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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

S.C. Supreme Court

Op. No. 2011-UP-383
(S.C. Ct. App. filed August 4, 2011)

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, ... Petitioner,

v.

Linda B. Harris, Individually and as Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9-17-07 and in all alleged fiduciary capacities,
Bibco, Inc., Dewey M. Houser, Carolina Pre-owned, LLP,
Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Bibco, Inc., Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), Patricia B. Schmid
and Ida Mae Belk are, ... Respondents.

APPENDIX

Volume 2

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

Civil Action No. 2008-CP-43-0347

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, ... Appellant,

v.

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Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Bibco, Inc., Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), Patricia B. Schmid
and Ida Mae Belk are, ... Respondents.

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OCT 05 2011

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91k1 Nature and Elements in General
91k2 Combination.

"Civil conspiracy" is combination of two or more persons for purpose of injuring plaintiff, which causes plaintiff special damage.

[5] Evidence ⇨ 355(1)

157 —
157X Documentary Evidence
157X(C) Private Writings and Publications
157k355 Private Memoranda and Statements in General
157k355(1) In General.

Internal memoranda of bank which loaned money to corporation, suggesting that manager who was charged with conspiracy to divert corporate funds may have overvalued equipment which he purchased on behalf of corporation, were admissible under the Business Records Act in civil action brought by company to recover alleged funds. Code 1976, § 19-5-510.

[6] Conspiracy ⇨ 19

91 —
91I Civil Liability
91I(B) Actions
91k19 Evidence.

Civil conspiracy need not be shown by direct evidence, but may be inferred from very nature of acts done, relationship of parties, interest of alleged conspirators and other circumstances.

[7] Conspiracy ⇨ 19

91 —
91I Civil Liability
91I(B) Actions
91k19 Evidence.

To establish civil conspiracy, evidence, direct or circumstantial, must be produced from which party may reasonably infer joint

assent of minds of two or more parties to prosecution of unlawful enterprise.

[8] Conspiracy ⇨ 19

91 —
91I Civil Liability
91I(B) Actions
91k19 Evidence.

Proof showing concert of action in commission of unlawful acts, from which natural or reasonable inferences arise that acts were in furtherance of common design of alleged conspirators, is sufficient to establish prima facie case of civil conspiracy.

[9] Conspiracy ⇨ 19

91 —
91I Civil Liability
91I(B) Actions
91k19 Evidence.

Court has broader discretion to admit evidence to prove civil conspiracy.

[10] Conspiracy ⇨ 19

91 —
91I Civil Liability
91I(B) Actions
91k19 Evidence.

In general, court has great latitude in admission of circumstantial evidence tending[¹⁵¹] to establish civil conspiracy and to connect those advising, encouraging, aiding, abetting and ratifying overt acts committed for purpose of effecting objects of conspiracy; jury should have before them and are entitled to consider every fact which has bearing on and tendency to prove ultimate fact in issue.

[11] Conspiracy ⇨ 20

91 —
91I Civil Liability
91I(B) Actions

91k20 Damages.

Where plaintiff seeking recovery in action for conspiracy fails to prove conspiracy or concerted design, he may nevertheless recover damages against defendant proven to be guilty of tort alleged to be object of conspiracy.

[12] Conspiracy ⚖ 21

91 ---

91I Civil Liability

91I(B) Actions

91k21 Trial.

Whether former manager of car wash corporation, upon whom shareholders relied to start up corporate business, breached his relations with company by conspiring with supplier to submit inflated invoice for equipment delivered to company was question for jurors, where internal memoranda of bank which loaned money to corporation suggested that invoice had been inflated.

[13] Appeal and Error ⚖ 274(1)

30 ---

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(C) Exceptions

30k274 Scope and Effect

30k274(1) In General.

Court of Appeals is concerned with substance of appeal, not with technical differences in issues raised by exceptions.

COUNSEL

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A.R. Grant Morehouse, Hilton Head Island, Ronald E. Boston and Laura Callaway Hart, Turner, Padgett, Graham & Laney, Columbia, and A. Parker Barnes, of Barnes, Davis & Tupper, Beaufort, for

respondents.

OPINION

GARDNER, Judge.

Island Car Wash, Inc., (I.C.W.) in this action alleged that George F. Norris, III, (Norris), a former manager of I.C.W., stood in a fiduciary relationship with I.C.W. and that Norris conspired with R. William Rhodes (Rhodes) to breach Norris's confidential relationship with I.C.W. and pursuant to [*598] said conspiracy diverted funds of I.C.W. to their own pockets. The trial judge directed a verdict in favor of Norris and Rhodes. We reverse and remand.

We briefly review the facts in a light most favorable to I.C.W. Evidence of record reflects that Rhodes gave Norris two separate purchase orders for car wash equipment, one in the amount of \$56,508 for used and rebuilt equipment and one in the amount of \$105,432 for new equipment. I.C.W. purchased the used, rebuilt equipment for \$56,650, but allegedly used the purchase order for new equipment when it applied for a loan from C & S Bank for land and equipment to commence the car wash business. The bank made periodic deposits to I.C.W.'s corporate account; checks written by Norris and his wife were mailed to Rhodes in payment of the car wash equipment.

The parents of Mrs. Norris, Norris's ex-wife, owned 90 percent of the stock of I.C.W. Norris and Mrs. Norris each owned 5 percent of the stock. Although Mrs. Norris was the secretary of the corporation, this title was only nominal; she had very little to do with starting up the business and was unfamiliar with I.C.W.'s financial dealings during the time of the events in question; she, however, at her husband's direction, wrote one of the checks payable to Rhodes in the amount of \$20,000.

Rhodes was paid \$17,000 more than the

cost of the used equipment. Rhodes was also paid a consulting fee of \$3,500. Norris testified that Rhodes brought \$10,000 of the excess payment back to him in cash, evidently from Columbia. Norris admitted that none of the money was redeposited to I.C.W.'s account or in any way went back to I.C.W.; his excuse was that he had not received a salary from I.C.W. and took the money to compensate himself for that. Norris further testified that Rhodes purchased for him stock of American Premier for \$7,000 and delivered him the certificates. Again Norris testified that he was entitled to the cash and stock to compensate him and for salaries which he allegedly had not been paid by I.C.W.

The trial judge interpreted the complaint as an action for fraud and deceit and then [*152] held that the necessary elements of a cause of action for fraud and deceit were not proved; he then granted a directed verdict against I.C.W.

[**599] The complaint clearly states a cause of action for civil conspiracy and we so hold.

The issues of merit on appeal are whether (1) the trial judge erred in the refusal to admit into evidence for purpose of publication to the jury certain documents which will later be identified and discussed and (2) the trial judge erred in the direction of the verdict.

[1] A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.

Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary

relationship may spring. 36A C.J.S. *Fiduciary* at 385 (1983).

Moreover, it is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence. 36A C.J.S. *Fiduciary* at 388 (1983).

No authority is necessary for the proposition that whether there was a confidential or fiduciary relationship between Norris and I.C.W. is an equitable issue.

[2] Where legal and equitable issues or rights are asserted in the same complaint, legal issues are for determination by the jury and equitable issues for the court. Winter v. U.S. Fidelity and Guaranty Co., 240 S.C. 561, 126 S.E.2d 724 (1962). And the issues are distinguished and divided by the court in its exercise as a court of law and a court of equity. Miller v. British America Assurance Co., 238 S.C. 94, 119 S.E.2d 527 (1961).

[**600] [3] With reference to the case in hand, the evidence is clear that the owners of I.C.W., mainly Mrs. Norris's father and mother and Mrs. Norris, at the time the wife of Mr. Norris, reposed special faith and confidence in Norris in the starting up of the car wash business. He was the general manager of the car wash corporation and was responsible for getting together whatever was necessary to establish the car wash operation; he handled all negotiations with Rhodes. We hold that Norris occupied a fiduciary relationship to I.C.W. and was the dominant party in the spending of the

money of I.C.W. in the starting up of the business.

[4] Having so held we address the issue of civil conspiracy and evidence relating thereto. The elements of a civil conspiracy are (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) and which causes the plaintiff special damage. Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct.App.1986).

[5] I.C.W. produced many documents which taken together were sufficient evidence to have submitted to the jury the issue of conspiracy, and we so hold. Mr. Gail, the vice-president of the Hilton Head branch of the C & S Bank of South Carolina, testified that he did not close the loan to I.C.W. (FN1) but that he was subpoenaed to bring to court the bank records pertaining to the I.C.W. loan. During the course of examination, Mr. Gail testified that he was a vice-president and custodian of the [*153] records which he brought with him. These records contain a copy of the larger invoice of \$105,432. With reference to this Mr. Gail testified:

In the normal course of business, when somebody purchases an asset or a piece of equipment, we ask for an invoice or something to give us an idea of the cost of it. Uh, in this case, I have—I have an invoice—one invoice for consulting fees for thirty-five hundred dollars and one invoice for the equipment for a hundred and five thousand four hundred and thirty-two dollars, which would have been what the bank used to base their opinion on the cost of the equipment.

[**601] From the records that Mr. Gail brought with him there were numerous office memoranda showing the contract price of the equipment and the consulting costs to have amounted to \$108,932.

Not only do these records come within the purview of Section 19-5-510, Code of

Laws of South Carolina (1976), known as the Business Records Act, but they were well within the discretion of the trial judge to admit because the office memoranda were on the stationery of the bank and the larger invoice was consistent with evidence other than Mr. Gail's testimony. And we so hold. See J.K.T. Company, Inc. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980).

The record discloses that sometime after Mr. Norris pocketed the \$10,000 in cash and the stock which Rhodes admittedly turned over to him, Mr. and Mrs. Norris separated. Mrs. Norris found in a desk belonging to Mr. Norris an envelope which was torn. In the envelope was a torn copy of the smaller invoice and a note which read, "Pete: this is for your records--only. Call me and let's discuss this." Mrs. Norris also found copies of the larger invoice in the I.C.W. records. These invoices were offered in evidence.

Most of the aforementioned documents were identified but not admitted into evidence and published to the jury because the judge ruled they were irrelevant. We disagree.

[6] Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators and other circumstances. Nottingham v. Wrigley, 221 Ga. 386, 144 S.E.2d 749 (1965). Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence; concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence. Mixon v. Phoenix Landscaping Co., 136 Ga.App. 344, 221 S.E.2d 225 (1975); see also 15A C.J.S. Conspiracy Section 29 at 691 (1977).

[7][8] And in order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to

the prosecution of the unlawful enterprise. Proof showing *concert of action* in the commission of the unlawful acts, from which the natural or [**602] reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators, is sufficient; at least to establish a *prima facie* case of conspiracy.

15A C.J.S. *Conspiracy* Section 30 at 698-700 (1977).

[9][10] Moreover, the field of admissibility of evidence is broadened in proof of conspiracy. Hall v. Walters, 226 S.C. 430, 85 S.E.2d 729 (1955). In general broad discretion and great latitude are permitted in the reception of evidence in conspiracy cases. The law permits great latitude in the admission of circumstantial evidence tending to establish a conspiracy and to connect those advising, encouraging, aiding, abetting and ratifying the overt acts committed for the purpose of carrying into effect the objects of a conspiracy; the jury should have before them and are entitled to consider every fact which has a bearing on and a tendency to prove the ultimate fact in issue. 15A C.J.S. *Conspiracy* Section 29 at 690, 693-94 (1977); Coleman v. Stevens, 124 S.C. 8, 117 S.E. 305 (1923).

[11] And finally, where a plaintiff seeking recovery in an action for conspiracy fails to prove a conspiracy or concerted design, he may still recover damages [*154] against a defendant proven to be guilty of a tort alleged to be the object of the conspiracy; the allegations of the conspiracy are considered as mere surplusage. Goble v. American Rv. Express Co., 124 S.C. 19, 115 S.E. 900 (1923).

[12] Taken together, the aforementioned documents do constitute evidence of a conspiracy to breach the confidential relations of Norris to I.C.W. which resulted in the conversion of \$17,000 of money belonging to I.C.W., and we so hold. We therefore hold that the trial judge erred in

directing a verdict for Norris and Rhodes.

And we find no merit to Rhodes' contention that I.C.W.'s exceptions do not conform to the rules of appellate procedure; they substantially do, and we so hold. Exception 1, which relates to directing the verdict, asserts error in that there was sufficient admissible, credible evidence to raise a jury issue as to all essential elements of the appellate's cause of action for both fraud and deceit and conspiracy to establish the same by clear, cogent and convincing evidence. We hold that the words fraud and deceit encompass constructive[**603] fraud which is most frequently found in a breach of duty arising out of a fiduciary or confidential relationship. See 37 C.J.S. *Fraud* 2(c) 1 and 2 (1983).

[13] On appeal, I.C.W. only briefly argues that the fraud was constructive fraud and that a false representation is not an element of constructive fraud. The thrust of I.C.W.'s argument is that there is circumstantial evidence of actual fraud although its argument encompasses constructive fraud. We, however, need not decide whether the evidence of record constitutes a cause of action for actual fraud and deceit because we hold that there is evidence of record that a jury issue was posed as to conspiracy to commit constructive fraud by violation of a fiduciary relationship. We do so because this court is concerned with the substance of an appeal, not technical differences in the issues raised by the exceptions. Bartles v. Livingston, 282 S.C. 448, 319 S.E.2d 707 (Ct.App.1984).

We find no merit in the remaining issues raised by Rhodes and Norris.

For the reasons stated, the judgment below is reversed and the case remanded for a trial *de novo*.

REVERSED AND REMANDED.

SANDERS, C.J., and SHAW, J., concur.

STILES V. ONORATO

457 S.E.2d 601, 318 S.C. 297 (S.C. 1995)

Headnotes

Opinion

Cases Citing This Case

..... Supreme Court of South Carolina.

Beverly J. STILES, Plaintiff,

v.

Robert C. ONORATO, Appellant,

v.

John R.C. BOWEN, Respondent.

No. 24243.

Heard March 22, 1995.

Decided May 1, 1995.

SYNOPSIS

In defamation action, defendant filed third-party complaint against plaintiffs attorney, alleging civil conspiracy and initiation of frivolous lawsuit. The Circuit Court, Beaufort County, Ellis B. Drew, Special J., dismissed third-party complaint, and third-party complainant appealed. The Supreme Court, Waller, J., held that: (1) attorney could be held liable for breach of independent duty to third person or acts outside scope of his representation of client, but (2) complaint failed to allege that attorney acted outside scope of his role as attorney or that attorney owed independent duty to third-party complainant.

Affirmed in result.

HEADNOTES

[1] Attorney and Client ¶26

45 —

45I The Office of Attorney

45I(B) Privileges, Disabilities, and

Liabilities

45k26 Liabilities to Adverse Parties and to Third Persons.

Attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to third person or acts in his own personal interest, outside scope of his representation of client.

[2] Pretrial Procedure ¶624

307A —

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)4 Pleading, Defects In, in General

307Ak623 Clear and Certain Nature of Insufficiency

307Ak624 Availability of Relief Under Any State of Facts Provable.

[See headnote text below]

[2] Pretrial Procedure ¶675

307A —

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)6 Proceedings and Effect

307Ak675 Motion and Proceedings Thereon.

Ruling on motion to dismiss for failure to state claim for which relief could be granted must be based solely upon allegations set forth on face of complaint; motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory. Rules Civ.Proc., Rule 12(b)(6).

[3] Attorney and Client ¶26

45 —

45I The Office of Attorney

45I(B) Privileges, Disabilities, and Liabilities

45k26 Liabilities to Adverse Parties and

to Third Persons.

Third-party complaint against plaintiff's attorney in defamation action was properly dismissed for failure to state claim, since third-party complaint failed to allege in what manner attorney acted outside role as plaintiff's attorney and did not allege breach of any independent duty owed to third party; only reasonable inference was that attorney was acting at all times in capacity as plaintiff's attorney. Rules Civ.Proc., Rule 12(b)(6).

COUNSEL

[*601] [**297] A. Camden Lewis and Thomas A. Pendarvis, Lewis, Babcock & Hawkins, Columbia, for appellant.

James W. Alford, R. Lewis Johnson, and Curtis W. Dowling, Barnes, Alford, Stork & Johnson, Columbia, for respondent.

OPINION

[**298] WALLER, Justice:

Robert C. Onorato (Onorato) appeals an order dismissing his third party complaint against Respondent, John C. Bowen (Bowen) pursuant to Rule 12(b)(6), SCRCP, for failure to state a cause of action. We affirm.

FACTS

Beverly Stiles, represented by attorney John Bowen, instituted this defamation (FN1) action against Onorato. Onorato counterclaimed against Stiles and filed a third-party complaint against Bowen alleging civil conspiracy and initiation of a frivolous lawsuit. (FN2) The circuit court dismissed the third-party complaint finding that it failed to state a cause of action under Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 339 S.E.2d 887 (Ct.App.1986)[*602].

ISSUE

Did circuit court err in dismissing Onorato's complaint for failure to state a cause of action?

DISCUSSION

In Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct.App.1986), the Court of Appeals held that "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution." (Emphasis supplied). The Gaar Court further noted,

"The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in [**299] the suit. In his professional capacity the attorney is not liable ... for injury allegedly arising out of the performance of his professional activities.... Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim."

Id. (Emphasis supplied).

Onorato concedes that, under Gaar, he may not maintain an action against Bowen for actions taken in his professional capacity as Stiles' attorney. However, he claims that nothing in Gaar renders an attorney immune for acts taken outside the scope of the professional relationship. We agree.

A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. See generally Annotation 97 ALR 3rd 688 (attorney's liability for abuse of process); Annotation 46 ALR 4th 249 (attorney's liability for malicious

prosecution). See also RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover, several courts have held that an attorney may be held liable arising out of a conspiracy with his client. See e.g., *Wolfrich Corp. v. U.S. Automobile Assn.*, 149 Cal.App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in conjunction with their representation of clients. See, e.g., *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank*, 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter*, 516 So.2d 27 (Fla.App.1987); *Guillebeau v. Jenkins*, 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold*, 520 So.2d 1327 (Miss.1987) [**300] (attorney liable for conversion for improperly paying real-estate proceeds only to his client).

[1] Consistent with *Gaar* and the above cited cases, we find that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. Accordingly, we hold that the trial court erred in dismissing the complaint on the basis that *Gaar* provides absolute immunity to an attorney under any and all

circumstances. However, we affirm in result since the complaint here fails to set forth sufficient facts to remove Bowen from the ambit of *Gaar*.

[2] The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. *State Board of Medical Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990). A Rule 12(b)(6) motion [*603] may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

[3] Onorato alleges, in paragraph 28 of his third-party complaint, that Bowen is the plaintiff's attorney in this action. Thereafter, in enumerating his conspiracy claim, *Onorato* realleges the prior paragraphs of his complaint so as to reallege Bowen's status as *Stiles*' attorney, then states that Bowen "formed a combination for the purpose of harming Mr. *Onorato*." Nowhere in the complaint does *Onorato* allege in what manner Bowen acted outside his role as *Stiles*' attorney nor does he allege that Bowen breached some independent duty owed to *Onorato*. Therefore, on the face of his complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as *Stiles*' attorney. Under *Gaar*, Bowen is immune for any activities taken in his professional capacity. Accordingly, under *Gaar*, *Onorato*'s complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted. The judgment below is

AFFIRMED IN RESULT.

FINNEY, C.J., TOAL and MOORE, JJ., and A. LEE CHANDLER, Acting Associate Justice, concur.

(FN1.) The defamation claim arises from a

previous lawsuit Stiles filed against Onorato and Bio-Turf, a corporation for which Onorato was president. Stiles prevailed therein and, believing Stiles had taken inconsistent positions in that matter, Onorato communicated with various persons and the U.S. Attorney regarding alleged perjury by Stiles.

When the U.S. Attorney declined to prosecute Stiles, she instituted this defamation claim against Onorato.

(FN2.) At oral argument before this Court, Onorato abandoned his appeal with respect to dismissal of the initiation of a frivolous lawsuit cause of action.

LawDesk

Requestor:
Project Name: None
October 01, 2008 07:26:19 PM

**GAAR V. NORTH MYRTLE BEACH
REALTY CO., INC.**

**339 S.E.2d 887, 287 S.C. 525 (S.C.App.
1986)**

Headnotes	•	Opinion	•
Cases Citing This Case			

Court of Appeals of South Carolina.

John E. GAAR and Karen B. Gaar,
Appellants,

v.

NORTH MYRTLE BEACH REALTY CO.,
INC., Dewey Max Glasco, Joel Lee Glasco,
John R. Clarke and Steven H. John,
Defendants,

of whom John R. Clarke and Steven H. John
are Respondents.

No. 0622.

Heard Sept. 24, 1985.

Decided Jan. 28, 1986.

SYNOPSIS

Vendors of condominium units brought action for malicious prosecution against attorneys, following granting of an involuntary nonsuit in a prior action filed by attorneys for their client, a realty company, against vendors for breach of real estate contracts. The Court of Common Pleas, Horry County, Marion H. Kinon, J., granted attorneys' motion for summary judgment, and vendors appealed. The Court of Appeals, Bell, J., held that attorneys were not liable to vendors in action for malicious prosecution, where they acted solely in their capacity as attorneys in bringing prior lawsuit against vendors, and did not become parties to the suit.

Affirmed.

HEADNOTES

[1] Malicious Prosecution Ⓒ0.5

249 —

249I Nature and Commencement of
Prosecution

249k0.5 Nature and Elements of
Malicious Prosecution in General.
(Formerly 249k16)

To recover in an action for malicious prosecution, plaintiff must show: institution or continuation of original judicial proceedings, either civil or criminal; by, or at the instance of, the defendant; termination of such proceedings in plaintiff's favor; malice in instituting such proceedings; want of probable cause and; resulting injury or damage.

[2] Malicious Prosecution Ⓒ25(3)

249 —

249II Want of Probable Cause

249k25 Civil Actions and Proceedings

249k25(3) Inference from Result of
Action.

With regard to want of probable cause element of malicious prosecution, mere fact that defendant was unsuccessful in the prior action has no bearing on the issue.

[3] Attorney and Client Ⓒ26

45 —

45I The Office of Attorney

45I(B) Privileges, Disabilities, and
Liabilities

45k26 Liabilities to Adverse Parties and
to Third Persons.

An attorney is immune from liability to third persons arising from performance of his professional activities as an attorney on behalf of and with knowledge of his client.

[4] Malicious Prosecution Ⓒ42

249 —

249V Actions

249k42 Persons Liable.

(Formerly 45k26)

An attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution; such suit is properly brought against party to the original action, not the attorney representing him.

[5] Attorney and Client ⇨ 26

45 —

45I The Office of Attorney

45I(B) Privileges, Disabilities, and Liabilities

45k26 Liabilities to Adverse Parties and to Third Persons.

In his professional capacity, attorney is not liable, except to his client and those in[*888] privity with his client, for injury allegedly arising out of performance of his professional activities.

[6] Attorney and Client ⇨ 26

45 —

45I The Office of Attorney

45I(B) Privileges, Disabilities, and Liabilities

45k26 Liabilities to Adverse Parties and to Third Persons.

Even if an attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable to a third person if he acts primarily for purpose of aiding his client in obtaining a proper adjudication of client's claim.

[7] Malicious Prosecution ⇨ 42

249 —

249V Actions

249k42 Persons Liable.

(Formerly 45k26)

[7] Malicious Prosecution ⇨ 30

249 —

249III Malice

249k30 Motive of Prosecution.

(Formerly 45k26)

Attorneys who brought suit on behalf of realty company against vendors of condominium units for breach of contract were not liable to vendors in subsequent action for malicious prosecution brought by vendors, where attorneys acted solely in their capacity as attorneys in bringing lawsuit, and did not become parties to the suit; moreover, there was no evidence that they were actuated by personal or malicious motives.

COUNSEL

[*888] [**526] Hammond A. Beale, Columbia, for appellants.

William C. Helms, III, Charleston, for respondents.

OPINION

BELL, Judge.

[**527] John E. Gaar and Karen B. Gaar commenced this action for malicious prosecution against attorneys John R. Clarke and Steven H. John. This suit followed the granting of an involuntary nonsuit in a prior action filed by the attorneys for their client, North Myrtle Beach Realty Company, against the Gaars for breach of real estate contracts. The circuit judge granted the attorneys' motion for summary judgment in the malicious prosecution suit. The Gaars appeal. We affirm.

The prior breach of contract action was instituted by officers of the Realty Company in April 1981. The Gaars had signed three six-month exclusive listing agreements with the Realty Company, one in December 1980 and two in January 1981. The contracts

covered three condominium units. The Realty Company advertised the units and began showing them to prospective buyers. In January 1981 the Gaars, without consulting the Realty Company, gave a one year lease on one of the units. In March 1981 they changed the locks on all three units and advised the Realty Company to return the keys and to begin showing the units by appointment only. The Gaars claim they desired to protect their property upon learning from a Realty Company employee that the keys to their units could not be located. The Realty Company, however, contends the Gaars' actual purpose was to deprive them of the opportunity to sell the units during the exclusive listing period.

The Realty Company returned the keys to the Gaars' employee at their place of business. Two weeks later the Realty Company's president asked the employee for a key to show the units. Upon consulting with the Gaars, the employee informed the Realty Company they could not have a key, and that the Gaars were considering allowing another company to handle the properties.

The Realty Company's president then contacted his attorney, John R. Clarke. He showed Clarke the six month listing agreements and reported the difficulties with the Gaars. The exact content of his conference with Clarke is disputed. It is undisputed, however, that the Realty Company's officers communicated only with the Gaars' employee during these events, not with the Gaars.

Following his consultation with the Realty Company's president, Clarke filed three breach of contract actions [**528] against the Gaars. Clarke's associate, Steven H. John, later amended the complaints into one action for damages in quantum meruit. John represented the Realty Company at trial on April 16, 1982, since Clarke was in court elsewhere when the case was called. Following testimony, the trial judge granted

the Gaars' motion for an involuntary nonsuit, stating the Realty Company has no cause of action against the Gaars. The Gaars then brought this suit for malicious prosecution.

[*889] [1][2] Our Supreme Court has recognized that an action will lie for the malicious prosecution of any ordinary civil action. Cisson v. Pickens Savings and Loan Assoc., 258 S.C. 37, 186 S.E.2d 822 (1972). To recover in an action for malicious prosecution, the plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal (2) by, or at the instance of, the defendant (3) termination of such proceedings in plaintiff's favor (4) malice in instituting such proceedings (5) want of probable cause and (6) resulting injury or damage. Ruff v. Eckerd's Drugs, Inc., 265 S.C. 563, 220 S.E.2d 649 (1975). The mere fact that the defendant was unsuccessful in the prior action has no bearing on the issue of probable cause. Cisson v. Pickens Savings and Loan Assoc., *supra*.

The circuit judge granted the attorneys' motion for summary judgment because he perceived no genuine issue of material fact regarding the existence of probable cause to pursue the breach of contract action. The Gaars contend the judge erred in finding no factual dispute on this issue. Because we hold that a suit for malicious prosecution does not ordinarily lie against an attorney who filed suit on behalf of his client, we affirm the granting of summary judgment.

We have discovered no South Carolina case dealing with an attorney's liability for malicious prosecution. Some jurisdictions have recognized such a suit directed against attorneys. See Annot., 27 A.L.R.3d 1113 (1969). The Gaars urge this court to recognize a cause of action in this case.

[3][4][5] In our opinion, the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney

on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the [**529] authority of his client is not liable to a third party in an action for malicious prosecution. See *W.D.G., Inc. v. Mutual Mfg. & Supply Co.*, 5 Ohio Op.3d 397 (1976). Such a suit is properly brought against the party to the original action, not the attorney representing him. The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities. *Id.*

[6] The case cited by the Gaars to support their cause of action recognizes an attorney is not ordinarily liable for the acts of his client. "The fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other." *Anderson v. Canaday*, 37 Okla. 171, 131 P. 697 (1913). Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim. *Restatement (Second) of Torts*, Section 674 comment d (1975).

[7] In this case, Karen Gaar admitted there is no evidence the attorneys acted for any purpose other than to secure compensation they believed was due to their client. The attorneys acted solely in their capacity as attorneys to bring the lawsuit, and did not become parties to the suit. There was no evidence that they were actuated by personal or malicious motives. Therefore, they are not liable to the Gaars in an action for malicious prosecution.

Our Supreme Court has cautioned against allowing suits for malicious prosecution to inhibit free access to the

courts. *Cisson v. Pickens Savings and Loan Assoc.*, *supra*. Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits. *Peck v. Chouteau*, 91 Mo. 138, 3 S.W. 577 (1887). An attorney has an ethical obligation zealously to pursue any lawful claim of his client. Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina. If he does not properly represent and support[**890] his client's position, an attorney is subject to a suit for malpractice. To hold that an attorney who files pleadings in support of his client's position has acted overzealously, and is therefore[**530] liable to the other party in damages for malicious prosecution, would create a conflict of interest with the attorney's obligation to properly represent and support his client. *Jimot v. Lee*, 372 So.2d 707 (La.App.1979); *W.D.G., Inc. v. Mutual Mfg. & Supply Co.*, *supra*. Such suits could conceivably prohibit attorneys from pursuing and developing new causes of action, and could hinder development of new legal theories. *Central Florida Machinery Co. v. Williams*, 424 So.2d 201 (Fla.App.1983).

This does not leave the plaintiff without a remedy. If the appropriate elements are demonstrated, the other party is subject to a malicious prosecution suit. Moreover, an attorney is subject to disciplinary proceedings if he knowingly pursues a claim when it is obvious such action will merely harass or maliciously injure another, or if he knowingly and in bad faith advances an unwarranted claim. Supreme Court Rule 32, DR-7-102(A)(1) and (2). A client subjected to a malicious prosecution suit may be able to sue his attorney for legal malpractice if the attorney negligently files an unwarranted claim.

These alternative remedies demonstrate that the plaintiff is not left without a recovery even though, in circumstances such as this case, the remedy of malicious prosecution is not properly directed against

STATE OF SOUTH CAROLINA

COUNT OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually and as Trustee
Of the Ida Mae K. Belk Irrevocable Trust dated
Dated 09/17/07 and in all alleged fiduciary
capacities, Bibco, Inc., Dewey M. Houser,
Carolina Pre-Owned, LLC, and Michael D.
"Mickey" Lyles, Jr. and M. M. Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmid,
Robert M. Belk, and Ida Mae Belk

Stakeholders,

And Patricia B. Schmid and Robert M. Belk,

Intervenors.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2008-CP-43-00347

AFFIDAVIT
OF
GENE C. BELK

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly sworn, says:

1. I am the Plaintiff in the above-styled matter. I make these statements upon
personal knowledge unless otherwise stated.

2. I am asking that this honorable Court accept this Affidavit in opposition to
Defendant Weinberg's Rule 12 Motion to Dismiss which was converted to a Motion for Summary
Judgment on October 2, 2008 and in support of my Motion for Reconsideration and Relief from
Judgment or Order.

3. That Plaintiff's attorney previously filed an Affidavit with the resident judge of the Third Judicial Circuit pursuant to §14-5-370 of the South Carolina Code of Laws requesting that Plaintiff be allowed to make an application to a judge of a circuit adjoining the Third Judicial Circuit to secure relief on Plaintiff's Motion for an Expedited Hearing on a Motion for Injunction and Restraining Order.

4. That the Honorable James R. Barber, III, of Richland County, pursuant to Plaintiff's Motion for Expedited Hearing issued an Order for Expedited Hearing requiring the Defendants to Show Cause why the relief requested in Plaintiff's Motion should not be granted. That said Rule to Show Cause hearing was scheduled for September 12, 2008. That based upon conflict of attorney's schedules, the hearing on the Rule to Show Cause Order was changed to October 2, 2008.

5. Based upon this Court's September 8, 2008, Order for Expedited Hearing, it was my belief that Plaintiff's Motion for Emergency Relief and Injunction and Restraining Order would be heard first at the hearing on October 2, 2008.

6. The October 2, 2008, hearing was very confusing and unorganized with apparently no one seeming to know what Motions were going to be heard. There was no Motion Calendar that had been published or circulated.

7. At the hearing the Court disregarded Plaintiff's Petition for Emergency Relief and did not take testimony on why the relief should not be granted, nor did the Court make any findings of fact on Plaintiff's Motion for Emergency Relief, the same matter that was the reason for the expedited hearing and the assignment of an out-of-circuit judge.

8. I further understood that Plaintiff's Motion to Relieve Mr. Weinberg as Counsel for Defendant dated February 29, 2008, and Plaintiff's Motion to Compel Mr. Weinberg to testify by

deposition and to produce records dated March 21, 2008, would be heard immediately following Plaintiff's Motion for Emergency Relief. I had subpoenaed witnesses and was prepared to go forward on those matters.

9. Despite the foregoing, the Court first proceeded with Mr. Weinberg's Motion to Dismiss that was converted to a Motion for Summary Judgment without notice to me. This caught me by complete surprise and myself nor my attorney were aware that a Summary Judgment Motion would be heard.

10. In fact, the Court proceeded with the Motion for Summary Judgment which was filed after my Motion to Disqualify M. M. Weinberg, Jr. and after Plaintiff's Motion to Compel M. M. Weinberg, Jr. to comply with Plaintiff's Rule 45 subpoenas for records and his deposition.

11. The underlying court record will show that I previously filed earlier Affidavits in this matter in support of Motions to Disqualify, Motions to Compel Discovery, and Motions for Injunctive Relief. However, I never filed an Affidavit in opposition to Defendant's Weinberg's Motion to Dismiss because I was not informed that the Motion to Dismiss would be converted to a Motion for Summary Judgment until the date of the hearing.

12. The Court did not consider my testimony that was given that same day, nor the testimony of Desa Ballard, my expert witness, which was taken on my Motion to Relieve Mr. Weinberg. ~~The Court should have considered all of the underlying relevant facts, and that~~ testimony should have been encompassed in the Court's decision.

13. That my deceased father, Robert D. Belk, had an attorney-client relationship with Defendant Weinberg for many years prior to his death, and that the attorney-client privilege extends beyond the death of my father. Further, that I had an expressed and implied attorney-client relationship with Mr. Weinberg and his law firm prior to my father's death and subsequent

to my father's death, both individually and as Personal Representative of my father's estate. Mr. Weinberg and his law firm previously provided legal advice and services to me prior to my father's death and also advice and counsel to myself individually and as Co-Personal Representative of the Estate of R. D. Belk subsequent to my father's death.

14. I understood that Mr. Weinberg and his firm were available to me and the Estate of R. D. Belk to provide continuing advice and counsel and that was a continuing relationship.

15. Based upon the express and implied attorney-client relationships with both myself individually and as Co-Personal Representative of the Estate of R. D. Belk, and the Estate of R. D. Belk, Mr. Weinberg owed a duty of loyalty to myself and to the estate. In the face of the forgoing, Mr. Weinberg undertook to represent both my mother and my sister subsequent to my father's death.

16. Mr. Weinberg, by his actions as set forth in the underlying Complaint, has aided and abetted my sister and also my mother, Ida Mae Belk, in breaching fiduciary duties owed to myself, and the Estate of R. D. Belk.

17. I previously signed Verified Answers to Interrogatories sent to me through my attorney from Mr. Weinberg's attorney. Defendant Weinberg's attorney was served with copies of Plaintiff's Answers to Interrogatories and knew of their existence well in advance of said hearing. Had I known that the Motion to Dismiss would have been converted to a Motion for

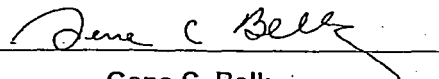
Summary Judgment, those Responses to Interrogatories would have been filed with the Court at the time of the hearing. Those Interrogatories have been filed with the Court subsequent to said hearing. I became aware these Interrogatories were not filed after the hearing and instructed my attorneys to file them. The Court should consider Plaintiff's Answers to Interrogatories.

There is no prejudice to Defendant Weinberg since his attorney was served with copies of Answers to Interrogatories and knew of their existence well in advance of said hearing.

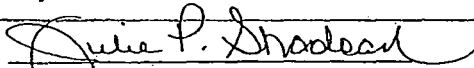
18. It was not proper for Defendant Weinberg's attorney to misrepresent to the Court that his Motion to Dismiss was ready to be considered for Summary Judgment. Defendant Weinberg's attorney was aware of Plaintiff's Answers to Interrogatories and also was aware of Plaintiff's outstanding Motion to Compel Discovery.

19. The Court should have considered Desa Ballard's Affidavit which was filed on April 7, 2008, together with Plaintiff's Memorandum Regarding Outstanding Motions filed that same date. If the Court had considered those documents, the Court would have seen that discovery was incomplete and further that Defendant Weinberg owed duties of loyalty to myself and to the Estate of R. D. Belk..

20. Plaintiff believes that he has a meritorious claim against Defendant Weinberg based upon the foregoing and that further inquiry by Plaintiff and the Court into the facts are desirable in order to clarify the application of the law.


Gene C. Belk

SWORN to before me this 10th
day of November, 2008


Notary Public of South Carolina
My Commission Expires on 02/04/2015

RECEIVED

STATE OF SOUTH CAROLINA

COUNT OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco Inc
Dewey M. Houser, Carolina Pre-Owned, LLC &
Michael D. "Micky" Lyles, Jr. and M. M.
Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmid,
Robert M. Belk, and Ida Mae Belk

Stakeholders

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2008-CP-43-0347

NOTICE OF MOTION AND
MOTION TO RECONSIDER,
VACATE, SET ASIDE, ALTER,
AND/OR AMEND OR CLARIFY
ORDER APPOINTING SPECIAL
ADMINISTRATOR DATED
NOVEMBER 3, 2008, A FILED
COPY OF WHICH WAS RECEIVED
BY COUNSEL FOR PLAINTIFF ON
NOVEMBER 7, 2008

TO: THE HONORABLE JAMES R. BARBER, III, PRESIDING JUDGE, COURT OF
COMMON PLEAS, THIRD JUDICIAL CIRCUIT; S. JAHUE MOORE, ATTORNEY FOR
LINDA B. HARRIS, INDIVIDUALLY, AND BIBCO INC.; D.J. TYLER, ATTORNEY FOR
DEWEY M. HOUSER AND MICHAEL D. LYLES JR; POPE D. JOHNSON,
ATTORNEY FOR M. M. WEINBERG, JR., LINDA B. HARRIS IN HER CAPACITIES AS
CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT D. BELK AND
TRUSTEE OF THE IDA MAE BELK IRREVOCABLE TRUST, IDA MAE BELK; AND
WILLIAM JOHNSON ATTORNEY FOR PATRICIA B. SCHMID AND ROBERT M.
BELK:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned
counsel, will move before the Honorable James R. Barber, III, Presiding Judge, Court of
Common Pleas for the Third Judicial Circuit, Sumter County Courthouse, 141 North Main Street,
Sumter, South Carolina, on the tenth (10th) day after service hereof at 10:00 A.M., or at such
time and place as the Court may deem appropriate, pursuant to the provisions of Rule 59, *South
Carolina Rules of Civil Procedure*, for an Order setting aside, vacating, altering, amending,
clarifying, or reconsidering Order Appointing Special Administrator dated November 3, 2008 (copy

attached as **Exhibit 1**), a filed copy of which was received by counsel for Plaintiff on November 7, 2008, upon the following particulars and grounds:

1. The Court did not take into consideration that the appointment of Patricia Schmid as Special Administrator is improper because her counsel, William H. Johnson, represents both Patricia Schmid and another beneficiary of the Estate which in itself presents an inherent and irresolvable conflict of interest between Patricia Schmid and the interests of the other beneficiaries.

2. The Court did not take into consideration that based upon the file, Patricia Schmid has other inherent and irresolvable conflicts of interest. For example, the pending action for injunction alleges irrefutable disputes with regard to the ownership and entitlement to monies and properties owned by the estate, but moved into accounts in the name of Ida Mae Belk, Bibco, and the Ida Mae Belk Trust. Pursuant to the terms of the Ida Mae K. Belk Trust dated September 17, 2007 which is subject to Plaintiff's pending action to be set aside, (**Exhibit 2**), Mrs. Belk provides in Paragraph 3 of Page 1 that she intends to prepare a Will to **"... authorize dissolution of the irrevocable trust and distribute all proceeds to my children."** Mrs. Belk then signed a Will dated October 16, 2007 (**Exhibit 3**) wherein stated on page one that she had created an Irrevocable Trust of all of her assets and **"... one condition of the Trust is that upon my death, the proceeds of said Trust shall be distributed according to this my Will."** This will names Patricia Schmid as alternate Trustee (See, page 4 of Exhibit 3), but names no Personal Representative. Since there is a genuine dispute regarding the ownership of estate funds that have been deposited into accounts of Mrs. Belk, and since Patricia Schmid was appointed as a fiduciary by her mother and would benefit if she did not require improperly taken funds to be returned to the Estate, Patricia Schmid has inherent and irresolvable conflicts of interest.

3. The Court did not take into consideration that since the beneficiaries under the Ida Mae Belk Irrevocable Trust and Will (not to mention accounts in the name of Ida Mae Belk)

2 

differ from the beneficiaries mandated by the Family Settlement Agreement and Memorandum Regarding Future Transactions, Patricia Schmid has inherent and irresolvable conflicts of interest as a beneficiary closely aligned with her mother, Ida Mae Belk, and her sister, Linda Belk Harris who has been removed as Personal Representative by this Court.

4. The Court failed to consider that the appointment of Patricia Schmid as Special Administrator is improper based upon the sworn testimony she gave at the hearing on October 2, 2008 wherein she hesitated when asked whether she would be able to bring a suit against her own mother for the return of property, especially based on her testimony of her close relationship with her mother as evidenced by her speaking to her mother every day for several hours at a time while Patricia Schmid lived in New York. **(Exhibit 4 – pp. 150 through 163 of October 2, 2008 Transcript of Record)**. By appointing Patricia Schmid, the Court has placed the fox in charge of the hen house, especially when, according to the record, more than \$1.1 million dollars were distributed to Ida Mae Belk in addition to more than \$300,000.00 (as of August 2008) that has been taken from Estate via Linda Harris and Ida Mae Belk and deposited into Ida Mae Belk accounts **(Exhibit 5-Ida Mae Belk Letter)**.

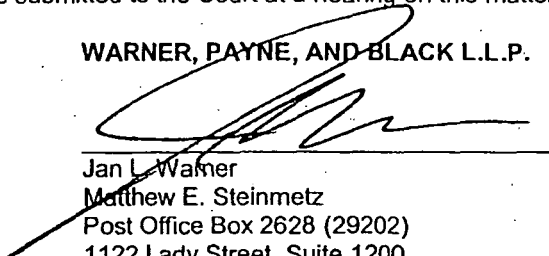
4. In addition to not considering the inherent conflicts, the Court did not consider that based upon the complex nature of the Estate and these proceedings **(Exhibit 6 – Sworn Inventory and Appraisal dated October 17, 2005 that is before the Court based upon removal from the Probate Court)**, based upon the fact that Patricia Schmid did not graduate from high school and has only recently received her GED, and based upon the fact that there are significant income tax issues, these proceedings are far beyond her abilities and capabilities. This is especially important since, in consideration of a compromise settlement of Ida Mae Belk's interest as set forth in the Family Settlement Agreement and Memorandum Regarding Future Transactions, Ida Mae Belk was assigned a fifty percent (50%) interest in certain assets based upon her naming the same beneficiaries as did her husband.

A handwritten signature in black ink, appearing to be a stylized 'A' or 'J' with a flourish.

5. The Court abused its discretion in appointing a family member as Special Administrator especially where, as here, Patricia Schmid must bring actions against her mother and sister to enforce the prior agreements and to seek the return of ill-gotten gains based upon complex legal issues.

This Motion shall be based upon the foregoing, the Court file of these proceedings, together with the attached exhibits, the transcript of testimony presented before this Court, and such other memoranda which may be submitted to the Court at a hearing on this matter.

WARNER, PAYNE, AND BLACK L.L.P.



Jan L. Warner
Matthew E. Steinmetz
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
November 14, 2008

STATE OF SOUTH CAROLINA
COUNT OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco Inc)
Dewey M. Houser, Carolina Pre-Owned, LLC &
Michael D. "Micky" Lyles, Jr. and M. M.
Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmid,
Robert M. Belk, and Ida Mae Belk

Stakeholders

RECORDED
2008 NOV - 5 PM 1:29
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ORDER APPOINTING SPECIAL
ADMINISTRATOR

RECEIVED
2008 NOV - 7 AM 11:49
W.F. & B. LLP
-LEGAL SERVICES
OF SC, PA

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me for a hearing on the 2nd day of October 2008 with regard to a number of issues including an application for injunction at Sumter, South Carolina.

Present and appearing were Plaintiff and his attorney, Jan L. Warner; Ida Mae Belk and her attorney, M.M. Weinberg, Jr.; Linda Harris and her attorney, S. Jahue Moore; Dewey Houser and his attorney Donald W. Tyler, Jr. (Mr. Tyler also appeared on behalf of Michael D. "Micky" Lyles, who was not in attendance); and Patricia B. Schmid and Robert M. Belk and their attorney, William H. Johnson.

Pursuant to Order of the South Carolina Supreme Court, this matter was transferred to the Honorable L. Casey Manning, Chief Administrative Judge of the Fifth Judicial Circuit. Judge Manning, in turn, assigned this matter to me to conduct this hearing.

Robert D. Belk died on April 5, 2004. The Personal Representative under his Last Will and Testament, Carlton R. Davidson, resigned, and Gene C. Belk was named as first alternate Personal Representative.

By Order of the Probate Court dated May 7, 2004, Gene C. Belk and Linda Harris, two (2) of the five (5) children of Robert D. Belk and Ida Mae Belk, were appointed as Co-Personal Representatives.

Applications to remove the Personal Representatives have been properly filed in the Probate Court and removed to this Court, thus vesting this Court with subject matter jurisdiction to enter this Order (§62-1-302, SC Code Ann.).

After beginning to take testimony with regard to removal of the Personal Representatives for the estate of Robert D. Belk, an agreement was reached to appoint a special administrator.

After due consideration of the testimony and the evidence, and having heard the preferences of the beneficiaries of the estate, I find and conclude that Patricia Schmid should be appointed as Special Administrator subject to the terms and conditions of this Order. In addition to the statutory duties vested in the Special Administrator, I hereby make the following additional requirements of service:

1. The Special Administrator shall provide regular accountings and updates to all attorneys on at least on quarterly basis. Both Co-Personal Representatives shall cooperate in turning over to the Special Administrator copies of all records, bank accounts, and other documents into which funds have been deposited in order to aid the Special Administrator in appropriately determining the assets, accounts, and accounts receivable of the Estate; the whereabouts of Estate income and assets; and then making appropriate disbursement and funding of the appropriate trusts.

2. Records of deposits into and expenditures from all accounts (including the Sumter Mortgage Company, Ida Mae Belk Irrevocable Trust, I.M. Belk, Bibco, and all other entities), shall be turned over to the Special Administrator who shall marshal all Estate assets, establish an appropriate estate account, assure appropriate estate expenses are paid and, where necessary, make such demands or bring such actions as may be necessary to return to the Estate any funds or assets that may have been misapplied, whether intentionally or otherwise.

3. That the Special Administrator, upon written request, shall provide the co-trustees copies of monthly bank statements, checks, and deposit details of all accounts referred to in Paragraph 2 above.

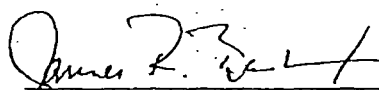
4. Based upon the Parties desire to minimize costs, anytime during the Special Administrator's service, the parties, by agreement may resolve this matter which would thereby relieve the Special Administrator of any further duties.

5. Input from the beneficiaries of the Estate may be directed to the Special Administrator, or through counsel employed by the Special Administrator to assist in the administration of the estate.

6. Any fees and expenses charged by the Special Administrator and counsel shall be approved by the Court. All beneficiaries shall receive notice of any hearing related to fees and costs.

7. All pertinent records shall be provided to a Certified Public Accountant(s) employed by the Special Administrator, so the CPA can bring current the bookkeeping of Sumter Mortgage and file completed Estate tax returns which are currently under an extension.

AND IT IS SO ORDERED.



James Barber III, Presiding Judge
Third Judicial Circuit

At Chambers
Columbia, South Carolina
October 2, 2008
October 31

10/31/07 09:47:15 Date Scanned

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VICKI M. MCCARTHY - REGISTER OF DEEDS
SUMTER COUNTY BY: R. Carter

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) IDA MAE K. BELK
IRREVOCABLE TRUST

This Agreement made this 17th day of Sept. 2007, between Ida Mae K. Belk (hereinafter referred to as Grantor) and Linda Belk Harris as Trustee (hereinafter referred to as Trustee). This Trust shall be known as the Ida Mae K. Belk Irrevocable Trust.

ARTICLE I

Creation And Disposition Of Trust

1. Creation, Name of Trust. I am the owner of the Bibco Corporation and an undivided one-half (1/2) interest and all assets of the above mentioned property known as Sumter Mortgage, an unincorporated entity.

I hereby transfer all of the above mentioned assets to the Ida Mae K. Belk Irrevocable Trust dated 17th day of Sept. 2007.

2. Trust During Lifetime. During my lifetime, my Trustee shall pay the income and principal of the trust as I may direct. If at any time, in the opinion of my Trustee, I am unable to so direct, my Trustee may pay income or principal as my Trustee may deem necessary to provide for my support and health and to pay my obligations. My Trustee is also authorized to continue to its conclusion any estate planning program which I have instituted during my lifetime but which remains incomplete as a result of my incapacity and shall annually add any undistributed income to principal.

3. Disposition at Death. It is my intention to prepare a Will which will authorize dissolution of the irrevocable trust and distribute all proceeds to my children.

Return To:
Linda Harris
PO Box 3610
Sumter, SC 29151-3610

I HEREBY CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL FILED
IN THIS OFFICE
Carol M. Jemney Deputy
REGISTER OF DEEDS
SUMTER COUNTY, S. C.

ARTICLE II

Debts, Taxes, And Other Charges

At my death, my Trustee may pay to or upon the order of my Personal Representative funds needed to pay my debts, funeral and burial expenses, costs of administration, transfer taxes, charitable pledges and specific bequests under my Will. My Trustee may rely upon my Personal Representative as to the amount of the charges. The decision of my Trustee about whether to provide funds shall be final. Assets that are not included in my gross estate shall not be used for such payments. The payments shall not be charged against any trust established herein or the share of any beneficiary.

ARTICLE III

Fiduciaries

1. Successor Trustee. If Linda B. Harris should fail or cease to serve as Trustee for any reason, I direct that my children select the Trust Department of a federally insured bank to serve as Successor Trustee.

2. Actions of Predecessor; Waiver of Board. No successor Trustee shall be responsible for or required to inquire into the actions of any Trustee occurring before the successor's appointment. My Trustee shall only be responsible for assets of this Trust upon receipt of such assets and during the period for which it retains such assets. These provisions shall survive the period during which a Trustee shall be acting as Trustee of any trust established hereunder. My Trustee shall not be required to post bond in any jurisdiction of the faithful performance of its duties hereunder or for the return of any payment on account of commissions.

