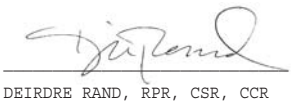
STATE OF UTAH)
)
COUNTY OF UTAH)

I, DEIRDRE RAND, a Certified Court Reporter and Registered Professional Reporter, hereby certify:

THAT the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was placed under oath to tell the truth, the whole truth, and nothing but the truth; that the proceedings were taken down by me in shorthand and thereafter my notes were transcribed through computer-aided transcription; and the foregoing transcript constitutes a full, true, and accurate record of such testimony adduced and oral proceedings had, and of the whole thereof.

I further certify that I am not a relative or employee of any attorney of the parties, nor do I have a financial interest in the action.

I have subscribed my name on this 15th day of August, 2020.



DEIRDRE RAND, RPR, CSR, CCR

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PAMELA HOLLIDAY WALLIN

vs

ROSS SAMUEL HOLLIDAY

Case No. 2016-ES-10-1673

ROSS

HOLLIDAY

November 13, 2020

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IN THE PROBATE COURT

IN AND FOR CHARLESTON COUNTY, STATE OF SOUTH CAROLINA

--oo0oo--

PAMELA HOLLIDAY WALLIN; MARK BENNETT HOLLIDAY; KINGSLEY K. HOLLIDAY; SARA JANE HOLLIDAY; and JOHN C. HOLLIDAY;	Case No. 2016-ES-10-1673
Petitioners,	
vs.	
ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLIDAY, ROSS SAMUEL HOLLIDAY, individually; WARREN LEA HOLLIDAY, individually; 2333 HIGHWAY 17 NORTH, LLC; 2237 HIGHWAY 17 NORTH, LLC; 2805 HIGHWAY 17 NORTH, LLC; 1606 MEETING STREET, LLC; BACONS BRIDGE ROAD, LLC; 4687 FRANCHISE STREET,L LC; ZEEZROM PROPERTIES, LLC; JOHN DOE LEASED VEHICLE; 1905 NORTH MAIN STREET, SUMMERVILLE,LLC; 815 FOLLY ROAD, LLC; 832 COLEMAN BLVD., LLC; 2189 DISCHER AVENUE, LLC; NEW SPACE SCIENCE, LLC; PIRATES PLUNDER, LLC; SAWGRASS TECHNOLOGIES, INC.; HOLLIDAY AMUSEMENT COMPANY, INC.; and THE REVOCABLE TRUST AGREEMENTS BETWEEN WARREN P. HOLLIDAY AS SETTLER AND AS TRUSTEE,	
Respondents.	

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Page 2

DEPOSITION OF ROSS HOLLIDAY

Taken on Friday, November 13, 2020

at 11:00 A.M.

At 14051 Sage Hollow Drive

Draper, Utah 84020

Reported by: Kellie Peterson, RPR, CSR

Page 3

APPEARANCES

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ALSO PRESENT:	Lea Holliday	
(Appearing via Zoom)	Pamela Wallin	
	Mark Holliday	

Page 4

INDEX

WITNESS	EXAMINATION BY	PAGE NO.
ROSS HOLLIDAY		
	Examination by Mr. Halversen	5

EXHIBITS

Ex. No.	Description	Page No.
C	Affidavit of Ross Holliday	6
D	6/10/15 Email, Re: Holliday v Holliday	10
E	Privilege Log	15
F	Relationship Change Application, 2/13/12	36
G	Relationship Change Application, 9/17/15	37
H	First Codicil	40
I	2/9/17 Email, Re: Update from Ross Holliday for Warren's Policy	47
J	Affidavit of Greg Bosch	50
K	Handwritten Notes	52
L	Finkel Law Firm Invoice Summary, 2/10/15	54
M	1/5/16 Email, Re: Codicil to Will	54
N	10/22/15 Check, $254	57
O	Finkel Law Firm Invoice Summary, 10/17/16	59

Page 5

(Exhibits cont.)

P	9/7/16 Email, Re: Revocation of Trust	65
Q	**Text Message Screenshots**	**67**
R	**1/26/13 Check, $957.50**	**73**
S	**Handwritten Notes, 3/20/19**	**74**
T	**Affidavit of Aliecia M. Bores**	**79**
U	**Affidavit of Truett Nettels**	**80**
V	**Divorce or Annulment as Revoking Revocable Trust**	**81**
W	**Marital Settlement Agreement**	**86**
X	**2/3/17 Check, $15,000**	**100**
Y	**4/3/17 Check, $1,587.44**	**102**

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 6

November 13, 2020 11:00 A.M.

P R O C E E D I N G S

EXAMINATION

ROSS HOLLIDAY,

called as a witness, having been first duly sworn, was examined and testified as follows:

BY MR. HALVERSEN:

Q. Mr. Holliday, this is Brent Halversen again. As you know, we are here taking your deposition. If you need to take a break, just raise your hand or let the court reporter know and we will take a break. Okay?

A. Okay.

MR. HALVERSEN: Okay. Madame Court Reporter, can you please hand to Ross Exhibit C?

Alice, I will send you for right now Exhibits C, D and E by email.

MR. PAYLOR: Okay.

MR. HALVERSEN: And just let me when you have them.

(Deposition Exhibit C was marked for identification.)

THE WITNESS: As we get started, who is all on the Zoom call, by the way? Is it just you?

MR. PAYLOR: Everybody identify themselves so he knows. I think that is appropriate.

THE WITNESS: Yes, I am just trying to show.

Page 7

Because my screen shows Alice, Brent and me.

MS. PAYLOR: Brent Halversen, Michael Timbes, Bijan is listening, Steve Slotchiver. I'm not sure who M-E is.

THE WITNESS: That's Lea.

MR. PAYLOR: Pamela Holliday.

LEA HOLLIDAY: I see Mary Ellen on here.

THE WITNESS: Yes, I show Mary Ellen on here. I'm not sure why she is listening or being a part of this since she is not a party to this case.

BY MR. HALVERSEN:

Q. It's probably Mark, and maybe that's just their screen name or something.

A. Well, can we clarify that? She should not be on here. Mark, obviously, has a right to, but she, certainly, does not.

Q. Okay. Well, I believe this is an open proceeding, but now saying that, I believe it's Mark.

MR. PAYLOR: I now have the exhibits.

BY MR. HALVERSEN:

Q. So Ross, I've handed to you what appears to be your exhibit of -- Exhibit C, which is your affidavit. Can you confirm that is a copy of the affidavit you signed?

A. Yes.

Page 8

Q. Can you go to paragraph 6, please? And I will read that into the record. It says, "My father was an extremely driven and decisive man. He was a very successful businessman. I worked closely with him and he [sic] was fortunate enough to learn a lot from him about managing a successful business. I was very close with my father, not only in a father-son relationship but also professionally."

Those are your words. Correct?

A. Yes.

Q. Would you agree with me?

MR. PAYLOR: Just for the record, you read in a "he" that should not have been there. You said, "He was fortunate enough to learn," and "he" shouldn't have been in there.

BY MR. HALVERSEN:

Q. Okay. Paragraph 6 was written by you. Correct?

A. Yes.

Q. Would you agree with me that you and your father had a very trusting relationship with each other?

A. Yes.

Q. Would you agree with me that he considered that you had special knowledge and education which was beneficial to him, and that's one of the reasons why he

Page 9

held you in a position of trust?

A. Sure.

Q. And when did you first become power of attorney over your father?

A. I would say in some of their initial -- some of the estate planning that happened in late -- like around that 2008 time frame, I had a power of attorney for both my mother and my father.

Q. What about 2002? It's my understanding that Truett Nettles first did a will for them back at the -- were you first set up as power of attorney back then or was it not until 2008?

A. I believe it was closer to 2008 on the power of attorney.

Q. Okay. Is Truett Nettles your lawyer now?

A. He is one of my attorneys.

Q. Has Mr. Nettles ever represented you personally before now?

A. He usually has represented me in business affairs, and then personally, around -- I'm not sure exactly when he personally began to represent me in legal matters, but probably closer to that 2008, 2010, '12 time frame. I don't remember exactly officially when.

Q. Well, I mean before your father died, was Mr. Nettles representing your father, generally speaking,

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 10

or was there something that he represented you on -- specifically you, not related to your dad?

A. No, all of his -- his representation of me was tied to the businesses, my father, my father's estate. I never had a need for individual legal representation that was separate from my father.

Q. Okay. And that's what I wanted to confirm. Could you look at what we have marked as Exhibit D?

(Deposition Exhibit D was marked for identification.)

THE WITNESS: I'm handing Exhibit C back to the reporter. Okay. I have it.

BY MR. HALVERSEN:

Q. It's two emails. Can you look at the first email on the first page?

A. Okay.

Q. At the bottom of that page, it appears to be an email from Mr. Nettles to you, dated June 4, 2015. And it appears to relate to a rule to show cause hearing in Charleston County Family Court.

And at the bottom, Mr. Nettles says to you, quote: He will have to go to the hearing unless he is incapacitated, end quote.

Was your understanding that your father was

Page 11

sick or ill at this time?

A. Yes. He -- I mean, yeah, he was on kidney dialysis, amongst other things, and his health -- yeah, he was definitely -- I would say he was sick.

Q. Okay. And if you look at the top of that email, Mr. Nettles to Alan Toporek. And Alan Toporek, it's my understanding, is your mom's divorce lawyer. Correct?

A. Correct.

Q. And Mr. Nettles says to Mr. Toporek, quote: I got my client Ross Holliday to send me a copy of the email I sent to you on June 4, 2015.

Was it your understanding that you were the client?

MR. PAYLOR: Object to the form.

THE WITNESS: I mean, I'm not trying to get into wordsmithing. This is -- this was an issue that related to my father, which, I believe, is what you previously asked me.

BY MR. HALVERSEN:

Q. Okay.

A. So to be -- to just reiterate, Truett Nettles is my attorney. He represented me in business and estate matters, as well as Zeezrom Properties, as well as issues related to my father and my mother.

Page 12

Q. And all of those matters related to your father. Correct? As it pertains to dealings with you. Right?

A. Typically, yes.

Q. Okay. All right. If you could look at the second page. The second page at the bottom appears to be -- is that your email address? I believe it is rossholliday@me.com.

A. Yes.

Q. From you to Mr. Nettles, dated February 11, 2016. And it says, quote: I have attached the current death benefit which is currently $661,591.52, which is in excess of the required amount. And let me say that I will no longer tolerate harassment on their part. I will not provide ad hoc status updates based upon her insanity. I am willing to provide it once or twice a year, not quarterly.

Did I read that accurately?

A. Yes.

Q. And as it pertains to this issue, when you are giving Mr. Nettles directions as to reporting in the -- as it pertained to insurance information in your father's divorce case?

MR. PAYLOR: Object to the form.

THE WITNESS: Yes, he was asking for an

Page 13

update as to what the death benefit would be, and I was providing the update.

BY MR. HALVERSEN:

Q. Okay. At the top of that email, Mr. Nettles states that, quote: I want to save and forward the report without our attorney/client exchange. Thanks.

Is that right?

A. Yes.

Q. When you were getting all these emails from Mr. Nettles back in 2015 regarding your parents' divorce case, were you taking all of these communications that Mr. Nettles sent to you and talking to your dad about them before you responded?

A. Sometimes yes, sometimes no.

Q. Let me just confirm a few things. Would you agree with me that you are now paying Mr. Nettles for legal work?

A. I am and my business is, yes.

Q. And you agree with me that you were also paying while your father was alive. Right?

A. Correct.

Q. And instead of sending the bills to your father, Mr. Nettles sent them to you; is that not correct?

A. He typically sent them to our business

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 14

office.
Q. And they were put to your attention. Correct?
A. Yes, as I was the business manager.
Q. And I don't have access to what kind of moneys that Mr. Nettles is being paid now by you or your business, but would you agree with me that you, as the personal representative, had employed Mr. Nettles for litigation purposes in this case?
A. Yes.
Q. Let me ask you this. When did you or your businesses start paying Mr. Nettles for legal representation?
A. I mean, it's been an ongoing attorney-client relationship for a decade. I mean, I don't know the exact start date.
Q. How about when you came back and started helping out with the business? That was about 2011. Correct?
A. 2010 and 2011.
Q. Okay. So Mr. Nettles has been paid off and on by either you or the family businesses since that time?
A. I would say almost exclusively by the businesses.

Page 15

Q. Okay.
MR. HALVERSEN: Madam Court reporter, can you hand Mr. Holliday Exhibit E?
(Deposition Exhibit E was marked for identification.)
BY MR. HALVERSEN:
Q. Mr. Holliday, have you read Mr. Nettles' deposition that was taken in this case?
A. Part of it. When I saw it was an 80-page PDF, quite frankly, I chose not to read the whole thing.
Q. Okay. So did you read the first 80 pages then?
A. I just answered that. I said I did not read all of it when I saw the size and length. I began to and I decided not to read all of it.
Q. Okay. Well, I will represent to you that this was a privilege log that we have marked as Exhibit E, and that Mr. Nettles testified that none of the communications in this log were between him and your dad. And I was going to ask you, do you have any reason to dispute that?
A. I have not looked --
MR. PAYLOR: Object to the form.
THE WITNESS: I haven't -- I don't even know what is in this privilege log. I'm not familiar with it.

Page 16

This is the first time I have seen it.
BY MR. HALVERSEN:
Q. Okay. So if you want to take a look at it, I will represent to you that it says they are all email communications to Ross Holliday. And Mr. Nettles testified that your dad didn't use email, so all of these emails were with you.
A. My dad did not use email. He was not an email guy. He's old school.
Q. Okay. And if you need to take a minute to look at these, I'm fine to have you take a look at it. But, generally speaking, Mr. Nettles, I will represent, testified that 95 percent of the communications he had with you were related to issues with either your divorce -- or your parents' divorce, your businesses or the 2016 codicil. Do you have any reason to dispute that?
MR. PAYLOR: Object to the form.
THE WITNESS: I don't know -- yeah, that would make -- potentially, yes.
BY MR. HALVERSEN:
Q. Okay. Have you supplied your attorney with all email communications, text messages and documents that you have had with Mr. Nettles that relate to either 2014 will or the 2016 codicil or the 2016 revocation?

Page 17

THE WITNESS: I have provided whatever was asked for.
BY MR. HALVERSEN:
Q. Okay.
A. And I don't -- I don't remember if they asked for all or some or specific emails or specific text communications, but whatever I was asked to provide, I have tried my best to provide that in its entirety.
Q. Okay. If you are asked to provide all of those documents, if your attorney asks you to do that, is that something you can do?
MR. PAYLOR: Object to the form.
THE WITNESS: I would think so.
BY MR. HALVERSEN:
Q. Okay. When did you start handling all of your dad's financial affairs?
A. Beginning at the end of 2010.
Q. Did you ever handle any legal affairs for your dad?
A. Yes.
Q. What were those matters?
A. Well, not for -- I mean, I handled legal affairs that involved the businesses beginning in 2010.
Q. And was that something that Mr. Nettles represented the businesses on?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 18

A. Yes.
Q. And what kind of matters were those? Like, collection matters? Lease disputes? Business disputes? What kind of matters?
A. Exactly those kinds of issues.
Q. Okay. Anything else?
A. Just typical business issues.
Q. Okay. Do you have copies of any of Mr. Nettles' bills, not since your father died but after -- sorry, not after your father died but before your father died?
A. We probably still have copies of some of them. I don't know if we have all of them. But yes.
Q. Is it possible you have bills that go back before the year 2016?
A. I'd have to check and see. I would assume, if -- usually, they had somebody in their office who would mail copies to the business, and I began to request -- they would email them to me so that I could have an email copy. I would assume there are emails with bills from him before 2016.
Q. Okay. And, again, if your attorney asked you to provide something with regard to that, is that something you could do?
A. I would think so.

Page 19

Q. Okay. Why did not your dad deal exclusively with Mr. Nettles for all of the divorce communications?
MR. PAYLOR: Objection.
THE WITNESS: My dad did deal with Truett Nettles on the divorce primarily. And I was brought in to some of those discussions because as I was the business manager for Zeezrom Properties, and I was, ultimately, tasked with making payments to my mom.
Obviously, I needed to be brought into the loop as to what their arrangements were and what they had agreed to and the timing as to how I was to financially respond.
BY MR. HALVERSEN:
Q. Okay. Well, I understand what you are saying, but all of the communications that we have, either letters or emails, are between you and Mr. Nettles. They are not with your dad.
MR. PAYLOR: Object to the form.
THE WITNESS: My father spoke on the phone and had in-person meetings with Truett separately from me that I was not involved in.
BY MR. HALVERSEN:
Q. Well, Mr. Nettles' bills don't reference very many, if any, meetings or phone calls in that time period, only dealings with you; is that fair?

Page 20

A. I don't --
MR. PAYLOR: Object to the form.
THE WITNESS: I don't know -- I don't know what the bills reflect.
BY MR. HALVERSEN:
Q. Okay. If the bills reflected that, do you have any reason to dispute that Mr. Nettles did not keep accurate records?
MR. PAYLOR: Object to the form.
THE WITNESS: I would assume his records are accurate, but I do -- if there are omissions, they would have been accidental omissions, if there was anything that did not fully reflect the one-to-one meetings that they had.
BY MR. HALVERSEN:
Q. Well, if Mr. Nettles testified that his billing entries were accurate representations of the amount or frequency that he consulted with your dad, do you have any reason to disagree with Mr. Nettles?
MR. PAYLOR: Object to the form.
THE WITNESS: No, I think he would know his billing better than I would.
BY MR. HALVERSEN:
Q. Was your dad unable physically or mentally to communicate with Mr. Nettles at this time during the

Page 21

divorce?
A. He was mentally capable to communicate with him.
Q. But he was not physically capable of meeting with him?
A. I think he was physically capable. Sometimes -- you know, his physical health, he had good days and bad days.
Q. Did your dad have a cell phone during this time?
A. Yes.
Q. Let me ask you some questions about the divorce, generally speaking. Did you read your Aunt Martha's deposition, Martha Brouthers?
A. No.
Q. What is your explanation for why your parents divorced?
A. My mother did not want to take care of my father in his ailing condition. She told me that when his health began to slightly improve, and it didn't appear in 2010 and '11 that he was going to pass away, that she did not want to become his primary caregiver through the remainder of his life. And as such, she, ultimately, made a very selfish choice to file for divorce.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 22

Q. And when did your father start having serious health issues?

A. I am not sure the exact timing of when he -- I would say one major consideration is when he had kidney failure and he began doing home dialysis. I can't -- I couldn't tell you if that was when that was, if that was 2009, 2008.

I know he had the kidney transplant in spring of 2010 and then that transplant failed. So it was kind of across that spectrum of time.

Q. Okay. So the reason -- your explanation is that she didn't want to take care of him?

A. That is what she told me.

Q. And it had nothing to do with money?

A. No. She had plenty of money.

Q. Okay. Well --

A. She never -- she never represented that to me, that there was a monetary issue and that was why she wanted a divorce.

Q. Okay. I will represent to you that your Aunt Martha said that you caused the divorce because you took control of the money.

A. Well, my mother --

MR. PAYLOR: Object to the form of the question.

Page 23

THE WITNESS: My mother and father asked me, in 2010, to take care of their business affairs for them. It was actually my mother's idea and request when my father was hospitalized after the kidney transplant failed. So that would be confusing to me, why she asked me to take care of the business affairs and then yet that was somehow a problem. That doesn't make sense to me.

BY MR. HALVERSEN:

Q. Well, what about after that, after you took control of the business affairs, did you try to take control over her money?

A. No.

Q. Did you take away her credit card or her gas card?

A. I may have, may not have, but if it was a business card, I may have done that. I don't remember, technically, if that happened.

Q. Were there any witnesses to the conversation where you said your mom said the reason why she wanted a divorce was because she didn't want to take care of him, or did she just say that to you alone?

A. She shared that with my siblings and myself, and as siblings, there were conversations that we had about it.

Q. Were you at any meetings, estate planning meetings, at Heyward Carter's office?

A. Yes. In the early 2000s, my parents met with him individually, and then they asked me, both of my parents and Heyward Carter, to come in to a meeting to discuss their estate plan.

Q. Would that have been in 2008 when the trust was set up and where they both had wills done?

A. It was probably in that 2008 time frame. I don't remember if it was after they had set it up or before. I -- I don't remember, but it was around that time frame.

Q. And why were you at that meeting?

A. Because they had asked me to be the executor of their estate and to help with issues when they -- when they would, you know -- in the future when they would have died.

