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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

---

Walton J. McLeod, Circuit Judge

---

Appellate Case No. 2020-001673

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Elisa Montgomery Edwards and Emily Cecile Edwards,.....Respondents,

v.

David C. Bryan, III,.....Appellant.

---

RECORD ON APPEAL

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|                              |   |                                   |
|------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS      |
|                              | ) | ELEVENTH JUDICIAL CIRCUIT         |
| COUNTY OF LEXINGTON          | ) |                                   |
|                              | ) |                                   |
| Elisa Montgomery Edwards and | ) |                                   |
| Emily Cecile Edwards,        | ) | Civil Action No: 2018-CP-32-00927 |
|                              | ) |                                   |
| Plaintiff,                   | ) |                                   |
|                              | ) | <b>ORDER</b>                      |
| v.                           | ) |                                   |
|                              | ) |                                   |
| David C. Bryan,              | ) |                                   |
|                              | ) |                                   |
| Defendants.                  | ) |                                   |
| _____                        | ) |                                   |

This action arose out of claims of fraud and negligent misrepresentation brought by Elisa Montgomery Edwards and Emily Cecile Edwards (“Plaintiffs”) against David C. Bryan (“Defendant”). A jury trial was held on the claims in this matter on October 20, 2020. The same day, the jury reached a verdict for Plaintiff and awarded \$500,000.00 in actual damages and \$100,000.00 in punitive damages.

On October 30, 2020, Defendant filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, a Motion for a New Trial *Nisi Remittitur* (collectively as the “Motion”). Plaintiff filed a Memorandum In Opposition to Defendants’ Motion on November 2, 2020. After a review of this Motion, the court denies Defendant’s Motion.

### **STANDARDS FOR GRANTING A NEW TRIAL**

#### **A. Judgment Notwithstanding the Verdict and/or Granting a New Trial:**

It is within the discretion of the trial judge to grant or deny a motion for a new trial, and their decision will not be disturbed on appeal unless their findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Howard v. Roberson, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007). A motion for judgment notwithstanding the

verdict under Rule 50(b), SCRCF is simply a renewal of a motion for directed verdict. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006).

When a party makes a motion for directed verdict, he or she “must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law.” Rule 50(a), SCRCF; RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). It follows that “[o]nly the grounds raised in the directed verdict motion may properly be reasserted” in a motion for judgment notwithstanding the verdict. RFT Mgmt. Co., at 331, 732 S.E.2d at 170-71 (citing In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001)). In deciding motions for judgment notwithstanding the verdict, the trial court does not have the authority to decide “credibility issues or to resolve conflicts in the testimony or the evidence.” RFT Mgmt. Co., 346 S.C. at 332, 732 S.E.2d at 171.

**B. Granting a New Trial Absolute or New Trial *Nisi Remittitur* due to Excessive Verdict:**

Discretion in granting or denying a motion for a new trial rests with the trial judge, and his or her decision “will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard, 376 S.C. at 149, 654 S.E.2d at 880. “A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993)). Granting a new trial absolute is appropriate only if the amount of the verdict is “grossly inadequate” or so excessive “as to shock the conscience”; it must clearly indicate that the figure reached was the result of “passion, caprice, prejudice, partiality, corruption[,] or some other improper motives.” Vinson, 324 S.C. at 404, 477 S.E.2d at 723.

In contrast, a motion for new trial *nisi remittitur* is a request to reduce an excessive verdict. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). “A motion for new trial *nisi remittitur* asks the trial court in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 345–46, 450 S.E.2d 66, 74 (Ct. App. 1994). “The grant or denial of this motion is within the trial court’s discretion and its decision will not be reversed on appeal absent an abuse of discretion.” Id. at 346, 450 S.E.2d at 74.

### **ANALYSIS**

Defendant argues that, based upon the evidence and testimony presented at trial, judgment notwithstanding the verdict or a new trial *nisi remittitur* or new trial absolute is warranted due to the inadequate and insufficient verdict returned by the jury. This Court disagrees.

After careful consideration of the record in this case and the submissions of Defendant, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In addition, this Court does not find the reasons cited by Defendant compelling enough to invade the province of the jury by granting *remittitur* or new trial absolute. This Court notes that as fact finder, the jury weighed the evidence at trial based upon their own judgment. Accordingly, Plaintiff’s motion for a new trial *nisi remittitur* or in the alternative motion for new trial absolute based upon the thirteenth juror doctrine is denied.

**THEREFORE**, based upon the foregoing, **IT IS HEREBY ORDERED** that Plaintiff’s Motion is **DENIED**.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



## Lexington Common Pleas

**Case Caption:** Elisa Montgomery Edwards , plaintiff, et al VS David Cuttino Bryan  
III  
**Case Number:** 2018CP3200927  
**Type:** Order/JNOV

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-12-02 15:05:02 page 4 of 4

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3200927

Elisa Montgomery Edwards et al  
PLAINTIFF(S)

David Cuttino Bryan, III  
DEFENDANT(S)

## DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

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

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

Jury returned a verdict in favor of the plaintiff in the amount of \$500,000 for fraud damages and \$100,000 for punitive damages. The parties have 10 days to file any post trial motions.

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

## For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/22/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

## Court Reporter:

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

---



## Lexington Common Pleas

**Case Caption:** Elisa Montgomery Edwards , plaintiff, et al VS David Cuttino Bryan  
III  
**Case Number:** 2018CP3200927  
**Type:** Order/Electronic Form 4

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-10-22 13:19:47 page 3 of 3

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS      |
|                               | ) |                                   |
| COUNTY OF LEXINGTON           | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
|                               | ) |                                   |
| Elisa Montgomery Edwards and, | ) |                                   |
| Emily Cecile Edwards          | ) | Civil Action No. 2018-CP-32-00927 |
|                               | ) |                                   |
| Plaintiff,                    | ) |                                   |
|                               | ) |                                   |
| v.                            | ) | <b>VERDICT FORM</b>               |
|                               | ) |                                   |
| David C. Bryan, III           | ) |                                   |
|                               | ) |                                   |
| Defendants.                   | ) |                                   |
|                               | ) |                                   |

PLEASE INDICATE YOUR VERDICT BELOW AND FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY

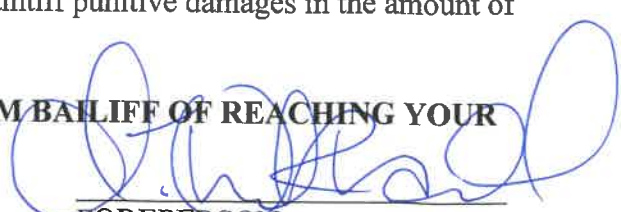
### I. FRAUD

- Did the Plaintiff prove her case for Fraud by clear, cogent and convincing evidence?  
☒ Yes (Proceed to Number 2)  
☐ No (Stop deliberations)
- We, the jury, unanimously find for the Plaintiff for the cause of action of Fraud damages in the amount of \$500,000 dollars.

### II. PUNITIVE DAMAGES

- Do you find that Plaintiff has proven by clear and convincing evidence that the Defendant actions were willful, wanton and reckless?  
☒ Yes (if "yes" proceed to #2)  
☐ No (Stop deliberations)
- We, the jury, unanimously award Plaintiff punitive damages in the amount of \$100,000 dollars.

**STOP YOUR DELIBERATIONS. INFORM BAILIFF OF REACHING YOUR VERDICT.**

  
FOREPERSON

Date: October 20th 2020



|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) |                                           |
| COUNTY OF LEXINGTON          | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
|                              | ) |                                           |
| Elisa Montgomery Edwards and | ) |                                           |
| Emily Cecile Edwards,        | ) |                                           |
|                              | ) | Case Number: 2018-CP-32-0927              |
| Plaintiffs,                  | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| David C. Bryan, III          | ) |                                           |
|                              | ) |                                           |
| Defendants.                  | ) |                                           |
|                              | ) |                                           |

---

### ORDER GRANTING PARTIAL SUMMARY JUDGEMENT

This is a case brought by the Plaintiffs on various causes of action against the Defendant who had previously acted as the Personal Representative of the estate of David Cuttino Bryan, Jr., the father of the Defendant. The decedent died in 2009 and the estate was closed in 2011. The complaint was filed with this court on March 14, 2018 alleging Fraud, Negligent Misrepresentation, Conversion and Negligence *per se*. The Defendant filed his answer and counterclaim on April 19, 2018, with general denials and a counterclaim for Summary Judgement based upon the provisions of Code of Laws of South Carolina Section 62-3-803 (2013). The Plaintiffs filed and electronically served their Reply to the Counterclaim on the 23<sup>rd</sup> of April, 2018.

Summary judgement was filed and argued on October 10, 2018 before this Court. The Court denied the motion as premature, but allowed that if new facts emerged from discovery, under the South Carolina Rules of Civil Procedure, the Defendant would be able to refile. This Court electronically signed a Form 4 Order denying summary judgement on October 10, 2018, which was filed October 12, 2018.

After depositions were taken of Plaintiff Elisa Edwards and the Defendant, the Defendant filed a "Motion to Reconsider" the denial of summary judgement on March 27, 2019.

Upon discussion and review, the parties, through their respective counsel, agree that summary judgement should be granted to the defendant on the causes of action alleging conversion and negligence *per se*. However, based upon the information at hand and presented to the court, the denial of summary judgement for the causes of action alleging fraud and negligent misrepresentation should remain in full force and effect.

**NOW, THEREFORE, BASED UPON THE FOREGOING**, the motion to reconsider filed by the defendant is hereby resolved by this consent order, the provisions of which are as follows:

1. It is hereby **ORDERED** that the causes of action in the Plaintiffs' complaint alleging Conversion and Negligence *per se* are hereby **DISMISSED** with prejudice; and
2. The previous order of this court filed on October 12, 2018 is hereby enforced with regards to the causes of action for Fraud and Negligent Misrepresentation.

**AND IT IS SO ORDERED!**

  
WALTON J. MCLEOD, IV, CIRCUIT JUDGE  
ELEVENTH JUDICIAL CIRCUIT

DECEMBER 6, 2019

Lexington, SOUTH CAROLINA

I HEREBY CONSENT ON BEHALF OF THE PLAINTIFFS:

s/David E. Belding  
David E. Belding  
Attorney for the Plaintiffs

I HEREBY CONSENT ON BEHALF OF THE DEFENDANT:

s/W. Mike Hemlepp, Jr.  
W. Mike Hemlepp, Jr.  
The Jeffcoat Firm  
Attorney for the Defendant

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS |
|                                    | ) | ELEVENTH JUDICIAL CIRCUIT    |
| COUNTY OF LEXINGTON                | ) |                              |
| Elisa Montgomery Edwards and Emily | ) | C/A No.: 2018-CP-32-_____    |
| Cecile Edwards,                    | ) |                              |
|                                    | ) |                              |
| Plaintiffs,                        | ) |                              |
|                                    | ) |                              |
| vs.                                | ) |                              |
|                                    | ) |                              |
| David C. Bryan, III,               | ) |                              |
|                                    | ) |                              |
| Defendant.                         | ) |                              |

---

**SUMMONS**

---

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the *Complaint* in this action, a copy of which is hereby served upon you, and to serve a copy of your *Answer* to the said pleading upon the subscriber at his offices, Post Office Box 11964, Columbia, South Carolina, 29211-1964, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the *Complaint* within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the *Complaint*.

s/ David E. Belding  
 SC Bar No. 000623  
 Post Office Box 11964  
 Columbia, SC 29211-1964  
 Telephone: (803) 665-3161  
 Fax: (866) 220-6352  
 Email: beldinglawsc@gmail.com  
 ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

March 14, 2018

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS |
|                                    | ) | ELEVENTH JUDICIAL CIRCUIT    |
| COUNTY OF LEXINGTON                | ) |                              |
| Elisa Montgomery Edwards and Emily | ) | C/A No.: 2018-CP-32-_____    |
| Cecile Edwards,                    | ) |                              |
|                                    | ) |                              |
| Plaintiffs,                        | ) |                              |
|                                    | ) |                              |
| vs.                                | ) |                              |
|                                    | ) |                              |
| David C. Bryan, III,               | ) |                              |
|                                    | ) |                              |
| Defendant.                         | ) |                              |

**COMPLAINT**  
**(Jury Trial Demanded)**

The Plaintiffs would hereby show the Court as follows:

**PARTIES**

1. All Plaintiffs are citizens and residents of Lexington County, South Carolina.
2. On information and belief, the Defendant, David C. Bryan, III, is a citizen and resident of Lexington County, South Carolina.

**JURISDICTION**

3. All relevant events alleged herein occurred in Lexington County, South Carolina.
4. Plaintiff is informed and believes that the Eleventh Circuit Court of Common Pleas has subject matter and *in personam* jurisdiction over the Defendant by virtue of the Defendant's residence in Lexington County in accordance with S.C. Code Ann. §15-7-30(C).

**STATEMENT OF FACTS**

5. On or about January 8, 2009, a Lexington County citizen named David Cuttino Bryan, Jr., died; leaving a *Last Will and Testament* dated May 19, 2000. The decedent's Estate was probated in the Lexington County Probate Court as Case No. 2009-

ES-32-00065. The Personal Representative of the Estate, as provided in the *Will* and as appointed by the Probate Court, was the Defendant, David C. Bryan, III, the decedent's son.

6. The *Last Will and Testament of David C. Bryan, Jr.* (copy attached hereto as Exhibit 1 and incorporated by reference) provided, *inter alia*, that the "Cecil I. Bryan Trust" was to be established and bequeathed to the Trustee "...cash, securities and other property of [the] estate..." to be administered under the terms of Item XI of the *Will*. The beneficiary of the Trust was to be Cecil I. Bryan, the decedent's widow. Upon the death of Cecil I. Bryan, the entire remaining principal of the Trust was directed to be distributed in equal one-quarter (1/4) shares to the Defendant, the Defendant's sister Sharon Lee Bryan Montgomery, and the two (2) Plaintiffs. Plaintiff Elisa Montgomery Edwards is a granddaughter of the decedent; and Plaintiff Emily Cecile Edwards is a great-granddaughter of the decedent.

7. In the Summer of 2009, Defendant met with a number of decedent's family members at the home of Plaintiff Elisa Montgomery Edwards to explain what needed to be done to complete the probate of the decedent's estate. Defendant said everyone who was to receive money or property from the Estate had to sign a "form" for the Probate Court. On information and belief, Defendant forged the signature of Sharon Lee Bryan Montgomery on the *Receipt and Release* submitted to the Probate Court (copy attached hereto as Exhibit 2 and incorporated by reference)

8. On information and belief, Defendant submitted to the Lexington County Probate Court a typewritten *Probate Accounting* (copy attached hereto as Exhibit 3 and incorporated by reference) and a signed Form 361PC (copy attached hereto as Exhibit 4 and incorporated by reference). Under "Disbursements" from the Estate, Defendant claimed, *inter alia*, that he had disbursed Eight Thousand Dollars (\$8,000.00) to Plaintiff Elisa Montgomery Edwards; however, this claimed "disbursement" was never made by Defendant. Additionally, Defendant reported to the Probate Court that he had disbursed \$468,587.06 to "Trust".

9. On or about November 9, 2011, the Lexington County Probate Court issued an *Order Closing Estate*, approving the accounting and distributions claimed to have been made by Defendant as the Personal Representative.

10. On information and belief, despite the sworn assertions made to the Probate Court, Defendant never disbursed a Ten Thousand Dollar (\$10,000.00) "Cash Legacy" to his sister, Sharon Lee Bryan Montgomery, nor disbursed Eight Thousand Dollars (\$8,000.00) to his niece, Plaintiff Elisa Montgomery Edwards.

11. On information and belief, despite the sworn assertions made to the Probate Court, Defendant never established nor disbursed any funds into the "Cecil I. Bryan Trust". Defendant's mother, Cecil Irene Ellis Bryan, died intestate on October 22, 2009. Defendant did not probate the estate of his mother.

12. For many years, whenever Defendant was asked by Plaintiff Elisa Montgomery Edwards when disbursement of funds would be made, Defendant assured them that the Estate funds were invested with Smith Barney and would be disbursed when they had accumulated to a sufficient amount. Defendant intentionally misled Plaintiffs to believe that the Estate of David C. Bryan, Jr., was still open and had not been distributed.

13. From 2009 until December 2015, Defendant intentionally misled Plaintiff Elisa Montgomery Edwards to believe that the "Cecil I. Bryan Trust" had been established and was awaiting distribution. Defendant specifically told Plaintiff Elisa Montgomery Edwards that the distribution from the Trust had to wait until the decedent's house on Bruce Road in Lexington sold and the Smith Barney account had grown because 2009 was a "terrible time" due to the crisis with the national economy.

14. On information and belief, in December 2015, when asked by his sister Sharon Lee Bryan Montgomery about disbursement of the Trust, Defendant told her that "...there is no money for you. Daddy didn't like you and didn't leave you anything". This conversation was then disclosed to Plaintiffs, which is when Plaintiffs discovered that Defendant had lied to them for years about the money he had received from the Estate of David C. Bryan, Jr.

15. The Estate of David Cuttino Bryan, Jr., had a value of approximately Nine Hundred Thousand Dollars (\$900,000.00) at the date of his death (January 8, 2009).

Defendant reported to the Probate Court that over half of that amount (\$468,587.06) was disbursed into the "Trust". There has never been an accounting of the "Trust" nor any distributions made as directed by the decedent's *Will*.

**FOR A FIRST CAUSE OF ACTION  
(Fraud)**

Plaintiffs reaffirm and reiterate each and every allegation of Paragraphs 1-15 inclusive as if repeated herein verbatim.

16. Plaintiffs are informed and believe that the Defendant's actions constitute Fraud under South Carolina law in the following particulars:

- a. Defendant misrepresented or failed to disclose to Plaintiffs as required the true facts about the distribution of the Estate of David C. Bryan, Jr.;
- b. Defendant's representations as to the status and disbursements from that Estate and the Trust were false;
- c. Defendant's representations were material to Plaintiffs' interests in the Estate;
- d. Defendant knew that the representations were false or acted in reckless disregard for the truth or falsity of the representations or, alternatively, knew that the nondisclosures would affect Plaintiffs' actions;
- e. Defendant intended that the representations or nondisclosures be acted upon by Plaintiffs;
- f. Plaintiffs were ignorant of the falsity of Defendant's representations or the nature of Defendant's nondisclosures;
- g. Plaintiffs relied upon the truth of Defendant's representations or acted in reliance upon the nondisclosures in awaiting the distributions from the Estate and Trust;
- h. Plaintiffs had a right to rely upon Defendant's representations or nondisclosures as the duly appointed Personal Representative of the Estate and Trustee of the Trust;
- i. Plaintiffs incurred damages by the fraud proximately caused by the Defendant.



17. Plaintiffs are informed and believe that they are entitled to an award of actual and punitive damages for Defendant's fraudulent acts.

**FOR A SECOND CAUSE OF ACTION  
(Negligent Misrepresentation)**

Plaintiffs reaffirm and reiterate each and every allegation contained in paragraphs 1 through 17 above as if repeated herein verbatim.

18. Plaintiffs are informed and believe that the Defendant's actions, in the alternative, constitute Negligent Misrepresentation under South Carolina law in the following particulars:

- a. Defendant misrepresented or failed to disclose to Plaintiffs as required the known facts about the Estate and Trust;
- b. Plaintiffs had a pecuniary interest in disbursements from the Estate and Trust and relied upon Defendant's representations or nondisclosures made to Plaintiffs about the status of the Estate and Trust;
- c. Defendant owed a duty of care to see that he communicated truthful Estate information to Plaintiffs;
- d. Defendant breached the duty by failing to exercise due care;
- e. Plaintiffs justifiably relied upon the truth of Defendant's representations or acted in reliance upon the nondisclosures in awaiting the distributions from the Estate and Trust; and,
- f. Plaintiffs incurred damages as a proximate result of the negligent misrepresentations of Defendant.

19. Plaintiffs are informed and believe that they are entitled to an award of actual damages for Defendant's negligent misrepresentation.

**FOR A THIRD CAUSE OF ACTION  
(Conversion)**

Plaintiffs reaffirm and reiterate each and every allegation contained in paragraphs 1 through 19 above as if repeated herein verbatim.

20. Plaintiffs are informed and believe that the Defendant exercised the right of ownership or dominion over money that rightfully should have been disbursed to Plaintiffs.

21. Plaintiffs incurred damages as a proximate result of having their funds withheld by Defendant.

22. Plaintiffs are informed and believe that the Defendant's actions constitute Conversion under South Carolina law.

23. Plaintiffs are informed and believe that they are entitled to an award of actual damages for Defendant's Conversion of funds they were rightfully entitled to receive.

**FOR A FOURTH CAUSE OF ACTION  
(Negligence *Per Se*)**

Plaintiffs reaffirm and reiterate each and every allegation contained in paragraphs 1 through 23 above as if repeated herein verbatim.

24. Plaintiffs are informed and believe that the Defendant had a duty imposed upon him by the *South Carolina Probate Code* as the Personal Representative of the Estate of David C. Bryan, Jr.

25. Plaintiffs are informed and believe that Defendant's actions in falsely reporting disbursements violate the statutes of the State of South Carolina.

26. Plaintiffs incurred damages as a proximate result of having their funds negligently withheld by Defendant.

27. Plaintiffs are informed and believe that the Defendant's actions constitute Negligence *Per Se* under South Carolina law.

28. Plaintiffs are informed and believe that they are entitled to an award of actual damages for Defendant's Negligence *Per Se* Conversion of funds they were rightfully entitled to receive.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray for judgment against Defendant, for their actual damages and for punitive damages and for attorney's fees and costs of this action as authorized by State law, and for such other and further relief as the Court may deem just and proper.

**PLAINTIFFS DEMAND A JURY TRIAL.**

s/ David E. Belding  
SC Bar No. 000623  
Post Office Box 11964  
Columbia, SC 29211-1964  
Telephone: (803) 665-3161  
Fax: (866) 220-6352  
Email: beldinglawsc@gmail.com  
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

March 14, 2018

LAST WILL AND TESTAMENT  
OF  
DAVID C. BRYAN, JR.

Introductory Clause. I, DAVID C. BRYAN, JR., a resident of and domiciled in the County of Lexington 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.

ITEM I

Direction to Pay Debts. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

ITEM II

Specific Bequest of Specific Item of Personal Effects. I give and bequeath to DAVID G. BRYAN, III; if he shall survive me, all firearms, knives, coins, books, and papers. If he shall not survive me, then I give and bequeath all firearms, knives, coins, books, and papers to Ethan Montgomery and Emily Cecil Edwards.

ITEM III

Specific Bequest of Specific Item of Personal Effects. I give and bequeath to CECIL I. BRYAN, if she shall survive me, all household property.

ITEM IV

Cash Legacy. I give and bequeath to SHARON DEE MONTGOMERY, if she shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00). If she shall not survive me, then I give and bequeath such sum to ELISA MONTGOMERY EDWARDS if she shall survive me.

ITEM V

Cash Legacy. I give and bequeath to MARY CECIL MONTGOMERY, if she shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

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SCANNED

EXHIBIT

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ITEM VI

Cash Legacy. I give and bequeath to ETHAN MONTGOMERY, if he shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

ITEM VII

Cash Legacy. I give and bequeath to DAVID BRYAN GAYDEN, if he shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

ITEM VIII

Maximum Marital Deduction. Pecuniary Formula Bequest. Maximize Unified Credit Payable to The CECIL I. BRYAN Trust. If my wife, CECIL I. BRYAN, 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 that the use of such state death tax credit does not increase the death tax payable to any state), will result in 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 deduction 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 than if the contrary election had been made. My Personal Representative shall have the sole discretion to select the assets which shall constitute this bequest. In no event, however, shall there be included in this 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 the CECIL I. BRYAN Trust as hereinafter set forth.



**ITEM IX**

Outright Gift to Share 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 be distributed under the terms of Share B as hereinafter provided.

**ITEM X**

Direction to Personal Representative to Elect The CECIL I. BRYAN Trust Assets as Qualified Terminable Interest Property. I direct my Personal Representative to elect as provided in the Internal Revenue Code Section 2056(b)(7)(B)(v) to cause the property distributed to the Trustee of the CECIL I. BRYAN Trust to be treated on my federal estate tax return as qualified terminable interest property.

**ITEM XI**

The CECIL I. BRYAN Trust Introductory Provision. The CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust as in its sole discretion shall be necessary or 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) Payment of Death Taxes From The CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust in her estate for such tax purposes.
- (4) Disposition of The CECIL I. BRYAN Trust at wife's Death. Upon the death of my wife, the entire remaining principal of the CECIL I. BRYAN Trust shall be distributed as

SCANNED



follows: 1/4 - David Bryan, III, or, if predeceased, to his wife and her children; 1/4 - Sharon Lee Montgomery or, if predeceased, to Ethan Montgomery; 1/4 - Elisa Montgomery Edwards; 1/4 - Emily Cecil Edwards..

#### ITEM XII

Share B to Testator's Son. Share B shall be distributed to my son, provided, however, if my son is then deceased, this share shall be distributed to Robin Christine Brown, Elias Montgomery Edwards, Mary Cecil Montgomery, Ethan Montgomery and Emily Cecil Edwards, in equal shares.

#### ITEM XIII

Naming the Personal Representative and Trustee. Personal Representative and Trustee Succession. Personal Representative and Trustee's Fees and Other Matters. The provisions for naming the Personal Representative and Trustee, Personal Representative and Trustee succession, Personal Representative and Trustee's fees and other matters are set forth below:

- (1) Naming Individuals as Personal Representative and Trustee. I hereby nominate, constitute, and appoint as Personal Representatives and Trustees of this my Last Will and Testament DAVID C. BRYAN, III and ROBERT V. FERRELL and direct that they shall serve without bond.
- (2) Individual Personal Representatives and Trustees Succession. If any individual Personal Representative and Trustee should fail to qualify as Personal Representative and Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Personal Representatives and Trustees shall continue to serve without a successor or substitute.
- (3) Fee Schedule for Individual Personal Representative and Trustee. For its services as Personal Representative and Trustee, my individual Personal Representative and Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

#### ITEM XIV

Powers for Personal Representative and Trustee. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives and Trustees generally, my Personal Representative and Trustee is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to

SCANNED



take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative and Trustee may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative and Trustee may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

#### ITEM XV

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 proper 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 age 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 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 believes 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.

SCANNED



Testimonium, Attestation and Self-Proving Affidavit. I, DAVID C. BRYAN, JR., the Testator, sign my name to this instrument this 19 day of May, 2000, and being first duly sworn, do hereby declare to the undersigned 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.

David C. Bryan Jr.  
DAVID C. BRYAN JR.

We, Frankie L. Ferguson and John Kruger, 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 as his last will and that 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.

Frankie L. Ferguson  
(Witness)  
John Kruger  
(Witness)

The State of South Carolina

County of Lexington

Subscribed, sworn to, and acknowledged before me by DAVID C. BRYAN, JR., the Testator, and subscribed and sworn to before me by Frankie L. Ferguson and John Kruger, witnesses, this 19 day of May, 2000.

David C. Bryan Jr. (Seal)  
Notary Public for South Carolina

My Commission Expires: May 1, 2001

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SCANNED

IN THE MATTER OF DAVID CUTTINO BRYAN, JR.

IN THE PROBATE COURT

CASE NUMBER: 2009ES3200065

## RECEIPT AND RELEASE

The undersigned hereby acknowledges receipt from Personal Representative(s) in this matter of the following property:

Cash, notes, and other considerations from the  
estate of David C. Bayer Jr. as legatee in bequest.

In consideration of the distribution, the undersigned releases and forever discharges the Personal Representative(s) and the Estate from any and all rights and claims, which the undersigned may have against the Personal Representative(s) and the Estate.

Executed this 5 day of June, 20 09

**Witness:**

Ruby L. Bowknight

**Beneficiary:**

Signature \_\_\_\_\_

Sharon Lee Bryan Montgomery  
Name (Print)

FORM #403PC (4/99)  
SCPC administrative

APR 19 2040 CRK

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

# EXHIBIT

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## PROBATE ACCOUNTING

David C. Brayn JR 2009es3200065

Period 1/9/2009 through 11/1/2009

Assets received into estate

Estate

Assets paid out of estate

|                            |          |                       |             |
|----------------------------|----------|-----------------------|-------------|
| 212 Happytown Rd           | rental   | 7,500.00 2/9-11/9     | \$254.68    |
| Morningside Dr 1/2 intrest |          | \$7,500.00 2/9-11/9   | \$0.00      |
| Lake Adger                 |          | \$65,000.00 2/9-11/9  | \$4,886.95  |
| Mother                     |          | \$0.00 2/9-11/9       | \$74,542.47 |
| Lot 7 Jakes Land           | rental   | \$1,308.00 2/9-11/9   | \$192.00    |
| 5AC Gladys Ct              | rental   | \$2,174.06 2/9-11/9   | \$971.84    |
| 2219-b Congaree            | rental   | \$1,700.00 2/9-11/9   | \$4,706.97  |
| 2219-a Congaree            | rental   | \$4,350.00 2/9-11/9   | \$4,028.08  |
| 1633 SOUTHbound Rd         | Farm 1/3 | \$29,333.00 2/9-11/9  | \$143.00    |
| 168 Happytown Rd           | rental   | \$385.00 2/9-11/9     | \$518.00    |
| 166 Happytown              | rental   | \$2,010.00 2/9-11/9   | \$770.00    |
| 172 Happytown Rd           | rental   | \$1,695.00 2/9-11/9   | \$1,080.00  |
| 182 Happytown Rd           | rental   | \$600.00 2/9-11/9     | \$888.42    |
| 188 Happytown Rd           | rental   | \$3,050.00 2/9-11/9   | \$2,548.42  |
| 186 Happytown Ra           | rental   | \$3,150.00 2/9-11/9   | \$1,271.53  |
| 196 Happytown Rd           | rental   | \$800.00 2/9-11/9     | \$739.00    |
| 216 Happytown Rd           | rental   | \$1,145.00 2/9-11/9   | \$793.00    |
| 208 Happytown Rd           | rental   | \$1,395.00 2/9-11/9   | \$690.00    |
| VA Account                 | CASH     | \$34,000.00 2/9-11/9  |             |
| SMITH Barney               | stock    | \$107,000.00 2/9-11/9 |             |
| IRA                        | STOCK    | \$37,000.00 2/9-11/9  |             |
| Cars                       |          | \$9,800.00 2/9-11/9   | \$750.00    |
| Guns                       |          | \$5,000.00 2/9-11/9   |             |
| coins                      |          | \$500.00 2/9-11/9     |             |
| Books                      |          | \$1,500.00 2/9-11/9   |             |
| Notes Collected            |          | \$3,500.00 2/9-11/9   |             |
| Legal fees                 |          | 2/9-11/9              | \$3,800.00  |
| Ins- DCBJR                 | Met life | \$9,000.00            |             |
| Hospital DCBJR             |          |                       | \$568.00    |
| FUNERAL FATHER             |          |                       | \$11,500.00 |
| Hospital MOTHER            |          |                       | \$782.00    |
| FUNERAL MOTHER             |          |                       | \$9,500.00  |
| Miscelenious expenses      |          |                       | \$1,500.00  |
| Notes Paid                 |          |                       | \$29,000.00 |
| Southern Company           |          | \$31,000.00           |             |
| Mary Cecil Montgomery      |          |                       | \$10,000.00 |
| Sharon Lee Montgomery      |          |                       | \$10,000.00 |
| David Bryan Gayden         |          |                       | \$10,000.00 |
| Elisa Edwards              |          |                       | \$8,000.00  |
| Emily Edwards              |          |                       | \$28,000.00 |
| Ethan Montgomery           |          |                       | \$10,000.00 |
| Mont counts                |          | \$410.00              |             |
| 948 Bruce Rd               |          | \$235,000.00          |             |

EXHIBIT

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Final 9-7-2010  
DAVID C. BRYAN JR.

7/7-2010

| RECEIPTS                      | DISBURSEMENTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (assets received into estate) | (assets disbursed/paid out from estate)                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 994,900                       | 10,000 Star Montgomery<br>25,000 Emily Edwards<br>8,000 Elisa Edwards<br>10,000 David Bryan Gayden<br>10,000 Sharon Lee Montgomery<br>10,000 Mary Cecil Montgomery<br>21,000 Funeral<br>1,350 Hospital<br>3,800 Legal<br>1,500 Probate<br>29,000 Note pay off<br>31,440 Mort. payments<br>200,000 Medical<br>138,000 Mortgage<br>2,800 C.P.A.<br>1,500 Miscellaneous exp.<br>10,538.94 Taxes real property<br>9,384.00 Bank pay-off credit cards<br>468,587.06 To Trust<br>994,900.00 |
| 994,900                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                               | FILED<br>SEP 20 2010<br>AB<br>PROBATE JUDGE<br>LEXINGTON COUNTY, S.C.<br>David C. Bryan Jr.<br>9-7-2010                                                                                                                                                                                                                                                                                                                                                                               |

EXHIBIT

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|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) |                                           |
| COUNTY OF LEXINGTON          | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
|                              | ) |                                           |
| Elisa Montgomery Edwards and | ) |                                           |
| Emily Cecile Edwards,        | ) |                                           |
|                              | ) | Case Number: 2018-CP-32-0927              |
| Plaintiffs,                  | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| David C. Bryan               | ) |                                           |
|                              | ) |                                           |
| Defendants.                  | ) |                                           |
| _____                        | ) |                                           |

### **ANSWER AND COUNTERCLAIM FOR SUMMARY JUDGMENT**

Defendant, David C. Bryan, III, answers the Complaint and respectfully assert the following:

1. Denies each and every allegation of the complaint unless the complaint is, after this answer, specifically admitted, modified, or explained.
2. Admits, on information and belief, the allegations of Paragraph 1, 2, 3, 4 and 5.
3. Defendant denies the allegations of Paragraph 6 as worded, and would show the exact language of the Will of David C. Bryan, Jr. is set forth by the Will itself and contains its full and complete provisions.
4. Defendant admits that he regularly met and/or communicated with Plaintiffs and other members of his family following the death of their father on January 8, 2009; to explain the probate process of David C. Bryan, Jr.'s will and that these communications occurred regularly and at least as early, if not before, the Summer of 2009. Defendants denies any forgery and remaining items of Paragraph 7.



5. Defendant denies the allegations of Paragraph 8 as worded and demands strict proof. Defendant admits he made a proper accounting to the Probate Court, including in 2010. Defendant made all payments required by the Will that was probated in 2010 and 2011.
6. Defendant admits the allegations of Paragraph 9 that the Lexington County Probate Court closed the estate at issue in November of 2011. (See Exhibit A)
7. Defendant denies the allegations of Paragraph 10, and defendant further refers to the Will of David C. Bryan, Jr. for the exact terms, provisions, stipulations, conditions, and requirements of the Will.
8. Defendant denies the allegations of Paragraph 11. Based upon the advice of tax professionals, the Trust referenced was not required to be funded and was therefore not funded. All funds were properly disbursed in accordance with the terms of the Will of David C. Bryan, Jr. and his wishes were fulfilled. ; that defendant would, further, refer to the Will of David C. Bryan, Jr. ; that defendant further admits and alleges that every provision of the previously mentioned Will signed by David C. Bryan, Jr. is pled in bar of the claims alleged in the complaint; that defendant further refers to the Will for the exact terms, provisions, stipulations, conditions, and exclusions of the Will; that defendant denies any allegations of Paragraph 11 which are inconsistent with or in addition these admissions.
9. Defendant denies the allegations of paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

Defendants denies that Plaintiffs are entitled to any of the relief sought in its Complaint.

FURTHER answering the complaint, defendant alleges:

10. That the Will of David C. Bryan, Jr. executed on or about May 19, 2000, a copy of which is attached, is pled in bar of the claims alleged in the complaint; that defendant refers to the Will for the exact terms, provisions, stipulations, conditions, agreements, terms; that, therefore, plaintiff should not recover from defendant.
11. That the Order, entered on or about November 9, 2011, closing the Estate of David C. Bryan, Jr., is pled in bar of Plaintiff's suit.
12. The Complaint does not state facts sufficient to constitute a cause of action.
13. Because this action by the Plaintiffs was not commenced within the statutory limitations on presentation of claims period, this Defendant pleads the statute of limitations on presentation of claims as a bar pursuant to , **Section 62-3-803 S.C. Code Ann**

**COUNTERCLAIM FOR SUMMARY JUDGMENT**

14. That defendant, through its counterclaim, seeks a Summary Judgment regarding the rights and obligations of the parties.
15. That defendant, David C. Bryan, III ("*David*"), is an individual who lives and worked in Lexington County, South Carolina for many years as a law enforcement officer. He is well known in the community and has a good reputation in the community for honesty and veracity.
16. David was appointed as the personal representative of his father's estate and acted at all times in accordance with the terms of the Will signed by his father and the wishes of his father. David divided up the proceeds of the estate as instructed and

managed the assets of his father's estate as he understood the terms of his father's will, based upon legal and tax advice he received for professional third parties and upon his understanding of his father's wishes. Beginning in 2009, the year of his father's death, David stayed in communication with his family, including the Plaintiffs in suit, and advised them what was happening with the estate.

17. Even before the death of his father, in 2009, David had borne the primary responsibility for arranging for the in home care for his father and mother and ensuring that expenses and care were provided and paid. At times other family members, including Plaintiff's, would be paid monies to provide care for the aging parents. There was always an exchange of communication concerning this care to ensure matters were handled properly and in accordance with the parent's wishes. Distributions were made and expenses paid in accordance with the terms of the Will.
18. Following the death of his father, David paid claims and expenses of the estate. He also paid Plaintiff's request for monies in keeping with the terms of the Will. Further Plaintiff's would also regularly seek additional monies from David to pay of their living expenses and high amounts of personal credit card debt. David would grant those requests and did pay off Plaintiff's debts. Plaintiffs also arranged, without the consent of Defendant, to transfer the life insurance beneficiary designation of their late father and benefitted from this transfer.
19. Plaintiff's late claims made in the lawsuit were apparently brought about by Plaintiff's recent displeasure when David had to tell Plaintiff's no with respect to their repeated requests for additional monies to pay off their credit card debts.

20. On its face, Plaintiff's claims are barred by the applicable South Carolina statute of limitations for claims against a decedent's estate or the personal representative. The very purpose and policy of the statute is to prevent and defeat such late claims as made in this case. This is because such claims can- and often do- represent no more than mere family squabbling over the division of property. If such claims are to be made, the law says they need to be made forthwith or forfeited.
21. Plaintiff's claims should have been and could have been much earlier as they were clearly aware-or legally charged with awareness of public records-of the relevant facts of the death of the father, the opening of an estate and the closing, in 2011, (more than 6 years ago) of that estate. Plaintiff's suit was not brought until March of 2018, well beyond the statutory required time frame required for such claims to be brought which is within eight months after it arises or within one year after the decedent's death.
21. Plaintiff's claims, not matter how titled, are all time barred. It make no difference what they are called. They statute is very clear. **"All claims"** whether based on, **"contract, tort, or other legal basis"**, (emphasis supplied) are barred against the estate, the personal representative, and the heirs....unless presented in a timely manner. In this case, since not based upon any contract, Plaintiff's would have had to bring their claims within 8 months after they arose. They did not so do, by a factor of -at least- over 6 years.
21. David C. Bryan, III is informed and believes that he is entitled to have this Honorable Court inquire into these matters and to issue a Summary Judgment determining that Plaintiff's claims were not brought in a timely manner and are thus barred as a

matter of law by the applicable statute of limitations; and thus; under the facts and circumstances alleged; that David C. Bryan, III does not, therefore, owe any additional obligations for the claims plaintiffs allege in its complaint.

22. The Plaintiff's action is not one which entitles her to a jury trial. This Defendant objects to the Plaintiff's demand for a jury trial and moves the Court to strike the demand for jury trial.

WHEREFORE, having answered the Complaint, this Defendant prays:

- (1) That it be dismissed with costs and that Defendant be awarded his attorney fees and expenses for defending this action as appropriate; and
- (2) That this Court issue its ORDER summarily dismissing Plaintiff's claims with Prejudice;
- (3) That the Court strike the Plaintiff's demand for jury trial; and
- (4) For such other and further relief as he may be entitled to.

Submitted by:

s/J. Kyle McClain  
J. Kyle McClain  
SC Bar # 103229  
Michael R. Jeffcoat  
Attorney at Law  
The Jeffcoat Firm  
4723 Sunset Blvd.  
P. O. Box 1860  
Lexington, SC 29071  
Phone: 803-808-9600  
Facsimile: 803-808-2240

ATTORNEYS FOR THE DEFENDANT





STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE MATTER OF DAVID CUTTINO BRYAN, JR.

) IN THE PROBATE COURT  
)  
)  
)  
)  
)

CASE NUMBER: 2009ES3200065

### ORDER CLOSING ESTATE

Upon the consideration of the Petition for Settlement, it appears to the Court that the allegations and statements in the Petition are true and correct; that all required notices have been given; that this estate has been administered according to the laws of South Carolina and the Orders of this Court; that the Estate should be closed in accordance with the Court's Order and

☒ (Testate-Complete Settlement) That the decedent's will dated May 19th, 2000 and codicil(s) dated \_\_\_\_\_ which was/were previously admitted to probate constitute the valid unrevoked Last Will and Testament of the decedent.

☐ (Intestate-Complete Settlement) That the decedent died leaving no valid unrevoked Last Will and Testament.

☐ Verified Statement to Close Estate. (62-3-1204)

☐ (Other:)

IT IS HEREBY ORDERED

☒ 1. That the final account and proposal for distribution is approved.

☐ 2. That the Personal Representative(s) is/are authorized and directed to deliver and distribute title and possession of the assets of this estate to the distributees in the amount and manner set forth in the Proposal for Distribution.

☐ 3. That, upon compliance with this Court's Order as set forth in #2 above and upon presentation of proper proof of such compliance, the appointment of the Personal Representative(s) shall be terminated and the estate closed.

☐ 4. That the Personal Representative(s) is/are released and discharged as the Personal Representative(s).

☒ 5. That the appointment of the Personal Representative(s) is/are hereby terminated and this estate is closed.

☐ 6. (Other:) BOND TERMINATION. (Please note that it is your responsibility to provide a copy of this order to bonding agent.)

☐ 7. (Other:)

Executed this 9th day of November, 2011.

Daniel R. Eckstrom

Daniel R. Eckstrom, Probate Judge

*ARM*

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS |
|                                    | ) | ELEVENTH JUDICIAL CIRCUIT    |
| COUNTY OF LEXINGTON                | ) |                              |
| Elisa Montgomery Edwards and Emily | ) | C/A No.: 2018-CP-32-0927     |
| Cecile Edwards,                    | ) |                              |
|                                    | ) |                              |
| Plaintiffs,                        | ) |                              |
|                                    | ) |                              |
| vs.                                | ) |                              |
|                                    | ) |                              |
| David C. Bryan, III,               | ) |                              |
|                                    | ) |                              |
| Defendant.                         | ) |                              |

### REPLY

The Plaintiffs, through undersigned counsel, in response to the Counterclaim asserted in the Defendant's *Answer and Counterclaim for Summary Judgment*, hereby allege as follows:

#### AS TO ALL AFFIRMATIVE DEFENSES

1. Plaintiffs reaffirm and reiterate all of the allegations contained in the *Complaint*.

#### AS TO THE COUNTERCLAIM

2. Plaintiffs deny the allegations contained in Defendant's *Counterclaim*, numbered paragraphs 14 through 22, inclusive and demand strict proof thereof.

3. Plaintiffs further assert that Summary Judgment cannot be obtained by counterclaim, but only through the motion procedure prescribed in Rule 56, *South Carolina Rules of Civil Procedure*.

WHEREFORE, having fully relied to the allegations of Defendants' *Counterclaim*, Plaintiffs pray that such counterclaim be dismissed with costs and that the Court awards such other and further relief as is just and proper.

s/ David E. Belding  
SC Bar No.: 000623

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ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina  
April 23, 2018

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**CERTIFICATE OF ELECTRONIC DELIVERY**

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The undersigned hereby certifies that on the 23rd day of April, 2018, he served a copy of the attached *Reply* upon the attorneys for Defendant by e-filing same with the Lexington County Clerk of Court. through the South Carolina Judicial Department's website.

s/ David E. Belding

Columbia, South Carolina

|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON          | ) |                                           |
|                              | ) |                                           |
| Elisa Montgomery Edwards and | ) |                                           |
| Emily Cecile Edwards,        | ) |                                           |
|                              | ) | Case Number: 2018-CP-32-0927              |
| Plaintiffs,                  | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| David C. Bryan, III          | ) |                                           |
|                              | ) |                                           |
| Defendants.                  | ) |                                           |
| _____                        | ) |                                           |

**DEFENDANT'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT  
OR, IN THE ALTERNATIVE, FOR A NEW TRIAL OR A NEW TRIAL REMITTUR:**

THE DEFENDANT, DAVID C. BRYAN, III, by and through his undersigned attorney, will move before the Honorable Walton J. McLeod, IV of the Court of Common Pleas for the Eleventh Judicial Circuit at the Lexington County Courthouse located at 205 East Main Street, Lexington, South Carolina, on the tenth (10<sup>th</sup>) day following the service hereof or as soon thereafter as counsel may be heard, for an Order granting the Defendant a new trial pursuant to Rule 59 and Rule 60, in their entirety, of the South Carolina Rules of Civil Procedure.

The trial of this matter was held during the October 19, 2020 term of Common Pleas (jury) for Lexington County. David Belding, Esq. appeared as counsel for the Plaintiffs. W. Mike Hemlepp, Jr., Esq. appeared as counsel for the Defendant. Present at the trial were Elisa Montgomery Edwards and David C. Bryan, III. The Plaintiff Emily Cecile Edwards was not present and did not appear.

Jury selection began on Monday, October 19, 2020. The jury was selected, but was not sworn in until Tuesday, October 20, 2020 at which time the trial immediately began. The Plaintiff Elisa Montgomery Edwards and the Defendant David C. Bryan, III testified during the Plaintiffs'



case in chief. Then the Plaintiff rested, and the Court granted a motion for directed verdict on the cause of action for negligent misrepresentation. During the Defendant's case in chief, the defense read the entire transcript of the deposition of Emily Cecile Edwards, by agreement of the parties. The Defense rested and moved for a directed verdict on the cause of action for Fraud. That motion was denied.

On Tuesday, October 20, 2020, the same day, the jury reached a verdict for the Plaintiff and awarded \$500,000.00 in actual damages and \$100,000.00 in punitive damages. Upon its own motion, the court granted ten (10) days to file post-trial motions.

The Defendant now comes asking the court to grant a new trial based upon the issues listed below:

- 1. The jury was not able to judge the credibility of the witnesses because they were required to wear masks.**

This trial was the first trial held in Lexington County for many months due to the worldwide pandemic caused by the SARS-COVID-19 virus which has killed more than 200,000 Americans in the year 2020 and infected almost nine million Americans.

This trial was conducted pursuant to the memorandum of the Chief Justice of the South Carolina Supreme Court dated September 14, 2020. Also, the Trial Court was guided by Administrative Order 2020-07-30-01 which requires the use of facial coverings (masks) for all persons within the courthouse.

In the instance of this trial, the courtroom in which the trial was held had been meticulously and carefully prepared with plexiglass barriers, which were transparent and allowed all parties to see each other clearly. However, during the testimony in the case, all of the witnesses wore opaque fabric masks which covered the entirety of the nose and mouth of their faces.

In his charges to the jury, the trial judge charged the jury they had a duty to determine the credibility or believability of the witnesses. Further, the court instructed the jury:

“You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced toward either party, the opportunity for the witness to have seen the matters and things about which the witness may testify, and *the way the witness acts on the witness stand.*” [Emphasis Added]

It is the Defendant’s position the credibility of the witnesses was the key aspect of this trial. Without the ability to assess credibility of the two live witnesses, the jury verdict is flawed. The Defendant is informed and believes that the fact that the witnesses were masked, despite the protections of physical distance and plexiglass barriers, amounted to a structural defect in the trial and a due process violation for the Defendant.

"The facial expressions of a witness may convey much more to the trier of facts than do the spoken words." United States v. Irvin, 450 F.2d 968, 971 (9th Cir. 1971).

As the court systems of the United States grapple with the challenges of conducting jury trials in a coronavirus world, unforeseen issues will arise. Despite the valiant attempts to protect both the rights of the litigants and the health of the participants, there are going to be unforeseen and novel aspects with which trial courts will grapple. The wearing of a mask for the purposes of the safety of the participants in the courtroom is scientifically sound and an area upon which there is widespread agreement. But the question of covering someone’s face inhibiting the ability of a jury to determine credibility is a topic of current legal debate.