3. Compensation. Any Trustee shall be entitled to receive reasonable compensation for fiduciary services; and if it maintains a published schedule of fees, then my Trustee

shall be entitled to compensation in conformity therewith at the time at the time such services are rendered, without judicial authorization; provided, however, that no Trustee shall be entitled to an acceptance fee on account of its succession to fiduciary duties following service by a prior Trustee; and provided, further, that no Trustee shall be entitled to a fee for or on account of a distribution of principal, or on account of the termination of its services as Trustee, commonly referred to as a "termination fee," except for reimbursement of reasonable expenses actually incurred. Any fees payable from income to which my Trustee is entitled may be made from current or accumulated income.

3. Fiduciary Powers. In addition to the powers granted by law, I grant my Trustee the powers set forth in the following subparagraphs:

- a. My Trustee may sell, exchange, lease, or encumber any trust assets upon such terms as my Trustee may deem appropriate.
- b. My Trustee may borrow money, grant security interests and execute mortgages, deeds of trust, and other instruments creating security interests upon such terms as my Trustee may deem appropriate.
- c. My Trustee may compromise and adjust any claims against or on behalf of any trust upon such terms as my Trustee may deem appropriate.
- d. My Trustee may make distributions to beneficiaries in cash or kind.
- e. My Trustee may invest and reinvest all or any part of the Trust Assets in any property an undivided interests in property, wherever located, and participate in proprietary mutual funds, common collective or pooled trust funds of my Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning

investments by fiduciaries. I further empower my Trustee to invest in any type of investment that plays an appropriate role in achieving the investment goals of any trust established herein, which investment shall be considered as a part of the total portfolio. It is my specific direction that no category or type of investment shall be prohibited. I specifically do not wish to limit the universe of trust investments in any way other than as is dictated by Trustee's exercise of reasonable care, skill and caution. In connection with my Trustee's investment and management decisions with respect to any trust established hereunder, my Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, tangible and intangible personal property, and real estate, the expected total return from income and the appreciation of capital, other resources of the beneficiaries, the Trust's needs for liquidity, regularity of income and preservation or appreciation of capital, and the particular relationship or special value, if any, which the Trust's asset or assets bear to its beneficiary or beneficiaries. My Trustee shall not be limited to any one investment strategy or theory, including without limitation modern portfolio theory, the efficient market theory or otherwise, but shall be free to consider any appropriate investment strategy or theory under all the circumstances.

f. My Trustee may sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Assets, on such terms as to my Trustee shall seem best, and no person dealing with my Trustee shall be bound to see

to the application of any monies paid.

g. My Trustee may hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship), or in bearer form,

h. My Trustee may employ agents, assistants and other advisors deemed by it needful for the proper administration and day to day management of the Trust Assets, and it may do so without liability for any neglect of such agent or representative, provided he was selected and retained with reasonable care.

i. My Trustee may determine, irrespective of statute or rule of law, what shall be fairly charged or credited to income and what to principal and whether or not to establish depreciation reserves.

j. My Trustee may, in its discretion, retain any shares of stock in itself or in any closely held business, or any affiliate, parent, subsidiary or successor corporation thereof (hereinafter called "Company"), and such retention shall not be deemed a violation of its duty of undivided loyalty or of its duty with respect to the diversification of investments. It may further exercise the same discretion, rights and powers with respect to the shares of stock in the Company, both as to those shares originally received and those acquired thereafter, as is conferred upon it by this instrument with respect to all the Trust Assets, and be subject to no greater liability as to the shares its own stock so held than as to any other securities which may form a part of the Trust Assets.

k. My Trustee shall have the following rights and powers with regard to any real property forming a part of the corpus of this Trust, with regard to environmental

matters:

(1) To deal with matters involving the actual or threatened contamination of trust property (including interests in sole proprietorships, partnerships or corporations and any assets owned by such business entities) by hazardous substances, or involving compliance with environmental laws. In particular, my Trustee is empowered:

(a) To inspect and monitor any such property periodically, as it deems necessary, to determine compliance with any environmental law affecting such property, with all expenses of such inspection and monitoring to be paid from the income or principal of the trust;

(b) To respond (or take any other action necessary to prevent, abate, or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;

(c) To refuse to accept property as a trust asset if it determines that such property is contaminated by any hazardous substances or that such property is being used or has been used for any activities directly or indirectly involving hazardous substances which could result in liability to the trust or otherwise impair the value of trust assets;

(d) To settle or compromise at any time any claim against this trust related to any such matter asserted by any governmental body or

private party;

(e) To disclaim any power which it determines may cause it to incur personal liability as a result of any such matters, whether such power is set forth in this document, incorporated by reference herein, or granted or implied by any statute or rule of law;

(f) To decline to serve as Trustee or, having undertaken to serve, resign at any time it believes there is or may be a conflict between it in its fiduciary capacity and its individual capacity because of potential claims or liabilities which might be asserted against this trust because of the type or condition of trust assets.

(2) My Trustee shall not be personally liable to any beneficiary or other party interested in this trust, or to any third parties, for any claim against the trust for the diminution in value of trust property resulting from such matters, including any reporting of or response to (1) the contamination of trust property by hazardous substances, or (2) violations of environmental laws related to my trust; provided that my Trustee shall not be excused from liability for its own negligence or wrongful or willful acts;

(3) When used in this document the term "hazardous substance" shall mean any substance defined as hazardous or toxic or otherwise regulated by federal law otherwise regulated by any federal, state or local law, rule or regulation relating to the protection of the environment or human health ("environmental law");

reasonable attorney's fees) attributable to any such accounting and approval shall be paid by this trust.

WITNESS my signature and seal:

Ida Mae K. Belk
Ida Mae K. Belk, Settlor and Trustee

The Settlor and Trustee signed, sealed and declared this as her trust instrument in our presence on the date indicated. At her request, we have signed our names as witnesses, and she and we were present together throughout.

M. W. Wadley Jr of Greenville SC
Deborah A. Meeks of Sumter, SC

I accept and agree to be bound by all conditions.

M. W. Wadley Jr
Witness
Deborah A. Meeks
Witness

Linda Belk Harris
Linda Belk Harris

[Signature] . Notary
Commission - Expires 2/04/2012

AFFIDAVIT OF SUBSCRIBING WITNESS (PROBATE)

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named:

NAME OR NAMES OF GRANTORS OR EXECUTORS OF THE DOCUMENT
sign, seal, and as his (her) or (their) ACT and DEED, deliver the attached document for the uses and purposes therein stated, and that (s)he, with the other witness(es) whose name is subscribed thereon, witnessed the due execution thereof.

SIGNATURE OF WITNESS

SWORN to before me this _____
day of _____ 19____

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

**SOUTH CAROLINA ACKNOWLEDGMENT
FROM GRANTOR OR MAKER OF THE INSTRUMENT
(CAN BE USED IN LIEU OF THE ABOVE PROBATE)**

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

I LINDA B. HARRIS, do hereby certify that
NAME OF OFFICIAL AND OFFICIAL TITLE

IDA MAE BELK, personally appeared
NAME OF GRANTOR OR MAKER

before me this 17th day of September, 2007

and acknowledged the due execution of the foregoing instrument.

[Signature]
SIGNATURE OF OFFICIAL OR NOTARY PUBLIC

My Commission Expires: 2/4/2012

THIS FORM WAS PREPARED IN ACCORDANCE WITH S. C. STATUTE 30-5-30

CLIENT'S COPY

STATE OF SOUTH CAROLINA)

LAST WILL AND TESTAMENT

COUNTY OF SUMTER)

I, IDA MAE BELK, a resident of and domiciled in the County of Sumter, State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

I am the widow of Robert D. Belk and my children are Gene C. Belk, Linda B. Harris, Patricia B. Schmid, Cheryl Ann Hanlon, and Robert M. Belk.

I have heretofore created an Irrevocable Trust of all of my assets and one condition of the Trust is that upon my death, the proceeds of said Trust shall be distributed pursuant to this my Will.

I direct that all of my property of which I may die possess, real, personal or mixed be divided into five (5) equal parts and that one part be delivered immediately to Gene C. Belk; one-fifth (1/5) to be delivered immediately to Linda B. Harris; and one-fifth (1/5) to be delivered immediately to Patricia B. Schmid.

As to my daughter, Cheryl Ann Hanlon, I leave, bequeath and devise one-fifth (1/5) of my Estate in Trust to my daughter, Linda B. Harris. Linda B. Harris, as Trustee, shall have the authority to give all of the income of said Trust to Cheryl Ann Hanlon, and if in her discretion it is in the best interest of Cheryl Ann Hanlon to deliver to her five percent (5%) of the corpus of the Trust or Five

Thousand and no/100ths (\$5,000.00) Dollars, whichever shall be greater at such time as in the sole discretion of my Trustee. The same is needed for the health, education and welfare of the said Cheryl Ann Hanlon.

Upon the death of Cheryl Ann Hanlon, I direct that the remainder of the this Trust, shall held be in trust by my Trustee, for the life of said William T. Hanlon, Sr. Should William T. Hanlon, Sr. die before Cheryl Ann Hanlon, then my Trustee shall divide the assets of the Cheryl Ann Hanlon

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Trust into three (3) equal parts.

Upon the death of Cheryl Ann Hanlon and William T. Hanlon, Sr., one-third (1/3) of the corpus of this Trust (Cheryl Ann Hanlon) shall be immediately delivered to Sandra Jean Hanlon provided she is then living. If, however, she has died prior to the death of Cheryl Ann Hanlon and leaves one or more decedents then living, said decedents shall receive her share.

The share provided to William Thomas Hanlon, Jr. and Robert Wayne Hanlon shall be held in trust by my Trustee. The Trust for William Thomas Hanlon, Jr. shall be a Supplemental Needs Trust which is intended as a non-support supplemental needs trust for the benefit of my grandson, William Thomas Hanlon, Jr. who is to be viewed as the primary beneficiary thereof. Its purpose is to supplement but not supplant whatever benefits and services he may from time to time be eligible to receive by reason of his age, disability or other factors from federal, state, or local government and charitable sources.

J.M.B.
DAM

The purpose of this Trust is to supplement governmental and charitable programs which may contain certain gaps with regard to the welfare of my grandson which unaddressed would greatly reduce the possibility of him maintaining himself independently and having the capacity for meeting his needs for residential, personal, and other non-medical services. It is therefore, my intent and direction that my Trustee use the principal and income of this Trust to provide him with those benefits and services and only those benefits and services in which my Trustee's judgement are not available to him otherwise. My Trustee has sole discretion to take whatever action she may consider advisable for the welfare of my grandson.

ITEM II

The share for son, Robert M. Belk, shall be held in trust by my Trustee, for the life of said Robert M. Belk.

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If he is not living, or upon his death, his share will be distributed in equal shares one each for my grandchildren Robert D. Belk, Jessica Belk and Robert M. Belk, Jr. Should any of my grandchildren predecease their father leaving issue the issue shall stand in place instead of the deceased sibling/grandchild and said children shall equally share in the remainder of said Trust.

ITEM III

ROBERT WAYNE Hanlon SUPPLEMENTAL TRUST

My Trustee shall hold the proceeds due to Robert Wayne Hanlon at the time that he becomes eligible for proceeds under the same terms and conditions of the William Thomas Hanlon Trust.

As to these trusts, that in the event that either of my grandchildren are unable to support themselves independently, my Trustee may in the exercise of the Trustee's best judgement and fiduciary duty seek support and maintenance for him from all available public sources. My Trustee shall take into consideration the applicable resources and income limitations of any public assistance program for which my grandson shall be eligible. In carrying out the provisions hereof, my Trustee shall be mindful of my grandson's probable future needs. No part of this corpus shall be used to supplant or replace public assistance benefits of any county, state, federal or any other governmental agency having legal responsibility to personal disability that are the same as those which my grandson may be experiencing. This is determining my grandson's public assistance eligibility, no part of the principal or undistributed income of this Trust shall be considered available to him. In the

J.M.
DAM

event that my Trustee is requested to release principal or income to or on my grandson's behalf to pay for benefits or services that such public assistance is otherwise authorized to provide were it not for the assistance of this Trust or in the event that my Trustee is requested to petition the court or any other administrative agency for release of the Trust principal or income for this purpose. My Trustee is authorized to deny such request and, in her sole discretion, take whatever administrative or judicial

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steps may be necessary to continue the public assistance program eligibility of my grandson including obstruction from a court of competent jurisdiction or ruling that the Trust corpus is not available to my grandson for such eligibility purposes. Any expenses of my Trustee in this regard, including reasonable attorney's fees shall be considered an expense of this Trust.

Upon the death of either of my grandsons, the Trustee shall divide the assets of the Trust into equal shares, one each for the surviving siblings, that is to say the survivors of Robert Wayne Hanlon, Sandra Jean Hanlon, and William Thomas Hanlon, Jr. provided, however, that Sandra Ann Hanlon is not then living, but leaves one or more decedents, then her share shall not lapse but instead shall be distributed to her decedents, per stirpes. Upon the death of my last surviving grandson, any remainder left in the Trust shall be distributed to the Robert M. Belk Trust for administration and distribution pursuant to the provisions herein included.

If my Trustee, Linda B. Harris, shall be unable or unwilling to serve, I direct that a bank, trust company, or other financial house having trust powers shall be named by Linda B. Harris, or if she has become deceased, then by my daughter, Patricia B. Schmid. In the event of failure to name a successor trustee, I direct that the Trust Department of the National Bank of South Carolina be Trustee of all the trusts set out herein above. The appointment of successor trustee shall be effective upon a written acceptance of fiduciary duties by the successor trustee and filed in the Probate Court of Sumter County, South Carolina.

J.M.
DAM

My Trustee shall have the right to receive reasonable compensation for fiduciary services. If it maintains a public schedule of fees, then my Trustee shall be entitled to compensation in conformity therewith at the time that such services are rendered. Provide that no trustee shall be entitled to an acceptance fee on account of its succession of fiduciary duties and further provided that no trustee shall be entitled to a fee on account of distribution of principal on account of

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termination of services of trustee except for reimbursement of general fees or reasonable expenses actually incurred. Any fees payable from the income from which my Trustee is entitled may be made from current or accumulated income.

I, IDA MAE BELK, the testatrix, sign my name to this 11th day of October, 2007, and being duly sworn; do hereby declare to the undersigned authority that I sign execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes herein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint of undue influence.

Ida Mae Belk
IDA MAE BELK

We, H M Weisberg Jr and Deborah A. Meeks, the witnesses, sign our names to this instrument, and at least one of us, being duly sworn, does hereby declare, generally and to the undersigned authority, that the testatrix signs and executes this instrument as her Last Will and that she signs it willingly, and that each of us, in the presence and hearing of the testatrix, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

H M Weisberg Jr
Witness

Deborah A. Meeks
Witness

CLIENT'S COPY

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF SUMTER)

Subscribed, sworn to and acknowledged before me by, IDA MAE BELK, the Testatrix, and
subscribed and sworn to before me by Deborah A. Meeks, witness, this

16th day of October, 2007.

Deborah A. Meeks

M. McLeod

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-7-10

1 professionals. But on the other hand, I would like
2 to save money. We have lost so much money to this
3 point, that I would like to save as much money as
4 possible.

5 Q HAVE YOU any involvement in the
6 administration of the estate to this point?

7 A No, I have not.

8 MR. WILLIAM JOHNSON: Thank you. Answer
9 any questions.

10 THE COURT: MR. WARNER, any?

11 MR. WARNER: Yes, Your Honor. Just be a
12 few.

13 CROSS EXAMINATION MR. WARNER:

14 Q Ma'am, please don't take anything I ask
15 you disrespectfully, okay.

16 A I won't.

17 Q And how old are you please?

18 A I'm 51.

19 Q And you have been married how many times?

20 A Does that matter?

21 Q I'm just asking. How many times have you
22 been married?

23 A Three times.

24 Q This is your third husband?

25 MR. BELK: Fourth.

1 A No, I have not been married four times.

2 THE COURT: MR. BELK, keep your comments
3 to yourself.

4 Q Now you have worked for your father 20
5 years straight?

6 A On and off.

7 Q Tell me what jobs you have held.

8 A Well 20 years in total. On and off. In
9 between there, I have had other jobs.

10 Q Educationally, where did you finish high
11 school.

12 A I have a diploma.

13 Q Where did you finish high school?

14 A I have a GED.

15 Q When did you get your GED?

16 A Four years ago. Five years ago.

17 Q So when did you drop out of high school?

18 A In the 12th grade.

19 Q And you were 17 then?

20 A 17 years.

21 Q And you got your GED 4 years ago.

22 A Yes, sir.

23 Q In the State of New York or South
24 Carolina?

25 A South carolina.

1 Q Have you any other courses or tech
2 schools?

3 A Yes, sir.

4 Q And where did you take courses?

5 A At Sumter Tech.

6 Q And what courses did you take?

7 A Bookkeeping I, Bookkeeping II, Typing I,
8 Typing II.

9 Q Was that before of after your GED?

10 A That was before, continuing education.

11 Q Okay. Your first marriage did you live in
12 South Carolina the whole time?

13 A Yes.

14 Q And you have one child?

15 A One child.

16 Q And your second marriage you lived in
17 South Carolina the whole time?

18 A Yes, sir.

19 Q Then you lived in New York for four years?

20 A Yes, sir.

21 Q Have you worked with CPA's before?

22 A Yes, sir. Mr. MacEwen, I've worked with
23 him.

24 Q Mr. MacEwen.

25 A Uh-huh. (affirmative.)

1 Q You and linda garrett, do you and she get
2 along?

3 A Yes, we do.

4 Q Was there a time you didn't get along?

5 A I think we have ins and outs like most
6 employees do, but there was really never a point
7 where we really just didn't like each other.

8 Q Are you familiar with your father's
9 business dealings?

10 A Yes, I am.

11 Q How are you familiar with those?

12 A I am familiar with the paperwork.

13 Q Are you familiar with the way he bought
14 and sold real estate?

15 A Yes, sir.

16 Q You were involved in those transactions?

17 A Yes, sir.

18 Q Are you familiar with the fact, or do you
19 know that some of notes payable to R. D. Belk
20 individually are being deposited elsewhere? Do you
21 know anything about that?

22 A No, sir.

23 Q Over the past four years, have you made
24 any efforts to get any type of accountings from your
25 sister or brother?

1 A Yes, sir. I contacted my father. In
2 fact, the first year he did send me a package. But
3 any time after that, I was not. I asked for those
4 records, but I was not given anything.

5 Q So you haven't, you haven't done anything
6 up to now to attempt to resolve whatever the
7 problems are with the estate, is that correct?

8 A No, sir, I have only been back in town 6
9 months.

10 Q Okay. After you've worked as a motel
11 clerk your next job was just on and off at your
12 father's office?

13 A No, sir.

14 Q Where did you work after that?

15 A I worked with my father at bibco
16 incorporated. and from there is where I hired
17 Linda Garrett.

18 Q You hired her?

19 A I was the office manager at that time.

20 Q Did you work for your sister, linda
21 harris?

22 A I've never worked for her except just as
23 being a sister and filing in for her sometimes. I
24 never was paid for that.

25 Q You didn't work at day care center at all?

1 A I did not get paid. No, sir, I was not
2 employed there.

3 Q Did you ever -- were you ever there and
4 just leave the place without her knowing it? Did
5 you ever just walk out?

6 A No.

7 Q Now if you are appointed as personal
8 representative, what would be the first thing you
9 would do?

10 A The first thing I would have to do is get
11 myself familiar with the paperwork.

12 Q Which paperwork?

13 A All the paperwork.

14 Q Have you sought anything from any of
15 accountants, Mr. Long, or anybody else?

16 MR. WILLIAM JOHNSON: Objection Your
17 Honor. That's in the pleadings.

18 MR. WARNER: I don't think I have any
19 further questions.

20 THE COURT: Mr. Moore, do you have
21 anything?

22 MR. MOORE: Just briefly.

23 CROSS EXAMINATION BY MR. MOORE:

24 Q I just want to make sure that, a few
25 things to clarify. You love your mother very much.

1 A I do.

2 Q And it's my understanding that you are
3 wanting to serve as the personal representative.
4 One reason is you are concerned about the 5 percent.
5 Or whatever the personal representative fee would
6 be.

7 A That's true.

8 Q And you are willing to work at a reduced
9 fee or no fee at all on the estate?

10 A Yes, sir.

11 Q And your mama, she's always been a very
12 fugal lady, hasn't she?

13 A She has.

14 Q And she is also concerned about the
15 expense of an outside personal representative, isn't
16 she?

17 A Yes, sir.

18 Q And if linda is not going to do it, and
19 gene is not going to do, and the other brother can't
20 do it and your sister has special needs, it pretty
21 much falls by default to you, doesn't it?

22 A Yes, sir. I feel responsible for them.

23 Q And you feel also responsible for your
24 mom.

25 A I do.

PATRICIA SCHMIDT-CROSS BY MOORE

1 Q Do you love your mama?

2 A I've called her every day while I have
3 been in new york for several hours a day.

4 Q Let me talk about linda garrett for
5 awhile. Linda garrett has worked for this business
6 for 25 years, is that correct?

7 A That's right.

8 Q And her job has been kind of bookkeeper,
9 and the ram rod of Sumter Mortgage for 25 years,
10 isn't it?

11 A Yes, sir.

12 Q If you were to go to sumter mortgage and
13 ask anything, the person you would ask for is Linda
14 Garrett.

15 A That's correct.

16 Q Linda garrett knows where everything is.
17 Knows what is what. Knows where the paperwork is.
18 Knows where the contracts are.

19 A She does.

20 Q Linda Garrett was somebody your daddy
21 trusted.

22 A Yeah, sHe was a valued employee, and he
23 could trust her.

24 Q The truth of the matter is, if Sumter
25 Mortgage lost Linda, it would be a mess, wouldn't

PATRICIA SCHMIDT-CROSS BY MOORE

1 it?

2 A It would be.

3 Q And also the truth is, most of what your
4 daddy had was Sumter Mortgage company, wasn't it?

5 A Yes, sir.

6 Q He didn't have much of anything else
7 except Sumter Mortgage?

8 A That's correct.

9 Q So the person who knows everything in the
10 world about your dad's business is basically going
11 to be Linda. And she is sitting in the back of the
12 courtroom.

13 A That's right.

14 Q And you have worked with Linda.

15 A I have.

16 Q And you are totally convinced that you can
17 work with her again.

18 A I am.

19 Q You respect her.

20 A I do.

21 Q You feel she respects you.

22 A Yes, sir.

23 Q And although you haven't worked in the
24 business for awhile, you certainly understand the
25 concept of the business and know how the paperwork

PATRICIA SCHMIDT-CROSS BY MOORE

1 works.

2 A Yes, sir.

3 Q You would know where to look in order to
4 know who is owed what.

5 A Yes, sir.

6 Q And you would know who to ask in regard to
7 who would know what.

8 A Yes, sir.

9 Q And when you saw the documents, you are
10 familiar with what they should look like. And you
11 would be able to tell pretty what's going on with
12 very little work, correct?

13 A Yes, sir.

14 Q And one of the things you understand that
15 you would need is to secure the services of an
16 accountant; somebody who can basically put 1 plus 1
17 together and decide who owes what. And what's
18 there.

19 A That's right.

20 Q Now you understand that if you're the
21 personal representative one of the things that this
22 court is going to order is that this estate be
23 closed as soon as possible.

24 A Yes, sir.

25 Q Is closing this estate as soon as possible

PATRICIA SCHMIDT-CROSS BY MOORE

1 one of the things that you are wanting to do?

2 A It is.

3 Q And are you basically willing to work for,
4 as I understand, no fee, is that correct?

5 A That would be fine.

6 Q And of course, if we hired an outside
7 representative, he is going to charge, correct?

8 A That's right.

9 Q Now one of this things that you understand
10 is that there has been some money that has gone in
11 to this car lot that Gene and Linda, and their son
12 have gotten this money. You understand as personal
13 representative you might have to make a claim
14 against them.

15 A Yes, sir.

16 Q You're willing to do that?

17 A I am.

18 Q Now you also understand that your sister
19 is a special needs person. Is that correct?

20 A Yes, sir.

21 Q And she has special needs children too.

22 A She does.

23 Q One of things you are concerned about and
24 we talked about earlier, is that one of the reasons
25 that you want to be Personal Representative is to

PATRICIA SCHMIDT-CROSS BY MOORE

1 ensure that when the estate is closed and the trusts
2 are set up, that the appropriate trusts are set up
3 for your special needs sister?

4 A That's true.

5 Q And it's my understanding that you talked
6 with your mom, and your mom wants you to do this if
7 you will.

8 A We have discussed it. And she does.

9 Q And you want to do this?

10 A Yes, sir.

11 Q Let me ask you this. If the judge
12 appointed you, instead of Duane Shuler, do you
13 think you can work with Gene?

14 A I do.

15 Q Do you think you can work with Linda?

16 A I do.

17 Q Do you think you can work with your mom?

18 A Yes, sir.

19 Q Do you think you can work with MR. WARNER?

20 A Yes, sir.

21 Q Do you think you can work with me?

22 A Yes, sir.

23 Q Do you think you can work with MR.

24 JOHNSON?

25 A Yes, sir.

PATRICIA SCHMIDT-CROSS BY MOORE

1 THE COURT: You're asking a lot now.

2 Q But you do understand that because of some
3 of the complexities of the numbers that it would be
4 necessary for you to see your lawyers. And probably
5 an accountant to get the appropriate and final
6 accounting to get this estate done.

7 A Yes, sir.

8 MR. MOORE: Your honor, I don't have any
9 further questions. Thank you.

10 Mr. POPE JOHNSON: No questions.

11 Mr. WILLIAM JOHNSON: Yes, I do have.

12 MR. TYLER: None, Your Honor.

13 THE COURT: Anything further on redirect?

14 MR. WARNER: I do, Your Honor, as new
15 matter brought up by Mr. Moore very briefly.

16 CROSS EXAMINATION BY MR. WARNER:

17 Q Ms. schmidt, you wouldn't have a problem
18 with them making a claim against your mother or
19 bibco if it has been improperly funded with assets
20 that belong to your father. I see you are
21 hesitating.

22 A I would have to see the paperwork. And I
23 always stand for what is right.

24 Q But my question is, you would not have a
25 problem if the money titled should have gone into

PATRICIA SCHMIDT-CROSS BY WARNER

1 the estate and instead put into bibco, you wouldn't
2 have a problem making a claim against your mother to
3 get it back, would you?

4 A I would have to do what I have to do if it
5 was a legal matter.

6 Q And you talked to your mother for two
7 hours while you were in New York, is that what you
8 said?

9 A Yes.

10 Q Okay. You were married to Ray Pritchard?

11 A That was not a marriage, sir. That was an
12 annulment. I was only 17.

13 MR. WARNER: I have no further questions.

14 THE COURT: I got a couple of questions.

15 Do you get along with your brothers and your
16 sisters?

17 A I get along with all my brothers and
18 sisters.

19 THE COURT: There is no ongoing dispute or
20 problem at this time.

21 A No, sir.

22 THE COURT: And you understand clearly if
23 you were appointed, that you would be responsible
24 for doing certain things. And one is to marshal all
25 the assets that belong to the estate to see that any

BIBCO, INC
POST OFFICE BOX 1853
SUMTER, SC 29151-1853
PHONE: (803) 494-9150

2-15-08,

I, Ida Mae K. Bell do give Linda Garrett
permission to deposit all incoming monies
into the I. M. account. I understand that
Gene has not signed the payroll checks.
I am giving Linda permission to write
them out of either I. M. Bell or the
Bibco account.

Ida Mae Bell

CERTIFICATE OF TRANSMITTAL

RE: ESTATE OF ROBERT DILLON BELK

CASE NUMBER: 2008-CP-43-327

TO: JAMES C. CAMPBELL – SUMTER COUNTY CLERK OF COURT

In accordance with Section §62-1-308, Code of Laws of South Carolina, 1976, each of the following documents is hereby certified to be true copy of the original document pertaining to the appeal from Sumter County Probate Court in the Estate of Robert Dillon Belk.

- Motion for transfer to Court of Common Pleas
- Application and Petition for Appointment of Personal Representative
- Renunciation of Right to Administration
- Last Will and Testament
- Fiduciary Letters
- Death Certificate
- Claim - Safe Federal Credit Union
- Information to Heirs and Devisees
- Proof of Delivery for Information to Heirs and Devisees and Last Will and Testament
- Claim - Tuomey Healthcare System
- Printer's Affidavit
- Letter from Tuomey in regards to Satisfaction of Claim
- Motion for Extension in regards to filing Inventory and Appraisement
- Claim - Mayo Foundation
- Letter and release in regards to satisfaction of Mayo Foundation claim
- Disclaimer
- Motion for Extension in regards to filing Inventory and Appraisement
- Letter from Department of Revenue
- Letter from Probate Court in regards to extension expiring for Inventory and Appraisement
- Inventory and Appraisement
- Letter from Carlton R. Davidson
- Receipts for Probate Bill payment
- Accounting from March 31, 2004 to March 31, 2005
- Closing tax letter from Department of Revenue
- Receipt and Release from Linda Garrett
- Letter from Probate Court in regards to filing accounting - dated 6/6/06
- Letter from Probate Court in regards to filing accounting - dated 11/20/06
- Accounting from April 1, 2005 - March 31, 2006
- Petition and Rule to Show Cause
- Proof of Delivery

- Accounting from April 1, 2006 - March 31, 2007
- Letter from Kenneth R. Young, Jr.
- Order of Continuance
- Letter from John Chase
-

This given under my hand and Seal of this Court, this 19th day of February, 2008.

Dale P. Brown Assoc

Dale Atkinson

Probate Court Judge

Sumter County, Sumter, South Carolina

Received on the 19th day of February, 2008.

By:

Sharon L. Goff

Clerk of Court

Sumter County, Sumter, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF: SUMTER

IN THE MATTER OF: Estate of Robert D. Belk

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2004ES4300225

☒ ORIGINAL☐ SUPPLEMENTAL #

Personal Representative (s): Gene C. Belk

Linda B. Harris

Decedent's Social Security Number: [REDACTED]

Decedent's Date of Death: [REDACTED]

Was there a will? ☒ YES ☐ NO

Domicile at death: Sumter

(county)

SC
(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 17th day of October, 2005

Lillian B. Moore
Notary Public for South Carolina

My Commission Expires: 2/04/15

Attorney: Karen H. Thomas

Address: 1501 Main St.
Columbia, SC 29201

E-Mail:

Telephone: 803-254-4190

Signature: Gene C. Belk

Name: Gene C. Belk

Address: [REDACTED]

E-Mail:

Telephone (O): [REDACTED]

(H): [REDACTED]

Signature: Linda B. Harris

Name: Linda B. Harris

Address: [REDACTED]

E-Mail:

Telephone (O): [REDACTED]

(H): [REDACTED]

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$	\$ 521,250
Schedule B - Stocks and Bonds		
Schedule C - Notes Due Decedent and Cash		67,882.00
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		
Part 2 - Payable to Beneficiary		
Schedule E - Jointly Owned Property		
Schedule F - Other Miscellaneous		2,569,724.00
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's Life		
Schedule H - Powers of Appointment		
Schedule I - Annuities and Retirement Accounts		
TOTAL GROSS VALUE	\$	3,158,856
ENCUMBRANCES	(	179,238.00
TOTAL NET WORTH	\$	2,979,618.00

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
1	Rental Lot: 50 Abington TMS#099-12-01-013			\$7,850.00
2	Rental Lot: 2435 Hwy 261 South Sumter TMS#100-00-02-007			\$6,200.00
3	Rental Lot: 2425 Hwy 261 South Sumter TMS#100-00-02-008			\$6,200.00
4	Rental Lot: 2415 & 2419 TMS#:100-00-02-009			\$6,200.00
5	Rental Lot: 2405 TMS#100-00-02-010			\$7250.00
6	118 Acre Tract Middleton Township TMS#:128-00-01-003			\$217,350.00
7	4835 Slick Willie Drive TMS#:156-08-01-058			10,800.00
8	Right of Way TMS#:156-08-01-059			
9	Commercial Lot TMS#:186-00-01-020			\$26,900.00
10	Residence: 2795 Powhattan Dr. TMS#: 204-16-03-013			\$193,700.00
11	5920 Wedgefield Rd. TMS#099-05-02-009			\$38,800.00

TOTAL SCHEDULE A \$ 521,250
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value

TOTAL SCHEDULE B \$
(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value
1	NBSC Checking Account # [REDACTED]	\$55,369.00
2	SAFE Federal Banking Acct # [REDACTED]	\$774.00
3	Note due from Timothy Brophy	\$5,923.00
4	Note due from Titus Rembert	\$5,816.00

TOTAL SCHEDULE C \$ 67,882.00
(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value

TOTAL PART 1 \$

(also enter under recapitulation, page 1)

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ _____

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Value
1	Home Furnishings	\$2,500.00
2	1990 Lincoln Continental VIN 1Inlm984SLY653627	\$1,000.00
3	33.3% interest in AB&G	\$26,207.00
4	50% interest in Gene Belk and Robert D. Belk, d/b/a Foxx Company	\$375,000.00
5	50% interest in Ida M. Belk and Robert D. Belk, d/b/a Sumter Mortgage Company	\$2,151,308.00
6	50% interest in Ida M. Belk and Robert D. Belk, d/b/a Sumter Mortgage Finance	\$13,709.00

TOTAL SCHEDULE F

(also enter under recapitulation, page 1)

\$ _____

\$2,569,724.00

NOTE: FOR SCHEDULES G, H, AND I. LIST VALUES ONLY IF PAYABLE TO ESTATE.

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers. Lifetime transfers of real property in which decedent retains a life estate or other incidents of ownership.

Did Decedent make any transfers during lifetime as described above?

☐ YES ☒ NO

If "yes" please give date and type of transfer and list total amount payable to estate:

(If more space is required, insert additional sheet of same size.)

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE H \$ _____
(also enter amounts payable to estate under recapitulation, page 1)

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE I \$ _____
(also enter amounts payable to estate under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered.

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
1	2795 Powhattan Drive Mortgage	\$16,968.00
2	One-half of the note secured by a mortgage on property in Gene Belk and Robert D. Belk, d/b/a Foxx Company	\$162,270.00

TOTAL ENCUMBRANCES \$ 179,238.00
(also enter under recapitulation, page 1)

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this county, such estate is not reportable to the South Carolina Department of Revenue.

Executed this _____ day of _____, 2005.

_____, Probate Judge

STATE OF SOUTH CAROLINA)

)

COUNTY OF SUMTER)

)

)

GENE BELK, ET. AL.,
PLAINTIFFS

VS.

2008-CP-43-00347

LINDA B. HARRIS, ET.AL.,
DEFENDANTS

OCTOBER 2, 2008
SUMTER, S.C.

BEFORE THE HONORABLE JAMES R. BARBER, III

MR. JAN L. WARNER, ESQUIRE
MR. M.M. WEINBERG, ESQUIRE
MR. POPE JOHNSON, ESQUIRE
MR. JAHUE MOORE, ESQUIRE
MR. D.J. TYLER, ESQUIRE

MARGARET T. SULLIVAN,
COURT REPORTER

RECEIVED
2008 NOV 10 PM 2:33
V.F.B. LLP
CLERK & LAW SERVICES
OF SC, PA

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	DESA BALLARD				
2	BY MR. WARNER	43		75	
3	BY MR. P. JOHNSON		59		
4	BY MR. MOORE		67		
5	GENE BELK				
6	BY MR. WARNER	77			
7	KAREN THOMAS				
8	BY MR. WARNER	102		126	
9	BY MR. MOORE		115		
10	WILSON MACEWEN				
11	BY MR. WARNER	126			
12	PATRICIA SCHMIDT				
13	BY W. JOHNSON	147			
14	BY MR. MOORE		155		
15	BY MR. WARNER		162		
16	BY THE COURT		168		
17	EXHIBITS				
18	NO.	DESCRIPTION	ID.	EV.	
19	P-1	WILL		104	
20	P-2	FAMILY SETTLEMENT		106	
21	P-3	MEMORANDUM		108	
22	P-4	TRUST SEVERANCE AGREEMENT		110	
23	P-5	IRREVOCABLE TRUST		134	
24	P-1	PROFFER AFFIDAVIT DINKINS VS. BIBCO	125		
25	C-1	AFFIDAVIT		124	
26	C-2	AFFIDAVIT		124	

1 THE COURT: we are here this morning on
2 the MATTER OF GENE BELK, individually, and as
3 co-personal representative of the estate of Robert
4 Belk. One of the heirs and trustee, et. Al. There
5 are a number of motions pending. And I have been
6 asked by judge manning to come to Sumter or go to
7 Richland wherever could be arranged. we decided it
8 would be in sumter to hear these motions.

9 A couple of things before we begin. We
10 had a status conference last Friday morning, and we
11 discussed a number of things. One of which was an
12 issue involving certain discovery pursuant to a
13 subpoena. Were you able to talk and resolve any of
14 that?

15 MR. WARNER: We have not received any
16 records.

17 Mr. POPE JOHNSON: We withdrew the
18 objection to the -- well the Motion to Quash. Jan
19 and I had communications this week and I told him we
20 had withdrawn. we have, I don't know whether he has
21 gotten the records yet or not. We told him to get
22 in touch with the person to see about getting
23 records.

24 THE COURT: Well that's not an issue
25 anymore.

1 MR. JOHNSON: That's not an issue.

2 MR. WARNER: Well it is not an issue. We
3 don't have records. But other than----

4 THE COURT: It's not something before
5 then. If they had some objections to subpoenas
6 being issued then---

7 MR. JOHNSON: We've withdrawn the
8 objection.

9 THE COURT: They have withdrawn the
10 objection. So it's just, you know, you don't have
11 to deal with trying to get -- secure the records.
12 And if you can't pursuant to the subpoena, then seek
13 some relief from the court.

14 MR. WARNER: We have subpoenaed the same
15 witnesses to be here today, with the same records,
16 so we've received those.

17 THE COURT: What else? Apparently you all
18 weren't able to come to any sort of agreement with
19 respect to somebody being appointed as the
20 administrator of the estate. That issue is still
21 before us. Is that correct?

22 MR. WARNER: Judge, we don't believe that
23 is before, because of jurisdictional issues we
24 raised back in April and today. And We don't
25 believe that still there is subject matter

1 jurisdiction here with regard to removal of our
2 client. I think the only issue is the removal of
3 Ms. Harris.

4 THE COURT: Well I had told you I would
5 not hear this matter unless y'all resolved that.

6 Mr. Warner: Well I don't know if we can
7 agree with subject matter jurisdiction. And that's
8 where we are.

9 THE COURT: The order, I've read the
10 orders for removal. And I've looked at the statute
11 and apparently the only thing that can be heard
12 pursuant to an order of removal is whatever that
13 order says. And the order in his case typed on the
14 bottom says the case is removed to the Circuit
15 Court.

16 MR. WARNER: The only issue in that
17 application of Probate Court was the removal of Ms.
18 Harris as co-personal representative. There was no
19 other issue. And, your honor, nothing else has been
20 removed. They filed motions to remove in this court
21 back in April. And we told them, I hand sent out to
22 everybody again our memo of April, and said there
23 was no jurisdiction. I have a subsequent memorandum
24 to hand up to the Court today and to counsel; that
25 there is no subject matter jurisdiction to hear

1 anything with regard to personal representative
2 removal except for Ms. Harris.

3 THE COURT: Well a lot of course is fairly
4 clear, that the, at least, from what I have seen,
5 the only thing that is heard by the circuit court is
6 whatever is removed. And anything else has to go
7 through the probate court and get removed as well.

8 MR. WEINBERG: Judge I filed, or Mr. Moore
9 filed an order to remove, I mean, on the petition,
10 to remove Gene Belk back in June. It did not go to
11 probate court. I filed in probate court and
12 forwarded a copy to mr. warner and the other parties
13 this week.

14 THE COURT: Well but it hasn't been
15 removed by the probate court.

16 MR. WEINBERG: But it was filled in
17 probate court and filed here. It was moved along
18 with the other stuff, I would assume.

19 THE COURT: Well so you all want to
20 continue the hearing, is that correct?

21 MR. WARNER: Judge,---

22 THE COURT: today?

23 MR. WARNER: Well, your honor, we still
24 believe we are entitled to be heard on this our
25 motion for an injunction.

1 THE COURT: Only if I agree, MR. WARNER.

2 MR. WARNER: Judge, I understand that.

3 THE COURT: I had told y'all the other day
4 we are not going to do this on a piecemeal basis.
5 There is not a rocket science about trying to get
6 this stuff all consolidated to hear it once. If you
7 all weren't going to consent to everything being
8 heard here today, we'll continue it until we get an
9 order from the probate court.

10 MR. WARNER: And please, and this is
11 certainly not to be disrespectful to the court. The
12 issue here is, we cannot agree to submit to subject
13 matter jurisdiction to this court if it is not here.
14 And it has not been here since April. No one has
15 done anything about it since then. We filed a
16 memorandum, raised it then. Which we sent around
17 again yesterday. I've got another memorandum in my
18 hand today.

19 THE COURT: MR. WARNER, I am not arguing
20 whether you are right or wrong. I just told you
21 what I would do, or wouldn't do.

22 MR. WEINBERG: May I say, I have an order
23 from Probate Court, moving it to the court of common
24 pleas. I served that on MR. WARNER this week. I
25 went and got it and took it over in person and got

1 it.

2 THE COURT: So there is an order from the
3 Probate Court removing the matter of having his
4 client removed as the co-personal representative.

5 MR. WEINBERG: That's correct.

6 THE COURT: Where is that order?

7 MR. WARNER: I have not seen It, your
8 honor. It has not come to my office.

9 Mr. weinberg: It's coming. My secretary
10 is bringing me my notebooks with everything in it.
11 She should be here momentarily.

12 THE COURT: Well why doesn't somebody walk
13 down to the probate court and get it. Is it in this
14 building?

15 MR. WEINBERG: Yes, sir.

16 MR. WILLIAM JOHNSON: Your Honor, I would
17 also point out that likewise, we petitioned the
18 Probate Court, and there is an Order of Removal,
19 removing, our position, to remove both personal
20 representatives. I believe all parties have been
21 served with that.

22 THE COURT: You deny receiving that?

23 MR. WARNER: What was date of that
24 William?

25 MR. WEINBERG: Judge, would you like me to

1 step down to the probate court?

2 THE COURT: I am not hearing this stuff,
3 unless we can hear everything.

4 mr. JOHNSON: The order is dated what,
5 September 16th?

6 MR. WARNER: Your honor, we not received
7 it. As of yesterday, I have not been served. But I
8 haven't seen the application to the probate court
9 for the removal. I have not been served that. I
10 have not received it.

11 THE COURT: Well you all need to figure it
12 out or I am going back. I am going home.

13 MR. POPE JOHNSON: Last Friday when we
14 met, this issue was raised. We said we would go
15 file it this week, which is what mr. Weinberg did,
16 and get it served so it would be removed so we go
17 could forward. So we did what we said we would do.

18 THE COURT: Mr. Warner is denying that
19 that's been done. Or at least denying that he has
20 received anything. I guess with respect to both Mr.
21 Johnson's Order of Removal, and your order of
22 removal. So...

23 MR. WARNER: Your Honor, if there are
24 orders, if I can see an order, I don't have a
25 problem. If I don't see an order, I just don't want

1 to go through this and have a subject matter
2 jurisdiction issue. And if we can take a minute and
3 they can show me---

4 THE COURT: You raised a subject matter
5 jurisdiction issue. Everybody agrees to it. I mean
6 I agree with you. I think you are right. If the
7 only thing that was ever removed initially was your
8 petition, I think everything has to be removed. But
9 I told you I wasn't doing it piecemeal.

10 MR. WARNER: Your honor, I see an order
11 dated September 16th and certified. it says mr.
12 johnson's motion to remove both is before the court.
13 Has been removed.

14 The court: Mr. Weinberg, if have you got
15 an order, show it to---

16 MR. WEINBERG: I have a order showing
17 certificate of mailing to mr. warner and a copy from
18 the probate court. Judge, while he is looking at
19 that, I will hand this up if you would like to see
20 it, judge.

21 MR. WARNER: Your honor, mr. weinberg for
22 the record, Mr. Weinberg has handed to me what was
23 an application---

24 THE COURT: Order of Removal.

25 MR. WARNER: This one MR. JOHNSON has.

1 THE COURT: I assume it was provided to me
2 by mr. Weinberg.

3 MR. WARNER: September 29th. It is moved
4 and it is here.

5 THE COURT: so we are prepared to go
6 forward on all these issues.

7 MR. WARNER: Yes, sir.

8 THE COURT: How do you want to do this?

9 MR. WARNER: May it please the court.

10 THE COURT: Yes, sir.

11 MR. WARNER: I have listed three
12 professional witnesses here. One, is Karen thomas.
13 Who is an attorney who is here with her counsel,
14 Elizabeth Gray. We would like to get these, she is;
15 Desa Ballard, and wilson macewen, CPA, would like to
16 get their testimony taken so they can leave.
17 Especially these attorneys that were subpoenaed to
18 be here.

19 Mr. JOHNSON: Your honor, I don't think we
20 can go forward on that, until we dispose of the
21 question of whether mr. Weinberg is in the case, or
22 whether he's disqualified from the case. Because if
23 he is in the case, if he is left in as a party to
24 the -- in the lawsuit you said you are not going to
25 allow him to serve as Ms. Belk's attorney. And she

1 then would not have an attorney here to represent
2 her interest.

3 If he dismissed, and you deny the motion
4 to disqualify him, then he is here to represent
5 Ms. Belk and we are prepared to go forward on
6 everything else. But we think the first issue we
7 have to take up is the Motion to Dismiss, then the
8 Motion to Disqualify.

9 MR. WARNER: Your honor, Desa Ballard is
10 here. She is a lawyer in support of our Motion to
11 Disqualify Mr. Weinberg. And would ask that her
12 testimony be taken. I don't agree with MR. JOHNSON.
13 We just heard the Motion to Dismiss like a week ago.
14 And it wasn't heard last week what motions were
15 before the court by order of service. Because they
16 sent a bunch -- most of our mail to the wrong
17 address, and we never received it. But Ms. Ballard
18 is here and prepared to testify with regard to mr.
19 Weinberg's disqualification if that's what the court
20 sees fit.

21 THE COURT: Well would you have any
22 objection to Mr. Weinberg participating until we can
23 address the issue of his being removed?

24 MR. WARNER: Well, sir, there is the
25 issue of him dismissed as a party, which i think is

1 the other thing MR. JOHNSON is raising.

2 THE COURT: Well look, we're not going to
3 leave him in limbo and let you put up witnesses and
4 he can't cross examine, because there is an issue of
5 whether he is going to be in this case or not in
6 this case.

7 MR. WARNER: Mr. Ballard's testimony goes
8 directly to the issue of whether he is going to be
9 disqualified. And I Think that issue needs to be
10 made by this court.

11 THE COURT: Well we take up the issue of
12 Mr. Weinberg's participation in this case, first.

13 MR. WARNER: Your honor, we would call---

14 MR. JOHNSON: Are we going to take up the
15 Motion to Dismiss because that bears on whether he
16 is disqualified. If you leave in the lawsuit, he is
17 not going to be a lawyer in the lawsuit. On the
18 other hand, if you dismiss him, then you have to
19 decide whether he should be disqualified for other
20 reasons. So it seems to me the first issue that has
21 to be addressed is the motion to dismiss.

22 THE COURT: We'll hear the Motion to
23 Dismiss. Have you served everybody a copy of the
24 order or memorandum?

25 Mr. POPE JOHNSON: I have.

1 THE COURT: I HAVE.

2 MR. POPE JOHNSON: Your honor, our Motion
3 to Dismiss is fairly simple and straightforward.
4 It's our position that the motion, that Rusty
5 Weinberg was joined as a party to this case simply
6 to disqualify him from representing people the
7 plaintiff doesn't want him to represent.

8 There is a motion as you know, to
9 disqualify him for other reasons, and this is just
10 another effort to do that. As to the causes of
11 action against mr. Weinberg, the fourth cause of
12 action is to set aside what are alleged to be
13 influenced transactions. And he is named as a
14 defendant in that cause of action. But there is no
15 allegation that he is a party to any agreement or
16 transaction that seeks to be set aside.

17 And if he is not a party to these
18 agreements that they seek to set aside, he can't be
19 reliable or wouldn't have an interest in or be a
20 party defendant as to that cause of action. The 7th
21 cause of action against him is to settle conspiracy.
22 We have provided you the law that generally a lawyer
23 is immune from liability from third parties arising
24 in the performance of professional activities.

25 As an attorney, the client alleges nothing

1 about him, other than what he has done as an
2 attorney for the two people he is representing.
3 There is no independent allegation that he has acted
4 outside the scope of his relationship representing
5 his attorneys. Of course the reason of the law is
6 that an attorney is immune from liability from third
7 parties is, because if attorneys could be sued by
8 third parties for advice they give to their client
9 in the professional capacity, no lawyer would want
10 to give advice to a client. It would chill the
11 representation.

12 The third cause of action is tortuous
13 interference with the contract. And that he
14 allegedly interfered---

15 The COURT: You mean the 10th cause of
16 action.

17 MR. POPE JOHNSON: 10th cause of action.
18 And of course for the same reason the civil
19 conspiracy must go, this cause of action must go.
20 He has done nothing but represent his clients. And
21 the complaint alleges nothing beyond that. The
22 final cause of action, the 11th cause of action, is
23 for breach of contract accompanied by fraudulent
24 act. There is no allegation that Mr. Weinberg is a
25 party to a contract for which he could breach and

1 breach by fraudulent actions.

2 All this is your honor is assertion of
3 four baseless claims against Rusty Weinberg to get
4 him out of the lawsuit, because They don't want that
5 lawyer representing these people in this
6 transaction. And we would ask that the motion to
7 dismiss be granted.

8 MR. WARNER: Can I approach the bench,
9 your honor?

10 (whereupon, the attorneys the bench and
11 confer with judge.)

12 THE COURT: Let me ask y'all this. How am
13 I supposed to review all this stuff when I get here
14 this morning and then apparently make a decision
15 here this morning, the first thing? Before we get
16 in to anything else.

17 MR. WARNER: Your Honor, I think we have
18 served Mr. Johnson's motion. I think the memorandum
19 yesterday, if I am not mistaken.

20 THE COURT: Well you don't have to wait
21 for them to serve a memorandum for you to serve a
22 Memorandum. That doesn't have anything to do. If
23 y'all wanted me to see something, it sure would have
24 been easier for me to see it yesterday or Monday.

25 MR. WARNER: I don't disagree, your Honor.

1 THE COURT: All right.

2 MR. WARNER: If it please the court, the
3 amended complaint alleges that mr. Weinberg
4 represented numerous individuals involved in these
5 transactions. Specifically, Mr. Belk, his business
6 entities. He was mr. Belk's lawyer for years.