Q. Okay. Any witnesses to those conversations?

A. Well, Heyward Carter was and my parents, in that meeting.

Q. Okay. Is that when you first became aware that there was a revokable trust set up in your dad's name?

A. That was probably the first time, yeah, that they -- yes.

Q. Did you ever read any of those documents at the time?

A. I don't know if I read through them at that time. I just knew that they were -- they had created those, but I don't know that I read through them at that time.

Q. Did you have an understanding at that point in time that your father was making equal dispositions of assets to the four siblings?

A. Yes, I did understand that.

Q. Let me go back to Exhibit C, which is your affidavit, and ask you to look at paragraph 4.

And it says, quote: During the divorce and in the years after, my brother, Lea Holliday, and I assisted our father, who was suffering from physical health issues.

A. Yes.

Q. And I would like to know from you, when and where did you assist your father from physical health issues?

A. Say that one more time.

Q. Yes. I would just like to get some facts that support your statement there. For instance, when did you help out your dad with a physical health issue? How did you do it? I mean, like, can you give me a time frame or two and what you did?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 26

A. So the divorce was final in 2013. And my father was not living with my mother. We helped him secure an apartment. We helped him to move, move some belongings into his apartment. And we would help him with -- you know, when we were in town or we would make ourselves available to be in town, to help get him to doctors' appointments and things of that nature, just general caregiving responsibilities.

You know, he was still dealing with all -- like I said, all of his kidney dialysis stuff, and so, you know, just helped him. He was just not in a physical capacity to lift and move things, and so we helped out in those ways specifically, and as well, like I said, in the business affairs of things.

Q. Can you give me a list of the medical procedures he had from 2013 through his date of death?

A. I have -- I couldn't give you a comprehensive list, no.

Q. Did Mark or Pamela ever help out with your dad's physical health issues?

A. Mark did not. We had to beg him to finally come out at the very end of my dad's life, and he didn't want to come. I think he came out for a few days, and he caused more problems and grief than it was worth.

Pamela was more helpful at the very end of my

Page 27

dad's life. She came out in the last, probably, two or three weeks before he passed, and so she -- she helped out around the house.

At that time I had full-time caregiving staff living with my father. They did -- they did the lion's share of the work towards the end of his life, but Pamela and Ben were not involved in his caregiving from the time of the divorce until he passed. Only at the very end, for just a select amount of days, they came out to see him.

Q. So you weren't aware that Mark came into town August of 2016 to help out your dad after he had his TAVR procedure?

A. Yes, we begged him to come because my father wasn't doing well. We told him there was a good chance my father was going to pass away, and he came begrudgingly in August. Like I said, you know, he died in September of 2016, and he came very grudgingly.

Q. You weren't aware that Mark come and spent the night with your dad in the assisted living facility?

A. No, I was aware that he -- he came and visited very infrequently. He was not a caregiver of my father.

Q. Okay. Were you a caregiver of your father?

A. I was, and my brother, Lea, was, and we had

Page 28

hired a company to help when we could not physically be there.

Q. And what care did you physically provide to your father here in Charleston?

A. I helped him shower. I helped him get dressed at times. I helped him load in and out of the car. I took him to medical appointments, helped with meals.

Q. Do you have anyone to attest to those things that you are claiming that you did?

A. Yes.

Q. Who?

A. My brother, Lea, the home health care workers that were hired. They saw me also assisting and helping.

Q. Who were they? Can you give me some names?

A. There was -- Tuiana was one of the main caregivers, and there was a lady named Ranae. They were the primary ones that the health care company sent out. There were others that came in on a temporary basis. There were family, friends and church members that checked in on my father and were very aware of what my role and my brother's role was in helping my father. They would all be able to communication that.

Q. And who are those people? What are the names?

Page 29

A. Dave and Sherrie Goltra, Nathan Hale, a number of individuals.

Q. Okay. I would like to go back to your affidavit, if you would, paragraph 9.

A. Okay.

Q. And it says, quote: On March 21, 2014, my father executed a will, which allocated 15 percent of his assets to my brother Mark, 5 percent to my sister Pamela, with the remaining 80 percent split between my brother, Lea, and me. I never asked my father if I was going to inherit anything or what the amount would be. I never told my father to give me that percentage. Warren shared his estate plan with me and the percentages later that year, end quote.

Would you agree with me that -- is it your testimony that you were not aware or had anything to do with the 2014 will?

A. I was not directly involved in that. That was something that my father and Truett worked out.

Q. Okay. When you say "directly involved," how were you indirectly involved?

A. I wasn't indirectly involved. I was -- it was just communicated to me after my father and Truett met and made these changes.

Q. Okay. And I just want to be clear so we are

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 30

clear. So you did not participate in any way with any communications with your dad or Truett regarding how anything was going to be changed in that 2014 will leading up to the execution?

A. I was not involved in -- what I signed here in the affidavit was, I was not aware of these exact percentages. Did I know that my father was going to meet with Truett and update his will? Sure. My father would say, "Oh, I'm meeting with Truett," or "I have to meet with Truett and I've got to do things."

It was very general in that regard. But I was not aware that he was making changes that -- to specific amounts, and I was just not involved in the detail aspects of it.

Q. Okay. So just if I can summarize it and tell me if I don't summarize it correctly, but from what you are telling me, you knew about it, you knew it was going on either through conversations with Truett or with your dad, but you had nothing to do with it in terms of any communications, substantively, about what they were doing; is that accurate?

A. Yes.

Q. Okay. Do you remember who told you about it? Was it both of them or each of them or --

A. My recollection is that my father told me

Page 31

that he had made changes later in that year, and I just don't remember when in 2014. I just remember that it was later in the year that he told me that he -- he had made some updates in his estate plan with Truett.

Q. Yes, and I know you said that in your affidavit. But my question was more towards before that. You had this general understanding that there was going to be some changes made. Did that come from something that was communicated to you from -- I want to be clear. Is it from Truett or your dad, or was it both of them?

A. I think it was more something my father said to me in passing, that he was meeting with Truett.

Q. Okay.

A. It was not a detailed conversation.

Q. Do you have any idea why he was going back to Truett at this point in time to have changes to his estate, rather than sticking with --

A. I think he used Truett because Truett represented him in the divorce and was -- had a greater awareness as to, you know, where things stood within, kind of, the family and the divorce.

And, you know, Truett was his long-term attorney for 30, 40 years. I don't even know how long. But probably at least 30 years, that is my guess. So I think that is probably why he used Truett.

Page 32

Q. Did you direct him to go to Truett?

A. No.

Q. Was your dad unhappy with Heyward Carter at this point in time?

A. It never came up, so I don't know.

Q. Would you agree with me that the establishment of the new 2014 will reduced what Mark and Pamela would get under your dad's estate and increase what you and Lea would get?

A. That is true.

Q. Would you agree with me that at this point in time, your dad was aware that the trust was still in existence?

A. I don't -- I don't know what he thought at that time about this trust.

Q. What do you mean?

A. Well, I don't know if he thought -- I thought, and I think my father thought, that the trust with the divorce was void and null.

Q. Okay.

A. I thought all of that going back then, at least for me personally, was that at the divorce, all of that -- their estate plan at the divorce, basically, was voided out. And I think my father was under the assumption that that either was probably also the case.

Page 33

Q. That, basically, what you are saying is that the trust, basically, was taken care of by whatever arrangements were done in the divorce; is that accurate?

MR. PAYLOR: Object to form.

THE WITNESS: I don't know if I would say it that way. I would just say that when they were divorced, that the trust was no longer either active or going to be valid going forward. That is how I would phrase it.

BY MR. HALVERSEN:

Q. Okay. Is that an understanding that you got from Mr. Nettles or your dad got from Mr. Nettles?

A. That was just my understanding, not necessarily from Mr. Nettles. I just assumed if you are divorced, having a joint estate plan would no longer be effective because you are no longer married.

Q. Okay. Was Truett aware that there was a trust in place in 2014?

MR. PAYLOR: Object to form.

THE WITNESS: I don't know what he knew.

BY MR. HALVERSEN:

Q. Did you ever discuss the fact with him that there was a revocable trust set up?

A. Not specifically that there was a trust set up.

Q. Well, what do you mean, "not specifically"?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 34

A. The only thing that I think Truett knew -- well, I'm not going to speculate what Truett may have known. You can ask him, but Truett knew that Heyward Carter had performed some estate planning for my mother and father back in 2008.

But specifically, what in their estate plan, whether it was a trust, not a trust, in that detail, I don't know what he knew at that point.

Q. Well, I will represent to you, if you haven't got that far in Truett's deposition, he said he was unaware of it until he spoke at Heyward Carter, until the end of August of 2016.

Do you have any reason to dispute that?

A. No.

Q. Did you have any conversations with your father about revoking or modifying the trust at any point in time?

A. It came up -- this came up in August of 2016 when he was having his heart procedure. That's when the whole issue of revocation came up with --

Q. Came up?

A. -- with Truett and I and my father.

Q. Okay. Well, Mr. Nettles testified that he never discussed the revocation with your dad until you got to his house to have him sign it. Do you dispute

Page 35

that?

MR. PAYLOR: Object to the form.

THE WITNESS: I don't dispute that. I spoke to Truett in August about -- it came up in our conversation. My dad's estate plan came up in the conversation in August when my dad had the heart procedure.

BY MR. HALVERSEN:

Q. Okay. We will get to that in a little bit. But the Wells Fargo Bank account, which we started talking about and attached the bank records as Exhibit B to your first deposition, that account was set up in the name of the trust. Correct?

A. Initially, it was named that, yes.

Q. Did it ever change?

A. No, it was just my dad's personal account for his, kind of, personal expenses, his personal checking account.

Q. Okay. So I thought you're leading me to believe that the name of the account changed. When did it change, the name of the account change?

A. I didn't --

MR. PAYLOR: Object to the form.

THE WITNESS: I didn't say that it changed.

BY MR. HALVERSEN:

Page 36

Q. Okay. I thought you had.

(Deposition Exhibit F was marked for identification.)

BY MR. HALVERSEN:

Q. I will represent to you that this was a document that was provided to us in response to a subpoena to Wells Fargo for that bank account information.

And at the top, it says, "Please add trust as beneficiary as noted below."

Do you recall having the trust, the revocable trust, being added to it as a beneficiary to this account in 2012?

MR. PAYLOR: Object to the form.

THE WITNESS: I don't recall.

BY MR. HALVERSEN:

Q. If you could look at the last page of that document, does that appear to be your signature, where it says, "Under the Warren P. Holliday Revocable Trust"?

A. That is my signature on -- sorry, say your question again.

Q. Is that your signature, your initials, on the last page as the power of attorney for the trust?

A. Yes.

Q. It is dated January 21, 2012?

Page 37

A. Yes.

Q. Okay. All right. And then go to Exhibit G now.

(Deposition Exhibit No. G was marked for identification.)

BY MR. HALVERSEN:

Q. Do you have Exhibit G?

A. I do.

Q. Do you recall going with your father and Aunt Martha to Mount Pleasant Wells Fargo Branch to take Aunt Martha off the account?

MR. PAYLOR: Object to the form.

THE WITNESS: Yes, I do, when she quit.

BY MR. HALVERSEN:

Q. And if you look at Exhibit G, it says, "Warren P. Holliday, account relationship unchanged; Ross Holliday, account relationship unchanged; Warren P. Holliday revocable account relationship unchanged; and Martha Brouthers, account relationship delete."

Do you see that?

A. I am looking, give me just a second.

Q. It is on the first page of Exhibit G.

A. Yes, I see that.

Q. And down at the bottom, it says, on the first page, "POD, the Warren P. Holliday Revocable."

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 38

Do you see that?
A. Yes.
Q. Do you know what that stands for, POD?
A. Paid on death, I would assume.
Q. Right. Did your father have any mental capacity issues at this time in 2015?
A. No.
Q. If we can go to the third page, at the top, it says, "Customer 3 information." It says, "The Warren P. Holliday Revocable, Account relationship: Beneficiary." And if you can look at the bottom of that page, does that appear to be your dad's signature?
A. Yes.
Q. What is the date by his signature?
A. September 17, 2015.
Q. Would you agree with me that this is evidence that your father did not want to delete or remove the revocable trust as a beneficial of his money at this point in time?
MR. PAYLOR: Object to the form.
THE WITNESS: I would not say that.
BY MR. HALVERSEN:
Q. Why not?
A. Because I don't think -- this was -- the purpose of this has been to just -- we went to the bank

Page 39

to take Martha off because she quit and said she was taking a job in Texas. That is why we went to the bank. This wasn't about a bunch of trust stuff. This was not -- didn't have anything to do with that.
Q. But would you agree with me that if your dad did not want the trust in place at this time, he could have removed the beneficiary of the trust off this account at that point in time, could he not?
MR. PAYLOR: Object to the form.
THE WITNESS: I don't think he was thinking about that in this technical fashion.
BY MR. HALVERSEN:
Q. Did he not have the ability to understand that in reading these documents, that the revocable trust was a beneficiary of his money?
MR. PAYLOR: Object to the form.
THE WITNESS: I don't believe that the nature of this meeting was, somehow, some estate planning meeting. We were literally going to the bank because the bank required that Martha and everybody had to come in and sign on the pin pad to make the change to delete her. That's the reason we went to the bank that day. There was no other estate planning issue as it related to this specifically.
BY MR. HALVERSEN:

Page 40

Q. Mr. Holliday, that is not my question. My question is: Couldn't your dad have deleted the beneficiary of the trust at this point in time when he was there to make changes on the status to the account?
MS. PAYLOR: Object to the form.
THE WITNESS: He could have. He could have had a burrito for lunch that day too. He could have done a lot of things.
MR. PAYLOR: Can we take a break? We have been going almost an hour.
THE WITNESS: Yes, I was going to ask. I'm suppose to take a break at an hour.
MR. HALVERSEN: Okay.
THE WITNESS: If you want to go for two or three more minutes, you are fine. I show 11:57 on my computer, but if we can right at noon my time, 2 P.M. your time, if we can take a five- to ten-minute break, that would be great.
MR. HALVERSEN: Okay. Actually now is a good time to break if you want.
(Whereupon, a break was taken.)
(Deposition Exhibit H was marked for identification.)
BY MR. HALVERSEN:
Q. I will represent to you this is a copy of the

Page 41

codicil. It's called "First codicil" that was executed at the beginning of January of 2016.
And at the beginning of the second paragraph, it says, "In my will dated March 21, 2014, I made a bequest and devise to each of my four children which were intentionally and purposely disproportionate and unequal. The bequests were based on a percentage share in the assets of my estate. Since the execution of that will, it has become apparent and clear to me that some of my children are inclined to dispute, contest or challenge legal actions by their siblings regarding my personally and business affairs. In order to prevent any such controversy in the administration of my probate estate, I have decided to make certain bequests in a sum certain of money rather than a percentage of assets."
And my question to you is: What happened in your family, in between the date of the new will, March 21, 2014, and the date of this codicil, January 7, 2016, that your father felt me needed to make a clarification and a change to go from a percentage to a sum certain?
A. I would ask you to maybe ask a more specific question.
BY MR. HALVERSEN:
Q. Do you have any knowledge of why your father did this codicil?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 42

A. He was concerned. And, obviously, he was a prophet because he ended up being very prophetic in his realization that my brother is a lawyer, in his litigious nature, would, ultimately, dispute what he wanted to do.

And there was -- my father communicated to me at some point that he didn't want there to be an argument over the basis of the percentage, that Mark would always be difficult to deal with, as he had been through most of his life. And he just wanted to have fixed amounts to streamline and to try to minimize any potential conflicts.

But he knew from the beginning that Ben's nature to contest his will was there. That was always a part of his estate plans from the very beginning, going back to 2008, that if you contested his estate plan, that you would be, in essence, removed in receiving an inheritance.

Q. I understand what you are telling me. But were there any witnesses to those conversations that you claimed you had with your father, or was it just you and your father?

A. Well, my father shared that with me after he made these changes. He -- but no, I mean, there really weren't a lot of witnesses around. Like I said, I mean, it was, my brother, Lea, and I were the caregivers, and

Page 43

my siblings were never around. I didn't -- you know, my father didn't go out a whole lot, you know. He went to medical appointments and came home, and he was retired. So no, there weren't -- there weren't people around him.

Q. Do you have any evidence or any kind of document that shows that that was your father's considerations at the time, what you are telling me about why he wanted to change it from a percentage to a fixed sum, or is this all stuff that he told you?

A. These are things that he told me.

MR. PAYLOR: Object to the form.

THE WITNESS: These are things that he told me. My father didn't draft and create documents. Like I told you in the beginning, my dad was old school.

BY MR. HALVERSEN:

Q. Would you agree with me that in going from a percentage to a sum certain lowered the amount that Ben or Pamela would get in these estate dispositions?

A. I don't know that necessarily lowered it. I think it clarified what my father's intent was.

Q. Well, let's run through an example. If you value hypothetically your estate at $6 million and if you took 15 percent for Mark, 15 percent of 6 million would be 900,000. If you took 5 percent for Pamela of 6

Page 44

million, it would be 300,000. That is a lot more than the sum certain of 300,000 for Mark and 100 for Ben. Correct? Or 100 for Pamela, sorry.

MR. PAYLOR: Object to the form.

THE WITNESS: In your hypothetical situation, yes.

BY MR. HALVERSEN:

Q. Well, it doesn't matter what the number is, does it? The math would still come out the same. By lowering the -- instead of having a percentage, instead by having a sum certain, you are effectively reducing as opposed to having a percentage.

Do you not agree with that?

MR. PAYLOR: Object to the form.

THE WITNESS: Yes, I understand how math and percentages work.

BY MR. HALVERSEN:

Q. Do you disagree with me then?

MR. PAYLOR: Object to form.

BY MR. HALVERSEN:

Q. Or do you agree with what I'm saying?

A. Well, ask your question again, specifically.

Q. Okay. I thought I asked it, but I will ask again.

A. Well, let's be clear here. If I need you to

Page 45

clarify a question, I really would -- or if I need you to repeat it, I hope we are at a point where you are willing to do that.

Q. I'm always willing to do that.

A. Okay. Good. Thank you.

Q. What I'm asking is if the estate value is whatever it is, whatever number it is, if you take a percentage of that number, 6 million, 10 million, 20 million, 30 million, whatever the number is, it is going to be more than what Pam and Mark have for a disposition of 300 and 100.

Do you agree with that or not agree with that?

MR. PAYLOR: Object to the form.

THE WITNESS: I can agree to that.

BY MR. HALVERSEN:

Q. Okay. So when your father put in this codicil that the purpose was to prevent fighting over what would be a percentage, in addition to doing that, by putting a sum certain, he was effectively lowering the amounts in these dispositions. Do you agree?

MR. PAYLOR: Object to the form.

THE WITNESS: I think what I would say is that he made changes that he wanted to make. And, clearly, he communicated that, and he memorialized it in

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 46

this codicil. And if it, ultimately --
BY MR. HALVERSEN:
Q. Let's go over to Exhibit C, back to Exhibit C, your affidavit, and go to Paragraph 11. I will read into the record, Paragraph 11.
It says, quote: I never asked my father to give me the remainder of his estate, nor did I tell him what my siblings should or should not get from his estate. My father was always in control of his estate plan and did what he wanted to do.
Did I read that correctly?
A. Yes.
Q. The second sentence, that's not true, is it?
A. Well, this is my affidavit. This is my affidavit, and I said it was true. It's what I believe to be true.
Q. Well, you were in control of his estate plan as it pertained to the 2016 codicil change, were you not?
A. No, I wasn't.
MR. PAYLOR: Object to form.
THE WITNESS: No, I wasn't. You are making that up.
BY MR. HALVERSEN:
Q. You were intimately involved in that transaction, were you not?

Page 47

MR. PAYLOR: Object to the form.
THE WITNESS: How I was intimately involved when I stated in 11 that I -- no.
BY MR. HALVERSEN:
Q. You were not involved in the codicil change at all?
A. I did not direct what was to be placed in the codicil or any of that, no.
Q. That is not my question. My question is: You were not involved in it?
A. I had involvement because I aided and helped in the businesses and my father.
Q. You had no involvement in the discussions leading up to the 2016 codicil change?
A. There may have been discussions, but I was not in charge of my father's estate plan.
Q. Okay. We will move on. Let's go to Exhibit I.
(Deposition Exhibit I was marked for identification.)
BY MR. HALVERSEN:
Q. Can you look at the bottom? Exhibit I appears to be an email from you from William Milligan. Subject line, "Update from Ross Holliday for Warren's policy."

