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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCullough, Probate Judge

Case No. 2020GC4000072
Appellate Case No. 2022-001328 and 2022-001226

Jane E. Baskin.....Respondent,

v.

William B. Walkup.....Appellant.

RECORD ON APPEAL – VOLUME III

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CROSS EXAMINATION

3 BY MR. SOWELL:

4 Q May it please the Court. Mr. Wingate, I reviewed
5 the video of your interview. One thing that you
6 said was that you had no opinion on the production
7 or the performance of this portfolio, that you
8 were not into the math. Is that correct or
9 incorrect?

10 A What I said to you in the interview was that I did
11 not put pencil to paper and do the math as to what
12 the return is on any sort of an annualized or
13 collective basis over the 30 years of this trust.

14 Q Understood. And you also said flat out that you
15 had no opinions with respect to the rate of return
16 for this trust.

17 A I didn't put it in those terms as I recall.

18 Q Well, I wrote it down from the transcript. It
19 says, "no opinions on the rate of return."

20 A And I haven't tried to say what the rate of return
21 is.

22 Q So am I correct that you have no opinions with
23 respect to the rate of return and the adequacy of
24 the rate of return on this trust?

25 A No, you are not being correct because to --

1 Q Well, then why did you tell me that?

2 MR. DETWILER: Your Honor, the witness may
3 answer.

4 THE COURT: Sustained.

5 BY MR. SOWELL:

6 Q Yes, thank you.

7 A I'm sorry. If you would ask me the question
8 again.

9 Q Well, like I say, I have high regard for your
10 facility to be truthful. I hope you have a high
11 regard for my facility to be truthful as well.

12 A Absolutely.

13 Q And I don't say that I'm perfect, but I took notes
14 when we were interviewing you and I went back on,
15 I think it was Thursday or Friday, I'm not sure,
16 and I reviewed the recording. And what I wrote
17 down was that you have no opinions on the rate of
18 return. Now, is that -- I'm not gonna cut you
19 off, but I'm going to ask you this question first.
20 Is that correct or not correct?

21 A Not correct. If you want a yes or a no. Not
22 correct.

23 Q You know, I go back to why did you tell me that?

24 A As I recall, you were asking about the specifics
25 of computations. And I have made no effort to try

1 to take the tax returns or to take the bank
2 statements, and certainly not to try to get net
3 any sorts of fees and come to a rate of return.

4 You may remember also that we talked about
5 the fact that although I am assuming numbers based
6 on Mr. Walkup's testimony about what the beginning
7 value of this trust was, about 175,000, and what
8 it is today, as I'm assuming from his testimony
9 about 575,000, that I've not made a specific
10 effort to compute any sort of annualized rate of
11 return. I don't have a specific number,
12 Mr. Sowell, other than what I've already said
13 today. Which is looking at those profit and loss
14 statements that you provided, that Mr. Detwiler
15 provided, and that you asked me about that show
16 from 2010 until 2020 the annual breakdown of net
17 income which is running, as I said today, between
18 14 and \$15,000 per year for most of those years
19 and which included that annuity, you and I talked
20 about that. Those are the levels of return that
21 I'm referring to in my testimony today. I don't
22 know what the percentages are.

23 Q So am I correct that you are not giving any
24 opinions today regarding the adequacy of the rate
25 of return?

1 A There's a distinction between saying do you have
2 an opinion about what the rate of return is and do
3 have an opinion about whether or not the
4 investment strategy is appropriate? And it's
5 beyond rate of return. There's also, as the Trust
6 Code and the prudent investor rule articulate, a
7 combination of factors: What are the taxes, what
8 is the economy like, what is the risk level, what
9 are the needs of the beneficiary, what would a
10 prudent investor do? All of those come into the
11 standard of what's an appropriate investment
12 strategy under the prudent investor rule.

13 Q I understand. And you made it plain in the
14 interview and you've made it plain today, and I
15 don't dispute that, that you think that, possibly,
16 I don't know you might even say probably, that too
17 much of this trust at this time is invested in
18 growth, correct?

19 A Correct.

20 Q But you have not given any opinions, you know,
21 taking that into account, that say, I mean if
22 Equity 95 is 60 percent of the trust, and if the
23 stated goal of Equity 95 is growth, you have not
24 given any opinions regarding the adequacy of the
25 rate of return on this trust over the 30 years

1 that Mr. Walkup has administered it.

2 A As an aggregate, that is correct.

3 Q So you may believe, for instance, the day that we
4 had the interview and today, because you gave the
5 testimony you did when we talked, I don't dispute
6 that. Even if you are correct that there is more
7 assets in growth than should be in growth, the
8 rate of return to date for the 30 years could be
9 quite good.

10 A If a person ran the numbers and it came to a
11 higher number than I believe it is, sure.

12 Q Let's look at, if you would, please, go with me to
13 Exhibit No. 1 in your notebook, which is the Last
14 Will and Testament of Eldridge Baskin.

15 A I've got it.

16 Q I'm going to take you through some of the
17 provisions, and I am assuming because I think you
18 told me you have reviewed the Last Will and
19 Testament which includes the testamentary trust of
20 Eldridge Baskin for the benefit of his daughter
21 Jane. Some of this I know is kinda rote, but I
22 want to go through it because it may prompt some
23 questions.

24 Under Roman numeral III, it says, "All the
25 rest residue . . . of which I may die seized and

1 possessed, I give, devise and bequeath unto my
2 trustee hereinafter named in trust to be held,
3 administered and distributed as hereinafter
4 provided for the sole benefit of my daughter Jane
5 E. Baskin. The sole purpose of the trust created
6 hereunder being to provide for the well-being of
7 Jane E. Baskin so long as she shall live."

8 Now, there is no dispute about that as an
9 intention of Eldridge Baskin when he created this
10 document between me and you, is there?

11 A There is not.

12 Q Now, do you know -- I know you said that you
13 reviewed several depositions. I think you said
14 you reviewed Baskin -- Jane E. Baskin?

15 A Yes, sir.

16 Q William Baskin Walkup?

17 A Yes.

18 Q Alex Weatherly?

19 A Yes..

20 Q Michele Moseley?

21 A Yes.

22 Q You looked at those depositions. Did you see in
23 Michele Moseley's deposition where she forecasted,
24 she believes that Jane Baskin will live to age 94?

25 A I did see that.

1 Q Would that cause you some concern about the
2 ability to make this, I'll call it \$500,000 plus
3 or minus, would that cause you some concern about
4 the ability of anybody who's not robbing banks to
5 make that money work for another 20 years?

6 MR. DETWILER: Your Honor, I object to the
7 relevance and the foundation. Ms. Moseley's
8 opinion of how long Jane Baskin is going to live
9 is not relevant or even competent.

10 THE COURT: It's not helpful. I don't know
11 why you're stuck on that. What Ms. Moseley
12 predicts her lifespan to be is based on hope,
13 wish, maybe the tables of a very healthy,
14 nondisabled individual. I can't even imagine.
15 But her opinion on that is irrelevant. What we're
16 looking at money and need and the evaluation of
17 that, not what Ms. Moseley projects her life to
18 be. Please. If you have a true opinion from
19 something based on study and science about the
20 longevity that she's predicted to have based on
21 how old she is now and what condition she has,
22 let's put that into evidence and present that as a
23 factual basis for the question. Otherwise, we're
24 all -- everybody in this room has no idea how long
25 she's gonna live and it's a specific sum of money

1 that should be provided for her care and invested
2 as wisely and provided as wisely as we can. So
3 ask him a question that's relevant based on his
4 expertise and the facts we know them to be. It's
5 not what Ms. Moseley projects her life to be.

6 MR. SOWELL: Thank you.

7 THE COURT: You're welcome.

8 BY MR. SOWELL:

9 Q You know what the so-called mortality tables are?

10 A I do know what they are.

11 Q Some lawyers, some wreck-case lawyers used to call
12 them mortuary tables, but you know what I'm
13 alluding to. That would probably be the most
14 definitive reference with respect to Jane Baskin's
15 expected life. That's the best reference we have
16 not knowing any more than we do as the Judge said.
17 We don't really know how long she will live.

18 THE COURT: Do you have that table?

19 MR. SOWELL: It's in the Code.

20 THE COURT: Do you have an age based on that
21 table that you want to question him about?

22 MR. SOWELL: I think so. I think it's 11 or
23 12 years. I haven't looked it up lately. I think
24 it's 11 or 12 years for Jane currently.

25

1 BY MR. SOWELL:

2 Q So the question, let's forget about the age 94 in
3 another 20 years. First of all, we don't how long
4 she will live for sure.

5 A I do not.

6 Q And neither do I. She might live 94 years; she
7 might live four.

8 THE COURT: Ask him a question.

9 MR. SOWELL: I'm leading up to it, Your
10 Honor, I'm getting there.

11 BY MR. SOWELL:

12 Q So, we don't know, but we have the so-called
13 mortality tables. And I think they say 11 or 12
14 more years. Now, would you have a concern if you
15 had that kind of money in the corpus of this
16 trust, that it will not last, particularly if she
17 needs assisted-living care?

18 A The duty of a fiduciary is to look at available
19 resources, and per this instruction intended by
20 the testator, to solely take care of his daughter,
21 to use these assets for her benefit. So the
22 standard of what a fiduciary does is project out
23 what available cash is going to remain on hand,
24 what income can be generated on those trust
25 assets, and what other assets outside of the trust

1 a beneficiary may have. And germane to this is
2 the fact that Jane Baskin owns, according to the
3 testimony of several of those witnesses, a home
4 outside of the trust, has an annuity outside of
5 the trust, and is therefore, at age 74, in a
6 situation where based upon current and projected
7 needs based on her condition as Mr. Walkup
8 testified to, in a position to use sitters or
9 caregivers in a less than skilled-care facility.
10 Could she need it one day? Absolutely. But can
11 this trust generate more income? Yes, it can.
12 Can it be invested in safer assets? Yes, it can.
13 Can it be invested in assets that are objective
14 and calculable rather than family company assets?
15 Yes, they can.

16 This is not a situation, in my opinion, where
17 that cash flow that can be generated is being done
18 in a manner appropriate for this circumstances for
19 the sole benefit of my daughter Jane E. Baskin.
20 The sole purpose of the trust being to provide for
21 her.

22 Q Do you own mutual funds?

23 A Do I own mutual funds? Yes, I do.

24 Q You've owned some in the past?

25 A Yes, I have.

1 Q And generally, when you look at a family of mutual
2 funds, some of them, you know, have 3,000
3 different funds, but some of them have generally
4 three funds. They have a growth fund, a balance
5 fund, and income fund. Do you understand that?

6 A I'm familiar with those concepts very much.

7 Q When you look at prospectuses for each one of
8 these funds, you see that the growth fund always
9 spits off more income. I say always, that's a
10 little extreme. It generally spits off a better
11 rate of return is what I should've said, growth
12 fund.

13 A Okay.

14 Q That is correct, is it not?

15 A In some cases. It depends on the object of the
16 funds and what they report. I think that's one of
17 the issues here, is that there is not clarity and
18 transparency as to what these assets are they are
19 being invested in and what the income is that is
20 being generated and what the expenses are that are
21 being taken out. That's the very point.

22 Q I'm going get to the part about the expenses. But
23 generally, the balance fund is somewhere between
24 the growth and the income fund, is it not? It's
25 got a mix of the two. It's got some growth and

1 it's got some income, so it's balanced?

2 A Typically, yes.

3 Q And typically, the rate of return is less than the
4 growth fund, but more than the income fund?

5 A If you're talking about a cash return, I would not
6 agree with your statement. If you're talking
7 about a total return concept --

8 Q I am.

9 A -- then that would be a probably true statement.
10 But again, I'm assuming, and Mr. Walkup testified
11 that he was not familiar with a total return trust
12 and had not made an effort to analyze it from that
13 perspective. The standard of a fiduciary is to
14 give thought to a conscientious and transparent
15 investment strategy aimed at meeting the needs of
16 the beneficiary. That's what I'm opining has not
17 been done in this instance.

18 Q Let me ask you this. How do you meet the needs of
19 a beneficiary by putting all of the money in
20 income, let's say in this case Columbia Cash
21 Reserves, at an average of about 5.2 percent per
22 annum over the last few years. How do you meet
23 her needs when she might live to 94, she might
24 live another 11 or 12 years, if you don't put some
25 money somewhere other than in income bearing fund?

1 A I'm not suggesting it should be entirely in
2 income. What I am suggesting is that it is almost
3 entirely, according to his testimony, in growth
4 and therefore is skewed. But more importantly,
5 whether he's done it right or wrong, it's not been
6 with a conscientious purpose and with a
7 transparent disclosure. That's my point.

8 Q Okay. I want to have a little argument with you
9 about that.

10 MR. DETWILER: Your Honor, I object.

11 THE COURT: Let's don't have an argument.
12 Ask him a question and make your argument later.
13 You can challenge him with questions, but there's
14 no point in going toe-to-toe on theory and
15 thoughts. Let's ask about the specific
16 accounting; let's ask about the specific
17 investments.

18 MR. SOWELL: I'm going to. I am going to do
19 that if I can find the right notes.

20 BY MR. SOWELL:

21 Q I was at Mr. Walkup's deposition and I took notes,
22 as I did from your video. And when the discussion
23 came up about Equity 95, he testified that it was
24 stock and real estate partnerships, that
25 60 percent of this trust is invested in Equity 95.

1 It started out at -- I'm not sure about that, I
2 don't want to go there -- well, it started out at
3 33,000; it's grown to 310, and he testified that
4 the goals of Equity 95 are value and growth and
5 income. Did you see that?

6 A I saw his transcript, yes, I did.

7 Q Well, you said you primarily relied upon his
8 transcript.

9 A Yes, I did.

10 Q So I'm asking you how do you -- you know, I need
11 to phrase this question so I don't irritate
12 anybody, but how do you conclude that this is not
13 appropriate when Equity 95 has made that kind of
14 money, has invested in value, growth, and income,
15 which are also typical of mutual funds. I mean,
16 Dodge and Cox is known as a value fund family. It
17 has the three funds. It has the income, the
18 balance, and the growth. Others are known as
19 growth funds. He says value and growth and
20 income. I just don't understand where the
21 criticism is when he's making that kind of money,
22 and there's only \$500,000 in there, and he
23 testified flat out that the goals were value,
24 growth and income.

25 A The degree in which they are in fact invested in

1 that, I assume you can show from some sort of
2 documents from the company. My point is twofold,
3 Mr. Sowell.'

4 One is that he testified that more than
5 60 percent of this is in one asset, that Equity
6 95, and it's not adequately disclosed as to
7 exactly how that money is invested. And number
8 three, it's presumed under the fiduciary standards
9 that because he's an owner in it and a principal
10 owner in it, that without disclosure, he's got a
11 conflict of interest as to going there. So the
12 diversification and the liquidity and the
13 objectivity that would be the standard applicable
14 to a professional trustee are not present in the
15 scenario that you've just described.

16 Q That is in code -- in the Trust Code, that is a
17 rebuttable presumption, is it not?

18 A It is rebuttal, yes, it is.

19 Q It's rebuttable by, among other things, the
20 prudent investment rule. In other words, if you
21 can prove that you've abided by the prudent
22 investor rule, then you don't have a problem with
23 respect to that issue.

24 A The way to prove that is to show one's strategy
25 and conformity with careful written revealed and

1 adhered to objectives. And to the extent that the
2 Uniform Prudent Investor Act, 62-7-933(c), eight
3 or nine elements that are to be addressed in that
4 do not appear per the testimony that I've seen in
5 the transcript to have been met. Because he said
6 he was not familiar with it, then it's my opinion
7 he has not met something that he's not familiar
8 with.

9 Q Well, he could easily have met it whether he was
10 familiar with it or not. He can be clueless and
11 could have met the prudent investment rule.

12 MR. DETWILER: Objection, argumentative.
13 It's a not a question.

14 THE COURT: Sustained.

15 A I would respectfully submit that knowing it is his
16 job as a professional trustee, whether he hit it
17 or not is almost less important than knowing what
18 we're aiming for, having a written roadmap as to
19 how we're going to get there, and disclosing
20 openly and transparently what fees and expenses
21 have been incurred.

22 Q I take your point. And I will ask you this
23 question. You know that Mr. Walkup has been the
24 trustee of this trust for 30 years?

25 A Since 1990, yes.

1 Q And in anybody's life, that is a pretty long time,
2 is it not?

3 A I'll accept that as an assertion, sure.

4 Q Any he started out with, I think it was 175, I
5 think it was 130 in securities that he got from
6 Eldridge Baskin, and then there was the
7 Ashley Street house that, I don't know, had a
8 value of approximately \$40,000. And now it's, you
9 know, I don't know, 550, 575, 525, somewhere in
10 the 500,000-dollar range, and for 30 years he has
11 paid all of Ms. Baskin's expenses. You understand
12 that?

13 A I don't know that that comports with what his
14 testimony was about paying all of her expenses.

15 Q I think it does.

16 A If you want me to assume that, I'll assume that.

17 Q Okay. If you assume that, then what's the problem
18 here? If he's paying over a 30-year period --

19 THE COURT: Wait a minute. I'm going to have
20 to absolutely stop you. Ask a very fact-based
21 question. And that statement you just made is not
22 true, "he's paid all of her expenses." That is
23 not a true statement.

24 MR. SOWELL: I'm smiling.

25 THE COURT: Mr. Sowell, the very list of

1 things that we have gone over in just the few
2 weeks I have known this case, he's not paid all of
3 her expenses. That's a bold statement when she's
4 asking for money for clothing and food.

5 MR. SOWELL: Your Honor --

6 THE COURT: No, Mr. Sowell. You've asked
7 Mr. Wingate an open-ended 30-year question, and so
8 far I haven't seen on the accountings that I've
9 looked at, and the only one in the timeframe
10 before now is '08, that is the bare minimum.

11 MR. SOWELL: Haven't seen what, what have you
12 not seen?

13 THE COURT: Mr. Sowell, you just told
14 Mr. Wingate to assume as factual that the trustee
15 has paid all of Ms. Baskin's expenses for 30
16 years. Do you believe that to be true?

17 MR. SOWELL: I think that he's paid all that
18 he's been requested to pay. I understand what
19 you're saying, and that's a disputed question of
20 fact.

21 THE COURT: Please ask him a fact-based
22 question. Because I don't even know where you're
23 headed with that question.

24 MR. SOWELL: Okay, thank you.

25

1 BY MR. SOWELL:

2 Q Let's go back if you would. Mr. Wingate, let's go
3 back to the Last Will and Testament.

4 A Got it.

5 Q Again, we're still in Roman numeral III, but I'm
6 down in the second paragraph now. And doesn't it
7 say the trustee shall receive, take and hold the
8 properties and assets, shall invest and reinvest
9 the same, collect and receive the income, and
10 after payment of all proper costs, charges and
11 expenses, shall dispose of the net income and
12 principal for the benefit of Jane E. Baskin as
13 follows?

14 A So far that's accurate.

15 Q And you know from Mr. Walkup's testimony that he
16 has applied all of the income every year he's run
17 the trust, don't you?

18 A His testimony says that, yes.

19 Q I mean, do you claim that's not truthful?

20 A I haven't tried to go back because I wasn't given
21 all the information to do so to correlate did he,
22 in fact, pay all those expenses. I'm not
23 disagreeing with your assertion. So I'm willing
24 to take that as an assumption that he's paid out
25 at least all income. That's fine.

1 Q Thank you. One thing we discussed when we were
2 having the interview -- that was last Thursday, I
3 must have watched the video on Friday or Saturday.
4 But one thing we discussed during the interview is
5 that, in this case, and it helps form some of your
6 opinions, I believe, there is a lot of she said,
7 Jane Baskin, and he said, Bill Walkup. Is that
8 correct?

9 A I don't recall that that repartee of what he said
10 or she said is germane to the assumptions that I'm
11 referring to and the opinions that I've spoken
12 about.

13 Q Well, you've talked a lot about, for lack of a
14 better word I guess, how you believe Mr. Walkup
15 has forced Ms. Baskin to move or not move and has
16 manipulated her through his administration of the
17 trust. Is that not generally what you said?

18 A Yes, but there are actions beyond what he said or
19 what she said. It's more important what he did or
20 what he did not do that I'm referring to.

21 Q I understand. But are you assuming that what he
22 did or did not do is consistent with what Jane
23 Baskin says and not what Bill Walkup says?

24 A There were a lot of transcripts that I read as I
25 told you and as I told the Court today from

1 Ms. Baskin herself, Mr. Weatherly to Michele to
2 Mr. Walkup. So, again, the he said/she said, I
3 won't say it's irrelevant, but it's not the basis
4 on which I'm giving opinions today. It's the
5 actions or inactions of the trustee that I am
6 evaluating.

7 Q So you're not assuming for purposes of giving any
8 of your opinions at what Jane Baskin has said in
9 her deposition or what Alex Weatherly has said or
10 what Michele Moseley has said is true?

11 A Any one fact or statement, no. The aggregate of
12 those that reflect what appears to be consistently
13 and oppositional rather than supportive and a
14 noncommunicative rather than a transparent
15 relationship is short of a fiduciary standard.

16 Q Did you read in Mr. Walkup's deposition where he
17 testified that Eldridge Baskin, who was an
18 internal revenue lawyer, called him, told him he
19 had cancer --

20 MR. DETWILER: Objection, Your Honor, dead
21 man's statute.

22 MR. SOWELL: It doesn't apply, Your Honor, to
23 Mr. Walkup, but. I mean, it's already in the
24 record.

25 THE COURT: It does apply, and sustained.

1 MR. SOWELL: I don't agree, but I understand.

2 I'll accept your ruling.

3 BY MR. SOWELL:

4 Q Did you read in the depositions the emails that
5 were sent to Mr. Weatherly -- it was probably
6 Mr. Weatherly's deposition, if not somewhere
7 else -- by Jane Baskin's first cousin Anne Webster
8 and her former power of attorney Kathy Parr and
9 former next-door neighbor that Jane was not wise
10 with respect to the use or the spending of money?

11 A I have seen some of those emails. I have seen
12 some of those affidavits. I have seen some of the
13 testimony that at least one of them is a remainder
14 beneficiary of this trust.

15 Q Right. Anne Webster.

16 A Yes.

17 Q Right, she is a remainder beneficiary. Well,
18 which is it? I mean, do you think Bill Walkup is
19 spending too much so the remainder people won't
20 get anything, or you think he's spending too
21 little so they'll get it all? What do you think?

22 A As I've indicated, it appears that this trust is
23 not being administered for the sole benefit of and
24 well-being of Jane E. Baskin so long as she shall
25 live.

1 Q Let's look. We're looking at the will, Last Will
2 and Testament. Let's look on the second page,
3 it's denominated paragraph two. Does it say, "My
4 trustee may and shall be authorized and empowered
5 in its complete and absolute discretion to
6 encroach upon and make disbursements from
7 principal to or for the benefit of Jane E. Baskin
8 at anytime and from time to time in such amount as
9 my trustee may deem proper for the medical care,
10 comfortable maintenance and welfare of my said
11 daughter, taking into consideration to the extent
12 my trustee deems advisable, any other income or
13 resources of my said daughter known to my
14 trustee."

15 Now this is an allusion, is it not, to making
16 disbursements from principal?

17 A That's right. Paragraph two of item three of the
18 testamentary trust is the discretionary invasion
19 of principal according to the standard that you
20 just read.

21 Q And we know he's paid out all the income over the
22 last 30 years?

23 A I'll accept that as an assumption based on your
24 statement, sure.

25 Q So he's got complete and absolute discretion with

1 respect to what he does with the principal,
2 disbursements from the principal, according to
3 this trust document?

4 A That's the balancing act as you know between what
5 statements such as this says and what statements
6 such as this means. It doesn't mean unfettered
7 discretion. It means professional discretion of
8 what's in the sole best interest of the
9 beneficiary openly communicated, clearly and
10 transparently done and reported. And yes, he has
11 a broad standard of discretion to look into and
12 manage to as he thinks appropriate, do for her for
13 her medical care, comfortable maintenance and
14 welfare, taking into consideration trust assets
15 and assets outside of the trust.

16 Q If you would look at Roman numeral IV, moving into
17 some other --

18 A Powers of the trustee.

19 Q Right. So this trustee -- and first of all,
20 Eldridge Baskin, it's clear he chose Bill Walkup
21 for some reason to be the trustee?

22 A Yes, item six. "I hereby appoint William B.
23 Walkup PR and trustee."

24 Q And you know that Bill Walkup is a registered
25 investment advisor pursuant to whatever the rules

1 are of the Securities and Exchange Commission?

2 A Yes, I assume, because I saw in his testimony that
3 he is an RIA, as we would call it.

4 Q And are you also aware, generally, that he has an
5 excellent reputation as a manager of money in the
6 Columbia/Richland County area?

7 A No, I cannot --

8 MR. DETWILER: Objection, Your Honor.

9 Mr. Sowell is now testifying.

10 THE COURT: Sustained.

11 BY MR. SOWELL:

12 Q Let's look at that first paragraph under Roman
13 numeral IV. And it says, does it not, "My trustee
14 as hereinafter named" -- and we know that's Bill
15 Walkup -- "is authorized in his absolute
16 discretion in any property with respect to any
17 property, real or personal, at anytime held under
18 the provision or any provision of this Will and
19 without authorization by any court and in addition
20 to any other rights or powers, authority and
21 privilege granted by any other provision in this
22 Will or by statute or general rules of law."

23 Number one, "to retain in the form received
24 any property or undivided interest in property
25 owned by me at the time of my death." That would

1 include cash and securities, would it not?

2 A Sure.

3 Q "Including residential property regardless of any
4 lack of diversification, risk or non-productivity
5 as long as it deems advisable and to exchange any
6 such security or property for other securities or
7 properties and to retain such items received and
8 exchanged, although said property represents a
9 large percentage of the total property of my
10 estate or the trust estate or even the entirety
11 thereof."

12 And does that not allude to Equity 95, among
13 other things?

14 A It would be a permissible investment per that, but
15 you're balancing here permissible versus proper
16 and non-waivable under the South Carolina Trust
17 Code are the fiduciary standards to objectively,
18 in the sole interest of the beneficiary, do what
19 that power allows the trustee to do. And lacking
20 disclosure as to the self-interested investments,
21 the self-owned, the self-dealing investments that
22 I've already referred to, then this general power
23 so stated is, in fact, cut down or reduced by the
24 South Carolina Trust Code.

25 A professional trustee, in my opinion, must

1 invest with a professional eye toward balancing
2 the needs of the beneficiary, disclosing any such
3 self-dealing or conflicts, and doing so solely for
4 the benefit of the beneficiary. Does he have the
5 power? Yes. Was it wise to do? In my opinion,
6 no.

7 Q Speaking of that, let's look at the Trust Code for
8 a minute. Let's look at 62-7-103, which is the
9 definition section, paragraph seven.

10 A Okay.

11 Q Does it state, "Interests of the beneficiary"
12 means beneficial interest provided in the terms of
13 the trust?

14 A Yes.

15 Q And does the comment, if you were to flip over --
16 now, I've got a supplement here, you can look at,
17 the part I yellowed right there, why don't you
18 just read it so it won't take too long.

19 A The phrase "interests of the beneficiaries"
20 paragraph seven is used with some frequency in the
21 South Carolina Trust Code. The definition
22 clarifies that the interests are as provided in
23 the terms of the trust and not as determined by
24 the beneficiaries.

25 Q Right. And that's what it says, that's what it

1 currently says?

2 A That's the recorder's comment, yes.

3 Q What is one of the primary purposes of a trust
4 fundamentally? I mean, if -- that's kind of a
5 predicate to my question. If Eldridge Baskin had
6 wanted to give all of his money to Jane Baskin,
7 his daughter, certainly he could have done that,
8 correct?

9 A Yes.

10 Q And he did give her some things. He gave her the
11 Summerlea property, he gave her the Lee County
12 property. I believe he gave her an automobile.
13 Might have been two automobiles, I'm not sure.
14 And then the balance of it was put in trust for
15 her benefit. And so that trust, it is really the
16 interest of the beneficiaries in the context of a
17 trust means with a view toward what the settlor or
18 the trustor wanted, not what the beneficiaries
19 want?

20 A The settlor's intent is germane absolutely.

21 Q Because if it weren't, there'd be no purpose in
22 drafting the trust. You'd just draft up a trust
23 and say do this and the beneficiary would say I
24 don't like it, I want more money, why don't you
25 give it to me. And then the trust would be

1 exhausted. I mean, that's one possibility, is it
2 not?

3 A I'm not sure I follow.

4 Q If you do everything that the beneficiary wants.
5 In this case, I'll be very specific. We have a
6 controversy or debate, dispute about whether
7 Mr. Walkup is properly taking care of Jane Baskin
8 as the trustee. She wants more money. He's
9 concerned that if he gives her more money, she
10 won't have enough money to live off of, whatever
11 is her lifespan. And what I'm saying is, is that
12 when you look at the trust, you've got to
13 determine the best interest of the beneficiaries
14 from what the trustor or the settlor put in the
15 trust.

16 A It's -- is that the question?

17 Q Yes, it is a question. It's a leading question,
18 but you can back off of it if you want to?

19 A It's always important obviously what the trustor
20 wants, the settlor or the trustor, the testator,
21 all means the same thing as you know, it's in the
22 Will, it's for her benefit. But the issue as I
23 have seen in the testimony is not how much income
24 is being spent, but what is it being spent for and
25 is it being done in a manner that's in Jane's

1 interest or in the trustee's interest or in
2 somebody else's interest.

3 A trust is nothing, as you know, but a split
4 in title, one person is the legal owner, the other
5 is the beneficial owner. The beneficial owner of
6 the trust, the beneficiary, is the one whose needs
7 the trust is supposed to be invested and managed
8 for, any income and principal used for, and I
9 don't see that that's occurring to the standard of
10 a professional trustee.

11 Q I understand what you're saying. Let's look at
12 subparagraph two under Roman numeral IV. Does it
13 give the trustee the authority to invest and
14 reinvest all or any part of my estate or trust
15 estate in any property, an undivided interest in
16 property wherever located, including bonds,
17 debentures, notes, partnerships, real estate or
18 any interest in real estate whether or not
19 productive at the time of investments, interest in
20 trust, investment trust, whether of the open or
21 closed fund types, and participation in common
22 collective or pooled trust funds, which might very
23 well be Equity 95, without being limited by any
24 statute or rule of law concerning investments by
25 fiduciary. Do you see that?

1 A I do see that.

2 Q Does that not give Bill Walkup the absolute
3 discretion to invest 60 percent of this trust in
4 Equity 95 which he says has goals of both growth
5 and value and income?

6 A Per the South Carolina Trust Code, in my opinion,
7 no trustee has absolute discretion if that means
8 the power to do anything they want to do. It's
9 got to be with the -- solely in the best interest
10 of the beneficiary with disclosing conflicts of
11 interest with an intentionally thought out,
12 written out and followed and diversified
13 investment portfolio. And to have 60 percent of
14 any trust invested in anything, let alone
15 something that's a growth fund, that's not
16 adequately disclosed as to who the owners are or
17 what the expenses are, what the fees are, and in
18 which the trustee is one of the owners, and
19 therefore by statute, has a conflict of interest.
20 It is not a power that is blindly and absolutely
21 given.

22 Q I do not argue with you about that, and I don't
23 say that any trust document gives totally
24 unfettered discretion. What I do say, and I ask
25 you, and I don't think you agree with me, but I'll

1 ask you one more time. Does this paragraph two
2 under Roman numeral IV not give Mr. Walkup the
3 discretion to invest 60 percent of that trust in
4 Equity 95, which he has testified produces growth,
5 value and income?

6 A It gives him the power to do so.

7 Q Okay, thank you. Let's look over on the next
8 page, this will be subparagraph five of these
9 authorities. Does it say, "to keep at any time
10 and from time to time all or any portion of my
11 estate or the trust estate in cash and uninvested
12 for such period or periods of time as it may deem
13 advisable without liability for any loss in income
14 by reason thereof?"

15 A That's what it says.

16 Q And so does that say that the settlor gave
17 Mr. Walkup the authority to put all of this trust
18 in cash if he wanted to in a money market mutual
19 fund paying some sort of a rate like .8 tenths of
20 1 percent per annum?

21 A The same answer applies as to paragraph two. The
22 power to do it is there, the propriety of it, the
23 wisdom of it, the standard of whether or not a
24 professional trustee would or should do that,
25 however, is not met. Just saying that he has the

1 power of it.

2 Q Okay. Well, with respect to wisdom, most money
3 market mutual funds now at places like Merrill
4 Lynch, I don't know precisely what they're drawing
5 today, but it's very, very minuscule, it's
6 somewhere like .8 tenths of 1 percent per annum.
7 And you saw in Mr. Walkup's deposition since it's
8 something that you read, you saw where he
9 testified that the annual rate of return on
10 Columbia Cash Reserves, which is essentially a
11 money market fund, has been approximately
12 5.5 percent over the last few years.

13 A I saw that he had a statement. I don't remember
14 the 5.5, but we'll assume that as a fact.

15 Q It might be 5.2, it's five-point something. That
16 sounds like pretty good wisdom to me if you're
17 considering whether to put it into Merrill Lynch's
18 money market fund or to put it in Columbia Cash
19 Reserves.

20 A Just as subsection five doesn't hold a trustee
21 liable if they happen to make a bad thoughtful
22 judgment, neither does it give credit if they
23 happen to make a good unthoughtful judgment.

24 Q Well, I understand. Let's flip over to the next
25 page, this is four. This is paragraph 16 of the

1 authorities that are rendered to Mr. Walkup. Do
2 you see where it says, "in buying and selling
3 assets?"

4 A I'm sorry, you're at 15?

5 Q Sixteen. "In buying and selling assets, in
6 lending and borrowing money, and in all other
7 transactions irrespective of the occupancy by the
8 same person of dual positions to deal with itself
9 in its separate or any fiduciary capacity." You
10 see that?

11 A I do see that.

12 Q The way I read that, and don't know whether you do
13 or not, so I'm going to ask you. But how do you
14 read that?

15 A Fiduciary can do what he likes, is how I read it.
16 And how I read the South Carolina Trust Code is
17 trustee cannot do what trustee likes in an
18 unwaivable posture.

19 Q Listen, I understand that, and I don't disagree
20 with that premise. But what you are talking about
21 is not -- in fact, Mr. Detwiler has stipulated at
22 the beginning today, you were not here for this,
23 that Mr. Walkup's not improperly taken any money.
24 So I understand you can't go into the trust funds
25 and spend the money on your own yacht, and you

1 can't go to the Bahamas, and you can't buy a house
2 in Bimini or whatever. He's not doing any of
3 those things, by stipulation. All he's done is
4 put 60 percent in Equity 95, which he says has got
5 three goals: Value, growth, and income.

6 And it looks to me like the trust allows
7 that. And you think not?

8 A I didn't say that. I said power versus propriety.
9 Yes, paragraph 16 gives him very broad power.

10 Q I understand, but, you know, what you are
11 supporting today -- and this is what I take issue
12 with. You are supporting the plaintiff's case to
13 remove Bill Walkup as a trustee when he's been the
14 trustee for 30 years and done what some people
15 would say, maybe not Kenneth B. Wingate, maybe not
16 somebody else, but what some people would say and
17 have said is quite a grand job with the money he
18 had when he first got it. And yet, the
19 beneficiary wants him removed as trustee because
20 he won't give her everything she wants. And now,
21 is the trustee supposed to give a beneficiary
22 everything she wants?

23 A What you've just articulated is a very simplistic
24 view of fiduciary responsibilities and
25 performance. The reality of the standard for

1 professional trustees is much more sophisticated
2 and much more complicated than what you just
3 described.

4 Q So are you holding Mr. Walkup to the standard of a
5 corporate trustee?

6 A He's an individual who is a registered investment
7 analyst who has touted as an investment
8 professional credentials as reasons why he has
9 done a good job. His credentials absolutely would
10 raise him to the level of a professional trustee.

11 Q Let's look at paragraph 19 of these authorities.
12 Does that say, "to determine irrespective of
13 statute or rule of law what shall be fairly and
14 equitably charged or credited to income and what
15 to principal notwithstanding any determination by
16 the courts or by any custom or statute and whether
17 or not to establish depreciation reserves."

18 Does that not give him the power, since we've
19 talked about powers, it gives them the power, does
20 it not, to charge or credit whatever he wants to
21 income or principal?

22 A Power versus propriety. And in the testimony, and
23 therefore I'm assuming, he has made no effort in
24 these 30 years to allocate to income and
25 principal. And, in fact, he testified that he

1 didn't know he was supposed to make the
2 distinction between the two and that he's not
3 familiar with the Uniform Principal and Income
4 Act.

5 Q Listen, I understand that, and I agree with you.
6 That is what he said. But do you know that he
7 hasn't abided by the Uniform Principal and Income
8 Act? Have you studied these papers to reach the
9 conclusion that he has not abided by the Uniform
10 Principal and Income Act?

11 A To sufficiently see that this does not account for
12 what's happened with principal and what's happened
13 with income, yes, I do.

14 Q Okay. Ken, in your direct testimony, some of the
15 things I wrote down, that you were relying
16 principally on the Walkup deposition, that the
17 remainder beneficiaries are also cousins of Bill
18 Walkup and that creates a conflict of interest. I
19 frankly don't understand that. So explain that to
20 me because they are Jane's Baskin's first cousin
21 and heirs-at-law as so denominated by Eldridge
22 Baskin, not by Bill Walkup. So what's the problem
23 there?

24 A If, in fact, the Court determines that growth in
25 principal and retention of principal rather than

1 paying out of income for the benefit of Jane
2 Baskin has been done for the benefit of the
3 residual beneficiaries improperly, what I was
4 alluding to is the series of indicators that
5 conflicts of interest are influencing the
6 professional decisions that are being made.

7 Q I mean, do you actually believe that is the case
8 here? When these are her first cousins and not
9 his, they are more remote to him than they are to
10 Jane Baskin. And her father said we will give the
11 residual to my heirs-at-law, my heirs-at-law.
12 That's her first cousins, not Bill Walkup's first
13 cousins, not his wife.

14 THE COURT: Would you like to present him
15 with the family tree that we just got today so he
16 can understand your question? Because before this
17 moment, it's been quite cloudy as to who's who and
18 what relationships and who would benefit. The way
19 you have drawn it out, and I base Mr. Detwiler's
20 agreement, Mr. Walkup, nor his immediate family
21 will benefit from the payout of this trust. I
22 thought that was stipulated.

23 MR. SOWELL: It's the truth.

24 THE COURT: Mr. Sowell, I'm trying to get you
25 there. Because goodness, God knows, it's almost

1 6 o'clock and I'm about ready to come out of my
2 chair, and I can't but imagine Ms. Baskin is
3 feeling the same way. And we feel like we're
4 going in circles a little bit with these
5 questions.

6 (To Mr. Detwiler) Do you agree that he
7 doesn't benefit directly, nor does his immediate
8 family benefit from the remainder of this trust
9 should it have remainder?

10 MR. DETWILER: I agree.

11 THE COURT: Thank you. So Mr. Wingate, just
12 to be clear factually, Mr. Walkup will not
13 personally receive if he passes away after her,
14 from this trust. Move on.

15 MR. SOWELL: What'd you say, Your Honor?

16 THE COURT: Pardon?

17 MR. SOWELL: What did you just say?

18 THE COURT: You really didn't hear what I
19 said?

20 MR. SOWELL: I'm not blaming Ms. DuRant, but
21 she was talking to me. So, if you'll just tell me
22 one more time. I just want to make sure I have it
23 right, that we have a stipulation that these are
24 not Bill Walkup's friends and relatives?

25 MR. DETWILER: No.

1 THE COURT: I don't know about friends.

2 They're his relatives. That's not the point of
3 the question. And to remove all sarcasm, which
4 would be great, Mr. Walkup will not personally
5 benefit from this trust should he die after
6 Ms. Baskin.

7 MR. SOWELL: Right.

8 THE COURT: Would you like to ask Mr. Wingate
9 anymore questions?

10 MR. SOWELL: I'd like to ask him one more and
11 then I'll quit.

12 BY MR. SOWELL:

13 Q If you would -- well, I need to ask you two more.
14 Let's look at 62-7-813. We talked about this a
15 little bit during the interview. I don't claim to
16 know the answer, but I'm very curious about what
17 it is. The way I read 62-7-813 is that it was
18 first passed in 2005, it was amended in 2013, and
19 then it was amended. It says effective January 1,
20 2014, but you have alluded, Ken, to 62-7-813(c) a
21 couple times. And I just want to make sure that
22 we understand what we're talking about here.

23 In (c), does it say unless the terms of the
24 trust expressly provide otherwise, the trustee who
25 accepts the trusteeship or undertakes the

1 administration of an irrevocable trust created on
2 or after the effective date of this article, or of
3 a revocable trust which becomes irrevocable on or
4 after the effective date of this article shall,
5 and then it gives these things you need to do.
6 It's this continuing duty to send annually a
7 written report.

8 So my first proposition is you have talked
9 some, I don't know that it's mainly you or Rick
10 Detwiler, but somebody has talked about
11 accountings. Does it say anything here about an
12 accounting in the legal sense? Or does it say
13 send annually a written report of the trust
14 property?

15 A The wording in 813(c) refers to a written report
16 of the trust property, which then you look over at
17 other code sections and see what all that
18 includes. But the assumption that I based my
19 statement on that you're referring to is that
20 there's always been under South Carolina law
21 during the relevant years of this trust a duty to
22 report at least annually, and not the least of
23 which is the request that Ms. Cullum had made of
24 Mr. Walkup specifically for Jane Baskin to please
25 report every year. And I think that was in 2008.

1 Q It was in 2008. You told me the same thing during
2 the interview, and Her Honor, Judge McCulloch --

3 THE COURT: Has already ruled on this.

4 Q -- has ruled on it. But the reason I'm asking you
5 is I can't find it, and I'd like to know where it
6 is if somebody knows where it is.

7 THE COURT: We gave it to you in the order.

8 MR. SOWELL: So you cite a case?

9 THE COURT: Yes, sir. It's always been in
10 the Trust Code.

11 MR. SOWELL: Okay, I'll leave that alone.

12 BY MR. SOWELL:

13 Q Let me ask you one last thing. If you would, turn
14 to, this would be Exhibit No. 14. And this is the
15 letter of May 4, 2017, to Alex Weatherly from Ben
16 Bruner. I think you will recall that Alex
17 Weatherly asked Ben Bruner a couple times -- well,
18 first of all, Rita Cullum asked Bill Walkup back
19 in 2008, and he gave her a report. May 4, 2017,
20 Alex Weatherly gets another response from Ben
21 Bruner which provides some information. Then
22 again, October 6, 2018, Ben Bruner updates that
23 information in response to another request for I
24 think the last three years of the same information
25 you gave me before. And then on October the 12th

1 of 2020, that is when the alleged document dump
2 was made. You remember Bess Durant's letter to
3 Judge McCulloch?

4 A I do.

5 Q I want to ask you about primarily the May 4
6 letter. If you look at it, look at the appendages
7 to it and go to what is Bates labeled Walkup 142
8 and 143.

9 MR. DETWILER: What exhibit are we looking
10 at?

11 MR. SOWELL: It's Exhibit No. 14, Bates
12 labeled 142 and 143.

13 BY MR. SOWELL:

14 Q And I'll give you mine. What do the yellowed
15 disbursements evidence in that document that was
16 included in Ben Bruner's letter to Alex Weatherly
17 dated May 4, 2017?

18 A You've highlighted April 1, 2016, a trustee fee
19 for 2016 in the amount of \$4,600; on April 6,
20 2016, a distribution or payment to Nathaniel
21 Carroll for Brenda Williams regarding
22 Ashley Street for \$600.

23 THE COURT: What is going to be the question
24 about these highlighted issues? I don't need him
25 to read them to me. What is your question? He

1 doesn't need to read them aloud to me, I can see
2 them. What is your question?

3 MR. SOWELL: Well, I understood a minute ago,
4 and I'm not clairvoyant obviously, but I
5 understood that you wanted to know about, first of
6 all, the Rita Cullum report that went back to her.
7 And I thought you were interested in knowing
8 whether Mr. Walkup had disclosed any of these
9 other fees. Well, this is a document that was
10 transmitted --

11 THE COURT: I didn't ask that question. And
12 I can clearly see what's been typed. I think the
13 whole issue behind any of these writeups is the
14 supporting documentation behind it.

15 MR. SOWELL: Well, there it is. That's what
16 I'm saying.

17 THE COURT: That's a typed list.

18 MR. SOWELL: Well, I mean -- you mean you
19 would need the internal entry?

20 THE COURT: The individual breakdowns,
21 absolutely, and the supporting documentation. The
22 Rita Cullum '08 report is somebody typed that up.
23 It's a conglomeration of things, no individual
24 entry, and no supporting documentation. I don't
25 know why we're asking about the fees. But if you

1 want to ask him a question about fees, that's not
2 my question.

3 MR. SOWELL: I'm just asking him if they were
4 disclosed in this document.

5 THE COURT: They're on that written list.

6 MR. SOWELL: They're definitely on there.

7 THE COURT: The point of the question has
8 always been the breakout and the breakdown. He's
9 charged a group fee --

10 MR. SOWELL: Not this, not this. That's one
11 of my points. This does not have E95 on it.
12 Which you are absolutely correct, E95 is a group
13 fee, it's like a mutual fund. This doesn't have
14 E95 on it, and so I'll probably have to confess
15 that it's deficient in that respect. What it does
16 have on it is trustee fees and the E*TRADE fees.
17 And all I'm trying to prove is that if he didn't
18 disclose the E95 because it was all tied up in big
19 partnership, he has disclosed these others on this
20 document.

21 THE COURT: You start broad and then you
22 bring it all the way down, and that's where I feel
23 like I'm missing a lot of documents. The all the
24 way down. The full transparency. But I want to
25 know if you have anymore questions for Mr. Wingate

1 so we can finish today.

2 MR. SOWELL: I do, I have one more.

3 THE COURT: Then please turn to him and ask
4 the question.

5 BY MR. SOWELL:

6 Q You have alluded to, both in your interview and in
7 your testimony today, to the October 12 document
8 dump. I mean, would you still have that opinion
9 if you knew that on October 8 during a status
10 conference with the Court, we were directed --
11 that was on a Thursday -- we were directed to
12 provide all of this information by the close of
13 business on Monday, and we provided it. Now, does
14 that still allow you in your good faith and good
15 conscience to say this is a document dump when we
16 worked our heinies off over the weekend to get
17 this information and provide it to the Court at
18 its direction --

19 THE COURT: All right, hold up a minute. If
20 we're going to ask that question, let's make it
21 the whole picture. I told you in the status
22 conference that I believed fiduciaries, trustees
23 should be keeping an annual accounting, so it
24 should be easy to provide. You just print off or
25 attach each year's accounting.

1 MR. SOWELL: Well, we know we didn't do that.

2 THE COURT: The whole point of the quick
3 response required, because I assume as what I
4 believe is required, is that the trustees,
5 fiduciaries, people in charge of other people's
6 money, make an annual accounting. Whether you
7 send it by email, by written document, maybe don't
8 send it at all until it's asked for, but you have
9 it, you have it ready to go because that's what
10 you do as a fiduciary.

11 MR. SOWELL: I can't quarrel with you about
12 that.

13 THE COURT: I just want to make sure I'm
14 being quoted correctly in the status hearing.

15 MR. SOWELL: Well, I'm quoting the way I
16 remember it. I'm not arguing with you.

17 THE COURT: Mr. Sowell, now that the question
18 is clearly placed on the record, at least with the
19 facts as I believe they should be, Mr. Wingate can
20 have an opinion or not about whether it's a
21 document dump, if that's what you want him to
22 answer.

23 MR. SOWELL: I'm just asking him --

24 BY MR. SOWELL:

25 Q Under the circumstances, which -- well, whatever I

1 stated, do you still think it's a "document dump?"

2 A Yes, I do, and then some. It shouldn't have been
3 required to dump information in a disjointed, late
4 fashion. It should've been provided, should've
5 been maintained. It should've been documented and
6 presented to the beneficiary year by year by year
7 by year for 30 years. And the need for there to
8 be a transfer in any sort of a hurry, not only is
9 no excuse, it underscores the very problem.

10 MR. SOWELL: No further questions.

11 MR. DETWILER: No questions, Your Honor, I'm
12 done.

13 THE COURT: We'll start tomorrow at 9:30.
14 Y'all have a good evening.

15 MR. DETWILER: Your Honor, if I may report
16 for the Court, that's our case.

17 - - - - -

18 (Whereupon, the proceeding adjourned at
19 6:10 p.m.)

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1 Day 2 - January 5, 2021

2 - - - - -

3 [Begin: 9:39 a.m.]

4 THE COURT: Good morning, again. Back on the
5 record in the Jane E. Baskin Trust matter. This
6 is Tuesday, January 5th. And I believe we heard
7 at the end of the day yesterday, Mr. Detwiler,
8 plaintiff/petitioner has rested?

9 MR. DETWILER: That's right, Your Honor.

10 THE COURT: So we are now ready to
11 transition. Any motions before we begin with
12 respondent/defendant's first witness?

13 MR. SOWELL: No, Your Honor.

14 MR. DETWILER: No, Your Honor.

15 THE COURT: All right, Mr. Sowell.

16 MR. SOWELL: May it please the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 MR. SOWELL: The defendant Bill Walkup calls
20 the defendant Bill Walkup as its first witness.

21 Whereupon,

22 William Baskin Walkup,
23 being duly sworn and cautioned to speak the truth, the
24 whole truth, and nothing but the truth, testified as
25 follows:

1.

- - - - -

2

DIRECT EXAMINATION

3 BY MR. SOWELL:

4 Q Mr. Walkup, first state your full name.

5 A William Baskin Walkup.

6 Q What is your address?

7 A 305 Crown Point Road, Columbia.

8 Q How long have you lived on Crown Point Road?

9 A Fifty years.

10 Q And that's over behind, what, the VA hospital?

11 A VA Hospital.

12 Q Are you married?

13 A I am.

14 Q Who are you married to?

15 A Gwen Walkup.

16 Q Do you have any children?

17 A We have four.

18 Q What are their names, where do they live, and what

19 do they do?

20 A My oldest daughter Karen Newsom is a Presbyterian

21 minister and has been the director for the Family

22 Promise Organization for the Midlands.

23 Q Who is she married to?

24 A She married Richard Newsom, who's also a

25 Presbyterian minister originally for about 15

1 years and now works in my office as a financial
2 planner.

3 Q Dick, he goes by Dick Newsom? What is Dick's
4 education to work in your office?

5 A Well, he had, first of all, a degree in math at
6 Vanderbilt and then decided to go to seminary and
7 got a degree in divinity and then got a doctorate
8 in divinity. And after about 15 years of working
9 as a minister and trying to be 24/7 minister was
10 difficult to handle his young children, he decided
11 to make a change and came to work with me and got
12 a degree in financial planning from Florida State.

13 Q And he works for you now?

14 A Yes.

15 Q And that's William B. Walkup and Associates?

16 A That's correct.

17 Q Is William B. Walkup and Associates located out on
18 Atrium Way?

19 A Correct.

20 Q And that's an office you share with Bobby Davis
21 the CPA?

22 A That's correct. He shares a part of the building.

23 Q How far is that from 200 Atrium Way where Ms. Jane
24 Baskin currently lives?

25 A Maybe 50 or 60 yards.

1 Q And she's been there since when approximately?

2 A June of 2015.

3 Q Who is your second child?

4 A Second child is William B. Walkup, Jr. He's a
5 psychiatrist.

6 Q So he's a medical doctor and a psychiatrist?

7 A Right.

8 Q Is his office also out near your office at Atrium
9 Way?

10 A It is. It's directly behind my office.

11 Q Who is your third child?

12 A Third child is Laura Walkup.

13 Q And Laura, has she worked at William B. Walkup and
14 Associates?

15 A She has worked as a manager of the Atrium Place
16 Apartments until recently, for 20 years.

17 Q Do you own the Atrium Place Apartments or any part
18 of it now?

19 A I don't own any part of it now.

20 Q When did you sell your interest?

21 A In July, end of July this year.

22 Q Well, that would be 2020, we're now in 2021. So
23 end of July of 2020. What was the ownership of
24 that apartment complex?

25 A Well, a group of different investors. I was

1 majority owner with 51 percent.

2 Q And then other persons owned the 49 percent
3 balance?

4 A Yes.

5 Q Laura Walkup, has she had occasion, since she
6 worked in your office at William B. Walkup and
7 Associates, to have some interface with Jane
8 Baskin over the years, since 2015, I think June
9 when she was moved there?

10 A She had a great deal of interface with Jane. Jane
11 had difficulties from time to time and would call
12 Laura and she would go down and help her with
13 bathroom duties and things of that nature.

14 Q Is that one of the reasons that you asked Jane
15 Baskin to move to Atrium Way apartments?

16 A She had been falling at her home, I had been
17 getting reports of her falls continually. It was
18 difficult for me to get across town to her house
19 to check on her. So I had a number of different
20 handicap accessible apartments that we built, and
21 I put her in one of those to bring her close to
22 where we can take care of her better.

23 Q Now, that apartment, she continues to live there
24 today?

25 A That's correct.

1 Q And that apartment, when you moved her in, it was
2 certified by DHEC for a handicap person?

3 A It was. First of all, it had wide doors
4 throughout. It had lower kitchen cabinets. It
5 had a bathroom with a 5-foot turnaround radius to
6 get a wheelchair in. We put handrails down both
7 sides of the hallway so she could go from the
8 bedroom to the living room and kitchen. In the
9 bathroom, we have an elevated commode with
10 handrails on either side of it.

11 Q We've heard a lot of discussion about Jane's
12 parent's house on Summerlea that was left to her
13 by her father Eldridge Baskin. Would you describe
14 that property, and I'm talking about the geography
15 of it or the physical presence of that property
16 both inside and outside and how it affected Jane's
17 mobility.

18 A Well, the house is on a very steep lot. You stand
19 on the street and the top of the roof is below the
20 street level. And if you go in the backyard,
21 continues on a downslope, so maybe 30 or 40,
22 50 feet difference from the front of the lot to
23 the back in elevation. A number of the reports of
24 her falls were trying to walk up that driveway to
25 get to the mailbox or to pick up the paper.

1 Inside the house, it had two separate levels
2 going from her bedroom and hallway area into the
3 kitchen. It was a step-up, probably maybe
4 12 inches or so. And that was a place, I mean a
5 possible place for her to trip and fall.

6 Q Do you have a fourth child, Chris Walkup?

7 A Right.

8 Q Tell us about Chris, the fourth child.

9 A Chris has got a degree from Clemson and then got a
10 Masters in International Business from the
11 University. And he's gotten a chartered financial
12 analyst designation, which you get by taking five
13 annual exams while you're working in the industry.
14 And he's had that certification. He came to work
15 with me in 1996.

16 Q So both Dick Newsom, your son-in-law, Laura
17 Walkup, your daughter, and Chris Walkup, your son,
18 work at William B. Walkup and Associates?

19 A Right. Laura worked at Renaissance Management
20 Group, which is Atrium Place Apartments. She is
21 now working some for our company and our office.

22 Q How long have you known -- well, let me ask you
23 this. Your name is William Baskin Walkup?

24 A Right.

25 Q And the family name Baskin is an old name from Lee

1 County, South Carolina?

2 A Correct.

3 Q How long have you known Jane E. Baskin?

4 A I've known Jane probably a little more than 73
5 years. She was adopted by her parents, an only
6 child, at age 11 months. We had a lot of good
7 times at family reunions. I can remember riding
8 her piggyback and she was a very happy child. But
9 from the earliest days had great difficulty
10 walking and difficulty talking. But I'd see her
11 typically every year at a family reunion typically
12 around the Fourth of July and some in Columbia,
13 but not much.

14 Q Am I correct, to get to more the heart of this,
15 that Eldridge Baskin asked you to serve as the
16 trustee for -- under the trust for the benefit of
17 Jane Baskin that was created in 1990?

18 A That's correct.

19 Q Did you agree to assume that responsibility?

20 A I did. He came to my office, and --

21 MR. DETWILER: Objection, Your Honor. Dead
22 Man's Statute.

23 MR. SOWELL: I'm not going to ask him about
24 it. I've already talked about it with him this
25 morning. So, you know we talked, we don't want

1 you to talk about what Eldridge said to you.

2 MR. DETWILER: Thank you.

3 BY MR. SOWELL:

4 Q So he came, he asked you, just simply asked you to
5 be the trustee?

6 A Yes.

7 Q Did you agree to be the trustee?

8 A Yes. I'd never been a trustee before that time,
9 but I agreed to do it.

10 Q Why did you agree to do it?

11 A I knew that she had great needs and I felt that I
12 could help her.

13 Q And she was 44 years old at that time?

14 A That's correct.

15 Q So you had known her for a little under 44 years
16 when you agreed to be the trustee for the Jane
17 Baskin Trust?

18 A Yes.

19 Q Now, let's talk about the business of William B.
20 Walkup and Associates and also William B. Walkup.
21 Let me back up a little bit. I was talking to you
22 about your family, but where did you grow up?