7 THE COURT: Everything you are alleging as
8 to Mr. Weinberg you're alleging that he acted in his
9 capacity as an attorney.

10 MR. WARNER: NO, sir. That is not
11 correct, sir.

12 THE COURT: Did you set out in your
13 complaint specifically that he acted outside the
14 scope of his---

15 MR. WARNER: Yes, sir,---

16 THE COURT: ---representation?

17 MR. WARNER: ---i believe we did, your
18 Honor. Because we alleged in the complaint, first,
19 if we could deal with the influence transaction.
20 Mr. weinberg says that our 4th cause of action
21 should be dismissed because he is not a party to the
22 irrevocable trust and other documents that we seek
23 to set aside. We have alleged in the complaint that
24 Mr. Weinberg prepared the documents complained of --
25 in the complaint, which are contrary to the face

1 intent to the family settlement agreement which is
2 attached to the amended complaint. Which is filed
3 in the Probate Court. It is violation of the
4 memorandum concerning future transactions. And we
5 believe it even violates the trust document that was
6 executed with regard to the severance of the trust
7 and the post mortem planning that was done by Karen
8 thomas.

9 He is a necessary party under Rule 19,
10 because he was acting in a fiduciary capacity which
11 to both Linda Harris who he represented as trustee
12 and agent and attorney. In fact, under a trust and
13 other documents prepared for Ms. Belk, and
14 represented at the same time Ms. Belk. He prepared
15 and caused the documents to be executed and funded.
16 In this case, the creation of this irrevocable trust
17 assisting in the transfer of installment sales into
18 that trust, which caused the immediate realization
19 of capital gains that caused significant tax
20 consequences, not to mention the tortuous breach of
21 the family settlement agreement, and the memorandum
22 concerning future transactions which provide benefit
23 to Ms. Harris.

24 Ms. Harris, your honor, acting as agent
25 for her mother, any transaction that benefits Ms.

1 Harris while she is acting as agent and attorney in
2 fact or trustee for her mother, even because she is
3 a daughter based on South Carolina, the cases of
4 South Carolina, means that any transactions that is
5 engaged in; that benefits her in any way, is deemed
6 to be an influenced transaction. It is presumed to
7 be void. And the burden shifts to her, to be able
8 to show that it was not an influenced transaction.

9 Mr. Weinberg is so inexorably involved in
10 this case in so many different capacities, that he
11 caused the genesis of the transactions that were
12 done by, were handled through Karen Thomas' office,
13 all the way through, are not taking positions and
14 helping Ms. Harris and Ms. Belk take positions
15 contrary to the contract. Mr. Weinberg was acting as
16 a fiduciary to both of them at the same time. And
17 Your Honor the main case in south carolina
18 concerning influenced transactions is Island Car
19 Wash vs. Norris. And we cited one quote from that
20 case. And we attached the case to the memorandum.

21 it is a well settled equitable rule to
22 anyone, anyone acting in a fiduciary relationship,
23 "shall not be permitted to make use of that
24 relationship to benefit his own personal interest."
25 Mr. Weinberg, here in addition to acting as an

1 attorney for both of them at the same time, was paid
2 fees from some place, which benefited. Prepared
3 contracts and documents, that benefited Ms. Harris
4 and Ms. Belk, to the detriment of the estate.

5 It is an adoption repeatedly announced by
6 the courts of this nation, that courts of this
7 equity will scrutinize with the most zealous
8 vigilance transactions between parties occupying
9 confidential relations toward each other. And
10 particularly any transaction between parties, by
11 which the dominant party which here we believe is
12 Ms. Harris. And that Mr. Wearing was acting as an
13 agent. We have not seen any waiver as between the
14 two of them concerning representation of both of
15 them at the same time. The attorney, in fact, the
16 mother, and the trustee of this trust were the
17 dominant parties. Secures inside effect of profit
18 or advantage of the expense of the person under his
19 or her influence.

20 The most recent case of Vance vs. Vance,
21 this is replete within the law of the State of South
22 Carolina. So we believe that Your Honor
23 Mr. Weinberg was a participant in the influenced
24 transaction. Especially in face, in the face of the
25 family settlement agreement, and the memorandum

1 concerning the future transactions, which were
2 attached to the complaint.

3 Those documents in and of themselves were
4 either fully or partially performed before
5 Mr. Weinberg did these acts. And we think he did
6 these acts as a fiduciary for both of these people.
7 And assisted Linda Harris in gaining a dominant
8 position which was an economic benefit for her. Now
9 with regard to the civil conspiracy, our 7th cause
10 of action, MR. JOHNSON cites one case. We
11 jeopardized it a further. And he says lawyers can't
12 be held liable in civil conspiracy.

13 We don't think this should be dismissed
14 either. Because if he jeopardized the case mr.
15 johnson cited, he failed to cite the case of moore,
16 vs. the same Mr. Weinberg, that's reported at 644,
17 s.e. 740. It's a 2007 case by the court of appeals,
18 which is another conspiracy case brought against Mr.
19 Weinberg. Our court of appeals held in that case,
20 and that what is cited on page 3 of our memorandum,
21 the elements that we must demonstrate in order to
22 prove a civil conspiracy, a combination of some
23 people, for purpose for injuring the plaintiff and
24 causing special damages.

25 And while it says in the second paragraph

1 on that page, an attorney is generally immune from
2 liability to third persons arising from the
3 performance of the professional activities of an
4 attorney, on behalf of and with the knowledge of his
5 client. However, the south carolina supreme court
6 cautions that an attorney may be held liable for
7 conspiracy to where in addition to representing his
8 client, he breaches an independent duty to a third
9 person.

10 Now in this case, we have a filed family
11 settlement agreement signed by my client, gene belk,
12 his sister and all members of the family. We also
13 have a memorandum concerning future transactions
14 signed by Mr. Belk my client, Ms. Belk, Ida Mae
15 Belk, and, Ms. Harris. The second document,
16 basically says that all transactions that will be
17 done in this estate will be done jointly by mr. belk
18 and Ms. Harris. Just like the will of Mr. belk
19 said, that was the intention of that document.

20 In the face of that document and
21 Mr. weinberg had a duty. Mr. Weinberg represented
22 Mr. Belk. He prepared this will. The will because
23 of defects caused the post mortem planning that we
24 complain about now. Mr. Weinberg despite those
25 documents being filed, is saying that both Mr. belk

1 and his sister, were to do these things, to prepare
2 a trust, where he put Linda harris as the trustee.
3 He excluded mr. Belk totally. He also then
4 transferred into, caused to be transferred in to
5 this trust, a half interest in what is called Sumter
6 Mortgage, which is really an entity that owns a
7 number of installment sales contracts that went in
8 to the trust, which we believe is irrevocable based
9 upon the terms of that trust.

10 He also transferred into the trust all the
11 stock of Bibco. Previously Bibco incorporated had
12 been making distributions to mr. belk and his
13 sister. Those have stopped since the trust was
14 created. And in addition to that, Mr. Weinberg
15 played an integral role here. We think Mr.
16 Weinberg, because he communicated with our client,
17 Gene Belk, throughout this period of time, as is
18 alleged in the complaint and to mr. belk's
19 affidavit. And based on the letters Mr. weinberg
20 was writing mr. belk, mr. weinberg had a duty to mr.
21 belk, our client, and to the estate. So there was
22 as duty by mr. Weinberg to third persons. So he did
23 not solely act as a lawyer.

24 And just like it says here, an attorney
25 may be held liable for conspiracy. Where in

1 addition to representing his client. And again, We
2 don't know who he represented here. He represented
3 Ms. Belk. He represented Ms. Harris. Now Ms.
4 Harris is represented by Jahue Moore. Mr. Weinberg
5 contends he continues to represent Ms. Belk. I
6 haven't seen a waiver conflict between the two of
7 them.

8 Our review of the records encounter, be of
9 no evidence agreement between the defendants. But
10 in this case Mr. Weinberg was aware of the family
11 settlement agreement. We allege that in paragraph
12 14 of the complaint. And he was aware of the other
13 documents that have been filed in the court, because
14 he participated in this after Karen Thomas finished
15 these.

16 In Stiles, which was cited as authority by
17 our Court of Appeals in Moore, our Supreme Court
18 held a number of jurisdictions recognize that an
19 attorney may be held liable or he acts in bad faith
20 for his own personal motivation. Moreover, several
21 courts have held that an attorney held liable
22 arising out of a conspiracy with his client.

23 So if Mr. Weinberg prepared these
24 documents in contravention of this family settlement
25 agreement and memorandum concerning future

1 transactions, if he did those with knowledge which
2 he had to have, that he was going to assist ms. belk
3 and or Ms. Harris, then Mr. Weinberg is subject to
4 being held liable for conspiracy. He conspired with
5 Ms. Belk and Ms. Harris to put Ms. Harris in charge
6 contrary to the memorandum concerning future
7 transactions.

8 With regard to tortuous interference with
9 the contract, which begins at page 4 of our
10 memorandum, that's our 10th cause of action. Which
11 should also not be dismissed. He relies on the same
12 argument that he does in the other case; that he is
13 a lawyer, he is acting as a lawyer, and he is
14 immune. However as discussed in stiles and in Moore
15 vs. Weinberg, an attorney may be held liable for
16 conspiracy where in addition to representing his
17 client, he breaches some independent duty for the
18 third person, knowing that these contracts were in
19 place. Known for years. Three years. Knowing that
20 these were in place, Knowing what he knew about the
21 belk estate, because of his representation Mr. Belk
22 over 20 years before he died, knowing what happened
23 after the will was defective; knowing these people
24 entered into an agreement, he still prepared this
25 irrevocable trust and caused assets to be

1 transferred in, which violated both the family
2 settlement agreement, and the memorandum concerning
3 future transactions.

4 With regard to breach of contract, and
5 your honor, we also cited the Garr case, the Garr
6 decision I think was cited by Mr. Johnson. And the
7 last we highlighted, that the last paragraph of page
8 5 of our memorandum, "in his professional capacity
9 the attorney is not liable except to his client.
10 And those in privity with his client for injury
11 allegedly arising out of the performance of his
12 professional duty." Here Mr. Weinberg, we think was
13 in privity with Ms. Belk. He was in privity with
14 Ms. Harris. And he had to have been, we believe in
15 privity with Mr. Belk, our client, because based by
16 the allegations he also gave our client advice prior
17 to all this happening.

18 THE COURT: Well under that theory, you're
19 in privity with Ms. Harris and Ms. Belk, if you
20 represent Mr. Belk. Is that correct?

21 MR. WARNER: No, sir, I don't believe
22 that -- I don't have background, no, sir. I don't
23 represent---

24 THE COURT: Under your theory, if he has
25 represented one, you have been privity with

1 everybody else.

2 MR. WARNER: I think he has been privy
3 exactly with ms. harris and ms. belk under that
4 argument of the Garr case.

5 THE COURT: Well he might be. But he has
6 got to show a duty to your client.

7 MR. WARNER: Well he had the duty of our
8 client under the family settlement agreement and not
9 to breach that agreement. And he did it.

10 THE COURT: He wasn't a part of that
11 agreement.

12 MR. WARNER: Well, sir, he knew it.

13 THE COURT: MR. WARNER, you get as much
14 information about everything when you advise.
15 Apparently Mr. Weinberg was advising the client
16 based on what the client was telling him her wishes
17 were.

18 MR. WARNER: Your honor, I don't know what
19 went on between the two of them. I do know that
20 there was an operation of this estate pursuant to
21 the family settlement agreement, and the memorandum
22 concerning future transactions for years before this
23 irrevocable trust was prepared. And based upon that
24 Mr. Weinberg had a duty to Mr. Belk not to breach
25 that contract, and he breached that contract. And

1 he did it outside the scope of his duties as an
2 attorney.

3 With regard to breach of contract
4 accompanied by fraudulent intent, we rely on
5 exactly the same agreement. We do think that the
6 case of Moore vs. Weinberg, your Honor, is
7 dispositive of the vast majority of Mr. Johnson's
8 arguments in this case.

9 THE COURT: Y'all want to say anything in
10 response?

11 MR. POPE JOHNSON: Your honor, I want to
12 say here briefly, this is a motion to dismiss
13 supported by affidavits from Mr. Weinberg and the
14 two clients. Both clients said,---

15 THE COURT: Well this is a 12(b)6 motion,
16 right?

17 Mr. POPE JOHNSON: It's a 12(b)6 summary
18 judgment based upon the filing of affidavits,
19 statutory motions. Both affidavits state, and the
20 client states, "I am aware of the activities of
21 Mr. Weinberg, jr., and he has done nothing in the
22 handling of these matters that I have not authorized
23 and which we not necessary in my opinion in properly
24 representing me and to implement the wishes of R.D.
25 Belk in the will."

1 So both clients have said that what he was
2 doing, he was doing within his professional capacity
3 authorized by him. This is a typical case, your
4 honor. Your client comes to you and says I got this
5 problem. There are these things are out there. You
6 advise the client and your client tells you what
7 they want to do and the lawyer does it unless it
8 involves some ethical breach. There is no duty owed
9 to the plaintiff in this case whatsoever. And the
10 fact that there is an alleged contract out there
11 that they simply allege is valid and binding on my
12 clients, two clients, in no way imposes a duty on
13 Mr. Weinberg to concede their position and not carry
14 out the wishes of the client.

15 Now if he gave bad advice to his client,
16 now he may be liable to them, but he has no
17 liability under the law to the third party. And the
18 question of duty is a question of law for the court.
19 And we would say that the court, and there is no
20 case law otherwise that support a duty in this
21 instance.

22 MR. WARNER: Your honor, if mr. Belk, and
23 just briefly in reply. Mr. belk, my client has
24 filed 2 or 3 different affidavits in this case that
25 are replete in the record with regard to all the

1 transactions that took place that are part of record
2 also before the court. And we think there is
3 sufficient allegation in the complaint to allow the
4 same to stand.

5 The court: Where are y'all's affidavits?

6 mr. pope JOHNSON: Your honor, I'll hand them
7 up. They're attached to the motion.

8 The court: I can't find the motion.

9 MR. WARNER: For the court's information
10 my client's affidavit in support of the motion to
11 remove---

12 THE COURT: Hold on. Here they are. And
13 where are you affidavits, Mr.?

14 MR. POPE JOHNSON: Attached to the
15 motions.

16 THE COURT: Now you say you have some
17 affidavits?

18 MR. WARNER: Yes, my client's affidavit,
19 one of them is a motion to remove dated
20 February 29th 2008. There is also the affidavit.

21 THE COURT: Wait a minute in your
22 notebook.

23 MR. WARNER: Your honor, that is two. I
24 just have two. There is also the affidavit---

25 THE COURT: Hold on.

1 MR. WARNER: Your honor, lastly my
2 client's affidavit is dated August 26th, that is
3 attached to our application for injunction. And Mr.
4 Ballard's affidavit was previously submitted.

5 THE COURT: Well I don't see anything in
6 any of these affidavits that indicate that factual
7 allegation by your client otherwise that
8 Mr. Weinberg has any kind of duty to your client.
9 Let me ask you something. Apparently Mr. Weinberg
10 is going to be involved in this case as a witness
11 regardless of what happens.

12 MR. WARNER: That's correct, your honor.

13 MR. POPE JOHNSON: No, your honor, i don't
14 think so at all. Depending on what you do with this
15 motion.

16 THE COURT: Well is MR. WARNER going to
17 attempt to make Mr. Weinberg a witness at some point
18 and time?

19 MR. WARNER: Yes, your honor. I can
20 answer that.

21 THE COURT: Well I know what your answer
22 is going to be. If he is dismissed as a party
23 defendant, it seems to me that he there is a good
24 potential that he is going be involved in this case
25 even if he is not a lawyer for anybody. Now you all

1 may claim privilege on everything. But...

2 MR. POPE JOHNSON: See exactly. He has
3 really had no contact with the other side. He's
4 only dealt with his clients. The only dealings he's
5 had with his client's were protected communications.
6 He can't be a witness to that. And I think this
7 business, again, this business if we're going to
8 call him as a witness unless to disqualify him it's
9 simply to kick him out of the case so he can't
10 represent people. It is a---

11 THE COURT: He's that good?

12 Mr. POPE JOHNSON: He is that good, your
13 honor. He doesn't look that good, but he really is
14 that good.

15 Mr. weinberg: I used to be anyway.

16 THE COURT: Well apparently we're going to
17 have to take some time and allow me to read the case
18 law you all have given me.

19 MR. WARNER: May it please the court, the
20 attachments to the complaint contain correspondence
21 from Mr. Weinberg.

22 THE COURT: I don't know that, lawyers
23 write people all the time, but they have no duties
24 to give your client. I read correspondence that he
25 wrote to Mr. Weinberg. And correspondence that has

1 come back. But that's doesn't signify anything to
2 me.

3 MR. WARNER: Well we issued previously, a
4 subpoena to Mr. Weinberg, and moved to quash. And
5 noticed a deposition. They moved to quash that. He
6 will be a witness in this case.

7 THE COURT: Well there may be an attempt
8 to make him a witness. And clearly if he is acting
9 in a capacity as an attorney, everything that he did
10 with his client is privileged unless that privilege
11 is waived. Which it has to be waived by his client.
12 I don't know -- I am not sure at this point and time
13 who his client is.

14 MR. WARNER: I don't know either.

15 THE COURT: Of course he has indicated ms.
16 belk is who he is representing. Is that correct?

17 Mr. pope Johnson: He is representing, the
18 only client he has in this litigation is, Ida mae
19 Belk.

20 MR. WARNER: Your honor, the issue is, he
21 was the author of 9/10's if not all the documents
22 that relate to the estate.

23 THE COURT: Do what?

24 MR. WARNER: 9/10's of the documents that
25 relate to this estate, when he represented Mr. Belk

1 when Mr. Belk was living. He prepared mr. belk's
2 will, which recollected Mr. Bell's testamentary
3 intent. And that was if one person couldn't act,
4 the personal representative, and Gene Belk was the
5 named personal representative. Mr. Weinberg
6 prepared all those documents.

7 THE COURT: Well what does have to do with
8 him?

9 MR. WARNER: Well the fact that, the
10 duties that he has to Mr. belk, the decedent and to
11 the estate, we think he breached because of the
12 family settlement agreement, he had to have the duty
13 to carry out the intention of the will. Which is
14 what the family settlement, and the memorandum
15 concerning future transactions did. And he did not
16 do that. So he is absolutely a witness aside---

17 THE COURT: MR. WARNER, I don't know what
18 he is. Some judge apparently at some point and time
19 is going to have to make a ruling on what
20 Mr. Weinberg's capacity is. Whether he is claiming
21 privilege, whether that privilege is there. It's
22 really not his privilege. It's the client's
23 privilege. They're claiming privilege. But that
24 isn't the issue here today. All right, we'll just
25 have to take a little bit of time and let me read

1 this stuff.

2 MR. MOORE: May I point out two small
3 issues, which may help the court a little bit when
4 it goes back to consider the motions, which are
5 under advisement? This will take two seconds, that
6 might help. Your Honor, there are some documents
7 which are attached to the Complaint which MR. WARNER
8 continues to talk about. One of these documents is
9 called a Family Settlement Agreement, which is
10 Exhibit no. 3.

11 THE COURT: Right. The complaint I have
12 that was provided to me by MR. WARNER doesn't
13 include that. This is the amended complaint.

14 Mr. moore: Your honor, the -- yes.

15 THE COURT: They are attached to the
16 original complaint.

17 MR. MOORE: They were. And I can hand up
18 to the court---

19 THE COURT: They're not -- MR. WARNER has
20 provided me copies of the original.

21 Mr. Moore: Your Honor, I might have MR.
22 JOHNSON hand the court a copy, because I think it is
23 important for the court to look at the various
24 portions of these two documents which he is so
25 concerned about. Exhibit no. 3, is the family

1 settlement agreement that MR. WARNER is constantly
2 talking about.

3 THE COURT: All right.

4 MR. MOORE: IF WE look at the family
5 settlement agreement, it contains 7 separate
6 agreements that were entered into with this family.
7 All It really does since in paragraph 1, is to agree
8 on how one portion of the will should be
9 interpreted. That is a division in the shares.
10 That's all this family settlement agreement
11 basically does. If the court looks at paragraph 1,
12 it talks about a division of the shares. The next
13 thing it indicates is that the family settlement
14 agreement was to be approved by the Probate Court.
15 Not one ever petitioned to have this agreement
16 approved by the Probate Court.

17 So one of the conditions to the
18 effectiveness of this document which is probate
19 court approval has never actually taken place. The
20 third paragraph says that it is to be integrated.
21 The fourth says that it is severable. The 5th says
22 it is binding. The 6th says it's controlling South
23 Carolina law. And the 7th says it may be executed
24 in counterparts. So all the family settlement
25 agreement really does is to clarify a portion of the

1 will. The next document that Mr. Warner is taking
2 such great exception is what they call Memorandum of
3 understanding, which is exhibit no 4. That is it
4 contains 7 separate agreements. And much of that
5 has to do with an agreement to agree. In other
6 words, they're talking about a trust document that
7 is to be created in the future, that is going to
8 have certain modifications. None of this is spelled
9 out in any details. And as I understand it, an
10 agreement to agree is no agreement at all. However
11 paragraph 7 of the memorandum of understanding
12 clearly indicates it is the intention of the parties
13 to work diligently for a new trustee and related
14 documents. And to complete new trustee, and the
15 transfer within the next 60 days. The parties agree
16 that this was the understanding. The new trustee
17 was not completed within those 60 days.

18 And the new trustee was never completed.
19 And the parties didn't work together. And the
20 transfers did not take place as called for in the
21 memorandum of understanding. It is clear to us, or
22 relatively clear to us, Your Honor, that on its
23 face, the memorandum of understanding would have
24 expired on or about August of 2005. So what you
25 have here is the two operative documents that MR.

1 WARNER complains so vehemently about. One appears
2 to have expired on its face by virtue of time. The
3 other appears not to have required Probate Court
4 approval, and the other one also doesn't clarify
5 portions of the will.

6 Now Mr. Weinberg wrote the irrevocable
7 trust for which he has been sued. It is a long time
8 after the expiration of the 60 days called for in
9 the memorandum of understanding which appears to
10 have expired on its face. I simply place those
11 comments before the court, because MR. WARNER talks
12 about these documents. He talks about them as if
13 they are some sort of iron clad enforceable contract
14 that is based on some sort of consideration which we
15 have yet to figure out exactly what that is. But
16 there are significant legal defects in the two
17 documents that MR. WARNER bases his whole crux of
18 his entire case on. And when the Court goes back to
19 do its consideration, I would ask the court to look
20 at those two documents, understanding that those two
21 documents do make the thrust of Mr. warner's
22 complaint. And that they do have some very real
23 deficiencies. And if those documents do not have any
24 efficacy, as I don't believe that they actually do.
25 Then the first, the efficacy doesn't make any

1 difference, any way regarding this whole case. It
2 would certainly appear to me that Mr. Warner's
3 entire case against Mr. Weinberg would fail. And
4 that Mr. Weinberg would have done nothing in
5 drafting a trust document, when the memorandum of
6 understanding has failed on its face. But I thank
7 you for listening to me in regard to that, your
8 honor.

9 MR. WARNER: Judge, very briefly, in reply
10 to that. These agreements have been performed up
11 until the time that this trust was created. So
12 there is partial and or full performance of these
13 agreements. They think managed this estate the same
14 way they managed it before.

15 THE COURT: Was a new trustee completed?

16 Mr. belk: It's never been funded.

17 MR. WARNER: It's never been funded. It's
18 completed but never funded.

19 THE COURT: I don't know how you complete
20 it if you don't fund it. You don't have a trust if
21 you don't have anything in there.

22 MR. WARNER: The trust is there.

23 THE COURT: So it's never been any
24 transfers into it, right?

25 MR. WARNER: No, sir.

1 MR. MOORE: And it was actually never
2 signed, your honor. It was -- there was one
3 prepared, but the parties could not agree on the
4 terms. And the new trustee, see to my knowledge,
5 I've never seen the document where it was signed.
6 And I stand to be corrected. And I know it wasn't
7 funded. And I don't believe the new trustee was
8 ever signed. And certainly was never signed within
9 the time frame required.

10 THE COURT: All right. Let me go back
11 here and read a little bit, and then I will bring
12 you all back here.

13 (Whereupon, the court takes a short
14 recess.)

15 THE COURT: I have read the memorandums
16 regarding the Motion to Dismiss, and read the cases
17 that MR. WARNER has provided me. And reread
18 Mr. Johnson's memorandum. And read the pleadings.
19 In the pleadings, MR. WARNER, when you identify
20 Mr. Weinberg as a defendant. You identify him as an
21 attorney. Practicing attorney and everything you
22 allege; that He did in his capacity as an attorney
23 for somebody or another. And no place in your
24 pleadings do you allege he was acting outside the
25 scope of his relationship as an attorney for any

1 individual or corporation or anyone else.

2 As such, I am going to after reviewing
3 everything, I am going to grant the Motion to
4 Dismiss Mr. Weinberg as the, I guess, it's a motion
5 for summary judgment. Because y'all have submitted
6 affidavits. I don't find that Mr. Weinberg had any
7 duty to anybody other than the person he was
8 representing at the time. And don't know who it is.
9 you allege that his personal gain was receiving
10 attorney's fees. In reading, well I don't know that
11 there's any allegation that -- I mean that there's
12 any facts that he received attorney's fees. But I
13 don't think receiving attorney's fee's is anything
14 that would allow somebody to receive a personal
15 gain, any advice that they may have given to a
16 client.

17 He clearly was not a party to any
18 transaction. He never signed any document as a --
19 so he is not a party to any agreement. I don't know
20 how he could breach some agreement that he was not a
21 party to. Because he had no duty, and was acting in
22 this capacity as an attorney for his client. And he
23 may have some duty to them if in fact they allege,
24 or her whoever it is. But that is not part of this
25 lawsuit. So I am going to grant the motion, MR.

1 JOHNSON. If you will prepare me an order in that
2 regard.

3 MR. POPE JOHNSON: Yes, sir.

4 THE COURT: What do we want to do next?

5 MR. WARNER: We have my Motion to
6 Disqualify Mr. Weinberg.

7 THE COURT: That's the one you are going
8 to have witnesses.

9 MR. WARNER: Yes, your honor. That was
10 filed in, the motion to be relieve him. That was
11 February 29th 2008.

12 THE COURT: What are we disqualifying him
13 from?

14 MR. WEINBERG: From representing anybody
15 in this proceeding.

16 THE COURT: Are you ready to go on that?

17 MR. POPE JOHNSON: Yes, sir.

18 THE COURT: Are you ready to go, mr.
19 Moore?

20 MR. MOORE: Yes, sir.

21 THE COURT: I assume you have no dog in
22 that fight, is that correct?

23 Mr. pope JOHNSON: That's correct, your
24 honor.

25 THE COURT: MR. WARNER, if you would.

1 MR. WARNER: I would call ms. ballard,
2 your honor.

3 Desa ballard, after being duly sworn,
4 testified as follows:

5 THE COURT: If you would have a seat and
6 tell us your full name, please.

7 A My name is Desa Ballard.

8 DIRECT EXAMINATION BY MR. WARNER:

9 Q Ms. Ballard, would you tell the court what
10 you do for a living, please?

11 A I practice law. My office is in West
12 Columbia.

13 Q And would you tell the court or give the
14 court the benefit of your training and experience as
15 a lawyer?

16 A I graduated from u.s.c. with a law degree
17 in 1983. Went to work for Ralph King Anderson, jr.,
18 who was then a circuit court judge for a little less
19 than a year. Then was a staff attorney for the
20 South Carolina Supreme Court for more than a year.
21 Then I was tapped by justice ness to be his law
22 clerk while he was chief justice of the supreme
23 court.

24 After that I left the Court in 1984. Practiced law
25 with the firm that became Ness, Motley. It was Blatt and

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1 Fales when i joined it. It became known as Ness, Motley.
2 I was there for 10 years. And in 1997, I opened my own
3 practice and I still have my own practice.

4 Q And would you tell the court not what you
5 specialize in, but what is the emphasis of your
6 practice?

7 A The majority of what I do is representing
8 lawyers in disciplinary proceedings. I also advise
9 lawyers and law firms on risk management issues. I
10 do represent doctors and other licensed
11 professionals in licensing proceedings as well. I
12 do a great number of opinion letters for lawyers on
13 ethical issues they face during their practice.

14 Q And have you, for how long have you been
15 involved in the ethics area with regard to giving
16 opinion letters et. cetera.?

17 A All of my practice, which I left the Court
18 in 87. So since 87.

19 Q And have you -- has your testimony been
20 admitted as an expert witness in the court's of this
21 state?

22 A Yes, sir.

23 MR. WARNER: Your honor, we would submit
24 ms. ballard as an expert in the area of attorney
25 ethics.

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1 MR. POPE JOHNSON: Your honor, it's our
2 position that offering opinion testimony from a
3 lawyer on this matter, the question is a question of
4 law for the court. And opinion, we don't need a
5 lawyer to give advice to the court on whether a
6 party should be, on what the law is. So we would
7 say she should be excluded on that basis.

8 THE COURT: I don't know what opinion she
9 is going to give. So it makes it hard. I find her
10 to be qualified as an expert. Tell me what
11 specifically you want her qualified as an expert.

12 MR. WARNER: With regard to attorneys and
13 their duties and responsibilities. As far as
14 Mr. Weinberg's continued participation in this case.

15 THE COURT: Well I will find her as an
16 expert in matters of ethics of related to the
17 cannons and such. There has been a recent a Supreme
18 Court case with respect to what attorneys can
19 testify with respect to matters. So we will have to
20 see what she says.

21 Q Ms. Ballard, were you retained in this
22 case by my firm on behalf of Gene Belk?

23 A Yes, sir. In the first part of the year.

24 Q And would you, could you tell the court
25 what documents you reviewed?

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1 A Initially I reviewed the complaint. The
2 documents, your Motion I believe, to Disqualify
3 Mr. Weinberg as counsel. A number of motions that
4 were filed after that. Subsequently, I reviewed
5 additional documents including an affidavit of
6 Mr. Weinberg. Affidavits of Ms. Harris, Ida Mae
7 Belk, the amended complaint. And a number of other
8 documents. I have my file. It's several inches
9 thick.

10 Q And when you reviewed these matters, did
11 you find anything that gave you any concern as a
12 professional doing what you do for a living?

13 A Well the question that I was asked was
14 whether in my opinion Mr. Weinberg had a conflict of
15 interest in continuing to represent at that time,
16 Ms. Harris, Ida Mae Belk, and I believe it was Bibco
17 at the time. And I opined to you to provide and---

18 MR. POPE JOHNSON: Your honor, I want to
19 note an objection to her opinion. I want her to
20 first identify the basis for the opinion. And I
21 make that request pursuant to the rule. Rule 705, I
22 want her to disclose the facts upon which she is
23 going to base her opinion.

24 THE COURT: Well you can certainly go in
25 to that. I am going to let MR. WARNER examine her.

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1 MR. POPE JOHNSON: The reason I make that
2 request, Your Honor, is that Ms. Ballard submitted
3 an affidavit. Part of what she based her affidavit
4 on was excepting the allegations of the complaint as
5 being true. Now for her to give an opinion based
6 upon hearsay, she can do that provided it is
7 information that an expert in her field would
8 normally rely upon. Nobody would rely upon.

9 THE COURT: Well I am clearly going to let
10 you cross examine her, and bring that out. But I am
11 not going to dictate how MR. WARNER conducts his
12 direct examination. Obviously he is going to have
13 to put information before the court that sets forth
14 what the opinion is, and the basis for that opinion
15 so.

16 Q Ms. Ballard, would you mind going and
17 getting your file?

18 A Yes, will be happy to. I pulled out what
19 I thought were the relevant documents.

20 Q At the time Mr. Weinberg was representing
21 Bibco, Ms. Harris, and Mr. Belk as he did in this
22 case, I am going to get to how you came to that
23 conclusion in a minute. But do you have an opinion
24 with regard to whether or not he had a conflict of
25 interest?

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1 A I did.

2 Q And what was your opinion?

3 A I felt that mr. Weinberg had a conflict of
4 interest under 1.7(a)(2) for a number of reasons.

5 Q What were those reasons?

6 A It appears to me from the facts that are
7 undisputed particularly. Mr. Weinberg's preparation
8 of irrevocable trust for Ms. Belk dated 9/17/07,
9 that his own conduct is, could be called in to
10 question as a result of the allegations that are
11 made concerning the trust, the irrevocable trust.
12 It may have somehow violated the family agreement.
13 And somehow interfered with the estate plan of
14 Mr. Belk. That being the case of 7. -- excuse me,
15 1.7(a) 2 prohibits him from serving as counsel for
16 record or a party, when his own conduct may cause
17 him to be less than diligent in representing the
18 interest of his client.

19 At that time my concern was he had both Ms. Harris as
20 a client and Ida Mae Belk as a client. My understanding
21 this morning is that he no longer represents Ms. Harris.
22 But that simply makes her a former client. So that
23 doesn't change the analysis under 1.7. The second concern
24 I had was of course his participation of a witness under
25 rule 3.7. That's not a conflict of interest. But my

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1 concern was that he is a witness to the underlying
2 proceedings. He apparently had prepared several operative
3 documents. One being Mr. Belk's dated March 5th of 04.
4 The irrevocable trust as I also mentioned. And Ms. belk's
5 will. I don't think that Mr. Belk's will is an operative
6 document insofar as, the issues that are in concern here.
7 But I think 1.7 he has a conflict in both. Because of his
8 own interest around this because of his prior
9 representation of Ms. Harris.

10 Q Now what about his prior representation of
11 Bibco?

12 A I didn't see other than the fact that
13 Bibco is owned by Ida Mae Belk, that gave me
14 concern about potential conflict. Of course, the
15 facts aren't developed enough for me to reach a
16 conclusion about that.

17 Q now aside from the allegations of the
18 Complaint itself, forgetting the allegations of the
19 Complaint itself, what other documents, if you could
20 just go through what you have in your file, would
21 you tell the court what you looked at to reach this
22 conclusion?

23 A The main document that gives me concern
24 other than understanding that facts as we related,
25 was a Response that was filed. Well actually the

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1 Notice and Notice to Dismiss by defendant Weinberg
2 jr., because there is attached affidavits from well
3 Mr. Weinberg, Linda B. Harris and Ida Mae Belk.

4 Q Okay.

5 A Those are affidavits, and I believe were
6 submitted in support of or in opposition to the
7 motion -- excuse me in support of the Motion to
8 Dismiss Mr. Weinberg as a defendant. And in those
9 affidavits, both Ms. Harris and Ms. Belk talk about
10 the fact that they knew there was a potential for
11 conflict of interest. But what they don't say, and
12 what gave me great concern is it does not appear
13 from these affidavits that Mr. Weinberg made
14 disclosure to them about possible liability. And
15 his own interests that needed to be protected since
16 he did prepare Mr. Belk's will and he did prepare
17 the irrevocable trust. Obviously under rule 1.7 in
18 the exact language is, I guess for you---

19 Q Sure.

20 A The exact language is that a lawyer cannot
21 act as a client if representation involves a
22 concurrent conflict of interest. And there is a
23 significant risk that the representation of that
24 client will be materially limited by the lawyer's
25 responsibilities to another client, which at the

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1 time was Ms. Harris. By a former client, which now
2 is Ms. Harris. And or by a personal interest of the
3 lawyer. And that's the one that concerns me,
4 because of the allegations that are made Are in part
5 that the will of Mr. Belk and the irrevocable trust
6 have interfered with estate plan of Mr. Robert Belk.
7 And since mr. Weinberg prepared the irrevocable
8 trust, if the plaintiff is successful in this case
9 in establishing that Ms. Harris or the irrevocable
10 trust have some liability as a result of the conduct
11 of Mr. Weinberg then clearly his conduct is an
12 issue.

13 Q That's whether or not he's a party to the
14 action or not.

15 A Whether he's a party to the action makes
16 no difference at all. His conduct is a focus of
17 some pivotal issue in litigation, which I think
18 makes him both disqualified. And also creates a 3.7
19 violation which makes him a witness. Now obviously
20 3.7 is an issue that has to do with the actual trial
21 of the case. Because 3.7's prohibition on a lawyer
22 also being a witness exists so that the fact finder
23 is not the accused. And typically the fact finder
24 being a jury, a jury has difficulty separating what
25 a lawyer says as a lawyer and what a lawyer says as

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1 a witness. So pretrial litigation 3.7 would not be
2 a concern. But that's really a moot point. Because
3 Mr. Weinberg does have a conflict under 1.7 that
4 prevents him from participation at all.

5 Q Ms. Ballard, as between those two
6 affidavits that you just mentioned of ms. Belk and
7 ms. Harris.

8 A Yes.

9 Q Does the fact that Ms. Harris is acting as
10 trustee for ms. belk and an attorney in fact for ms.
11 belk, in other words, as a fiduciary have anything
12 to do with your opinion?

13 A Well that's part of the problem. If in
14 fact the irrevocable trust had caused some liability
15 to the plaintiff then Ms. Harris' position as the
16 trustee of that irrevocable trust and Mr. Weinberg's
17 prior representation of her, would create a
18 conflict. Because she could have a claim against
19 him. If in fact the irrevocable trust or her
20 individually are found to have liability to the
21 plaintiff.

22 Q Did you anywhere see in those affidavits
23 or any document where there was an informed waiver
24 between Ms. Harris and Ms. Belk?

25 A No, that's why I made reference to those

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1 affidavits. Because it said that a conflict of
2 interest was mentioned. But there is no indication
3 of any those affidavits, there is no indication that
4 the lawyer's own conduct and own potential liability
5 was disclosed to those clients. And maybe it was.
6 But according to the affidavits, there is no mention
7 of that.

8 Q Other than those two affidavits, is there
9 anything else on which you base your opinion?

10 A Well the only other document that I felt
11 was particularly pivotal was Mr. Weinberg's
12 affidavit, which I pulled out. And now cannot put
13 my hands on. Mr. Weinberg filled an affidavit in
14 response to the motion to remove counsel of record.
15 And he testified about factual issues.

16 Q All right.

17 A About his involvement with Mr. Gene Belk
18 and his involvement with Mr. Robert Belk prior to
19 his death. And just a type of history of his
20 involvement in the case. And I felt like that
21 further established his role as witness. It did
22 give me particular concern under 1.7. But my theory
23 was under 1.7, it was so clear to me that he could
24 be counsel in this case, frequency then really
25 didn't really matter.

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1 Q In the affidavit of mr. Weinberg, what is
2 the date of that affidavit?

3 A That's the one I can't put my hands on.
4 I'm sorry it's 3/7/08.

5 Q March 7th 2008?

6 A Yes, sir, and I had pulled it out. But it
7 got lost in my papers. Which is why I should have
8 pulled it out.

9 MR. WARNER: Did the court put his hands
10 on the affidavit of the one she is speaking of,
11 march 7th 08, which is attached to the return to
12 the---

13 THE COURT: Attached to the what?

14 MR. WARNER: Ms. Ballard's attached to, I
15 am sorry. The return to the motion to remove
16 counsel?

17 A It looks like it was filed separately. It
18 doesn't look like there was a return with it. It
19 was filed at the same time as the notice of motion
20 and motion to quash, subpoena on Mr. Weinberg. But
21 it appears to be a separate document. And I had it
22 in my hands just a moment ago.

23 Q Ms. Ballard, let me show you this
24 document. Is this the affidavit to which you are
25 referring?

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1 A No, ---

2 Q Okay.

3 A This was an earlier affidavit of
4 Mr. Weinberg. This was dated, it's entitled
5 weinberg's response to affidavit of Gene Belk. And
6 it's dated 3/7/08. Did i any chance lay it on the
7 bench when I went to get my file. No?

8 Q Is this it, Ms. ballard? This is it, I'm
9 sorry.

10 A I am sorry. Yes, this is the affidavit
11 that I was referring to. Rusty Weinberg sets forth
12 his historical involvement in response to mr. Gene
13 Belk's affidavit in support of disqualification.

14 Q For the purpose of the record, I don't
15 know if everybody has that. But would you mind
16 publishing that affidavit?

17 A I would be happy to. Of course he is
18 sworn. In response to the affidavit of Gene C. Belk
19 dated February 29th, 2008, which shows he admits
20 paragraph one. He admits paragraph 2, alleging
21 however that during the period of time that Mr. Belk
22 was represented by numerous other attorneys
23 including but not to limited W.E. Durant of the
24 sumter bar. David I. McInnis, prior to the
25 appointment as a judge and perhaps other lawyers

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1 that are unknown at the time. item 3 is admitted,
2 which I recall, was the allegation that he had
3 prepared Mr. Belk's will. Item 4 is denied, in that
4 every item asked for by Mr. Belk, was treated as a
5 request by Mr. Belk, who had specific objection to
6 some of what Gene C. Belk had called deficiencies in
7 the will, which was drawn as he directed. As to
8 paragraph, your deponent is informed and is believed
9 Ida Mae Belk never sought the services of attorney,
10 Sojourner, Ed Thomas.

11 as to item 6, your deponent is informed and believes
12 the same is true as far as it goes. But that when a trust
13 was prepared in conjunction with the family settlement
14 agreement known as Gene C. Belk and Linda Harris as
15 co-trustees, Gene C. Belk has refused to accept the
16 co-trusteeship thereby negating in full, the efficiency of
17 said agreement, which he now seeks to enforce. As to
18 paragraph 7, (c) paragraph 6. As to paragraph 8, I am
19 misquoted in said paragraph. Which I told Mr. Belk who
20 was desperately seeking appointment as co-trustee of this
21 trust that if it had not been recorded, that it would be a
22 simple matter to review it. If however it had been
23 recorded, it would be necessary simply to start another
24 trust, since no property had been put into irrevocable
25 trust, only if that was what Ms. Ida Mae Belk' wish, which

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1 for some period of time was not her wish.

2 Paragraph 9 is denied. In answering paragraph 10,
3 it is true that Mr. Belk has come to this office and
4 imposed upon my time for extended periods of time,
5 rambling on about the situation, and telling me very
6 little except that he wanted to be co-trustee and the
7 balance of said paragraph is denied.

8 as to paragraph 11, it is admitted that Mr. belk's
9 letter was received. However after finding out what his
10 opinion was, I disagree with it and still do. For that
11 reason i filed an answer and counterclaim. As to item 12,
12 the same is denied. assuming that this complex property
13 negotiation refers to the Williamsburg Subdivision. Item
14 13 is denied. Ms. ida mae Belk is the sole owner of bibco
15 which owns 50 percent of the complex in question. And a
16 50 percent owner of Sumter Mortgage, which owns 50 percent
17 of said subdivisions. And sHe had every right to have her
18 position noted without creating a conflict of interest.

19 in referring the entire matter, it is my opinion
20 that in spite of Gene Belk's attempts to create a
21 conflict, none exists. Linda B. Harris is presently
22 represented by counsel. And I have never done any act
23 orally or in writing without an express request from
24 Ms. Belk. Upon conclusion of this matter, it is my
25 intention to move for costs and sanctions under Rule 11,

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1 in that this motion is completely frivolous. And the fact
2 that it is frivolous is well known to plaintiff and
3 plaintiff's attorney. Sworn to, signed by Mr. Weinberg
4 dated March 7th 2008. Notarized by a signature that I
5 cannot read. He lists himself as attorney for defendants
6 Linda Harris as trustee, of the Ida Mae K. Belk
7 irrevocable trust, bibco, and Ida Mae K. Belk.

8 Q All three.

9 A Yes, sir.

10 Q And since the time he had filed that
11 affidavit, he only represents Ms. Belk. Does that
12 change your opinion whatsoever?

13 A No, because it simply changes Ms. Harris'
14 position from a present client to a former client.

15 Q What else in your file, which is notebook,
16 and I estimate is how many inches thick?

17 A 3 inches maybe.

18 Q What else, what other operative documents,
19 upon which other operative documents did you rely on
20 to come in to your opinion?

21 A I read the transcript of record of the
22 hearing that occurred June 20th 2008, and some of
23 the statements that Mr. Weinberg made during that
24 hearing. About, you know, needing to get his note
25 carrier involved. He didn't admit that he was a

DESA BALLARD-DIRECT BY WARNER

1 witness in the matter. But in that colloquy there
2 was some discussion of his role in representing the
3 deceased Mr. Belk, as well as, Ms. Harris and Ida
4 Mae Belk. Those are the primary documents. I have
5 a total of 21 documents that have been provided to
6 me. But those are primary ones that I relied on.

7 Q And based on all the information that you
8 have in front of you, do you need any additional
9 information to support your opinion?

10 A My opinion that Mr. Weinberg cannot
11 continue to represent anyone in this litigation.

12 Q Yes.

13 A Stands. I don't think I need anything
14 further to amend that opinion.

15 MR. WARNER: I have no further questions
16 of this witness.

17 A I just found the affidavits.

18 THE COURT: Anything further?

19 Cross examination by mr. pope Johnson:

20 Q Ms. Ballard, you were hired---

21 THE COURT: Mr. weinberg are you
22 represented?

23 MR. WEINBERG: Am I represented? Yes,
24 sir. MR. JOHNSON.

25 THE COURT: You represent Mr. Weinberg?

DESA BALLARD-CROSS BY POPE JOHNSON

1 MR. POPE JOHNSON: I am representing him
2 on this motion. And having represented him on a
3 prior motion.

4 THE COURT: All right.

5 Q Ms. Ballard, who were you hired by again?

6 A I was contacted by MR. WARNER to serve as
7 an expert witness for the plaintiff.

8 Q The plaintiff?

9 A Yes.

10 Q Mr. Weinberg hasn't represented the
11 plaintiff, has he?

12 A No.

13 Q He is representing---

14 A Well, he's had conversations with him,
15 but I don't think he represented him in this matter.

16 Q Exactly. So you aren't representing
17 Ms. ida Mae Belk or linda harris or Bibco. You
18 weren't retained by any of them to determine whether
19 there was some conflict of interest on the part of
20 Mr. Weinberg.

21 A I was not.

22 Q Now did I understand you to say that when
23 you were asked about what you relied upon, you said
24 the main things were the affidavits of Ms. Harris
25 and the affidavit of Ms. Belk?

DESA BALLARD-CROSS BY POPE JOHNSON

1 A That was one of the more compelling
2 things. I think what I said primarily is that I
3 relied on was the undisputed evidence That
4 Mr. Weinberg had prepared the will of Mr. Belk, the
5 irrevocable trust, and Ms. Belk's will. Which I
6 don't think really is an operative document.

7 Q Ms. Ballard, you have given an affidavit
8 in this case, haven't you?

9 A Yes.

10 Q And you gave an affidavit in which you
11 have expressed essentially the same opinions you
12 have expressed here today, that's dated
13 April 7th 2008, right?

14 A Let me put my hands on it if you don't
15 mind. Yes, my affidavit is dated 4/7/08.

16 Q And you didn't have the affidavits of
17 Linda Harris or Ms. Belk, as of that date and time
18 you expressed those opinions, did you?

19 A No, i didn't. Those affidavits simply
20 heightened my opinion.

21 Q Now, Ms. Ballard let's look at your
22 affidavit, if you would.

23 A Okay.

24 Q You say in paragraph 8, in rendering my
25 opinions, I have assume the following facts. Read

DESA BALLARD-CROSS BY POPE JOHNSON

1 paragraph a and b and they were facts you assumed
2 for purposes of giving an affidavit in this matter.

3 A Paragraph 8 (a) "says, "In instant action
4 Weinberg has appeared as counsel for defendant,
5 Linda B. Harris in the capacity of co-personal
6 representative of the estate of Robert D. Belk and
7 its trustee of the Ida Mae Belk irrevocable trust
8 dated 9/17/07." He is also appearing as counsel for
9 a estate holder Ida Mae Belk, although she is not
10 named as a defendant. And has apparently never been
11 served with the pleadings in action.

12 I Have assumed the historical background and
13 designations of the parties as set forth in paragraph's 2
14 through 48, of the complaint dated February 5th 2008, as
15 the same paragraph of the amended complaint dated to be
16 true.

17 Q In other words, you have taken
18 allegations of the complaint and for purposes of
19 giving an opinion in this matter you assume each and
20 every allegation in the complaint to be true and
21 each and every allegation of the amended complaint
22 to be true.

23 A My affidavit was done before the amended
24 complaint was filed.

25 Q Well it is -- it refers to the amended

DESA BALLARD-CROSS BY POPE JOHNSON

1 complaint.

2 A Okay. It does, I am sorry. You're Right,
3 yes, i'm sorry.

4 Q Now, ms. Ballard, you go on in the next
5 paragraph to identify the basis of their being a
6 conflict of interest and you say in paragraph b, the
7 "complaint alleges a violation of family settlement
8 agreement dated June 30th 2005, to which, the
9 parties, of which include the plaintiff, as well as
10 defendant, Harris, presumably in her individual
11 capacity. Ida Mae Belk by defendant Harris, and ida
12 mae belk, which would result in and which has, will
13 result in damage to the plaintiff as a result of the
14 execution of the ida mae Belk irrevocable trust
15 agreement which was allegedly prepared by Weinberg."

16 A Correct.

17 Q And then you go on to say, that is true;
18 that is if the agreement that he prepared after
19 consulting with his clients, and having followed his
20 client's wishes prepared that agreement. That
21 agreement creates some liability to the -- by them
22 to the plaintiff, then he could have civil liability
23 himself.

24 A To his former client.

25 Q To his former clients.

DESA BALLARD-CROSS BY POPE JOHNSON

1 A Correct.

2 Q And that in itself creates a conflict of
3 interest?

4 A That's what 1.7 (a) says, yes.

5 Q So any time a lawyer gives advice to a
6 client about a particular transaction and based upon
7 the client's wishes prepares a document, it may be
8 subsequent litigation with the other party if the
9 lawyer is exposed, if his advice is wrong and he is
10 exposed to civil liability. That would create a
11 conflict of interest. Wouldn't every lawyer who
12 ever sits in the room with a client and gives them
13 advice, and helped to do one thing or another,
14 always have that conflict of interest with that
15 particular client?

16 A I don't think so, no. The facts of this
17 case are, that are alleged to be; the existence of
18 the irrevocable trust, which was prepared by
19 Mr. Weinberg, may form the basis of civil liability
20 to a plaintiff. And under those facts I believe
21 that 1.7(a)2 requires that Mr. Weinberg not serve as
22 counsel, because it is a pivotal and operative
23 document upon which plaintiff's liability is
24 alleged.

25 Q So if the lawyers representing the person

DESA BALLARD-CROSS BY POPE JOHNSON

1 drafting the agreement, helps them draft the
2 agreement, and somebody else says That creates
3 liability to them, your testimony is, each and every
4 case that lawyer has to step aside and not represent
5 his client in defending the agreement that he helped
6 prepare?

7 A I am not going to give you an opinion that
8 would apply in all cases. My opinion here is
9 applying to this case.

10 Q Well let me ask you this. You then go on
11 to say that you think mr. Weinberg, he should be
12 disqualified because he may have to participate as a
13 witness?