Page 48

Could you read that for us into the record?
A. Where it says, sorry -- the bottom of I, where it says -- starts with "Buddy"?
Q. Yes, please.
A. It says, "I need to get something signed that says that when my dad dies, that my mom only gets her portion of the life insurance which is $645,000. Anything above that needs to go to my dad's estate. What do I need to sign to document this? Because currently, the death benefit is greater than 645K, and I won't let her receive one penny over the agreed upon 645K."
Q. Would you agree with me that you're making decisions here on behalf of what's going to be in your dad's estate?
A. No.
MR. PAYLOR: Object to the form.
THE WITNESS: No, I didn't make a decision. I was managing an administrative task of the insurance.
BY MR. HALVERSEN:
Q. Does it say anywhere in this document, "I need to check with Dad," or "Dad doesn't want this," or "Dad doesn't want mom to receive one penny over the agreed amount"?
MR. PAYLOR: Object to the form.
THE WITNESS: I just read it. You know that

Page 49

it didn't say that.
BY MR. HALVERSEN:
Q. And I'm asking you the question, do you see that anywhere in there?
A. Well, you made a statement. You didn't ask a question. So ask a question. Let me -- then that will help me.
Q. Okay. Nowhere in this document did you say, "I need to check with my father." Is that not true?
A. I didn't say that in the email, but that doesn't mean that my father and I had not spoken regarding the matter.
Q. Okay. So is it your testimony you had talked to him about this?
A. Yes, because when they made a rule to show cause, we had to artificially go pay money into the policy to make sure that the balance was always, at least, 645K. And as such, it created incremental value, and it was agreed upon in their divorce that she was only entitled to 645, and my father wanted to make sure that if there was anything above 645, that, ultimately, his estate would be the recipient of that, that she would not be paid extra. He was frustrated with his ex-wife.
Q. Do you have any documents or evidence that you spoke to your father about this issue?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 50

A. I told you, my dad was old school. My father and I didn't use documents to communicate, no.

Q. Do you have any witnesses to that conversation, or is that just a conversation you had with him alone?

A. Truett may have been -- he was a party to that because he was the attorney in the -- in the rule to show cause case. He would have been aware of my dad's intent and desire around that, most likely, but I can't say for sure.

Q. Okay. We will go to Exhibit J.

(Deposition Exhibit J was marked for identification.)

THE WITNESS: I have it.

BY MR. HALVERSEN:

Q. I will represent this is Greg Bosch's affidavit. And for the record, do you know who Mr. Bosch is?

A. I do.

Q. Who is he?

A. He was my dad's, kind of, like physical trainer, and he did some physical therapy with my dad.

Q. Okay. And paragraph 8, it says, "On that day, as well as several times over the two years that I knew him, he stated several things concerning his

Page 51

ex-wife: A, that his ex-wife was crazy; B, that she stuck it to him; C, that she made my life hell, took me to court many times; and D, that nothing could satisfy her; E, that he did not want her to get a penny more than he had to give her."

And paragraph 9 says, "Mr. Holliday said that his daughter will not be happy and will likely challenge what he has done. He said that he was not cutting her enough but that he did not want to give her any more than he did because she has a well-off husband who could take care of her, but more importantly, he did not want his daughter to give a single penny to his ex-wife, which he believed would have occur if he left more money than he did."

Would you agree with me that Mr. Bosch testified that your father said repeatedly, he did not want your mom to get a penny more than he had to give her?

MR. PAYLOR: Object to the form.

THE WITNESS: My father was not happy at how greedy my mother was, and no, he did not want her to have any more than they agreed to. He felt like he had agreed to give her, quite frankly, entirely too much.

And so yeah, he didn't want her to have anything extra.

Page 52

BY MR. HALVERSEN:

Q. His words about giving a penny extra, those are the same words you used to William Milligan in Exhibit I, wasn't it; isn't that correct?

A. Not exactly, but there is a reference to a penny, yes.

Q. Let's go to Exhibit K.

(Deposition Exhibit K was marked for identification.)

BY MR. HALVERSEN:

Q. Do you have Exhibit K in front of you?

A. I do.

Q. I will represent to you that this was in Mr. Nettles' deposition. It says Exhibit 25 and were notes that he had on the date of what's on there, December 17, 2015, regarding conversations with you and Mr. Nettles regarding the codicil.

MR. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Q. Do you recall that conversation?

A. Well, let me look through -- let me look at the documents for a second.

Q. Sure.

MR. PAYLOR: I think you misstated because it says, "Ross Holliday with Warren," at the top, and you

Page 53

said, "Conversations with you and Mr. Nettles."

Well, maybe you meant to say Mr. Holliday too.

THE WITNESS: Okay. So I have reviewed the notes and K and L. So yes, what is the question?

BY MR. HALVERSEN:

Q. Do you have any reason to dispute that you had a conversation with Mr. Nettles and your father on that day to discuss the codicil?

A. My recollection in having a conversation with Truett was primarily around the trustee. Because Pamela would never go and -- she never fulfilled her responsibility as trustee. She didn't want to become a signer on the bank account, asked her repeatedly to do that, and so my father wanted to remove her as trustee and add Lea. That's the conversation that I remember, primarily. I don't --

Q. Okay. If Mr. Nettles has it noted here in his notes and in this bill, do you dispute that you were on that telephone call?

A. I don't know if it was a phone call or what it was. It says "Teleconference" on the bill. I don't know if I was on the entire phone call or part of the phone call. I don't recall.

Q. Okay. Would you agree with me that there is

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 54

no indication of revoking the trust or any discussions about the trust in this bill or these notes?

A. No. Like I told you previously, I thought at the divorce that the trust was revoked. I thought that that was kind of implied and understood. When their joint estate plan would have been void because of the divorce, that that was -- this was no longer in play. That's -- that's what I thought as it related to the trust.

Q. We will get there in a minute. I would like you to look at Exhibit M.

(Deposition Exhibits L and M were marked for identification.)

THE WITNESS: I have it. Let me read it. Yes, I see this.

BY MR. HALVERSEN:

Q. Okay. And this is the email where it is from Mr. Nettles to you, and the subject line, "Codicil to will," where Mr. Nettles says, "See draft codicil attached. If this is what Warren wants, let me know. I will get him to the office to sign with witnesses and a notary."

Was this what was emailed to you as the final version of what your dad actually signed?

A. I don't know. I don't see an attachment to

Page 55

it on this exhibit.

Q. Well, notwithstanding that, do you have any recollection of various drafts going back and forth for the codicil?

A. I don't -- I don't recall if there were multiple drafts.

Q. Why was Mr. Nettles not sure of what your father wanted?

MR. PAYLOR: Object to the form.

THE WITNESS: I don't know if he was unsure as much as he just wanted to confirm that it matched what my father had communicated to him.

BY MR. HALVERSEN:

Q. It doesn't say that this is confirming it. It says, "If this is what he wants."

Did he not know?

MR. PAYLOR: Object to the form.

THE WITNESS: Well, I think you saw his notes, and it appears that the final codicil and the notes kind of coordinate that issue.

BY MR. HALVERSEN:

Q. Okay. Did your dad have a cell phone at this time and was able to communicate?

A. Yes, he had a cell phone.

Q. Do you have any evidence that Mr. Nettles

Page 56

spoke to your dad at this time, other than what is in that billing record?

A. Well, they talked sometimes to talk. He didn't bill him every time they talked. I mean, there were plenty of times when he would just call and ask my dad how he is doing and stuff. So according to Truett and my dad, but I don't -- I think they had conversations that weren't billable conversations.

Q. Is that speculation on your part?

A. No. They both --

MR. PAYLOR: Object to the form.

THE WITNESS: No. They both told me that they talked to each other from time to time. That is not speculation. He was a 30-year client. I mean, they had a different kind of relationship.

BY MR. HALVERSEN:

Q. Were you in town when your dad signed the codicil?

A. When was it signed?

Q. I will represent it was January 7, 2016.

A. I don't know, but I don't think so.

Q. Would you dispute the flight records that indicate that you were in town that day?

A. No. Like I said, I just -- I just don't know.

Page 57

Q. You don't have any recollection of being there?

A. I, honestly, just don't remember. My birthday is January 8th, so I was just trying to think, would I have been there over my birthday or not. And I just -- I don't remember. But if -- obviously, if there is a flight record saying I was in Charleston, I was there.

Q. Okay. So you don't dispute that you were there?

MR. PAYLOR: Object to the form.

THE WITNESS: What I'm saying is if there is a flight record that I was in Charleston, whether or not I was there, I may have -- I don't know if I drove my dad there to go sign, if I wasn't there, I honestly just do not remember.

BY MR. HALVERSEN:

Q. Okay.

A. I am not trying to be coy.

(Deposition Exhibit N was marked for identification.)

BY MR. HALVERSEN:

Q. Do you have that front of you?

A. Yes.

Q. Does that appear to be your dad's signature

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 58

on a revokable trust account on October 22, 2015?
A. Yes.
Q. That would have been after the new will was done in 2014. Correct?
A. Yes.
Q. And on the second page, that is your dad's signature as well?
A. Yes.
Q. And what is the date on that document?
A. It says February 17, 2016. What is this second document?
Q. I'll represent to you that is from Wells Fargo bank account as a withdrawal slip.
A. Okay. Got it.
Q. And you started talking earlier about the revocation and your discussions with Mr. Nettles about it. And I will represent to you that Mr. Nettles testified he never spoke with your dad about the revocation until he got there.
And do you have any information to dispute that or documents to dispute that?
MR. PAYLOR: Object to the form.
THE WITNESS: No. No.
BY MR. HALVERSEN:
Q. Would you agree with me that you were

Page 59

involved in preparing that revocation document?
A. Yes.
Q. Let's mark Exhibit O.
(Deposition Exhibit O was marked for identification.)
BY MR. HALVERSEN:
Q. Do you have Exhibit O? I will represent to you for the record that these are -- it is a bill that was provided to us from Mr. Nettles.
And it says on the top, "October 17, 2016." And it says, "Warren P. Holliday, CO," care of, "Ross Holliday." And then there is an 1808 meeting address, and it says, "Will for Warren Holliday."
Do you see that?
A. Yes.
Q. Okay. August 23, 2016, appears to be the first entry on the top. And it says, "Telephone conference with Heyward Carter regarding W.H. trust."
Do you know how or why Truett started talking to Heyward on that date? What prompted it?
A. Yes. Truett had called me to check in on my father when he had his heart procedure, which I think was in early to mid August. I don't -- I don't remember exactly. He asked me how my father was doing, and I said, "Well, not good. A heart valve replacement, you

Page 60

know, that is a pretty risky procedure."
And, you know, I think we all had concerns at this point that my father was imminently, you know, going to die soon, in the coming, you know, months. And so I asked him if there was anything that needed to be done with my father's legal -- you know, legal issue, legal affairs, and we talked.
And I asked him at that time in the flow of the conversation to reach out to Heyward Carter. I said, "You need to make sure that you guys -- that everything here is in harmony." And at that point, I think he then reached out to Heyward Carter.
It was only at this time that we became aware that our -- that the trust was -- in essence, had not been somehow formally revoked with a signature. I just always assumed that it was taken care of with the divorce. And so Truett went and communicated with Heyward.
Q. Okay. And I think you said when you first started telling me about this, answering this question, that you said that Truett had called you. Correct? Inquiring about his health?
A. I don't know if I called Truett or Truett called me. But it was just -- there was a conversation when he was in the hospital. Truett -- Truett was very

Page 61

concerned. You know, Truett has had some health issues of his own, and when he heard that my dad was having a heart valve replacement, he became very concerned because I think the writing was on the wall, quite frankly, that my dad, you know, might not make it or wasn't good.
So, but I don't remember if I initiated the call or he did. It was just -- somehow, he was -- we were speaking, and he was checking in on my dad.
Q. So is it possible that you called him and initiated the conference?
A. Sure, but it wasn't a conference. It was a --
Q. Telephone conference?
A. Well, yeah. Yeah, a phone call.
Q. Okay. Let's go back to Exhibit O. So that first entry, is it fair to say that maybe he was already -- you had already spoken to him before then about this issue?
A. I -- yes, I would think so.
Q. Okay. So let's go down to the next entry, 8/26/16. It says, "Conference with Ross and telephone conference with Clever, Swanson, Boyd and Trey," and then it goes on.
What is that about?
A. I was wondering the same thing. I don't know

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 62

who Clever, Swanson, and Boyd is.
Q. Okay. What about Trey? Do you know a Trey?
A. I know a Trey, but I don't -- I know a few Treys, actually, but I don't -- I'm still stuck on who Clever, Swanson and Boyd is.
Q. What about Trey?
A. Trey Sedalik, yes.
Q. Could that have been him? Did that have to do with the property, the 17 property?
A. Yeah, it could have been.
Q. What was this about?
A. I, honestly, don't know. I'd have to figure out -- who is Clever, Swanson and Boyd?
Q. So you don't know who those people are?
A. It does not ring a bell.
Q. Okay.
A. I could Google them and try to figure it out, but I -- I don't know.
Q. And then below that, there is an entry that says, "8/26 conference with Ross, re: Trust versus will call Heyward Carter."
Was this a continuing discussion?
A. This is probably him calling and following up with me that he had met with Heyward, and as a result, a revocation probably needed to happen because I told

Page 63

him -- I said, "Go check in with Heyward and see if we are -- if everything is good and let me know."
And I'm sure that was probably just the follow up with that.
Q. Why wasn't Truett speaking to your dad at this time?
A. I am not sure that he was or he wasn't, but my dad at this time was actually very sick. I mean, he died less than 30 days later. And his health, really, in his last 30 days -- his physical health was just, quite frankly, not very good.
Q. Okay. We will go down where it says -- it looks like Truett is emailing Heyward Carter about the financial agreement in 2012. He is talking to Heyward again August 31st. He is reviewing the trust. And then September 6, 2016, "Draft revocation of trust."
Are you aware that Mr. Nettles testified that it was his idea to prepare the revocation?
MR. PAYLOR: Object to the form.
THE WITNESS: That doesn't surprise me. He is an attorney. I would think that he -- he would make a legal recommendation as to what to do.
BY MR. HALVERSEN:
Q. And he gave that recommendation to you?
A. Yes.

Page 64

Q. And you approved him going forward with that?
A. Yes.
Q. Would that have been on or before September 6th?
A. I --
Q. Before he actually drafted it?
A. I don't know if it was before the 6th or not, but, I mean, obviously, I was in agreement with the revocation.
Q. Okay. And then going down, it says, "September 7, review draft revocations, email to Ross and Heyward with draft revocation."
And then the next day, September 8th, "Telephone conference with Ross. Trust is revocable. Telephone conference with Heyward. Re: Trust is revocable."
Do you remember him getting back to you and telling you what Heyward had told him?
A. My only recollection was that Heyward thought that it -- he told me that Heyward thought that it should be to just cross the Ts and dot the Is, that, basically, that it should be revoked.
The divorce implies that it was revoked and some of the earlier legal stuff, but let's just, you know, belt and suspenders and let's just be -- have an

Page 65

abundance of caution. So, you know, it should be -- make sure that there is just an extra step taken to revoke it. That is how I understood it.
Q. Did you already make plans to be in Charleston before this point?
A. I don't know when I made the plans, but like I said, my dad was very sick and spent -- we were spending more and more time. At this point, my brother, Lea, and I were on a nearly weekly rotation. He would go in for a week, he would leave, and as he was leaving, I would come in. He was just in a place where, you know, as sad as it was, we just had the realization that my dad was really at the end of life.
Q. Okay. Set Exhibit O aside for a minute. If you would look at Exhibit P, which is an email from Mr. Nettles to you, dated September 7,2016.
And it says, "Ross, how is Warren doing today? I discussed the trust revocation with Heyward Carter, as you requested. Attached is the draft revocation which I have prepared. Please review and call me about having a Warren execute this document."
(Deposition Exhibit P was marked for identification.)
BY MR. HALVERSEN:
Q. And it appears from the billing records on

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 66

Exhibit O, September 8th, it looks like he talked to Heyward that next day. Did you have any discussions in that call about you coming into town?

A. I don't recall. I just -- I mean, I was in town, like I said, almost every other week at that point.

Q. Okay.

A. But certainly, if I was coming into town and speaking to Truett and he asked me, I would tell him, "Yeah, I'm going to be here," or "No, I'm not going to be here."

I mean, I didn't give him a travel log of every time, but certainly, he was aware that I was -- if I was in town or needed to be in town to do something --

Q. And by coming into town specifically to make sure the revocation got signed?

A. No, not that I remember specifically. I was coming just to spend time, really, with my dad at the end of life.

Q. Was there any reason that you needed to be there?

MR. PAYLOR: Object to the form.

THE WITNESS: No. Quite frankly, I wish I would not have been there in the revocation so you guys would quit reaching and trying to imply a lot of things that just are false and not true.

Page 67

BY MR. HALVERSEN:

Q. You were there. Correct?

A. I was there. Oh, how I wish I wasn't.

Q. Okay. Let's go to Exhibit Q.

(Deposition Exhibit Q was marked for identification.)

THE WITNESS: You're about to run out of alphabet letters at some point. We are already at Q.

BY MR. HALVERSEN:

Q. I'm not going past the end of the alphabet.

A. All right.

Q. All right. Q is a series of text messages that you produced to us.

A. Okay.

Q. On the far left side, it says on August 29th, it says from you to, I guess, your brothers and sisters. It says, "He is in Ashley River Tower in ICU."

So he was in ICU at that point, and then if we go to the next text message on August 31, you stated, "When he leaves, it will be to his house regardless of whether it's the best decision for longevity. With so much changing, please contact me before making travel plans so I can attempt to orchestrate help."

And then it says, September 2nd, you had plans to be in Charleston on September 13, Tuesday, until

Page 68

September 16, Friday.

Does that ring a bell?

A. Yup.

Q. I will represent to you that the flight records indicate you purchased your ticket on September 1st. You don't have any reason to dispute that, do you?

A. No.

MR. PAYLOR: Object to the form.

THE WITNESS: No, we were just kind of -- like I said, we were just really on a rotation to try to take care of my dad. So at that point, I probably was buying tickets in advance. That would make sense to me.

BY MR. HALVERSEN:

Q. Okay. And then on the second page, you sent a text out to everybody September 6th, and at that point, you basically state -- feel free to read it and tell me if I'm wrong, but you tell everybody that your dad is probably not going to live much longer and is going to pass soon. Correct?

A. Let me read it. Sorry, it's a little small print here. Give me just a second. Okay. Sorry, so ask the question. Sorry, I was just kind of --

Q. At this point in time, you agree with me that it was apparent that your father was not going to live

Page 69

much longer. Correct?

A. Correct.

Q. Okay. After your dad came home from the hospital, I believe it was September 12th, there was supposed to be a home health care worker at his home at all times.

Was that something you were setting up?

A. For the most part, we were trying to have around the clock -- somebody there around the clock, whether it was me, my brother, or home health care at some point. And so yes, he really was at a point of needing around-the-clock care.

Q. Okay. When is your father's birthday?

A. I always confuse his anniversary and his birthday. There's the 14th and the 17th. I'm embarrassed to admit, I don't remember the exact day. Let me think if his is the 17th or 14th.

Q. Okay. If I represented to you that it was the 17th --

A. That's -- yeah, that is what I thought.

Q. Okay. So the 17th was -- if you were in town on the 13th, which was a Tuesday, and Friday, you are leaving, Friday which is the 16th, and giving what you are telling me that you had a close relationship with your dad and that his death was imminent, why would you

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 70

not stay in town to celebrate what would have been his last birthday?

MR. PAYLOR: Object to the form.

THE WITNESS: Your question is ridiculous, but I will answer it anyhow. My dad was not one to be celebrated. He didn't like stuff like that. He didn't like fanfare. I don't remember my dad sitting in front of a cake and candles a day in my entire life. That is just not who he was.

And, quite frankly, I was trying to be polite in allowing and coordinating, as you can see in the text messages, my siblings to come in. I was all but begging them to come and see him before the end of his life. And it was unfortunate and sad that I had to literally beg them to come and be a part of his life at the end. Truly sad and even disgusting.

BY MR. HALVERSEN:

Q. Were you there when your father passed away?

A. Not that night. I was not.

Q. Who was?

A. My sister was.

Q. After you had left Charleston on the 16th, did you have any plans to come back?

A. I am sure I was planning to be back in a week or within a week or so. But I don't know if they were

Page 71

formal at this point. I was having to play everything somewhat by ear on a day-to-day basis, hour to hour, day to day.