23 A I grew up in Orangeburg until beginning of the
24 eighth grade and then moved to Columbia. Been
25 here ever since.

1 Q Did you finish high school in Columbia?

2 A Yes, Dreher High School.

3 Q What class, what year?

4 A 1958.

5 Q Was Ben Boyd the lawyer who drafted the Eldridge
6 Baskin Last Will and Testament, was he in your
7 class at Dreher High School?

8 A Yes.

9 Q So you had known him as well?

10 A I had.

11 Q Does he have any relationship to the Baskin
12 family?

13 A He married Jane's first cousin, R.E. Fletcher.

14 Q What is your relationship, your familial
15 relationship to Jane Baskin?

16 A My mother was first cousin to Eldridge Baskin, her
17 father.

18 Q And Jane's mother was Nell Baskin?

19 A Correct.

20 Q And Jane was an only child?

21 A Yes.

22 Q Tell the Court, what is your formal education
23 after finishing Dreher High School?

24 A I got a degree in mechanical engineering from
25 University of South Carolina and went to work in

1 the construction of the Allied chemical plant in
2 Irmo for four years. Then I was hired by Trane
3 Company, the national manufacturer of heating and
4 air-conditioning equipment, and I went to a
5 graduate training program in Wisconsin at the
6 headquarters for about five months where the
7 professors extended our education in engineering,
8 and particularly in all the details of heating and
9 air-conditioning equipment and systems.

10 Q So you became employed by Trane Corporation?

11 A That's correct.

12 Q How long were you employed by Trane Corporation?

13 A About 14 years.

14 Q After you got your BS in mechanical engineering at
15 the University, did you also achieve the
16 designation of registered professional engineer?

17 A Yes, I did. We had to work a certain amount of
18 time in the field and then take exams to get that
19 designation.

20 Q And when you were at Trane for about 15 years,
21 just generally, what did you do, what was your
22 job?

23 A I worked with, first of all, with consulting
24 engineers as they designed systems, heating and
25 air systems for, Richland Memorial hospital was

1 one of our jobs. Baptist Hospital, University's
2 central systems. I worked with those consulting
3 engineers in the design of the systems, and then
4 the contractor bid on the job and I had to work
5 with the contractors in securing the bid and
6 actually writing the orders and writing the
7 specifications for the equipment to be
8 manufactured.

9 Q Did you have any interface with the installation
10 of the equipment or the approval of it?

11 A I did.

12 Q Now, we know -- well, let me ask you this.
13 William B. Walkup and Associates, is that a money
14 management or an investment firm generally?

15 A It is.

16 Q How did you get started managing money and
17 supervising investments?

18 A Well, I began to invest with some money from my
19 paper route from high school, and I continued to
20 invest over the years. And after growing the
21 investments I had, I left my engineering job to
22 just invest full time. I had my boss and other
23 family members and clients that began to ask me to
24 help them with their finances, and so that's how
25 that developed.

1 Q Am I correct that when you were at Dreher, you
2 were president of the National Honor Society?

3 A That's correct.

4 Q Was that true for the state of South Carolina?

5 A That's correct.

6 Q So let's talk a little bit. Are you a registered
7 investment advisor?

8 A I am.

9 Q And that's a designation that's given to you by
10 the US Securities and Exchange Commission?

11 A Yes.

12 Q What does that allow you to do?

13 A It allows you to invest and make investment
14 decisions for your clients and follow all the
15 ethical rules required of an investment advisor.

16 Q So you are a registered investment advisor and am
17 I correct that Chris Walkup is a certified
18 financial analyst?

19 A Yes, and a registered investment advisor. And
20 Dick Newsom. There's three of us in the firm.

21 Q And Chris also has an MBA from the University from
22 the MIPS program?

23 A That's correct.

24 Q Give the Court some idea of what your, you know,
25 without alluding to specific names right now, give

1 the Court some idea of what kind of clients you
2 manage money and make investments for.

3 A Well, individual clients who have retirement
4 accounts and direct individual accounts. And we
5 have one corporation that has a particular
6 partnership that we manage for them. We manage
7 investments for individuals, but also for
8 partnerships. I happen to be a partner in every
9 one of those partnerships that we manage funds
10 for.

11 Q Are you a member of the Shandon United Methodist
12 Church?

13 A Yes.

14 Q How long have you been a member of that church?

15 A Since 1985.

16 Q What has been your active involvement at the
17 Shandon United Methodist Church?

18 A I've been Chairman of the Board of Trustees and
19 Chairman of the Finance Committee. And for the
20 last 26 years, I have been the investment advisor
21 for all the church trust funds.

22 Q In that capacity, do you report primarily to L.E.
23 Spradlin as Chairman of the committee that
24 oversees those funds?

25 A That's correct.

1 Q How much money total do you have, does William B.
2 Walkup and Associates have under advisement today?

3 A I would say somewhere in the vicinity of a hundred
4 million.

5 Q Do you invest money, for instance, for
6 Mr. Spradlin personally?

7 A Yes.

8 Q Do you invest money for the Reverend Sinclair
9 Lewis who was the former primary minister at
10 Shandon personally?

11 A Yes, his IRA account.

12 Q Let's talk about the nature of those investments.
13 Tell the Court, if you would, and of course this
14 would encompass the Jane E. Baskin Trust as well,
15 and you can delineate those investments when you
16 deem it appropriate, but what are the vehicles for
17 investment that are utilized on a regular basis
18 for this hundred million dollars at William B.
19 Walkup and Associates?

20 A We invest in stocks and real estate and any cash
21 management program. The stock investments are
22 individual stocks, New York Stock Exchange, large
23 quality companies.

24 Q Is there any specific weighting with respect to
25 those stocks or are they a composite of growth,

1 value and income stocks?

2 A They're a composite of growth and value and
3 income. All stock investments partnerships have
4 all of those three objectives.

5 Q Very briefly without belaboring this point because
6 I think we probably all understand it, but would
7 you just delineate for the Court the difference
8 between growth, value, and income investments
9 generally and briefly.

10 A Well, there are some stocks that are very heavily
11 income-oriented, like AT&T is paying a dividend of
12 about 7 percent. It's growth has not been that
13 substantial. There are other stocks on the other
14 end of the spectrum that pay no dividends, but
15 they've grown a great deal. One example of that
16 would be the AutoZone stock that we have owned for
17 some significant amount of time. We purchased
18 that stock at a value, something, 15 to \$17 a
19 share and it's now worth about 1200 a share.
20 That's over a long period of years. That had been
21 a growth stock with no income, but the company --
22 the company itself continues to buy its own stock
23 back. And every time it does that, it increases
24 the earnings-per-share for the shareholders and
25 the stock value goes up as a result of it.

1 Q And, you know, an example, for instance, of growth
2 stock, would that be something like Apple or
3 Google or Amazon?

4 A Well, it could be many different kind of stocks,
5 such as the drug stocks.

6 Q Pharmaceuticals?

7 A Pharmaceuticals. Pfizer and Everlabs and those
8 that are producing vaccines.

9 Q But with growth, you get your appreciation through
10 growth and the share price generally?

11 MR. DETWILER: Objection, Your Honor. I
12 appreciate the need to lead through a lot of these
13 background questions, but we're kinda getting into
14 the substance of the case now. I ask that we stop
15 the leading.

16 THE COURT: Sustained.

17 MR. SOWELL: Thank you.

18 BY MR. SOWELL:

19 Q Let's go -- let's get down to some more specific
20 issues.

21 THE COURT: Could you get him to finish that
22 definitional part. I think that is important.
23 Let him finish the definitional part where you
24 were getting him to explain, but without giving
25 him the prompting that maybe was in an effort to

1 speed this up. I'd rather Mr. Walkup feel like
2 he's educating me, educating the record, and truly
3 educating Ms. Baskin. So you're actually taking
4 this moment to tell us about the very things that
5 we're most interested in right now, which is how
6 you invest, what the investments mean and these
7 three words he's asked you to define. So go back
8 to that.

9 BY THE WITNESS:

10 A Well, I could at this point follow your lead and
11 talk about the investments that we have for the
12 Baskin Trust.

13 Equity 95 is an investment partnership that
14 invests in stocks. And unlike what Mr. Wingate
15 said yesterday, he was not fully informed about
16 the objectives that we have for the partnership.
17 That partnership has the objective of income and
18 growth. It buys value stocks. And as evidence
19 of -- and he made the statement that it was
20 illiquid, that it -- and that if we didn't follow
21 the rules of a prudent man, and I think the best
22 way I can address that would be to give you the
23 picture of the three different investments we
24 have.

25 Equity 95, I'm a relatively small investor in

1 that partnership, although he said I was a
2 majority investor, but maybe I'm a 5 percent
3 investor in it. But, you know, when the cook
4 tastes his own cooking first, that's something
5 significant. And I'm an investor in every one of
6 the partnerships that we manage, both the stock
7 partnerships and the real estate partnerships.
8 That particular partnership, the Baskin Trust
9 invested 33,000 in 1995, and that 33,000 is now
10 worth about 315 to 320,000. Now, that's a
11 compounded rate of return of about 9.5 percent.
12 Had I looked at the 130,000 of assets initially in
13 this trust, and taking the approach that I was
14 going to invest in 3 percent CDs for income, that
15 33,000 would be worth something like 69,000.
16 \$250,000 less than it is. So that's an example of
17 one of the vehicles that we have -- the 33 had
18 grown to the 320 with all of the difficult markets
19 we've been through, the 2003 downturn, the 2008
20 and '9 downturn, the COVID downturn this past
21 March, it has still grown to that level.

22 And to put it a different way, if you looked
23 at \$100,000 investment at that same rate, it's now
24 worth \$970,000 in the 25-year period of time. Had
25 you done at 3 percent rate, it would be worth

1 about 21 percent of that, much smaller.

2 The second vehicle --

3 Q Let me interrupt very briefly. I would like for
4 you to tell the Court again what kind of
5 securities: growth, value or income, are utilized
6 in Equity 95.

7 A Large companies of various types. For example,
8 Home Depot, Walmart, big companies that have done
9 well and continue to pay some dividends. Those
10 don't pay real high dividends, maybe
11 two-and-a-half percent, something in that range,
12 but they grow. We let those grow in that
13 particular investment, but over here, there are
14 two other investments. One is an E*TRADE account
15 that has some of the original stocks in it that
16 Eldridge Baskin owned at his death.

17 Q Let me back you up for a minute before we go to
18 E*TRADE. Now, Equity '95, does it have a, like a
19 mutual fund or somewhat like a mutual fund
20 generally? Does it have a composite of investors?

21 A What do you mean composite?

22 Q Well, a congregation. Not just one, but several?

23 A Right. There may be 15 or 20 investors in it.

24 Q Are they all charged a fee?

25 A They're all charged a fee.

1 Q What is that fee?

2 A .9 percent. And that number of growth to 320,000
3 is a net after all brokerage commissions, all
4 expenses, all of my management expenses. That's
5 the net number, the 9.5 percent net.

6 Q I want to make sure this is clear. That's
7 nine-tenths or 90 percent of 1 percent?

8 A That's correct.

9 Q And that's charged to every one of the investors
10 who makes up what I would call the congregation of
11 investors in the Equity 95 partnership?

12 A Correct.

13 Q Now -- and you have charged that fee to the Equity
14 95 partnership and all of the members from the
15 beginning, I assume?

16 A True.

17 Q In the case of the Jane Baskin Trust, am I correct
18 that generally you also charge a \$4600 a year
19 trust management fee?

20 A That's correct. Trustee fee.

21 Q Trustee fee, okay. And you have charged that from
22 the beginning?

23 A Correct. Or smaller numbers. As it has grown,
24 I've increased it, but I've left it the same now
25 for several years. In fact, I haven't collected

1 any trustee fees for over a year now.

2 Q What is the Dow Jones industrial average?

3 A That's an average of about 30 stocks.

4 Q And it changes from time to time, does it not?

5 A Yes.

6 Q How do the returns for Equity 95 over its history
7 compare to the history of the returns and the Dow
8 Jones industrial average?

9 A In that same 25-year period of time, the Dow Jones
10 adjusted commissions and expenses is about
11 six-and-a-quarter percent compared to the
12 nine-and-a-half percent. That is a huge
13 difference when you look at compounding.

14 Q So that creates, let's say, over three points
15 difference in the rate of return when you compare
16 Equity 95 to the Dow Jones industrial average. Is
17 that right?

18 A That's correct. In fact, I'll put it in my
19 calculator. If you started with 33,000 and you
20 had a 3 percent return, 25 years, without adding
21 any additional payments to it, you'd have 69,000.
22 But what we have is 315,000 compared to 69,000.
23 Excuse me -- I put the wrong interest rate in.
24 You'd have 150,000 instead of 320,000.

25 Q So you've chosen in your experience as an

1 investment manager, money manager, I believe it's
2 been testified that you've put approximately
3 60 percent of trust monies, the Jane Baskin Trust
4 monies, into Equity 95?

5 A That's the current percentage. It changes from
6 time to time. But keep in mind -- let me explain
7 the other two vehicles.

8 The E*TRADE account has some stocks that were
9 in Mr. Baskin's original fund at his death and
10 other stocks that we had bought in it, and it has
11 an approximate value of something like 200,000.
12 It has a particular feature that I negotiate for
13 all my clients and that is that we can borrow
14 against the stocks in that account at
15 one-and-a-half percent. That account is in the
16 name of the Eldridge Baskin Trust.

17 Over here in this third vehicle is a --

18 Q Let me ask you this --

19 MR. DETWILER: Excuse me, Your Honor, could
20 we -- I'd like to hear the rest of that answer.

21 THE COURT: I would to. I feel like you have
22 questions that you want to get to, and he is in
23 the middle of some really great explanations, and
24 I think bouncing around from subject to subject is
25 going to -- certainly I'm trying to make notes to

1 make sure we go back to this. And I appreciate
2 your questions and I don't mean to interrupt your
3 plan, but I'd like him to finish these statements
4 because I'm finding them very informative.

5 MR. SOWELL: Thank you. I concede.

6 BY THE WITNESS:

7 A The third vehicle is a cash management program
8 named Columbia Cash Reserves. I started this
9 partnership in 1982, February of '82, so it's
10 close to 39 years old. It started as a vehicle to
11 invest in those very high rate CDs. You may
12 remember there were rates up in the 15 percent
13 range. And I had clients that came to me and said
14 I've got \$50,000, how can I invest that in
15 something in a fixed income situation. I said,
16 well, you can go to Merrill Lynch and they'll give
17 you a money market account at 15 percent. But
18 then I -- after enough of those clients came to me
19 asking those questions, I said, you know what we
20 need to do is start a partnership and pool our
21 funds together, and then we can go -- we can go to
22 banks and negotiate jumbo CDs. And so I put my
23 money along with some family money and friends'
24 money into this partnership and we bought jumbo
25 CDs at high rates.

1 Those rates went away and then we eventually
2 bought some high rate tax-free bonds that had
3 maturities of six, eight, ten years down the road.
4 At the end of that time, the rates had gone down
5 and during that time, we began rates on loans to
6 the individual partners in the partnership for
7 home equity loans to add on to their homes or for
8 cars. And they would always have collateral, of
9 course, their ownership in the partnership.
10 Eventually that has transitioned into a loan
11 portfolio.

12 The loans are being made to single-family
13 builders in Richland and Lexington County area and
14 to developers in this area. That fund has an
15 average return of, it varies from 5.2 to
16 5.5 percent net after we have charged all of our
17 management fees to negotiate these loans and
18 mortgages and notes, to collect the payments on a
19 monthly basis, to do the accounting every two
20 months and send reports out to our people. But
21 it's a vehicle that has a lot of liquidity to it.
22 Someone can put funds in and they can give us a
23 schedule, here's a hundred thousand dollars, but I
24 want to get \$3,000 out every month. We have
25 retirees that are doing that. So it is a vehicle

1 of liquidity.

2 And the fact that Eldridge Baskin Trust can
3 borrow from E*TRADE at one-and-a-half percent
4 gives us an additional amount of liquidity. In
5 fact, we do, in fact, borrow at a
6 percent-and-a-half and put over here and make
7 five-and-a-half with it.

8 So unlike what Mr. Wingate said yesterday,
9 there's a great deal of liquidity and flexibility
10 to the investing that we do, which allows me to
11 take care of Jane's needs without sitting a bunch
12 of money in a checking account earning zero. We
13 will sell some stocks, maybe annually, put the
14 money in Columbia Cash Reserves earning
15 five-and-a-half percent, and then pay her bills as
16 necessary. When that money runs out, we sell some
17 more stock to replenish the liquidity in Columbia
18 Cash Reserve. But there's no pile money, it's
19 small amounts. Obviously, you've got some money
20 in a bank account at Wells Fargo that's not
21 earning anything in a checking account, but that's
22 a small amount of the total funds.

23 So that's some of the vehicles that we use to
24 manage the funds. You know, I can't help but stop
25 at this point and say there's a big neon sign up

1 here that says Jane's money is gonna run out.

2 The Guardian Ad Litem made the determination
3 of what I've been saying and others have been
4 saying for a long, long time, that she needs 24/7
5 care. And the Guardian Ad Litem determined that
6 in her examination. I've been saying it for
7 years, but I can't make Jane go to assisted
8 living.

9 I arranged -- you know, one of her objections
10 to going to assisted living is that she can't take
11 her dog with her. I was able to get an employee
12 of the vet to agree to take her dog and to bring
13 it to her three times a week or some amount of
14 time for her to visit with the dog. She couldn't
15 go to the nursing home with the dog unless you're
16 able to walk the dog, and she's just not able to
17 do that. So I arranged that with the knowledge
18 that she didn't want to go, but still I was trying
19 to get that done.

20 MR. DETWILER: Your Honor, excuse me. Is
21 this responsive to any question that's been asked?

22 THE COURT: Oh, my goodness. You just said,
23 please don't interrupt him, I'm listening to his
24 answer, let him fully answer. We can't have it
25 both ways, Mr. Detwiler. There's not one thing

1 that he has said that is not already been read by
2 me in the deposition.

3 MR. DETWILER: Right. Thank you.

4 THE COURT: Would you like to now ask him
5 your next question? I feel like we just had a
6 schizophrenic moment, I apologize. Mr. Walkup,
7 thank you, sir, for the information. I appreciate
8 your flow of information, nothing wrong with it,
9 but now Mr. Sowell's going to take you back to his
10 questions that he wants to make sure that we hear.

11 BY MR. SOWELL:

12 Q I want to talk to you for a minute about the
13 Columbia Cash Reserves and the rate of return 5.2
14 and 5.5 percent. You and I have talked about my
15 wife's got a little bit of money in a money market
16 mutual fund at Merrill Lynch. Would you tell the
17 Court -- well, let me ask you this first.

18 Have there ever been any substantial defaults
19 in Columbia Cash Reserves with respect to these
20 loans you've made?

21 A Never. We set aside the loan loss reserves every
22 accounting period. We've had a loan of two years
23 over the years that has been insufficient and paid
24 off, but we simply use some of the loan loss
25 reserves. Like a bank sets aside loan loss

1 reserves in their accounting. And I think we have
2 some \$2.4 million in loan loss reserve right now.
3 If we cut and shut it down, we distribute that
4 2.4 million out to the partners. So 39 years
5 worth of nobody ever losing a penny.

6 Q If you would, tell the Court or give the Court a
7 comparison of the return you've achieved on
8 Columbia Cash Reserves over this extended period
9 of time. Well, let's say what you're achieving
10 today versus what is being paid in a money market
11 mutual fund at a place like Merrill Lynch.

12 A I don't buy any mutual funds at Merrill Lynch, but
13 the rates are something like .1 percent or
14 something in that vicinity.

15 Q Compared to, obviously, the -- what?

16 A Compared to five-and-a-quarter to five-and-a-half
17 percent. Our rates over the years have varied
18 from low of 4.5 percent up to maybe nine or
19 nine-and-a-half percent.

20 Q And no defaults?

21 A No defaults. No one has ever gotten a report that
22 didn't show a return such as that.

23 Q So that is a four-and-a-half to five-and-a-half
24 percent return over the years in what has
25 historically been a no-risk investment. Is that

1 correct?

2 MR. DETWILER: Objection.

3 THE COURT: You're doing a little more of the
4 leading there, Mr. Sowell. Please help me out.

5 MR. SOWELL: Thank you.

6 BY MR. SOWELL:

7 Q So let me summarize -- why don't you summarize
8 where the Jane E. Baskin Trust money has been for
9 the last 30 years. And let me ask you this, you
10 have been the trustee of that trust for 30 years?

11 A That's correct.

12 Q Where has the Jane E. Baskin Trust money, and I
13 think it was about \$130,000 in securities or cash
14 and then another \$45,000 maybe in the
15 Ashley Street house that's owned by the trust.

16 A Yeah, as part of being the trustee, the trust
17 owned initially 130,000 worth of stocks and some
18 CDs and also owned a rental house worth maybe
19 45,000. That has also been my responsibility over
20 these years, to deal with the renters of that
21 house and the repair, the heating and air, the new
22 roofs, and the complaints about the furnace not
23 working. All of those things are part of my duty
24 as a trustee, and it's been -- and to pay the
25 taxes and insurance, repairs on that particular

1 house. It's been a substantial burden. In fact,
2 we finally sold the house in an installment sale
3 to a couple who have continued to get further and
4 further behind on their payments and we're right
5 at the point of starting foreclosure on it to take
6 it back and fix it up and sell it again. It's in
7 a difficult area and it's difficult to find
8 quality tenants in that area.

9 Q If you would, without my help, just go back and
10 tell the Court how you have invested the Jane E.
11 Baskin Trust money from inception to date.

12 A Well, it evolved over time, but initially some in
13 Columbia Cash Reserves and in the E*TRADE account,
14 the securities that were already in place, and
15 then the investment in the Equity 95, that 33,000.

16 And so the 130,000 has grown to approximately
17 500,000. We do have upcoming this year in April a
18 substantial tax bill to pay because we sold stocks
19 this year with gains of something like 45,000, and
20 that 45,000 is taxed. Long-term capital gains are
21 taxed to the trust, not to the individual. And
22 the trust gets in a high tax bracket than a very
23 low level compared to an individual's. So that
24 tax liability is coming down the road very soon.

25 Q Is the Jane E. Baskin Trust -- are the Jane E.

1 Baskin Trust investments tax managed?

2 A It is. Instead of selling a lot of stocks and
3 creating big capital gains, we're selling just a
4 measured amount to move over to cover her
5 expenses.

6 And in 2019, for example, I might add that we
7 spent about 53,000 of principal on Jane's care in
8 addition to -- and every year we've always paid
9 all the income and principal -- some principal off
10 every year throughout.

11 Q And how much principal was spent in 2019?

12 A About 53,000.

13 Q And that was in addition to all of the income?

14 A That's correct.

15 Q And all of the income has been spent every year
16 you've been the trustee of the Jane Baskin Trust?

17 A That's correct.

18 Q But the three investments, just to get this
19 straight, Equity 95 about 60 percent, E*TRADE,
20 Columbia Cash Investments at a very small amount
21 from time to time and a Wells Fargo checking
22 account?

23 A Right. Columbia Cash Reserves may not be that
24 large at this point because of the fact that we
25 spend it down and then when it runs out, we sell

1 some more stock to replenish that five-and-a-half
2 investment.

3 Q Is that a feature of the William B. Walkup company
4 management of these monies?

5 A Yes.

6 Q Now, over the 30 years you've been trustee, have
7 you attempted to meet Jane Baskin's day-to-day
8 needs?

9 A I've done my best. I've tried so hard to get her
10 to go to assisted living. She refuses and I have
11 no power to make her go. That leads me to our
12 current situation of, and I was not made aware --
13 her house has been sitting unsold, unused for
14 five-and-a-half years. As soon as -- you know,
15 when I couldn't get her to move to assisted
16 living, I moved her close to me so we could better
17 take care of her. But I immediately was making
18 application to assisted living facilities like
19 Presbyterian Home and Jenni Lynn.

20 When I applied to Presbyterian Home, they
21 asked for her financial statement and her physical
22 condition, and when I gave them the details, they
23 said, well, she doesn't have enough assets to come
24 here because we have a perpetual care provision
25 that if somebody's funds run out, we will continue

1 to care for them for the rest of their life. But
2 looking at her age and her physical condition and
3 a small amount of assets that you have, we can't
4 take her. And so -- I later found the Jenni Lynn
5 facility which didn't have that same kind of
6 facility, but still I knew she needed 24/7 care.
7 So I made application there, and I can go into
8 some detail about that later. Obviously, she
9 refused to go there as well.

10 To reflect upon Ms. Nunn's recommendation of
11 24/7, she agrees with what we've been saying about
12 the 24 care, 24/7 care, but on the other hand, she
13 just had one conversation with me to get my
14 perspective and I hoped that she would call me
15 back, but I didn't hear from her but just that one
16 time when she made a recommendation that she get
17 24/7 care. And she also recommended that she move
18 to her house on Summerlea. And when I did a
19 budget for her move to Summerlea, first of all, it
20 meant that that was an asset that could not be
21 sold and the funds reinvested for her care, but it
22 also meant that it was -- I was told \$32,000 worth
23 of renovations to be done to the home to make it
24 accessible for her which used up some of her
25 assets. But then to move her there and get 24/7

1 care, the caregivers plus all the home expenses,
2 medical expenses, et cetera, created a budget of
3 about \$14,400 a month.

4 With those numbers and the size of the trust
5 as it exists today, the funds will run out in
6 three years. I assumed a 3 percent interest rate
7 on that because I'm going to have to start
8 liquidating assets in order to be able to do that.
9 I can't leave -- you know, a much faster process
10 will have to liquidate assets. And Mr. Wingate,
11 of course, alluded that I should be much more
12 income-oriented and concerned about security. But
13 had I taken that approach in 1990 with the
14 130,000, we wouldn't be sitting here. There
15 wouldn't be any money left. If I'd invested in
16 3 percent, the money would be gone.

17 I am confident that I was very prudent with
18 the experience I had, not knowing for sure that I
19 could predict any great return, but having the
20 experience of having made very substantial returns
21 over the years, I made the judgment, decision that
22 I had to take care of Jane for the rest of her
23 life if I possibly could. That was my promise,
24 that's what the Will required me to do with the
25 trust funds. And I have made an extremely gallant

1 effort to do that.

2 I have spent hundreds of hours dealing with
3 these attorneys, false information that they've
4 provided about me over these years, particularly
5 over these last four years. It's just an awful
6 strain, but I'm trying to do the best I can. I
7 will quote some information that's been given
8 about me. But let me go back to the beginning.

9 THE COURT: Well, no. We're going to now let
10 Mr. Sowell ask you a question. I feel like you've
11 almost got some things written down that you're
12 trying to tell me, and I really want them to be
13 more Mr. Sowell's questions and your answers than
14 just letting you continue to flow with the
15 information you want to state. I'm sure he's
16 gonna get to it.

17 THE WITNESS: Okay.

18 THE COURT: Mr. Sowell.

19 BY MR. SOWELL:

20 Q Thank you, Your Honor. To allude back to the
21 Presbyterian Home, have you recently made
22 inquiry -- I don't know if it's a formal
23 application, but have you recently made inquiry to
24 the same Presbyterian Home about whether Jane
25 Baskin would qualify to live there?

1 A I have. And in the last several months, I
2 contacted Presbyterian Home. Her assets have
3 grown enough now to where they, without actually
4 doing a physical exam of her, they've said that
5 yes, I believe we can take her and we can put her
6 in assisted living level three for about \$6600 a
7 month as opposed to the \$14,300 a month it would
8 cost her to live at the Summerlea house with 24/7
9 care. They might examine her and determine that
10 she needs skilled care, which would be a higher
11 level. They haven't actually done the exam. I've
12 just had the conversation with them and telling
13 them about her current condition, the falls that
14 she has, the fact that she's unable to walk by
15 herself and described that to them, and they said,
16 well, you know, her situation has changed because
17 the assets have grown from when you called before.

18 MR. DETWILER: Your Honor, again, I object.
19 I appreciate the leeway that this witness is being
20 given, but the fact of the matter is this is not a
21 conservatorship proceeding, and we're not here to
22 talk about Ms. Jane's condition -- Ms. Baskin's
23 condition. We're here to talk about his
24 investments and his handling of this trust.

25 THE COURT: I don't disagree with your

1 objection, sir, but I think it matters in terms of
2 how, why he has evaluated what he's done, and it
3 matters in terms of budget. It's not lost on any
4 of us that if we're trying to provide her, and I
5 think it is everyone's goal, the safest, happiest
6 environment of her best choosing that her money
7 will allow her to have, all of this needs to be
8 heard by everyone. So, even in the smallest
9 concept, that she has the information.

10 MR. DETWILER: Thank you, Your Honor.

11 MR. SOWELL: Thank you.

12 THE COURT: Please continue with your most
13 recent conversation with Presbyterian Home. If
14 you were finished, that's fine, but if you
15 weren't.

16 BY THE WITNESS:

17 A I basically had finished, that they would have to
18 examine her to evaluate her, but certainly since
19 the Guardian Ad Litem has stated she needs 24/7
20 care, I certainly assume she's a qualified person
21 to evaluate the physical condition of Jane.

22 Q Mr. Walkup, is there also a feature available now
23 at the Presbyterian Home that would provide
24 Ms. Baskin with long-term care?

25 A Yes.

1 Q Would you tell the Court what that is about.

2 A You mean skilled care.

3 Q Skilled care.

4 A There's skilled care as well as assisted living
5 and independent living.

6 Q But is it being paid for in these payments you put
7 in the budget to continue that care?

8 A If she moved to the skilled care, instead of the
9 funds lasting eight years, it would last some
10 shorter period of time. I'm not in a position to
11 make a decision on whether she needs to be skilled
12 care versus assisted living.

13 Q Is there a feature at the Presbyterian Home,
14 though, that would allow her to stay there for a
15 period of time after her funds have been exhausted
16 or not?

17 A It is still there. That is a perpetual care
18 provision.

19 Q How does that work at the Presbyterian Home?

20 A They do health and financial evaluation and make a
21 decision before you come that they're willing to
22 accept that risk. They have some --

23 THE COURT: So it's almost like a risk
24 evaluation for them in terms of how much money she
25 has and how long they think she needs this level

1 of care versus that level of care, and they do
2 some kind of calculation of whether or not to take
3 you or not?

4 THE WITNESS: They put it in the computer and
5 come back with an answer.

6 THE COURT: How bizarre. I guess those
7 mortality tables would come into play.

8 MR. SOWELL: Mortuary tables.

9 THE WITNESS: I've had three clients that are
10 at Presbyterian Home. One of which died in the
11 spring, another that's in the dementia section,
12 and I've been managing assets in stock
13 partnerships for them, and we are liquidating --
14 one of those died in April, we're liquidating her
15 partnership to pay off -- we were, of course,
16 covering all her expenses there. She didn't have
17 to end up using the perpetual care feature. We
18 were able to pay all of her expenses even though
19 she had -- she had round-the-clock sitters sitting
20 with her in addition to the -- 24-hour sitters
21 sitting with her in addition to the fact that she
22 was in the skilled care section. They had some
23 kind of restriction that they couldn't strap her
24 in, they were afraid she was going to fall out.
25 So it's a great facility.

1 THE COURT: So you've negotiated this for
2 previous clients?

3 THE WITNESS: I have moved in several clients
4 into Presbyterian Home.

5 THE COURT: In that capacity as their, what,
6 trustee?

7 THE WITNESS: No, just as a financial advisor
8 for them.

9 THE COURT: As their POA?

10 THE WITNESS: No. Just the fact that I
11 manage funds for them and they relied on me for
12 financial advice, and I call and discuss with the
13 officials and they looked at their financial
14 situation and their health situation and made
15 determinations they would take them.

16 THE COURT: Next question.

17 BY MR. SOWELL:

18 Q Mr. Walkup, these moves that we've been
19 discussing, let's say, for instance, the move from
20 Summerlea to Atrium Place or the move from Atrium
21 Place to the Presbyterian Home or Jenni Lynn or
22 some other assisted living facility, you do not
23 control Jane Baskin with respect to those
24 geographical moves?

25 A No. No. In fact, I didn't know that she was

1 planning on moving back to Summerlea. That
2 information had not been given to me at all until
3 we started these proceedings and I understood that
4 the house was being renovated and she was planning
5 on moving. She had not given notice to the
6 apartment complex that she's breaking her lease.
7 I called the manager and they said they haven't
8 heard from her. I heard Ms. Moseley say that they
9 have a \$32,000 renovation project underway. No
10 one mentioned that to me that that was even
11 happening. And I had been trying to get her to
12 sell the house instead of sitting there for
13 five-and-a-half years with no income coming from
14 it. It was her asset. She could control it, and
15 she failed to agree to let me fulfill the contract
16 that I had on the house. I didn't have any choice
17 about it.

18 Q What year approximately was it that you had a
19 contract to sell the house at Summerlea?

20 A 2015.

21 Q And Ms. Baskin did not want to execute that
22 contract?

23 A She wouldn't sign it.

24 Q And you did not make her and you could not make
25 her sign --

1 THE COURT: Could you ask -- let's ask these
2 questions, please. Explain how the sales contract
3 came to be.

4 BY THE WITNESS:

5 A I had a For Sale sign there, and I got a number of
6 inquiries. One of which was one of these house
7 flippers that wanted to pay 65 or \$70,000 for it.
8 But if I'm remembering right, I got a contract for
9 90,000, somewhere in that range, but Jane wouldn't
10 sign it.

11 THE COURT: So had she agreed for you to list
12 it? Had Jane agreed for you to list it?

13 THE WITNESS: I think she did. She was
14 opposed to me selling it, but I said we need to
15 sell it to provide the money to you for --

16 THE COURT: Describe the discussion about
17 selling it. Did you have a discussion with her
18 about selling it?

19 THE WITNESS: I had a discussion with her.
20 She said, well, I really don't want to sell it. I
21 said, well, it would help you, you'll have the
22 money instead of having a house just sitting there
23 and have the expenses. And I'm concerned that the
24 insurance is gonna be canceled on it because it's
25 a vacant house. I explained all that to her.

1 THE COURT: And she said what?

2 THE WITNESS: She said I don't want to sell
3 it.

4 THE COURT: But you went ahead and put a sign
5 in the yard.

6 THE WITNESS: I had already had a sign in the
7 yard. I don't remember the exact.

8 THE COURT: Okay, so you put a sign in the
9 yard and then you tried to get her to agree to
10 sell it?

11 THE WITNESS: Right.

12 THE COURT: Are you a real estate agent as
13 well?

14 THE WITNESS: No.

15 THE COURT: Were you doing a For Sale by
16 Owner concept?

17 THE WITNESS: For Sale by Owner concept,
18 yeah.

19 THE COURT: So the For Sale sign is in the
20 yard. Is it your phone number that's on the For
21 Sale sign?

22 THE WITNESS: It was.

23 THE COURT: Is this the encounter with
24 Ms. Moseley where she takes the sign or is that a
25 different time?

1 THE WITNESS: I don't remember when she
2 threw -- I remember going over and finding the
3 sign was gone, but I didn't know who had done away
4 with it.

5 THE COURT: So you've got the For Sale sign
6 in the yard and you try to talk Jane into doing it
7 and she's telling you no. Did you just keep
8 bringing her offers and maybe she'll say yes?

9 THE WITNESS: No, I didn't bring her the
10 original offers, I brought her one that was a good
11 offer, the best offer I could get.

12 THE COURT: Describe that.

13 THE WITNESS: That's the one I think was
14 about \$90,000.

15 THE COURT: And what happened, you went to
16 her with a signed contract?

17 THE WITNESS: Went to her with a signed
18 contract signed by the buyer, and she said I'm not
19 selling it. So that was that.

20 THE COURT: Did you take the sign out of the
21 yard?

22 THE WITNESS: I don't remember at that point
23 whether the sign was still up or not.

24 THE COURT: At what point did you relent on
25 your efforts?

1 THE WITNESS: I remember going by the house
2 and seeing the sign was gone.

3 THE COURT: What year would this have been?
4 Is this still in 2015?

5 THE WITNESS: I believe it's all in 2015.

6 THE COURT: Did you make any other efforts to
7 try to sell the house for her?

8 THE WITNESS: No, I have not.

9 THE COURT: Okay.

10 BY MR. SOWELL:

11 Q Coincidentally, am I correct that Jane moved to
12 Atrium Place in 2015?

13 A That's correct.

14 Q Tell the Court how that came about.

15 A Well, I told her that I wanted her to come look at
16 the apartment, it was all on one level, no steps
17 to even get in the front door. I brought her over
18 to see it. I remember specifically on the way
19 back home, the engine went out on my car and we
20 had to get out of the car. And I got a lady close
21 by, we were just about three blocks away from your
22 house and I got a lady to take you home while I
23 could call a wrecker to pick up my car.

24 Q So did Jane at some point in 2015 agree to move to
25 Atrium Place?

1 A She did. I think she complained to her minister
2 that I was -- after she moved, her minister came
3 to see me unannounced and said why are you making
4 her move. I said I'm not making her move, I'm
5 trying to get her closer to me so I can take care
6 of her better. When she has a fall and I'm 20
7 minutes away from me on that steep hill, it takes
8 me that much longer to get to her. And over here,
9 my daughter can look out for her better and my
10 staff can. In fact, they did. The staff itself
11 looked after her. And we had a caregiver, Tammy,
12 started shortly after that, and then we had a
13 wonderful neighbor next door, Debbie and Dan
14 Barnes, that just took a lot of love and care, TLC
15 to Jane and would come over and check on her four
16 or five times a day and walk her dog and would fix
17 meals for her. I paid Debbie for doing that.
18 They filled in when Tammy, the part-time person,
19 wasn't there.

20 Q And Jane continues to live there today?

21 A That's correct.

22 Q At Atrium Place. I'm going to go back a little
23 ways. What is your relationship to Eldridge
24 Baskin?

25 A He is a first cousin -- was the first cousin of my

1 mother.

2 Q Are you -- and I know the trust refers to residual
3 beneficiaries as his heir-at-law. Are you an
4 heir-at-law of Eldridge Baskin?

5 A No. None of my family is an heir-at-law to Jane
6 or to Eldridge, either one.

7 Q When Mr. Baskin died -- he was an Internal Revenue
8 Service attorney?

9 A That's correct.

10 Q And so he was an employee of the United States
11 government?

12 A He was retired, right.

13 Q And he had some form of an annuity through the
14 government?

15 A Yes.

16 Q And when he died, was that annuity being paid to
17 Jane Baskin shortly after his death or not?

18 A No. Let me explain that. When his wife died in
19 December of '89, he had an annuity, survivors
20 annuity, that would give his wife, prior to the
21 time, would give his wife benefits when he died.
22 But whenever she died, he changed that to the
23 maximum benefit with no survivor benefit at all.
24 I discovered that after his death, and I called
25 the Government Employees Association in Columbia

1 and they referred me to Washington, and I dealt
2 with them over about a six-month period of time,
3 and I told them that he had just passed away with
4 cancer and because of his illness, he wasn't
5 thinking clear and he should have had his benefit
6 reduced so that there would be a beneficiary
7 annuity. After six months worth of work, they
8 finally agreed to send that annuity, which I think
9 now is something like \$600 a month. It was less
10 than that at that point. And they agreed to send
11 it to me as the trustee of the trust. Had I not
12 done that, there would've been no annuity at all.
13 Those funds come to the trust bank account
14 automatically every month. And we in past years
15 have been using that for care.

16 After Mr. Weatherly began calling me, he
17 asked for us to send that money directly to her.
18 Well, instead of spending it on her benefits,
19 we're now sending her the check every month and
20 she spends it like she wants to. But in all
21 cases, we spent it for her care.

22 Q Does Ms. Baskin also have some Social Security
23 income?

24 A She has some Social Security disability income.
25 That's approximately \$400 a month. So she gets

1 approximately \$800 a month total, those two.

2 Q Outside the trust?

3 A Outside of the trust.

4 Q And other monies have come to her outside the
5 trust over the period of time beginning 30 years
6 ago. For instance --

7 MR. DETWILER: Objection, leading.

8 THE COURT: Sustained.

9 MR. SOWELL: I'm not going to. Thank you.

10 BY MR. SOWELL:

11 Q If you want to look at the trust document, am I
12 correct that Mr. Baskin left some things to Jane
13 Baskin outright?

14 A Yes, he left some partial ownership of some land
15 along with other family members as Mr. Stephenson
16 attested to. He left two cars and all the
17 personal property, furniture, et cetera, to Jane
18 and he left the house to Jane.

19 Q Summerlea?

20 A The house at Summerlea, that's right. The rental
21 house was left in the trust for me to manage.

22 Q Just tell the Court, if you would, you referred to
23 Summerlea house, we know the history of the
24 Summerlea house that's being renovated. The two
25 cars, though, and the property in Lee County that

1 was left to Jane Baskin outright, would you tell
2 Her Honor what has devolved or evolved with
3 respect to those properties.

4 A Those properties have been sold and she brought me
5 the checks for those and told me to -- gave them
6 to me, and I said I'll use them for your use.

7 THE COURT: She Jane? When you say "she"
8 you're referring to Jane?

9 BY THE WITNESS:

10 A Yes, Jane brought the check to me and we set those
11 funds -- it was approximately a \$13,000 number.
12 We set it in a separate Columbia Cash Reserves
13 account earning the five-and-a-half percent. And
14 we spent it on her needs over a period of time.

15 Q What about --

16 A Including spending about \$2500 on an
17 air-conditioning unit for her house at Summerlea
18 and a furnace at her house at Summerlea. I'd like
19 to get into that at a little later time.

20 Q You can go ahead and talk about that now. We, as
21 you know, we had a conversation with Michele
22 Moseley yesterday about the air-conditioning unit
23 and the furnace at Summerlea. So that's been a
24 point of some discussion. Would you tell the
25 Court what transpired with respect to the air

1 conditioning at Summerlea and with respect to the
2 furnace at Summerlea?

3 A Well, first of all, having been a mechanical
4 engineer and in that particular field, in July
5 of 2012, I had my mechanic replace the condensing
6 unit, the outside unit for the air-conditioned
7 unit at Summerlea with a new unit. And Jane moved
8 about two years and 11 months later to Atrium
9 Place. The air conditioning and heating was
10 working perfectly when she left. But having Jane
11 make the decision that she didn't want to sell the
12 house, I had my guy go over and -- I've got a
13 mechanic who did everything. He's a heating and
14 air contractor, he's an electrician, carpenter.
15 He did it all. And for a cost of maybe a thousand
16 dollars, he installed a new condensing unit in
17 2012. After she refused to sell the house, there
18 was no rush about it, but I had him check the
19 furnace out, and the furnace had been -- was the
20 original furnace and I had him to replace the
21 furnace. He got started on the project and was
22 real busy with a lot of projects. He didn't
23 finish the installation. He connected the new
24 unit to the ductwork, but the only two things he
25 had left to be done was to connect a flue for the

1 flue gas to the outside and to connect the gas
2 line which was right there, it just had to be
3 connected. So it was really a relatively small
4 amount of work to get it finished, but he was busy
5 and there was no rush. And then when he got
6 around to going over to finish the work,
7 Ms. Moseley had changed the locks on the door.
8 And unlike what she said, he didn't go in the
9 window. He needed to get into the house in order
10 to set the thermostat. He could have finished the
11 piping, but he couldn't finish the project without
12 getting into the house. I don't know why they had
13 made the decision to change the locks to keep us
14 out, but he couldn't finish the job. He's the
15 same mechanic who on March 18th of '18 had a
16 severe brain bleed, spent nine months at Richland
17 Memorial and he still, two years or more, he's in
18 a nursing home and never will walk again. So it
19 might be worthwhile for me to go at this point
20 into -- you know, I got a letter from
21 Mr. Weatherly stating some false information.

22 It said that, number one, it said Jenny, the
23 caregiver, had gone on vacation and left Jane
24 without any help. He said about five things along
25 those lines. It said that she had asked me for

1 additional help, additional hours for care and
2 that she had asked Jenny additional hours of care,
3 at least five different questions --

4 THE COURT: Who's the "she" in this
5 conversation?

6 BY THE WITNESS:

7 A That Jane had asked us for these different things.
8 And so I knew they were not true. And I went to
9 Jane's house and I sat down with her and I said --
10 and there was also a statement about the air
11 conditioning that wasn't correct, said I refused
12 to give her a new air-conditioning unit. Well,
13 she already had a new air-conditioning unit. So I
14 sat down with Jane, and I said Jane, has Jenny
15 been taking vacation and left you with no help?
16 Jenny's standing right there, Jenny says -- Jane
17 says no. She contradicted what Mr. Weatherly had
18 said in his letter. All of the five questions she
19 contradicted what he had said in the letter. I
20 don't know where that information came from,
21 whether it came from Mr. Weatherly or from Jane or
22 from Ms. Moseley. Whoever compiled that letter or
23 gave the information had given false information,
24 and Jane had contradicted what was in the letter
25 in every case. It was puzzling, and the fact that

1 they said that I had refused to fix the
2 air-conditioning unit. No one had asked me to fix
3 the air-conditioning unit. I had voluntarily
4 changed the furnace out. At that point, the phone
5 rang. Ms. Moseley was calling to Jane and Jane --
6 and I had offered, since my mechanic had had his
7 brain bleed and wasn't available, I offered -- she
8 wanted to get her mechanic to connect the gas
9 line --

10 THE COURT: Her? Jane's mechanic?

11 BY THE WITNESS:

12 A No, Jane or Ms. Moseley, who seemed to be more in
13 control at that point in time, but I was offering
14 to Jane to get somebody else to finish it off
15 because my mechanic was not available. And I said
16 it might cost two or \$300 to get the final. It
17 might be an hour or two job at most to get it
18 finished. At that point, the phone rang, Jane
19 answered it. I was being watched from a camera
20 that I didn't know existed. And she handed me the
21 phone, and Ms. Moseley starts cussing me out, "you
22 know it's gonna cost a lot more than two or \$300."
23 She had also, actually sometime after that, she
24 had obtained three different quotations for new
25 heating and air-conditioning systems, and one of

1 those, at least one of those had complained that
2 the furnace that my man had connected was too big,
3 it was 80,000 BTU per hour instead of 70,000 BTU
4 per hour. The only thing wrong with that is the
5 house would heat up faster. It's not a mechanical
6 problem in the least. The quotes that they
7 eventually obtained, and I think at this point in
8 time, probably had been installed, they had
9 removed the unit that was only two years and 11
10 months old, thrown it away. They removed the new
11 furnace that was connected to existing ductwork.
12 They removed all of the ductwork and they've put
13 in \$9,000 worth of equipment where my mechanic
14 charged maybe 2,000 or \$2200 to put in a new
15 furnace and AC unit. But they've done it for
16 9,000.

17 THE COURT: I think now's a good time to take
18 a little bit of a break. I need a break.

19
20 (Off the Record)

21 BY MR. SOWELL:

22 Q May it please the Court. One thing, Mr. Walkup,
23 that you were talking about before we broke was
24 the air conditioning and the furnace. Do you
25 recall yesterday that Ms. Moseley and Ms. Baskin

1 wrote you a letter shortly after that telephone
2 conference you had with Ms. Moseley from
3 Ms. Baskin's apartment?

4 A Yes.

5 Q Was there any allusion or reference in that letter
6 to the heater?

7 A The statement was that I was manipulating her, I
8 believe it said.

9 Q Let's look at the letter then. If you would look
10 in your exhibits to Exhibit No. 20. Do you see
11 Exhibit No. 20? Do you see it?

12 A Right.

13 Q Does it allude to the air conditioning?

14 A It just says, "We feel that this is best due to
15 your manipulating action you tried to use on her
16 about the AC unit."

17 Q Was there anything wrong with the AC unit?

18 A No. It was new as of two years and 11 months
19 before Jane moved out and was operating perfectly.

20 Q So just to be clear, is the device that was not
21 hooked up totally, that was the furnace?

22 A That was the furnace.

23 Q And that was the device that you had your Jack of
24 all trades sent back to hookup and the locks had
25 been changed?

1 A Correct.

2 Q And then he had a brain bleed and had to go in the
3 hospital for a period of time?

4 A Right.

5 Q Let's look at Exhibit No. 1, which is the Last
6 Will and Testament of Eldridge Baskin. It should
7 be the first document. Have you over the years,
8 when you were first made trustee and since then,
9 have you reviewed the trust document?

10 A I have.

11 Q During the administration of Jane Baskin's Trust,
12 have you always been aware of and governed by the
13 terms of the trust?

14 A Yes.

15 Q And have you been acutely aware of the terms of
16 the trust?

17 A I don't read it all the time, but have referred to
18 it over time.

19 Q What is the total amount of trust funds that you
20 have under management today?

21 A 575,000.

22 Q I know you testified in the beginning that you --

23 THE COURT: Can we clarify that number?

24 That's not a number I've heard before.

25

1 MR. SOWELL: I know it. This is the -- the
2 question is how much total --

3 BY MR. SOWELL:

4 Q Oh, are you talking about the Jane Baskin Trust?

5 A Yes.

6 Q I was asking about the total amount of trust
7 funds. You have more?

8 A I'm not the trustee of the Shandon United
9 Methodist Church trust funds. I'm the investment
10 advisor for that.

11 THE COURT: How did we skip to that? You've
12 completely lost me. Are you asking how much
13 available in the trust fund and he said 750,000.
14 What trust fund were you asking about?

15 MR. SOWELL: I was asking him about -- he
16 didn't answer, but what I was asking him about
17 what are total amount of trust funds he has under
18 management at William B. Walkup and Associates.

19 THE COURT: Okay, so not just the Jane
20 Baskin --

21 MR. SOWELL: Not just the Jane Baskin.

22 THE COURT: Did you understand that was the
23 question?

24 BY THE WITNESS:

25 A I understand it now. The Shandon United Methodist

1 trust fund I manage are approximately 6.8 million.
2 When I took over management of the funds in 1994,
3 it was 600,000, but now it's about 6.8 million.

4 THE COURT: I'm just not understanding. You
5 wanted him to talk about the total trust funds
6 with William Walkup and he mentioned Shandon
7 Methodist. Is that the only other trust fund you
8 manage, is that your point?

9 THE WITNESS: Well, that fund, I do not
10 charge for management.

11 THE COURT: I don't think you're
12 understanding. He's trying to -- I think, Mr.
13 Sowell, please clarify your question.

14 MR. SOWELL: You're absolutely correct.

15 THE COURT: The total trust assets he manages
16 for anybody.

17 MR. SOWELL: That's right. That was my
18 question. It may not be anything more than Jane
19 Baskin.

20 THE COURT: Do you manage more than Jane
21 Baskin Trust fund, trust funds?

22 THE WITNESS: That's right. I manage the
23 church trust funds and I also manage another trust
24 fund for the Warren Trust, actually manage the
25 funds for that one, which might be three or

1 400,000.

2 THE COURT: So when you said number 750, what
3 were you referring to? You said 750,000, was that
4 just a misstatement?

5 A I don't remember saying 750,000.

6 THE COURT: Okay, I must have misunderstood
7 you. I apologize for any confusion I've added to
8 the mix.

9 MR. DETWILER: Your Honor, may I ask for some
10 clarification, because if we're talking about his
11 management of trust funds, can we ask about what
12 he manages where he's the trustee of the trust? I
13 think that might be more pertinent.

14 THE COURT: You can ask any questions you
15 want to when get cross examination. So reserve
16 that as your question.

17 MR. DETWILER: Thank you.

18 BY MR. SOWELL:

19 Q Thank you. Okay, let's turn to Exhibit No. 9 in
20 the notebook. Before we broke, you were talking
21 about some things that Jane had said about you I
22 think to Alex Weatherly. And what is Exhibit
23 No. 9 in evidence?

24 A It's a letter from me to Alex Weatherly.

25 Q What is the date on it?

1 A March 3, 2017.

2 Q Is this a point in time where you were trying to
3 persuade Jane to move to Jenni Lynn?

4 A Relatively close to that time.

5 Q We know I think, and I think you know, at least I
6 believe you do, that she went to --

7 THE COURT: Wait. Now you're testifying and
8 leading. If you want to refer to another exhibit
9 to help him with the date that you're trying to
10 get him to recognize, that's appropriate.

11 BY MR. SOWELL:

12 Q Thank you. Do you remember when Jane went to
13 Dr. Anderson to get the assisted living form
14 filled out for Jenni Lynn?

15 THE COURT: Where is his exhibit book?

16 MR. SOWELL: He's got it in his lap. And I
17 think I can probably find it here. Yes, let's
18 look at Exhibit No. 6 in the exhibit book.

19 A That exhibit says 2/17. The second page looks
20 like it says to 2/27.

21 Q Right. It's got what appears to be two different
22 dates on it, 2/17 and 2/27. Is that correct?

23 A That's correct.

24 Q But in that time frame, and keeping in mind I'm
25 asking you about this March 3, 2017 letter. So

1 you know the difference between February 27th
2 and March 3rd, unless it's the leap year, it's
3 not a whole lot of time.

4 My question to you is, is this during the
5 period of time, and I'm referring to Exhibit
6 No. 9, your letter to Alex Weatherly, when you
7 were trying to talk Jane into going to Jenni Lynn?

8 A Let me glance at that letter again.

9 Q Exhibit No. 9.

10 A Alex had -- in his letter of March 3, '17, I was
11 telling Alex, talking to him about the fact that I
12 went to see Jane to confirm her statements that
13 Alex had told me she had made about me, and I said
14 those statements were false.

15 Q But my question is, is what did Jane say to you
16 about those statements that she had made to Alex
17 Weatherly?

18 A Well, the first statement was that I had removed
19 things from her apartment. And when I asked her
20 what I had removed from her apartment, she
21 couldn't come up with anything. But eventually,
22 she said something is missing. And I said what is
23 missing? And she said a copy of a check is
24 missing. Now, why would I have stolen a copy of a
25 check?

1 Q All right, is there --

2 A The check she was referring to was a check for the
3 land that was sold in Lee County. And since I had
4 already had possession of the check and had
5 deposited it, why would I want to go steal a copy
6 of the check from her apartment? And of course I
7 didn't.

8 Q If you look at the first couple of sentences
9 there. Is there an allusion to -- what are the
10 allusions there? I'm trying to tie this into your
11 attempts to move her to Jenni Lynn. What does it
12 say there in the first three sentences of the
13 letter?

14 A It says, "I went to see Jane to confirm the
15 statements you told me she had made about me. She
16 has confirmed to me that what you told me -- she
17 has confirmed to me what you told me she had said.
18 She absolutely lied to you with the three
19 statements she made you, which is her way of
20 discrediting me so that she can avoid the great
21 need to move to an assisted-living facility that
22 she so greatly needs."

23 Q Now, so this is the time frame when she went to
24 Dr. Henderson to get an approval to go to assisted
25 living. And is this the time frame that you were

1 trying to talk her into going to the Jenni Lynn
2 assisted-living facility?

3 A Yes.

4 Q Why did you want her to go to the Jenni Lynn
5 assisted-living facility?

6 A Well, I had tried to work into Presbyterian Home,
7 but they didn't assess the lack of finances and
8 health condition, they would not take her. Jenni
9 Lynn didn't have such a policy. They didn't have
10 an endowment set up where they had -- they would
11 take you and it wouldn't require big entrance fees
12 and monthly fees involved in which she couldn't
13 have afforded at that time.

14 Q Let's look down -- had Jane experienced at this
15 time, and we're talking about by March 3, 2017, a
16 number of falls?

17 A Yeah, she fell continually. I had reports given
18 to me that she had fallen.

19 Q Well, had she been falling consistently for a
20 number of years?

21 A Yes.

22 Q And if you look at the last paragraph of the
23 letter, would you read -- this is at the bottom of
24 the first page Exhibit No. 9. Would you read that
25 paragraph, publish that paragraph to the Court.

1 A "Please respond as soon as possible. I'm
2 responsible for seeing that she gets the care she
3 needs, and she cannot continue to fall and be
4 injured. Her other family members and friends
5 agree that she needs to be in assisted living. Of
6 course, she had done her best to tell Pat Watson
7 all the bad she can think of about me. And Pat
8 had never discussed that with me. My daughter
9 gives her extra care and the neighbors have done a
10 lot. One neighbor has moved, did an incredible
11 amount of visiting from four to five times a day,
12 fixing meals, walking the dog, picking her up from
13 falls. She's given my daughter numerous calls and
14 reports about difficulties and falls. Thanks for
15 your efforts to understand the situation and
16 anything you can do to help her get the care that
17 she greatly needs."

18 Q Did Mr. Weatherly do anything to help you persuade
19 Jane to go to assisted living?

20 A Not that I know of.

21 Q Now, the falling, the incidents of falling, is
22 that what initially persuaded you to try to
23 persuade Jane to move from Summerlea to Atrium
24 Place?