14 A Correct.

15 Q You have been in court and understand that
16 there was a motion and notice to take his
17 deposition. And there was a motion to quash the
18 deposition. And no court yet has ruled on whether
19 he will be a witness.

20 A He has already made himself a witness by
21 filing affidavits.

22 Q No, ma'am. He has made himself a witness
23 as a party in support of the motion to dismiss. He
24 has not made himself a witness beyond getting
25 himself out of the litigation.

DESA BALLARD-CROSS BY POPE JOHNSON

1 MR. WARNER: Judge, I don't think that's a
2 question. That's a statement.

3 THE COURT: Well it's cross examination.

4 A He can't unmake himself a witness,
5 Mr. Johnson, regardless of when or if the court
6 rules on whether he is a witness. He is a witness.

7 Q Well you understand a court is going to
8 rule on whether he is subject to being deposed.
9 And, therefore, subject to being made a witness in
10 this action.

11 A Correct. But that won't have any effect
12 on his disqualification under rule 1.7. As I said
13 before, 3.7 is really irrelevant to this analysis
14 because he is disqualified under 1.7.

15 Q Okay. 3.7 is irrelevant. The question
16 about him participating as a witness is irrelevant.

17 A the question of whether he should or
18 whether he should be disqualified as counsel in this
19 case, yes.

20 Q So the question as to whether he should be
21 disqualified in this case is focused on his having
22 drafted this trust agreement. That may create
23 liability for his clients to another party. And you
24 say that he -- the same clients are not entitled to
25 have him defend that trust agreement and document.

DESA BALLARD-CROSS BY POPE JOHNSON

1 A Under the facts that have been presented
2 to me, that is my opinion. Yes, I don't think you
3 don't get to the analysis under 3.7 because he is
4 disqualified under 1.7.

5 THE COURT: Well didn't you just say that
6 under 3.7 that is not an issue at this point? Would
7 never be an issue---

8 A Until the trial. Yes, sir.

9 THE COURT: Until the trial. So it's---

10 A Yes, sir.

11 MR. POPE JOHNSON: thank you, your honor.
12 That's all I have.

13 THE COURT: 3.7 is not something this
14 court will consider.

15 MR. MOORE: May it please, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION BY MR. MOORE:

18 Q Ms. ballard, I only have a few questions
19 for you. I wrote it down what you said. I just
20 want to make it positive we understand the opinion
21 you have rendered, which we are arguing about here
22 this morning. You said it's my opinion that there
23 is a conflict for Mr. Weinberg to continue in
24 representing Ms. Harris, ms. Belk and Bibco in this
25 case.

DESA BALLARD-CROSS BY MOORE

1 A Well at the time I wrote the affidavit, he
2 still represented Ms. Harris, yes.

3 Q So that's the opinion that you have. And
4 that you have given us today.

5 A I also said that the fact that he no
6 longer represents her does not change my opinion,
7 because it simply changes her from a present client
8 to a former client, which is also one of the
9 qualifications in 1.7.

10 Q Sure. And you've said that in regard to
11 Bibco, Mr. Weinberg representing Bibco, that's not a
12 conflict, but a potential conflict.

13 A I believe so, based on the information
14 that I have available to me. Which is not much
15 related to bibco.

16 Q And you described this concept of absent a
17 waiver, it would be a conflict for him to continue,
18 correct?

19 A No, sir. What I said is that the
20 affidavits that were submitted in support of the
21 Motion to Dismiss did not talk about what I would
22 consider full disclosure.

23 Q Right. And of course today on the witness
24 stand, you as an expert, have made full disclosure
25 of the potential conflict, correct?

DESA BALLARD-CROSS BY MOORE

1 A I believe so, yes.

2 Q You've made it very clear as with all of
3 your years of expertise, as to exactly what the
4 conflict is, correct?

5 A Correct.

6 Q And you know that Ms. Harris is in the
7 courtroom.

8 A I don't know Ms. Harris.

9 Q The lady in the red, Ms. Harris. And
10 Ms. Belk sitting next to her.

11 A It's nice to meet you both.

12 Q And they have both been here as you have
13 clearly and explicitly explained the conflict of
14 interest, correct?

15 A Apparently so, yes.

16 Q And if they can understand English and can
17 hear, they should now understand the gravity and the
18 nature of the conflict of interest, correct?

19 A Presumably, yes.

20 Q And with the knowledge you have now given
21 all of us, if they were to get on the witness stand
22 and to waive the conflict, there wouldn't be any
23 problem with Mr. Weinberg continuing, would there?

24 A I don't think this is a waivable conflict.

25 Q I see. Well you had talked about this

DESA BALLARD-CROSS BY MOORE

1 concept of waiving conflict. You basically
2 mentioned It in your direct examination. Would you
3 simply explain to me how a client normally goes
4 about waiving a conflict?

5 A I am not sure I understand your question.

6 Q Well the person whose rights you're so
7 concerned about are Ms. Harris' rights, and Ms.
8 Belk's rights and Bibco's rights, correct?

9 A The question I have been asked is whether
10 Mr. Weinberg has a conflict.

11 Q Sure. A conflict in regard to Bibco, Ms.
12 Harris and Ms. Belk?

13 A Correct.

14 Q And ms. Belk owns Bibco. To your
15 understanding.

16 A That's what I read in Mr. Weinberg's
17 affidavit, yes.

18 Q So now that we have full consent and full
19 knowledge thanks to your testimony, you're telling
20 me that these individuals with all the knowledge
21 they now have, don't have the legal right to make an
22 intelligent and informed waiver of a conflict of
23 interest?

24 A My concern under these facts is that it is
25 a nonwaivable conflict. Somebody else may disagree,

DESA BALLARD-CROSS BY MOORE

1 Jahue.

2 Q Ms. Ballard, this concept of nonwaivable
3 conflict, do you have any idea where that came from?

4 A What do you mean where that came from?

5 Q Well is there anything in the rules that
6 basically say where two parties have a potential
7 conflict they may not after full education,
8 intelligently waive the conflict?

9 A I believe so, but I can't point to it.

10 Q Actually the rules provide---

11 A Well the rule that I would rely on is 1.7
12 (a)-- excuse me, (B)2. The representation is not
13 prohibited by law.

14 Q Absolutely.

15 A Right.

16 Q And when two people, you understand the
17 concept of waiver. After two people fully
18 understand a problem or a right; that they may
19 renounce that right, correct?

20 A In my opinion, Jahue, a good lawyer would
21 not allow them to waive that conflict.

22 Q Yes, ma'am. And I understand what a good
23 lawyer or a bad lawyer might do. I am simply trying
24 to get to what the rules basically provide. The
25 rules no where provide that a party may not waive a

DESA BALLARD-CROSS BY MOORE

1 conflict of interest, does It?

2 A Not to my knowledge, no.

3 Q As a matter of fact, the rules actually
4 provide, and the case laws actually provide the way
5 it's done. The way it is done is it's supposed to
6 be done in writing, correct?

7 A As of October 05, yes, It had to be
8 writing.

9 Q And actually would you agree with me that
10 getting on a witness stand, raising your hand and
11 swearing to tell the truth before a judge would be
12 the equivalent of a written waiver?

13 A That's an interesting question. It
14 wouldn't comply with the rule, no.

15 Q Well in order to comply with the rules
16 then, they would have to write it out on a piece of
17 paper, "I waive the conflict as to Mr. Weinberg?"

18 A With full disclosure, yes.

19 Q And of course, they had full disclosure
20 today, because you have given it to us.

21 A I would hope so.

22 Q Just a few more questions. You say that
23 there is a potential conflict as to Bibco. And
24 there is a conflict in regard to ms. Belk. Is Ms.
25 Belk a party to this action?

DESA BALLARD-CROSS BY MOORE

1 A No.

2 Q All right. So then we would agree that
3 Mr. Weinberg is not representing Ms. Belk in this
4 action?

5 A He says He is. In the answer and
6 counterclaim that he filed he said he was.

7 Q Well, yes, ma'am, but she is not an actual
8 party to the litigation, correct?

9 A Well that's not the way he characterized
10 it. He said that -- let me put my hands on it.

11 Q Well my question simply is, is she a party
12 to this litigation.

13 A Not according to me, but according to
14 Mr. Weinberg she is.

15 Q Well instead of talking about Mr. Weinberg
16 or you, let's talk about the caption of the lawsuit.
17 You understand that---

18 A Oh, she's not listed in the caption other
19 than a stakeholder, that's correct.

20 Q She's actually not even listed in the
21 caption as a stakeholder. The person that basically
22 is listed is Linda Harris as trustee?

23 A No, sir. The caption that I have, i could
24 read the whole thing. But the last portion of it is
25 and Cheryl Ann Hanlon, Patricia B. Schmidt, Robert

DESA BALLARD-CROSS BY MOORE

1 N. Belk and Ida Mae Belk, as stakeholders.

2 Q Do you know if she has ever been served
3 with any formal pleadings in this case?

4 A It's my assumption she has not.

5 Q And of course you understand that the only
6 way a party is within the jurisdiction of the court
7 and is actually a party to the proceeding, is to be
8 served with a jurisdictional document such as a
9 Summons?

10 A Correct.

11 Q And so we know then that since she has not
12 been served with a summons, Ms. Belk is not a party
13 being represented by anybody as far as the case is
14 concerned, correct?

15 A That would have been my opinion, but for
16 the answer and counterclaim filed by Mr. Weinberg.
17 And what that says is, and I quote, "The defendant
18 Ida Mae Belk although listed as a stakeholder is the
19 sole beneficiary of the Ida Mae Belk, irrevocable
20 trust. And under the terms and conditions of said
21 trust, is the beneficial owner of all income coming
22 from the trust; if she so desires, and therefore has
23 a right to make an answer to the allegations of the
24 Complaint."

25 So she made an answer. And she made

DESA BALLARD-CROSS BY MOORE

1 herself a party in a very unusual way. But
2 Mr. Weinberg made her a party is the bottom line.

3 Q And as I understand it, do you have any
4 proof that Mr. Weinberg has ever represented Linda
5 harris individually?

6 A No.

7 MR. MOORE: Thank you so much for
8 answering my questions.

9 The COURT: MR. JOHNSON, anything?

10 Mr. WILLIAM JOHNSON: We have no
11 questions, Your Honor?

12 THE COURT: Mr. Tyler?

13 MR. TYLER: No, Your Honor.

14 THE COURT: MR. WARNER, anything further?

15 MR. WARNER: One other question, ms.

16 ballard.

17 A Sure.

18 REDIRECT EXAMINATION by MR. WARNER:

19 Q You mentioned these conflicts. What about
20 with regard to the personal representatives of the
21 estate who actually represent the estate. Is there
22 any conflict in your opinion of Mr. Weinberg and the
23 personal representatives in those capacities?

24 A Well certainly.

25 THE COURT: What is that question? Is

DESA BALLARD-REDIRECT BY WARNER

1 there any conflict for Mr. Weinberg?

2 Q As to Mr. Weinberg and the personal
3 representatives. We've mentioned individuals. Now
4 my question is, is there a conflict in your opinion
5 with regard to Mr. Weinberg and the co-personal
6 representatives or the administrators of the estate?

7 A I believe he could representative the
8 co-personal representatives of the estate and the
9 probate of the estate. But once something comes in
10 to conflict, I think he would be prohibited from
11 representing either of the personal representatives
12 in connection with that matter in dispute.

13 MR. WARNER: I don't have any further
14 questions.

15 THE COURT: Does Mr. Weinberg represent a
16 Co-personal Representative?

17 MR. POPE JOHNSON: No, your honor.

18 THE COURT: Mr. Johnson, anything further?

19 Mr. POPE JOHNSON: No, your honor.

20 THE COURT: Mr. Moore?

21 MR. MOORE: Nothing from this witness.

22 Thank you, judge.

23 THE COURT: Thank you, Ms. Ballard.

24 MS. BALLARD: Thank you, Your Honor. Am I
25 excused?

DESA BALLARD-REDIRECT BY WARNER

1 THE COURT: You are free to leave.

2 MR. WARNER: I ask that she be excused.

3 A Thank you.

4 MR. WARNER: Your honor, I would call gene
5 Belk.

6 Mr. moore: Your honor, is he being called
7 in regard to the?

8 MR. WARNER: Just this issue.

9 Mr. MOORE: Just this issue, okay.

10 Gene Belk, after
11 being duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BELK:

13 THE COURT: Tell us your full name,
14 please.

15 A My name is Gene Belk. And I am a resident
16 of Sumter, South Carolina. And I have been
17 practicing law here---

18 THE COURT: Well I am going to get you to
19 answer your questions from your lawyer.

20 A Okay.

21 Q Mr. Belk, do you have any position,
22 fiduciary position with the estate of your father,
23 Robert Belk?

24 A Yes, I am a personal representative,
25 co-personal representative under his will.

GENE BELK-DIRECT BY WARNER

1 Q And when, who was the initial personal
2 representative of the estate?

3 A Carlton Davidson.

4 Q And did he resign?

5 A He wrote the probate court a letter of
6 resignation---

7 Q Did he resign?

8 A Yes, sir.

9 Q Did -- who was the other named person in
10 the will to act as personal representative?

11 A I was successor alternate, substitute
12 personal representative.

13 Q Was anybody else named?

14 A No.

15 Q Who prepared that will?

16 A Mr. M. M. Weinberg, Jr.

17 Q And did you make an application to Probate
18 Court to be appointed?

19 A Immediately following my daddy's death on
20 April 4th of 2000, my sister, Linda Harris and I,
21 went to Mr. Weinberg's office just subsequent to my
22 dad's death. And he showed us my dad's will. And
23 my sister Linda Harris and I were named as
24 co-trustees under my dad's will. And so
25 Mr. Weinberg instructed us on what our duties would

GENE BELK-DIRECT BY WARNER

1 be as co-trustees. He told us, He picked up the
2 telephone and called Wilson MacEwen the estate
3 accountant, and asked him about my dad's business
4 interest. And then he instructed my sister and I
5 about what our duties would be as co-personal
6 representatives and how we would go about taking
7 over the business of my dad and---

8 Q How did your sister---

9 A ---probating my dad's will.

10 Q ---become a co-personal representative if
11 you were named under the will?

12 A Okay. I had several more visits to Mr.
13 Weinberg's office immediately following that visit.
14 And I want to say that visit to Mr. weinberg's
15 office, the original visit when Linda Harris and I
16 went there.

17 Q Shortly after your father's death. My
18 question is, did your sister become co-personal
19 representative?

20 A When Carlton Davidson resigned, I
21 approached my sister as an active family unity and
22 asked her if she would serve with me since we were
23 eventually going to serve together as trustees. And
24 so She and I jointly filled out an application form
25 in the Probate Office together and were appointed

GENE BELK-DIRECT BY WARNER

1 Co-personal Representatives.

2 Q Very briefly, for how many years did
3 Mr. Weinberg represent your father?

4 A 30 plus years.

5 Q And the transactions that were involved,
6 the tractions that are involved in the estate, how
7 many of those transactions did Mr. Weinberg actually
8 handle for your father?

9 A Well going back to April 13th of 1976,
10 Mr. Weinberg incorporated berkeley land corporation.
11 And he named my special education sister Cheryl
12 Hanlon as stockholder and corporate officer. And
13 also her husband, William Hanlon. And so that was
14 the corporation that my date brought property in.
15 And so that's the first---

16 Q What was next?

17 A I got some public records.

18 Q How many? What is next?

19 A The next one is July 14, 1999,
20 Mr. Weinberg handled a transaction where my dad
21 purchased 3289 Broad Street. And he prepared the
22 name and deed in my dad's name. But I believe the
23 property may have been bought with Sumter Mortgage
24 money or Sumter Mortgage check. But I have the
25 document. In the year 2000, the firm of Weinberg

GENE BELK-DIRECT BY WARNER

1 and brown provided legal services for me. I was
2 attempting to purchase some real estate from the
3 estate of Lewis Level, Jr. And warren Curtis of
4 that office wrote at least 4 or 5 letters for me,
5 which I have. In that same calendar year, Russ
6 Weinberg the year 2000, represented me as owner of
7 Sunset Reality company in a foreclosure matter.

8 In March of 2000, Mr. Weinberg handled a
9 transaction for my dad, where my dad purchased 3277
10 Broad Street in Sumter and prepared the deed for my
11 dad, R. D. Belk doing business as Sumter Mortgage.
12 on April 20th 2001, Mr. Weinberg handled the
13 transaction for my dad for the sale of whitash
14 mobile home park. It was a multi -- it was a
15 million dollar sale. And Mr. Weinberg handled the
16 transaction, and prepared a mortgage and promissory
17 note, with R.D. Belk being named as payee, which is
18 of public record.

19 I read my sister's affidavit today. And
20 she is examining that Bibco has an interest in
21 Whitash Mobile Home Park.

22 Q What created bibco or formed it?

23 A I believe it was not Mr. Weinberg. On
24 January 17th 2002, Mr. Weinberg handled a real
25 estate transaction for my dad. The sale of Harwood

GENE BELK-DIRECT BY WARNER

1 mobile home park. Bibco was also claiming ownership
2 interest in this according to an affidavit of my
3 sister. He prepared the deed, the mortgage and
4 promissory note, in the name of R.D. belk doing
5 business as Sumter Mortgage Company as payee.

6 THE COURT: Is this an installment sale?

7 A An installment sale.

8 THE COURT: Okay.

9 A I have already mentioned that my sister
10 went to Mr. Weinberg after my dad's death. It was
11 April 12th 2004. She and I met with him personally
12 over an hour. And we reviewed my daddy's---

13 Q Who filed the probate on behalf of the
14 estate?

15 A Okay. Mr. Weinberg filed the will on
16 behalf of the estate. I meet with him on
17 April 16th 2004, and discussed the fact that my
18 mother was disgruntled over the will because it --
19 he disinherited two of his grandchildren. And also
20 give his secretary a \$100,000 bequeath when his own
21 children weren't getting any immediate benefit. On
22 April the 20th---

23 Q Were you there as personal representative,
24 or in what capacity?

25 A I was there. I was the client of his. I

GENE BELK-DIRECT BY WARNER

1 thought he was helping assist the estate. He was --
2 I approached him as an estate attorney for advice.
3 On April 20th 2004, I saw Mr. Weinberg at Wendy's
4 with Ken Young another attorney in town. He said
5 come by my office, I've got something for you. I
6 went by his office that afternoon, April 20th 2004.
7 He showed me four lists of assets. "These are your
8 dad's assets." what he owned and what was owed to
9 Him. And then that same day he wrote me he already
10 put a letter in the mail to me saying that I have
11 called your secretary. And have a copy of your
12 dad's lists of assets.

13 Q Mr. Belk, did there come a time after your
14 will was filed, that an issue came up with regard to
15 some of the language in the will?

16 A Yes, sir. But I wanted to say this; that
17 subsequent to my daddy's death and the probate of
18 the will, one of these real estate transactions
19 involving Whitash Mobile Home Park, we got in a
20 dispute with the person that my dad sold it to. And
21 so it was a slow pay. And so Mr. Weinberg called
22 his attorney, Stewart Herrick's attorney, Paul
23 Weissenstein, and discussed the fact that his
24 client, Stewart was not making payments as required.
25 And he wrote one or two letters.

GENE BELK-DIRECT BY WARNER

1 THE COURT: On whose behalf?

2 A On behalf of the estate. On behalf of
3 Robert D. Belk doing business as Sumter Mortgage.
4 He wrote one or two letters both to Mr. Weissenstein
5 and also to Mr. Herrick.

6 Q Did he do other acts for you as personal
7 representative representing the estate?

8 A Yes, sir. In addition we got in another
9 dispute with a Dean Gainey involving Williamsburg
10 Subdivision. In the latter part of December 2006, I
11 met Mr. Weinberg in his office. I gave him a copy
12 of the contract. He read it. He said this is a
13 scrivener's error. He gave me legal advice on it.
14 And we discussed the possibility of getting Harry
15 Wilson in town to handle it; he lead counsel on the
16 case. He went to Bunt Wilson, Harry Wilson, and
17 discussed the case with him. And Mr. Wilson
18 declined to take the case, because he said he had a
19 conflict that he had previously did consulting for
20 Dean Gainey.

21 Q As a result of that, did you hire another
22 lawyer?

23 A Yes, sir. We ended hiring Ken Young, who
24 called Mr. Weinberg.

25 Q I don't need any of the conversations.

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1 A All right, sir.

2 Q In addition to that subdivision, was there
3 any other acts Mr. Weinberg performed for you as
4 personal representative of the estate?

5 A No, sir.

6 Q Okay. Now did it become an issue with the
7 will and estate tax return?

8 A Yes, it did.

9 Q And who did you and your sister hire?

10 A My sister and I hired and signed every
11 check jointly, Karen Thomas.

12 Q Did Karen Thomas do the post-mortem plan?

13 A Yes, she did.

14 Q Did Karen Thomas prepare a form 706 or
15 have it prepared?

16 A Well she prepared two irrevocable trusts
17 for my mom in December of 04.

18 Q Were they signed or not?

19 A Yes..

20 Q Were they funded?

21 A Yes.

22 Q Did sHe file the form 706?

23 A Yes, she did. Just as a deadline of the
24 time to file.

25 Q When did the -- when was there a dispute

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1 between you and Mr. Weinberg with regard to the
2 matters concerning the estate?

3 A It wasn't until later in the probate when
4 ms. Thomas told us that there was significant
5 problems with the grandchildren.

6 Q I don't what you to get in to---

7 A Okay.

8 Q ---what she said.

9 Mr. pope JOHNSON: Your honor, I am going
10 to object on the grounds of relevance anyway. We
11 have gone through a whole bunch of stuff that has
12 nothing to do with whether Mr. Weinberg should be
13 be disqualified, and I object. There is not the
14 first opinion from an expert on any of this. And I
15 object on relevance and ask It be required.

16 THE COURT: What difference does it make
17 how many transactions Mr. Weinberg represented
18 Mr. Belk, the deceased, back in 2000?

19 MR. WARNER: Well as far as witness issue,
20 it certainly is because of some of the transactions.
21 As far as him being a witness. As far as a conflict
22 is concerned, the advice he gave my client as
23 co-personal representative is certainly I believe
24 relevant, because I asked Ms. Ballard the last
25 question without objection that she consider---

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1 THE COURT: The witness issue is not an
2 issue, MR. WARNER. Your own expert said that issue
3 won't come up until trial; that she's not -- did not
4 opine anything to his being a witness in this case.

5 Q Mr. Belk,---

6 THE COURT: So it's y'all's position that
7 he in fact has been representing the estate.

8 MR. WARNER: Yes. I asked her that at the
9 end. And Mr. Belk has so testified.

10 Q Did you have meetings with Mr. Weinberg,
11 With your sister and without your sister, with
12 regard to the estate?

13 A Yes, sir.

14 Q Was there a time when you stopped having
15 meetings with him?

16 A After he prepared the irrevocable trust
17 for my mother.

18 Q Did you have communications with him after
19 that?

20 A Yes, I did.

21 Q And are those correspondences that are
22 attached to the complaint in this case?

23 A Yes, sir.

24 Q Do you believe, or do you want
25 Mr. Weinberg representing in this case whether they

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1 are a party or nonparty?

2 A I thought mr. Weinberg was available to
3 represent me, his firm. I thought Mr. Weinberg was
4 representing my sister and I jointly. Immediately
5 following my dad's death, Mr. Weinberg did estate
6 work for the estate for Sumter Mortgage. For the
7 estate of r.d. belk.

8 Subsequent to my dad's death, every
9 conversation I had with Mr. Weinberg on the
10 telephone or in person was before he would hang up,
11 or before I left, let me know what I can do for you.
12 Let me know what I can do for you.

13 Q So until the irrevocable trust was
14 prepared.

15 A That's correct.

16 Q That's the last civil communication you
17 had with mr. Weinberg?

18 A That's correct.

19 Q Do you object to him continuing?

20 A I do specifically, because my sister in
21 her affidavit that was handed to me today, says that
22 Bibco is disputing sumter mortgage's ownership of
23 assets. And these assets are assets that Mr.
24 Weinberg prepared the legal paperwork for. And the
25 notes and the mortgages in my dad's name doing

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1 business as Sumter Mortgage.

2 MR. WARNER: I don't have any further
3 questions.

4 THE COURT: MR. JOHNSON, anything?

5 MR. POPE JOHNSON: I don't have any
6 questions, your honor.

7 THE COURT: Mr. moore?

8 MR. MOORE: No questions, Your Honor.

9 MR. WARNER: Nothing else from the
10 plaintiff on the issue of disqualification, your
11 honor.

12 The COURT: Anything from, the...

13 MR. MOORE: My client has advised me that
14 she cares to waive any and all conflicts in regard
15 to Mr. Weinberg. She is willing to place that under
16 other. But her representing of course with full
17 knowledge of what has happened, and full explanation
18 of this matter. We are told that Ms. Harris has
19 asked me to advise the court she waives any and all
20 conflicts regarding Mr. Weinberg.

21 MR. WARNER: May it please the court,
22 excuse me---

23 MR. WEINBERG: Your honor, please, of
24 course, I represent Ms. Belk in her capacity as
25 bibco. She also has advised me that she has waived

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1 any apparent conflict and is willing to testify to
2 It under oath.

3 THE COURT: You're representing
4 Mr. Weinberg?

5 MR. POPE JOHNSON: Yes, sir, your Honor.

6 THE COURT: Are you representing Ms. Belk?

7 MR. POPE JOHNSON: No.

8 THE COURT: Just Mr. Weinberg.

9 Mr. pope JOHNSON: Just Mr. Weinberg.

10 The court: And you have Ms. Harris.

11 Mr. moore: I do.

12 MR. WARNER: May it please, excuse me.

13 MR. MOORE: Your honor, we can, and if the
14 court, if MR. WARNER would insist upon it, if the
15 court would give us about 2 minutes, we can step
16 outside and bring in written waivers and probably
17 notarize it and hand them up.

18 MR. WARNER: Your honor, the issue with
19 that is I think the water is already under the
20 bridge. Ms. Harris is not only individually
21 involved here, she also represents her mother as
22 agent under a power of attorney and as trustee of a
23 trust. So Ms. Harris I don't believe there can be
24 again, I don't believe this is a waivable issue.
25 given the fact that he also represented my client's

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1 co-personal representative.

2 THE COURT: I've never heard of a conflict
3 that couldn't be waived. So long as everybody knew
4 whatever was involved in the exposure that was there
5 or what they were giving up. So this nonwaivable
6 conflicts, I am not familiar. Nor I think your own
7 expert testified she knew nothing that would prevent
8 a client from waiving any potential conflicts or
9 existing conflicts if that's what they elected to
10 do. My concern is that I mean, I hear now that at
11 least there is testimony that Mr. Weinberg in fact
12 represented Mr. Belk in his capacity as the personal
13 representative.

14 MR. POPE JOHNSON: Yes, your honor. We
15 are going to call Mr. Weinberg.

16 THE COURT: Well I asked you all if you
17 were going to call anybody else.

18 Mr. pope JOHNSON: Oh, I didn't understand
19 you. I would call Mr. Weinberg, I'm sorry.

20 THE COURT: But I do, Ms. Harris, and,
21 Ms. Belk, let me get you to raise your right hands,
22 if you would.

23 (whereupon, both Ms. Harris and Ms. Belk
24 are sworn.)

25 THE COURT: You two ladies have heard Ms.

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1 Ballard testify here today to what she considered to
2 be either the existing conflicts, or the potential
3 conflicts that may exist with respect to both of
4 you. And Mr. Weinberg.

5 MS. HARRIS: Yes, sir.

6 THE COURT: And both of you are both, I
7 assume individually, and in any other capacity that
8 we are here today, as a trustee of any kind of trust
9 or owner of any asset of the estate of Robert D.
10 Belk or stakeholder or shareholder of any asset or
11 entity involved in the estate of Robert D. Belk, is
12 that correct?

13 Ms. harris: Yes, sir.

14 THE COURT: Both MR. JOHNSON and Mr. Moore
15 have indicated that or Mr. Weinberg and mr. moore
16 indicated that you two ladies wish to waive any
17 potential conflicts or existing conflicts that may
18 exist with respect to Mr. Weinberg, is that correct?

19 MS. HARRIS: Yes, sir.

20 THE COURT: Do y'all feel like you need
21 any additional advice from any other attorneys with
22 respect to that matter?

23 MS. HARRIS: No, sir.

24 MS. BELK: No.

25 THE COURT: Has anybody threatened you,

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1 coerced you or pressured you in to making this
2 decision?

3 MS. HARRIS: No, sir.

4 MS. BELK: No, sir.

5 THE COURT: Do you feel like you are
6 making this decision freely and voluntarily?

7 Ms. harris: Yes, sir.

8 Ms. belk: Yes, sir.

9 THE COURT: And you both think your
10 decision is made knowingly and intelligently. You
11 have had all the information that you think you need
12 to understand and understand exactly what is
13 involved here today.

14 Ms. harris: Yes, sir.

15 Ms. belk: Yes, sir.

16 THE COURT: Well that should comply with
17 the rule. I think y'all are going to need to put it
18 in writing. And I am going to ask that you do so.
19 We are going to take a break for about 15 minutes.

20 Mr. moore: Your honor, I have faxed this
21 to the court.

22 The court: I don't know that you need to
23 have that done in the next 15 minutes, mr. moore.
24 but I will want it to be submitted, require it to be
25 submitted if Mr. Weinberg continues to be involved

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1 in this.

2 (WHEREUPON, THE COURT BREAKS.)

3 THE COURT: Mr. Johnson, who are, your
4 clients are who?

5 Mr. WILLIAM JOHNSON: Patricia Schmidt and
6 Robert N. Belk. They were initially designated as
7 stakeholders.

8 THE COURT: Who is representing Mr. Dewy
9 Houser? You are representing Mr. Houser?

10 MR. TYLER: And Mr. Lyles.

11 THE COURT: And Mr. Lyles. How about
12 Carolina preowned, LLP? Is that the used cars?

13 MR. TYLER: Yes, sir. I'm not
14 representing them at this point.

15 THE COURT: Are they represented?

16 MR. TYLER: No, your honor, they are not
17 represented. They were being -- it was being
18 represented by Mr. Miles. But since Mr. Miles has
19 been relieved, they haven't retained counsel to
20 represent carolina preowned.

21 THE COURT: Do you represent Ms. Hanlon?

22 MR. WILLIAM JOHNSON: Your honor, no, sir.

23 MR. MOORE: Judge, I have prepared a short
24 affidavit. I had emailed a rough draft to your
25 office yesterday. It's only about 9 pages, which I

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1 think sets forth pretty much what is at issue here
2 and now. I have given everybody a copy of that.

3 THE COURT: Are we ready to go?

4 MR. WARNER: Yes, your honor. Let me talk
5 to mr. johnson one second.

6 THE COURT: Mr. johnson.

7 Mr. pope JOHNSON: Your honor, during the
8 break and based upon the discussions that we have
9 had, Mr. Weinberg has agreed to voluntarily withdraw
10 as counsel for Bibco. And to, I don't know whether
11 ms. belk is even a party. But to the extent she is
12 party, to withdraw as counsel of record. With the
13 understanding that he denies that he has ever been
14 attorney for the estate or the PR's or done -- that
15 he ever represented them as counsel. And with the
16 understanding that the motion to enjoin him, which
17 was filed by MR. WARNER is withdrawn as it applies
18 to him.

19 Such that he could consult with ms. belk,
20 consult with ms. harris, consult with Bibco. He's
21 in any way he wanted to, he simply is not counsel of
22 record. And he wanted to make a statement, your
23 honor, for the record, himself.

24 THE COURT: Yes, sir.

25 MR. WEINBERG: Your honor, please, I would

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1 like the record to show that the reason I am
2 withdrawing is that I think---

3 THE COURT: Well let me say something
4 before you do that.

5 MR. WEINBERG: Yes, sir.

6 THE COURT: If you don't mind. First of
7 all, I told these lawyers, I am going to go ahead
8 and make a finding that if there was a conflict
9 potential or otherwise, with respect to Ms. Harris,
10 or Ms. Belk or Bibco that that conflict was, has
11 been waived and will be formalized by the written
12 instrument prepared by Mr. moore. Formalized by the
13 memorialization to the court here today. I am not
14 finding that there was a conflict. I am just saying
15 if there was, that has been waived by Mr. Belk,
16 Ms. Harris and Bibco. Through their waiver here
17 today with respect to any other allegations that
18 have been put forth here, the court is making no
19 finding whatsoever.

20 Now.

21 MR. WEINBERG: Yes, sir. The reason, if
22 your honor, please, that I am voluntarily
23 withdrawing from this matter is, I think it is in my
24 client's best interest. We have spent the morning
25 here dealing with side issues. I engage them if I

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1 don't withdraw, we will spend many more mornings
2 dealings with other issues brought about by the
3 plaintiff and his attorney, all at my client's
4 expense, and accomplishing nothing.

5 I don't want to leave, but my first
6 interest is to protect my client's rights, Ms. Belk.
7 And for that reason I am voluntarily withdrawing.

8 THE COURT: Well I am not requiring you to
9 leave now, Mr. Weinberg. You are certainly welcome
10 to sit here.

11 MR. WEINBERG: Judge, I thank you. But
12 after 55 years, hence, Watching two other lawyers
13 try a case is something I can't stand.

14 THE COURT: Okay, I will appreciate your
15 willingness to do that. I do think it would be in
16 your client's best interest, that Mr. Johnson, Pope
17 Johnson, remain here throughout the process.

18 MR. WEINBERG: They want to engage his
19 services. I want him off my payroll and put him on
20 theirs.

21 THE COURT: Well we will get him to this
22 pro bona, at least for the next half hour or so. He
23 may be gone after lunch. I appreciate it.

24 Mr. Weinberg: You're welcome.

25 The court: You're welcome to stay.

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1 Anything, MR. WARNER?

2 MR. WARNER: No, sir.

3 THE COURT: You understand the conditions.

4 AND, mr. Weinberg, you obviously have the ability to
5 do what you want to do with respect to life from
6 here on out.

7 MR. WEINBERG: Yes, sir, I have got
8 several plans. Thank you, judge.

9 THE COURT: Thank you, sir. Now what is
10 the next issue? All three petitions for removal?
11 Is that what we have now? Mr. Johnson's petition
12 for removal of both pr's. Mr. Johnson's petition
13 for removal of Mr. Belk. And mr. Warner's petition
14 for removal of Ms. Harris. Is that what we have
15 remaining?

16 MR. WARNER: Judge, we have the
17 application for injunction.

18 THE COURT: Well isn't that all part and
19 parcel of the same thing?

20 MR. WARNER: I think It probably is going
21 to involve the same testimony.

22 THE COURT: All right, well let's proceed.

23 MR. WARNER: Your Honor, I WOULD CALL

24 Ms. Karen Thomas.

25 THE COURT: Ms. Gray, do you want to sit

1 over here in the jury box?

2 MS. GRAY: Yes, sir. If you would like to
3 swear the witness, first. I have one issue I would
4 like to raise to the court before you start.

5 KAREN THOMAS, being first
6 duly sworn, testified as follows:

7 MS. GRAY: Your honor, there is an issue
8 of attorney/client privilege. As your honor
9 remarked this morning. Obviously it is the
10 privilege of the client. It is not the privilege
11 that Ms. Thomas can waive on her own. I suspect
12 that the testimony that MR. WARNER intends to elicit
13 from her may in some respects touch on the
14 client/privilege. And so without a waiver her
15 testimony will need to be pretty limited.

16 THE COURT: All right. And I don't know
17 who the client is for Ms. Thomas. I know I have
18 read that some people visited her at some point and
19 time. I think I saw, I can't remember if that
20 letter was written by her or mr. sojourner or
21 somebody about some matters but who is the client?

22 MS. GRAY: Ms. Thomas represented the
23 personal representatives of the estate. She
24 represented the estate through Mr. Belk and Ms.
25 Harris.

1 THE COURT: So it would be both of them in
2 the estate.

3 MS. GRAY: She also represented Ms. Belk
4 in connection with some estate planning issues as
5 well during that same period of time. And she met
6 with them.

7 THE COURT: Are those estate planning
8 issues related to Ms. Belk or were they also related
9 to Mr. Belk's estate?

10 MS. GRAY: They were sort of intertwined.
11 I mean they were related to his estate as well as
12 her estate.

13 The court: All right.

14 Ms. gray: And obviously there are other
15 parties here that are not those individuals. So I
16 have advised Ms. Thomas that she needs to be very
17 careful about that unless the privilege is waived
18 so....

19 THE COURT: What do you all want to say
20 about that?

21 MR. WARNER: Your Honor, it's our
22 intention to have Ms. thomas identify and then
23 introduce into evidence a trust severance agreement,
24 a family settlement agreement, and the agreement
25 regarding future transactions. The latter having

1 been signed by Ms. Belk, my client---

2 THE COURT: Of course, I don't know what
3 Ms. Thomas' position is going to be with respect.
4 Whatever y'all ask her or you want her to identify.
5 Whether or not that is going to be covered by her---

6 MR. WARNER: I understand.

7 THE COURT: ---client's privilege. Are
8 you all prepared to have your clients waive any
9 privilege?

10 Mr. POPE JOHNSON: No, your honor.

11 MR. MOORE: No, sir, your honor.

12 THE COURT: So you've got a problem.

13 MR. WARNER: I don't think I have any of
14 the documents, your honor.

15 MS. GRAY: I mean I think there are some
16 things that she can perhaps testify to as it relates
17 to the fact that here is the document I filed with
18 the Court. But beyond that I think her testimony
19 will need to be pretty limited.

20 THE COURT: Do you believe you need to be
21 assisting her in determining that?

22 MS. GRAY: I do. Your Honor, it's a
23 problem because, it's first of all, Ms. Thomas is
24 not a litigator, she is an estate planner. So the
25 issue that relates to testimony becomes, and then

1 this subject matter is very intertwined, because
2 conversations and the documents that she prepared
3 come from the intended communications that were
4 communicated to her.

5 THE COURT: I will tell you what we'll do,
6 ms. gray.

7 MS. GRAY: I can stand over here.

8 MR. MOORE: May I make a suggestion, your
9 honor? If all he is going to have her do is put in
10 some documents, if he will show us the documents we
11 very well may stipulate to the authenticity.

12 MR. WARNER: Well all three of them have
13 been throughout this proceeding, and I am going to
14 ask them about some of these document's execution.

15 THE COURT: All right. Well you can just
16 pull up a chair and have a seat up over here. Madam
17 court reporter, did you get ms. gray's? Elizabeth
18 Gray who attorney for Ms. Thomas. Again, y'all are
19 going to have to when you believe privilege means.
20 We'll just have to deal with it. Mr. Warner.

21 DIRECT EXAMINATION BY MR. WARNER:

22 Q Tell us your full name.

23 A My name is Karen Hudson Thomas.

24 Q Ms. Thomas, would you just, you're in fact
25 a witness. Certainly not an expert witness for

1 purposes of this examination.

2 A Yes, sir.

3 Q Tell the court and counsel your
4 educational background and your experience please.

5 A I went to USC law school. Graduated in
6 1988. Went to NYU and have a master's in tax law in
7 1989. And practiced at Nelson, Mullens, for 6, 7
8 years. And have been at Ellis Law Firm the rest of
9 the time.

10 Q And with the specifics of your, the
11 specifics of the work that you do, what type of work
12 do you do?

13 A Tax and estate planning. And i'm a
14 certified in both.

15 Q First let me show you, let me show it to
16 counsel first. A copy of a Last Will and Testament
17 of Robert E. Belk. It is stamped by Yvonne B.
18 Choice. Clerk of the judge Probate's Office for
19 Sumter County. Have you seen this document before?

20 A Yes, sir.

21 Q Would you tell me how you the first
22 became, let me offer this will in to evidence as
23 Plaintiff's Exhibit No. 1.

24 MR. MOORE: No objection.

25 Mr. POPE JOHNSON: Without objection.

1 THE COURT: So admitted.

2 (Will marked Plaintiff's exhibit no. 1
3 into evidence.)

4 Q Without telling me who or what anybody
5 said, how did you obtain a copy of that document?

6 A My best recollection is my law partner
7 gave it to me.

8 Q Subsequent to that without getting in to
9 any discussions, did you have meetings with regard
10 to this last will and testament?

11 A After, yes.

12 Q Would you tell the court with whom you had
13 meetings regarding the last Will and Testament?

14 A My law partner, Dave sojourner, Linda Belk
15 and ms. bell. Gene Belk.

16 Q Linda Belk Harris?

17 A Yes, I'm sorry.

18 Q Ida Mae Belk?

19 A Yes, sir.

20 Q And Gene Belk?

21 A Yes, sir.

22 Q When you met with these folks, did you
23 meet with them together and I'm speaking of Harris,
24 Belk and Belk or separately?

25 A We met so many times. But most of the

1 time in the beginning it was together with Ms. Belk.
2 i don't know...

3 Q Subsequent to those meetings, did you
4 engage in any planning for the Post Mortem planning?

5 A Yes, sir.

6 Q What is Post Mortem planning?

7 A Taking facts that we are given at death
8 and see what we can do with them to help the family.

9 Q And help the family do what?

10 A Save estate taxes or either help with the
11 administration of the estate or family assets to
12 make it more efficient for them in the future.

13 Q Did you in fact do a post-mortem plan---

14 A Yes.

15 Q ---for this estate?

16 A Yes.

17 Q What is the form 706?

18 A It's an estate tax return.

19 Q Who prepared the form 706?

20 A We did.

21 Q And did you have A CPA involved with you
22 in the preparation of that document?

23 A We prepared it. I think, I do not know.

24 I do not remember if Mr. MacEwen looked at it.

25 Q Okay. By Mr. MacEwen, you are speaking of

1 Wilson MacEwen?

2 A Yes.

3 Q Now as part of the Post-Mortem Planning,
4 did you prepare a Family Settlement Agreement?

5 A Oh, yes.

6 Q Do you have a copy of that with you?

7 A I do.

8 Q May I see it please? I think everybody
9 has got a copy of it.

10 THE COURT: Does everybody have a copy of
11 the Family Settlement Agreement?

12 MR. POPE JOHNSON: No.

13 MR. WARNER: Your honor, I would offer in
14 to evidence as plaintiff's exhibit no. 2, the family
15 settlement agreement.

16 THE COURT: Any objection?

17 Mr. pope JOHNSON: No objection.

18 MR. MOORE: No objection.

19 (family settlement agreement marked
20 Plaintiff's exhibit no. 2 into evidence.)

21 Q Ms. Thomas, was the Family Settlement
22 Agreement part of the post-mortem plan?

23 A Yes, sir.

24 Q And as part of the post mortem plan, were
25 assets divided between Mr. and Ms. Belk under 706?

1 A Relating to the family agreement?

2 Q Yes.

3 A No.

4 Q As far as the estate tax returns was
5 concerned, were assets divided between Mr. and Ms.
6 Belk?

7 A They ended up being owed by mr. and ms.
8 Belk. They were not divided.

9 Q Okay.

10 A The estate tax reflected the ownership of
11 the assets.

12 Q And did you receive a closing letter from
13 the Internal Revenue Service?

14 A Yes.

15 Q And the State of South Carolina?

16 A Yes.

17 Q Did you prepare a memorandum concerning
18 intention of future transactions?

19 A Yes.

20 Q And who signed that document? Do you have
21 it with you?

22 A Yes, sir. I just wanted to make sure.
23 Gene belk, linda belk harris, ida mae belk, ida mae
24 belk, D/B/A Sumter Mortgage company and Sumter
25 Finance Company.

1 Q Okay. And is that the document you
2 prepared?

3 A It's a copy of it, yes, sir.

4 Q And this is a one page memorandum?

5 A Yes.

6 Q And it's dated the 30th of June 2005?

7 A Uh-huh. (affirmative.)

8 MR. WARNER: I would offer the memorandum
9 of understanding regarding future transactions as
10 plaintiff's 3.

11 MR. MOORE: No objection at all from us,
12 your honor.

13 Mr. pope JOHNSON: No objection.

14 THE COURT: So admitted.

15 (Memorandum marked Plaintiff's exhibit no.
16 3 into evidence.)

17 Q Ms. Thomas, with regard to Family
18 Settlement Agreement, this is exhibit 2. How did it
19 get filed in the Probate Court?

20 A We mailed it from our office.

21 Q Did you mail anything with it?

22 A A check.

23 Q And did you mail anything with it?

24 A Well the consent, the Petition. And the
25 family agreement. Petition to the Probate Court and

1 the consents and the Family Agreement.

2 Q And you petitioned the Probate Court to do
3 what?

4 A Just to approve the family agreement. It
5 needed approvement.

6 Q What was the purpose of the memorandum
7 concerning future transactions?

8 MR. POPE JOHNSON: Objection, your honor.
9 the document will speak for itself. She is going to
10 be invading the purpose and intent of the parties.

11 THE COURT: I agree. That's what you're
12 getting in to---

13 MR. WARNER: I'll withdraw that.

14 MS. GRAY: I object to that.

15 The court: ---that privilege.

16 Q Did you prepare a Trust Severance
17 Agreement.

18 A Yes.

19 Q And would you let me see a copy of that?

20 A Yes.

21 MR. WARNER: Your honor, I offer in to
22 evidence the qualified severance, called a Trust
23 Severance Agreement.

24 MR. MOORE: May I see that document, your
25 Honor.

1 THE COURT: sure.

2 MR. MOORE: Thank you, Your Honor. No
3 objection.

4 THE COURT: Mr. Johnson?

5 MR. POPE JOHNSON: No objection.

6 MR. WILLIAM JOHNSON: May I see that copy,
7 Your Honor?

8 MR. WARNER: Oh, yes. Without objection
9 it is no. 4.

10 THE COURT: So admitted.

11 (Trust Severance Agreement marked as
12 Plaintiff's exhibit no. 4 into evidence.)

13 MR. WARNER: Your honor, this is paper
14 clipped together. Let me see if I can find a
15 stapler.

16 Q Ms. Thomas, let me show you no. 4, that's
17 before we hand it up to the court. And would you
18 tell the judge what a trust severance agreement is?
19 What was the purpose of this document?

20 MR. POPE JOHNSON: The same objection,
21 Your Honor.

22 THE COURT: Well my understanding of the
23 question is, and in generic terms is, tell me what
24 this type of agreement is. Not as to the specific
25 agreement itself.

1 Mr. pope JOHNSON: Then I would withdraw.

2 MS. GRAY: If it is a general question.

3 THE COURT: I thought that was the
4 question. The general question. Tell us what the
5 trust severance agreement is. If you don't know
6 much you better tell them.

7 A Everyone has an exemption to the
8 generation scheduling tax. It can be applied only
9 to one trust at a time. If we have a big trust, and
10 we apply a generation skipping exemption to it, then
11 it applies to the entire trust whether it's needed
12 or not. A qualified severance agreement is a
13 technique under the Internal Revenue code which
14 allowed executors of the estate to divide trusts.
15 Even multiple trusts. They have to be identical.
16 They can't change any terms. But the IRS does allow
17 a trust to be divided in to little trust, and the
18 exemption to the generation skipping tax applied to
19 pieces of each little trust.

20 Q Okay.

21 A That's all it is.

22 Q And was exhibit 4 a part of the
23 post-mortem planning that you accomplished?

24 A Yes, sir.

25 Q Now subsequent to the these four documents

1 having been prepared, did you prepare any documents
2 for either Mr. Belk or Ms. Harris or Ida Mae -- Ms.
3 Ida Mae Belk?

4 A After this agreement?

5 Q Yes.

6 A Yes, sir.

7 Q And would you tell the court what you
8 prepared?

9 MS. GRAY: Your Honor, I think that gets
10 within the attorney/client privilege.

11 THE COURT: I agree.

12 Q Subsequent to the preparation of these
13 four documents.

14 A Yes.

15 Q Did you communicate with any other
16 attorneys representing Ms. Belk and or Ms. Harris?

17 A Yes.

18 Q Would you tell the court with whom you
19 communicated?

20 A Only three that I remember. Bert Brannon,
21 John Chase, and John Scott. And Rusty Weinberg.

22 Q Okay. Bert Brannon. Which one was the
23 first one you communicated with?

24 A Bert Brannon to my knowledge, yes, sir.

25 Q Did you engage in meetings with

1 Mr. Brannon?

2 A I don't think we ever meet.

3 Q John Chase, did you engage in meetings
4 with Mr. Chase?

5 A Yes, sir.

6 Q Was Mr. Belk, Gene Belk, Ms. Harris and
7 everybody present or just two of you?

8 A I don't think they were there. I could be
9 wrong, but I don't think there was anybody but John
10 Chase and myself and John Scott.

11 Q And John Scott is with whose office? Do
12 you remember?

13 A I don't know. He's in Florence. They're
14 both in the same building. I am not quite sure.

15 Q And then Mr. Weinberg.

16 A Yes.

17 Q Did you have meetings with Mr. Weinberg?

18 A One phone call that's all.

19 Q And do you remember about when that phone
20 call was?

21 A Some time last year.

22 Q Did you know there was an Irrevocable
23 Trust being prepared for Ms. Belk?

24 A Belk?

25 Q Yes.

1 A Any irrevocable trust?

2 Q Yes.

3 A Yes.

4 Q And when did you know about approximately?

5 MR. POPE JOHNSON: Your honor, I am going
6 to object.

7 MS. GRAY: That may be prejudicial.

8 Q The transfer, you know what an installment
9 contract is.

10 A Yes, sir.

11 Q Would you tell the judge what an
12 installment contract is?

13 A When you sell a piece of property and you
14 get paid over time.

15 Q At the time of a death, does the internal
16 revenue service treat installment sales contracts
17 differently?

18 A Yes.

19 Q And how differently?

20 A Most other assets get a step up in basis.
21 To step more or step down now to the fair market
22 value of the assets. And when you sell them then
23 you don't actually pay capital gains on them.
24 Installment sales are normally indicative of
25 something that is not going to get a step up in

1 basis. You have to pay the income taxes or capital
2 gains as if you were still living.

3 Q Okay.

4 A There are exceptions to that, but that's
5 the general rule.

6 Q Okay. What effect if any does the
7 transfer of an installment sale to another entity
8 have?

9 A There are exceptions to the rule.

10 Q I understand.

11 A But the general transfer under 453 (B) tax
12 is a taxable transaction.

13 Q And are all the taxes then due at the type
14 of that transfer?

15 A Yes, sir. Whether or not you receive any
16 cash.

17 MR. WARNER: I have no further questions
18 of this witness, Your Honor.

19 THE COURT: Anything?

20 CROSS EXAMINATION BY MR. MOORE:

21 Q Ms. Thomas. The family settlement
22 agreement that you prepared, the writing of that
23 document simply purports to clarify one of the items
24 of the will, is that correct?

25 A Yes, sir.

1 Q And so that basically is a clarification
2 document as it appears on its face?

3 A Yes, sir.

4 Q And the memorandum of understanding
5 basically talks about trusts to be created in the
6 future, correct?

7 A On its face, yes, sir.

8 Q And on its face, It basically required
9 that the trust to be created in the future be done
10 within 60 days?

11 A I don't remember the language, but that
12 was -- I think that was the intent of the language.
13 I don't have the language. I am sorry.