This entire case revolved around the believability of the witnesses. Addressing the credibility of witnesses whose faces are covered up is a structural defect in the proceeding.

- 2. The court should have granted the Defense motion for a directed verdict on the cause of action for fraud because the plaintiffs failed to show the alleged fraudulent act resulted in any proximate or consequential damages.**

In the instant case, the only cause of action which was presented to the jury was Fraud.

In order to establish a claim for fraud in the inducement to enter a contract, a party must establish the following by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *M.B. Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). *John v. Milliman*, 392 S.C. 116, 708 S.E.2d 766 (S.C. 2011)

Because of the time constraints of the trial, counsel for the defense made a motion for a directed verdict on the grounds of lack of evidence of the elements, which was renewed, and denied, at the close of the Defense case. The Defense would allege unto this court that denial was an error. There is no evidence in the record of the first element, [a representation] and the last element [consequent and proximate damages].

*a. A Representation*

The Plaintiff testified that her uncle would generally answer the question, “how is our money doing?” with responses. There was virtually no evidence provided of an affirmative statement or actions which would give rise to the level of a “representation” as required under the law. One of the key factors of fraud is that an unperformed promise does not constitute fraud absent evidence that the promisor did not intend to keep the promise at the time he made it. *Hansen v. DHL Laboratories, Inc.*, 450 S.E.2d 624, 316 S.C. 505 (S.C. App. 1994).

In this case, the Plaintiff argued the Defendant had an obligation to create a trust. But without evidence of his representation, there was no evidence for the jury to determine if the Defendant intended *at the time of the representation* to disregard this obligation. The Elisa Edwards testimony was devoid of specificity from which a jury could discern the Defendant’s motives at the time of the representation.

There was no specific testimony of any particular act, representation, assertion or activity of the Defendant which then caused the Plaintiffs, or either one of them, to take any action to their detriment. In order to adequately assess whether there were any damages flowing from the fraudulent act, there needs to be evidence of act from which the damages could result. The record is devoid of such testimony.

*b. Causal Connection from the Fraud to the Damages*

The case theory for this action hinged, by all parties, on the alleged “fraud” of the Defendant to the Plaintiff. In multiple points of the trial, Elisa Edwards testified, and both attorneys argued, that the administration of the estate, and the Defendant’s obligations thereunder, were not an issue in this case for the jury. David Bryan was not being held liable for not creating the Cecil I. Bryan Trust. This point was agreed by all parties throughout.

The jury was told by both lawyers the fact that the Cecil I. Bryan Trust was not created was not the point of the case. The case hinged on the representations which the Plaintiff stated the Defendant made about the proceeds of the Cecil I. Bryan Trust.

When asked, Elisa Edwards testified that if her uncle had not committed a “fraud”, then she would have had the use of the money from the trust. That is simply not true. There was no evidence presented by either plaintiff that the alleged fraud, through the alleged representations of the Defendant, damaged either of the Plaintiffs. The clear testimony was the failure to create the trust was both their measure of damage and what proximately caused it.

The law requires that the Plaintiff suffer a “consequent and proximate injury” from the alleged fraud. As the South Carolina Supreme Court stated: "Respondents have testified to nothing more than appellant's failure to keep his promises. While this showing may entitle respondent to relief in a contract action if it is determined the promises were actually made, such a showing is not

sufficient to demonstrate actionable fraud." Woodward v. Todd, 240 S.E.2d 641, 270 S.C. 82 (S.C. 1978). This is analogous to this case. The Plaintiffs in this case had a myriad of avenues they could have pursued against the Defendant for improperly administering the estate of David Bryan, Jr. and the management of the Cecil I. Bryan Trust. They chose not to do that but rather pursued a cause of action without any evidence of proximate damage from that particular wrong.

The evidence which would be required to satisfy this element of fraud would be that the Plaintiffs, or either of them, in reliance on representations of the Defendant, acted, or failed to act, in reliance thereon and was subsequently damaged. The evidence in this case is devoid of even a scintilla of evidence showing the Plaintiffs took any action or notice of these representations which caused any damages.

**3. The court erred by not requiring the jury to make a verdict for each Plaintiff. The jury returned one verdict, but there were two plaintiffs. This cannot be a fatal error which cannot be corrected.**

This case was brought on behalf of two Plaintiffs: Elisa Montgomery Edwards and Emily Cecile Edwards. The testimony of all parties showed Elisa Edwards is Emily Edwards mother. According to the testimony of Elisa Edwards, Emily knew nothing about the case and was only a named Plaintiff because she was a named beneficiary of the Cecil I. Bryan Trust.

However, the verdict form which was sent to the jury requested a verdict for only one (1) Plaintiff. There was no provision made for multiple plaintiffs. The jury was prevented from finding, for instance, that one plaintiff relied more heavily on the alleged misrepresentations than the other Plaintiff. The jury was prevented from dividing the verdict between the Plaintiffs.

As a practical matter, the Defendant has no way to pay this verdict. To whom would the check be written? In what amount?



A trial court is vested with very limited power to correct a jury verdict which is defective in form, but which in substance clearly and definitively expresses the jury's intentions.” [397 S.C. 620] Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct.App.1996) Wachovia Bank Nat'l Ass'n v. Beane, 397 S.C. 612, 725 S.E.2d 715 (S.C. App. 2012). However, there are clear limitations.

After the amendment the verdict must be not merely what the judge thinks it ought to have been, but what the jury intended it to be. ***Their actual intent, and not his notion of what they ought to have intended, is the thing to be expressed and worked out by the amendment.***

The law rather forbids this [c]ourt assuming to take upon itself the powers, duties, rights, and privileges of a jury.’ Vinson, 324 S.C. at 407, 477 S.E.2d at 724 (quoting Anderson v. Aetna Cas. & Sur. Co., 175 S.C. 254, 282, 178 S.E. 819, 829–30 (1934)). Wachovia Bank Nat'l Ass'n v. Beane, 397 S.C. 612, 725 S.E.2d 715 (S.C. App. 2012). [Emphasis Added]

This error is an error which cannot be fixed by the court, by the parties or by supposition. This error requires the trial court order a new trial in this matter. "Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed.” Todd v. Owen Indus. Prods., Inc., 315 S.C. 34, 431 S.E.2d 596 (Ct.App.1993).

**4. The jury verdict was motivated by supposition, passion, prejudice, bias and unsupported by the facts.**

The jury in this case reached a verdict of \$500,000.00 in actual damages and \$100,000.00 in actual damages. In this case, the Plaintiff alleged the Defendant was required to form a trust for the benefit of his mother and, upon her death, the trust would have been divided four ways. The valuation of the amount of the purported trust was conceded at trial by the Plaintiffs to be \$468,587.06. Divided four ways, this amount would be \$117,146.77.

However, the Plaintiff testified that the stock market improved and used an arbitrary self-serving multiplier to argue to the court that the “Plaintiff”, or some combination of the Plaintiffs, were damaged from the *fraud*, in an amount in excess of \$600,000.00. There is no evidentiary support for this. Elisa Edwards testified to this amount without basis or foundation. While she would clearly be able to testify the amount, which should have been in the trust, the increase in value was without any evidentiary support.

Based upon the foregoing, the Defendant would pray that this court either grant a new trial in this matter for a more factual determination of any appreciation on the alleged corpus of the trust or, in the alternative, to remit the verdict to an amount more in line with the evidence presented<sup>1</sup>

**5. The speed of the trial due to COVID19 precautions prejudiced the due process rights of the parties, especially with regards to the preservation of errors.**

The historic and unprecedented nature of the COVID19 pandemic of 2020 is currently felt by all industries, including the legal industry. The right to trial by jury, enshrined in our State and Federal Constitutions, is inviolate. S.C. Const. Article 1, Section 14. But even this fundamental right succumbs to the vagaries of the public’s health when faced with a virulent pathogen which has killed or severely impacted so many people.

The efforts and implementation of various plans by the Chief Justice of the South Carolina Supreme Court, South Carolina Court Administration, the various Clerks of Court and the Chief Administrative Judges of the sixteen circuits have been remarkable and herculean. However, in his September 21, 2020 memorandum resuming normal court operations, even the Chief Justice acknowledges that the situation is fluid and fluctuating.

“As we have seen thus far in 2020, the impacts of the COVID-19 pandemic have been unprecedented and unpredictable. This may continue for many months. I will continue to monitor court operations and make alterations should the need

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<sup>1</sup> The Defendant makes this argument for a remittitur without abandoning his position that the verdict form is a clear, irreparable error which even a remittitur cannot repair.

arise statewide or in a particular judicial circuit.” Chief Justice Beatty, Sept. 21, 2020 Memo

The trial of this particular case, the impact of the coronavirus protections, outlined by the Supreme Court and with adherence to the recommendations of the Centers for Disease Control, was a testing ground for the “new normal” of proceeding with jury trials while balancing the interests of the population to have a functioning court system against the safety of the participants and their loved ones. In that regard, this trial was a great success.

But it is also a laboratory for future trials. The speed of the trial, while a necessary component for the safety of the participants, negatively impacted on the parties’ ability to conduct the trial and the attendant procedural safeguards.

This is especially true regarding the preservation of issues. Many of the issues in this case were discussed off the record in chambers, with the decisions of the court or the agreements of the parties being put on the record, or not, upon reentering the courtroom. Again, this was pragmatic to ensure the safety of the courtroom, but problematic at ensuring a clean and complete record of the trial.

For instance, there was a discussion by the parties regarding the amendment of the answer to reflect the protections of the punitive damages’ statute, Title 15, Chapter 32, Article 5 of the Code of Laws of South Carolina. All parties, and the court, agreed to the amendment of the Defendant’s answer which was necessitated pursuant to the ruling of the South Carolina Court of Appeals in *Garrison v. Target*, Opinion No. 5711, January 15, 2020. However, all parties and the

trial court forgot this agreement and therefore protections of the statute were not preserved for the record<sup>2</sup>.

Consequently, the jury instructions, the verdict form, and evidentiary issues were admitted by the court or by agreement of the parties with very little discussion beyond perfunctory acknowledgement.

The Defendant would concede that substantive law is unchanged by the precautions and alterations made for the reality of the pandemic. The Defendant would also concede that the trial court's efforts to conduct a fair and balanced trial during these trying times was laudable and thoughtful. But the procedural law should be decided by the Courts in context. The objections, legal arguments, evidentiary concerns and the preservation of these issues is more difficult when trying a case with these new unprecedented procedures and environments.

**The jury verdict was not supported by clear and convincing evidence.**

Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts. See *Gastineau v. Murphy*, 473 S.E.2d 819, 827 (Ct.App.1996). The seminal case stating the "thirteenth juror" doctrine is *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 195 S.E. 638 (1938).

The appellate courts of this state have considered the thirteenth juror doctrine repeatedly after 1938 Worrell decision. Each time they have supported the use of the rule. South Carolina courts have refused to require trial judges to explain the reasons for their rulings. The thirteenth juror doctrine allows the trial court to grant a new trial absolute when he finds that the evidence

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<sup>2</sup> The Defendant does not allege the punitive damage award exceeds the statutory cap because, mathematically, it does not. This example is included to illustrate the difficulty of preservation of issues during a highly unusual proceeding.

does not justify the verdict. S.C. Highway Dept. v. Townsend, 265 S.C. 253, 217 S.E.2d 778 (1975).

The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (S.C. App. 1996).

A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. South Carolina State Highway Department v. Clarkson, 267 S.C. 121, 226 S.E.2d 696 (1976). When an order granting a new trial is before this Court, our review is limited to the consideration of whether evidence exists to support the trial court's order. South Carolina Department of Highways & Public Transportation v. Mooneyham, 275 S.C. 205, 269 S.E.2d 329 (1980).

During the trial of this case, the measure of damages proposed by the Plaintiffs was calculated upon the  $\frac{1}{4}$  share each of the beneficiaries would have received if the Cecil I. Bryan Trust had been created and then divided upon her death in October 2009. Further, Elisa Edwards testified that the money would have grown if it had been invested in a manner similar to her other investments. The defense placed an arbitrary number, unsupported by any evidence, before the jury of approximately \$600,000.00 (representing two of the one-fourth shares) and the jury returned a verdict of \$600,000.00

However, for the many reasons stated above, this is the measure of damages the Plaintiff would have if she had asked a court for relief on the failure to create the trust. This is not damage



flowing from any alleged fraudulent statement. The failure to form and administer the Cecil I. Bryan Trust may have resulted in damages, but the alleged fraud resulted in none.

Fraud and deceit, to be actionable, must be accompanied by some injury or damage which *was proximately caused by the fraud*. O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E.2d 734 (1978). 25 C.J.S. Damages § 50. Prickett v. A & B Elec. Service, Inc., 311 S.E.2d 402, 280 S.C. 123 (S.C. App. 1984)

The Plaintiffs here are using a fraud allegation to attempt to recover what they should have recovered from a challenge in the probate court or under a different cause of action in Circuit Court. There was no evidence presented that the representations of the Defendant injured either Plaintiff, especially when Elisa Edwards testified, and counsel affirmatively argued to the jury that the failure to create the trust was not before the jury and not part of the case.

This court has the ability, and should, to grant a new trial as the “thirteenth” juror to repair the confusion of the jury holding the Defendant liable by clear and convincing evidence when it the verdict was unsupported by the facts.

Now, therefore, given the foregoing reasons, the defects in the trial, the irreparable verdict form, the due process questions raised and the clear lack of evidence in this case, the Defendant would pray that the Court exercise its discretion and set aside the jury verdict in this case and grant a new trial.

**\*\* SIGNATURE ON NEXT PAGE\*\***

Respectfully submitted,

s/ W. Mike Hemlepp, Jr.

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ATTORNEY FOR THE DEFENDANT

October 30, 2020

Court of Common Pleas

Transcript of Record  
2018-CP-32-00927

B E F O R E:

## A P P E A R A N C E S:

Michael Hemlepp, Esquire  
Attorney for the Defendant

Edwards v. Bryan record on appeal p. 052

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## P R O C E E D I N G S

\* \* \*

(The following proceedings were held  
October 19, 2020.)

THE COURT: All right. Ladies and gentlemen,  
we're about to begin the trial of the case of Elisa  
Montgomery Edwards and Emily Cecile Edwards versus  
David C. Bryan, III. I'm going to have a list of  
questions here to ask you momentarily.

First, before I do that, I'd like to ask the  
lawyers to stand up and introduce themselves and  
their clients, please.

MR. BELDING: Thank you, Your Honor. May it  
please the Court?

Good morning, my name is Dave Belding. I'm an  
attorney and I live over in Irmo in Lexington  
County. I represent the plaintiff in the first  
case. This is Ms. Elisa Edwards. She also has a  
daughter named Emily Cecile Edwards, who is also a  
plaintiff. And, by agreement, the Court and the  
counsel for the defendant, that defendant is not  
here; she's in Canada attending school. So it would  
be Elisa Edwards and her daughter, Emily Cecile  
Edwards.

Thank you, Your Honor.

MR. HEMLEPP: May it please the Court?



1 THE COURT: Yes, sir.

2 MR. HEMLEPP: Ladies and gentlemen, my name is  
3 Mike Hemlepp. I'm a lawyer with the Jeffcoat Firm,  
4 which is a Lexington County firm. In fact, my  
5 senior partner, Michael Jeffcoat, is here with me,  
6 and we have the pleasure today representing the  
7 defendant in this case, Mr. David Bryan, III, who is  
8 a lifelong resident of Lexington County as well.  
9 Thank you.

10 THE COURT: All right. Is any member of the  
11 jury panel here today related by blood or marriage  
12 to either the plaintiff, Ms. Elisa Montgomery  
13 Edwards, or the defendant, Mr. David C. Bryan, III,  
14 or have a close business or personal relationship  
15 with either of the parties involved in this case?  
16 If so, please stand.

17 (No response.)

18 THE COURT: Ladies and gentlemen, just so I'm  
19 clear, if there's anyone who can't hear me, please  
20 wave your hand. I want to make sure everyone can  
21 hear me while I'm asking --

22 PROSPECTIVE JUROR: I'm having a little bit of  
23 trouble.

24 THE COURT: I can increase the volume, I  
25 promise. Thank you.

1           Now, this is our witness list for the first  
2           trial, Elisa Montgomery Edwards and David Bryan,  
3           III, who are the parties.

4           Once again, is anyone related by blood or  
5           marriage or have any relationship, close personal or  
6           business, with any of the parties? If so, let me  
7           know.

8           (No response.)

9           THE COURT: All right. Does any member of the  
10          jury panel know or has any member of the jury panel  
11          ever been involved in a case where you are -- or a  
12          party who was represented by Mr. Mike Hemlepp of the  
13          Jeffcoat Firm? If so, please stand.

14          PROSPECTIVE JUROR: I think I might know  
15          Mr. Jeffcoat. I used to live off Irmo Drive.

16          MR. JEFFCOAT: It's been a long time.

17          THE COURT: Well, you beat me to my next  
18          question. In addition to being represented, does  
19          anyone have a close personal or business  
20          relationship with Mr. Hemlepp or Mr. Jeffcoat?

21          You've indicated you may have lived near him.  
22          Anyone else?

23          PROSPECTIVE JUROR: It's been years, but I used  
24          to babysit him.

25          THE COURT: I have some additional questions

1 I'd like to ask.

2 MR. HEMLEPP: Let's talk afterwards.

3 THE COURT: I'm sure he behaved well. Thank  
4 you, ma'am. Tell me your juror number again.

5 PROSPECTIVE JUROR: 43.

6 THE COURT: Thank you.

7 Any member of the jury panel ever been  
8 represented by or have a relationship, close  
9 personal or business, with the other attorney here,  
10 Mr. Belding, David Belding? If so, please stand.

11 (No response.)

12 THE COURT: All right. Granted, you haven't  
13 heard anything about the case yet from the  
14 attorneys, but has any member of the jury panel  
15 formed or expressed an opinion about any issue or  
16 matter involved in this case?

17 (No response.)

18 THE COURT: Is any member of the jury panel  
19 aware of any bias or prejudice towards either party,  
20 plaintiff or the defendant, in this case? If so,  
21 please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel  
24 been employed with the South Carolina Bankers  
25 Association? Any member of the Credit Union, which

1 is a member of the South Carolina Bankers  
2 Association? If so, please stand.

3 Yes, ma'am.

4 PROSPECTIVE JUROR: In the past, I worked with  
5 the banking industry for quite a few years, but it's  
6 been a while.

7 THE COURT: Tell me your juror number again.

8 PROSPECTIVE JUROR: 64.

9 THE COURT: Thank you.

10 Anyone else?

11 Yes, ma'am?

12 PROSPECTIVE JUROR: 186. The company I worked  
13 for is owned by United Community Bank.

14 THE COURT: Okay. Thank you very much.

15 And 64, 186, the fact that you worked for these  
16 entities, would that affect your ability in any way  
17 to be fair and impartial in this case?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you.

20 Has any member of the jury panel ever acted as  
21 a conservator of an aged parent's assets and monies?

22 (No response.)

23 THE COURT: Has any member of the jury panel  
24 ever served as a personal representative of an  
25 estate or as trustee of a testamentary trust?

1 (No response.)

2 THE COURT: Were you or any family member  
3 represented by a Lexington attorney,  
4 David Bryan, Jr., in the past? Anyone ever involved  
5 in a case with Mr. Bryan in the past?

6 (No response.)

7 THE COURT: Any member of the jury panel, their  
8 family members or friends, ever been involved in a  
9 lawsuit as either a plaintiff or a defendant? If  
10 so, please stand.

11 Yes, sir, your number?

12 PROSPECTIVE JUROR: 73.

13 THE COURT: And were you a plaintiff or  
14 defendant?

15 PROSPECTIVE JUROR: Both.

16 THE COURT: Both?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Yes, sir.

19 PROSPECTIVE JUROR: Plaintiff.

20 THE COURT: And what's your juror number?

21 PROSPECTIVE JUROR: 7.

22 PROSPECTIVE JUROR: Juror No. 151, I was a  
23 plaintiff.

24 THE COURT: Thank you.

25 And the fact that the three of you were

1 involved in a lawsuit in the past as either a  
2 plaintiff or a defendant, do you think that would  
3 affect your ability to be fair and impartial in any  
4 way?

5 PROSPECTIVE JUROR: No, Your Honor.

6 THE COURT: Okay. Does any member of the jury  
7 panel know of any reason whatsoever why he or she  
8 should not serve as a juror in this case, with  
9 particular emphasis being placed on your ability to  
10 be fair and impartial to both plaintiff and the  
11 defendant?

12 (No response.)

13 THE COURT: All right. Counsel, any other voir  
14 dire?

15 MR. HEMLEPP: No, thank you, Your Honor.

16 PROSPECTIVE JUROR: I need to correct one. I  
17 missed that question on trustee. I was the trustee  
18 for my sister's estate.

19 THE COURT: Your juror number was what?

20 PROSPECTIVE JUROR: 73.

21 THE COURT: 73?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: And the fact that you were a  
24 trustee for your sister's estate, do you think that  
25 would affect your ability to be fair and impartial



1 in hearing this case?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR: What was your question  
5 about being a conservator? I couldn't hardly hear  
6 you.

7 THE COURT: The question was has any member of  
8 the jury panel ever acted as a conservator of an  
9 aged parent's asset and monies?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. And your juror number is  
12 what?

13 PROSPECTIVE JUROR: 187.

14 THE COURT: 187. Thank you.

15 Is that it?

16 All right. Madam Clerk.

17 Ladies and gentlemen, what we're doing right  
18 now is we're compiling a list of potential jurors  
19 here. Bear with us a moment and we'll have it  
20 ready.

21 (Brief pause in the proceedings.)

22 THE COURT: Are we ready?

23 MR. BELDING: Excuse me, Your Honor. Plaintiff  
24 strikes number 1.

25 THE CLERK: Defense?

1           MR. HEMLEPP: Your Honor, defendant would  
2 strike number 18.

3           THE CLERK: Plaintiff?

4           MR. BELDING: Plaintiff strikes number 7.

5           THE CLERK: Defense?

6           MR. HEMLEPP: The defense would strike number  
7 17, Your Honor.

8           THE CLERK: Plaintiff?

9           MR. BELDING: Plaintiff strikes number 11.

10          THE CLERK: Defense?

11          MR. HEMLEPP: The defense would strike number  
12 12, Your Honor.

13          THE CLERK: Plaintiff?

14          MR. BELDING: Plaintiff strikes number 13.

15          THE CLERK: Defense?

16          MR. HEMLEPP: Defense would strike number 21,  
17 Your Honor.

18          THE CLERK: Only use 1 through 20 for right  
19 now; 21 through 23 are for alternates.

20          MR. HEMLEPP: Okay. Number 9.

21          THE CLERK: Using numbers 21, 22, 23 for  
22 alternate, each side gets one strike.

23          Plaintiff?

24          MR. BELDING: Plaintiff strikes number 21.

25          THE CLERK: And defense?

1 MR. HEMLEPP: Defense would strike number 23.

2 THE CLERK: I'm going to repeat your strikes  
3 back to you, if you'll confirm. Plaintiff, you  
4 struck number 1, 7, and 13; is that correct?

5 MR. BELDING: That is correct. Thank you,  
6 ma'am.

7 THE CLERK: Defense, you struck number 18, 17,  
8 12, and 9; is that correct?

9 MR. HEMLEPP: Yes.

10 THE CLERK: Okay. Plaintiff, for alternate,  
11 you struck number 21?

12 MR. BELDING: Yes. Thank you.

13 THE CLERK: And defense struck number 23?

14 MR. HEMLEPP: Yes. Thank you, Madam Clerk.

15 THE CLERK: Okay.

16 When I call your name, if you'll please come up  
17 here to the bailiffs. They're going to seat several  
18 of you on this side and the remaining of you on this  
19 side so that we're not sitting next to each other.

20 Carl Johnson, Richard Fields, Stuart Harmon,  
21 William Davis, Charles Summers, Jonathan Cutore,  
22 Brittany Turner, Wendy Asher, Andrew Robertson,  
23 Daniel Scoggins, Chevis Ballentine, Alana Underwood,  
24 and our alternate is Craig Burgess.

25 THE COURT: All right. Ladies and gentlemen,

1           thank you for your willingness to serve.

2           Congratulations, you're on the jury.

3                   We're not going to start this trial this  
4           afternoon; we're going to start first thing in the  
5           morning. In the interim, you haven't heard anything  
6           about the case yet, but I certainly want to remind  
7           everybody, please don't do any independent research  
8           about the parties in this case.

9                   Everything you hear tomorrow will be the  
10          evidence in this case, and you'll get it from the  
11          witness stand. That's all you need to worry about.  
12          So don't do any independent research on the parties  
13          on the internet or social medial or any of that.

14                  I want us to start first thing in the morning.  
15          I'm going to ask you to be at the courthouse across  
16          the street at 8:45 so we can start about 9:00 a.m.  
17          We'll get started with opening statements and plow  
18          on through the day.

19                  Now, everyone is, of course, wearing masks  
20          right now. Would anyone like a face shield  
21          tomorrow? If so, raise your hand. If you change  
22          your mind, we'll try to accommodate it then. But  
23          you certainly have the option to have one, and we'll  
24          provide you with one, if you would like one.

25                  I would -- I say be here at 8:45. I think it's

1       just us in the building. It shouldn't take you long  
2       to get through the building. We'll be on the third  
3       floor tomorrow. You'll have to go through the main  
4       door at the courthouse across the street, the  
5       Westbrook Judicial Center. You'll do exactly what  
6       you did today. It shouldn't take too long, but  
7       please plan accordingly for the morning. I know the  
8       morning commute can sometimes be a bit chaotic, at  
9       best. So just please try to be here, and we'll get  
10      started.

11             Madam Clerk, anything I've left out?

12             THE CLERK: Just identify yourselves when you  
13      come in. Tomorrow, when you arrive, we'll have  
14      badges for you, so it will identify you to security  
15      and the bailiffs. It just helps us move you a  
16      little quicker through the courthouse. So just  
17      identify yourselves in the morning. We'll have  
18      those to hand out as soon as you get to the jury  
19      room.

20             We'll also have masks and hand sanitizer  
21      available. If you want a face shield, you'll have  
22      to wear it in addition to the mask. So once you get  
23      in the courtroom, it's going to be completely  
24      different when you go over there. The jury box  
25      is -- the chairs are separated by Plexiglass over

1       there. So if you, at any point, feel like you want  
2       a face mask or a face shield, we will provide it.  
3       But they are expensive, so if you don't want to wear  
4       it, please don't take it.

5             Anything else that you need while you're there,  
6       if you feel like you need wipes or whatever, just  
7       let us know and we'll get anything you need to make  
8       you comfortable.

9             THE COURT: Counsel, anything before we let the  
10       jury go?

11            MR. HEMLEPP: Nothing from the defense, Your  
12       Honor.

13            MR. BELDING: Your Honor, do you want a short  
14       pretrial tomorrow morning?

15            THE COURT: We can do that this afternoon with  
16       just us.

17            We'll see you first thing in the morning across  
18       the street. Have a good evening and we'll see you  
19       then, tomorrow morning.

20            (The jury exited the courtroom at 11:25 AM.)

21            MR. HEMLEPP: Your Honor, may we approach?

22            THE COURT: Sure.

23            (Sidebar conference.)

24            (The following proceedings were held  
25       October 20, 2020.)

1           THE COURT: I asked the jurors to go ahead and  
2 pick a foreperson while they were waiting. They  
3 have chosen Alana Underwood, who is Juror No. 208,  
4 number 20 on your strike sheet. Ms. Underwood will  
5 be our foreperson.

6           We had a bench conference yesterday afternoon.  
7 We talked -- the defendant had several motions in  
8 limine to bring up. I believe they were,  
9 essentially, all resolved.

10          Anything outstanding?

11          MR. HEMLEPP: No, sir, Your Honor. I would  
12 like them to at least be on the record.

13          THE COURT: Sure. You put them on the record  
14 and note that they are resolved.

15          MR. HEMLEPP: Okay. Absolutely. May it please  
16 the Court, Your Honor?

17          In a bench conference, due to COVID instead of  
18 being on the record, we -- I made several motions in  
19 limine which the Court resolved either by agreement  
20 of the parties or with a decision to wait on the  
21 determination.

22          The first motion in limine was that the  
23 defendant moved for the Court to suppress any  
24 evidence propounded by the plaintiffs of character,  
25 reputation, traits of character, or prior alleged



1 crimes. The attorney for the plaintiff agreed that  
2 that's an appropriate rule of evidence and advised  
3 the Court that he would certainly tell his witness  
4 that that would not be admissible. So we resolved  
5 that by agreement.

6 THE COURT: Mr. Belding, do you agree with  
7 that?

8 MR. BELDING: Yes, Your Honor. Thank you.

9 MR. HEMLEPP: My second motion in limine was  
10 the Court suppress any evidence propounded by the  
11 plaintiff of furnishing or offering to -- or  
12 offering or promising to furnish or accepting or  
13 offering or promising to accept consideration and  
14 compromise.

15 Your Honor, this case involves a longstanding  
16 dispute over estate funds. And the parties  
17 themselves have spoken back and forth in compromised  
18 discussions that didn't involve the lawyers. Our  
19 position is that that would be inadmissible. My  
20 impression and belief, I think Mr. Belding agrees  
21 with that, and he also said that that's an  
22 appropriate ruling for the Court.

23 MR. BELDING: We agree, Your Honor. Offers of  
24 compromise and consolation of settlement, I believe,  
25 are inadmissible.

1 THE COURT: All right.

2 MR. HEMLEPP: Your Honor, I had my fourth  
3 motion in limine -- it's actually my third; I pulled  
4 one of them, asking to suppress any hearsay evidence  
5 in this case made by any witness who is unavailable  
6 as a witness under Rule 804(a), except as allowed  
7 under 804(b).

8 The issue here, Your Honor, is the estate funds  
9 are in a family in which three of the principal  
10 members of this family who would be potentially --  
11 who are going to be discussed in this case have  
12 passed away. The issue being either of the parties  
13 testifying to the jury of what a person who has  
14 passed away told them.

15 I believe that the Court was going to review  
16 this, the Dead Man's statute. And my position, Your  
17 Honor, I believe this is what we determined: If  
18 that comes up, I'll make an objection at that time.  
19 I think we actually resolved that by agreement, too.

20 THE COURT: I think -- go ahead, Mr. Hemlepp.

21 MR. BELDING: Thank you, Your Honor. We would  
22 stipulate that we think the Dead Man's statute would  
23 control, which would probably prevent all of this.  
24 However, I have advised my client that we shouldn't  
25 bring up any hearsay evidence. Things that they

1       said between the two of them can be discussed, but  
2       not anyone that's not here. So, basically, we  
3       agreed to that. We think that should not come up.

4               MR. HEMLEPP: Thank you, Your Honor. The next  
5       motion in limine involved taking judicial notice of  
6       public documents that have been filed with the  
7       Lexington County Clerk of Court in 2018-CP-32-02237.  
8       This was a companion case that was dismissed to the  
9       present case. All of the documents that were  
10      referred to are on the public index; they're all  
11      public records.

12             I believe the Court -- and the reason for this,  
13      Your Honor, we discussed it yesterday, was that in  
14      the era of COVID, limiting the number of people who  
15      have to testify about that. I think Mr. Belding  
16      agreed they were all public record and readily  
17      available and, if they were to be introduced, he  
18      wouldn't have any objection -- or would not object  
19      based on authenticity.

20             MR. BELDING: Right. And we so stipulated.

21             MR. HEMLEPP: I have not marked any of those as  
22      exhibits because they would only come in based upon  
23      impeachment line of questioning, and I don't know  
24      what the plaintiff is going to testify to.

25             My final motion in limine, Your Honor, is a

1 motion in limine asking that the plaintiff be  
2 required to elect his remedy. We had a long  
3 discussion about this. I take the position that the  
4 gravamen of both of these causes of action is a  
5 statement. So they share facts; so that -- to  
6 recover twice on that would be a violation of the  
7 process.

8 My memory is that when we discussed this, we  
9 all decided that that is an issue to be brought up  
10 at the close of evidence, not at this point; that it  
11 depends on what the evidence brings. That's my  
12 memory of it, if the Court agrees.

13 MR. BELDING: And we agreed that he would be  
14 allowed to bring that up if it was relevant at the  
15 end of the close --

16 THE COURT: It didn't matter to you last night.  
17 I mean, you really can't make a determination under  
18 the same set of facts until you've heard all the  
19 evidence.

20 But, based upon what y'all have told me about  
21 the case, the plaintiffs are entitled to prove both  
22 causes of action, but, at the close of evidence, may  
23 be in a position where they have to elect.

24 MR. HEMLEPP: Yes, Your Honor. And that motion  
25 is made as a motion in limine so that I've made

1           everybody aware that I was going to bring it up.

2           THE COURT: Yeah. I think that's something we  
3           bring up at the close of the evidence.

4           MR. HEMLEPP: Yeah.

5           THE COURT: I did look through the Dead Man's  
6           statute last night. Wonderful statute, so clearly  
7           worded. But, you know, one of the documents I  
8           believe y'all have told me, obviously, in this case,  
9           is the will, which, in and of itself, is one of the  
10          exceptions to the statute.

11          So that makes sense why we're relying on that  
12          and will be relying on that in this trial;  
13          basically, the idea being that if events or parties  
14          are profiting saying what a decedent told you and it  
15          can't be contradicted by testimony of other  
16          witnesses.

17          The witnesses have been apprised of that and,  
18          hopefully, we can stay within the rules on that. If  
19          we can't, we'll tackle that when we get to it.  
20          Obviously, the will is an exception, and I expect it  
21          to be used.

22          MR. BELDING: Your Honor, the last motion, is  
23          it being withdrawn or denied at this time?

24          MR. HEMLEPP: I think it's held in abeyance.

25          THE COURT: I don't have to rule on it. I

1 mean, a motion in limine you can leave forever.  
2 It's up to y'all to get me to make a ruling on it.  
3 I don't see a point in ruling on it when we haven't  
4 heard the case. I certainly think it's appropriate  
5 to be ruled upon after the close of the evidence.

6 MR. HEMLEPP: Another issue that we discussed  
7 yesterday regarded the deposition of the other  
8 plaintiff, Emily Edwards. Emily Edwards is the  
9 daughter of Elisa Edwards. She is currently  
10 enrolled in college in Canada. She is not here  
11 today, but she has been deposed in this case. And  
12 I -- by agreement in a pretrial meeting, we agreed  
13 that we would admit the deposition.

14 Your Honor, I'm having my law clerk come to  
15 court to help me in presenting that to the jury.  
16 And I may, from time to time, need to coordinate  
17 with her.

18 THE COURT: We won't take offense if she texts  
19 you during Mr. Belding -- just turn the beeper off.

20 MR. HEMLEPP: Oh, absolutely. Absolutely. I  
21 won't interrupt the trial to do that.

22 THE COURT: All right. Anything else? And --  
23 well, just as to the point of depositions, we  
24 agreed --

25 Go ahead, Mr. Belding.

1           MR. BELDING: Thank you, Judge. Yes. We  
2 stipulated we would agree to that deposition being  
3 read and admitted as evidence.

4           THE COURT: All right. And the defendant did  
5 not object to the deposition being published. Now,  
6 I haven't read the deposition; I don't know how much  
7 objecting there was during the deposition.

8           MR. HEMLEPP: Not a lot.

9           MR. BELDING: I don't think there was any. I  
10 don't remember any.

11          THE COURT: Y'all are just going to read your  
12 objections to the form, I guess, into the record?

13          MR. HEMLEPP: I actually don't think there were  
14 any objections. I've read it several times, and it  
15 was a very friendly, noneventful deposition.

16          MR. BELDING: Right. And by publishing it and  
17 reading it, does that mean, Your Honor, that the  
18 jury would get a copy of the transcript as well or  
19 it'd just be just like it was from the witness  
20 stand?

21          THE COURT: My opinion is no. Now, I can't  
22 send a live witness back to the jury room, and I  
23 don't want to send the live testimony to read back  
24 there. My intent would be not to give a copy of the  
25 deposition to the jury. Their job is to listen and



1           hear the testimony and take that all into account.

2           If you find out something different, let me know.

3           Anything else before we start moving forward?

4           MR. BELDING:  Nothing from the plaintiff, Your  
5           Honor.

6           THE COURT:  The deposition will be the second  
7           witness then?

8           MR. BELDING:  I apologize?

9           THE COURT:  The deposition will come after --  
10          let's see here.  The deposition will come after --

11          MR. BELDING:  After the plaintiff's case.

12          MR. HEMLEPP:  The deposition is coming in, in  
13          my case.

14          THE COURT:  Oh, okay.  All right.  One other  
15          thing:  Once the first witness finishes the  
16          testimony, we'll have to take a break, five or ten  
17          minutes, so we can wipe down and sanitize the  
18          witness stand.  We'll let it all dry out, and then  
19          we'll move on.  If that's your only witness, then  
20          move on -- actually, that would be a good time to  
21          take a break anyway.

22          Anything else?

23          MR. BELDING:  Nothing from the plaintiff.

24          THE COURT:  I didn't ask y'all this:  But did  
25          y'all stipulate to certain exhibits?

1           MR. BELDING: I think we have. There's eight  
2 exhibits that are the same that you have, and  
3 Mr. Hemlepp has a copy. They're stipulated. I can  
4 go quickly. I don't need to authenticate them all.

5           THE COURT: So, just for the record, everything  
6 has been stipulated to by the parties?

7           MR. BELDING: Right. Now, I was still planning  
8 on moving them all in.

9           THE COURT: I think that's fine, but we don't  
10 need to have any discussion.

11          MR. HEMLEPP: I will just say that I'm handing  
12 you what's been marked as Exhibit 1, and move it in.

13          THE COURT: Without objection?

14          MR. HEMLEPP: Your Honor, I have two exhibits  
15 that we've already talked about. I think they're  
16 going to be moved in without objection as well. One  
17 of them is the will of Mrs. Bryan. The other one  
18 is --

19          THE COURT: You told me they're without  
20 objection, so let's just get ready for them.

21          (The jury enters the courtroom at 9:18 AM.)

22          THE COURT: Okay. Good morning, ladies and  
23 gentlemen, Madam Foreperson. Thank you for agreeing  
24 to serve. We appreciate it. I hope everyone had a  
25 nice evening. In addition to serving on jury duty

1       this week, you're all going to know what it feels  
2       like to be in a hockey arena. You're getting two  
3       things for one this week. Thank you for being here  
4       this morning.

5               Ladies and gentlemen, we're about to try the  
6       case of Elisa Montgomery Edwards and Emily Cecile  
7       Edwards vs. David C. Bryan, III. Now, before we  
8       begin this trial, I want to tell you this trial will  
9       be different from what you might expect. Many  
10      people don't have a chance to attend actual court  
11      sessions as you are doing now and may think, from  
12      watching television or movies or reading books, that  
13      trials are full of high drama, intense action, and  
14      riveting circumstances. While all these things may  
15      be true at times, this trial is not for  
16      entertainment.

17             This courtroom is a place of honor that are for  
18      the protection and preservation of citizens' rights  
19      through what many have called the greatest justice  
20      system ever created.

21             The attorneys appearing before you are  
22      advocates for the parties they represent; but, first  
23      and foremost, they are officers of the court, sworn  
24      to uphold the integrity and fairness of our judicial  
25      system. You should expect them to be professional,

1       confident, and ethical in the representation of  
2       their clients' interests. Remember that you've  
3       taken an oath to try this case and reach a fair and  
4       impartial verdict -- or you will be taking an oath.  
5       You're also expected to be professional, reasonable,  
6       and ethical. Thank you for accepting this important  
7       responsibility.

8               At this time, I'll have the Clerk of Court  
9       swear you in.

10              (Jury sworn.)

11             THE COURT: All right. Ladies and gentlemen,  
12       the first thing that will occur here is that the  
13       attorney for the plaintiff -- the plaintiff is the  
14       person who has brought this action or suit. Her  
15       attorney will make an opening statement which will  
16       be followed by a similar statement by the attorney  
17       for the defendant. These opening statements are not  
18       arguments. Those arguments will come at the  
19       conclusion of the case.

20             The purpose of the opening statements is for  
21       each party to outline his or her claims and the  
22       evidence he or she intends to present in support of  
23       these claims.

24             Following the opening statements, each side  
25       will present its evidence with the plaintiff, once

1       again, going first. Evidence may take many forms.  
2       It may be testimony, documents, models, photographs,  
3       or the like. You should pay close attention to all  
4       evidence which is presented by each party. You, the  
5       jury, are the sole finders of the facts in this  
6       case, and no one else will be permitted to weigh the  
7       evidence and render a verdict based upon it.

8               After all the evidence has been presented, the  
9       attorneys will make their closing arguments. Unlike  
10      opening statements, the final remarks will be true  
11      arguments; that is, each side will emphasize certain  
12      portions of the evidence to try to persuade you to  
13      agree with their version of the facts.

14             Keep in mind that opening statements, as well  
15      as closing arguments of the attorneys, do not  
16      represent evidence in this case. Give the attorneys  
17      your undivided attention. Keep in mind that what  
18      they say is not evidence.

19             After the arguments are finished, I will  
20      explain to you the law which applies to this case.  
21      You will then retire to the jury room to consider  
22      the facts and the law. Once you have done so, you  
23      will return a verdict in favor of one side or the  
24      other.

25             During the course of the trial, the plaintiff

1       has the burden of proving her claims. The plaintiff  
2       must meet the burden by proving her claims by a  
3       greater weight or preponderance of the evidence.  
4       What we mean by greater weight of the evidence can  
5       be illustrated by imagining a traditional set of  
6       scales. When the case begins, the scales are even.

7             After all the evidence has been presented, if  
8       the scales should remain evenly balanced or if they  
9       should tip even slightly in favor of the defendant,  
10      the plaintiff would have failed to meet her burden  
11      of proof and your verdict would be for the  
12      defendant.

13            If, on the other hand, the scales should tip  
14      even slightly in favor of the plaintiff, then she  
15      would have met her burden of proof and your verdict  
16      would be for the plaintiff.

17            As I mentioned earlier, I'm the only person who  
18      can tell you what the law is. You're the only ones  
19      who can determine what the facts are. I do not have  
20      the right to indicate how I may feel about the  
21      evidence presented and, throughout this trial, my  
22      intention would be to act impartially towards each  
23      party.

24            Second, from time to time, an attorney will  
25      object to some bit of testimony or evidence which

1       the other side is seeking to present. As in sports,  
2       business, or any other structured activity, there  
3       are certain rules that both sides must obey in  
4       presenting evidence. These rules have a definite  
5       purpose; they ensure the information you receive is  
6       the most trustworthy and reliable evidence  
7       available.

8             An objection is the procedure that is used for  
9       an attorney to call a possible violation of the  
10      rules to my attention as the judge of this court.  
11      For this reason, you should not hold an attorney's  
12      objection against his or her client, nor should you  
13      conclude from my ruling on the objection that I  
14      favor one side or the other.

15            Finally, I'd ask you to pay close attention to  
16      all the evidence presented to you. It is you, the  
17      jury, who will determine the facts in this case and,  
18      as a result, you'll have to evaluate the credibility  
19      and believability of each witness who testifies in  
20      this matter.

21            Once again, we thank you for your service this  
22      week, and I thank you in advance for the attention  
23      you're going to give in this case. I don't see  
24      anyone with notepads, and you shouldn't have them.  
25      But, if you do have anything with you, please don't

1 take any notes during the case. I want all your  
2 attention focused on the witness stand, hearing the  
3 evidence as its presented to you.

4 At this time, I'd like you to give your  
5 complete and undivided attention to the attorneys as  
6 they make their opening statements.

7 Mr. Belding?

8 MR. BELDING: Thank you, Your Honor. May it  
9 please the Court?

10 THE COURT: Yes, sir.

11 MR. BELDING: Good morning, Madam Foreperson  
12 and ladies and gentlemen of the jury. My name is  
13 Dave Belding. I introduced myself to you yesterday  
14 at the jury qualification across the street. We do  
15 appreciate your service. This and voting are two of  
16 the things all citizens do in this country. And  
17 it's a good thing we do them, because we need this.

18 If you have a dispute with somebody, you would  
19 certainly want to have 12 people that were willing  
20 to step up and say -- help us resolve this dispute.  
21 We're going to try to speak up a little bit because  
22 of the masks. I thank y'all for wearing them.

23 Let me introduce to you who we have here today.  
24 This is Ms. Elisa Montgomery Edwards. She is my  
25 client. There's another client in this case --



1       there's an empty chair here -- and that is her  
2       daughter, Emily Cecile Edwards. Emily Cecile  
3       Edwards is in college in Canada right now. There  
4       are travel restrictions, as I'm sure you can  
5       understand, that make it very difficult for her to  
6       get back here to attend the trial. Plus, she would  
7       have to miss some college because of the  
8       requirements that they make them quarantine when  
9       they go back.

10           So, without objection and with the agreement of  
11       Judge McLeod, we determined that her daughter, Emily  
12       Cecile Edwards, did not have to physically appear  
13       here today. However, we understand that you will  
14       hear about the deposition that she gave in this case  
15       that was taken by Mr. Hemlepp. So she will be here;  
16       you just won't be able to see her.

17           She also has a claim in this case against the  
18       defendant. The defendant is David Cuttino  
19       Bryan, III. And he will be introduced, of course,  
20       by Mr. Hemlepp. But, just so you'll know, this is  
21       the defendant's uncle. She is his niece. And  
22       Emily, who's up in Canada, is the grandniece of the  
23       defendant. So this is a family situation.

24           What we intend to do is to get done with this  
25       trial today. We only have a couple of live

1 witnesses. We think this is a pretty  
2 straightforward case. We are going to be explaining  
3 to you -- rather than me doing it now, you'll get it  
4 from the witness stand what the issue is, what  
5 happened in this case, and then we'll ask you at the  
6 end to render a verdict for the plaintiffs.

7 I appreciate your attention. I hope it's not  
8 too boring. And I thank you for your service.

9 MR. HEMLEPP: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. HEMLEPP: Mr. Belding.

12 Trust. Trust is the word that you will hear  
13 more than any other word today. Ladies and  
14 gentlemen, we have these and we had a ruling earlier  
15 from the Court that allowed us to not wear a mask  
16 while we're addressing the jury because we want to  
17 make sure that you hear everything. It's important  
18 that you hear everything because, in the end, you're  
19 going to be asked a question about trust.

20 My name is Michael Hemlepp. We met yesterday.  
21 I work with the Jeffcoat firm, which is a Lexington  
22 County firm. I'm from Lancaster, so I keep saying  
23 Lancaster. If I say Lancaster, I mean Lexington.  
24 It's a Lexington County firm.

25 I have the honor of representing Mr. Bryan, who

1 Mr. Belding just introduced to you. Mr. Bryan is a  
2 lifelong Lexington resident. His father was a  
3 Lexington resident. His father was a prominent  
4 attorney here in Lexington, David Bryan, Jr. And  
5 Mr. Bryan, Jr., the father, passed away years ago.  
6 This family has been in disarray since then.

7 Why is trust such an important word? Well, I'm  
8 a writer. I like to write. And trust is a  
9 fascinating word to me because it means so many  
10 things. If I told you that I don't trust Joe, you  
11 might think that I think he's dishonest. But,  
12 actually, I can think he's totally honest, but not  
13 good at what he's doing, not competent. We've all  
14 known somebody who we think is honest as the day is  
15 long, but we wouldn't trust them with a task.

16 I could say I don't trust Joe even though he's  
17 honest and even though he's competent, but because  
18 he might have, like, a bias. He might be talking to  
19 me through a lens of his own preconceived ideas or  
20 his world view or his past experiences.

21 Trust, when you think about it in your everyday  
22 life, means lots of different things. Trust can be  
23 a verb. I entrust something to you. You watch my  
24 dog, I'm entrusting my dog to you because I love my  
25 dog. I do, in fact, love my dog. In the legal

1 world, trust can also be a noun. It's a legally  
2 created entity which holds and owns property for the  
3 benefit of somebody else.

4 Now, you're not expected to know the ins and  
5 outs of trust. The Judge, Judge McLeod, is the  
6 judge of the law. He's going to tell you what the  
7 law is, and he's going to tell you the law to apply  
8 in this case because he's the judge of the law.