25 A That's one of the things that I was greatly

1 concerned about and continue to be concerned
2 about. You know, I had the vision of there's a
3 fire and Jane can't get up to get out of the
4 location unless there's somebody there to help
5 her. That's the great need for 24/7 care.

6 Q Okay. Do you remember Dr. Henderson's records
7 from a February 27, 2017 visit, or somewhere about
8 that time, when Ms. Baskin fell going from the
9 waiting room to the bathroom and broke her hand?

10 A Yes, I read that in the deposition.

11 Q By the time you got her to Atrium Place, were you
12 already concerned or were you already concerned
13 that she needed to be placed in assisted living?

14 A Absolutely.

15 Q Did you try on more than one occasion to persuade
16 her to go to assisted living?

17 A I did.

18 Q And she has never wanted to go to assisted living?

19 A Correct.

20 Q Now, am I correct that Dr. Henderson, in his form
21 that is Exhibit No. 6 in those exhibits, 'approved
22 her to go to assisted living? In other words, he
23 qualified her to go to assisted living? Down at
24 the bottom of the first page of Exhibit No. 6.

25 A Yes.

1 Q Since then and, of course, I think -- am I correct
2 that Mr. Weatherly and Ms. Moseley got involved
3 sometime in the neighborhood of the latter part of
4 2016, early 2017?

5 A That's what I understand it, that's when.

6 Q Well, Mr. Weatherly's first letter to you -- let's
7 see if I can identify that. Let's look at Exhibit
8 No. 13. You must've been involved on March
9 the 3rd because you were writing him a letter.

10 A Yeah.

11 Q So we know he was involved on March 3rd. Did he
12 write you a letter, Exhibit No. 13, on March
13 the 29th?

14 A He did.

15 Q So was that the first letter that you got from
16 Alex Weatherly?

17 A I couldn't attest to it being the first one.
18 There's been so many.

19 Q Is that about the time, though, that he got
20 involved, like I said before, I think late 2016,
21 early 2017?

22 A That's correct.

23 Q Sometime in that same time frame, I think
24 Ms. Moseley testified that she had gotten involved
25 maybe in May or June of 2017. Is that

1 approximately the time she got involved?

2 A I remember seeing her power of attorney document
3 being earlier than that, if I'm correct.

4 Q Right, but I'm talking about interface with you
5 and your knowledge of her.

6 A I never saw Ms. Moseley until I was deposed at
7 Callison Tighe office. I never talked to her on
8 the phone, although she said she had talked to me
9 one time. I never saw her face or talked to her
10 on the phone until the time that she called me in
11 Jane's apartment when I was in Jane's apartment
12 that day and began to fuss at me. I had never
13 talked her before that time.

14 Q Have you talked to her since that time?

15 A No.

16 Q Have you ever met her before you gave your
17 deposition in Mr. Detwiler's office?

18 A No. The first contact I had with her was a
19 written note, and I when I say contact, she wrote
20 a note and had it delivered by Jenny to my office
21 manager, and it said "I'm gonna start cleaning
22 Jane's apartment for \$75 a week." My office
23 manager responded to her that --

24 MR. DETWILER: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. SOWELL:

2 Q You can't talk about that, that's hearsay. You
3 can't go there. So just sort of work around that.
4 Don't talk about what Celeste said. Figure out
5 some way to talk about it without talking about
6 what Celeste said.

7 THE COURT: Okay, Mr. Sowell. No, no. Let's
8 ask him a question that's proper and that he can
9 answer based on his own knowledge and not hearsay.

10 MR. DETWILER: Thank you, Your Honor.

11 MR. SOWELL: Thank you.

12 BY MR. SOWELL:

13 Q My question is, is other than at Mr. Detwiler's
14 office when you were deposed, have you ever met
15 Michele Moseley?

16 A No.

17 Q Has she ever come to your office for an interview
18 to be a caregiver for Jane Baskin?

19 A No.

20 Q Has she ever called you on the telephone and asked
21 you if she could be a caregiver for Jane Baskin?

22 A No.

23 Q And the only time you've ever talked to her is
24 when she was blessing you out on the telephone
25 when you were in Jane's apartment?

1 THE COURT: All right, Mr. Sowell, again,
2 that's, in my opinion, leading, and I believe
3 it's -- you know, you're asking him about ever met
4 her, ever come to your office, ever talked to her.
5 Just ask the open-ended question have you ever
6 spoken to her on the telephone?

7 BY MR. SOWELL:

8 Q Have you ever spoken to Michele Moseley on the
9 telephone other than that one time?

10 THE COURT: Mr. --

11 BY MR. SOWELL:

12 Q Have you ever spoken to Michele Moseley on the
13 telephone?

14 THE COURT: Thank you.

15 BY THE WITNESS:

16 A That one time.

17 Q But no other time?

18 A But no other time.

19 Q Have you ever met Michele Moseley other than at
20 Mr. Detwiler's office?

21 A At Mr. Detwiler's office. She brought Jane there
22 and I saw her on the other end of the table.

23 Q Now, during the 30 years you've been the trustee
24 up until the 2016/2017 time frame that was alluded
25 to a few minutes ago, had you ever had any great

1 friction with Jane Baskin?

2 A In the very beginning, Jane resented the fact that
3 her father had not given all of the funds to her
4 directly, but had given the funds in trust for me
5 to handle. And that's a natural resentment. I'm
6 not responsible for her feelings. All I have done
7 is to try to do my best to take care of her. But
8 that resentment has led Jane to have difficult
9 feelings about me, but I still love Jane and want
10 to care for her and do everything I can for her
11 and get the best care that she really needs. She
12 has fabricated many stories to discredit me over
13 the years, but that doesn't stand in the way of my
14 loving her as a cousin. It's just a sad situation
15 that worries me, but I can't do anything about it.
16 I haven't been able to convince her to get the
17 best care that she needs. I'm just -- I'm just at
18 a loss for that.

19 Q During the period of your administration of the
20 trust, you have testified that you've spent all of
21 the income, and I think in 2019 \$53,000 of
22 principal. What have you consistently,
23 persistently and regularly spent that money for
24 over the years?

25 A Many things. House taxes and insurance and

1 repairs, like a new roof on her house, appliances,
2 new air conditioning and furnace in her house.
3 Painting the interior of her house after she left,
4 the entire interior. Her electric and gas bills
5 and water bills, phone bills, doctors, drugs,
6 glasses and eye appointments, car repairs, yard
7 maintenance, vet bills for boarding her dogs. And
8 that included all of the years that she went to
9 her cousin Anne's in North Carolina twice a year
10 for two weeks at a time. We paid for the boarding
11 of all the dogs all those times. Car taxes and
12 insurance, Christmas and birthday money, spending
13 money for her two trips to Anne's each year,
14 medicines. It's been a continuous process paid.

15 Q And have those things been regularly and
16 customarily paid for from Jane Baskin's trust
17 funds?

18 A That's correct.

19 Q Was there an occasion where you bought her an
20 automobile?

21 A Yes.

22 Q From the trust funds?

23 A From the trust funds.

24 Q Tell the court about that occasion.

25 A 2001, I bought a Ford for her for something like

1 \$12,900 with trust funds. And in 2007, she had a
2 wreck in that car. And I had been questioning her
3 ability to see over the steering wheel with her
4 neck down like it was and her ability to raise her
5 foot to put on the brakes because she doesn't have
6 the strength in her leg to do that. And so I
7 asked her to go to her doctor and get a letter
8 certifying that she could drive before we went any
9 further. She couldn't produce a letter from the
10 doctor. Now, she has testified in her deposition
11 I guess is where we saw it and I --

12 MR. DETWILER: Objection.

13 THE COURT: Let me hear your reasons.

14 MR. DETWILER: He is testifying about what
15 Jane Baskin testified in her deposition. That's
16 not in evidence and I don't think he's competent
17 to testify about what she testified or
18 characterize what she testified. I don't think
19 that's proper testimony.

20 THE COURT: You want to be heard?

21 MR. SOWELL: Your Honor, I know we've
22 excerpted certain pieces.

23 THE COURT: It's in my knowledge base, but I
24 hear it's not proper for the record at this time.
25 I'm going to sustain your objection.

1 BY MR. SOWELL:

2 Q Thank you. You understand that means don't talk
3 about that.

4 A I can't talk about anything --

5 Q Jane's deposition. So you bought her a car?

6 A I bought her a car.

7 Q Are there other expenses that you have regularly
8 paid on behalf of Jane Baskin?

9 A Well, everything that came along except for food
10 and clothes.

11 Q Have you typically paid for everything that
12 Ms. Baskin has requested except for her food and
13 her clothes?

14 A I can think of other things, like a lift chair and
15 a mattress and appliances. If I pulled my
16 financial stuff out, I could come up with
17 additional items, but.

18 Q Have you typically paid for whatever items
19 Ms. Baskin requested with the exception of food
20 and clothes?

21 A Yes.

22 Q And you have given her cash from time to time?

23 A I give her extra cash, yes.

24 Q And that's in addition to the annuity payment she
25 gets and the Social Security payment that she

1 gets?

2 A That's correct.

3 Q Now, did you get a letter -- if you would look at
4 exhibits two and three in the exhibit notebook.

5 What is Exhibit No. 2?

6 A A letter from Rita Cullum.

7 Q What's the date on it? And what is Exhibit No. 3?

8 A She said --

9 THE COURT: Mr. Walkup, you're not listening
10 to the question. He said what is Exhibit No. 3?

11 A Oh, I'm sorry. Exhibit No. 3 is a letter to Rita
12 Cullum showing the assets of the trust at that
13 time, including the rental house. And it talks
14 about the final distribution from the Baskin heirs
15 property in Lee County being made eight years ago.

16 Q Let me ask you this. What is -- The first
17 sentence of that letter says what?

18 A "The final distribution for the --"

19 Q No, the first sentence of that letter.

20 A "See attached a list of assets and 2008 expenses
21 you requested."

22 Q So what are the investment assets that are listed
23 as of December 31, 2007?

24 A Well, the TD Ameritrade account, which was
25 transferred to E*TRADE, was the first item.

1 Wachovia checking account, Columbia Cash Reserves
2 investment account, and the Equity 95 investment
3 account.

4 Q Those are the same accounts you have now except TD
5 Ameritrade is now E*TRADE?

6 A That's correct.

7 Q And you also, did you list the rental house at
8 1307 Ashley Street?

9 A Yes.

10 Q Were those the total assets of the Eldridge Baskin
11 Trust at that time?

12 A Yes.

13 Q If you would, in that next paragraph, would you
14 tell the Court what you informed Ms. Cullum about
15 in terms of what you were spending some money on
16 Jane's personal home at Summerlea.

17 A New roof, heating and air, plumbing and many other
18 expenses used of those funds. Purchase of an
19 automobile in 2001 of approximately 13,000 came
20 mostly from the trust. When the car was sold in
21 April '07 for 5600, the money was reinvested in
22 the trust.

23 Q Is that what you just alluded to a minute ago in
24 your testimony?

25 A That's correct.

1 Q What do you tell Ms. Cullum in the last sentence
2 of that letter?

3 A "In spite of the many expenses of the trust, these
4 funds have grown since 1990. When Jane has to
5 move to assisted living, it's clear that her
6 assets will be depleted long before her life
7 expectancy."

8 Q So in 2008 when you were conversing by letter with
9 Rita Cullum, were you already concerned that Jane
10 would need to at some time in the future be moved
11 into assisted living?

12 A Yes.

13 Q Let's look at Exhibit No. 10. What is Exhibit
14 No. 10?

15 A It's a letter from Alex Weatherly to Teresa
16 Laverne.

17 Q Looked down below there, that's just his printing
18 that he made?

19 A From Anne Webster to Alex Weatherly and to me.

20 Q What is the date on that email?

21 A March 8, 2017.

22 Q So what does -- who is Anne Webster?

23 A Anne Webster is Jane's first cousin on her
24 mother's side. Her mother's sister's child.

25 Q So she's Jane's first cousin?

1 A That's correct.

2 Q And you see there in her email address it says
3 aweb44etal@triadrr.com? That's okay, you don't
4 need to -- where does she live?

5 A She lives in Winston-Salem.

6 Q Has she lived there most of her life?

7 A As far as I know.

8 Q And up until the last few years, has Jane Baskin
9 visited Anne Webster in Winston-Salem?

10 A Anne came down to Columbia to pick Jane up and
11 took her and we boarded the dogs and cats, and
12 took her to Winston-Salem for two weeks to
13 entertain her and then brought her back. She did
14 this twice a year.

15 Q Is Anne Webster still living in Winston-Salem?

16 A Yes.

17 Q Generally, what is the essence of this email from
18 Anne Webster to Alex Weatherly?

19 A Well, she started off saying that Jane's mobility
20 issue is now requiring that she be in assisted
21 living for her own safety and that her inability
22 to handle money wisely in the past, amassing a
23 \$15,000 debt and other smaller ones since then,
24 make having a money manager mandatory. And I can
25 stop and explain that 15,000.

1 Q Well, why don't you.

2 A She came to me with approximately 15,000 --

3 THE COURT: She? Jane or Anne?

4 BY THE WITNESS:

5 A Jane came to me with approximately 15,000 worth of
6 credit card debt on 12 or 14 credit cards and
7 asked me to pay those off for her. And I asked
8 her what have you spent it on, Jane? And the only
9 thing she would ever tell me was things.

10 THE COURT: What year are we referring to?

11 THE WITNESS: I would have to go back and
12 research when that was.

13 THE COURT: Last five years? Last ten years?
14 You got to -- put me in a time frame. You've done
15 this for 30 years, so I need at least a time
16 frame.

17 THE WITNESS: Maybe ten or 15 years back.

18 BY THE WITNESS:

19 A And I concluded that if I paid all those off, she
20 would just get more credit cards. She wouldn't
21 promise me she wouldn't get more credit cards. In
22 fact, I wrote a letter to her asking her to
23 promise me she wouldn't get anymore credit cards,
24 but she refused to do that. So then she went to
25 her next-door neighbor, Steve Parr, and her

1 cousin, Ellen Baskin, and borrowed the funds to
2 pay the debt off. The larger part I was told was
3 from Pete Parr. When Pete died, his children,
4 including Karl and Kathy Parr, forgave her the
5 debt that she had not paid back.

6 Q Now, look on the next page of this exhibit,
7 paragraph four. Now, this is from Anne Webster to
8 you and Alex Weatherly. What does Anne Webster
9 say in paragraph four?

10 A "To Answer the question about Bill being mean to
11 her, she says over the years, Jane has told this
12 tale to everyone she gets to know. She considers
13 it mean that he won't let her have free access to
14 her trust money, but she never tells him about the
15 credit card debt she allowed to go to 15,000 when
16 she had only 800 per month of discretionary
17 spending or about the other times I had to bail
18 her out of smaller debt situations. Jane thinks
19 it's mean that he stopped her from driving when he
20 felt she was a danger to herself and others. She
21 thinks it's mean that he told her she needed to
22 clean the clutter from her furniture and floors at
23 a time when stuff was piled on all the furniture
24 surfaces and layers of stuff covered the floor
25 leaving only pathways to follow while moving from

1 one room to the other. I walked those pathways
2 and even made a special trip to Columbia to try to
3 help get rid of the mess only to find that she
4 wouldn't let me get rid of anything but
5 accumulated trash."

6 Q What does she say, what does Anne Webster say to
7 you and Mr. Weatherly in the next two sentences of
8 that letter?

9 A "Please recognize that when Jane gets terribly
10 upset, she makes charges the way a child does
11 without realizing that facts will not back her up.
12 Sometimes she has false memories of situations and
13 other times she lies to support her agenda. This
14 behavior comes from a person who elicits sympathy
15 because of her physical condition, often
16 obfuscates the truth of the issue. People tend to
17 believe her precisely because she is someone they
18 don't expect of any capability of subterfuge.
19 Therefore, she has friends in Columbia and a whole
20 church congregation trying to protect her. This
21 made possible because they know only what she
22 tells them and see no reason to doubt her.
23 Keeping these supporters ignorant of the whole
24 situation has been Jane's MO for years, as well it
25 works well for her unfortunately."

1 Q And what is the last sentence in that letter?

2 A "I have explained to Jane that falsely accusing
3 someone of theft and making unsubstantiated
4 charges seriously damages her own credibility and
5 makes your job as her lawyer more difficult. I
6 want Jane located in a safe environment that will
7 give her the opportunity to pursue her many
8 interests, but I will not support her
9 misrepresenting facts to achieve her goal."

10 Q Now, has Anne Webster during this timeframe we're
11 talking about, March 8, 2017, maybe before, maybe
12 after, has she encouraged Jane to go to assisted
13 living?

14 A She has.

15 Q And has she informed you that she believes that
16 Jane needs to go to assisted living?

17 MR. DETWILER: Objection. Hearsay.

18 THE COURT: Sustained.

19 BY MR. SOWELL:

20 Q Thank you.

21 A She informed me --

22 MR. DETWILER: Object.

23 MR. SOWELL: The Judge has sustained the
24 objection, so you got to lie low on that.

25

1 BY MR. SOWELL:

2 Q Now, we know from I believe Exhibit No. 20 that,
3 or do we know from Exhibit No. 20 that
4 Ms. Moseley, Michele, and Ms. Baskin, Jane, wrote
5 you a letter on May 14, 2018 asking you not to
6 contact Jane any further?

7 A Yes.

8 Q Did Mr. Alex Weatherly subsequent to that letter
9 within a week or two also write a letter to either
10 you or your lawyer Ben Bruner asking you not to
11 contact Jane Baskin directly?

12 A That's correct.

13 Q So since May 14, 2018, which is a little less than
14 three years, have you had any direct contact with
15 Jane Baskin?

16 A No.

17 Q And why not?

18 A Because I followed the instructions I was given by
19 this POA and signed by Jane.

20 Q Was that something that you instituted, this no
21 contact policy, or were you even in favor of it?

22 A I was definitely not in favor of it and had
23 nothing to do with it.

24 Q But you abided by it because when Jane asked you
25 not to contact her, her POA Michele asked you not

1 to contact, and her attorney-at-law Alex Weatherly
2 asked you not to contact her?

3 A Yes.

4 Q Before you got that letter from Jane Baskin and
5 Michele Moseley, Exhibit No. 20, did you know
6 Michele Moseley was the POA for Jane Baskin?

7 A No.

8 Q Who was the POA for Jane Baskin before that time?

9 A Kathy Parr.

10 Q Who is Kathy Parr?

11 A She is the daughter of Jane's next-door neighbor
12 Pete Parr.

13 Q And the sister of Karl Parr?

14 A That's correct.

15 Q Where does she live?

16 A Fairly close to Winston-Salem. I'm not sure what
17 the exact city name is.

18 Q Look in your exhibit notebook, please, to Exhibit
19 No. 11. Do you have that?

20 A I do.

21 Q Would you publish that. It's pretty short. Would
22 you publish that email -- well, let me ask you
23 this first. Is this an email from Kathy Parr to
24 Alex Weatherly dated March 10, 2017?

25 A It is.

1 Q Would you publish -- and this is Jane Baskin's
2 former next-door neighbor and power of attorney?

3 THE COURT: Help me why this is somebody he
4 would've known about before today. Can you lay
5 the foundation of why this is in his possession.
6 I know it's an exhibit book that everyone's agreed
7 to, but he's not included in this communication.

8 MR. SOWELL: I'll ask him.

9 BY MR. SOWELL:

10 Q How did you come into possession of this email?

11 A I've seen it before. I don't know how I came into
12 possession of it.

13 THE COURT: In the discovery phase or
14 previous? Is this knowledge he had because of
15 this lawsuit?

16 MR. SOWELL: I think he had it before.

17 THE COURT: Well, I think he had it before --

18 MR. SOWELL: I'm like 99 and nine-tenths
19 percent sure he had it before the --

20 THE COURT: Mr. Sowell, you have just -- all
21 right, approach the bench, please. Off the
22 record.

23

24

(Off the Record)

25

1 MR. SOWELL: May it please the Court?

2 THE COURT: Yes, sir.

3 BY MR. SOWELL:

4 Q With respect to Exhibit No. 11, Mr. Walkup, do you
5 know how you came into possession of Exhibit
6 No. 11?

7 A I remember seeing it. I don't remember how I
8 obtained it.

9 Q Has Kathy Parr, the former POA, communicated to
10 you any concerns over the years about the care and
11 the spending of trust funds and so on for Jane
12 Baskin her former next-door neighbor?

13 A She has communicated that she felt --

14 MR. DETWILER: Objection. Hearsay.

15 THE COURT: Sustained. Do you have any
16 objection to him reading this email?

17 MR. DETWILER: Your Honor, I do, frankly, but
18 I've been sitting on my hands just not to
19 interrupt, but I think it's improper for him to
20 just read this, it's somebody else's email. So I
21 do object.

22 THE COURT: Well, it's in the book as an
23 agreed-upon exhibit. Who was it coming in on,
24 Alex?

25 MR. SOWELL: Well --

1 MR. DETWILER: Your Honor, if I could address
2 your question. We agree that it's admitted, we
3 agree that it's admissible. Why he needs to
4 publish it and read it and waste the Court's time
5 and our time, I don't know.

6 THE COURT: Well, I think he's trying to get
7 it as a part of the record, but --

8 MR. DETWILER: It's in the record.

9 THE COURT: On the record, in the record, I
10 agree it's an agreed-upon exhibit. However, is it
11 pertinent to like a secondary question you want to
12 ask him, or are you just trying to get it
13 published?

14 MR. SOWELL: Just trying to have it
15 published.

16 THE COURT: Okay. Let's read it after his
17 testimony. If you want Exhibit No. 11 read into
18 the record, if that's your point, versus him -- I
19 think you want him to read it so it's in his now
20 current knowledge memory base and now you're going
21 to ask him a question. Is that what's going on?

22 MR. SOWELL: Well, that's probably part of
23 it, but --

24 THE COURT: Well, what's your plan with
25 getting him to read this exhibit?

1 MR. SOWELL: Kathy Parr intends to testify.

2 THE COURT: Then let it come in with her.

3 MR. SOWELL: I understand, but --

4 THE COURT: No, no, I'm serious. I

5 understand y'all have made a lot of effort here.

6 It's tab Exhibit No. 11, or make a red note about

7 Exhibit No. 11 that you want her to read that

8 email. But your real issue with Mr. Walkup at

9 this point is what he was alerted to in terms of

10 concerns about her care. And if she's gonna be a

11 witness, you need to call her and ask her those

12 questions so that it's not hearsay.

13 MR. SOWELL: Thank you.

14 THE COURT: Ask him something else. Let's

15 move on.

16 BY MR. SOWELL:

17 Q Let's look at Exhibit No. 13. Do you see Exhibit.

18 No. 13?

19 A Yes.

20 Q What is Exhibit No. 13?

21 A It's a letter from Alex Weatherly to me.

22 Q Is that the first letter you know of that you

23 received from Alex Weatherly?

24 THE COURT: You've asked and answered this.

25 This has been asked and answered. His exact

1 response was "I can't say for sure."

2 BY MR. SOWELL:

3 Q Is this a letter you received from Alex Weatherly?

4 A Yes.

5 Q And this is a letter in which he seeks an
6 accounting of receipts and disbursements from the
7 trust?

8 A Correct.

9 Q Let's look at Exhibit No. 14. What is Exhibit
10 No. 14?

11 A It's a letter to Alex Weatherly from Ben Bruner.

12 Q Who is Ben Bruner?

13 A My attorney.

14 Q So did you engage Ben Bruner after you got that
15 prior letter from Alex Weatherly?

16 A Yes, somewhere in this time frame.

17 Q Is this Mr. Bruner's response to the letter from
18 Alex Weatherly?

19 A Yes.

20 Q In this letter, does he respond to Mr. Weatherly's
21 request by enclosing copies of the tax returns for
22 2013, '14, '15? You see where the letter says per
23 your request? First paragraph.

24 A Oh, yeah, okay, "Per your request, I'm enclosing
25 copies of your tax return for the '13, '14, '15.

1 In addition, I'm enclosing the return that was
2 prepared for her to file '16 which she has not yet
3 filed. Based on our April 18th phone call, my
4 understanding is you took the necessary steps to
5 secure her an extension to file her 2016 return."

6 Q Go down to the fourth paragraph at the bottom
7 there, and re-publish that paragraph.

8 A "There's no pending sale of Ms. Baskin's residence
9 at 316 Summerlea, and there will not be one
10 without Ms. Baskin's consent in light of your
11 letters. However, there are repair bills,
12 maintenance costs and other expenses from the
13 continued ownership of that home which must be
14 paid. The terms of the trust give the trustee
15 complete and absolute discretion to encroach upon
16 and make disbursements from principal to or for
17 the benefit of Jane Baskin at any time and from
18 time to time in such amount as he may deem proper
19 for medical care, comfort, maintenance, and
20 welfare of my daughter, taking into consideration
21 to the extent deem advisable, any other income or
22 resources of my said daughter known to him.
23 Historically, the trustee has exercised the
24 discretion to pay necessary costs of living for
25 Ms. Baskin's primary residence. Nothing in the

1 trust terms requires the Trustee to encroach upon
2 principal to pay the costs of ownership for a home
3 in which Ms. Baskin is not living."

4 Q All right. Now, with respect to that paragraph,
5 have you, as trustee over the last 30 years, from
6 time to time in such amounts as you deemed proper,
7 paid for the medical care of Jane Baskin?

8 A Absolutely.

9 Q Have you paid for her comfortable maintenance?

10 A Yes.

11 Q And her welfare?

12 A Yes.

13 Q Taking into consideration the extent you deemed it
14 advisable --

15 THE COURT: Could you please stop leading
16 him.

17 BY MR. SOWELL:

18 Q Have you done what is stated in the trust over the
19 last 30 years?

20 A Yes.

21 Q If you would, go down to the bottom half of the
22 letter that starts with "respect to the status of
23 the trust," and publish that portion of the letter
24 including the four paragraphs below that.

25 MR. DETWILER: Objection, Your Honor.

1 There's no reason for him to publish something
2 that's already in the record. I would just ask
3 that we move on. If he has a specific question
4 about it, then I think that should be an
5 appropriate question.

6 THE COURT: Here's what I would prefer, Mr.
7 Sowell, unless there's a purpose to him reading,
8 which we can all do. Have him read it to himself
9 as some kind of reminder moment and then ask your
10 question.

11 MR. SOWELL: All I care about, Your Honor, is
12 that the court appreciates the fact that they are
13 reporting to Alex Weatherly on May 4, 2017 in
14 response to his letter of March 29. That's all I
15 care about. And if the Court is sufficiently
16 apprised of that, then he probably doesn't need to
17 publish this.

18 THE COURT: This exhibit has been drawn
19 before on other testimony. I'm aware of the
20 exhibit. I'm aware of the communication. I think
21 it's consistently been is it a quality
22 communication? Is it a quality accounting? Does
23 it provide all the information? Is everyone
24 satisfied? So I don't know of what question you
25 want to ask him in relation to those issues, but

1 we can clearly see there's a response.

2 MR. SOWELL: Thank you.

3 BY MR. SOWELL:

4 Q If you would, go to the next page?

5 A Page three?

6 Q Yes, page three. Look at the last paragraph if
7 you would. Just publish the last paragraph.

8 MR. DETWILER: Same objection, Your Honor.

9 THE COURT: Again, what are we doing?
10 Publish the last paragraph?

11 MR. SOWELL: Well, Mr. Bruner says to
12 Mr. Weatherly, "I trust you will find enclosed
13 information and documents satisfactory."

14 THE COURT: Right. Like we would normally
15 all end a letter about something like this. I'm
16 not sure the purpose of him reading me that
17 paragraph. What is the question?

18 BY MR. SOWELL:

19 Q The question is, is in light of that last
20 paragraph, Mr. Walkup, are you aware that
21 Mr. Weatherly ever called Mr. Bruner in response
22 to this letter of May 4, 2017 and asked him for
23 additional information?

24 A No, I'm not aware of any response.

25 Q Can you identify Exhibit No. 15?

1 A A letter to Jane from me.

2 Q What is the date on that?

3 A August 10, 2017.

4 Q How did you come to write this letter to Jane?

5 A She had been out of the house since June the 15th
6 of '15, over two years, and I had continued to pay
7 the taxes and insurance bill, and I was concerned
8 that the insurance company was going to cancel
9 insurance on the house because it was vacant. And
10 I was hopeful that she would understand that and
11 would sell the house and let the asset grow rather
12 than deteriorate.

13 Q What did you tell her in the letter?

14 A I told her I was gonna pay another payment on
15 insurance, but she would need to take it over.

16 Q For what reason?

17 A Because it was not a trust asset and it was
18 drawing down the value of the trust to pay the
19 expenses.

20 Q What did you tell her in the last paragraph?

21 A "It would be wise for you to sell the house and
22 invest the funds to be used on your future care
23 instead of spending on expenses that would be
24 wasteful." We also forwarded the property tax
25 bill we received in November.

1 Q So what were you trying to persuade Ms. Jane
2 Baskin to do in August of 2017 with respect to the
3 Summerlea house that she owned?

4 A To sell the house that'd been sitting there vacant
5 for over two years.

6 Q And at some point in this time frame, it might've
7 been before this, it might've been in 2015, I'm
8 not sure, but you actually got a contract to sell
9 the house for \$90,000?

10 THE COURT: We've already done this piece of
11 the testimony, Mr. Sowell. Something new.

12 BY MR. SOWELL:

13 Q Thank you. Let's look at Exhibit No. 16. Can you
14 identify Exhibit No. 16?

15 A August 15, '17, a letter to Alex from Ben Bruner.

16 Q From Alex Weatherly to Ben Bruner?

17 A Excuse me, from Ben Bruner to Alex Weatherly.

18 Q And Ben Bruner was your attorney at this time?

19 A That's correct.

20 Q In the third paragraph, what does Mr. Bruner say
21 to Mr. Weatherly?

22 A "In addition, you and I spoke about setting up a
23 meeting in person involving you, me and the
24 clients and Ms. Baskin's new POA. As I mentioned
25 to you, my client has no intention of resigning.

1 You made a commitment to Mr. Baskin --
2 Ms. Baskin's father. He has honored his
3 commitment for years and has the intent to
4 continue to honor the commitment. Moreover, the
5 administrative costs of the trust increase
6 exponentially if a bank were to be substituted as
7 trustee. Given Ms. Baskin's life expectancy, and
8 the current value of the trust, these higher costs
9 will most probably drain the trust during Ms.
10 Baskin's lifetime, leaving her destitute at a time
11 in her life where she will be in the greatest need
12 of care."

13 MR. DETWILER: Your Honor, I object to any
14 further publication. It's in evidence.

15 THE COURT: Could you just ask him a question
16 versus having him read letters or portions of
17 letters to me. Ask him a question.

18 BY MR. SOWELL:

19 Q Thank you. Look at -- if you would, look at
20 Exhibit No. 17.

21 A Letter to Ben Bruner from Alex.

22 Q From Alex Weatherly?

23 A Yes.

24 Q What's the date on it?

25 A October 10, '17.

1 Q Do you recall that Mr. Bruner had previously, a
2 letter or two back, had sent the draft '16 tax
3 return to Mr. Weatherly at his request?

4 A Right.

5 Q And in this letter, does Mr. Weatherly authorize,
6 or I guess Jane Baskin, authorize this Gary Ballou
7 CPA to file those tax returns electronically?

8 A Yes, at the last minute there was a deadline of
9 October 15th, and this is a letter saying now go
10 ahead and file the return.

11 Q Who is Gary Ballou, CPA.

12 A It's my in-house CPA.

13 Q Had he been filing the tax returns for Ms. Baskin
14 personally?

15 A He had been filing them, but Mr. Weatherly had
16 instructed us not to file this one.

17 Q Any then gave you an authorization to file it
18 electronically?

19 A I believe that is correct.

20 Q Look at the first sentence in the letter.

21 A Yes.

22 Q Let's look at, turn your attention, please, to
23 Exhibit No. 18. What is Exhibit No. 18?

24 A Letter from Ben Bruner to Alex.

25 Q The last sentence on the first page -- well, let

1 me -- yeah, the last sentence on the first page,
2 what does that say?

3 A "Surely you understand the trustee's need to
4 consider the expected costs of care for Ms. Baskin
5 as she ages."

6 Q Why is that so important to you as the trustee of
7 the Jane E. Baskin Trust?

8 MR. DETWILER: Asked and answered, Your
9 Honor, many times.

10 THE COURT: Got it. Agreed. Sustain the
11 objection.

12 BY MR. SOWELL:

13 Q Let's look at Exhibit No. 21.

14 A There's nothing in my book for 21.

15 Q Do you see Exhibit No. 21?

16 A A letter from Alex to Ben Bruner.

17 Q Right. What does the first sentence of that
18 letter say -- well, the first two sentences?

19 THE COURT: Again, I'm going to make you
20 stop. I don't want him to read out loud letters.
21 Ask him a question.

22 BY MR. SOWELL:

23 Q I will do so. Is there a reference in there from
24 Mr. Weatherly to Mr. Bruner to wit, "I also
25 requested that--"

1 THE COURT: Now you're reading the letter.

2 MR. SOWELL: Well, it's important for the
3 question. Very important.

4 THE COURT: Then ask him to read it by
5 himself to himself to remind himself.

6 BY MR. SOWELL:

7 Q Okay. Mr. Walkup, would you read the first two
8 sentences of this Exhibit No. 21.

9 A (Witness complies).

10 THE COURT: Ask the question. Don't read it
11 to me. Ask the question. Whatever question you
12 have, ask it.

13 MR. SOWELL: I'm just waiting for him to
14 finish reading it.

15 THE COURT: Ask the question. If he needs to
16 read it to answer the question, he may. Come on.

17 BY MR. SOWELL:

18 Q Have you completed reading the first two
19 sentences?

20 A Yes.

21 Q You see that Mr. Weatherly is inquiring about
22 completing the installation of the HVAC unit at
23 Summerlea?

24 THE COURT: Ask the question, please.

25 MR. SOWELL: I'm going to.

1 THE COURT: Just do it.

2 BY MR. SOWELL:

3 Q Was there ever any question about completing the
4 installation of the HVAC unit at Summerlea?

5 THE COURT: From who? You're asking if he's
6 ever been questioned about the AC unit?

7 BY MR. SOWELL:

8 Q Has it ever been a question in your mind that the
9 air conditioning needed something done to it to
10 complete its installation at Summerlea?

11 THE COURT: At what year?

12 MR. SOWELL: Any year.

13 THE COURT: There's been many discussions and
14 lots of testimony about the HVAC unit, the
15 furnace, the AC unit. He has testified about his
16 journey through that. Are you asking him if
17 someone ever questioned him about it in the year
18 of 2018?

19 MR. SOWELL: I'll skip that. Thank you.

20 BY MR. SOWELL:

21 Q Look at the third paragraph. Is this where
22 Mr. Weatherly demands that you have no further
23 direct contact with Ms. Baskin?

24 A That's referring to that.

25 Q Is he demanding that from you?

1 A Let me read it.

2 THE COURT: So noted, he demanded that.

3 BY MR. SOWELL:

4 Q Let's look at, Mr. Walkup, let's turn to Exhibit
5 No. 22.

6 A A letter to Ben Bruner from Alex Weatherly.

7 Q Well, I think it's to Ben Bruner, right, from Alex
8 Weatherly?

9 A Yes, there's --

10 THE COURT: We're losing you again, Mr.
11 Walkup. Don't forget to get back on that
12 microphone. I know you're looking down, but it's
13 hard to hear you when you get too far away from
14 that microphone.

15 BY MR. SOWELL:

16 Q So what is Exhibit No. 22 again?

17 A A letter from Alex Weatherly to Ben Bruner.

18 Q What is the date on it?

19 A August 13, '18.

20 Q And in that first paragraph, does he say he would
21 like to begin by asking for a current accounting
22 of all income and expenditures by the trust for at
23 least the past three years?

24 A I don't see that.

25 Q It's at the end of the first bullet point.

1 A Oh, yes.

2 THE COURT: You know these aren't letters
3 that he's even included in. Wouldn't it be the
4 first question to say "Have you ever seen this
5 letter? Did you see it in time with its request?
6 But isn't it more important that he provided
7 another accounting or he produced another
8 accounting based on this letter? What is the
9 point of having him acknowledge communications
10 between Alex Weatherly and Ben Bruner?

11 MR. SOWELL: It's just a progression of --
12 it's just a timeline.

13 THE COURT: You're going to have Alex
14 Weatherly. If you want to ask him what he did or
15 did not do in response to the letter, that's
16 appropriate.

17 MR. SOWELL: I plan to.

18 THE COURT: Then let's go ahead and do that.

19 BY MR. SOWELL:

20 Q So what was done in response to this August 13,
21 2018 letter, and if you would, let's turn as a
22 reference to Exhibit No. 25.

23 A Letter from Ben Bruner to Alex Weatherly.

24 Q Is this a letter where Mr. Bruner -- what is with
25 that letter? Let's look at the whole shooting

1 match there. What is with the letter of October
2 6, 2018 in your notebook?

3 A It's a balance sheet for Eldridge Baskin Trust, an
4 analysis of the income and distributions and a
5 QuickBooks -- Wells Fargo QuickBooks accounting
6 report, and a 2015 tax return for the trust, and
7 2016 tax return, and 2017 tax return. So that's
8 what I assume was being requested earlier.

9 Q What does Ben Bruner say the first sentence in the
10 letter, Exhibit No. 25?

11 A "I write in response to your August 13th
12 letter."

13 Q And then down in the first full paragraph, what is
14 that related to, what does it say in the heading?

15 A He referred to the way expressed a concern about
16 transparency.

17 Q What does it say in the heading, Roman numeral I?

18 A Request for an accounting of all income and
19 expenditures by trust for the past three years.

20 Q And then what does it say?

21 A "On May 4th, we provided you a detailed
22 description of the current assets, values, and
23 bank account balances, previous four years of
24 returns, tax returns, an accounting of all
25 expenditures to or on behalf of Ms. Baskin during

1 the period of 12 months, prior 12 months. Three
2 year accounting you requested, which is enclosed,
3 includes the same tax return and format of
4 accounting."

5 Q And what else?

6 A "If you need anymore specific documents required
7 to have a closer look, please advise."

8 Q Now, did Mr. Weatherly ever request any additional
9 documents that you are aware of after this letter
10 of October 6, 2018 from Ben Bruner to Alex
11 Weatherly?

12 A Not that I'm aware.

13 Q Let's look at Exhibit No. 26.

14 A It's a letter from me to Jane.

15 Q What's the date on it?

16 A The 8th of October.

17 Q And this is a letter that you sent to Jane?

18 A It's a letter I sent to Jane.

19 Q That's good enough. Let's look at Exhibit No. 27?

20 A Ben Bruner's writing Alex October 6th saying,
21 "I'd like to follow up on this letter since I
22 never received any response to my last
23 correspondence from you. Unless I hear from you
24 in the next ten days, I will take the absence of a
25 response as Ms. Baskin's acquiescence to the

1 manner in which Mr. Walker has been managing the
2 trust property and making payments to Ms. Baskin.
3 over the past four months."

4 MR. SOWELL: Your Honor, I would request a
5 stipulation from Mr. Detwiler and Mr. Weatherly.
6 This letter, we know from Ben Bruner's
7 correspondence with Mr. Weatherly, email
8 correspondence, was actually saved and transmitted
9 on February 5, 2019. That date is incorrect. In
10 other words, the October 6th date, he wouldn't
11 write him on October 6 about the letter he sent on
12 October 6. And if they would stipulate to that,
13 then that's all hunky-dory.

14 MR. DETWILER: Tell me what exhibit you're
15 talking about again.

16 MR. SOWELL: Twenty-seven.

17 THE WITNESS: Are you saying the date at the
18 top of the letter is correct and the body of the
19 letter is wrong?

20 MR. SOWELL: No. I'll get to it.

21 THE COURT: Isn't it a question for another
22 person? I just -- I think we're --

23 MR. SOWELL: It's a question for a
24 stipulation.

25 THE COURT: Well, you're asking questions of

1 your client and these are issues related to
2 another witness.

3 MR. SOWELL: Well --

4 THE COURT: Do you have a question about an
5 issue related to this letter?

6 MR. SOWELL: Well, the question is was the
7 letter sent? And it says it was sent on October
8 6, which it was not and we know that.

9 THE COURT: Your witness didn't send it and
10 it's not addressed him. That's a question for
11 Mr. Weatherly.

12 MR. SOWELL: Well, his lawyer sent it. So
13 I'll ask him this --

14 THE COURT: Please ask your witness a
15 question he can answer based on his involvement in
16 these issues.

17 BY MR. SOWELL:

18 Q Mr. Walkup, did you get copies of when your lawyer
19 Mr. Bruner sent letters to Mr. Weatherly, were you
20 copied on them?

21 A Normally, yes.

22 Q Were you copied on this letter?

23 A I don't see my name listed on it.

24 Q Okay.

25 MR. DETWILER: Your Honor, I'll stipulate

1 that it was sent, because it's referred to in the
2 next exhibit on May 13.

3 THE COURT: That's not just the only
4 question. Was it sent when it was sent? Do you
5 stipulate it was sent truly in February of '19,
6 not the date of October of '18?

7 MR. DETWILER: Yes, we'll stipulate to that.

8 THE COURT: Okay, next question.

9 BY MR. SOWELL:

10 Q What is Exhibit No. 28?

11 A May 13, '19, letter from Alex Weatherly to Ben
12 Bruner.

13 Q Now is it covered by a May 22, 2019 letter from
14 Alex Weatherly to Ben Bruner? I don't know if
15 yours is or not?

16 A Is it covered by what?

17 Q The letter of May 22, 2019 from Alex Weatherly to
18 Ben Bruner.

19 A I don't have a May 22.

20 Q That's fine. The May 13 letter, what does it say
21 in the first sentence?

22 A "I write in response to your email --

23 MR. DETWILER: Objection, Your Honor.

24 THE COURT: Stop having him read letters to
25 me. Ask him a question. That is your final

1 warning.

2 BY MR. SOWELL:

3 Q Thank you. Was Alex Weatherly writing Ben Bruner
4 in response to Mr. Bruner's letter of October 6,
5 2018?

6 A Yes.

7 Q Is this that letter?

8 A It looks like it.

9 Q Let's look at Exhibit No. 32. What is Exhibit
10 No. 32?

11 A It's an October 12, '20 email, an email to judge
12 McCulloch.

13 Q From whom?

14 A From Bess DuRant.

15 Q Does it provide a link to some information?

16 A Where would the link be?

17 Q Where it says down there, "We have attached --"

18 THE COURT: I acknowledge this was sent to me
19 and it had a link and all of the information
20 attached to it was received.

21 MR. SOWELL: Thank you.

22 MR. DETWILER: So stipulated. Your Honor,
23 while Mr. Sowell is thinking about his next
24 question, there is one housekeeping issue with
25 regard to this exhibit. May I?

1 THE COURT: No. He's going to finish his
2 questions and we're going to lunch.

3 BY MR. SOWELL:

4 Q Would you look at Exhibit No. 36 in the notebook.

5 A A letter to Judge McCulloch from Bess DuRant
6 October 29th.

7 Q And what is attached to it?

8 THE COURT: Acknowledged, a letter with
9 proposed and thought about budgets. Next
10 question.

11 BY MR. SOWELL:

12 Q Would you look at Exhibit No. 37.

13 A It's a revised budget.

14 Q Is it actually two budgets A and B revised on
15 November 12, 2020?

16 A Right.

17 Q And have these been submitted to Mr. Detwiler and
18 the Court?

19 THE COURT: Yes, acknowledged. Do you want
20 to ask him questions about the proposed or
21 analyzed budgets? That's pertinent. Getting him
22 to say he sent it or it was sent or I got it is a
23 waste of time. Asking him questions about his
24 thoughts behind the budgets, his plan regarding
25 the budget, his analysis or research in putting

1 together the budget are all pertinent. Do you
2 have any kind of questions like that that you want
3 to ask him?

4 MR. SOWELL: Thank you.

5 BY MR. SOWELL:

6 Q Let's look at Exhibit No. 36 and what is appended
7 to it. If you would, in response to --

8 A Letter from Bess to Judge McCulloch.

9 THE COURT: I don't need you to acknowledge
10 the letter, Mr. Walkup, please turn the page.
11 This is your October 29, '20, I believe you put
12 together her current budget and then a future
13 budget. Do you see that?

14 THE WITNESS: I see that, I do.

15 THE COURT: You put that together, correct?

16 THE WITNESS: Yes.

17 BY MR. SOWELL:

18 Q If you would, just describe in general terms what
19 is evidenced by the current budget for Jane
20 Baskin.

21 A Well, I had revised that budget again based upon
22 --

23 Q We'll get to that, but I'm asking you now about
24 what is in this document, October 29, '20?

25 THE COURT: Let me stop you, Mr. Sowell. He

1 did revise the budget and it's more pertinent to
2 talk about his revised budget than one he did
3 before the revised budget, correct?

4 MR. SOWELL: I think so. Do you want me to
5 go there?

6 THE COURT: Mr. Sowell, I want you to ask
7 pertinent questions that are actually helpful and
8 gets us finished.

9 MR. SOWELL: Well, do you want me to go to
10 the next budget?

11 THE COURT: Mr. Sowell, if he revised his
12 budget, it would be more pertinent to talk about
13 his revised budget.

14 MR. SOWELL: Thank you.

15 BY MR. SOWELL:

16 Q Mr. Walkup, turn your attention then to Exhibit
17 No. 37. It has, I believe, is it dated November
18 12, 2020?

19 A Right.

20 Q And does it have in paragraph A a revised budget
21 as of November 12, 2020?

22 A Yes.

23 Q Does it have on the next page in paragraph B a
24 future budget based upon moving Jane Baskin to the
25 Presbyterian Home?

1 A Right.

2 Q If you would, explain to the Court generally
3 what's in these budgets and how you have compared
4 the two and what you have recommended as trustee
5 of the Jane E. Baskin Trust.

6 A Well, I strongly recommended, I guess budget A
7 because of the fact if the funds run out so fast
8 in a 39-month period of time. I have since
9 revised this again, and I think primarily because
10 of the number of hours, the rate for the
11 caregiver -- this budget A had 12,963 per month,
12 but the final budget that I prepared, which I
13 probably have in my suitcase, is more than 14,000,
14 14,300 I think it is per month.

15 MR. DETWILER: Excuse me, Judge, I'm sorry to
16 interrupt. But what exhibit are we looking at?
17 I'm looking at Exhibit No. 37, which has a
18 different number on it than what he just testified
19 to.

20 THE COURT: What exhibit are we on?
21 Mr. Walkup, what exhibit number are you reading
22 from?

23 THE WITNESS: Thirty-seven.

24 THE COURT: And you're looking at the first
25 column?

1 THE WITNESS: The first page.

2 THE COURT: There's two columns, right?

3 THE WITNESS: That's correct.

4 THE COURT: You did a per month and a per
5 year.

6 THE WITNESS: That's correct.

7 THE COURT: What number are you looking at,
8 Mr. Detwiler?

9 MR. DETWILER: I thought he testified that
10 the caregiver was 12,000, almost 13,000, then he
11 had revised it to some higher number.

12 THE WITNESS: No.

13 MR. DETWILER: Did I misunderstand you, sir?

14 THE WITNESS: You misunderstood me. I said
15 the grand total in this budget is 12,900, but I
16 later revised the caregiver's total cost from her
17 current hourly rate that I had gotten from
18 Ms. Nunn.

19 MR. DETWILER: Thank you. I'm sorry to
20 interrupt.

21 THE COURT: Next question.

22 BY MR. SOWELL:

23 Q You were alluding to \$12,963 per month.

24 THE COURT: That's the total amount at the
25 bottom, got it.

1 BY MR. SOWELL:

2 Q What's the revised number?

3 THE COURT: That is the revised number. He

4 --

5 THE WITNESS: I revised it again. I revised
6 it again to 14,300 approximately.

7 THE COURT: Where is that?

8 THE WITNESS: I don't see it in this book,
9 but I may have it in my satchel somewhere.

10 THE COURT: Okay, next question.

11 BY MR. SOWELL:

12 Q And that comes from, what? The revision up
13 towards the 14,300?

14 A Because of the records, information given by Ms.
15 Nunn of what hourly rates were.

16 Q If you look at the top of the second page, when
17 you did the revised budget on November 12, 2020,
18 did you make a note with respect to that budget,
19 that funds would run out in 39 months and her life
20 expectancy?

21 THE COURT: You're testifying and not asking
22 him a question. The question would be, with that
23 budget in mind, how soon would her funds run out?
24 I've already asked it, you don't need to repeat
25 after me. That's just sarcastic. Mr. Walkup,

1 answer the question that I believe you just need
2 to read your answer on page two.

3 BY THE WITNESS:

4 A The 11/12/20 revised budget A, the funds run out
5 in 39 months, but then the Presbyterian Home, they
6 last, in this example, eight-and-a-half years, 103
7 months.

8 Q What's gonna happen if you revise the monthly
9 budget on the first page upward?

10 THE COURT: It just runs out faster. We're
11 clear that we're pressing time on an increased
12 budget. That is obvious and painfully obvious.
13 Next question.

14 BY MR. SOWELL:

15 Q What is budget B?

16 A That's for being in Presbyterian Home with a level
17 three assisted living.

18 Q And you believe you can have Ms. Baskin accepted
19 at Presbyterian Home?

20 A I believe from my discussions I've had with them
21 that they will accept her, but they have not
22 actually examined her physically. I've just
23 described her physical condition to them and her
24 financial statement.

25 THE COURT: We have fully evaluated the

1 Presbyterian Home situation in his earlier
2 testimony.

3 BY MR. SOWELL:

4 Q Is that what you recommend for Ms. Baskin?

5 A That's what I recommend. If there were other
6 possibilities for assisted living, I'd be happy to
7 listen to those as well.

8 MR. SOWELL: Your Honor, that's all I have
9 for Mr. Walkup.

10 THE COURT: All right. We're breaking for
11 lunch until 2:15.

12

13 (Off the Record)

14 THE COURT: Back on the record after our
15 lunch break. Mr. Walkup, you're back on the
16 witness stand even though you're sitting at the
17 same table. Cross-examination, Mr. Detwiler.

18 MR. DETWILER: Thank you, Your Honor, may it
19 please the Court?

20 THE COURT: Yes, sir.

21

- - - - -

22

CROSS EXAMINATION

23 BY MR. DETWILER:

24 Q Mr. Walkup, can you hear me, okay?

25 A Yes.

1 Q I'm going to try to speak up and if you start
2 drifting down away from the microphone, I'll do my
3 best to remind you to be there, okay?

4 A Okay.

5 Q How old are you, sir?

6 A Eighty.

7 Q You're an engineer by education. Is that right?

8 A That's correct.

9 Q And you're now a professional money manager?

10 A Correct.

11 Q You are the 98 percent owner of Walkup and
12 Associates. Is that correct?

13 A That's correct, approximately.

14 Q How big is your staff?

15 A Staff of five including myself.

16 Q Of those five, I think you testified that you have
17 your son-in-law, Dick Newsom, who works for you,
18 correct?

19 A Correct.

20 Q And do you have Laura Walkup who works for you
21 correct?

22 A She works part time for us.

23 Q And prior to that, she worked for 20 years as a
24 manager of the Atrium Apartments?

25 A Including Laura, it's six.

1 Q And Chris Walkup also works for you, he's your
2 son?

3 A Yes.

4 Q Are there any other relatives that you have
5 working for you?

6 A No.

7 Q Now, you or your company are partners in a number
8 of investment companies or investment funds. Is
9 that correct?

10 A Correct.

11 Q One of those is Columbia Cash Reserves?

12 A Yes.

13 Q And I think you testified earlier that that makes
14 loans to its partners?

15 A Partners and also outside loans to builders and
16 developers and individuals.

17 Q Basically real estate oriented loans?

18 A Some are stock related based upon the values of
19 stock.

20 Q And you also have or are a partner or you or your
21 company -- and when I say "you" I may just say
22 "you." If you need to correct, me let me know,
23 but when I say "you" I'm also referring to your
24 company William Walkup and Associates, okay?

25 A Okay.

1 Q Now, you are also a partner in Equity 95. Is that
2 right?

3 A That's correct.

4 Q And Equity 95 is, in effect, a mutual fund?

5 A It's an ownership of a number of individual New
6 York Stock Exchange stocks.

7 Q In both of those partnerships I just mentioned,
8 you have money that is invested on behalf of a
9 number of people.

10 A That's correct.

11 Q Including Jane Baskin's trust?

12 A In 95, that's correct. Small amount in Columbia
13 Cash Reserves, which varies according to what our
14 cash needs are.

15 Q Right. And I think there was a report from an
16 earlier year that the investment in Columbia Cash
17 Reserves was around \$35,000. So it does -- it
18 varies?

19 A It varies.

20 Q Now, I want to ask you about your testimony real
21 quickly about Equity 95, okay?

22 A Okay.

23 Q Now, let me ask you --

24 MR. DETWILER: Ms. Kelly, did that document
25 make it into his notebook?

1 MS. KELLY: Yes.

2 MR. DETWILER: Is it at the end?

3 MS. KELLY: At the very end.

4 BY MR. DETWILER:

5 Q Flip, if you will, Mr. Walkup, to Exhibit No. 32,
6 and flip toward the very back, is the audited
7 financial statement for Equity 95. Let me know
8 when you find that, okay.

9 A Okay. I found it.

10 Q If you would just keep flipping until you get to
11 page nine for me, would you.

12 A Yes.

13 Q Just to be clear, you have about 60 percent of
14 Jane Baskin's trust invested in Equity 95?

15 A Roughly.

16 Q And that is essentially a stock account?

17 A That's correct.

18 Q And her money is invested with a bunch of other
19 people's money?

20 A Yes.

21 Q So it's commingled with other people's money?

22 A Yes.

23 Q She doesn't own certain values of stock, she owns
24 a value of Equity 95?

25 A Exactly.

1 Q I want to look first at note number one on page
2 nine. Do you see that at the top?

3 A Yes.

4 Q I think you testified earlier that this was a --
5 Equity 95 was involved in stocks or had investment
6 objective of growth, income, and value. Isn't
7 that what you said?

8 A Yes.

9 Q However, this financial statement on note one says
10 that the partnership investment objective is to
11 seek capital growth. Do you see that?

12 A Yes.

13 Q It doesn't say a word about value and it doesn't
14 say a word about income, does it?

15 A No, but I think it may in other parts of the
16 document or in parts of the actual operating
17 document itself. This is a part of it.

18 Q Let me make sure we understand what we're looking
19 at, okay? This is an audited financial statement,
20 which means that it's been audited by an outside
21 third-party CPA firm, correct?

22 A Yes.

23 Q And it is bound by law to be absolutely correct,
24 is it not?

25 A I would not necessarily say that it describes

1 exactly what the purposes are. I'd have to look
2 back at the document itself, the organizational
3 document, to confirm that.

4 Q You don't think that this is an accurate statement
5 that this statement that Equity 95 is about
6 growth?

7 A I don't know that it's totally about growth.

8 Q Did Jane Baskin, who has 60 percent of her trust
9 invested in this Equity 95 vehicle, ever receive a
10 copy of this audited financial statement before
11 this litigation?

12 A I don't think that she did.

13 Q I want to flip you to the next page, Mr. Walkup,
14 and let's go on down to note four. Do you see
15 that?

16 A Yes.

17 Q It says that contributions may be made if you --
18 the managing partner agrees to accept them,
19 correct?

20 A Yes.

21 Q And you're the managing partner, correct?

22 A Yes.

23 Q And you're also an equity partner, not just a
24 managing partner, but you're an equity partner?

25 A Yes.

1 Q And it says that withdrawals can be made within a
2 written 60-day advanced notice prior to the end of
3 the calendar year. Is that right?

4 A Yes.

5 Q So if I were one of your partners in this and I
6 wanted to take money out in June, I couldn't do
7 that according to this. Is that correct?

8 A The next sentence says you may borrow funds from
9 the partnership at the sole discretion --

10 Q So I can't take the money out, but I can borrow
11 against it?

12 A You can borrow against it. And then at the end of
13 the year, you can liquidate it, pay off the loan.

14 Q And you get, you or your company, gets a fee for
15 managing Equity 95, correct?

16 A Correct.

17 Q And then you also get a fee for managing the trust
18 or being trustee, correct?

19 A Right. My trustee fees including handling the
20 rental house and every other item of business for
21 the trust.

22 Q We'll get into that. But the fact of the matter
23 is, you get a fee for this and then you get a fee
24 for being a trustee for investing the trust money
25 in this, correct?

1 A Right.

2 Q At any time in the last 30 years except perhaps
3 after this litigation started, did you ever
4 explain to Jane Baskin that you were getting fees
5 for acting as the trustee and also fees for the
6 investment funds that the trust has invested in?

7 A I don't know that I have.

8 Q There's also an E*TRADE brokerage account. Is
9 that right?

10 A Correct.

11 Q Does that also have funds of other people
12 commingled in it?

13 A No, it's strictly Eldridge Baskin Trust funds.

14 Q You are the trustee for one more trust. Is that
15 right?

16 A One more, yes.

17 Q It's not important to ask you details about that
18 except for this. Do you also invest that trust
19 funds in partnerships in which you are also a
20 partner and a managing partner and getting fees?