14 Q Take a look at it, if you would.

15 MS. GRAY: Your honor, I would object to
16 anything about intent. I mean, she can testify as
17 to what the document says, but not what was intended
18 based on.

19 A Did it say?

20 Q We'll get it. I am not going to bit you,
21 okay.

22 A Uh-huh. (affirmative.)

23 Q I just want to make sure we understand.

24 If you look now I believe it's Paragraph 7. I
25 don't have my copy in front of me, but I believe it

1 provides that the document that is being referred to
2 in the memorandum of understanding is to be done
3 within 60 days of, correct?

4 A That's what this says.

5 Q And it's to be done within 60 days of what
6 date?

7 A I would interpret it to be the 30th day
8 of June 2005.

9 Q So the 60 days would be like July. So
10 august 2005, is when the document calls for this new
11 trust to be created.

12 A Yes. It says that, yes.

13 Q To your knowledge, subsequent to the
14 memorandum of understanding, did Ida Mae Belk ever
15 sign the document that was called to be created
16 within 60 days under that?

17 A To my knowledge, no.

18 Q To your knowledge, did Ida Mae Belk ever
19 fund the trust that was called for?

20 A This particular one?

21 Q Yes, ma'am.

22 A No.

23 Q Now to your knowledge, we've talked about
24 this Trust Severance Agreement. you have seen that.

25 A Yes.

1 Q Now as I understand---

2 THE COURT: You need that.

3 Q ---that document, it was actually signed
4 by Linda Harris and Gene Belk, correct?

5 A That's correct.

6 Q That document was not signed by Ida Mae
7 Belk, correct?

8 A No.

9 Q And on its face, all that document does is
10 to take one large trust that was in the will, and
11 breaks it up in to several smaller trusts,---

12 A Exactly.

13 Q ---correct?

14 A And they're identical.

15 Q Certainly. And that's really all that
16 document does on its face.

17 A Yes.

18 Q So the document the trust Severance
19 agreement, the trusts that are created under that,
20 are not the trusts that were called for in the
21 memorandum of understanding?

22 A Oh, no, sir.

23 Q Now when this estate was filed, you
24 actually participated in the preparation of estate
25 tax returns, correct?

1 A Yes.

2 Q And you're familiar then with a company
3 that was known as Sumter Mortgage company, right?

4 A Uh-huh. (affirmative.)

5 Q Is that yes?

6 A Yes, sir. I'm sorry.

7 Q We have to use words, because of the court
8 reporter.

9 A You're right.

10 Q And I promise you I am not trying to trick
11 you nor am I trying---

12 A And I may not be able to answer.

13 Q You do the best you can. We're getting
14 along just fine. Sumter Mortgage company was not a
15 corporation. It was actually any form of defined
16 legal entity that you could find, correct?

17 A Correct.

18 Q What you did do was look at the tax
19 returns of Mr. and Ms. Belk, and you had to make a
20 determination as to how to file the tax return of
21 Sumter Mortgage Company?

22 A No, sir, I didn't.

23 Q Of the estate tax return for Mr. Belk?

24 A Yes, sir.

25 Q And when you looked at the documents, you

1 filed the estate tax return as showing Mr. Belk as
2 owning one half of Sumter Mortgage Company and Ida
3 Mae Belk owing the other half of Sumter Mortgage
4 company, correct?

5 A Yes, sir.

6 Q Now when you filed the tax returns, you
7 did not show Mr. Belk as having any interest a
8 corporation known as Bibco, did you?

9 A No, sir.

10 Q And that's because from the documents you
11 had seen Bibco corporation belonged exclusively to
12 Ida Mae Belk.

13 A Yes, sir.

14 Q And from the documents you had seen, it
15 was clear that Bibco had been treated separately
16 from Sumter Mortgage by the belk's as the years had
17 gone on.

18 A I don't know about that. But the stock
19 records show that she was the...

20 Q Okay, that's fine. The way you were
21 contacted, you were -- your office, or do you know
22 that your office was contacted by Gene Belk?

23 MS. GRAY: Your honor, I think that's
24 within the attorney/client privilege at this point.

25 MR. MOORE: That's fine, your honor. And

1 I accept that.

2 Q Do you know anything at all about a car
3 lot known as Carolina Preowned?

4 A It doesn't ring a bell. I am sorry, could
5 It be called something else?

6 Q That's all.

7 A Okay.

8 Q Do you know anything at all about the
9 estate having advanced \$100,000 to Carolina
10 Preowned?

11 MS. GRAY: Your honor, again I would say
12 anything that she knows about what the estate did
13 would be by the attorney/client privilege. It wasn't
14 something that she would have been---

15 THE COURT: Well I mean, I don't know. If
16 it was some tax return.

17 MS. GRAY: If it were, that would be
18 different. But if it's anything---

19 THE COURT: She said she doesn't know
20 anything about it.

21 A The answer is no.

22 Q Do you know based on the documents you
23 have seen, if Mr. Gene Belk or Linda Harris have
24 taken any money for a personal representative's fee?

25 A I do not know that.

1 MR. MOORE: Thank you for answering my
2 questions.

3 THE COURT: MR. POPE JOHNSON, anything?

4 Mr. pope Johnson: None, your Honor.

5 THE COURT: Mr. william johnson?

6 Mr. william JOHNSON: None, your honor.

7 THE COURT: Mr. tyler?

8 Mr. tyler: Thank your honor, no, sir.

9 MR. WARNER: Your honor, I do have a
10 question of this witness based on Mr. moore's
11 examination.

12 Redirect examination by Mr. Warner:

13 Q Ms. thomas, Mr. Moore brought up
14 information that you knew about Bibco.

15 A Yes, sir.

16 Q Is that correct in the preparation of the
17 estate tax return?

18 A Yes, sir.

19 Q I believe you testified that based on
20 everything you saw, Ms. Belk was the sole
21 shareholder and owner, is that correct?

22 A That's my recollection, yes.

23 Q Let me show you a Motion for Summary
24 Judgment dated May 13th 1999. In A case Josephine
25 Dinkins vs. Bibco Corporation and it's agent R. D.

1 Belk?

2 A What did you say the date was?

3 Q 1999.

4 A 99.

5 Q Did you see stock folks at Bibco?

6 A 3 or 4 years.

7 Q And that affidavit June 9th 1999, signed
8 by Mr. Belk, and I ask you is this an application
9 Motion for Summary Judgment filed by Mr. Weinberg
10 firm on behalf of Bibco? I ask you if you have seen
11 that document?

12 A No, sir. I don't remember.

13 MR. MOORE: That's fine. If she hasn't
14 seen it. That's fine, Your Honor.

15 THE COURT: All right that's fine.

16 MR. WARNER: I have no further questions
17 of this witness. I ask that she be excused.

18 MS. GRAY: So she can be excused, your
19 honor?

20 THE COURT: She can. Thank you for
21 coming.

22 MR. MOORE: Your honor, might I hand up
23 those two forms? I have provided copies to counsel.

24 THE COURT: All right, I assume y'all are
25 going to make a copy and make them a court exhibit.

1 And I assume you are going to want to keep the
2 originals in somebody's file. Mr. Weinberg's file,
3 I guess.

4 MR. MOORE: If I can have the court
5 reporter mark them.

6 THE COURT: Give it to me. I will get my
7 clerk to go in to Judge James and make copies.

8 MR. MOORE: Thank you, your honor.

9 THE COURT: Do y'all have an objection to
10 substituting a copy and giving the original back to
11 Mr.?

12 Mr. Pope Johnson: No.

13 (Affidavits marked court's exhibit nos. 1
14 and 2 into evidence.

15 MR. WARNER: Your honor, I would offer in
16 to evidence and I'd give a certified copy to the
17 clerk if I need to. The motion for summary
18 judgment and affidavit of Robert D. Belk dated JUNE
19 9th 1999. In the case of Dinkins vs. Bibco and it's
20 agent R. D. Belk, Civil Action no. 94-CP-43-778.
21 Which is a motion for summary judgment on behalf of
22 the defendant's represented by Mr. Weinberg's firm,
23 along with an affidavit by Mr. Belk indicating the
24 ownership of Bibco, which is some of the issues that
25 we have here today.

1 I can get a certified copy for the clerk.
2 This is a stamped copy for the clerk's office.

3 Mr. pope JOHNSON: Your honor, I assume
4 he's offering it to prove the truth of the matter
5 asserted in the affidavit and it would be hearsay.

6 THE COURT: It is clearly hearsay.

7 MR. WARNER: Well I think it is a matter
8 of public record, your honor. I think we're
9 entitled to put it in.

10 THE COURT: It's still hearsay. I mean if
11 you want to put the Summary Judgment in. You may be
12 able to put the motion. But the affidavit is, what
13 you want. You have a right to cross examine that
14 witness. And you're offering it. It's hearsay. I
15 am not going to.

16 MR. WARNER: I would just like to mark
17 this as a proffer. Plaintiff's proffer no. 1.
18 Thank you, sir.

19 THE COURT: You can do that.

20 (affidavit of Josephine dinkins v. Bibco,
21 Plaintiff's no. 1 proffer.)

22 MR. WARNER: We would call wilson MacEwen.

23 THE COURT: Madam court reporter, here are
24 the substituted copies of court exhibits. And mr.
25 macewen, raise your right hand. Mr. johnson, this

1 is the originals.

2 Wilson MacEwen, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. WARNER:

5 Q State your full name, please, sir.

6 A Wilson MacEwen.

7 THE COURT: MR. MOORE, you don't have any
8 objection to mr. warner going forward, do you?

9 MR. MOORE: No, sir. I apologize, your
10 honor. I do apologize.

11 Q Mr. MacEwen, what is your occupation,
12 please?

13 A I am a certified public accountant.

14 Q Would you give the judge the benefit of
15 your education and experience, please?

16 A I graduated from the university of
17 Georgia, with a degree of Accounting in 1968. And
18 from the law school at the University of Georgia in
19 1970. I went to work with Arthur Anderson in
20 Charlotte, N.C. Stayed with them September of 1975,
21 when I moved to Sumter.

22 Q And since that time you have been
23 continuously engaged in what business?

24 A As a certified public accountant.

25 Q Mr. MacEwen, are you familiar with the,

1 that you know Robert Belk?

2 A Yes, sir.

3 Q For how long did you know or do business
4 with Mr. belk?

5 A Probably since the mid 1980's.

6 Q And what type of business, tell the court
7 did you do for Mr. Belk? What kind of services did
8 you perform?

9 A We prepared personal and corporate income
10 tax returns for Him.

11 Q Okay. Were you familiar with a company
12 called Sumter Mortgage?

13 A Yes, sir.

14 Q From a tax return preparation standpoint,
15 what was Sumter Mortgage?

16 A We included it as a business that was
17 owned jointly by Mr. and Ms. Belk and forwarded it
18 on an individual form 1040 with the individual
19 income tax return.

20 Q Was that a Schedule C business?

21 A Yes, sir.

22 Q Which is basically a sole proprietorship?

23 A Yes, sir.

24 Q Okay. Was it a partnership?

25 A We never filed a partnership return. We

1 understood that Mr. Belk owned half of it, and Ms.
2 Belk owned half of It.

3 Q And is that the same theory on which the
4 form 706 was prepared?

5 A Yes, sir.

6 Q What were the major assets of Sumter
7 Mortgage Company?

8 A It had real estate assets, and a number of
9 notes receivable from different sales that had
10 occurred.

11 Q Were these installment sales?

12 A Yes, sir.

13 Q Now, Mr. MacEwen, when Mr. Belk died,
14 explain to the court what your position was if
15 anything, as far as the continuation of your
16 services.

17

18 A There was a period of time, where Karen
19 Thomas was working on the estate tax return. And we
20 basically would have during that period of time
21 prepared a return for Ms. Belk and assisted the
22 personal representatives with anything we were asked
23 to.

24 Q Did you prepare the estate income tax
25 returns?

1 A We prepared the estate income tax returns.

2 Q And who were the personal representatives
3 of the estate?

4 A Gene Belk and Linda Harris.

5 Q And after Mr. Belk died in, I believe in
6 2004?

7 A He died in april of 2004.

8 Q And did you prepare the 2004 estate income
9 tax return?

10 A We did.

11 Q How about 2005?

12 A We did.

13 Q 2006?

14 A We did.

15 Q 2007?

16 A The 2007 return is on extension.

17 Q And when does that extension expire?

18 A In January.

19 Q For the years 2004, 2005 and 2006, how did
20 you get information on which to base the income tax
21 returns for the estate of Mr. Belk?

22 A We maintained a set of books for the
23 estate. The estate itself was on March 31st year
24 end. And so we maintained a general ledger for the
25 estate. We were provided the checks and transaction

1 registers for the estate.

2 Q By who?

3 A Generally it came either from Linda
4 Garrett who was the bookkeeper at sumter mortgage or
5 from Gene Belk or Linda Harris.

6 Q Okay. Did you -- describe to the court
7 the type of communication you had with Mr. Belk,
8 Ms. Harris and Ms. Garrett, up through mid 2007?

9 A It was very frequent contact. You know
10 the estate was conducted, being it's on a monthly
11 basis. And we were trying to keep the books up to
12 date.

13 Q And how often were you provided
14 information on which to keep of books up to date?

15 A We would pretty much get a monthly package
16 and try to get the records prepared. And then back
17 to gene and linda for them to review.

18 Q And did you notice or see any problems
19 between Mr. Belk and Ms. Harris with regard to your
20 getting the information and then preparing the
21 returns?

22 A None really during the early.

23 Q Did there come a time when the source of
24 information, the monthly sources stopped?

25 A Yes.

1 Q And when was that, Mr. MacEwen?

2 A I believe that was December of 07.

3 Q Did you receive monthly packages as you
4 had for Linda Garrett and Mr. Belk or Linda Harris
5 up to December of 07?

6 A Yes, sir.

7 Q Did you speak with Mr. Harris about or
8 Mr. Belk about where the documents were?

9 A From both of them.

10 Q And did you receive any documents from
11 that point forward?

12 A We received copies of like bank
13 statements. But we need to basically continue to
14 keep the books, is we needed the receipts broken
15 down between how much was interest and how much was
16 principal on a particular payment. And the checks
17 coded. Who they were written to; that sort of
18 thing.

19 Q These are the payments on the installment
20 loans?

21 A Correct.

22 Q Are these significant payments or small
23 payments?

24 A It would be a number of both of them.

25 There would be some small ones and two large ones.

1 Q From a revenue standpoint into the estate
2 from Sumter Mortgage or all sources of revenue, how
3 much per year would the gross revenue be, principal
4 and interest?

5 A It would be several hundred thousand
6 dollars.

7 Q What did ms. harris tell you after
8 December of 07, as to why you were not receiving any
9 further information?

10 A Uh, when we prepared the statements for
11 the period ending December 31st of 07, we prepared
12 one set for mr. belk, and one set for Linda Harris.
13 and there was, I had discussions with linda harris
14 as to whether or not this was something that Roger
15 long could do. Roger had taken over the Bibco for
16 us, I believe it was sometime in maybe June of 07.

17 Q Let's back up to there just a second. Who
18 is Roger long?

19 A Roger long is another certified public
20 accountant who practices here in Sumter.

21 Q Who had done the Bibco tax returns during
22 the years 04, 05, 06?

23 A Bibco had a June 30th year end. And we
24 would have prepared those returns through June 30th
25 06.

1 Q Did you prepare the June 30th 07 return?

2 A I don't believe so. I might be wrong. I
3 was thinking it was, I just don't remember. Either
4 I did or I didn't.

5 Q Did ms. harris give you a reason why you
6 were no longer doing the Bibco returns?

7 A She indicated that Roger long was going to
8 be preparing those returns. And so we told her we
9 would cooperate and get Roger whatever he needed.

10 Q And did you do that?

11 A Yes, sir.

12 Q Have you see any of those tax returns?

13 A No.

14 Q Now in September of 2007, did you know
15 that ms. belk had signed this irrevocable trust?

16 A No.

17 Q Did you ever see the trust that was signed
18 by Ms. Belk?

19 A I did..

20 Q Mr. MacEwen, let me show you a document
21 and ask if you can identify that, please?

22 A Yes. It's a trust Ms. Belk executed of
23 September of 07.

24 Q And what was the source of your receipt of
25 that trust?

1 A I can't remember whether, either Gene
2 gave it to me or Mr. Weinberg gave it to me. One or
3 the other.

4 MR. WARNER: Your honor, I would offer
5 that as plaintiff's 5; the September 17th 2007, Ida
6 Mae Belk, irrevocable trust.

7 MR. MOORE: Your honor, I have a hard time
8 understanding why it would be relevant to the facts
9 of the case. Ms. Belk i don't even think is part of
10 this action. What trust documents she may decide to
11 make with her own assets would appear to me to be
12 totally irrelevant to the facts of the case.

13 MR. WARNER: Your honor, it's alleged in
14 the application for injunction that funds came from
15 the estate and went in to this trust. Or account
16 concerning this trust or concerning Mr. Belk.

17 Ms. moore: You know, I guess for purposes
18 of showing that she has got a trust, I don't guess
19 we have an objection to the document.

20 THE COURT: So admitted.

21 (Irrevocable Trust of Ida Mae Belk marked
22 Plaintiff's exhibit no. 5.)

23 THE COURT: MR. WARNER, we need to break
24 sometime around one. If you will pick a time that
25 you think is good.

1 MR. WARNER: Judge, this is probably going
2 to be a, if the court wants to break now, certainly
3 the witness won't talk to anybody.

4 THE COURT: Well I figured it would be a
5 long witness. So but I don't know where you might
6 want to break.

7 MR. WARNER: Well this will be as good a
8 spot as any.

9 THE COURT: We will go ahead and break and
10 come back here. What time do y'all want to be back
11 at 2:00 o'clock? That's all right with you?
12 2:00 o'clock. Mr. MacEwen, again don't talk about
13 your case---

14 A Yes, sir.

15 THE COURT: ---with anybody while we are
16 on break.

17 (Whereupon, the court takes a break.)

18 THE COURT: From the logistically who do you
19 have after Mr. MacEwen?

20 MR. WARNER: I believe Ms. Harris.

21 THE COURT: And how long do you anticipate
22 that will be?

23 MR. WARNER: Direct maybe 20/30 minutes.

24 THE COURT: And how long do you anticipate
25 he will be on direct?

1 MR. WARNER: Probably another 30 minutes.

2 THE COURT: Have y'all got witnesses?

3 MR. MOORE: I just want to rely on our
4 affidavit, your honor. That's all we were planning
5 to do.

6 THE COURT: Have you got witnesses?

7 Mr. tyler: If they bring anything against
8 Mr. Houser, then we may have to put him on the
9 stand. But I haven't really heard.

10 MR. WARNER: I will need to put my client
11 back up very briefly, your honor.

12 THE COURT: Mr. Houser is probably going
13 to be involved in this, is he?

14 MR. WARNER: Except as to the restraining
15 order we requested.

16 THE COURT: Do you have witnesses?

17 MR. WILLIAM JOHNSON: I'll have one brief
18 witness.

19 THE COURT: Do you have witnesses?

20 Mr. pope JOHNSON: I wouldn't think so,
21 your honor. But I reserve the right. We are making
22 a request that it be removed, judge. MR. WEINBERG
23 had filed I believe on behalf of Ms. Harris.

24 MR. MOORE: Our position simply is as of
25 today, your honor, that both personal

1 representatives should be removed and the sister,
2 ms. Schmidt, should be appointed. We agree with
3 counsel.

4 THE COURT: Are you going to offer any
5 evidence?

6 MR. MOORE: Your honor, simply the
7 affidavit. The affidavit basically if they want
8 to -- we have given them a copy of the affidavit.
9 And I am sure if they have got anything to
10 contradict. I mean, I can call her, and let her
11 read the affidavit. Or parrot what the affidavit
12 is. That's her testimony.

13 THE COURT: Well I think you are going to
14 have to, if you want evidence in, you are going to
15 have to put up some testimony to make her subject to
16 cross examination.

17 MR. MOORE: What really bothers me is that
18 we are in effect trying the whole case here today
19 for all practical purposes. It's but I mean, we're
20 here.

21 THE COURT: What is it you intend to show
22 with these witnesses?

23 MR. WARNER: That the funds, the estate
24 funds have been diverted into accounts. While the
25 estate has been required to pay all the estate

1 expenses without receiving a revenue since January.

2

3 THE COURT: January of 08?

4 MR. WARNER: Yeah, January of 08.

5 THE COURT: Do you all deny that?

6 MR. MOORE: I think that it's---

7 THE COURT: Now at some point and time, I
8 read about some funds being used to open up a car---

9 MR. WILLIAM JOHNSON: Car dealership.

10 Yes, sir. That's what we would want to inquire.

11 MR. MOORE: The bills---

12 THE COURT: That would go to Ms. Harris.

13 MR. MOORE: The bills have all been---

14 THE COURT: Mr. belk is involved in that?

15 Mr. WILLIAM JOHNSON: Yes, sir.

16 MR. MOORE: What happened is, the money
17 has come in. We had a problem in January of 08 with
18 a squabble. My client set up one banking account.
19 The banking account has been used to pay the bills.
20 The lady who knows that is Ms. Garrett. She is the
21 bookkeeper. She is here to tell you that the money
22 that has come in, has come in. The money that is
23 gone out, is gone out. And there has been no money
24 diverted to anybody out of Sumter Mortgage. The
25 money that has come in is still there. It hasn't

1 been used to pay bills. Whatever money of sumter
2 mortgage has come, has come in. Whatever money has
3 gone out and on the car---

4 THE COURT: Well the estate is made up of
5 more receivables than just Sumter Mortgage.

6 MR. WARNER: Yes. That's correct, Your
7 Honor. And the estate account has gone down to I
8 think about \$10,000.

9 MR. BELK: Sumter mortgage account is
10 down.

11 MR. WARNER: Sumter mortgage account is
12 down about \$10,000. And Ms. garrett is not the
13 personal representative to be making decisions about
14 what bills in the estate to pay.

15 THE COURT: Well I don't know what he is
16 saying but they might be the instrument that pays
17 it. I don't know that he's saying that she
18 determines who gets paid, or doesn't get paid.

19 MR. MOORE: Judge, in regard to the car
20 lot, here is what we acknowledge our client did
21 wrong, and what Mr. Belk did wrong. An opportunity
22 came up to open a car lot. That car lot was formed.
23 And mr. Belk as an attorney, got up and formed the
24 corporation. Mr. Belk owned 25 percent of that car
25 lot. My client owned 25 percent of the car lot. My

1 client's son owned 25 percent of the car lot. And a
2 third party owned 25 percent of the car lot.

3 THE COURT: That mr. johnson's---

4 Mr. tyler: Mr. houser.

5 THE COURT: But estate money was used,
6 correct?

7 MR. MOORE: That's exactly right \$100,000
8 from the estate.

9 MR. POPE JOHNSON: we understood it was
10 200,000.

11 MR. MOORE: And it very easily could have
12 been \$200,000. I understand it. It's either
13 100,000 or \$200,000 estate money was placed in to
14 that car lot. And what happened is, the car lot as
15 a corporation, gave a note back to the estate. But
16 it wasn't guaranteed by anybody. The car lot then
17 went broke. And the car lot now has no money. I
18 think it's six old cars sitting on somebody's lot is
19 all It has got left. The money has been lost. The
20 estate has no recourse.

21 Our position is that from a self dealing
22 standpoint and a fiduciary duty standpoint, it was
23 for Mr. belk to have done that. And it was wrong
24 for Linda Harris to have done that.

25 THE COURT: Do you all disagree with the

1 scenario that Mr. Moore has just set out?

2 Mr. WILLIAM Johnson: We agree to that.

3 THE COURT: Whether it's a 100 or 200? Do
4 you disagree?

5 MR. WARNER: Your honor, there is also
6 other issues involved in it. I prefer to get in to
7 testimony rather---

8 THE COURT: Do you disagree with what he
9 just said?

10 MR. WARNER: I don't disagree that the
11 money was used as a loan to make to the LLC run by
12 Mr. Harris' son.

13 THE COURT: That's all he just told us.
14 There wasn't anything else. What other issues are
15 there that affect these two? Do you have any other
16 issues that affect these two?

17 Mr. WILLIAM JOHNSON: There are. There
18 is an issue I am sure MR. MOORE is about to explain.
19 We understand that they have taken personal
20 representative's fees in advance. And we have not
21 been advised about that.

22 THE COURT: They being mr. belk and ms.
23 harris?

24 Mr. WILLIAM JOHNSON: That is correct.

25 MR. WARNER: We don't believe that is

1 correct.

2 Mr. WILLIAM JOHNSON: There is also an
3 issue, additional LLC's called Premier Properties.
4 And we know of at least one instance in which
5 estate assets were conveyed to Premier Properties
6 without any type of oversight. We don't know if
7 there was valid consideration. It was not approved
8 by the court as required.

9 MR. MOORE: And that is absolutely
10 correct.

11 THE COURT: Do you disagree with that?

12 MR. WARNER: No estate money.

13 Mr. WILLIAM JOHNSON: There was estate
14 property by public notice, and it showed there is a
15 deed from the estate to Premier Properties. And so
16 we don't know.

17 MR. MOORE: What happened was, the estate
18 had some lots. Mr. belk signed a deed as
19 transferring those lots from the estate to Premier
20 Properties. When ms. harris found out---

21 MR. WARNER: That was not the estate
22 property.

23 Mr. WILLIAM JOHNSON: I have the deed.

24 MR. MOORE: The deed shows it is.

25 THE COURT: The grantor is who?

1 Mr. WILLIAM JOHNSON: The grantor is James
2 R. Adams, Barbara Gulledge and Gene C. Belk and
3 Linda B. Harris as personal representatives of the
4 estate of Robert D. Belk.

5 Mr. BELK: That was done with three other
6 partners.

7 MR. MOORE: It sure was.

8 Mr. WILLIAM JOHNSON: On it's face.

9 THE COURT: So that was estate property.

10 MR. BELK: And consideration was paid.

11 MR. WARNER: To the estate.

12 MR. MOORE: Well the property came back.

13 The property has now come back to the estate. The
14 property has been deeded back to the estate now.

15 MR. BELK: You are talking about a
16 different transaction.

17 Mr. WILLIAM JOHNSON: Your honor, our
18 problem is self dealing. And there is no oversight.

19 THE COURT: What is the relationship with
20 your client and Mr. BELK?

21 MR. MOORE: Brother and sister.

22 THE COURT: On a daily basis.

23 MR. MOORE: They don't get along at this
24 time.

25 MR. BELK: We haven't for three and a half

1 years.

2 THE COURT: But they don't get along now.
3 because of all this?

4 MR. MOORE: Yes, sir. There are five
5 siblings, Your Honor. One of them is mentally
6 handicapped. One of them has certain problems,
7 which we don't need to go in to. The other two are
8 my client and Mr. BELK who have been the pr's up to
9 this point. And the only other sibling is Patricia
10 smith who hasn't had any self dealing. Who hasn't
11 done anything. And who is here today and is the
12 only person who really is capable in the family of
13 being the PR.

14 Mr. WILLIAM JOHNSON: And has experience
15 in this office as well.

16 MR. MOORE: Our position is that it's
17 going to remain in the family, she's the person to
18 be. And mr. belk---

19 THE COURT: If everything y'all tell me is
20 true, we're going to have a new, we're going to have
21 someone else administering this estate. Now I don't
22 know it would be her. And i'll give you an
23 opportunity to put that evidence up. Or if you all
24 agree, we will save everybody a bunch of time. But
25 if it's not true, no estate money was used to set up

1 the car business, no property was transferred out,
2 or no basis, or the brother and the sister get along
3 well then we may not. Y'all talk about It. You are
4 spending lots of money. Right now I have the names
5 of some individuals who -- y'all had your chance.
6 All right we will see you at 2:00 o'clock.

7 (WHEREUPON, THE COURT BREAKS.)

8 THE COURT: Back to the two co-personal
9 representatives being replaced. And the court
10 should go ahead and appoint somebody to step in
11 their stead. Is that correct, mr. johnson?

12 MR. POPE JOHNSON: Yes, Your Honor. And A
13 special administrator.

14 THE COURT: A special administrator.

15 Mr. POPE JOHNSON: With the understanding
16 that the instructions would be and get in and
17 conclude the estate as quickly as reasonably
18 possibly. And some of you have agreed that former
19 judge Duane Shuler would be the appropriate person.
20 My understanding is MR. JOHNSON has a person that he
21 wants to propose.

22 Mr. WILLIAM JOHNSON: Yes, sir, my client.

23 THE COURT: But everybody is in agreement
24 that we will appoint somebody to be the special
25 administrator. THE COURT will appoint.

1 Mr. pope JOHNSON: Either one or the
2 other, correct.

3 THE COURT: And my understanding is that
4 somebody has talked to judge Shuler and he has
5 agreed to do it.

6 Mr. pope JOHNSON: I spoke with him, and
7 he said he would be willing to do it.

8 THE COURT: And your client or whoever you
9 are proposing---

10 Mr. WILLIAM JOHNSON: Yes, sir.

11 THE COURT: ---is agreeable to do it as
12 well.

13 Mr. WILLIAM JOHNSON: Yes, sir. She is
14 right here.

15 THE COURT: Anybody disagree with what I
16 just said?

17 MR. WARNER: No, Your Honor.

18 MR. MOORE: No, sir.

19 THE COURT: Mr. johnson, do you disagree?

20 Mr. pope JOHNSON: No, sir.

21 THE COURT: Mr. tyler?

22 Mr. tyler: No, sir.

23 THE COURT: Mr. johnson, you want to -- I
24 don't know whoever it is you are proposing if you
25 want to call your.

1 Mr. WILLIAM JOHNSON: We would propose.

2 Yes, sir. Call her to the stand.

3 THE COURT: Let me see who you are talking
4 about.

5 Mr. WILLIAM JOHNSON: We would call
6 Patricia Schmidt.

7 Patricia Schmidt, after being duly sworn,
8 testified as follows:

9 THE COURT: If you will have a seat and tell me your
10 full name, please.

11 A Patricia faye schmidt. BELK schmidt.

12 DIRECT EXAMINATION BY MR. WILLIAM JOHNSON:

13 Q Okay, Ms. Schmidt, you are one of the
14 children of Robert Belk, is that right?

15 A That's right.

16 Q And two of them are the co-personal
17 representatives who brought this litigation, is that
18 right?

19 A Yes, sir.

20 Q And then there are two other children.

21 And who are they?

22 A That's my brother, Bobby.

23 Q Okay. And he's here today.

24 A And my sister cheryl is not.

25 Q And cheryl has some special needs, is that

1 correct?

2 A That's right.

3 Q Tell the court if you will about your work
4 history.

5 A Well I have worked the majority of my life
6 I started off at a motel. Which was a desk clerk
7 job. And from that point on, I went to my father's
8 office. And I worked for my father for over 20
9 years.

10 Q Okay.

11 A Which included a lot of different things.
12 A variety of things. I handled installment sales.
13 I also handled contracts that he sold to NBSC. And
14 we did recourse on those. I managed mobile home
15 parks for him. I managed the office for him. I was
16 the officer manager. Then he hired Ms. Miller at
17 the time, which is Linda Garrett. And he had
18 several different entities, as you know. Sumter
19 Mortgage and Bibco. So we split the books. And I
20 took care of one, and she took care of the other.
21 And we worked together for a long period of time
22 like that. But I have a lot of experience in the
23 bookkeeping. Record keeping. Property manager.

24 Q Okay.

25 A Property management is mostly what I do.

1 And feel I know the business because I have been in
2 it for so long.

3 Q Now most recently you have lived out of
4 state for several years?

5 A Yes, sir. I had a job for a year and a
6 half. I was the manager for a senior apartment
7 complex here in town.

8 Q Okay.

9 A And then my husband and I decided to go to
10 New York. We moved there to help his parents.

11 Q Okay.

12 A Which are aged. And then we moved back
13 because of the controversy that was going on with
14 that situation.

15 Q And so you're now -- you live here full
16 time now?

17 A Yes, I do.

18 Q You have no other outside responsibilities
19 that would draw away from your time?

20 A I don't.

21 Q And are you of course willing to utilize
22 such professional assistance as might be needed?
23 Do you think you need the assistance of
24 professionals in the administration of this estate?

25 A I realize I would need the help of

1 professionals. But on the other hand, I would like
2 to save money. We have lost so much money to this
3 point, that I would like to save as much money as
4 possible.

5 Q HAVE YOU any involvement in the
6 administration of the estate to this point?

7 A No, I have not.

8 MR. WILLIAM JOHNSON: Thank you. Answer
9 any questions.

10 THE COURT: MR. WARNER, any?

11 MR. WARNER: Yes, Your Honor. Just be a
12 few.

13 CROSS EXAMINATION MR. WARNER:

14 Q Ma'am, please don't take anything I ask
15 you disrespectfully, okay.

16 A I won't.

17 Q And how old are you please?

18 A I'm 51.

19 Q And you have been married how many times?

20 A Does that matter?

21 Q I'm just asking. How many times have you
22 been married?

23 A Three times.

24 Q This is your third husband?

25 MR. BELK: Fourth.

1 A No, I have not been married four times.

2 THE COURT: MR. BELK, keep your comments
3 to yourself.

4 Q Now you have worked for your father 20
5 years straight?

6 A On and off.

7 Q Tell me what jobs you have held.

8 A Well 20 years in total. On and off. In
9 between there, I have had other jobs.

10 Q Educationally, where did you finish high
11 school.

12 A I have a diploma.

13 Q Where did you finish high school?

14 A I have a GED.

15 Q When did you get your GED?

16 A Four years ago. Five years ago.

17 Q So when did you drop out of high school?

18 A In the 12th grade.

19 Q And you were 17 then?

20 A 17 years.

21 Q And you got your GED 4 years ago.

22 A Yes, sir.

23 Q In the State of New York or South
24 Carolina?

25 A South carolina.

1 Q Have you any other courses or tech
2 schools?

3 A Yes, sir.

4 Q And where did you take courses?

5 A At Sumter Tech.

6 Q And what courses did you take?

7 A Bookkeeping I, Bookkeeping II, Typing I,
8 Typing II.

9 Q Was that before of after your GED?

10 A That was before, continuing education.

11 Q Okay. Your first marriage did you live in
12 South Carolina the whole time?

13 A Yes.

14 Q And you have one child?

15 A One child.

16 Q And your second marriage you lived in
17 South Carolina the whole time?

18 A Yes, sir.

19 Q Then you lived in New York for four years?

20 A Yes, sir.

21 Q Have you worked with CPA's before?

22 A Yes, sir. Mr. MacEwen, I've worked with
23 him.

24 Q Mr. MacEwen.

25 A Uh-huh. (affirmative.)

1 Q You and linda garrett, do you and she get
2 along?

3 A Yes, we do.

4 Q Was there a time you didn't get along?

5 A I think we have ins and outs like most
6 employees do, but there was really never a point
7 where we really just didn't like each other.

8 Q Are you familiar with your father's
9 business dealings?

10 A Yes, I am.

11 Q How are you familiar with those?

12 A I am familiar with the paperwork.

13 Q Are you familiar with the way he bought
14 and sold real estate?

15 A Yes, sir.

16 Q You were involved in those transactions?

17 A Yes, sir.

18 Q Are you familiar with the fact, or do you
19 know that some of notes payable to R. D. Belk
20 individually are being deposited elsewhere? Do you
21 know anything about that?

22 A No, sir.

23 Q Over the past four years, have you made
24 any efforts to get any type of accountings from your
25 sister or brother?

1 A Yes, sir. I contacted my father. In
2 fact, the first year he did send me a package. But
3 any time after that, I was not. I asked for those
4 records, but I was not given anything.

5 Q So you haven't, you haven't done anything
6 up to now to attempt to resolve whatever the
7 problems are with the estate, is that correct?

8 A No, sir, I have only been back in town 6
9 months.

10 Q Okay. After you've worked as a motel
11 clerk your next job was just on and off at your
12 father's office?

13 A No, sir.

14 Q Where did you work after that?

15 A I worked with my father at bibco
16 incorporated. and from there is where I hired
17 Linda Garrett.

18 Q You hired her?

19 A I was the office manager at that time.

20 Q Did you work for your sister, linda
21 harris?

22 A I've never worked for her except just as
23 being a sister and filing in for her sometimes. I
24 never was paid for that.

25 Q You didn't work at day care center at all?

1 A I did not get paid. No, sir, I was not
2 employed there.

3 Q Did you ever -- were you ever there and
4 just leave the place without her knowing it? Did
5 you ever just walk out?

6 A No.

7 Q Now if you are appointed as personal
8 representative, what would be the first thing you
9 would do?

10 A The first thing I would have to do is get
11 myself familiar with the paperwork.

12 Q Which paperwork?

13 A All the paperwork.

14 Q Have you sought anything from any of
15 accountants, Mr. Long, or anybody else?

16 MR. WILLIAM JOHNSON: Objection Your
17 Honor. That's in the pleadings.

18 MR. WARNER: I don't think I have any
19 further questions.

20 THE COURT: Mr. Moore, do you have
21 anything?

22 MR. MOORE: Just briefly.

23 CROSS EXAMINATION BY MR. MOORE:

24 Q I just want to make sure that, a few
25 things to clarify. You love your mother very much.

1 A I do.

2 Q And it's my understanding that you are
3 wanting to serve as the personal representative.
4 One reason is you are concerned about the 5 percent.
5 Or whatever the personal representative fee would
6 be.

7 A That's true.

8 Q And you are willing to work at a reduced
9 fee or no fee at all on the estate?

10 A Yes, sir.

11 Q And your mama, she's always been a very
12 fugal lady, hasn't she?

13 A She has.

14 Q And she is also concerned about the
15 expense of an outside personal representative, isn't
16 she?

17 A Yes, sir.

18 Q And if linda is not going to do it, and
19 gene is not going to do, and the other brother can't
20 do it and your sister has special needs, it pretty
21 much falls by default to you, doesn't it?

22 A Yes, sir. I feel responsible for them.

23 Q And you feel also responsible for your
24 mom.

25 A I do.

PATRICIA SCHMIDT-CROSS BY MOORE

1 Q Do you love your mama?

2 A I've called her every day while I have
3 been in new york for several hours a day.

4 Q Let me talk about linda garrett for
5 awhile. Linda garrett has worked for this business
6 for 25 years, is that correct?

7 A That's right.

8 Q And her job has been kind of bookkeeper,
9 and the ram rod of Sumter Mortgage for 25 years,
10 isn't it?

11 A Yes, sir.

12 Q If you were to go to sumter mortgage and
13 ask anything, the person you would ask for is Linda
14 Garrett.

15 A That's correct.

16 Q Linda garrett knows where everything is.
17 Knows what is what. Knows where the paperwork is.
18 Knows where the contracts are.

19 A She does.

20 Q Linda Garrett was somebody your daddy
21 trusted.

22 A Yeah, sHe was a valued employee, and he
23 could trust her.

24 Q The truth of the matter is, if Sumter
25 Mortgage lost Linda, it would be a mess, wouldn't

PATRICIA SCHMIDT-CROSS BY MOORE

1 it?

2 A It would be.

3 Q And also the truth is, most of what your
4 daddy had was Sumter Mortgage company, wasn't it?

5 A Yes, sir.

6 Q He didn't have much of anything else
7 except Sumter Mortgage?

8 A That's correct.

9 Q So the person who knows everything in the
10 world about your dad's business is basically going
11 to be linda. And she is sitting in the back of the
12 courtroom.

13 A That's right.

14 Q And you have worked with linda.

15 A I have.

16 Q And you are totally convinced that you can
17 work with her again.

18 A I am.

19 Q You respect her.

20 A I do.

21 Q You feel she respects you.

22 A Yes, sir.

23 Q And although you haven't worked in the
24 business for awhile, you certainly understand the
25 concept of the business and know how the paperwork

PATRICIA SCHMIDT-CROSS BY MOORE

1 works.

2 A Yes, sir.

3 Q You would know where to look in order to
4 know who is owed what.

5 A Yes, sir.

6 Q And you would know who to ask in regard to
7 who would know what.

8 A Yes, sir.

9 Q And when you saw the documents, you are
10 familiar with what they should look like. And you
11 would be able to tell pretty what's going on with
12 very little work, correct?

13 A Yes, sir.

14 Q And one of the things you understand that
15 you would need is to secure the services of an
16 accountant; somebody who can basically put 1 plus 1
17 together and decide who owes what. And what's
18 there.

19 A That's right.

20 Q Now you understand that if you're the
21 personal representative one of the things that this
22 court is going to order is that this estate be
23 closed as soon as possible.

24 A Yes, sir.

25 Q Is closing this estate as soon as possible

PATRICIA SCHMIDT-CROSS BY MOORE

1 one of the things that you are wanting to do?

2 A It is.

3 Q And are you basically willing to work for,
4 as I understand, no fee, is that correct?

5 A That would be fine.

6 Q And of course, if we hired an outside
7 representative, he is going to charge, correct?

8 A That's right.

9 Q Now one of this things that you understand
10 is that there has been some money that has gone in
11 to this car lot that Gene and Linda, and their son
12 have gotten this money. You understand as personal
13 representative you might have to make a claim
14 against them.

15 A Yes, sir.

16 Q You're willing to do that?

17 A I am.

18 Q Now you also understand that your sister
19 is a special needs person. Is that correct?

20 A Yes, sir.

21 Q And she has special needs children too.

22 A She does.

23 Q One of things you are concerned about and
24 we talked about earlier, is that one of the reasons
25 that you want to be Personal Representative is to

PATRICIA SCHMIDT-CROSS BY MOORE

1 ensure that when the estate is closed and the trusts
2 are set up, that the appropriate trusts are set up
3 for your special needs sister?

4 A That's true.

5 Q And it's my understanding that you talked
6 with your mom, and your mom wants you to do this if
7 you will.

8 A We have discussed it. And she does.

9 Q And you want to do this?

10 A Yes, sir.

11 Q Let me ask you this. If the judge
12 appointed you, instead of Duane Shuler, do you
13 think you can work with Gene?

14 A I do.

15 Q Do you think you can work with Linda?

16 A I do.

17 Q Do you think you can work with your mom?

18 A Yes, sir.

19 Q Do you think you can work with MR. WARNER?

20 A Yes, sir.

21 Q Do you think you can work with me?

22 A Yes, sir.

23 Q Do you think you can work with MR.

24 JOHNSON?

25 A Yes, sir.

PATRICIA SCHMIDT-CROSS BY MOORE

1 THE COURT: You're asking a lot now.

2 Q But you do understand that because of some
3 of the complexities of the numbers that it would be
4 necessary for you to see your lawyers. And probably
5 an accountant to get the appropriate and final
6 accounting to get this estate done.

7 A Yes, sir.

8 MR. MOORE: Your honor, I don't have any
9 further questions. Thank you.

10 Mr. POPE JOHNSON: No questions.

11 Mr. WILLIAM JOHNSON: Yes, I do have.

12 MR. TYLER: None, Your Honor.

13 THE COURT: Anything further on redirect?

14 MR. WARNER: I do, Your Honor, as new
15 matter brought up by Mr. Moore very briefly.

16 CROSS EXAMINATION BY MR. WARNER:

17 Q Ms. schmidt, you wouldn't have a problem
18 with them making a claim against your mother or
19 bibco if it has been improperly funded with assets
20 that belong to your father. I see you are
21 hesitating.

22 A I would have to see the paperwork. And I
23 always stand for what is right.

24 Q But my question is, you would not have a
25 problem if the money titled should have gone into

PATRICIA SCHMIDT-CROSS BY WARNER

1 the estate and instead put into bibco, you wouldn't
2 have a problem making a claim against your mother to
3 get it back, would you?

4 A I would have to do what I have to do if it
5 was a legal matter.

6 Q And you talked to your mother for two
7 hours while you were in New York, is that what you
8 said?

9 A Yes.

10 Q Okay. You were married to Ray Pritchard?

11 A That was not a marriage, sir. That was an
12 annulment. I was only 17.

13 MR. WARNER: I have no further questions.

14 THE COURT: I got a couple of questions.

15 Do you get along with your brothers and your
16 sisters?

17 A I get along with all my brothers and
18 sisters.

19 THE COURT: There is no ongoing dispute or
20 problem at this time.

21 A No, sir.

22 THE COURT: And you understand clearly if
23 you were appointed, that you would be responsible
24 for doing certain things. And one is to marshal all
25 the assets that belong to the estate to see that any

PATRICIA SCHMIDT-CROSS BY WARNER

1 bills, any obligations that the estate has, to see
2 that they are paid. And see that the assets are
3 dispersed pursuant to whatever the will is. Do you
4 understand that?

5 A Yes, sir.

6 THE COURT: And if that means there have
7 been, I think it has been represented to the court
8 today and apparently it was without dispute, that
9 certain funds were taken from the estate and paid in
10 to entities that probably were not authorized.

11 A Yes, sir.

12 THE COURT: So the estate will be expected
13 to make claims to get those funds back, you
14 understand that?

15 A Yes, sir.

16 THE COURT: Which will involve maybe
17 family, maybe friends, maybe acquaintances. Do you
18 understand that?

19 A Yes, sir.

20 THE COURT: And you are willing and you
21 fill like you can do that.

22 A Yes, sir. And If i may speak, i have had
23 to do that today. And this is not a good thing.
24 But we have to do what we have to do.

25 THE COURT: You understand you are

PATRICIA SCHMIDT-CROSS BY WARNER

1 responsible if you are you are appointed to
2 administer the estate and preserve the assets to see
3 that they go where they're supposed to go?

4 A Yes, sir.

5 THE COURT: And do you have any questions?

6 A No, sir, I don't.

7 THE COURT: And do you understand if you
8 are appointed, it's going to be pursuant to a Court
9 Order. And you're going to be obligated to do
10 everything else that that order requires you to do.
11 And if you don't, you are subject to sanctions by
12 the court.

13 A Yes, sir. I will seek help from where I
14 need to in order to fulfill it.

15 THE COURT: Okay. Anything further?
16 Thank you ma'am.

17 MR. POPE JOHNSON: That's all we have your
18 Honor.

19 THE COURT: Anything further?

20 MR. WARNER: No.

21 THE COURT: I would like to ask, Ms. ida
22 mae BELK. Ms. belk.

23 MS. BELK: Yes, sir.

24 THE COURT: You heard your daughter up
25 here testifying. Do you have any objection to her

PATRICIA SCHMIDT-CROSS BY THE COURT

1 being appointed?

2 A No, sir.

3 THE COURT: You think you can work with
4 her?

5 A Sure.

6 THE COURT: Can somebody tell me basically
7 what the will says?

8 MR. WARNER: As far as what, Your Honor?

9 MR. WARNER: Who are the beneficiaries for
10 the will?

11 MR. WARNER: Everything I think comes to
12 ms. belk, until she died.

13 THE COURT: And then there are two trusts.

14 MR. WARNER: The two trusts. The trusts
15 have already been created. All the trusts have been
16 created.

17 THE COURT: Has there been any funding of
18 any of the trusts?

19 MR. WARNER: No, sir.

20 THE COURT: So the documents have been
21 done. But so there is no trust because there is
22 nothing in them.

23 MR. WARNER: We understand.

24 THE COURT: And what are the two trusts?

25 A and b trust?

PATRICIA SCHMIDT-CROSS BY THE COURT

1 MR. WARNER: And there's a c also. A and
2 b.

3 MR. POPE JOHNSON. And a trust for the
4 children.

5 THE COURT: And what are the -- generally
6 what are the assets?

7 MR. WARNER: Judge, we estimate probably 6
8 to 8 million dollars.

9 THE COURT: No, I don't mean in terms of
10 value. But I mean, is it mainly real estate?

11 MR. WARNER: Real estate and installment
12 sales proceeds.

13 MR. MOORE: Judge, what you basically have
14 is, the gentleman was in the mobile home park
15 development business primarily. They would sell
16 mobile homes and mobile home lots. And rent mobile
17 homes and mobile home lots. So you have a number of
18 mobile home lots primarily.

19 And they're receiving these installment
20 payments in them. Primarily they're coming in to
21 the office, which the officer manager is handling.
22 And we have outlined in our affidavit, the actual
23 assets of the estate and told the court what they
24 are. But it's primarily it's a traditional mobile
25 home park management company is basically what it

1 amounts to.

2 Plus they have sold some mobile home
3 parks. And they some have some very large
4 installment sales contracts coming in from the
5 people who actually bought the mobile home park.
6 For about 17, \$18,000 a month, i believe.

7 THE COURT: Here's what I want. Who wants
8 to do an order in this case?

9 MR. WARNER: I'll be happy to do it,
10 judge.

11 THE COURT: Here's what I want, but I
12 want it circulated, because I want y'all to agree on
13 some things. First of all, I want an order
14 appointing a special administrator and leave the
15 name blank. And I want an order, and the court can
16 also approve the fees that the special administrator
17 will get if any. Does ms. Harris and Mr. Belk each
18 have certain accounts that they are operating on
19 behalf of the estate?

20 MR. WARNER: Your honor, there is an
21 estate account, that I understand, that has been
22 sitting for about \$107,000. And there is a Sumter
23 Mortgage account that is down to 10 or 15,000.

24 Mr. Moore: And there is an I. m. belk
25 company account which actually is a Sumter Mortgage

1 Account.

2 Ms. harris: Half and half.

3 MR. MOORE: Half and half. That account
4 belongs half to ms. belk and half to sumter
5 mortgage.

6 THE COURT: Is Ms. Garrett here? WHERE IS
7 SHE?

8 MS. HARRIS: She's right here.

9 THE COURT: Do you work for one of these
10 companies?

11 Ms. garrett: Yes, sir.

12 THE COURT: As a full time employee?

13 Ms. garrett: Yes, sir.

14 THE COURT: And do you intend to continue
15 to do that?

16 Ms. garrett: Yes.

17 THE COURT: Well I want in this order
18 y'all to identify not all the assets to the estate.
19 But I mean if you have got accounts that are being
20 managed by the pr, I want those accounts identified
21 so the special administrator will know where they
22 are, and we'll have some record as to what they are.
23 I want the administrator to provide information to
24 the attorneys on a regular basis about this. SO
25 whatever he or she is doing, it is, y'all have to

1 get an update on some basis. How often do y'all
2 want some sort of update?

3 MR. WARNER: I think monthly would be
4 satisfactory, to keep the books up like that.

5 THE COURT: Well you might ask them to
6 write you a letter to kind of tell you what is going
7 on. Do y'all think we need on a monthly basis?
8 What about a quarterly basis?

9 Mr. Moore: A quarterly certainly. A
10 quarterly basis sounds to me.

11 THE COURT: What else do you all want in
12 this order that you think we need?

13 MR. WARNER: Your honor, I guess one of
14 the questions would be for the special administrator
15 to identify to who the account was payable and where
16 it has been deposited. Because I think---

17 THE COURT: Well clearly the special
18 administrator is going to need to go back and
19 identify all the assets that have been, or were paid
20 in to the estate. Or should have been paid in to
21 the estate. And if they were paid somewhere else,
22 they need to retrieve those funds.