9 But you are the judges of the facts -- of the  
10 facts of this case. You are the ones who decide  
11 when you hear something, can I trust it? Can I  
12 trust that person is honest? Can I trust that  
13 person is competent? Can I trust that person  
14 doesn't have a bias? Can I trust it?

15 I agree with Mr. Belding. In this case, we've  
16 agreed on lots of things. And one of the things I  
17 agree with, it's not going to be a long case. It's  
18 probably going to be over today. It's going to be a  
19 day-long seminar about trust. And I'm trusting you  
20 to listen carefully; to use your common sense.

21 There's a lot of legal jargon that's going to  
22 be thrown at you, but this is also a real-world case  
23 that happened to a real family. And I trust that  
24 you're going to do your duty, and we're going to try  
25 and make it as efficient as possible. Thank you.

1 Thank you, Your Honor.

2 MR. BELDING: Your Honor, may it please the  
3 Court?

4 I'd like to begin the plaintiff's case by  
5 calling to the stand Ms. Elisa Montgomery Edwards.

6 ELISA MONTGOMERY EDWARDS

7 being first duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Have a seat and state your full  
10 name for the record, please.

11 THE WITNESS: Elisa Montgomery Edwards.

12 DIRECT EXAMINATION

13 BY MR. BELDING:

14 Q. All right. Ms. Edwards, good morning. I'm  
15 going to take this off just for a few minutes.

16 Ms. Edwards, where do you live?

17 A. I live in Lexington County, West Columbia.

18 Q. How long have you lived in Lexington County?

19 A. 37 years.

20 Q. Okay. Is that most of your life?

21 A. Most of my adult life, yes.

22 Q. Okay. And is that -- is it unincorporated  
23 Lexington County or is it in West Columbia or Cayce  
24 or where?

25 A. West Columbia.

1 Q. Do you attend a church?

2 A. I do, Westminster Presbyterian Church.

3 Q. Do you hold any offices there?

4 A. I do. I serve as the clerk of session and  
5 elder in the church.

6 Q. What do you do for a living?

7 A. I had worked for the South Carolina National  
8 Guard in a division called service member family  
9 care. And I serve as their director of employment  
10 services.

11 Q. How long have you been doing that?

12 A. Nine years.

13 Q. Okay. Before you went with the National Guard,  
14 what did you do?

15 A. I worked for the South Carolina Bankers  
16 Association and spent a lot of my career in banking.

17 Q. What did you do with -- what were your duties  
18 with the banking --

19 A. I was the senior VP and ran their for-profit  
20 subsidiary and worked with insurance. And I worked  
21 with a lot of banks in our state.

22 Q. Tell me a little bit about your educational  
23 background. Did you finish high school?

24 A. I finished high school. I went to Covington  
25 High School in Covington, Tennessee. Then I went to

1 the University of South Carolina and graduated with  
2 a degree in business administration.

3 Q. Now, your family, where did you say you were  
4 born?

5 A. I was born in Memphis, Tennessee.

6 Q. Who were your parents?

7 A. My parents are Sharon Bryan Montgomery and  
8 Robert Edward Montgomery.

9 Q. Did you have brothers or sisters?

10 A. Yes. I was the oldest child. I have a  
11 brother -- his name is Bryan Montgomery -- and a  
12 sister, Mary Cecil Montgomery.

13 Q. And who were your grandparents on your mother's  
14 side?

15 A. My grandparents were David C. Bryan, Jr. and  
16 Cecil Irene Bryan.

17 Q. Are your -- where did they live?

18 A. They lived in Cayce, South Carolina.

19 Q. Okay. And are either of them still living?

20 A. No. They died in 2009.

21 Q. Both of them in the same year?

22 A. Yes, sir.

23 Q. Now, who were your -- those grandparents, the  
24 Bryans, who were their children?

25 A. Their children were David C. Bryan, III, who is

1 the defendant, and my mother, Sharon Lee Bryan  
2 Montgomery.

3 Q. Two kids?

4 A. Yes.

5 Q. Okay. And, to your knowledge, where does your  
6 uncle live?

7 A. He lives in Lexington County.

8 Q. Are you married?

9 A. I'm -- no, I'm not. I'm divorced.

10 Q. Do you have any children?

11 A. I have two children.

12 Q. Is one of them a plaintiff in this case?

13 A. One of them is a plaintiff; it's my daughter,  
14 Emily Cecile Edwards. And then I have a son,  
15 Brandon --

16 Q. What's his name? I'm sorry.

17 A. Brandon Montgomery Edwards.

18 Q. Brandon?

19 A. Yes.

20 Q. All right. How old is your daughter?

21 A. She's 22 years old.

22 Q. What year was she born?

23 A. She was born in 1997.

24 Q. Do you remember the exact date?

25 A. December 3rd.



1 Q. Did you have custody of your children after the  
2 divorce?

3 A. Yes, I did.

4 Q. Okay. We've mentioned this, but I need you to  
5 tell us: Where is Emily Cecile Edwards right now?

6 A. Emily is in St. Catharines, Ontario, and she's  
7 attending Brock University.

8 Q. How long has she been in Canada?

9 A. She's a senior this year, so she's been up  
10 there for four years.

11 Q. Any particular reason why she would have gone  
12 to school in Canada?

13 A. Well, she looked at different options, and  
14 Canada had a great school that she liked. Tuition  
15 was a factor. And the tuition had good rates for  
16 Canada. Her father has Canadian citizenship, and  
17 that was the attraction to go to Canada.

18 Q. Okay. You understand that Emily had her  
19 deposition taken earlier this year, correct?

20 A. That's correct.

21 Q. Did you attend that deposition?

22 A. Yes, I did.

23 Q. How was it conducted?

24 A. We had to do it virtually because of COVID.

25 Q. And I think we're going to be hearing the

1        thing -- the entire deposition in this case. But,  
2        between us, did Ms. Emily Cecile Edwards know much  
3        about this case?

4        A.     She knew what I had been telling her during  
5        this time. Yes.

6        Q.     Okay. Now, when did your grandfather, David  
7        Cuttino Bryan, Jr., pass away?

8        A.     January 9th of 2009.

9        Q.     Was his estate probated in Lexington County?

10       A.     Yes, it was.

11       Q.     How did you find out that your grandfather's  
12       estate had been opened?

13       A.     I received a letter in the mail from the  
14       probate court listing me and my daughter, Emily, as  
15       one of the, I think it's called, devisees for the  
16       estate, two of seven. Emily and I were two of seven  
17       people that were listed in his will.

18       Q.     Okay. I'm going to have the court reporter  
19       hand you Plaintiff's Exhibit 1.

20               Ms. Edwards, are you looking at what's been  
21       marked as Plaintiff's Exhibit 1?

22       A.     Yes, I am.

23       Q.     What is this document?

24       A.     This is information to heirs and devisees.

25       Q.     Do you know what heirs are?

1       A.    I think they're people that receive a benefit  
2       after someone dies, whether they have a will or not.

3       Q.    What is -- and I've heard this word pronounced  
4       about three different ways.  Who are devisees?

5       A.    Devisees are people that are listed in a will  
6       that are to receive a certain amount of money or  
7       property.

8       Q.    How many pages are in this document?

9       A.    There are two pages in this document.

10      Q.    Now, do you have -- let me ask the court  
11      reporter to hand you what's been premarked as  
12      Plaintiff's Exhibit 2.

13           All right.  Do you know what this document is?

14      A.    This is the Last Will and Testament of my  
15      grandfather, David C. Bryan, Jr.

16      Q.    How many pages are in it?

17      A.    I believe there are six pages -- six pages,  
18      plus the cover page.

19      Q.    All right.  Did you ever read this will?

20      A.    Yes, I did.

21      Q.    How did you get a copy of it?

22      A.    I had to come down here to the probate court  
23      and pull it myself.

24      Q.    Now, in this will, who was named to be the  
25      personal representative of the estate of your

1 grandfather?

2 A. My uncle, David C. Bryan, III.

3 Q. Anyone else?

4 A. Yes. Robert B. Ferrell, who was my  
5 grandfather's CPA.

6 Q. Do you know whether or not Mr. Ferrell ever  
7 actually served as the personal representative or PR  
8 of your grandfather's estate?

9 A. No. I saw a document when I came to pull some  
10 files that he had removed himself as a personal  
11 representative.

12 Q. To your knowledge, did he ever have anything to  
13 do with the administration of the estate?

14 A. No.

15 Q. Okay. Did anyone challenge this will, to your  
16 knowledge?

17 A. No; just me.

18 Q. Okay. Did you actually bring a challenge in  
19 the probate court to this will?

20 A. No.

21 Q. Okay. So, ultimately, did the estate close  
22 without any challenge by anyone?

23 A. Yes, it did.

24 Q. To your knowledge, was this will admitted to  
25 probate and your grandfather deemed by the Court to

1 be competent to have made a will?

2 A. Yes.

3 Q. Were you and your daughter named in the will?

4 A. Yes, we were.

5 Q. Okay. Where?

6 A. We were listed as -- let me see where it says.

7 All right. Under Item 12, it said -- that's  
8 not right. Here it is. Oh, here it is. It says:  
9 Disposition of the Cecil I. Bryan trust at Wife's  
10 death. Upon the death of my wife, the entire  
11 remaining principal of the Cecil I. Bryan trust  
12 shall be distributed as follows: One-fourth to  
13 David C. Bryan, III or, if predeceased, to his wife  
14 and her children; one-fourth to Sharon Lee  
15 Montgomery or, if predeceased, to Ethan Montgomery;  
16 one-fourth to Elisa Montgomery Edwards; and  
17 one-fourth to Emily Cecile Edwards.

18 Q. Okay. Now, to your knowledge, was this trust  
19 ever distributed to those four people?

20 A. No.

21 Q. Okay. What -- and the will speaks for itself.

22 But can you tell us in here what the will was  
23 supposed to be for?

24 A. The way the will was set up, it was set up in a  
25 trust. And when -- I know when my grandfather made

1       the will, he had a sizable estate and the will was  
2       set up with the trust to help with inheritance tax  
3       upon his death so there would be less inheritance  
4       tax for his heirs and devisees.

5       Q.    And then, after his death, who was supposed to  
6       be the initial beneficiary of the trust?

7       A.    The initial beneficiary of the trust was for my  
8       grandmother, Cecil Bryan.

9       Q.    What was the trust intended to do for her?

10      A.    To pay out any of her life expenses that she  
11      had.

12      Q.    Okay. What was supposed to happen after she  
13      died?

14      A.    After she died, all the funds that were in the  
15      trust were supposed to go to the four heirs, which  
16      were David Bryan, III; my mother, Sharon Montgomery;  
17      me, and my daughter, Emily.

18      Q.    Okay. Now, let me go back and make sure I got  
19      this chronology right. When did your grandfather  
20      die?

21      A.    He died in January of 2009.

22      Q.    Okay. When did your grandmother die?

23      A.    She died the same year, October 22nd of 2009, a  
24      little over nine and a half months later.

25      Q.    Okay. Now, after your grandfather passed away,

1 do you know when his estate was opened?

2 A. It was opened like two weeks after he died.

3 Q. And your notice is that in Exhibit 1?

4 A. Right. I noticed on here it said it was opened  
5 on January 22nd of 2009. And he had died January  
6 the 9th.

7 Q. Okay. Now, when did the estate of your  
8 grandfather actually close?

9 A. Well, I had to come down to the court to figure  
10 that out. I think it was in -- maybe two years  
11 later. There was some lag time in there. And I  
12 don't have the date exactly. I think it was about  
13 two years after I got noticed.

14 Q. Okay. Would that have been sometime maybe in  
15 2011?

16 A. Correct.

17 Q. Was your grandfather's estate closed after your  
18 grandmother had already passed away?

19 A. Yes, it was.

20 Q. Okay. Now, do you know, of your own personal  
21 knowledge, what a personal representative is  
22 supposed to do?

23 A. It's somebody entrusted to take care of the  
24 estate of, or the financial matters, a person that  
25 they're entrusted to.

1 Q. Okay. Now, after your grandfather died, did  
2 your uncle, David C. Bryan, III, did he get  
3 appointed as the personal representative of the  
4 estate?

5 A. Yes, he did.

6 Q. Did he ever meet with you or any other family  
7 members that were named in the will about the  
8 estate?

9 A. Yes, he did. We had family occasions, and he  
10 came over to the house one afternoon. We were  
11 having a big family dinner. He was passing out  
12 papers for everyone to sign.

13 He gave one to my brother, who is the father of  
14 Ethan, who was to receive some money; said, here,  
15 sign this thing for your son, who was underage at  
16 the time; said, sign this so your ex-wife can't get  
17 any money, and then handed it to my mother and said,  
18 here, sign this form.

19 And my mother, who had trouble seeing, just  
20 signed a blank form. And he handed me a form. And  
21 I did not sign it because I will not sign a blank  
22 form.

23 Q. Okay. Tell me a little bit about this form.  
24 Do you recall what it said on it?

25 A. It was a form to say that they received their



1 share or distribution of the estate.

2 Q. So the form -- when, approximately, was this  
3 meeting?

4 A. This was probably -- I don't know when the --  
5 the date whenever the forms were signed. But it was  
6 a year after my grandfather's death.

7 Q. Let me ask you this: There were some other  
8 forms that were signed in June of 2009 by others.  
9 Could that have been the same day?

10 A. That would have been it. It was in the  
11 summertime.

12 Q. So June 2009 would have been approximately  
13 five, six months after your grandfather passed away?

14 A. Correct.

15 Q. Grandmother still alive?

16 A. Correct.

17 Q. Now, this form, what is it asking you to admit  
18 or agree to for the probate court?

19 A. That we received our share of the inheritance.

20 Q. Had you received anything at that time?

21 A. No.

22 Q. And there's a part where it's supposed to -- on  
23 the form, is there a part where it's supposed to say  
24 what you received?

25 A. Correct.

1 Q. And you were asked to sign that in blank?

2 A. Correct.

3 Q. And you did not do that?

4 A. I did not.

5 Q. Was there one for Emily, your daughter?

6 A. I did not sign one for her as well.

7 Q. How old would Emily have been in 2009?

8 A. She was born in '97, so she would have been  
9 around 11.

10 Q. Now let me ask the court reporter to hand you  
11 what's been marked for identification Plaintiff's  
12 Exhibit 3, please.

13 All right. What's been marked as Plaintiff's  
14 Exhibit 3? Do you know what this document is?

15 A. This is a final accounting of my grandfather's  
16 estate. And it has a list of receipts and a list of  
17 disbursements.

18 Q. Okay. And when was this filed?

19 A. This was filed on September 20th of 2010.

20 Q. All right. So in the year after your  
21 grandparents died; is that right?

22 A. Correct.

23 Q. Now, in this form, is there a beginning balance  
24 that's listed for the estate?

25 A. The beginning balance of the estate was listed

1 at \$994,900.

2 Q. Okay. And is there an indication of  
3 disbursements?

4 A. There is a list of disbursements, and they  
5 total up to \$994,900.

6 Q. Now, look at the front page. There's a summary  
7 on the front; is that correct?

8 A. That is correct.

9 Q. What is the beginning balance in the summary?

10 A. The beginning balance is \$994,900.

11 Q. Okay. And what is shown as less disbursements?

12 A. He put down \$523,312.94 as disbursements.

13 Q. When you said he put it down, who would have  
14 done that?

15 A. That would have been David Bryan, III.

16 Q. Did he sign this form?

17 A. Yes, he did.

18 Q. Okay. I'm trying to get the math right. So if  
19 there's \$994,000 and 523- have been spent, that  
20 leaves some balance, doesn't it?

21 A. It does. \$471,587.06 went to the trust.

22 Q. Is that actually written on the form?

23 A. It's written on the form, to trust.

24 Q. Now, the ending balance is written as -- what  
25 was that number?

1 A. \$471,587.06.

2 Q. Okay. I want you to turn the page. And on the  
3 next page, which was -- was this an attachment to  
4 that form -- the first page?

5 A. Correct, it's a two-page form.

6 Q. Filed on the same date?

7 A. Yes.

8 Q. Is this page signed by your uncle, too?

9 A. This page is signed as well and stamped  
10 September 20th, 2010.

11 Q. What date did he put that he actually signed  
12 it?

13 A. He said he signed it on September the 7th of  
14 2010.

15 Q. Okay. And what are disbursements?

16 A. These are payments that were made, I guess, on  
17 behalf of the estate.

18 Q. Okay. There's one -- if you would, look at the  
19 last figure under disbursements before the total.  
20 What is that number?

21 A. That number is \$468,587.06 payable to trust.

22 Q. All right. I think you -- I want you to reread  
23 the number because I think you threw in the wrong --

24 A. \$468,587.06.

25 Q. \$468,587.06?

1 A. Correct.

2 Q. All right. Is there an indication of what that  
3 was disbursed for?

4 A. It says to trust.

5 Q. To trust, okay. Let me ask you one thing about  
6 this. Go back to the beginning, the first page.

7 You see where it's got the ending balance to trust?  
8 What was the first part of that number?

9 A. 471-. And on the second page, it was 468-, a  
10 \$3,000 difference.

11 Q. Okay. Thank you. Do you know much about the  
12 probate process?

13 A. I'm learning.

14 Q. How are you learning?

15 A. Well, I've learned a lot from you. I came up  
16 here to the courthouse and asked questions and  
17 pulled. And I've been reading a lot.

18 Q. Where is your mother today?

19 A. My mother is deceased.

20 Q. When did she pass away?

21 A. Last July.

22 Q. And in the last -- July of 2019?

23 A. Correct.

24 Q. In the last more than a year, have you been  
25 having to deal with her estate?

1 A. Yes.

2 Q. What is your understanding of the final  
3 accounting and what is supposed to be done with all  
4 of the property of the estate?

5 A. Well, you're supposed to pay all the bills that  
6 are outstanding from the estate and provide the  
7 courts with a final accounting of everything that  
8 was paid for the estate and then all the  
9 disbursements that were listed as well.

10 Q. Okay. Now, again looking on the first page of  
11 what's been marked as Exhibit 3, you testified that  
12 your uncle, Mr. Bryan, had signed this form,  
13 correct?

14 A. Correct.

15 Q. Do you see the printed words on that form above  
16 his signature on the first page?

17 A. It says in the matter -- no. Let's see.

18 Q. Just the sentence right above his signature.

19 A. I gotcha. It says: The personal  
20 representative declares that this account has been  
21 examined and that it contains -- that its contents  
22 represent a correct statement of all receipts and  
23 disbursements and are true to the best knowledge and  
24 belief of the personal representative.

25 Q. Okay. So is it your understanding that,

1       according to the final accounting, that either  
2       \$471,000 and some cents or \$468,000 and some cents  
3       are going to trust?

4       A.     That is correct.

5       Q.     All right. Let me ask you, did you actually  
6       receive a cash distribution from your grandfather's  
7       estate?

8       A.     It's listed on here as a disbursement that I  
9       received \$8,000. But, no, I did not receive that as  
10      a disbursement. It was a reimbursement to pay for  
11      my grandmother's healthcare workers that were taking  
12      care of her at the time.

13      Q.     During what time?

14      A.     During her last few months of life.

15      Q.     During her last few months, you were taking  
16      care of her?

17      A.     Yes. I was coordinating her healthcare worker  
18      that came in. It took quite a few of us to take  
19      care of both my grandparents. My grandmother's --  
20      her final wishes were to stay at home and to die  
21      peacefully in her home. So we had home healthcare  
22      come in to take care of her.

23      Q.     Did you actually pay money for her healthcare?

24      A.     Yes.

25      Q.     Do you know how much you spent?

1       A.    Not off the top of my head.  She had a  
2       long-term care policy that covered a good portion of  
3       the home healthcare; that there was about \$1,000 a  
4       month that we were short.  So David, my uncle, would  
5       give me a check for \$1,000 every month so that I  
6       could pay the healthcare workers.

7       Q.    So when it says there's money disbursed from  
8       the estate, \$8,000 to you, that's not a cash  
9       distribution to you --

10      A.    No.  That was just a reimbursement.

11      Q.    All right.  Do you know whether or not your  
12      daughter, Emily, received a cash distribution from  
13      your grandfather's estate?

14      A.    No.  And he put down here that my daughter  
15      received a \$28,000 disbursement.

16      Q.    Well, is that true or not?

17      A.    No.

18      Q.    Do you have any idea what this \$28,000 is?

19      A.    When my daughter was born, my grandfather gave  
20      me \$5,000, which he did with each one of his  
21      grandchildren.  And I asked him to help me invest it  
22      because he loved to play the stock market.  He was  
23      very smart and savvy in the stock market.

24                So we put it into a Smith Barney account and it  
25      was listed as David C. Bryan, Jr., who was my



1 grandfather, as custodian for Emily Cecile Edwards  
2 under the Uniform Gift of Minors Act. So he helped  
3 me invest that \$5,000, and that was not part of the  
4 estate. And so upon -- when she turned 18, the  
5 money was worth approximately \$28,000.

6 Q. When did your daughter turn 18?

7 A. She's 22 now, minus four. In 2016 -- '15, '16.

8 Q. Possibly December of 2015?

9 A. Correct.

10 Q. Okay. So is that when she got this money?

11 A. That's when she got this money, yes.

12 Q. So this \$28,000 on the accounting that's listed  
13 as a disbursement paid out of the estate, had it  
14 even been made at that time?

15 A. No, it had not.

16 Q. Okay. And is it your understanding that the  
17 money in the Smith Barney account was not part of  
18 what we call estate funds?

19 A. Correct.

20 Q. Who owned that account, essentially?

21 A. My grandfather and Emily owned that account.

22 Q. Okay. How was your grandfather holding that  
23 money?

24 A. It was in a Uniform Gift of Minors Act. When  
25 my grandfather died, all the financial paperwork

1           went to David, III, my uncle.

2           Q.     Okay.  If it's a gift, who owns it?

3           A.     The -- my daughter, Emily Edwards.  Yeah.

4           Q.     So this was not estate funds?

5           A.     No.

6           Q.     This was something already been given to your  
7           daughter; is that correct?

8           A.     It was given to her at birth, yes.

9           Q.     Okay.  Now, you testified earlier that it took  
10          until, I believe you said, November of 2011 for the  
11          estate to close of your grandfather; is that right?

12          A.     Right.

13          Q.     Over two and a half years?

14          A.     Correct.

15          Q.     Okay.  Now, during those two and a half years,  
16          did you have other discussions with your uncle about  
17          the trust?

18          A.     Yes, I did.  I talked to -- right after my  
19          grandfather died, he had money in a Smith Barney  
20          account and lots of property, rental properties.  
21          And I talked with my uncle about the estate.  And  
22          David told me he was going to leave the money in  
23          Smith Barney because in 2009 -- the economy tanked  
24          in 2009 and the stock market crashed.

25                 He wanted to leave the money in the Smith

1       Barney account to try to build it back up and earn  
2       more money before he ever disbursed the account. I  
3       told him -- I said, that's a great idea. Nobody was  
4       in need of money right away. And so he was going to  
5       keep the money in the Smith Barney account and allow  
6       it to grow before he disbursed the funds.

7       Q.    Okay. Did your uncle, as the personal  
8       representative of the estate, ever tell you any  
9       other reasons for why he couldn't disburse the funds  
10      from the trust?

11     A.    No.

12     Q.    Did your uncle ever have a conversation with  
13     you about a property on Bruce Road?

14     A.    Yes.

15     Q.    What was Bruce Road?

16     A.    Bruce Road was the property of my grandparents.  
17     That was their home. And he was going to wait until  
18     the property on Bruce Road sold -- and he was going  
19     to wait until that property sold, and then he would  
20     disburse the funds.

21     Q.    When you say disburse the funds --

22     A.    Disburse the funds from the trust.

23     Q.    Okay. Now, let me make sure I understand this.

24     Are you here today suing the estate of your  
25     grandfather?

1 A. No.

2 Q. Has that been closed and over with?

3 A. Yes.

4 Q. Are you suing your uncle for his actions as the  
5 personal representative?

6 A. No.

7 Q. Okay. So after the estate closed in November  
8 of 2011, did you have other conversations with your  
9 uncle about the trust?

10 A. I did. I asked him when he was going to  
11 disburse the funds on the trust. And my mother kept  
12 asking him and I kept asking him. And finally, one  
13 day, he says, there is no money in the trust and  
14 nobody gets anything.

15 Q. There's no trust?

16 A. He said there was no money in the trust; no  
17 trust.

18 Q. Do you know approximately when that was that he  
19 finally told you that?

20 A. It was either in 2014, '15. And that prompted  
21 me to come down to the courthouse and pull all the  
22 documents because, as far as I knew and as far as I  
23 thought, the money was being held safely in the  
24 trust, growing, and would be disbursed whenever we  
25 were ready for the money.

1 Q. Now, I understand you're up here without  
2 benefit of any notes. Have you ever been a witness  
3 at a trial under oath before?

4 A. I have not.

5 Q. Is it a little stressful?

6 A. It's okay.

7 Q. In previous testimony when you did have your  
8 notes in front of you, you stated that he told you  
9 and your mother in December of 2015. Now, is that  
10 true?

11 A. That sounds accurate.

12 Q. Okay. Does that refresh your memory?

13 A. That does refresh my memory.

14 Q. Okay. Now let me go back to this Bruce Road  
15 house. Is that where your grandmother was when she  
16 passed away?

17 A. Both of them died in the house. Yes.

18 Q. And can you tell us, to the best of your  
19 recollection, when your uncle was telling you that  
20 the Bruce Road house had to sell before he could  
21 disburse the funds?

22 A. For the first couple years, we didn't do  
23 anything with the house. We went over with the  
24 family and had Thanksgiving there after they died.  
25 We kept having our family gatherings at the house.

1 But we started cleaning the house, getting it ready  
2 to sell, and that's when David said once the house  
3 sold, he was going to disburse the funds from the  
4 estate. I assumed the house was part of the trust.

5 Q. Was that after the estate had been closed in  
6 2011?

7 A. Yes. But I did not know the estate had been  
8 closed at that time.

9 Q. Okay. And I want to make sure I understand.  
10 You said your uncle led you to believe that the  
11 money was in the trust?

12 A. He led me to believe the money was always  
13 there, would always be there for us.

14 Q. To the best of your recollection, how would he  
15 have lead you to believe that?

16 A. He told me so. He told me that the money is  
17 growing in a trust. He told me once the house on  
18 Bruce Road sold, then he would have the money in the  
19 trust available for us.

20 Q. Okay. Before December of 2015 -- and I  
21 understand that's when you say he told you there  
22 wasn't anything.

23 A. Right.

24 Q. What was the most recent time before that that  
25 you had discussed the trust and getting a

1 distribution?

2 A. There are several times throughout those years  
3 that I would just check in with him and -- to find  
4 out about the trust. And he said the money was  
5 growing and the money was there.

6 Q. Okay. Did he tell you where the money was?

7 A. It was in a Smith Barney account.

8 Q. Okay. Did you know when the Bruce Road house  
9 sold?

10 A. I think it sold in 2000 -- I don't have my  
11 notes. I don't know. I know we talked about this,  
12 but I think in 2013 or '14.

13 Q. Now let me -- do you know whether or not as  
14 part of the estate the Bruce Road house was deeded  
15 out to somebody else?

16 A. Well, when I came down to look at the court  
17 records, I saw where David, my uncle, had deeded the  
18 house over in his name to -- for the benefit of  
19 himself.

20 Q. Okay. And, by the way, again, we're not  
21 challenging anything about his being the personal  
22 representative. Is it illegal for a personal  
23 representative to deed something to themselves?

24 A. I don't --

25 MR. HEMLEPP: Objection.

1           THE COURT: Sustained. Re-ask the question.

2           BY MR. BELDING:

3           Q.    Are you, in any way, in this case, challenging  
4           that transfer of that property from David C. Bryan,  
5           as the personal representative, to himself?

6           A.    No, I'm not.

7           Q.    Do you know when that deed of distribution  
8           would have been done?

9           A.    I do not know. I don't have the exact date.

10          Q.    Would it have to have been done before the  
11          estate closed?

12          A.    It would have had to have been done before the  
13          estate closed, yes.

14          Q.    And we know the estate closed in November of  
15          2011.

16          A.    Correct.

17          Q.    All right. After you found out in December of  
18          2015 that there was no trust and there was no money,  
19          what did you do?

20          A.    I sent a letter to David. I tried to call him  
21          and texted him and said please give me an accounting  
22          of the trust. I sent him a letter and had no  
23          response from him whatsoever.

24          Q.    Okay. What would you have done with a  
25          distribution from the trust?



1       A.    I would have probably invested the money.  My  
2       portion, I would have invested.

3               My daughter -- we were trying to make plans for  
4       college.  And her graduate school is coming up, and  
5       we were trying to make plans on her future.  So  
6       that's what we would have made, those decisions for  
7       my daughter.

8       Q.    Okay.  Did you have an expectation of what each  
9       quarter share of that trust might have been?

10      A.    Yes, I did.

11      Q.    How did you have an expectation?

12      A.    Well, I looked at this document of what it said  
13      the trust was.  There's a disparity in the amounts  
14      by \$3,000.  But a quarter share of \$468,000 would  
15      have been roughly over \$100,000 for each one of us.

16      Q.    And had Mr. Bryan, your uncle, told you that  
17      the money was in a stock account with Smith Barney?

18      A.    He told me it was in a stock account with Smith  
19      Barney, growing.

20      Q.    I didn't want to misstate that.

21               Did you ever, during those years up to 2015,  
22      keep track of Wall Street and the stock market?

23      A.    Well, I did.  I knew the economy was back on  
24      track.  I knew that my personal accounts were doing  
25      well in the economy, so I just assumed the trust was

1       doing well, too.

2       Q.     Did you assume it was appreciating in value?

3       A.     Absolutely.

4       Q.     So when you stated that you thought there would  
5       be over \$100,000, did you and Emily have plans for  
6       that money, for her share?

7       A.     Correct.  You know, college is not cheap.  And  
8       I have a very smart child, and she had ideas of  
9       where she wanted to go to school.  And, you know,  
10      having that money was going to be a big factor in  
11      where she was going to go to school.  Yes.

12      Q.     Okay.  Do you recall ever confronting your  
13      uncle about the trust and him talking about some  
14      money that Emily had gotten?

15      A.     Yes.

16      Q.     Okay.  What money -- and, by the way, do you  
17      have any idea when this might have been?

18      A.     I don't recall the dates.  I don't.  It was  
19      after the estate had already been settled, which I  
20      didn't know at the time it was already settled.

21      Q.     Okay.  Was it before he told you there was no  
22      trust in 2015?

23      A.     Yes.

24      Q.     All right.  Now, the money that was in the  
25      Smith Barney stock account for Emily?

1 A. Correct.

2 Q. When did she finally get that money?

3 A. When she turned 18.

4 Q. And we determined that was in --

5 A. December 3rd of 2015 or '16.

6 Q. I think it's '15.

7 A. Okay.

8 Q. Is that in and around the time you actually had  
9 the discussion with him and found out there was no  
10 trust?

11 A. Correct.

12 Q. When you asked -- when do you believe, relating  
13 to that -- that 2015 revelation, when did you talk  
14 to your uncle about money for Emily?

15 A. During that time, I was asking him when the  
16 trust was going to be distributed.

17 Q. Did he ever tell you that she had already  
18 gotten money?

19 A. Yes.

20 Q. Well, is this fair -- let me ask you, it would  
21 not have been the money from the stock account?

22 A. Well, I knew it wasn't money from the stock  
23 account because it wasn't part of the estate. The  
24 \$5,000 that my grandfather had given me had grown  
25 and when she turned 18. That was her money to use

1       for school at 18.

2       Q.     What did Mr. Bryan claim was money that Emily  
3       had gotten?

4       A.     My daughter also received an annuity. She was  
5       the beneficiary of a life insurance annuity of  
6       \$100,000, and that was at Merrill Lynch.

7       Q.     Okay. To your knowledge, do you know how she  
8       got to be the beneficiary of an annuity?

9       A.     Yes. He opened up the -- well, the annuity,  
10      I'm not sure exactly when it was opened. But Emily  
11      was born in '97. And in 1999, he had an annuity  
12      that he opened up for --

13     Q.     And he is who?

14     A.     My grandfather had opened up an annuity with a  
15     real estate partner of his, a woman. It was a  
16     \$14,000 annuity that he had opened with a real  
17     estate partner. The -- the woman happened to be my  
18     grandfather's mistress at the time.

19             So I had found all the paperwork and documents  
20     that he opened up this \$14,000 annuity for this  
21     woman, and I gave all the information to my  
22     grandmother. And she took the information and she  
23     and my grandfather, I guess, sorted it out.

24             But in 1999, when my daughter was two years  
25     old, my grandfather went back to Merrill Lynch and

1       changed the beneficiary of that annuity, instead of  
2       his real estate partner to my daughter, Emily Cecile  
3       Edwards.

4       Q.     Okay. And when did you find out that that had  
5       been done?

6       A.     When I received notice from Merrill Lynch that  
7       my daughter was the beneficiary of this annuity. I  
8       did not know that she was the beneficiary. I went  
9       down to Merrill Lynch and had to bring in some  
10      documents, death certificate, and things like that.  
11      And I sat down with his financial advisor, a  
12      gentleman by the name of Todd Lynn, and he told me  
13      that --

14      Q.     Wait. You don't need to say what anybody else  
15      said.

16      A.     Okay. Anyway, Todd then told me the  
17      circumstances and that my grandfather had made my  
18      daughter the beneficiary in 1999.

19      Q.     Obviously, as a two-year-old, Emily didn't have  
20      anything to do with that being changed.

21      A.     No, she did not.

22      Q.     Did you have anything to do with that being  
23      changed?

24      A.     No, I did not.

25      Q.     Just that you told your grandmother about it.

1           Okay. So was that money part of the estate?

2           A. No, it was not. It was a separate annuity that  
3           had nothing to do with the estate.

4           Q. Okay. Now, when did you ultimately know for a  
5           fact that your uncle had never set up this trust?

6           A. When I came and got the documents and started  
7           checking around. And when I asked him about the  
8           estate, he told me -- he said, there's never been a  
9           trust set up.

10          Q. Okay. Do you recall whether or not -- did you  
11          attend his deposition in January of 2019?

12          A. I did.

13          Q. Did he say in that deposition, under oath, that  
14          he had never set up the trust?

15          A. He told me that he had never set up the trust,  
16          even though he said in here he did.

17          Q. Okay. So between November of 2011, at the  
18          close of the estate, which nobody challenged -- is  
19          that correct?

20          A. Correct.

21          Q. And December of 2015, four years?

22          A. Correct.

23          Q. Approximately how many times would you say your  
24          uncle told you there was money in the trust?

25          A. Every time we had a family gathering, I would

1       just say how's our money doing, just jokingly, and  
2       he'd say it's doing fine.

3       Q.     Okay. Can you put a number on that, even a  
4       ballpark number?

5       A.     I could not. I was personally going through a  
6       divorce during that time. It was a very emotional  
7       for me, so the trust and this estate was not my  
8       number one priority. And I just knew that I trusted  
9       my uncle and I knew that he -- he always took care  
10      of the family finances, and I trusted him to do the  
11      right thing.

12      Q.     Okay. Do you believe your uncle misrepresented  
13      the trust to the probate court?

14      A.     Absolutely. Yes.

15      Q.     Did he say there was money in a Smith Barney  
16      trust account for you and your daughter?

17      A.     Yes, he did.

18      Q.     Ultimately, did you find out those  
19      representations about the trust were false?

20      A.     I did, yes.

21      Q.     Were his misrepresentations material? Did it  
22      matter?

23      A.     It mattered to me. Yes.

24      Q.     How did it matter?

25      A.     Well, financially, that was money I was going

1 to depend on, and also my daughter as well.

2 Q. Okay. Did you-all rely on his representations  
3 that there was money in the trust?

4 A. Absolutely. Yes.

5 Q. How did your plans change when you found out  
6 that there was no money and that wasn't true?

7 A. Well, it made a big difference in where my  
8 daughter chose to go to school; it made a big  
9 difference in me in lots of ways. But, yes,  
10 primarily for my daughter, her choices in school.

11 Q. Okay. Do you believe your uncle knew, at the  
12 time he was telling you, that the information about  
13 the trust was false?

14 A. I did not believe it was false at the time. I  
15 believed there was money in the trust and I believed  
16 everything he told me was true.

17 Q. Okay. Do you believe, as we sit here today,  
18 that he knew that those were false representations?

19 A. Yes. They were all false representations.

20 Q. Do you believe your uncle intentionally lied to  
21 you about the trust?

22 A. Yes, I do.

23 Q. Why do you believe he lied?

24 A. He wanted to keep all the money for himself.

25 Q. Do you believe your uncle intended for you and



1       your daughter to rely on those misrepresentations?

2       A.    I think he did until, you know, I discovered  
3       the truth.

4       Q.    Do you believe he was trying to hide the truth  
5       for a period of time?

6       A.    I believe he was trying to hide the truth for a  
7       period of time, yes, I do.

8       Q.    When he was telling you about the trust during  
9       the four years to December of 2014, did you believe  
10      what he told you was true?

11      A.    I did believe everything he said.

12      Q.    Did you have any reason to think his  
13      representations were false?

14      A.    No, I did not.  He was my uncle and I trusted  
15      him.

16      Q.    Do you believe that your uncle had a duty to  
17      tell you the truth about that?

18      A.    As personal representative, he did have a duty  
19      to tell me the truth.

20      Q.    Do you believe he had a duty as your uncle?

21      A.    He had a duty as my uncle, yes.

22      Q.    Was your reliance upon what he said more  
23      because he was the personal representative or more  
24      because he was family?

25      A.    More because he was family.

1 Q. Okay. Do you have a recollection from  
2 attending Mr. Bryan's deposition last year of his  
3 explanation for why he never opened the trust?

4 MR. HEMLEPP: Objection, Your Honor.

5 MR. BELDING: Let me withdraw that.

6 BY MR. BELDING:

7 Q. Had your uncle, before his deposition, ever  
8 given you an explanation for why he didn't open the  
9 trust?

10 A. No, he did not.

11 Q. Had he only told you that there was no trust?

12 A. He just told me there was no trust.

13 Q. Okay. Now, have you been damaged by what you  
14 have stated under oath to be the misrepresentations  
15 by your uncle about the trust?

16 A. Well, financially, that was money that I  
17 planned on using for retirement. And I never  
18 received it and I will never receive it, I guess.

19 Q. Okay. And we talked about this a little bit  
20 earlier. In Exhibit 1, there were two different  
21 numbers listed as going to the trust, correct?

22 A. Yes.

23 Q. And both of them said they were going to the  
24 trust?

25 A. Correct.

1 Q. What's the lower number?

2 A. The lower number was \$468,587.06.

3 Q. And six cents. Pretty exact number, isn't it?

4 A. Correct.

5 Q. Can you, in your head, tell me what -- let's  
6 take that lower number.

7 At the time he filed this, what would  
8 one-fourth of that number have been?

9 A. It would be roughly \$114,000.

10 Q. Pretty close, yeah. Pretty close.

11 Did you actually calculate out the numbers?

12 A. I did.

13 Q. And I have just a little chart here I'll refer  
14 to myself. Did you get together these numbers?

15 A. I did.

16 Q. So if you take \$468,587 -- we'll forget about  
17 the six cents -- divide that by four, you calculated  
18 that that was \$117,146?

19 A. Correct.

20 Q. Okay. And that was the amount that Mr. Bryan  
21 said had been disbursed in 2010, correct?

22 A. Correct, into the trust. Yes.

23 Q. All right. Now, if that money, as he said, was  
24 in a Smith Barney stock account, would it have  
25 appreciated?

1       A.    It would have apprecia- --

2           MR. HEMLEPP:  Objection, Your Honor.  She's not  
3       been qualified as an expert in finance and how she  
4       can render an opinion on that.

5           THE COURT:  Sustained.  But you can try to  
6       rephrase it.

7           MR. BELDING:  That's fine.  I understand.

8       BY MR. BELDING:

9       Q.    Let me ask you this:  You stated earlier that  
10       you had been keeping an eye on the stock market.  
11       From what you understand from information you  
12       receive, how has the stock market done in the last  
13       ten years?

14       A.    In the last ten years -- my personal  
15       investments have done very well in the last ten  
16       years.

17       Q.    Have they gone up an average amount every year?

18       A.    I've got some aggressive investments that have  
19       done, like, 20 percent over the past ten years.  But  
20       anywhere between 10 and 20 percent; they've done  
21       very well.

22       Q.    Would you have any reason to think the Smith  
23       Barney stock account wouldn't do as well?

24       A.    No.

25       Q.    Is ten percent a year a low number on stock

1 market appreciation over the last ten years in  
2 your --

3 MR. HEMLEPP: Objection, Your Honor.

4 THE COURT: Let him rephrase the question.

5 BY MR. BELDING:

6 Q. In your experience from your investments?

7 A. From my investment, ten percent, it's an  
8 average lowball number. Yes.

9 Q. Okay. Did you yourself sit down and calculate  
10 taking a share and having it appreciate by ten  
11 percent every year for the last ten years?

12 A. Yes, I did.

13 Q. What would each share be worth if that had  
14 occurred? If it had been in there accruing at just  
15 ten percent, what would that be worth today?

16 A. If I took \$117,000 and compound interest at ten  
17 percent, it would be worth a little over \$300,000  
18 today.

19 Q. Okay. And we're talking about two shares,  
20 aren't we?

21 A. Right; my share and my daughter's share.

22 Q. So if we had it till today, what would both of  
23 your shares approximately be worth?

24 A. Both shares would be a little over \$600,000.

25 Q. And you don't have that money, do you?

1 A. No, sir, I do not.

2 Q. Thank you very much, Ms. Edwards. No further  
3 questions.

4 MR. BELDING: Your Honor, I'd like to move the  
5 exhibits into evidence, Plaintiff's 1 through 3.

6 THE COURT: Without objection, Plaintiff's  
7 Exhibits 1 through 3 are admitted into evidence.

8 (Plaintiff's Exhibit Nos. 1 through 3 admitted  
9 into evidence.)

10 MR. BELDING: Thank you, Your Honor.

11 THE COURT: Cross-examination. Please answer  
12 any questions counsel may have.

13 MR. HEMLEPP: May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. HEMLEPP:

17 Q. Thank you, Ms. Edwards. I want to take you  
18 back -- actually, I want to take you to what has  
19 been marked as Defendant's Exhibit No. 2. This is a  
20 family tree of your family; is it not?

21 A. Yes.

22 Q. David Cuttino Bryan, Jr. was your grandfather?

23 A. That is correct.

24 Q. Cecil Bryan was your grandmother. You've  
25 already testified to that.

1 A. That is correct.

2 Q. You testified that David Bryan, III is your  
3 uncle?

4 A. That is correct.

5 Q. He's the defendant in this case?

6 A. Yes.

7 Q. He was the personal representative?

8 A. Yes.

9 Q. Of your grandfather's estate?

10 A. That is correct.

11 Q. Was he also the personal representative of your  
12 grandmother's estate?

13 A. I was not aware that she had a will. Yes.

14 Q. Sharon Lee Bryan Montgomery, who is that?

15 A. That is my mother.

16 Q. His sister?

17 A. His sister, that's correct.

18 Q. And your mom passed away in July of 2019?

19 A. That is correct.

20 Q. I'm very sorry for your loss.

21 A. Thank you.

22 Q. Who was the personal representative of her  
23 estate?

24 A. Me and my father.

25 Q. Now, your father is not on here. Were your

1 parents divorced?

2 A. No. My father is still living.

3 Q. Divorced?

4 A. No, they're not divorced.

5 Q. Oh, okay. Where does your father live?

6 A. He lives with me.

7 Q. Okay. Cathy Vella, Tammy Hughes, Robin  
8 Simmons, who are they?

9 A. They are David's stepchildren from a marriage.

10 Q. And this is my fault. I misspelled your name,  
11 didn't I?

12 A. That's okay.

13 Q. I said Elisha. It should be Elisa. I  
14 apologize for that. That's you.

15 Bryan Montgomery, who is that?

16 A. That's my brother.

17 Q. Mary Montgomery Moyers, who is that?

18 A. That's my sister.

19 Q. Who is Brandon Montgomery Edwards?

20 A. That's my son.

21 Q. Your son?

22 A. Yes.

23 Q. How old is your son?

24 A. He is 19 years old.

25 Q. Where is Brandon today?



- 1 A. He is playing hockey in Canada.
- 2 Q. So both of your children are in Canada?
- 3 A. That is correct.
- 4 Q. Bryan Montgomery, your brother, where does he
- 5 live?
- 6 A. He lives in Memphis, Tennessee.
- 7 Q. And does he have children?
- 8 A. He has two boys. Yes, sir.
- 9 Q. Ethan Bryan Montgomery and Matthew Sawyer
- 10 Montgomery?
- 11 A. Right.
- 12 Q. Mary Moyers is your sister?
- 13 A. Correct.
- 14 Q. Where does she live?
- 15 A. She lives in West Columbia.
- 16 Q. Does she have children?
- 17 A. Yes.
- 18 Q. I have listed Montgomery Campbell Moyers,
- 19 Jeremy Lewis Moyers, and Madeline Cecil Moyers.
- 20 A. That's correct.
- 21 Q. Now, your grandfather had a sister, Mary Bryan
- 22 Gayden; is that true?
- 23 A. That's true.
- 24 Q. And she had a son named David Bryan Gayden?
- 25 A. Correct.

1 Q. She actually had only the one son?

2 A. Yes.

3 Q. So David Brian Gayden was your grandfather's  
4 nephew?

5 A. Correct.

6 Q. So this is actually a correct family tree?

7 A. That's a correct family tree.

8 Q. I think this is helpful to us all.

9 MR. HEMLEPP: I'd like to admit this.

10 THE COURT: All right. That would be  
11 Defendant's Exhibit 2?

12 MR. HEMLEPP: It's actually marked as 2. I  
13 have the 1.

14 THE COURT: Admitted into evidence without  
15 objection.

16 MR. HEMLEPP: Thank you.

17 (Defendant's Exhibit No. 2 admitted into  
18 evidence.)

19 BY MR. HEMLEPP:

20 Q. Thank you for that. I think that's helpful. I  
21 want to take you back to the will of your  
22 grandfather. You've read that will?

23 A. I have.

24 Q. And that will was written almost 20 years ago,  
25 wasn't it?

1 A. That is correct.

2 Q. Dated May 19th of 2000; is that true? I think  
3 it's before you.

4 A. Yes.

5 Q. And your testimony is that it provided for a  
6 trust to be created?

7 A. Correct.

8 Q. Please look at item 8.

9 A. Okay.

10 Q. Is that the provision that creates the trust?

11 A. That is the provision that creates the trust.

12 Q. Okay. Well, I think that's important in this  
13 case, don't you think?

14 A. (Witness nods head.)

15 Q. Would you please read it in its entirety to the  
16 jury?

17 A. I'll be glad to. And I don't have my glasses  
18 on, so please bear with me.

19 Maximum marital deduction, pecuniary formula  
20 bequeathed to maximize unified credit payable to the  
21 Cecil I. Bryan Trust. If my wife, Cecil I. Bryan,  
22 shall survive me, I give, devise and bequeath, to my  
23 trustee, herein after named cash, securities, or  
24 other properties of my estate, undiminished by any  
25 estate inheritance, succession, death, or similar

1        taxes having a value equal to the maximum marital  
2        deductions as finally determined in my federal  
3        estate tax proceedings, less the aggregate amount of  
4        marital deductions, if any, allowed for such tax  
5        purposes by reason of property or interest in  
6        property, passing, or which have passed to my wife  
7        otherwise been pursuant to the provisions of this  
8        item provided; however, the amount of the bequest  
9        shall be reduced by that amount, if any, needed to  
10       increase my taxable estate for federal estate tax  
11       purposes to the largest amount that after filing for  
12       the unified credit against the federal estate tax  
13       and the state tax death credit against such tax, but  
14       only to the extent that the use of such state death  
15       tax credit does not increase the death tax payable  
16       to any state will result in the smallest, if any,  
17       federal estate tax being imposed on my estate.

18                The term maximum marital deduction shall not be  
19       construed as a direction by me to exercise any  
20       election respecting the deduction of the state  
21       administrative expenses. The determination of the  
22       estate tax valuation date or any other tax election  
23       which may be available under any tax laws only in  
24       such manner as will result in larger allowable  
25       estate tax marital deductions than if the contrary

1 election had been made.

2 My personal representative shall have the sole  
3 discretion to select the assets which shall  
4 constitute his bequest. In no event, however, shall  
5 there be included in this bequest any assets or the  
6 proceeds of any assets which will not qualify for  
7 the federal estate tax marital deduction. And this  
8 bequest shall be reduced to the extent that it's not  
9 to be created with such qualifying assets.