Q. So did you purchase any airplane tickets --

A. I don't know.

Q. -- to come back?

A. I don't know. You got all those travel records. I think you would know the answer.

Q. Let go back to Exhibit C, your affidavit. Go to paragraph 12.

A. Okay.

Q. I will read it. "On September 15, 2016, while visiting my -- with my father, I watched him execute a Revocation of Warren P. Holliday Revocable Trust at his home in front of attorneys, Truett Nelson and Aliecia Bores, and his personal trainer, Greg Bosch. I did not direct him to do this, and he did it of his own free will."

Those are your words?

A. Yes.

Q. How did your dad do this of his own free will if the idea for the revocation was Truett's idea?

A. Oh, Truett provided him legal advice, he thought about it and he made the decision to do it. That is how.

Page 72

Q. Right then and there. Right?

MR. PAYLOR: Object to the form.

THE WITNESS: My father and I had had discussions. I had shared with my father what Truett was advising.

BY MR. HALVERSEN:

Q. Were there any witnesses to those conversations you had?

A. I think I already answered that to you. No, I was pretty much my father and I. I'm not sure if anybody overheard our conversation, no.

Q. Let's talk more about the revocation. Would you agree with me that as a result of the revocation, that the inheritance that you and your brother are to receive are significantly proportionally better than it would have been if the revocation hadn't been done?

MR. PAYLOR: Object to the form.

THE WITNESS: I can agree. I can agree that there was a change made, and I and my brother received an increased portion over where he had previously articulated it, yes.

BY MR. HALVERSEN:

Q. Okay. And it significantly reduced what went to Mark and Pam. Correct?

A. Correct.

Page 73

MR. PAYLOR: Object to the form.

THE WITNESS: Correct.

BY MR. HALVERSEN:

Q. And you were present with Greg Bosch and Aliecia Bores and Mr. Nettles at his house at the time that revocation was signed by your father. Correct?

A. Correct.

Q. Let me just mark for the record -- we will go to Exhibit R.

(Deposition Exhibit R was marked for identification.)

THE WITNESS: Just so we are clear, I have, like -- let's go about five more minutes, and then I will need to get up and move around a little bit.

BY MR. HALVERSEN:

Q. Sure. In about five minutes, you want to take a break?

A. Yes.

Q. Okay. We marked for the record Exhibit R, which appears to be check from the revocable trust account to the Grimbell & Cabaniss. That is the firm that Mr. Nettles was associated with at one point in time; is that true?

A. Yes.

Q. Okay.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 74

(Deposition Exhibit S was marked for identification.)
BY MR. HALVERSEN:
Q. And Exhibit S, I will represent to you, were some notes that were provided to us from Mr. Nettles. And right down on the page, it says, "Warren:" Then it says, "Trust, Ross and Lea."
A. Hold on just a second, I have R in front of me. Let me look at these checks. Okay. I see the notes in S.
Q. Okay. Do you see where it says, "Warren:" and it says, "No. 1, trust, Ross and Lea"? Can you see that?
A. Yes.
Q. Would you agree with me that based on this, that your father had, in fact, discussed with Mr. Nettles the fact that there was a trust that was set up, that you and Lea were named as the successor trustees to that trust?
MR. PAYLOR: Object to the form.
THE WITNESS: I don't know the connection between his notes, and I don't know whether -- the notes aren't indicative of what my father knew or didn't know. These are Truett's notes, not my father's notes.
BY MR. HALVERSEN:

Page 75

Q. Okay. I wasn't questioning you about what -- the question was about what Mr. Nettles knew.
A. Oh, that is not how I heard the question. So sorry, I must not have heard you clearly.
Can you ask that question one more time? I thought you were asking what my father knew as it related to the trust.
Q. Well, Mr. Nettles had some knowledge of the trust at this point in time that Exhibit S was executed; would you agree with me?
MR. PAYLOR: Object to form.
THE WITNESS: I don't know if it's that trust or if my father was trying to create a new trust or something different. I mean, I have no idea.
BY MR. HALVERSEN:
Q. Okay.
A. I mean, there is one line that says, "Trust, Ross and Lea."
Q. Are there any other trusts out there that Ross and Lea -- that you and Lea were successor trustees on, or just the revocable trust that was formed in 2008?
A. Not that I'm aware of.
MR. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. Do you know why Mr. Nettles didn't modify or revoke the trust --
A. Can we hold tight?
Q. -- what your father would have wanted?
MR. PAYLOR: Object to the form.
THE WITNESS: It's been an hour. This would be a good place to break, if that's okay, and then we will jump right back in.
MR. HALVERSEN: Sure.
(Whereupon, a break was taken.)
BY MR. HALVERSEN:
Q. I think you mentioned previously that Truett had some health issues at some point in the past. Are you aware of what that is or was?
MR. PAYLOR: Object to the form.
THE WITNESS: Not in a lot of detail, no. It just --
BY MR. HALVERSEN:
Q. Generally speaking?
A. I think it's just once you become in your late 60s or 70s, stuff flairs up. I don't -- he never gave me the details of his health.
Q. Was he having any health issues at the time back in 2014, '15, or '16?
A. I don't know.
Q. What were the kinds of issues that he had?

Page 76

Page 77

A. I just -- I think I have been pretty clear, I just don't know.
Q. You have not been clear, and it is a pretty easy question.
A. So I would guess --
MR. PAYLOR: Object to the form.
THE WITNESS: I will say it again. I do not know. That is clear.
BY MR. HALVERSEN:
Q. Okay. All right. But you are aware that he had some kind of an issue?
MR. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. That you answered previous. Correct?
A. Generally, yes.
Q. Okay. When we broke off for a break, I was asking you why Mr. Nettles did not modify or revoke the trust back when he was making changes to your father's estate in 2014 and beginning of 2016, if that was really what your dad wanted.
Do you know why he did not?
MR. PAYLOR: Object to the form.
THE WITNESS: I don't -- I don't know why at that time.
BY MR. HALVERSEN:

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 78

Q. Could he have?
MR. PAYLOR: Object to the form.
THE WITNESS: Like I said earlier, he could have had a burrito for lunch that day. Of course he could have done something, you know, but I don't know why they did or did not.
BY MR. HALVERSEN:
Q. Did you ever express any frustration to Mr. Nettles about not modifying or revoking the trust back then?
A. I wouldn't say "frustration," but I, certainly, thought that it was handled at the divorce. I didn't understand -- when the issue of revocation came up in that kind of August 2016 time frame, I just didn't understand how the trust was -- could even been considered to be active or in play when the divorce moved all the assets, in essence, to pay for my mother in the divorce.
So how could there be a trust if all the assets were tied to the preferred interest that Patricia was supposed to receive. So I didn't understand why it wasn't resolved back then. Because it, certainly, in my mind, was resolved back then.
Q. Did you read Aliecia Bores's deposition testimony?

Page 79

A. No.
Q. Have you seen her affidavit?
A. I may have seen her affidavit, but I have not read her deposition.
Q. Were you aware that she testified that the reason that your father signed the revocation was to alter and preclude your mother from getting any portion of the trust?
A. No, because I didn't read it.
Q. Okay. Well, we will mark it for the record. It is Exhibit T.
(Deposition Exhibit T was marked for identification.)
BY MR. HALVERSEN:
Q. Do you have that in front of you, Exhibit T?
A. I do now, yes.
Q. And if you could, go to Paragraph 11E and read that into the record.
A. "Mr. Nettles asked Mr. Holliday about what we were doing that day. Mr. Holliday responded that he went through a divorce and that Patricia was receiving property through a marital trust and that the 2008 revokable trust was no longer necessary."
Q. Okay. And I would like to show you also Exhibit U, which is Mr. Nettles' affidavit. Paragraph

Page 80

10B, could you read that into the record?
(Deposition Exhibit U was marked for identification.)
THE WITNESS: 10B, "I asked Warren about what we were doing that day. Warren responded that he went through a divorce and that Patricia was receiving property through a marital trust. And that the 2008 revokable trust that he had set up was no longer necessary."
BY MR. HALVERSEN:
Q. Okay. Do you recall them saying those statements to your dad on September 15th, at his condo?
A. I just remember them asking him a series of questions, you know. Do you know what we are doing today? Why are we doing this? and what not. Yes, not specifically the details of that exact question, but that they were asking him about, you know, what they were doing and what the purpose was. I do remember that.
Q. Okay. You don't have any reason to dispute that they told him that was the reason why they were there, what you just -- those statements you just read?
MR. PAYLOR: Object to the form.
THE WITNESS: No. I'm okay with what is said, what they said.
BY MR. HALVERSEN:

Page 81

Q. And you could hear what they were telling your dad. Correct?
A. I heard the majority of it. I was not standing in the room. I was kind of through the doorway out in the kind of living room area, in front of his bedroom. So I would hear most of everything that was going on.
Q. Could you see them inside? Were you able to see what they were doing?
A. Yes, I could look through the doorway and see what they were doing.
Q. We will show you next what we will mark as Exhibit V, which I'll represent to you is what South Carolina law speaks directly on this issue about what divorce does to a revocable trust.
(Deposition Exhibit V was marked for identification.)
BY MR. HALVERSEN:
Q. I will read it to you. It says that, "If after executing a revocable trust the settlor is divorced or the marriage annulled or the spouse is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses, the divorce or annulment or order revokes any disposition or appointment

Page 82

of property, including beneficial interest made by such trust to the spouse."

Do you know what that means?

A. I think so.

Q. It means what you have already been testifying to, is that you thought that the divorce took care of her interest. Right?

A. I wasn't speaking -- well, yes. Yeah, right. Exact -- sorry, yes.

Q. So my question to you is: If the divorce already took care of Patricia getting any part of that trust, why in the world were they telling your dad that they needed to sign this document so that your mom wouldn't get anything?

MR. PAYLOR: Object to the form.

THE WITNESS: Like I said, I think this was just Heyward Carter and Truett -- just trying to put belt and suspenders. It was just trying to be -- this was an added layer. I always viewed the revocation as really just a dotting of Is and crossing of Ts, that it was, in essence -- in my mind, it was done. And this was just an added layer of insulation, if you will, to carry out that will and directive. That is how I've always understood it.

BY MR. HALVERSEN:

Page 83

Q. Okay. But revoking the trust did more, would you agree with me, than just making sure that your mother didn't get anything? It did more than that; do you agree with that?

A. Yes, I think --

MR. PAYLOR: Object to the form.

THE WITNESS: I think it also provided clarity to my dad's estate plan and his will and relation to his children. I think it put everything into final harmony.

BY MR. HALVERSEN:

Q. Okay. But you would agree with me that the stated purpose of what was told to your dad before he signed that document was that he needed to sign it because they didn't want your mom to get any more money.

MR. PAYLOR: Object to form. That is not what it says.

MR. HALVERSEN: Ms. Paylor, no speaking objections.

MR. PAYLOR: You are mischaracterizing the affidavit.

MR. HALVERSEN: You know the rules.

MR. PAYLOR: And you're not reading all of it.

Go ahead.

Page 84

MR. HALVERSEN: You know the rules. You have been doing it throughout this case. I will ask you to please stop. It is totally unethical and totally unprofessional.

THE WITNESS: All right.

MR. PAYLOR: I have not done anything other than object to the form of this entire deposition.

MR. HALVERSEN: Except for right now, and you have done it in other depositions, so I please ask you to stop.

THE WITNESS: Ask your question again.

BY MR. HALVERSEN:

Q. My question is: Weren't those false representations that were made to your father about why he needed to sign the revocation --

A. No.

Q. -- if your mother had already been taken out of the estate dispositions?

A. You act --

MR. PAYLOR: Object to the form.

THE WITNESS: You act as if this was mutually exclusive. There were -- there can be more than one purpose to the revocation. One was to make sure that Patricia didn't receive incremental money. My father is not an attorney. I'm not an attorney.

Page 85

And then the other reason was just to make sure that there would be no miscommunication as to my father's will and his intent. He, obviously, made a codicil. He wanted a fixed amount for my brother and sister, and the remainder of the assets to go to my brother and I.

And if the revocation also created belt and suspenders for that, then what's the harm if it accomplished more than one thing and if it provided, ultimately, a level of clarity. I don't think there was any misrepresentation of any kind.

BY MR. HALVERSEN:

Q. Well, your dad never revoked the trust until it was put under his nose on September 15th. Correct?

MR. PAYLOR: Object to the form.

THE WITNESS: That is when he signed it, yes.

BY MR. HALVERSEN:

Q. Do you agree that the trust was totally active and valid on September 14, 2016?

A. I --

MR. PAYLOR: Object to the form.

THE WITNESS: I have told you multiple times, I thought it was revoked at the divorce.

BY MR. HALVERSEN:

Q. Okay.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 86

A. That was my understanding.
(Deposition Exhibit W was marked for identification.)
BY MR. HALVERSEN:
Q. If you can go to page 7?
A. Okay. I have it, the Holliday settlement agreement, page 7.
Q. Okay. And I will refer you to Paragraph 10. It says, "Trust funds and other gifted or inherited property: The parties release and waive any and all right, title or interest he or she has or may have had to any trust funds, inheritances, accounts, gifts or property of any kind, inherited by the other party or gifted to the other party or held in trust for the benefit of that party, as except as may be specifically provided herein."
A. Yes.
Q. So your mom was taken out of any interest she would have gotten in the trust. Do you disagree with me or agree with me?
MR. PAYLOR: Object to the form.
THE WITNESS: I agree that she was removed.
BY MR. HALVERSEN:
Q. Okay. Did your dad have dialysis on the day that you came to the house for the revocation?

Page 87

A. Sorry, say that one more time.
MR. PAYLOR: Object to the form.
BY MR. HALVERSEN:
Q. Did your dad have dialysis on September 15th?
A. I don't -- I don't know if he did or didn't. He was pretty much doing it about three to four times a week at that point.
Q. Okay. So you don't have any knowledge of him --
A. Of that --
Q. -- having dialysis that day earlier because he couldn't get through the session?
A. On that specific day, I don't -- I don't remember. There were plenty of days where -- I wouldn't say "plenty," but there definite days when he left dialysis early.
Q. You have no knowledge of him going to dialysis on that day?
A. I'm just not -- he very well may have. I just don't know.
Q. Where was the caregiver at the time of the revocation on September 15th? Was anyone else there?
A. I don't -- typically, there was somebody there. I've thought about this. I thought that there was somebody there, but what I don't recall is if they

Page 88

left, if they were there that morning or, you know, that afternoon. I don't recall a specific individual, the more I've thought about this. I just don't recall someone specifically being there from -- from Home Instead, that -- the health care company on that day.
Q. I will represent to you that the other witnesses' depositions we took said there was no one else there that they were aware of, in terms of a nurse or a home health care worker.
A. Yeah, I -- that -- that makes sense to me if that is what that I recalled. I just don't remember them being there during the revocation.
Q. Do you have any explanation as to why no one was there?
A. Probably because Greg Bosch was there and I was there. We tried to have home health people there when I couldn't be there or my brother, Lea, couldn't be there. Typically, if we were there, you know, we -- sometimes we had overlaps, sometimes we didn't.
Q. Okay. Did you know how to administer his IV of antibiotics?
A. I didn't give my father IVs, no. And, quite frankly, neither did the home health care people.
Q. Okay.
A. These were not nurses. These were more like

Page 89

medical assistants. They were helping him get up and down. They weren't giving -- they weren't administering him IVs.
Q. Would you agree with me that your physical presence -- you did not need to be there in order for your dad to sign that document?
A. No, I didn't need to be there. Truett could have handled that. I didn't need to be there. I just happened to have been there. It was my rotation and my time to be there during -- and so I was there. Like I told you, I wish I wouldn't have been.
Q. Was it a coincidental that you were there?
A. Yes.
Q. Did you see how your father signed the document?
A. Yes.
Q. Did he have his glasses on?
A. I don't remember if he had glasses on.
Q. Or his hearing aids in?
A. I didn't look in his ears. I don't know if his hearing aids were in.
Q. Was he in pain on that day?
A. No, I wouldn't say pain, as much as he just seemed tired. He had just finished a therapy session with Greg, and I think it just kind of -- you know, just

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 90

kind of wears him out at that point. He was -- he would just get petered out pretty easy, get really tired.

Q. What kind of physical therapy was he doing with Greg?

A. Greg primarily was trying to work with him on mobility and his legs. He was laying down a lot, and he was just kind of getting to the point where he was getting really hard for him to walk around, and just stamina. So he would work and move his legs quite a bit, trying to keep blood flow and trying to avoid some foot neuropathy and just, you know, muscle deterioration. That was really his primary focus.

Q. He was bedridden at that point, was he not?

A. He was on the edge of it. He was, certainly, kind of on edge of it. He needed help getting up and down and moving around.

Q. Why was he doing those exercises when you put in the text, in Exhibit Q, to Mark and Ben that physical therapy was pointless?

A. Because I saw --

MR. PAYLOR: Object to form.

THE WITNESS: I saw the writing on the wall, but my dad is a survivor. I don't think you ever had the chance to meet him, but my dad was just tough as nails, and he just believed that he could fight his way through

Page 91

this and get physically better, you know. And I think it was just kind of a survival instinct for him. If he just quit, he was going to die.

So my father just wasn't a guy that had quit in him. I mean, I didn't think truthfully there was a lot of value in it, but, you know, it was one of those things and if your dad wants to do and he had the gumption and fight to keep trying, I sure as hell am not going to tell him not to.

BY MR. HALVERSEN:

Q. Was it his idea for Greg to come by?

A. Yes, he coordinated therapy with Greg.

Q. Were you aware that your dad was on Oxycodone the day he signed that document?

A. I'm not aware of what medicines he was taking on that specific day.

Q. You didn't know that he had been prescribed Oxycodone?

A. Whether he was prescribed it is a different question from whether he was on it. I'm not sure that he was on it that day.

Q. Okay. But you were unaware, as you said, that he even had the prescription; is that true?

A. I know that he had had different prescriptions. Very specifically if at that point it was

Page 92

expired or not expired or renewed, no.

Q. He had a new prescription for it, I will represent to you that, but it sounds like you were not aware of the new prescription.

MR. PAYLOR: Object to form.

THE WITNESS: Yeah, I was not -- I was not fully aware of that.

BY MR. HALVERSEN:

Q. Were you aware that your dad was diagnosed with dementia in the year 2010?

A. He was not diagnosed with dementia in 2010.

Q. He was not?

A. No.

Q. How do you know that?

MR. PAYLOR: Object to form.

THE WITNESS: I've never seen anything medically that said that, and it sounds more like my mother, who didn't like the fact -- my mother, because she didn't agree with him. That is the kind of crap that she would say. But it didn't make it true.

BY MR. HALVERSEN:

Q. Okay. You never were aware that your dad was diagnosed with vascular dementia?

MR. PAYLOR: Object to form.

THE WITNESS: I don't know what vascular

Page 93

dementia means. When you say "dementia," I thought you were referring to something as to his mental state and mental capacity. If that's the technical word for that, I'm not aware of what vascular dementia means.

BY MR. HALVERSEN:

Q. Okay. Or that your dad had it, you are not aware of that?

A. No, he didn't.

MR. PAYLOR: Object to form.

THE WITNESS: No, he did not -- my father did not have dementia.

BY MR. HALVERSEN:

Q. Okay. So you've never heard the term "chronic ischemia of the brain"? You are not aware of that medical term as it applied to your dad?

MR. PAYLOR: Object to form.

THE WITNESS: Specifically the word "ischemia," no.

BY MR. HALVERSEN:

Q. Pardon?

A. The word "ischemia" --

Q. Yes.

A. -- I am not aware of that word.

Q. Okay. And you are not aware of the terms being ascribed to your dad; is that true?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 94

A. No. So what doctor made this -- you are saying a doctor made this dementia or how are -- where are we coming up with this?

Q. I'm here to ask you questions of what you are aware of and not what I'm aware of.

A. I am just trying to see if you are making stuff up, or if you actually have a reason to be able to ask it.

Q. I'm asking you based on what your understanding of your father's health condition was, and I will represent to you that his medical records speak for themselves.

A. Well, how do you have copies of his medical records?

Q. Again, we have copies of his medical records. If you want copies of them, you can ask your attorney for them. She has them as well.

A. Okay.

Q. Mr. Bosch testified having exchanged text messages and emails with you. Do you still have them?

A. I would think so.

Q. If your attorney asked you to provide that, is that something you could get to us?

A. I would -- I would have to check, but yes, I would think so.

Page 95

Q. Have you executed any transfers of property out of the trust since your father passed?

MR. PAYLOR: Object to form.

THE WITNESS: Well, the trust was cancelled before he passed, so there is no property that went out of it because it was revoked prior to his death.