21 A Yes.

22 Q I believe you testified, and I just want to
23 confirm this is correct, you never knew that you
24 were required to give regular accountings to the
25 trust, to the beneficiaries of the trust,

1 particularly in this case Jane Baskin, you didn't
2 know you were required to give those on a regular
3 basis until Alex Weatherly wrote you in 2017 or
4 2018?

5 A You know, I got the request from Rita Cullum in
6 2008, and I furnished her the information at that
7 point. But I didn't realize that I had to do it
8 on an annual basis.

9 Q Let's look at that letter from Rita Cullum, would
10 you, please. And that will be found, I think it's
11 Exhibit No. 2. So if you'll flip very easily to
12 that. Do you see that?

13 A Did you say Exhibit No. 2?

14 Q Exhibit No. 2, yes, sir?

15 A I see it.

16 Q In the first paragraph, Ms. Cullum writes you and
17 she's asking about the trust, and she points out
18 to you, does she not, that you are required as a
19 trustee to give financial information to the
20 beneficiaries at least annually, and she even
21 cites the Code Section. Isn't that correct?

22 A That's what it says.

23 Q And so at least until April 7, 2008, when you
24 received this or as soon as you got it, you knew
25 or had notice that you had to provide annual

1 accountings according to the trust, though, didn't
2 you?

3 A Well, this letter certainly says that and I have a
4 staff that handles accounting for me, and I may
5 have turned this letter over to them to conform
6 and didn't remember the fact that she's got it
7 included in the letter.

8 Q So you just turned that duty over to somebody, one
9 of your staff members?

10 A Well, CPA and then the staff would provide the
11 accounting that she requested.

12 Q Have you ever heard the phrase "non-delegable
13 duty," Mr. Baskin?

14 A No, I haven't. My name is Walkup.

15 Q I'm sorry, Mr. Walkup. I'm sorry. Your middle
16 name is Baskin.

17 A Right.

18 Q I apologize.

19 THE COURT: Ask him that question again. He
20 didn't answer.

21 BY MR. DETWILER:

22 Q I'm sorry. Have you ever heard the phrase or the
23 term "non-delegable duty?"

24 A No.

25 THE COURT: Do you understand what it means?

1 THE WITNESS: I don't understand what it
2 means.

3 BY MR. DETWILER:

4 Q You don't understand.

5 A I could guess at it.

6 Q Did you believe that you had the right to delegate
7 the duties of reporting to the beneficiary to your
8 staff?

9 A Did I have the responsibility or the right?

10 Q Did you have the right? Did you believe that you
11 had the right to delegate the duties of reporting
12 to the beneficiary to your staff?

13 A I think I do.

14 Q Now, your response, Mr. Walkup, is found in
15 Exhibit No. 3. Could you turn to that, please.

16 A I have it.

17 Q And first, let me be sure. This response appears
18 to consist of two pages. Is that right? This is
19 your letter to Rita Cullum.

20 A Yes.

21 Q I don't see a date on this. Can we presume that
22 it was done on a timely basis after you received
23 her letter?

24 A Yes.

25 Q And is this the entirety of your response?

1 A I assume it is. It's been 12 or 13 years back.

2 Q Well, this is all I see, so. Unless you can tell
3 me otherwise, we're going to assume that this is
4 the entirety of your response, okay? Is that an
5 adequate presumption?

6 A Yes, agreed.

7 Q Let's go through this just a little bit. You
8 mentioned the first half of the letter lays out
9 the investment assets of the Eldridge Baskin Trust
10 as of 12/31/2007. Do you see that?

11 A Yes.

12 Q The first is a TD Ameritrade brokerage account and
13 it shows about 183,000 and some change in that.
14 Do you see that?

15 A Correct.

16 Q Is this an account that ultimately became the
17 E*TRADE account?

18 A Yes, it is.

19 Q And I think you told me that that consists of
20 stocks that only are owned by the trust, there's
21 no money commingled with anyone else's money in
22 that account. Is that correct?

23 A Correct.

24 THE COURT: Hold on one minute.

25 [Cell phone interruption]

1 BY MR. DETWILER:

2 Q Now, going back to this Exhibit No. 3, you also
3 mentioned that there's about \$2500 in a checking
4 account, and then the Columbia Cash Reserves
5 investment partnership had almost \$37,000 in it.
6 Do you see that?

7 A Yes.

8 Q And that's the same Columbia Cash Reserves
9 partnership that we just talked about?

10 A Yes.

11 Q And that's the partnership that invests in loans
12 to partners and other people?

13 A Right.

14 Q How much is in that partnership presently?

15 A At this time, I would say maybe 22 million.

16 Q And you personally are a partner in that?

17 A I am.

18 Q And William Walkup and Associates is also a
19 partner in that?

20 A It is.

21 Q And you also get fees for managing that
22 partnership?

23 A That's correct.

24 Q And is it you or William Walkup and Associates
25 that is the general partner or the managing

1 partner of that partnership?

2 A William B. Walkup and Associates is the managing
3 partner.

4 Q Then the next thing listed is Equity 95 investment
5 partnership. And at that time, it had about
6 \$88,000 in it. Is that correct?

7 A That's correct.

8 Q And this is the same Equity 95 partnership that we
9 talked about a while ago?

10 A Yes.

11 Q In this letter responding to Ms. Cullum's request
12 for financial information, you didn't explain that
13 you also were paid fees from these partnerships,
14 did you?

15 A I don't see that I did.

16 Q And you didn't explain to Ms. Cullum that you were
17 paid fees from these partnerships and then also
18 received a trustee fee, did you?

19 A Not in this letter.

20 Q Did you explain that money could not be withdrawn
21 from the Equity 95 partnership except on one
22 two-month period during the year?

23 A I didn't in this letter.

24 Q Did you at anytime ever explain that to
25 Ms. Cullum?

1 A Not that I know of.

2 Q Prior to Ms. Cullum's letter -- excuse me, well,
3 let me ask it a different way. Prior to your
4 response to Ms. Cullum's letter, whenever that
5 was, but it was sometime in 2008 or 2000 -- when
6 was it? I'm sorry, yes, April 7, 2008, is when
7 she wrote you. Prior to your response to that
8 letter, have you ever given Jane Baskin a report
9 on her trust or an accounting of her trust?

10 A She has remembered that I gave her a couple
11 reports earlier.

12 THE COURT: She who?

13 A Jane has said that she remembered that I gave her
14 a couple trust reports early on. I don't
15 remember, that's 30 years back.

16 Q As far as your memory serves you, you've never
17 given her a report until this?

18 A As far as I can remember, I have not, except for
19 that early reporting.

20 Q Do you consider this a report or an accounting?

21 A It's a basic report of the assets and values at
22 that time.

23 Q You mentioned a rental house. Did you explain how
24 much income was generated by the rental house,
25 what kind of rents you were receiving?

1 A No, I did not.

2 Q Did you explain what income had been distributed
3 to Jane?

4 A Not in this report.

5 Q And you've never given her a report before, so you
6 never had done that, at least at this point?

7 A I don't believe until a later time, '14, '15, '16,
8 '17.

9 Q We're going to get to that. Did you explain how
10 much principal had been distributed to Jane in
11 this report?

12 A No.

13 Q Can you tell us today, Mr. Walkup, how much income
14 and principal has been distributed to Jane?

15 A I'd have to go back and do addition on all those
16 years to tell you that.

17 Q You'd actually have to go back and add up the
18 entries on the general ledger, the bank accounts,
19 and so forth?

20 A In my reporting that we provided, we gave ten
21 years worth of that information, income and
22 expenses in detail.

23 Q And that was a report. Are you talking about the
24 P&L reports? Is that what you're talking about?

25 A Well, various reports that we reported on

1 Section 32.

2 Q Has there ever been a report where Jane Baskin
3 could very easily see, okay, I received \$10,000
4 from the trust this year in one fashion or
5 another? Have you ever given her any kind of
6 report like that?

7 A I don't know that I have.

8 Q Let me ask you something. When did you first turn
9 these letters to and from Rita Cullum over to your
10 lawyers. Was that recently?

11 A To my lawyers?

12 Q Well, yeah, in this case.

13 A I don't know whether we sent this earlier or not.

14 Q Okay. Did you consider this report, and I'm going
15 to use that phrase loosely, but that's what you
16 call it, a report, on Exhibit No. 3?

17 A It's a list of assets and expenditures.

18 Q Did you consider this list of assets and the
19 information provided in Exhibit No. 3 to be a
20 report good enough to inform Jane of what was
21 going on with the trust so as to protect her own
22 interests?

23 A I responded to her and she had never asked for
24 anything more than that.

25 Q So that's that? I mean, if she didn't follow up,

1 then it was good enough?

2 A I assumed this is what she wanted.

3 Q Let's then look at Alex Weatherly's letter to you
4 of March 29, 2017, which is found in Exhibit
5 No. 13.

6 A Okay.

7 Q In the third paragraph, middle of the first page,
8 Mr. Weatherly says that he's been asked to demand
9 a full accounting from you of all receipts into
10 and disbursements from the trust since the last
11 time an accounting was rendered. Do you see that?

12 A I do.

13 Q But no accounting had ever really been rendered
14 prior to this letter. Isn't that true?

15 A Except for those early ones that she alluded to.

16 THE COURT: She who?

17 A Jane.

18 Q You don't remember any such accounting, do you,
19 right?

20 A Specifically, I don't remember.

21 Q Right. So we're now, what's that, 27 years into
22 the trust at this point when Mr. Weatherly wrote
23 this letter?

24 A Yeah.

25 Q And after Rita Cullum had written you and provided

1 you the applicable Code Section telling you that
2 you had to give at least annual accountings to
3 Jane, you had not provided any report of trust
4 activities, accountings or any other information
5 between April of 2008 and the time when Alex
6 Weatherly wrote this letter. Is that correct?

7 A I believe that's correct.

8 Q Even as late as your deposition recently, you
9 still had never even read or looked into or made
10 any attempt to understand what the Trust Code
11 requires of you. Isn't that true?

12 A I'm not an attorney, and I didn't know anything
13 about what the Trust Code had to say. I had never
14 seen a copy of the Trust Code. This was the first
15 trust I'd ever been involved with and was helping
16 a family member with a handicapped daughter.

17 Q Alex's letter also references some proceeds from a
18 sale of Jane's non-trust property over in Lee
19 County, I believe. Do you see that? I think it's
20 probably at the bottom of the first page and going
21 into the second page. Take your time to look at
22 that if you need to.

23 A Proceeds from -- stated that "She has directed me
24 to instruct you that the proceeds for any such
25 sale are to be delivered directly to her."

1 Q Right. And I appreciate it, I just wanted you to
2 make sure that you knew what it said before I ask
3 a question about it, okay?

4 A Right.

5 Q So my question is this. Do you recall Jane
6 selling some of her non-trust property in Lee
7 County and getting some money for it?

8 A That's correct.

9 Q And she gave you the check and asked you to hold
10 it for her, didn't she?

11 A I told her I would invest it for her and make it
12 grow and use it for her benefit, and that's what I
13 did.

14 Q That's what you told her. What did she tell you
15 is what I'm asking. She told you to hold it for
16 her. Is that right?

17 A I don't recall her telling me to hold it for her.

18 Q Did she tell you that she wanted you to invest it
19 and make it grow and decide how to spend it?

20 A I don't recall her saying that.

21 Q Exactly. She didn't tell you that, did she?

22 A I do not recall. It's been probably ten years
23 back.

24 Q But that's, in fact exactly what you did. You
25 took that money and you spent that money as you

1 saw fit. Is that not true?

2 A On her.

3 Q Okay. I'll except that.

4 A And some of that on her personal house. Like a
5 new roof on the house. The roof was not a trust
6 asset, but I spent it on her house, it needed a
7 new roof.

8 Q And instead of spending trust assets, you spent
9 her assets.

10 A It was her personal house, not trust assets, that
11 I spent the money on.

12 Q Not entirely. You also used that to provide other
13 distributions.

14 A I would have to go back and review all the
15 financing, but I do remember specifically putting
16 a new roof on the house. That's one of the things
17 I know we did with it, was to spend money on the
18 roof of the house.

19 Q But you can't tell the Judge right now what you
20 spent that money on, whether it was spent on trust
21 property or non-trust property or just given to
22 Jane in lieu of other distributions from the
23 trust, can you?

24 A I could go back to the office and find the
25 accounting for it and see how it was spent.

1 Q Well, we are way past that, Mr. Baskin [sic]. I'm
2 asking you today to tell me.

3 A I don't have all my records from the office with
4 me.

5 THE COURT: I want you to stop. Are there
6 accountings we don't have?

7 MR. SOWELL: Not that I know of.

8 THE COURT: Well, he just alluded to the fact
9 that at his office is an accounting of these
10 funds. Mr. Walkup, it would be in your interest
11 to either talk to your attorneys before you answer
12 me or let your attorneys speak for you.

13 THE WITNESS: I'm sorry.

14 THE COURT: We have a huge problem. If he
15 has information about how things were handled that
16 are specifics to this litigation and it has been
17 known from the beginning these proceeds from sale
18 of the Lee County property is one hot issue, and
19 he just alluded that at his office there is an
20 accounting of these proceeds. If there is such
21 and it has not been turned over, your in huge
22 issue with me.

23 MR. SOWELL: I'm sorry.

24 THE COURT: I'm sorry is not even close to
25 where we are. You're going to take Mr. Walkup

1 into the hallway and get to the bottom of any
2 other accountings and immediately get them faxed
3 or e-mailed over here.

4 MR. SOWELL: Okay.

5 THE COURT: Thank you. Mr. Walkup, go talk
6 to your attorneys in the hallway. Stop flipping
7 pages.

8 (Off the Record)

9 THE COURT: All right. What do you have
10 Mr. Detwiler? We believe on its way by email is
11 an accounting of the land proceeds, and you think
12 it's already in the exhibit book, but no one could
13 put their hands on it right this second?

14 MR. DETWILER: Not exactly. I think, Your
15 Honor, it was sent by way of this May 4, 2017
16 letter. It appears it was referred to in this
17 letter, but is not I don't think in the exhibit
18 book. It either got dropped off and not included
19 in the exhibit --

20 THE COURT: Have you seen it with your eyes
21 during this discovery litigation? Have you seen
22 it?

23 MR. DETWILER: I can't tell you that I
24 haven't seen it, but I don't recall seeing it.
25 Mr. Weatherly, and that's why I brought it to the

1 Court's attention, he says he remembers seeing
2 something like that.

3 THE COURT: As a part of this discovery or a
4 part of communications in '17 and '18?

5 MR. DETWILER: Prior communications in '17,
6 '18.

7 THE COURT: Is it in the exhibit book that
8 you've seen?

9 THE WITNESS: It's the last two pages of 14.

10 THE COURT: Exhibit No. 14?

11 THE WITNESS: Exhibit No. 14.

12 THE COURT: I don't understand. This is an
13 accounting of your '16, '17. Are you saying --

14 THE WITNESS: I did remember the time of this
15 check, but the check came in -- this particular
16 check came in on 3/3/16 13,556.36.

17 THE COURT: The March 23, 2006 entry is the
18 land proceeds?

19 THE WITNESS: That's correct. Stuckey, Fata
20 & Segars, LLC.

21 THE COURT: Is this just the land proceeds
22 activity or are there other co-mingled income?

23 THE WITNESS: This is just the land proceeds.

24 THE COURT: Mr. Detwiler.

25

1 MR. DETWILER: Thank you, Your Honor, if I
2 could go back to my questions because I think this
3 begs a number of other questions.

4 BY MR. DETWILER:

5 Q We're now looking at the last two pages of Exhibit
6 No. 14.

7 A Yes.

8 Q And it has a list at the top referred to as Baskin
9 Columbia Cash Reserves account. Do you see that?

10 A Yes.

11 Q And it looks like there was a balance distribution
12 from trust \$10 on 3/22/16, right?

13 A Correct.

14 Q And then there was an entry of \$13,556.36. Is
15 that right?

16 A Correct.

17 Q Does this refresh your recollection of what
18 happened to the money that came from the sale of
19 the property in Lee County?

20 A That's one of the pieces that came from Lee
21 County.

22 Q And this is the check that Ms. Baskin gave to you
23 to hold and invest. Is that right?

24 A That's correct.

25 Q So beginning in March of 2016, it looks, and I'm

1 looking at this quickly, but it looks like you
2 were not investing yet, but paying Ms. Baskin's
3 personal expenses, Hawthorne Pharmacy, paying for
4 her caregivers of Sheila Wolfe, paying Richard
5 Newsom, your son-in-law cash for Jane, Atrium
6 Place Apartments. And it looks like it was pretty
7 much used up by a year later. Is that pretty much
8 what I'm looking at?

9 A That's what you're looking at, but you see the net
10 taxable interest being added each time.

11 Q Okay.

12 A That's the interest being added to it, it was
13 invested at roughly five-and-a-half percent.

14 Q That is interest on this \$13,000?

15 A That's correct.

16 Q Was this money actually segregated into a separate
17 account as reflected in Mr. Bruner's letter or was
18 this just your accounting for that money?

19 A We had a separate accounting in Columbia Cash
20 Reserves for this money.

21 Q Let's make sure we understand each other. This
22 wasn't like a checking account where I had \$13,000
23 in it and I could see where it was. This is just
24 your accounting of the 13,000. Is that correct?

25 A This is a Columbia Cash Reserves accounting,

1 including all the interest and added all expenses
2 charged against it. And it still has a small
3 balance in it, and I think that small balance
4 still exists over there. We haven't closed it
5 out.

6 Q My question to you is, and I just want to make
7 sure I'm clear, this was put in with all the other
8 money at Columbia Cash Reserves and invested in
9 that fashion but accounted for in your internal
10 accounting in this fashion?

11 A In a separate account. Each Columbia Cash Reserve
12 account has a separate account.

13 Q Why were these expenses paid for out of
14 Ms. Baskin's personal non-trust money when these
15 should have been paid for by the trust?

16 A Well, some of the items should've been paid by
17 Jane. For example, taxes on her houses and things
18 of that nature. But if the Court wanted me to
19 replenish these funds from the trust and write
20 another check out to Jane, that would be certainly
21 possible. We were using it for her benefit. It
22 was earning money and because this money was used,
23 the trust assets themselves were greater than they
24 would have.

25 Q But Jane didn't have any money to spend, right?

1 A Some of this money here and there was Jane for
2 cash.

3 Q And that's all she had to spend plus her Social
4 Security, right?

5 A She had Social Security and annuity, approximately
6 \$800 a month.

7 Q But she wasn't getting the annuity back then, was
8 she?

9 A It was paid on her behalf.

10 Q When did you start giving her the entire net
11 amount of the annuity?

12 A I would have to trace it, but I would think two or
13 three years back.

14 Q Prior to that, you didn't give her that money,
15 correct?

16 A I spent it on her behalf.

17 Q You spent it on her behalf. Just like you spent
18 her own money on her behalf like this, correct?

19 A Correct.

20 Q The annuity, you described that earlier and
21 there's no need for us to go back into how that
22 came about, but that annuity, you would agree with
23 me is non-trust money. That's Jane's money,
24 right?

25 A Right, but the government sent it to me since I

1 was the one who negotiated it to get it back.

2 Q For the longest time, you kept it and either gave
3 Jane none of it or some of it or whatever you
4 wanted to do until in recent years. Is that
5 correct?

6 A We used it on her behalf.

7 Q Even though it was non-trust money?

8 A Even though it was non-trust money, we spent it on
9 her behalf.

10 MR. SOWELL: Your Honor, may I offer this
11 letter into the record?

12 THE COURT: In a minute when it's your turn.

13 MR. SOWELL: Thank you.

14 BY MR. DETWILER:

15 Q We got sidetracked, Mr. Walkup, give me a second
16 while I pull my thoughts back together. The March
17 29, 2017 letter from Alex, Exhibit No. 13, do you
18 have that?

19 A Yes, I have it.

20 Q Mr. Walkup, in the March 29th letter, Exhibit
21 No. 13, Mr. Weatherly recounted a conversation he
22 had had with you in which he says that you
23 indicated you might be willing to consider
24 resigning as trustee and consenting to the
25 appointment of a successor trustee. This is back

1 on March 29, 2017. You recall that conversation?

2 A I really don't recall that conversation.

3 Q And you don't doubt that y'all talked about the
4 possibility of you resigning.

5 A He may have asked me if I was willing to resign.

6 Q And you're not denying that you said you'd be
7 willing to consider resigning?

8 A I don't remember saying that I would consider it.

9 Q But you're not denying that the further statement
10 that says that your relationship with Ms. Baskin
11 had significantly deteriorated?

12 A I would answer that question by saying that Jane
13 has felt a great deal of resentment against me
14 because her father did not leave the assets
15 directly to her. I didn't have anything to do
16 with that feeling. He simply selected me, and I
17 don't let that stand in the way of my relationship
18 with her.

19 Q You don't think you had a thing to do with your
20 poor relationship with Ms. Baskin. Is that what
21 your testimony is before this Court?

22 A That's what I'm saying. I don't hold it against
23 her that she has a resentment. About this time
24 when Mr. Weatherly got involved and Ms. Moseley
25 got involved, she seemed to be more negative than

1 before, but it didn't change my love for her or my
2 desire to help her. It's just a situation that I
3 have no control over.

4 Q We'll get back to that in minute. Let's look at
5 Exhibit No. 14, which is Mr. Bruner's letter with
6 a bunch of, some financial information included
7 with it. Do you see that?

8 A Yes.

9 Q We talked about some of that a moment ago. Just
10 to be clear, between April of 2008 and when this
11 letter was written by Mr. Bruner, you had not
12 provided any report to Jane about her trust?

13 A I don't believe so.

14 Q Nine years.

15 A This particular one provided '14, '15, '16, parts
16 of '17.

17 Q But no such information was given between April
18 2008 and May of 2017, which is nine years?

19 A I don't believe so.

20 Q You've indicated previously that you didn't think
21 Jane was capable of understanding financial
22 reports, tax returns, and the like. You remember
23 say that?

24 A I do remember saying it was questionable whether
25 she could understand it.

1 Q Isn't that exactly what Mr. Bruner gave to Jane in
2 his May 4, 2017 letter, the very things that you
3 say she was incapable of understanding?

4 A Well, I gave them to him for him to explain if he
5 could, at his request.

6 Q Let's look at Exhibit No. 22 if you would, please.

7 A Okay.

8 Q And this is Mr. Weatherly's letter of August 13,
9 2018. Do you see that?

10 A Yes.

11 Q First bullet point says, "At the present time, we
12 really do not have a clear picture of what
13 Mr. Walkup is spending for Jane and what he is
14 not. You sent me some financial information a
15 year ago detailing some of the expenditures and
16 some of the income." And then it goes on to take
17 issue with the sufficiency of that. Do you see
18 that?

19 A I see that, yes.

20 Q And then Mr. Bruner replies in Exhibit No. 25. Do
21 you see that the date of the letter is October 6,
22 2018, although I think there may be some issue
23 exactly when that was sent. It says that, Roman
24 numeral one first second full paragraph, it says
25 that, "The three-year accounting you've requested

1 and which is enclosed includes the same tax
2 returns and format of accounting as he had
3 previously provided." Do you see that?

4 A I'd have to read it.

5 Q Yes, take your time and read it, please.

6 A You're referring to Roman numeral one?

7 Q Roman numeral one, yes, sir.

8 A The last sentence says, "If there are any specific
9 documents other than the ones provided which you
10 believe are required for you to have a clear
11 picture of what the trustee is distributing on
12 behalf of Ms. Baskin, please advise."

13 Q Right. So Mr. Weatherly indicated to your lawyer
14 that still even with the information he had
15 previously been provided was unclear about how you
16 were spending the money and he asked for
17 additional information and Mr. Bruner just
18 basically gave him the same stuff again. Is the
19 way I read that.

20 A I can't be clear without reading the whole
21 document.

22 Q Let's just move on. Let's flip real quick to
23 Exhibit No. 32.

24 A I have it.

25 Q This is Exhibit No. 32. This is the information

1 that Ms. Durant sent by letter to the Court after
2 the Court directed you to provide an accounting.

3 Do you remember that?

4 A I remember that.

5 Q Were you on the conference call with Judge
6 McCulloch when she directed you to provide that
7 accounting. Do you recall?

8 A I don't recall that.

9 Q As a professional trustee, couldn't you just spit
10 out an easy-to-read, easy-to-understand accounting
11 or report on a \$575,000 trust?

12 A As I understand it, we were asked for ten years
13 worth of accounting and reports. And, in fact, I
14 was out of town driving at the time I heard her
15 request, and I got my staff to pull it together
16 and respond to the request.

17 Q So that was your understanding of what the Judge
18 had directed?

19 A I asked them to communicate with my office and
20 instructed my staff to follow through with
21 whatever the instructions were.

22 Q Are you set up, sir, to provide an individual
23 beneficiary like Jane Baskin an easy-to-read,
24 easy-to-understand report on her trust?

25 A You mean in terms of what the assets and

1 liabilities are?

2 Q You're the trustee, you tell me.

3 A Included in this report is a profit and loss that
4 shows for each year for ten years a page of income
5 and expenses. It's just one page long and a small
6 part of another page.

7 Q Is there anything about that or about anything
8 that you can produce inside your system that would
9 be able to tell Jane well, Jane, I spent X number
10 of dollars on your caregivers and X number of
11 dollars on your house and X number of dollars on
12 your health insurance or your out-of-pockets or
13 any of that kind of stuff?

14 A It details specifically the income and expenses.

15 Q So, in other words, I've got to go in there and
16 just ferret it out?

17 A It's here, and it would take a minute for us to
18 look at it.

19 Q So do you, sir, consider this a proper report or
20 accounting of a trust, this Exhibit No. 32 or
21 Exhibit No. 14 or Exhibit No. 25?

22 A I think it certainly includes all of the
23 information that's needed to understand the trust.

24 Q Do you feel that your duty is a little greater
25 given Jane Baskin's disabilities to provide her

1 with a slightly more easy-to-understand accounting
2 of her trust?

3 A We can certainly produce a simple page or two that
4 would show the total assets of the trust. And
5 that profit and loss sheet is already very clear,
6 it's just a matter of looking at the details.

7 Q It's very clear to you, but we're 30 years down
8 the road, sir, and you've never produced such an
9 easy-to-read report, have you?

10 A We have in '14, '15, '16, '17, back in that period
11 of time.

12 Q But you didn't produce in 2017?

13 A I would have to look to review this to see when I
14 last report.

15 Q We know what the documents show. Do you agree
16 with me that the trustee owes a fiduciary duty to
17 a beneficiary?

18 A I do.

19 Q And do you understand that that is a high duty?
20 Some courts have even called it the highest duty a
21 person can have.

22 A I do understand more now than I did before.

23 Q Than before when, the suit?

24 A Before going through all this process.

25 Q Do you think it's appropriate to be a partner with

1 a trust?

2 A I certainly do.

3 Q Do you think it's appropriate to receive fees from
4 those partnerships before also taking fees from a
5 trust?

6 A I do.

7 Q Do you think it's appropriate to require your
8 beneficiary to move into an apartment that you
9 own?

10 A That was a compromise, a temporary compromise to
11 get her in a safer location. I had not been able
12 to get her to move to assisted living, which she
13 needs. And I knew it was a safer and closer
14 environment for her to be in, and I was
15 immediately continuing to apply to Presbyterian
16 Home and other nursing home facilities to try to
17 work out as soon as I moved her in there. Someone
18 made the comment that I moved her there for my own
19 financial gain. I moved her there to be able to
20 take care of her better, and I was proceeding to
21 try my best to get her into an assisted living
22 place after that time and that has continued.

23 Q Do you understand the difference between being a
24 guardian and being a trustee, Mr. Walkup?

25 A I am not a guardian. I don't know exactly what's

1 involved in being a guardian except you can maybe
2 act on their behalf on any of their activities.

3 Q Do you understand the difference between a
4 conservator and a trustee?

5 A I have never been a conservator, so I don't know
6 exactly the responsibilities and details.

7 Q Did you hear Mr. Wingate testify yesterday about
8 the importance of the relationship between a
9 trustee and a beneficiary?

10 A I heard him testify. I didn't understand
11 everything he had to say, and I also didn't agree
12 with everything he had to say.

13 Q I'm not asking about everything, I'm asking about
14 that specific point.

15 A What specific point?

16 Q Here's my question, listen to my question. My
17 question is did you hear him testify about the
18 importance of the relationship between the trustee
19 and the beneficiary?

20 A I heard him testify to that effect. And the
21 response that I have to that is that I can't make
22 her not resent me. I have no control over that.
23 I can't control the fact that she and her POA sent
24 me a letter stating that I should not have any
25 contact with her. I want to have contact with

1 her. I want to have a relationship with her, but
2 if she doesn't want to have one with me, then I
3 can't control that. I'm at a loss.

4 Q Well, you're not at a loss, Mr. Baskin, you can
5 resign. I said you can resign --

6 A Mr. Baskin, what?

7 Q I'm sorry, Mr. Walkup. You're not at a loss,
8 Mr. Walkup, are you? There are things you can do.

9 A You know, if she had a different trustee that did
10 the job the way he's supposed to do it, Jane
11 wouldn't be happy with it.

12 Q Well, let's talk about your Exhibit No. 9, your
13 March 3, 2017 letter to Alex. Do you see that?

14 A I see that.

15 Q I think it's fair to say, I think you've already
16 told me, but it's fair to say that you'd been
17 having difficulties with your relationship with
18 Jane Baskin for quite a while. Is that a fair
19 statement?

20 A More recently in these last three or four years.

21 Q Well, at least before --

22 A Before that time, she wanted me to give her
23 control of her money, which is not what the trust
24 document called for me to do. And I accepted the
25 fact that she wanted me to give her X number of

1 dollars per month to spend like she wanted to.

2 But the instructions I had was I had to do

3 everything in light of her long-term needs, not,

4 just her short-term needs, but the fact that I had

5 great concern that her funds are going to run out.

6 Q Well, you've had difficulties with Ms. Baskin at

7 least after you moved her out of her home, right.

8 She didn't want to move out of her home.

9 A No, but she was reasonably happy at the

10 apartments. We had a good relationship. I would

11 visit her. We were friendly and then the

12 situation worsened somewhere around '17 when

13 Ms. Moseley became more involved. And as I told

14 you earlier, I've never seen Ms. Moseley, but that

15 seemed to be a turning point and it was a big

16 turning point when I got instructions not to have

17 any contact with her.

18 Q You don't like being told what to do by a woman,

19 do you.

20 A I'm told what to do by women every day.

21 Q So you had been having issues with her at least

22 since you moved her from the home. I think you

23 testified earlier that she did not want to go, did

24 not want to move to the apartment?

25 A Right, but she agreed to do it and she had a good

1 atmosphere and made friends with the neighbors and
2 my daughter was able and my staff were able to
3 care for her much better than they could in her
4 house on Summerlea.

5 Q And in your letter of March 3, 2017, Exhibit
6 No. 9, you actually called Jane a liar, didn't
7 you? That's a yes-or-no question. You called her
8 a liar. You said she'd been lying about you.

9 A That's correct. She made false statements about
10 me.

11 Q That's your version of it.

12 A She said that I had removed things from her
13 apartment.

14 Q Now, you --

15 A May I answer the question since you --

16 Q It's a yes-or-no question and you answered it,
17 Mr. Walkup. Let me ask you the next question.
18 The next question is this. You testified earlier
19 on direct examination that you'd been having
20 issues with Ms. Baskin for years and there was
21 just nothing you could do about it. I mean, I
22 wrote that down, there was nothing you could do
23 about it.

24 A I can't remove her resentment or the fact that her
25 dad left certain major portion of her assets in

1 trust and he had appointed me as the trustee.

2 Q As far back as 2015 or before, you felt like she
3 needed more care than she was getting, right?

4 A Way before that.

5 Q Way before that.

6 A Yeah.

7 Q And why didn't you give it to her?

8 A I tried to get her more help and I tried to get
9 her to move to assisted living and she refused to
10 do it.

11 Q Two different things, Mr. Walkup.

12 A I have no control over it.

13 Q Two different things, Mr. Walkup. Did you try to
14 give her more caregiving help in her home?

15 A I did.

16 Q And why didn't you give it to her?

17 A I did give her more help. Louise came to work
18 with her, and then when she moved over to the
19 apartments, Tammy began to help her, then Sheila,
20 then Jenny, and others -- others as well.

21 Q Let's just start with the Guardian's report. The
22 Guardian thinks she needs more help, right?

23 A Yes.

24 Q And Jane doesn't want 24/7 care. You've heard
25 that testimony, correct?

1 A Yes.

2 Q And you've heard it directly from her before,
3 correct?

4 A Yes.

5 Q And you're only giving her 40 hours of care a
6 week, correct?

7 A I can give her more.

8 Q Why don't you? What are you waiting on,
9 Mr. Walkup?

10 A She said she doesn't need 24/7 care.

11 Q She needs more care than she's got. And the trust
12 isn't paying for it, why not?

13 A That's why I'm trying to move her to assisted
14 living, to get her 24/7 care that the Guardian Ad
15 Litem -- the Guardian Ad Litem said she needs 24/7
16 care. She's a qualified person reported by the
17 courts to make a determination of that.

18 THE COURT: Did you have an objection, Mr.
19 Sowell?

20 MR. SOWELL: Yes, ma'am. I object to
21 Mr. Detwiler or any co-counsel interrupting the
22 witness' answers.

23 MR. DETWILER: I apologize.

24 THE COURT: I think he got his opportunity
25 and fully answered the question. I think the

1 point is well made. And I will plan on coming
2 back to that very specific point.

3 MR. SOWELL: Thank you.

4 BY MR. DETWILER:

5 Q There are some, including you, who think Jane
6 Baskin needs 24/7 care, correct?

7 A Yes.

8 Q And Jane Baskin doesn't want 24/7 care?

9 A That's correct.

10 Q And you agree with me that you can't force 24/7
11 care on Ms. Baskin, correct?

12 A I agree.

13 Q But you do believe she needs more care than she's
14 currently getting paid for by the trust, correct?

15 A Right.

16 Q My question to you while ago and I didn't get an
17 answer is why aren't you providing it?

18 THE COURT: Right now.

19 A I'm willing to provide more pay for. As I
20 understand it, she's getting Michele Moseley there
21 extra hours, and I'm willing to pay from the trust
22 for that.

23 THE COURT: Wow. That would be kind of a
24 yesterday thing to have done. That wasn't
25 requiring a response. That's my reaction, that's

1 certainly going to be my next order to you. I
2 thought I already ordered that in fact, that you
3 begin to provide evening paid care for her.

4 THE WITNESS: I didn't know --

5 THE COURT: It doesn't require a response
6 right now. I'll make sure it's clear when we're
7 done at the end of today. That's an immediate.

8 MR. SOWELL: Thank you, Your Honor.

9 BY MR. DETWILER:

10 Q Now let's talk about Summerlea Drive, and I'm
11 almost done, Mr. Walkup, I know you're pleased to
12 hear that. Jane has made it clear that she wanted
13 to keep Summerlea Drive. She made that clear to
14 you, correct?

15 A Yes.

16 Q And she made it clear to you that she wanted to
17 move back into Summerlea Drive, didn't she?

18 A Yes, recently she told that. I wasn't aware that
19 any of the construction was going on or there was
20 any move to move her back to Summerlea.

21 Q Well, she didn't want to keep Summerlea Drive for
22 no reason, did she?

23 A When I brought the contract to her to sell the
24 house, I said Jane, why are you not willing to
25 sell the house? Her only answer to me was "the

1 money." I didn't understand what that meant, but
2 that was her only answer to me.

3 Q Well, why didn't you ask her what she meant?

4 A I asked her to try to understand, but I didn't
5 understand what the answer was.

6 Q Isn't that part of the problem, is lack of
7 communication, Mr. Walkup?

8 A Well, it's a matter of her communicating with me,
9 to explain better what she meant. She didn't say
10 I want to move back into the house. She just said
11 I don't want to sell the house.

12 Q She's asked the trust to pay for the renovations
13 of the house. You're aware of that, at least
14 recently, to a letter to the Court. You're aware
15 of that?

16 A Where was I told that she was asking for the trust
17 to pay for renovations?

18 Q You're not aware that she's asked the trust to
19 pay -- this is news to you today?

20 A I don't remember hearing that. I heard that she
21 had borrowed money from Pat Watson to do the
22 renovations, but I had not heard that she was
23 asking the trust to pay for those renovations.

24 Q I'm surprised that this is the first you've heard
25 of that, Mr. Walkup, but let me move on. My

1 question to you now is are you willing to pay for
2 the renovations of Summerlea Drive so Jane can
3 move back in?

4 A I'll have to reevaluate my consideration of my
5 responsibility to take care of Jane for the rest
6 of her life. If she spends too much money on the
7 renovation of that house, her money's gonna run
8 out faster. And will I have done my job and duty
9 as a trustee to preserve the funds to take care of
10 her? If she moves in and the funds run out in
11 three years -- and I've heard the witnesses and
12 nobody really to step up and take care of her when
13 the money runs out. So I can't answer that
14 question without understanding what's going to
15 happen to her.

16 Q So when Alex Weatherly and Jane Baskin together
17 wrote the Court on October 20 or whatever it was
18 and suggested that the trust pay -- made actually
19 a couple of alternative suggestions that the trust
20 pay for the renovations or that the trust lend
21 Jane the money to pay for the renovations at which
22 time it could be repaid upon her death or sale of
23 the house or in some other fashion make financial
24 arrangements about doing those renovations, are
25 you telling this Court today that you never

1 understood that request?

2 A I have volumes of papers to keep up with. I do
3 not know that I ever understood that the request
4 was being made.

5 THE COURT: Mr. Walkup, I have a problem with
6 that answer and I'm going to ask you please look
7 at the proposal that he's referring to. Because
8 not reading that and not trying to resolve this
9 litigation before it's in this courtroom is not
10 acceptable, the fact that you're telling me you
11 have volumes of paper to read. Read this letter.
12 Because if you had read it and considered it, you
13 could have resolved it.

14 THE WITNESS: Where is this letter?

15 THE COURT: Mr. Walkup, it will be given to
16 you, but you should have already seen it and
17 evaluated it. Somebody hand it to him.

18 MS. DURANT: It's Exhibit No. 34.

19 THE COURT: If this is the first time you're
20 gonna read this, I really might have to take a
21 break and walk around the block.

22 BY MR. DETWILER:

23 Q Mr. Walkup, to be clear, this is Exhibit No. 34,
24 which is the October 16, 2020 letter from Alex
25 Weatherly to Judge McCulloch.

1 A Let me read it again.

2 Q Yes, I'm sorry. I just wanted to make the record
3 clear.

4 A (Witness reading document). I do remember reading
5 about this being a loan to her, but it's not a
6 trust asset repaid by her through mortgage
7 payments to the trust rather than rent payments.

8 THE COURT: So you've seen that letter before
9 today?

10 THE WITNESS: I have.

11 THE COURT: That's what he's talking about.

12 THE WITNESS: Okay.

13 THE COURT: I have to urge you, sir, and I
14 mean this with all my heart, that at every moment
15 of this experience, you remain in a position to do
16 something different, as she does. There is always
17 the possibility to resolve. And so for you to
18 remain plugged in and knowledgeable and engaged,
19 even though it feels like attacks and a horrible
20 litigation, it is your fiduciary duty to remain
21 engaged and plugged in at every level in the
22 thoughts of what we can do to resolve this beyond
23 this knockdown drag out three to four day
24 litigation.

25 THE WITNESS: I understand.

1 THE COURT: Thank you, sir. Ask a question.

2 BY MR. DETWILER:

3 Q Are you willing now to pay for the renovation of
4 Jane's house so that she can live where she wants
5 to live and relieve the trust of the burden of
6 paying her rent?

7 A I'm certainly willing to consider that. And I
8 still want to consider the depletion of the funds
9 and how soon they will run out under this
10 arrangement.

11 Q So since October 16, 2020 when this letter was
12 written to the Court, you really haven't done any
13 analysis of that or given any thought to that, of
14 doing the renovations and doing what was proposed
15 here?

16 A This was a request treated as a loan from the
17 trust rather than that would be secured by a
18 mortgage on her residence, which is not a trust
19 asset and repaid by her through mortgage payments
20 to the trust rather than by rent payments to Mr.
21 Walkup. Where will those mortgage payments come
22 from?

23 Q From the trust just like rent payments.

24 A So the trust would make distributions to make
25 mortgage payments?

1 Q To make mortgage payments or it could lend her the
2 money and allow for her estate to repay the loan
3 when she passes. Or you could do as Mr. Weatherly
4 proposes in the second paragraph, the paragraph
5 just above where you read, to have you pay for it,
6 have the trust pay for the renovations that would
7 more than be offset in two or three years by the
8 nonpayment of rent. Do you see that, Mr. Walkup?

9 A I see that paragraph, but as I indicated in the
10 budget that I wrote, the funds are going to run
11 out in three years and there'll be no place for
12 her to go.

13 Q And do you see also that he references the fact
14 that he has been talking to you through your
15 attorneys for two years on this very subject?

16 A On moving back to the house?

17 Q On the renovations into Summerlea and moving back
18 to the house.

19 A It was a surprise to me when I learned in October
20 that renovations were underway at the house. No
21 one told me about a proposed budget or anything.
22 I didn't know it was in the works. I was
23 completely in the dark.

24 Q Let's don't talk about when the renovation starts.
25 The idea of renovating the house so Jane could

1 move back in has been a topic of conversation
2 between Mr. Weatherly and your lawyers for two
3 years according to this letter. Were you unaware
4 of that?

5 A Two years? Show me where two years ago there was
6 discussion of moving back to the house.

7 Q How much money have you spent in legal fees since
8 October 16, 2020, Mr. Walkup?

9 A A little over \$60,000.

10 Q That's since October 16, 2020?

11 A I think.

12 Q Have any of your legal fees in this matter been
13 paid for by Jane Baskin's trust?

14 A No, I paid them all individually from my own
15 individual funds.

16 Q I saw some entries from the accountings we looked
17 at a while ago that you paid Ben Bruner from the
18 trust. Is that correct?

19 A Yes.

20 Q How much did you pay Mr. Bruner?

21 A I'd have to go back and look. I don't recall.

22 Q Your Honor, we've been going quite a while, I
23 know. May I have just a moment to take a break
24 and I think I'm done, but I want to look at my
25 notes?

1 THE COURT: How long?

2 MR. DETWILER: Ten.

3 THE COURT: Ten-minute break.

4

5 (Off the Record)

6 MR. SOWELL: May I approach the bench, Your
7 Honor.

8 THE COURT: Let him -- wait one second.

9 Anymore questions, Mr. Detwiler?

10 MR. DETWILER: Your Honor, I have no further
11 questions. I would like to clarify that I think
12 we've resolved the issue of the accounting for the
13 funds from the sale of the property in Lee County.
14 We did locate on the record a while ago and talk
15 about the list of expenses that were paid from
16 that money. Mr. Walkup testified about that. And
17 then Mr. Sowell has a letter that he would like to
18 proffer. We have no objection to the letter from
19 Alex Weatherly dated December 6th, I think it
20 is?

21 MR. SOWELL: 2019.

22 MR. DETWILER: Where he acknowledges he's
23 satisfied with the list he was given.

24 THE COURT: You want it marked as an exhibit?

25 MR. SOWELL: Please.

1 MR. DETWILER: No objection.

2 MR. SOWELL: So for the record, Exhibit
3 No. 52 is a letter of December 6, 2019, from Alex
4 Weatherly to Ben Bruner in which he says "you have
5 fully accounted for the payment of the \$13,000
6 check about which Ms. Baskin inquired." Thank
7 you.

8 THE COURT: Any further questions on
9 redirect?

10 MR. SOWELL: No, Your Honor.

11 THE COURT: Mr. Walkup, I'm gonna ask you a
12 few questions. If you can't understand me or hear
13 me, let me know, okay?

14 A Okay.

15 - - - - -

16 EXAMINATION BY THE COURT

17 Q I want to talk to you about when you moved her
18 into Atrium. Did you sign the initial lease as
19 trustee or did she sign the initial lease?

20 A I believe I signed it, I'm not sure.

21 Q Have you since 2015 signed any renewal leases?

22 A Probably.

23 Q Are you aware if she has personally signed a
24 lease?

25 A I'm not aware of that.

1 Q Earlier, I think early this morning, you made
2 reference to the fact that she has not given
3 notice that she's going to break her lease?

4 A I understood they had some calling the apartments
5 and asking them did they had -- heard any --
6 gotten any information regarding termination of
7 the lease or her moving, and the manager said they
8 had not.

9 Q Can I ask you to look into that for us?

10 A Yes.

11 Q If you signed the lease and renewal leases, I can
12 only imagine they would turn to you for another
13 renewal lease. But I need you to verify who is on
14 the lease, you as trustee or her as an individual,
15 and what the renewal or notification terms of the
16 lease are to move out.

17 A Right.

18 THE COURT: Okay. And can we just keep a
19 list of that for him?

20 MR. DETWILER: Your Honor, could I make a
21 statement to try to help with that issue?

22 THE COURT: Okay.

23 MR. DETWILER: I think Ms. Baskin had
24 testified and it's my understanding that the new
25 owner of the Atrium approached her about signing a

1 lease sometime in, I want to say, August after
2 they had taken over the apartment and she declined
3 to sign a lease. So it is her understanding that
4 there is no lease extant.

5 THE COURT: I heard her say that. I heard
6 Ms. Moseley had that opinion, but I need finality
7 to that.

8 BY THE WITNESS:

9 A Right. I will investigate, but I believe the
10 probability is that knowing that there was a
11 possibility that the sale was going to go through,
12 that I signed another lease to protect her so --
13 the rents were gonna go up under the new company.
14 I wanted to protect her to have a lower rent. So
15 I believe that's what I'm going to find, is I did
16 sign another lease for her back in June.

17 Q So you know that to be true or you're guessing
18 that to be true?

19 A I'll have to investigate that.

20 Q And what would the term of that lease have been?

21 A For a year most likely.

22 Q And what would the notification to cancel be?

23 A I'll have to look at their terms. There may be
24 some kind of a payment for breaking the lease
25 that's involved.

1 Q Well, I need you --

2 A I'll have to find that out.

3 Q I need a copy of the current lease you've signed.

4 A Right.

5 Q So that I can see that for myself.

6 A Right.

7 Q Mr. Walkup, you have great influence, you do. I
8 heard you talk about being able to make the
9 federal government change a federal decision. I
10 consider that unrelenting and great influence,
11 because sometimes it's being unrelenting that gets
12 you your way. Sometimes it's being determined.
13 Sometimes it's about being who you are and the
14 friendships and the connections you have with
15 people. I need you to use that influence to make
16 sure she's protected in terminating her lease to
17 move back to her home. That's how I want you to
18 approach the conversation.

19 A Right.

20 Q Can you describe, and I know I can get this from
21 her as well, how many bedrooms Summerlea has.

22 A Three bedrooms.

23 Q Can you describe the layout of the home.

24 A Well, when you enter the front door, you come into
25 the living room, I guess kind of combination

1 living room/dining room. If you go to the left,
2 you come into the kitchen and then you skip down
3 into a den on the left hand into the house, and
4 then you turn right and go back through a hallway.
5 Washer/dryer is on your left and there's a sunroom
6 at the end of the hall which was Jane's bedroom.
7 And back around to the right of that in that
8 sunroom is a bathroom. The other side of the
9 house if you turn right after you come to the
10 front door, there is a hallway and a bathroom
11 straight ahead of you and a rear bedroom and a
12 front bedroom.

13 Q I hear you tell me the driveway is very steep. Is
14 there like a basement situation.

15 A There's a basement under the house.

16 Q What's in the basement?

17 A The furnace and ductwork.

18 Q Like storage. Not living?

19 A Not living, no.

20 Q So if she's driven around to the back, she has to
21 go upstairs to get to a door?

22 A You can't drive to the back of the house. You
23 stop right at the front of the left of the house
24 and you go in. And you can also go into a
25 left-hand door right there rather than go in the

1 front steps, which is her normal entry point.

2 Q Is it like a garage?

3 A No, there's no garage.

4 Q No carport?

5 A No carport.

6 Q When was the last time you were in the house?

7 A I guess '15.

8 Q 2015?

9 A 2015.

10 Q Would you be willing to go and visit what they're
11 doing to the house?

12 A I would.

13 Q Thank you. You give her two monthly checks.

14 A Pardon?

15 Q I'm asking in a statement, I apologize. How do
16 you pay her monthly?

17 A I pay one monthly payment each month.

18 Q You give her a check?

19 A We have been giving the check directly to the
20 office, hand delivering it down there to them.

21 Q Who is the office?

22 A The manager's office at the apartments.

23 Q At Atrium, you give the check to the manager of
24 Atrium?

25 A Right.

1 Q And they deliver it to her?

2 A No, they go ahead and apply it, because the trust
3 has been paying the rent.

4 MR. SOWELL: He's talking about the rent
5 check.

6 Q I guess I'm talking about the annuity check.

7 A Oh, the annuity check, we give it to her caregiver
8 Jenny, who takes it down there to her when she
9 comes to get her paycheck. That's typically when
10 we give that check to her.

11 Q Why would you not set up direct deposit?

12 A It has been set up that way all along, we just
13 haven't changed it.

14 Q Wouldn't that be more efficient?

15 A If we can get the government to transfer it over
16 there. They send it to us because --

17 Q I believe you can do that. It would just take all
18 kinds of headache heartache and transition out of
19 that one transaction?

20 A If we can't do that, we might be able to arrange a
21 transfer from one bank account to the other.

22 Q I know you can.

23 A That would be --

24 Q I would like to see first effort federal
25 government to Jane's account.

1 A Right. I'll need to do information on that
2 account, which bank account it is, et cetera.

3 Q You tell me you're ready, set, go, we'll get you
4 that information. Direct deposit.

5 A Okay.

6 Q You don't give her any other money directly,
7 right?

8 A We used to, but when -- we were giving her extra
9 cash along with her Social Security check, and
10 then we began giving her the annuity. We were
11 paying the annuity towards her various needs and
12 then we began giving her the annuity check.

13 Q So over the years when I see cash on the
14 accounting or cash to so-and-so for Jane, you're
15 actually giving her paper cash?

16 A In that situation, we were, we were giving her
17 some extra cash.

18 Q Was that her preference or your decision? Did she
19 want the cash or was that your decision?

20 A I think she probably wanted the cash. It's been
21 historically done that way. I'd have to check
22 with my office to find out for sure if that's what
23 they're doing.

24 Q So you think your office is still giving her cash?

25 A Not now, except -- I'd have to check with them to

1 see if they give that in check form or in cash,
2 but I think it's most likely in a check form for
3 her to deposit.

4 Q Can you look at your most recent accounting and
5 tell me if you're giving her any extra? I think
6 it's Exhibit No. 32. That would include some of
7 '18 and '19. Can you see if you're giving her
8 extra cash or extra money over the annuity
9 directly to her.

10 A I see, of course it's a real thick volume.

11 Q Look towards the very back of 32. You have a
12 transactional all the way through October of '20,
13 can you see if you're giving her extra cash? When
14 you reimburse her, how do you give it to her,
15 paper check or cash?

16 A Check, I believe. My office manager does that.

17 THE COURT: Alex, Mr. Weatherly, can you ask
18 Ms. Baskin if she would object to any direct
19 deposits coming from him from his office to her
20 account. Or does she prefer paper check?

21 A We do a lot of bill paying like to Hawthorne
22 Pharmacy.

23 Q I mean anything directly to her. I'm trying to
24 find a way to get it from your account to her
25 account without a paper check, without cash. I

1 would rather it be a direct deposit unless she
2 objects.

3 MR. WEATHERLY: Your Honor, she's okay with
4 doing a direct deposit so long as he doesn't have
5 any other information about the account or how the
6 money is spent.

7 THE COURT: Of course.

8 BY THE WITNESS:

9 A You're just referring to the annuity, right?

10 Q No, sir, I'm talking about she gives you a receipt
11 and asks for reimbursement, you give her
12 reimbursement. Is that a paper check?

13 A For example, Hawthorne Pharmacy --

14 Q No, I don't want to talk about Hawthorne Pharmacy.
15 When you give any money to Jane, is it a paper
16 check or cash?

17 A I'd have to investigate with my staff.

18 Q I find that frustrating that you don't know that.

19 A They do all the banking.

20 Q We've been preparing for trial, and these are very
21 pertinent issues, and it feels like you're not
22 plugged into these daily activities, and I need
23 you to be.

24 MR. WEATHERLY: Your Honor, if I may speak,
25 she does get a check for the annuity payment.

1 THE COURT: I'm not talking about the annuity
2 payment. We've moved on from the annuity.

3 MR. WEATHERLY: The other expenses he pays
4 directly to the vendors.

5 THE WITNESS: Like Hawthorne Pharmacy.

6 THE COURT: So she never gets a reimbursement
7 from him?

8 MR. DETWILER: That's not entirely true.

9 THE WITNESS: On occasion.

10 MR. DETWILER: There are occasions when she
11 asks for reimbursement. For example, her Depends
12 undergarments, and I think I've seen copies of
13 checks written to reimburse her.

14 MR. SOWELL: Your Honor, I don't think she
15 gets any cash. I'm talking about greenback
16 dollars.

17 THE COURT: She used to.

18 MR. SOWELL: Well, I know, but there's some
19 confusion here. I'm trying to clear it up.

20 BY THE COURT:

21 Q Mr. Walkup, I'm going to assume you quit giving
22 her cash when your relationship soured horribly in
23 '18.

24 A [Indiscernible crosstalk]

25 Q Have you given her cash since she and Michele

1 Moseley told you to not come around anymore? Have
2 you given her cash since then?

3 A I don't think so, but we've given her the annuity
4 check sometime maybe before that time.

5 Q So in your mind, the cash I see earlier has been
6 replaced with the annuity check?

7 A It was \$120 a month worth of cash being given to
8 her. We substituted with \$380 worth of a check.

9 Q So you quit giving her cash when you gave her the
10 annuity check?

11 A I believe that's correct.

12 MR. DETWILER: Your Honor, we believe that
13 was more recently than several years ago.

14 MR. SOWELL: I think it was in '18.

15 MR. DETWILER: That might be right.

16 MR. SOWELL: I think was in October of 2018,
17 October 6, 2018.

18 BY THE COURT:

19 Q We're gonna move on, Mr. Walkup. Come back to
20 where we are now. I heard you describe Equity 95.
21 In the most simplistic of terms, I have an
22 investment account with, let's say, Merrill Lynch.
23 Why doesn't she have her individual account? What
24 does it benefit her to join with other people?

25 A She has one -- the trust has one individual

1 account, the E*TRADE account.

2 Q I'm talking about Equity 95.

3 A Equity 95, by pooling the funds from a number of
4 different partners together, we can get more
5 diversity. We can buy a greater number of stocks
6 rather than having a small amount of funds. And
7 buying small amounts of individual stocks, we can
8 buy bigger round blocks and more different company
9 stocks.

10 Q Switching to Columbia Cash Reserves. You
11 described it as a loan portfolio situation,
12 single-family builders, developers. Who decides,
13 in your William Walkup and Associates entity, who
14 decides who to loan to?

15 A Well, we're more than one office.

16 Q Who?

17 A My son-in-law and I and my son-in-law, all three
18 get involved in that.

19 Q It sounds like a mini bank. Would that be an easy
20 way to understand it?

21 A I don't know what a mini bank is.

22 Q Well, it sounds like you're doing activities of a
23 bank privately.

24 A Well, it's a loan portfolio. It is earning
25 substantial returns.

1 Q So if I wanted a loan from you, I would make
2 application?

3 A Well, we are not dealing with the public in
4 general.

5 Q It's a private loan entity?

6 A We don't have a sign in the front of our office or
7 on our door.

8 Q How do you market?

9 A We don't market.

10 Q So it's all internal. If you haven't got money
11 invested with us already, you wouldn't be a part
12 of this loan process?

13 A Our clients have come to us, there are people that
14 have come to us and asked us to help them. And
15 they may be asking us to help them with stock
16 investments or with a real estate investment. But
17 we have -- and Columbia Cash Reserves has
18 restricted the number of partners in the
19 partnership now to 100. If we got an
20 application -- if someone contacted us about -- to
21 make an application for a loan, we could review
22 that and make a decision about whether to -- it's
23 a risk award situation and what collateral there
24 was for the loan and we make a judgment about it.