10 My personal representative shall value any  
11 asset selected by my personal representative for  
12 distribution in kind as part of this bequest as the  
13 value of such asset at the date of distribution of  
14 such asset. The bequest shall be administered by my  
15 trustee under the terms of the Cecil I. Bryan Trust  
16 as herein set forth.

17 Q. That's a lot.

18 A. That's a lot.

19 Q. Do you have specialized training in taxation?

20 A. No, I do not.

21 Q. Do you have any specialized training in probate  
22 or estate?

23 A. No, I do not.

24 Q. Well, the word tax is used more than 20 times  
25 in there; do you agree?

1 A. Yes, it is.

2 Q. From this, does it not appear that the primary  
3 purpose of this trust was to avoid state taxes?

4 A. Correct.

5 Q. At the time that this will was written, your  
6 grandfather's estate was large?

7 A. Quite sizable, yes.

8 Q. Yes. It was several million dollars. You  
9 testified that the recession of 2008/2009 greatly  
10 diminished the value of the estate; did you not?

11 A. Correct.

12 Q. In fact, we know that from the exhibit that's  
13 been introduced that says the value of the estate at  
14 the time of the estate was less than a million.

15 A. Correct.

16 Q. How much federal taxes was owed on the estate  
17 when your grandfather died?

18 A. I don't know.

19 Q. If I told you none, would you dispute that?

20 A. No.

21 Q. Okay. When I go through the will -- and I ask  
22 you to go with me through the will.

23 A. Okay.

24 Q. Let's go to page 1. Item two gives some  
25 personal effects, firearms, knives, coins, books,

1 papers to David Bryan, III, my client. And if he  
2 doesn't survive, to Ethan Montgomery, and then Neil  
3 Edwards --

4 MR. BELDING: You said the name wrong.

5 MR. HEMLEPP: I did? Ethan Montgomery?

6 THE WITNESS: Ethan Montgomery and Emily  
7 Cecile, yeah.

8 MR. HEMLEPP: Isn't that right? Ethan  
9 Montgomery and Emily Cecile Edwards. Is that  
10 correct?

11 MR. BELDING: It is now.

12 BY MR. HEMLEPP:

13 Q. So Emily Cecile Edwards is your daughter?

14 A. Correct.

15 Q. Ethan is Bryan's son?

16 A. Correct. They were the only two  
17 great-grandchildren alive when he made the will.

18 Q. Okay. He also gave, in Item No. 4, \$10,000 in  
19 the will to Sharon Lee Montgomery, if she survives;  
20 if not, then it would go to Elisa Montgomery  
21 Edwards. So that was to your mom and then to you?

22 A. Correct.

23 Q. Is that correct?

24 A. That's correct.

25 Q. Item 5, Mary Cecil Montgomery was to get

1       \$10,000. Mary Cecil Montgomery is your sister?

2       A.     Correct.

3       Q.     Okay. Ethan Montgomery. Again, Ethan  
4       Montgomery was going to get \$10,000. David Bryan  
5       Gayden -- and I'm looking at Item 7. Do you agree  
6       that he was to get \$10,000?

7       A.     Yes.

8       Q.     Is that your cousin?

9       A.     That's my cousin.

10      Q.     Okay. Look at Item 12. That would be on page  
11      4. Share B shall be distributed to my son -- who we  
12      all would agree is the defendant,                Mr.  
13      Bryan -- provided if he is deceased, then this share  
14      shall be distributed to Robin Christine Brown, Elisa  
15      Montgomery Edwards, Mary Cecil Montgomery, Ethan  
16      Montgomery, and Emily Cecile Edwards in equal  
17      shares.

18             Do you agree that that's what that says?

19      A.     Yes.

20      Q.     Okay. Do you have any reason -- I'm going to  
21      back up.

22             You testified about a meeting with the family  
23      where deeds of distribution were signed by different  
24      members. And --

25             MR. BELDING: Objection. I don't think that



1       was the testimony, Your Honor. There weren't deeds  
2       of distribution signed by the family. It was  
3       receipts and releases.

4             MR. HEMLEPP: I apologize. I apologize.

5             THE COURT: Rephrase the question.

6             MR. HEMLEPP: My mistake. This whole thing is  
7       complicated.

8       BY MR. HEMLEPP:

9       Q.     Forms were signed. And one of the things that  
10      you testified to is that there was a form about the  
11      Smith Barney trust that was to go to Emily. You  
12      said there was a distribution to Emily and you  
13      didn't want to sign it for her?

14     A.     I did not say that. No.

15     Q.     Okay. Then tell me what you said.

16     A.     He was giving a form that said that you  
17      received a distribution. And my brother signed one  
18      and my mother signed one, but I did not. Emily's  
19      money was not ready to be distributed at that time;  
20      she was not 18.

21     Q.     Okay. She was not 18. How old was she?

22     A.     She would have been 11 or 12.

23     Q.     Okay. And who owned that money?

24     A.     Emily was -- owned the money.

25     Q.     I'm sorry?

1 A. Emily Cecile Edwards owned the money.

2 Q. Was it in her name?

3 A. It was a personal -- or Uniform Gift of Minors

4 Act. David C. Bryan, Jr., my grandfather, was --

5 Q. Right. It was in the name of your grandfather?

6 A. Right.

7 Q. And he was on the account?

8 A. Correct.

9 Q. And at the time that was done, these forms were  
10 given, he had already died; had he not?

11 A. He had.

12 Q. So who owned that account? Wouldn't his estate  
13 own that account?

14 A. Well, no, because it wasn't part of the estate.

15 Q. Well, it was in his name; was it not?

16 A. But it was a Uniform Gift to Minors Act.

17 Q. I'm asking who the account -- who was the name  
18 on the account? The name on the account was your  
19 grandfather?

20 A. Correct.

21 Q. And your grandfather had died?

22 A. Correct.

23 Q. Who was the personal representative of his  
24 estate?

25 A. David Bryan, III.

1 Q. So if your grandfather had died, the estate  
2 would own it; would it not?

3 A. I guess so.

4 Q. Okay. So when you say that it was not part of  
5 the estate, you actually don't know that, do you?

6 A. I don't know that, no.

7 Q. You're assuming that?

8 A. Yes.

9 Q. Because of your understanding of what the  
10 Uniform Gift to Minors Act is?

11 A. Right.

12 Q. But the actual title to that property was in  
13 your grandfather's name. And when he died, it  
14 became part of the estate. Could there be other  
15 things in this case that you assumed, based on the  
16 fact that you're not trained in estate and probate?

17 A. Oh, absolutely, yes.

18 Q. Could there be other things in this case that  
19 you assume because you're not trained in taxation?

20 A. Yes.

21 Q. I want to go -- well, I want to finish this  
22 thought: So the Smith Barney account, at the time  
23 of your grandfather's death, had \$24,000 in it or  
24 so. Later -- and it grew. When she turned 18, you  
25 say she got that account?

1 A. Yes.

2 Q. How much money did she get?

3 A. Around \$30,000.

4 Q. 30,000. Could it have been more?

5 A. 32 -- right at -- a little over \$30,000. I

6 can't tell you exact amount without my notes.

7 Q. And then you testified about this annuity that  
8 your daughter got as well.

9 A. Correct.

10 Q. And the annuity which you testified about, how  
11 old was she when she got that?

12 A. 10 or 11.

13 Q. She got it when she was 10 or 11? Did she  
14 actually get it when she was 10 or 11?

15 A. No.

16 Q. Who got it?

17 A. I did.

18 Q. How much was it?

19 A. It was \$107,000.

20 Q. Okay. \$107,000.

21 A. It was money that I put into her name in  
22 Uniform Gift to Minors Act.

23 Q. So from your grandfather's funds -- I'm not  
24 going to say the estate. But at the time he passed  
25 away, your daughter got money -- not then, but money

1       promised to her and invested on her behalf somewhere  
2       in the tune of \$140,000; is that true?

3       A.     Correct.

4       Q.     Okay. Are you the personal representative of  
5       your mother's estate?

6       A.     My father and I are. Yes. I'm helping my  
7       father.

8       Q.     Did your mother leave a will?

9       A.     Yes, she did.

10      Q.     Who did she leave her estate to?

11      A.     To my father.

12      Q.     To your father?

13      A.     Yes.

14      Q.     And your father is still alive?

15      A.     Yes, he is.

16      Q.     Do you get along with your father?

17      A.     Oh, yes.

18      Q.     Do you talk on a regular basis?

19      A.     He lives with me.

20      Q.     He lives with you. I think y'all went on a  
21      trip recently.

22      A.     We did.

23      Q.     Back to the home place?

24      A.     We did.

25      Q.     Did you talk to him about this situation?

1 A. I have discussed it with him before. Yes.

2 Q. So I would imagine that if you're close, that  
3 you two don't have secrets.

4 A. We don't.

5 Q. Okay. When all this was going on, prior to  
6 your mother's passing, did you talk to her about  
7 this?

8 A. Yes.

9 Q. And there were no secrets?

10 A. (Nonverbal response.)

11 Q. Okay. Under this trust, which you say should  
12 have been created, a fourth of it was to go to the  
13 defendant?

14 A. Correct.

15 Q. A fourth was to go to you?

16 A. Correct.

17 Q. A fourth was to go to Emily?

18 A. Correct.

19 Q. I believe you testified that she's a plaintiff  
20 in this case because she was named in that trust.

21 A. Correct.

22 Q. Why wasn't your mom?

23 A. My mother was ill and she did not want to be a  
24 plaintiff. She did not want to sue her brother  
25 because she felt her brother would do the right

1           thing.

2           Q.     Okay.   What about your father?

3           A.     What?

4           Q.     If she had gotten money from this lawsuit, he  
5           would have inherited it; would he not?

6           A.     He would have.

7           Q.     Was he ever a party to this case?

8           A.     No, he was not.

9           Q.     What about Brandon?   Brandon's your son?

10          A.     He was not born.

11          Q.     He was not born when this case was brought?

12          A.     He was not a beneficiary in the will because he  
13          was not born when the will was made.

14          Q.     But he would certainly be entitled to some of  
15          this money?

16          A.     He's not listed as being part of it.

17          Q.     Okay.   As a matter of fact, how many people on  
18          this -- in this family have sued the personal  
19          representative about this will?

20          A.     Just me and my daughter.

21          Q.     And your testimony is that your daughter only  
22          sued based upon the fact that her name is in the  
23          will and based upon what you told her?

24          A.     That is correct.

25          Q.     So, really, it's only you?

1 A. Correct.

2 Q. When you were talking to Mr. Belding and you  
3 were talking about the discussions that you would  
4 have with your uncle and the -- that there would be  
5 family occasions -- and, I believe, your term was  
6 I'd jokingly ask, how is our money doing. Is it  
7 your testimony that in every single solitary  
8 conversation you had with him, the word trust was  
9 used?

10 A. No.

11 Q. Okay. I want to go back to the final  
12 accounting.

13 A. Okay.

14 Q. I think it's been marked as Plaintiff's Exhibit  
15 3. I just really want to kind of -- I want to make  
16 sure that I get this, and I want you to help me.  
17 Your father died in January of 2009?

18 A. Grandfather. Yes.

19 Q. I'm sorry. Your grandfather died --

20 A. Correct.

21 Q. -- in January of 2009, correct?

22 A. That is correct, yes.

23 Q. And your mother died that same year, October of  
24 2009?

25 A. My grandmother died that same year, yes.



1 Q. Thank you. I keep making that mistake. I  
2 apologize.

3 A. I'll keep you straight.

4 Q. The final accounting was filed, according to  
5 this document, September of 2010, almost a year  
6 after your mom died?

7 A. Grandmother. Yes.

8 Q. Your grandmother. That and I keep saying  
9 Lancaster.

10 A. That's fine.

11 Q. You agree with me on that? You agree with me  
12 on those dates?

13 A. Yeah.

14 Q. Grandfather died same year grandmother died. A  
15 year later, this document was filed with the probate  
16 court, correct?

17 A. That is correct.

18 Q. And this is the document upon which you rely  
19 because it says to trust?

20 A. That is correct.

21 Q. Okay.

22 A. This and the will.

23 Q. Sorry?

24 A. This and the will.

25 Q. Yes. But you're relying on this document when

1       you're saying there was a fraud committed?

2       A.     That is correct.

3             MR. HEMLEPP:   Beg the Court's indulgence.

4       BY MR. HEMLEPP:

5       Q.     So as you've already testified, you're not an  
6       expert in probate law or tax law?

7       A.     Correct.

8       Q.     Do you have any specialized knowledge with  
9       regards to finances?

10      A.     No.

11      Q.     You worked for the banking association, but not  
12      as a banker?

13      A.     I worked as a banker for ten years, and then I  
14      worked for the Bankers Association for 17 years,  
15      specializing in insurance and --

16      Q.     Specializing in insurance?

17      A.     Correct.

18      Q.     Not necessarily specializing in stock  
19      portfolios?

20      A.     Correct.

21      Q.     Did you ever take a Series 7?

22      A.     I did not.

23      Q.     So your testimony about if this money had come  
24      to you, that it would have grown to a certain rate  
25      and a certain amount, that is not an expert opinion

1           that you're trying to give us, is it?

2           A.    No; just an educated opinion.

3           Q.    Okay.

4           A.    I tried to educate myself.

5           Q.    Okay.  But it's still an opinion?

6           A.    Yes.

7           Q.    And it's not an educated opinion?

8           A.    Okay.

9           Q.    Correct?

10          A.    Right.

11          Q.    How much money do you have in the stock market?

12          A.    I have about \$175,000 in the stock market.

13          Q.    Is it in the stock market or is it in mutual  
14          funds?

15          A.    I have both stocks and bonds.

16          Q.    Stocks and bonds?

17          A.    Stocks, bonds, and mutual funds.  Yes.

18          Q.    How much of that is in mutual funds?

19          A.    I can't tell you right now looking at it.  I  
20          have a financial advisor that helps me.

21          Q.    Did you talk to your financial advisor about  
22          this?

23          A.    No, I did not.

24          Q.    So all the numbers you've given out, you  
25          calculated them?

1 A. They are my numbers and I calculated them.

2 Yes.

3 Q. Although you have no education in that?

4 A. Right.

5 Q. Thank you, Ms. Edwards.

6 MR. HEMLEPP: Thank you, Your Honor.

7 THE COURT: Redirect?

8 MR. BELDING: Your Honor, I'll keep this brief.

9 REDIRECT EXAMINATION

10 BY MR. BELDING:

11 Q. All right. Elisa, Mr. Hemlepp said he wanted  
12 to take you through the will. Okay? And, as you  
13 recall, it was Items 1 and 2 and went all the way up  
14 through Item 10. You recall --

15 A. Yes.

16 Q. -- where it talked about something to the  
17 trust? And then he skipped to 12.

18 A. Right.

19 Q. He didn't talk to you about Item 11. What's in  
20 Item 11?

21 A. The Cecil I. Bryan Trust introductory  
22 provisions.

23 Q. So you said that the Item A that talks all  
24 about the tax stuff created the trust. Doesn't item  
25 11 also create the trust?

1 A. Yes, it does.

2 MR. HEMLEPP: Objection, Your Honor.

3 THE COURT: Overruled.

4 MR. BELDING: Thank you.

5 BY MR. BELDING:

6 Q. Ms. Elisa, I don't want you to read this whole  
7 thing. I just want to make two points: One, as  
8 Mr. Hemlepp said, by 2009, when your grandfather  
9 died, all that tax stuff was no longer an issue,  
10 correct?

11 A. My understanding, yes.

12 Q. It wasn't any state inheritance tax, federal  
13 estate tax like there had been earlier?

14 A. That is correct.

15 Q. So we have Item 11, which is in the will and  
16 the jury can read later. But what was -- can you  
17 summarize, briefly, what was that trust supposed to  
18 do?

19 A. It's to set up my grandmother -- to set up my  
20 grandmother's trust. It says it's direction to pay  
21 all income to the wife, discretionary payments of  
22 principal by trustee for the benefit of the wife,  
23 the payment of death taxes for the Cecil I. Bryan  
24 Trust on death of the wife, and the disposition of  
25 the Cecil I. Bryan trust at the wife's death.

1 Q. Now, what was supposed to happen at the wife's  
2 death? And the wife is your grandmother?

3 A. My grandmother, Cecil I. Bryan. Upon the death  
4 of my wife, Cecil I. Bryan, the entire remaining  
5 principal of the Cecil I. Bryan Trust shall be  
6 distributed as follows: One-fourth to David Bryan,  
7 III, or, if predeceased, to his wife and her  
8 children; one-fourth to Sharon Lee Montgomery, or,  
9 predeceased, to Ethan Montgomery; one-fourth to  
10 Elisa Montgomery Edwards; and one-fourth to Emily  
11 Cecile Edwards.

12 Q. When Mr. Hemlepp was talking to you about the  
13 long paragraph you read, there was language in  
14 there, do you recall, about the personal -- well,  
15 I'll just read it.

16 My personal representative shall have the sole  
17 discretion to select the assets which shall  
18 constitute this bequest into the trust.

19 A. Correct.

20 Q. You see that written in there?

21 A. Yes.

22 Q. So he had the authority to determine what went  
23 into the trust for the benefit of his mom and the  
24 other beneficiaries after her death, right?

25 A. Correct.

1 Q. And didn't he do that with the accounting?

2 A. Yes, he did.

3 Q. And what's been marked and admitted as  
4 Exhibit 3, he gave two numbers. But what's the  
5 lowest one?

6 A. \$468,587.

7 Q. And?

8 A. Six cents.

9 Q. There you go. And so that was done eight, nine  
10 years after your grandmother died. All right.

11 Finally, when you said you don't know if you  
12 ever actually used the word trust in talking with  
13 your uncle --

14 A. Other than I trusted him. And I'd ask about  
15 the trust. Yes.

16 Q. But you asked him about the trust by using  
17 words like how's our money doing, correct?

18 A. How's our money doing, how's the Smith Barney  
19 account. Yes.

20 Q. Did your uncle ever say, what are you talking  
21 about?

22 A. No.

23 Q. When did he finally say, what money are you  
24 talking about?

25 A. When my mother and I approached him about when

1 is he going to distribute the money in the trust.

2 And he was very frustrated one day and said, there  
3 is no money in the trust and nobody is going to get  
4 anything.

5 Q. Okay. In response to one of the questions by  
6 Mr. Hemlepp, he asked you if you were suing  
7 Mr. Bryan as the personal representative?

8 A. No.

9 Q. Is he in any of these pleadings being sued as  
10 the personal representative?

11 A. No.

12 Q. Is all that estate stuff over and done with?

13 A. Correct.

14 Q. Finally, about the damages, I understand; I'm  
15 not a financial expert either. But you're -- are  
16 you testifying about appreciation of that amount  
17 based upon your experience in the stock market?

18 A. I am, yes.

19 Q. And, in your experience, has ten percent been  
20 an average return in the last ten years?

21 A. Ten percent has been an average return, yes.

22 Q. Thank you very much.

23 MR. BELDING: No further redirect.

24 THE COURT: Any recross?

25 MR. HEMLEPP: Really short.



## 1 REDIRECT EXAMINATION

2 BY MR. HEMLEPP:

3 Q. Let's go back a little bit. Item 12, we've  
4 already referred to that. Share B to testator's  
5 son. Share B shall be distributed to my son. What  
6 is share B?

7 A. I'm not sure.

8 Q. Okay. Okay. Thank you.

9 A. Uh-huh.

10 MR. HEMLEPP: Thank you, Your Honor.

11 THE COURT: All right. The witness may step  
12 down.

13 Ladies and gentlemen, we're going to take our  
14 midmorning break, probably a ten-minute break.  
15 Please don't discuss the case in any way while  
16 you're in the jury room. It's not appropriate for  
17 you to discuss the case at this time. You can talk  
18 about other things, but just not the case. We'll  
19 get you back in here as soon as possible. Thank  
20 you.

21 (The jury exits the courtroom at 10:56 AM.)

22 THE COURT: Okay. Please be seated. Madam  
23 foreperson, welcome back. I hope everyone had a  
24 chance to refresh themselves. Now we're going to  
25 proceed on with the next witness.

1 MR. BELDING: If it pleases the Court, I'd like  
2 to call David Cuttino Bryan, III.

3 DAVID CUTTINO BRYAN, III  
4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Have a seat, please, and state your  
7 full name for the record.

8 THE WITNESS: David Cuttino Bryan, III.

9 MR. BELDING: May it please the Court, Your  
10 Honor?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. BELDING:

14 Q. Mr. Bryan, where do you live?

15 A. Say again, sir.

16 Q. Okay. I'm going to try to speak up --

17 A. Because I can't hear.

18 Q. I understand. Where do you live?

19 A. 120 Smith Street, Lexington County.

20 Q. Okay. Are you working now or are you retired  
21 or what?

22 A. I am retired.

23 Q. How long have you been retired?

24 A. Since 2011, I think.

25 Q. Do you recall giving a deposition in this case?

1 A. I do.

2 Q. What, to your understanding, is a deposition?

3 A. Well, my understanding is when you're deposed,  
4 you're under oath, and you're asked questions by the  
5 opposing counsel, and your counsel can respond, and  
6 they take a written record of it.

7 MR. BELDING: Okay. Your Honor, I have here  
8 today the original sealed transcript of the  
9 deposition of David Cuttino Bryan, III. I'd like to  
10 hand it to the clerk and ask her to open it and hand  
11 it to the witness.

12 THE COURT: That will be fine.

13 MR. HEMLEPP: Judge, I hate to do this. Can we  
14 have a side bar?

15 (Sidebar conference.)

16 BY MR. BELDING:

17 Q. All right. Mr. Bryan, have you, for any  
18 reason, read this transcript of your deposition  
19 since you gave it?

20 A. Yes.

21 Q. Now, I understand you were the personal  
22 representative or PR of the estate of your father.  
23 Correct?

24 A. Yes.

25 Q. In your father's will, was someone else named

1 to be the personal representative also?

2 A. Yes.

3 Q. Who was that?

4 A. William Ferrell.

5 Q. Okay. Is his name Robert V. Ferrell?

6 A. Yes. But we call him Buddy.

7 Q. Call him Buddy. Okay. Was he a CPA?

8 A. Yes.

9 Q. Did he work with your father for a long time?

10 A. He did his taxes for 30, 40 years.

11 Q. Was he also a tax attorney?

12 A. Yes.

13 Q. Okay. Did he ultimately act as personal

14 representative of your estate -- of your

15 grandfather's estate -- no. Of your father's

16 estate, did Mr. Ferrell actually help you as

17 personal representative?

18 A. He recused himself from being the co-personal

19 representative.

20 Q. Okay.

21 A. But I did discuss with him, off and on, certain

22 things about the probate court accounting because I

23 was having problems with it.

24 Q. Okay. Do you recall my asking you in the

25 deposition if you had ever seen him in writing

1       renounce his right to be the personal  
2       representative?

3       A.     I remember that.  And the next time I saw him,  
4       I asked him personally did he sign a form for  
5       probate renouncing his co-personal representative,  
6       and he informed me he did.

7       Q.     We'll try not to testify please about what  
8       anybody else said.

9       A.     That's fine.

10      Q.     Let me just ask the court reporter to hand you  
11      what's been marked Plaintiff's Exhibit 4.  Do you  
12      recognize that document?

13      A.     I do.

14      Q.     When I asked you at the deposition, you stated,  
15      as I recall, that you did not think he had signed  
16      anything.  Does that refresh your memory?

17      A.     Say that again.

18      Q.     When I asked you at the deposition if he had  
19      actually signed anything to renounce, I believe you  
20      said, no, I don't think he did.  Is that your  
21      recollection?

22             MR. HEMLEPP:  Your Honor, I'm going to object  
23      to the -- in the recollection of the deposition or  
24      the recollection of the signing of the document?

25             MR. BELDING:  Well, let's --

1           THE COURT: Let's just ask him a question about  
2 his personal knowledge, and go from there.

3 BY MR. BELDING:

4 Q. Do you recall, at your deposition, you had an  
5 independent recollection of whether or not

6 Mr. Ferrell had signed anything to not be the PR?

7 A. I think, at the deposition, I did not know  
8 whether he had signed or not.

9 Q. Okay. And now you know that he did sign  
10 something, correct?

11 A. I know it now and I knew it sometime before.

12 Q. Okay. As a matter of fact, when is that --  
13 what's the date that that was filed with the probate  
14 court?

15 A. Looks like January 22nd, 2009.

16 Q. Isn't that also the same date you opened the  
17 estate?

18 A. I don't know.

19 Q. Okay. How long was that after your father's  
20 death?

21 A. My best recollection is I turned in to probate  
22 the death certificate. I talked to Buddy about it.  
23 He said that he felt comfortable for me doing it; he  
24 was going to recuse himself, I think. And I started  
25 shortly after my father's death. What the dates

1       were, I'm not sure. But I started shortly after his  
2       death, started turning things in to probate.

3       Q.    On Exhibit 4, isn't that your handwriting above  
4       there?

5       A.    Yes.

6       Q.    Okay. So you helped him fill out this form?

7       A.    Say again.

8       Q.    You and he both filled out this form, correct?

9       A.    I think I filled out the top part of the form.  
10      He signed it in front of the witness, and either  
11      gave it to me to turn in or he turned it in.

12      Q.    Now, after you became appointed as the personal  
13      representative for your father, one of the first  
14      things you're supposed to do is send information to  
15      heirs and devisees. Do you recall doing that?

16      A.    Say that again.

17      Q.    One of the first things that you're supposed to  
18      do after you get appointed as personal  
19      representative is to send information about the  
20      opening of the estate to the people named in the  
21      will. Do you recall doing that?

22      A.    Send them information? I don't recall sending  
23      them information. I recall discussing it with my  
24      sister, my nephew, my cousin, my niece. But sending  
25      an actual form saying, look, you've been named in

1 the will, I don't think I did that.

2 MR. BELDING: Madam Clerk, would you mind  
3 handing him Plaintiff's Exhibit 1 right here?

4 BY MR. BELDING:

5 Q. All right. Mr. Bryan, this is a two-page  
6 exhibit that's been admitted into evidence as  
7 Exhibit 1. Okay? Does this refresh your memory  
8 about doing a form called Information to Heirs and  
9 Devisees?

10 A. Yes.

11 Q. And the second page, which has to be filed with  
12 it, is a proof of delivery, telling the Court that  
13 you actually sent information about the opening of  
14 the estate to a number of people. Correct?

15 A. Yes.

16 Q. Is your signature on that page?

17 A. It is.

18 Q. And was -- Emily Cecile Edwards and Elisa  
19 Montgomery Edwards, were they listed as people that  
20 you sent that to?

21 A. It says so, yes.

22 Q. You don't really recall doing that, but does  
23 that refresh your memory?

24 A. Well, I checked ordinary first class mail. So  
25 I assume -- I do not have an independent memory of



1 mailing these people notification. But --

2 Q. Okay.

3 A. -- I assume I did.

4 Q. And you don't deny it because --

5 A. I don't deny that I --

6 Q. That's fine. I understand how memories work.

7 Everything I hand you, keep up there for the  
8 court reporter.

9 Now, what I'd like to ask is that the court  
10 reporter now hand you what's been premarked as  
11 Exhibit 5.

12 A. All right.

13 Q. Okay. Do you know what Exhibit 5 is,  
14 Mr. Bryan?

15 A. Inventory and appraisalment of the estate.

16 Q. Can you tell us, just in your own words, what  
17 that document is?

18 A. Well, at the time, it was accumulation of what  
19 real and personal property my father was conveying  
20 in his estate, what insurance policies he had, what  
21 personal property, guns, books, knives.

22 Q. All the stuff that comprised the estate?

23 A. That he had in his possession.

24 Q. All right. Now, you signed that document on  
25 the first page, didn't you? On the front page, I'm

1       sorry.

2       A.     Yes.

3       Q.     And what was the date that you did that?  Do  
4       you see where it was notarized?

5       A.     Well, it was filed April 28th, 2000 -- April  
6       28th, 2000.

7       Q.     And is it 2009?

8       A.     Yes.  I'm sorry.

9       Q.     Would have been after your father passed away,  
10      right?

11      A.     Yes.

12      Q.     Okay.  Now, just briefly, the form is kind of a  
13      mess on the first couple pages, isn't it?

14      A.     I would agree that it's a mess.

15      Q.     And there were things, obviously, that you  
16      wrote down, and there was a lot of handwritten  
17      corrections and crossing through and other figures  
18      put up, correct?

19      A.     Yes.

20      Q.     Okay.  Actually, you see on the front page, it  
21      looks like they asked you to initial the changes.  
22      Is that what that is right above the stamping mark?

23      A.     Yes.

24      Q.     And on this document -- and understand that you  
25      get -- inventory is just your initial, you know,

1 appraisal of what all is in the estate. Sometimes  
2 you have to go back and amend that. You understand  
3 that?

4 A. I do.

5 Q. In fact, you did that in this case, didn't you?

6 A. Several times.

7 Q. So your initial net worth value that you put on  
8 your father's estate, what did you write down as his  
9 total net worth?

10 A. \$491,000.

11 Q. Okay. And then someone came along and -- it  
12 looks like different handwriting, doesn't it?

13 A. Yes.

14 Q. Okay. Someone came along, scratched that  
15 through, and wrote what appears to be \$836,900. Do  
16 you see that?

17 A. I see 800 -- 867,900. I see that.

18 Q. Okay. Is that what that is? All right. And  
19 over to the left on the front page, there's a note.  
20 You see that note? It says: Verified with PR in a  
21 phone call.

22 A. I do.

23 Q. So you agreed with these changes?

24 A. It appears so. Yes.

25 Q. So, originally, it was down as \$471,000. But,

1 ultimately, the initial inventory and appraisal is  
2 at -- is that 856,900? I can't read it.

3 A. 867,900.

4 Q. Okay. So it's almost twice as much?

5 A. Yes.

6 Q. And you agreed with that?

7 A. Yes.

8 Q. All right. Now let me ask the court reporter  
9 to hand you what's been marked as Plaintiff's  
10 Exhibit 6.

11 A. All right.

12 Q. Thank you, Mr. Bryan. This is a -- I'll  
13 represent to you, it says this is a supplemental  
14 inventory and Appraisement No. 2 on the first page.  
15 Okay?

16 A. Okay.

17 Q. And you signed it and it's dated. What's the  
18 date on it?

19 A. April 28th, 2011.

20 Q. Okay. When was it actually filed with the  
21 probate court?

22 A. August 9th, 2011.

23 Q. Okay. Some four months later maybe, right?

24 A. I'll agree with that.

25 Q. And, once again, there were numbers written

1 down, and somebody changed them, correct?

2 A. Yes.

3 Q. And that is not your handwriting; that's  
4 someone else's handwriting, correct?

5 A. Yes.

6 Q. Do you have any idea who actually was the  
7 person who did the handwriting?

8 A. I do now. It looks like it was Attorney Tim  
9 Driggers.

10 Q. Who is Tim Driggers?

11 A. Who is he?

12 Q. Yes.

13 A. He's an attorney here in Lexington.

14 Q. Was he working with you on this case?

15 A. Yes.

16 Q. Okay.

17 A. Eventually.

18 Q. All right. So originally, in this  
19 supplemental, you put down real estate of \$238,460?  
20 On the front page, I'm sorry, in the recapitulation.  
21 I mean, that's what's typed up.

22 A. 238,460 scratched out. Is that what you're  
23 referring to?

24 Q. Yes. Someone wrote in about \$1,114,360. Do  
25 you see that?

1 A. 1,518,360 and some other figures. Yes, I see  
2 that.

3 Q. Okay. So someone wrote in that was the value  
4 of the real estate. And did you agree with this  
5 number?

6 A. I signed the form. Yes.

7 Q. Okay. And the net worth was now up to, on the  
8 bottom, \$1,380,360 on the front page. Do you see  
9 that?

10 A. All right.

11 Q. Okay. All right, sir.

12 Now, you heard your niece, Elisa Edwards,  
13 testify about the trust this morning, didn't you?

14 A. I heard her testify about the trust, yes.

15 Q. I just want to make sure you heard it.

16 I want to ask the court reporter to hand you  
17 what's been admitted as Plaintiff's Exhibit 3 to  
18 look at briefly.

19 A. Yes.

20 Q. Okay. On the front page, we have established  
21 that the ending balance on the front page was  
22 \$471,587.06, correct?

23 A. That's correct.

24 Q. When you did your handwritten page on the  
25 second page, it was at \$468,587.06, correct?

1 A. That's correct.

2 Q. That's a difference of \$3,000, right?

3 A. Yes.

4 Q. All right. Now, beside both of those -- both  
5 of those terms, whether it's 471- or 468,000, both  
6 of them have the words to trust written, don't they?

7 A. They do.

8 Q. Okay. So you had filed this form with the  
9 probate court saying this was going to trust, being  
10 disbursed, correct?

11 A. No. That wouldn't be correct --

12 Q. Okay?

13 A. -- technically.

14 Q. Before we get to the answer, let me just ask  
15 you this: Go to the second page of this.

16 Exhibit, the handwritten page. Up at the top,  
17 handwritten, it says: Final, David C. Bryan, Jr.  
18 Correct?

19 A. Yes.

20 Q. See where it's got the side that says receipts  
21 on the left?

22 A. Yes.

23 Q. At the top. And underneath, it says: Assets  
24 received into estate.

25 A. Yes.

1 Q. And you had one number there, that's \$994,900,  
2 correct?

3 A. Yes.

4 Q. Disbursements are on the other side?

5 A. Yes.

6 Q. Right. What does it say the explanation of  
7 what that term means? Can you read that under the  
8 word disbursements?

9 A. Money that was transferred elsewhere.

10 Q. Do you mind reading what's exactly on the form?

11 A. Assets disbursed from the estate.

12 Q. Well, it doesn't. Look -- because I know it's  
13 hard to read; I'll give you that. But look real  
14 close. Does it say under disbursement: Assets  
15 disbursed/paid out from estate?

16 A. Oh, yes. Okay. I see that.

17 Q. Okay. Now, when you take all the receipts and  
18 all the disbursements at the bottom, they both equal  
19 the same number, correct?

20 A. That's correct.

21 Q. Is that because you were supposed to have a  
22 zero balance?

23 A. That's correct.

24 Q. What is a zero balance?

25 A. Well, we were having problems with that. I



1 don't know what submission this was. But two or  
2 three times the clerks told me --

3 Q. I'm sorry. Please don't say what anybody else  
4 told you.

5 A. It was my understanding that my submissions  
6 were not up to probate court standard because one  
7 side did not match the other side. They -- the  
8 rules said what went in had to go out and it had to  
9 be a zero balance, and the figures weren't jiving.

10 Q. Now, did you talk to Buddy Ferrell, the tax  
11 attorney CPA, about how to get the numbers to  
12 balance?

13 A. I did.

14 Q. Did he come up with any ideas about how to get  
15 the numbers to balance?

16 A. General accounting information, what went in,  
17 what went out had to balance on both sides.

18 Q. All right. Now, in that document, which has  
19 been admitted into evidence --

20 A. Okay.

21 Q. -- both places, you told the Court that amount  
22 of money, either 468,000 and some change or 471-,  
23 had been disbursed, meaning paid out, to trust?

24 A. Yes.

25 Q. Okay. Did you ever actually open a trust

1 account?

2 A. No.

3 Q. Okay. Did you ever actually put anything into  
4 a trust that you held for the trust for your mother  
5 and her subsequent beneficiaries?

6 A. Say that again about --

7 Q. Let's do it in little pieces. You never went  
8 and opened up an account saying this is the trust,  
9 the Cecil I. Bryan Trust?

10 A. I never went to a bank and opened a financial  
11 instrument that said this is a trust account or  
12 stock account that said it was a trust account;  
13 didn't do any of that.

14 Q. Okay. So the -- do you recall admitting in  
15 your deposition that there was no trust?

16 A. Yes.

17 Q. Okay. And did you testify who came up with  
18 this trust idea?

19 A. Yes.

20 Q. Who was it?

21 A. The attorney that drew the will.

22 Q. Okay. Did you agree and follow his advice?

23 A. My father did. Yes.

24 Q. I'm sorry. Who -- did the person you named --  
25 was that the person that did the will?

1 A. Yes.

2 Q. I'm asking, though, for you, not the will; that  
3 was ten years before.

4 A. Okay.

5 Q. When you were administering his estate, did you  
6 come up with the idea of telling the Court this  
7 money is going to trust?

8 A. Well, the -- his will said -- used the word  
9 trust or entrustment or here's the money; I'm  
10 entrusting it to you to take care of this.

11 Q. Okay.

12 A. Now, whether -- so I -- yes.

13 Q. Yes what?

14 A. Yes to what you said.

15 Q. Okay. Let me make sure I understand it then.  
16 We've gone through the will. You've read the will  
17 many times.

18 A. Okay.

19 Q. That says that you're supposed to open up --  
20 you're supposed to have a trust name. I mean, it  
21 actually has a name: The Cecil I. Bryan Trust.  
22 Right? That was provided for in your father's will,  
23 wasn't it?

24 A. I don't want to agree with that. No.

25 Q. Okay. Do you mind -- I'll ask the court

1 reporter to hand the witness what's been admitted as  
2 Exhibit 2. Mr. Bryan, I know you've seen this  
3 before.

4 A. Yes.

5 Q. Okay. Go to page 2 of the will, numbered  
6 page 2.

7 A. All right.

8 Q. Okay. We talked a little earlier about item 8.  
9 And, as a matter of fact, I believe Ms. Edwards had  
10 to read this whole thing into the record. Did you  
11 listen to her read all this?

12 A. I did.

13 Q. Now, there's a couple things in here. First of  
14 all, this whole item A, was it intended to help  
15 shelter money from inheritance taxes?

16 A. In 2000, the estate tax, as I remember Attorney  
17 Hipp describing it, was somewhere around 50 percent.

18 Q. So --

19 A. And my father's estate, at the time the will  
20 was drawn, was anywhere between four and five  
21 million dollars, which would have impacted a tax of  
22 two and a half million dollars or something -- some  
23 denomination of that. So he put this in here to  
24 shelter whatever money was left at my father's  
25 death. And it was to be used for the benefit of my

1 mother, if she lived longer than my father.

2 Q. Okay. Now, you just stated that this  
3 instrument, this device, the trust, was -- you were  
4 supposed to put the money that your father had in  
5 his estate into it, and then you were supposed to  
6 take care of your mother with that money, right?

7 A. Well, this is where we have the rub. Basic --

8 Q. Let me just ask you. Isn't that what you just  
9 said, that the money was supposed to go into this  
10 trust?

11 A. All right. I'll -- I'll go along with that.

12 Q. You agree with that for purposes of this trial?

13 A. For the purpose of the will, yes.

14 Q. Okay. Now, we've also established that this  
15 whole tax sheltering part of the will didn't really  
16 apply by the time your father died; did it?

17 A. No. I think, at that point, it was 1.2 million  
18 dollars.

19 Q. Okay. So you didn't have to worry about paying  
20 inheritance tax on it?

21 A. No.

22 Q. Okay. Go to numbered page 3. All right. Item  
23 11 in the will says -- here again, it talks about  
24 the Cecil I. Bryan Trust and how it's supposed to be  
25 administered. Isn't that correct?

1 A. Yes.

2 Q. And when I read all of it, is this not what it  
3 says that you were supposed to use the net income of  
4 that trust to maintain your mother?

5 A. Yes.

6 Q. Okay. And, nine months later, she passed away?

7 A. Say that --

8 Q. Well, she passed away nine months later than  
9 your father, correct, in the same year?

10 A. Yes.

11 Q. But for nine months, you're supposed to be  
12 using this trust money to take care of your mother?

13 A. That's correct.

14 Q. Go to the bottom of page 3 under what's marked  
15 as subparagraph 4. Do you see where it says  
16 disposition of the Cecil I. Bryan Trust at Wife's  
17 death?

18 A. Yes.

19 Q. Okay. It's not very long. But doesn't it say  
20 that upon the death of my wife, the entire remaining  
21 principal of the Cecil I. Bryan Trust shall be  
22 distributed to four people in equal fourths? Right?

23 A. Yes.

24 Q. And you were one of them?

25 A. Yes.

1 Q. Okay. And your sister was one of them?

2 A. Yes.

3 Q. And if she had passed away, it would have been  
4 her son?

5 A. Yes.

6 Q. And then you have the two plaintiffs; each were  
7 supposed to get a fourth?

8 A. Yes.

9 Q. Go back to -- let's go back to the will. I  
10 want to ask you something in there. Go back to page  
11 2 again where we were talking about item 8.

12 Okay. That big long paragraph, find -- do you  
13 see -- about seven lines from the bottom of the big  
14 paragraph, you see where a sentence starts? Then  
15 the last sentence says: Been made. And then a  
16 sentence starts: My personal representative. Do  
17 you see that?

18 A. Yes.

19 Q. Okay. Let me just read that to you for  
20 purposes of this question. My -- this is the will  
21 of your father, correct?

22 A. Yes.

23 Q. My personal representative shall have the sole  
24 discretion to select the assets which shall  
25 constitute this bequest. Isn't that what it says?

1 A. That's what it says.

2 Q. And doesn't that give you the authority, as the  
3 personal representative, to select the assets that  
4 constitute the Cecil I. Bryan Trust?

5 A. Yes.

6 Q. Okay. And you did that, didn't you?

7 A. Yes.

8 Q. With the accounting that's Exhibit 3, you told  
9 the Court, this is how much money I'm sending to  
10 trust?

11 A. Yes.

12 Q. Either 468,000 or 471-?

13 A. Yes.

14 Q. But there wasn't any other trusts involved in  
15 your father's estate, right? There weren't any  
16 other trusts, were there?

17 A. Say that again.

18 Q. Were there any other trust accounts provided  
19 for in your father's will?

20 A. No.

21 Q. Okay. This is the only trust in the will, the  
22 Cecil I. Bryan Trust, correct?

23 A. There were some FMA accounts for grandchildren  
24 and nieces and nephews that were transferred after  
25 he was dead. Smith Barney transferred them to my



1 maintenance. One account was for -- started out as  
2 \$10,000 for Emily, which I shepherded along until  
3 she turned 18, and then I gave her \$35,000.

4 Q. Okay.

5 A. That was an example of -- if that's what you're  
6 asking.

7 Q. Well --

8 A. If that's what you're asking about other trust  
9 accounts or other things that were entrusted to me  
10 to take care of.

11 Q. Okay. Let me just make sure, though. But  
12 under the will, and as you administered the estate,  
13 the only trust is this Cecil I. Bryan Trust?

14 A. Correct.

15 Q. Okay. That's fine. Now you brought up the  
16 money to Emily. Is that correct, what Ms. Edwards  
17 said, that that was a stock account as Smith Barney?

18 A. I think. Yes.

19 Q. That was open shortly after your grandniece,  
20 Emily, was born?

21 A. I can't testify to the date. I know that most  
22 of the account summaries came to me, which I  
23 shoveled over to my father.

24 Q. Your father is the one that opened that  
25 account, correct?

1 A. Yes.

2 Q. And it was independent; it was standalone? It  
3 wasn't mixed in with other things, was it?

4 A. No.

5 Q. Okay. Is he the one that put the money in?

6 A. Yes.

7 Q. What was the name on the account?

8 A. David C. Bryan, Jr., Emily Cecile Edwards, FMA,  
9 whatever.

10 Q. Did it indicate on there that it was made under  
11 the Uniform Gift to Minors Act?

12 A. I can't -- I don't know.

13 Q. Okay. But didn't you consider it -- I mean, it  
14 was a gift from a great-grandfather to a  
15 great-granddaughter, wasn't it?

16 A. I considered it Emily's money. Yes.

17 Q. Absolutely. I mean, it was a gift, right?

18 A. You're talking about a technical term that I'm  
19 not familiar with. Was it a gift? Probably so.  
20 But I don't know that.

21 Q. Let's just try to make it less technical. If I  
22 give you a gift, is it yours or mine?

23 A. It would be my gift.

24 Q. Do you have to give it back to me?

25 A. No.

1 Q. So the money in that account, which started out  
2 at 5 or 10, we don't know, that was Emily's money.  
3 And your grandfather was the custodian of the  
4 account, correct?

5 A. Correct.

6 Q. It wasn't his money; it was her money. He's  
7 the custodian, correct?

8 A. Okay.

9 Q. And after he died, you took over that role,  
10 too?

11 A. Yes.

12 Q. So the money wasn't part of your father's  
13 estate because it wasn't his money. It was her  
14 money; isn't that correct?

15 MR. HEMLEPP: I hate to object, but we are on  
16 direct and there's a lot of leading.

17 MR. BELDING: Your Honor, I did call him, but  
18 he's obviously an adverse party. I'd ask for some  
19 latitude to go ahead and lead if necessary. I think  
20 it's helpful.

21 THE COURT: Some latitude. I'd certainly also  
22 start off with basic personal knowledge.

23 MR. BELDING: Okay. Appreciate it.

24 BY MR. BELDING:

25 Q. So do you have any personal knowledge of

1       whether or not that \$5,000 that your father gave to  
2       Emily should have been part of his estate?

3       A.     I considered it a part of his estate.  I  
4       considered it entrusted to me to manage it for her  
5       until she turned 18.  It was my responsibility to  
6       take care of that money for Emily until she turned  
7       18 or when she was not a minor any longer.

8       Q.     Okay.  You had people you could talk to, like  
9       Buddy Ferrell, correct?

10      A.     Yes; and a lawyer.

11      Q.     And you obviously talked to people at the  
12      probate court a lot?

13      A.     Yes.

14      Q.     What was your understanding of what the estate  
15      of your father was comprised of?

16      A.     All of his stock accounts, all of his personal  
17      property, all of his money, all of his bank  
18      accounts, all the assets in other banks; his VA, his  
19      social security, his investments, his property.

20      Q.     So you believed, at the time, that something he  
21      had given away as a gift needed to be included  
22      because his name was on the account?

23      A.     I never considered it at the time as a gift.  
24      Okay?

25      Q.     Do you consider it a gift now?

1 A. Well, I gave it to her when she was 18. Yes.

2 Q. So the money that was in her stock account,  
3 with your dad as the custodian, he could take out  
4 any time and it was his money?

5 A. He could take it out?

6 Q. Could he?

7 A. I think he could have.

8 Q. And rescinded that gift?

9 A. Well, we're working on semantics here. I think  
10 when he was managing the stock accounts and when I  
11 managed the stock accounts with the stock broker, I  
12 did not go to Emily and say this is your money, I'm  
13 going to invest it in IBM. I would tell the stock  
14 account, invest it in IBM, if that's what you're  
15 asking.

16 Q. So can we agree to disagree as to whether it  
17 was in the estate or not?

18 A. Sure. Sure.

19 Q. Okay. Now, on the final accounting that's in  
20 Exhibit 3 --

21 A. Yes.

22 Q. -- you wrote down that you had disbursed  
23 \$28,000 to Emily?

24 A. Okay.

25 Q. Do you see it in the handwritten -- I don't

1 want you to have to guess. The two-page accounting,  
2 second page handwritten --

3 A. I believe you.

4 Q. You see the line where it says \$28,000 to Emily  
5 Edwards?

6 A. Yes.

7 Q. Now, you put that down as a disbursement,  
8 correct?

9 A. Yes.

10 Q. And we already read what disbursements mean:  
11 Paid out of the estate. Correct?

12 A. Yes.

13 Q. Okay. Now, what date did you sign at the  
14 bottom?

15 A. 9/7/2010.

16 Q. September of 2010, correct?

17 A. Yes.

18 Q. When did you file it with the probate court?

19 A. September 20th, 2010.

20 Q. Okay. So on September 20th, 2010, you have  
21 filed a form with the probate court saying I gave  
22 \$28,000 to Emily Edwards, haven't you?

23 A. I took \$28,000 out of the estate and assigned  
24 that to Emily Edwards, yes.

25 Q. And when you say you took it out of the estate,

1       you mean for accounting purposes. You didn't  
2       actually make a withdrawal or anything, did you?

3       A.    No. Her account stayed the same.

4       Q.    Was it increasing in value?

5       A.    Yes.

6       Q.    Okay. I'd like you to -- do you recall me  
7       asking you, in your deposition, did you give Emily  
8       Edwards \$28,000?