BY MR. HALVERSEN:

Q. Okay. So we asked Mr. Nettles what his definition of "capacity" was in his deposition, and he said, quote: Well, for testimony, documents and trusts, it's generally they know what property they have, they know who are the persons of their affection and what, you know, who they like and then who they want to give parts of their estate to.

That was Mr. Nettles -- what he testified to is his definition. And what I wanted to know from you is -- based on his definition, is that whether your father liked you and Lea more than Pam and Mark.

MR. PAYLOR: Object to the form.

THE WITNESS: So my father loved all of his children, but he was extremely, extremely disappointed in Ben and Pamela. Extremely.

BY MR. HALVERSEN:

Q. How did you get that information? From them or --

Page 96

MR. PAYLOR: Object to the form.

THE WITNESS: My father -- my father spoke pretty openly about his disappointment. Ben had lived a life of tremendous disappointment, just so many things in the course of his life that were just so disheartening to my father.

And Pamela, quite frankly, always seemed to have an intense alignment to my mother and not really to him and that was hurtful to him. He was very hurt when my sister involved herself in the divorce. She made arrangements for her best friend's husband, Alan Toporek, to represent my mother in the divorce, provided the retainer funds in the divorce on behalf of my mother, and it just was very hurtful to my father.

He felt that even though they got divorced, he never wanted his kids to pick sides or get into that. And, unfortunately, Ben and Pamela, they picked sides, and it was hurtful to him.

BY MR. HALVERSEN:

Q. When did your parents' relationship start to go down hill?

A. Well, looking back on it, they've had their share of issues for probably the last 20 years they were married.

Q. Everyone has their issues, but I'm talking about, when did it get to the point where they were having discord to the point where lawyers were involved?

A. Well, lawyers became involved as you know, kind of in that 2012 time frame, when she engaged Toporek, Alan Toporek. But prior to that, there were moments of intense discord with Patricia and Warren.

You know, Patricia was admitted to a psychiatric hospital. She had tremendous mental health issues, and it put a lot of strain in their marriage, quite frankly, issues that really aren't that dissimilar to what Ben Holliday has and it just made it tough. It made it really, really tough in their marriage, and I think it just finally got to a point of fracture.

Q. Okay. I want to move on because I don't have much more time.

The day you came into town on September 12th, you were placing calls, according to your phone records, to Trey Sedalik, or however you pronounce his name?

A. Sedalik.

Q. Why were you talking to him while you were in town during that time?

A. Any time I was in Charleston, he and I were in communication. At the time, we were -- I think at that point, we were probably under contract on properties, either whether it was to purchase something

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 98

or sell something. I think we had Discher Avenue was -- I would have to go back and really look at the records and whatnot, but we were working on the sale of the Discher Avenue property. And so I'm sure there were issues coming up.

Q. Okay. How did the meeting for the revocation get set up? Who set it up on that day, at that time?

A. My recollection is Truett said he wanted to come by the house, and he needed to bring witnesses. And I said, you know, "He is at home, so if you want to -- if you want to come over, then come over."

I think Truett was pretty hot to trot to get it signed and done.

Q. Is there a reason why your dad did not go to Truett's office to have it signed?

A. Yeah, he was just at a point where -- like I said, I mean, he was sick and not feeling well, and, really, his last month, he really wasn't getting out and about really at all, outside of I think dialysis and a medical appointment. He just -- he wasn't -- he really wasn't going out.

Q. Do you remember what time on September 15th that Mr. Bosch arrived at your father's condo for the physical therapy session?

A. Not the exact time, no.

Page 99

Q. Do you remember what time Mr. Nettles arrived at the condo to get the documents signed, when that was?

A. It was the afternoon.

Q. Like, any better feel than that? Early, mid, late, or do you remember?

A. Kind of mid to late afternoon.

Q. Did you pay Mr. Bosch before or after the physical therapy session?

A. I don't remember if -- I don't remember the timing of payment. I thought that he was paid some amount of money, then he would just kind of bill down on it. That was my recollection, almost like an advance. And then he would just kind of come and do work as needed.

Q. Why did you make an in-person withdrawal at the Wells Fargo branch on U.S. 17 by Arby's for 4,000 in cash on that day?

A. I don't -- I don't recall. We usually tried to keep cash on hand at this point for, you know, buying food, doing things. I can't specifically say. I would have to go back and -- I would have to go back and try to look and figure that out.

Q. Was any or all of this money given to Mr. Bosch?

A. It could have been. Like I said, what my

Page 100

memory was is that we kind of paid him a kind of a lump sum, that then he just billed it down. And then once he had kind of used it up, kind of like a retainer for lack of a better word, then I would just get him some more money.

Q. Okay. Let's move on to Exhibit X.

(Deposition Exhibit X was marked for identification.)

BY MR. HALVERSEN:

Q. I would like to show you some checks that were made out to your dad. Do you have those in front of you?

A. Yes.

Q. Do those signatures appear to be your dad's signatures on the endorsements?

A. It has his name. It appears to be.

Q. Would you agree with me that these are all checks that are dated after your father died?

A. Yes. It says February the 3rd on one of them, yes.

Q. Is your dad still alive or did you forge these checks?

A. I didn't forge anything.

MR. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Page 101

Q. Did you write "Warren P. Holliday" to enforce these instruments?

A. I may have or somebody did. It was probably -- it was probably easier than trying to get them to recut a check.

Q. Was this the only three times that you've forged your dad's signature on an instrument?

A. I never forged --

MS. PAYLOR: Object to form.

THE WITNESS: I never forged his signature. Writing someone's signature is not a forgery. Forgery implies I was doing something elicit or illegal. If I signed a check to be able to cash it, and I had that right and I had power of attorney and I was his PR, it sure as hell isn't forgery.

I don't need to tell you as a lawyer what the definition of forgery is, do I?

BY MR. HALVERSEN:

Q. Again, these are not my questions to answer. I'm asking questions.

But is there a reason why you didn't just sign it as your -- Ross Holliday, as power of attorney, as you had done with various other things in the past?

A. Well, my understanding is once someone dies, the power of attorney is over. So I thought that I was

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 102

signing it as the PR.
Q. Okay. All right. Let's go to Exhibit Y.
(Deposition Exhibit Y was marked for identification.)
THE WITNESS: Okay.
BY MR. HALVERSEN:
Q. Is that your signature on Exhibit Y?
A. Yes.
Q. And this was a check that was made out to the revokable trust. Correct?
A. Correct.
Q. And what is the date of that check?
A. April 3, 2017.
Q. Would you agree with me that you were still using the revocable trust bank account, even after your father had passed and the trust revocation was executed?
A. As I said earlier, that was really Warren's personal account. We just didn't go through the technicality of adjusting the name after the revocation. With everything going on, with him dying and passing, it was one of those things that administratively really didn't matter, so we didn't go and technically change that.
Q. Okay. When we left off from your first deposition, we had marked that Wells Fargo bank account

Page 103

as Exhibit B.
Was that the only bank account you would take money out of from your father's business during that time frame of about 2011 or '10 to 2015, or were there other accounts?
MR. PAYLOR: Object to the form.
THE WITNESS: That was his primary account, was this Wells Fargo account. There were other -- there were business accounts. All the way back in 2010, I think they had bank accounts at MBSC, and I can't remember the other name of the other bank, but MBSC became Synovus, you know.
But we had tried -- I don't remember the exact year, but we moved everything -- we tried to get everything moved over to Wells Fargo for business and personal so that it could all be coordinated and I could have access to it across the country because MBSC -- obviously, there aren't branches here in Utah, so when I was carrying out business activities, it was easier to have a national bank like a Chase or a Wells Fargo. It just made it more convenient and easy to manage.
BY MR. HALVERSEN:
Q. Okay.
A. And Wachovia -- they used to have accounts at

Page 104

Wachovia, but then they got gobbled up by Wells Fargo as well.
Q. Right. I will take a quick two-minute break.
A. Okay. We have about 13, 12 minutes left.
Q. Well, we started at 1:05, and that would take us to 4 to 5, not counting the breaks we have taken, but that would take us three hours to 4:05.
A. No issues. That's great. We will take a break.
(Whereupon, a break was taken.)
BY MR. HALVERSEN:
Q. I know you said you didn't review Ms. Brouthers -- your Aunt Martha's deposition testimony, but I will represent to you that you took -- she testified that you took millions of dollars out of the company while you were there from 2011 to 2015.
Do you dispute her testimony?
A. Yes. Like, how many millions? Like, what are we saying?
Q. She testified that you took out up to about $4 million in that time frame.
A. Yeah, I would dispute that. My father and I -- no. $4 million?
Q. That is what she said.
A. Well --

Page 105

Q. Maybe it was 3. It was a lot of money.
A. Yeah. And where did she say I took the money out and did what?
Q. She said that during the time she was there and was -- I guess the bookkeeper or whatever she was doing with the finances, that there were multiple millions of dollars that you had taken out of the company at that period of time.
A. There was money that was taken out. My father and I, as discussed previously, I think maybe in the other deposition, maybe, we had made investments in different businesses and technologies and properties and things like that. So sure, money was coming in and out of the business.
But if the implication is that I somehow took out $4 million for exclusive and personal benefit, that is a farce and just a flat-out lie.
Q. Okay. Well, she said aside from -- we spent time talking about the 2 million note, but she said aside from that, even including that, there was still millions that were coming out during that -- on her watch.
But it sounds like you dispute that?
A. Yes.
Q. Okay. And those bank account records will speak for themselves about those moneys. Correct?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 106

A. Yes.
Q. What was your understanding of how much compensation you were receiving for your services to your father's companies during that time? What was your understanding?
MR. PAYLOR: Object to form.
THE WITNESS: I would say let's be more specific.
BY MR. HALVERSEN:
Q. Okay. What do you need me to be more specific on?
A. Well, you are asking me just to ramble about something generally. Specifically --
Q. Okay.
A. -- what about the compensation do you want to know?
Q. Well, I gave you a time frame. I thought that was specific. From 2011 to 2015, for any services you were providing for doing whatever work you were doing during that period of time for your father's business, how much were you paying yourself or was your father paying you? How much, in your mind?
If you believe Aunt Martha was off the reservation in what she saying, how much, in your mind, did you believe you were being compensated for your

Page 107

services at the time?
A. We -- there was never -- in early 2011, we were trying to stabilize the business. The compensation at that point was very small. As a matter of fact, many times I had to cover expenses to get back and forth. And once the business got stabilized, we released properties and we increased the value. Then as the business got healthy and into the black and began to make some money, then it was able to pay more money.
So it increased over time. That's what I would say, generally. And there were some -- there was compensation that was somewhat kind of retroactive since it couldn't pay me hardly anything at all. And really, 2011 and '12, it was -- they were very nominal amounts.
Q. What was the problem with the business, as you are telling me in 2010, '11? What was --
A. So my dad was sick, and, you know, with the kidney failure and getting the transplant all the way back into '09 and '10, quite frankly, there were things where my mother and father had not paid. You know, property taxes, they were delinquent on some stuff.
They had IRS issues. I had to meet with the IRS on behalf of my parents and specifically negotiate with them and buy time. They were really not -- so unfortunately, not in a good way, and my parents did not

Page 108

communicate just really how poor the financial situation was. They had lots of assets, not a lot of cash.
And, quite frankly, with my dad's physical absence and being sick, a lot of things just weren't happening. And so it was an unfortunate situation, but we got the ship righted by -- probably by about 2012, we got things worked out, got things in a better way.
Q. Well, they had a lot of assets at that time. They owned all of these same properties, you know, all of these nine or ten properties. Correct? They still owned the assets, owned them outright. Correct?
A. They did, but the problem was they were delinquent on taxes, income taxes, they were delinquent on some property taxes. And, you know, my dad had old handshake agreements on properties and had -- a number of them didn't have formal leases, and it was a problem. It was a real problem.
And a lot of them, just quite frankly, were not leased at current market value because, you know, my dad was just not -- not managing that stuff well because he was sick. And my mother, quite frankly, was of no help, zero help.
Q. It was not most of the money that was coming in from passive income from rental properties?
A. Yes, but back in that -- if you looked at,

Page 109

like, the net value, it may have had 100 grand coming in annually in that 2010 time frame. And after we got everything released and going and got market rates on properties, brought in some new tenants, improved it, it went closer to, you know, a $400,000 thing. It was just -- you know, not as much money was coming in as should have been.
Q. Okay. Mr. Holliday, that is our three hours. We started at 1:05, and it is now 4:05, including breaks we took. I still have more questions to ask you about the business and things we are talking about now. I still have more questions to pose to you about the estate administration.
And unless your attorney and us can come to an agreement on that, it is going to be something that the court will have to decide in the future. But until then, I wish you well, and I hope your health continues to improve.
A. Well, thank you. Have a nice day.
(The deposition was concluded at 2:05 P.M.)

REPORTER'S CERTIFICATE

State of Utah)
)
County of Salt Lake)

I hereby certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken at the time and place herein named;

That the testimony of said witness was reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the events thereof.

IN WITNESS WHEREOF, I set my hand this 18th day of November, 2020.

Kellie Peterson, RPR

Case: Holliday vs. Holliday
Case No: 2016-ES-10-1673
Reported by: Kellie Peterson, RPR
Date Taken: 2019-CP-10-2430

WITNESS CERTIFICATE

I, ROSS HOLLIDAY, HEREBY DECLARE:
That I am the witness in the foregoing transcript; that I have read the transcript and know the contents thereof; that with these corrections I have noted, this transcript truly and accurately reflects my testimony.

PAGE/LINE	CHANGE/CORRECTION	REASON
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I, ROSS HOLLIDAY, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be true and correct.

_____
ROSS HOLLIDAY, Deponent

STATE OF _____)
)
COUNTY OF_____)

SUBSCRIBED and SWORN to by ROSS HOLLIDAY at_____ this_____day of_____, 2020.

_____
Notary Public

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Exhibit D
(Last Will and Testament)

See Duplicate Exhibit*
found at ROA pages 104-106

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit E
(First Codicil)

See Duplicate Exhibit*
found at ROA pages 107-110

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit F
(F. Truett Nettles, II, Deposition Transcript
dated July 28, 2020)

See Duplicate Exhibit* found at ROA pages 220-265

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit G
(Revocation)

See Duplicate Exhibit* found at ROA pages 176-177

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit H
(Greg Bosch Deposition Transcript dated July 28, 2020)

See Duplicate Exhibit* found at ROA pages 200-219

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit I
(Aliecia Bores Deposition Transcript
dated July 28, 2020)

See Duplicate Exhibit* found at ROA pages 183-199

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit J
(MUSC Medical Record)

See Duplicate Exhibit* found at ROA page 130

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

Exhibit K

(Affidavit of Alice F. Paylor together with Exhibit A to that Affidavit)

See Duplicate Exhibit* found at ROA pages 138-145

*To avoid unnecessary duplication of material in the Record on Appeal, Appellants and Respondents have agreed to include a single Record cite to material that was filed more than once.

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EXHIBIT L

In the Matter Of:

Pamela Holliday Wallin et al vs Ross Samue Holliday, et al

HEYWARD CARTER, JR

April 16, 2019

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DEPOSITION OF T. HEYWARD CARTER, JR.

PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY

Petitioners,

vs.

ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE

Respondents.

DEPONENT: T. HEYWARD CARTER, JR.

DATE: April 16, 2019

TIME: 2:09 p.m. - 3:59 p.m.

LOCATION: Gordon & Rees
40 Calhoun Street, Suite 350
Charleston, SC 29401

REPORTED BY: SARAH GACIOCH

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I N D E X

	Page
Witness Sworn	5
EXAMINATION BY:	
BRENT HALVERSEN	5-55
ALICE PAYLOR	55-71
Certificate of Reporter	72

E X H I B I T S

	Page
Petitioner's Exhibit No. 1	11
Petitioner's Exhibit No. 2	15
Petitioner's Exhibit No. 3	15
Petitioner's Exhibit No. 4	17
Petitioner's Exhibit No. 5	20
Petitioner's Exhibit No. 6	22
Petitioner's Exhibit No. 7	27
Petitioner's Exhibit No. 8	30
Petitioner's Exhibit No. 9	38
Petitioner's Exhibit No. 10	41
Petitioner's Exhibit No. 11	44

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 5

T. HEYWARD CARTER, JR., having been first duly sworn, testified as follows:

E X A M I N A T I O N

BY MR. HALVERSEN:

Q. Good afternoon, Mr. Carter. I introduced myself briefly to you a little while ago. My name is Brent Halversen, and I, along with Dan Slotchiver and Steve Slotchiver, represent the Petitioners in an action that was filed in the Probate Court on behalf of our clients, Mark Holliday and Pamela Holliday. Mark Holliday is seated here behind you today.

I know you've had your deposition taken before, so I don't need to tell you what -- how it works, but if you want to take a break, let us know. I don't think we're going to be here very long. I have a limited amount of questions, and as far as I can tell, you only have a limited amount of information that you can provided us here today, so we won't be here that long, but thank you for appearing.

MS. WALL: May I just make a statement so it's clear to all counsel here?

My name is Susan Wall. I represent Mr. Carter. Mr. Carter is here pursuant to a subpoena,

Page 6

and for purposes of responding to questions here today, I want to be sure that everybody understands that Patricia Holliday, the former wife of Warren Holliday, has not waived her privilege, and therefore, Mr. Carter will not be answering any questions with regard to Patricia Holliday, except as to a 2012 Financial Arrangement Agreement, and with that, you can continue.

MR. HALVERSEN: Okay. My understanding was a little bit different, but I think my understanding was that the privilege had been waived, except as to with respect for items contained in her estate -- her specific estate plan.

MS. WALL: Well, let's see where we go with this, but I actually have an e-mail from counsel for Patricia Holliday.

MR. HALVERSEN: Okay.

MS. WALL: And it says, and I quote "My client does not waive the attorney-client privilege as to her personal estate plan prepared by Mr. Carter or as to any other subject matter, except regarding a 2012 financial agreement," she calls it. The real title is Financial Arrangements Agreement.

MR. HALVERSEN: Okay. Well, I don't know -- I'm not disputing what that is saying right

Page 7

there. I'm just saying, for the record, if an issue does come up as to matters, the only privilege waiver -- the only privilege that is left standing and will be as to her estate that she created at some point in time with Mr. Carter. If something comes up that you're concerned about that you feel is beyond what you have, I'm happy to take that up, but I believe there shouldn't be any privilege issues going forward.

MS. WALL: We'll wait and see how it goes along.

BY MR. HALVERSEN:

Q. All right. With that being said. What do you do for a living?

A. I'm a lawyer.

Q. And specifically, what kind of law do you practice?

A. I practice trust and estate, estate planning, probate, some tax law.

Q. Okay. And how long have you been doing that type of work?

A. I started practicing law in 1973. I went back to a graduate tax program in 1976, '77, so that type of work specifically since 1977.

Q. Okay. Just if you had to characterize who

Page 8

your clientele is, I mean, how would you describe that to me as a -- as a non-lawyer, how would you describe your clientele?

A. Well, I'm not sure I understand.

Q. I guess --

A. You'd have to --

Q. Sure.

A. -- define it a little bit more than that. They're all humans.

Q. Well, I guess --

A. Most of them are.

Q. Right, hopefully.

I mean, how would you describe your clientele? Do you do wills for, you know, people of high net worth or all income levels? I'm just trying to get a feel for what type of clientele you service.

A. I'd say, a good number of clients are high net worth.

Q. And how long has your clientele been like that?

A. Let's -- without a definition -- even with a definition, it's kind of hard to say, but I'd say, at least since the late '70s, early '80s.

Q. Okay. How long have you known Truett

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 9

Nettles?
A. I would hazard a guess, and it's nothing more than a guess, but we both have been practicing in Charleston for quite a while, and I know that when I started practicing in Charleston, it was a relatively small bar. So I'd say -- I don't know when Truett began practicing, but I'd say, at least 20 years just casually.
Q. And do you have any social relationships with Mr. Nettles?
A. No. I think we go to the same church, but that's -- that's it, if you want to call that social.
Q. What church is that?
A. Grace Episcopal Church on Wentworth Street.
Q. Do you have any business relationships with Mr. Nettles?
A. I do not.
Q. Have you ever had any business relationships with Mr. Nettles?
A. I believe we shared, or, perhaps, still share, I'm not sure, a client, but never -- never did anything together because we practice in different areas of the law.
Q. Okay. What kind of areas does Mr. Nettles

Page 10

practice in, as far as you're concerned?
A. I gather business matters. I don't know the range of his practice, but I think that would be one area.
Q. And that one client you share, is there certain things that Mr. Nettles performs for that client, and then there's certain things that you perform for that client?
A. I don't know exactly what Mr. Nettles does for that client, if he still does anything for that client. What I do for the client is in the trust and estate planning area.
Q. Okay. Has Mr. Nettles ever sent clients to you?
A. Not that I can recall.
Q. Have you ever sent clients to Mr. Nettles?
A. Not that I can recall.
Q. Okay. Are you aware of the circumstances surrounding how Mr. Holliday came to your services?
A. No. I don't know if I was aware at the time. If I was, I don't recall now.
Q. Okay. Let me just -- I've got a set of documents here, and we'll just mark them, and the majority of them were produced pursuant to the subpoena that we sent to your office.