25 Q If I asked you to produce the rental account for

1 Ashley, could you do so?

2 A Yes.

3 Q Do you keep a separate log of that?

4 A Yes.

5 Q Have you produced such a log?

6 A I believe it's probably in some of these papers.

7 I didn't specifically look for it.

8 Q Is it something that I can easily turn to, the
9 rental account log?

10 MR. DETWILER: I don't recall seeing it, but
11 I'm not gonna tell you, Judge, that I have not.

12 A As I explained earlier, it's now an installment
13 sale.

14 Q That's not what I'm asking. Over the years,
15 you've rented Ashley, yes or no?

16 A Yes.

17 Q If I ask you to go all the way back to 1990 or
18 whenever you first rented it, could you create a
19 rental account log?

20 A I don't know that I could go back that far.

21 Q How far could you go back?

22 A Well, I would certainly imagine we have the record
23 for ten or 15 years.

24 Q Is it something you would have to create for me
25 currently or something you would just press print

1 on?

2 A I have to go to the archives for some of the older
3 stuff, I'm sure.

4 Q Do you keep anything in a program like QuickBooks?

5 A QuickBooks programs.

6 Q Is that what you use?

7 A Yes, and we also have loan accounts that we manage

8 --

9 Q I'm asking about this Ashley rental account.

10 A But --

11 Q Is it logged in QuickBooks?

12 A It's now an installment sale and has been
13 converted to installment sale. Therefore, we have
14 records of all the payments made.

15 Q I'm not asking about the installment contract.

16 I'm asking when it was rental property. Do you
17 have a rental log that you can press print on?

18 A That has not been a rental property for five or
19 six years.

20 Q Again, I'm still asking. Same question.

21 A I may be able to find the rental log for the prior
22 renters.

23 Q That's what I'm asking about. If I wanted to see
24 under my trust beneficiary concept what the rental
25 in and out was all the years you were in charge of

1 it, could you produce that?

2 A I would have to go to the archives to find 1990
3 stuff, and we may still have it. We have records
4 --

5 Q Mr. Walkup, let me ask a better question. Do you
6 involve yourself on the daily coming and going of
7 these accounts or do you turn that over to staff?

8 A Staff primarily handles it. They receive the
9 checks and deposit those and make the records.

10 Q Do you know what software you use at your office
11 to manage those kinds of entries?

12 A We use QuickBooks and we also have loan records.

13 Q What program do you use for your loan records?

14 A We used to use Lotus for that. And I'm not sure
15 what actual program they are using at this moment.

16 Q When was the last time you personally involved
17 yourself in the entry and exit of those kinds of
18 programs?

19 A I don't get involved in entering on any kind of
20 regular basis.

21 Q Who does?

22 A Dick Newsom, Gary Ballou, the CPA, my son Chris,
23 and also my office manager Celeste.

24 Q Who does the entry and the management of the
25 program?

1 A Dick Newsom primarily and Celeste.

2 Q If I wanted you to remove her assets from Columbia
3 Cash Reserves and Equity 95, how long would it
4 take you to do that?

5 A Columbia Cash Reserves, she has a roughly small
6 account.

7 Q How long would it take you to write a check from
8 the Columbia Cash Reserves, how long?

9 A It might take a few days time to a week.

10 Q So that's not a big deal. How about Equity 95?

11 A Equity 95 has -- the document itself requires
12 notification by the 30th day of October.

13 Q I understand that, but if I told you to liquidate
14 her interest in Equity 95, how long would it take
15 you?

16 A It would take until next year to follow the rules
17 of the document.

18 Q I'm telling you to not follow the rules.

19 A Well --

20 Q How long would it take you?

21 A I'm not in a position to not follow the document
22 rules. We've always abided by --

23 Q If I ordered you to liquidate her interest in
24 Equity 95, how long would it take you?

25 A If I follow the rules, which I'm obligated to do

1 --

2 Q Please stop arguing with me. Answer my question.

3 A I'm not trying to argue. I'm just saying that's
4 our -- our responsibility is to follow the rules
5 of the document. One of the reasons for that is
6 that when you purchase funds in a partnership
7 account and one partner gets out, that requires
8 borrowing funds to liquidate that person or a sale
9 of stock and it requires a totally new accounting
10 to -- all of the ownership percentages change for
11 every one of the partners. That's one of the
12 reason it's limited to once a year. But if you
13 needed to borrow some money against that fund,
14 that could be done in a few days time.

15 MR. SOWELL: Your Honor --

16 A Might I also add that if you liquidated all of
17 Equity 95 at one point in time, there would be a
18 huge tax bill to be paid by the trust.

19 Q Mr. Walkup, you are very smart, but sometimes you
20 miss the actual question and you want to tell me
21 about the consequences and the downfalls.

22 A Ask me again, and I'll try to answer it.

23 Q If there was the need to liquidate her entire
24 interest in Equity 95, how long would it take you
25 to do that?

1 A It would take until next January.

2 Q How much of it would you allow her to borrow?

3 A \$150,000.

4 Q Why are you grabbing that number?

5 A 50 percent of the current value. That's the
6 collateral --

7 THE COURT: Did you want to jump in with
8 something?

9 MR. SOWELL: Well, he can't violate the
10 partnership agreement. I mean, it may even be a
11 security, so, you know --

12 THE COURT: Mr. Sowell, instead of guessing
13 what he is or isn't going to do or what he can and
14 can't do, just let me move on to my next question.

15 MR. SOWELL: He can't do it.

16 THE COURT: I've heard him.

17 MR. SOWELL: Thank you.

18 BY THE WITNESS:

19 A On the other hand, the E*TRADE account, we could
20 liquidate all of it at anytime in just a few days
21 and get a check written for it. But again, --

22 Q Tell me about the installment contract now on
23 Ashley. Take me all the way through that.

24 A This couple came along and purchased it on
25 installment sale.

1 Q How did they know it was available to purchase?

2 A I put a For Sale sign up.

3 Q That's what I mean. Take me back. What made you
4 decide to sell Ashley?

5 A It's been a huge burden to deal with.

6 Q Has it ever made money for her?

7 A It has.

8 Q When did you put the For Sale sign in the yard for
9 Ashley?

10 A Maybe five or six years ago.

11 Q And a couple applied?

12 A A couple applied for it.

13 Q Were you doing it through the Columbia Cash
14 Reserves loan situation?

15 A Well, yes, I believe that it was done through
16 Columbia Cash Reserves as a loan, but they made a
17 down payment and they made payments, but they've
18 recently got behind on their payments, and I'm
19 facing the responsibility of foreclosure on it and
20 taking the house back and selling it again.

21 Q How far behind are they?

22 A I would have to go ask my people.

23 Q Put that on the list. Mr. Walkup, going back all
24 the way to 1990, how do I trace on paper what
25 Mr. Baskin passed to you to take over as trustee?

1 A I probably have the bank statements and the broker
2 statements in my archives.

3 Q Were you the personal representative of his
4 estate?

5 A I was.

6 Q So you administered his estate and transferred the
7 assets?

8 A Correct.

9 Q So I can look at his estate document to see what
10 the trust received from his estate?

11 A Yes.

12 Q Has anyone done that?

13 MR. WEATHERLY: I want to say that we do have
14 that. I don't have that particular record here in
15 the court with me, but I want to say we did
16 retrieve a copy of whatever the Probate Court had
17 on record.

18 THE COURT: We'll double check that.

19 THE WITNESS: I believe I've seen it
20 recently.

21 BY THE COURT:

22 Q Mr. Walkup, I believe you answered this, but just
23 remind me. Who does her tax return?

24 A Gary Ballou.

25 Q And he does her individual tax return and her

1 trust tax return?

2 A Mr. Weatherly objected to her doing it and so I'm
3 not --

4 Q Did he do her individual tax return and the trust
5 tax return?

6 A He does the trust tax return every year, but
7 Mr. Weatherly objected and delayed us, and I'm not
8 sure the last time we did it.

9 Q Before the litigation and the problems, was he
10 doing her personal tax return?

11 A He did her personal tax return as well as the
12 trust tax return.

13 Q Thank you. Who's currently doing the tax return?

14 MR. WEATHERLY: I am, Your Honor. Since 2017
15 tax year, I took over.

16 BY THE COURT:

17 Q I think I know what you're going to say to this,
18 but I'm going to ask it anyway. You believed she
19 needed 24/7 care in 2015, at the latest?

20 A Yes.

21 Q Why didn't you give it to her?

22 A She wouldn't take it.

23 Q Why didn't you give her more than what Jenny is
24 providing?

25 A I was in an active effort to try to get her into

1 assisted living.

2 Q Five years of efforts to get her into assisted
3 living. I think it's time to make a different
4 decision about more care, you agree?

5 A I agree and I will cooperate and help in any way I
6 can.

7 Q Okay. And I believe you said earlier you're
8 willing to pay Ms. Moseley the evening hours that
9 she spends with her and the weekend hours that she
10 spends with her.

11 A Yes.

12 Q What rate would you pay her?

13 A We're paying \$15 an hour to Jenny, and she is a
14 certified nursing assistant. It would be
15 appropriate to pay her a little bit less than that
16 not being a certified nursing assistant.

17 Q What rate would you pay her?

18 A \$13 an hour was what we used to pay Jenny.

19 Q Are you suggesting \$13 an hour for Michele
20 Moseley?

21 A Pardon?

22 Q I'm trying to understand what you're saying. You
23 say you pay Jenny \$15 an hour?

24 A That's correct.

25 Q And she's a nursing assistant?

1 A That's right.

2 Q And you want to pay Michele Moseley less because
3 she's not a nursing assistant?

4 A That seems reasonable.

5 Q And you said we used to pay Jenny 13. Are you
6 suggesting 13 for Ms. Moseley?

7 THE COURT: Ms. Moseley, are you willing to
8 receive \$13 an hour for the hours you provide
9 currently for Ms. Baskin?

10 MS. MOSELEY: I would rather receive \$15 an
11 hour for the evening because of the sacrifice I
12 put in the evening. It's hard to find people in
13 the evening and that is the going rate is 15. It
14 is more than that, but I would like to get 15, but
15 I'm not going to argue 13, but I would like to
16 have 15.

17 BY THE COURT:

18 Q How do you feel about that statement, Mr. Walkup?
19 Do you agree that evening hours and weekends are
20 harder to find someone to commit to?

21 A It would be -- of course, I don't want to offend
22 Jenny in any way by saying -- you know, she didn't
23 have the certification and I do. But I'll be
24 willing to try to work with what the Court thinks.

25 Q Well, I think evenings and weekends are harder to

1 find individuals to work in because of that's kind
2 of our private personal time considered. So I
3 would suggest allowing the 15 at least for now.

4 A Okay.

5 Q Thank you, sir. And that can begin retro
6 yesterday.

7 MS. MOSELEY: Okay. Yes, Your Honor.

8 THE COURT: Mr. Walkup?

9 THE WITNESS: Okay.

10 BY THE COURT:

11 Q I really -- this is meant to understand something.
12 You were in the courtroom when Ms. Moseley
13 testified.

14 A Yes.

15 Q She described a very specific encounter with what
16 I understand to be you personally, not someone at
17 your office.

18 A I have not seen her until I saw her in the
19 deposition that we had when I was deposed at their
20 office.

21 Q So I may have misunderstood her, but I heard her
22 describe an encounter with you at your office.
23 You don't recall that?

24 A I have no recollection of ever seeing her before
25 or talking to her except the one time when she

1 called Jane on the phone. That was the only time
2 I talked to her.

3 Q You're a great numbers guy and I bet you can do
4 this quick. Just for 2000 and either '20 or '19,
5 it doesn't matter, how much money is spent or
6 given to, indirectly or directly, to Jane from the
7 trust, principal income, the annuity, the Social
8 Security check?

9 A Since what date?

10 Q I'll just pick a year, 2019. How much money,
11 total money for Jane in one year? It can be '20,
12 2020, it could be 2019.

13 A \$60,000.

14 Q So I heard you say some numbers, and I just want
15 to make sure we're talking on the same page.
16 Fifty-three to 55,000 you had going to principal,
17 then the \$14,000 in income. Am I on the right
18 page?

19 A That sounds reasonably close.

20 Q And then about 10,500 and the two additional sums?

21 A I don't know what you mean by the two additional.

22 Q The annuity and the Social Security.

23 A Right. 800 a month would make it 10,000.

24 Q So 55,000 plus 14,000 plus 10,000?

25 A Right.

- 1 Q Would you agree with those concepts?
- 2 A Yeah, there's some --
- 3 Q An annual amount. 55 for principal --
- 4 A Some of that income is used for expenses, of
- 5 course.
- 6 Q I'm just saying total money used for Jane.
- 7 A Right.
- 8 Q So walk me through it again. 55,000 in principal.
- 9 Is that too large a number?
- 10 A That's close to it.
- 11 Q 14,000 in additional income?
- 12 A Roughly.
- 13 Q Then the 10,000 that makes up the annuity and
- 14 Social Security?
- 15 A Right.
- 16 Q And so 55 plus 14 plus ten. That's 79,000.
- 17 A Right.
- 18 Q Do you agree with that?
- 19 A Sounds reasonable.
- 20 Q I just want to make sure my numbers are adding up
- 21 and I'm not misunderstanding.
- 22 A Sounds reasonable. I don't have the numbers in
- 23 front of me, but.
- 24 Q So in previous years, somewhere close to 79,000 is
- 25 spent on or for or given to Jane?

1 A Correct.

2 MR. DETWILER: Your Honor, I think there may
3 be some confusion. I just want to make sure I
4 understand the answer, if you don't mind.

5 THE COURT: Sure.

6 MR. DETWILER: It's my understanding that the
7 12 to \$14,000 per year in income was gross income
8 before his fees and other expenses of the trust.
9 That's not money that was given to Jane. I may be
10 mistaken, but that's my understanding.

11 THE WITNESS: I think you're right. For
12 example, when we borrow funds from E*TRADE to put
13 in Columbia Cash Reserves, there's some interest
14 expenses we pay, as an example. There's also
15 interest income being made by Columbia Cash
16 Reserves, but it's a give-and-take situation.

17 MR. DETWILER: I think your question was how
18 much money is Jane getting is what you're trying
19 to get to.

20 THE COURT: Spent on or for her.

21 MR. DETWILER: Not expenses, but on or for
22 her.

23 BY THE COURT:

24 Q What would be a better number?

25 A I think that's reasonably close without my

1 studying at first.

2 Q What I guess he's asking is the back out of fees
3 and expenses to you or the transfer situation.
4 Actual for her care benefit. And I know you could
5 argue fees and expenses are ultimately for the
6 trust benefit, but really is the number for her
7 direct benefit?

8 A Well, in the direct benefit, you're referring to
9 caregivers \$40,000, for example?

10 Q Absolutely.

11 A Caregivers, rent \$10,000. So the \$55,000 number
12 is certainly in the ballpark to start with.

13 Q I'm not sure we're talking the same thing. It's
14 okay, I'm moving on, sir. Mr. Walkup I'm going to
15 move on. He asked you about -- he, Mr. Detwiler
16 asked you about the audited financial document
17 that we tried to go through, the note one
18 specifically, the growth situation, note four, et
19 cetera et cetera. He asked you, are you the
20 managing partner and you said yes, and I'm an
21 equity partner. This is in Equity 95, yes?

22 A Right.

23 Q Then he asked you, do you know if it's totally
24 about growth, and you say, I don't know.

25 A It's a combination of growth and income.

1 Q I understand. It's like we're wanting to get some
2 details from you and you say I'm not sure. Who
3 would know that? Who would know the details of
4 that?

5 A I can go back in my records at the office and give
6 you the details.

7 Q Who's more actively involved than you?

8 A Well, various segments are handled by different
9 ones of us, but my CPA, for example, could -- and
10 if I was at my computer, I could pull up and tell
11 you what the total dividends were for that account
12 last year, if there was any interest expense or
13 interest income, if there was any capital gains,
14 sales of stock -- well, there was no sales of
15 stock, but I could give you that information. I
16 just don't have it here, I have it on my computer.

17 Q Who else has say-so in Equity 95? Who else other
18 than you?

19 A Well, my staff makes decisions about stocks to buy
20 or to sell.

21 Q Who do you mean by "my staff?"

22 A My son Chris and my son-in-law Dick.

23 Q So are they more actively involved in the
24 day-to-day?

25 A In different segments of it.

1 Q He asked you if you understood the term non-
2 delegable, and you said I'm not sure what that
3 means. And this is in relationship to the
4 accountings. I need to make sure you understand
5 moving forward very specifically. You said I turn
6 that over to staff or my CPA.

7 A My in-house CPA does a monthly evaluation for each
8 of the partnerships. My office manager puts it on
9 QuickBooks, income and expenses for each of those
10 partnerships. But monthly, he does an evaluation
11 of all the stocks there and any income received,
12 any expenses that go out.

13 Q I know, but I need you to be very clear. While
14 you trustee is a very special role and while you
15 have the absolute right, power even, to turn it
16 over to staff to create, it's your non-delegable
17 duty to make sure it's accurate and provided.

18 A And I do a great deal of tracing the values and
19 evaluating, being sure that the numbers that the
20 CPA have come up with are correct.

21 Q I'm talking about her trust accounting.

22 A Okay.

23 Q Is non-delegable.

24 A I thought you were talking about Equity 95.

25 Q No, sir, I apologize. Annually, her trust

1 accountings are to be provided to her. No if,
2 ands or butts about it. It is a duty for you to
3 give that to her so while you have the right to
4 turn it over to staff to help you create it, which
5 is what you say you do, it is your duty as trustee
6 to make sure she gets it and make sure it's
7 accurate.

8 A Right.

9 Q Are we good on that?

10 A Yes.

11 Q If I generated a QuickBooks report of my personal
12 ins and outs and I turn it over to someone and say
13 here's the accounting and they say I don't trust
14 what you put in QuickBooks because you manually
15 put that in QuickBooks, I want to see the
16 supporting documentation behind it. You
17 understand that?

18 A Yes.

19 Q As someone who is in the money, in the numbers,
20 you would want if you turn your money over to
21 someone to see not just the data entry of someone,
22 but the actual documentation behind it, right?

23 A Right.

24 Q What can we see about Columbia Cash Reserves or
25 Equity 95 that would be along those lines, not

1 just the generated profit and loss that would be
2 again manual data entry by someone looking at
3 something? What is it they're looking at to be
4 able to put those numbers in and can we get that
5 level of review?

6 A We can. Of course, get the monthly statements
7 from brokerage. Equity 95, for example, we get
8 the monthly statements. The values of all the
9 stocks are put into the computer to test and be
10 sure, not that the statement itself is correct,
11 but on a separate statement -- we've got a
12 separate statement that we create at Equity 95,
13 for example, that lists every stock, what date it
14 was bought, what its cost basis was, what the
15 current value is, a total valuation, and what the
16 gains are. It also accumulates the dividends so
17 that we know where we are income wise. And with
18 the annual reporting that we do, we give each
19 individual in a partnership a tax report that says
20 your share of the interest income, the dividend
21 income or interest expense is X number of dollars
22 for each individual partner for them to use on
23 their -- it's a K-1 for them to use on tax
24 returns.

25 THE COURT: Thank you for answering my

1 questions, sir. I appreciate it. Do you have
2 anything to follow up.

3 MR. DETWILER: No, ma'am, I do not.

4 THE COURT: Mr. Sowell?

5 MR. DETWILER: No, Your Honor, Thank you.

6 THE COURT: All right. We're going to
7 adjourn for the day and I'll see you in the
8 morning at 9:30.

9 MR. SOWELL: Thank you.

10 MR. DETWILER: Thank you, Your Honor.

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12 (Whereupon, the proceeding adjourned at
13 5:05 p.m.)

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1 Day 3 - January 6, 2021

2 [Begin 10:07 a.m.]

3 THE COURT: Back on the record in the trust
4 matter for Jane Baskin. It's Wednesday January
5 6th, and there's been lots of efforts and
6 discussions overnight and this morning and
7 meetings with the attorneys in chambers. We have,
8 I believe, agreed -- and I'm gonna let you,
9 Mr. Sowell, put it in the words you want -- agreed
10 to a temporary suspension of the litigation in an
11 effort to truly come to a resolution, although
12 temporary in nature, today for the parties to
13 attempt a new progress forward. Do you want to
14 say . . .

15 MR. SOWELL: Yes. Thank you, Your Honor, may
16 it please the Court.

17 THE COURT: Yes, sir.

18 MR. SOWELL: Just to make a record on this,
19 we -- of course, we had some evidence to put on
20 today, we were going to put on our expert Julian
21 Walker as well as Sinclair Lewis, Al Moses,
22 Clarence Knight, Lewis Spradlin, Anne Webster and
23 Kathy Parr. And I think we were going to proffer
24 the deposition of Frampton Henderson and maybe the
25 Guardian Ad Litem report.

1 As I understand it, and I want to make sure
2 this is clear, we are reserving our rights to put
3 on that evidence at a later date. And the Court
4 agrees with that. Is that correct?

5 THE COURT: Only with the caveat that while
6 you are reserving that right, forever to the
7 moment you have to, we are working on a temporary
8 solution that will hopefully lead to a permanent
9 solution.

10 MR. SOWELL: Understood. We're trying to
11 work out today a temporary solution, and we're
12 also going to try to work out at some future date
13 a permanent solution, but at the same time, we are
14 not waiving any of our rights to proceed forward
15 with our case in defense of Mr. Walkup as trustee.

16 If that is stipulated to, then we are
17 prepared to agree to the suspension of the
18 litigation today to make an effort to try to reach
19 today a temporary solution and in the future a
20 permanent solution. But if we are failures in
21 that endeavor, which I hope we are not, we reserve
22 our rights to put on our evidence as enumerated
23 previously. And thank you, Your Honor.

24 THE COURT: Thank you, Mr. Sowell.
25 Mr. Detwiler?

1 MR. DETWILER: We agree with that, Your
2 Honor.

3 THE COURT: So let me tell you attorneys and
4 Mr. Walkup, Ms. Baskin and Ms. Moseley how
5 important the next hour to two hours are going to
6 be. And it is going to be really hard to
7 transition from a mindset of fight and litigate to
8 a mindset of working towards a solution. I'm
9 going to urge you to work with me on this, work
10 with each other on this, and I am one hundred
11 percent confident that we will leave here today
12 feeling better, feeling involved, feeling
13 included, and feeling like we're moving to some
14 progress.

15 I'd like to break now, allow the court
16 reporter to wrap up, get her things and move out.
17 Take a break to go the restroom, get some water,
18 feed your meter if that's what you need to do and
19 really come back here and we're going to just
20 really hammer out some good temporary details to
21 test some of the relationships and some of the new
22 potential avenues to a successful new situation
23 for Ms. Baskin. Good?

24 MR. SOWELL: Yes, Your Honor, with our
25 reservation proxy.

1 MR. DETWILER: We're good with that, Your
2 Honor.

3 THE COURT: All right. Thank you very much.
4 We'll take about a 15-minute moment to give her
5 time to get in and out. And also to allow y'all
6 to talk to your clients a little bit about the
7 things we've talked about in chambers, okay?

8 MR. SOWELL: Thank you.

9 - - - - -

10 (The proceeding was adjourned at 10:21
11 a.m.)

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CERTIFICATE

Be it known that the foregoing Trial Proceeding was taken by Jennifer L. Thompson, CCR, CVR-M;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

That the witnesses were sworn or administered an oath of affirmation to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 2nd day of September 2021.

Jennifer L. Thompson, CCR, CVR-M

Notary Public for South Carolina
My Commission Expires: April 2, 2029

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT

JANE E. BASKIN,
Petitioner,

vs.

C.A. No.: 2020-GC-40-00072

WILLIAM B. WALKUP,
Respondent.

TRIAL BEFORE THE HONORABLE AMY MCCULLOCH,
PROBATE JUDGE
VOLUME IV

DATE TAKEN: Friday, August 5, 2022

TIME START: 10:08 a.m.

TIME END: 5:31 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
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803.212.0012

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P R O C E E D I N G S

- - -

THE COURT: We're now making a recording and a record in the trust matter of Jane E. Baskin, 2020-GC-40-72.

Ms. DuRant.

MS. DuRANT: Thank you, Your Honor. Bess DuRant for William Walkup. While you said that a few minutes ago, Mr. Detwiler and I cleaned up some housekeeping matters, and if it suits the Court, we would like to mark that family tree that we handed up as Exhibit 56, if that's possible, Your Honor.

THE COURT: Any objection?

MR. DETWILER: No objection, Your Honor. Thank you.

MS. DuRANT: Thank you, Mr. Detwiler.

THE COURT: Do you want it to be your exhibit?

MS. DuRANT: I think we just have a joint list of running exhibits.

THE COURT: Right. Okay.

MR. DETWILER: That might be the cleanest, easiest way to do it.

1 - - -

2 (EXHIBIT NUMBER 56, Family Tree, was marked
3 for identification.)

4 - - -

5 MS. DuRANT: Your Honor -- 56, Your Honor,
6 for the family tree.

7 We also -- I believe Ms. Nunn is getting
8 ready to step up and talk about her reports. We
9 would also like to mark her two reports as 57
10 and 58. Specifically her report dated
11 October 19th, 2020 as Exhibit 57.

12 THE COURT: No objection?

13 MR. DETWILER: No objection, Your Honor.

14 - - -

15 (EXHIBIT NUMBER 57, Senior Matters Report
16 Dated October 19th, 2020, was marked for
17 identification.)

18 - - -

19 (EXHIBIT NUMBER 58, Guardian Ad Litem
20 Report Dated June 8, 2021, was marked for
21 identification.)

22 - - -

23 MS. DuRANT: And then her second report
24 dated -- both of her reports, Your Honor, are
25 marked as Exhibit 57 and 58.

1 THE COURT: Yeah.

2 MS. DuRANT: Okay. The third just
3 housekeeping issue is that we filed several
4 affidavits in lieu of testimony, Your Honor,
5 with the agreement of Mr. Detwiler.

6 The first one is the affidavit of Benjamin
7 C. Bruner that was filed yesterday, August 4,
8 2022. The affidavit of Katherine Parr, which
9 was filed with this court December 18th, 2020.
10 The affidavit of Ellie Spradlin, which was filed
11 with this court December 18, 2020.

12 The affidavit of Captain Lewis Edward
13 Spradlin filed December 18, 2020. The affidavit
14 of Julian W. Walker, Jr. filed December 18,
15 2020. And the affidavit of Sinclair Lewis filed
16 December 18, 2020.

17 All of those affidavits have agreed to be
18 admitted in this matter, Your Honor.

19 MR. DETWILER: No objection to their
20 admission subject to the issue of relevance,
21 which I think I raised before. But that's for
22 the Court.

23 THE COURT: And that would be in place of
24 the live testimony?

25 MS. DuRANT: Yes, Your Honor.

1 MR. DETWILER: Your Honor, yes.

2 THE COURT: Okay.

3 MS. DuRANT: Thank you, Your Honor. That's
4 all I have.

5 THE COURT: All right. Just so that the
6 record is clear, does anyone want to summarize
7 where we were and how we got to today and what
8 we're doing today, or do you want me to try?

9 MR. DETWILER: I'll be glad to try as the
10 petitioner, Your Honor. And then Ms. Durant or
11 Mr. Sowell can fill in.

12 Your Honor, you may recall that in our case
13 in chief, we put up Ms. Baskin who testified
14 about her current situation at the time. She
15 was living in the apartment that had been
16 provided to her by Mr. Walkup and other matters
17 about her relationship with Mr. Walkup and so
18 forth. I'll summarize it -- try to summarize
19 any of this.

20 We also put up Mr. Wesley Stevenson as a
21 witness. We put up Michele Moseley, who
22 testified extensively about her relationship
23 with Ms. Baskin and so forth.

24 You may recall Mr. Stevenson -- going back
25 to that for just a moment -- is a cousin of

1 Ms. Baskin and who was familiar with her
2 situation and made some -- I think some pretty
3 pointed observations about it.

4 And then our last witness was Mr. Ken
5 Wingate, who testified about his review of the
6 file and the documents and the accountings, and
7 all of that is reflected in the trial
8 transcript.

9 And I think that took us through the entire
10 day -- first day. That was our case. And then
11 I think Mr. Baskin testified -- Mr. Walkup, I'm
12 sorry, testified all day the second day. And
13 then on the third day, we had our conference
14 with Your Honor in which the temporary
15 settlement arose.

16 Is that a fair summary?

17 THE COURT: Do you want to add anything?

18 MS. DuRANT: No, Your Honor. Mr. Detwiler
19 did a fair job of summarizing the procedural
20 issue thus far.

21 THE COURT: Did we capture when this was
22 for this record?

23 MR. DETWILER: It was January 4th through
24 January 6th of 2021. You may recall that we
25 ended on January 6, 2021, a day that will remain

1 in infamy.

2 THE COURT: All right. So we are returning
3 to the respondent's case, and it would be
4 technically your second witness?

5 MS. DuRANT: Yes, Your Honor. I don't know
6 if Ms. Nunn is going to be called as a Court's
7 witness, but we're happy to have her as our
8 witness as well.

9 MR. DETWILER: Your Honor, I think that's
10 great. I think she's the court witness, and I
11 think it would be appropriate to her from her at
12 this time with their approval.

13 MS. DuRANT: That's fine with me.

14 THE COURT: So, Ms. Nunn, I'm going to call
15 you as my witness, as I painted you as my eyes
16 and ears as the guardian ad litem in this
17 matter. If you would, please come up to our
18 witness stand. And before you take your seat,
19 we'll swear you in.

20 - - -

21 MICHELLE NUNN, being first duly sworn,
22 testified as follows:

23 - - -

24 THE COURT: Thank you so much.

25 Slide and get comfortable. That microphone

1 adjusts, so make sure you get it to where you
2 need it to.

3 Be. And, interestingly, because of
4 whatever humidity is in this building in the
5 summertime, sometimes you have to actually wake
6 the mic up by kind of giving it a little tap.
7 You're going to have to be more aggressive than
8 that.

9 Ms. Nunn, obviously, you're behind glass;
10 I'm behind glass. These microphones don't work
11 great. So just make sure you project on top of
12 the microphone's amplification, if there is any.

13 How would you like to proceed, Petitioner,
14 Respondent, with questioning? Would you like
15 her to just give her report and then ask
16 questions afterwards?

17 MR. DETWILER: That sounds good to me,
18 Your Honor.

19 MS. DuRANT: No objection.

20 THE COURT: Ms. Nunn, if you would, do you
21 have your report in front of you, because we
22 need to hand those to you, both of them. Do you
23 have them?

24 THE WITNESS: I would say I would like to
25 see both of them.

1 THE COURT: You want her to have the
2 Court's marked exhibits so you can keep yours?

3 MR. DETWILER: I've got an extra copy,
4 Your Honor. This is Court's Exhibit or Trial
5 Exhibit 57, which is the October 19th, 2020,
6 Report. And admitted by agreement, I think.

7 And the second one is Exhibit 58, which is
8 the June 8, 2022, Report, also admitted by
9 agreement.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Ms. Nunn, take a
12 moment and kind of remind yourself, which I'm
13 sure you've already done. I think where I would
14 like you to start, and the parties may want to
15 ask you some other questions later, but where I
16 would like you to start is your most current
17 contact with Ms. Baskin.

18 THE WITNESS: Okay. Yes, Your Honor.

19 I was appointed to go out to go visit
20 Ms. Baskin, and when I arrived, her caregiver
21 that's there usually during the day, Ms. Kelly
22 was there with her, with her dog Lamb Chop.

23 As I walked in, she was well groomed,
24 dressed, and, you know, pleasant mood. The
25 house was very clean, from what I seen when I

1 walked through.

2 Lauren Kelly, she was very respectful, and
3 when I requested for her to just remove the
4 camera from the inside of the house. So she
5 removed that and took it out. And she left for
6 a couple of hours and left me and Jane together.
7 And Jane and I just, you know, discussed how
8 everything was going. She was happy with her
9 new place, the new environment.

10 She let me walk through her house just to
11 see what areas that she used the majority of,
12 which was the left portion of the house that was
13 reconstructed.

14 I walked down the hall. The rooms were
15 very nicely wide open space for her to walk
16 through and utilize her wheelchair. And the
17 shower was very appropriate. It was a push-in
18 shower, roll-in shower. The area was clean,
19 clutter free.

20 I went back and asked Jane how she felt
21 about the setup. She was very, very happy, and
22 she made it clear that she did not want to leave
23 her house. That was the house she grew up in;
24 that was the house she wanted to stay in. She
25 didn't want anyone to remove her from her home

1 because that's where she felt comfortable.

2 We went on to discuss about her meal
3 prepping and about, you know, the portions of
4 food that she eats and, you know, her diet. And
5 I asked who made her meals, and a lot of her
6 meals, she said, was made by Ms. Kelly, who is
7 there during the day.

8 The grocery shopping was done by
9 Ms. Moseley. And when I looked in her
10 refrigerator, it was full. It was stocked. You
11 can tell that when Ms. Kelly made food, she
12 would put the dates on it so you can see that if
13 it was expired. There was no expired food. But
14 if it was expired, they knew to throw it out.

15 MS. DuRANT: Ms. Nunn, if I may object.

16 Your Honor, we had a motion for
17 sequestration. May I please ask that all
18 witnesses leave the courtroom.

19 THE COURT: Yeah, I apologize. You did
20 make that, and it was agreed to. I guess we
21 just forgot this morning.

22 MS. DuRANT: We did.

23 MR. DETWILER: We did.

24 THE COURT: Can you identify who you know
25 is a witness that you want to leave versus who

1 is here in some other capacity. Obviously, we
2 have our law firm assistants, but is everyone
3 else a witness or potential witness?

4 MS. DuRANT: I definitely want Ms. Moseley
5 to leave. I'm not sure who the others are.

6 THE COURT: Could you identify yourselves
7 for us.

8 UNIDENTIFIED SPEAKER: We're just friends
9 of Janes for many years. We're here for
10 support.

11 MR. DETWILER: And I don't intend to call
12 them as witnesses.

13 THE COURT: Do you need identification by
14 name?

15 MS. DuRANT: I would like identification by
16 name.

17 THE COURT: Could you tell us your names,
18 please.

19 MS. HEADLEY: My name is Jane Headley.

20 THE COURT: Headley?

21 MS. HEADLEY: Headley, H-E-A-D-L-E-Y.

22 THE COURT: Thank you.

23 MS. COLLIER: I'm Delores Collier,
24 C-O-L-L-I-E-R.

25 THE COURT: Thank you very much.

1 And the gentleman?

2 MR. WALKUP: Chris Walkup.

3 THE COURT: Is he a witness or no?

4 MS. DuRANT: He is a potential witness. He
5 is part of Mr. Walkup's staff. To the extent
6 the Court or Mr. Detwiler --

7 THE COURT: Do you want him sequestered?

8 MR. DETWILER: Yeah. If he's going to be a
9 witness, yes.

10 MS. DuRANT: We're not anticipating calling
11 him. The Court ordered us to bring any of
12 Mr. Walkup's staff in case questions need to be
13 answered. So he's just here in case the Court
14 has any questions for him.

15 MR. DETWILER: Whatever the Court wants to
16 do.

17 THE COURT: It's not my trial.

18 MR. DETWILER: Well, Ms. DuRant wanted
19 everybody sequestered, so if they're going to
20 testify, they need to go, I guess.

21 THE COURT: Okay. And tell me the other
22 gentleman.

23 MR. NEWSOME: Richard Newsome. I work
24 alongside Chris Walkup.

25 THE COURT: You also want him to leave too?

1 MR. DETWILER: Yes.

2 THE COURT: If you wouldn't mind,
3 gentlemen, there are benches and places to sit.
4 Obviously, it might be a little bit. I think
5 we're doing Ms. Nunn first and then the woman on
6 Zoom?

7 MS. DuRANT: Yes, ma'am. Yes, Your Honor.

8 THE COURT: You're welcome to go to the
9 canteen on G1, get coffee or a drink. The
10 restroom is at the end of the hallway. There's
11 an active water fountain, although, questionable
12 water at the courthouse.

13 Thank you very much.

14 MS. DuRANT: I apologize for the
15 interruption.

16 THE COURT: That's okay.

17 Ms. Nunn, sorry for that interruption but
18 necessary. You were at the refrigerator, dates,
19 appropriately stocked.

20 THE WITNESS: Right. It was appropriately
21 stocked, and it had a well amount of food. And
22 as I was walking through, talking about some of
23 the meals that she has during the day and on the
24 weekend, she stated that her food was portioned
25 out because they didn't want her to gain weight.

1 And I asked her did that have anything to
2 do with maybe a doctor's order or was there a
3 reason why she couldn't have certain foods
4 during the week? And she said that "They just
5 didn't want me to gain weight."

6 So we went on to discuss the rest of the
7 part of the house, and it was a door up in the
8 kitchen that kind of cut off the rest part of
9 the house. And I asked her if I could have
10 access to that side so I can see what other
11 things are done or does she ever use the
12 handicap accessible door?

13 And she said, "No, that's Ms. Spires' side
14 that she uses."

15 I said, "Well, does she pay you rent?"

16 She said, "I don't think so. You'll have
17 to ask Ms. Moseley."

18 So I had to contact Jessie who, I guess she
19 was out on a run because it was her time off, to
20 see if I was able to just see the other portion
21 of the house. So she came back and let me go on
22 the other parts of the house. And she was just
23 moving her stuff in, and she had a cat and a dog
24 over there that she said she had rescued.

25 And I asked her when does she -- when does

1 she want to get that place back in order so Jane
2 will have access to it?

3 And she said, "Well, I just have to get
4 some stuff arranged so she'll have" -- "so
5 she'll be able to use her patio."

6 And I asked her, you know, "Who uses the
7 patio?"

8 And she says that's where she's using it to
9 plant -- start a garden.

10 And when I asked her for the, you know, to
11 have access to the older portions of the house,
12 there was a dog barking in the background. And
13 I asked, you know, "Does he have full access to
14 the house as well?"

15 And she says, "Well, sometimes the dog
16 comes out to interact with Jane."

17 But the other two bedrooms that she's still
18 moving her stuff into, so she wanted to make
19 sure that she gets that cleaned up before space
20 is being -- before the space is utilized.

21 And so I went back, and I just kind of
22 asked her, you know, "What are some of her
23 things that you do?"

24 And Jessie went on to state that -- she
25 told me she was a nurse. You know, I just told

1 her that we had some things in common because
2 that's what I was going to school for. So she
3 kind of explained her background of things,
4 working in a doctor's setting.

5 And I asked -- and she said that they
6 stopped going to the doctor because of her --
7 that Jane did not like the doctor that she was
8 currently seeing, which is her urologist. So
9 they did not go there.

10 I asked who was following her. And she
11 said that they would take her to the ER or they
12 would use SC House Calls, if necessary.

13 The only time they utilized SC House Calls
14 was when they felt that she had a UTI. But
15 Jessie has been changing her catheters and
16 keeping in-and-out catheters and making sure
17 that she's able to not get a infection.

18 When I asked Jessie, "When's the last time
19 that Ms. Jane seen a doctor?"

20 She said that they're in the loop-to-loop
21 with seeing a doctor because of a different
22 complication or something that Ms. Baskin had
23 with the doctor.

24 So I went back to speak with Jane and ask
25 her how she felt about the physicians that are

1 currently providing services toward her, and she
2 said that she didn't care for them because they
3 were not doing her any good. They were causing
4 more harm. And they were in the process of
5 getting another doctor.

6 So at that time we went over her
7 medications. And I didn't expect her to know
8 all of her medications. There was already a
9 list that Michele had out, so I can see what
10 time she was taking her medications and who was
11 queuing for her medications to be taken.

12 So then by that time, Ms. Kelly came back
13 with Lamb Chop. And, you know, we set aside and
14 I asked Ms. Jane if it was okay if I spoke with
15 Ms. Kelly just to see what her duties were on a
16 day-to-day basis. And she just said she meal
17 prepped and fed her.

18 She's total care. And they pretty much --
19 she does attend daycare -- not daycare, excuse
20 me. She does attend therapy once per week to
21 kind of help her get gathered back the
22 strengthening and training, but sometimes it is
23 more difficult than other times.

24 But, overall, I do think from just that
25 visit, she is in better spirits than she was

1 prior. She seems happier and a little bit more
2 content in her setting.

3 After the visit, I contacted Michele
4 Moseley to kind of get her insight on the
5 caregivers providing those services and just
6 kind of clarify a lot of things because I didn't
7 understand the pay rates, who they were
8 submitting their time to, and their actual
9 roles. And she confirmed some of them.

10 And I was just asking her, you know, what's
11 Jessie -- does she get paid? Does she live
12 there for free? And she says that she gets paid
13 to -- for her hours, but she said that she was
14 not paying rent. Her services, because she's up
15 all the time throughout the night checking on
16 Ms. Baskin throughout the night, that's kind of
17 her way of, I guess, staying there and taking
18 care of her and getting paid while she actually
19 is performing those duties.

20 She went on to say that, you know, I had a
21 question about, you know, her meals and why they
22 were being proportioned out. And she said that
23 she didn't want her to gain weight because she
24 feels -- because it's hard for them to get her
25 in and out of the vehicle. And she was only

1 allowed to have dessert on Sundays. That even
2 though I just told her, you know, you could
3 offer different varieties that are sugar free
4 that diabetics can have, she should have choice,
5 not be monitored or saying, "You can't have
6 more. This is all that you can receive."

7 So that's kind of when I wrote in the
8 reports I feel that, you know, Jane, she is well
9 enough to speak for herself. And I do think
10 that, you know, if she wants to have a snack or
11 she wants to have additional desserts, that
12 should be offered to her regardless of --
13 because she's not diagnosed with diabetes, she's
14 borderline.

15 So I do think that, you know, approving or
16 allowing her to have what she wants and feels
17 she needs and not restricting her would be a
18 little more appropriate for her.

19 But I think during my second visit, it
20 was -- it was more of a -- just a check-in to
21 get a little bit more information from Jessie
22 Spires because some of the information, I didn't
23 really understand because first she told me she
24 was a nurse and then she said, "Oh, I'm not a
25 nurse, I'm a medical assistant."

1 And then I explained to her, you know,
2 these are things that medical assistants can and
3 can't do under supervision from a physician.

4 And at that time she just said, "Well, I'm
5 doing what is in the best interest of the
6 client."

7 And I reached back out to Michele to kind
8 of see, you know, where we were because, you
9 know, the SC House Calls only seen her one time.
10 So I just told her it was very important that
11 she get a doctor to supervise her to where they
12 can make sure that she's getting the best
13 quality of care that she needs.

14 And during that time, I did -- Michele did
15 express, "I'm just learning. I'm still trying
16 to find all the resources and get where she
17 needs to be."

18 And I told her, you know, "I think you
19 would definitely benefit from a care manager,
20 with someone that can establish a care plan with
21 you to make sure that those care plans are
22 followed according to Jane's needs." And for
23 her to possibly receive some -- a little bit
24 more education on individuals that are in Jane's
25 situation.

1 THE COURT: Thank you very much.

2 THE WITNESS: You're welcome.

3 THE COURT: Mr. Detwiler, would you like to
4 go first?

5 MR. DETWILER: Thank you, Your Honor.
6 Shall I stand? We were sitting last time.

7 THE COURT: Thank you for reminding me of
8 that. It's best -- I know we are going to stand
9 up because we are lawyers and we are taught to
10 do that, but the microphone situation in here is
11 so complicated that if you could stay in your
12 seat speak closer to the microphone, it
13 certainly will give us a better recording and
14 you may be able to hear better.

15 I don't know, you're probably fine where
16 you are right here. It's just hard for me back
17 here.

18 MR. DETWILER: Thank you, Your Honor. I'll
19 sit.

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. DETWILER:

24 Q. Ms. Nunn, thank you for all your work in
25 this case.

1 A. You're welcome.

2 Q. Ms. Baskin appreciates it and so do I. I
3 know everyone does.

4 I have a few questions. You mentioned that
5 she didn't like her urologist. Did you mean
6 Dr. Henderson? Or do you remember what doctor she
7 said she didn't like?

8 A. It was her -- it was the urologist that
9 they left. It wasn't Dr. -- the one that put it in
10 her ...

11 Q. Her catheter?

12 A. Uh-huh.

13 Q. Okay. And are you aware -- and I -- not a
14 trick question, I just didn't know how much of the
15 background you were aware of her health situation
16 since your first visit.

17 Were you aware that she was hospitalized?

18 A. Yes, sir. She did tell me that she was
19 hospitalized and that the catheter that was in her,
20 it was very painful when he did it. And she said
21 that he was very aggressive to her, and that's why
22 she did not care for him at all.

23 Q. But I'm speaking of her hospitalization
24 after our last court appearance where she was
25 hospitalized for a urinary tract infection.

1 Were you aware of that? She was in the
2 hospital for two weeks.

3 A. Yes, she did mention that to me. Yes, sir.

4 Q. Okay. And -- okay. Was there any mention
5 of her dissatisfaction with the care she got that led
6 her to the hospitalization?

7 A. Yes, sir. She did.

8 Q. Okay. And tell us -- tell the Court what
9 she said.

10 A. She said that the -- actually the way that
11 they treated her in the hospital, and she said the
12 way that the doctor did not provide the services that
13 she needed when she needed it, it was not
14 appropriate. And she felt that he was not putting
15 her concerns first versus what he felt was best for
16 her.

17 Q. And that was Dr. Henderson?

18 A. That was Dr. Henderson, yes, sir.

19 Q. Thank you.

20 Now, you've got both of your reports in
21 front of you, do you not?

22 A. Yes, sir.

23 Q. Okay. And the October 19th, '20, Report,
24 which exhibit is that again?

25 A. I think 57.

1 THE COURT: 57.

2 MR. DETWILER: 57. And the other one is
3 58?

4 THE WITNESS: Yes, sir.

5 THE COURT: Yes, sir.

6 MR. DETWILER: I'm sorry, I didn't write
7 that down. I gave you my marked copies.

8 BY MR. DETWILER:

9 Q. Could you indulge me for just a minute and
10 let's go through and compare those two things. I'll
11 help you because I've made some notes in that regard.

12 In your report of October 19th, 2020, you
13 mentioned that Ms. Baskin was in an apartment of
14 approximately 1100 square feet; is that correct?

15 A. Yes, sir.

16 Q. And it had one entryway, one way in, one
17 way out?

18 A. Yes, sir.

19 Q. Okay. And it was not handicapped
20 accessible?

21 A. No, sir.

22 Q. Okay. And it did not meet her needs, I
23 think you said?

24 A. That's correct.

25 Q. And it did not meet her needs because it

1 did not have a handicap accessible bath, there was no
2 wide hallway, there was no handicap accessible entry
3 or exit; is that what you said?

4 A. That's correct.

5 Q. Comparing that to your most recent report,
6 Ms. Baskin is -- her house is approximately 1545
7 square feet?

8 A. Uh-huh. Yes, sir.

9 Q. Okay. And I recognize you noted that
10 Ms. Baskin is living in just one portion of that, and
11 I'm going to come back to that in a minute. Okay?

12 A. Yes.

13 Q. And in that case, there are three
14 entryways. Two are usable, but there are three
15 entryways in and out of that house, correct?

16 A. Correct.

17 Q. Okay. It is handicapped accessible, her
18 house?

19 A. Yes, in the front door.

20 Q. In the front door and the side door that
21 goes into her little suite area?

22 A. Yes, sir.

23 Q. Okay. And in that case, it does have a
24 handicap accessible bath, correct?

25 A. Correct.

1 Q. Okay. And the new -- her house does have a
2 wide hallway?

3 A. Correct.

4 Q. Correct? And it is handicap -- does have a
5 handicap accessible entry and exits?

6 A. Yes, sir.

7 Q. Okay. So would you consider her current
8 situation an improvement over where Mr. Walkup had
9 her back in October of 2020?

10 A. Yes, sir.

11 Q. Okay. Now, you mentioned that in the first
12 report in October of '20, that you went through her
13 caregivers. And I think her caregiver -- her primary
14 caregiver was Jenny Vega, who worked Monday through
15 Friday for four hours, 9 to 1; is that correct?

16 A. That's correct.

17 Q. And she also worked on Monday and Tuesday
18 evenings, 5 to 7, for two more hours, correct?

19 A. Correct.

20 Q. Okay. And those -- Jenny Vega was the only
21 paid caregiver provided for her in this
22 not-handicap-accessible apartment?

23 A. That's correct.

24 Q. Now, you also mentioned that Michele
25 Moseley was providing care for Jane. I think you

1 mentioned that she was there Saturday and Sunday,
2 5:00 p.m. to 11:00 p.m.

3 A. Yes.

4 Q. That was back in 2020?

5 A. Yes.

6 Q. Okay. And she was not paid to do that?

7 A. Correct.

8 Q. Correct?

9 A. That's correct.

10 Q. Okay. Now, currently, you mentioned Jessie
11 Spires, who lives there around the clock, correct?

12 A. Correct.

13 Q. Okay. And she also is paid for certain
14 hours during the day to care for Jane. Specifically
15 to care for Jane, correct?

16 A. Correct.

17 Q. And Lauren Kelly works 8 to 3:00 p.m.,
18 Sunday through Friday. Did I write that down right?
19 I think that's right.

20 A. Yes, Sunday through Friday.

21 Q. Six days a week?

22 A. Correct.

23 Q. 8 to 3?

24 A. Uh-huh.

25 Q. Okay. And Ms. Spires is paid to be there

1 from 3 to 8:00 a.m.?

2 A. Correct.

3 Q. As well as around the clock should she need
4 care.

5 And then Ms. Moseley is working weekdays
6 and weekends as needed?

7 A. That's correct.

8 Q. Is that correct?

9 So now Jane is getting 24/7 care; is that
10 correct?

11 A. Yes, sir.

12 Q. I'm sorry, I --

13 A. Yes, sir, that's correct.

14 Q. Okay. And your concern back in October of
15 '20 was that she was not getting 24/7 care?

16 A. Correct.

17 Q. She's getting that now?

18 A. Yes, sir.

19 Q. Now, you mentioned in your October of 19,
20 '20, report, from your first encounter with Jane,
21 that there were financial concerns expressed?

22 A. Correct.

23 Q. Okay. And specifically you mentioned that
24 she could not afford food; incontinence supplies;
25 household products; medications; clothing; veterinary

1 expenses for her dog, Lamb Chop; medical equipment;
2 and any extra money for entertainment?

3 A. That's correct.

4 Q. Okay. None of those financial concerns are
5 mentioned in your new report.

6 A. Correct.

7 Q. So they were not expressed concerns this
8 time?

9 A. That's correct.

10 Q. Okay. Now, you mentioned in your first
11 report, going back to her living arrangements, that
12 Mr. Walkup owned 51 percent of the apartment complex
13 that Jane was living in?

14 A. That's correct.

15 Q. And that Jane wanted to move back into her
16 house, correct?

17 A. Correct. Yes.

18 Q. And renovations were underway at that time,
19 but had not been completed so she had not moved in?

20 A. That's correct.

21 Q. Okay. Now, when you went back in -- or
22 when you visited Jane at her house on Summerlea on
23 June 8, 2022 -- I'm referring to the report now --
24 the renovations had been completed?

25 A. Yes.

1 Q. Correct?

2 A. Correct.

3 Q. It was now handicap accessible. She had a
4 roll-in shower?

5 A. Correct.

6 Q. Okay. Would you consider this much more
7 suitable for Jane?

8 A. Yes, sir.

9 Q. Okay. And are you aware that there's still
10 a loan outstanding for renovations that were made to
11 her house? That she borrowed \$30,000 to do those
12 renovations, are you aware of that?

13 A. I was not.

14 Q. Okay. And so I take it you're not aware
15 that Jane's been paying that or the trustee has been
16 paying interest on that loan. You're not aware of
17 that?

18 A. I'm not aware of that.

19 Q. All right. You mentioned in your report
20 from October of '20 that "Jane refuses to see
21 Mr. Walkup under any circumstances."

22 I think those are your words.

23 A. That's correct.

24 Q. Okay. That's not mentioned in your new
25 report. Has anything changed as far as you know?

1 A. Nothing's changed. She still feels the
2 same way.

3 Q. Okay.

4 A. I just didn't discuss that.

5 Q. You didn't mention it?

6 A. No, sir.

7 Q. Okay. Now, you had several recommendations
8 in your report from October of 2020. One was to
9 release funds from the trust to complete the
10 renovation. That was a recommendation you made. I
11 think number 3?

12 A. Yes, sir.

13 Q. Okay. And as far as you know, that has not
14 happened?

15 A. As far as I know, no, sir.

16 Q. Okay. And number 6, Jane -- you said Jane
17 needed to get a custom-fitted wheelchair. I think at
18 the time she had just a transport chair, didn't she?

19 A. That's correct.

20 Q. Okay. And she now has a wheelchair?

21 A. She does.

22 Q. Okay. And back in October of 2020, you
23 mentioned number 7, "Incorporate physical therapy and
24 occupational therapy to increase her strength."

25 That's been happening as well, has it not?

1 A. Yes, sir.

2 Q. Okay. And you mentioned -- and I want to
3 get some clarification on this. Your October of '20
4 report said, number 9, "Hire a professional fiduciary
5 service provider."

6 Did you mean somebody other than
7 Mr. Walkup?

8 A. Right. Like someone that specialized in
9 fiduciary services. That kind of takes them from any
10 connection.

11 Q. Okay. Thank you.

12 And number 10 -- that's why we're here.
13 Okay. So I won't go -- won't ask you anything about
14 it.

15 And number 10, "Establish a monthly budget
16 with her input."

17 A. Correct.

18 Q. That was a recommendation you made in '20?

19 A. Correct.

20 Q. Okay. And in fact, that's exactly what
21 happened when we met last time, and a Settlement
22 Agreement was entered into -- a Temporary Settlement
23 Agreement was entered into. Are you aware of that?

24 A. No, sir.

25 Q. You're not aware of the Temporary

1 Settlement Agreement?

2 A. No.

3 Q. But you -- are you aware that a budget has
4 been established with Jane's input?

5 A. Yes.

6 Q. Okay. All right.

7 You said a couple of things that I want to
8 highlight and compare. You said that "Ms. Baskin is
9 a capable woman with a strong desire to improve her
10 quality of life."

11 And you said the same thing in both
12 reports. And you stand by that today, correct?

13 A. Yes.

14 Q. Okay. You said that "She is an independent
15 thinker." You said that in both reports?

16 A. Yes.

17 Q. She's pretty strong-willed, isn't she?

18 A. Absolutely, she is.

19 Q. Okay. And you said that -- and here's a
20 little built of a difference. I don't know if it was
21 a meaningful difference, but you said that "She
22 recognizes her need for" -- this is -- I'm going to
23 your October of '20 report -- "She recognizes the
24 need for and value of nonconflicted professionals who
25 communicate openly and honestly."

1 You said essentially the same thing in the
2 new report, but you left out the words
3 "nonconflicted." Okay. But that -- is that an
4 intentional omission or intentional change?

5 A. No, it wasn't intentional. It's just from
6 my interaction with Jane, I do feel that -- that she
7 feels that, you know, someone who is able to assess
8 her and speak with her in regards to her personal,
9 you know, how she feels and to address what she needs
10 and not look at it as someone that's known her for a
11 long time, or, you know, has anything to do with her
12 past or her family. So I think that if she responds
13 more to someone who doesn't necessarily know the
14 background.

15 Q. Are you intending in these comments you
16 just made to address a relationship with Mr. Walkup?

17 A. I do think that the relationships that she
18 has with some, it kind of -- I guess it comes down to
19 conflict when it comes to her personal interest.

20 Q. Okay. So you still feel that "It's
21 important to Ms. Baskin's well-being to have
22 nonconflicted professional who communicates openly
23 and honestly with a true sense of partnership."
24 Those are your words?

25 A. Yes.

1 Q. Now, when you met with Ms. Baskin either
2 time, was Michele Moseley in the room?

3 A. No, she was not present.

4 Q. Okay. Did Ms. Baskin speak freely and
5 openly?

6 A. Absolutely.

7 Q. Okay. Did Ms. Baskin hold back anything,
8 did you feel?

9 A. No.

10 Q. Okay. And I think you said this, but just
11 to be clear, did Ms. Baskin seem to be in a happier
12 circumstance now versus back when you met with her in
13 October of '20?

14 A. Yes.

15 Q. Okay. Now, Mr. Walkup has recently filed
16 an amended answer and counterclaim in this case, and
17 the only change that I see is the following
18 paragraph, and I want to read it and ask what you can
19 tell us about it.

20 This is paragraph 32. It says that "The
21 defendant," that would be Mr. Walkup, "pleads that
22 Jane Baskin is being duly" -- "unduly influenced by
23 Michele Moseley and others for the specific purpose
24 of injuring the trust and the defendant.

25 "Upon information and belief, Jane Baskin

1 brought the current lawsuit because of the undue
2 influence imposed upon her by Michele Moseley and
3 others for the specific purpose of injuring the trust
4 and the defendant."

5 That's what Mr. -- those are the words of
6 Mr. Walkup in this case. Okay.

7 So what I'm going to ask you is this: In
8 your investigation of this matter on behalf of the
9 court in October of 2020 or in June of 2022, have you
10 seen any evidence to support the allegation that I
11 just read to you?

12 MS. DuRANT: Your Honor, I object. This is
13 going to the legal question of undue influence
14 that she's not competent to testify about.