9       A.    I don't recall that, no.

10      Q.    Okay. You still have the transcript of your  
11      deposition up there?

12      A.    Yes.

13      Q.    Okay. You mind turning to page 33?

14      A.    36?

15      Q.    No; 33.

16            All right. Mr. Bryan, I'm sorry. You have  
17      page 33 up?

18      A.    I do.

19      Q.    And on the question of -- remember, I just  
20      asked you did you tell the probate court that you  
21      had paid her \$28,000 in September of 2010. And we  
22      heard your response. Do you see line 6 in this?

23      A.    Yes.

24      Q.    And I'll just represent to you that I asked  
25      you, did you give Emily Edwards \$28,000? And what

1 was your response?

2 A. Not at that time.

3 Q. I said: Okay. When would you have given it to  
4 her? Have you ever give it to her? And you  
5 responded.

6 A. When she turned 18, I gave her \$35,000.

7 Q. Okay. So she turned 18 about five years after  
8 this, isn't that right, as we've established,  
9 sometime in 2015?

10 A. Yes.

11 Q. So when you told the Court that you had  
12 disbursed \$28,000, you had not done that, correct?

13 A. That's correct.

14 Q. Okay.

15 A. Can I say something about that, what you just  
16 asked me?

17 Q. Fine.

18 A. When my answer was when she turned 18, I gave  
19 her \$35,000, she didn't get \$35,000. She got the  
20 total sum that had accumulated in the stock account,  
21 which I turned over to my niece with instructions  
22 for Smith Barney that they were to cut her check to  
23 my great-niece or she could continue investing with  
24 them in her name solely.

25 Q. Okay.



1       A.    But as far as \$35,000 in cash, that didn't  
2       happen.

3       Q.    So did you ever give her any money?

4       A.    I gave her the stock account with the \$35,000  
5       in it. Does that constitute me giving her money? I  
6       would assume so.

7       Q.    You turned over the ownership of the account?

8       A.    That's right.

9       Q.    Okay. Which she already had her name on  
10      anyway, correct?

11      A.    That's correct.

12      Q.    Okay. Did you believe that you were the  
13      trustee of that stock account?

14      A.    Of Emily's stock account?

15      Q.    Yes.

16      A.    Yes.

17      Q.    Now, in your deposition, I also asked you and  
18      you said that there was no trust.

19      A.    That's correct.

20      Q.    No account was ever opened?

21      A.    Correct.

22      Q.    And never put any money into it?

23      A.    That's correct.

24      Q.    Do you recall trying to explain that the trust  
25      was comprised of properties?

1 A. Say that again.

2 Q. Did you tell me, in your deposition, that it  
3 wasn't money that was entrusted, but it was all  
4 properties?

5 A. Some of it was money; some of it was property.

6 Q. Okay.

7 A. Some of it was cars; some of it was --

8 Q. The 468,587.06, what was that comprised of?

9 A. Wasn't cash money.

10 Q. Okay. Then what was it?

11 A. Real property.

12 Q. Okay. Where did you come up with those  
13 numbers, \$468,578.06?

14 A. Well, I think I took the appraised -- what I  
15 assume was the appraised value of each piece of  
16 property and his other personal possessions and put  
17 a value on that of somewhere around \$900,000.

18 Q. And that was going to be the money that you  
19 were going to use to support your mother until her  
20 death?

21 A. That's correct.

22 Q. And then, as we've seen in the will, at her  
23 death, that entire remaining principal was supposed  
24 to be divided four ways, correct?

25 A. That wasn't my understanding. No.

1 Q. Is that what the will says?

2 A. There's language in there that says that. Yes.

3 Q. And when you did the accounting, your mother  
4 had already been passed away for almost a year,  
5 correct?

6 A. I won't -- yes.

7 MR. BELDING: Thank you. No further questions,  
8 Your Honor.

9 THE COURT: Any cross?

10 MR. HEMLEPP: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. HEMLEPP:

14 Q. David, were you the personal representative of  
15 your dad's estate?

16 A. Yes.

17 Q. Did his will mention a trust?

18 A. Yes.

19 Q. Did you make that trust?

20 A. No.

21 Q. Were you the personal representative of your  
22 mom's estate?

23 A. Yes.

24 Q. Did it mention a trust; a trust, a legal trust?

25 A. I don't think so.

1 Q. Okay. Did you ever tell anybody that you made  
2 a trust?

3 A. No.

4 MR. HEMLEPP: Ladies and gentlemen -- I  
5 apologize.

6 BY MR. HEMLEPP:

7 Q. Let's clear some of this up. Your father was a  
8 lawyer, was he not?

9 A. He was.

10 Q. And your parents were married for a very long  
11 time?

12 A. Long time, yes.

13 Q. How long were they married?

14 A. From probably 1949 until they died.

15 Q. And at one point early in their marriage, they  
16 owned a business together, didn't they?

17 A. Yes.

18 Q. It was a frozen food business, right?

19 A. Yes.

20 Q. Here in Lexington?

21 A. West Columbia. Yes.

22 Q. West Columbia. Okay. They also had children.  
23 They had you and then, at one point, they adopted  
24 Sharon, your sister?

25 A. That's correct.

1 Q. Okay. Your father practiced law?

2 A. That's correct.

3 Q. He practiced law for a long time?

4 A. Yes.

5 Q. He was also the mayor of --

6 A. Cayce.

7 Q. -- of Cayce.

8 He also -- from his practice of law, he also  
9 invested in real estate, did he not?

10 A. Yes.

11 Q. And some of his investments in real estate were  
12 rental properties?

13 A. Yes.

14 Q. Some of his investments in real estate were  
15 with partners outside of the family; is that  
16 correct?

17 A. Correct.

18 Q. He also engaged in business transactions with  
19 people. He also engaged in business investments,  
20 right?

21 A. Yes.

22 Q. And was he knowledgeable about the stock  
23 market?

24 A. Yes.

25 Q. Did he invest his money into the stock market?

1 A. Yes.

2 Q. When he was alive, did you help him maintain  
3 these assets, including the rental properties,  
4 including his money?

5 A. Yes.

6 Q. Did you have specialized training for that?

7 A. I sold real estate when I got out of school for  
8 six or seven years and got an appraisal  
9 certification. And I also did title work out of his  
10 law office occasionally in the summers.

11 Q. And your dad was a well-respected lawyer. So  
12 you picked up some stuff along the way, didn't you?

13 A. Yes.

14 Q. But that was not your career, was it?

15 A. No.

16 Q. What was your career?

17 A. I went in law enforcement.

18 Q. You were a longtime Lexington County sheriff's  
19 deputy, were you not?

20 A. Correct.

21 Q. When did you start with the sheriff's  
22 department?

23 A. '78.

24 Q. When did you retire from the sheriff's  
25 department?

1 A. 2011.

2 Q. Okay. When you were helping your father with  
3 his assets, with the rental properties, did he  
4 sometimes --

5 MR. BELDING: Your Honor, let me object.  
6 Mr. Hemlepp will be able to call him up and go  
7 through all of this as part of their case in chief.  
8 But he's not asking questions directed to the direct  
9 examination. So the cross-examination is outside  
10 the scope.

11 THE COURT: Y'all come up here for a minute.  
12 (Sidebar conference.)

13 MR. BELDING: Withdrawing my objection, Your  
14 Honor.

15 BY MR. HEMLEPP:

16 Q. I believe I was asking you, when you were  
17 helping your father manage the rental property and  
18 manage his estates, did he rely on you?

19 A. Yes.

20 Q. Did you have hands-on knowledge of how he  
21 conducted his own financial affairs?

22 A. Yes.

23 Q. Sometimes, was it unorthodox?

24 A. Say that again.

25 Q. Sometimes, was it unorthodox?

1 A. Yes.

2 Q. How so?

3 A. Well, mainly, he gave instructions about how he  
4 wanted things done, and if that went contrary the  
5 way they should be done, you either modified it on  
6 the fly or you didn't do it.

7 Q. Was he a generous man?

8 A. Yes.

9 Q. You've seen the family tree that has been  
10 admitted as Defendant's Exhibit No. 2, have you not?

11 A. Yes.

12 Q. Did he routinely give gifts of money or  
13 property to members of the family?

14 A. All of them that were alive while he was alive,  
15 yes.

16 Q. Okay. When he passed away, where were you?  
17 How did you find out your father passed away?

18 A. I was at work.

19 Q. You were at work?

20 A. Here in the courthouse.

21 Q. Here in the courthouse?

22 A. Yes.

23 Q. You were assigned to the courthouse by the  
24 sheriff's department?

25 A. Yes; court security.



1 Q. And were you aware that there was a will --  
2 when did you become aware there was a will?

3 A. In 2000.

4 Q. Near when the will was written? Near in time  
5 when the will was written?

6 A. My father had written his own will. And after  
7 reading it and going over it with him, I suggested  
8 we get an attorney. My father practiced criminal  
9 law and tax law, but I wanted an attorney that just  
10 did estate planning law. And I suggested we go to  
11 Mr. Hipp, and he concurred. And I took his draft,  
12 his starting draft, to Mr. Hipp. And he finished it  
13 with the document for -- that was done in 2000.

14 Q. You've already testified that, based upon your  
15 knowledge of your father's investments and his  
16 assets and his money, that the estate -- that at the  
17 time of the will being written, almost 20 years ago,  
18 he would have been worth somewhere between four and  
19 five million dollars. Is that true?

20 A. That is a reasonable estimate.

21 Q. So estate taxes were a very paramount concern  
22 of his?

23 A. Tax laws at that time would have been  
24 substantial inheritance tax having to be paid.  
25 That's why the instrument was entered about the

1 trust, a trust, a financial vehicle that would  
2 minimize the tax burden upon his death, whenever  
3 that was.

4 Q. So we fast-forward from the will. And we  
5 fast-forward to January -- January of 2009 when your  
6 father passed away; you were here in the courthouse.  
7 At that time, when you became the personal  
8 representative of his estate, his estate had  
9 decreased a great deal, hadn't it?

10 A. Yes.

11 Q. It had decreased because of the economy?

12 A. Yes.

13 Q. There was real estate involved?

14 A. Yes.

15 Q. Had the real estate -- was it rental property?

16 A. Rental property, yes, and some raw land.

17 Q. Okay. Had your father also given away assets?

18 A. Say again.

19 Q. Had your father also given away assets?

20 A. Yes.

21 Q. To whom?

22 A. His grandchildren, to me, his family.

23 Q. So during his lifetime, he had given away some  
24 of his property?

25 A. Yes.

1 Q. Okay. Then your mother died. When did your  
2 mother die?

3 A. October 22nd, I believe.

4 Q. Did your mother have a will?

5 A. Yes.

6 Q. Who was the personal representative of her  
7 estate?

8 A. I was.

9 Q. The court reporter has handed you what has been  
10 marked as Defendant's Exhibit 1. What is that?

11 A. My mother's will.

12 Q. And what does your mother's will -- well, let  
13 me back up. Is there a date on that will when it  
14 was signed?

15 A. Yes.

16 Q. When was it signed?

17 A. Looks like the first day of June 2001.

18 Q. 2001?

19 A. Yes.

20 Q. So that would be approximately the year after  
21 your father wrote a will?

22 A. Yes.

23 Q. Okay. In your mother's will -- what is the  
24 provision in your mother's will of what happens to  
25 her assets?

1       A.    Excuse me.  I hereby leave all property of  
2       every kind and description to my son, David C.  
3       Bryan, III.

4       Q.    So she left everything to you?

5       A.    Yes.

6       Q.    Okay.  And in her will -- did she leave in her  
7       will any instructions on what you were supposed to  
8       do with the money that you inherited from her?

9       A.    I'm sorry.  This chair keeps running away from  
10      me.

11      Q.    Okay.

12      A.    Say that again.

13      Q.    In her will, did she leave you instructions of  
14      what you were to do with the money that you  
15      inherited from her?

16      A.    Yes.

17      Q.    What was it?

18      A.    What was I supposed to do with the money that I  
19      inherited from my mother?

20      Q.    Yes.

21      A.    She wanted me to make sure her grandchildren  
22      and her great-grandchildren got an opportunity for  
23      an education.

24           MR. HEMLEPP:  This is a blowup of the same  
25      exhibit.

1 THE COURT: Okay.

2 BY MR. HEMLEPP:

3 Q. Your mother's will, on the front page, leaves  
4 all of her property of every kind and description to  
5 my son David C. Bryan, III. Is that true? What  
6 does the very next line say?

7 A. I'm sorry. Where are you?

8 Q. Look down about the middle. It starts: I  
9 hereby leave my property of every kind and  
10 description to my son, David C. Bryan, III. Do you  
11 see that?

12 A. I do.

13 Q. What does the very next line say?

14 A. He is entrusted with all my property to hold,  
15 to sell, to invest, to mortgage, to dispose of in  
16 any way he sees fit with the provision that the  
17 proceeds of the property will be used for the  
18 exclusive use of David C. Bryan, III, my son; Sharon  
19 Montgomery, my daughter; Elisa Montgomery Edwards,  
20 my granddaughter; Mary Cecil Montgomery, my  
21 great-granddaughter; Emily Cecile Edwards, my  
22 great-granddaughter; and Bradley Montgomery Edwards,  
23 my great-grandson.

24 Q. Do you read that that was creating a legal  
25 trust?

1 A. No.

2 Q. How did you interpret that?

3 A. She left me the money to take care of all these  
4 people.

5 Q. Okay. Is that how you interpreted your  
6 father's will?

7 A. Yes.

8 Q. These two wills, both naming you as the  
9 personal representative, both of which in the same  
10 year, your interpretation was that you were to take  
11 care of your family?

12 A. Yes.

13 Q. Because your father had taken care of his  
14 family?

15 A. Yes.

16 Q. Have you been doing that?

17 A. Yes.

18 Q. In your father's will, some money went to Mary  
19 Moyers?

20 A. Yes.

21 Q. Did she get it?

22 A. Did she get it?

23 Q. Yes.

24 A. Yes.

25 Q. Some money was supposed to go to David Gayden.

1 Did he get it?

2 A. Yes.

3 Q. Some money was supposed to go to Sharon  
4 Montgomery. Did she get it?

5 A. Yes.

6 Q. Some money was supposed to go to other people.  
7 Did they get all their money? Everyone in the will  
8 who was bequeathed money, did they get their money?

9 A. Yes. They got money where it said -- yes.  
10 Yes. For --

11 Q. Based upon your mother's will that she trusted  
12 you to take care of your family, have you put money  
13 aside if the younger great-grandchildren need to go  
14 to college?

15 A. For Cam and for Maddie, yes. When you say put  
16 money aside, I have allocated money for them to go  
17 to school, if they wish to go to school and have the  
18 ability to go to school. Yes.

19 Q. Now, at the time that you filled out all these  
20 forms with the probate court, had you ever been a  
21 personal representative before?

22 A. No.

23 Q. Had you ever seen these forms before?

24 A. No.

25 Q. Okay. When -- one of the things that you were

1       asked about by Mr. Belding is this whole little to  
2       trust that was put in there. And it had a dollar  
3       figure next to it, \$400,000. Was there \$400,000 in  
4       cash sitting around?

5       A.    No.

6       Q.    Was there \$400,000 sitting in a bank account?

7       A.    No.

8       Q.    Did that \$400,400 and whatever it is, was that  
9       represented by lots of different things?

10      A.    Say that again.

11      Q.    Was it really lots of different types of  
12      assets?

13      A.    Yes.

14      Q.    Vehicles? Real estate?

15      A.    Yes.

16      Q.    Household goods?

17      A.    Yes.

18      Q.    So the idea that there's this pool of money  
19      that should go into a trust, that actually isn't  
20      true, is it?

21      A.    No. If the contention is or was that \$468,000  
22      of cash was to go into a vehicle that you got in and  
23      drove around the block, a trust, no, that's not  
24      correct. Can I -- in -- 2008 and 2009 was the most  
25      severe economic depression the country had seen



1           since 1930. Okay?

2           Now, there was two options, basically, that I  
3           saw: We could have sold everything that we owned,  
4           got in cash, and distributed the money in cash, or  
5           we could hold on and we could try to recover and  
6           then disburse as we went along. Those were the two  
7           options that I saw. And if we had sold everything  
8           at the time of my father's death, we would have  
9           probably gotten 10 cents on the dollar, in my  
10          opinion.

11         Q.    And so you made that decision?

12         A.    Yes.

13         Q.    And you just testified to the jury we; if we  
14                had sold the money and we would disburse it. Who is  
15                that we?

16         A.    Well --

17         Q.    Is that your family?

18         A.    Yes. We -- in the part that it was my  
19                responsibility, was entrusted in me to take care of  
20                my family.

21         Q.    And you've done that?

22         A.    Yes.

23         Q.    And you continue to do that to this day?

24         A.    Yes.

25         Q.    Did you tell them that you set up a trust?

1 A. No.

2 Q. You sure you didn't tell them that you set up a  
3 trust?

4 A. No.

5 Q. Did you tell them there was money in a Smith  
6 Barney account?

7 A. I did.

8 Q. What was that?

9 A. Emily's FMA account.

10 Q. Okay.

11 A. I kept them apprised -- when there's talk about  
12 there was a trust, in my mind, Emily's FMA account  
13 was a trust account. I was responsible for that  
14 account. And when she turned 18, she was given the  
15 account.

16 When we talk about trust, it was entrusted to  
17 me to look after, not a trust that's over here  
18 somewhere that you can go look at or you could go  
19 see or you could go do something with. And  
20 that's -- those are my thought process.

21 Q. You felt like you had a responsibility to take  
22 care of this money?

23 A. Sure.

24 Q. In part because your mother asked you to --

25 A. Yes.

1 Q. -- in her will?

2 So Emily, at the time of the estate, had this  
3 account at Smith Barney. And when she turned 18, I  
4 believe you testified, you gave instructions to  
5 Smith Barney to give her the account. It was in her  
6 name; she could keep the account, keep the money  
7 there or take the money out; it was none of your  
8 business anymore?

9 A. That's correct.

10 Q. She also got an annuity that your father had  
11 set up earlier?

12 A. It was an insurance policy. Whether it's  
13 annuity or insurance policy, I'm not sure.

14 Q. When did you first find out about that?

15 A. Going through some files, I saw that there was  
16 a policy with MetLife or New York Life, one of the  
17 two. And I sent them a copy of the death  
18 certificate and a request for them to cut a check  
19 for the policy cash value. And it was my  
20 understanding that I was the beneficiary. I had  
21 talked to my father several years before --

22 Q. You can't testify to what your father told you.

23 A. That's right.

24 Q. But you had a belief --

25 A. I had a reason to believe that I was the

1 beneficiary of that policy. And, as the personal  
2 representative, I wanted that cash to be able to  
3 start disbursing and pay off mortgages for rental  
4 property and that sort of thing.

5 Q. Did you then discover that you were not the  
6 beneficiary?

7 A. That's correct.

8 Q. And the beneficiary was Emily?

9 A. Yes.

10 Q. The plaintiffs have introduced Exhibit No. 5,  
11 which is inventory and appraisalment. And on page 3,  
12 under insurance payables, there's an indication that  
13 I would say to you is MetLife, Emily Edwards,  
14 \$118,000. Is that what you're referring to?

15 A. Yes.

16 Q. There's another one, David C. Bryan, III,  
17 \$9,000. Was that another insurance policy?

18 A. Yes.

19 Q. And that went to you?

20 A. I was the beneficiary on that policy. Yes.

21 Q. Okay. When you father died and you were named  
22 personal representative, there was a period of time  
23 when your mother was still alive? Your mom did not  
24 die until October?

25 A. That's correct.

1 Q. What was her health?

2 A. Poor.

3 Q. And I believe your niece testified that she  
4 stated she wanted to stay home; she didn't want to  
5 go to a facility or a hospital; that she elected to  
6 stay home. Is that correct?

7 A. That's correct.

8 Q. Did you have healthcare nurses and other  
9 professionals to come into the house and help her?

10 A. Yes.

11 Q. Did Ms. Edwards help her?

12 A. Yes.

13 Q. And did you pay all of those bills from your  
14 father's estate?

15 A. Yes.

16 Q. Did you maintain your mother the way that she  
17 was accustomed? Did she want for anything?

18 A. No.

19 Q. You paid for the house?

20 A. Yes.

21 Q. You paid all the utilities?

22 A. Yes.

23 Q. All the food?

24 A. Yes.

25 Q. Did she have a credit card?

1 A. Yes.

2 Q. Did Ms. Edwards have access to that credit  
3 card?

4 A. Yes.

5 Q. Whenever that credit card was used, did you pay  
6 that off?

7 A. Yes.

8 Q. And you did that through the funds that your  
9 father had in his estate in the manner in which his  
10 will directed?

11 A. Yes.

12 Q. Okay. Did that diminish his estate? Was that  
13 spent out of his estate?

14 A. Yes.

15 Q. During that time, how often would you see your  
16 mother?

17 A. Not often during the week, because I didn't  
18 leave here until probably 5:00 or 6:00 in the  
19 evening. But maybe once a weekend.

20 Q. At least every week --

21 A. Two or three times a month, I would go over  
22 there.

23 Q. Okay.

24 A. If I got off early one day, I'd probably go by  
25 there.

1 Q. And --

2 A. Not as much as I should have; I'll tell you  
3 that.

4 Q. Okay. How often did you see Ms. Edwards during  
5 that time?

6 A. Probably once a month.

7 Q. Okay. Do you have your father's will up there?

8 A. I think so.

9 Q. I think it's Plaintiff's 2.

10 A. I do.

11 Q. Okay.

12 A. Exhibit 2?

13 Q. Yes, sir. Would you please go to page 4.

14 A. Okay.

15 Q. And you see item 12?

16 A. Yes.

17 Q. It's a Roman numeral.

18 A. Yes.

19 Q. Share B to Testator's son.

20 A. Yes.

21 Q. This is your father's will?

22 A. Yes.

23 Q. You're the son?

24 A. Yes.

25 Q. What is Share B?

1       A.    Shall be distributed to my son.  Provided my  
2       son is deceased, it shall be distributed to Robin  
3       Christine Brown, Elisa Montgomery Edwards, Mary  
4       Cecil Montgomery, Ethan Montgomery, and Emily Cecile  
5       in equal shares.

6       Q.    Yes.  If you predeceased him?

7       A.    Yes.

8       Q.    But you didn't?

9       A.    That's correct.

10      Q.    So you would have inherited all of Share B?

11      A.    Yes.

12      Q.    And Share A was anything that would go into the  
13      trust?

14      A.    Yes.

15      Q.    Okay.  I want to go back to it without  
16      belaboring the point.  Did you ever tell anybody  
17      that you had created a legal trust?

18      A.    No.

19      Q.    Did you lie to your family?

20      A.    No.

21      Q.    Now, your testimony is not that you did this --  
22      that you had ever managed an estate before.  You  
23      admit that maybe you made mistakes?

24      A.    Sure.

25      Q.    Math mistakes?



1 A. Sure.

2 Q. You'd never seen these forms before?

3 A. Sure.

4 Q. But you're being sued for making statements.

5 Did you ever make a statement trying to trick them?

6 A. No.

7 Q. Finally, did your sister sue you?

8 A. No.

9 MR. BELDING: Objection, Your Honor. It's  
10 really not relevant because she's dead.

11 MR. HEMLEPP: I'll move on.

12 THE COURT: Yeah.

13 BY MR. HEMLEPP:

14 Q. Brandon Montgomery Edwards, did he ever sue  
15 you?

16 A. No.

17 Q. Bryan Montgomery, your nephew, did he ever sue  
18 you?

19 A. No.

20 Q. Your other -- his two sons also named in the  
21 will, did either one of them sue you?

22 A. No.

23 Q. Did Mary Cecil Moyer sue you?

24 A. No.

25 Q. Did her children sue you?

1 A. No.

2 Q. Nobody sued you but Elisa and Emily; is that  
3 correct?

4 A. Yes.

5 Q. Thank you.

6 THE COURT: Redirect?

7 MR. BELDING: Go?

8 THE COURT: Yes, sir.

9 MR. BELDING: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BELDING:

12 Q. Mr. Bryan, let's start with the will of your  
13 mother, okay, Defendant's 1. I'm not going to ask  
14 you many questions about it.

15 Did you open an estate for her in the Lexington  
16 County Probate Court?

17 A. No.

18 Q. You didn't have to, did you?

19 A. No.

20 Q. And why did you not have to?

21 A. Why did I not probate my mother's will?

22 Q. Why didn't you have to open up an estate?

23 A. Because my mother had nothing.

24 Q. Your mother had nothing --

25 A. That's correct.

1 Q. -- that's exactly right. She didn't own any  
2 real property?

3 A. No.

4 Q. We have stacks of deeds of distribution you  
5 did. She never had any real property in her name,  
6 did she?

7 A. She had jewelry in her name. Yes.

8 Q. Okay. But not land or houses?

9 A. No.

10 Q. All right. And so this will never got probated  
11 by the court?

12 A. No.

13 Q. Because, isn't this true, anybody will tell  
14 you, if you don't have at least \$10,000 worth of  
15 stuff and especially if you don't have real  
16 property, you don't need to probate it? They don't  
17 want to be bothered with little tiny things like  
18 this; you only have to do an estate if you have  
19 property that needs to be transferred. Isn't that  
20 correct?

21 A. Yes. I think so.

22 Q. So this never saw the court, did it?

23 A. No.

24 Q. Okay. She had died by the time you did that  
25 accounting and put a figure of money on what went to

1 the trust; isn't that correct?

2 A. Yes.

3 Q. Okay. In her will, it said she gave everything  
4 to you. But even a -- we were talking earlier about  
5 trust and entrust and all sorts of variations of the  
6 word trust.

7 You were entrusted to take care of these  
8 people, right, in your mother's will?

9 A. Yes.

10 Q. But you were already -- when she died, you were  
11 still working on your father's estate, weren't you?  
12 It didn't close for a year after she passed away;  
13 matter of fact, two years. Wasn't it two years  
14 after your mother passed away before you closed your  
15 father's estate?

16 A. Probably took that long. Yes.

17 Q. So Mom didn't have anything to do with this;  
18 isn't that correct? She didn't have anything that  
19 needed to be distributed to anybody, right?

20 A. Say that again now.

21 Q. She didn't really have much of anything to give  
22 to anybody but clothes and jewelry and things like  
23 that? She didn't have any money and she didn't have  
24 any property, right?

25 A. She had everything that my father left --

1 Q. Okay.

2 A. -- entrusted to me to look after her. All the  
3 assets he accumulated over his lifetime, she was  
4 entitled to for as long as she lived and were  
5 interested to me to take care of her and others.

6 Q. You've still got the will handy, don't you?

7 A. Yes.

8 Q. Let's go to -- okay. Go to numbered page 3 --

9 A. Which will are we working on?

10 Q. I'm sorry. Your dad's.

11 A. My dad's. Okay. Thank you. All right.

12 Q. Okay. Ready?

13 A. Yes.

14 Q. Go to numbered page 2.

15 A. 2.

16 Q. Item 8.

17 A. All right.

18 Q. Big, long thing about how you set up the trust,  
19 right?

20 A. Yes.

21 Q. Okay. That's item 7, correct -- no. Sorry.  
22 Item 8.

23 A. Okay. 8.

24 Q. VIII, that's 8, correct?

25 A. Yes.

1 Q. Then you turn the page, got Item No. 9 right on  
2 the top, correct, IX? It's entitled Outright Gift  
3 to Share B, right?

4 A. Okay.

5 Q. This comes after number 8. This is the next  
6 thing. This says money goes to the trust. The very  
7 next one says -- and I'll read it. Tell me if I  
8 read it right. Ready?

9 A. Sure.

10 Q. I give, devise, and bequeath all the rest,  
11 residue, and remainder of my property of every kind  
12 and description to be distributed under Share B,  
13 which you read earlier to Mr. Hemlepp, right? And  
14 Share B all went to you, correct?

15 A. Say that again.

16 Q. You got everything that was considered Share B  
17 under the will of your father?

18 A. Okay. I'll agree with that.

19 Q. All right. Let's go -- he asked you to read --  
20 go to page 4.

21 A. All right.

22 Q. You see at the top, Roman numeral 12 says:  
23 Share B to Testator's son, on page 4.

24 A. 12, okay, share B, yes.

25 Q. Share B shall be distributed to my son,

1 provided that he's still alive. So you got all  
2 that, didn't you?

3 A. Yes.

4 Q. And Mr. Hemlepp made a point about that. But  
5 what was Share B? Wasn't Share B all the rest,  
6 residue, and remainder of the property after what  
7 went into the trust? I mean, that's what it says in  
8 the will, isn't it?

9 A. That's what you say it says. Yes.

10 Q. Okay. And the document speaks for itself and  
11 the jury can read this, correct?

12 A. If that's what you say, yes.

13 Q. And a year after your mother died, you filed an  
14 inventory saying there's \$468,000 that's in this  
15 trust; isn't that correct?

16 A. \$460,000 entrusted. Yes.

17 Q. Okay. Now, Mr. Hemlepp had you go through the  
18 problems the estate had had because of the stock  
19 market crash in 2009, correct?

20 A. Yes, '8 and '9.

21 Q. And that we didn't have money; we had  
22 properties, but didn't have a lot of money, correct?

23 A. That's not totally correct. We did have  
24 property and we did have money --

25 Q. We did have money. Okay.

1       A.    We didn't have as much money as we should have  
2       had.

3       Q.    Well, you know what, whose fault was that?  It  
4       wasn't ours.  Okay.  Fair enough.

5            Let me ask the Court Reporter to hand you  
6       what's been marked as Plaintiff's Exhibit 8.  Well,  
7       you know what, give him 7 at the same time.  Let's  
8       do them both.

9            All right.  Mr. Bryan, take the one that's  
10      marked as Plaintiff's Exhibit 7.

11      A.    All right.

12      Q.    Do you know what this is?

13      A.    It's a deed of distribution.

14      Q.    Right.  And, real quick, just for the jury, not  
15      everybody has been involved in an estate, what is a  
16      deed of distribution?

17      A.    Transferring the property from one person to  
18      another.

19      Q.    Who does that for the estate?

20      A.    The Probate Court signs the deed of  
21      distribution and it's transferred to the County, and  
22      the County records it as a transfer deed.

23      Q.    Okay.  And I think you might have misspoken.  
24      Who signs the deed of distribution?  Not the County.  
25      Look on the second page.  Who signed it?



1 A. I signed the deed.

2 Q. Right. You signed as the personal  
3 representative of the estate, correct?

4 A. Correct.

5 Q. You signed all the deeds from -- the properties  
6 that were owned by your father, you had to do a deed  
7 of distribution for each one in this estate, didn't  
8 you?

9 A. Yes.

10 Q. I mean, there's tons of them. He owned a lot  
11 of stuff?

12 A. Yes.

13 Q. These are all copies of deeds of distribution  
14 that you signed --

15 A. Yes.

16 Q. -- right?

17 Okay. And this one was signed -- you actually  
18 did this -- on the second page, the notary says this  
19 was done on the 18th of March of 2009. Correct?

20 A. Yes.

21 Q. Which was a couple months after your father  
22 passed away, right?

23 A. Yes.

24 Q. And I want you to understand, this is -- this  
25 part is exactly correct: The personal

1       representative deeds to whoever gets these  
2       properties under the will. And, in this case, the  
3       person it was supposed to go to was you; isn't that  
4       right?

5       A.    Yes.

6       Q.    I mean, you deeded it to yourself?

7       A.    Yes.

8       Q.    But that happens all the time in estates; don't  
9       get me wrong. Okay?

10           Now, here's the thing though: Look at what's  
11       been marked as Plaintiff's Exhibit 8. Do you  
12       recognize that document?

13       A.    I do.

14       Q.    Okay. What is this?

15       A.    What is it?

16       Q.    Yes.

17       A.    A deed.

18       Q.    Okay.

19       A.    Or title.

20       Q.    Title to real estate?

21       A.    Yes.

22       Q.    What real estate was being sold by this  
23       document?

24       A.    My mother's home or my father's home.

25       Q.    The Bruce Road home, correct?

1 A. Yes.

2 Q. When was this transfer made?

3 A. July 15th, 2011.

4 Q. Okay. And the estate didn't close until  
5 November of 2011, correct?

6 A. Yes.

7 Q. And how much money was paid to you for this  
8 house, the house of your parents?

9 A. If memory serves, I think Ms. Surat paid  
10 \$175,000 down, and I took a note back for \$50,000.  
11 And she was to make payments on the note until she  
12 sold some property in Florida, and then pay off the  
13 \$50,000, which she did seven or eight months later.  
14 So 225-, 230-, something like that.

15 Q. This says 230-, we can agree on that?

16 A. All right.

17 Q. Okay. So money came in, right? Money came in?

18 A. Yes. Yes. Yes.

19 Q. Okay. And you, even according to the will of  
20 your mom, were supposed to be taking care of people  
21 in your family with this money, weren't you?

22 A. Yes.

23 Q. Now, I just want to make sure I'm not confused  
24 about anything. This trust account, if there had  
25 been one, did not belong to your mother, did it?

1 A. Yes.

2 Q. How, under this will, does the trust account  
3 belong to your mother?

4 A. Because my mother would get everything that my  
5 father had except for the cash bequest that he put  
6 in the will.

7 Q. And the jury can read this document?

8 A. They can.

9 Q. Okay. But, under Item 11, the trust shall be  
10 administered and distributed as follows. You've  
11 read all this, right?

12 A. Yes.

13 Q. Okay. This was not hers to put into probate  
14 when she died anyway, because this says it was  
15 supposed to be used for her benefit and, upon her  
16 death, it's distributed to four people. That's what  
17 the will of your father says; isn't that correct?

18 A. Yes.

19 Q. Okay. Who wrote up your mother's will? Do you  
20 know?

21 A. I think my father had something to do with it.

22 Q. I mean, you didn't type it up?

23 A. I may have.

24 Q. Well, I just wondered, because there's a couple  
25 of misspelled words and --

1 A. Well, you know English wasn't my main --

2 Q. I understand. I understand.

3 So when I see a misspelled word, I think of  
4 David C. Bryan, III. As a matter of fact, it --  
5 right here, it says: Bradley Montgomery Edwards.  
6 Bradley Montgomery Edwards. Is there such a person  
7 that you know?

8 A. No. Brandon Montgomery Edwards.

9 Q. Right. I mean, his name is not even right in  
10 this. Okay?

11 Is that something you think your mother would  
12 have known, who her grandson was?

13 A. I don't think my mother read the will.

14 Q. Okay. Finally, you were talking about money  
15 that you had to spend to keep your parents up; money  
16 for their medical care and things like that.

17 A. Yes.

18 Q. In the accounting that's in Exhibit 3, you  
19 actually put down that you spent -- that \$200,000  
20 came out of the estate to pay for medical care.  
21 Correct?

22 A. Yes.

23 Q. I mean, is that number real?

24 A. I think the last maybe eight months that my  
25 mother was alive, it was probably 7- to \$8,000 a

1 month.

2 Q. Okay. But she had a long-term care policy that  
3 was paying off, didn't she?

4 A. Yes.

5 Q. And she had social security coming in?

6 A. And my father's social security. Yeah.

7 Q. Plus, you had the money from the trust to use  
8 for her, right?

9 A. Say again.

10 Q. You had the money from the trust to use for  
11 her, to pay her medical bills, right?

12 A. Yes.

13 Q. So ultimately --

14 A. I never saw any of her money from social  
15 security; I never saw any money from the Glenworth  
16 account. I was billed for the health care. What  
17 that money went for, I haven't a clue.

18 Q. Okay. Thank you, Mr. Bryan.

19 MR. BELDING: No further questions, Your Honor.

20 THE COURT: Very brief recross?

21 RECROSS-EXAMINATION

22 BY MR. HEMLEPP:

23 Q. Your mother's will --

24 A. Yes.

25 Q. -- did she sign it?

1 A. Yes.

2 Q. Was this her will?

3 A. Yes.

4 Q. Okay. Thank you. Nothing further.

5 THE COURT: The witness may step down.

6 Any other witnesses?

7 MR. BELDING: That would be the plaintiff's  
8 case, Your Honor.

9 THE COURT: All right. The plaintiff rests.

10 All right. Ladies and gentlemen, I've got to  
11 take up some matters with the attorneys at this  
12 time. It's ten till 1:00. I'd like you back in  
13 your jury room in an hour. Okay?

14 Please don't discuss the case while you're out.  
15 Enjoy your lunch. We'll see you in an hour.  
16 Thanks.

17 (The jury exits the courtroom at 12:50 PM.)

18 THE COURT: All right. You may step down, sir.

19 All right. Motions, briefly?

20 MR. HEMLEPP: Your Honor, I would move for a  
21 directed verdict on the negligent entrustment. All  
22 of the testimony --

23 THE COURT: You mean --

24 MR. HEMLEPP: I mean negligent  
25 misrepresentation.

1           All of the testimony from the plaintiff was  
2           that the defendant knew he was telling the truth;  
3           that this was an unintentional act; that there was  
4           no negligence about it.

5           The defendant denies making the statement at  
6           all. I don't think there's any evidence of  
7           negligence.

8           THE COURT: Well --

9           MR. BELDING: Your Honor, I'd leave it up to  
10          the Court.

11          But are you going to make a directed verdict  
12          motion on fraud, too.

13          MR. HEMLEPP: Actually, I'm not.

14          MR. BELDING: Okay.

15          MR. HEMLEPP: I'm --

16          MR. BELDING: You know what? I'm happy to let  
17          this go. I'll elect my remedy.

18          THE COURT: That's what it -- it sounds like --

19          MR. BELDING: I'll elect my remedy and go with  
20          fraud.

21          MR. HEMLEPP: Well, I think they did.

22          THE COURT: Well, I think the testimony I heard  
23          certainly --

24          MR. BELDING: Supported the fraud allegation.

25          THE COURT: Or you at least provided enough



1 evidence for the elements.

2 MR. BELDING: Right. Okay.

3 MR. HEMLEPP: Correct.

4 THE COURT: What the jury will decide is not --  
5 and it sounds to me like you'll stipulate and you'll  
6 go forward on fraud and not negligent  
7 misrepresentation.

8 MR. BELDING: I so stipulate on behalf of the  
9 plaintiff, Your Honor.

10 THE COURT: All right. Does that make sense to  
11 you then? All right.

12 MR. HEMLEPP: And Your Honor --

13 THE COURT: You still want to do the  
14 deposition?

15 MR. HEMLEPP: Uh-huh.

16 THE COURT: Okay. All right. Well, your  
17 timeline worked out just right.

18 MR. BELDING: Yes, it did.

19 THE COURT: I should have never questioned you.

20 MR. HEMLEPP: It's not -- and it's not going to  
21 take very long.

22 THE COURT: Very well.

23 All right. I've got each of you a proposed  
24 charge, which I'll now scratch out negligent  
25 misrepresentation. But please read it over.

1           MR. BELDING: Okay. And, understand, it would  
2 be cleaned up by Chris and --

3           THE COURT: Yeah. Well, this is his first jury  
4 trial with me. So I'm doing most of the heavy  
5 lifting.

6           MR. BELDING: Well, now is not the time to be  
7 making any mistakes, Chris.

8           THE COURT: This is a proposed verdict form,  
9 which we will remove negligent misrepresentation as  
10 well.

11          MR. HEMLEPP: Your Honor --

12          THE COURT: Yes, sir?

13          MR. HEMLEPP: Based upon --

14          THE COURT: If you've got issues with the  
15 charge, we can talk about it.

16          MR. HEMLEPP: Okay.

17          THE COURT: I want to get everybody off so they  
18 can go to lunch.

19          MR. HEMLEPP: Okay.

20          THE COURT: We can talk about it off the  
21 record.

22               (Luncheon recess 12:52 PM - 2:01 PM.)

23          THE COURT: I spoke with the attorneys after  
24 our bench conference. We agreed on the jury charge  
25 and, I think, we agreed on the verdict form.

1 MR. BELDING: Yes.

2 MR. HEMLEPP: Yes.

3 THE COURT: Okay. And just to save the jury an  
4 extra break, we're going to go ahead and just let  
5 defense counsel put his directed verdict motions on  
6 the record now since we know what the testimony that  
7 is about to be presented says. He can make those  
8 arguments and Mr. Belding can reply.

9 And then, when we do finish the defendant's  
10 case in chief, he can just reassert his previous  
11 motions, which I will reassert that ruling, and  
12 we'll go straight into closing arguments after the  
13 defense closes their case.

14 Are we all on the same page?

15 MR. BELDING: It works for me.

16 THE COURT: All right. Mr. --

17 MR. HEMLEPP: Your Honor, the defense would  
18 move for directed verdict on the cause of action for  
19 fraud in this case. There's been a failure of  
20 evidence by the plaintiff to put forth to -- for the  
21 jury to the standard of clear and convincing that a  
22 fraud occurred. It was denied by the defendant.  
23 I'd move for a directed verdict.

24 THE COURT: Okay.

25 MR. BELDING: Thank you, Your Honor. May it

1 please the Court?

2 I very carefully went through every element of  
3 fraud that is required by the State of South  
4 Carolina. In the plaintiff, Ms. Elisa Edwards',  
5 testimony as to representation, falsity, reliance,  
6 materiality, everything was in there and she  
7 answered it all. And I would say that it's a jury  
8 question for them to take up.

9 THE COURT: Okay. Well, based on where we are  
10 now, we can -- you want me to hold the ruling in  
11 abeyance?

12 MR. HEMLEPP: Yeah.

13 THE COURT: I'll hold it in abeyance until you  
14 make your formal motion.

15 MR. HEMLEPP: And in front of the jury, I'm  
16 simply going to renew my motion.

17 THE COURT: All right.

18 MR. HEMLEPP: Not get --

19 THE COURT: Understood. All right. I'm with  
20 you.

21 Are we ready to bring them in?

22 MR. HEMLEPP: So that it's smooth, how -- I'm  
23 going to call Ms. Parham to the stand. Is the Court  
24 going to explain what we're doing here?

25 THE COURT: Yeah, I can do that. She'll be

1 reading the testimony of Emily Cecile.

2 Let's go ahead and bring in the jury, please.

3 (The jury enters the courtroom at 2:05 PM.)

4 THE COURT: All right. Madam Foreperson --  
5 please be seated, everyone. Welcome back. I hope  
6 you had a chance to get some lunch and refresh  
7 yourselves.

8 When we left off, the plaintiff had just  
9 finished their case in chief. We'll now have the  
10 opportunity to hear from the defendant.

11 MR. BELDING: May I make a motion real quick to  
12 have all of the evidence moved into the record?

13 MR. HEMLEPP: Thank you. No objection.

14 THE COURT: So that would be Defendant's  
15 Exhibit 1 and 2 and Plaintiff's Exhibits 1 through  
16 8.

17 MR. BELDING: Right.

18 THE COURT: All right. So noted and admitted  
19 into evidence without objection.

20 (Plaintiff's Exhibit Nos. 1 - 8 admitted into  
21 evidence.)

22 (Defendant's Exhibit Nos. 1 and 2 admitted into  
23 evidence.)

24 MR. HEMLEPP: Your Honor, the defense would  
25 call Ms. A.C. Parham.

1           THE COURT:   Okay.

2           Now, ladies and gentlemen, the testimony is now  
3 going to be presented to you by deposition. A  
4 deposition is a document containing sworn testimony  
5 given by a witness outside of court in the presence  
6 of the lawyers for each party who may ask questions  
7 of the witness.

8           If any objections were made in the deposition,  
9 you may hear them. The deposition will essentially  
10 be read from beginning to end. It's up to you --  
11 this testimony is entitled to the same consideration  
12 and is to be judged as to credibility and weighed by  
13 you in the same way as if the actual witness were  
14 present.

15          The reason I say that is Ms. Parham is actually  
16 a law clerk with Mr. Hemlepp's law clerk. The  
17 witness here today is actually Emily Cecile Edwards.  
18 She's currently in Canada and couldn't make the trip  
19 down here. So what we're going to do is have  
20 Ms. Parham read the deposition for her, so you'll  
21 have the opportunity to hear the questions that were  
22 asked of her by both attorneys read by a live  
23 witness.

24          So while this is not Ms. Edwards, she's  
25 standing in and just reading the testimony. Okay?

1 But it's up to you to hear that testimony and give  
2 it the weight you think it deserves. Okay? Thank  
3 you.

4 MR. HEMLEPP: Thank you, Your Honor. I would  
5 move to stipulate that the deposition of Emily  
6 Edwards, the plaintiff in this case, was done on  
7 February 26th, 2020, by virtual deposition, and is  
8 now a Court's Exhibit.

9 MR. BELDING: So stipulated.

10 THE COURT: All right. So noted.

11 MR. HEMLEPP: Thank you.

12 (Court's Exhibit No. 1 marked for  
13 identification.)

14 EMILY CECILE EDWARDS

15 having been previously duly sworn, testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. HEMLEPP:

19 Q. Hey, Emily. My name is Mike Hemlepp. I  
20 represent David Bryan in the lawsuit you brought  
21 against him. This process that we're having today  
22 is kind of informal, and it's a little weird because  
23 it's multiple countries. And we're doing this.  
24 And, because of that, and the time zone and the  
25 video, there's probably going to be a delay between

1 questions and answers, so I'll just -- so we'll just  
2 want to be cognizant of that, because Susan is  
3 taking down everything that's being said and you're  
4 under oath.

5 Is there anything -- you understand all of  
6 that, right?

7 A. Yes.

8 Q. Okay. The rules require that I put a few  
9 ground rules on the record, put a few things on the  
10 record before we begin. Okay?

11 First of all, would you tell me your full name  
12 and spell your last name for the record.

13 A. Emily Cecile Edwards, E-D-W-A-R-D-S.

14 Q. And what is your birth date, Emily?

15 A. December 3rd, 1997.

16 Q. Where are you right now?

17 A. St. Catharines, Ontario, Canada.

18 Q. And where physically are you in St. Catharines?

19 A. In my room that I rent.

20 Q. Like a dorm room or an apartment?

21 A. Like a student house. Yeah.

22 Q. Okay. Could you tell me that address? And the  
23 reason we're doing that is we're putting some  
24 verification on the record of what's happening right  
25 now.



1 A. Yep. 162 Highland Avenue. The postal code is  
2 L2R4J6.

3 Q. Okay. Is it cold?

4 A. Yes.

5 Q. Emily, do you understand that you're under oath  
6 today?

7 A. Yes.

8 Q. What does that mean?

9 A. It means if I lie, I would be committing  
10 perjury.

11 Q. Right. So your only obligation today is to  
12 tell the truth. You understand that we're taking  
13 this down, and anything that you say could be used  
14 in a courtroom, right?

15 A. Yes.

16 Q. Are you represented by an attorney in this  
17 case?

18 A. I'm not sure.

19 Q. Okay. This is a case in which you are a  
20 plaintiff. In other words, you have brought a  
21 lawsuit on behalf of yourself against David Bryan.  
22 And the lawyer on that lawsuit is David Belding. Is  
23 he your lawyer?

24 A. Yes.

25 Q. Don't tell me what you guys have talked about,

1 but did you talk to Mr. Belding before this about  
2 the deposition?

3 A. Yes.

4 Q. Okay. Did you go over any documents?

5 A. No.

6 Q. Okay. How do you feel today?

7 A. How do I feel?

8 Q. Uh-huh.

9 A. Good.

10 Q. Okay. The question -- that's leading into the  
11 question: Is there any medical reason or mental  
12 reason or any other reason why you don't think you  
13 can go forward and do a deposition today?

14 A. No, there's not.

15 Q. Okay. Are you on any prescription medication  
16 or anything that would affect your ability to  
17 understand what's happening today?

18 A. No.

19 Q. Okay. So, in depositions, especially under the  
20 best of circumstances, if we were in the same room,  
21 it can be confusing. And we're not even in the same  
22 country right now. So none of my questions are  
23 designed to trick you; none of them are trick  
24 questions; none of them are designed to do anything  
25 other than find out what you know.

1           So if I ask a question and you don't understand  
2       it, you need to tell me that. I can rephrase it; I  
3       can, you know, put it in a different way; I can  
4       explain what it is that I'm doing. If there's a  
5       word that you don't understand that you want a  
6       definition of, I need you to stop me and say I don't  
7       understand that word, what do you mean, or an  
8       explanation. Do you understand that?

9       A.    Yep. Sounds good.

10      Q.    Okay. So the rules going forward are that if I  
11     ask a question and you answer it, we are all going  
12     to assume that you understood the question and all  
13     the terms therein. Is that fair?

14      A.    Yes.

15      Q.    Okay. Now you're required to answer all of my  
16     questions. Mr. Belding may object during the  
17     deposition. If he does, that's for the record so  
18     that a judge, later on, can decide what they want to  
19     do with the question or the answer. But you're  
20     still going to have to answer the question.