23 MR. WARNER: And frankly, Your Honor, we
24 would ask the special administrator to create one
25 account to make all distributions from one estate

1 account.

2 THE COURT: Well it sounds like some of
3 these accounts that are business accounts that are
4 used to operate on the basis. If it operates in an
5 entity, some name of an entity, then I don't know if
6 you want to close that account.

7 MR. WARNER: Well, for example, I.M. belk
8 account, is ms. belk's account. They say half of
9 that belongs to the estate and half of it belongs to
10 Ms. Belk at Sumter Mortgage money. I think that
11 needs to be handled by a special administrator and
12 let him make the distributions. Based on Ms.
13 Garrett's bookkeeping there is about 3 or 4 accounts
14 up here, I think.

15 THE COURT: What do you think about It?
16 Are there ongoing obligations to be -- ms. garrett,
17 are there ongoing obligations, bills that you have
18 to pay on a weekly basis?

19 Ms. garrett: YES, sir.

20 THE COURT: And what are they related to
21 besides?

22 Ms. garrett: Maintenance, insurance
23 taxes, whatever.

24 THE COURT: Is the estate obligated for
25 any of those expenses? I think---

1 MS. GARRETT: If they are saying that
2 Sumter Mortgage is half and half, I guess so.

3 MR. BELK: They are, yeah.

4 THE COURT: I think we are just going to
5 have an accounting done to show on a quarterly basis
6 to -- I am going to require -- I want the special
7 administrator, who signs the checks?

8 Ms. garrett: The belks do.

9 Ms. belk: Well we sign for Sumter
10 Mortgage. She signs for other.

11 MR. WARNER: They were signing them
12 jointly for a while. And then Ms. Garrett writing
13 the expenses, was given the information to the other
14 account.

15 THE COURT: Well you all figure that out,
16 how you want that done so that these accounts.
17 Until we can get this special administrator how
18 these bills are going to be paid. But I mean, I
19 want this to be transparent. I want y'all to get
20 all the information you need to assure yourselves
21 and your client that whoever the special
22 administrator is doing what is necessary in order to
23 gather the assets.

24 Now you have got a tax return that is due.
25 Is that correct, Mr. macewen?

1 Mr. Macewen: Yes, sir.

2 THE COURT: Due by Wednesday,
3 December 31st?

4 Mr. macewen: January 15th. So...

5 THE COURT: And you're doing that? Your
6 company.

7 MR. MACEWEN: I don't know. We have---

8 THE COURT: Did y'all get the extension on
9 their behalf?

10 Mr. MacEwen: We prepared the extension.
11 and delivered the general ledgers up through
12 December 31st to both Gene BELK and Linda Harris.
13 All that needs to be done to complete that tax
14 return is to bring the books from January up to
15 March 31st.

16 THE COURT: 2008.

17 Mr. wall: My office has done the
18 preliminary on that. They put together books---

19 THE COURT: And your name.

20 Mr. wall: Roger wall. They put together
21 the books of the two checking accounts in to one set
22 of folders.

23 THE COURT: I want in there that the
24 administrator do whatever is necessary to get these
25 tax returns, the CPA, or whoever is going to do it.

1 I don't know. It might be up to the administrator.
2 I would say clearly using somebody that has some
3 knowledge would be better. It reduces the learning
4 curve. But anything else you all think needs to be
5 in there that you can agree on that would be helpful
6 in giving the administrator the necessary authority
7 or power that needs to be done.

8 THE COURT: Yes, sir, mr. tyler.

9 MR. TYLER: Your honor, Mr. houser has
10 been over at Sumter Mortgage doing some of the day
11 to day managerial tasks. And I think he's agreed to
12 do or not do it. He really has been kind of doing
13 it as favor by Ms. Harris and Ms. BELK. But we are
14 just looking for some direction so that he knows
15 whether he should continue to go over there or not
16 go over there.

17 THE COURT: Well I can't answer that.
18 That will ultimately be a decision of the special
19 administrator.

20 THE COURT: Anybody have any objections or
21 thoughts about that?

22 MR. WARNER: Your honor, we had asked that
23 he be restrained from going around there. That was
24 part of our, whatever the court. I think the
25 special administrator needs to make that

1 determination.

2 THE COURT: All right, that will be. I
3 just, you know, I am not going to tell him he can't
4 go over there. But I guess, Ms. Garrett needs to
5 run the thing until we get the new special
6 administrator in there.

7 Mr. tyler: That's fair, Your Honor. We
8 just wanted to make sure we get some direction.

9 THE COURT: Anything else?

10 MR. POPE JOHNSON: Your honor, I assume
11 the order needs to include, pr's. Current pr's will
12 turn over probably over all records.

13 THE COURT: Pr's -- they are ordered to
14 cooperate in any way that the administrator believes
15 is necessary. And make themselves available.

16 MR. WARNER: Your honor, I will be happy
17 to do a draft and send it out.

18 THE COURT: And I don't want clients
19 contacting the special administrator to -- if they
20 have things that they need to know, they need to do
21 it through you all.

22 Mr. tyler: Your honor, one more
23 question. There are other claims, individual
24 claims, by mr. belk against my clients. Are we
25 staying in the lawsuit pending kind of what happens

1 with the special administrator? Or if we are going
2 to continue to move forward with those, or kind of
3 what the status of the lawsuit are we going forward
4 after this hearing is going to be?

5 THE COURT: I can't answer that question.
6 I mean, do you have some pending motions here today?

7 Mr. tyler: No, Your Honor, I don't
8 believe there is any motions. I just want to know
9 what the status of the overall lawsuit is.

10 THE COURT: I mean this case is going to
11 administered by Judge Manning, at least as long as
12 he is the chief administrative for Richland County,
13 which will be through the end of this year. The way
14 that we had talked is that this case will go on the
15 docket here in Sumter county and will be reached in
16 it's normal course.

17 but It will not be administered by judge
18 James who is the administrative judge over here. I
19 don't who starts in January. I will be the
20 administrative judge in Richland county whether the
21 thing is going to pass to me by virtue of that, I
22 don't know. I don't think the lawsuit is stayed.

23 Mr. pope JOHNSON: I don't think it is
24 stayed either, Your Honor. But I assume the special
25 administrator would then become the decision maker

1 as to what claims on behalf of the estate need to be
2 pursued and what claims don't have to be pursued.

3 MR. WARNER: Your honor, I think that is a
4 legal issue that I am probably not prepared to
5 address today. But I am more concerned with getting
6 the special administrator.

7 THE COURT: I am not putting anything in
8 the order. But generally the Personal
9 Representative or the administrator is the ones that
10 pursue claims on behalf of the estate. That doesn't
11 mean that individuals may not have their own claims.

12 Mr. POPE JOHNSON: Exactly.

13 THE COURT: But we are not addressing that
14 at this point and time. The administrator.
15 Anything else we need to do?

16 MR. WARNER: Nothing else.

17 MR. MOORE: No, Your Honor.

18 THE COURT: I know what Mr. Johnson's,
19 William Johnson's position is. I know what Mr. Jan
20 Warner's position. I don't know what you all,
21 Mr. Tyler, or mr. pope johnson, or Mr. Moore's
22 position is with respect to your clients with
23 respect to who should be appointed.

24 MR. POPE JOHNSON: It's our position---

25 THE COURT: Do you want to write me a

1 letter after talking to your client?

2 Mr. pope JOHNSON: I talked to her
3 beforehand. Ms. belk's position is, she would want
4 her daughter to serve in this capacity. And if the
5 court doesn't appoint the daughter, then she, you
6 know, is willing to accept Duane Shuler.

7 THE COURT: Does your client have a
8 position?

9 Mr. Moore: We're the same. The exact
10 same as MR. JOHNSON.

11 MR. TYLER: Your honor, I don't think we
12 really have a dog in that fight. I'll talk to my
13 client and make sure. Because I don't think they
14 are necessarily directly impacted about who is going
15 to be the administrator in this estate.

16 THE COURT: Anything else?

17 MR. MOORE: Thank you, Your Honor.

18 -----end of requested transcript of record---

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Certificate

STATE OF SOUTH CAROLINA)
COUNTY Of Sumter,

I, Margaret T. Sullivan, Official Court Reporter for
the third Judicial Circuit of the State of South Carolina,
do hereby Certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in THE above captioned case,
relative to appeal, in Common Pleas, Nonjury Court on
October 2, 2008, in Sumter County, Sumter, South Carolina.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

1/6/08
date

Margaret T. Sullivan
court reporter
my commission expires october 3, 2011

FILED TRUE COPY OF ORIGINAL
FILED IN THIS OFFICE.

Yvonne B. Choice
Clerk, Judge of Probate
Sumter County
South Carolina



Last Will and Testament

of

Robert D. Belk

Introductory Clause. I, Robert D. Belk, a resident of and domiciled in the City of Sumter, County of Sumter and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to Ida Mae K. Belk.

I have five (5) children: Gene C. Belk, Linda B. Harris, Patricia B. Schmit, Cheryl Ann Hanlon, and Robert M. Belk.

ITEM I

I direct that:

(1) **Direction to Pay All Taxes and Specified Expenses from the Designated Source.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of Trust B and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and my residuary estate, thus likewise reducing the denominator of the fraction.

(2) **Apportion Taxes on Non probate Property.** All such taxes in respect to any interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however: (a) there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable

deduction; (b) there shall be no apportionment against my surviving spouse, if she is a donee or recipient of any such property or interest in property and the property or interest in property was allowed in my federal estate tax proceedings as a marital deduction under I.R.C. Section 2056. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate of such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

ITEM II

General Request of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death or for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my wife, Ida Mae K. Belk, if she shall survive me. If my wife shall not survive me, I give and bequeath all this property to my children surviving me in approximately equal share; provided, however the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issues do not agree to the division of the property among themselves, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM III

Specific Bequests. I give and bequeath One Hundred Thousand (\$100,000.00) Dollars to Linda F. Garrett, if she survives me.

ITEM IV

The Specific Devise of Residential Property. I give and devise to my wife, Ida Mae K. Belk, if she shall survive me, any interest which I own at the time of my death in the house and lot which I occupy as my residence at the time of my death.

ITEM V

Maximum Marital Deduction. Pecuniary Formula Bequest. Maximize Unified Credit. Payable to Trust C. If my wife, Ida Mae K. Belk, shall survive me, I give, devise and bequeath to my Trustee hereinafter named cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my wife otherwise than pursuant to the provisions of this Item; provided, however the amount of this bequest shall be reduced by the amount, if any, needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent shall that the use of such state death tax credit does not increase the death tax payable to the to any state), will result the smallest (if any) federal estate tax being imposed on my estate. The term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction that if the contrary election had been made. My Personal Representative shall have the sole direction to select the assets which shall constitute this bequest. In no event, however, shall there be included in the bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representative shall value any asset selected by my Personal Representative for distribution in kind as a part of this bequest at the value of such asset at the date of distribution of such asset.

This bequest shall be administered by my Trustee under the terms of *Trust C* as hereinafter set forth.

ITEM VI

Residuary Gift to Trustee Under *Trust B*. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to the Trustee of *Trust B* shall be administered as hereinafter set forth.

ITEM VII

Trust B Introductory Provision. *Trust B* shall be held, administered and distributed as follows:

(1) **Discretionary Payment of All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit my wife, until division into shares for children as hereafter provided, all the net income from *Trust B* in convenient installments, but no less frequently than quarter annually.

(2) **Discretionary Payments of Principal for Wife.** If my wife shall survive me, and if there is no principal remaining in *Trust C*, my Trustee may pay to or apply for the benefit of my wife during her lifetime, such sums from the principal of *Trust B* as in its sole discretion shall be necessary for advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Limited Withdrawal by Wife.** If there is no principal remaining in *Trust C*, then, in addition to the income and discretionary payments of principal from this Trust, where shall be paid to my wife during her lifetime from the principal of this Trust upon her written request during the last month of each fiscal year of the Trust an amount not to exceed during such fiscal year the greater of Five Thousand (\$5,000.00) Dollars or Five (5%) per cent of the total value of the principal of *Trust B* on the last day of such fiscal year without reduction for the principal payments for such fiscal year. This right of withdrawal is noncumulative, so that if any wife does not withdraw, during such fiscal year, the full amount to which she is entitled under this Paragraph, her right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

(4) **Division Into Shares for Children.** Upon or after the death of the survivor of my wife and me, my Trustee shall divide this Trust as then constituted into equal separate share so as to provide One (1) share for each deceased child of mine who shall leave issue then living. Each share for a living child of mine shall be distributed to such child except as provided in (5), (6) and (7) below.

(5) **Special Provision for Share of Robert M. Belk.** The share created by (4) above for my son shall not be distributed to him, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my son, Robert M. Belk, during his lifetime.

(b) Upon the death of my son, my Trustee shall pay the net income from this share in equal shares to my grandchildren, ~~D. B. Belk~~ and Jessica Belk, or to the survivor. My son, Robert M. Belk, has two other children who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(6) **Special Provision for Share of Cheryl Ann Hanlon.** The share created by (4) above for my daughter, Cheryl Ann Hanlon, shall not be distributed to her, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my daughter, Cheryl Ann Hanlon, during her lifetime.

(b) Upon the death of my daughter, my Trustee shall pay the net income from this share in equal shares to my grandchildren, Robert Hanlon and Tommy Hanlon, or to the survivor. My daughter, Cheryl Ann Hanlon, has another child who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(7) **Special Provision for my Deceased Children Who Shall Leave Issue Then Living.** With respect to a share created by (4) above, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors. In the event this share is for the children of Robert M. Belk or Cheryl Ann Hanlon, it is my desire that the beneficiaries are to be these individuals identified in (5) and (6) above.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

ITEM VIII

Trust C Introductory Provision. *Trust C* shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my wife during her lifetime all the net income from *Trust C* in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her personal representatives.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, my Trustee may pay to or apply for the benefit of my wife such sums from the principal of *Trust C* as in its sole discretion shall be necessary or advisable comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Withdrawal Power in Wife.** In addition to the income and discretionary payments of principal from this Trust, there shall be paid to my wife during her lifetime from the principal of this Trust upon her written request during the last month of each fiscal year of the trust an amount not exceed during such fiscal year the greater of Five Thousand (\$5,000.00) Dollars or Five (5%) per cent of the total value of the principal payment for such fiscal year. This right of withdrawal is noncumulative, so if any wife does not withdraw, during such fiscal year, the full amount to which she is entitled under the Paragraph, her right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

(4) **Power in Wife to Cause Nonproductive Property to Be Made Productive.** My wife may at any time by written notice, require my Trustee to make any nonproductive property of this trust productive or to convert such nonproductive property within a reasonable time.

(5) **Payment of Death Taxes From *Trust C* on Death of Wife.** Unless my wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of *Trust C* be paid otherwise, my Trustee shall pay to the personal representatives of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of *Trust C* in her estate for such tax purposes.

(6) **Division Into Shares for Children.** Upon the death of my wife, the entire remaining principal of *Trust C* shall be divided into equal separate shares so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living. The share provided for a living child of mine shall be distributed to such child, except as provided in (7), (8) and (9) below.

(7) **Special Provision for Share of Robert M. Belk.** The share created by (6) above for my son shall not be distributed to him, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my son, Robert M. Belk, during his lifetime.

(b) Upon the death of my son, my Trustee shall pay the net income from this share in equal shares to my grandchildren, D[REDACTED] B[REDACTED] and Jessica Belk, or to the survivor. My son, Robert M. Belk, has two other children which I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(8) **Special Provision for Share of Cheryl Ann Hanlon.** The share created by (7) above for my daughter, Cheryl Ann Hanlon shall not be distributed to her, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my daughter, Cheryl Ann Hanlon, during her lifetime.

(b) Upon the death of my daughter, my Trustee shall pay the net income from this share in equal shares to my grandchildren, Robert Hanlon and Tommy Hanlon, or to the survivor. My daughter, Cheryl Ann Hanlon, has another child who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(9) **Special Provision for my Deceased Children Who Shall Leave Issue Then Living.** With respect to a share created by (6) above, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors. In the event this share is for the children of Robert M. Belk or Cheryl Ann Hanlon, it is my desire that the beneficiaries are to be these individuals identified in (7) and (8) above.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

ITEM IX

Naming the Personal Representative, "Personal Representative Succession, and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, and other matters are set forth below:

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament Carlton R. Davidson and direct that he shall serve without bond. I have previously entered into a compensation agreement with Mr. Davidson.

(2) **Naming Individual Successor or Substitute Personal Representative.** If any individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representatives who shall also serve without bond shall be Gene C. Belk. If any individual Personal Representative named herein should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the remaining individual Personal Representatives named herein shall continue to serve without a successor or substitute.

ITEM X

Naming the Trustee, Trustee Succession, and Other Matters. The provisions for naming the Trustee, Trustee succession, and other matters are set forth below:

(1) **Naming Individuals as Trustee.** I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament Gene C. Belk, and Linda B. Harris, and direct that they shall serve without bond.

(2) **Individual Trustees Succession.** If any individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustees shall continue to serve without a successor or substitute.

(3) **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees.

(4) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which I have given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ITEM XI

Definition of Personal Representative and Trustee. Whenever the word "Personal Representative" and/or the word "Trustee", any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

(1) To retain any property or individual interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk of nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the real property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of my Personal Representative or Trust, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate of the Trust Estate, for cash or upon credit, to exchange any property of my estate of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan or reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal Representative or Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate of the Trust Estate for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lesser or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs to alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem available, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of any Estate of the Trust Estate.

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with settle claims in favor of or against my Estate of the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate of Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distributions of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as Personal Representative or Trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms

and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all of my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, at any portion or all of any other trusts or bequests in my Will or any other transfer which I am the transferor for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to *Trust B*, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

ITEM XIII

Marital Deduction Savings Clause for *Trust C*. It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representative and Trustee in connection with the imposition of duties upon my Personal Representative and Trustee by any provision of this my Will or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in *Trust C* hereof. It is my intention that my wife under the provisions of *Trust C* have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Trustee

shall not exercise its discretion in an manner which is not in accord with this expressed intention. My Personal Representative and Trustee shall Invest the Trust Estate so that it will produce for my wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my trustee shall not in the exercise of this discretion make any determination inconsistent with the foregoing.

ITEM XIV

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-one. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as my Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining the age of Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ITEM XV

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One (21), Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by my Trustee using amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that my Trustee shall not make any payment from *Trust C* under (3) above.

ITEM XVI

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believe has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my wife.

ITEM XVII

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "the living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XVIII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this

Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XIX

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator Reverse Presumption as to Wife. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me; provided, however, that if my wife shall die with me as aforesaid, I direct that she shall be conclusively presumed to have survived me.

ITEM XX

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ITEM XXI

Perpetuities Savings Clause. Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than Twenty-one (21) years after the death of the last survivor of my wife and issue living on the date of my death, when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

Testimonium; Attestation, and Self-Proving Affidavit. I, Robert D. Belk, the Testator, sign my name to this instrument this 5 day of MARCH 2004 and being first duly sworn, do hereby declare to the understanding authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Robert D. Belk
Robert D. Belk

We, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument at this last will and he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

William H. Hackett

William H. Hackett

The State of South Carolina
County of Sumter

Subscribed, sworn to, and acknowledge before me by Robert D. Belk, the Testator, and subscribed and sworn to before me by William H. Hackett and William H. Hackett witness, this 5 day of MARCH 2004.

William H. Hackett (Seal)
Notary Public for South Carolina
My Commission Expires 07-09

STATE OF SOUTH CAROLINA)
) FAMILY SETTLEMENT AGREEMENT
COUNTY OF SUMTER)

DATE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
JUN 30 PM 20

WHEREAS, Robert D. Belk (the "Decedent") died on April 5, 2004; and

WHEREAS, the Estate of Robert D. Belk (the "Estate") is being administered in the Probate Court for Sumter County, South Carolina, in Case No. 2004-ES-43-00225; and

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Co-Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk (the "Decedent's Will"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, under the terms of the Decedent's Will, the assets of the residuary estate are to be divided into two separate trusts, the QTIP Trust (the "QTIP Trust") and Trust B ("Trust B"), of which Gene C. Belk and Linda B. Harris are designated as Co-Trustees; and

WHEREAS, Paragraph (4) of Item VII of the Decedent's Will, entitled "Division Into Shares for Children," provides for the distribution of assets of Trust B upon the death of the Decedent's surviving spouse; and

WHEREAS, said Paragraph (4) of Item VII of the Decedent's Will provides that the assets of Trust B will be divided into shares, "so as to provide One (1) share for each deceased child of mine who shall leave issue then living", but does not provide for the creation of shares for the Decedent's then-living children; and

WHEREAS, the very next sentence in said Paragraph (4) of Item VII of the Decedent's Will states that "Each share for a living child of mine shall be distributed outright to such child" (subject to restrictions in later paragraphs of Item VII concerning the shares created for Robert M. Belk and Cheryl Ann Hanlon), thereby evidencing the Decedent's intent to create a share of Trust B for each of his then living children;

WHEREAS, Paragraph (6) of Item VIII of the Decedent's Will, entitled "Division Into Shares for Children," provides for the distribution of the assets of the QTIP Trust upon the death of the Decedent's surviving spouse and therefore is the functional equivalent of Paragraph (4) of Item VII of Decedent's Will; and

WHEREAS, said Paragraph (6) of Item VIII of the Decedent's Will provides that the assets of the QTIP Trust will be divided into equal shares "so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living," supplying further evidence that the Decedent intended to create a share of Trust B for each of this then living children; and



WHEREAS, the parties to this Agreement acknowledge that the language in Item VII, Paragraph (4) contains a drafting error, and that the Decedent intended to provide for a division into shares for the living children identical to the provision in Paragraph (6) of Item VIII;

NOW, THEREFORE, THE UNDERSIGNED, BEING THE PERSONAL REPRESENTATIVES OF THE ESTATE, THE SURVIVING SPOUSE, ALL THE CHILDREN OF ROBERT D. BELK AND ALL INTERESTED GRANDCHILDREN OF ROBERT D. BELK HEREBY ENTER INTO THIS AGREEMENT TO CONSTRUE THE ABOVE-REFERENCED LAST WILL AND TESTAMENT:

1. Construction of Item VII, Paragraph (4). The undersigned hereby agree that the Co-Trustee's of the Trust B shall construe Trust B, Item VII, Paragraph (4) as though it read:

(4) **Division Into Shares for Children.** Upon or after the death of the survivor of my wife and me, my Trustee shall divide this Trust as then constituted into equal separate shares so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living. Each share for a living child of mine shall be distributed to such child except as provided in (5), (6) and (7) below.

2. Probate Court Approval. The undersigned agree to that the Co-Personal Representatives of the Estate shall Petition the Sumter County Probate Court for an Order approving the terms of this Agreement.

3. Integration. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.

4. Severability. If any provision of this Agreement or the application thereof to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

5. Binding Agreement. This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives, and assigns.

6. Controlling Law. This Agreement is entered into in South Carolina and shall be enforced and construed in accordance with the laws thereof.

7. Counterparts. This Agreement may be executed ~~in any number of counterparts with the same effect as if all parties hereto had all signed the same document.~~ All counterparts shall be construed together and shall constitute one agreement.

*I hereby agree to sign this document,
and any other future documents that
I have read and agree to beforehand.*

P/S.

P/S.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
28th day of June, 2005.

Patricia B. Schmit
Patricia B. Schmit

WITNESS:
Peter Schmit

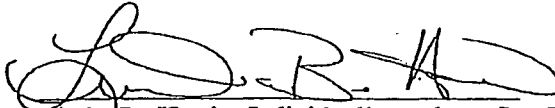
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
21 day of JUNE, 2005.

Gene C. Belk
Gene C. Belk, Individually and as Co-Personal
Representative and Co-Trustee

WITNESS:

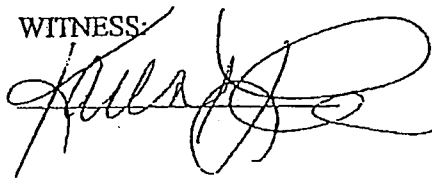
Wanda A. Cook

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
23rd day of June, 2005.



Linda B. Harris, Individually and as Co- Personal
Representative and Co-Trustee

WITNESS:



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
23 day of June, 2005.

Ida Mae K. Belk
Ida Mae K. Belk

WITNESS:

[Signature]

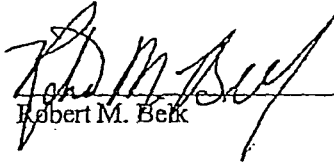
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
24th day of June, 2005.

Cheryl A. Hanlon
Cheryl Ann Hanlon

WITNESS:

John P. Shadock

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
24th day of June, 2005.


Robert M. Beck

WITNESS:

Lillian B. Moore

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
28th day of June, 2005.

Patricia Schmit

Patricia Schmit, as guardian for
Jessica Belk

WITNESS:

Pat Schmit

Patricia Schmit

Patricia Schmit, as guardian for
~~Ross D. Belk~~

WITNESS:

Ryan Gallorey

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE PROBATE COURT

IN RE:)

THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)

CONSENT

GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
PETITIONERS.)

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
2005 JUN 30 PM 4 21

WHEREAS, the Last Will and Testament of Robert D. Belk was executed on March 5, 2004 ("Decedent's Will").

WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED PATRICIA B. SCHMIT, as the legal guardian of Jessica Belk and Robert D. Belk, who are remainder beneficiaries, hereby consents to the relief requested in the Petition. The undersigned hereby waives her right to respond to the Petition and her right to a hearing on the matters presented in the Petition.



Patricia B. Schmit, legal guardian of
Jessica Belk and Robert D. Belk

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
IN RE:)
THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)
GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
PETITIONERS.)

IN THE PROBATE COURT

CONSENT

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
2005 JUN 30 PM 4 21

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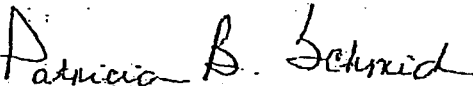
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WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED PATRICIA B. SCHMIT, as a child of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives her right to respond to the Petition and her right to a hearing on the matters presented in the Petition.


Patricia B. Schmit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
 IN RE:)
)
 THE ESTATE OF ROBERT D. BELK)
 CASE NUMBER: 2004-ES-43-00225)
)
 GENE C. BELK AND LINDA B.)
 HARRIS, CO-PERSONAL)
 REPRESENTATIVES OF THE)
 ESTATE OF ROBERT D. BELK,)
)
 PETITIONERS.)

IN THE PROBATE COURT

CONSENT

DALE ATKINSON
 JUDGE OF PROBATE
 SUMTER COUNTY, S.C.
 2005 JUN 30 PM 4 21

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WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, the Personal Representatives and Trustees under the Decedent's Will and I have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED IDA MAE K. BELK, as the surviving spouse of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives her right to respond to the Petition and her right to a hearing on the matters presented in the Petition.



 Ida Mae K. Belk

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
IN RE:)
THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)
GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
PETITIONERS.)

IN THE PROBATE COURT

CONSENT

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
2005 JUN 30 PM 4 21

WHEREAS, the Last Will and Testament of Robert D. Belk was executed on March 5, 2004 ("Decedent's Will").

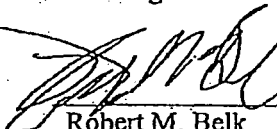
WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED ROBERT M. BELK, as child of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives his right to respond to the Petition and his right to a hearing on the matters presented in the Petition.


Robert M. Belk

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE PROBATE COURT

IN RE:)

THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)

CONSENT

GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
)
PETITIONERS.)

2005 JUN 30 PM 4 21

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.

WHEREAS, the Last Will and Testament of Robert D. Belk was executed on March 5, 2004 ("Decedent's Will").

WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED CHERYL ANN HANLON, as the surviving spouse of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives her right to respond to the Petition and her right to a hearing on the matters presented in the Petition.

Cheryl Ann Hanlon
Cheryl Ann Hanlon

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
IN RE:)
THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)
GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
PETITIONERS.)

IN THE PROBATE COURT

CONSENT

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
2005 JUN 30 PM 4 21

WHEREAS, the Last Will and Testament of Robert D. Belk was executed on March 5, 2004 ("Decedent's Will").

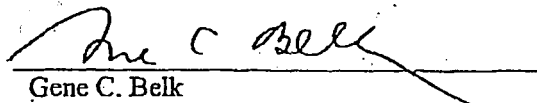
WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED GENE C. BELK, as a child of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives his right to respond to the Petition and his right to a hearing on the matters presented in the Petition.


Gene C. Belk

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE PROBATE COURT

IN RE:)

THE ESTATE OF ROBERT D. BELK)
CASE NUMBER: 2004-ES-43-00225)

CONSENT

GENE C. BELK AND LINDA B.)
HARRIS, CO-PERSONAL)
REPRESENTATIVES OF THE)
ESTATE OF ROBERT D. BELK,)
)
PETITIONERS.)

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
2005 JUN 30 PM 4 21

WHEREAS, the Last Will and Testament of Robert D. Belk was executed on March 5, 2004 ("Decedent's Will").

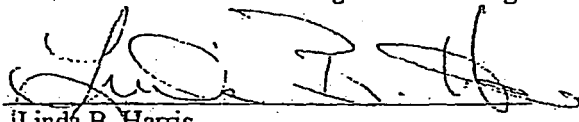
WHEREAS, Robert D. Belk died on April 5, 2004, and the Estate is being administered in the Probate Court for Sumter County, South Carolina, Case No. 2004-ES-43-00225.

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk ("Decedent's Will"); Gene C. Belk and Linda B. Harris are also the Trustees of any Trusts created under the Decedent's Will.

WHEREAS, confusion exists as to the construction of Item VII of the Decedent's Will and the Decedent's surviving spouse, his children, the guardians acting for any minor grandchildren having a beneficial interest in the Estate, and the Personal Representatives and Trustees under the Decedent's Will have entered into a Family Agreement to reconcile the confusion.

WHEREAS, Gene C. Belk and Linda B. Harris have filed a Petition with the Sumter County Probate Court requesting an order (a) approving the Family Agreement; (b) directing the Personal Representatives of the Estate of Robert D. Belk to administer the Estate according to the terms of the Family Agreement.

NOW, THEREFORE, THE UNDERSIGNED LINDA B. HARRIS, as the surviving spouse of Robert D. Belk, hereby consents to the relief requested in the Petition. The undersigned hereby waives her right to respond to the Petition and her right to a hearing on the matters presented in the Petition.


Linda B. Harris



MEMORANDUM OF UNDERSTANDING REGARDING FUTURE TRANSACTIONS

The following is a Memo of Understanding Regarding Future Transactions between the undersigned parties. This Memorandum is intended to be binding on the parties and to document the intent of the parties as to future transactions on behalf of Ida Mae Belk and Sumter Mortgage Company and Sumter Mortgage Finance.

- (1) Ida Mae Belk will assign her fifty percent interest in Sumter Mortgage Company (including Sumter Mortgage Finance) to Linda Harris and Gene Belk as Trustees of a Trust to be created for her benefit for her lifetime.
- (2) Linda, Gene, Mrs. Belk, and their counsel shall analyze the provisions of the Trust C under the Last Will and Testament of Robert Belk and shall prepare a Trust for Mrs. Belk with substantially the same provisions (the "New Trust C").
- (3) The New Trust C will differ from the Trust C under the Last Will and Testament of Robert Belk as it relates to certain tax and Medicaid issues. Other details may be different in the discretion of the undersigned, but the provisions of the New Trust C will be materially the same. It will benefit Mrs. Belk for her lifetime and will be distributed in five equal shares at her death.
- (4) The New Trust C will contain the same ability of Mrs. Belk to withdraw five percent each year from the trust, the purpose for the withdrawal will be to make gifts of the assets in five equal shares among the family members.
- (5) The New Trust C will own Mrs. Belk's interest in the unincorporated Sumter Mortgage Company, which may subsequently be transferred to one or more entities which will be owned by the New Trust C.
- (6) Mrs. Belk will sign paperwork directing Linda and Gene to transfer the assets of Sumter Mortgage Company to New Trust C and they will be given the authority to complete such transfers. They will also be given the authority and the documents necessary to exercise the withdrawal right from New Trust C and Trust C and make gifts of those and/or other assets in five equal shares to the family members.
- (7) It is the intention of the parties to work diligently on the issues of New Trust C and the related documents and to complete New Trust C and the transfers within the next sixty (60) days.

The parties execute this Memorandum of Agreement the 30th day of June, 2005.

Ida Mae Belk
Ida Mae Belk

Gene C. Belk
Gene Belk

Ida Mae Belk
Ida Mae Belk, d/b/a Sumter Mortgage Company
and Sumter Finance Company

Linda Belk Harris
Linda Belk Harris

Quen Belk 6/30/05

QUALIFIED SEVERANCE

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) TRUST SEVERANCE
) AGREEMENT

Recitals:

1. Robet D. Belk (the Decedent) died a resident of Sumter County, South Carolina on April 5, 2004;
2. The Estate of Robert D. Belk is being administered in the Probate Court for Sumter County, South Carolina, in Case No. 2004-ES-43-00225;
3. On May 7, 2004, the undersigned Gene C. Belk and Linda B. Harris were appointed as Co-Personal Representatives of the Decedent's estate;
4. Pursuant to Item X of Decedent's Will, the undersigned Gene C. Belk and Linda B. Harris are named as Trustee of the trusts created under Decedent's Will;
5. Pursuant to Item V of Decedent's Will, Decedent made a pecuniary formula bequest to Trust C, a trust created for the lifetime benefit of Decedent's wife, Ida Mae K. Belk, the terms of which are contained in Item VIII of Decedent's Will;
6. Paragraph 25 of Item XII of Decedent's Will provides the Trustee with discretionary authority to divide any trust into separate trusts;
7. Paragraph 26 of Item XII of Decedent's Will authorizes the Trustee create trusts to receive property with an inclusion ration (as defined in IRC § 2642(a)(1)) of either one or zero;
8. Paragraph 21 of Item XII of Decedent's Will authorizes the Personal Representative, when dividing fractional interests in property among several beneficiaries, to allocated entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries;
9. In order to fully utilize the Decedent's Generation-Skipping Tax Exemption (as provided in IRC § 2631), it is necessary to sever Trust C into fractional shares so trusts will be created to which the Decedent's GST Exemption can be allocated to produce an inclusion ratio of zero and to which a so-called "Reverse QTIP election" can be made pursuant to under IRC § 2652(a)(3);
10. Internal Revenue Code § 2642(a)(3) and the proposed regulations thereunder provide rules concerning when a trust severance will constitute a "qualified severance" that is respected for generation-skipping tax purposes and income tax purposes.



NOW, THEREFORE, in consideration of the foregoing premises, the undersigned hereby exercise the discretionary authority granted to them under Item XII of the Decedent's Will to sever Trust C into three (3) fractional shares in the manner provided below.

1. Trust C will be divided into three shares to produce QTIP Trust 1, QTIP Trust 2, and QTIP Trust 3. QTIP Trust 1 will be funded with three-fifths (3/5) of the value of the Trust C assets as finally determined for federal estate tax purposes. The remainder beneficiaries of QTIP Trust 1 will be Gene C. Belk, Linda B. Harris, and Patricia B. Schmid or their issue. The terms of QTIP Trust 1 are attached as Appendix A.

2. QTIP Trust 2 will be funded with one-fifth (1/5) of the value of the Trust C assets as finally determined for federal estate tax purposes. The remainder beneficiary of QTIP Trust 2 will be a trust created for the benefit of Robert M. Belk and certain of his issue.

3. QTIP Trust 3 will be funded with one-fifth (1/5) of the value of the Trust C assets as finally determined for federal estate tax purposes. The remainder beneficiary of QTIP Trust 3 will be a trust created for the benefit of Cheryl Ann Hanlon and certain of her issue.

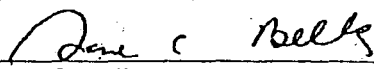
4. Each trust resulting from the severance of Trust C will be funded with the appropriate fraction of the fair market value of the Trust C assets as determined on the date of funding.

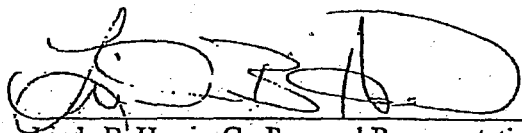
5. It is the intent of the undersigned that this trust severance constitute a "qualified severance" within the meaning of IRC § 2642(a)(3) and the proposed regulations promulgated under that section, and this Agreement shall be interpreted accordingly.

6. The Personal Representatives of the Decedent's estate shall cause a Form 706-GS(T) to be filed with the federal estate tax return that, to the extent possible, provides the information required under Prop. Reg. § 26.2642-6(b)(6).

The undersigned hereby execute this Agreement in their capacity as Co-Personal Representatives and Co-Trustees, respectively.

This the 30th day of June, 2005.


Gene C. Belk, Co-Personal Representative and Co-Trustee


Linda B. Harris, Co-Personal Representative and Co-Trustee

QUALIFIED SEVERANCE

Notice of Qualified Severance

This Notice of Qualified Severance is filed along with Form 706-GS(T) pursuant to Proposed Treasury Regulation § 26.2642-6(b)(6).

Statement identifying the trust that is severed. Robert D. Belk (the Decedent) died a resident of Sumter County, South Carolina on April 5, 2004. The Estate of Robert D. Belk is being administered in the Probate Court for Sumter County, South Carolina, in Case No. 2004-ES-43-00225. Item V of the Decedent's Last Will and Testament (Decedent's Will) contains a devise to "Trust C," the terms of which are contained in Item VII of Decedent's Will. It is Trust C under Decedent's Will that is severed.

Name of the transferor of the trust. Robert D. Belk, the Decedent, is the transferor of the trust.

Date of creation. The terms of Trust C are contained in Item VII of Decedent's Will. However, Trust C has yet to be funded. Thus, Trust C was not created prior to its severance.

Tax identification number. As Trust C under Decedent's Will was not funded prior to its severance, there exists no tax identification number for the trust.

Inclusion ratio with respect to the trust before severance. There exists no inclusion ratio with respect to Trust C before its severance. Rather, Trust C is being severed prior to its actual funding. Generation-skipping tax exemption will be allocated to various of the trusts resulting from the severance of Trust C on a timely-filed federal estate tax return.

Statement identifying each of the new trusts created as a result of the severance; fraction of assets to be received by each new trust; details explaining the basis for funding each new trust; inclusion ratio of each new trust. Trust C is severed on a fractional basis into three (3) separate trusts in the manner described below:

- Three-fifths (3/5) of the value of the Trust C assets as finally determined for federal estate tax purposes will pass to QTIP Trust 1. Upon the death of the surviving spouse, the assets of QTIP Trust 1 will be distributed equally to three of the Decedent's children. QTIP Trust 1 will have an inclusion ratio of one.

- One-fifth (1/5) of the value of the Trust C assets as finally determined for federal estate tax purposes will pass to QTIP Trust 2. Upon the death of the surviving spouse, the assets of QTIP Trust 2 will continue to be held in trust for the benefit of the Decedent's son, Robert M. Belk, during his lifetime, after which they will be distributed to certain of the Decedent's grandchildren. QTIP Trust 2 constitutes a generation-skipping trust, but it will have an inclusion ratio of zero.

One-fifth (1/5) of the value of the Trust C assets as finally determined for federal estate tax purposes will pass to QTIP Trust 3. Upon the death of the surviving spouse, the assets of QTIP Trust 3 will continue to be held in trust for the benefit of the Decedent's daughter, Cheryl Ann Hanlon, during her lifetime, after which they will be distributed to certain of the Decedent's grandchildren. QTIP Trust 3 constitutes a generation-skipping trust, but it will have an inclusion ratio of zero.

Thus, Trust C under Decedent's Will is divided into the following three (3) separate trusts based on the corresponding fractional amounts of the value of Trust C assets as finally determined for federal estate tax purposes:

<u>Trust Name</u>	<u>Fraction of Trust C Assets</u>	<u>Inclusion Ratio</u>
QTIP Trust 1	$\frac{3}{5}$	1
QTIP Trust 2	$\frac{1}{5}$	0
QTIP Trust 3	$\frac{1}{5}$	0

Each trust will be funded based on by applying the appropriate fractional interest to the fair market value of the assets on the date of funding.

Name and tax identification number of each new trust. The names of the trusts resulting from the severance of Trust C are listed in the above chart. Tax identification numbers for these trusts have not yet been obtained because the trusts have not yet been funded through a distribution from the Decedent's estate.

QUALIFIED SEVERANCE

QTIP Trust 1

[This *QTIP Trust 1* results from a Qualified Severance of Trust C created under the Will of Robert D. Belk. The restated terms of the trust set forth below are provided as a means of ensuring that the severed trusts operate in the aggregate in the same manner as Trust C would have operated has the Qualified Severance not occurred.]

QTIP Trust 1 Introductory Provision. *QTIP Trust 1* shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my wife during her lifetime all the net income from *QTIP Trust 1* in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her personal representative.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, my Trustee may pay to or apply for the benefit of my wife such sums from the principal of *QTIP Trust 1* as in its sole discretion shall be necessary or advisable for the comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Withdrawal Power in Wife.** In addition to the income and discretionary payments of principal from this Trust, there shall be paid to my wife during her lifetime from the principal of this Trust upon her written request during the last month of each fiscal year of the trust an amount not to exceed during such fiscal year Sixty Percent (60%) of the greater of (a) Five Thousand (\$5,000.00) Dollars or (b) Five percent (5%) of the total value of this trust combined with the total value of any other trust that was created from the qualified severance of Trust C (that is, *QTIP Trust 2* and *QTIP Trust 3*) for such fiscal year. The right of withdrawal is noncumulative, so if my wife does not withdraw, during such fiscal year, the full amount to which she is entitled under this Paragraph, her right to withdraw the amount not withdrawn shall lapse as of the end of the fiscal year.

(4) **Power in my Wife to Cause Nonproductive Property to Be Made Productive.** My wife may at any time by written notice, require my Trustee to make any nonproductive property of this trust productive or to convert such nonproductive property within a reasonable time.

(5) **Payment of Death Taxes from *QTIP Trust 1* on Death of Wife.** Unless my wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of *QTIP Trust 1* be paid otherwise, my Trustee shall pay to the personal representative of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of *QTIP Trust 1* in her estate for such tax purposes.

(6) **Division of Shares for Children.** Upon the death of my wife, the entire remaining principal of *QTIP Trust 1* shall be divided into three (3) shares so that one share is created in respect of (a) my son, Gene C. Belk, (b) my daughter, Linda B. Harris, and (c) my daughter, Patricia B. Schmidt. If the child in respect of whom a share is created above is then living, that share shall be distributed to such child outright. If the child in respect of whom a share is created above is not then living but he or she has left issue who are then living, my Trustee shall continue to hold such share in trust pursuant to the terms in paragraph (7) below.

Any share not disposed of by the prior provisions shall be subdivided so that (a) one subdivided share is created for each child of mine who is then living, and (b) one subdivided share is created for each child of mine who is not then living but who has left issue who are then living. Each subdivided share created for Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be distributed to them if they are then living. Each subdivided share created for the then-living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be held by my Trustee in trust pursuant to the terms of paragraph (7) below. The subdivided share, if any, created for Robert M. Belk or his issue shall be added to the *QTIP Trust 2*. The subdivided share created, if any, created for Cheryl Ann Hanlon or her issue shall be added to the *QTIP Trust 3*.

(7) **Special Provision for Certain Deceased Children Who Shall Leave Issue Then Living.** With respect to any share, if any, created for the then living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

QUALIFIED SEVERANCE

QTIP Trust 2

[This *QTIP Trust 2* results from a Qualified Severance of Trust C created under the Will of Robert D. Belk. The restated terms of the trust set forth below are provided as a means of ensuring that the severed trusts operate in the aggregate in the same manner as Trust C would have operated had the Qualified Severance not occurred.]

Exempt QTIP Trust 2 Introductory Provision. *QTIP Trust 2* shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my wife during her lifetime all the net income from *QTIP Trust 2* in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her personal representative.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, my Trustee may pay to or apply for the benefit of my wife such sums from the principal of *QTIP Trust 2* as in its sole discretion shall be necessary or advisable for the comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Withdrawal Power in Wife.** In addition to the income and discretionary payments of principal from this Trust, there shall be paid to my wife during her lifetime from the principal of this *QTIP Trust 2* upon her written request during the last month of each fiscal year of the trust, a combined amount not to exceed during such fiscal year Twenty Percent (20%) of the greater of (a) Five Thousand (\$5,000.00) Dollars or (b) Five percent (5%) of the amount determined by totaling the value of this trust with the value of all other trusts created from the qualified severance of Trust C (that is, *QTIP Trust 1*, *QTIP Trust 2*, and *QTIP Trust 3*) for such fiscal year. The right of withdrawal is noncumulative, so if my wife does not withdraw, during such fiscal year, the full amount to which she is entitled under this Paragraph, her right to withdraw the amount not withdrawn shall lapse as of the end of the fiscal year.

(4) **Power in my Wife to Cause Nonproductive Property to Be Made Productive.** My wife may at any time by written notice, require my Trustee to make any nonproductive property of this trust productive or to convert such nonproductive property within a reasonable time.

(5) **Payment of Death Taxes from *QTIP Trust 2* on Death of Wife.** Unless my wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of *QTIP Trust 2* be paid otherwise, my Trustee shall pay to the personal representative of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of *QTIP Trust 2* in her estate for such tax purposes.

(6) **Distribution of Trust.** Upon the death of my wife, the entire remaining principal of *QTIP Trust 2* shall continue to be held in Trust according to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually, to my son, Robert M. Belk, during his lifetime.

(b) Upon the death of my son, my Trustee shall pay the net income from this share in equal shares to my grandchildren, D [REDACTED] B [REDACTED] and Jessica Belk, or to the survivor. My son, Robert M. Belk, has two other children which I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(d) If the property of this *QTIP Trust 2* is not distributed pursuant to the above provisions, the trust property shall be divided in equal shares so that one share is created (a) for each child of mine who is then living and (b) for each child of mine (other than Robert M. Belk) who is not then living but who has left issue who are then living. Each share created for Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be distributed to them if they are then living. Each share created for the then-living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be held by my Trustee in trust pursuant to the terms of paragraph (7) below. The share, if any, created for Cheryl Ann Hanlon or her issue shall be added to the *QTIP Trust 3*.

(7) **Special Provision for Certain Deceased Children Who Shall Leave Issue Then Living.** With respect to any share, if any, created for the then living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

QUALIFIED SEVERANCE

QTIP Trust 3

[This *QTIP Trust 3* results from a Qualified Severance of Trust C created under the Will of Robert D. Belk. The restated terms of the trust set forth below are provided as a means of ensuring that the severed trusts operate in the aggregate in the same manner as Trust C would have operated has the Qualified Severance not occurred.]

Exempt QTIP Trust 3 Introductory Provision. *QTIP Trust 3* shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my wife during her lifetime all the net income from *QTIP Trust 3* in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her personal representative.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, my Trustee may pay to or apply for the benefit of my wife such sums from the principal of *QTIP Trust 3* as in its sole discretion shall be necessary or advisable for the comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Withdrawal Power in Wife.** In addition to the income and discretionary payments of principal from this Trust, there shall be paid to my wife during her lifetime from the principal of this *QTIP Trust 3* and/or the principal of Nonexempt QTIP Trust 3, upon her written request during the last month of each fiscal year of the trust, a combined amount not to exceed during such fiscal year Twenty Percent (20%) of the greater of (a) Five Thousand (\$5,000.00) Dollars or (b) Five percent (5%) of the amount determined by totaling the value of this trust with the value of all other trusts created from the qualified severance of Trust C (that is, QTIP Trust 1, QTIP Trust 2, and QTIP Trust 3) for such fiscal year. The right of withdrawal is noncumulative, so if my wife does not withdraw, during such fiscal year, the full amount to which she is entitled under this Paragraph, her right to withdraw the amount not withdrawn shall lapse as of the end of the fiscal year.

(4) **Power in my Wife to Cause Nonproductive Property to Be Made Productive.** My wife may at any time by written notice, require my Trustee to make any nonproductive property of this trust productive or to convert such nonproductive property within a reasonable time.

(5) **Payment of Death Taxes from *QTIP Trust 3* on Death of Wife.** Unless my wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of *QTIP Trust 3* be paid otherwise, my Trustee shall pay to the personal representative of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of *QTIP Trust 3* in her estate for such tax purposes.

(6) **Distribution of Trust.** Upon the death of my wife, the entire remaining principal of *QTIP Trust 3* shall continue to be held in Trust according to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually, to my daughter, Cheryl Ann Hanlon, during her lifetime.

(b) Upon the death of my daughter, my Trustee shall pay the net income from this share in equal shares to my grandchildren, Robert Hanlon and Tommy Hanlon, or to the survivor. My daughter, Cheryl Ann Hanlon, has another child who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(d) If the property of this *QTIP Trust 3* is not distributed pursuant to the above provisions, the trust property shall be divided in equal shares so that one share is created (a) for each child of mine who is then living and (b) for each child of mine (other than Cheryl Ann Hanlon) who is not then living but who has left issue who are then living. Each share created for Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be distributed to them if they are then living. Each share created for the then-living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid shall be held by my Trustee in trust pursuant to the terms of paragraph (7). The share, if any, created for Robert M. Belk or his issue shall be added to the Nonexempt *QTIP Trust 2*.

(7) **Special Provision for Certain Deceased Children Who Shall Leave Issue Then Living.** With respect to any share, if any, created for the then living issue of Gene C. Belk, Linda B. Harris, or Patricia B. Schmid, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

QUALIFIED SEVERANCE
Generation-Skipping Transfer Tax Return
For Terminations

OMB No. 1545-1145

For calendar year **05**

Part I General Information

1a Name of trust
Trust C

1b Trust's employer identification number (see instructions)
NA

2a Name of trustee
Linda B. Harris and Gene C. Belk

2b Trustee's address (number and street or P.O. box; apt. or suite no.; city, town or post office; state and ZIP code)
[REDACTED]

Part II Trust Information (see page 3 of the instructions)

	Yes	No	Sch. A number(s)
3 Has any exemption been allocated to this trust by reason of the deemed allocation rules of section 2632? If "Yes," describe the allocation on the line 7, Schedule A attachment showing how the inclusion ratio was calculated		✓	
4 Has property been contributed to this trust since the last Form 706-GS(T) or 706-GS(D-1) was filed? If "Yes," attach a schedule showing how the inclusion ratio was calculated		✓	
5 Have any terminations occurred that are not reported on this return because of the exceptions in section 2611(b)(1) or (2) relating to medical and educational exclusions and prior payment of GST tax? If "Yes," attach a statement describing the termination.		✓	
6 Have any contributions been made to this trust that were not included in calculating the trust's inclusion ratio? If "Yes," attach a statement explaining why the contribution was not included		✓	
7 Has the special QTIP election in section 2652(a)(3) been made for this trust?	✓		
8 If this is not an explicit trust (see page 1 of the instructions under Who Must File), check box and attach a statement describing the trust arrangement that makes its effect substantially similar to an explicit trust			☐

Part III Tax Computation

9a Summary of attached Schedules A (see instructions for line 9b on page 6)

Schedule A No.	Net GST tax (from Sch. A, line 14)
1	9a1 0
2	9a2 0
3	9a3 0
4	9a4 0
5	9a5 0
6	9a6 0
9b Total from all additional Schedules A attached to this form	9b 0
10 Total net GST tax (add lines 9a1-9b)	10 0
11 Payment, if any, made with Form 2758	11 0
12 Tax due—if line 10 is larger than line 11, enter amount owed	12 0
13 Overpayment—if line 11 is larger than line 10, enter amount to be refunded	13 0

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than fiduciary) is based on all information of which preparer has any knowledge.