15 THE COURT: Can you rephrase the
16 question -- sustain the form of the question.

17 Can you rephrase your question.

18 BY MR. DETWILER:

19 Q. Did you see any evidence that Michele
20 Moseley or anybody else has influenced Jane Baskin to
21 do anything that she would not have otherwise done?

22 MS. DuRANT: Calls for speculation.

23 Objection.

24 MR. DETWILER: I'm asking for evidence.

25 THE COURT: Objection. Speculative.

1 Overruled. You may answer the question.

2 Ms. Nunn, in your opinion, in your
3 interactions, do you have an opinion about this?

4 THE WITNESS: I think that Jane is
5 strong-minded, and I think that Jane does
6 express how she feels, what she feels. However,
7 I do feel that because Jane does not want to
8 leave her house, and she wants to stay in her
9 house, I think that if it works for everyone
10 else, I feel that she would be -- she would be
11 more than willing to go with whatever takes
12 place. As long as you can stay in her place.

13 BY MR. DETWILER:

14 Q. Okay. So let me drill down a little bit on
15 what you just said because I -- what I'm looking for
16 is any evidence that you observed. I'm talking about
17 your personal observations. Did you personally
18 observe anyone exerting any influence upon Jane to
19 get her to do something she didn't want to do?

20 A. No.

21 MR. DETWILER: Okay. Thank you. That's
22 all I have.

23 THE COURT: No more questions of Ms. Nunn?

24 MR. DETWILER: No more questions of
25 Ms. Nunn. Thank you.

1

- - -

2

EXAMINATION

3

- - -

4

BY MS. DuRANT:

5

Q. Good morning, Ms. Nunn.

6

A. Good morning.

7

MS. DuRANT: Sheri, can you hear me?

8

THE COURT REPORTER: I can.

9

THE COURT: Grab the base of that

10

microphone and just bring it closer and bend the

11

wand.

12

MS. DuRANT: Like so?

13

THE COURT: Yeah, better. I'm not kidding,

14

it makes no sense, but if you pop it a couple of

15

times, it wakes up.

16

Ms. DuRant.

17

BY MS. DuRANT:

18

Q. Ms. Nunn, do you know that Michele Moseley

19

is receiving Summerlea house after the death of

20

Ms. Baskin?

21

A. No, ma'am, I do not.

22

Q. Does that change your mind about your

23

conclusion that she just told Mr. Detwiler?

24

A. No.

25

Q. Okay. Ms. Nunn, can you please briefly

1 tell me your educational history.

2 A. I have a master's in health care
3 administration, and I am a geriatric care manager. I
4 also do guardian shifts and work with Adult
5 Protective Services.

6 Q. How long have you been a geriatric care
7 manager?

8 A. The past 12 years.

9 Q. I'm going to refer you, please, ma'am, to
10 your June 8th report, which is Exhibit 58.

11 A. Okay.

12 Q. In preparing this report, did you review
13 any documents?

14 A. Did I review any documents?

15 Q. Yes, ma'am.

16 A. No, ma'am.

17 Q. So you didn't review any medical records of
18 Ms. Baskin?

19 A. I spoke with SC House Calls, and
20 Dr. Henderson took a while, and they still have yet
21 to get me the paperwork that I needed.

22 Q. It looks like you spoke with Alex
23 Weatherly, who is over at counsel table. You spoke
24 with Jane Baskin twice; is that correct?

25 A. Yes.

1 Q. Michele Moseley twice; is that correct?

2 A. Yes.

3 Q. Lauren Kelly twice; is that correct?

4 A. Yes.

5 Q. Jessie Spires twice; right?

6 A. Yes.

7 Q. And South Carolina House Calls; is that
8 about right?

9 A. Yes.

10 Q. Since your last report, which is Exhibit
11 59, October 19th, 2020, since that report, I
12 understand your opinion is that Ms. Baskin has
13 physically declined; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. And it's your opinion that she needs
16 24/7 care; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. What is your understanding of
19 Michele Moseley's role in Ms. Baskin's care plan?

20 A. Her role is to make sure that she's getting
21 the appropriate level of care, which means she has
22 adequate care; make sure that all the physicians and
23 other specialty doctors are involved in her care;
24 making sure that she is provided with nutrition;
25 hygiene is clean; and also making sure that she's

1 giving her the best quality of life.

2 Q. Is that called a care manager?

3 A. Yes, ma'am.

4 Q. Okay. If I could follow up on some
5 questions that you raised that I had during your
6 opening and during Mr. Detwiler's testimony, you said
7 that the food was portioned out because Ms. Moseley
8 didn't want Ms. Baskin to gain weight?

9 A. Yes, ma'am.

10 Q. And that's because Ms. Moseley couldn't
11 lift her in the car; is that correct?

12 A. That's correct.

13 Q. So there was no health need for Ms. Baskin
14 to lose weight; is that correct?

15 A. That's correct.

16 Q. Do you know when Jessie Spires moved into
17 the house at Summerlea?

18 A. She said it was around April or May.

19 Q. Of this year, 2022?

20 A. Yes.

21 Q. And earlier, I think Mr. Detwiler may have
22 cleaned this up, but when you were talking about she
23 didn't like the urologist or the doctor she was
24 working with, was that Frampton Henderson?

25 A. That's correct.

1 Q. And then when you were talking about your
2 conversation -- during your conversation with
3 Ms. Spires, you referenced that she said something to
4 the effect of loop-to-loop about seeing doctors.

5 So was it true when you were talking with
6 Ms. Spires, that Ms. Baskin had no doctor at that
7 time?

8 A. That's correct.

9 Q. How long has she not had a doctor
10 overseeing her care?

11 A. She said that it was probably about a month
12 and a half.

13 Q. And that would have been a month and a half
14 from?

15 A. From my visit in June. So it was around
16 the time that Jessie had just came in, so it was
17 around the beginning of -- I think May 14th was the
18 last time, or May 17th I think I put in my report was
19 the last time that an actual doctor had seen her.

20 Q. And that was SC House Calls, wasn't it?

21 A. That's correct.

22 Q. Are those actual MDs?

23 A. They have nurse practitioners, and they
24 have physicians. But a lot of the times the nurse
25 practitioners are the ones that come out to the home.

1 Q. So on this May 17th visit from
2 South Carolina House Calls either a nurse --

3 A. A nurse practitioner.

4 Q. -- practitioner came to see Jane to change
5 her catheter?

6 A. And take a specimen.

7 Q. Did she or he perform any other services
8 other than changing the catheter and cleaning it?

9 A. That's it.

10 Q. Okay. So she hadn't seen any other doctor
11 other than changing a catheter for a while; is that
12 correct?

13 A. That's correct.

14 Q. Do you know before this March 17th, 2020,
15 date, when the last time she saw a doctor before that
16 date?

17 A. Was when she was hospitalized in April.

18 Q. Was it February of 2021?

19 A. I don't want to say the exact date because
20 I'm not sure of the exact day.

21 Q. Was it in the late winter, early spring of
22 2021 when she last saw a doctor?

23 A. Yes.

24 Q. So just so I can get my timeline right.
25 The last time we know she saw an MD, medical doctor,

1 was the late spring or -- I'm sorry, late winter,
2 early spring of 2021; is that correct?

3 A. I want to say I don't -- I'm not really
4 sure on that date. I don't want to give that exact
5 day.

6 Q. Is it around that date?

7 A. I want to say because she has a catheter, I
8 really -- I can't give you the exact date or the
9 time.

10 Q. Yeah. Yeah. When Ms. Baskin said she
11 didn't want to see -- now we know Dr. Henderson
12 because he was causing her harm, did she elaborate on
13 what the harm was?

14 A. She did. She said that he was -- when he
15 was trying to intact her catheter that had came out,
16 that she was in a lot of pain because he wasn't -- he
17 wasn't using his bedside manners, and he was very
18 inappropriate, and she was uncomfortable, and he
19 wasn't listening to her express her concerns to him.

20 Q. Do you know that Dr. Frampton Henderson is
21 simply a family practitioner and not a urologist?

22 A. That's correct. When she did go to see him
23 at that time, she said that he did not have the
24 appropriate bed manners. And they were trying to
25 show him where it was oozing or something on the

1 outside, and that's where he was trying to clean it
2 up during that visit.

3 MS. DuRANT: Okay. Okay.

4 I made a chart from my understanding of
5 your description.

6 THE COURT: Can I take a minute and tell
7 them we're just running late.

8 MS. DuRANT: Sure.

9 - - -

10 (Off the record.)

11 - - -

12 BY MS. DuRANT:

13 Q. Ms. Nunn, I'm looking at, again, your labor
14 report, Exhibit 58, about the hours of the
15 timekeepers -- I mean the caregivers keep. May I
16 show you this chart to see if this accurately
17 reflects your understanding of the hours of the
18 caregivers for Ms. Baskin when you last visited?

19 A. To see if they match with these?

20 Q. Yes, ma'am.

21 A. Okay. Okay. Lauren's is from 8 to 3, and
22 Jessie has the rest.

23 Q. Is this chart accurate?

24 A. It's off by -- Lauren Kelly works from 8 to
25 3, but then Jessie covers the rest.

1 Q. Is that not what that shows, that Lauren
2 starts at 8 and she finishes at 3?

3 A. Yes, you're right. You're right. This is
4 correct. This is correct.

5 MS. DuRANT: Your Honor, if I mark this,
6 admit this exhibit -- as Exhibit 59. Any
7 objection?

8 THE COURT: I think those are the numbers
9 of joint exhibits. Is it a respondent's exhibit
10 that I have no idea what number we would be on.
11 Do you have separate exhibits? I don't think
12 you do.

13 MS. DuRANT: No.

14 MR. DETWILER: We don't, Your Honor. And I
15 think this is a bit misleading. Ms. Nunn's
16 report is in. It's very specific about the
17 hours that the caregivers give, and this
18 specifically omits the time that Michele Moseley
19 spends as a caregiver.

20 MS. DuRANT: Well, there's a point that I
21 want to raise with Ms. Nunn. Maybe I can clean
22 it up with this testimony.

23 MR. DETWILER: I don't think we need this
24 exhibit to do it.

25 THE COURT: Let's see where she goes with

1 her testimony, and then we'll revisit the
2 exhibit.

3 MR. DETWILER: Thank you.

4 BY MS. DuRANT:

5 Q. Ms. Nunn, what I'm getting to is, I think
6 there might just be a word missing in your report
7 about when Jessie Spires and Lauren Kelly is there.
8 Specifically what days. I'll start with it's in the
9 third paragraph under facts on the first page.

10 It says, "Ms. Kelly's schedule at
11 Ms. Baskin's home is Sunday through Friday, 8:00 a.m.
12 to 3:00 p.m. Ms. Spires works every evening after
13 Ms. Kelly leaves from 3:00 p.m. to 8:00 a.m. Sunday
14 through Saturday and all day on Sundays."

15 Well, you're saying in one sentence that
16 Ms. Spires works all day on Sundays, but you're also
17 saying that Ms. Kelly is there on Sunday from 8 to 3.
18 I think there's just an accidental mix-up, or maybe
19 I'm reading your report incorrectly.

20 A. I don't see where you're saying that.

21 Q. Okay.

22 A. Because it clearly states that Kelly works
23 Sunday through Friday from 8 to 3, and Ms. Spires
24 works from 3:00 p.m. to 8:00 a.m. Sunday through
25 Saturday. And then I put on Sundays, Ms. Spires

1 works all day.

2 Q. Yes, but you have Ms. Kelly working at
3 8:00 a.m. to 3:00 p.m. on Sunday, and you also state
4 that Ms. Kelly --

5 A. I see what you mean.

6 Q. Yeah.

7 A. It should have been Saturday. Yes, you're
8 right.

9 Q. So is this chart that I just handed you an
10 accurate depiction rather than the words in your
11 report --

12 A. Correct.

13 Q. -- of what the true caregivers hours are;
14 is that correct?

15 A. That's correct.

16 Q. Okay.

17 A. Yes.

18 MS. DuRANT: Your Honor, if I may now move
19 this in now as an exhibit.

20 MR. DETWILER: I object, Your Honor. It
21 still leaves out Ms. Moseley. I think
22 Ms. Nunn's testimony is clear. And that this is
23 misleading.

24 THE COURT: Is this chart a full and
25 comprehensive list, or does it leave out

1 Ms. Moseley as you described? I don't have it
2 in front of me to answer that question by
3 looking at it myself.

4 THE WITNESS: I would say it kind of covers
5 the shifts, but Ms. Moseley does provide
6 services during this time frame.

7 MS. DuRANT: But I'm fine to add it with
8 that caveat that the next sentence in Ms. Nunn's
9 report is that Ms. Moseley assists during the
10 weekdays and weekends as needed. So she doesn't
11 have a designated time.

12 THE COURT: What's the point of the chart?

13 MS. DuRANT: I just wanted to clear up her
14 report so that I can have a visualization of
15 what the caregiver's schedule actually is.

16 THE COURT: You want that graphic, and I
17 see it, it's a whole graphic.

18 MS. DuRANT: Yeah.

19 THE COURT: Could we in any way amend your
20 graphic so that it reflects what she wants to
21 clear up?

22 MS. DuRANT: Absolutely. Absolutely. If
23 she wants to say --

24 THE COURT: What does that look like in
25 Michele Moseley's responsibilities? As needed,

1 were all the other -- is that a Monday
2 through --

3 MS. DuRANT: Yes, ma'am, it's a whole week.

4 THE COURT: -- calendar? What would it
5 look like if Ms. Moseley wasn't, you know, red?

6 THE WITNESS: I do think on some of the
7 days, because she does do the grocery shopping
8 when the caregivers are there. She does go take
9 to her doctor's appointment. She does her
10 therapy appointments. So she does need to be
11 included in it because she does do other things
12 where she's not physically there, but she's
13 still having to do things on the back end.

14 MS. DuRANT: Yes, ma'am.

15 THE COURT: Would you be willing to amend
16 your report and resubmit and just call it an
17 amended report?

18 MS. DuRANT: That's perfect. That's
19 perfect. I just wanted to clean up --

20 THE COURT: At some point before Wednesday
21 of next week, if you could get that back to us.

22 THE WITNESS: That would be perfect. Yes,
23 ma'am.

24 MS. DuRANT: Thank you, Ms. Nunn. I just
25 wanted to clean up what I thought you just had a

1 scrivener's error in the report. Thank you for
2 doing that.

3 BY MS. DuRANT:

4 Q. Ms. Nunn, are you ready?

5 A. Yes.

6 Q. Earlier in your discussion with
7 Mr. Detwiler, you were referring to Michele Moseley
8 saying that she's just learning this process?

9 A. That's correct.

10 Q. Do you know she's been Ms. Baskin's health
11 care power of attorney since February 23rd of 2017?

12 A. I read it through her appointment papers.

13 Q. You also agreed that Jane is now getting
14 24/7 care; is that correct?

15 A. Yes, ma'am.

16 Q. Is it adequate care?

17 A. Yes, ma'am.

18 Q. Okay. And, also, you were referring to
19 conflicts and relationships with Jane. Mr. Detwiler
20 was asking if that was specifically Mr. Walkup. And
21 you said there were some people. Who were those
22 people that had conflicts with Ms. Baskin?

23 A. I think the ones that -- when I say
24 conflict, I think it needs to not be personable. It
25 needs to be someone that specializes in that

1 profession to be able to provide the assistance --
2 overall assistance that she needs. Her care,
3 fiduciary services, those are -- when I say people, I
4 think those are the appropriate people I feel that
5 should be involved.

6 Q. Okay. Is that -- do those people include
7 Michele Moseley?

8 A. Correct.

9 Q. In fact, you state in your latest report
10 that Michele Moseley is -- I might be paraphrasing,
11 but over her head a little bit; is that correct?

12 MR. DETWILER: Objection, Your Honor.

13 THE COURT: I didn't hear the word. I'm so
14 sorry. Michele Moseley is?

15 MS. DuRANT: Michele Moseley is over her
16 head in her role as care manager; is that
17 correct?

18 MR. DETWILER: Objection, Your Honor. I
19 don't think that's what she said.

20 THE COURT: She can answer the question
21 herself. Overrule your objection.

22 What were your words, is basically the
23 question.

24 THE WITNESS: I think she just needs to be
25 groomed a little more, and she just needs a

1 little bit more training on just Jane in
2 specific.

3 BY MS. DuRANT:

4 Q. Also going back to your report, I see that
5 Ms. Baskin uses about 25 percent of her house; is
6 that correct?

7 A. Yes, sir.

8 Q. And Ms. Spires uses the other 75 percent of
9 the house; is that correct?

10 A. That's correct.

11 Q. And Ms. Spires is living rent free; isn't
12 that correct?

13 A. That's correct.

14 Q. At the beginning, Ms. Spires did not tell
15 you that; is that correct?

16 A. That's correct.

17 Q. It was only after you confronted her that
18 she admitted that she is living rent free; is that
19 correct?

20 A. That's correct.

21 Q. Ms. Moseley hired Ms. Spires; isn't that
22 correct?

23 A. That's correct.

24 Q. Ms. Spires may have told you some untruths
25 about her licensure; isn't that correct?

1 A. That's correct.

2 Q. She told you she was an RN; isn't that
3 correct?

4 A. That's correct.

5 Q. It was only after you went to LLR and found
6 out she was not an RN that she admitted she was a
7 medical assistant; isn't that correct?

8 A. That's correct.

9 Q. Isn't it correct that Michele Moseley
10 conducted no background check on Jessie Spires?

11 A. That's correct.

12 Q. Isn't it correct that Ms. Spires has an
13 80-pound dog living in Ms. Baskin's house?

14 A. That's correct.

15 Q. Is it your opinion that an 80-pound dog
16 should be around a 76-year-old woman with cerebral
17 palsy and dystonia?

18 A. Could you repeat the question.

19 Q. Is it your opinion that an 80 percent
20 rescue dog should be around a 76-year-old woman with
21 cerebral palsy and dystonia?

22 A. I do think that she likes the
23 companionship, I will say that.

24 Q. Okay. Did you ever see Jane interact with
25 the 80-pound dog?

1 A. I did.

2 Q. Okay. I understand that there is some
3 confusion over the baby monitor located in
4 Ms. Baskin's bedroom; is that correct?

5 A. That's correct.

6 Q. Was it turned on when you interviewed
7 Ms. Baskin?

8 A. I didn't see one.

9 Q. And Ms. Baskin believes that there is not a
10 baby monitor, correct?

11 A. That's correct.

12 Q. But you were informed there is a baby
13 monitor?

14 A. That's correct.

15 Q. In fact, the baby monitor is used to
16 monitor Jane; isn't that correct?

17 A. That's correct.

18 Q. And the cameras are used to monitor Jane;
19 isn't that correct?

20 A. That's correct.

21 Q. I see you talked with Alex Weatherly before
22 this last visit?

23 A. Yes, ma'am. It was briefly.

24 Q. Okay. What did -- did you tell -- what did
25 you and Mr. Weatherly discuss?

1 A. It was just basically arranging a time to
2 go out to see Ms. Baskin.

3 Q. Did you talk with Ms. Moseley before you
4 met with Ms. Baskin?

5 A. No, I spoke to no one.

6 Q. Did Ms. Baskin know you were coming to her
7 house when you came to visit her?

8 A. She did.

9 Q. Okay. So she was prepared for your visit;
10 is that correct?

11 A. I called her and let her know I was on the
12 way, yes, ma'am.

13 Q. Okay. Okay. Were you under the impression
14 when you interviewed the caregivers that they knew
15 you were coming to interview them?

16 A. I don't think they knew I was going to talk
17 to them.

18 Q. Let's talk about Lauren Kelly, if you don't
19 mind.

20 Is she a certified caregiver?

21 A. No.

22 Q. And she was hired by Ms. Moseley; is that
23 correct?

24 A. Yes.

25 Q. Okay. And Ms. Moseley did not run a

1 background check on Ms. Kelly, did she?

2 A. No.

3 Q. No, she did not?

4 A. No, ma'am.

5 Q. Do you know if Ms. Kelly has any experience
6 or education in helping persons with cerebral palsy?

7 A. From speaking with her, she was very
8 knowledgeable in caring for her and providing
9 appropriate care for her. Yes, I do.

10 Q. Do you know how Michele Moseley knew about
11 Ms. Spires and Ms. Kelly?

12 A. She was -- Ms. Kelly was recommended from
13 another agency that -- she knew someone that was
14 receiving care from Lauren. And from Ms. Spires,
15 Lauren had referred Ms. Spires over.

16 Q. Okay. You talk about in your October 19,
17 2020, report that Ms. Baskin goes outside. Is that
18 correct?

19 A. Yes.

20 Q. Do you know how often she goes outside?

21 A. From my understanding, when the weather
22 permits, she goes -- she tries to go outside daily
23 just to get some fresh air.

24 Q. Do you know how long she's been going out
25 daily provided the weather permits?

1 A. From my understanding and from talking with
2 Lauren, she said she tries to take her out at least
3 once a day and since she's been working there. So
4 far this year, she said she's been taking her out.

5 Q. Okay. Do you know when Lauren Kelly was
6 hired?

7 A. It was around December.

8 Q. December of 2021?

9 A. 2021.

10 Q. Thank you, ma'am.

11 You also said that she, Ms. Baskin, is
12 receiving physical therapy, correct?

13 A. Correct.

14 Q. Did you review any records to see how often
15 she receives physical therapy?

16 A. I did not.

17 Q. Did you ask how often she receives physical
18 therapy?

19 A. I did.

20 Q. How often?

21 A. She goes once a week.

22 Q. Okay. And who takes her to physical
23 therapy?

24 A. Lauren and Michele.

25 Q. Okay. So the trust is paying for two

1 caregivers for her to go to physical therapy?

2 A. I'm not really sure how they're actually
3 billing it, but I do know that both of them takes ...

4 Q. Do you know the name of the physical
5 therapy practice that she visits?

6 A. It's beside her old place. I want to say
7 it is Progressive Therapy.

8 Q. Do you know if Ms. Baskin is able to turn
9 herself in the bed?

10 A. She needs -- she requires assistance.

11 Q. Okay. I understand that there is a
12 twin-size bed in Ms. Baskin's bedroom.

13 A. Correct.

14 Q. And this is your language, quote,
15 Reportedly, this is used for overnight caregivers; is
16 that correct?

17 A. That's correct.

18 Q. Does any caregiver sleep on that bed
19 overnight?

20 A. Not every night.

21 Q. How often?

22 A. When Jessie is off, Michele says she will
23 use the bed to stay in with Ms. -- Jane.

24 Q. Okay. But that's coming from Michele
25 Moseley's mouth?

1 A. That's correct.

2 Q. And you talked about this a little bit in
3 your opening narrative that Ms. Spires changes
4 Ms. Baskin's catheter; isn't that correct?

5 A. That's correct.

6 Q. Is she practicing medicine without a
7 license by doing that?

8 A. That's correct.

9 MR. DETWILER: Objection, Your Honor. I
10 think that calls for a legal conclusion. I
11 don't know what she -- I don't know the answer
12 to that.

13 THE COURT: I'm going to let you ask her
14 what her basis of saying yes to that is,
15 practicing medicine without a license. You can
16 ask her that on follow up.

17 MR. DETWILER: Thank you, Your Honor.

18 THE WITNESS: I have to say that she can't
19 use a medical assistant license to change a
20 catheter. It has to be a registered nurse or a
21 doctor.

22 BY MS. DuRANT:

23 Q. And Ms. Spires is not a registered nurse or
24 a doctor?

25 A. That's correct.

1 Q. Yet she was cleaning, inserting, and
2 removing the catheter for Ms. Baskin, correct?

3 A. That's correct.

4 Q. Isn't it also true that Ms. Spires
5 represented to you that she was not receiving any
6 payment?

7 A. That's correct.

8 Q. But after you confronted her, she admitted
9 that she is receiving payment for her services; is
10 that correct?

11 A. That's correct.

12 Q. To the tune of \$15 an hour, correct?

13 A. That's correct.

14 Q. My understanding, the normal rate is \$10 an
15 hour for a medical assistant; is that right in your
16 experience?

17 A. In my experience, it actually averages a
18 little bit more. Between 17- and \$20.

19 Q. And she's also living free in 75 percent of
20 Jane's house, correct?

21 A. That's correct.

22 Q. I know you've stated that you have not
23 received records from Dr. Henderson -- any updated
24 records from Dr. Henderson, correct?

25 A. That's correct.

1 Q. When with Jane -- I'm sorry I keep using
2 Jane. I don't mean to be so informal.

3 When talking with Ms. Baskin, Ms. Moseley,
4 or any caregiver, did they ever reference that she
5 was experiencing hallucinations?

6 A. No.

7 Q. I also understand Ms. Baskin became
8 agitated when she didn't know the answers to your
9 questions; is that correct?

10 A. Correct.

11 Q. Do you remember what questions you were
12 asking that she became agitated about?

13 A. It was just for her vitamins. I was just
14 asking her could we go over her medication list, and
15 it was just a couple of them that she didn't -- she
16 couldn't remember. And I just, you know, told her
17 it's okay, don't worry about it. I have a list here.
18 But she was just a little agitated.

19 Q. Let's talk about insurance, please, ma'am,
20 if you don't mind.

21 In your October 19, 2020, report, you
22 raised the issue of insurance. I'll point you to
23 your discussion of it, if I can find it.

24 THE COURT: Can I get you to pause one more
25 time. We're running into a situation where we

1 need to tell them to log out and log back in.

2 MS. DuRANT: Yes, Your Honor.

3 - - -

4 (A recess transpired.)

5 - - -

6 BY MS. DuRANT:

7 Q. Ms. Nunn, I directed you to the wrong
8 report. Do you mind looking at your June 8th, 2022,
9 report, please, ma'am. And it's on the third page at
10 the very top.

11 You say, quote, Ms. Kelly stated that she
12 submits her hours to Ms. Moseley, who submits it to
13 the trustee for payment, and she is insured by
14 Ms. Baskin's insurance, end quote.

15 What insurance are you referring to in that
16 sentence?

17 A. She stated it was her homeowners insurance
18 that they were included in.

19 Q. So what kind of insurances -- so Ms. Baskin
20 is paying homeowners insurance for Ms. Kelly?

21 A. For -- to have the caregivers in the home.

22 Q. To provide what kind of coverage?

23 A. Liability.

24 Q. Is that a proper practice?

25 A. It is.

1 Q. And then you also talk about Jane, if there
2 was a fire, Ms. Baskin could not get out of the
3 house; is that correct?

4 A. That's correct.

5 Q. Okay. And then you talk about in your
6 report that Ms. Baskin's house, quote, has been
7 modified to accommodate Ms. Baskin's disabilities,
8 end quote. Is that correct?

9 A. Correct.

10 Q. But at the same time, Ms. Baskin, if there
11 was a fire, she could not get out of her house as it
12 stands today?

13 A. If a fire broke out on the front end, there
14 is no handicap accessible on the back end for her to
15 get out.

16 Q. And you understand that they renovated -- I
17 say they. I believe it was Callahan Enterprises, if
18 I look back at your first report, renovated
19 Ms. Moseley's house to make it handicap accessible?

20 A. Correct.

21 Q. Okay. Do you know who Ron Callahan is?

22 A. I know it is a family member of the
23 caregiver.

24 Q. Would it surprise you if Mr. Callahan is
25 Ms. Moseley's brother?

1 A. Yes, she mentioned that.

2 Q. Okay. Do you understand now that as of
3 5:05 yesterday afternoon, that for the first time the
4 trustee has received a request, to add a deck to the
5 back of Ms. Baskin's house for her to have access out
6 of her house?

7 A. I was not aware.

8 Q. Well, neither were we until 5:05 yesterday.
9 But the blueprints, according to your
10 report, to make the house handicap accessible were
11 from Callahan Enterprises, LLC; isn't that correct?

12 A. That's correct.

13 Q. And that is the brother of Michele Moseley,
14 correct?

15 A. To my knowledge, from verbal ...

16 Q. Okay. Did you talk with Ms. Baskin,
17 Ms. Moseley, or any caregiver about the prior
18 caregivers that Ms. Baskin has had over the past year
19 or two?

20 A. Have I spoke with them about it?

21 Q. Yes, ma'am.

22 A. No, ma'am.

23 Q. Would it surprise you that she's had 14
24 caregivers in 2021?

25 A. I had no idea.

1 Q. Would that raise a red flag for you?

2 A. I would have questions.

3 Q. Okay. And you are aware that Ms. Baskin's
4 longtime caregiver Jenny Vega quit, correct?

5 A. I was not aware, but I know she's no longer
6 there.

7 Q. Are you aware that Ms. Baskin's other
8 longtime caregiver Sheilah Wolfe quit?

9 A. I was not aware.

10 Q. Let me ask you a quick clean-up question,
11 Ms. Nunn. In October 19th, 2020, report, in Exhibit
12 57, can you look under Interviews Conducted, please,
13 ma'am.

14 A. Yes, ma'am.

15 Q. Do you see number 3?

16 A. Yes, ma'am.

17 Q. Do you see it says Michele Mason?

18 A. Yes, ma'am.

19 Q. Is that a typo?

20 A. That was the name that was given during
21 that time frame unless her name changed.

22 Q. Okay. Do you remember back in
23 October 19th, 2020, whether you talked to Michele
24 Moseley?

25 A. I remember talking to Michele Moseley.

1 Q. Okay. Are you aware that Mr. Baskin [sic]
2 received anonymous notes from former caregivers
3 alleging poor care of Ms. Baskin?

4 A. I was not aware.

5 Q. Are you aware that DSS has investigated the
6 care that Ms. Baskin has been receiving?

7 MR. DETWILER: Objection, Your Honor. This
8 is a line of questioning that assumes facts that
9 are not in evidence.

10 THE COURT: I think it goes to her
11 knowledge and her interviews that what she knew
12 more before she talked to -- went out at our
13 direction. So I'm going to overrule your
14 objection.

15 BY MS. DuRANT:

16 Q. Let me ask my question to make sure you
17 have the answer.

18 Are you aware that DSS has investigated the
19 care that Ms. Baskin is receiving?

20 A. I was not aware.

21 Q. Isn't it true that there are no certified
22 caregivers taking care of Ms. Baskin right now?

23 A. That's true.

24 Q. Under your recommendations in your
25 June 8th, 2020, report, if I may direct you there,

1 please, ma'am. You've got a list of eight of them.
2 I want to kind of hit the highlights with you, if you
3 don't mind, please, ma'am.

4 A. Yes, ma'am.

5 Q. Isn't it true that Ms. Baskin's catheter is
6 not being properly handled now?

7 MR. DETWILER: Objection. Are we talking
8 about the time of this report, or are we talking
9 about now?

10 THE COURT: Could you clear up your
11 question.

12 MS. DuRANT: I'll clear it up, Your Honor.

13 BY MS. DuRANT:

14 Q. Ms. Nunn, at the time that you were
15 interviewing Ms. Baskin, Ms. Moseley, everybody else
16 when you were conducting your investigation, isn't it
17 true that Ms. Baskin's catheter was not being
18 properly handled?

19 THE COURT: In this most recent contact?

20 MS. DuRANT: Correct.

21 THE WITNESS: Correct.

22 BY MS. DuRANT:

23 Q. And that isn't it true that she has
24 unlicensed and unvetted caregivers taking care of
25 her?

1 A. That's correct.

2 Q. And isn't it true that Ms. Baskin is paying
3 for insurance coverage for these unlicensed
4 caregivers?

5 A. That's correct.

6 Q. And, in fact, Ms. Baskin has a caregiver
7 that lives with her rent free, correct?

8 A. Correct.

9 Q. And she is also receiving payment for
10 taking care of Ms. Baskin; isn't that correct?

11 A. That's correct.

12 Q. In fact, that caregiver lives in 75 percent
13 of Ms. Baskin's house?

14 A. That's correct.

15 Q. And Jane only lives in 25 percent of the
16 house that she owns personally; isn't that correct?

17 A. That's correct.

18 Q. Isn't it correct that the caregiver has an
19 80-pound rescue dog that lives in Ms. Baskin's house?

20 A. That's correct.

21 Q. And isn't it correct that Ms. Baskin has
22 not been seeing a urologist even though she has had
23 to use a catheter for over a year; isn't that
24 correct?

25 MR. DETWILER: Objection, Your Honor.

1 That's not correct.

2 MS. DuRANT: You're testifying now.

3 MR. DETWILER: She's testifying.

4 THE COURT: Stop. We're not going to do
5 this. She's asking direct, leading questions,
6 which no one's objected to the leading. She's
7 absolutely asking questions that you haven't
8 objected to for the purpose of leading.

9 If it's not true and you want to clear it
10 up, you're going to have full access to this
11 witness, Mr. Detwiler.

12 MR. DETWILER: I object to their leading,
13 one; and number two, I object to the failure to
14 establish a time frame. She's talking right
15 now -- she's asked the question about
16 Ms. Baskin's current -- current care. And the
17 question is misleading to the Court and to
18 Ms. Nunn.

19 THE COURT: I'm going to overrule your
20 objection. And I will let you lead. No one
21 gave the ground rules for this Court's witness.
22 And certainly if you want to clear up any of the
23 factual pieces or the foundation from which she
24 is answering, I give you full access to this
25 witness when Ms. DuRant is finished.

1 Ms. DuRant.

2 MR. DETWILER: Thank you, Your Honor.

3 MS. DuRANT: Thank you, Your Honor.

4 BY MS. DuRANT:

5 Q. Ms. Nunn, let me ask you this question.
6 Isn't it true that Ms. Baskin only saw a urologist
7 upon your recommendation?

8 A. Can you rephrase the question?

9 Q. Yes, ma'am. I'll show you. The
10 recommendation number 7, you reference a urology
11 appointment in June 13th, 2022, with Dr. Chapman.

12 A. That's correct.

13 Q. Been before you made that recommendation,
14 did Ms. Baskin see any urologist to your knowledge?

15 A. They were in the process of finding.

16 Q. But it was over a year since she's had a
17 catheter; isn't that correct?

18 A. Yes. She has a catheter, but she doesn't
19 have anyone supervising as of now.

20 Q. Ms. Nunn, I'm going to ask you one more
21 question, and I'll be quiet.

22 A. Okay.

23 Q. Those are famous last words from a lawyer.

24 The last page of your June 8, 2022, report,
25 the penultimate paragraph starts with "In summary."

1 Do you see that second sentence that says, quote, The
2 current health care power of attorney lacks
3 experience in dealing with a complex situation such
4 as this, end quote?

5 A. Yes.

6 Q. Will you please explain that more for the
7 court and me.

8 A. I think that the type of care plan and
9 services that Jane needs, it needs to be someone who
10 is certified and has knowledge on the appropriate
11 care plan for someone as Jane. Meaning to -- making
12 sure that all the appropriate people are in place,
13 making sure that she has the appropriate doctors,
14 appropriate therapy, the appropriate meal plans.

15 I just think her overall care needs to be
16 driven by someone who specializes in, you know,
17 someone in her position -- Jane's position.

18 MS. DuRANT: Thank you very much, Ms. Nunn.
19 I appreciate it.

20 THE COURT: Mr. Detwiler.

21 MR. DETWILER: Thank you, Your Honor.

22 - - -

23 REEXAMINATION

24 - - -

25 BY MR. DETWILER:

1 Q. Ms. Nunn, a couple of follow up, but more
2 than a couple. But I'll try to make them as brief as
3 I can.

4 There's been a lot of conversation about
5 the fact that Jane lives in 25 percent of the house
6 and Ms. Spires lives in 75 percent of the house.
7 That's your estimate?

8 A. Yes, sir.

9 Q. Right. And I told you before when I was on
10 direct, I was going to come back to that, and I
11 failed to do that, and I apologize.

12 Jessie Spires is there -- living there
13 24/7, right?

14 A. Yes, sir.

15 Q. Okay. And so if there is this hypothetical
16 fire situation that seems to be brought up on a
17 regular basis, if Ms. Spires were not living there,
18 who would take care of Jane?

19 A. No one.

20 Q. Okay. You're aware that when Jane first
21 was able to move back into her house, there was a
22 lady that had moved in with her named Pat McIntosh.
23 Are you aware of that?

24 A. No, sir.

25 Q. Okay. Well, are you aware that the Court

1 was aware -- was made aware of Pat McIntosh living
2 there rent free?

3 A. No, sir.

4 Q. Okay. And you would agree with me that
5 Ms. Spires, by being there, is providing a valuable
6 service -- just by being there --

7 A. Yes, sir.

8 Q. -- is providing a valuable service to
9 Ms. Baskin?

10 A. Yes, sir.

11 Q. Okay. Now, this whole thing about the
12 catheter, you don't have any knowledge of what
13 happened prior to your visit in June of this year and
14 what has happened afterwards, do you?

15 A. Say again.

16 Q. You don't have any knowledge of the medical
17 attention Ms. Baskin got with respect to her catheter
18 or otherwise prior to your visit or after your visit,
19 do you?

20 A. Not after and not before. Just only from
21 what Michele and Jessie has told me. That's it.

22 Q. What you understood them to say?

23 A. Correct.

24 Q. Okay. And you do understand that there
25 were two hospital visits now. I want to make sure

1 we're not confused about that. There was one in
2 February of 2021, right after our first trial, when
3 Jane had a urinary tract infection that was not
4 picked up appropriately by her then caregiver or
5 primary treating physician, and she had to be
6 hospitalized?

7 MS. DuRANT: I object to the framing of
8 that. Assuming facts not in evidence with
9 respect to Dr. Henderson.

10 THE COURT: Sustained.

11 BY MR. DETWILER:

12 Q. You're aware -- you're now aware that she
13 was hospitalized in February of 2021 due to a urinary
14 tract infection?

15 A. Correct.

16 Q. Okay. And you weren't aware of that when
17 you did your October -- excuse me, your latest
18 report?

19 A. Correct.

20 Q. And she was in the hospital for two weeks?

21 A. From the information that I gathered from
22 the caregivers, that's correct.

23 Q. Okay. And are you aware that a large part
24 of her recent -- most recent decline is a result of
25 her hospitalization, sickness?

1 MS. DuRANT: Same objection. Assume facts
2 not in evidence.

3 MR. DETWILER: I'm asking what she knows,
4 Your Honor.

5 THE COURT: I think -- I'm going to allow
6 that opinion. I think it's kind of a basic
7 about those functions.

8 BY MR. DETWILER:

9 Q. Are you aware of that?

10 A. From my understanding.

11 Q. Okay. So with regard to the catheter,
12 that's a separate visit to the hospital? You're
13 aware of that?

14 A. Correct.

15 Q. Are you aware of the fact that the catheter
16 had been inserted one way and they were looking at a
17 way of inserting it another way, were you aware of
18 that?

19 A. Yes, sir.

20 Q. And the procedure that was undertaken to do
21 that was very painful and caused a lot of problems
22 for Ms. Baskin.

23 A. Yes.

24 Q. Are you aware of that?

25 A. Yes, she told me.

1 Q. She told you that?

2 A. Yes.

3 Q. And that is a more recent event, correct?

4 A. Correct.

5 Q. So she has been getting medical attention
6 unlike some of the questions insinuated earlier;
7 isn't that correct?

8 A. Some, but it was very minimum.

9 Q. Okay. To your knowledge?

10 A. To my knowledge.

11 Q. You haven't seen the medical record, you
12 don't know?

13 A. Correct.

14 Q. Okay. And -- now, I want to talk to you a
15 little bit about the caregivers and the medical
16 attention she got prior to your first visit back in
17 October of 2020. Who got her to her medical
18 appointments back then, do you know?

19 A. Michele took her to her appointments.

20 Q. Okay. Unpaid Michele took her to her
21 medical appointments?

22 A. I'm not sure if she was paid, but I do know
23 that Michele takes her to all of her appointments.

24 Q. I'm talking about prior to your first visit
25 in October of '20.

1 A. Correct.

2 Q. Is your answer the same?

3 A. Correct. She was not paid before my
4 October visit.

5 Q. Okay. And do you know, did Mr. -- did
6 Mr. Walkup do any background checks on Jenny Vega, do
7 you know?

8 A. I'm not sure.

9 Q. Did Mr. Walkup do any background checks on
10 Sheilah Wolfe, do you know?

11 A. I'm not sure.

12 Q. Are you aware that Sheilah Wolfe has a
13 financial arrangement with Mr. Walkup outside of this
14 relationship of caregiving for Ms. Baskin?

15 A. I have no idea.

16 Q. You're not aware of that, are you?

17 A. No.

18 Q. But you don't know of any background check
19 that Mr. Walkup did, do you?

20 A. No.

21 Q. Are you? Okay.

22 How about Tiasha Dukes, do you have any
23 knowledge of the background check that Mr. Walkup may
24 have done on that person?

25 A. No.

1 Q. Do you have any idea of how many caregivers
2 Mr. Walkup went through when he was trying to care
3 for Ms. Baskin?

4 A. No.

5 Q. Do you know how much those people got paid
6 back then?

7 A. No.

8 Q. Are you aware of any person who was -- had
9 any sort of certification whatsoever that was caring
10 for Ms. Baskin prior to this lawsuit being brought?

11 A. No.

12 Q. And prior to your first visit?

13 A. No, I don't.

14 Q. Okay. Now, I want to clear up this
15 testimony about the handicap accessibility of the new
16 house. Okay? Or the old, new house. The Summerlea
17 house.

18 A. Yes.

19 Q. Okay. The Summerlea house, the front door
20 was modified to make it handicap accessible in the
21 recent renovations; is that correct?

22 A. Uh-huh. That's correct.

23 Q. And the side door was modified in these
24 recent renovations to make it handicap accessible; is
25 that correct?

1 A. That's correct.

2 Q. And the inside was modified as well to make
3 it handicap accessible?

4 A. A portion of it.

5 Q. A portion of it right. A portion of it.

6 And the part that you observed in the back,
7 that is the door off of Ms. Baskin's bedroom suite
8 area, that is not accessible?

9 A. No.

10 Q. Correct?

11 And I think that is a recommendation you
12 made, number one, it's in your report of June 8th --
13 did I get that right? 2022? The door that is in
14 Ms. Baskin's room leading to the outside has stairs
15 instead of a handicap-accessible ramp. This is a
16 safety hazard and it makes the door inaccessible.

17 And your recommendation is to get that
18 fixed?

19 A. Correct.

20 Q. Okay. And so this report came in on --
21 whenever it came in. It's dated June 8th, and we got
22 it whenever we got it. And you now have been made
23 aware from the questions that were asked that the
24 special trustee here, not the trustee, but the
25 special trustee set about to get an estimate to build

1 the very ramp you recommend. Are you aware of that?

2 A. Just until Ms. DuRant brought it up, then I
3 was aware.

4 Q. Perfect. So you stand by that
5 recommendation. You may think that that is something
6 that would be a good thing for Ms. Baskin to have?

7 A. Yes.

8 Q. You think that's a very important safety
9 issue, do you not?

10 A. Yes.

11 Q. Okay. You were asked about DSS being
12 called to investigate Ms. Baskin's circumstance. Do
13 you remember that question?

14 A. Yes.

15 Q. I didn't hear this question. Are you aware
16 that DSS closed its investigation after it made the
17 investigation?

18 A. No.

19 Q. Are you aware that no one to this day knows
20 who made this anonymous phone call to DSS?

21 A. No.

22 Q. Is Bill Walkup an appropriate certified
23 caregiver?

24 A. Not to my knowledge.

25 MR. DETWILER: Thank you. That's all I

1 have.

2 MS. DuRANT: No more questions, Your Honor.

3 THE COURT: Ms. Nunn, I really appreciate
4 all you've done for the parties in this matter.
5 You've been very professional across the board.
6 I just have a couple of very quick questions.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Clearly, I have no idea the
9 living situation for Ms. Baskin in her home, but
10 it occurs to me that one of the things, just a
11 basic, that if she needed to call for help from
12 her bedroom, what would that be?

13 THE WITNESS: She showed me a little
14 walkie-talkie that she had that she would have
15 to press, and that's how they hear. It's a
16 walkie-talkie, it's not a monitor. She keeps
17 that with her. So when she needs to contact
18 someone overnight, she'll press it. But during
19 the day, you know, someone is in her area.

20 THE COURT: Is she physically able to do
21 that?

22 THE WITNESS: Yes. She did.

23 THE COURT: Okay. One of the things that
24 you alerted us to in your previous time frame
25 was that she needed a -- some kind of an alert.

1 Is that still a part of the picture?

2 THE WITNESS: It is still a part, and they
3 were working on that. But I don't think she has
4 it because I didn't see anything in that regard
5 because someone -- she said someone is with her
6 all the time.

7 THE COURT: That was more when she was
8 living by herself?

9 THE WITNESS: By herself, yes, ma'am.

10 THE COURT: Did my questions alert you to
11 anything you want to follow up on?

12 MR. DETWILER: One clarification, Your
13 Honor.

14 - - -

15 REEXAMINATION

16 - - -

17 BY MR. DETWILER:

18 Q. With regard to the walkie-talkie versus the
19 baby monitor, you mentioned a baby monitor earlier.

20 A. Right. She had -- it was mentioned by the
21 caregivers that she had a baby monitor, but I never
22 seen the baby monitor. The only thing that I seen
23 that she uses was a walkie-talkie. A yellow and
24 black walkie-talkie.

25 Q. And as far as you know, or do you know, who

1 was able to listen to the baby monitor to see if Jane
2 needs anything during the night?

3 A. That would be Jessie.

4 MR. DETWILER: Thank you. That's all I
5 have.

6 THE COURT: Are you good with letting her
7 go?

8 MS. DuRANT: Thank you, Ms. Nunn. Thank
9 you for your time.

10 THE COURT: I think we can excuse her and
11 let her get back to her professional life.

12 MR. DETWILER: No objection, Your Honor.

13 MS. DuRANT: Thank you, Ms. Dunn.

14 THE COURT: Are we ready for a witness, or
15 do you want a break?

16 MS. DuRANT: If I could get just a break to
17 fill this.

18 THE COURT: We're down five minutes.

19 MS. DuRANT: Thank you.

20 - - -

21 (A recess transpired.)

22 - - -

23 ANNE JENKINS WEBSTER, being first duly
24 sworn, testified as follows:

25 - - -

1 THE COURT: Ms. DuRant has technically
2 called her second witness today, and that is
3 Ms. Webster. Ms. Anne Webster. And she's
4 appearing over Zoom.

5 Ms. DuRant.

6 - - -

7 EXAMINATION

8 - - -

9 BY MS. DuRANT:

10 Q. Good morning, Ms. Webster. How are you?

11 A. I'm fine, Ms. DuRant.

12 Q. Good. I'll try to keep the questions short
13 and sweet today, especially considering we're over
14 Zoom. But would you be here today in person if you
15 could?

16 A. Yes, I would.

17 Q. But you have medical reasons keeping you in
18 Winston-Salem; is that correct?

19 A. I have physical difficulties because of --
20 because of my age. Let's face it, I'm 78 and because
21 of physical difficulties, both because of my -- I was
22 getting ready to say cerebral palsy and take on
23 Jane -- because the bell's palsy in my head and
24 problems I have with driving because of glaucoma and
25 the effect of jiggles in my eyes and cataracts and

1 also things like that.

2 Q. Yes, ma'am.

3 A. I just do not drive out of Winston-Salem
4 anymore.

5 Q. Yes, ma'am, I understand.

6 Will you please tell the court your
7 educational background.

8 A. I completed my education at the University
9 of North Carolina at Chapel Hill.

10 Q. What did you graduate with?

11 A. Pardon? I didn't catch all of that.

12 Q. What degree did you graduate with from
13 Chapel Hill?

14 A. A BA in English education.

15 Q. And then did you become a teacher?

16 A. Yes. I did my student teaching in
17 Winston-Salem. And following that, I was in employed
18 for 29 years by Winston-Salem Forsyth County schools
19 and taught English there. Most of the time for 27
20 years of that time at one school. Mount Tabor High
21 School where I taught basically ninth-grade English.

22 Q. Yes, ma'am. And you are currently retired;
23 is that correct?

24 A. Yes. Since 1996.

25 Q. Okay. And you are here today because of

1 your relationship with Jane Baskin; is that correct?

2 A. I'm losing the first part of every
3 question, Ms. DuRant.

4 Q. Okay. Let me speak up louder.

5 A. Okay.

6 Q. Are you cousins with Jane Baskin?

7 A. Yes. Jane is my first cousin. She was the
8 daughter of my mother's sister, Nell.

9 Q. Describe your relationship with your Aunt
10 Nell.

11 A. Nell was almost like a second mother to me.
12 When my mother stopped teaching to give birth to me,
13 Nell, whose husband was overseas during Second World
14 War, in the South Pacific, she came to Edenton and
15 took over my mother's position. My mother who had
16 been teaching Latin there. She took that position
17 and taught Latin and French to students in Edenton
18 there for a few years while my uncle was away.

19 And therefore, she was there when I was
20 born and helped to bring me up those years. And some
21 of my first memories, in fact, all of my first
22 memories include Nell. And she brought me up to call
23 her Nell. I never called her anything other than
24 that.

25 Q. And then at some point in time your aunt

1 Nell and her husband Eldridge received Jane as their
2 first child; is that correct?

3 A. As their only child. My aunt had to have a
4 hysterectomy while Eldridge was overseas, so they
5 could not have any of their own children. And she
6 had become so attached to me having helped to bring
7 me up, she wanted her own little girl. And Jane
8 became that.

9 Q. Okay. When you and Jane were children,
10 describe your relationship with Jane.

11 A. Jane was always the only cousin I claimed
12 as a cousin. But Jane has always been a little bit
13 different from other people around her. She has had
14 some kind of special needs. She was never going to
15 be quite like our other friends simply because of her
16 personal preferences of her own. And we had to
17 adjust to some of Jane's physical difficulties
18 because of it, and she had to adjust to ours.

19 Jane was -- I mean, when Jane came to
20 visit, it was a special occasion. When Nell and Jane
21 was there, I mean, it was next to Christmas. The
22 high point of our calendar.

23 Q. Yes, ma'am. And you are two years older
24 than Jane; is that correct?

25 A. Yes.

1 Q. Okay. Describe your relationship with Jane
2 when you all became adults.

3 A. Once I was away teaching and once Jane was
4 older and out of school and living there in Columbia,
5 I did not see her as often. Now, we had always
6 visited back and forth during the summer. We -- Nell
7 and Jane had been coming down to Edenton to spend a
8 week with us in June. And then usually in August,
9 mama and Ed and I would go down to Columbia to visit.

10 But once we became adults, Jane had things
11 going there in Columbia, and, of course, Ed was off
12 doing his thing. And very often it seemed that Jane
13 was busy with her friends and her club work there in
14 Columbia, and so often then Nell would come to visit
15 and stay with us for a week. And Jane would come
16 down with Eldridge, and I would see her just on the
17 weekend. Or sometimes it was necessary that Jane
18 stayed there with the dogs when she had more than
19 one.

20 So I didn't see her as frequently there for
21 a number of years until 1991 when we both lost our
22 parents and once again there was a change in our
23 relationship.

24 Q. And tell the Court about that change in
25 that relationship.

1 A. At that time it was time for me to step in
2 and see more of Jane. I mean, we both lost our
3 parents. Now, I lost my mother in 1988. Nell died
4 the Christmas of the next year, and Eldridge died the
5 following fall. So our entire parental line, it
6 seemed, was wiped out there. And I made an effort to
7 call Jane more often. She called me.

8 Now, she had support there at home. Her
9 neighbor, next-door neighbor and good friend, Dee
10 Park, was doing an excellent job of helping and
11 guiding her, but I certainly wanted to be the family
12 support. I mean, as far as her mother's side.

13 Jane and I were support for each other
14 because we always remembered the stories that Mama
15 and Nell used to tell us. And Jane was my contact
16 with my past and always has been. So we started
17 keeping more in touch then.

18 Q. Okay. Would she ever visit you in
19 Winston-Salem where you live?

20 A. Not until I had a place for her to come
21 visit. In 1991, when the city -- not the city, what
22 am I saying? When the route for what was then called
23 the Muddy Creek Beltway, which had originally been
24 planned to come very close to the property that we
25 had planned to build on, when it was ruled out

1 because too much development had taken place along
2 it, when they were no longer going to become that
3 route, it was safe for my husband and me to finally
4 build our house.

5 We got that house built, starting in
6 construction on it in March of 1991 and got moved in
7 in August. And finally we had a place to entertain
8 Jane. And unfortunately, I was back in school by
9 that time. But the following summer, we had our
10 first Jane visit. Drove down to Columbia, picked her
11 up, and brought her back to Winston-Salem for the
12 first of what was to be a regular Jane visit to
13 Winston-Salem.

14 And at that time, I continued to go get
15 her, and we would have a weekly Jane visit in
16 Winston-Salem until the time I retired. And at that
17 time, the Jane visits started becoming something more
18 than just a weekly Jane visit.

19 Q. And so it was -- how often would she visit
20 you in this new time of your life?

21 A. Pardon? I did not catch that.

22 Q. How often would she visit you in this new
23 time of your life? Previously, she was visiting you
24 once a year, correct?

25 A. Right. I'm sorry. Yes.

1 Q. Okay.

2 A. She was -- right. Once I was retired, Jane
3 and I had a little bit more freedom to plan these
4 things. And we decided first the visit was going to
5 be two weeks. What was the point of limiting it to
6 one and having to fit in all the places Jane wanted
7 to go in Winston-Salem into one week? So we expanded
8 to two weeks.

9 And then somewhere in there, we had done a
10 week there at Thanksgiving so that Jane could be with
11 me at Thanksgiving. And I said, "Jane, why not do it
12 at Thanksgiving and in the summer?" Well, she was
13 amenable to that, so we started doing the Jane
14 two-week visit twice a year.

15 And I would go down and pick her up and
16 drive her back to Winston, and we would do two weeks
17 of running all over the place.

18 MS. DuRANT: Timeout. Timeout, Ann. We
19 might have a technological issue.

20 THE WITNESS: Yeah.

21 MS. DuRANT: I'm going to ask Judge
22 McCulloch to help me with this notice that says
23 "The meeting will end in ten minutes."

24 THE COURT: You have ten minutes, and we'll
25 turn it back on again.

1 MS. DuRANT: All right. Ten minutes, and
2 then we'll start another Zoom meeting, if we
3 have to.

4 BY MS. DuRANT:

5 Q. So Ms. Webster, I understand that you would
6 have visits with Jane twice a year where she would
7 come see you in Winston-Salem, but at some point in
8 time those visits stopped. Is that correct?

9 A. Yes. The last time I had Jane with me was
10 in 2016. And following that last visit, I discovered
11 that I had cancer and had to immediately have surgery
12 and begin chemo and then radiation. And all of that
13 treatment lasted right up until the week of
14 Christmas. So, of course, that wiped out our fall
15 visit.

16 But it also came at a time when Jane and I
17 had discovered that I could not get her up off the
18 floor if she fell. And this was another problem.
19 Jane had also fallen down my steps during a past
20 visit, and I became greatly concerned that Jane was
21 no longer safe at my house because it was no way she
22 could come in and go without doing those steps.

23 Q. Yes, ma'am. And after those visits
24 stopped, did you engage in telephone visits with
25 Jane?

1 A. Continued.

2 Q. Okay. Talk about your telephone visits
3 with Jane. After she stopped visiting you in
4 Winston-Salem.

5 A. Those telephone visits continued right up
6 until the problems began with this court matter.
7 When it became clear that Jane's talking to me about
8 what was going on with the court case was a problem
9 for her attorneys and for Michele Moseley, they did
10 not want her talking to me about what was going on at
11 all.

12 And it was simply so that I could not ask
13 her anything about the situation, nor could she tell
14 me anything about the situation. And it limited what
15 we could talk about to the past and to our dog.

16 Q. Yes, ma'am. So you were aware that Jane
17 had issues with Bill Walkup; is that correct?

18 A. Yes. Jane had issues with anyone who had
19 control over her money. Jane had issues with me
20 during the time when I tried to help her by giving
21 her some money to help her start a savings account.

22 Q. At some point in time did you ever become
23 aware that Jane had hired an attorney with respect to
24 her trust?

25 A. Yes. She told me about it. She told me

1 that she had been encouraged by Pat Watson to use the
2 attorney who had helped Pat in one of her matters.
3 Because, of course, Pat did not know anything about
4 Jane's former problems with money.

5 And my immediate response, because Jane
6 always gave me contact information for everybody that
7 she worked with, my immediate response was to get in
8 touch with that lawyer to try to make him aware of
9 Jane's limitations and problems because I thought
10 surely he did not understand what Jane's limitations
11 were and what the true nature of her problem was.

12 Q. And who was that lawyer?

13 A. I caught only one word of that, Ms. DuRant.

14 Q. Who was the lawyer?

15 A. I caught only the word "lawyer."

16 Q. Who was Jane's lawyer that you contacted?

17 A. Yes. The name?

18 Q. What is his name?

19 A. Alex Weatherly.

20 Q. Did you contact Mr. Weatherly after you
21 heard that Jane hired him?

22 A. What about that?

23 Q. I'm asking if you contacted -- I'm asking
24 you, Ms. Webster, if you contacted Mr. Weatherly
25 after you received his contact information.