21      A.    Okay.

22      Q.    There's very rare circumstances where you  
23     wouldn't have to answer. And, under those  
24     circumstances, Mr. Belding and I will figure it out,  
25     and we'll tell you what to do. Okay?

1           If you hear an objection, go ahead and stop.

2           He will put it on the record that he objects to the  
3           form, and I will ask it again. Is that fair?

4           A.    Yes.

5           Q.    Okay. Okay. Well, you're not even here, so  
6           that's not a problem. If you need a break, if this  
7           goes too long -- I don't think we're going to be  
8           here very long, I mean, to be honest. But, if you  
9           need a break or something happens, just tell me. We  
10          can figure that out. Okay?

11          A.    Sure.

12          Q.    Have you ever taken a deposition before?

13          A.    No.

14          Q.    Have you ever been part of a lawsuit before?

15          A.    No.

16          Q.    Okay. Have you ever -- one of the things that  
17          I always have to tell people during a deposition  
18          that's really hard but that you're doing great at is  
19          that you have to answer all the questions in words.  
20          People will sometimes go nah or huh-uh or huh, and  
21          she has a way of putting that down on paper. So I  
22          just need to remind you to answer in words and not  
23          phrases or nods or whatever. You got that, right?

24          A.    Okay. Yep. Okay.

25          Q.    You have already given us your name; you've

1 already given us your address and your birth date.

2 Are you married, single, or divorced?

3 A. Single.

4 Q. Single. Okay. What is your permanent  
5 residence?

6 A. 2305 Raven Trail, West Columbia, South  
7 Carolina, 29169.

8 Q. Who lives there?

9 A. Elisa Edwards.

10 Q. Who is Elisa Edwards?

11 A. My mother.

12 Q. Your mother. Okay. She's present here in the  
13 room. She's also a plaintiff in this case; is that  
14 correct?

15 A. Yes.

16 Q. Okay. Are you in school in Canada?

17 A. Yes, I am.

18 Q. Okay. Where did you go to high school?

19 A. River Bluff High School in Lexington.

20 Q. When did you graduate from River Bluff?

21 A. 2016.

22 Q. Okay. One of our law clerks just is getting  
23 read to go to the state championship in wrestling  
24 from River Bluff, so we have a connection to River  
25 Bluff.

1 A. Oh, nice.

2 Q. So after you went to high school and you  
3 graduated in 2016, what did you do after that?

4 A. That September, I moved to Canada and started  
5 attending Brock University.

6 Q. Brock?

7 A. Yes. B-R-O-C-K.

8 Q. Okay. What took you to Brock?

9 A. I'm a Canadian citizen, so I get domestic  
10 tuition rates. And I like their music department,  
11 which is my major.

12 Q. Okay. Were you in music in high school?

13 A. Yes.

14 Q. Okay.

15 A. I was very involved in the band there.

16 Q. What kind of -- and you're a performer?

17 A. Yes. I play the flute.

18 Q. Do you have a dual -- you play the flute. Do  
19 you have a dual citizenship?

20 A. Yes.

21 Q. Okay. You have a citizenship in the United  
22 States and you also have a Canadian passport?

23 A. Yes.

24 Q. And were you born in Canada?

25 A. I was born in South Carolina.

1 Q. Okay. How did you come to have Canadian  
2 citizenship?

3 A. My father has Canadian citizenship. So when I  
4 was a small child, he got it for me as well.

5 Q. Okay. What's your father's name?

6 A. Bradley Edwards.

7 Q. Where does your father live?

8 A. West Columbia. Do you need the address?

9 Q. Please.

10 A. 1412-A Lake Dogwood Drive, 29170.

11 Q. Okay. Have you been in Canada since 2016 --  
12 September of 2016?

13 A. On and off.

14 Q. Well, I assume during the school year, you've  
15 been there.

16 A. Last year, I did a study abroad, and I was in  
17 the UK for the year. But, other than that, I've  
18 been in Canada.

19 Q. Okay. And on, let's say, like, summer breaks,  
20 do you stay in Canada or do you go somewhere else?

21 A. Last summer, I was in Canada. Before that, I  
22 was in South Carolina.

23 Q. Okay. Tell me about your year abroad in the  
24 UK. That sounds exciting.

25 A. It was really fun. I went to Leeds University

1 for the year, and I got to do a lot of traveling  
2 while I was there; visited lots of places in Europe.

3 Q. Was that part of their music program?

4 A. The traveling wasn't part of it. But it's a  
5 lot cheaper to travel when you're in Europe, so I  
6 decided to take advantage of that while I was there.

7 Q. But did you study music at Leads?

8 A. Yes. Yeah, I did.

9 Q. Okay. Is Leads in Manchester?

10 A. No, it's in Leads.

11 Q. Okay.

12 A. Yorkshire.

13 Q. What type of program are you in right now? Is  
14 it a bachelor's program? a master's program? What  
15 kind of program are you in right now?

16 A. Bachelor's.

17 Q. What is your expected graduation date?

18 A. 2021.

19 Q. You indicated a minute ago that one of the  
20 reasons why you chose to go to school in Canada is  
21 that, as a Canadian citizen, that benefits you  
22 getting higher education. Can you tell me more  
23 about that? Explain that to me.

24 A. In the U.S., they have in-state/out-of-state  
25 system. But, in Canada, it's just based on



1 citizenship. So I have the same tuition rates as  
2 everybody that's grown up here that's from here.  
3 So...

4 Q. Okay. Do you have a scholarship?

5 A. Yes. I get some scholarships from the school  
6 every year.

7 Q. Okay. You said scholarships; that sounds  
8 plural. You have more than one scholarship?

9 A. My school has a lot of, like, smaller  
10 scholarships you can apply for. And I will usually,  
11 like, get maybe one or two of those. And then I  
12 generally get, like, a music scholarship from my  
13 department.

14 Q. Okay. And does that cover your entire tuition  
15 and board -- room and board?

16 A. Not quite. I get OSAPs, which is Ontario  
17 Student Assistance Programs.

18 Q. And tell me what that is. I don't know what  
19 it's called. What does it do? I know what it's  
20 called, but what does it do?

21 A. So that's funding from the government. So I  
22 get a grant every year, which I can keep. And then  
23 I have the option to take out a loan as well.

24 Q. Okay. Have you taken out any loans?

25 A. Yes.

1 Q. Okay. Do you know how much those are?

2 A. About \$15,000.

3 Q. About 15, one-five?

4 A. Yes, one-five.

5 Q. Okay. Is that per year or total?

6 A. Total.

7 Q. Okay. Because if I'm doing this right, and  
8 tell me if I'm not, you're a junior right now?

9 A. This is my fourth year. But I'll be doing a  
10 fifth year, so yes.

11 Q. Is your program five years?

12 A. No.

13 Q. Was there a delay?

14 A. I didn't take as many classes as I should have  
15 last year, and I wanted to take some more elective  
16 classes, so I chose to stay for an extra year.

17 Q. Okay. Okay. Other than your high school  
18 degree and the program that you're in right now, do  
19 you have any professional certifications?

20 A. When I was in high school, I got my certified  
21 nursing assistant license.

22 Q. Oh, good for you.

23 A. Thanks. That expired in 2018, though.

24 Q. Okay.

25 A. And I also have my CPR, First Aid

1           certifications.

2           Q.     Okay. Did you have any -- are those the only  
3           two?

4           A.     Yes.

5           Q.     Okay. Did you have any professional licenses  
6           of any kind?

7           A.     No.

8           Q.     Okay. Are you employed outside of school?

9           A.     Yes. I work for the Niagara Parks Commission.

10          Q.     Tell me about that. What is that? Is that  
11          Niagara Falls?

12          A.     Yes. I work in Niagara Falls. They maintain  
13          all of the parks around here, as well as a lot of  
14          the tourist attractions. And I work in one of the  
15          welcome centers and one of the attractions.

16          Q.     When did you get hired there?

17          A.     It was May 2018.

18          Q.     Okay. Have you had any other employment while  
19          you've been up in Canada?

20          A.     No.

21          Q.     Okay. Did you have any employment here in  
22          South Carolina?

23          A.     Yes. I worked for Cutco Vector for a while.

24          Q.     Say that again. Say that again.

25          A.     Cutco Vector.

1 Q. Spell it for me.

2 A. C-U-T-C-O.

3 Q. Cutco?

4 A. Yes.

5 Q. Okay. And what do they do?

6 A. They sold knives.

7 Q. Oh, knives.

8 A. Yeah, like kitchen knives.

9 Q. Okay. Yeah. I've heard of them. Sure. Was  
10 that in Lexington County?

11 A. Yes.

12 Q. Okay. And what did you do for them?

13 A. I was a sales team member, so I went out and  
14 sold knives and met with people.

15 Q. Okay. Was that, like, door-to-door?

16 A. Not quite. I would make phone calls and, like,  
17 make appointments with people and go to specific  
18 appointments; not really door-to-door.

19 Q. Okay. I'm going to ask you some questions and  
20 they're going to sound rude and I don't mean them  
21 to. I ask everybody every time there's a  
22 deposition.

23 A. Okay.

24 Q. This is not about you. This is about I do this  
25 every time. Have you ever been arrested?

1 A. No.

2 Q. Okay. Have you ever been charged with a crime,  
3 but not arrested? And I'm not talking about traffic  
4 offenses. I don't care about traffic offenses.

5 A. Oh, okay. No.

6 Q. Okay. Have you ever been the victim of a  
7 crime?

8 A. Yes. I had my phone stolen.

9 Q. Your phone?

10 A. Yes. It was an iPhone 5, 2012 or '13.

11 Q. Where did that happen?

12 A. Brookland Cayce High School.

13 Q. Okay. Were the police called?

14 A. Yes.

15 Q. Was anyone arrested for that?

16 A. No.

17 Q. Did you get your phone back?

18 A. No.

19 Q. Did you ever go to a court?

20 A. No.

21 Q. Okay. So I asked you a little while ago if  
22 you've ever had a deposition or if you've ever been  
23 a party to a lawsuit. Have you ever been a witness  
24 in a lawsuit?

25 A. No.

1 Q. Okay. You kind of hesitated on that. I mean,  
2 other than this one.

3 A. No.

4 Q. Okay. Have you ever been inside of a  
5 courtroom?

6 A. Not while court was in session.

7 Q. Okay. So you have never testified in a  
8 courtroom?

9 A. Correct.

10 Q. Have you ever served on a jury? I assume no.

11 A. No.

12 Q. Ever had jury duty?

13 A. No.

14 Q. Do you have a driver's license?

15 A. Yes.

16 Q. Is it a Canadian driver's license or a South  
17 Carolina driver's license?

18 A. South Carolina driver's license.

19 Q. Okay. And I don't know if that's a stupid  
20 question or not because, with dual citizenship, I  
21 guess you could have both if you wanted.

22 A. Right.

23 Q. When did you first get your driver's license?

24 A. I got it -- license or permit?

25 Q. Let's start with your permit. Did you get a

1 permit?

2 A. I got it -- yes. I got my permit when I turned  
3 15.

4 Q. Okay. When was that?

5 A. So that would have been 2013. Right?

6 Q. Okay.

7 A. 2012.

8 Q. I swear I'm not trying to trick you. It's  
9 whenever you turned 15.

10 A. Okay.

11 Q. Okay. And then did you get a driver's license?

12 A. Yes.

13 Q. When was that?

14 A. Six months later, I got my restricted. And  
15 then, I think, a year after that, turned into a  
16 license.

17 Q. Okay. Do you have that same license? I mean,  
18 not the same card, but you have the South Carolina  
19 driver's license since then?

20 A. Yes.

21 Q. Has it ever been suspended?

22 A. No.

23 Q. Has it ever been revoked?

24 A. No.

25 Q. Okay. Do you own a car?

1 A. Yes.

2 Q. What kind of car do you own?

3 A. 2010 Toyota Camry.

4 Q. Okay. How long have you owned that car?

5 A. Since 2015.

6 Q. Okay. How did you get that car? Did you buy  
7 that car?

8 A. Yes.

9 Q. And are you making payments on that car?

10 A. No.

11 Q. Did you borrow money for that car?

12 A. No.

13 Q. Were you given money for that car?

14 A. I had money saved in an account that I used to  
15 purchase that car.

16 Q. Okay. And what was the source of the money in  
17 that account?

18 A. I think it was a life insurance policy.

19 Q. A life insurance policy. Okay. Whose life  
20 insurance policy was it?

21 A. You'd have to ask my mom.

22 Q. Okay. So there was money in your account that  
23 came from a life insurance policy, but you don't  
24 know where that money came from?

25 A. I assume it was my great-grandfather.



1 Q. Okay. How long was that money in your account  
2 before you bought your car? A long time?

3 A. Yes; a couple years. I was a minor, so I'm not  
4 really sure about when I got that or anything.

5 Q. Do you know how much money it was?

6 A. Not exactly.

7 Q. Do you have an estimate?

8 A. Probably around 30 or so -- 30,000.

9 Q. Okay. How much was your car?

10 A. About \$7,000.

11 Q. Okay. Do you still have money in that account?

12 A. No.

13 Q. Okay. So I'm going to ask you a question and,  
14 again, this is not intended to be a crazy question.  
15 When you spent the money from that account, was it a  
16 little bit at a time or did you make a big purchase?

17 A. It was large purchases.

18 Q. Large purchases. Okay. Tell me, like what?

19 A. My car. I bought my flute.

20 Q. Oh, your flute. That sounds like an  
21 investment.

22 A. Yes.

23 Q. How much was your flute?

24 A. In total, around \$8,000.

25 Q. Wow. Really?

1 A. Yes. Professional instruments are expensive.

2 Q. Yeah. Yeah. Wow. Do you still have that?

3 A. Oh, yes.

4 Q. I guess they last a long time. Right?

5 A. Yes. You just have to do some yearly

6 maintenance, a bit of adjustment.

7 Q. Wow. So your flute was more than your car?

8 A. Yeah.

9 Q. So what else did you use that money for?

10 A. The rest of it went towards school.

11 Q. Okay. When you say for school, was it for  
12 tuition?

13 A. Yes.

14 Q. Okay.

15 A. And dorm, housing.

16 Q. School expenses?

17 A. Yes.

18 Q. Okay. Do you have any social media accounts?

19 A. Yes. I have Facebook, Snapchat, Instagram. I  
20 have a couple that I don't use often. I have a  
21 Twitter account and Tumblr account, but I don't use  
22 them very often.

23 Q. I don't know that Tumblr exists any more. I  
24 think they shut Tumblr down.

25 A. Did they?

1 Q. Yeah. I think they did.  
2 What's your name on Facebook?  
3 A. Emily Cecile Edwards.  
4 Q. Okay. What about on Instagram?  
5 A. Emily Cecile Edwards.  
6 Q. No underscore or anything?  
7 A. Yes. It's just one word.  
8 Q. And Cecile is C-E-C-I-L-E?  
9 A. Yes, C-E-C-I-L-E. Yes.  
10 Q. I'm not interested in Twitter or Snapchat.  
11 Okay. Do you know what this case is about?  
12 A. Yes.  
13 Q. Tell me in your own words what this case is  
14 about.  
15 A. So when my great-grandfather died, his estate  
16 was supposed to be divided. And my great-uncle  
17 didn't do that and just kind of took it all for  
18 himself.  
19 Q. Okay. So I'm going to make a statement and  
20 then ask if you understand it. Okay?  
21 A. Okay.  
22 Q. You know something of your own personal  
23 knowledge if you observed it, you read it, you saw  
24 it, you know it. Okay? Do you understand that?  
25 A. Yes.

1 Q. That is different from somebody told you  
2 something. Do you see the difference?

3 A. Yes.

4 Q. I could tell you that I own a dog, but that's  
5 not the same thing as you seeing a dog at my house.

6 A. Right.

7 Q. So you understand the difference between  
8 personal knowledge and somebody telling you?

9 A. Right.

10 Q. What you just told me about this case, what do  
11 you know of your personal knowledge that supports  
12 what you just told me?

13 A. Right after I turned 18, I signed paperwork for  
14 money that I was supposed to receive from his  
15 estate. And I have not seen or heard anything about  
16 that, really, since then.

17 Q. Okay. Tell me about this paperwork. It was  
18 right after you turned 18. And I'm not -- again,  
19 I'm not trying to trick you. How long after you  
20 turned 18? Like, a couple days? a couple months? a  
21 couple weeks? Do you know?

22 A. A couple weeks.

23 Q. A couple weeks. And who presented you with  
24 this paperwork?

25 A. My mom and I went into an office.

- 1 Q. Okay. Do you know whose office that was?
- 2 A. I don't know.
- 3 Q. Okay. Do you remember where it was?
- 4 A. Downtown Lexington, I think.
- 5 Q. Was it on Main Street?
- 6 A. I'm not sure.
- 7 Q. Okay. Do you know what kind of office it was?
- 8 A. No.
- 9 Q. Okay. Well --
- 10 A. Well, it was a legal office, I'm assuming. But
- 11 I'm not exactly sure.
- 12 Q. Okay. Who was present at the time that you
- 13 signed the paperwork?
- 14 A. My mom and the person that works there.
- 15 Q. Do you know that person's name?
- 16 A. I do not remember.
- 17 Q. Okay. Was it a man or a woman?
- 18 A. I think it was a woman.
- 19 Q. Okay. Did she have the paperwork already
- 20 prepared?
- 21 A. Yes.
- 22 Q. Did you both sign it, you and your mom?
- 23 A. I don't remember.
- 24 Q. Did the other person who was there sign it?
- 25 A. I don't remember.

1 Q. Okay. Did you get a copy of it?

2 A. I don't remember.

3 Q. So I'm circling back. Of your own personal  
4 knowledge, do you remember going after you -- of  
5 your own personal knowledge, you do remember going,  
6 after you turned 18, and went to an office and you  
7 signed the paperwork that was purportedly for some  
8 money for you?

9 A. Yes.

10 Q. Is there anything else of your own personal  
11 knowledge that you know that supports what you told  
12 me this case is about?

13 A. No.

14 Q. So would I be -- is it -- so you have talked to  
15 your mom about this case; have you not?

16 A. Yes. Yes, I have.

17 Q. And without telling me what you've discussed,  
18 you've discussed it with Mr. Belding; have you not?

19 A. Not extensively.

20 Q. So you have not talked to Mr. Belding a lot?

21 A. Not really. No.

22 Q. Okay. So would you -- would you say that,  
23 like, 90 percent of the discussions about this case  
24 have been between you and your mom?

25 A. Yes.

1 Q. Okay. Tell me about your great-grandfather.  
2 How well did you know him?

3 A. He died when I was about 11. So, I mean, I  
4 knew him as my great-grandfather. We would go visit  
5 him and stuff. He had a farm down in Swansea.

6 Q. Was the farm for crops or for animals? What  
7 was on the farm? Was it just, like, land to play on  
8 and go hunting on and stuff? What was the farm  
9 like?

10 A. So there was pecan trees. And I remember he  
11 had donkeys, stuff like that.

12 Q. So tell me about your great-grandmother. What  
13 was her name?

14 A. Cecil.

15 Q. Are you named after her?

16 A. Yes. But I have an E and I'm the only one.

17 Q. So tell me about your great-grandmother.

18 A. She was a lovely, proper, southern lady; always  
19 had her lipstick on. Yeah. My mom and dad and I  
20 lived with her right after I was born for a while  
21 down in Cayce.

22 Q. Uh-huh. So you lived with your  
23 great-grandfather?

24 A. Yes.

25 Q. Both of them?

1 A. Yes.

2 Q. When did your grandmother -- your  
3 great-grandmother, Cecil, when did she pass?

4 A. 2009, October.

5 Q. Okay. How old were you then?

6 A. 11.

7 Q. So they passed fairly close together?

8 A. Yes.

9 Q. Did you ever talk to your great-grandfather  
10 about money or finances?

11 A. No.

12 Q. Okay. Did you ever talk to your  
13 great-grandmother about money or finances?

14 A. No.

15 Q. Okay. So I need to ask you a question real  
16 quick.

17 A. Okay.

18 MR. HEMLEPP: Your Honor, this is -- I'm going  
19 to skip down. This is about her texting.

20 Go to page 31, line 3.

21 MS. PARHAM: Okay.

22 BY MR. HEMLEPP:

23 Q. Okay. I promise I'm going to be fast and will  
24 be done pretty quick. Okay?

25 A. Yes.



1 Q. Okay. And thank you for reassuring me that.

2 So who is Sharon Montgomery?

3 A. My grandmother.

4 Q. That's your grandmother. And tell me about  
5 your grandmother.

6 A. She passed away this past summer.

7 Q. I'm sorry.

8 A. Thank you. Yeah. She was another proper,  
9 southern lady, you know, always having her lipstick  
10 on. She'd ask you a million questions; she would  
11 walk in for, like, five minutes and leave two hours  
12 later, you know.

13 Q. Did you ever talk to her about finances or  
14 money?

15 A. No.

16 Q. Did you ever talk to her about this case?

17 A. No.

18 Q. Who is Ethan Montgomery?

19 A. My cousin.

20 Q. Your cousin. How are you guys related? You  
21 know, in South Carolina we all have dozens and  
22 dozens of cousins.

23 A. I know.

24 Q. So how are y'all related? How are y'all  
25 cousins?

1 A. My mom's brother, Bryan's son.

2 Q. Your mom's brother's son. Okay. What is your  
3 relationship like with Ethan? When is the last time  
4 you spoke with Ethan?

5 A. He was here, what was it, Thanksgiving, I  
6 think -- no. No.

7 Q. He was in Canada?

8 A. No, no, no; South Carolina.

9 Q. Okay.

10 A. It was a funeral. That's when we were all  
11 together. That's the last time I saw him.

12 Q. For your grandmother?

13 A. Yes.

14 Q. Did you and Ethan talk about this case?

15 A. No.

16 Q. Did you talk about finances?

17 A. No.

18 Q. Okay. Prior to the funeral, Ms. Sharon's  
19 funeral, when was the last time you talked to Ethan  
20 before that?

21 A. A year or two on some holiday.

22 Q. Okay. Where does he live? Do you know?

23 A. Currently, Utah.

24 Q. Oh, wow.

25 Do you know David Bryan Gayden?

1 A. Yes.

2 Q. Who is that?

3 A. The family from Florida.

4 Q. The family from Florida. Okay.

5 A. Yes.

6 Q. Okay. Is he related to you?

7 A. Yes.

8 Q. Do you know how?

9 A. Yes. So my great-grandfather's sister's son.

10 Q. Okay. Your great-grandfather's sister's son.

11 Okay. And when is the last time you saw -- does he

12 go by David or Bryan?

13 A. Bryan.

14 Q. Bryan, right. When is the last time you saw

15 him?

16 A. Over Christmas.

17 Q. This past Christmas?

18 A. Yes.

19 Q. Okay. Do you know where he lives?

20 A. Melbourne, Florida.

21 Q. Okay.

22 A. Well, Indialantic.

23 Q. When you saw him at Christmastime, did you talk

24 to him about this case?

25 A. No.

1 Q. Did you talk to him about finances?

2 A. No.

3 Q. Prior to Christmas, when was the last time you  
4 had spoken to him prior to that?

5 A. Probably the funeral.

6 Q. Over Thanksgiving?

7 A. The funeral.

8 Q. Your grandmother's funeral?

9 A. No. I wasn't here Thanksgiving, so it was  
10 probably the funeral.

11 Q. Do you remember when the funeral was? I'm not  
12 trying to pin you down again; I'm just trying to get  
13 the dates straight in my head.

14 A. It was July.

15 Q. It was July. Okay.

16 When Bryan Gayden came to the funeral of your  
17 grandmother, did you talk to him about the case?

18 A. No.

19 Q. Okay. Did you talk to him about finances at  
20 all?

21 A. No.

22 Q. Okay. Who is Cecil -- Mary Cecil Montgomery?

23 A. My aunt.

24 Q. That's your aunt. How are you related to her?

25 A. My mom's sister.

1 Q. Okay. And where does Ms. Mary Cecil Montgomery  
2 live?

3 A. West Columbia.

4 Q. Okay. Are y'all close?

5 A. Yes.

6 Q. I mean, you have a good relationship?

7 A. Yep.

8 Q. How often do you two talk?

9 A. Every other week or so.

10 Q. Okay. Do you call her or does she call you?

11 A. She'll call me or I'll talk to the kids. The  
12 kids will call me.

13 Q. Okay. How many children does she have?

14 A. Two.

15 Q. And these are your cousins?

16 A. Yes.

17 Q. What are their names?

18 A. Montgomery, but goes by Cam, and Maddie.

19 Q. How old are they?

20 A. 13 and 10.

21 Q. Okay. So they're both minors?

22 A. Yes.

23 Q. Okay. Have you ever talked to your aunt --  
24 does she go Mary or Cecil?

25 A. Mary.

1 Q. Okay. She spells it without an E?

2 A. I know.

3 Q. Yeah. Have you talked to your Aunt Mary about  
4 this lawsuit?

5 A. No.

6 Q. Have you ever talked to her about finances?

7 A. Nothing in relation to this.

8 Q. Okay. Have you ever talked to her about  
9 finances related to, like, your great-grandfather?

10 A. No.

11 Q. Okay. Or your great-grandmother?

12 A. No.

13 Q. Okay. So when you talked about finances, was  
14 it about anything specific?

15 A. Not really.

16 Q. Tell me what you remember.

17 A. I mean, just general life conversations, not  
18 anything about, like, family finances.

19 Q. Okay. So stuff like I wish I had more money  
20 and things cost too much money and, oh, my gosh, my  
21 flute costs \$8,000?

22 A. Yeah.

23 Q. Things like that?

24 A. Things like that.

25 Q. Do you know who Robert Ferrell is?

1           A.    No.

2           Q.    Okay.  Do you know Brandon Edwards?

3           A.    Yes.

4           Q.    I thought you might.

5           A.    Too well.

6           Q.    Brandon is your brother?

7           A.    Yes.

8           Q.    And where does Brandon live?

9           A.    He lives in Pelham, Ontario.

10          Q.    Pelham, Ontario.  So he lives in Canada also?

11          A.    Yes.

12          Q.    How far away is that?

13          A.    About 20 minutes.

14          Q.    Do you guys get to see each other?

15          A.    Yeah.  I will go to his hockey games.  He's up

16          here to play hockey.  And he'll come to my concerts

17          and stuff.

18          Q.    That's nice.  Who does he play hockey for?

19          A.    The Pelham Panthers.

20          Q.    The Pelham Panthers?

21          A.    Yes.  That a Junior B hockey team here.

22          Q.    Okay.  How did a South Carolina get into

23          hockey -- South Carolina guy get into hockey?

24          A.    My dad is Canadian and had him playing hockey

25          as soon as he could walk.

1 Q. That's cool. How old is your brother?

2 A. He just turned 19 like two days ago.

3 Q. Oh, wow. Tell him we all wish him happy  
4 birthday.

5 A. Thanks.

6 Q. Would you say that you talk to him several  
7 times a week?

8 A. Yeah. Yes.

9 Q. Okay. Good catch.

10 Have you ever talked to him about this lawsuit?

11 A. No.

12 Q. Not a word?

13 A. Not that I can think of. No.

14 Q. Did you tell him that you were going to be  
15 deposed today?

16 A. No.

17 Q. Okay. Did you ever talk to him about your  
18 great-grandfather's finances?

19 A. No.

20 Q. Have you ever talked to him about your  
21 great-grandmother's finances?

22 A. No.

23 Q. Was he with you when you and your mom went to  
24 that office in Lexington to sign the paperwork that  
25 you told me about right after you turned 18?



1 A. No.

2 Q. Okay. Where was he at the time?

3 A. I don't know.

4 Q. Was he living with you at the time?

5 A. Yes.

6 Q. You-all were in the same household? He was in  
7 South Carolina, you just don't know where he was?

8 A. My parents were separated, so he was probably  
9 at my dad's house.

10 Q. Okay. And where did your dad live at the time?  
11 In West Columbia?

12 A. Yes.

13 Q. Okay. So my statement would be true; that he  
14 lived in South Carolina at that time, but you don't  
15 know where he was when you went to that office? He  
16 was somewhere here, but you don't know where he was?

17 A. Correct.

18 Q. Okay. To your knowledge, has your mom ever  
19 talked to him about this lawsuit?

20 A. I don't know.

21 Q. Okay. In addition to playing for the Panthers,  
22 is he in school?

23 A. Yes.

24 Q. Okay. Where is he in school?

25 A. E.L. Crossley High School. He's doing a 12B

1       year, which is an optional year here after 12th  
2       grade.

3       Q.     Okay. And tell me the name of that school  
4       again. I didn't catch it.

5       A.     I think it's E.L. Crossley, E.L. Crossley. I  
6       think it's two S's.

7       Q.     Okay.

8       A.     I'm not exactly sure.

9       Q.     So I'm going to ask you to do me a favor. Can  
10      you spell it phonetically so we can hear how it's  
11      pronounced?

12      A.     I think I can look up how it's called or what  
13      it's -- it's E-L and then a space, and then  
14      C-R-O-S-S-L-E-Y.

15      Q.     E.L. Crossley. Okay. Who is David Bryan, III?

16      A.     Little David. That's my grandma's brother.

17      Q.     Okay. And that's your great-uncle?

18      A.     Yes.

19      Q.     Have you ever talked to him about this lawsuit?

20      A.     No.

21      Q.     Have you ever talked to him prior to this  
22      lawsuit being filed about any issues that are  
23      related to this lawsuit?

24      A.     No. I was really young when my  
25      great-grandfather died, so I never talked to him

1       about any of this.

2       Q.     Have you ever received a letter from him about  
3       this?

4       A.     Not that I can remember.

5       Q.     Okay. Has he ever written you a check?

6       A.     I don't think so. Maybe like a birthday check,  
7       but nothing in relation to this.

8       Q.     So I've got one final question. You are suing  
9       your great-uncle; you're named as a plaintiff in  
10      this case. Your mom is also suing your great-uncle,  
11      her uncle, who is David Bryan, III.

12            At the time that this lawsuit was filed, were  
13      you aware of that?

14      A.     Yes.

15      Q.     Okay. And who authorized that -- and you  
16      authorized that?

17      A.     Yes.

18      Q.     And who did you authorize that with?

19      A.     My mom.

20      Q.     You told your mom that was fine?

21      A.     Yes.

22      Q.     Okay. Did you sign any paperwork?

23      A.     I signed some paperwork. I don't know if it  
24      was that.

25      Q.     Okay. Did you keep any of it?

1 A. No.

2 Q. Okay. Do you have any paperwork related to  
3 this lawsuit?

4 A. No.

5 Q. Okay. Do you have any paperwork related to  
6 your great-grandfather's estate?

7 A. No.

8 Q. Do you have any paperwork related to your  
9 great-grandmother's estate?

10 A. No.

11 Q. Okay. Emily, thank you so much for taking time  
12 out of your day. Good luck with your studies. Stay  
13 warm. It is not cold here, but it's been raining  
14 for five months.

15 A. Oh, yeah.

16 MR. HEMLEPP: Thank you, Your Honor.

17 THE COURT: Is that it? All right.

18 You may step down, ma'am. Thank you.

19 Any further witnesses?

20 MR. HEMLEPP: After that voice from the -- up  
21 north, the defendant would rest.

22 THE COURT: Okay. Any motions?

23 MR. HEMLEPP: Yes, Your Honor. I would renew  
24 my motion that I made prior to us reconvening for  
25 the Court.

1           THE COURT: All right. Your motion -- and you  
2           assert your previous grounds. I'll deny the motion.

3           All right. Ladies and gentlemen, the parties  
4           have presented their evidence in this case. It is  
5           now time for the attorneys to make their closing  
6           arguments. The arguments of the attorneys are not  
7           evidence in this case. Their statements and  
8           arguments are meant to help you understand the  
9           evidence and apply the law to the evidence. You  
10          should disregard any remark, statement, or argument  
11          which is not supported by the evidence presented  
12          during the trial or the law that I will explain to  
13          you after the arguments.

14          At this time, please give your complete and  
15          undivided attention to the attorneys as they present  
16          their closing arguments.

17          MR. BELDING: Thank you. May it please the  
18          Court?

19          THE COURT: Yes, sir.

20          MR. BELDING: Thank you, Your Honor.

21          Well, thank you-all for your attention. We got  
22          it done in one day. And what did we hear? Well, we  
23          really only had two witnesses; one that seems to  
24          remember what went on and one that doesn't remember  
25          much about it at all.

1           This -- this case happened because Mr. Bryan  
2       did not tell his niece the truth about what happened  
3       with his father's estate. I went through all of  
4       these forms that he filed for a reason. Again,  
5       we're not suing the estate; we're not suing  
6       Mr. Bryan as personal representative. I wanted to  
7       show, very clearly, that he filed form after form  
8       after form that were wrong. A lot of times they  
9       had -- would call him up and change the figures  
10      dramatically.

11           And, ultimately, he did not do what the will  
12      said he was supposed to do. The will, that you will  
13      see, Exhibit 2, very clearly says: Set up a trust,  
14      use it for my wife until she's died and, at her  
15      death, the entire remaining principal is to be  
16      divided four ways and given out to him, to his  
17      sister, to Emily, and to Elisa Edwards. That was  
18      the main part of what they were going to inherit  
19      from his estate.

20           I mean, several people you will see in there,  
21      little, you know, nephews and things like that,  
22      several people got a little \$10,000 cash legacy.  
23      They didn't. They -- Elisa only got money -- was  
24      only supposed to get money if her mother passed away  
25      as a cash legacy. He left \$10,000 for his sister,

1 Sharon Montgomery.

2 The main way that they were going to benefit  
3 from this estate is through the trust. He was going  
4 to have money put into a trust for their benefit.  
5 Okay? And if you believe Mr. Bryan, then you would  
6 have to believe that his father made no provision  
7 for his sister or his granddaughter or his  
8 great-granddaughter in this will. And you can look  
9 at the will and tell that's just not what it says.

10 The next point is, he, being Mr. Bryan, had the  
11 opportunity, under the wills, to say how much  
12 money -- determine how much money was going to go  
13 into that trust. And he did. He filed a, you know,  
14 form with the probate court that you sign saying  
15 everything is accurate to the best of my knowledge  
16 that says either \$468,587.06 or \$571,000 is going to  
17 trust, to have that money there to take care of his  
18 mother, and then be divided amongst the four people  
19 who were the closest to Mr. David C. Bryan, Jr. And  
20 he didn't do that. He admitted he didn't do that.

21 And you heard, ever since this has started,  
22 there's been all kinds of explanations about, well,  
23 it wasn't money; it was properties and -- but, you  
24 know what, didn't do it; didn't do it. And  
25 everything, he kept. And I pointed out to him,

1       under the will, that it said you do this trust and  
2       then the next -- the very next section says: And  
3       the rest and residue and remainder after that goes  
4       to Share B, which is what he inherited. He never  
5       put a dime into this trust, and he never distributed  
6       it.

7               Now, the Judge is going to be instructing you  
8       on the South Carolina law of fraud. We are alleging  
9       that Mr. Bryan, what he did, constituted fraud under  
10      South Carolina law. There's a number of elements of  
11      the -- of fraud that we must prove. And I would  
12      tell you that we believe in Elisa Edwards'  
13      testimony; she had every single one of these  
14      elements.

15             We must prove that there was a representation  
16      made by the defendant. Well, he said he didn't; she  
17      said he did. It's a he said/she said case. But  
18      here's the thing: He specifically told her there  
19      was a Smith Barney stock account. Well, there was  
20      one; it just wasn't this.

21             Oh, and I'm letting it, you know, appreciate  
22      after the 2009 crash. Oh, and then I have to wait  
23      for the Bruce Road money to come in. When they  
24      finally went up and said where -- we need money,  
25      Emily is getting ready to go to college, there is no



1 money for you. That's when they found out; that's  
2 when this lawsuit was brought.

3 Now, Mr. Hemlepp said nobody else has sued.  
4 Well, nobody else has a lawsuit. And the other  
5 people all got their little cash requests.  
6 Interestingly, you know, he even wrote down that he  
7 gave Elisa Edwards \$8,000. And it's pretty clear,  
8 and she testified, that was a reimbursement for  
9 money she spent taking care of her grandmother.

10 Well, wait a minute. He wrote down that he  
11 went ahead and gave Emily Edwards, the other  
12 plaintiff who's not here, gave her \$28,000. Well,  
13 not really, and it wasn't then, and so it was  
14 entrusted to me. It's the new word of the day. We  
15 started out with trust and now we have entrusted.

16 David Bryan felt that everything was entrusted  
17 to him to do whatever he wanted to with. The only  
18 problems with this are that he had to account to the  
19 Probate Court for how that estate was distributed.  
20 You know how he did it? By signing a piece of paper  
21 and giving it to the Court saying I'm putting the  
22 rest in trust, to the trust. Oh, what trust? The  
23 trust that's in the will. Oh, fine; that's fine.  
24 And then never did it; kept it all.

25 He -- what he told them was false. Every time

1 she asked him, he misrepresented what was going on  
2 with that. It was material. This was money they  
3 were going to use. I mean, as you heard in that  
4 deposition, I mean, she got some money, but, you  
5 know, Emily Edwards went up to Canada because they  
6 had equal tuition, and she's out how selling knives  
7 door-to-door. I mean, if she had gotten all of the  
8 money that she should have gotten out of this trust,  
9 she could have gone anywhere to go to college.

10 The speaker's knowledge. Do we think that the  
11 speaker's knowledge of the falsity is shown? I tell  
12 you what, I asked a lot of questions of Mr. Bryan.  
13 And, please, we all are going to give him some  
14 leeway because he doesn't hear very well. He had a  
15 lot of problems answering those questions.

16 That is all part of what you, as the jury, are  
17 entitled and will be instructed by Judge McLeod to  
18 do. You are the finders of fact in this case. You  
19 are the ones that get to determine who was telling  
20 the truth from that stand; you find the facts. And  
21 we have proven every -- and had testimony of every  
22 single thing that constitutes fraud that Judge  
23 McLeod will charge you on; that we had a right to  
24 rely on the truth. This was her uncle. There was  
25 no reason to think he'd lie to her. Was there a

1 proximate cause and injury? Absolutely. You know,  
2 not getting this money made a difference.

3 So here's the things that we need to think  
4 about: First of all, as Ms. Edwards testified to,  
5 this is just a simple diagram of what she considers  
6 to be her damages; that one-quarter -- using the  
7 defendant's numbers now, the \$468,576.06 --

8 Your Honor, there's a copy of this in your  
9 materials too.

10 Each share, at that time, would have been  
11 \$117,146. David Bryan got his part of that and the  
12 other three, too. None of this was distributed.  
13 She testified that in her experience with her own  
14 investing that the stock market has been going up at  
15 least ten percent a year. I mean, some of the  
16 things -- you know, Smith Barney, their financial  
17 things, they are doing a lot better than that. But  
18 10 percent a year is a very conservative -- that's  
19 how much this goes up.

20 And what she did is this very -- you know, you  
21 put the 117- that she should have gotten when he  
22 said, back in 2010, that she should have gotten it,  
23 it would go up by 10 percent. And the next year,  
24 you add those two together, and it goes up by 10  
25 percent. And for ten years, it goes up. And it's

1       been ten years, right now, since this happened. And  
2       each share, ultimately, would be worth \$303,840 if  
3       it stayed in the stock market that long. And that's  
4       what we believe he has.

5               And, of course, two shares, because it's the  
6       mother and the daughter, both shares put together  
7       would now be worth \$607,680, none of which they have  
8       because Mr. Bryan didn't feel like giving it to  
9       them. He had everything out of this estate. Every  
10      way to interpret what happened in this case all  
11      inure to his benefit. He got all the properties,  
12      you know. Then he acted like they didn't have any  
13      money. And we showed that he had sold his parents'  
14      property before they closed the estate and got  
15      \$260,000. There was money; he just didn't want to  
16      get rid of it. He didn't want to give it to them.

17             So to believe Mr. Bryan, again, you would have  
18      to believe that he, being his father, wouldn't have  
19      left his -- his daughter or her daughter, and a  
20      granddaughter, that he wouldn't have left them  
21      anything. And that's just not credible.

22             Now, Judge McLeod is also going to charge you  
23      on punitive damages. You need to do what he says,  
24      according to his charge. If you find that Mr. Bryan  
25      committed fraud and did not turn over the -- their

1 shares of this trust, that is a tort that also  
2 allows you to assess punitive damages in your  
3 discretion. And the Judge will give you a form and  
4 explain to you how you may do that.

5 What we're asking for right now is, for after  
6 ten years, some justice. David Bryan's got plenty  
7 of property and money; he just doesn't want to spend  
8 it. I understand that. A lot of people are greedy.  
9 But he was required by South Carolina law to do what  
10 that will said, and he didn't do it.

11 And then after the estate was closed and nobody  
12 sued about it, he expressly told Elisa Edwards, oh,  
13 the money is building up; trying to recover from the  
14 stock market crash; oh, I need to sell the Bruce  
15 Road property, you know, get these things done  
16 before I can distribute it, until they finally said,  
17 we have to have some money for Emily to go to  
18 college on; she's getting ready to graduate. And  
19 what? There is no money for you. There never was a  
20 trust. He just lied through this whole thing.

21 I'm asking you to consider giving an award of  
22 actual damages and punitive damages to Emily and  
23 Elisa Edwards in finding that Mr. Bryan committed  
24 fraud, because we believe that's exactly what he  
25 did. Thank you very much.

1           THE COURT: Mr. Hemlepp?

2           MR. HEMLEPP: May it please the Court?

3           THE COURT: Yes, sir.

4           MR. HEMLEPP: I told you this case was going to  
5 be about trust. And now we're coming down to the  
6 final -- the final explanation. It is all about  
7 trust. It's not only about the legal term of trust;  
8 it's also about entrusting your family; it's about  
9 entrusting your children. And, more importantly,  
10 who do you trust?

11           As Mr. Belding told you, the Judge is going to  
12 explain the law to you. He's going to tell you the  
13 law to apply; he's going to tell you what fraud is.  
14 There are nine elements of fraud. He's going to  
15 tell you that you are the judges of the facts; you  
16 decide who to believe; and you decide who to believe  
17 based upon the credibility of the witnesses.

18           There's really two witnesses who testified in  
19 your presence: Ms. Edwards and Mr. Bryan. And you  
20 get to look at their story and listen to their story  
21 and decide, who do you trust?

22           One of the things that has been very clear  
23 throughout this whole trial, because Mr. Belding is  
24 the one who told you, is that he's not -- Mr. Bryan  
25 is not being sued for mismanagement of this estate.

1       He is not being sued as the personal representative;  
2       he is not being sued in any of that capacity. And,  
3       from his testimony, we know nobody has done that;  
4       nobody has sued him, other than this woman and her  
5       daughter; her daughter, who testified I don't know  
6       anything about this; it's just what my mom told me.  
7       So, in actuality, there's just one person who is  
8       bringing a complaint before you, just one. She has  
9       to prove nine elements of fraud. But what's  
10      interesting is the Court is going to explain to you  
11      that your burden of proof, what she has to prove, is  
12      clear and convincing evidence.

13             I want to talk to you for a moment about what  
14      burden of proof means. Burden of proof means the  
15      level at which -- the level of evidence you have to  
16      have to make something be proven to you as a fact.  
17      And in the United States, in our court system, we  
18      have lots of different burdens of proof.

19             Anybody ever watch anything like a criminal  
20      trial on TV? Beyond a reasonable doubt. Right?  
21      Beyond a reasonable doubt. You have to prove a  
22      crime beyond a reasonable doubt. It's the highest  
23      burden of proof in the world.

24             The lowest burden of proof in the world would  
25      be a scintilla of evidence. There are certain

1 things, under the law, where all you need is just  
2 one little, tiny piece of evidence, and then the  
3 Court can rule on that.

4 This is clear and convincing. And the way I'm  
5 going to describe it to you -- of course, you have  
6 to listen to the Judge when it comes to the law.  
7 But the way that I'll describe it to you is I want  
8 you to imagine a puzzle, a jigsaw puzzle. So no  
9 evidence is that there are no pieces on the board;  
10 there are no pieces put together.

11 Beyond a reasonable doubt would be almost all  
12 of the pieces are put together. When you look at  
13 that puzzle, you have no doubt what that puzzle is a  
14 picture of. It's a ship or a train or a flower or a  
15 dolphin. You have no doubt. We have a burden of  
16 proof above nothing called scintilla. That would  
17 mean you don't really know what it is, but there's  
18 some pieces on the table.

19 The next burden of proof is called reasonable  
20 suspicion. Reasonable suspicion. It's used in the  
21 criminal context. It means, okay, I think I see a  
22 shape coming along. The burden of proof above that  
23 in the law is called probable cause. It's a little  
24 bit more. You see where I'm going with this, right?

25 There comes a point where you know what this is



1 a picture of. You know that it's a dolphin and you  
2 know that -- there comes a point where you go for  
3 the tipping point and you have that aha moment.  
4 That burden of proof is called the preponderance of  
5 the evidence. That means a little bit more than  
6 half; that you know this a little bit more than you  
7 don't know it.

8 But the burden of proof here is beyond that.  
9 The burden of proof here is beyond, oh, I know it  
10 more than I don't know it. And, almost to  
11 reasonable doubt, it is I know that this is taking  
12 the shape of something; I see that it's taking the  
13 shape of something; I see part of the flower; I see  
14 part of the dolphin. It's not a full picture, but  
15 you're not required to have a full picture.

16 You're required to have a picture that's big  
17 enough and bold enough and complete enough that you  
18 can look at it with some certainty. It's clear and  
19 convincing. That's actually the name of the burden  
20 of proof. And you have to have that level of  
21 certainty for all nine of the elements of fraud;  
22 each of them; not, oh, I think he did this; each of  
23 them. That's a high standard.

24 And how do you do that? You do that by  
25 assessing credibility. You do that all the time,

1 right? I mean, you go about your everyday life and  
2 you talk to somebody and they tell you something,  
3 they tell you a story, and sometimes you go, I don't  
4 think that's true. You look at them and you go,  
5 wow, that seems really sincere; I completely believe  
6 that. You do that a million times a day when you  
7 interact with humans. We all do that. And you get  
8 to bring that little bit of experience into this  
9 jury box as you're looking at what's going on and  
10 you're looking at what happened to this family.

11 The question is not whether this estate was  
12 managed perfectly; the question is, did David Bryan  
13 commit a fraud when he told -- as she alleged, when  
14 he said I set up a trust? Did he commit a fraud?  
15 And, ladies and gentlemen, I would argue to you, it  
16 is clear he did not. He did not do that.

17 He did talk about a Smith Barney account  
18 because there was a Smith Barney account. And the  
19 Smith Barney account was in the name of his father  
20 for the benefit of Emily, and he considered that a  
21 trust. And he talked to them about it; it was clear  
22 that he talked to them about it. And when he talked  
23 about the Smith Barney account, that's what he was  
24 talking about. That's what he was walking about.

25 We know from Ms. Edwards that they didn't use

1       the term trust every time they talked. What did she  
2       say? I would ask him, kind of joking, how's the  
3       money doing, blah, blah, blah. That's what she  
4       said. These many times, it was miscommunication at  
5       best; it was her making assumptions at worst; or it  
6       was something else.

7                You will have Mr. David Bryan's will in the  
8       jury box for you to consider. It has been entered  
9       into evidence by Judge McLeod, and you can read it  
10      for yourself. This is a paragraph that you can read  
11      that purports to create a trust. When you read  
12      this, I would argue to you it is clear that in 2000,  
13      when Mr. Bryan was worth several million dollars and  
14      the tax code was going to take most of it away from  
15      his family, he wrote a will to avoid taxes.

16               He gave his personal representative, his son,  
17      who had been working with him for years managing the  
18      property, managing the accounts, he gave to his son,  
19      who he trusted, the ability to decide how to do  
20      this.

21               How do we know that? Because it says: My  
22      personal representative, David Bryan, shall have the  
23      sole discretion to select the assets which shall  
24      constitute this bequest. He was given the authority  
25      to decide what would go into that trust. And why?

1       Because, when you read this, it's clear: Use this  
2       trust to not pay taxes. It was clear.

3             I ask you to read this will carefully when you  
4       go in the back. Mr. David Bryan, Jr. is speaking to  
5       us from the grave. I don't want to pay taxes; I  
6       want my wife taken care of and David take care of  
7       her. How do we know that? Because what goes in the  
8       trust is Share A. And you'll see that Share B goes  
9       entirely to him.