Sign Here: *Gene C. Belk*
Signature of fiduciary or officer representing fiduciary

Paid Preparer's Use Only: *[Signature]*
Preparer's signature

Date: **6/30/05**

Firm's name (or yours if self-employed) and address: _____

ZIP code: _____

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IDA MAE K. BELK
IRREVOCABLE TRUST

COPY

This Agreement made this 17th day of Sept. 2007, between Ida Mae K. Belk (hereinafter referred to as Grantor) and Linda Belk Harris as Trustee (hereinafter referred to as Trustee). This Trust shall be known as the Ida Mae K. Belk Irrevocable Trust.

ARTICLE I

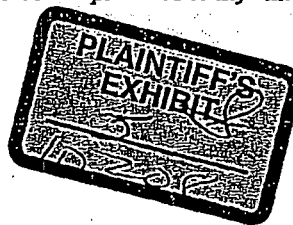
Creation And Disposition Of Trust

1. Creation, Name of Trust. I am the owner of the Bibco Corporation and an undivided one-half (1/2) interest and all assets of the above mentioned property known as Sumter Mortgage, an unincorporated entity.

I hereby transfer all of the above mentioned assets to the Ida Mae K. Belk Irrevocable Trust dated 17th day of Sept., 2007.

2. Trust During Lifetime. During my lifetime, my Trustee shall pay the income and principal of the trust as I may direct. If at any time, in the opinion of my Trustee, I am unable to so direct, my Trustee may pay income or principal as my Trustee may deem necessary to provide for my support and health and to pay my obligations. My Trustee is also authorized to continue to its conclusion any estate planning program which I have instituted during my lifetime but which remains incomplete as a result of my incapacity and shall annually add any undistributed income to principal.

3. Disposition at Death. It is my intention to prepare a Will which will authorize dissolution of the irrevocable trust and distribute all proceeds to my children.



ARTICLE II

Debts, Taxes, And Other Charges

At my death, my Trustee may pay to or upon the order of my Personal Representative funds needed to pay my debts, funeral and burial expenses, costs of administration, transfer taxes, charitable pledges and specific bequests under my Will. My Trustee may rely upon my Personal Representative as to the amount of the charges. The decision of my Trustee about whether to provide funds shall be final. Assets that are not included in my gross estate shall not be used for such payments. The payments shall not be charged against any trust established herein or the share of any beneficiary.

ARTICLE III

Fiduciaries

1. Successor Trustee. If Linda B. Harris should fail or cease to serve as Trustee for any reason, I direct that my children select the Trust Department of a federally insured bank to serve as Successor Trustee.

2. Actions of Predecessor; Waiver of Board. No successor Trustee shall be responsible for or required to inquire into the actions of any Trustee occurring before the successor's appointment. My Trustee shall only be responsible for assets of this Trust upon receipt of such assets and during the period for which it retains such assets. These provisions shall survive the period during which a Trustee shall be acting as Trustee of any trust established hereunder. My Trustee shall not be required to post bond in any jurisdiction of the faithful performance of its duties hereunder or for the return of any payment on account of commissions.

3. Compensation. Any Trustee shall be entitled to receive reasonable compensation for fiduciary services; and if it maintains a published schedule of fees, then my Trustee

shall be entitled to compensation in conformity therewith at the time at the time such services are rendered, without judicial authorization; provided, however, that no Trustee shall be entitled to an acceptance fee on account of its succession to fiduciary duties following service by a prior Trustee; and provided, further, that no Trustee shall be entitled to a fee for or on account of a distribution of principal, or on account of the termination of its services as Trustee, commonly referred to as a "termination fee," except for reimbursement of reasonable expenses actually incurred. Any fees payable from income to which my Trustee is entitled may be made from current or accumulated income.

3. Fiduciary Powers. In addition to the powers granted by law, I grant my Trustee the powers set forth in the following subparagraphs:

- a. My Trustee may sell, exchange, lease, or encumber any trust assets upon such terms as my Trustee may deem appropriate.
- b. My Trustee may borrow money, grant security interests and execute mortgages, deeds of trust, and other instruments creating security interests upon such terms as my Trustee may deem appropriate.
- c. My Trustee may compromise and adjust any claims against or on behalf of any trust upon such terms as my Trustee may deem appropriate.
- d. My Trustee may make distributions to beneficiaries in cash or kind.
- e. My Trustee may invest and reinvest all or any part of the Trust Assets in any property an undivided interests in property, wherever located, and participate in proprietary mutual funds, common collective or pooled trust funds of my Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning

investments by fiduciaries. I further empower my Trustee to invest in any type of investment that plays an appropriate role in achieving the investment goals of any trust established herein, which investment shall be considered as a part of the total portfolio. It is my specific direction that no category or type of investment shall be prohibited. I specifically do not wish to limit the universe of trust investments in any way other than as is dictated by Trustee's exercise of reasonable care, skill and caution. In connection with my Trustee's investment and management decisions with respect to any trust established hereunder, my Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, tangible and intangible personal property, and real estate, the expected total return from income and the appreciation of capital, other resources of the beneficiaries, the Trust's needs for liquidity, regularity of income and preservation or appreciation of capital, and the particular relationship or special value, if any, which the Trust's asset or assets bear to its beneficiary or beneficiaries. My Trustee shall not be limited to any one investment strategy or theory, including without limitation modern portfolio theory, the efficient market theory or otherwise, but shall be free to consider any appropriate investment strategy or theory under all the circumstances.

f. My Trustee may sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Assets, on such terms as to my Trustee shall seem best, and no person dealing with my Trustee shall be bound to see

to the application of any monies paid

g. My Trustee may hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship), or in bearer form.

h. My Trustee may employ agents, assistants and other advisors deemed by it needful for the proper administration and day to day management of the Trust Assets, and it may do so without liability for any neglect of such agent or representative, provided he was selected and retained with reasonable care.

i. My Trustee may determine, irrespective of statute or rule of law, what shall be fairly charged or credited to income and what to principal and whether or not to establish depreciation reserves.

j. My Trustee may, in its discretion, retain any shares of stock in itself or in any closely held business, or any affiliate, parent, subsidiary or successor corporation thereof (hereinafter called "Company"), and such retention shall not be deemed a violation of its duty of undivided loyalty or of its duty with respect to the diversification of investments. It may further exercise the same discretion, rights and powers with respect to the shares of stock in the Company, both as to those shares originally received and those acquired thereafter, as is conferred upon it by this instrument with respect to all the Trust Assets, and be subject to no greater liability as to the shares its own stock so held than as to any other securities which may form a part of the Trust Assets.

k. My Trustee shall have the following rights and powers with regard to any real property forming a part of the corpus of this Trust, with regard to environmental

matters:

(1) To deal with matters involving the actual or threatened contamination of trust property (including interests in sole proprietorships, partnerships or corporations and any assets owned by such business entities) by hazardous substances, or involving compliance with environmental laws. In particular, my Trustee is empowered:

- (a) To inspect and monitor any such property periodically, as it deems necessary, to determine compliance with any environmental law affecting such property, with all expenses of such inspection and monitoring to be paid from the income or principal of the trust;
- (b) To respond (or take any other action necessary to prevent, abate, or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;
- (c) To refuse to accept property as a trust asset if it determines that such property is contaminated by any hazardous substances or that such property is being used or has been used for any activities directly or indirectly involving hazardous substances which could result in liability to the trust or otherwise impair the value of trust assets;
- (d) To settle or compromise at any time any claim against this trust related to any such matter asserted by any governmental body or

private party;

(e) To disclaim any power which it determines may cause it to incur personal liability as a result of any such matters, whether such power is set forth in this document, incorporated by reference herein, or granted or implied by any statute or rule of law;

(f) To decline to serve as Trustee or, having undertaken to serve, resign at any time it believes there is or may be a conflict between it in its fiduciary capacity and its individual capacity because of potential claims or liabilities which might be asserted against this trust because of the type or condition of trust assets.

(2) My Trustee shall not be personally liable to any beneficiary or other party interested in this trust, or to any third parties, for any claim against the trust for the diminution in value of trust property resulting from such matters, including any reporting of or response to (1) the contamination of trust property by hazardous substances, or (2) violations of environmental laws related to my trust; provided that my Trustee shall not be excused from liability for its own negligence or wrongful or willful acts;

(3) When used in this document the term "hazardous substance" shall mean any substance defined as hazardous or toxic or otherwise regulated by federal law otherwise regulated by any federal, state or local law, rule or regulation relating to the protection of the environment or human health ("environmental law");

reasonable attorney's fees) attributable to any such accounting and approval shall be paid by this trust.

WITNESS my signature and seal:

Ida Mae K. Belk
Ida Mae K. Belk, Settlor and Trustee

The Settlor and Trustee signed, sealed and declared this as her trust instrument in our presence on the date indicated. At her request, we have signed our names as witnesses, and she and we were present together throughout.

M. W. [Signature] of Greenville SC
Deborah A. Meeks of Sumter, SC

I accept and agree to be bound by all conditions.

M. W. [Signature]
Witness

Linda Belk Harris
Linda Belk Harris

Deborah A. Meeks
Witness

[Signature] Notary
Commission Expires 2/04/2012

AFFIDAVIT OF SUBSCRIBING WITNESS (PROBATE)

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named:

NAME OR NAMES OF GRANTORS OR EXECUTORS OF THE DOCUMENT
sign, seal, and as his (her) or (their) ACT and DEED, deliver the attached document for the uses and purposes therein stated, and that (s)he, with the other witness(es) whose name is subscribed thereon, witnessed the due execution thereof.

SIGNATURE OF WITNESS

SWORN to before me this _____
day of _____ 19____

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

**SOUTH CAROLINA ACKNOWLEDGMENT
FROM GRANTOR OR MAKER OF THE INSTRUMENT
(CAN BE USED IN LIEU OF THE ABOVE PROBATE)**

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

I LINDA B. HARKIN, do hereby certify that
NAME OF OFFICIAL AND OFFICIAL TITLE

LINDA MAE BELK, personally appeared
NAME OF GRANTOR OR MAKER

before me this 17th day of September, 1997

and acknowledged the due execution of the foregoing instrument.

[Signature]
SIGNATURE OF OFFICIAL OR NOTARY PUBLIC

My Commission Expires: 2/4/2012

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2008-CP-43-0347
	)	
	)	
Gene Belk, Individually and as	)	
Co-Personal Representative of the	)	
Estate of Robert D. Belk	)	
	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Linda B. Harris, et. al.	)	
DEFENDANT	)	

January 29, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE JAMES R. BARBER, III

A P P E A R A N C E S:

JAN L. WARNER, ESQ.
MAT E. STEINMETZ, ESQ.
Attorney for the Plaintiff

WILLIAM H. JOHNSON, ESQ.
POPE D. JOHNSON, II, ESQ.
S. JAHUE MOORE, ESQ.
Attorney for the Defendants

RECEIVED
2009 JUL -2 PM 1:28
CLERK OF COURT
COLUMBIA

KESHIA REED
Circuit Court Reporter

I N D E X

(There were no witnesses introduced.)

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1 THE COURT: All right. Just for the court reporter
2 purposes, I'm going to get y'all to stand, the attorneys,
3 and tell us who you represent, so she can put it on.

4 MR. WARNER: I'm Jan Warner and I represent Gene D.
5 Belk, who's the plaintiff. Gene C. excuse me.

6 MR. STEINMETZ: Mat Steinmetz, S-T-E-I-N-M-E-T-Z,
7 co-counsel.

8 THE COURT: He's with Mr. Warner.

9 MR. JOHNSON: I'm William Johnson and I present
10 Patricia Schmid, S-C-H-M-I-D, special administrator of the
11 estate.

12 POPE JOHNSON: I'm Pope Johnson and I represent M.M.
13 Weinberg, Jr. and Ida Mae Belk.

14 MR. MOORE: My name is Jake Moore and I present Linda
15 Harris in all capacities in which she is the party to this
16 action and I also represent BIBCA.

17 THE COURT: All right. Before we begin on Mr.
18 Warner's motions, I want to put on the record we had some
19 discussions about a number of items before we -- the court
20 reporter was available and that certain agreements had
21 been reached and certain actions will be taken submitted
22 to Judge Cothran I assume. I'm going to call Judge James
23 and find out whether he's the appropriate judge to submit
24 it. And if he's not, Mr. Johnson, I will call you and
25 tell you as to what judge he says you need to submit

1 whatever orders you going to submit, otherwise submit it
2 to Judge Cothran. But the parties have agreed on several
3 things. One they agreed that they would all make
4 themselves available for certain depositions to be taken
5 beginning on March 11th. I think, Mr. Moore, isn't that
6 the correct date at ten a.m. at Mr. Moore's office. And
7 they would begin with Mr. Weinberg, he would be the first
8 deponent.

9 MR. MOORE: I believe there's also one in March and
10 April.

11 THE COURT: Yeah, I was going to get to the April
12 second date.

13 MR. MOORE: Yes, sir.

14 THE COURT: March 11 and Mr. Weinberg would make
15 himself available at 10 a.m. Mr. Weinberg is under
16 impairment because of some health conditions and is
17 presently in the hospital. If Mr. Weinberg's health
18 prevents him from doing so participating in that
19 deposition, then the first deposition will be Mr. Gene C.
20 Belk at ten a.m. When Mr. Belk is finished, it's
21 anticipated his deposition will go half a day or so. And
22 when he is finished, then the next deposition will be
23 parties that Mr. Warner designates that he wishes to have
24 deposed and they will go through that day. If all the
25 depositions are not completed that day, then parties have

1 agreed that they would recess and return on April 2nd
2 again at Mr. Moore's office to complete the depositions or
3 attempt to complete all the depositions that need to be
4 taken. Again, if that doesn't provide enough time, then
5 the parties will develop another day that's agreeable to
6 everybody to go forward with the deposition.

7 MR. MOORE: Thank you, Your Honor.

8 THE COURT: All right. In addition, what else did we
9 agree on earlier?

10 MR. JOHNSON: Escrow account.

11 THE COURT: Yes, there's an escrow account -- I mean,
12 the funds presently held in an account at Nelson Mullins
13 law firm and the parties agreed that an order would be
14 prepared, which would be consented to by all the attorneys
15 on behalf of their clients, that those funds would be
16 removed from the escrow of Nelson Mullins and paid over to
17 the special administrator who will deposit them in an
18 interest bearing account. The funds will be held in that
19 account without any disbursements, with no disbursements
20 unless there is some order of the Court authorizing the
21 funds to be removed from that account or disbursed from
22 that account for some reason. Anything else with respect
23 to that?

24 MR. JOHNSON: That was all on that issue.

25 THE COURT: An order will be prepared and consented

1 to by everyone else. There are several motions that ---

2 MR. JOHNSON: Your Honor, the other issue was the
3 authority to convey real estate.

4 THE COURT: Oh, yeah. The parties have also agreed
5 apparently there was some contracts of sell some real
6 estate that all payments have been made pursuant to the
7 contract and is now time is right for the real estate to
8 be conveyed to the respective purchasers and the parties
9 agreed that this should be done. Mr. Johnson, on behalf
10 of the special administrator will advise all the parties
11 or their attorneys what the pieces of property are and
12 that an order will be prepared consented to by all the
13 attorneys on behalf of their clients, wherein the Court
14 will authorize the special administrator to convey title
15 of those properties to the respective purchasers.

16 MR. JOHNSON: Thank you.

17 THE COURT: All right. Now, with respect to
18 Mr. Warner's motions. Mr. Warner, you ready to go
19 forward?

20 MR. WARNER: Yes, Your Honor.

21 THE COURT: All right, if you would please.

22 MR. WARNER: Does, Your Honor, have any particular
23 order, we've got two?

24 THE COURT: Whatever you want to do. Rule 59 and
25 Rule 60.

1 MR. WARNER: Yes, sir. There's a reconsideration and
2 a Rule 60 motion on Your Honor's order granted summary
3 judgment on behalf of Evan Weinberg, Jr. Your Honor,
4 during our pretrial or pre-hearing discussion, the purpose
5 of Your Honor's presence in this case was pursuant to an
6 order to hear an expedited motion. At the time of that
7 hearing, issues came up and motions were heard including
8 what was styled a motion to dismiss, but which had three
9 affidavits attachments Mr. Weinberg, Ms. Belk and Ms.
10 Harris. All of which said that Mr. Weinberg did not owe
11 any duty to anybody but them and that they represented him
12 and there was no conflict of interest. In the record, in
13 this case, both the allegations and two affidavits of our
14 client and, Your Honor, we handed up what we got at this
15 -- does, Your Honor, has this rather healthy...

16 THE COURT: I do.

17 MR. WARNER: Okay. And, Your Honor, if I miss
18 anything that's in there, I stand on the content of this
19 document. When this case was started, it began with
20 Mr. Belk acting as plaintiff individually and as
21 co-personal representative of the estate. He brought the
22 action because no one else had brought it and he thought
23 it needed to be brought, so he brought it in two
24 capacities. He brought it individually and he brought it
25 on behalf of the estate. There's no question in the

1 record, but that Mr. Weinberg represented the decedent,
2 Robert Belk, for 20 or 30 years and did majority, the vast
3 majority if not all of his legal work. The devolution of
4 the duty or responsibility of the attorney passes to the
5 personal representative, which again Mr. Belk was serving
6 in that capacity and brought this action in that capacity.
7 Secondly, Mr. Belk's two affidavits indicate that not only
8 did Mr. Weinberg represent his father, the decedent, but
9 he also gave advice to Mr. Belk while acting as personal
10 representative. Mr. Belk's affidavits that were filed
11 before the motion to dismiss that was converted to a
12 summary judgment also state that Mr. Weinberg represented
13 him individually in certain matters and there were
14 conflicts of interest. Within the record, there is the
15 affidavit of Desa Ballard, who is somewhat of an ethics
16 expert, who opined that Mr. Weinberg had irreconcilable
17 conflicts of interest based upon his representation and he
18 should be removed from the case.

19 In February of 2008, we commenced or we served
20 discovery on Mr. Weinberg and a notice of taking his
21 deposition. We were met with a motion to not have his
22 deposition taken. We filed a motion to compel dated March
23 of 2008 and that was never heard by anybody. So at the
24 point of the taken of the hearing before, Your Honor, back
25 in Sumter during the summer, Mr. Weinberg's deposition had

1 not been taken. And due to the issue with the judges in
2 Sumter or whatever or the schedule, the motion to compel
3 the taking of those deposition reduction of records was
4 never heard. So at the time Your Honor heard the motion
5 and again the hearing was based upon the rule to show
6 cause issue, the expedited hearing concerning the matters
7 contained in Mr. Belk's application for relief. The Court
8 heard Mr. Weinberg's motion to dismiss prior to hearing
9 the testimony of Ms. Ballard which we introduced with
10 regard to Mr. Weinberg being disqualified from the case,
11 which we think is the exact same thing as in their
12 affidavit. The Court indicated that Mr. Belk, my client,
13 had submitted affidavits with regard to this motion to
14 dismiss or motion for summary judgment which we did not.
15 We relied upon the record in the case. If it was going to
16 be converted to a motion for summary judgment and again we
17 went to that hearing assuming it would be based upon the
18 order that was issued and these other issues were not
19 going to be heard. They ended up being heard. We dealt
20 with them as best we could. And when the motion was
21 converted to a motion for summary judgment, we don't
22 believe that the Court adequately reviewed the affidavits
23 in the record that show the duty of Mr. Weinberg to the
24 estate when Mr. Belk at that time was personal
25 representative or the other issues that are contained in

1 the affidavit. Again, a protective order that
2 Mr. Weinberg sought on March 18th and our motion to compel
3 on March 21st was never heard. We believe -- don't
4 believe that based on Rule 12 that we had a reasonable
5 sufficient opportunity to present all the materials that
6 would be pertinent to any such motion under Rule 56. We
7 did not know that the motion to dismiss would be heard on
8 that date. Again, we thought we were proceeding on the
9 other, but certainly, we attempted to argue all the
10 motions that we could at that time.

11 The conversion was announced at the hearing on
12 October the 2nd. Again, from March until October, we had
13 no opportunity to get any of the discovery which was
14 relevant here as to Mr. Weinberg's participation who he
15 owes duties to. We basically -- we received nothing up
16 until the time of the hearing and we believe that it is
17 error to grant a summary judgment where we have an
18 outstanding motion to compel discovery that we believe
19 would further add to the affidavits that were filed and
20 the allegations of the complaint. One thing to provide
21 the discovery, it's another not to provide and then make
22 motion for summary judgment and then say there is no
23 evidence. We don't know if there's any evidence or not,
24 we believe that our motion to compel should have first
25 been heard. But I call the Court's specific attention to

1 Mr. Belk's affidavit of August 26, 2008, in support of the
2 motion for injunctive relief which is attached to our
3 memorandum here and our motion as Exhibit No. 8, the
4 affidavit of Ms. Ballard dated April 7th, which is
5 attached to the memorandum regarding motions to be heard
6 April the 7th which is Exhibit 9. And then again Mr.
7 Belk's affidavit dated March 21st in support of the motion
8 to disqualify which is Exhibit 10 attached, the affidavit
9 of Mr. Belk dated March 21st 2008, in support of the
10 motion to compel which is attached as Exhibit 11.

11 Your Honor, we were -- despite the fact that we were
12 provided no discovery from Mr. Weinberg, we received
13 discovery dated December the 10th of 2008 and we filed
14 answers to interrogatories on November 6, 2008. We were
15 not able as shown in those responses to adequately respond
16 to Mr. Weinberg's discovery until Mr. Weinberg complied
17 with Rule 45 production subpoena and the deposition
18 because there was no other way to get the information. We
19 believe the Court did not consider the verification of
20 Mr. Belk as personal representative and individually which
21 was attached to the amended summons and complaint which
22 should have been considered by the Court we believe as a
23 sworn affidavit. Clearly, the affidavits of Ms. Ballard,
24 Mr. Belk, and the other facts of this case raise a genuine
25 issue of fact as to whether or not there was a duty of

1 Mr. Weinberg to -- not only to Mr. Belk individually, but
2 also certainly to Mr. Belk as co-personal representative
3 of the estate in which position he was acting at that
4 point in time. If the matter had heard -- if the Court
5 had heard the matter set forth in Your Honor's order of
6 September 8th, regarding the injunction request and heard
7 the motions and date order, the motions was basically
8 somewhat heard out of order because our motion to
9 disqualify was filed and served well in advance of the
10 motion to dismiss which was converted to a summary
11 judgment. Again, had Mr. Weinberg's deposition been
12 allowed to proceed during that time had our motion been
13 heard, I think we would have an entirely differently
14 situation, but even based on the record itself here, we
15 believe that summary judgment was erroneously granted as
16 to Mr. Weinberg and ask that that be set aside and
17 vacated.

18 The Court did not find that Mr. Weinberg did not know
19 -- in its order, if the Court found that Mr. Weinberg did
20 not owe a duty to Mr. Belk, it did not find as we read the
21 order that Mr. Weinberg did not owe a duty to Mr. Belk as
22 co-personal representative of the estate of Mr. Weinberg
23 clearly represented Mr. Belk, Robert Belk, the decedent,
24 previously. So even if there was no duty owed to Mr. Belk
25 individually which we don't think is correct, we think

1 it's a factual issue based upon the affidavit.
2 Mr. Weinberg absolutely owed a duty to Robert D. Belk. He
3 owed a duty to the estate and he owed a duty to the
4 personal representative. Again, Mr. Belk sued
5 Mr. Weinberg individually or as an individual or
6 co-personal representative of the estate. We believe the
7 Court failed to apprehend Mr. Weinberg had an client
8 relationship with Mr. R.D. Belk which extends well past
9 his death, thereby to the estate and thereby to the
10 personal representative and that there was an express to
11 reply the attorney-client relationship between Mr. Belk
12 here individually and Mr. Weinberg and his law firm and
13 Mr. Weinberg and his law firm owed a duty not only to Gene
14 Belk individually, but also to him as co-personal
15 representative of the estate.

16 Your Honor, we believe that the affidavits that are
17 attached in the record as a whole shows that there is a
18 genuine issue of fact despite the fact that the motion was
19 converted from a motion to dismiss to summary judgment on
20 that day despite it was heard out of order. We believe
21 that the record itself including all the affidavits, the
22 verified pleadings that were by filed by Mr. Belk
23 previously which are part of the record show that there is
24 a genuine issue of fact that summary judgment should not
25 have been granted.

1 Your Honor, the other motion is our 60(b) motion to
2 set aside the order based on a mistaken inadvertence
3 excusable neglect or newly discovered evidence. We
4 believe the Court should have considered the testimony of
5 Mr. Belk and Ms. Ballard which was taken after court
6 granted Mr. Weinberg's -- granted the motion to dismiss
7 Mr. Weinberg. As the Court recalls, after Mr. Weinberg's
8 motion was heard, then there was a motion to disqualify
9 and Mr. Belk here testified and Desa Ballard testified
10 that was heard on the same day, that in and of itself we
11 believe and even though it was in the affidavits, it was
12 somewhat after discovery because it came after the Court
13 had already ruled on the other.

14 The Court should now consider also Mr. Belk's
15 responses to the interrogatories submitted by Mr. Weinberg
16 that if made a part of this memorandum because of the fact
17 that he couldn't answer those without the motion to compel
18 having been heard. The affidavit of October 10th of 2008,
19 in opposition to the motion to dismiss they converted it,
20 it was not filed and we believe that these other matters
21 should have been heard before the motion for summary
22 judgment as to the motion to reconsider. And if not, then
23 under Rule 60(b) the Court should vacate and set aside the
24 order based upon excusable negligent the state in
25 advertence of newly discovered evidence because the

1 information that came from the witness stand from sworn
2 testimony Mr. Belk and Ms. Ballard both show that there is
3 a genuine issue of fact as to the culpability of
4 Mr. Weinberg.

5 THE COURT: My recollection of this case is everybody
6 agreed Mr. Weinberg would be out of the case at the
7 hearing, that was one agreement we had.

8 POPE JOHNSON: Your Honor, that was -- you're
9 correct. The idea of Mr. Weinberg or Mr. Warner saying he
10 was surprise or didn't know we were going to do this, it
11 was just not supported by the record. The hearing was
12 set. It was set with you initially on his having the
13 matter sent over here and assign to you to hear his
14 motion, but we had a motion to dismiss supported by
15 affidavits. He had a motion to disqualify Rusty which you
16 heard immediately after you heard my motion and that
17 motion got resolved by my client withdrawing voluntarily
18 without admitting any wrongdoing. And I've got ---

19 THE COURT: Everybody agreed that he would withdraw
20 and that he would be out of the case including Mr. Warner
21 and his client.

22 POPE JOHNSON: Exactly. And, of course, I got -- I
23 think I got that portion of the transcript. I asked for
24 one portion and they sent me this. And I got the portion
25 I sent you which is an argument Mr. Warner just addressed.

1 But in any event, when the motion was called, there was no
2 objection. There was no saying we're surprised. There
3 was no motion for a continuance. There was no affidavit
4 to support a continuance. None of this was ever raised at
5 that time. Instead what happened was Mr. Warner stood up
6 and argued at length his position. He referred you to the
7 affidavit of his client and affidavits of his client. He
8 referred you to the affidavit of Desa Ballard. In fact,
9 when he referred to that on page 19 of the transcript, the
10 Court said, Well, I don't see anything in any of these
11 affidavits that indicate that factual allegation by your
12 client otherwise that Mr. Weinberg has any kind of duty to
13 your client. So you look at all that. At the same time
14 we heard all this and concluded and challenged him on that
15 and he pointed to no allegation of fact that would support
16 his claim. And as a result, the Court issued an order
17 which wasn't -- and I don't know how Mr. Warner can read
18 it the way he said he read it. He said that only -- the
19 Court only found that no duty was owed to Mr. Belk
20 individually. Actually what your order says is I find
21 that Weinberg owed no duty to the plaintiff. The
22 plaintiff in this case is Gene Belk individually and as
23 co-personal representative. So factually, I think is of
24 resuscitation of what occurred is inaccurate and supported
25 by the transcript which I provided you. But legally what

1 he's ascertaining is grounds for Rule 59(e) motion simply
2 cannot be a bases for granting that type motion because
3 it's limited to what was argued at the hearing at the
4 first hearing. And as I pointed out, he made no motion to
5 continue and he made no objection. He proceeded to argue
6 it in full and he can't come back now and say I'm
7 surprised. The same holds true, Your Honor, with Rule 60
8 motion. It requires excusable negligent, surprise et.
9 cetra. Well, he can't come in and argue fully and at
10 length his position, his affidavits and then say, Well,
11 what a minute I was surprise that we were doing this. You
12 all excuse me or somehow give me another bit because I was
13 surprise and didn't prevail the first time. All he's done
14 in his argument really is argue the same things you've
15 already ruled on and not addressed the grounds of his
16 motion because he knows they aren't sufficient. And we
17 would say that the Court should hold him to the facts,
18 hold him to what the law says, deny the motions.

19 THE COURT: All right. Mr. Johnson, anything you
20 want to say?

21 MR. JOHNSON: No, sir.

22 THE COURT: Mr. Moore?

23 MR. MOORE: No, sir.

24 MR. WARNER: Your Honor, I do need to address

25 Mr. Pope's and the Court's statements about there was an

1 agreement that Mr. Weinberg got out of the case and since
2 that door was opened. The problem here is certainly after
3 your order was issued we received a motion for frivolous
4 proceedings and sanctions based on this case, which we
5 don't think it was appropriate. We believe that this
6 order needs to be looked at. If there was an agreement,
7 there was an agreement, but we don't believe that part
8 this order ---

9 THE COURT: Well, you know, I might tend to agree
10 with you, but I don't know how that has anything to do
11 with this thing, that seems to me like that argument would
12 be made at the time they attempt to move forward on that
13 motion, you know. If everybody got up and agreed that
14 this person would be out of the case, how could they say
15 that anything was frivolous or anything like that unless
16 you got up and said, Well, we brought them in this case
17 just to accomplish some purpose other than have a true
18 effort to litigate the matter based on the merits and that
19 was never done.

20 MR. WARNER: This motion or this order did address it
21 on the merits and relieve them.

22 THE COURT: I understand that, I understand that, but
23 I mean, well, there was arguments based on the merits as
24 well, but everybody agreed that Mr. Weinberg was going to
25 be out of the case. He might be in the case as a witness

1 and you acknowledge that at some point in time I may want
2 to call him. I think there was a dispute about that on
3 the other side. And again, what he could or couldn't
4 testify to would be determined at the time that he was
5 called as a witness.

6 MR. WARNER: Your Honor, any agreement was discussed
7 off the record was not on the record and we had an order
8 here ---

9 THE COURT: Well, Mr. Warner ---

10 MR. WARNER: Yes, sir.

11 THE COURT: --- everybody agreed. Now, if I got to
12 go through life having to worry about lawyers telling me
13 something and then at some point in time they're going to
14 come back and say, Well, you didn't put it on the record,
15 so my word really doesn't mean anything.

16 MR. WARNER: I understand that, sir. You know, we
17 have the same problem because if we have an agreement, we
18 understood that everything was completed, but it certainly
19 was not.

20 THE COURT: I don't know why it isn't.

21 MR. WARNER: Sir?

22 THE COURT: I don't know why it isn't.

23 MR. WARNER: That's that the decision that
24 Mr. Weinberg, Mr. Johnson...

25 THE COURT: Well, that doesn't mean that they're

1 going to have any sort of merit then that argument.

2 MR. WARNER: It's still matter of ---

3 THE COURT: But I can't address that at this time.

4 MR. WARNER: I understand.

5 THE COURT: They can file all kinds of things as you
6 can, that's just like you can sue anybody you want to sue
7 whether you're successful in those efforts or... I don't
8 know why y'all would do that based on that, but I still
9 can't get into that at this point.

10 MR. WARNER: I understand. The only reason I'm
11 speaking now is because the issue was raised about that
12 there was an agreement.

13 THE COURT: Well, there was an agreement. I don't
14 care what y'all say. I guess, everybody here agrees there
15 was an agreement.

16 MR. MOORE: Yes, sir.

17 THE COURT: Now, Mr. Warner's position is it wasn't
18 put on the record.

19 POPE JOHNSON: Actually, Your Honor, it was put on
20 the record. I got it right here. We agreed to withdraw
21 as counsel. Rusty agreed to withdraw as counsel.

22 MR. WARNER: Judge, that was after Your Honor heard
23 the motion for summary judgment.

24 POPE JOHNSON: That was the next motion you put up.

25 THE COURT: So what, it's still an agreement. All

1 right. Anything else anybody else wants to say about this
2 matter?

3 POPE JOHNSON: No, Your Honor.

4 THE COURT: Submit me a proposed order, submit me a
5 proposed order. How long is it going to take to -- I
6 assume, Mr. Moore, and, Mr. Johnson, y'all join in
7 whatever order -- let them see it.

8 MR. MOORE: Yes, Your Honor.

9 THE COURT: You take any interest in editing it?

10 MR. MOORE: No, sir.

11 MR. JOHNSON: No, thank you.

12 THE COURT: Now, his motion about attorney fees do
13 y'all want -- I don't know if it was a motion or just a
14 request for the approval.

15 MR. JOHNSON: Right, it was a request of the
16 approval.

17 THE COURT: Not much money.

18 MR. JOHNSON: It was around \$5,000, Your Honor.

19 THE COURT: I thought it was about 3,000.

20 MR. JOHNSON: Well, I supplemented later.

21 MR. MOORE: That look reasonable to us, Your Honor.

22 THE COURT: Do y'all have an objection to his being
23 paid that or do you want to send that to Judge Cothran?

24 MR. WARNER: Your Honor, I really would prefer that
25 Judge Cothran handle that if that's where the rest of the

1 thing is going.

2 MR. JOHNSON: Is that a consent? We'll consent and
3 talk about it to Judge Cothran.

4 MR. WARNER: I'll look at it and I don't know if we
5 really got an objection. I really hadn't -- you saw what
6 I file today, but I think Judge Cothran needs to handle
7 this and I'll get with Mr. Johnson to see if we can
8 resolve it.

9 THE COURT: Well, I mean, I looked at it and it
10 doesn't seem like -- it doesn't shock my concise and I'm
11 not use to big money like you guys are when it comes to
12 fees.

13 All right. How much time you want, Mr. Johnson, I
14 would think you could do your order pretty quickly based
15 upon your memo?

16 POPE JOHNSON: I can. Whatever Mr. Warner wants.
17 I'm fine, I can do it today.

18 MR. WARNER: Judge, I've got two briefs due at the
19 Court of Appeals.

20 THE COURT: Well, I assume your order would be --
21 would follow your memo.

22 MR. WARNER: Judge, I would say ---

23 THE COURT: A week.

24 MR. WARNER: Could I do it -- what's today Thursday.
25 Could I do it a week from Monday would that be too late?

1 THE COURT: That's not too late.

2 MR. WARNER: Thank you, sir.

3 THE COURT: Or earlier. You don't have to wait to

4 ---

5 POPE JOHNSON: I'm not.

6 THE COURT: Okay. Anything else y'all want to talk
7 about?

8 MR. MOORE: Nothing from us, Your Honor.

9 MR. WARNER: We got the motion to reconsider the
10 appointment of the special administrator.

11 THE COURT: All right.

12 MR. WARNER: Frankly, it's still before you.

13 THE COURT: I'm the only one that can hear a motion
14 to reconsider or any matter going to somebody else y'all
15 are stuck. Now, y'all understand the worse nightmare in
16 this case could be if Judge James says nobody over there
17 can hear it from here on out and I'm stuck with it.
18 You'll file some objection to that want you, Mr. Johnson?

19 POPE JOHNSON: I will expect to.

20 THE COURT: Does anybody have any problems with what
21 Miss -- what's your client's name?

22 MR. JOHNSON: Schmid.

23 THE COURT: With what she's been doing?

24 MR. JOHNSON: Don't know what's she's been doing.

25 THE COURT: Has she done anything?

1 MR. JOHNSON: Yes, sir, Your Honor, the first thing
2 she had to do was marshall these people together to get
3 the information because there was a tax return due
4 January 15th and that took some effort.

5 THE COURT: All right. She did that.

6 MR. JOHNSON: She did that. That was filed and we
7 sent it out in advance and that had been filed.

8 THE COURT: All right. Listen to this now,
9 Mr. Warner.

10 MR. WARNER: Yes, sir.

11 MR. JOHNSON: She has spent a great deal of time.
12 She's trying to match up the real estate that's listed on
13 the inventory, so the real estate that is owned pursuant
14 to the Sumter County assessor's records with some
15 appraisals that were performed three or four years ago on
16 behalf of the estate, so she is working on that project.
17 She is also requested and finally obtained bank statements
18 from the accounts. There are accounts for the estate, of
19 course. There accounts from Sumter Mortgage. There's
20 accounts for BIBCO. There's accounts for something called
21 I.N. Belk Company. And there's also another trust
22 account, so there's a mired of accounts that she has
23 obtained the statements for those accounts over the past
24 three years or however long those statement -- accounts
25 have been in existence and reviewing those and pointing

1 out issues that need to be addressed. We're not yet
2 prepared to address all those things just because the
3 magnitude of that. She is also engaged Roger Long as the
4 C.P.A. for assistance in this process. Obviously, it's
5 not going to be an audit because no one can afford an
6 audit at this time, but it will be too much. But he has
7 agreed to review both the internally completed statements
8 and also the bank statements to determine if the
9 transactions were appropriate and in accordance with
10 proper procedure of the estate.

11 THE COURT: All right. I assume any questions,
12 information Mr. Warner wants y'all prepared to provide it
13 based on...

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Or Mr. Johnson or Mr. Moore?

16 MR. JOHNSON: There had been some communications, of
17 course, between obviously Ms. Schmid and Ms. Harris and
18 Ms. Schmid and Mr. Belk they exchanged information back
19 and forth.

20 THE COURT: So Mr. Belk would be aware of some of her
21 activities up to this point?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: All right. Do you want to make a motion
24 for me to reconsider her appointment? You want me to hear
25 that?

1 MR. WARNER: Your Honor, whatever I submitted to you
2 and whatever the Court rules on arguments contained in
3 there.

4 THE COURT: Well, I'm not going to...

5 MR. WARNER: I didn't figure you would, I don't want
6 to waste any more time.

7 THE COURT: If y'all have some complaint, I think
8 that would be my main consideration was the cost factor.
9 And if she doesn't prove to be someone who can't or will
10 do what she needs to do, the full intent was that you have
11 access to -- not to stop her, but to know everything she's
12 doing and ultimately pass or call Mr. Johnson and say we
13 need to do this. And, of course, I would encourage them
14 to contact y'all if they have any questions because
15 obviously you have some information that might be helpful
16 or your client does might be helpful in bringing this
17 thing to a conclusion. I'm not going to change her.

18 MR. WARNER: All right.

19 THE COURT: Y'all have a problem, I'll tell you to
20 take it to whatever judge has it. Until then -- I mean,
21 it's been three months, four months. And I would
22 encourage y'all to concur to Mr. Johnson's fee because
23 I've looked at them and I don't think they're
24 unreasonable. Again, that's up to y'all. All right.
25 Anything further?

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MR. WARNER: No, sir.

END OF REQUESTED TRANSCRIPT

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF FLORENCE

4
5 I, Keshia Reed, Court Reporter and Notary Public
6 in and for the State of South Carolina At Large, do hereby
7 certify that the above-entitled cause was heard as
8 hereinafter set out; that I was authorized to and did
9 transcribe the said proceedings; and that the foregoing
10 and annexed pages, numbered 1 through 28, inclusive,
11 constitute a true and accurate transcription of my
12 stenographic report of the said cause taken during the
13 said hearing.

14 In witness whereof, I have hereunto affixed my
15 signature this 30th day of June, 2009.

16
17 
18 Keshia Reed, Court Reporter
19 My Commission Expires: 6-5-2010
20
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Last Will and Testament

of

Robert D. Belk

Introductory Clause. I, Robert D. Belk, a resident of and domiciled in the City of Sumter, County of Sumter and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to Ida Mae K. Belk.

I have five (5) children: Gene C. Belk, Linda B. Harris, Patricia B. Schmit, Cheryl Ann Hanlon, and Robert M. Belk.

ITEM I

I direct that:

(1) **Direction to Pay All Taxes and Specified Expenses from the Designated Source.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of Trust B and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and my residuary estate, thus likewise reducing the denominator of the fraction.

(2) **Apportion Taxes on Non probate Property.** All such taxes in respect to any interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, (a) there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable

deduction; (b) there shall be no apportionment against my surviving spouse, if she is a donee or recipient of any such property or interest in property and the property or interest in property was allowed in my federal estate tax proceedings as a marital deduction under I.R.C. Section 2056. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate of such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

ITEM II

General Request of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death or for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my wife, Ida Mae K. Belk, if she shall survive me. If my wife shall not survive me, I give and bequeath all this property to my children surviving me in approximately equal share; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issues do not agree to the division of the property among themselves, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM III

Specific Bequests. I give and bequeath One Hundred Thousand (\$100,000.00) Dollars to Linda F. Garrett, if she survives me.

ITEM IV

The Specific Devise of Residential Property. I give and devise to my wife, Ida Mae K. Belk, if she shall survive me, any interest which I own at the time of my death in the house and lot which I occupy as my residence at the time of my death.

ITEM V

Maximum Marital Deduction. Pecuniary Formula Bequest. Maximize Unified Credit. Payable to Trust C. If my wife, Ida Mae K. Belk, shall survive me, I give, devise and bequeath to my Trustee hereinafter named cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my wife otherwise than pursuant to the provisions of this Item; provided, however the amount of this bequest shall be reduced by the amount, if any needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent shall that the use of such state death tax credit does not increase the death tax payable to the to any state), will result the smallest (if any) federal estate tax being imposed on my estate. The term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws; only in such manner as will result in a larger allowable estate tax marital deduction that if the contrary election had been made. My Personal Representative shall have the sole direction to select the assets which shall constitute this bequest. In no event, however, shall there be included in the bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representative shall value any asset selected by my Personal Representative for distribution in kind as a part of this bequest at the value of such asset at the date of distribution of such asset.

This bequest shall be administered by my Trustee under the terms of *Trust C* as hereinafter set forth.

ITEM VI

Residuary Gift to Trustee Under Trust B. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to the Trustee of *Trust B* shall be administered as hereinafter set forth.

ITEM VII

Trust B Introductory Provision. *Trust B* shall be held, administered and distributed as follows:

(1) **Discretionary Payment of All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit my wife, until division into shares for children as hereafter provided, all the net income from *Trust B* in convenient installments, but no less frequently than quarter annually.

(2) **Discretionary Payments of Principal for Wife.** If my wife shall survive me, and if there is no principal remaining in *Trust C*, my Trustee may pay to or apply for the benefit of my wife during her lifetime, such sums from the principal of *Trust B* as in its sole discretion shall be necessary for advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Limited Withdrawal by Wife.** If there is no principal remaining in *Trust C*, then, in addition to the income and discretionary payments of principal from this Trust, where shall be paid to my wife during her lifetime from the principal of this Trust upon her written request during the last month of each fiscal year of the Trust an amount not to exceed during such fiscal year the greater of Five Thousand (\$5,000.00) Dollars of Five (5%) per cent of the total value of the principal of *Trust B* on the last day of such fiscal year without reduction for the principal payments for such fiscal year. This right of withdrawal is noncumulative, so that if any wife does not withdraw, during such fiscal year, the full amount to which she is entitled under this Paragraph, her right to withdraw the amount no withdrawn shall lapse at the end of that fiscal year.

(4) **Division Into Shares for Children.** Upon or after the death of the survivor of my wife and me, my Trustee shall divide this Trust as then constituted into equal separate share so as to provide One (1) share for each deceased child of mine who shall leave issue then living. Each share for a living child of mine shall be distributed to such child except as provided in (5), (6) and (7) below.

(5) **Special Provision for Share of Robert M. Belk.** The share created by (4) above for my son shall not be distributed to him, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my son, Robert M. Belk, during his lifetime.

(b) Upon the death of my son, my Trustee shall pay the net income from this share in equal shares to my grandchildren, ~~Debra Belk~~ and Jessica Belk, or to the survivor. My son, Robert M. Belk, has two other children who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(6) **Special Provision for Share of Cheryl Ann Hanlon.** The share created by (4) above for my daughter, Cheryl Ann Hanlon, shall not be distributed to her, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my daughter, Cheryl Ann Hanlon, during her lifetime.

(b) Upon the death of my daughter, my Trustee shall pay the net income from this share in equal shares to my grandchildren, Robert Hanlon and Tommy Hanlon, or to the survivor. My daughter, Cheryl Ann Hanlon, has another child who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(7) **Special Provision for my Deceased Children Who Shall Leave Issue Then Living.** With respect to a share created by (4) above, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors. In the event this share is for the children of Robert M. Belk or Cheryl Ann Hanlon, it is my desire that the beneficiaries are to be these individuals identified in (5) and (6) above.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

ITEM VIII

Trust C Introductory Provision. *Trust C* shall be held, administered, and distributed as follows:

(1) **Direction to Pay All Income to Wife.** Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my wife during her lifetime all the net income from *Trust C* in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her personal representatives.

(2) **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, my Trustee may pay to or apply for the benefit of my wife such sums from the principal of *Trust C* as in its sole discretion shall be necessary or advisable for the comfort of my wife, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my wife known to my Trustee.

(3) **Withdrawal Power in Wife.** In addition to the income and discretionary payments of principal from this Trust, there shall be paid to my wife during her lifetime from the principal of this Trust upon her written request during the last month of each fiscal year of the trust an amount not exceed during such fiscal year the greater of Five Thousand (\$5,000.00) Dollars or Five (5%) per cent of the total value of the principal payment for such fiscal year. This right of withdrawal is noncumulative, so if any wife does not withdraw, during such fiscal year, the full amount to which she is entitled under the Paragraph, her right to withdraw the amount not withdrawn shall lapse at the end of that fiscal year.

(4) **Power in Wife to Cause Nonproductive Property to Be Made Productive.** My wife may at any time by written notice, require my Trustee to make any nonproductive property of this trust productive or to convert such nonproductive property within a reasonable time.

(5) **Payment of Death Taxes From *Trust C* on Death of Wife.** Unless my wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of *Trust C* be paid otherwise, my Trustee shall pay to the personal representatives of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of *Trust C* in her estate for such tax purposes.

(6) **Division Into Shares for Children.** Upon the death of my wife, the entire remaining principal of *Trust C* shall be divided into equal separate shares so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living. The share provided for a living child of mine shall be distributed to such child, except as provided in (7), (8) and (9) below.

(7) **Special Provision for Share of Robert M. Belk.** The share created by (6) above for my son shall not be distributed to him, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my son, Robert M. Belk, during his lifetime.

(b) Upon the death of my son, my Trustee shall pay the net income from this share in equal shares to my grandchildren, D. B. and Jessica Belk, or to the survivor. My son, Robert M. Belk, has two other children which I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(8) **Special Provision for Share of Cheryl Ann Hanlon.** The share created by (7) above for my daughter, Cheryl Ann Hanlon shall not be distributed to her, but shall be held in Trust pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my daughter, Cheryl Ann Hanlon, during her lifetime.

(b) Upon the death of my daughter, my Trustee shall pay the net income from this share in equal shares to my grandchildren, Robert Hanlon and Tommy Hanlon, or to the survivor. My daughter, Cheryl Ann Hanlon, has another child who I have purposely excluded.

(c) Upon either of these two grandchildren attaining the age of 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

(9) **Special Provision for my Deceased Children Who Shall Leave Issue Then Living.** With respect to a share created by (6) above, my Trustee shall hold this share pursuant to the following terms:

(a) My Trustee shall pay the net income from this share in convenient installments, but not less frequently than quarter-annually to my grandchildren or survivors. In the event this share is for the children of Robert M. Belk or Cheryl Ann Hanlon, it is my desire that the beneficiaries are to be these individuals identified in (7) and (8) above.

(b) Upon the first grandchild for this share attaining age 30, my Trustee shall distribute the remaining principal in this share to said grandchildren.

ITEM IX

Naming the Personal Representative, Personal Representative Succession, and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, and other matters are set forth below:

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament Carlton R. Davidson and direct that he shall serve without bond. I have previously entered into a compensation agreement with Mr. Davidson.

(2) **Naming Individual Successor or Substitute Personal Representative.** If any individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representatives who shall also serve without bond shall be Gene C. Belk. If any individual Personal Representative named herein should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the remaining individual Personal Representatives named herein shall continue to serve without a successor or substitute.

ITEM X

Naming the Trustee, Trustee Succession, and Other Matters. The provisions for naming the Trustee, Trustee succession, and other matters are set forth below:

(1) **Naming Individuals as Trustee.** I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament Gene C. Belk, and Linda B. Harris, and direct that they shall serve without bond.

(2) **Individual Trustees Succession.** If any individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustees shall continue to serve without a successor or substitute.

(3) **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees.

(4) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which I have given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ITEM XI

Definition of Personal Representative and Trustee. Whenever the word "Personal Representative" and/or the word "Trustee", any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

(1) To retain any property or individual interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk of nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the real property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of my Personal Representative or Trust, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate of the Trust Estate, for cash or upon credit, to exchange any property of my estate of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan or reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal Representative or Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate of the Trust Estate for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lesser or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs to alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem available, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of any Estate of the Trust Estate.

ROP

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with settle claims in favor of or against my Estate of the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate of Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distributions of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as Personal Representative or Trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms

and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all of my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, at any portion or all of any other trusts or bequests in my Will or any other transfer which I am the transferor for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to *Trust B*, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

Bob

ITEM XIII

Marital Deduction Savings Clause for *Trust C*. It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representative and Trustee in connection with the imposition of duties upon my Personal Representative and Trustee by any provision of this my Will or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in *Trust C* hereof. It is my intention that my wife under the provisions of *Trust C* have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Trustee

shall not exercise its discretion in an manner which is not in accord with this expressed intention. My Personal Representative and Trustee shall invest the Trust Estate so that it will produce for my wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my trustee shall not in the exercise of this discretion make any determination inconsistent with the foregoing.