Page 11

MR. HALVERSEN: We'll mark this as Exhibit 1.

(PETITIONER'S EXHIBIT NO. 1
WAS MARKED FOR IDENTIFICATION)

Q. And you can just take some time to familiarize yourself with these couple e-mails, and just let me know when you've finished reading them.
A. Okay.
Q. Do you remember first meeting Ross Holliday or a connection with Ross Holliday, who is one of the sons of Mr. Warren Holliday?
A. No, I don't.
Q. Okay. So with respect to this e-mail, there was -- that you authored, it's the bottom of the first page of Exhibit 1 to Ross Holliday, CC Sandi Jenkins, where you said: Mr. Holliday, I understand from my secretary, Sandi Jenkins, that your father is seriously ill. Let me know when you would like to meet in Charleston next week. Do you have any recollection of Mr. Holliday's health at this point in time?
A. No.
Q. Okay. Do you recall when you first met Mr.

Page 12

Holliday in your office?
MS. WALL: Which Holliday? You want to use a first name?
BY MR. HALVERSEN:
Q. Mr. Warren P. Holliday, the late Mr. Holliday.
A. No, I don't. I would assume from this -- these e-mails that it was on this -- these dates that were scheduled.
Q. Sure. I guess I'll just maybe ask a little bit more in detail. Do you have any -- you don't have any recollection -- independent recollection, as we sit here today, as to when you met with the late Mr. Holliday?
A. You mean when I met with him, or what happened at the meeting?
Q. Well, I guess -- I think we have a pretty good idea when it was, based on when you prepared the will and the date of this e-mail. What I really want to know is what you recall when you first met with him.
A. Okay. No. I don't have a recollection.
Q. Of meeting with the late Mr. Holliday?
A. Well, I remember meeting with him probably several times, but I don't remember specifically

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 13

this, what was apparently the first meeting.
Q. Okay. Would it be fair to say or was it your practice that you would meet with the client a couple different times to get to know them, get to know their -- you know, their financial affairs before you actually put pen to paper and drafted documents for them?
A. With a new client, that would be correct.
Q. Okay. And you don't have any reason to dispute that, that's probably the procedure you would have followed in this case with the late Mr. Holliday?
A. I don't have any reason to dispute that.
Q. Okay. And with those first series of meetings -- and correct me if I'm mischaracterizing it. In those first series of meetings, as we sit here today, do you have a recollection of what -- what some of the things were that came up, as far as Mr. Holliday's children, or his estate plan, or where he wanted to dispose of his assets?
A. No specific recollections, other than I know I was informed that he owns several businesses and was informed as to how he wanted to handle the disposition of those businesses at his death.
Q. You were informed by whom?

Page 14

A. Well, I can't specifically recall, but I know to at least some extent by Mr. Warren Holliday.
Q. I mean, do you have -- do you recall having specific conversations directly with the late Mr. Holliday as to how he wanted his estate to be left to his children?
A. Oh, yes.
Q. And what were those -- the nature of those discussions?
A. Well, again, that he had a number of businesses, and that however it was he directed he wanted them to be left, after that conversation or conversations, I would have drafted some documents.
Q. Okay. As we sit here today, though, you don't have any independent recollection of what his specific request was in terms of how his estate was to be divided up amongst his issue?
A. Not specifically. The only thing I can say is that I would assume that what he told me was the way he wanted his estate to be divided among his issue is what wound up in the documents that I drafted, went over with him, and he signed.
Q. I guess now that we're on the subject, we'll go ahead and mark the will -- the 2008 will and the 2008 trust. We'll mark the will as Exhibit 2, and

Page 15

I'll give a copy of the exhibit for you to look at.

(PETITIONER'S EXHIBIT NO. 2
WAS MARKED FOR IDENTIFICATION)

MR. HALVERSEN: And for the record, it's Bates labeled Carter 00136 through Carter 00142.
And we'll also mark while we're at it the trust as Exhibit 3.

(PETITIONER'S EXHIBIT NO. 3
WAS MARKED FOR IDENTIFICATION)

MR. HALVERSEN: And for the record, Exhibit 3 is Bates labeled Carter 00018 through Carter 00048.
Q. Have you had a chance to look at those documents?
A. Uh-huh.
Q. Do those appear to be the will and the trust that you drafted for Mr. Holliday in 2008?
A. They do. They were witnessed by me and my secretary.
Q. Okay. In the course of the meetings you describe, before you had those documents drafted, do

Page 16

you ever recall one of Mr. Holliday's sons, Ross Holliday, being present with you in the room when those conversations were taking place?
A. I believe that he was present for at least one meeting.
Q. Do you recall any conversation or statements by that gentleman, Mr. Holliday -- the late Mr. Holliday's son, indicating that he did not want equal shares to be given to each of his children?
MS. PAYLOR: Object to the form.
BY THE WITNESS: That Ross Holliday did not want Warren Holliday's shares to be given to each of his children; is that your question?
BY MR. HALVERSEN:
Q. Yes, sir, in an equal amount.
A. No. I don't recall that.
Q. Do you ever recall him slamming his fist on the table and him having some kind of -- some kind of discord with the family members about what the allocation was going to be to the heirs?
A. I don't recall that.
Q. You don't -- do you recall having to leave the room and saying something to the effect of, you guys work this out, and I'll come back?
A. No. I don't recall that. I mean, I don't

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 17

say that it didn't happen. I just don't recall it.
Q. Okay. Fair enough. Would it be fair to say that the estate plan you drafted in 2008, which is reflected in Exhibits 2 and 3, would have been the late Mr. Holliday's testamentary intent?
MS. PAYLOR: Object to the form.
BY THE WITNESS: Yes.
MR. HALVERSEN: We'll next mark this as Exhibit 4.

(PETITIONER'S EXHIBIT NO. 4
WAS MARKED FOR IDENTIFICATION)

Q. And it is Bates labeled Carter 00221 through Carter 00226, and just take a minute to review those, if you could, and let me know when you're finished.
A. All right.
Q. And what is Exhibit 4?
A. This is an independent accountant's report and financial statement as of December 31, 2007 prepared by McGuire & Company CPAs for Warren P. Holliday.
Q. And what was the date of this analysis through what date?

Page 18

A. December 31, 2007 --
Q. And so --
A. -- as of that day.
Q. Okay. And what was the value of the estate according to McGuire & Company as of that date?
A. The net value of Mr. Holliday's assets, according to this report, was $6,740,000.00.
Q. What was the unified credit that was in effect on that date?
A. I do not know.
Q. Okay. It is what it is, correct?
A. It was what it was.
Q. Was what it was.
A. It has changed often.
Q. And what was the purpose of getting this analysis before you undertook the estate plan that you -- that is reflected in Exhibit 3 and Exhibit 4?
A. Well, in this particular circumstance, I can't say anything, other than it was my general modus operandi, when working with a new client, to get as good a picture of their financial situation as I could, because that would help me suggest to them various -- the structure for tax reasons and maybe some other reasons of how their documents should be structured.

Page 19

Q. Okay. Do you recall preparing a Power of Attorney for the late Mr. Holliday?
A. I don't recall that.
Q. Do you recall anything those first few meetings about the status of the late Mr. Holliday's health at the time?
A. I believe it was mentioned to me, whether it was by Ross Holliday or Mr. Holliday, that he had some health issues, some physical health issues.
Q. Okay. At the time, though, you weren't aware of what particular ailment or disability he may have had?
A. I don't think so. I don't recall exactly, but I don't think so.
Q. Okay. It looked like from the subpoena response, and I didn't bring copies here today, but that you prepared various assignments of LLCs that were deeded into the trust. Do you recall doing that work?
A. Yes, I do.
Q. Does your office still have those original assignments?
A. No.
Q. Do you know what -- or do you have a procedure as to where those -- where you would have

Page 20

sent those assignments?
A. I believe I sent the originals to Mr. Warren Holliday.
Q. Okay. Since that point in time, when you prepared those originals or assignments, did you -- has anyone ever asked to you prepare assignments of those LLCs out of the trust?
A. No.
Q. If the assignments out of the trust were never made, does that mean that the LLCs are still in the trust?
MS. PAYLOR: Object to the form.
BY THE WITNESS: Unless they have been distributed under the terms of the trust, that would be correct.
BY MR. HALVERSEN:
Q. Let me show you some e-mails on another thing that was produced to us.
MR. HALVERSEN: We'll mark this as the next exhibit, Exhibit 5.

(PETITIONER'S EXHIBIT NO. 5
WAS MARKED FOR IDENTIFICATION)

Q. And just take a moment to familiarize

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 21

yourself with these e-mails, and just let me know when you're done.

A. Okay.

Q. So we moved up a few years from 2008, when you initially did the estate plan, to 2011. Do you recall what the facts or circumstances were surrounding Mr. Ross Holliday contacting you at this time?

A. No. I don't recall.

Q. I mean, other than what's stated in this e-mail.

A. No.

Q. At this point in time did you do any work for either Mr. Ross Holliday or the late Warren Holliday?

A. I never did any work for Ross Holliday. I did in 2011 -- yeah, 2011, prepare a Financial Arrangement Agreement for Mr. and Ms. Holliday.

Q. Right. And I'll ask you a couple questions about that in a minute, but as it concerns these -- this communication with Mr. Ross Holliday, and this -- and from 2011, you don't recall any work culminating out of that meeting?

A. No. I mean, I don't know whether it was that Financial Arrangement Agreement that came out of

Page 22

that meeting or whether it was something else. I just don't recall.

Q. Okay. Do you recall meeting with Mr. Ross Holliday at this point in the time?

A. I think so. I think so.

Q. Okay. Do you remember?

A. I don't remember any specifics, but I think I do remember meeting with him.

Q. Do you remember any general aspects of what the --

A. No.

Q. -- conversation or what the purpose of the meeting was?

A. No.

Q. Okay. Was it at your office?

A. I would assume it was, yeah.

Q. Okay.

MR. HALVERSEN: We'll mark that agreement that you just referenced as Exhibit 6.

(PETITIONER'S EXHIBIT NO. 6 WAS MARKED FOR IDENTIFICATION)

A. Okay.

Q. And what were the facts and circumstances

Page 23

surrounding how this document came into existence?

A. I was asked to prepare -- well, I was told that Mr. and Ms. Holliday had been having some marital difficulties and had agreed on a financial arrangement and the details of the financial arrangement, and they asked me to draw it up for them.

Q. And when you say you were told, was that -- was that -- about their having difficulties, is that something you were told by Ross Holliday?

A. I don't recall specifically who told me that first. It may have been Ross Holliday, or it may have been Mr. and Ms. Holliday when they came to see me.

Q. Okay. Did you meet with all three of them together?

A. Well, I don't recall meeting with the three of them together. No. I can't say whether I did or not.

Q. Do you recall meeting with Mr. -- the late Mr. Holliday and Ms. Holliday separately?

A. I believe so.

Q. Okay. And, I mean, the agreement kind of speaks for itself, but you basically made the point that, I'm not representing either of you guys. I'm,

Page 24

I think, to your words you put scribe. I'm merely facilitating what you're going to do in terms of attempting to resolve whatever issues you're having; is that fair?

A. That's right. If I recall correctly, I had met with them, I think, at -- I recommended to them that they meet with a couple -- a pair of lawyers who do family law, matrimonial work, that sort of thing. We met with them, and I can't remember the conclusion, other than they didn't think that -- as I'm recalling, those lawyers didn't feel it was something that they could handle or maybe something that they needed to handle. So it came back to me to draw this agreement that they had agreed on.

Q. Okay. So it sounds like you actually made a specific referral to a particular lawyer for each of them?

A. As I recall -- and you know, I can't remember what I had for dinner last night. This was 8 years ago, but as I recall, Mr. and Ms. Holliday and I had met with this couple in Mount Pleasant who handled that sort of law together, because I thought that -- I don't do matrimonial law, family law of any kind. I thought, perhaps, this couple could help them work out or do whatever they needed to do in their

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 25

separation, but best of my recollection, those lawyers didn't feel it was something that they were equipped to handle. I don't know exactly what, but I wound up drawing the settlement agreement for the two of them.

Q. Did you physically take them to these lawyers or meet with them?

A. I think we met at these lawyer's office.

Q. Okay. And you were with them during the meeting?

A. As I recall, yes. I think that's right.

Q. Okay. Do you recall the identity of the lawyers who's this couple family law lawyers?

A. Ms. Segars-Andrews and her husband.

Q. Okay.

A. Whose name I can't recall right now.

Q. Do you remember anything from that meeting?

A. Other than what I just told you, no.

Q. But eventually it sounds like they, for whatever reason, said they either couldn't or didn't want to help, and then you put the -- this Financial Arrangements Agreement to attempt to settle their issues?

MS. WALL: Object to the form.

BY THE WITNESS: They told me what their

Page 26

agreement was; I put it on paper; they reviewed it. It may have been revised, and they signed it.

BY MR. HALVERSEN:

Q. Okay. Let me just point to the -- looks like the second full paragraph in the background section, and it says -- the first sentence, "Ross is one of Warren and Patricia's children and has assisted Warren and Patricia with the management of the family businesses. Ross lives in Draper, Utah and because of the on-going state of disagreements between Warren and Patricia, and because of the state of Warren's health, Ross has had to spend an increasing amount of time in, and traveling to and from, Charleston to attend to family business affairs and to try to help his parents resolve their disagreements." That language, that verbiage, would that have come from you or from the parties?

A. Well, the description of the situation would have come from the parties. The particular language on the page would have come from me.

Q. As you drafted, or, you know, put this document into paper, do you recall what the state of Warren's health was at this point in time?

A. Again, I just have the general recollection of being told that his -- that he was not in good

Page 27

physical health.

Q. Okay.

A. I mean, specifically what it was, I may have been told. I don't recall that.

Q. Okay. I mean, was your -- do you have any recollection of his personal appearance at this time?

A. I mean, he was -- he was mobile. He seemed to be -- by his appearance, he did not look all that healthy to me, but he was certainly no invalid.

Q. Okay.

MR. HALVERSEN: Let me mark the next document as Exhibit 7.

(PETITIONER'S EXHIBIT NO. 7
WAS MARKED FOR IDENTIFICATION)

Q. These are three pages that were taken out of your subpoena response, Carter 1, 2, and 3. And it appears to be, kind of, a cover page. No. 1, it says, Warren P. Holliday, Estate Planning Documents, Updated March 2012, and then there's a -- on page 2, it looks like there's an inventory of the will, the estate -- I'm sorry, the will and the trust and Power of Attorney, Health Care Power of Attorney,

Page 28

and it says, photocopies of assignments, and then it does reference here that the -- where the originals were. And Original No. 1 and No. 2 retained in the bank's safety deposit of your firm. Is that still true today?

A. What, that those documents are in our firm's safety deposit box?

Q. Right.

A. No.

Q. The originals were taken out?

A. They were taken out and given at some point to Mr. Nettles.

Q. Okay. So when I look at this and see that the -- it says, updated March 2012, is it a fair characterization that the updating was -- or you tell me, what was updated in March 2012?

A. Other than this may have been the first time that all these documents -- I don't see any documents listed on here that were signed in 2012, and other than this may have been the first time when copies of all of these documents were put together was in 2012, but I don't -- I don't recall any other kind of updating.

Q. Okay.

A. This would have been the cover of first pages

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 29

to a three-ring binder booklet that had copies of all these documents. It was given to the client, what I normally do.

Q. Okay. At this point in time, did the late Mr. Holliday express any intension to alter his previous estate plan, which you had drafted in the will and trust that you created in 2008?

A. No.

Q. If Mr. Holliday had wanted to have altered his estate plan at this point in time, would he have had the opportunity to do that in your meetings with him in 2012?

MS. WALL: Object to the form.

BY THE WITNESS: I mean, if he had something he wanted to change, he certainly could have told me about it.

BY MR. HALVERSEN:

Q. And the only reason I'm asking is because when I saw "updated March 2012," I didn't know if you had, had -- specifically had some kind of holistic conversation with Mr. Holliday about what his estate plan was, or if you, in your office as a practicing estate plan lawyer, have some system of reaching out to your clients to ask them if everything is good or nothing's changed or the law's

Page 30

changed or anything of that nature.

A. To the best of my recollection, this didn't involve any of that. I think that this was probably just a compellation of these documents in 2012 that were executed previously.

Q. Okay. Would that have been for your client's benefit?

A. Yes.

Q. So this would -- might have been something that might have been sent to Mr. Holliday?

A. It would have been given to Mr. Holliday.

Q. Okay.

MR. HALVERSEN: Next set of documents we'll mark as Exhibit 8.

(PETITIONER'S EXHIBIT NO. 8
WAS MARKED FOR IDENTIFICATION)

A. Okay.

Q. Before I ask you about Exhibit 8, I apologize, I just thought of another question I meant to ask you about a previous exhibit.

Go back to the Financial Arrangements Agreement in 2012 that we marked as Exhibit 6.

A. All right.

Page 31

Q. This document did make a substantive change to part of the estate plan, did it not, in that it named Mr. Ross Holliday as a successor trustee of the 2008 revocable trust?

A. I think that's right. Let me find that.

Q. And I believe it's on page 2.

A. Yeah, 1(a).

Q. 1(a). So, in fact, there was --

A. Yeah. Mr. and Ms. Holliday each agreed to resign -- they were the initial trustees of their own separate revocable trust. In this document they agreed to resign as trustee and appoint Ross, keeping the power to remove and replace trustees.

Q. Okay. So there was one change to the trust made in --

A. Change not to the dispositive terms of the trust, but as to who the trustee at that time was, correct.

Q. Correct, but there were no other changes made in 2012?

A. None that I'm aware of.

Q. Right. Everything else was kept in place?

A. As far as I know, yes.

Q. Sorry. Going back to Exhibit 8, what I did was, I attached to the first page of Exhibit 8 an

Page 32

e-mail where Mr. Toporek, looks like, reached out to you, says: Heyward, I hope all is well. This is Alan Toporek. I represent Patricia Holliday in a divorce case. She advised me you have been counsel in the past. Truett Nettles represents Warren. Attached is a proposed trust agreement that I would like you to review and give me your thoughts, da, da, da, da, da, and then that e-mail is dated April 29th.

And then the second and third page of Exhibit 8 appears to be a letter that you drafted to Mr. Toporek with your comments about the marital trust, which -- and that document appears to have been CC'ed to Mr. Nettles.

A. Uh-huh.

Q. Is that a yes?

A. Correct.

Q. Okay. Do you recall what the circumstances were about them tapping you for your help in 2013 about this marital trust?

MS. WALL: Let me think about this for a minute before you answer.

MR. HALVERSEN: Do you want to take some time to confer with your client?

MS. WALL: This specifically references

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 33

the Patricia Anne Holliday Trust.
MS. PAYLOR: That's a marital trust that they did. Not Warren -- I mean, Heyward did.
MS. WALL: I understand that. This is a completely different document that's being referenced here, apparently a document prepared by Alan Toporek. In my conversations with Patricia Holliday's current attorney, Ms. Blair, this issue about Patricia Holliday's Trust didn't come up. I wasn't aware that anybody was going to be talking about the Patricia Holliday Trust.
MR. HALVERSEN: I think I can save you --
MS. WALL: If there's been no waiver, I'm not going to allow him to respond.
MR. HALVERSEN: I think I can save you any issues just by telling you what my question is going to be, because it really doesn't even implicate the marital trust at all.
MS. WALL: All right.
MR. HALVERSEN: So my question is going to be, on the last page of the letter, in the third to the last paragraph, which starts, I also note -- I also note that when the parties have signed the settlement agreement and the trust, and the party's

Page 34

divorce is final, the Financial Arrangements Agreement, effective January 1, 2012, will need to be terminated, as the settlement agreement does not appear to contemplate the incorporating or continuing his provisions.
MS. WALL: Okay.
MR. HALVERSEN: All I want to ask him is, if at this point in time, if Mr. Carter had any discussions with Mr. Nettles about that document, the 2012 financial arrangements.
MS. WALL: So let me see if understand. Your question is, in 2013, on or around April or May, did Mr. Carter have any discussions with Mr. Nettles with regard to the effect of the January 1, 2012 Financial Arrangements Agreement?
MR. HALVERSEN: Or anything about it.
MS. WALL: Or anything about the Financial Arrangements Agreement?
MR. HALVERSEN: Right.
MS. WALL: You can answer that question.
BY THE WITNESS: I don't recall having any such discussions.
BY MR. HALVERSEN:
Q. With Mr. Nettles about that document?
A. No. Other than the fact that he got a copy

Page 35

of this letter --
Q. Right.
A. -- from me to Mr. Toporek discussing the document.
Q. Okay. That's all the questions I wanted to ask you about that. So moving forward in time, after -- well, before I ask you that. At this point in time, did you have any communications with Mr. Nettles regarding Mr. Holliday -- the late Mr. Holliday?
A. "At this point in time" being?
Q. Being 2013, when they asked you for your input on reviewing this marital trust agreement, and more specifically --
A. You mean this revocable trust? Ms. Holliday's revocable trust, is that what you're referring to?
Q. Well, yes, if that is something that came up, but --
A. This letter is about a revocable trust that apparently Mr. Toporek was drafting for Ms. Holliday.
MS. WALL: Right.
BY THE WITNESS: "Marital trust," I'm not sure what you're referring to.