10            We know there's discretion because, if you take  
11       the plaintiff's version of this story, there is no  
12       Share B. Their version of the story is everything  
13       goes into this trust. Well, if everything goes into  
14       this trust, then why do you have a Share B? You  
15       have a Share B because you only put into the trust  
16       what you need to put into the trust to not pay  
17       taxes.

18            Well, the banking scandal, 2008, hit us all;  
19       2008/2009 devastated the country; many would argue  
20       devastated the world. Mr. David Bryan, Jr. also had  
21       spent some of his money. He had given it to family  
22       members. He had spent some of his money. And at  
23       the time that he passed away, his estate was no  
24       longer worth a million dollars; it was worth much  
25       less. And the tax code had changed; there were no

1       taxes owed. All of this was unnecessary.

2               All of this became Share B; Share B for the  
3       purpose of taking care of his mother, as his father  
4       wished, and taking care of the family. And we know  
5       that because, right after this was signed in 2000,  
6       his mom signed a will. And when his mom signed a  
7       will, what did she say? She said: I hereby leave  
8       all my property of any kind and description to my  
9       son, David Bryan. Did she just give it to him? No.  
10      Did she just say, here, here, have everything? She  
11      did not. She did not say that. She said, give it  
12      to you.

13             He is entrusted with all of my property to  
14      hold, to sell, to invest, to mortgage, to dispose of  
15      in any way he sees fit with the provision that the  
16      proceeds from this property will be used for the  
17      exclusive use of him, her daughter; the plaintiff,  
18      Mary Cecil Montgomery, Emily Cecile from Canada; and  
19      Bradley, who is also in Canada. Yeah, there's a  
20      typo on it. Isn't it clear? I give it to my son  
21      for him to take care of everybody.

22             So when we talk about the term trust, we have  
23      one will that says form a legal trust so that you  
24      don't have to pay taxes, so nobody has to pay taxes.  
25      Then you have another will that says, I'm entrusting

1       this to you, take care of this for everyone. So  
2       when he's asked about the proceeds of everything and  
3       he says I'm holding it in trust, this isn't fraud,  
4       this isn't fraud, this is what his parents told him  
5       to do.

6               And if he believed this is what his parents  
7       told him to do, you know what? It's not fraud. If  
8       he believed that he was doing what was right, it  
9       ain't fraud. You have to -- if you find a verdict  
10      for the plaintiff, you have to show, by clear and  
11      convincing evidence, that he knew what was going on;  
12      that he was trying to cheat them.

13             Because here's the thing: One of the things  
14      Mr. Belding talked about was, oh, you didn't have to  
15      probate the estate because your mom didn't own  
16      anything. Right? You remember that? Your mom  
17      doesn't own anything, so you didn't have to probate  
18      the estate. That's true. We're not disputing that  
19      fact.

20             But here's the thing: In 2001, when she signed  
21      this will, a year after her husband of many, many,  
22      many years had signed his will, she thought she'd  
23      have something. Otherwise, why would you say the  
24      proceeds were to be used for the benefit of the  
25      family? If you knew you weren't going to get

1 anything and you knew you didn't own anything, why  
2 would you entrust somebody with that? Why would you  
3 do that?

4 And perhaps they lived in the same house,  
5 having been married for decades, and never discussed  
6 the fact that they had wills; maybe that's true.  
7 But is that credible? No, it's not at all credible.

8 So who do you believe? Emily, according to the  
9 plaintiffs, is entitled from you to get \$300,000;  
10 Ms. Edwards is entitled to get \$300,000. Your child  
11 is going to get 300,000-plus dollars, and you're  
12 never going to discuss it with her? She's an adult.  
13 You're never going to mention it to her? You're not  
14 going to talk to either of your children about this?  
15 Does that make sense?

16 Her mom, under their theory, was going to get a  
17 fourth as well. There's nobody here about that.  
18 Her mom wasn't part of the lawsuit. You know what?  
19 Did you hear why she said her mom wasn't part of the  
20 lawsuit? My mom trusted her brother. To do what?  
21 To take care of the family. If she thought she was  
22 being defrauded, she would have sued him along with  
23 everybody else.

24 She would get \$300,000 and you would believe  
25 that her beneficiary, her husband, who lives with

1       the plaintiff, isn't part of this lawsuit; isn't  
2       even here. I mean, she would be entitled to a  
3       fourth as well, right? Not even here. She's got a  
4       brother and a sister. This happened at family  
5       gatherings, these statements he made, this  
6       fraudulent stuff that he made. And she says, oh,  
7       well, they're not part of the lawsuit; they're not  
8       named in the lawsuits; they don't have to be  
9       plaintiffs; they don't have to be plaintiffs.  
10      That's fine.

11             You know what they could do? Testify. They  
12      could testify. They're not here. No one is here;  
13      nobody. One person who says but I'm the one telling  
14      the truth; she's the one telling the truth.

15             Here's what I find to be interesting, though:  
16      The justification for all of this, all of this, is  
17      that Emily needs to go to school. Emily is entitled  
18      to this because she needs to go to school. I took  
19      Emily's deposition. I got to meet her. I'll tell  
20      you, she's a nice young lady studying to play the  
21      flute. She's a nice young lady.

22             Here's what's interesting to me and why that  
23      deposition had to be read by me and A.C.: This girl  
24      has absolutely no idea what's going on today; no  
25      idea. If you had a lawsuit where you were going to



1       get \$300,000 or more, would you be here? Seriously,  
2       would you be here? And all of this is so that she  
3       can go to school.

4             Remember, she got money from her  
5       great-grandfather when he died, or, rather, money  
6       went to her. She got \$35,000 when she turned 18.  
7       But she also got a life insurance policy. Her mom  
8       called it an annuity. Her great-uncle called it a  
9       life insurance policy; that he thought the life  
10      insurance policy was in his name and, after the  
11      death, he called and found out, no, it's not in your  
12      name; it's actually in Emily's name. He was like,  
13      oh, okay, okay, that's fine; \$117,000 of a life  
14      insurance policy, according to their exhibits.  
15      \$117,000. \$117,000 added to the \$35,000, that's,  
16      what, \$150,000. \$150,000 that she got from the  
17      event of her grandfather dying.

18            And here's what I find super-interesting about  
19      that when we're being asked to trust this lady: Her  
20      daughter knows nothing about it; nothing about it.  
21      Her daughter said, I had about \$30,000; I bought a  
22      car; I bought a professional flute; I paid for some  
23      school. She didn't say anything about \$120,000;  
24      nothing.

25            She has no clue what is going on today; she had

1 no clue what was given to her. She has only what  
2 her mom told her. And you're being asked to render  
3 a verdict of an outrageous amount of money; an  
4 outrageous amount of money based solely on the  
5 testimony of that exact same person. Who do you  
6 trust?

7 THE COURT: Brief reply?

8 MR. BELDING: Excuse me, Your Honor?

9 THE COURT: Brief reply?

10 MR. BELDING: Sorry, I couldn't see you. Give  
11 me one minute.

12 May it please the Court?

13 THE COURT: Yes, sir.

14 MR. BELDING: It's always amazing to me how  
15 lawyers can take the same facts and weave a  
16 different story, you know? What happened here is  
17 pretty clear. The testimony was that when  
18 Mr. Bryan, Sr., Jr.'s father, died, Emily was young;  
19 12, I believe. She didn't get dragged into this  
20 every day to find out what was going on. And she's  
21 been up in Canada for a couple years going to  
22 college.

23 She gave her mother -- as we know and  
24 testified, gave her mother the right to do this for  
25 her. She doesn't really have any direct knowledge,

1       that's why we didn't bring her down. Everything she  
2       knows is something that was told by her mother. So  
3       she's really not a fact witness. But that doesn't  
4       mean she didn't get defrauded. Everything that  
5       applies to Elisa applies to Emily. She was deprived  
6       of this money because her uncle -- great-uncle kept  
7       it.

8               And on credibility grounds, all you got to do  
9       is say, well, who's had a lot of trouble getting the  
10      facts right in this case? Who's had a lot of  
11      trouble filing documents that are accurate? You  
12      want to sign and say they're accurate to the best of  
13      my knowledge; they have to be changed and fixed. I  
14      mean, who decided that, hey, I guess everything is  
15      Share B?

16             They keep leaving out the next page of the will  
17      that says there's going to be a trust; it's going to  
18      do this and, when my wife dies, it's to be divided  
19      four ways. Yeah, I agree the tax thing went out.  
20      And he just decided, well, that means I get to keep  
21      everything.

22             So he even said -- Mr. Hemlepp said, everything  
23      became Share B, and we got to keep it. Well, you  
24      know what? If that's really the way it was, he  
25      wouldn't have needed to lie to these people for five

1       years. He could have just told them you don't get  
2       anything and we would have been here ten years ago.  
3       He just led them on, led them on, led them on.

4               And then, finally, when they pressed him, we  
5       need money, no, there's no money for you. Who do  
6       you believe? I agree that's the right question in  
7       this case. Thank you.

8               THE COURT: All right. Members of the jury,  
9       it's now my duty as the trial judge to instruct you  
10      on the law applicable in this case. And in that  
11      regard, it's your duty as jurors to accept and apply  
12      the law as I now state it to you.

13              Furthermore, it is your exclusive duty to  
14      decide all the issues of fact in this case and to  
15      determine the effect, the value, weight, and truth  
16      of the evidence. All the parties have a right to  
17      expect you will carefully consider and evaluate the  
18      evidence and apply the law to this case so that in  
19      the end, all parties receive a fair and impartial  
20      trial.

21              During this trial, you and I have separate  
22      duties to perform. As trial judge, it is my  
23      responsibility to preside over this trial and rule  
24      upon the admissibility of evidence offered during  
25      the trial. In that regard, you are to consider only

1       the evidence before you. Thus, you are to consider  
2       only the testimony which has been presented from the  
3       witness stand, together with any exhibits admitted  
4       into the record of this case.

5               In this trial, you are the sole and exclusive  
6       judge of the facts. Do not infer that I have an  
7       opinion about the facts of this case from anything  
8       I've said or done during the course of this trial.  
9       In that regard, the law simply does not permit me to  
10      have an opinion about the facts. As jurors, it is  
11      your duty alone to determine the effect, value,  
12      weight, and truth of evidence presented during the  
13      course of the trial.

14             Furthermore, it is your job as jurors to  
15      determine the credibility or believability of the  
16      witnesses who have testified in this case. You must  
17      evaluate the evidence and determine which evidence  
18      convinces you of its truth.

19             In determining the believability of witnesses  
20      who have testified in this case, you may believe one  
21      witness over many or many over one; you may believe  
22      a part of the testimony of a witness and reject the  
23      remaining part; you may believe the testimony of a  
24      witness in its entirety or reject it in full; you  
25      may consider whether the witness has an interest in

1       the result of the trial, whether the witness is  
2       prejudiced toward either party; the opportunity for  
3       the witness to have seen the matters and things  
4       about which the witness may testify; and the way the  
5       witness acts on the witness stand.

6               Now, furthermore, evidence may be direct or  
7       circumstantial. Direct evidence is testimony by a  
8       witness about what the witness personally saw or  
9       heard or did. Circumstantial evidence is indirect  
10      evidence. In other words, it is proof of one or  
11      more facts from which one can find another fact.  
12      You may consider both direct and circumstantial  
13      evidence equally.

14             The following things are not evidence and you  
15      must not consider them as evidence in deciding the  
16      facts of this case: One, statements and arguments  
17      of the attorneys; two, questions and objections of  
18      the attorneys; and, three, any testimony that I have  
19      instructed you to disregard. While the argument of  
20      counsel is a beneficial part of every trial, you  
21      should remember that the statements made by counsel  
22      are not evidence.

23             In presenting arguments, counsel often referred  
24      to the evidence. However, you should base your  
25      verdict on the evidence as you remember it.

1       Therefore, if there are any conflicts between the  
2       recollection of counsel about the evidence and your  
3       own recollection, you should rely on your own  
4       understanding of the evidence.

5               Now, the burden of proof in this case is by  
6       clear and convincing evidence because the sole  
7       remaining claim for you to decide is the plaintiff's  
8       action for fraud. You may recall that in my  
9       preliminary remarks before opening statements, I  
10      mentioned a preponderance or greater weight of the  
11      evidence, which is generally the applicable burden  
12      in civil cases.

13             The preponderance of the evidence simply means  
14      the greater weight. It is evidence that, as a  
15      whole, shows the facts sought to be proven is more  
16      likely true than not true. In this specific case,  
17      however, the plaintiff's burden is clear and  
18      convincing evidence.

19             Clear and convincing evidence is that degree of  
20      proof that gives you a firm belief as to the facts  
21      sought to be proved. This is more than a mere  
22      preponderance of the evidence, but less than beyond  
23      a reasonable doubt.

24             Now, during this trial, you heard deposition  
25      testimony from a witness. A deposition is a

1 document containing sworn testimony given by a  
2 witness outside the court in presence of lawyers for  
3 each party who may ask questions of the witness.  
4 This testimony is entitled to the same consideration  
5 and is to be judged as to credibility and weighed by  
6 you in the same way as if the witness were present  
7 and gave the testimony about to be read -- or gave  
8 the testimony as you heard it during trial. So it  
9 is then for you, the jury, to determine the effect,  
10 value, and truth of the testimony given in the  
11 deposition.

12 The plaintiff claims the defendant committed  
13 fraud and deceit. The plaintiff must prove each  
14 element of fraud and deceit by clear and convincing  
15 evidence. Fraud cannot be presumed. Clear means  
16 evidence which is not ambiguous, doubtful, or  
17 contradictory. Convince means to cause one to  
18 believe in the truth of what is asserted. Fraud  
19 means bad faith and dishonesty as opposed to mistake  
20 or neglect or negligence. Deceit means a fraudulent  
21 misrepresentation by which one person deceives  
22 another.

23 In order to prevail on an action for fraud or  
24 deceit, the plaintiff must prove all the following  
25 nine elements by clear, cogent, and convincing



1 evidence: One, the plaintiff must prove that the  
2 representation was made by the defendant; two, the  
3 falsity of the representation; three, the  
4 materiality of the representation; four, the  
5 speaker's knowledge of its falsity or reckless  
6 disregard for its truth or falsity; five, the  
7 speaker's intent that the representation be acted  
8 upon by the person hearing the representation; six,  
9 the hearer's ignorance of its falsity; seven, the  
10 hearer's reliance on its truth; eight, the hearer's  
11 right to rely thereon; and, nine, the hearer's  
12 consequent and proximate injury.

13 Representations may be made orally, in writing,  
14 by acts and conduct, or by acts meant to deceive.  
15 It is not necessary for the defendant to have made  
16 the representations directly. A false impression  
17 may be made by words or acts that may constitute  
18 fraud. The representations must be false.

19 Fraudulent act is characterized by dishonesty,  
20 in fact, unfair dealing or unlawful appropriation of  
21 another's property by design. Bad faith is the test  
22 of fraud. Nondisclosure or silence becomes  
23 fraudulent when the intent is the duty of the party  
24 having the knowledge of facts to uncover them to the  
25 other. The truth or falsity of a representation

1        must be determined as of the time it was made or  
2        acted on, not at some later date.

3            The representation must be material. If an  
4        objective reasonable person using the  
5        misrepresentation would have viewed the  
6        representation as sufficiently important and  
7        significant that it would have played a role in the  
8        decision to enter into a contractual relationship,  
9        the representation may be deemed material.

10           The matter is material if, one, a reasonable  
11        person would attach importance to its existence or  
12        nonexistence in determining his choice of action and  
13        the transaction in question; or, two, the maker of  
14        the representation knows or has reason to know that  
15        its recipient regards or is likely to regard the  
16        matter as important in determining his choice of  
17        action, although a reasonable man would not so  
18        regard it.

19           The knowledge of falsity extends to the  
20        statements made in reckless disregard of the truth.  
21        Reckless disregard exists when one makes a statement  
22        and knows he lacks the knowledge necessary to be  
23        confident that the statement is true.

24           The amount of damages for fraud is the  
25        difference between the value that plaintiff would

1        have received if the defendant's representations had  
2        been true and the value the plaintiff actually  
3        received plus any consequential or special damages  
4        proximately caused by the defendant's  
5        representations.

6                The measure of damages for fraud is the actual  
7        pecuniary loss sustained. Thus, as a general rule,  
8        one injured by the commission of fraud is entitled  
9        to recover such damages as will compensate him for  
10       the loss or injury actually sustained and placed him  
11       in the same position that he would have occupied had  
12       he not been defrauded.

13               In an action for fraud, punitive damages are  
14       warranted when the defendant knows the  
15       representation to be false or where a false  
16       representation is recklessly made as a positive  
17       assertion without knowing or caring whether it is  
18       true or false. In the latter instance, liability  
19       for punitive damages is dependent upon whether the  
20       defendant was conscious or chargeable with  
21       consciousness of his wrongdoing.

22               The recovery of punitive damages is not limited  
23       to cases where the false representations were  
24       actually known to be false at the time of the making  
25       of the representations. That is to say knowledge by

1       the defendant that his representations were false is  
2       not required for an award of punitive damages. It  
3       is only necessary that the defendant was conscious  
4       or chargeable with consciousness of his wrongdoing.

5             To award punitive damages, you must find, by  
6       clear and convincing evidence, that fraud was  
7       committed in such a manner or under such  
8       circumstances that a person of ordinary reason or  
9       prudence would have been conscious of it as an  
10      invasion of the plaintiff's rights. The plaintiff  
11      must prove, by clear and convincing evidence, that  
12      she's entitled to an award of punitive damages.

13            The burden of proof is over and above the  
14      normal burden of proof by a preponderance of the  
15      evidence. Clear and convincing evidence is that  
16      degree of proof which will give you a firm belief as  
17      to the facts sought to be proved. This is more than  
18      a mere preponderance of evidence, but less than  
19      beyond a reasonable doubt.

20            Now, a verdict in this case cannot be based  
21      upon sympathy, passion, prejudice, or emotion, or  
22      some other consideration not found in the evidence.  
23      I charge you that, as jurors, you must decide the  
24      issues in this proceeding based solely upon the  
25      evidence which you have heard during the course of

1 the trial.

2 Your verdict must be without bias and without  
3 prejudice to any party. You cannot allow yourselves  
4 to be governed by sympathy, by prejudice, passion,  
5 or public opinion, or some other consideration not  
6 found in the evidence.

7 Now, let me say something about your  
8 deliberations. Deliberation is defined as the  
9 careful consideration weighing up with a view to  
10 decision. The genius of our jury system is it  
11 allows 12 good men and women from different  
12 backgrounds and life experiences and perspectives to  
13 consider the evidence, talk about it, and,  
14 ultimately, reach a verdict.

15 We call them deliberations for a reason.  
16 You're to consider the evidence in this case  
17 carefully and deliberately. Discuss it in a calm,  
18 thorough, and courteous manner. Listen to the views  
19 of all your fellow jurors. Consider other people's  
20 points of view and talk through and discuss the  
21 evidence.

22 And, remember, if you're doing something  
23 deliberately, you're not in a big hurry. And you  
24 should not be in a big hurry here. This case is  
25 very important to both sides and this is their only

1 day in court.

2 When you retire to the jury room, you should  
3 discuss the case with your fellow jurors to reach an  
4 agreement, if you can do so. Your verdict must be  
5 unanimous. Each of you must decide the case for  
6 yourself, but you should do so after you have  
7 impartially considered all the evidence, discussed  
8 it further with other jurors, and listened to the  
9 views of your fellow jurors.

10 Do not be afraid to change your opinion if your  
11 discussion persuades you that you should. Do not  
12 come to a decision simply because other jurors think  
13 it is right. Ladies and gentlemen, your verdict  
14 must be unanimous.

15 Madam Foreperson, when the jury agrees on a  
16 verdict, you'll write the verdict on the verdict  
17 form and sign your name as foreperson. Then knock  
18 on the jury room door and inform the bailiff that  
19 you've reached a verdict and, at that time, we'll  
20 receive you back into the courtroom. I also will be  
21 giving you a copy of these jury instructions for you  
22 to have in the jury room as well.

23 I ask that you return to your jury room, but do  
24 not begin your deliberations until you are told to  
25 by the clerk or bailiff to do so. There are some

1 matters I need to discuss with the attorneys first  
2 before you can begin your deliberations.

3 At this time, I'll have you go back to your  
4 jury room. Please do not begin your deliberations  
5 yet. Thank you.

6 (The jury exits the courtroom at 3:29 PM.)

7 THE COURT: Any objection to the charge?

8 MR. BELDING: No.

9 MR. HEMLEPP: No.

10 THE COURT: Bring out the alternate.

11 (Alternate Juror enters the courtroom.)

12 THE COURT: Mr. Burgess, thank you for serving  
13 as an alternate. We didn't need you after all.  
14 It's only Monday, but we appreciate your service  
15 here. You're welcome to stay around and hang out  
16 and watch the verdict whenever it comes in, but  
17 you're free to go, if you like. But we want to  
18 thank you for your service today. You're free to  
19 go.

20 MR. BURGESS: Thank you, sir.

21 (Jury begins deliberations at 3:34 PM.)

22 THE COURT: We've received a question from the  
23 jury; marked this question as Court's Exhibit No. 3.  
24 The question reads: How and when did she find out  
25 about the will?

1           My only response would be you've heard all the  
2           evidence and testimony that you're going to hear.  
3           You must base your verdict upon the evidence as you  
4           heard it. There's nothing more I can tell them.  
5           I'm going to write that.

6           MR. BELDING: She actually testified about  
7           that, too.

8           MR. HEMLEPP: Are you going to send it back in  
9           a note or bring them out and tell them?

10          THE COURT: My general practice, I go tell them  
11          so we don't have to just wait for people to come  
12          back and forth.

13          MR. HEMLEPP: So you write it and read it and  
14          then go deliver it to them?

15          THE COURT: Yeah. Y'all can walk with me.

16          You've heard all the evidence and testimony  
17          that you're going to hear. You must base your  
18          verdict on the evidence as you heard it.

19          Y'all are welcome to come with me.

20          (The Court and Counsel exit the courtroom.)

21          (The jury continues deliberations at 4:27 PM.)

22          (The jury enters the courtroom at 5:09 p.m.)

23          THE COURT: All right. Please be seated.

24          Madam Foreperson, I understand y'all have a  
25          verdict.



1 THE FOREPERSON: Yes, sir, we do.

2 THE COURT: Is your verdict unanimous?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: Please hand the verdict to the  
5 bailiff.

6 Madam Clerk, please publish the verdict.

7 THE CLERK: 2018-CP-32-00927, Elisa Montgomery  
8 Edwards and Emily Cecile Edwards versus David C.  
9 Bryan, III. The verdict form is: Did the plaintiff  
10 prove her case for fraud by clear, cogent, and  
11 convincing evidence? The jury has checked the box  
12 yes. We, the jury, unanimously find for the  
13 plaintiff for the cause of action of fraud damages  
14 in the amount of \$500,000.

15 As far as punitive damages: Do you find that  
16 the plaintiff has proven clear and convincing  
17 evidence of the defendant's actions were willful,  
18 wanton, and reckless? The jury has checked yes.  
19 We, the jury, unanimously award Plaintiff punitive  
20 damages in the amount of \$100,000. It's signed and  
21 dated by the foreperson for the jury.

22 THE COURT: All right. Anything before we  
23 discharge the jury, please?

24 MR. BELDING: Nothing for the plaintiff.

25 MR. HEMLEPP: No, Your Honor.

1           THE COURT: Ladies and gentlemen of the jury, I  
2       appreciate your time today and your focus in  
3       listening in on the evidence in this case. You know  
4       it's been a while since we've been able to have jury  
5       trials up here. Your service has been really  
6       important for us getting back to some normal  
7       operations around here. We appreciate your work and  
8       your efforts this week, even if it was only for a  
9       day. Without your help, it's hard to move some of  
10      these cases. So we appreciate your help very much.

11           Y'all are free to go. You'll be done for the  
12      week, by the way, so you're free to go at this time.  
13      Just follow the bailiffs and hand in your name tags  
14      and all of that. Thank you again on behalf of all  
15      of us.

16           (The jury exits the courtroom at 5:12 PM.)

17           THE COURT: Okay.

18           MR. BELDING: Nothing from the plaintiff, Your  
19      Honor.

20           THE COURT: Ten days?

21           MR. HEMLEPP: Yes, Your Honor.

22           THE COURT: Ten days for posttrial motions. I  
23      certainly commend both counsel for arguing their  
24      cases so well. I'll look for posttrial motions  
25      accordingly.

-- END OF TRANSCRIPT OF RECORD --

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 19th and 20th of October, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 2, 2021

s/ *Bethanie K. Creppon*

Bethanie K. Creppon  
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE MATTER OF DAVID CUTTINO BRYAN, JR.

IN THE PROBATE COURT

CASE NUMBER: 2009ES3200065

INFORMATION TO HEIRS AND DEVISEES

On 22ND JAN., 2009 Application/Petition was made to the Probate Court of

Lexington County, at 205 E. MAIN STREET, SUITE 134 LEXINGTON, SC 29072, for the  
(check all that apply):

INFORMAL

FORMAL

☒ PROBATE OF WILL  
☒ APPOINTMENT

☐ TESTACY  
☐ APPOINTMENT

in the above matter.

(Complete if applicable) The decedent's will dated May 19th 2000  
and codicil(s) dated \_\_\_\_\_ was/were presented

This notice is being sent to persons who have or may have some interest in the estate.

Bond HAS ☐ HAS NOT ☒ been filed.

My application/petition was granted within the past thirty days on January 22nd, 2009.

**\*\*Disclaimer: This form is required to be sent to all the potential heirs of deceased. Receipt of this form does not mean that you will inherit from the deceased. You may review the file in the Probate Court or see an attorney if you desire further information.**

Applicant/Personal Representative Name: DAVID C. BRYAN, III

Address: 120 SMITH STREET

LEXINGTON, SC 29072

Telephone (O): 803-223-1690

(H): 803-957-7596

Applicant/Personal Representative Name: \_\_\_\_\_

Address: \_\_\_\_\_

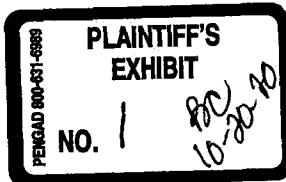
Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

Attorney: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_



**FILED**

FORM #305PC (2/2004)  
62-3-306, 62-3-402, 62-3-705

SCANNED

JAN 26 2009  
PROBATE JUDGE  
LEXINGTON COUNTY, SC

ELECTRONICALLY FILED - 2018 Apr 30 2:22 PM - LEXINGTON - COMMON PLEAS - PAGE #2018CP3200927

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF LEXINGTON

IN THE MATTER OF DAVID CUTTINO BRYAN, JR.

CASE NUMBER: 2009ES3200065

PROOF OF DELIVERY

On the 23<sup>rd</sup> day of January, I mailed or delivered the following document(s),

INFORMATION TO HEIRS AND DEVISEES (FORM #305PC)

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

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

- ☐ personal delivery ☒ ordinary first class mail  
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME

ADDRESS

Mary Cecil Montgomery Moyers

108 Laurel Oak Dr. W. Colo 29169

Cecil I Bryan

948 Bruce Rd Cayce SC 29033

Sharon Lee Montgomery

104 Sweet Springs Ct. Lev. S.C. 29073

David Bryan Gayden

401 Michigan Avenue Indian Land, SC 29909

Ethan Montgomery

2402 Peace Pipe Circle, Copperas Cove, TX 76522

Emily Cecil Edwards

2305 Raventrail West Colo S.C. 29169

Elisa Montgomery Edwards

2305 Raventrail West Colo S.C. 29169

SWORN to before me this 26<sup>th</sup> day of  
January, 20 09.

Signature: David C Bryan III

Name: DAVID C. BRYAN, III

Address: 120 SMITH STREET

LEXINGTON, SC 29072

Telephone (O): 803-223-1690

(H): 803-957-7596

Rebecca S. Leary

Notary Public for South Carolina

My Commission Expires: 7-29-2009

SWORN to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

**FILED**

JAN 26 2009

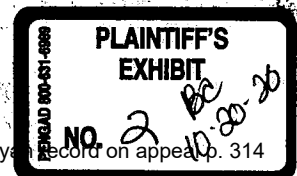
PROBATE JUDGE  
LEXINGTON COUNTY, SC

SCANNED

Last Will  
and  
Testament  
of  
DAVID C. BRYAN, JR.

DOOLEY, DOOLEY, SPENCE, PARKER & HIPPE, P.A.  
ATTORNEYS AT LAW  
218 EAST MAIN ST.  
LEXINGTON, S.C. 29072

Edwards v. Bryan, record on appeal p. 314



LAST WILL AND TESTAMENT  
OF  
DAVID C. BRYAN, JR.

Introductory Clause. I, DAVID C. BRYAN, JR., a resident of and domiciled in the County of Lexington 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.

ITEM I

Direction to Pay Debts. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death.

ITEM II

Specific Bequest of Specific Item of Personal Effects. I give and bequeath to DAVID C. BRYAN, III, if he shall survive me, all firearms, knives, coins, books, and papers. If he shall not survive me, then I give and bequeath all firearms, knives, coins, books, and papers to Ethan Montgomery and Emily Cecil Edwards.

ITEM III

Specific Bequest of Specific Item of Personal Effects. I give and bequeath to CECIL I. BRYAN, if she shall survive me, all household property.

ITEM IV

Cash Legacy. I give and bequeath to SHARON LEE MONTGOMERY, if she shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00). If she shall not survive me, then I give and bequeath the same to ELISA MONTGOMERY EDWARDS if she shall survive me.

ITEM V

Cash Legacy. I give and bequeath to MARY CECIL MONTGOMERY, if she shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

SCANNED



ITEM VI

Cash Legacy. I give and bequeath to ETHAN MONTGOMERY, if he shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

ITEM VII

Cash Legacy. I give and bequeath to DAVID BRYAN GAYDEN, if he shall survive me, the sum of Ten Thousand Dollars and No Cents (\$10,000.00).

ITEM VIII

Maximum Marital Deduction. Pecuniary Formula Bequest. Maximize Unified Credit.  
Payable to The CECIL I. BRYAN Trust. If my wife, CECIL I. BRYAN, 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 that the use of such state death tax credit does not increase the death tax payable to any state), will result in 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 deduction 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 than if the contrary election had been made. My Personal Representative shall have the sole discretion to select the assets which shall constitute this bequest. In no event, however, shall there be included in this 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 the CECIL I. BRYAN Trust as hereinafter set forth.

ITEM IX

Outright Gift to Share 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 be distributed under the terms of Share B as hereinafter provided.

ITEM X

Direction to Personal Representative to Elect The CECIL I. BRYAN Trust Assets as Qualified Terminable Interest Property. I direct my Personal Representative to elect as provided in the Internal Revenue Code Section 2056(b)(7)(B)(v) to cause the property distributed to the Trustee of the CECIL I. BRYAN Trust to be treated on my federal estate tax return as qualified terminable interest property.

ITEM XI

The CECIL I. BRYAN Trust Introductory Provision. The CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust as in its sole discretion shall be necessary or 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) Payment of Death Taxes From The CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust 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 the CECIL I. BRYAN Trust in her estate for such tax purposes.

(4) Disposition of The CECIL I. BRYAN Trust at wife's Death. Upon the death of my wife, the entire remaining principal of the CECIL I. BRYAN Trust shall be distributed as

follows: 1/4 - David Bryan, III, or, if predeceased, to his wife and her children; 1/4 - Sharon Lee Montgomery or, if predeceased, to Ethan Montgomery; 1/4 - Elisa Montgomery Edwards; 1/4 - Emily Cecil Edwards.

#### ITEM XII

Share B to Testator's Son. Share B shall be distributed to my son, provided, however, if my son is then deceased, this share shall be distributed to Robin Christine Brown, Elisa Montgomery Edwards, Mary Cecil Montgomery, Ethan Montgomery and Emily Cecil Edwards, in equal shares.

#### ITEM XIII

Naming the Personal Representative and Trustee, Personal Representative and Trustee Succession, Personal Representative and Trustee's Fees and Other Matters. The provisions for naming the Personal Representative and Trustee, Personal Representative and Trustee succession, Personal Representative and Trustee's fees and other matters are set forth below:

(1) Naming Individuals as Personal Representative and Trustee. I hereby nominate, constitute, and appoint as Personal Representatives and Trustees of this my Last Will and Testament DAVID C. BRYAN, III and ROBERT V. FERRELL and direct that they shall serve without bond.

(2) Individual Personal Representatives and Trustees Succession. If any individual Personal Representative and Trustee should fail to qualify as Personal Representative and Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Personal Representatives and Trustees shall continue to serve without a successor or substitute.

(3) Fee Schedule for Individual Personal Representative and Trustee. For its services as Personal Representative and Trustee, my individual Personal Representative and Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

#### ITEM XIV

Powers for Personal Representative and Trustee. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives and Trustees generally, my Personal Representative and Trustee is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to,

take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative and Trustee may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative and Trustee may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

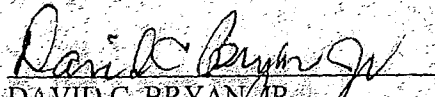
#### ITEM XV

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 proper 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 age 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.

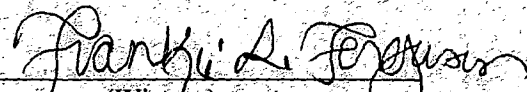
#### ITEM XVI

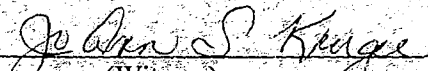
Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, 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 believes 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.

Testimonium, Attestation and Self-Proving Affidavit. I, DAVID C. BRYAN, JR., the Testator, sign my name to this instrument this 19 day of MAY, 2000, and being first duly sworn, do hereby declare to the undersigned 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.

  
DAVID C. BRYAN, JR.

We, Frankie L. Ferguson and JoAnn Kruger, 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 as his last will and that 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.

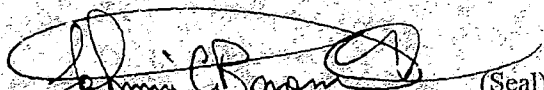
  
(Witness)

  
(Witness)

The State of South Carolina

County of Lexington

Subscribed, sworn to, and acknowledged before me by DAVID C. BRYAN, JR., the Testator, and subscribed and sworn to before me by Frankie L. Ferguson and JoAnn Kruger, witnesses, this 19 day of MAY, 2000.

  
(Seal)  
Notary Public for South Carolina

My Commission Expires: MY COMMISSION EXPIRES JANUARY 26, 2010



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE PROBATE COURT

IN THE MATTER OF

DAVID C. Bryan Jr.  
Estate

CASE NUMBER

ACCOUNTING

☒ FINAL

☐ INTERIM#

The undersigned Personal Representative(s) submits this accounting, which covers the period from 1-9-09 9-21-20  
20 10 through 9-21-2010 20 10

The documentation on the reverse side of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance 994,900.00  
Plus: Receipts \_\_\_\_\_  
Subtotal \_\_\_\_\_  
Less: Disbursements 523,312.94  
Ending Balance 471,587.06 To Trust

**FILED**

SEP 20 2010

13

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

The Personal Representative declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s)

SWORN to before me this 20 day of

SEPTEMBER, 20 10  
Jawon E. Pethel

Notary Public for South Carolina

My Commission Expires 03/04/2012

*See attached (1) page*

Signature: David C. Bryan Jr.

Name (Print): DAVID C. BRYAN JR.

Address: 120 Smith St.  
Lexington S.C.

Telephone (H): 803 447-1340

(H): 803 957-7596

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

PLAINTIFF'S  
EXHIBIT

NO. 3 PC  
10-20-20

Final 9-7-2010  
DAVID C. BRYAN JR.

777-2101

| RECEIPTS                      | DISBURSEMENTS                           |
|-------------------------------|-----------------------------------------|
| (assets received into estate) | (assets disbursed/paid out from estate) |
| 994,900                       | 10,000 Eliza Montgomery                 |
|                               | 21,000 Emily Edwards                    |
|                               | 8,000 Eliza Edwards                     |
|                               | 10,000 David Bryan Snyder               |
|                               | 10,000 Sharon Lee Montgomery            |
|                               | 10,000 Mary Cecil Montgomery            |
|                               | 21,000 Funeral                          |
|                               | 1,350 Hospital                          |
|                               | 3,800 Legal                             |
|                               | 1,500 Probate                           |
|                               | 29,000 Note pay off                     |
|                               | 31,440 Mort. payments                   |
|                               | * 200,000 Medical                       |
|                               | 138,000 Mortgages                       |
|                               | 2,800 C.P.A.                            |
|                               | 1,500 Miscellaneous exp.                |
|                               | 10,558.94 Taxes real property           |
|                               | 9,384.00 Bank pay-off credit cards      |
|                               | 468,587.06 To Trust                     |
| 994,900                       | 994,400.00                              |

**FILED**

SEP 20 2010

AB

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

David C. Bryan Jr.

9-7-2010

794-2187

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE MATTER OF David C. Bryan Jr

) IN THE PROBATE COURT  
)  
)  
)  
)  
)

) CASE NUMBER: 2009-ES-32-00065

**RENUNCIATION OF RIGHT TO ADMINISTRATION  
AND/OR NOMINATION AND/OR WAIVER OF BOND**

The undersigned hereby (check all that apply):

- ☒ renounces his/her right to serve as Personal Representative of the captioned estate.  
☒ nominates the following person to serve as Personal Representative.  
☒ I agree to waive bond for the person(s) nominated below.

Name: DAVID C Bryan III  
Address: 120 Smith St  
Lexington S.C. 29072

I understand this is effective only to the extent the law allows for nomination and waiver of bond.

Executed this 21<sup>th</sup> day of January, 2009

\* Witnessed by:

Brenda Glendon

Signature: [Signature]

Name (Print): Robert V. Farrell II

Address: P.O. Box 5689, 1600 Augusta Rd  
West Columbia, S.C. 29171

Email: \_\_\_\_\_

Telephone (O): 803 794 8210

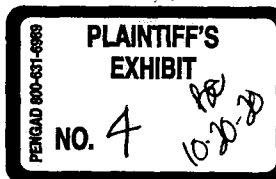
(H): \_\_\_\_\_

\*Must be a disinterested party not related to the decedent, the beneficiary, or the personal representative.

**FILED**

JAN 22 2009

PROBATE JUDGE  
LEXINGTON COUNTY, SC





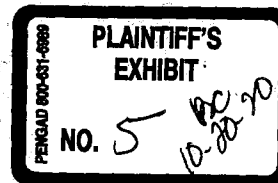
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE MATTER OF DAVID C. Bryan Jr.

IN THE PROBATE COURT

CASE NUMBER: 2009ES32.00065



INVENTORY AND APPRAISEMENT

☒ ORIGINAL

☐ SUPPLEMENTAL# \_\_\_\_\_

Personal Representative(s): David C. Bryan III

Decedent's Social Security Number: \_\_\_\_\_

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: 1-8-09

Domicile at Death: Lexington SC  
(county) (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 before me this 29 day of

April 2009  
Sheppard D. Moore

Notary Public for South Carolina

My Commission Expires: 5-16-17

Signature: David C. Bryan III

Name (Print): DAVID C. BRYAN III

Address: 120 Smith St.

Lexington SC 29072

Email: lbryan20.sc.rr.com

Telephone (O): 223-7690

(H): 957-7596

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

Attorney: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

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 Appraisalment shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

**\* NON-TAXABLE ESTATE RECAPITULATION**

Schedule A - Real Estate

Schedule B - Stocks and Bonds

Schedule C - Notes Due Decedent and Cash

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

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

ENCUMBRANCES

TOTAL NET WORTH

| Non-Probate          | Probate              |
|----------------------|----------------------|
| \$ <u>155,000.00</u> | \$ <u>590,900.00</u> |
| \$ <u>25,000.00</u>  | \$ <u>123,000.00</u> |
| \$ <u>35,000.00</u>  | \$ <u>1,000.00</u>   |
| \$ <u>149,000.00</u> | \$ <u>994,900.00</u> |
| \$ <u>125,000.00</u> | \$ <u>856,900.00</u> |
| \$ <u>471,000.00</u> |                      |

APR 28 2009

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

\* VERIFIED WITH PR. PHONE CALL 11-4-10

FORM #350PC (2/2004)

62-3-704, 62-3-705, 62-3-707, 62-3-708, 62-3-1203

PA - \$867,900.00

SCANNED

PAGE 1 OF 6

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<br>(include county and state)<br>(tax map # needed for each tract of real estate) | Tax Assessor's Fair<br>Market Value for year<br>of Decedent's Death | Appraised Value | Appraised Value of<br>Decedent's Interest |
|----------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-----------------|-------------------------------------------|
| ✓        | 011018 01 001 166 Happytown Rd                                                                | 20,000                                                              | 8,000           | 8,000                                     |
| ✓        | 011018 01 004 208 Happytown Rd                                                                | 20,000                                                              | 11,200          | 11,200                                    |
| ✓        | 011018 01 001 216 Happytown Rd                                                                | 25,000                                                              | 13,500          | 13,500                                    |
| ✓        | 011018 01 002 212 Happytown Rd                                                                | 22,000                                                              | 11,200          | 11,200                                    |
| ✓        | 011018 01 003 205 Happytown Rd                                                                | 20,000                                                              | 8,800           | 8,800                                     |
| ✓        | 011018 01 006 186 Happytown Rd                                                                | 22,000                                                              | 11,700          | 11,700                                    |
| ✓        | 011018 01 007 152 Happytown Rd                                                                | 20,000                                                              | 10,500          | 10,500                                    |
| ✓        | 011018 01 009 176 Happytown Rd                                                                | 20,000                                                              | 11,000          | 11,000                                    |
| ✓        | 011018 01 010 168 Happytown Rd                                                                | 22,000                                                              | 10,500          | 10,500                                    |
| ✓        | 044634 04 018 948 Bruce Rd                                                                    | 250,000                                                             | 212,000         | 212,000                                   |
| ✓        | 004348 01 012 205 Circleview Dr                                                               | 185,000                                                             | 185,000         | 185,000                                   |

TOTAL SCHEDULE A

(also enter under recapitulation, page 1)

SEE ATTACHED LISTING -

\$ 590,900

**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 |
|----------|------------------|------------|-----------------|
|          | EMA Smith Barney | 107,000    | 107,000         |
|          | EMA IRA          | 40,000     | 40,000          |
|          | Southern Company | 12,000     | 12,000          |

TOTAL SCHEDULE B

(also enter under recapitulation, page 1)

\$ 159,000

**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  |
|----------|----------------|--------|
|          | Frist Citizens | 46,000 |

TOTAL SCHEDULE C

(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    |
|----------|---------------|----------|
|          | AXA Equitable | 4,000.00 |
|          | MONEY LIFE    | 9,000    |
|          |               |          |
|          |               |          |
|          |               |          |
|          |               |          |
|          |               |          |
|          |               |          |
|          |               |          |

**TOTAL PART 1**

(also enter under recapitulation, page 1)

\$ 13,000

**Part 2 - Life Insurance Payable to Beneficiaries**

| Item No. | Description | Beneficiary       | Value   |
|----------|-------------|-------------------|---------|
|          | MONEY LIFE  | DAVID C BRYAN III | 9,000   |
|          |             | Emily Edwards     | 118,000 |
|          |             |                   |         |
|          |             |                   |         |
|          |             |                   |         |
|          |             |                   |         |
|          |             |                   |         |
|          |             |                   |         |
|          |             |                   |         |

**TOTAL PART 2**

(also enter under recapitulation, page 1)

\$ 127,000

**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 includible 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.)

SCANNED

[illegible]

71.500

**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.

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.)

5

(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 *ACB*

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

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 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.)

\$ 147,000

**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.)

SCANNED





TMS#: 012000-02-022

✓ **PROPERTY ADDRESS:** 1633 SOUTHBOUND RD

Tax assessors fair market value 55,000

Appraised Value 35,000

Appraised value of Decedent's Death 11,500

TMS#: 005757-02-018

✓ **PROPERTY ADDRESS:** 2219A CONGAREE DR

Tax assessors fair market value 86,000

Appraised Value 76,000

Appraised value of Decedent's Death 76,000

TMS#: 005757-02-036

✓ **PROPERTY ADDRESS:** CONGAREE DR

**LEGAL DESCRIPTION:** PARCEL B 2219-b

Tax assessors fair market value 36,000

Appraised Value 60,000

Appraised value of Decedent's Death 60,000

TMS#: 007998-01-014

✓ **PROPERTY ADDRESS:** GLADYS CT

Tax assessors fair market value 32,000

Appraised Value 40,000

Appraised value of Decedent's Death 40,000

**PROPERTY ADDRESS:** Morningside Dr. Richland County S.C. 1/2 Interest

Tax assessors fair market value 20,00

Appraised Value 40,000

Appraised value of Decedent's Death 20,00

**PROPERTY ADDRESS:**

2.6 AC Columbus County Lake Adger N.C

Tax assessors fair market value 50,000

Appraised Value 75,000

Appraised value of Decedent's Death 75,000

ADDED 1st schedule A

DAVID C BRYAN Jr.

0444

SCANNED

David C Bryan Jr.  
P/R.

2009ES32000GS

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

IN THE MATTER OF David Cuttino Bryan, Jr.

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2009-ES-32-00065

☐ ORIGINAL

☒ SUPPLEMENTAL # 2

Personal Representative(s): David C. Bryan, III

Last Four Digits of Decedent's Social Security Number: xx-xx-0444

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: January 8, 2009

Domicile at death:

Lexington County South Carolina  
(county) (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 28th day of April 20 11

Notary Public for South Carolina

My Commission Expires: February 19, 2014

Signature: David C. Bryan, III

Name: David C. Bryan, III

Address: 120 Smith Street  
Lexington, South Carolina 29072

E-Mail: \_\_\_\_\_  
Telephone (O): 803-223-1690

(H): 803-957-7596

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

**FILED**

AUG 9 2011

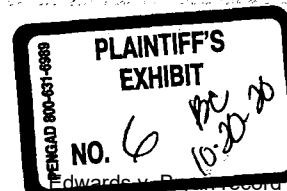
**PROBATE JUDGE**  
**LEXINGTON COUNTY, S.C.**

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                                            | \$            | \$ 238,460.00 |
| Schedule B - Stocks and Bonds                                       |               |               |
| Schedule C - Notes Due Decedent and Cash                            |               | 46,000.       |
| Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate |               | 13,000.       |
| Part 2 - Payable to Beneficiary                                     |               | 12,000.       |
| Schedule E - Jointly Owned Property                                 |               |               |
| Schedule F - Other Miscellaneous                                    |               | 71,000.       |
| Other Assets Payable to Estate                                      |               |               |
| Schedule G - Transfers during Decedent's life                       |               |               |
| Schedule H - Powers of Appointment                                  |               |               |
| Schedule I - Annuities and Retirement Accounts                      |               | 141,000.      |
| <b>TOTAL GROSS VALUE</b>                                            | \$ 238,460.00 | 1518,360.     |
| <b>ENCUMBRANCES</b>                                                 |               | 138,000.      |
| <b>TOTAL NET WORTH</b>                                              |               | 1380,360.     |





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<br>(include county and state)                                              | Tax Assessor's Fair<br>Market Value for year of<br>Decedent's Death | Appraised Value | Appraised Value of<br>Decedent's Interest |
|----------|----------------------------------------------------------------------------------------|---------------------------------------------------------------------|-----------------|-------------------------------------------|
| 1.       | 205 Circleview Drive<br>Lexington, South Carolina<br>Tax Map Number: 004348-01-<br>022 | 238,460.00                                                          | 238,460.00      | 238,460                                   |
|          | Corrected Tax Map Numbers                                                              |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |
|          |                                                                                        |                                                                     |                 |                                           |

TOTAL SCHEDULE A  
(also enter under recapitulation, page 1)

\$ 238,460.00

**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 |
|----------|-------------|-------|
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |
|          |             |       |

TOTAL SCHEDULE C  
(also enter under recapitulation, page 1)

\$

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

\* change made per Tim Diggers Attor. working in TIN

**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.)





(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

[illegible]**TOTAL ENCUMBRANCES**

(also enter under recapitulation, page 1)

§ 100.100

**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 15 day of June, 2015

**Probate Judge**

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

2009-ES-32-00065 FILED, RECORDED, INDEXED  
FEB 2 2010 15:41:11:810  
REL: L: \$10.00 ST FEE: \$0.00 Exempt  
CO FEE: \$0.00 Exempt Pages: 2  
Lexington County R.O.D. Debra M. Gunter  
DEED 8kPg 14023:191

STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT

COUNTY OF: LEXINGTON )

DEED OF DISTRIBUTION

IN THE MATTER OF: The Estate of David C.  
Bryan, Jr. )

) CASE NUMBER: 2009-ES-32-00065

WHEREAS, the decedent died on January 8, 2009 and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Lexington County, South Carolina in File # 2009-ES-32-00065 and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: David C. Bryan, III

Address: 120 Smith Street

Lexington, SC 29072

**FILED**

JAN 4 2010

PROBATE JUDGE  
LEXINGTON COUNTY, S.C.

the following described property:

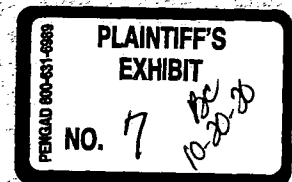
All My Right, Title, and interest In and To:

All that certain piece, parcel or lot of land, situate, lying and being on the Northeastern corner of the intersection of Pineview Road and U.S. Highway No. One (1), in the County of Lexington, State of South Carolina, being shown on a Plat prepared for F.A. Barnett, made by J.H. Rudisill, dated July 29, 1955, to be recorded in the Office of the Clerk of Court for Lexington County, said lot being bounded and measuring as follows: On the North by the property of T.G. and Marie Leaphart and measuring thereon One Hundred Sixty-four (164) feet; On the East by the property of A.A. Loda and measuring thereon Eighty (80) feet; On the South by U.S. Highway No. One (1) and measuring thereon One Hundred Forty-four and 8/10 (144.8) feet; On the West by Pineview Road and measuring thereon Eighty (80) feet.