1 A. Yes. I called him, without Jane's
2 knowledge, to talk to him and to tell him what I
3 thought he did not know about Jane and needed to
4 understand by way of helping her because I knew that
5 Jane would not have told him about the problems that
6 she had managing money. The reason that the money
7 was not left to her in the first place, and the
8 problems that she had with all sorts of issues
9 because he would have no way of knowing about her
10 intellectual disability.

11 She is highly socialized, and this is
12 something that would not show up immediately. And so
13 I called him and had the long discussion with him
14 about her problems, her educational background, as
15 well as the problem she had had financially.

16 Q. At some point in time, did you contact Jane
17 about the allegations that she was making against
18 Mr. Walkup?

19 A. Yes. Mr. Walkup contacted me about these,
20 asking me if Jane had ever mentioned any of this to
21 me in our many conversations. And she had not. So,
22 I mean, she had told me other things, but she had
23 certainly not mentioned in this particular form.

24 So my first response was to call Jane and
25 ask her about this.

1 Q. Okay. And after you talked with Jane, did
2 you then talk with Mr. Weatherly again?

3 A. Not by phone, but I wrote an email
4 addressing each of the issues that he had addressed
5 in his communication to Mr. Walkup.

6 Q. Okay. Ms. Webster, I'm going to direct you
7 to what's already been admitted as the Parties' Joint
8 Exhibit 10.

9 Ms. Webster, do you have it?

10 We're done. I see why. Can we go off the
11 record?

12 - - -

13 (A recess transpired.)

14 - - -

15 BY MS. DuRANT:

16 Q. Anne? Ms. Webster?

17 A. Yes.

18 Q. Did you have a chance to pull out
19 Exhibit 10?

20 A. Let's try again, Ms. DuRant.

21 Q. Yes, ma'am. Ms. Webster, were you able to
22 locate Exhibit 10?

23 You can't hear me?

24 A. You're going out.

25 MS. DuRANT: They can't hear me, period, I

1 think.

2 - - -

3 (Off the record.)

4 - - -

5 BY MS. DuRANT:

6 Q. Ms. Webster, have you had an opportunity to
7 pull out Exhibit 10?

8 A. Yes.

9 Q. Can you identify that exhibit for us?

10 A. This is a copy of the email that I sent to
11 Mr. Weatherly with a copy to Mr. Walkup.

12 Q. All right. In the opening paragraph, you
13 talk about -- or did you talk about Ms. Baskin and
14 her ability to handle money?

15 A. Yes.

16 Q. What do you say?

17 A. I thought --

18 - - -

19 (Off the record.)

20 - - -

21 BY MS. DuRANT:

22 Q. Ms. Baskin?

23 A. Yes.

24 Q. Do you have Exhibit 10 in front of you?

25 A. Yes, I do.

1 Q. Okay. In the first half of that email, do
2 you talk about Jane's ability to handle money?

3 A. Right.

4 Q. Okay. What do you say?

5 A. I told him that in the past, she had
6 managed, while getting no more than \$800 a month
7 herself, to take care of her needs and pay her
8 bills -- the bills that she was still responsible
9 for.

10 She had managed to build up a debt of over
11 \$15,000, which she could not pay off and which she
12 will still -- which she was simply holding at bay by
13 paying the minimum amount. And I told him at that
14 time that we had found out about it only because of
15 her injury, which she was having to rely on the
16 neighbor's help even to write her checks and help her
17 pay bills. And that she was not able to manage
18 money -- manage her own money like she was telling
19 other people she should have.

20 Q. Okay. And then, Ms. Webster, you have four
21 items in this email, correct?

22 A. Yes.

23 Q. What are those four items?

24 A. One, that Mr. Walkup had gone into her
25 apartment while she was not there and had taken some

1 items. One -- a second one, that there had been some
2 water that had leaked into her apartment. In this
3 case, the charge was two inches of water that's
4 standing in her apartment that had done all sorts of
5 damage and that could have led to mold.

6 The third, that Mr. Mr. Walkup had
7 physically caused damage to her toe while taking her
8 out to the car. And the fourth, that he was just
9 mean to her in many different ways.

10 And I went in to different ways that she
11 had claimed over the years that he was being mean to
12 her, unfair to her.

13 Q. Okay. For each of those four items, those
14 allegations, did you talk to Jane about those
15 allegations?

16 A. Yes. After Mr. Walkup had made me aware of
17 these charges that had been communicated to him by
18 Mr. Weatherly, I called Jane and just asked her
19 pointedly about them because some of these were
20 things in forms that I had never heard her talk
21 about.

22 Q. And what did she say in response to each of
23 the four items?

24 A. Well, in the case of the -- his going into
25 her apartment and taking things, I asked Jane

1 pointedly, "What is missing from your apartment,
2 Jane?"

3 And the only thing specifically that she
4 could come up with that was missing was a copy of the
5 check that was given to her from a land sale.

6 Q. Okay.

7 A. That check, she had told me about being
8 turned over to Mr. Walkup. And I was the one who had
9 told her that she needed to give him that check
10 because I was under the impression that it would need
11 to be reported on her income tax. And so she told me
12 when she did this.

13 Q. Okay. So she explained that number one was
14 not true; is that correct?

15 A. Well, I'm -- she explained to me that she
16 couldn't find the copy of the check, and this is the
17 reason that she had decided he had come into her
18 apartment and had taken it. And I tried to convince
19 her that it did not make any sense that he would go
20 into her apartment and steal a copy of a check. That
21 the copy had no real value. She had told me that her
22 cousin Steve went with her to turn over the check.
23 And that was someone else who could verify that the
24 check existed.

25 But there was already a record of that

1 check in Mr. Walkup's records. I mean, obviously,
2 the check had been turned in.

3 Q. Yes, ma'am.

4 A. It just made no sense.

5 Q. And then what did Jane say in response to
6 the second allegation?

7 A. The two inches of water that had showed up
8 in the charge, Jane laughed about that. And she
9 said, "Well, Alex had got that wrong." She told him
10 that this is what had happened in the apartment above
11 her. That there was simply some water that leaked
12 down into her apartment, and when she called and
13 reported that, they sent somebody right out and I
14 think set up humidifiers once they had cleaned up the
15 water. And that they had taken care of that matter
16 immediately, but that was never a problem. And the
17 two inches of standing water had never occurred in
18 her apartment.

19 Q. And number three, the third allegation,
20 what did Jane say about that allegation?

21 A. Well, that was even stranger, Ms. DuRant.
22 Because when I brought that up, Jane immediately
23 started telling me about how Mr. Walkup dragged her
24 out to the car, injuring her toe in the process.

25 And I said, "Jane, don't you remember you

1 told me about falling in your laundry room and
 2 hurting your toe that way and how you had to call
 3 Sheilah to come back to your house at night and get
 4 you up off the floor? Don't you remember you told me
 5 about how you later found out that your toe was
 6 bruised when you realized how much it hurt later?"

7 But, of course, Jane didn't feel like at
 8 the time she needed to go to the emergency room or
 9 call for help. She never wanted Mr. Walkup to find
 10 out that she had fallen again, and she certainly
 11 didn't want to call emergency services because that
 12 always meant that a report would go to Mr. Walkup.
 13 But the injury had happened when she fell in the
 14 laundry room.

15 And once I reminded her of that, she said,
 16 after a long pause, "Oh, yeah, I remember now.
 17 That's the way it happened."

18 Q. Yes, ma'am. And the fourth allegation,
 19 what did Jane tell you about that allegation?

20 A. Well, Jane's examples of ways in which
 21 Mr. Walkup is mean to her consisted of he would not
 22 let her have access to her money.

23 I said, "Jane, why are you not allowed to
 24 just get your money and spend it any way you want?
 25 What reason have you shown in the past for that not

1 to be a good idea?"

2 Her other reasons, "Well, he stopped me
3 from driving when I could still drive."

4 Well, Jane -- Jane could hardly walk well.
5 Her legs were weak. Anyone would question her
6 ability to use those legs to step on the gas pedal in
7 an emergency. Anyone would question her ability to
8 steer accurately. Anyone who saw Jane moving would
9 think that there was a problem with her driving.

10 Q. Yes, ma'am.

11 A. Other things that I would not even want to
12 go into, she thought it was unreasonable that he
13 would discuss with her the reason for her many toilet
14 backups was she was using too much toilet paper.
15 That he shouldn't talk to her about things like that.
16 He shouldn't fuss at her about needing to clean up
17 her house when she had clutter all over the floor.

18 I walked the floors of that house when
19 there was nothing but a pathway through there. Here
20 is a person who had physical disability, mobility
21 issues, why wouldn't you be concerned about there
22 being simply a path through the hallways, through the
23 rooms, there being no furniture to sit on.

24 The eyes of the kitchen stove being covered
25 with papers and things like that that were flammable.

1 It just made no sense.

2 Q. Yes, ma'am.

3 A. But things of that nature.

4 Q. And then in your penultimate paragraph, you
5 start with the sentence, quote, Please recognize that
6 when Jane gets terribly upset, she makes charges the
7 way a child does without realizing that facts will
8 not back her up. Sometimes she has false memories of
9 situations, end quote.

10 Is that sentence and really all of the
11 sentences contained in this email accurate?

12 A. Yes.

13 Q. Okay. And your final sentence which
14 states -- I guess the final phrase which states, "But
15 I will not support her misrepresenting facts to
16 achieve her goal"; is that accurate?

17 A. Yes.

18 Q. Have you talked with Jane about this
19 lawsuit?

20 A. Yes, I did as long as I was allowed to.

21 Q. And did you talk to her about the
22 consequences of not telling the truth?

23 A. I have talked to Jane for years about how
24 unjust it was for her to make charges against.
25 Simply every time she would come up to visit and be

1 around my friends, that one of the big jokes was they
 2 were going to get to hear about William, which is
 3 what she always called Mr. Walkup. And Jane did this
 4 with anyone that she met and got to sit around long
 5 enough. I always felt that it was a defense
 6 mechanism because it helped her explain why it was
 7 she was not in control of her money.

8 Q. Yes, ma'am. Regarding defense mechanisms,
 9 let me talk to you about one topic. Can Jane read?

10 A. Jane can read simple things. But as far as
 11 reading instructions or business letters, anything
 12 that gets complicated, Jane always turns over to
 13 someone else to deal with. She always needs somebody
 14 else to handle her big issues for her and seeks out
 15 people who will serve her in that way.

16 Q. Does Jane have a defense mechanism that she
 17 uses when she's presented with something to read?

18 MR. DETWILER: Objection, Your Honor.

19 That's calling for a psychological analysis from
 20 this witness.

21 THE COURT: Sustained.

22 MS. DuRANT: Okay.

23 BY MS. DuRANT:

24 Q. Ms. Webster, what does Jane say when she's
 25 presented with something to read?

1 A. Jane simply says that she does not have her
2 glasses with her. And she can't see.

3 Q. Okay. Has there been a time, we'll say
4 within the past year, where you have not been able to
5 get in touch with Jane on the telephone?

6 A. Yes. Jane has a friend named Emmie, who
7 thinks it's great fun to call Jane, and if Jane will
8 not accept the call -- I mean, Emmie would call her
9 so many times a day it was driving Jane up the wall.
10 Emmie leaves a message and then calls back and leaves
11 another message and leaves another message. And so
12 Jane was leaving the voice mail full so that Emmie
13 would not be able to do that.

14 I just would hit low periods where I could
15 not leave a message myself, and Jane was not calling
16 me. I had no way to leave a message and get in touch
17 with her. I found at one point that the only way I
18 could even let Jane know I was trying to reach her
19 was to email Michele Moseley and ask her to have Jane
20 call me.

21 Q. Was there ever a point in time when you
22 would send cards or letters to Jane so that she would
23 call you?

24 A. Yes. I have done that on several
25 occasions. One time even going so far as to tease

1 her. I said, "Jane, I don't know if I don't hear
2 from you whether you are sick again." Because one
3 time in the past she has been even in the hospital.
4 I said, "I don't know whether you are hospitalized or
5 whether you are being held hostage."

6 And surprisingly, I got a call back rather
7 immediately and at night this time, which was highly
8 unusual from Jane, saying, "I'm not being held
9 hostage."

10 Q. Was anybody present with her when she made
11 that statement?

12 A. Yeah. Michele was there with her at that
13 time. In fact, she even got on the phone eventually
14 and talked to me. And I think sometimes Michele has
15 encouraged her to stay in touch.

16 But I had been concerned that Jane is
17 having more difficulty making those calls without
18 help. I don't know whether it is that or whether
19 Jane is having as much difficulty keeping the
20 conversation going as I am as limited in topic as it
21 is. Jane and I just aren't free to talk as much if
22 we are limited in scope to what our dogs are doing or
23 what our parents did in the past.

24 Q. And what are you limited from discussing?

25 A. Well, nothing that has to do with what's

1 really going on in Jane's house. I can tell she has
2 to be so careful about what she says. Certainly not
3 getting into any change up there. She can tell me
4 about her health, but thank heaven she doesn't have
5 too many problems that way that she has to tell me
6 about daily.

7 But I don't know, for instance, anything
8 that they think. And you hear me using the word
9 "they," it seems to be a team-type thing now,
10 them-and-us situation. And I just, you know, feel
11 like that is what has been at play ever since this
12 legal situation developed.

13 MS. DuRANT: Well, thank you very much,
14 Ms. Webster. I have nothing further for you
15 right now. Answer any questions Mr. Detwiler
16 may have of you.

17 THE WITNESS: Yes, ma'am.

18 MS. DuRANT: Thank you.

19 - - -

20 EXAMINATION

21 - - -

22 BY MR. DETWILER:

23 Q. Ms. Webster, this is Rick Detwiler. Can
24 you hear me okay?

25 A. Yes, I can, Mr. Detwiler.

1 Q. Thank you, ma'am. I represent Jane. You
2 know that?

3 A. Yes.

4 Q. And you know Jane is sitting in here
5 listening to this whole conversation. You understand
6 that, right?

7 A. Yes.

8 Q. Okay. Now, when you emailed Michele to
9 have Jane call you or wrote to Jane to have her call
10 you, Michele made sure that happened; is that right?
11 That's what I understood you to say?

12 A. Yes, she did.

13 Q. Okay. Good.

14 Now, this Exhibit 10, this email that you
15 wrote back in March of 2017 --

16 A. Yes.

17 Q. -- to Alex Weatherly, do you have that in
18 front of you?

19 A. Yes, I do.

20 Q. Okay. And you copied that to Bill Walkup,
21 right?

22 A. I'm thinking back, Mr. Detwiler. Yes.
23 Yes.

24 Q. Right. Well, in fact, you had Mr. Walkup
25 look at this and approve it before you sent it; isn't

1 that true?

2 A. I don't believe -- no, sir, it is not
3 correct. I have a copy from -- that he sent me, but
4 I have my own copy at home that I made because,
5 remember, I sent a copy of this original email to
6 Mr. Weatherly and sent a copy of that to him. So
7 while the exhibit that I'm holding is a copy that he
8 sent me of it, it is the email that I sent. This is
9 nothing but a copy of the email I sent --

10 Q. Yes, ma'am.

11 A. -- which was the original and is exactly
12 like what I sent.

13 Q. Yes, ma'am. I understand that.

14 My question is this: Prior to sending it
15 to Mr. Weatherly, didn't you send it to Mr. Walkup to
16 get his edits?

17 A. No, I didn't. No, I did not.

18 Q. You did not?

19 A. I sent it directly to Mr. Weatherly without
20 any input from Mr. Walkup.

21 Q. Okay.

22 A. I simply sent it to Mr. Walkup as a
23 courtesy so he would know that I had sent this to
24 Mr. Weatherly.

25 Q. Yes, ma'am. And so in March of 2017, when

1 you sent this email, you had been conversing with
2 Mr. Walkup about these allegations, correct?

3 A. Only he had called me and asked me about
4 them. I was at that time in no way conversing with
5 Mr. Walkup about any of this.

6 Q. Okay.

7 A. He simply called to ask me if Jane had
8 discussed any of this with me.

9 Q. Did Mr. Walkup ask --

10 A. Yes. And once I talked to Jane, I returned
11 his call and told him what Jane had told me.

12 Q. Okay.

13 A. But at this time, Mr. Walkup and I were in
14 no way calling, discussing the situation.

15 Q. Okay. Well, then Mr. Walkup encouraged you
16 to check in with Jane and see what she has to say
17 about these allegations?

18 A. He asked me to do that because -- he was
19 concerned because he knew that Jane and I were in
20 constant contact at that time.

21 Q. Okay. Now, so it's my understanding that
22 your testimony today is that -- I think you used this
23 phrase, "Jane is intellectually disabled," I think
24 that's what you said?

25 A. Yes.

1 Q. And that she's irresponsible with money?

2 A. Yes.

3 Q. And that she's a liar; is that your
4 testimony?

5 A. I think "liar" is a hard word to use with
6 Jane because -- because of her mental age,
7 Mr. Detwiler.

8 MR. DETWILER: Thank you, Ms. Webster. I
9 appreciate your answering my questions.

10 MS. DuRANT: No further questions,
11 Your Honor.

12 THE COURT: Thank you, Ms. Webster. We're
13 hanging up now.

14 THE WITNESS: Okay.

15 THE COURT: All right.

16 MR. SOWELL: Your Honor.

17 THE COURT: Yes, sir.

18 MR. SOWELL: I know you probably are
19 thinking about breaking. Mr. Al Moses has been
20 here since 11:30. Is there a way we can put him
21 up before lunch and get him out of here?

22 THE COURT: Oh my goodness. How long is he
23 going to take? He's going to get into all kind
24 of trust analysis.

25 MR. SOWELL: I'll try to make it.

1 THE COURT: I need a break. I have got to
2 have a break. I'm so sorry.

3 MR. SOWELL: Thank you.

4 THE COURT: I don't mind if it's 45
5 minutes. It's our lunch break. Is that enough
6 for you?

7 MR. SOWELL: Yes.

8 MR. DETWILER: We'll make it work.

9 THE COURT: It looks like it's pretty close
10 to 1:00. I will see everybody back at 1:45.

11 - - -

12 (A lunch recess transpired.)

13 - - -

14 THE COURT: Yes, sir. We're back on the
15 record after our lunch break.

16 MR. SOWELL: Thank you.

17 THE COURT: Mr. Sowell.

18 MR. SOWELL: May it please the Court,
19 Your Honor, the defendant calls Dr. Frampton
20 Henderson.

21 THE COURT: Dr. Henderson, thank you for
22 joining us. I know you're not familiar with our
23 court, but you're going to walk past Ms. Baskin,
24 hang a right, and I'll swear you in.

25 So when you get to our witness stand, the

1 other glassed-in area, you'll see the Bible on
2 the ledge. Please place your left hand on the
3 Bible and raise your right hand.

4 - - -

5 FRAMPTON W. HENDERSON, JR., being
6 first duly sworn, testified as follows:

7 - - -

8 THE COURT: Did you want to say something,
9 sir?

10 MR. DETWILER: I did, Your Honor. I'm not
11 sure -- Dr. Henderson's deposition was taken
12 previously. I'm not sure what his live
13 testimony today will change; however, my client
14 does not waive her rights to privacy with regard
15 to her medical care. And so I just want to make
16 that statement.

17 Dr. Henderson knows what that means,
18 Mr. Sowell knows what that means, and so
19 whatever else he is going to testify to, I just
20 want to make that clear.

21 THE COURT: So you're going to have to stay
22 on top of it because I'm not sure where we're
23 crossing over.

24 MR. DETWILER: I don't know either.

25 THE COURT: All right. May go a little

1 slower than normal in case this touches into
2 something he's concerned about.

3 MR. SOWELL: Your Honor, Michele Moseley
4 signed the HIPAA release for Dr. Henderson's
5 records.

6 THE COURT: At my direction.

7 MR. SOWELL: Yes. And we have the records.
8 All he's going to be asked about is what's in
9 his chart, which we got pursuant to HIPAA
10 release at your direction.

11 MR. DETWILER: And we object to his
12 testifying. We've already agreed to allow him
13 to testify in his deposition. He's done that.
14 Enough is enough. My client is -- feels like
15 her privacy has been invaded enough.

16 THE COURT: All right. Can the records
17 speak for themselves, or is there additional
18 information you want him to testify about?

19 MR. SOWELL: Probably just a smidgen.

20 THE COURT: Well, be careful.

21 MR. SOWELL: Okay.

22 THE COURT: They strenuously objected to me
23 even ordering them to allow the release of the
24 records. And it was in my mind at that time
25 related directly to her capacity and any

1 question about her being able to speak for
2 herself.

3 MR. SOWELL: I don't believe he testified
4 about anything outside of his chart or his
5 deposition.

6 MR. DETWILER: Then why are we here?

7 MR. SOWELL: Because we wanted him to
8 testify live so the Court can view him.

9 THE COURT: I don't think there's been any
10 contention about his information.

11 MR. DETWILER: Nor do we object to his
12 deposition being submitted.

13 THE COURT: What's the issue today? Is
14 there something that you wanted since the
15 medical records, since the deposition, that you
16 want him to talk about?

17 MR. SOWELL: Yes, precisely.

18 THE COURT: Would you all like a side-bar
19 because I'm not sure I understand. And by
20 side-bar, I mean the court reporter still takes
21 it down.

22 MR. SOWELL: Okay. This is Exhibit 39.

23 THE COURT: So this is now like a proffer?
24 What are we doing?

25 MR. SOWELL: I want to put the witness on

1 and ask him some questions.

2 THE COURT: I know. But I'm not
3 understanding where we're going, and I have a
4 standing objection.

5 MR. SOWELL: I don't understand the
6 objection. He's a witness. He's been listed as
7 a witness. We've called him as a witness.

8 THE COURT: He's objected as to any
9 confidential information related to her privacy.
10 You've now cleared up the fact that you want him
11 to testify about things since his deposition.

12 MR. SOWELL: That's right.

13 THE COURT: Do you all need to go talk in
14 the hallway to see where you're headed?

15 MR. SOWELL: I don't think so. It's all in
16 this second records request we got pursuant to
17 HIPAA. Mr. Detwiler has a copy of it.

18 THE COURT: I'm not sure of the date of
19 records you're talking about.

20 Mr. Detwiler?

21 I would rather you show it to him so see if
22 it releases concerns.

23 MR. SOWELL: I mean, he's seen them.

24 MR. DETWILER: These records were obtained
25 pursuant to Your Honor's order, as you pointed

1 out.

2 THE COURT: Can you tell me what exhibit it
3 is maybe?

4 MR. DETWILER: And I'll point -- this is an
5 exhibit, been marked as Exhibit 53. And I will
6 point out, Your Honor, that this was obtained by
7 Mr. Sowell pursuant to the HIPAA release of
8 12-8-20. Two years ago. Which was the same
9 HIPAA release that you instructed us to give
10 him.

11 THE COURT: Right. This is an exhibit that
12 you have agreed to, right?

13 MR. DETWILER: Your Honor, the records
14 speak for themselves.

15 THE COURT: I don't know -- until he asks a
16 question, I don't know what the exact objection
17 is. So I'm going to let him ask his questions
18 to see where your uncomfortableness arises, if
19 it does.

20 So Mr. Sowell, first question, please.

21 Dr. Henderson, you can see that your
22 testimony is a little interesting in the journey
23 we're about to take. You may want to pause in
24 answering the question so that I can see if we
25 have an objection to the question, rule before

1 you either are not allowed to answer or are
2 allowed to answer. Is that okay?

3 THE WITNESS: That's okay.

4 THE COURT: Thank you.

5 MR. SOWELL: Your Honor, this is
6 Exhibit 39. That's the first set of records.

7 THE COURT: Let me pull it out. Hold on.
8 All right.

9 MR. SOWELL: And this is Exhibit 53, the
10 second set of records.

11 The first set of records, looks like they
12 were produced on October 28, 2020. They were.
13 That's when they were printed.

14 The second set, they were produced on
15 June 2nd, 2022. That's when they were printed.

16 Just so the Court will know and
17 Dr. Henderson will know, I've marked on both
18 sets with these little tabs where I want to
19 direct him to. Is that okay?

20 THE COURT: It's Mr. Detwiler's issue.

21 MR. DETWILER: I got to hear a question,
22 Your Honor.

23 MR. SOWELL: I just want to make sure
24 nobody objects to marking because it will be
25 easier for him to find it.

1 MR. DETWILER: No objection to that.

2 THE COURT: All right.

3 - - -

4 EXAMINATION

5 - - -

6 BY MR. SOWELL:

7 Q. Dr. Henderson, state your full name.

8 A. Frampton Wyman Henderson, Jr.

9 Q. And do you live in Columbia?

10 A. Yes.

11 Q. And do you practice family practice
12 medicine in Columbia?

13 A. Yes.

14 Q. And are you board certified in family
15 practice?

16 A. I am.

17 Q. And do you practice at Providence Family
18 Practice?

19 A. Yes.

20 THE COURT: What was that last -- I
21 couldn't hear.

22 MR. SOWELL: Providence Family Practice.

23 THE COURT: Providence.

24 BY MR. SOWELL:

25 Q. How long have you practiced with Providence

1 Family Practice?

2 A. 40 years.

3 Q. And for the last 25 years or so --

4 THE COURT: I can't hear you. I'm very
5 sorry. I'm having trouble hearing.

6 BY MR. SOWELL:

7 Q. The last 25 years or so, have you had Jane
8 Baskin as a patient or treated Jane Baskin?

9 A. Yes, I have.

10 Q. And Exhibit 39 there that you have in front
11 of you, does that appear to be the chart of
12 Providence Family Practice related to Jane Baskin for
13 the last few recent years?

14 A. Yes.

15 Q. And the chart that's there, Exhibit 53,
16 does that appear to be a couple of supplemental or
17 maybe even three supplemental visits that were not in
18 the original chart from January of 2021 and February
19 of 2021?

20 A. Yes.

21 Q. All right. Are these records regularly
22 maintained in the business and medical practice of
23 Providence Family Practice?

24 A. Yes.

25 Q. All right. If you would, with respect to

1 Exhibit 39, turn to the note -- and I've marked it
2 with a sticky note -- for Monday, February 27th,
3 2017.

4 MR. DETWILER: Excuse me, can you give me a
5 Bates-stamp number.

6 MR. SOWELL: Yeah. It's four zeros and an
7 eight.

8 MR. DETWILER: Four zeros --

9 MR. SOWELL: 00008.

10 MR. DETWILER: I'm looking at Henderson 01
11 through -- so you are on page 8?

12 MR. SOWELL: 8, yeah.

13 MR. DETWILER: Thank you. Sorry to
14 interrupt.

15 MR. SOWELL: No problem.

16 BY MR. SOWELL:

17 Q. Is that your progress note from Monday,
18 February 27 of 2017?

19 A. Yes.

20 Q. And it's denominated Full Progress Note
21 signed by Frampton Henderson, M.D.?

22 A. That's right.

23 Q. And, obviously, that is you?

24 A. Yes.

25 Q. All right. What was the chief complaint on

1 that day?

2 A. Fill out assisted living form.

3 Q. All right. Did you fill out the assisted
4 living form?

5 A. Yes.

6 Q. Did you approve her for assisted living?

7 A. Yes.

8 Q. If you look at -- under the history of the
9 present illness, does it say Ms. Baskin is in to have
10 a form filled out and the examination done to get
11 assisted living? Is that what it says in the first
12 sentence?

13 A. Yes, it does.

14 Q. And then it says, "However, she says she is
15 not going to go"?

16 A. That's what it says.

17 Q. And read the third sentence clearly.

18 A. Part of it is cut off.

19 Q. No, the third sentence.

20 A. Third sentence. Okay. "Episodic falls.
21 She has a past history of severe cerebral palsy,
22 severe dystonia --

23 MR. DETWILER: Your Honor, can we ask the
24 witness to speak up. I can't hear him.

25 THE COURT: Dr. Henderson, I'm so sorry,

1 because of all the glass, we are very hard of
2 hearing.

3 THE WITNESS: Okay. I will be happy to
4 read.

5 THE COURT: Project your voice as loudly as
6 you could, please.

7 BY MR. SOWELL:

8 Q. Dr. Henderson, let me back you up because
9 you skipped over the one actually I'm looking for.

10 The third sentence there, does it say,
11 quote, She denies any acute problems, end quote?

12 A. That's the second line, but, yes, that says
13 she denies any acute problems.

14 Q. Okay. All right. Is that a correct
15 recitation of what you were told by the patient with
16 respect to the history of why she was coming to see
17 you on February 27, 2017?

18 A. Yes.

19 Q. Did she make any other complaints with
20 respect to, for instance, a bruise on her arm? Do
21 you see any notation --

22 A. I do not have any documentation that she
23 said she had a bruise on her arm.

24 THE COURT: I need to pause. That
25 microphone is messing up.

1 Dr. Henderson, I know this is a lot to ask.
2 Could you pop that microphone -- ding, ding,
3 ding. We'll see if it helps.

4 Ask your question again.

5 BY MR. SOWELL:

6 Q. Is there any notation in your records that
7 she complained of a bruise on either of her arms?

8 A. There is no notation in any record that
9 there is a bruise on any of her arms or either of her
10 arms.

11 Q. Okay. And so you filled out the assisted
12 living form and let her go on her way that day; is
13 that correct?

14 A. That's correct.

15 Q. All right. Now, there's been an assertion
16 in this case that Mr. Walkup, who is my client here,
17 back in the 2003-2004 time frame, wrote you a letter
18 that threatened to sue you if you let Jane Baskin
19 drive her automobile.

20 Do you remember any such letter?

21 A. I do not remember any such letter.

22 Q. If any such letter had been written to you,
23 do you believe you would remember it?

24 A. I believe I would have.

25 Q. Now, have you seen Jane Baskin other than

1 that at the State Fair?

2 THE COURT: At where?

3 MR. SOWELL: The State Fair.

4 THE COURT: Is that a real question?

5 MR. SOWELL: I'll rephrase that.

6 BY MR. SOWELL:

7 Q. When was last time you saw Jane Baskin?

8 A. The last time I saw Jane was in

9 February 2021, I believe it was.

10 Q. Professionally?

11 A. Yes.

12 Q. And that is a note that was made in Exhibit
13 53. I think I put a sticky tab there so you could go
14 to it. If you look at Henderson Bates label 000083,
15 is that the full progress note that you signed on
16 Monday, February 1st, 2021?

17 A. Yes.

18 Q. Is that the last time you've seen Jane
19 Baskin professionally?

20 A. Yes.

21 Q. All right. And that's the last entry in
22 your chart, is it not?

23 A. That's correct.

24 Q. All right. Now, what were you seeing her
25 for in terms of chief complaint, history of present

1 illness, and so on, on February 1st, 2021?

2 A. She had come in for a scheduled follow-up
3 on her cerebral palsy and her high cholesterol,
4 hyperlipidemia. But she also said she had been
5 having hallucinations with no auditory hallucinations
6 that had been going on for about two weeks.

7 Q. Okay. Did she also relate that she had
8 started having UTI symptoms and went to an Urgent
9 Care center?

10 A. Yes, she did.

11 Q. So she didn't come to you for the UTI
12 symptoms?

13 A. No.

14 Q. And then her caregiver reported to you and
15 said that the hallucinations seemed to get a little
16 bit better while she was on an antibiotic but came
17 back when she got off of it?

18 A. Yes.

19 Q. And she was found to have a urinary tract
20 infection at an Urgent Care center?

21 A. Yes.

22 Q. You did not see her for the urinary tract
23 infection?

24 MR. DETWILER: Object to the form of the
25 question. That's not what this says.

1 MR. SOWELL: Well, I'll ask it this way.

2 MR. DETWILER: Just ask him what it says.

3 BY MR. SOWELL:

4 Q. Did you see her for the urinary tract
5 infection?

6 A. We -- yes, we saw her while she was there
7 for a urinary tract infection and repeated the urine
8 culture, I believe. Let me look at my note.

9 Q. Okay.

10 A. Yes, if you will look on page 84, right
11 above where it said "The encounter was coded."

12 Q. Right.

13 A. You will see urinalysis and urine culture.

14 Q. So you did a urinalysis?

15 A. We did a urinalysis and a urine culture.

16 Q. Okay. And was she instructed to see you
17 back in three months or sooner depending on what the
18 labs show?

19 A. Yes.

20 Q. Did she come back?

21 A. No.

22 Q. What did the labs show?

23 A. She had another infection, and we ended up
24 just having her see the urologist.

25 Q. Do you know who that was? Was it a

1 Dr. Chapman?

2 A. I don't think so. I have on me a copy of
3 my phone calls because that's how we handled it, by
4 phone. And I think it was the Prisma Urology Group.

5 Q. Okay. But the sum of that is you did refer
6 her to a urologist?

7 A. Yes.

8 Q. Did you ever, during this time frame, and
9 I'm talking about January, February of 2021, did you
10 ever change Ms. Baskin's catheter?

11 A. No.

12 Q. Who would have been changing her catheter,
13 if anyone?

14 A. I would assume either a home health agency
15 or the urologist.

16 Q. But your practice did not do it?

17 A. No, we did not.

18 Q. Now, if you look down, this would be I
19 guess about 11 days, 12 days prior, did you see her
20 for the first time about hallucinations on January 19
21 of 2021? This is on page 84 of your chart.

22 A. Let me look at that.

23 MR. DETWILER: Bates number?

24 MR. SOWELL: 84 in the bottom right-hand
25 corner. It's 0000.

1 THE WITNESS: Yes.

2 BY MR. SOWELL:

3 Q. Do you see the note that starts in the
4 middle of the page, Tuesday, January 19, 2021?

5 A. Yes.

6 Q. Okay. And that was the first time she came
7 in complaining about these hallucinations?

8 A. I believe so.

9 Q. All right. Did she complain that they had
10 been going on for about four weeks?

11 A. She was reported to -- they were reported
12 to have been going on for about four weeks. I don't
13 believe that Jane mentioned -- said it herself. I
14 believe the caregiver was reporting this.

15 Q. Okay. Is there a notation in the complaint
16 section that, "Initially, the hallucinations were
17 mild, but they're getting worse"?

18 A. Yes.

19 Q. Did you ever determine what was cause of
20 the hallucinations?

21 A. No, I did not.

22 Q. All right. And you sent out some -- you
23 sent out for some labs, and I think maybe an x-ray.
24 What were the consults that you did after the January
25 visit or at the January visit?

1 A. Well, we made a referral to a neurologist
2 and after waiting a few weeks, we were notified by
3 the neurologist that they don't handle
4 hallucinations, to refer her to the psychiatrist. So
5 that referral was made.

6 Q. Did you ever get any reports back from any
7 of those referrals that told you what it was that was
8 causing these hallucinations?

9 A. No.

10 Q. And as far as you know, you've not seen
11 Ms. Baskin since February the 1st, 2021?

12 A. I have not.

13 MR. SOWELL: That's all I have. Thank you.

14 THE WITNESS: You're welcome.

15 - - -

16 EXAMINATION

17 - - -

18 BY MR. DETWILER:

19 Q. Doctor, first of all, have you had any
20 conversations with Mr. Sowell or anybody else about
21 Ms. Baskin's chart or medical history other than the
22 deposition that we had?

23 A. Just the deposition.

24 Q. Okay.

25 A. I mean, and then the records.

1 Q. How about Mr. Walkup, did you ever have any
2 conversation with Mr. Walkup?

3 A. No. No.

4 Q. Okay. I've got have question. I'll refer
5 you to page 84 again.

6 A. Yeah.

7 Q. It says, "Tuesday, January 19th, she was
8 brought in by her caregiver."

9 Do you remember who that was? Was it
10 Michele Moseley?

11 A. I think it was. Michele, I think, is the
12 only one that I met.

13 Q. All right.

14 A. I'm pretty sure it had to be her. The only
15 one I remember.

16 Q. And she is in because she's having visual
17 hallucinations. We talked about that. Initially,
18 they thought it might be a urinary tract infection,
19 and the patient was taken to an urgent care center
20 over the weekend and was treated with an antibiotic.

21 Does your chart reflect what the antibiotic
22 was that she received?

23 A. I want to look back at another note because
24 there's ...

25 Q. Sure. Just tell us where you're looking.

1 A. Yeah. No, not on the January note. The
2 February note, I did know what it was.

3 Q. Okay.

4 A. January note, I do not.

5 Q. We'll get to that.

6 A. Yeah.

7 Q. And then Doctors Care repeated a urine
8 culture and so forth. Did you ever confirm through
9 these urine cultures that she did, in fact, have a
10 UTI?

11 A. I don't recall.

12 Q. Has the -- is a hallucination a potential
13 side effect for a UTI?

14 A. It can be.

15 Q. Okay. And then when she came to see you on
16 February 1st, that was essentially in follow up about
17 the hallucinations?

18 No, I'm sorry. It says a six-month
19 follow-up; is that right?

20 A. Yes. That was the main reason she was in,
21 and then as kind of like, well, while I'm here, this
22 has been going on. It was set up as a routine
23 follow-up.

24 Q. Okay. But this was only a couple of weeks
25 after --

1 A. Yes.

2 Q. -- the January 19?

3 A. Yes. It was shortly after.

4 Q. I'm with you. And you say that -- you
5 mentioned that you had seen her a couple of weeks
6 ago, and then a few days later she started having UTI
7 symptoms and went to an Urgent Care; is that right?

8 A. Yes.

9 Q. That was in between the two visits with
10 you?

11 A. I think so. To be honest with you, I don't
12 know if I was referring back to the preceding note on
13 that or not. I really don't know at this point.

14 Q. But she, at that point, had been diagnosed
15 with a urinary tract infection and placed on
16 Macrochantin?

17 A. Yes. That's just the name one of the
18 numerous antibiotics.

19 Q. Okay. And it was reported to you that the
20 hallucinations seemed to get a little bit better, but
21 then they came back when she got off of those
22 antibiotics?

23 A. Yes.

24 Q. Is that what it says?

25 A. Yes. Yes.

1 Q. Okay. And then you treated her for the UTI
2 by calling in Bactrim?

3 A. That's correct.

4 Q. Is that another antibiotic?

5 A. Yes. That's another antibiotic.

6 Q. Okay. So you felt comfortable with the
7 diagnosis of UTI?

8 A. No, I did not. I mean, I didn't feel
9 uncomfortable about treating her, but we called it
10 in. She had been on an antibiotic; she got better.
11 She had the same recurrence of the symptoms, so it
12 made me think that until we can get an actual urine
13 culture in the office, go ahead and treat it with an
14 antibiotic but use a different one in case there's
15 some resistance to the initial antibiotic.

16 Q. Have you ever been made aware,
17 Dr. Henderson, that shortly after your visit in
18 February of '21 that Jane's UTI got significantly
19 worse and she actually had to be hospitalized?

20 A. I don't think I know that.

21 Q. Okay.

22 A. I would have to look at all the important
23 notes and all.

24 Q. Okay. And that -- there's no way to
25 confirm that with these exhibits?

1 A. Not with what we have here. There's a
2 whole other section of the charts that would have
3 imported notes and things.

4 Q. So you weren't aware that she was
5 hospitalized for two weeks with a UTI?

6 A. I don't recall that, no.

7 MR. DETWILER: All right. Thank you, sir.
8 That's all I have.

9 THE WITNESS: You're welcome.

10 MR. DETWILER: Wait a minute. One second.
11 I'm sorry, I do have ...

12 BY MR. DETWILER:

13 Q. On the second visit we talked about the
14 February 1st, I believe it was -- yeah, February 1st.

15 A. Uh-huh.

16 Q. That's page 83. There's a mention that a
17 caregiver brought her in at that point in time. Was
18 that also Michele Moseley, to the best of your
19 recollection?

20 A. I'm sure it was.

21 Q. Now, how about the visit where she was --
22 on February 27th, 2017, she was in there to get a
23 form filled out, an Examination for Assisted Living.
24 Do you remember that one?

25 A. Yes.

1 Q. Okay. Who brought her that day, do you
2 remember?

3 A. I don't remember.

4 Q. Okay.

5 A. I can guess it was Michele, but I don't
6 know for sure.

7 Q. Do you recall Mr. Walkup ever bringing her
8 to your office?

9 A. I don't.

10 MR. DETWILER: Okay. Thank you, Doctor. I
11 appreciate you answering my questions.

12 MR. SOWELL: Nothing further.

13 THE COURT: Thank you, Doctor. Thank you
14 very much for coming.

15 He can be excused?

16 MR. SOWELL: Yes.

17 THE COURT: You can be excused. Thank you
18 so much. You can step down. Be careful. Don't
19 grab those exhibits. Don't worry about it.
20 We'll make the attorneys do that hard work.

21 Next witness.

22 MS. DuRANT: Your Honor, our next witness
23 is Sheryl Glymph.

24 THE COURT: Glymph?

25 MS. DuRANT: G-L-Y-M-P-H.

1 THE COURT: Ms. Glymph, come around.

2 - - -

3 SHERYL GLYMPH, being first duly sworn,
4 testified as follows:

5 - - -

6 THE COURT: Thank you very much. Have a
7 seat. You can move the microphone closer to you
8 so that we can hear you well.

9 State your full name for the record.

10 THE WITNESS: My name is Sheryl --

11 THE COURT: I can't hear you. You're going
12 to have to project.

13 THE WITNESS: Sheryl Glymph.

14 THE COURT: Will you spell your first and
15 last name.

16 THE WITNESS: S-H-E-R-Y-L G-L-Y-M-P-H.

17 - - -

18 EXAMINATION

19 - - -

20 BY MS. DuRANT:

21 Q. Good afternoon, Ms. Glymph. How are you?

22 A. I'm good.

23 MS. DuRANT: You might need to pop that mic
24 a few times because I can't hear you.

25 THE COURT: It's almost like you wake it

1 up. Yeah.

2 THE WITNESS: Can you hear me now?

3 THE COURT: Not really. You're going to
4 have to still talk pretty loud.

5 THE WITNESS: Okay.

6 BY MS. DuRANT:

7 Q. Are you ready, Ms. Glymph?

8 A. Yes, I am.

9 Q. Thank you, ma'am.

10 Are you a certified nursing assistant with
11 the State of South Carolina?

12 A. I am a CNA certified, yes.

13 Q. How long have you been a caregiver?

14 A. For 27 years.

15 Q. Were you a caregiver for Ms. Jane Baskin?

16 A. Yes, I was.

17 Q. When were you a caregiver for her?

18 A. I started back in 22 of August.

19 Q. I'm sorry, ma'am. I didn't hear you.

20 A. It is around the 22nd of August in 2022.

21 THE COURT: Can you let me see if I can
22 make that better.

23 MS. DuRANT: Please. Please.

24 BY MS. DuRANT:

25 Q. Ms. Glymph, I'm afraid you are going to

1 have to speak up, if you don't mind.

2 A. Do you want me to come around or stay in
3 this spot?

4 MS. DuRANT: I think we might have to let
5 Her Honor make that decision.

6 THE COURT: What?

7 MS. DuRANT: She's asking if she can come
8 around the plexiglass.

9 THE COURT: It's actually going to be
10 better if she could sit by Mr. Walkup and get on
11 microphone.

12 Are you comfortable, Mr. Walkup, with
13 her -- we just need to pull the chair.

14 I have said my scientific evaluation is that
15 the later in day, the worse they get. They don't
16 believe me. Let's try that one.

17 MS. DuRANT: All right. Ms. Glymph, if you
18 will try that microphone.

19 THE WITNESS: Can you hear me now?

20 THE COURT: Much better.

21 MS. DuRANT: Much better. Thank you.

22 THE WITNESS: I'm not sure about the exact
23 date that I started with Ms. Jane, but I started
24 working with her in 2021 and I ended in 2022.

25 BY MS. DuRANT:

1 Q. Earlier, Ms. Glymph, you said you started
2 in August 22nd of 2022, but you meant August 22nd of
3 2021; is that correct?

4 A. Yeah. It was a little bit further down
5 from there. I was talking to the lady, Michele, and
6 then I started on while she determined some of the
7 other workers.

8 Q. And when you say Michele, you mean Michele
9 Moseley?

10 A. Yes. I didn't know her last name.

11 Q. Okay. Do you know when you stopped working
12 with Ms. Baskin?

13 A. They should have the date that I stopped,
14 but it was in 2021. I don't know the exact date that
15 I stopped. So since I'm going to have to tell the
16 exact truth, I don't want to say a date because I'm
17 not sure. Michele should have the record.

18 Q. So whatever the records show, that's how
19 long you worked?

20 A. Whenever they stopped paying us, that's
21 what it show.

22 Q. Who hired you to work with Ms. Baskin?

23 A. Michele.

24 Q. Michele Moseley?

25 A. Michele Moseley.

1 Q. Okay. When you were hired, did you take
2 over for any caregiver that had left?

3 A. Yes.

4 Q. And who was that?

5 A. She was -- I really don't know her name
6 because when I go in to work, I just go to work. I
7 don't try to get involved with the caregivers. But I
8 do know she left and went -- she was from out of
9 town. She was a Korean girl, I think, and she left
10 and went out of town.

11 Q. Okay. When you stopped working with
12 Ms. Baskin, were you -- did you quit or were you
13 fired?

14 A. I was fired.

15 Q. Okay. Can you please tell us the situation
16 about how you were fired.

17 A. Well, they just -- she just called me up
18 and -- well, no, she text me and said that I was
19 fired. And so I automatically just called her back
20 and said, "Well, what did I do?"

21 And she just said, "We no longer need your
22 services."

23 So I said, "Okay," and that was it.

24 Q. And when you say she called you --

25 A. Michele. Michele Moseley.

1 Q. Thank you.

2 When you were working with Jane, did you
3 see that she had proper nutrition in her house?

4 A. Well, sometimes. She didn't -- not all the
5 time.

6 Q. Can you tell us about the times that she
7 did not have proper nutrition in her house?

8 A. Well, sometimes we go in there and she just
9 didn't have all the things that she needed to have,
10 you know, for food-wise and nutrition-wise.

11 Q. What specifically didn't she have? Fruits?
12 Vegetables? Can you give the Court a more -- a
13 broader picture of what you're talking about?

14 A. Food in general. I mean, just the basic
15 food that you should have on a three meal, daily
16 basis.

17 Q. And who was supposed to -- or do you know
18 who was supposed to buy Ms. Baskin food?

19 A. Well, when she didn't have what she needed,
20 we called Michele.

21 Q. Did you and Ms. Moseley ever have a
22 conversation about the lack of food at Ms. Baskin's
23 house?

24 A. All the time.

25 Q. Can you please tell me about those

1 conversations.

2 A. Well, if she didn't have anything -- most
3 of the time with myself, I've been doing it so long,
4 so if I come in a home and I leave the next day and
5 see that they don't have what they need, I'll just
6 stop at the grocery store and pick it up and just
7 bring it. That's just what I do.

8 But if she didn't have things, we had other
9 caregivers that came in behind me. And if she didn't
10 have things, we would just call and say, "Michele,
11 she don't have this or she don't have that. When can
12 you get it over?"

13 And she'll just say make due with what we
14 have. But, you know, in my mind, we have to give
15 three nutritious meals a day. We just can't throw
16 together something of what you have. We have to put
17 a meal together. So we would just tell her, you
18 know, what we need. And if we run out of something,
19 we always made a list of what we had run out of and
20 leave it so when she does come in, that she can look
21 on that list and see and make sure that we have it
22 the next day.

23 Q. Would you get the food the next day?

24 A. Well, sometimes; sometimes not. Because
25 she has a business too, you know. She runs a

1 business. She says some type of cleaning business.
2 So, you know, she runs a business. She's working, so
3 sometimes she may not get it, but if we tell her,
4 she'll get it there.

5 Q. Did you ever have a conversation with
6 Ms. Moseley about a shepherd pie?

7 A. Yes. I've never heard of a shepherd pie.
8 I had just never heard of a shepherd pie before. And
9 that is what, you know, she makes for us to give her.
10 But I just had never heard of it. I couldn't prepare
11 it.

12 Like I said, I didn't know if it was a
13 white thing because it definitely wasn't a black
14 thing. Because we never made a shepherd pie, and I
15 just didn't know what it was. You know, she -- "You
16 never heard of shepherd pie?" I didn't know what it
17 was.

18 But she told me it was all the ingredients
19 that you have cooked, then you put it together. But
20 I've never -- I don't eat leftovers. My mother never
21 worked, she always cooked. So I'm just not a
22 leftover eater.

23 Q. Were the leftovers from Ms. Moseley's
24 family?

25 A. From Ms. Moseley's family. She didn't come

1 in and cook at Jane's house. She cooked at her
2 house.

3 Q. So Ms. Moseley was using the leftovers of
4 her family making shepherd's pies for Ms. Baskin?

5 A. Uh-huh.

6 MR. DETWILER: Object to the leading, Your
7 Honor.

8 THE COURT: Don't lead the witness.

9 MS. DuRANT: Yes, Your Honor.

10 THE WITNESS: What now?

11 MS. DuRANT: That's directed to me.

12 THE WITNESS: I'm sorry.

13 MS. DuRANT: That's all right.

14 BY MS. DuRANT:

15 Q. Does Ms. Baskin have a dog?

16 A. Yes.

17 Q. What's that dog's name?

18 A. I can't even think of his name because he
19 drove me crazy. But she loves him to death. Jane
20 was all about that dog. Jane love that dog. But
21 he's a -- what was his name? I can't think of his
22 name. But she does have a little -- she has a little
23 dog. She loves him so much. She does.

24 Q. Cute little dog?

25 A. He's okay.

1 Q. Did he have accidents around the house?

2 A. Did he? Yes, all the time.

3 Q. Were you charged with cleaning up those
4 accidents?

5 A. Well, at the beginning, they said that was
6 a part of my job description. But I shared with her
7 I'm a nurse, I'm not a dog scooper. And, now, I
8 didn't mind helping sometimes, but she said that was
9 a part of our job. But one of the caregivers that
10 works for me that came to work for Jane, she had dogs
11 and she liked the dog. So I just allowed her to do
12 the scooping, not me. I'm not a dog scooper.

13 Q. While you were working with Ms. Baskin, did
14 anybody fall in those accidents?

15 A. Yes. I had a fall in one of them.
16 Ms. Sheilah that works there, she fell.

17 Q. Were you hurt as a result of those falls?

18 A. Well, I was to a certain degree. Any time
19 you fall and don't know you're falling. If I could
20 have caught myself, that's one thing. But if you
21 fall and don't know. And it's mostly because the
22 little puppy, he be done urinated on the floor, and
23 if you don't cut the lights on when you walk in in
24 the morning, and you can't see because the floor is
25 brown like this, so you can't see all the places that

1 the water been. So you can just easily slide and
2 fall, and that's what happens.

3 Q. Were the accidents daily? Weekly?
4 Monthly?

5 A. Well, I can't say -- it only happened to me
6 twice because after I almost broke my rear end, I
7 just said, okay, I come in with my legs like this and
8 walking to make sure that I didn't step in anything.
9 I can't speak for anybody else, only me.

10 Q. Well, let me clarify that question. Were
11 the dog's accidents -- bathroom accidents weekly,
12 daily, or monthly? Not the people falling.

13 A. Yes. Yes. I mean, he was a puppy. So
14 Jane can't get up to take him to the bathroom, and
15 Jane can't get his -- so nobody comes in there that
16 she's there and the puppy all night to the next
17 morning. So nobody is there until we come in the
18 next morning and we clean it up and clean up
19 everything around it.

20 Q. So there were dog accidents each morning
21 when you arrived?

22 A. Yes. Yes. Yes.

23 Q. At the time that you were working with
24 Ms. Baskin, was there another big dog in the house at
25 the same time?

1 A. Well, that was Michele's daughter's
2 boyfriend had that. That's their dog.

3 Q. Okay. So when you were there, Michele's
4 daughter's boyfriend had a dog at Jane's house?

5 A. Well, they moved in after the other lady
6 moved out. And they moved in next door to be there
7 with Ms. Jane, you know, so somebody would be in the
8 building at night. So she wouldn't be there by
9 herself.

10 Q. So Ms. Moseley moved in her daughter and
11 daughter's boyfriend into Jane's house while you were
12 working with Jane?

13 A. Well, I had just left when the lady was
14 leaving and she moved her in. But they would be over
15 there all the time.

16 Q. And they had a dog?

17 A. They had a big dog.

18 Q. Do you remember Michele Moseley's
19 daughter's name?

20 A. I don't know them. I just spoke to them.
21 Like I said, when I go to work, I go to work. I
22 don't try to form a big relationship with the people
23 there.

24 Q. Okay. Do you remember the name of the lady
25 who lived there before the daughter and the boyfriend

1 moved in?

2 A. Pat.

3 Q. Pat McIntosh?

4 A. Uh-huh.

5 Q. Did you and Jane ever have a conversation
6 about that big dog?

7 A. Well, Jane don't want no big dog in her
8 house because she don't want that dog to bother her
9 little dog.

10 MR. DETWILER: Your Honor, I object. She
11 doesn't know what Jane wants.

12 THE WITNESS: Well, no, I don't know what
13 Jane wants. You're right.

14 MR. DETWILER: Object.

15 THE WITNESS: I'll object. I will object.

16 THE COURT: Just let us do the talking for
17 just a second.

18 Objection because of what now?

19 MR. DETWILER: Her testimony is that --
20 she's trying to give testimony about what Jane
21 wants and what Jane doesn't want. I mean, she's
22 not talking about what Jane said. She's just
23 talking about what she perceives Jane wants.
24 That's improper.

25 THE COURT: Sustained on the concept of

1 she's talking about what she believes Jane
2 wants. If she wants to quote Jane or go through
3 an incident that happened with Jane, I'll be
4 glad to listen to that.

5 THE WITNESS: Your Honor, I wasn't just
6 quoting.

7 THE COURT: Let her start the question
8 again.

9 BY MS. DuRANT:

10 Q. Ms. Glymph, did Jane ever have any
11 discussions with you about that large dog?

12 A. Yes.

13 Q. What did Jane say?

14 A. She wanted him to stay on that side of the
15 room and not come over her on that -- because it
16 irritated her little puppy. If he saw the dog, he
17 just barked, barked, barked. And she didn't want him
18 upset.

19 Q. And when you point to say, "That side of
20 the house," you mean the side of the house where
21 Michele Moseley's daughter and boyfriend --

22 A. The way the home is made, where Jane sits
23 right here in the living room area, you go in the
24 kitchen, and the room where they stay is right
25 between the kitchen and Jane's room. So the dog can

1 easily come and come through the door.

2 Q. Ms. Glymph, are you aware if DSS has ever
3 investigated Jane Baskin?

4 A. Yes. When I was there, she came.

5 Q. And who is "she"?

6 A. Well, I don't know who she was. She was a
7 black lady, and she said that she was -- somebody had
8 called, and she was from DSS, and she was coming in
9 to -- you know, somebody called.

10 MR. DETWILER: Objection, Your Honor.

11 Hearsay.

12 THE COURT: Sustained.

13 BY MS. DuRANT:

14 Q. Let me ask you this question, Ms. Glymph.
15 Before DSS came in, did you have a conversation with
16 Michele Moseley about DSS?

17 A. Yes. She said that they usually call.

18 MR. DETWILER: Objection, Your Honor.

19 Hearsay.

20 THE WITNESS: I'm not on trial, am I?

21 MS. DuRANT: No, no, the objections aren't
22 to you.

23 THE COURT: Ms. Glymph, I think you're
24 taking this personally, and I don't want you to.
25 This is the legal, going to court, attorneys

1 agreeing or disagreeing about what you can or
2 cannot testify about. So please don't take it
3 personally.

4 THE WITNESS: Okay.

5 THE COURT: Objection to what Michele --
6 what she's quoting Michele Moseley as saying?

7 MR. DETWILER: Hearsay.

8 MR. SOWELL: Your Honor, if I may address
9 that. If you remember in your order yesterday,
10 you ruled that Michele Moseley was her power of
11 attorney, and, therefore, she was her agent and
12 also her alter ego. So any statements of
13 Ms. Moseley as her POA and her role as POA is a
14 statement of Ms. Baskin, therefore, gets party
15 interest.

16 MR. DETWILER: The rule is it deals with
17 parties and nonparties. She's not a party.

18 THE COURT: I get it, and Ms. Moseley is
19 her power of attorney. It's either her agent or
20 attorney in fact and her power of attorney, but
21 isn't she quoting Ms. Moseley and isn't that the
22 concept of hearsay?

23 MS. DuRANT: I'm going to cite to you the
24 actual rule because I have a feeling it's going
25 to come up. Rule 801(d)(2)(1).

1 THE COURT: Hold on one second.

2 MS. DuRANT: Yes, ma'am.

3 THE COURT: Hit me again.

4 MS. DuRANT: Sure. South Carolina Rule of
5 Evidence 801(d) as in DuRant, 2, (D) as in
6 DuRant, which states, "A statement is not
7 hearsay if (D) a statement by the party's agent
8 or servant concerning a matter within the scope
9 of the agency or employment made during the
10 existence of that relationship."