ITEM XIV

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-one. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as my Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining the age of Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ITEM XV

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One (21), Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by my Trustee using amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that my Trustee shall not make any payment from *Trust C* under (3) above.

ITEM XVI

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believe has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my wife.

ITEM XVII

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "the living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

ReB

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XVIII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this

Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XIX

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator Reverse Presumption as to Wife. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me; provided, however, that if my wife shall die with me as aforesaid, I direct that she shall be conclusively presumed to have survived me.

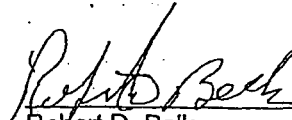
ITEM XX

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

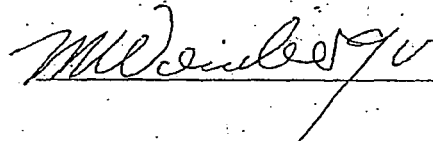
ITEM XXI

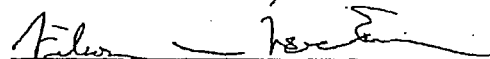
Perpetuities Savings Clause. Notwithstanding anything herein to the contrary, the trusts created hereunder shall terminate not later than Twenty-one (21) years after the death of the last survivor of my wife and issue living on the date of my death, when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

Testimonium; Attestation, and Self-Proving Affidavit. I, Robert D. Belk, the Testator, sign my name to this instrument this 5 day of MARCH, 2004, and being first duly sworn, do hereby declare to the understanding authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


Robert D. Belk

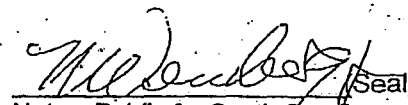
We, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument at this last will and he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.





The State of South Carolina
County of Sumter

Subscribed, sworn to, and acknowledge before me by Robert D. Belk, the Testator, and subscribed and sworn to before me by William H. Hatcher and William H. Hatcher witness, this 5 day of MARCH, 2004.


Notary Public for South Carolina
My Commission Expires 1-07-09

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF SUMTER

IN THE MATTER OF: ROBERT D. BELK

CASE NUMBER

RENUNCIATION OF RIGHT TO ADMINISTRATION

The undersigned hereby renounces his/her right to serve as Personal Representative of the above estate and relinquishes any statutory right except as indicated below:

- X 1. I hereby exercise my right to nominate a Personal Representative. The name and address of the proposed nominated Personal Representative is:

GENE C. BELK
SUMTER, S.C.

LINDA B. HARRIS
SUMTER, S.C.

2. I hereby waive my right to nominate another Personal Representative.

Executed this 5th day of May, 2004.

Witnessed by:

Signature:
Name

Carlton Davidson
CARLTON DAVIDSON

Address:

[REDACTED]
[REDACTED]

Telephone (O):
(H):

803- [REDACTED]
803- [REDACTED]

Debra H. Drake
Notary Public
for South Carolina
My Commission
expires 09-29-2008.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF Sumter

IN THE MATTER OF Robert Dillon Belk

CASE NUMBER 2004ES4300225

APPLICATION FOR

(check any that apply)

INFORMAL
☒ PROBATE OF WILL
☒ APPOINTMENT

PETITION FOR

FORMAL
☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner:

Address:

Telephone:

Gene C. Belk and Linda B. Harris

* See addresses below

Mr. Belk

Mrs. Harris

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.
Son and daughter respectively.
2. Decedent Information

Name: Robert Dillon Belk

Social Security Number: [REDACTED]

Date of Birth: [REDACTED]

Date of Death: [REDACTED]

Age at date of death: 74

Domicile at date of death:

Sumter

(county)

South Carolina

(state)

3. Venue for this proceeding is proper in this county because:

☒

Decedent was domiciled in this county at date of death.

☐

Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐

Decedent has a right to take legal action in this county because:

- 4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name

Date of Birth

Address

Relationship to Decedent

* See Exhibit A attached *

(use additional sheet if necessary)

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
<u>Not applicable</u>			

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses of such Personal Representative, on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of *To be determined and real estate of about the value of *. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

to be
determined.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:
☒ The original is attached
☐ The original is in the Court's possession
☐ An authenticated copy of a will probated in another jurisdiction is attached
☐ An authenticated copy of a will not probated in another jurisdiction is attached
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☒ Yes ☐ NO If no, please explain on page 3.
3. The date of execution of the will was: 03/05/04
codicil(s): _____
4. Are you aware of any instrument or document amending or revoking the will?
☒ NO ☐ YES If yes, please explain on page 3.
5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?
☒ YES ☐ NO If no, please explain on page 3.
6. Do you believe the will defined in "1" above is the decedent's last will?
☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Blank lined paper.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:
Gene C. Belk, [REDACTED]
Linda B. Harris, [REDACTED]
2. Priority for this appointment is:
☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☒ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☒ named as nominee of Primary and/or Alternate Personal Representative
☐ other devisee of decedent, or nominee (describe): _____ or
nominee of said devisee
☐ surviving spouse of decedent, or nominee of said spouse
☐ other heir of decedent (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above
3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).
Gene C. Belk

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 7th day of
May, 2004
Lillian B. Moore
Notary Public for South Carolina
My Commission Expires: 2/14/05

Signature: Gene C. Belk
Name: Gene C. Belk
Address: [REDACTED]
Tel. [REDACTED]
Signature: Linda B. Harris
Name: Linda B. Harris
Address: [REDACTED]
Tel. [REDACTED]

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally
this 7 day of May, 2004.

[Signature]

Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☒ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, March 5, 2004, be admitted formally to probate.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 7 day of May, 2004.

Dele. Arch
_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Gene C. Belk
Name: Gene C. Belk
Address: [REDACTED]
E-mail: [REDACTED]
Telephone (O): [REDACTED]
(H): [REDACTED]
Signature: Linda B. Harris
Name: Linda B. Harris
Address: [REDACTED]
E-mail: [REDACTED]
Telephone (O): [REDACTED]
(H): [REDACTED]
Attorney: [REDACTED]
Address: [REDACTED]
E-mail: [REDACTED]
Telephone (O): [REDACTED]

EXHIBIT A

4.a Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

<u>Name</u>	<u>Date of Birth</u>	<u>Address</u>	<u>Relationship to Decedent</u>
1. Ida Mae K. Belk	Adult	[REDACTED]	Wife
2. Gene C. Belk	Adult	[REDACTED]	Son
3. Linda B. Harris	Adult	[REDACTED]	Daughter
4. Patricia B. Schmit	Adult	[REDACTED]	Daughter
5. Cheryl Ann Hanlon	Adult	[REDACTED]	Daughter
6. Robert M. Belk	Adult	[REDACTED]	Son
7. Linda F. Garrett	Adult	[REDACTED]	Secretary
8. Thomas Hanlon	Adult	[REDACTED]	Grandson
9. Robert Hanlon	Adult	[REDACTED]	Grandson
10. Jessica Belk	[REDACTED]	[REDACTED]	Granddaughter
11. R. D. B.	[REDACTED]	[REDACTED]	Grandson

STATE OF SOUTH CAROLINA

COUNTY OF: SUMTER

IN THE MATTER OF: Estate of Robert D. Belk

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2004ES4300225

☒ ORIGINAL

☐ SUPPLEMENTAL #

Personal Representative (s): Gene C. Belk
Linda B. Harris

Decedent's Social Security Number: [REDACTED]

Decedent's Date of Death: [REDACTED]

Domicile at death:

Was there a will? ☒ YES ☐ NO

Sumter
(county)

SC
(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 17th day of October, 2005
Lillian B. Moore
Notary Public for South Carolina
My Commission Expires: 2/04/15

Attorney: Karen H. Thomas

Address: 1501 Main St.
Columbia, SC 29201

E-Mail:

Telephone: 803-254-4190

Signature: [Signature]

Name: Gene C. Belk

Address: [REDACTED]
[REDACTED]

E-Mail:

Telephone (O):

(H):

Signature: [Signature]

Name: Linda B. Harris

Address: [REDACTED]
[REDACTED]

E-Mail:

Telephone (O):

(H):

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$	\$ 521,250
Schedule B - Stocks and Bonds		
Schedule C - Notes Due Decedent and Cash		67,882.00
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		
Part 2 - Payable to Beneficiary		
Schedule E - Jointly Owned Property		
Schedule F - Other Miscellaneous		2,569,724.00
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's Life		
Schedule H - Powers of Appointment		
Schedule I - Annuities and Retirement Accounts		
TOTAL GROSS VALUE	\$	3,158,856
ENCUMBRANCES	(	179,238.00
TOTAL NET WORTH	\$	2,979,618.00

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description (Include county and state)	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
1	Rental Lot: 50 Abington TMS#099-12-01-013			\$7,850.00
2	Rental Lot: 2435 Hwy 261 South Sumter TMS#100-00-02-007			\$6,200.00
3	Rental Lot: 2425 Hwy 261 South Sumter TMS#100-00-02-008			\$6,200.00
4	Rental Lot: 2415 & 2419 TMS#:100-00-02-009			\$6,200.00
5	Rental Lot: 2405 TMS#100-00-02-010			\$7250.00
6	118 Acre Tract Middleton Township TMS#:128-00-01-003			\$217,350.00
7	4835 Slick Willie Drive TMS#:156-08-01-058			10,800.00
8	Right of Way TMS#:156-08-01-059			
9	Commercial Lot TMS#:186-00-01-020			\$26,900.00
10	Residence: 2795 Powhattan Dr. TMS#: 204-16-03-013			\$193,700.00
11	5920 Wedgefield Rd. TMS#099-05-02-009			\$38,800.00

TOTAL SCHEDULE A \$ 521,250
(also enter under recapitulation, page 1)

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value

TOTAL SCHEDULE B \$
(also enter under recapitulation, page 1)

SCHEDULE C - Notes due to Decedent, and Money on hand and in banks (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value
1	NBSC Checking Account #	\$55,369.00
2	SAFE Federal Banking Acct #	\$774.00
3	Note due from Timothy Brophy	\$5,923.00
4	Note due from Titus Rembert	\$5,816.00

TOTAL SCHEDULE C \$ 67,882.00
(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value

TOTAL PART 1 \$

(also enter under recapitulation, page 1)

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value

TOTAL PART 2

(also enter under recapitulation, page 1)

\$

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)

NOTE: You must complete Schedule E if the Decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is included in the gross estate.

Percentage Includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Value
1	Home Furnishings	\$2,500.00
2	1990 Lincoln Continental VIN 1n1m984SLY653627	\$1,000.00
3	33.3% interest in AB&G	\$26,207.00
4	50% interest in Gene Belk and Robert D. Belk, d/b/a Foxx Company	\$375,000.00
5	50% interest in Ida M. Belk and Robert D. Belk, d/b/a Sumter Mortgage Company	\$2,151,308.00
6	50% interest in Ida M. Belk and Robert D. Belk, d/b/a Sumter Mortgage Finance	\$13,709.00

TOTAL SCHEDULE F

(also enter under recapitulation, page 1)

\$ 2,569,724.00

NOTE: FOR SCHEDULES G, H, AND I, LIST VALUES ONLY IF PAYABLE TO ESTATE.

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers. Lifetime transfers of real property in which decedent retains a life estate or other incidents of ownership.

Did Decedent make any transfers during lifetime as described above? ☐ YES ☒ NO

If "yes" please give date and type of transfer and list total amount payable to estate:
(If more space is required, insert additional sheet of same size.)

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment property, both real and personal, over which Decedent exercised a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE H \$ _____
(also enter amounts payable to estate under recapitulation, page 1)

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

Did Decedent own any accounts as described above? ☐ YES ☒ NO

If "yes", is the estate designated as the beneficiary of these accounts? ☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE I \$ _____
(also enter amounts payable to estate under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered.

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
1	2795 Powhattan Drive Mortgage	\$16,968.00
2	One-half of the note secured by a mortgage on property in Gene Belk and Robert D. Belk, d/b/a Foxx Company	\$162,270.00

TOTAL ENCUMBRANCES \$ **\$179,238.00**
(also enter under recapitulation, page 1)

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is NOT REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this county, such estate is not reportable to the South Carolina Department of Revenue.

Executed this _____ day of _____, 2005.

_____, Probate Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

RECORDED

2008 MAR 31 11:56

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case NO.: 2008-CP-43-00347

JAMES E. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO DISQUALIFY

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly
sworn, says:

1. I am the Co-Personal Representative of the Estate of my father, Robert D. Belk.
2. An action was commenced against my sister in regard to her breaches of a Family Settlement Agreement and Memorandum with regard to future transactions.
3. I previously moved to disqualify M.M. Weinberg, Jr. as attorney in this case from representing my sister and my mother because of significant conflicts of interest and other grounds heretofore stated.

4. I am informed and believe that Mr. Weinberg caused tainted information to be provided to Mr. Miles, who now purports to represent my sister individually, Dewey M. Houser, Bibco, Inc., Carolina Preowned, LLC, and Michael Lyles, Jr., my nephew.

5. Mr. Miles has filed a Counterclaim against me personally alleging that Mr. Houser has not received any compensation from Premier Premier Properties, LLC, Bibco, Inc. and Sumter Mortgage (an unincorporated business) for sales commission owed on approximately ten (10) mobile homes. My sister, Linda Harris, and I are joint partners in Premier Properties, LLC. Further, my sister and I are corporate officers in Bibco, Inc. and Sumter Mortgage is an unincorporated business that currently falls under the administration of the Estate of R. D. Belk and both my sister and I are Co-Personal Representatives for the Estate in administering the day-to-day operation of Sumter Mortgage. Mr. Miles has done this on behalf of my sister and Mr. Houser in an effort to attempt to collect from me rather than the appropriate LLC or entity in which my sister either owns an interest or acts as a corporate officer or fiduciary.

6. I have moved to dismiss the Counterclaims as proper parties have not been joined, however, more importantly, I believe that Mr. Miles has received information from Mr. Weinberg which is tainted, and which requires that Mr. Miles withdraw as counsel.

7. In addition, Mr. Miles has conflicts of interest in that the claims he has made in Mr. Houser's Counterclaim are, in fact, claims against entities in which my sister has an ownership interest, is a corporate officer in, or is a fiduciary in the management of.

8. I requested a hearing be held with regard to the disqualification of Mr. Miles from representation in this matter based upon the foregoing and such Memoranda and Affidavits as may be submitted to the Court at the time of the hearing.

Gene C. Belk
Gene C. Belk

SWORN to before me this 21st
day of March 2008

Walter C. Hoffman

Notary Public of South Carolina

My Commission Expires: 5/23/2011

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
)

Case NO.: 2008-CP-43-00347

AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO COMPEL

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly
sworn, says:

1. I am the Plaintiff in this action and Co-Personal Representative of my
father's Estate, Robert E. Belk.

2. I have previously filed and served a Motion to Disqualify M.M. Weinberg,
Jr. from participating as counsel in this case due to the fact that he is a material witness,
has substantial conflicts of interest and, in fact, is attempting to disrupt a plan that was
put in place based upon his preparation of a faulty Will of my father.

3. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

4. Subsequent thereto, Mr. Weinberg, who had represented my father for years, took on the representation of my mother and my sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

5. A production subpoena was served on Mr. Weinberg on February 29, 2008.

6. On March 19th, five days after the records were due, Mr. Weinberg served Motion to Quash Subpoena as to his appearance and attendance at his deposition.

7. Mr. Weinberg is a material witness to the allegations contained in the Complaint. His deposition is scheduled for March 26, 2008 and cannot be taken without the production of the records that were subpoenaed.

8. I request an Order of the Court enforcing the subpoena, and further request an award of attorney's fees and costs for bringing this matter before the Court.

Gene C. Belk
Gene C. Belk

SWORN to before me this 21st
day of March 2008

Patricia C. Herman
Notary Public of South Carolina
My Commission Expires: 5/23/2017

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

Gene C. Belk, Individually and as)
Co-Personal Representative of the Estate)
Of Robert D. Belk,)

Plaintiff,)

Vs.)

Linda B. Harris, Individually & as Trustee of the)
Ida Mae K. Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles Jr.,)

Defendants.)

And Cheryl Ann Hanlon, Patricia B. Schmidt,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
CASE No. 2008-CP-43-000347

AFFIDAVIT OF DESA BALLARD

Personally appeared before me, Desa Ballard, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. To the best of my knowledge, I have no personal or professional relationship with any of the parties to this action. I have been retained as an expert witness in this action by the plaintiff.
2. I am a member of the South Carolina Bar, having been admitted in 1983. A copy of my resume is attached hereto as Exhibit A. I am also licensed to practice in the District of Columbia, the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, the Supreme Court of the United States, and numerous other United States Courts of Appeals. I lecture and teach continuing legal education seminars frequently on topics related to legal ethics and professionalism, making presentations to



legal and paralegal groups in South Carolina, and occasionally outside the state, approximately six (6) to eight (8) times per year. In connection with these presentations, I create materials for distribution to attendees or update materials I have prepared for earlier seminars. I do not maintain a catalog of these materials, nor do I maintain a log of my presentation at seminars. I attend national conferences on professional responsibility and legal malpractice at least annually, sometimes more often, sponsored by the American Bar Association Center for Professional Responsibility, the Association of Professional Responsibility Lawyers, and other groups.

3. Since 1995, I have taught, with Professor Gregory B. Adams, a seminar entitled Advanced Legal Profession to second and third year students at the University of South Carolina School of Law. In 2003, I was designated an Adjunct Professor at the USC School of Law. I am a founding member of the South Carolina Association of Ethics Counsel, a group of practitioners with a particular interest in the field of ethics, professional responsibility and legal discipline.
4. I represent or have represented numerous attorneys in South Carolina in lawyer disciplinary proceedings and/or reinstatement or admission proceedings before the Commission on Lawyer Conduct, the Supreme Court of South Carolina, and the United States Bankruptcy Court for the District of South Carolina. I defend or have defended lawyers in civil actions involving professional negligence. I represent and have represented plaintiffs in professional negligence actions against attorneys.
5. I have been retained to provide expert opinions on legal malpractice issues by lawyers and law firms on approximately fourteen (14) occasions, have been qualified as an expert in the

state courts on at least three (3) occasions, and have testified as an expert by deposition in other cases.

6. I have been asked by counsel for the plaintiff to review this matter and to offer my expert opinion as to the ethical propriety of W. W. Weinberg Jr., (hereafter referred to as "Weinberg") serving as counsel for certain parties in a civil matter pending in Sumter County identified by the caption above. In preparing this affidavit, I have reviewed the following materials¹:

- A. Complaint dated 2-5-08, with verification and Exhibits 1 through 15.
- B. Answer and Counterclaim of Ida Mae Belk, Linda B. Harris as Trustee for the Ida Mae Belk Irrevocable Trust and Bibco Inc. (Weinberg as counsel), dated 2-22-08 with cover letter² and certificate of service.
- C. Notice of Motion and Motion to Remove Counsel of Record dated 2-29-08 with Exhibit 1 and Affidavit dated 2-29-08 of Gene C. Belk in Support of Motion to Remove Counsel of Record, with motion cover sheet.
- D. Answer of Linda B. Harris, Individually, Dewey M. Houser, Carolina Preowned-LLC and Michael D. "Mickey" Lyles Jr. and Counterclaim of Linda Harris and Dewey Houser dated 3-3-08 with cover letter and certificate of service.
- E. Notice of Motion and Motion dated 3-4-08 (subject matter: relieving Gene C. Bel (*sic*) as Co-Personal Representative of the Estate (*sic*) Robert D. Belk as Co-Personal Representative of the Estate (*sic*)), with cover letter, certificate of service and motion cover sheet.
- F. Notice of Motion and Motion dated 3-7-08 (subject matter quashing subpoena served on M. M. Weinberg Jr. dated February 29, 2008 and served that day) with certificate of service and motion cover sheet.

¹ All pleadings identified herein bear the caption of the instant case.

² The cover letter states that "initial discovery" was also enclosed, but I have not received or reviewed that discovery.

- G. Response to Affidavit of Gene C. Belk dated 3-7-08 (which appears to be an affidavit of Weinberg) with certificate of service.
 - H. Reply to Answer and Counterclaim of Linda B. Harris, Individually, Dewey M. Houser, Carolina Preowned LLC and Michael D. "Mickey" Lyles Jr., undated and unsigned.
 - I. Notice of Motion and Motion dated 3-21-08 to Compel Compliance with Subpoena, with Affidavit of Gene C. Belk in Support of Motion to Compel dated 3-21-08, with Exhibit 1 (subpoena dated 3-14-08 to M. M. Weinberg Jr. and Attachment listing Items 1 through 5, affidavit of service, and certificate of service.
 - J. Affidavit of John E. Miles, Sr. dated April 3, 2008 in Opposition of Gene Belk's Motion to Remove John E. Miles as Counsel of Record, with cover letter.
 - K. Affidavit of Linda B. Harris dated April 3, 2008 In Support of Motion to Relieve Gene C. Belk as Co-Personal Representative, with cover letter.
 - L. Affidavit of Dewey Houser dated April 3, 2008 in Opposition of Gene Belk's Motion to Dismiss Counterclaim, with cover letter.
 - M. Affidavit of Linda B. Harris dated April 3, 2008 in Opposition of Gene Belk's Motion to Dismiss Counterclaim.
 - M. Amended Complaint dated April 4, 2008 adding additional party M. M. Weinberg Jr. (unsigned).
7. I have had several brief conversations with Plaintiff's counsel, Jan Warner, which were limited to his request of me to insure I had no conflicts and to advise me of the issues he wished me to address in my review. I have not spoken to or received information from the Plaintiff, any other party, or anyone else. My review is limited to the items set forth herein.
8. In rendering my opinions, I have assumed the following facts:
- A. In the instant action, Weinberg has appeared as counsel for Defendant Linda B. Harris in her Capacity as Co-Personal Representative of the Estate of Robert D. Belk and as Trustee of the Ida Mae Belk Irrevocable Trust dated 9/17/07. He is also appearing as counsel for a

"stakeholder" Ida Mae Belk, although she is not named as a defendant and has apparently never been served with the pleadings in this action.

B. I have assumed the historical background and designations of the parties as set forth in Paragraphs 2 – 48 of the Complaint dated 2-5-08 and the same paragraphs of the Amended Complaint dated to be true.

9. In my professional opinion, Weinberg has a conflict of interest in serving as counsel for Ida Mae Belk, Linda B. Harris as Trustee for the Ida Mae Belk Irrevocable Trust and Bibco Inc. (or for any other party) in this action under Rule 1.7(a)(2). There are several bases for my opinion:

A. Weinberg prepared a will for the decedent, Robert D. Belk, dated March 5, 2004 which is alleged to have caused damages to the Estate of Robert D. Belk. While no claim has apparently been asserted by the Estate against Weinberg, and any limitations period is likely expired, Weinberg is necessarily adverse to the Estate, which is represented at least in part by one of his clients, and to the beneficiaries of the estate, which apparently include his client Ida Mae Belk. In my opinion, the expiration of the limitations period does not void the conflict, although it attenuates it.

B. The complaint alleges a violation of a Family Settlement Agreement dated June 30, 2005, the parties to which include the Plaintiff as well as Defendant Harris (presumably in her individual capacity), and Ida Mae Belk, by Defendant Harris and Ida Mae Belk, which has or will result in damage to the Plaintiff, as the result of the execution of the Ida Mae Belk Irrevocable Trust Agreement dated 9/17/07, which was allegedly prepared by Weinberg. If true, Weinberg may have civil liability to certain parties to this action, including the plaintiff and Weinberg's client Harris, in her capacity

as Trustee of the Irrevocable Trust. This places him in an adverse position to his own client and possibly to others who are parties to this action.

10. Conflicts under Rule 1.7 may be waived by the affected clients under certain circumstances. See Rule 1.7(b). In my opinion, however, the conflict presented here is not waivable. Under the facts alleged, it would be unreasonable for Weinberg to "reasonably believe[] that [he] would be able to provide competent and diligent representation to each affected client" because his testimony regarding the execution of the Ida Mae Belk Irrevocable Trust dated 9/17/07 will address the circumstances surrounding the execution of that document, which is a disputed factual matter presented here. Therefore, even with client consent, he is not able to remain as counsel for any party to this litigation.

11. For the same reasons set forth in Paragraph 9, I believe that Weinberg is a witness to the issues in dispute in this action and that materials in his possession would necessarily be discoverable in this proceeding. Rule 3.7 addresses circumstances in which a lawyer who has personal knowledge of a matter can or cannot serve as counsel in a matter. My construction of Rule 3.7 prohibits a lawyer from serving as counsel in a jury trial when he is also a witness, because of the risk of confusion by the fact-finder. Therefore, there are circumstances under which a lawyer who is also a witness could remain as counsel of record during pretrial proceedings or in a non-jury proceeding. However, where, as here, the lawyer's own conduct is called into question, the provisions of Rule 1.7 would mandate Weinberg's withdrawal as counsel. It is conceivable that Weinberg may assert that the facts of which he has knowledge are undisputed, which would absolve him of disqualification under Rule 3.7. Should that be the case, however, I believe Rule 1.7 would still require his disqualification in this matter.

12. I have also been asked to offer my opinion on the ethical propriety of ethical propriety of John Miles (hereafter referred to as "Miles") serving as counsel for certain parties in the same civil matter. At this point, I do not have sufficient information from which to analyze this issue and therefore defer any opinion at this time.

12. The opinions set forth herein are preliminary opinions, based only on the information available to me at this time, and are subject to revision upon receipt of additional facts which would alter the opinions set forth.

FURTHER, deponent sayeth not.



Desa Ballard

Sworn to before me this
7 day of April, 2008.



Notary public for South Carolina

My commission expires: 11.28.17

COUNT OF SUMTER

Plaintiff,

vs.

Defendants.

Stakeholders

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2008-CP-43-00347

AFFIDAVIT OF
GENE C. BELK
IN SUPPORT OF APPLICATION
FOR INJUNCTIVE RELIEF

PERSONALLY APPEARED BEFFORE ME Gene. C: Belk who, being duly

sworn, says:

I am Co-Personal Representative of the Estate of my father, Robert D. Belk and Plaintiff above named and seek an expedited hearing for this Court to grant injunctions.

I have determined that between February 20, 2008 and June 20, 2008, \$208,563.16 of estate revenue that should have been deposited to the estate account of Sumter Mortgage Company has been deposited elsewhere, based upon the directions of my sister, Linda Harris, co-personal representative of the estate, and M. M. Weinberg, Jr. (Exhibits 1 and 2).

Based upon previous deposits, I believe that additional income of \$71,000.00 has not been deposited to Sumter Mortgage during July and August 2008.

The July 31, 2008 statement of Sumter Mortgage general operating checking account, an estate asset, has a reconciled balance of \$10,228.36. In January 1, 2007, this account had a beginning balance of \$300,385.24. Therefore, \$290,000 plus has been spent from this account, and there have been no deposits since mid-February 2008 per the instructions of my sister and Mr. Weinberg.

From June 2008 to this date, the only monies received by me have been deposited into the estate Sumter Mortgage account.

I am a duly licensed and practicing attorney in good standing. I also am a licensed real estate agent and broker in good standing. I have a good working knowledge of real estate and accounting.

It is believed that this money has been deposited to an account known as I. M. Belk Company. Mr. MacEwen has previously prepared a spreadsheet showing that my mother has received gross distributions of \$1,138,829.00 between April 5, 2004, and June 30, 2007 ^{ACB} ~~2007~~. If you add the additional monies that have been diverted from ^{ACB} Sumter Mortgage Company indicated hereinabove, Ida Belk has conservatively received gross distributions in of \$1,418,392.16. I submit this affidavit in support of my application for an injunction to prevent further irreparable damage from being done to the Estate.

RELATIONSHIP WITH MY FATHER

During my father's life, he and I were involved in several business relationships. My father had a lot of confidence in me. I was his firstborn son and his only child to graduate from college and obtain a professional degree. Our most recent business relationship was a 50/50 business venture which began in June of 2002 in which I was

the managing partner of a 40 lot mobile home park. In that capacity, I handled all the cash receipts, deposits, bookkeeping and tax preparation.

After my father died on April 5, 2004, I individually and on behalf of his Estate sold the mobile home park to Jessie McLeod in June 2004 under an owner financing arrangement, and I remit the Estate's portion of the accounts receivable to the Estate each month.

HISTORICAL FACTS

In the year 2000, when my father was diagnosed with a life-threatening condition, he consulted with a noted estate planner Dave Sojourner, of Columbia, at which time he reported that he was the 100% owner of Sumter Mortgage, a sole proprietorship, and that substantially all of the assets were titled R. D. Belk, d/b/a Sumter Mortgage Company.

On March 4, 2004, M. M. Weinberg, Jr., of Weinberg and Brown prepared a Will for my father who died on April 5, 2004. His estate is being probated in the Sumter County Probate Court. 2003

According to my father's will, Carlton R. Davidson was named as Personal Representative, and I was named as sole Successor or Alternate Personal Representative.

On or about, April 12, 2004, my sister, Linda Harris, and I jointly consulted Mr. Weinberg as we had been designated as co-trustees under the Will. Mr. Weinberg had my father's original Will in his possession, and reviewed the terms with my sister and me. Among other things, the three of us discussed the fact that during my father's lifetime, he had handled all aspects of the family finances including buying and selling

real estate and other properties in his name, and in the name of Sumter Mortgage Company, an unincorporated entity.

In our presence, Mr. Weinberg called my father's longstanding certified public accountant, Wilson MacEwen, to discuss estate assets and existing business interests. Mr. Weinberg provided us legal advice about the probate of the Will; made recommendations to us about what we would do as trustees; and how the Estate should take control over the assets and business interests in accordance with his Will.

Acting on Mr. Weinberg's advice, my sister and I contacted the National Bank of South Carolina and had them freeze my father's personal checking account and three (3) Sumter Mortgage business accounts – a General Business Operating Account; a Finance Accounts; and a Money Market Account – until the Will could be submitted to probate.

On or about, April 16, 2004, I again met with Mr. Weinberg at his office and discussed with him that my mother, Ida Belk, was not pleased my father disinheriting two (2) of his grandchildren and giving his long-term employee, Linda Garrett, an immediate bequest of \$100,000.00 while his natural children were not getting any immediate benefit. Dcb

On, or about, April 20, 2004, I again met with Mr. Weinberg at his office, this time to discuss my father's assets and business interests at which time Mr. Weinberg showed me four (4) different lists of assets prepared by my father and wrote me concerning the same.

On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. I alone was to act as solely as successor or alternate Personal

were designated as vice-presidents of Bibco, and agreed that Bibco would not conduct future sales of used mobile homes due to unreasonable exposures for liability and risk.

Bibco, a C Corporation set up for my father by Mr. Weinberg, was a "holding company", and its only legitimate business was to manage its assets, collect outstanding notes receivables, and to wind down the business entity. Because this was an unfavorable way of currently doing business because C Corp's have double taxation – the corporation itself is taxed and then any dividends to stockholders are also taxed.

In December 2007, Bibco only had two (2) employees, me and my sister, and we were paid an annual management fee for three (3) years immediately following my father's death through June 2007.

Any assets owned by Bibco that required either yard maintenance or building maintenance were serviced by employees of Sumter Mortgage. Bibco occupied office space at 3061 Broad Street, the same office building as Sumter Mortgage Company. And Linda Garrett handled all accounts receivables for Bibco and Sumter Mortgage.

Linda Garrett is an employee of and is paid by Sumter Mortgage. To my knowledge, Bibco has made no contributions toward Linda Garrett's salary nor has it paid anything toward office operating expenses such as utilities, telephone, water, cleaning, etc.

In December 2007, Linda Harris unilaterally instructed Linda Garrett to withhold the Bibco financial records from me, and from Mr. MacEwen. At that time, she also unilaterally instructed Linda Garrett to transfer Bibco all accounting and bookkeeping service from Wilson MacEwen to her own personal accountant, Roger Long. I have not received any compensation for services since the 2006 fiscal year.

Then, after other lawyers would not do her bidding, my sister took my mother to Mr. Weinberg on September 17, 2007, and Mr. Weinberg, the same person who had prepared my father's defective Will, prepared a Trust for my mother naming my sister as sole trustee that flies in the face and breaches the very agreements that were made necessary by Mr. Weinberg preparing my father's faulty will.

Mr. Weinberg then had my mother transfer into this trust disputed interests in the underlying assets of Sumter Mortgage and Bibco, all contrary to the very agreements made necessary by Mr. Weinberg's errors. These transactions have the potential of triggering gift taxes, not to mention that distribution of certain installment sales accounts receivable titled in Sumter Mortgage and Bibco to this trust will likely trigger acceleration of income on those notes, thereby causing substantial and dire tax consequences.

To make matters worse, in 1999, an attorney in Mr. Weinberg's firm filed an Affidavit in Circuit Court on behalf of my father stating that he (Robert D. Belk) was the sole stockholder of Bibco, Inc. Under the theory of judicial estoppels, Mr. Weinberg and his firm are barred from now taking a contrary position. But he has.

The underlying gravamen of the action I brought is based upon the breaches of the partially performed oral and written agreements referred to above. I have included an cause of action for unjust enrichment and accounting against Bibco because estate assets have been deposited into Bibco. For example, even though Sumter Mortgage is the owner of a note and mortgage from Gem Investment Company, Gem's monthly payment to Sumter Mortgage is being deposited into Bibco.

I also believe that because the Estate has an interest in Westgate Subdivision lots that have been sold on time, but monthly payments are being collected and

deposited into Bibco. In addition, the Estate has interests in unsold lots in this subdivision that are being rented, with rent being deposited into Bibco.

The underlying litigation here is based upon the breach of the partially performed oral and written agreements by my sister, and, on behalf the estate, I am seeking specific performance of these agreements and disputing my mother's legal ownership of Sumter Mortgage based upon her and my sister's breaches of contract.

By letter dated July 31, 2008, Mr. Weinberg acknowledges that my mother's disputed ownership in Sumter Mortgage is based upon the previous agreement that she and my sister reneged on with the help of Mr. Weinberg.

In addition, Mr. Houser has been allowed by my sister to intermeddle in Estate matters and sign legal documents for both Bibco and Sumter Mortgage. He also has a key to the Sumter Mortgage post office box. In late December 2007, unknown to me, Houser put in a bid for a used mobile home that was accepted. When he approached me for funds, I refused. I have just learned that Houser in concert with my sister purchased the mobile home with Bibco funds even though Bibco had no legitimate business interest and was suppose to be winding down its affairs. This is another breach of my sister's fiduciary duties. ACB

On Friday, January 18, 2008, I was informed by Linda Garrett, who is employed by Sumter Mortgage, that my sister instructed her in the late December 2007 not to make any future deposits into the Sumter Mortgage business account for the 2008 calendar year. On the same date, Linda Garret informed me that my sister had further instructed her to make the designated Sumter Mortgage deposits into another bank account known as the I. M. Belk Company and that my sister had actually given her deposit slips for this account. Ms. Garrett also informed me that, not knowing what else

to do, she had not made any deposits into Sumter Mortgage for approximately three (3) consecutive weeks and had a significant amount of cash and checks in excess of \$48,000.00 which had not yet been deposited.

During the estate administration, it has been normal and customary for Sumter Mortgage to pay quarterly estimated taxes for my mother as an accommodation to her. During the 2006 tax year, extraordinary payments were paid for both state and federal taxes, and therefore, large refund checks were issued: in excess of \$90,000.00 by the IRS and in excess of \$20,000.00 by the South Carolina Department of Revenue. My sister intercepted both of these checks from Mr. Houser who picked up the mail, and they were never deposited into the Sumter Mortgage business account.

In addition, a note receivable from Solomon Till was sold, and this check also was intercepted by my sister and never deposited into the Sumter Mortgage account. These acts were done without my knowledge and approval. Both acts resulted in unintended distributions to my mother or my sister during the Estate administration, another breach of fiduciary duty. pcc

On January 21, 2008, I hand delivered a letter to Linda Garrett, expressing my concern and demanding that all funds collected on behalf of Sumter Mortgage be deposited into the Sumter Mortgage business account because said account fell under the administration of the estate.

My sister caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, and also to Mr. Houser during early January 2008 that I refused to sign because her son had never worked for Sumter Mortgage and Mr. Houser is her boyfriend.

When I filed the underlying action on February 5, 2008, I also sought removal of my sister as Co-Personal Representative. My similar motion in the probate court has been removed to this Court.

Then, on February 19, 2008, the same Mr. Weinberg who prepared my father's defective will and helped my mother and sister breach the agreements that were made necessary by his malpractice, wrote a unilateral letter to Linda Garrett instructing her to deposit incoming funds to my mother's account. I was unaware of this letter and was not copied with the letter, nor did my attorneys receive a copy of this letter even though the underlying action had been commenced.

Then on March 18, 2008, Mr. Weinberg sent a unilateral letter to Jessie McLeod instructing him to forward one-half (1/2) of a note receivable arising out of the sale of Cedar Hill Mobile Home Park to my mother. I again was unaware of this letter, was not copied with the letter, and my attorneys did not receive a copy of this letter. The note receivable from Jessie McLeod is owed jointly to me and to the Estate, and this note is not a Sumter Mortgage asset. It is Estate asset. ACB

On June 21, 2008, while reviewing the Sumter Mortgage May bank statement, I discovered that no income had been deposited into the general operating account for Sumter Mortgage for that month. Therefore, on June 25, 2008, I filed a County Incident Report with the sheriff's department reporting missing deposits from Sumter Mortgage Company in an undetermined amount of money.

I made an immediately inquiry to Linda Garrett, the in-house accounts receivable clerk, and she provided me with the income detail of Sumter Mortgage covering the period from February 20, 2008, up through June 20, 2008. I determined that

\$208,563.16 in revenue which should have been deposited to Sumter Mortgage Company has been deposited elsewhere.

The only Sumter Mortgage checks I have refused to sign were those to my sister's son, Mitch Harris, and her romantic interest, Dewey Houser.

Mr. Weinberg has continued to conspire with my sister and others to disrupt the orderly administration of this estate.

As the result of a settlement that I handled on behalf of the estate, a large sum of money is currently held at Nelson Mullins Riley and Scarborough which represented the estate. My attorney prepared an Escrow Agreement to place these funds on interest in a restricted account at NBSC, but it has been ignored, thus causing the estate interest.

Even though Wilson MacEwen has been my father's and his companies' certified public accountant for more than 20 years and handled everything until my sister and Mr. Weinberg unilaterally interfered, he has been taken out of the loop.

For example, on August 8, 2008, I spoke with Linda Garrett who told me that financial information for Sumter Mortgage that would normally be provided to account Wilson MacEwen covering the period of January 2008, up through June 30, 2008 was still at her office because my sister had not authorized her to release the Sumter Mortgage financial information, she did not know what to do with it, so she has done nothing.

On August 13, 2008, I spoke with Mr. MacEwen who confirmed that he had not received the Sumter Mortgage Company financial information that he needs to complete the normal and customary bookkeeping for Sumter Mortgage Company and also the 2007 estate income tax return that was due on July 15, 2008.

Because of my sister's refusal to release the financial information, Mr. MacEwen had to request an extension of time for the estate income tax return. Also, the Sumter County Probate Court's annual accounting for the period April 1, 2007, through March 31, 2008 is due but cannot be completed by Mr. MacEwen until he receives the above financial information.

Another example is that the estate has had difficulty collecting a monthly note receivable from Land and Mortgage of South Carolina, Inc. that is due to R. D. Belk d/b/a Sumter Mortgage Company. Debtor, who has gotten behind in the past, has been sending monthly payments directly to my office, and I would send them to Linda Garrett for deposit into the Sumter Mortgage account. I collected the February through June payments and entrusted Linda Garrett to deposit them to the Sumter Mortgage account, but she did not do so. I have now collected the July and August 2008 payments totaling \$28,784.12 and based upon his lack of faith in Linda Garrett, I have deposited funds directly into the Sumter Mortgage operating account. ACB

Based on the unilateral acts of my sister who now has an absolute conflict of interest serving as trustee of the trust Mr. Weinberg prepared for my mother and as co-personal representative of the estate. The financial integrity of the estate and Sumter Mortgage have been seriously jeopardized based on these actions.

Another example: under my father's Will, the personal representatives were required to fund two (2) separate trusts, a Trust B and a Trust C before any significant distributions to my mother. Despite this, according to spreadsheet prepared by Mr. MacEwen, my mother has received gross distributions of \$1,138,829.00 between from April 5, 2004 and June 20, 2008.

Based upon the diversion of Estate/Sumter Mortgage income, and prior distributions to Ida Belk, the ability of the personal representatives to fund Trust B and Trust C are being severely jeopardized.

Importantly, my mother has waived her interest in Trust B, making the beneficiaries of Trust B her five (5) children who are to divide approximately \$1,400,000.00 in equal shares with a distribution of approximately \$280,000.00 to each.

Since filing of this action on February 5, 2008, Houser, Lyles, and Mitch Harris (my sister's sons and boyfriend) all occupy space at my father's former office at 3061 Broad Street in a double wide modular home.

After my father's death and during the administration of the Estate since May 7, 2004, I have been given office space at the above address. In order to carry out my duties and the administration of the Estate, I need to have frequent contact with the accounts receivable clerk and the other employees of Sumter Mortgage and the peaceful possession of an office to do so. Under the current estranged circumstances, I cannot carry out my duties with these individuals occupying the same office as myself. pc 5

Based on the foregoing, I seek an the following injunctions which, if not granted, will cause irreparable damage to the estate and its assets: Removal of my sister as co-personal representative; requiring all books and records of all entities be turned over to Wilson MacEwen, CPA, immediately; An Order restraining my sister and Mr. Weinberg from continuing to interfere with the administration of the estate; requiring an audit and accounting; requiring that all funds be deposited into the appropriate estate accounts; An Order removing Mitch Harris, Lyles, and Houser from the estate office.

I make these statements based upon personal knowledge unless otherwise stated. I also rely upon the facts set forth in my Amended Verified Complaint dated April 4, 2008 which, to my knowledge, has not been answered by any Defendant.

Gene C. Belk

Gene C. Belk

SWORN to and subscribed before me

This 26th day of August, 2008.

David B. Jackson

Notary Public for South Carolina

My Commission Expires: 5/27/14

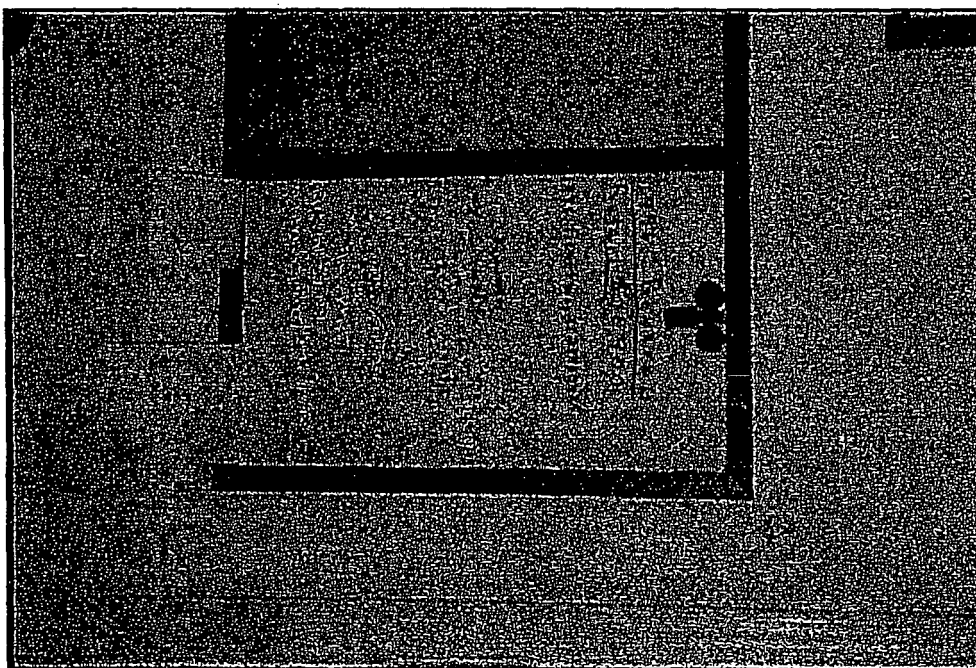
ADDENDUM TO AFFIDAVIT

Plaintiff submits that the following acts also need to be enjoined:

1. Dewey Houser should be enjoined from acting as an "agent," "owner" or in any other capacity for Sumter Mortgage Company. The attached exhibit provides evidence that Mr. Houser is continuing to act as an agent for Sumter Mortgage Company in sales of both mobile homes and real estate.
2. The following entities are operating on properties owned by the Estate of Robert D. Belk without paying rent to the Estate. These entities, as described below, should be enjoined from operating on the property:
 - a. Carolina Pre-Owned Car and Trucks
 - b. Hospitality Housing
 - c. Carolina Pressure Washing
3. Please see the attached exhibit.

Hospitality Housing
USED HOME SUPERSTORE
"SAVE THOUSANDS"
803-469-4220

PROP. FOR SALE BY OWNER
SEE DEWEY HOUSER
4949600
983 4826









STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

CASE NUMBER: 2004-ES-43-225

PROBATE COURT
DALE ATKINSON
PROBATE COURT JUDGE

2008 SEP 16 AM 10:40

SUMTER COUNTY, S.C.

APPLICATION FOR PETITION FOR
(check any that apply)

INFORMAL

☐ PROBATE OF WILL

☐ APPOINTMENT

FORMAL

☐ TESTACY

☒ APPOINTMENT

Applicant/Petitioner: PATRICIA B. SCHMID

Address:

Telephone:

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: daughter

2. Decedent Information:

Name: Robert D. Belk

Social Security Number:

Date of Birth:

Date of Death:

Age at date of death: 74

Domicile at date of death:

Sumter

(county)

SC

(state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐ Decedent has a right to take legal action in this county because: Property in Clarendon County

4a. Names and addresses of devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent
Ida Mae Belk	Adult	[REDACTED]	wife
Patricia B. Schmid	Adult	[REDACTED]	daughter
Linda B. Harris	Adult	[REDACTED]	daughter
Gene C. Belk	Adult	[REDACTED]	son
Cheryl Ann Hanlon	Adult	[REDACTED]	daughter
Robert M. Belk	Adult	[REDACTED]	son
Linda F. Garrett	Adult	[REDACTED]	Secretary
Thomas Hanlon	Adult	[REDACTED]	Grandson
Robert Hanlon	Adult	[REDACTED]	Grandson
Jessica Belk	11/26/90	[REDACTED]	Gdtr
R. D. B.	11/11/94	[REDACTED]	Grandson

4b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this Will (if one exists), or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain:

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain:

7. Has a guardian or conservator ever been appointed for this person?

☒ NO ☐ YES If yes, please explain:

8. Has a personal representative of the decedent been appointed prior to this date in this state or elsewhere?
☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative:

Gene C. Belk and Linda B. Harris have been appointed as Co-Personal Representatives by this Court. This Petition is filed subject to the Petition for Removal of Co-Personal Representatives, filed simultaneously herewith.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including names and addresses:
10. Have more than ten years passed since the decedent's death?
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate:
11. The decedent died with a personal estate of about the value of unknown and real estate of about the value of unknown. (A full inventory and appraisal, Form #350PC, must be filed with 90 days.) If decedent was a non-resident, please attach South Carolina Tax Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
☒ NO ☐ YES If yes, please explain and then proceed to Section II:

II IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:
☐ the original is attached
☒ The original is in the Court's possession
☐ an authenticated copy of a will probated in another jurisdiction is attached
☐ the will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☒ Yes ☐ NO If no, please explain:
3. The date of execution of the will was: March 5, 2004
codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?
☒ NO ☐ YES If yes, please explain:

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☒ YES

☐ NO If no, please explain:

6. Do you believe the will defined in "1" above is the decedent's last will?

☒ YES

☐ NO If no, please explain:

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Patricia B. Schmid
14 Buford Street
Sumter, SC 29150

2. Priority for this appointment is:

☐ named as Primary Personal Representative in will

☐ named as Alternate Personal Representative in will

☐ named as nominee of Primary and/or Alternate Personal Representative

☐ surviving spouse of decedent who is devisee of decedent, or nominee

☐ other devisee of decedent, or nominee (describe): _____

☐ surviving spouse of decedent, or nominee: _____

☒ other heir of decedent, or nominee (describe): Daughter

☐ creditor (Forty-five days after death must have passed), or nominee

☐ other (describe): _____

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this
15 day of Sept, 2008

Signature: _____

Patricia B. Schmid
Patricia B. Schmid

W.S.
Notary Public for South Carolina

My Commission Expires: 10/19/2010

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will dated _____ be

☐ GRANTED ☐ DENIED informally this _____ day of _____.

Executed this _____ day of _____,

Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE:

TIME:

PLACE:

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this ____ day of _____, _____

Probate Court Judge

☐ SEE ATTACHED ORDER

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, _____ be admitted formally to probate.

☐ SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, _____

Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: _____

Name: Patricia B. Schmid

Attorney: William H. Johnson
Address: 2 North Brooks Street
Manning, SC 29102
Telephone (O): 803-435-0909

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SUMTER

DALE ATKINSON
PROBATE COURT JUDGE

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK 2008 SEP 17 PM 12:12

CASE NUMBER: 2004-ES-43-225

SUMTER COUNTY, S.C.

PROOF OF DELIVERY

On the 16TH day of September, 2008, I mailed or delivered a copy of a certified copy of the Petition for Removal of Co-Personal Representatives, Petition for Review of Compensation, Application for Formal Appointment of Patricia B. Schmid, Motion for Removal from Probate Court to Circuit Court, and Order of Removal, a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☐ ordinary first class mail
- ☐ certified mail
- ☐ registered mail
- ☒ regular mail

to each of the following persons at the address shown:

Linda F. Garrett
50 Gold Court
Sumter, SC 29154

M. M. Weinberg, Jr., Esquire
109 North Main Street
Sumter, SC 29151-1289
(Attorney for Linda Harris, Co-PR and Trustee
and Ida Mae Belk)

Robert Dillon Belk
921 Trailmore Ct.
Sumter, SC 29154

Thomas Hanlon
2227 Sanford Dr.
Sumter, SC 29153

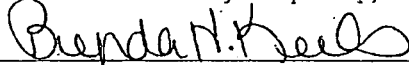
Cheryl Ann Hanlon
2227 Sanford Drive
Sumter, SC 29153

Jessica Belk
921 Trailmore Ct.
Sumter, SC 29150

Jan L. Warner, Esquire
P.O. Box 2628
Columbia, SC 29202
(Attorney for Gene C. Belk,
individually and as Co-Pr.)

S. Jahue Moore, Esquire
Moore, Taylor & Thomas, PA
P.O. Box 5709
W. Columbia, SC 29171
(Attorney for Linda S. Harris, Individually)

Executed this 16th day of September, 2008



Brenda H. Keels
Johnson McKenzie & Robinson

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY: 

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1611 Devonshire Drive, Second Floor
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Counsel for Appellant

Columbia, South Carolina

February 17, 2010