Page 36

BY MR. HALVERSEN:
Q. I understand that, but what I'm trying to find out, as part and parcel of any conversation you may have had at the time back then, did you have any communications with Mr. Nettles, separate and apart from what these marital issues and the marital trust were about, did you have any other conversations with them -- with Mr. Nettles about his estate plan or the trust, or was it -- was your focus completely --
A. What marital trust?
MS. WALL: This isn't a marital trust.
BY MR. HALVERSEN:
Q. I'm sorry, the trust that's referenced in your letter, the Patricia Anne Holliday Trust.
MS. WALL: So is your question, did he have conversations with Mr. Nettles about the Patricia Holliday Trust?
MR. HALVERSEN: No, and I'm sorry if I'm not being clear.
Q. I just wanted to know if at this point in time -- you had some communications with Mr. Nettles and Mr. Toporek at this point in time, correct?
A. Yeah. Yeah. I know, other than this copy of this letter going to Mr. Nettles, communication was

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 37

apparently with Mr. Toporek.
Q. Okay. So would that have been who your primary person you were talking to -- would you have had any conversations with Mr. Nettles at this point in time?
A. At some point, and I don't recall whether it was at this particular point in time in 2013, but at some point Mr. Nettles contacted me and said that he had done a will for Mr. Holliday.
Q. Okay. And do you remember when that was?
A. I believe it was in 2013. I'm not positive about that.
Q. Do you know why he was contacting you to tell you that he had -- I don't want to misstate what you told me. He told you he had done a will for him?
A. Mr. Nettles told me that he had done a will for Mr. Holliday subsequent -- subsequently to the will that I had done in 2008 for Mr. Holliday.
Q. Okay. Did he tell you why he had done that will?
A. No. I don't recall him telling me why he had done that will.
Q. Or what was the purpose of him calling to tell you about that?
A. As I recall, he asked me about the will and

Page 38

the revocable trust that I had previously done in 2008 for Mr. Holliday.
Q. Okay. Let me see if we can just make sure we're all on the same page as to the timeline.
MR. HALVERSEN: We'll mark this as Exhibit 9.

(PETITIONER'S EXHIBIT NO. 9
WAS MARKED FOR IDENTIFICATION)

Q. And I'll represent to you that these are two pages from Mr. Nettles' billing records, that we sent a subpoena to him, and we received these two pages in response, among others, but -- and on the first ledger entry it says, August 23rd, 2016, teleconference with Heyward, it looks like -- is that your name misspelled? Heyward Carter re: WH Trust .3 hours. So this is in 2016 that Mr. Nettles lodged a billing entry reflecting a telephone conference with you.
So I want to clarify, when you were just telling me moments ago about a conversation you had with Mr. Nettles about him making you aware that he had done a will, was that a conversation that was maybe in 2016, or do you believe that was actually

Page 39

in 2013 that you had that conversation with him?
A. I think there was a previous conversation to this --
Q. Okay.
A. -- in 2016, which I think -- I may be confusing some dates, which I think was around 2013.
Q. Okay. Would it be fair to say then that conversation may have been contemporaneous with at the time when Mr. Toporek had asked you to review the Patricia Holliday Trust?
A. It may have been, but I can't say whether it was or not. I just don't recall.
Q. And, again, I'm -- you told me the date 2013, and I'm just trying to figure out a little better idea of the time frame, and my question is, would it have been contemporaneous with that time frame as to -- or about the same time? I'm not holding you to a specific date.
A. I don't recall.
Q. Okay. All right. But per your testimony before, you feel that it was in 2013 you had some conversation with Mr. Nettles about the fact that he had done a subsequent will, correct?
A. Correct.
Q. Okay. Do you remember what the context of

Page 40

that conversation was?
A. Well, again, let me say that I'm not sure it was in 2013, but whenever the conversation -- that conversation took place, because I think I've said Mr. Nettles told me that he had done a will subsequent -- for Mr. Holliday subsequent to the will I did in 2008, and he -- I believe he said he would like to have a copy of the revocable trust -- of the will and revocable trust. I don't remember exactly what he said, but it was in relation to the will he had done for Mr. Holliday and the revocable trust that I previously had done for Mr. Holliday.
Q. Okay. And just to kind of button this up, and I showed you Mr. Nettles' billing entries, which logged a telephone conference with you at the summer of 2016, a month before the late Mr. Holliday died, what you're talking about right now would have preceded that, this conversation with Mr. Nettles?
A. Yeah, and, again, it may have been 2016. I just have 2013 fixed in my mind. I know there was a conversation in apparently 2016 where either in that conversation or subsequent conversation Mr. Nettles asked me to look at a revocation of trust of the 2008 trust that I had done for Mr. Holliday. I know that there was that conversation. I think that

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 41

there were two different conversations. I may be confusing them.

Q. Okay. And I know this -- this was 3 years ago, and I don't know what I had for dinner last night either. As you know, it's not a memory contest, but I'm trying to find out what you do know.

So let's just walk through some of this in a little more detail. So August 23rd, 2016, Mr. Nettles noted a telephone conference with you for .3 hours, which is lawyer speak for 18 minutes or less. And then, let's see, there's an e-mail on August 29th from you, and I believe we have that.

MR. HALVERSEN: And we'll mark that as Exhibit 10.

(PETITIONER'S EXHIBIT NO. 10
WAS MARKED FOR IDENTIFICATION)

Q. Okay. There's an e-mail, we're in Exhibit 10 where you said, "Truett, Warren has a Revocable Trust (unless it has been terminated) referred to in this agreement signed by Warren and Patricia. I will send you a copy of the Trust." Does that refresh your memory at all as to your sequence of

Page 42

events?

A. Yeah. This e-mail in August of 2016 makes me think that I'm probably wrong in remembering two separate phone conversations, one in 2013, one in 2016. It makes me think that instead of 2013, it was 2016 when Truett called me and said he had done the subsequent will and asked me for a copy of the trust.

Q. Okay.

A. So the 2013 date may be totally wrong.

Q. Okay. And that's why I wanted to make sure we were on the same page.

A. For some reason I just had 2013 fixed in my mind.

Q. Okay. So when he, Mr. Nettles, called you, told you he had -- did he -- was he aware at the time there was a trust in place when he talked to you about that, when he called you?

A. I believe he was, because, as I recall, he asked me for a copy of it.

Q. Okay. What else did he tell you in that phone conversation?

A. I mean, do you have any specifics? I don't recall, other than him saying that he had done a trust -- I mean, a will for Mr. Holliday and would

Page 43

like to see a copy of the trust that I had previously done for him.

Q. Did he tell you how he became aware that there was a trust in existence?

A. No. I don't think so.

Q. Did he tell you how he in any way found out about the trust?

A. I don't recall that he did.

Q. Did he say anything more than, hey, can I get a copy of the trust?

MS. PAYLOR: Object to the form.

BY MR. HALVERSEN:

Q. Was there anything more discussed in that -- this conversation that Mr. Nettles noted a telephone record of, other than Mr. Nettles requesting a copy of the trust?

A. Well, he would have told me he didn't have a copy of the trust, because he was asking me for a copy of it. How he learned of the trust or if he knew of the trust previously, I just don't know.

Q. Did he make any statements about Ms. -- the late Mr. Holliday changing his intentions to keep the trust in existence?

A. No, I don't recall that he did.

Q. Okay. So we'll move forward in time then to

Page 44

the exhibit --

MR. HALVERSEN: We'll mark this as Exhibit 11.

(PETITIONER'S EXHIBIT NO. 11
WAS MARKED FOR IDENTIFICATION)

A. Okay.

Q. And so Mr. Nettles on September 7th sends an e-mail to Ross Holliday, CC's you, and says, I discussed the trust revocation with Heyward Carter as you requested. Is it your testimony that when you spoke to Mr. Nettles that you had no communications concerning the revocation of the trust?

MS. WALL: Object to the form.

BY THE WITNESS: No. That's not my testimony.

BY MR. HALVERSEN:

Q. Okay. Well, I thought you just told me a few minutes ago that the only thing that was discussed was Mr. Nettles asked for a copy of the trust.

MS. WALL: Object to the form.

BY THE WITNESS: We're talking about that first telephone conversation, aren't we?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 45

BY MR. HALVERSEN:
Q. How many conversations did you have? I'm just supposing there was only --
A. Well, August 23rd it says, telephone conversations with me.
Q. Right.
A. And August the 26th, call H. Carter.
Q. Well, that says, August -- I'm sorry, I'm not trying to interrupt you, but it says, conference with Ross re: Trust v. Will, call H. Carter.
A. Semicolon call H. Carter. To me it looks like he gave me a call. I don't know.
Q. I mean, is it -- is it your testimony --
A. August 29th, telephone conversation with Heyward Carter, and then September the 8th, telephone conference with Heyward Carter. That looks like about it.
Q. Okay.
A. So at any rate, what we had been talking about, what my understanding was, his first telephone conversation with Heyward -- conference with Heyward Carter re: WH Trust on August 23rd.
Q. And that was --
A. And at that conversation, the only thing I recall was he told me he had done a will for Mr.

Page 46

Holliday subsequent to the will I did and asked for a copy of the revocable trust that I had done in 2008 --
Q. I understand.
A. -- in that conversation.
Q. And that was the it of that conversation?
A. Correct.
Q. Okay. I'm with you.
So going forward in time, whether or not that's an entry and a call to you, but -- on the 26th or not, or not withstanding that, it looks like there might have been an entry on the 29th: Telephone conference with Heyward regarding WH Trust, .3 hours, is that the conversation that there was some topic of conversation about revoking the trust?
A. Truett -- and I can't say for sure, but it was probably in that conversation -- told me that he was going to draw or maybe had drawn a revocation of the 2008 trust that I had prepared for Mr. Holliday.
Q. Okay. Did he tell you why he had was drafting that?
A. To revoke the trust.
Q. Did he tell you anything more than the fact that, I'm going to revoke the trust?

Page 47

A. I don't recall that.
Q. Did he tell you -- give you any kind of communication about the circumstances regarding why the trust was going to be revoked?
A. No. I mean, he did not -- when he told me that he had done a new will for Mr. Holliday, he did not tell me that he had done a revocable trust for him also. He may have, may have not have, but he didn't tell me anything about that, and he didn't -- didn't tell me why the revocable trust in his, or his and Mr. Holliday's opinion needed to be revoked.
Q. The only thing then that was discussed was, he said he needed to revoke it, and I'm paraphrasing, I'm not trying to represent exactly what Mr. Nettles said to you. I'm just trying to get an idea of what the substance of the communication was.
A. Yeah. I mean, he said that -- he said it needed to be revoked. He was drawing or had drawn a revocation, and he wanted -- he asked me to take a look at it.
Q. Did he tell you why he wanted you to look at it?
A. He asked me if I -- having drawn the trust itself, asked me if I would take a look at it and

Page 48

asked me if I had any comments about the revocation.
Q. Did he tell you in that conversation that he had, had any communications with the late Mr. Warren Holliday about -- about revoking the trust?
A. No. I don't recall that he went into his communications with his client.
Q. Okay. And it sounds like from what you're telling me, there was no level of detail beyond him just telling you that, I think what your words were, that the trust needed to be revoked?
A. Correct.
Q. And that he would -- I see that he sent the trust to you and --
A. He sent me a draft revocation of the trust.
Q. I misspoke. Yes. He sent you, and did you -- and your comment -- your statement was, I have read the draft and have no comments. Before when you spoke to Mr. Nettles on the phone, is that -- did he say, I want you to take a look at the draft revocation -- or the revocation I'm -- can I send you a copy to look at it or --
A. Yes.
Q. -- was this out of the blue when you got this?
A. No. He said that he wanted to send me a copy

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 49

to take a look at.
Q. Okay. And, I mean, at this point in time did you consider the late Mr. Holliday your client?
A. No.
Q. Okay. So when he sent the revocation to you, did you read it?
A. I did.
Q. And did you have -- I see you say, I have no -- you've read it. I have no comments. Is that you just weren't saying anything about it? Yeah, I read it. I don't have any comments, no more, no less?
A. You know, having represented by drawing wills and trusts for both Mr. and Ms. Holliday, I didn't feel it was appropriate for me to comment on what Mr. Holliday and his attorney were doing. So Truett said he wanted to send it to me, asked me to take a look at it, I did. Decided I couldn't help him with the drafting, if that's what he was looking for. So I said I had no comment.
Q. Was he looking to you for help with the drafting of it?
A. I don't know. I mean, if he was asking me for any comments I had about it, I guess he was looking for if I saw there could be any changes or improvements in the drafting.

Page 50

Q. Right.
A. But, again, I didn't feel it was appropriate, having represented both parties in the past, to make comments on something that was for Mr. Holliday alone.
Q. Okay. So just to sum it up then, you might have had a couple conversations with Mr. Nettles back at this time, what's referenced in the billing entry in August of 2016. The first conversation was basically to the effect of, there's -- you know, there's a trust, could I get a copy of it? And then a subsequent conversation was that the trust needed to be revoked, and that's it?
A. That's what I recall, yes.
Q. Did Mr. Nettles tell you that he had made -- I think you said he did tell you initially that he had made a change to the will, or did he tell you?
A. He said he made a new will.
Q. Made a new will. Did he reference that there was also a codicil to the will, or did he just say, I did a new will?
A. Codicil to which will?
Q. The 2014 will.
A. That was the will that was -- the subsequent will that Mr. Nettles -- I don't recall anything being said about a codicil.

Page 51

Q. Okay. Did he ever contact you before this point in time to tell you that he had made changes or was going to make changes to the estate plan that you had set up?
A. I don't believe so.
Q. Did he ever make any statements in these conversations that you had in August 2016 about the state of Mr. Holliday -- the late Mr. Holliday's health at the time?
A. If he did, I don't recall it.
Q. Is it possible he did?
A. Sure, it's possible.
Q. Did he express any urgency about getting the revocation drafted and signed by Mr. Holliday?
A. Not that I recall.
Q. Did he tell you that Mr. Holliday had been in the hospital at the time?
A. Not that I recall. Doesn't mean that he didn't. I just don't recall it if he did.
Q. Would it be fair to say that Mr. Nettles was calling you for advice?
A. No. I don't think so.
Q. Okay. I thought you told me he wanted you to look at the revocation. I'm not saying -- it sounds

Page 52

like from what your previous testimony in your e-mail was that you had no comment, because you didn't really feel it was appropriate for you to take any kind of interpretive position on the document. But what I'm asking you is, was Mr. Nettles soliciting you for your input on the revocation?
A. Well --
MS. WALL: Object to the form.
BY THE WITNESS: -- by asking for my comments, yeah, I guess you could say that he was asking for advice.
BY MR. HALVERSEN:
Q. Okay. But based on what you told me, your previous testimony, you didn't feel comfortable giving advice and did not give advice?
A. Correct.
Q. And I apologize if I asked you this, but when he initially contacted you about the existence of the trust, did you send him a copy of the trust, or did you say he already had a copy of the trust?
A. I think I sent him a copy.
Q. You think you sent him a copy?
A. I think so.
Q. Would that have been by e-mail, or would

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 53

there have been another method?
A. I think so. I mean, if I did send him a copy, it probably would have been by e-mail.
Q. Okay.
A. You know, it may be that he had a copy of the trust, I assume from his client, but I -- I can't recall with any certainty whether he already had one or I sent it to him. I just had the feeling I sent him one. I may not be correct.
Q. Do you recall when the last time you spoke to Ross Holliday was?
A. No.
Q. Do you know when the last time you spoke to Mr. Nettles was?
A. No. It may have been subsequent to these conversations in 2016. It seems to me there maybe was some conversation in 2018.
Q. When was -- was that in the fall?
A. I don't know. I don't know. I just have a feeling this was the -- not last time that I spoke to Mr. Nettles about the Holliday affair.
Q. Have you talked to him about any of the issues or substance of what we discussed this afternoon with Mr. Nettles?
A. I don't think so. As far as I can recall, I

Page 54

haven't discussed this case or these cases, whatever they are, with him.
MR. HALVERSEN: All right. We're going to take a quick little break, and I may have one or two more follow ups, but that's pretty much the questions I have for you. I appreciate your patience.

(OFF THE RECORD)

MR. HALVERSEN: Back on.
Q. Just a couple quick follow ups.
A. Sure.
Q. Other than your attorney, Ms. Wall, have you -- is there anybody else you've spoken to about this matter?
A. Whoever the agent for [indiscernible] insurance company CNA, which --
Q. I don't care about that.
MS. WALL: You don't want to get into that.
BY MR. HALVERSEN:
Q. Other than --
A. No. I mean, I told a couple people at my office I was being deposed this afternoon, but I

Page 55

hadn't talked to them about the matter.
Q. Okay. Did the late Mr. Holliday ever call you after you set up the original estate plan in 2008 and ask -- and ask you if you could do any change -- make any changes to his plan?
A. No. He did not.
Q. And I believe it was your testimony, but I may be incorrect, but I believe you indicated that the original 2008 will and trust that you had sent to Mr. Nettles, was that true? Is that accurate?
A. Yeah. I did, and I think this is what I was thinking about subsequent to the 2016 conversations. I think it was in 2018, we still had Mr. Holliday's 2008 original will and revocable trust in our bank safety deposit box, and at some point in 2018 I sent those to Mr. Nettles.
MR. HALVERSEN: All right. Thank you. They may have some questions.
E X A M I N A T I O N
BY MS. PAYLOR:
Q. I have a few questions.
Hey, Heyward. How are you doing?
A. Hi, Alice.
Q. I'm going to go backwards. So if you could have Exhibit 10 in front of you, and you couldn't

Page 56

specifically recall whether you had sent him a copy of the trust, but in this e-mail dated August 29, 2016 you tell him, "Warren has a Revocable Trust, (unless it has been terminated) referred to in this Agreement signed by Warren and Patricia. I will send you a copy of the Trust." And the agreement you're talking about is the Financial Arrangements Agreement.
A. Okay.
Q. Do you see where --
A. I'm still trying to find No. 10.
Q. Yeah. Let me start back over. This is an e-mail from you to Mr. Nettles dated August 29, 2016, and it says, e-mailing Holliday Financial Arrangements, and that's the agreement from 2012, correct?
A. Which one is this again? I'm looking at 10.
MS. WALL: She's referencing this.
BY THE WITNESS: Warren, has the Revocable Trust referred to -- okay. Yes.
BY MS. PAYLOR:
Q. I'm referring to the subject.
A. Yeah. I will send you a copy of the trust, so apparently I did send him a copy at that time.
Q. I just wanted to clarify that and --

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 57

A. My memory is vindicated, such as it is.
Q. Okay. And you testified that you didn't know why they were -- Mr. Holliday was revoking his trust, correct?
A. Right. I don't think that was discussed with Truett.
Q. Okay. And you did not talk to Mr. Holliday, correct?
A. No. I did not.
Q. Wouldn't a reason for revoking the revocable trust be if he had a new will that changed the distributions of assets and made it different from what it said in the revocable trust?
A. That could be a reason.
Q. Thank you. And isn't it also true that Mr. Holliday had gotten a divorce subsequent to the Revocable Trust Agreement and the will?
A. Yeah. I don't think I knew it at the time, but I was told by somebody later that he had gotten -- that they had gotten a divorce, and I think it was in 2013, 2014 time period.
Q. It was. Well, that was when Mr. Toporek was sending you that letter.
A. About Ms. Holliday's --
Q. About the marital trust.