11 That is exactly what is happening here, and
12 therefore, it is not hearsay.

13 THE COURT: Any response?

14 MR. DETWILER: So the question is, did you
15 ever have any -- any conversations with Michele
16 Moseley about the dog?

17 THE COURT: No, about DSS.

18 MR. DETWILER: About DSS?

19 MS. DuRANT: I think you heard the
20 question. We can read back the question. The
21 question is what's the --

22 THE COURT: Let's just take a breath.

23 Do you have any response to her rule?

24 MR. DETWILER: Yes, ma'am.

25 THE COURT: Points?

1 MR. DETWILER: Yes, ma'am, I do. I don't
2 think the foundation has been laid that any
3 conversation that Michele Moseley may have had
4 with this lady about DSS has been established
5 that that was within the scope of her agency as
6 power of attorney.

7 THE COURT: Overrule your objection.

8 Ask the question again, and, yes, ma'am,
9 you may answer. Okay?

10 BY MS. DuRANT:

11 Q. What did Michele Moseley tell you after she
12 spoke with the DSS agent?

13 A. Well, she only told -- well, she had told
14 me that the lady was coming, so we already was
15 prepared that she was coming. And once she came and,
16 you know, we knew to open the door for her, let her
17 look around, let her see we had everything clean,
18 everything was like it was supposed to be and
19 whatnot. And so once she left, she called Michele
20 back and told her it was fine.

21 MR. DETWILER: Objection, Your Honor.

22 That's double hearsay.

23 THE WITNESS: It's not --

24 THE COURT: Ma'am, it's not for you to --

25 I'm so sorry you're feeling personal about this.

1 Just give me a moment.

2 THE WITNESS: Okay.

3 THE COURT: He is not telling you what to
4 do. He's asking me to tell you what to do.
5 Okay?

6 THE WITNESS: All right.

7 MR. DETWILER: She is testifying or about
8 to testify about what Michele Moseley told her
9 that the DSS person told her. That is double
10 hearsay.

11 THE COURT: I have to give him that.

12 MS. DuRANT: That's fine.

13 MR. DETWILER: Thank you, Your Honor. I
14 got one.

15 BY MS. DuRANT:

16 Q. Back to my question. Did Ms. Moseley tell
17 you to clean up the house before the DSS agent
18 arrived?

19 MR. DETWILER: Your Honor, I object. That
20 is a leading question. Objection.

21 THE COURT: Overruled.

22 Ms. Glymph, you may answer that question.
23 Do you need her to restate it?

24 THE WITNESS: Can you restate it?

25 BY MS. DuRANT:

1 Q. Did Michele Moseley tell you to clean up
2 the house before the DSS agent arrived?

3 MR. DETWILER: Objection.

4 THE COURT: I heard you. Overruled.

5 THE WITNESS: She didn't have to tell me to
6 clean up the house because that's what I do
7 every day I go in. You know, it was certain
8 things that I do every day I go in. It was very
9 clean when she got there.

10 But, you know, she did let us know that the
11 lady was coming. We did know that the lady did
12 call her back. You all just told me to tell the
13 truth. I'm just telling the truth.

14 MS. DuRANT: You can just leave it right
15 there.

16 THE WITNESS: That's all I'm doing.

17 BY MS. DuRANT:

18 Q. Okay. Were you present when the DSS agent
19 arrived?

20 A. Yes, I was.

21 Q. Okay. Are there cameras in the house?

22 A. Yes.

23 Q. Where are the cameras?

24 A. Well, the cameras on the outside so we can
25 see if any investigators are watching the house. And

1 the cameras in the bedroom where Jane sleep, and the
2 camera's right there at Jane's TV. So when Jane's
3 home, when she's working, she can watch everything
4 from the camera.

5 Q. When you were -- what were your hours?

6 A. Well, I had different hours because I came
7 in the morning at 8:30 and I stayed till 12, and I
8 would leave at 12 and come back at 2 for the
9 afternoon.

10 Q. When you would arrive at 8:00 in the
11 morning, were there ever any times when you showed up
12 and nobody -- no caretaker was with Jane?

13 A. Well, she don't have a caretaker with her
14 at night. The lady just stays -- somebody stays over
15 in the other part of the house, so that means
16 somebody is in the house.

17 Q. Okay. And when you were there, it was
18 either Pat McIntosh, correct?

19 A. Uh-huh.

20 Q. Or the -- Michele Moseley's daughter and
21 boyfriend; is that correct?

22 A. Yes, ma'am.

23 Q. Anybody else?

24 A. Not that I know of.

25 Q. Did you ever have any conversations with

1 Jane about the cameras being in the house?

2 A. Well, we knew what they were for. I mean,
3 Jane's very smart. She knows what's going on. She's
4 very smart. She knows what they're for. But I
5 didn't have to have a conversation with her about
6 cameras.

7 Q. Did you ever have any conversations with
8 Jane about Michele Moseley?

9 A. No.

10 Q. Okay. You smirked a little bit when you
11 say that. Why did you smirk?

12 A. Well, Jane loves Michele. She trusts
13 Michele. So, you know, I just came to do a job.

14 Q. Do you have any knowledge as to who is
15 going to receive the property when Jane passes away?

16 A. Well, from my understanding, and I guess
17 it's hearsay.

18 MR. DETWILER: Objection. Do I need to say
19 it?

20 MS. DuRANT: She's going to be a lawyer
21 before she leaves this room.

22 MR. DETWILER: Do I need to say it?

23 THE COURT: Yes, sir. You're making a
24 record. Objection?

25 MR. DETWILER: Objection.

1 THE COURT: Sustained.

2 THE WITNESS: Okay.

3 BY MS. DuRANT:

4 Q. Do you have any independent knowledge of
5 who is getting the house upon Jane's death?

6 A. Michele Moseley.

7 MR. DETWILER: Objection, Your Honor. No
8 foundation.

9 THE COURT: Yeah, the independent knowledge
10 part was a jump over.

11 BY MS. DuRANT:

12 Q. How do you know that Michele Moseley is
13 getting the house upon Jane's death?

14 A. Michele told me.

15 Q. As a CNA, are you allowed to receive any
16 property or money directly from Jane?

17 A. We are not allowed to take anything from a
18 client unless the person that is the POA or whoever
19 is over her tell her. But Michele is her POA, so ...

20 Q. With court dates -- and you knew about --
21 or let me ask you. Did you know about this
22 litigation when you were working as a caregiver for
23 Jane?

24 A. Yes.

25 Q. So when court dates were approaching, did

1 life around Jane's house change?

2 A. Yes, I guess so.

3 Q. Please tell me how.

4 THE WITNESS: Judge, can I say one thing?

5 THE COURT: No, ma'am.

6 THE WITNESS: Okay. Well --

7 THE COURT: You need to answer the
8 question.

9 THE WITNESS: Okay. Go ahead.

10 THE COURT: And then if there's an
11 objection, you pause.

12 BY MS. DuRANT:

13 Q. Please tell me about how life changed
14 around Jane's house when court dates were
15 approaching.

16 A. Well, we just knew when the court date was
17 approaching, that we was told -- and I guess nothing
18 really changed other than we just tried to make sure
19 everybody's on the same page.

20 Q. What do you mean by everybody being on the
21 same page?

22 A. Well, I guess that would be hearsay.

23 Q. Well, tell me and then Mr. Detwiler can
24 object if he wants.

25 A. Well --

1 Q. How did life change for you, tell me that,
2 when Jane was --

3 A. Well, life didn't change for me because I
4 always did what I did. That was cleaning up and
5 trying to give Jane the best of care each time I
6 entered her home. You know, it's just court stuff,
7 you know.

8 Q. What did you see that changed in Jane's
9 house near court dates?

10 A. Well, you know, when you get ready to go to
11 court, you prepare, you know. Everybody got to be on
12 the same page, I guess. You prepare. Everybody
13 trying to win, I guess. I don't know.

14 Q. What about her physical therapy regime?

15 A. Yes. She really didn't do much of that
16 other than what you do, but when it's time to go to
17 court and stuff like that, we did schedule some
18 sessions that we had to take her outside the house to
19 go to physical therapy a couple of times a week, you
20 know.

21 Q. And remind me how long you've been a
22 caregiver.

23 A. Over 26 years.

24 Q. And how much were you getting paid as a
25 caregiver for Ms. Baskin?

1 A. Well, I was only getting paid \$15 an hour,
2 and that's what caused, you know -- it's limited of
3 what we can do for Jane. Mostly keeping the house
4 clean, making sure she gets three meals a day, her
5 showers, changing the clothes, washing the clothes.
6 So I didn't have to do very much lifting or pulling
7 with her. So I was paid \$15 an hour.

8 Q. What happens or what happened when you were
9 there if you disagreed with Michele Moseley?

10 A. You're fired.

11 MS. DuRANT: No more questions. Thank you,
12 Ms. Glymph.

13 THE WITNESS: Can I go now?

14 MS. DuRANT: Mr. Detwiler may have some
15 questions.

16 - - -

17 EXAMINATION

18 - - -

19 BY MR. DETWILER:

20 Q. Is it Ms. Glymph?

21 A. Yes, sir.

22 Q. You also are known by Ms. Johnson?

23 A. Yes, sir.

24 Q. Is that your name? Which is proper?

25 A. I was married and Johnson was the last

1 name, but I'm divorced now. I got divorced last
2 August 31st.

3 Q. Do you prefer Glymph?

4 A. I prefer Glymph.

5 Q. Ms. Glymph, I have some dates here for your
6 employment, and I'm just asking if this sounds about
7 right. Did you start somewhere around November 5th,
8 2021? Does that sound about right?

9 A. Yes. Going to work, but I --

10 Q. Going to work?

11 A. Into Jane's home, but I had started doing
12 little things before then.

13 Q. Okay. And then you were let go on
14 February 5th, 2022, does that sound right?

15 A. Yes, it does.

16 Q. So you were there three months about?
17 Thereabouts?

18 A. It was a little bit more.

19 Q. A few days more?

20 A. Yeah.

21 Q. Okay. Okay. And, now, Ms. Moseley told
22 you she needed someone to come in from 8 to 2 or
23 3:00 p.m., does that sound about right?

24 A. Well, she said from 8 to 12. And then
25 after that, come back in the evening from 2 until.

1 Q. Okay. And you have a caregiving business,
2 don't you, called A Personal Touch?

3 A. Yes, I do.

4 Q. So you have other clients?

5 A. Of course, I do. I couldn't have made it
6 off of her.

7 Q. How many other clients did you have at this
8 time?

9 A. Five.

10 Q. You had five clients at this time. So you
11 were coming and going between clients?

12 A. Well, no, I wasn't coming and going between
13 clients. I have six other ladies that works with me,
14 and one of them was working with Jane inside the
15 house. Davinia.

16 Q. Okay.

17 A. She was working in the house with Jane. So
18 when I left, she came in.

19 Q. Okay. And so -- you worked for a few hours
20 and you came back and worked for a few hours more
21 later in the day?

22 A. Well, if you call a few hours, I came
23 around 8:00 in the morning, I didn't leave until 12.

24 Q. Okay.

25 A. And then I left then and came back around 2

1 or 2:30.

2 Q. Okay. Stayed for how long?

3 A. To about 5 or 4:30.

4 Q. Okay. Okay. And in between you went to
5 help other clients?

6 A. Yeah. That's what I do for a living.

7 Q. I'm not --

8 A. Yeah. But that's what I do.

9 Q. We're just trying to learn --

10 A. That's fine. That's fine.

11 Q. Just trying to learn the routine?

12 A. But that's what I do, yeah. And when I got
13 hired, when Michele asked me to come aboard because
14 she had fired the other lady. When she asked me to
15 come aboard, I shared with her what I could do, and
16 she said that was fine.

17 Q. Okay. And so you worked for a few hours,
18 then you went to help another person, and then came
19 back, and then you worked for somebody else after
20 that?

21 A. Yeah. I worked with somebody else too.

22 Q. Okay. And isn't it true that this going
23 back and forth became a problem with Michele, anyway,
24 and you all couldn't get your schedules to mesh?

25 A. Well, if it had become a problem, in my

1 line of business, people come and talk to you and
2 tell you that it's problem, but nobody shared with me
3 it was a problem.

4 Q. You and Michele never had a conversation
5 about your schedules meshing?

6 A. After she fired me, we did. Because I
7 called her and asked her why.

8 Q. And she told you that?

9 A. She said because she was going to get
10 someone in for a time.

11 Q. Whose schedule could work better for
12 Jane's?

13 A. That's what she said.

14 Q. Okay. And is it your testimony -- did I
15 hear you right, that you're saying that Michele
16 Moseley's daughter and her husband had moved in?

17 A. I don't think her daughter had a husband,
18 but her boyfriend was staying in the house.

19 Q. And is your understanding that that was
20 Michele Moseley's daughter?

21 A. Well, that's what she said.

22 Q. That's what she said?

23 A. She told me. She said that was her
24 daughter and the boyfriend and the dog.

25 Q. Okay. Do you know who called DSS?

1 A. Well, once again, it's hearsay. We don't
2 know who called.

3 Q. Let me ask it this way, then. I don't want
4 you to give me hearsay.

5 A. That's right.

6 Q. Did you call DSS?

7 A. Why would I call DSS if I was working
8 there?

9 Q. Is that a no?

10 A. That's a no.

11 Q. Okay. And the cameras are there for Jane's
12 safety, are they not?

13 A. Well, they are there so Michele can watch
14 her on the monitor while she's not in the house. But
15 I guess it's for safety because if nobody's in the
16 house, how it's going to be for safety? A camera
17 can't do no work.

18 MR. DETWILER: Thank you, ma'am. That's
19 all I have.

20 MS. DuRANT: Nothing further, Your Honor.

21 THE COURT: Ms. Glymph, it's been a
22 pleasure.

23 If you would go ahead and put your
24 information down now. We said you could do it
25 after the hearing -- after your testimony.

1 Next witness.

2 MR. SOWELL: Your Honor, I need to go out
3 here and call -- Al Moses is here, so is Smoke
4 Kanipe -- and find out which of them will be
5 least inconvenienced by having to wait a little
6 bit longer.

7 THE COURT: Do offer my apologies for
8 inconveniencing either or both.

9 MR. SOWELL: I'll be right back with
10 somebody.

11 - - -

12 (A recess transpired.)

13 - - -

14 THE COURT: This is Mr. Knipe?

15 MR. SOWELL: KANIPE. K-A-N-I-P-E.

16 THE COURT: I apologize. Kanipe. This was
17 a big misstatement. Come around to the witness
18 stand, sir. If you will make your way around.

19 - - -

20 CLARENCE KANIPE, being first duly
21 sworn, testified as follows:

22 - - -

23 THE COURT: If you would, state your full
24 name for the record.

25 THE WITNESS: Clarence Earl Kanipe, Jr.

1 THE COURT: Would you spell your last name,
2 please.

3 THE WITNESS: I'll go one letter at a time
4 because people get confused. K as in Kansas, A
5 as in Alabama, N as in New York, I as in
6 Indiana, P as in Pennsylvania, E as Edward.

7 THE COURT: Thank you very much.

8 MR. SOWELL: Mr. Kanipe.

9 THE COURT: Mr. Sowell, I need you on that
10 microphone as well, please.

11 MR. SOWELL: Yes, ma'am.

12 THE COURT: Thank you.

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. SOWELL:

17 Q. Do you have a nickname?

18 A. Yes.

19 Q. What is your nickname?

20 A. It's "Smoke," which I inherited from my
21 father who was "Smoky."

22 Q. Okay. And did you grow up in Spartanburg
23 or the Spartanburg area?

24 A. Correct.

25 Q. And you went the college?

1 A. I did.

2 Q. Where did you go to college?

3 A. I went to Duke University.

4 Q. All right. And after you finished Duke --
5 what year did you finish Duke?

6 A. I finished in 1980 as an undergrad.

7 Q. And what were your degrees?

8 A. I majored in English and religion.

9 Q. After you finished Duke undergraduate
10 University in 1980, what did you do?

11 A. I went to seminary at Duke Divinity School
12 for my master's degree.

13 Q. Did you finish the Duke Divinity School?

14 A. Yes, in 1983.

15 Q. And what have you done for a profession
16 since then?

17 A. I have been a minister in the United
18 Methodist Church for the last 39 years.

19 Q. You're married?

20 A. Correct.

21 Q. You have two children?

22 A. Correct.

23 Q. Son and daughter?

24 A. Correct.

25 Q. You're currently the senior pastor of

1 Shandon United Methodist Church on Devine Street?

2 A. Correct.

3 Q. In Columbia?

4 A. Correct.

5 Q. And in that capacity, do you know well

6 William Walkup?

7 A. Yes.

8 Q. This gentleman right here?

9 A. Yes.

10 Q. And how do you know William Walkup?

11 A. Well, as the pastor of the church, I, of
12 course, interacted with lots of people, but I've
13 interacted a lot with Mr. Walkup because he's
14 involved in a lot of things. So I do know him quite
15 well.

16 Q. So you've had many opportunities since
17 you've been at Shandon to observe Mr. Walkup?

18 A. Yes.

19 Q. And how long has that been? You might have
20 said.

21 A. Six years. I came there in June of 2016.

22 Q. And in what capacities have you observed
23 Mr. Walkup at Shandon United Methodist Church or
24 otherwise, for that matter?

25 A. Well, I've observed him as a church leader

1 serving in various offices. In particular he is the
2 manager for our foundation funds, our investment
3 funds. And so I'm on that board, and so I see the
4 reports, and we interact with him and so forth about
5 those things.

6 Now, I know that in past years, before my
7 time, he served in a lot of other positions as well.
8 That's the main position he's had during the last six
9 years I've been at the church.

10 Q. So as professional steward of the Shandon
11 United Methodist Church endowment funds, is that how
12 he has operated in the last six years to your
13 knowledge?

14 A. That's correct. We have a committee that
15 is responsible for managing those funds, but
16 Mr. Walkup is the professional manager and brings
17 reports to our community. And he's actually been
18 doing that, I think, since the mid '90s or so. So
19 I've -- you know, quarterly we had a meeting and we
20 basically see how those funds are doing. And they're
21 doing well.

22 Q. So have the committee -- has the committee,
23 I guess, and has the senior pastor been satisfied
24 with Mr. Walkup's performance in that capacity?

25 A. Yes. Absolutely. So this is obviously way

1 before my time, but I know the history of this. That
2 back in the mid '90s, I think it was 1994, that fund
3 began with just a few hundred thousand dollars, and
4 today it's 8 million.

5 Now, we, of course, get some donations
6 along the way into the fund, but much of that has
7 been because the fund has grown because of his good
8 management. And we also spend the income of the fund
9 as we need it, particularly for building repairs and
10 things like that. So we're actually spending some of
11 what we're getting as well. It's performed very,
12 very well. And he's done all that for free. He's
13 not charged the church a penny for doing that.

14 Q. What about his stewardship to the church
15 personally? Can you tell us how that has been
16 recorded during your time at Shandon United Methodist
17 Church?

18 A. So I can say some things about that. I can
19 tell you that he's an extremely generous person. I
20 do not look at the giving records of our church
21 members; however, Mr. Walkup has called me on a
22 number of occasions to ask how he could make
23 substantial gifts, particularly to the area of
24 missions, but other things that needed to go on at
25 the church. So I know of his giving involvement from

1 that.

2 I also know, because I'm on the board of
3 trustees for Epworth Children's Home, and we have
4 just been through a capital campaign, and I was
5 involved in that, that he also was a very, very
6 generous contributor to that capital campaign as
7 well. So I do actually, in his case, know more about
8 his giving record. He's a very generous person.

9 Q. During the six years or so that you have
10 observed William Walkup, have you formed an opinion
11 about his professionalism in managing the church's
12 money and his trustworthiness in managing the
13 church's money?

14 A. Well, absolutely. We trust him implicitly.
15 And that's just not me personally, but that's
16 obviously the whole church, our board of trustees and
17 the people that are on the investment committee.

18 Q. What kind of person -- aside from financial
19 aspect of what Bill Walkup's done for the church,
20 what kind of person are you impressed that Bill
21 Walkup is as a human being?

22 A. I've known him to be an extremely kind
23 person, a very sensitive person, a giving person, a
24 person with a very big heart. Like I said, he has
25 come to me on more than one occasion wanting to give

1 for work that serves other people.

2 I know him to be a very gentle,
3 kind-hearted human being. A truly good human being.

4 MR. SOWELL: Thank you.

5 Mr. Detwiler is opposing counsel. He may
6 have some questions for you, but that's all I
7 have.

8 - - -

9 EXAMINATION

10 - - -

11 BY MR. DETWILER:

12 Q. Mr. Kanipe?

13 A. That's fine.

14 Q. I'm Rick Detwiler. I represent Jane
15 Baskin. How are you today?

16 A. I'm great.

17 Q. Did you ever know a fellow at Shandon,
18 William E. Sellers? Bill Sellers?

19 A. He was gone before my time. I know the
20 name, yeah, but I've only been there the last six
21 years.

22 Q. Okay. I was thinking you had been there
23 longer.

24 A. I don't think I ever had a chance to meet
25 him.

1 Q. Epworth Children's Home and Mess Hall was
2 named after William E. Sellers Mess Hall.

3 A. Okay. Okay. Yeah. Yeah. And it may be
4 Epworth where I know his name.

5 Q. He went to Epworth.

6 A. Yeah. Yeah. Okay.

7 Q. Grew up there.

8 A. Yeah.

9 Q. That's my father-in-law.

10 A. Okay. Okay.

11 MR. DETWILER: Thank you. That's all the
12 questions I have.

13 THE WITNESS: Am I good?

14 MR. SOWELL: You can dispatch Mr. Al Moses.

15 THE WITNESS: I'll send him in. Thank you
16 very much.

17 - - -

18 (Off the record.)

19 - - -

20 ALBERT L. MOSES, being first duly
21 sworn, testified as follows:

22 - - -

23 THE COURT: Thank you, sir. You may have a
24 seat.

25 If you would, state your full name for the

1 record.

2 THE WITNESS: Albert L. Moses.

3 THE COURT: Mr. Sowell.

4 MR. SOWELL: May it please the Court.

5 THE COURT: Yes, sir.

6 - - -

7 EXAMINATION

8 - - -

9 BY MR. SOWELL:

10 Q. Mr. Moses, where do you live?

11 A. The street address?

12 Q. Yeah.

13 A. 6449 Gold Branch Road in Columbia.

14 Q. Okay. And you are retired?

15 A. Yes.

16 Q. And you are currently a member of Shandon
17 United Methodist Church?

18 A. That's correct.

19 Q. And before that, though, before you
20 retired, were you a lawyer?

21 A. Yes.

22 Q. All right. Tell the Court, and I know the
23 Court already knows, but this is for the record, what
24 your experience was as a lawyer. And you might start
25 with what you did after you graduated from Wofford

1 College.

2 A. Well, after Wofford, I went to law school
3 and graduated three years later. And then I entered
4 the United States Army as a member of the Judge
5 Advocate General Corps stationed at Fort Belvoir in
6 the Combat Development Schematic. And then when I
7 left the Army, after three years I came back to
8 Columbia and started practicing here.

9 Q. Now, you finished the USC Law School?

10 A. Yes.

11 Q. What year was that?

12 A. '64.

13 Q. And you were ranked second in your class --
14 your senior class when you graduated?

15 A. Yes.

16 Q. And when you came back after the military
17 to practice in Columbia, just tell us what that
18 practice involved. Who you practiced with and how it
19 reinvolved.

20 A. Well, I guess most of my practice over the
21 years has been estate trust and estate planning
22 practice. I would say more than 90 percent of what I
23 did was in that field. I came back and again
24 practiced in -- it was McCabe, McCabe, Black & Walker
25 was the firm. And I have been through several

1 different firms. And the last firm I was with was
2 Moses, Koon & Brackett. And I retired in about 2005
3 after about 40 years.

4 Q. Okay. Now, I know from reading your
5 affidavit, your resume, that you received several
6 honors. You don't have to recite all of them, but
7 the ones of which you are most proud, tell us what
8 those were during your legal career.

9 A. Well, I don't know that it was an honor, it
10 was more hard work, but I was the author of the
11 first, second, third, and fourth Probate Practice
12 Manual. I was author and co-editor and author of the
13 book published by West Publishing Company on Durable
14 Powers of -- Durable Powers of Attorney.

15 I was given the -- let me see. I have
16 forgotten exactly what it's called, but it's the --

17 Q. Is that Robert P. Wilkins Award?

18 A. Probate -- Wilkins.

19 Q. Let me just guide you along for expedition.
20 Did you receive in 2017 the Robert P. Wilkins Award
21 for meritorious service in the practice of probates?

22 A. Meritorious service in the practice of
23 probate, estate and trust law.

24 Q. Did you -- after USC law, did you get an
25 LLM in taxation?

1 A. Yes. While I was in the Army, I attended
2 Georgetown University Law Center in Washington and
3 finished with an LLB in taxation.

4 Q. Were you on the adjunct faculty at USC
5 teaching estate administration?

6 A. I was for about 25 years, teaching the bar
7 review course and trust and the one on wills.

8 Q. Are you a fellow of the American College of
9 Trusts and Estates?

10 A. Yes.

11 Q. Okay. This is probably good enough on
12 that.

13 Do you know Bill Walkup personally?

14 A. Yes.

15 Q. How do you know Bill Walkup?

16 A. I think I met him in junior high school.
17 Hand Junior High School. And known him ever since.

18 Q. And what do you know about him as well as a
19 person and as a financial manager?

20 A. Well, I remembered during high school, he
21 was always a straight A student, worked very hard. I
22 have, in the course of my practice later on, run into
23 him. I have done some work for him. I found him to
24 be very honest, faithful, and always did a good job
25 in everything he did.

1 I know that he was a member of the Honor
2 Society, and I think state president of the group.
3 Which I found to be an impressive distinction.

4 Q. That's when you were at Dreher and Bill was
5 at Dreher?

6 A. That's correct.

7 Q. Did you finish in the same class at Dreher?

8 A. I did.

9 Q. What have you done in this case to form
10 your opinions?

11 A. Well, I have -- I've read, I think, trial
12 transcript. I have read various other pieces of
13 evidence. I can't -- I've read a deposition of
14 Dr. Hutchinson, I think.

15 Q. Henderson?

16 A. Henderson. Okay. And, you know, I
17 really -- I read a number of documents, but I just
18 can't remember the entire ...

19 Q. Okay. And as a result of having done that
20 reading and that studying, have you formed some
21 opinions with respect to this case?

22 A. Yes, I have.

23 Q. The case of Jane Baskin versus Bill Walkup
24 as trustee?

25 A. I have.

1 Q. Would you tell the court what those
2 opinions are.

3 A. Well, I've looked at, first of all, what
4 the controlling law is. Mr. Walkup agreed to serve
5 as trustee of Ms. Baskin's trust and was given, I
6 think, the broadest possible range of discretion in
7 what he could do in carrying out Mr. Baskin's
8 instructions.

9 And I have formed the opinion that under
10 the Trust Code, the provisions in Mr. Baskin's will
11 override the provisions of the Trust Code except
12 there are -- and I think one of the statutes lists
13 some eight to ten exceptions, and two were raised in
14 the complaint in this case. One was charges of
15 serious breach of trust, and one was the removal of
16 Mr. Walkup as trustee as in the best interest of the
17 beneficiary, Ms. Baskin.

18 And I have opinions on all of those
19 charges, breach of trust. And in summary, I don't
20 think they have -- there's anything that I saw that I
21 would constitute as serious breach of trust.

22 Q. All right. Did you see anything that leads
23 you to conclude that replacing Mr. Walkup as the
24 trustee for the Eldridge Baskin Trust is in the best
25 interest of Jane Baskin?

1 A. Well, I think from what I read, he's done
2 an excellent job. And he has certainly had
3 spectacular success on the financial side. I did
4 some calculations based on the numbers that he told
5 me about, and he has over time -- I think we started
6 with trust corpus around \$170,000 and built it up to
7 575-. And during that period of time, paid out some
8 fairly large sums of money in both income and
9 principal.

10 Now, he was required to pay all the
11 principal of the trust, but he also paid an awful lot
12 of principal as encroachments.

13 Q. Actually, you said he's required to pay all
14 the principal. You meant to say --

15 A. I mean income, sorry.

16 Q. -- income.

17 So he paid all of the income?

18 A. All of it, yes.

19 Q. Which he's required to do, and he's also
20 encroached upon the principal; is that correct?

21 A. Say again, I'm sorry.

22 Q. He paid all of the income --

23 A. Yes.

24 Q. -- as he was required --

25 A. Yes.

1 Q. -- by the will and the testamentary trust,
2 and he also encroached upon principal?

3 A. Yes.

4 Q. Now, did the will give him the discretion
5 with respect to encroachments of principal?

6 A. Yes, it did. Broad discretion. I'm
7 looking for the numbers I have here.

8 Over the last ten years, principal
9 encroachment, as I calculated, were about -- total
10 for ten years were about 320 -- \$332,000 over the
11 last ten years. And during that same period of time,
12 he had paid to her \$152,000 of income. And if you
13 average out the principal encroachments over the ten
14 years, and the income, it looks to me like it amounts
15 to about 484,000 total or averages \$48,000 per month.
16 And \$48,000 per month is about four times the federal
17 poverty level.

18 Q. All right. Now, does the will require
19 Mr. Walkup -- this is in item 3 of the will, if you
20 want to look at it. -- does it require Mr. Walkup to
21 provide for the well-being of Jane Baskin as long as
22 she shall live?

23 A. Yes, it does.

24 Q. All right. And so to relegate her, for
25 instance, sometime before she passes away per se,

1 Medicaid will not fulfill that directive, would it?

2 A. Well, it certainly wouldn't. If you're
3 talking about if the trust ran out of money before
4 she died, yes --

5 Q. That's what I'm --

6 A. -- it would not. It would be, I think, a
7 severe financial blow to her.

8 Q. What are the -- are there some conditions
9 that a trustee must consider currently before he
10 encroaches upon principal?

11 A. Well, he's got to try to make that corpus
12 last for her lifetime, and he doesn't know how long
13 she will live. He needs to take into account her
14 handicap and the expenses associated with that plus
15 her tendency to fall. Which exposes the trust to
16 maybe a lot of extra expensive medical care.

17 And then he has to consider the uncertain
18 economic conditions that we have today with
19 inflation, according to government numbers,
20 9.1 percent, which on the amount of \$575,000 corpus
21 amounts to over \$50,000 a year in loss of purchasing
22 power.

23 And on top of that, I think since he's
24 paid -- he's already provide -- paid her all the
25 income, every time a principal encroachment is made,

1 he's got to sell assets. And my understanding is
2 that these assets are low basis assets so that there
3 is a gain -- capital gain tax to be paid every time
4 he does that.

5 And so if he's paying out \$8,000 a month,
6 for example, and you have to calculate the additional
7 tax to see what -- how much this diminished the trust
8 corpus.

9 Q. Now, there's been an assertion in this case
10 that Mr. Walkup did not properly provide annual
11 accountings to Ms. Baskin. Have you studied that
12 issue and can you comment upon it and give us an
13 opinion?

14 A. Well, I think that the Trust Code itself
15 does not use the term "accounting." And I went
16 through the Trust Code and started counting how many
17 times the code used the word accounting. And when I
18 got to 1500, I quit. Because it seemed to me that
19 the drafters of the code well understood what an
20 accounting was and chose not to use that word to
21 impose duties on the trustee. And that's why they
22 said report.

23 Q. Does the -- do you have an opinion about
24 whether the Trust Code, which is a somewhat
25 reasonable advantage, applies to the Eldridge Baskin

1 Trust that was created in 1990 or '91?

2 A. Well, the comments to the code that I read
3 said essentially you have to look at the trust as a
4 default code. That it governs the provisions of the
5 trust only if the will does not.

6 And with all of the broad discretions given
7 under the will, it seems to me that you're down to
8 two requirements now. One is that he act for the
9 benefit of the beneficiary, and that he keep her
10 informed.

11 Q. All right. Look at -- if you would, look
12 at item 4. That would be Roman numeral IV,
13 subparagraph 22 of the will -- of the Eldridge Baskin
14 will, which includes the testamentary trust.

15 A. Okay.

16 Q. Do you see that?

17 A. Yes.

18 Q. What does item 4, subparagraph 22 authorize
19 the trustee to do?

20 A. Well, I think the critical language, it
21 says that he manages the trust upon such terms and
22 conditions as it may deem best and to do all acts
23 which it may deem necessary or proper to carry out
24 the purpose of this trust. And it further says that
25 he should exercise the same power that any individual

1 could exercise in his or her own right.

2 So it pretty much frees up, I think, the
3 trustee from a lot of traditional trust provisions
4 and gives him the broadest possible discretion in
5 managing the trust estate.

6 Q. And is it your opinion that that provision
7 in the will, as is true to the will in general,
8 trumps the Trust Code with those two exceptions you
9 alluded to earlier?

10 A. Yes. I think that the history beginning
11 with Page versus Page case back in 1953 forward
12 through the code itself and the comments that it's a
13 default code, it seems to me that we're down to two
14 requirements of the trustee. One is to follow the
15 instructions of the settlor or the testator and to
16 keep her informed. No format, particular writing or
17 anything like that is set out in the code, just the
18 requirement is to keep her informed.

19 Q. Now, that will and that testament of trust,
20 do they authorize the trustee to do all acts which
21 the trustee may deem necessary or proper to carry out
22 the purposes of the will? And do they authorize the
23 trustee to deal with itself in its separate or
24 fiduciary capacity?

25 A. Well, I think it's item 18 of -- I mean,

1 paragraph 18 of item 4. It says --

2 Q. That's Roman numeral IV, subparagraph 18?

3 A. Yeah.

4 Q. What does it say?

5 A. It says -- I'm sorry. I think I quoted --
6 I'm sorry, it is 18. I put my glasses on. It's
7 actually paragraph 16 of item Roman numeral IV. And
8 it says, "In buying and selling assets and lending
9 and borrowing money and in all other transactions,
10 irrespective of the occupancy by the same person of
11 dual positions, to deal with itself in its separate
12 or any fiduciary capacity."

13 Q. All right. The beneficiary, of course, who
14 were the lawyers, explained that Mr. Walkup should be
15 removed as trustee in her best interest. What is
16 your opinion about that contention?

17 A. Well, I don't feel that there was any
18 validity to the several charges of breach of --
19 serious breach of trust. And I'm not sure why the
20 allegation was made that it would be in her best
21 interest, particularly in light of the financial
22 performance that Mr. Walkup has done with this trust.
23 I think it's a remarkable achievement. And it seems
24 to me that to remove him would do serious damage to
25 Mr. Eldridge's estate plan.

1 Q. Were you informed, from reading the
2 depositions, that Mr. Eldridge Baskin had cautioned
3 Mr. Walkup when he made him trustee that Jane Baskin
4 was not capable of handling the money?

5 A. Well, he did. Actually, Mr. Walkup
6 testified that -- and this is in page -- page 46 of
7 his deposition -- that "He, Baskin, told me that Jane
8 had no ability to manage money. He used the example,
9 he said, 'You know, if you gave her a thousand
10 dollars, she would just go spend it on stuffed
11 animals for the bed.'"

12 Now, I think this qualifies as a part of
13 the testator's instructions to the trustee and,
14 therefore, part of the estate plan.

15 In Section 62-7-103, definition 17 says,
16 "The terms of a trust mean the manifestation of the
17 settlor's intent regarding a trust provision and
18 expressed in the trust instrument or as may be
19 established by other evidence that would be
20 admissible in a judicial proceeding."

21 Now, that was Mr. Walkup's testimony in
22 court, and the question, I think, was -- to which it
23 was addressed was by Mr. Detwiler.

24 Q. All right. In sum, have you seen any
25 serious breach of trust that warrants removing Bill

1 Walkup as a trustee?

2 A. I have not.

3 Q. And in sum, have you seen any evidence that
4 warrants his removal of trustee -- as trustee as in
5 beneficiary's best interest?

6 A. I have seen no such interest.

7 MS. DuRANT: That's all I have.

8 Mr. Detwiler might have some questions.

9 MR. DETWILER: Thank you, Your Honor. May
10 it please the Court.

11 - - -

12 EXAMINATION

13 - - -

14 BY MR. DETWILER:

15 Q. Mr. Moses, it's a pleasure to see you
16 today.

17 A. Thank you.

18 Q. It's an honor. It's been a long time.
19 You know this guy here, don't you?

20 A. I do.

21 Q. Alex Weatherly.

22 How many times have you all been law
23 partners?

24 A. Alex, you have to help me out with that.

25 Q. Were you law partners at Moses, Koon &

1 Brackett?

2 A. Yes.

3 MR. WEATHERLY: Two different firms.

4 BY MR. DETWILER:

5 Q. And you were also at the Rogers Townsend
6 firm together, right?

7 A. Correct.

8 Q. Okay. And I think you even hired him away
9 from one firm to come work for you at one point in
10 time. Do you recall that?

11 A. I have a vague recollection of that, yes.

12 Q. Okay. And would you consider Mr. Weatherly
13 an honorable person?

14 A. I'm sorry, what?

15 Q. Would you consider Mr. Weatherly an
16 honorable person?

17 A. Yes.

18 Q. And a good lawyer?

19 A. Yes.

20 Q. And a person who would look out after his
21 client's best interest?

22 A. Yes.

23 Q. Now, you would agree with me that a trustee
24 is required to provide regular accountings? Or you
25 argue with the word "accounting," but regular

1 reports. Is that a better word for you?

2 A. No, I wouldn't. I think he -- the
3 trustee's job is to provide them on request.

4 Q. Okay.

5 A. And Mr. Walkup testified that he always
6 answered such request.

7 Q. Okay. So a trustee has no duty -- at least
8 in this case, in your opinion, the trustee has no
9 duty to provide information to the beneficiary unless
10 requested?

11 A. I think on a periodic basis, that's right.

12 Q. Okay. So there's no regular reporting duty
13 under the Trust Code or under the common law. Is
14 that your testimony?

15 A. Yes.

16 Q. When a reporting or accounting is given,
17 let's assume by request, would you agree with me that
18 the accounting should reflect growth and principal --
19 growth in the principal?

20 A. Well, the code says to make a report.

21 Q. Okay.

22 A. I don't know that there is any particular
23 format, content, or anything else in that
24 requirement.

25 Q. Well, let me ask it a different way. You

1 surely believe that a report to a beneficiary should
2 be a meaningful report, wouldn't you?

3 A. Well, I think so, yeah.

4 Q. Okay. And a meaningful report would
5 reflect the growth of the principal and the income
6 earned, would it not?

7 A. A meaningful report, it seems to me, would
8 answer the beneficiary's questions, whatever they
9 might be.

10 Q. Okay. And so if you don't ask, you ain't
11 going to get it; is that your testimony?

12 A. Yes.

13 Q. Okay. And if the request is for a report
14 of principal and interest earned, that should be
15 given in a way that's understandable; would you agree
16 with that?

17 A. Yes.

18 Q. Okay. And would you also agree, if
19 requested, that the amount of principal spent and the
20 amount of interest spent on the beneficiary should be
21 reported and should be reported in a way that's
22 understandable?

23 A. If she asks the question, yes.

24 Q. Okay. That's fair enough.

25 And if she asks a question, shouldn't the

1 report also reflect what the principal is spent on
2 and what the interest was spent on?

3 A. If that's what she wants, yes.

4 Q. Okay. And in this case, all of the income
5 is supposed to be spent or given to her?

6 A. Yes.

7 Q. Now, I heard you testify about this
8 provision in the will about self-dealing.

9 A. Yes.

10 Q. Do you remember that?

11 And it's -- the will said that's okay,
12 right?

13 A. Yes.

14 Q. And does that mean that any kind of
15 self-dealing is okay?

16 A. Well, I don't think it's okay if the
17 self-dealing involves some taking advantage of the
18 beneficiary.

19 Q. Okay. And would -- going back to the
20 reporting issue but similar in topic, shouldn't a
21 report, if asked, give a clear indication of what the
22 trustee's fees are?

23 A. If the beneficiary asks, yes.

24 Q. That was the purpose of my question.

25 A. Yes.

1 Q. Okay. Now, you're aware that Mr. Walkup
2 moved Jane from her home, where no rent or mortgage
3 payment was being made, to an apartment he owned,
4 paying over 900 -- I think \$930 a month, over \$11,000
5 a year, to a company that he owned. You're aware of
6 that?

7 A. Yes.

8 Q. Okay. And that sort of self-dealing is
9 perfectly okay in your mind?

10 A. If no advantage was taken. If you were
11 paying the same rent as everybody else, I would say
12 that's correct.

13 Q. But all of a sudden, she is paying rent
14 that she didn't used to pay. You understand that,
15 right?

16 A. I understand it, but I think there were
17 some reasons why she was moved there.

18 Q. All right. And is it a trustee's -- does
19 the trustee have the power to move the beneficiary
20 where he wants to move her?

21 A. No. But I think the trustee has the power
22 to decide what kind of expenditures out of principal
23 are appropriate. And I think if this case, the
24 trustee decided that living in her own home was
25 dangerous, could incur greater medical expenses. And

1 I don't think -- I think he felt that was risky
2 behavior, and I don't think the trust proceeds should
3 be spent on what he regards as risky behavior because
4 it is a risk to the trust estate.

5 Q. Are you aware that he -- that he moved her
6 into an apartment that --

7 A. Well, he asked her to move.

8 Q. May I finish my question?

9 A. I'm sorry.

10 Q. Thank you.

11 Are you aware that he moved her into an
12 apartment that he owned that was not handicapped
13 accessible, had one way in and one way out, are you
14 aware of that?

15 A. May have been, yeah.

16 Q. Is it your testimony that that was safer
17 than where she was?

18 A. Well, there were a lot of people around.
19 And I think it's a better chance that if she got in
20 some kind of trouble, somebody would see it and
21 report it. And I also understood that it was
22 temporary until he could get her into an assisted
23 living facility, which he was trying to do.

24 Q. Don't you think that Ms. Baskin has a right
25 to decide where she lives or is that up to the

1 trustee?

2 A. She has a right to decide it, but the
3 trustee has a right to decide what he's going to pay
4 for out of the trust. And if it's risky behavior, I
5 don't think he has a duty to pay it.

6 Q. And what is -- and so she has no right to
7 decide what is a risk worth taking and what isn't a
8 risk worth taking; is that what your testimony is?

9 A. It's not that I disagree, but he's given
10 that discretion in the will.

11 Q. So the rent, the 11-plus thousand dollars a
12 year in rent that he paid out of the trust to his
13 company, was that rent paid out of a principal or out
14 of interest?

15 A. It had to be out of principal because he
16 paid her all the income.

17 Q. Okay. Have you looked at the reports that
18 he gave her or gave -- that have been given in this
19 case? Have you looked at the reports he generated at
20 the request in this case?

21 A. I don't think so.

22 Q. Okay. So you don't know what was paid out
23 of principal and what was paid out of interest?

24 A. Well, process of elimination. If you got
25 to pay all the income, then this had to be paid by

1 the principal.

2 Q. Well, what did he pay all the income on,
3 then, do you know?

4 A. I think he simply gave it to her.

5 Q. That's your understanding, that he just
6 gave her checks for the income?

7 A. Yes.

8 Q. What if that is not the case?

9 A. Well, are we speculating?

10 Q. I'm asking to find out what you know, and
11 you obviously don't know the answer to that question;
12 is that right?

13 A. I would say that's right, yes.

14 Q. Okay. Are you aware that Mr. Walkup has
15 had the trust invested heavily in funds that he is
16 also personally invested in?

17 A. Yes.

18 Q. And that's not a problem in your mind?

19 A. No.

20 Q. Okay. Are you aware that he has invested
21 in funds from which he's also paid a management fee?

22 A. Yes.

23 Q. And that he also gets a management fee for
24 the trust on top of that management fee?

25 A. Yes.

1 Q. And that's not a problem in your mind?

2 A. No, I don't think so.

3 Q. Wouldn't you agree with me that where there
4 is any hint of self-dealing, that the trustee should
5 fully disclose that in his report to the beneficiary?

6 A. If she asks for it.

7 Q. Okay. So in other words, as long as you
8 don't get caught with your hand in the till, it's
9 okay; is that your testimony?

10 A. I wouldn't put it like that, no.

11 Q. How would you put it then?

12 A. I put it that he has the duty give her
13 information if she asks for it.

14 Q. And if he self-deals and puts money in his
15 own pocket from the trust and nobody asks about it,
16 that's okay in your mind?

17 A. No, it's not okay. That's a fraud on the
18 beneficiary. And I don't think --

19 Q. Exactly. Now --

20 MR. SOWELL: I don't think he's being
21 allowed to finish his answer.

22 THE COURT: Would you like to object?

23 MR. SOWELL: Yes, Your Honor.

24 THE COURT: What's your objection?

25 MR. SOWELL: My objection is, is that

1 Mr. Detwiler, who is a very good lawyer, has cut
2 the witness off and not allowed him to finish
3 his answer. And I think it's inappropriate.

4 MR. DETWILER: I think it is inappropriate
5 if I did that, and I'm sorry. Is there anything
6 more you want to say on that point?

7 THE WITNESS: Can we go back and ask the
8 question again?

9 MR. DETWILER: I don't remember.

10 THE COURT: Can I get everybody stop for a
11 second. I keep hearing a phone ring. Can
12 everybody just check and make sure your phone is
13 off.

14 Can you go back to the last question and
15 read that again for me.

16 - - -

17 (The Court Reporter read the record as
18 requested.)

19 - - -

20 THE WITNESS: I'm sorry, I'm having trouble
21 hearing that.

22 THE COURT: It was the concept that would
23 be fraud -- you said that that would be fraud on
24 the beneficiary. Did you want to say anything
25 after that?

1 THE WITNESS: As I understand it, he's
2 asking me if it's okay -- if I think it's okay
3 if the beneficiary -- if the trustee is stealing
4 from the beneficiary. And I don't think that's
5 okay. I think that's a breach of trust.

6 BY MR. DETWILER:

7 Q. My question was really this -- and I'm
8 sorry I cut you off. If -- I believe you testified
9 that it's -- this is a -- if you don't ask -- it's a
10 no-ask/don't-tell policy in your mind. If the
11 beneficiary doesn't ask, you don't have to tell it?

12 A. I think essentially that's what the code
13 says.

14 Q. Okay. And so if the trustee is engaged in
15 self-dealings, and specifically, I mean, is taking
16 money out of the trust and paying it to a company
17 that he owns and investing money in partnerships that
18 he is in and gets a management fee and then takes a
19 fee on top of that, that unless the beneficiary
20 specifically asks for that, that's okay. That's
21 appropriate behavior?

22 A. That's exactly what the will says. And he
23 is authorized to manage the trust in such a way as he
24 feels necessary and to deal with himself. And the
25 code says if the will says it, then it's effective.

1 Q. And it's okay with you if he puts money in
2 his own pocket in a way --

3 A. It is not okay with me if he puts money in
4 his own pocket.

5 Q. Okay. All right.

6 A. If you're talking about stealing the money.

7 Q. Well, I think we're clear on what you mean.
8 You're aware -- we've established that the
9 trust requires that all income be paid to Jane?

10 A. Yes.

11 Q. You don't know how much income has been
12 paid to Jane?

13 A. Well, I have some numbers over a ten-year
14 period, yeah.

15 Q. From whom?

16 A. From Bill.

17 Q. Okay. How about the accountings that you
18 have, you haven't looked at those?

19 A. I didn't see the necessity to.

20 Q. Okay. Well, the whole case here is about
21 his failure to account and the failure to report,
22 Mr. Moses.

23 A. If he were required to.

24 Q. And you didn't bother looking at what was
25 actually given to the beneficiary?

1 A. I don't know that I ever had those.

2 Q. Okay. Are you aware that the trust
3 investments are predominantly in growth investments
4 and not income investments?

5 A. Yes.

6 Q. Okay. And yet the -- all of the income is
7 supposed to be paid to the beneficiary?

8 A. Yes.

9 Q. Would you agree, conceptually, that
10 investing in growth -- in growth assets versus income
11 benefits the remainder beneficiaries over the
12 intended beneficiary?

13 A. Well, I think it's hard to make that
14 argument where he has discretion over principal and
15 has paid out a lot of principal.

16 Q. But he has discretion not to pay out
17 principal?

18 A. Yes, he does.

19 Q. He does not have discretion to pay out
20 income?

21 A. No.

22 Q. He has to pay the income?

23 A. Correct.

24 Q. So in order not to pay income, you can put
25 it in a growth asset so he doesn't have to do that;

1 isn't that correct?

2 A. Well, frankly in --

3 Q. Excuse me. Answer my question, if you
4 could, please, and then I'm happy to --

5 A. I'm answering you, and I want to read you
6 something out of the will.

7 Q. Could you answer my question? This is a
8 conceptual question. It doesn't have anything to do
9 with the will.

10 A. I think it does.

11 Q. You want me to restate the question?

12 A. Okay.

13 Q. Okay. The question is this: If you invest
14 if growth stocks or assets, whatever, growth
15 investments, investments that are geared toward
16 growth and not income, as opposed to investments that
17 are geared toward income versus growth, then you are
18 choose -- you are choosing to invest in things that
19 allow you not to give out to the beneficiary whereas
20 if you had invested in income-oriented investments,
21 you have to give back, correct?

22 A. Yes. I think the answer to your question
23 initially is yes. But on the other hand, if the
24 beneficiary of the trustee was not doing that and
25 was, in fact, paying out a fair amount of principal

1 instead, then I think the question is irrelevant.

2 Q. Well, it's not irrelevant if you've got the
3 discretion not to give out principal, is it?

4 A. Well, it's irrelevant if you, in fact, are
5 giving out a lot of it.

6 Q. Okay. So my question was this -- that
7 you've avoided answering, so let's try to focus on
8 the question.

9 A. I think I answered it.

10 Q. The question is this: Investing in an
11 asset that is growth-oriented beneficiary -- benefits
12 the remainder beneficiaries more than it does the
13 income beneficiary, does it not?

14 A. Well, I suppose that anything that remains
15 benefits them, but it doesn't mean that's why he's --
16 that's why the trustee is withholding that.

17 Q. Are you -- I'm sorry, did I interrupt you?

18 A. I'm done.

19 Q. Are you aware that all the remainder
20 beneficiaries are Mr. Walkup's second cousins?

21 A. I am.

22 Q. Are you aware that one of those remainder
23 ben is Wesley Stevenson who testified here on behalf
24 of Jane?

25 A. No.

1 Q. You would agree with me that the
2 relationship between a trustee and the beneficiary is
3 important, isn't it?

4 A. Not as important as following the
5 testator's instructions.

6 Q. So it's not important?

7 A. No, I didn't say that.

8 Q. Okay.

9 A. I said it is not as important.

10 Q. I didn't ask you a relative question. I
11 asked you "Is that important?"

12 A. That's my answer.

13 Q. Okay. So you're not going to tell me that
14 it's important for the -- that the relationship
15 between the trustee and the beneficiary is important?

16 A. I didn't say that. I said it wasn't as
17 important.

18 Q. Okay. But it's important?

19 A. Yeah.

20 Q. Okay. Good.

21 And will you say that that relationship
22 requires communication to be effective?

23 A. Well, I think that's right except that the
24 trustee received a letter instructing him not to have
25 any further communications with the beneficiary.

1 Q. How about the 30 years prior to that letter
2 being sent?

3 A. Well, was the relationship bad back then?

4 Q. Do you know?

5 A. No.

6 Q. Okay. So does the relationship -- a good
7 relationship between the beneficiary and a trustee,
8 does that require trust between the two?

9 A. Probably.

10 Q. Probably?

11 A. Probably.

12 Q. Okay. And does it require, in your
13 opinion, respect from the trustee to the beneficiary
14 and vice versa?

15 A. Well, I think what, as I said before, is
16 most important is that the trustee follows the
17 instructions of the settlor or the testator. And if
18 that results in a bad relationship, and it often does
19 between the trustee and the beneficiary, I think he's
20 got to choose his priority to do what settlor or
21 trustee -- testator asks him to do. And if that
22 happens to be one that makes the beneficiary unhappy,
23 that's too bad.

24 Q. How about if the relationship sours so bad
25 that there cannot be an effective administration of

1 the trust? Does that matter to you?

2 A. I haven't seen that.

3 Q. Okay. But you haven't seen all the
4 testimony and all that. I'm just asking you in
5 general, don't you think at some point in time that
6 the relationship can be so bad that the trustee needs
7 to step aside?

8 A. Well, I don't know. I guess that's the
9 decision of the trustee's.

10 Q. And the decision of the Court?

11 A. Well, a trustee can resign; although, it
12 probably would take the Court's approval to do so.

13 Q. So you would agree with me, maybe, that
14 where the trustee cannot communicate with the
15 beneficiary, is not trusted by the beneficiary, has
16 shown no respect for the beneficiary, that something
17 really does need to change?

18 MR. SOWELL: Object to the form of the
19 question on the grounds that it's not properly
20 founded. I don't think all of those
21 stipulations are into evidence and, therefore, I
22 object.

23 MR. DETWILER: Actually, every one of those
24 things are in evidence, and I actually pulled
25 that straight out of Tim Wingate's testimony.

1 THE COURT: Overruled.

2 BY MR. DETWILER:

3 Q. You want me to repeat the question?

4 A. Please.

5 Q. Would you agree that where the trustee
6 cannot communicate with the beneficiary, is not
7 trusted by the beneficiary, has shown disrespect for
8 the beneficiary, that something really does need to
9 change for the benefit of all concerned?

10 A. Well, I suspect that conflicts between
11 trustees and beneficiaries are fairly constant. Some
12 of them are friendly, some of them not. Now, the
13 question is, can the trustee continue to administer
14 the trust in accordance with instructions with the
15 settlor, and if he can, then I think he has a duty to
16 proceed.

17 Q. And you're aware that Mr. Walkup has
18 already stepped aside in the day-to-day
19 administration of this trust and that Alex Weatherly
20 is now the special trustee and has been for a year
21 and a half?

22 A. Well, I don't know that I would use the
23 term "step aside," but certainly under the
24 supervision of the court, that's been done.

25 Q. That's right. He agreed to do that. You

1 understand that?

2 A. Well, I think he agreed to it as a
3 temporary measure, yeah.

4 Q. Right. Of course.

5 And are you aware that Ms. Baskin is happy
6 with that arrangement and that things seem to be
7 going a lot better for all concerned?

8 A. Probably she is happy, yeah.

9 Q. And that things are going a lot better for
10 all concerned?

11 A. Well, I wouldn't agree to that.

12 Q. Well, why not?

13 A. Because I think that what she's doing is
14 exhausting the trust estate a lot faster than
15 Mr. Walkup would have agreed to, and if she winds up
16 with nothing in the trust estate, that's going to be
17 very bad for her.

18 MR. DETWILER: Thank you, Your Honor.

19 That's all I have, sir.

20 THE WITNESS: Okay.

21 MR. SOWELL: Your Honor, if it pleases the
22 Court and Mr. Moseley [sic], I have a couple of
23 questions.

24 THE COURT: Moses.

25 MR. SOWELL: Please. Yes?

1 THE COURT: But I just said Moses. I think
2 you said Moseley. We have Michele Moseley.

3 MR. SOWELL: Thank you.

4 - - -

5 REEXAMINATION

6 - - -

7 BY MR. SOWELL:

8 Q. Am I correct, Mr. Moses, that it's not
9 unusual for a beneficiary to agree -- to disagree,
10 I'm sorry -- to disagree with her trustee?

11 A. I think it's fairly common.

12 Q. Is the purpose of a trust to protect the
13 corpus and use the money as directed by the settlor
14 and not as those directed by the beneficiary?

15 A. Yes.

16 Q. Is that the reason that the trust is
17 created in the first place?

18 A. Absolutely.

19 Q. Have you observed in Mr. Walkup any
20 unfitness as trustee or persistent failure to carry
21 out his duties as the trustee of the Eldridge Baskin
22 trust?

23 A. None.

24 Q. With respect to the Walkup fees and the
25 colloquy you had with Mr. Detwiler about the Walkup

1 fees and so on, as I understand it, you believe that
2 Bill Walkup's fees that he's charging with respect to
3 either Equity 95 or e-Trade or Columbia Cash Reserves
4 or whatever as well as his trustee fees are
5 appropriate under the will?

6 A. There's a provision, I think, in the will
7 that authorizes that.

8 Q. All right. So the payment of those fees is
9 not what you would characterize as stealing?

10 A. No, it's not.

11 Q. Thank you.

12 Let me ask you one last thing. There was a
13 question about whether you reviewed the records. You
14 have reviewed -- or at least you are aware that I
15 guess it was Mr. Weatherly or somebody in his office,
16 I think it was probably Mr. Weatherly, requested some
17 fiduciary tax returns, and they were provided to him.

18 A. Yes.

19 MR. SOWELL: Okay.

20 MR. DETWILER: One follow-up. I promise
21 one.

22 THE COURT: Certainly.

23 - - -

24 REEXAMINATION

25 - - -