Page 58

A. About her --
Q. Yeah.
A. -- irrevocable trust.
Q. If you look at Exhibit 8, which are those e-mails and then a letter.
A. Okay.
Q. It says in there, April 29, 2013, "Heyward, I hope all is well. This is Alan Toporek. I represent Patricia Holliday in a divorce case."
A. Okay.
Q. And did you understand that the agreement that he sent you to look at was basically the marital settlement agreement, and they were setting up this trust to pay her?
A. No.
Q. You did not?
A. No. Let's see. Excuse me. I'm confusing this with her revocable trust.
Q. Right.
A. What he was -- yeah, because my letter of May the 16th to him does -- excuse me, does talk about a Marital Settlement Agreement and the trust, which is, I think, the Patricia Anne Holliday Revocable Trust referenced in the first paragraph. Okay.
Q. Well, actually, the first paragraph it says,

Page 59

Dear Alan: You have asked me to comment on a draft of a proposed Patricia Anne Holliday Trust. So this isn't the revocable trust that you had done in --
A. No. No. This, I believe, was a subsequent revocable trust for her.
Q. You think it was a revocable trust, okay.
A. I think so. I'm taking it to mean that, but I don't have a copy of that trust in front of me.
Q. But you didn't draft that trust agreement?
A. No.
Q. It will speak for itself, correct?
A. Of a proposed Patricia Anne Holliday Trust, I understand a draft was prepared by Truett on behalf of his client. Well, maybe I'm wrong about that. Maybe it was not her revocable trust. It look like -- from that second sentence it looks like it must have been a trust that Mr. Holliday was going to set up for Ms. Holliday, in which case it would have been irrevocable I'm sure.
Q. But from your review back in 2013, you don't remember; is that correct?
A. That's right.
Q. Okay. Now, do you recall that there's a lot of talk about Zeezrom Properties, LLC in this letter?

Page 60

A. Right.
Q. Do you recall that Zeezrom Properties, LLC was assigned to the revocable trust?
A. To which revocable trust?
Q. The one -- Mr. Holliday's, I'm sorry.
A. Yes. Yes, I do.
Q. Okay. And you didn't mention in here that Mr. Holliday didn't actually own Zeezrom anymore and that it was owned by the revocable trust, correct?
A. In the letter?
Q. Yes, sir.
A. I'd have to read the letter again.
Alice, would you ask me your question again?
Q. When you're giving your comments to them on the agreement, you did not tell them that Zeezrom was owned by the Warren P. Holliday Revocable Trust, correct?
A. I don't see that I did. I did say that Zeezrom is not a signatory to the Settlement Agreement or the trust; therefore, it appears that Zeezrom as an entity has no obligation to make payments to Ms. Holliday. I don't see that I specifically said it had been assigned to the trust.
Q. If an entity like Zeezrom is in a trust, does it have to be assigned by the trust in order to

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 61

create an obligation?
A. Does it have to be --
Q. Does it have to be an assignment of an interest from the trust rather than from Mr. Holliday?
A. Well, let's see. Mr. Holliday -- it was Mr. Holliday's Revocable Trust to which Zeezrom had been assigned. Mr. Holliday, as the trustee of his revocable trust, therefore, controls Zeezrom. So I suppose there could be the -- what was stated, that Zeezrom's obligation could come back to the person who controls Zeezrom and owns the trust that owns Zeezrom to fulfill that obligation.
Q. Okay. So when he was alive, he could -- he could have actually signed it as himself and made the obligation be fulfilled. What about --
A. I said, I suppose. That's not a legal opinion.
Q. Oh, okay. I'm not asking for a legal opinion.
MR. HOLLIDAY: Sure were.
BY MS. PAYLOR:
Q. You have experience in this, and based on your experience and years of doing this, if there were -- upon Mr. Holliday's death and the revocable

Page 62

trust is still there, do all the assets go into the revocable trust and then are then distributed in accordance therewith?
MR. SLOTCHIVER: Is this a legal opinion question, or is it a fact question?
MS. PAYLOR: I'm asking his opinion based on all of his years in practice.
MR. SLOTCHIVER: So it's a legal opinion you're asking? I just want to be clear.
MS. WALL: Yeah. I'm going to object for the record in that this is -- as we understand, he's been subpoenaed as a fact witness and not as an expert witness in this matter, and the question also presupposes knowledge by Mr. Carter that he doesn't have. The factual record is clear that after 2008, with the exception of the financial agreement between husband and wife at the time, he was not -- there were other lawyers doing other work for one or both of the parties. So from that standpoint of it, also I would object in that he doesn't have all of the information.
If you'll repeat your question, and if you can answer it -- let's see what the question is.
MS. PAYLOR: I don't even remember what it was, to be honest with you. It was a roundabout

Page 63

question. There is --
MS. WALL: You're asking him a hypothetical?
MS. PAYLOR: It was a hypothetical, yeah.
MS. WALL: And the hypothetical was?
MS. PAYLOR: You have an entity assigned to a revocable trust, then the settlor trustee signs an agreement pledging asset -- an interest in that to another -- to his wife, then they get divorced, and I know upon divorce his irrevocable trust as it's written would not go to the wife upon his death because she would be considered to be dead, but on his -- on his -- under the trust, that's the way the state law reads. On his death, and if there is a revocable trust, would that still support the wife? That wasn't a great question.
MR. HALVERSEN: Object to the form.
MS. WALL: Yeah, I'll --
MS. PAYLOR: I'll withdraw it. I'll withdraw it. That's not something I intended to get into.
Q. I'm going to ask you about the Financial Arrangements Agreement, which is Exhibit 6. Prior to your drafting this agreement, did you meet with

Page 64

both Warren and Patricia?
A. Yes.
Q. And did they both tell you that they wanted Ross to assist them in the management of the family business?
A. Yes.
Q. And did they both tell you that they wanted Ross to be the trustee of each of their revocable trusts?
A. Yes.
Q. Do you recall if you drafted a Power of Attorney? And I think if we look at exhibit -- that index, the fourth item is photocopy of Will and Power of Attorney of Warren Holliday to Ross Holliday.
A. Yeah. I would have drafted that.
Q. Okay. And to your knowledge, was that ever changed or revoked?
A. Not to my knowledge.
Q. Is Ms. Holliday a current client of yours?
A. No, she's not.
Q. Can you tell me when the last time you did any work for her was?
A. I mean, is that something I'm supposed to get into?

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 65

MR. HOLLIDAY: No. And I hold my mother's Power of Attorney, and the answer is no.
MS. WALL: Do not answer that question?
MR. HOLLIDAY: I'm not answering a question.
MS. WALL: No. No. Is that what you're --
MR. HOLLIDAY: No. There's a privilege designation. She retained --
MR. SLOTCHIVER: She was asking.
MS. WALL: I was asking. I'm not attacking you. I'm the one here trying to protect her privilege as well, because we have a limited waiver, and so if you're asking for the last date of activity, I'm going to instruct him not to answer.
MS. PAYLOR: I'm not asking for any advice he gave or what he did --
MS. WALL: I understand.
MS. PAYLOR: -- just the last time he was her lawyer and did any legal work, and I do not think that's privileged.
MS. WALL: Let me think about it. Ask your question again.
BY MS. PAYLOR:
Q. When was the last time you did any legal work

Page 66

for Patricia Holliday?
MS. WALL: I think technically under the rules, the information on a client as to dates, first date of representation and end date of representation is not privileged. The privilege goes to any substantive communications, actions taken based on any communications with a client. So from that standpoint, the question asks for a date only, and I think he can answer.
Are you going to object?
MR. HOLLIDAY: Not to that, but the next question I am going to object.
MS. WALL: I don't know what the next question is, but Mr. Carter can answer the date question.
BY THE WITNESS: It would have been sometime in 2012.
BY MS. PAYLOR:
Q. Okay. Thank you.
And if you look -- I'm still on Exhibit 6, the Financial Arrangements Agreement exhibit. If you look at the second page, under 1(b) it says, all savings accounts, brokerage accounts, and other accounts now held jointly by Warren and Patricia will be transferred to Ross as trustee to be held as

Page 67

joint accounts by their revocable trust, and such accounts will be managed by Russ -- Ross as trustee for them and for their benefit. Did both Warren and Patricia agree to that?
A. Yes, they did.
Q. And if you look on the third page, you have No. 2, Business Affairs, "Warren and Patricia agree that Ross shall be in charge of family business affairs, to include the management of Holliday Amusement Company, Zeezrom Properties, LLC, and all other family owned entities, such as, for example, 2233 Highway 17 North, LLC, and the like. Ross shall also have authority to deal with Sawgrass Technologies, Inc. and its management and stockholders, on behalf of Warren as to Warren's stock ownership in Sawgrass Technologies, Inc., and to sign a revocable proxy giving Ross the authority to vote such stock on Warren's behalf," and the rest of the paragraph gives him other authority. Did Warren and Patricia agree to that?
A. Yes.
Q. And if you look at the signatory pages of the Financial Arrangements Agreement, it looks like Mr. and Ms. Holliday signed it, one on March 8th, 2012 and the other on March 7, 2012; do you see that?

Page 68

A. I do.
Q. And it's -- are those people that work in your office the witnesses?
A. Yes.
Q. Okay. So do you recall if they came down to the office and signed it?
A. I don't recall specifically, but I can say with pretty much certainty that they did.
Q. Okay. And then if you look at the next page, there's Ross Holliday's signature, and it's dated March 23rd, 2012, and it has different witnesses. Do you recognize those names?
A. No, I don't.
Q. So he was -- he was not in your office when he signed the agreement; is that correct?
A. Well, there's a Notary from Utah on the next page, so I assume he signed it in Utah.
Q. Okay. So he wasn't present when Mr. and Ms. Holliday signed, correct?
A. I don't know, but I don't think so.
Q. Okay. Do you recall ever talking to any of the other Holliday children besides Ross?
A. No. I may have talked to one of them or been introduced to one of them, or, I mean, there's a name of one that comes into my mind, whether I ever

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Page 69

met that other one -- I'll have to say, I don't think I ever talked to any of the others. It may be possible I had a brief conversation with one, but that probably is not the case.

Q. Okay. You stated a number of times that you were told that Mr. Holliday was in poor physical health, correct?

A. Correct.

Q. The times you met with him, did you have any reason to believe that he had any mental health issues?

A. No.

Q. Did anyone ever tell you that he was incapacitated mentally?

A. No.

Q. And you were not present when Mr. Holliday signed the revocation of the revocable trust, correct?

A. I was not.

Q. So you don't have any idea what his capacity was on that day?

A. I do not.

Q. You were asked about Mr. Ross Holliday being at a meeting and him slamming his fist on the table and him telling you he didn't agree with each of the

Page 70

children getting an equal part and even walked out of the room, and you said you didn't remember that. Isn't that something that you would recall if it had happened?

MR. HALVERSEN: Object to the form.

BY THE WITNESS: Not necessarily.

BY MS. PAYLOR:

Q. Do you recall having a meeting with Ross and his parents?

A. Yes.

Q. Do you remember when that was?

A. No. It would have been in that 2011 time frame when the Financial Arrangements Agreement was drawn.

Q. And if you look at that, I just remember reading this, you say in here that Carter has explained to Warren, Patricia, and Ross, and then you go on to say what you explained to them. So you had a conversation with Ross somewhere in connection with this agreement; is that correct?

A. With the three of them.

Q. Together?

A. Together.

Q. Do you recall Ross doing anything to try to influence his parents and what they were going to

Page 71

put into this Financial Arrangements Agreement?

MR. HALVERSEN: Object to the form.

BY THE WITNESS: No.

MS. PAYLOR: That's all I've got. Thank you, Mr. Carter.

MR. HALVERSEN: Thank you, Mr. Carter.

(The reading and signing of the deposition by the witness is waived)

Page 72

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Sarah Gacioch, Certified Shorthand Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

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 24th day of April, 2019, at Charleston, Charleston County, South Carolina.

_____
Sarah Gacioch
My Commission Expires:
October 15, 2025

EXHIBIT M

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO. 2017-CP-10-872 2018
Patricia B. Holliday,	
Plaintiff,	**ORDER**
vs.	
Ross S. Holliday,	
Defendant.	

FILED
2019 OCT 11 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Matthew Tillman, Esq.
Defendant's Attorney:	Alice Paylor, Esq.
Date of Hearing:	September 27, 2019
Court Reporter:	Elizabeth Harris

This matter came before the Court for a hearing on September 27, 2019, on Defendant's Motion for Summary Judgment, filed June 11, 2019. The Court finds that there is no genuine issue of material fact and that, as a matter of law, Defendant's Motion for Summary Judgment is Granted.

FINDINGS OF FACT

On June 18, 2004, the National Bank of South Carolina ("NBSC") loaned $2 million to Warren Holliday ("Warren"), the now deceased ex-husband of Plaintiff, Patricia Holliday ("Patricia"), and the father of Defendant, Ross Holliday ("Ross"). That loan was secured by a business asset owned by Warren. On that same day, Warren loaned the $2 million to Ross, who gave a Promissory Note payable to "Warren P. Holliday and Patricia B. Holliday, as joint tenants or the survivor of them, or order…" Patricia testified that she was included as an obligee on the

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ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

Promissory Note because she "was married to Warren. It was a joint asset." Deposition of Patricia Holliday at 39-40. At all times until the NBSC note was repaid in full, Warren had possession of the original Promissory Note. Patricia never had possession of the note. Patricia testified that Warren had demanded payment from Ross in the time period of 2005 to 2007. Id. at 32.

In 2013, Patricia filed for divorce from Warren. On December 9, 2013, Warren and Patricia were divorced by Order of the Family Court, which adopted the Marital Settlement Agreement that Warren and Patricia had executed prior to the entry of the divorce. The Family Court Order provided that "[t]he personal property acquired by and between the parties during the marriage has been equitably divided to their mutual satisfaction." The Marital Settlement Agreement provided that Warren, his successors, heirs and assigns would pay to Patricia $16,000 per month for her life, that Patricia would own the family home and most of the married couple's personal effects, and that she would have a life insurance policy on Warren's life in the amount of $645,000. In exchange, Patricia gave up all claims to any business property of Warren, as well as all personal property in Warren's possession and not specifically mentioned in the agreement. The agreement provides in pertinent part:

> "Whereas, the parties now consider it to be in their respective best interests to settle all issues between themselves and all matters heretofore arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement; … and they desire that [the agreement] shall constitute the total agreement between them, both now and following any divorce which either might obtain, with respect to all matters which were raised or could have been raised between the parties hereto, other than the issue of divorce itself."
>
> "The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits actions, causes of action, claims, demands, damages (known, unknown, foreseen and unforeseen), … including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement.

"The parties agree that Warren shall retain and continue full ownership and interest in any and all [of his] companies and other business assets which Warren holds at this time. Patricia hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust [which provided for the $16,000 monthly payments]. Warren shall retain sole authority to manage these business assets personally, or at his sole discretion, delegate or appoint management of these business assets to a person holding durable power of attorney."

"Except to the extent set forth in this Agreement, Warren and Patricia have made a physical division of all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment and all other personal property of value. The parties each release the other from all claims of interest to any monies or assets in the possession of the other… Each shall retain sole ownership of all such properties in his or her possession or titled in his or her name unless such property is made the property of the other pursuant to the terms of this Agreement."

"Warren and Patricia each waive any claim of inheritance or right that they may be entitled to by virtue of the SC Probate Code to share in the other's estate… Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement."

Ross made payments to Warren, but not to Patricia. In early 2016, prior to Warren's death, the loan from NBSC was paid off in full. In September of 2016, Warren died and, in his will, left all of his business properties and personal assets to his heirs, Ross and his brother, Lea Holliday. On July 12, 2017, Patricia's lawyer made a demand that Ross repay the $2 million note. On February 19, 2018, Patricia initiated this action to collect from Ross on the note.

CONCLUSIONS OF LAW

A. Summary Judgment Standard

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule

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56(c), SCRCP; Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Evidence, however, is not sufficient to overcome summary judgment if it is introduced "solely in a vain attempt to create an issue of fact that is not genuine." Main v. Corley, 316 S.E.2d 406, 407 (S.C. 1984). The Court finds that the material facts are not in dispute and that this matter is ripe for summary judgment.

B. Release

The Promissory Note at issue in this case is personal property of value and a "negotiable instrument" as defined by the Negotiable Instruments Section of the South Carolina Commercial Code. See S.C. Code Ann. § 36-3-104. As provided by § 36-3-604, a person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument in either of two ways: (1) an intentional voluntary act or (2) agreeing not to sue or otherwise renouncing rights against the party by a signed record. See S.C. Code Ann. § 36-3-604(a). In this case, as demonstrated in this section and the following, Plaintiff's interest in the Note was released in multiple ways.

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

First, the Marital Settlement Agreement, by its terms, resolved all issues of ownership of marital assets. As even Plaintiff recognized, the Promissory Note at issue herein was a marital asset. Marital property is defined as all real and personal property acquired by the parties during marriage and owned as of the date of filing or commencement of marital litigation regardless of how title is held. S.C. Code Ann. § 20–3–630(A). Equitable distribution of marital assets is based on a recognition that marriage is, among other things, an economic partnership. Johnson v. Johnson, 296 S.C. 289, 293, 372 S.E.2d 107, 109 (Ct. App. 1988). When a marriage ends, division of the property acquired is determined by the guiding equities set forth in Section 20–3–620 of the South Carolina Code. Id. Similarly, South Carolina law recognizes that a beneficiary may contract away her beneficiary interest through a separation or property settlement agreement, even if the beneficiary designation is not formally changed. Estate of Revis v. Revis, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997).

It is undisputed that the loan made to Ross was done during the marriage of Patricia and Warren. All debts and receivables arising during the marriage of the parties constitutes marital property. When Warren and Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia. Patricia expressly released Ross—who is an heir, personal representative, successor and assignee of Warren—from "all suits, actions, causes of action" that result from or arise out of the "marital relationship … from the beginning of the world to the date of this agreement." In addition, Patricia released any claims to the Note repeatedly throughout the document. The release specifically says that "Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred" and that "Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement."

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

The Family Court's act of entering the Agreement into the Final Divorce Decree estops Plaintiff from asserting a claim to this Note. See S.C. Code Ann. § 20–7–420(2) (Supp. 1998) (granting family court exclusive jurisdiction over all legal and equitable rights of parties in actions in and to the real and personal property of the marriage); see also S.C. Code Ann. § 20–3–130(G) (Supp.1998) ("The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve [an] agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements."); Moseley v. Mosier, 279 S.C. 348, 353, 306 S.E.2d 624, 627 (1983).

The Court finds that the language of the Marital Settlement Agreement provides that Patricia expressly released any and all claims she had to the marital assets, both business and personal of Patricia and Warren, except as provided in the Agreement. The Court concludes that Patricia has no claim to, or interest in, the Promissory Note at issue in this matter.

At the hearing before the Court, Patricia argued that S.C. Code § 62-2-507(c)(2) somehow preserved her interest in the Promissory Note despite the terms of the Marital Settlement Agreement. That Section states in pertinent part:

> (c) ***Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals*** before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:
>
> …
>
> (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and

ELECTRONICALLY FILED - 2020 Dec 10 4:14 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1002430

> loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents. [Emphasis added.]

Because there were express terms in a Court Order, the Court finds that Patricia released her interest in the Promissory Note under the terms of this statute.

C. Statute of Limitations

The Defendant contends Patricia's claim are also barred under the applicable Statute of Limitations. He contends that S.C. Code § 36-3-118 requires that a plaintiff bring an action within six years after a demand for payment has been made or within ten (10) years of the date of the note if no payments have been made. Patricia argued that no payments were made to her and that she had no knowledge that any payments had ever been made by Ross to Warren. Thus Defendant argues, Patricia went thirteen (13) years without requesting payments on the Note or even inquiring as to whether the Note had been, or was being, paid.

Patricia argued that Ross had testified that he had made payments in 2005 through 2007 and another payment in 2010 after Warren's demand for payment. Defendant argues that under the applicable statutes of limitations, even if these payments retriggered the start of the limitations period, Patricia's action in 2018 was well after six (6) years after Ross made his last payment to Warren.

The Court has concluded that Plaintiff is barred from suing for breach of contract in this case due to the Marital Settlement Agreement as explained above. Since this issue is dispositive the Court declines to address the merits of the Defendant's statute of limitations argument on summary judgment.

CONCLUSION

Based on the undisputed facts and conclusions of law, it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

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IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

October 10, 2019.

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