See Deed recorded in Deed Book 8-A, at Page 201, as dated August 8, 1955, and recorded on August 11, 1965, in the Office of the Register of Deeds for Lexington County. Deed Book 1769, at Page 289.

Tax Map Number: 004634-04-018

This property having the address of 948 Bruce Road.



FORM #400PC (1/89)

2  
62-3-907, 62-3-908

SCANNED

Page 1 of 1

TOGETHER with all and singular the Rights Members Hereditaments and Appurtenances to the said Premises/Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said David C. Bryan, III their heirs and assigns forever.

IN WITNESS WHERE OF the undersigned as Personal Representative of the estate of the decedent has executed this Deed, on this 18 day of March, 2009.

SIGNED, SEALED AND DELIVERED

Estate of: The Estate of David C. Bryan, Jr.

IN THE PRESENCE OF

by Signature:

David C. Bryan, III  
David C. Bryan, III, Personal Representative

Witness:

Witness:

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF Lexington

PERSONALLY appeared before me Sandy M. Fox and made oath that he/she saw, he within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with Timothy G. Driggers witnessed the execution thereof.

SWORN to before me this 18th day of March, 2009.

Witness Signature

Sandy M. Fox  
Notary Public for South Carolina  
My Commission Expires: February 19, 2014

Sandy M. Fox

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

**TITLE TO REAL ESTATE**  
(No Examination of Title)

KNOW ALL MEN BY THESE PRESENTS, that I,

**DAVID C. BRYAN, III**

in the State aforesaid, for and in consideration of the sum of Two Hundred Thirty Thousand and 00/100 (\$230,000.00) Dollars to me paid by TED R. SURRETT AND JOYCE A. SURRETT, in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

**TED R. SURRETT AND JOYCE A. SURRETT, THEIR HEIRS AND  
ASSIGNS:**

All the certain piece, parcel, lot, or tract of land, with the improvements thereon, situate, lying, and being in Lexington County School District Number Two, in Lexington County, South Carolina, shown and delineated as Eastern Ten (10.0') Feet of Lot Number Thirty (32), Lot Number Thirty-One (31), and the Western Forty (40.0') Feet of Lot Number Thirty (30) of Block Number Fifty-Two (52), containing 0.49 of an Acre, on a Plat prepared for Ted Surret and Joyce Surret by Collingwood Surveying, Inc., dated July 7, 2011, and recorded on July 18, 2011, in Record Book 14960, at Page 251, in the Office of the Register of Deeds for Lexington County.

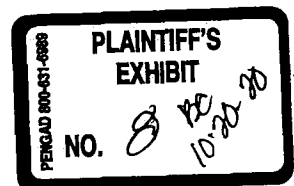
This property has the following boundaries and measurements: On the North by property now or formerly of property of Hazel Stilwell, by property now or formerly of Mike Lyon, and property now or formerly of Selena C. Metts for a distance of 110.00 feet; On the East by property now or formerly of West and Hunnicutt for a distance of 194.32 feet; On the South by Bruce Road, along which it fronts for a distance of 99.76 feet; and On the West by property now or formerly of Doris S. Turner for a distance of 215.35 feet.

This being the identical property conveyed to David C. Bryan, Jr. by Deed of the Guignard Estate, dated June 10, 1955, and recorded on August 16, 1955, in Deed Book 8-A, at Page 201-A, in the Office of the Register of Deeds for Lexington County. David C. Bryan, Jr. died on January 8, 2009, with his Estate preserved in Estate file; 2009-ES-32-00065, in the Office of the Probate Court for Lexington County. A Corrective Deed of Distribution to David C. Bryan, III (which corrected the legal description to the prior Deed of Distribution recorded in Record Book 14023, at Page 191) dated July 13, 2011, was recorded on July 14, 2011, in Record Book 14956, at Page 7, in the Office of the Register of Deeds for Lexington County.

This property is conveyed in "as is" condition.

Tax Map Number: 004634-04-018

Grantee's Address: 948 Bruce Road





Cayce, South Carolina 29033-3307

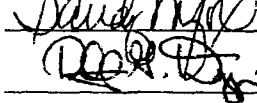
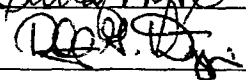
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

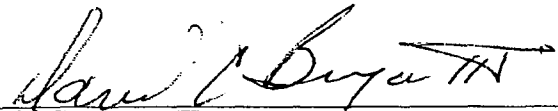
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said TED R. SURRETT and JOYCE A. SURRETT, their Heirs and Assigns, forever.

And DAVID C. BRYAN, III does hereby bind himself and his Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said TED R. SURRETT and JOYCE A. SURRETT, their Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our Hands and Seals this 15<sup>th</sup> day of July in the year of our Lord Two Thousand Eleven (2011), and in the Two Hundred Thirty-fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

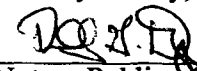
  
\_\_\_\_\_  


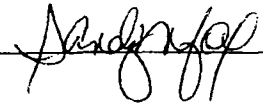
  
\_\_\_\_\_  
David C. Bryan, III

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

PERSONALLY appeared before me Sandy M. Fox and made oath that s/he saw the within-named DAVID C. BRYAN, III, sign, seal and as his act and deed, deliver the within Deed for the uses and purposes therein mentioned, and that s/he, with Timothy G. Driggers witnessed the execution thereof.

SWORN to before me this  
15<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
(L.S.)  
Notary Public of South Carolina  
My Commission Expires: February 19, 2014

  
\_\_\_\_\_

**LAST WILL AND TESTAMENT  
OF  
CECIL I. BRYAN**

**I, CECIL I. BRYAN, a resident of and domiciled in the County of Lexington 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 direct that all my legally enforceable debts secured and unsecured, be paid as soon as practicable after my death.**

**I hereby nominate, constitute, and appoint as Personal Representative of this my Last Will and Testament David C. Bryan III, and Robert V. Ferrell and direct that they shall serve without bond.**

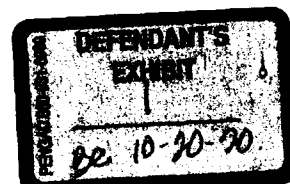
**I hereby leave all my property of every kind and description to my son,  
David C. Bryan III.**

**He is entrusted with all my property, to hold, to sell, to invest, to mortgage, to dispose of in any way he sees fit, with the provision that the proceeds from this property will be for the exclusive use of David C. Bryan III, my son, Sharon Bryan Montgomery, my daughter, Elisa Montgomery Edwards, my granddaughter, Mary Cecil Montgomery, my granddaughter Emily Cecil Edwards, my great-granddaughter and Bradley Montgomery Edwards my great-grandson.**

**I wish my son to disperse these funds at his discretion and he solely shall decide the amounts dispersed to each so named person. He may provide funds to one without providing the exact amount to another.**

**The intent is for him to provide for each depending on need so the above named may benefit and be provided for.**

**I, Cecil I. Bryan, the Testator, sign my name to this instrument this 1st day of June, 2001\_\_, and being first duly sworn, do hereby declare to the undersigned 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.**



Cecil I. Bryan  
Cecil I. Bryan

We, Lanaia Carney and Rebecca H. Davis, 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 as her last will and that she signs it willingly, 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 to the best of our knowledge the Testator is eighteen years of age, of sound mind, and under no constraint or undue influence.

Lanaia Carney  
(Witness)

Rebecca H. Davis  
(Witness)

The State of South Carolina  
County of Lexington

Subscribed, sworn to, and acknowledged before me by Cecil I. Bryan, the Testator, and subscribed and sworn to before me by Lanaia Carney and Rebecca H. Davis, witnesses, this 1st day of June, 2001.

Rebecca H. Davis

Notary Public for South Carolina (seal)

My Commission Expires: June 5, 2008

DAVID CUTTINO BRYAN, JR\*. - CECIL IRENE (ELLIS) BRYAN



David Cuttino Bryan, III —

Sharon Lee (Bryan) Montgomery

b. June 16, 1950

born 1942, died July, 2019



-Kathy Vella

-Elisha (Montgomery) Edwards

→Carlee Marie Vella and Baylee Lynne Vella

→Brandon Montgomery Edwards and Emily Cecile Edwards

-Tammy Hughes

-Bryan E. Montgomery

→Robert Allen Hughes, Jr. and Taylor Rene Hughes

→Ethan Bryan Montgomery and Matthew Sawyer Montgomery

-Robin Simmons

-Mary Cecil (Montgomery) Moyers

→ <none>

→ Montgomery Campbell Moyers, and

Jeremy Lewis Moyers

Madeline Cecil Moyers

\*Mary Bryan Gayden (sister)

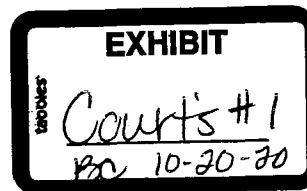
→ David Bryan Gayden (nephew)



Deposition of:  
**Emily C. Edwards**

*February 26, 2020*

In the Matter of:  
**Edwards, Elisa Montgomery And Emily  
Cecile Vs. David C. Bryan, III**



A. William Roberts, Jr & Assoc.  
800-743-3376 | [calendar-awr@veritext.com](mailto:calendar-awr@veritext.com) | [www.veritext.com](http://www.veritext.com)

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

11TH JUDICIAL CIRCUIT

3 ELISA MONTGOMERY EDWARDS

4 AND EMILY CECILE EDWARDS,

5 Plaintiffs,

6 vs.

CASE NO. 2018-CP-32-0927

7 DAVID C. BRYAN, III,

8 Defendant.

9 VIDEOCONFERENCE

10 DEPOSITION OF: EMILY CECILE EDWARDS

11 DATE: February 26, 2020

12 TIME: 5:00 p.m.

13 LOCATION: Jeffcoat Firm

1333 Main Street, Suite 510

14 Columbia, SC

15 TAKEN BY: Counsel for the Defendant

16 REPORTED BY: Susan M. Valsecchi, CRR

Registered Professional Reporter

17  
18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC

Hilton Head, SC

Myrtle Beach, SC

21 (843) 722-8414

(843) 785-3263

(843) 839-3376

22 Columbia, SC

Greenville, SC

Charlotte, NC

23 (803) 731-5224

(864) 234-7030

(704) 573-3919

24 Asheville, NC

(828) 785-5699

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 ELISA MONTGOMERY EDWARDS AND EMILY  
4 CECILE EDWARDS:

5 LAW OFFICE OF DAVID E. BELDING  
6 BY: DAVID E. BELDING  
7 1201 Main Street, Suite 1980  
8 Columbia, SC 29201  
9 (803) 665-3161  
10 beldinglawsc@gmail.com

11 ATTORNEYS FOR THE DEFENDANT  
12 DAVID C. BRYAN, III:

13 JEFFCOAT FIRM  
14 BY: W. MIKE HEMLEPP, JR.  
15 1333 Main Street, Suite 510  
16 Columbia, SC 29201  
17 (803) 808-9600  
18 mikeh@thejeffcoatfirm.com

19 ALSO PRESENT:

20 Elisa Montgomery Edwards

21 (INDEX AT REAR OF TRANSCRIPT)  
22  
23  
24  
25

1 EMILY CECILE EDWARDS

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HEMLEPP:

5 Q. Hey, Emily, my name is Mike Hemlepp. I  
6 represent David Bryan in the lawsuit that you've  
7 brought against him.

8 This process that we're having today is  
9 kind of informal and it's a little weird because  
10 it's multiple countries that we're doing this and  
11 because of that and the time zone and the video,  
12 there's probably going to be a delay between  
13 questions and answers, so we'll just want to be  
14 cognizant of that, because Susan is taking down  
15 everything that's being said and you're under oath.

16 Is there anything -- you understand all  
17 of that, right?

18 A. Yes.

19 Q. Okay. The rules require that I put a  
20 few ground rules on the record, put a few things on  
21 the record before we begin, okay?

22 First of all, would you tell me your  
23 full name and spell your last name for the record.

24 A. Emily Cecile Edwards, E-d-w-a-r-d-s.

25 Q. And what is your birth date, Emily?



1 A. December 3rd, 1997.

2 Q. Where are you right now?

3 A. St. Catharines, Ontario, Canada.

4 Q. And where physically are you in  
5 St. Catharines?

6 A. My room that I rent.

7 Q. Like a dorm room or an apartment?

8 A. Like a student house, yeah.

9 Q. Okay. And could you tell me that  
10 address? And the reason we're doing that is we're  
11 putting some verification on the record of what's  
12 happening right now.

13 A. Yep. 162 Highland Avenue. The postal  
14 code is L2R4J6.

15 Q. Okay. Is it cold?

16 A. Yes.

17 MR. BELDING: Does she have like a  
18 driver's license you would like to see?

19 MR. HEMLEPP: No.

20 BY MR. HEMLEPP:

21 Q. Emily, you understand that you're under  
22 oath today?

23 A. Yes.

24 Q. What does that mean?

25 A. It means if I lie, I would be

1 committing perjury.

2 Q. Right. So your only obligation today  
3 is to tell the truth. You understand that we're  
4 taking this down and anything that you say could be  
5 used in a courtroom, right?

6 A. Yes.

7 Q. Are you represented by an attorney in  
8 this case?

9 A. I'm not sure.

10 Q. Okay. This is a case in which you are  
11 a Plaintiff. In other words, you have brought a  
12 lawsuit on behalf of yourself against David Bryan.

13 And the lawyer on that lawsuit is David  
14 Belding. Is he your lawyer?

15 A. Yes.

16 Q. Don't tell me what you guys have talked  
17 about, but did you talk to Mr. Belding before this  
18 about the deposition?

19 A. Yes.

20 Q. Okay. Did you go over any documents?

21 A. No.

22 Q. Okay. How do you feel today?

23 A. How do I feel?

24 Q. Uh-huh.

25 A. Good.

1           Q.    Okay. The question -- that's leading  
2           into the question Is there this any medical reason  
3           or mental reason or any other reason why you don't  
4           think that you can go forward and do a deposition  
5           today?

6           A.    No, there's not.

7           Q.    Okay. Are you on any prescription  
8           medication or anything that would affect your  
9           ability to understand what's happening today?

10          A.    No.

11          Q.    Okay. So in depositions, especially  
12          under the best of circumstances, if we were in the  
13          same room, it can be confusing. And we're not even  
14          in the same country right now.

15                So none of my questions are designed to  
16          trick you. None of them are trick questions. None  
17          of them are designed to do anything other than to  
18          find out what you know.

19                So if I ask a question and you don't  
20          understand it, I need you to tell me that. I can  
21          rephrase it. I can, you know, put it a different  
22          way. I can explain what it is that I'm doing.

23                If there's a word that you don't  
24          understand that you want a definition of, I need  
25          you to stop me and say I don't understand that

1 word, what do you mean, or an explanation.

2 Do you understand that?

3 A. Yep, sounds good.

4 Q. Okay. So the rules going forward are  
5 that if I ask a question and you answer it, we are  
6 all going to assume that you understood the  
7 question and all the terms therein.

8 Is that fair?

9 A. Yes.

10 Q. Okay. Now, you're required to answer  
11 all of my questions. Mr. Belding may object during  
12 the deposition. And if he does, that's for the  
13 record, that's so that a judge later on can decide  
14 what they want to do with the question or the  
15 answer, but you're still going to have to answer  
16 the question.

17 A. Okay.

18 Q. There's very rare circumstances where  
19 you wouldn't have to answer and under those  
20 circumstances Mr. Belding and I will figure it out  
21 and we'll tell you what to do, okay?

22 If you hear an objection, go ahead and  
23 stop, he will put it on the record that he objects  
24 to the form, and I will ask it again.

25 Is that fair?

1 A. Yes.

2 Q. Okay. You -- well, you're not even  
3 here, so that's not even a problem.

4 If you need a break, if this goes too  
5 long -- I don't think we're going to be here very  
6 long, I mean, to be honest, but if you need a  
7 break, if something happens, just tell us, we can  
8 figure that out, okay?

9 A. Sure.

10 Q. Have you ever taken a deposition  
11 before?

12 A. No.

13 Q. Okay. Have you ever been part of a  
14 lawsuit before?

15 A. No.

16 Q. Okay. Have you ever -- okay.

17 One of the things that I always have to  
18 tell people during a deposition that's really hard  
19 but that you're doing great at is you have to  
20 answer all of the questions in words.

21 People will sometimes go nah or uh-uh  
22 or huh and she has no way of putting that down on  
23 paper so I just need to remind you to answer in  
24 words and not phrases or nods or whatever.

25 You got that, right?

1 A. Okay. Yep, okay.

2 Q. You have already given us your name.  
3 You have already given us your address and your  
4 birth date.

5 Are you married, single or divorced?

6 A. Single.

7 Q. Single, okay.

8 And what is your permanent residence?

9 A. 2305 Raven Trail, West Columbia, South  
10 Carolina, 29169.

11 Q. Who lives there?

12 A. Elisa Edwards.

13 Q. And who is Elisa Edwards?

14 A. My mother.

15 Q. Your mother, okay. She's present here  
16 in the room. She's also a Plaintiff in this case;  
17 is that correct?

18 A. Yes.

19 Q. Okay. Are you in school in Canada?

20 A. Yes, I am.

21 Q. Okay. So where did you go to high  
22 school?

23 A. River Bluff High School in Lexington.

24 Q. When did you graduate from River Bluff?

25 A. 2016.

1           Q.    Okay.  One of our law clerks just is  
2           getting ready to go to the state championship in  
3           wrestling from River Bluff, so we have a connection  
4           to River Bluff.

5           A.    Oh, nice.

6           Q.    So after you went to high school -- you  
7           graduated in 2016; what did you do after that?

8           A.    That September I moved to Canada and  
9           started attending Brock University.

10          Q.    Brock?

11          A.    Yes, B-r-o-c-k.

12          Q.    Okay.  What took you to Brock?

13          A.    I'm a Canadian citizen so I get  
14          domestic tuition rates and I like their music  
15          department, which is my major.

16          Q.    Okay.  Were you in music in high  
17          school?

18          A.    Yes.

19          Q.    Okay.

20          A.    I was very involved in the band there.

21          Q.    What kind of -- and you're a performer?

22          A.    Yes, I play the flute.

23          Q.    You play the flute.

24                  Do you have dual citizenship?

25          A.    Yes.

1 Q. Okay. You have citizenship in the  
2 United States and you also have a Canadian  
3 passport?

4 A. Yes.

5 Q. And were you born in Canada?

6 A. I was born in South Carolina.

7 Q. Okay. How did you come to have  
8 Canadian citizenship?

9 A. My father has Canadian citizenship so  
10 when I was a small child he got it for me as well.

11 Q. Okay. What's your father's name?

12 A. Bradley Edwards.

13 Q. Where does your father live?

14 A. West Columbia. Do you need the  
15 address?

16 Q. Please.

17 A. 1412-A Lake Dogwood Drive, 29170.

18 Q. Okay. Have you been in Canada since  
19 2016, September of 2016?

20 A. Um, off and on.

21 Q. Okay. Well, I assume during the school  
22 year you've been there.

23 A. Last year I did a study abroad and I  
24 was in the UK for the year; but other than that,  
25 I've been in Canada.



1 Q. Okay. And on, let's say, like summer  
2 breaks, do you stay in Canada or go somewhere else?

3 A. Last summer I was in Canada. Before  
4 that I was in South Carolina.

5 Q. Okay. Tell me about your year abroad  
6 in the UK. That sounds exciting.

7 A. It was really fun. I went to Leeds  
8 University for the year and I got to do a lot of  
9 traveling while I was there, visited lots of places  
10 in Europe.

11 Q. Was that part of their music program?

12 A. The traveling wasn't part of it but  
13 it's a lot cheaper to travel when you're in Europe  
14 so I decided to take advantage of that while I was  
15 there.

16 Q. But did you study music at Leeds?

17 A. Yes, yeah, I did.

18 Q. Okay. Is Leeds in Manchester?

19 A. No, it's in Leeds.

20 Q. Okay.

21 A. Yorkshire.

22 Q. What type of program are you in right  
23 now? Is it a bachelor's program? A master's  
24 program? What kind of program are you in right  
25 now?

1 A. Bachelor's.

2 Q. What is your expected graduation date?

3 A. 2021.

4 Q. You indicated a minute ago that one of  
5 the reasons why you chose to go to school in Canada  
6 is that as a Canadian citizen that benefits you  
7 getting higher education. Can you tell me more  
8 about that. Explain that to me.

9 A. In the U.S. they have the  
10 instate/out-of-state system but in Canada it's just  
11 based on citizenship so I have the same tuition  
12 rates as everybody that's grown up here that's from  
13 here, so --

14 Q. Okay. Do you have any scholarships?

15 A. Yep, I get some scholarships from the  
16 school every year.

17 Q. Okay. You said scholarships. That  
18 sounds plural. You have more than one scholarship?

19 A. Um, my school has a lot of like smaller  
20 scholarships you can apply for and I will usually  
21 get maybe one or two of those and then I generally  
22 get, like, a music scholarship from the department.

23 Q. Okay. And does that cover your entire  
24 tuition and board, room and board?

25 A. Um, not quite. So I get OSAPs, which

1 is Ontario Student Assistance Programs.

2 Q. And tell me what that is. I know what  
3 it's called, but what does it do.

4 A. So that's funding from the government  
5 so I get a grant every year which I can keep and  
6 then I have the option to take out a loan as well.

7 Q. Okay. Have you taken out any loans?

8 A. Yes.

9 Q. Okay. Do you know how much those are?

10 A. About \$15,000.

11 Q. About 15? 1-5?

12 A. Yes, 1-5.

13 Q. Okay. Is that per year or total?

14 A. Total.

15 Q. Okay, because if I'm doing this  
16 right -- and tell me if I'm not -- you're a junior  
17 right now.

18 A. This is my fourth year but I'm doing a  
19 fifth year, so, yes.

20 Q. Is your program five years?

21 A. No.

22 Q. Was there a delay?

23 A. I didn't take as many classes as I  
24 should have last year and I wanted to take some  
25 more elective classes, so I chose to stay for an

1 extra year.

2 Q. Okay, okay. Other than your high  
3 school degree and the program that you're in right  
4 now, do you have any professional certifications?

5 A. When I was in high school I got my  
6 Certified Nursing Assistant license.

7 Q. Oh, good for you.

8 A. Thanks.

9 That expired in 2018, though.

10 Q. Okay.

11 A. And I also have my CPR, first aid  
12 certifications.

13 Q. Okay. Did you have any -- are those  
14 the only two?

15 A. Yes.

16 Q. Okay. Did you have any professional  
17 licenses of any kind?

18 A. No.

19 Q. Okay. Are you employed outside of  
20 school?

21 A. Yes, I work for the Niagara Parks  
22 Commission.

23 Q. Tell me about that. What is that? Is  
24 that Niagara Falls?

25 A. Yes, I work in Niagara Falls. They

1 maintain all of the parks around here as well as a  
2 lot of the tourist attractions and I work in one of  
3 the welcome centers and one of the attractions.

4 Q. When did you get hired there?

5 A. It was May 2018.

6 Q. Okay. Have you had any other  
7 employment while you've been up in Canada?

8 A. No.

9 Q. Okay. Did you have any employment here  
10 in South Carolina?

11 A. Yes. I worked for Cutco/Vector for a  
12 while.

13 Q. Say that again. Say that again.

14 A. Cutco/Vector.

15 Q. Spell it for me.

16 A. C-u-t-c-o.

17 Q. Cutco.

18 A. Yes.

19 Q. Okay. And what do they do?

20 A. They sold knives.

21 Q. Oh, knives.

22 A. Yeah, like kitchen knives.

23 Q. Okay, yeah. I have heard of them,  
24 sure.

25 Was that in Lexington County?

1 A. Yes.

2 Q. Okay. What did you do for them?

3 A. I was a sales team member, so I went  
4 out and sold knives and met with people.

5 Q. Okay. Was that like door to door?

6 A. Not quite. I would make phone calls  
7 and like make appointments with people and go to  
8 specific appointments, not really door to door.

9 Q. Okay. I'm going to ask you some  
10 questions and they're going to sound rude and I  
11 don't mean them to. I ask everybody every time  
12 there's a deposition.

13 A. Okay.

14 Q. This is not about you, this is about I  
15 do this every time.

16 Have you ever been arrested?

17 A. No.

18 Q. Okay. Have you ever been charged with  
19 a crime but not arrested? And I'm not talking  
20 about traffic offenses. I don't care about traffic  
21 offenses.

22 A. Okay, no.

23 Q. Have you ever been the victim of a  
24 crime?

25 A. Ah, yes, I had my phone stolen.

1 Q. Your phone?

2 A. Yes, it was an iPhone 5, 2012, '13.

3 Q. Where did that happen?

4 A. Brookland-Cayce High School.

5 Q. Okay. Were the police called?

6 A. Yes.

7 Q. Was anybody arrested for that?

8 A. No.

9 Q. Did you get your phone back?

10 A. No.

11 Q. Did you ever have to go to a court?

12 A. No.

13 Q. Okay. So I asked you a little while  
14 ago if you have ever had a deposition or if you  
15 have ever been a party to a lawsuit.

16 Have you ever been a witness in a  
17 lawsuit?

18 A. No.

19 Q. Okay. You kind of hesitated on that.  
20 I mean other than this one.

21 A. No.

22 Q. Okay. Have you ever been inside of a  
23 courtroom?

24 A. Not while court was in session.

25 Q. Okay. So you have never testified in a

1 courtroom?

2 A. Correct.

3 Q. Have you ever served on a jury? I  
4 assume no.

5 A. No.

6 Q. Ever had jury duty?

7 A. Nope.

8 Q. Do you have a driver's license?

9 A. Yes.

10 Q. Is it a Canadian driver's license or a  
11 South Carolina driver's license?

12 A. South Carolina driver's license.

13 Q. Okay. And I don't know if that's a  
14 stupid question or not, because with dual  
15 citizenship, I guess you could have both if you  
16 wanted.

17 A. Right.

18 Q. When did you first get your driver's  
19 license?

20 A. I got it -- license or permit?

21 Q. Let's start with your permit. Did you  
22 get a permit?

23 A. I got a -- yes, I got my permit when I  
24 turned 15.

25 Q. Okay. When was that?



1 A. So that would have been 2013, right?

2 Q. Okay.

3 A. 2012.

4 Q. I swear I'm not trying to trick you.  
5 It's whenever you turned 15.

6 A. Okay.

7 Q. Okay. And then did you get a driver's  
8 license?

9 A. Yes.

10 Q. When was that?

11 A. Six months later I got my restricted  
12 and then I think after a year that turned into a  
13 license.

14 Q. Okay. Do you have that same license?  
15 I mean, not the same card, but you have had a South  
16 Carolina driver's license since then?

17 A. Yes.

18 Q. Has it ever been suspended?

19 A. No.

20 Q. Has it ever been revoked?

21 A. No.

22 Q. Okay. Do you own a car?

23 A. Yes.

24 Q. What kind of car do you own?

25 A. 2010 Toyota Camry.

1 Q. Okay. How long have you had that car?

2 A. Since 2015.

3 Q. Okay. How did you get that car? Did  
4 you buy that car?

5 A. Yes.

6 Q. And are you making payments on that  
7 car?

8 A. No.

9 Q. Did you borrow money for that car?

10 A. No.

11 Q. Were you given money for that car?

12 A. I had money saved in an account that I  
13 used to purchase that car.

14 Q. Okay. And what was the source of the  
15 money in that account?

16 A. I think it was a life insurance policy.

17 Q. A life insurance policy? Okay, whose  
18 life insurance policy was it?

19 A. You would have to ask my mom.

20 Q. Okay. So there was money in your  
21 account that came from a life insurance policy, but  
22 you don't know where that came from?

23 A. Uh, I assume it was my  
24 great-grandfather.

25 Q. Okay. How long was that money in your

1 account before you bought your car? A long time?

2 A. Yes, a couple years. I was a minor, so  
3 I'm not really sure about when I got that or  
4 anything.

5 Q. Do you know how much money it was?

6 A. Um, not exactly.

7 Q. Do you have an estimate?

8 A. Um, probably around 30 or so, \$30,000.

9 Q. Okay. How much was your car?

10 A. About \$7,000.

11 Q. Okay. Do you still have money in that  
12 account?

13 A. No.

14 Q. Okay. So I'm going to ask you a  
15 question -- and, again, this is not intended to be  
16 a crazy question.

17 When you spent the money from that  
18 account, was it just a little bit at a time or did  
19 you make a big purchase?

20 A. It was large purchases.

21 Q. Large purchases?

22 Okay. Tell me like what?

23 A. A car. I bought my flute.

24 Q. Oh, your flute. That sounds like an  
25 investment.

1 A. Yes.

2 Q. How much was your flute?

3 A. In total, around \$8,000.

4 Q. Wow, really?

5 A. Yes. Professional instruments are  
6 expensive.

7 Q. Yeah, yeah, wow. Do you still have  
8 that?

9 A. Oh, yes.

10 Q. I guess they last a long time, right?

11 A. Yep, you just have to do some yearly  
12 maintenance, a bit of adjustment.

13 Q. Wow, so your flute was more than your  
14 car.

15 A. Yeah.

16 Q. So what else did you use that money  
17 for?

18 A. The rest of it went towards school.

19 Q. Okay. When you say for school, was it  
20 for tuition?

21 A. Yes.

22 Q. Okay.

23 A. And dorm, housing.

24 Q. School expenses?

25 A. Yes.

1 Q. Okay. Do you have any social media  
2 accounts?

3 A. Yes.

4 Q. What kind?

5 A. Um, I have Facebook, Snapchat,  
6 Instagram. I have a couple that I don't use often.  
7 I have a Twitter account and Tumbler account, but I  
8 don't use them very often.

9 Q. I don't know that Tumbler exists  
10 anymore. I think they shut Tumbler down.

11 A. Did they?

12 Q. Yeah, I think they did.

13 What's your name on Facebook?

14 A. Emily Cecile Edwards.

15 Q. Okay. And what about on Instagram?

16 A. Emily Cecile Edwards.

17 Q. No underscore or anything? Is that  
18 just one word?

19 A. Yes, just all one word.

20 Q. And Cecile is C-e-c-i-l-e?

21 A. Yes, C-e-c-i-l-e, yes.

22 Q. I'm not interested in Twitter or  
23 Snapchat.

24 Okay. Do you know what this case is  
25 about?

1 A. Um, yes.

2 Q. Tell me in your own words what this  
3 case is about.

4 A. So when my great-grandfather died, his  
5 estate was supposed to be divided and my  
6 great-uncle didn't do that and just kind of took  
7 all of it for himself.

8 Q. Okay. So I'm going to make a statement  
9 and then ask if you understand it, okay?

10 A. Okay.

11 Q. You know something of your own personal  
12 knowledge if you observed it, you read it, you saw  
13 it, you know it, okay? Do you understand that?

14 A. Yes.

15 Q. That is different from somebody told  
16 you something.

17 Do you see the difference?

18 A. Yes.

19 Q. I could tell you that I own a dog but  
20 that's not the same thing as you seeing a dog at my  
21 house.

22 A. Right.

23 Q. So you understand the difference  
24 between personal knowledge and somebody telling  
25 you?

1 A. Right.

2 Q. What you just told me about this case,  
3 what do you know of your own personal knowledge  
4 that supports what you just told me?

5 A. Right after I turned 18, I signed  
6 paperwork for money that I was supposed to receive  
7 from his estate and I have not seen or heard  
8 anything about that, really, since then.

9 Q. Okay. Tell me about this paperwork.  
10 It was right after you turned 18. And I'm  
11 not -- again, I'm not trying to trick you.

12 How long after you turned 18? Like a  
13 couple days? A couple months? A couple weeks? Do  
14 you know?

15 A. A couple weeks.

16 Q. A couple weeks? And who presented you  
17 with this paperwork?

18 A. My mom and I went to an office.

19 Q. Okay. Do you know whose office that  
20 was?

21 A. I don't know.

22 Q. Okay. Do you remember where it was?

23 A. Downtown Lexington, I think.

24 Q. Was it on Main Street?

25 A. I'm not sure.

1 Q. Okay. Do you know what kind of office  
2 it was?

3 A. No.

4 Q. Okay.

5 A. Well, it was a legal office, I'm  
6 assuming, but I'm not exactly sure.

7 Q. Okay. Who was present at the time that  
8 you signed the paperwork?

9 A. My mom and the person that works there.

10 Q. Do you know that person's name?

11 A. I do not remember.

12 Q. Okay. Was it a man or a woman?

13 A. I think it was a woman.

14 Q. Okay. And did she have the paperwork  
15 already prepared?

16 A. Yes.

17 Q. Did you both sign it, you and your mom?

18 A. I don't remember.

19 Q. Did the other person who was there sign  
20 it?

21 A. I don't remember.

22 Q. Okay. Did you get a copy of it?

23 A. I don't remember.

24 Q. So I'm circling back. Of your own  
25 personal knowledge, you do remember going after you



1       turned 18 and you went to an office and you signed  
2       the paperwork that was purportedly for some money  
3       for you.

4             A.     Yes.

5             Q.     Is there anything else of your own  
6       personal knowledge that you know that supports what  
7       you told me this case is about?

8             A.     No.

9             Q.     So would I be -- is it -- so you have  
10      talked to your mom about this case; have you not?

11            A.     Yes, yes, I have.

12            Q.     And without telling me what you've  
13      discussed, you've discussed it with Mr. Belding,  
14      have you not?

15            A.     Not extensively.

16            Q.     So you have not talked to Mr. Belding a  
17      lot?

18            A.     Not really, no.

19            Q.     Okay. So would you say that like 90  
20      percent of the discussions about this case have  
21      been between you and your mom?

22            A.     Yes.

23            Q.     Okay. Tell me about your  
24      great-grandfather. How well did you know him?

25            A.     Um, he died when I was about 11, so, I

1 mean, I knew him as my great-grandfather. We would  
2 go visit him and stuff. He had a farm down in  
3 Swansea, um...

4 Q. Was the farm for crops or for animals?  
5 What was on the farm? Or was it just like land to  
6 go play on and go hunting on and stuff? What was  
7 the farm like?

8 A. So there was pecan trees and I remember  
9 he had donkeys, stuff like that.

10 Q. So tell me about your  
11 great-grandmother. What was her name?

12 A. Cecil.

13 Q. Are you named after her?

14 A. Yes, but I have an E and I'm the only  
15 one.

16 Q. So tell me about your  
17 great-grandmother.

18 A. She was a lovely, proper southern lady,  
19 always had her lipstick on. Yeah, my mom and dad  
20 and I lived with her right after I was born for a  
21 while, um, down in Cayce.

22 Q. Uh-huh. And so you lived with your  
23 great-grandfather?

24 A. Yes.

25 Q. Both of them?

1 A. Yes.

2 Q. When did your grandmother, your  
3 great-grandmother, Cecil, when did she pass?

4 A. 2009, October.

5 Q. Okay. How old were you then?

6 A. 11.

7 Q. So they passed fairly close together?

8 A. Yes.

9 Q. Did you ever talk to your  
10 great-grandfather about money or finances?

11 A. No.

12 Q. Okay. Did you ever talk to your  
13 great-grandmother about money or finances?

14 A. No.

15 Q. Okay. So I need to ask you a question  
16 real quick.

17 A. Okay.

18 Q. Who are you texting?

19 A. Sorry.

20 Q. Who are you texting?

21 A. My boyfriend.

22 Q. Your boyfriend?

23 A. My boyfriend, yes.

24 Q. So the reason I say that is because  
25 during a deposition you're not allowed to consult

1 with anybody, because all the answers are supposed  
2 to be yours.

3 I promise I'm going as fast as I can  
4 and we'll be done pretty quick, okay?

5 A. Yes.

6 Q. It's not that I'm calling you out for  
7 being rude as much as, you know, I want to make  
8 sure you're not texting anybody about your answers  
9 or about your testimony.

10 Does that make sense?

11 A. I assure you I am not, but, yes, I  
12 understand.

13 Q. Okay, thank you. And thank you for  
14 assuring me on that.

15 So who is Sharon Montgomery?

16 A. My grandmother.

17 Q. That's your grandmother. And tell me  
18 about your grandmother.

19 A. She passed away this past summer.

20 Q. I'm sorry.

21 A. Thank you.

22 Yeah, she was another proper southern  
23 lady, you know, always having her lipstick on. She  
24 would ask you a million questions. You would walk  
25 in for five minutes and leave two hours later, you

1 know, yeah.

2 Q. Did you ever talk to her about finances  
3 or money?

4 A. No.

5 Q. Okay. Did you ever talk to her about  
6 this case?

7 A. No.

8 Q. Who is Ethan Montgomery?

9 A. My cousin.

10 Q. Your cousin? How are you guys related?  
11 You know, in South Carolina we all have  
12 dozens and dozens of cousins.

13 A. I know.

14 Q. So how are y'all related? How are  
15 y'all cousins?

16 A. My mom's brother Brian's son.

17 Q. Your Mom's brother's son, okay.

18 What's your relationship like with  
19 Ethan? When is the last time you spoke with Ethan?

20 A. He was here -- what was it,  
21 Thanksgiving, I think? No, no.

22 Q. He was in Canada?

23 A. No, no, no, South Carolina.

24 Q. Okay.

25 A. It was a funeral. That's when we were

1 all together. That's the last time I saw him.

2 Q. For your grandmother?

3 A. Yes.

4 Q. Okay. Did you and Ethan talk about  
5 this case?

6 A. No.

7 Q. Did you talk about finances?

8 A. No.

9 Q. Okay. Prior to the funeral,  
10 Ms. Sharon's funeral, when was the last time you  
11 talked to Ethan before that?

12 A. Um, a year or two on some holiday.

13 Q. Okay. Where does he live? Do you  
14 know?

15 A. Currently, Utah.

16 Q. Oh, wow. Do you know David Brian  
17 Gayden?

18 A. Yes.

19 Q. Who is that?

20 A. The family from Florida.

21 Q. The family from Florida, okay.

22 A. Yes.

23 Q. Okay. Is he related to you?

24 A. Yes.

25 Q. Do you know how?

1           A.    Yes, um, so my great-grandfather's  
2           sister's son.

3           Q.    Okay.  Your Great Grandfather's  
4           sister's son, okay.

5                   And when was the last time you  
6           saw -- does he go by David or Brian?

7           A.    Brian.

8           Q.    Brian, right.

9                   When was the last time you saw him?

10          A.    Over Christmas.

11          Q.    This past Christmas?

12          A.    Yes.

13          Q.    Okay.  And do you know where he lives?

14          A.    Melbourne, Florida.

15          Q.    Okay.

16          A.    Well, Indialantic.

17          Q.    When you saw him at Christmastime, did  
18          you talk to him about this case?

19          A.    No.

20          Q.    Did you talk to him about finances?

21          A.    No.

22          Q.    Prior to Christmas, when was the last  
23          time you had spoken to him prior to that?

24          A.    Probably the funeral.

25          Q.    Over Thanksgiving?

1 A. The funeral.

2 Q. Your grandmother's funeral?

3 A. No, I wasn't here Thanksgiving, so it  
4 was probably the funeral.

5 Q. Do you remember when the funeral was?  
6 I'm not trying to pin you down again. I'm just  
7 trying to get the dates straight in my head.

8 A. It was July.

9 Q. Oh, it was July, okay.

10 When Brian Gayden came to the funeral  
11 of your grandmother, did you talk about the case?

12 A. No.

13 Q. Okay. Did you talk about finances at  
14 all?

15 A. No.

16 Q. Okay. Who is Mary Cecil Montgomery?

17 A. My aunt.

18 Q. That's your aunt. How are you related  
19 to her?

20 A. My mom's sister.

21 Q. Okay. And where does Ms. Mary Cecil  
22 Montgomery live?

23 A. West Columbia.

24 Q. Okay. Are y'all close?

25 A. Yes.



1 Q. I mean, you have a good relationship?

2 A. Yep.

3 Q. How often do you two talk?

4 A. Um, every other week or so.

5 Q. Okay. Do you call her or does she call  
6 you?

7 A. She'll call me or I will talk to the  
8 kids. The kids will call me.

9 Q. Okay. How many children does she have?

10 A. Two.

11 Q. And these are you cousins?

12 A. Yes.

13 Q. What are their names?

14 A. Montgomery, but he goes by Camp, and  
15 Mattie.

16 Q. How old are they?

17 A. 13 and 10.

18 Q. Okay. So they're both minors.

19 A. Yes.

20 Q. Okay. Have you ever talked to your  
21 aunt? Does she go by Mary or Cecil?

22 A. Mary.

23 Q. Okay. She spells it without an E.

24 A. I know.

25 Q. Yeah. Have you ever talked to your

1 Aunt Mary about this lawsuit?

2 A. No.

3 Q. Have you ever talked to her about  
4 finances?

5 A. Um, nothing in relation to this.

6 Q. Okay. Have you ever talked to her  
7 about finances related to, like, your  
8 great-grandfather?

9 A. No.

10 Q. Okay. Or your great-grandmother?

11 A. No.

12 Q. Okay. So when you talked about  
13 finances, was it about anything specific?

14 A. Not really.

15 Q. Tell me what you remember.

16 A. I mean, just general life  
17 conversations, um, not anything about like family  
18 finances.

19 Q. Okay. Stuff like I wish I had more  
20 money and things cost too much money and oh my gosh  
21 my flute costs \$8,000?

22 A. Yeah.

23 Q. Yeah.

24 A. Things like that.

25 Q. Do you know who Robert Ferrell is?

1 A. No.

2 Q. Okay. Do you know Brandon Edwards?

3 A. Yes.

4 Q. I thought you might.

5 A. Too well.

6 Q. Brandon is your brother?

7 A. Yes.

8 Q. And where does Brandon live?

9 A. He lives in Pelham, Ontario.

10 Q. Pelham, Ontario. So he lives in Canada  
11 also?

12 A. Yes.

13 Q. How far away is that?

14 A. About 20 minutes.

15 Q. Do you guys get to see each other?

16 A. Yeah, I'll go to his hockey games.

17 He's up here to play hockey. He will come to my  
18 concerts and stuff.

19 Q. That's nice. Who does he play hockey  
20 for?

21 A. The Pelham Panthers.

22 Q. The Pelham Panthers?

23 A. Yes, that's a junior B hockey team  
24 here.

25 Q. Okay. How did a South Carolina guy get

1 into hockey?

2 A. My dad is Canadian, had him playing  
3 hockey as soon as he could walk.

4 Q. That's cool.

5 How old is your brother?

6 A. He just turned 19 like two days ago.

7 Q. Oh, wow. Tell him we all wish him  
8 happy birthday.

9 A. Thanks.

10 Q. Would you say that you talk to him  
11 several times a week?

12 A. Yeah. Yes.

13 Q. Okay, good catch.

14 Have you ever talked to him about this  
15 lawsuit?

16 A. No.

17 Q. Not a word?

18 A. Not that I can think of, no.

19 Q. Did you tell him that you were going to  
20 be deposed today?

21 A. No.

22 Q. Okay. Did you ever talk to him about  
23 your great-grandfather's finances?

24 A. No.

25 Q. Have you ever talked to him about your

1 great-grandmother's finances?

2 A. No.

3 Q. Was he with you when you and your mom  
4 went to that office in Lexington to sign the  
5 paperwork that you told me about right after you  
6 turned 18?

7 A. No.

8 Q. Okay. Where was he at the time?

9 A. I don't know.

10 Q. Was he living with you at the time?

11 A. Yes.

12 Q. You-all were in the same household. He  
13 was in South Carolina. You just don't know where  
14 he was?

15 A. My parents were separated so he was  
16 probably at my dad's house.

17 Q. Okay. And where did your dad live at  
18 the time? In West Columbia?

19 A. Yes.

20 Q. Okay. So my statement would be true,  
21 that he lived in South Carolina at that time, but  
22 you don't know where he was when you went to that  
23 office. He was somewhere here, but you don't know  
24 where he was.

25 A. Correct.

1 Q. Okay. To your knowledge, has your mom  
2 ever talked to him about this lawsuit?

3 A. I don't know.

4 Q. Okay. In addition to playing for the  
5 Panthers, is he in school?

6 A. Yes.

7 Q. Okay. Where is he in school?

8 A. E.L. Crossley High School. He's doing  
9 12B year, which is an optional year here after 12th  
10 grade.

11 Q. Okay. And tell me the name of that  
12 school again. I didn't catch it.

13 A. I think it's E.L. Crossley.

14 E.L. Crossley.

15 I think it's two S's.

16 Q. Okay.

17 A. I'm not exactly sure.

18 Q. So I'm going to ask you to do me a  
19 favor. Could you spell it phonetically so we can  
20 hear how it's pronounced?

21 A. I think I can look up how it's  
22 called -- or what it's --

23 It's E-L and then a space and then  
24 C-r-o-s-s-l-e-y.

25 Q. E.L. Crossley, okay.

1 Who is David Bryan, III?

2 A. Little David. That's my grandma's  
3 brother.

4 Q. Okay. And that's your great uncle?

5 A. Yes.

6 Q. Have you ever talked to him about this  
7 lawsuit?

8 A. No.

9 Q. Have you ever talked to him prior to  
10 this lawsuit being filed about any issues that are  
11 related to the lawsuit?

12 A. No. I was really young when my  
13 great-grandfather died, so I never talked to him  
14 about any of this.

15 Q. Have you ever received a letter from  
16 him about this?

17 A. Not that I can remember.

18 Q. Okay. Has he ever written you a check?

19 A. I don't think so. Maybe like a  
20 birthday check, but nothing in relation to this.

21 Q. So I've got one final question. You  
22 are suing your great-uncle. You're named as a  
23 Plaintiff in this case. Your mom is also suing  
24 your great-uncle, her uncle, who is David Bryan,  
25 III.

1                   At the time that this lawsuit was  
2       filed, were you aware of that?

3           A.     Yes.

4           Q.     Okay. And you authorized that?

5           A.     Yes.

6           Q.     Okay. And who did you authorize that  
7       with?

8           A.     My mom.

9           Q.     You told your mom that was fine?

10          A.     Yes.

11          Q.     Okay. Did you sign any paperwork?

12          A.     Uh, I signed some paperwork. I don't  
13       know if it was that.

14          Q.     Okay. Did you keep any of it?

15          A.     No.

16          Q.     Okay. Do you have any paperwork  
17       related to this lawsuit?

18          A.     No.

19          Q.     Okay. Do you have any paperwork  
20       related to your great-grandfather's estate?

21          A.     No.

22          Q.     Do you have any paperwork related to  
23       your great-grandmother's estate?

24          A.     No.

25          Q.     Okay. Emily, thank you so much for



1 taking the time out of your day and good luck with  
2 your studies. Stay warm. It is not cold here, but  
3 it has been raining for five months.

4 A. Oh, yeah.

5 Q. So we're drowning.

6 I don't have any more questions.

7 Mr. Belding may have some questions for  
8 you and I may have some follow-up after that.

9 A. Okay.

10 MR. HEMLEPP: Do you have any  
11 questions?

12 MR. BELDING: No, I really don't, Em.  
13 Good seeing you.

14 (Off-the-record discussion.)

15 THE COURT REPORTER: Do you want this  
16 transcribed?

17 MR. HEMLEPP: I will.

18 THE COURT REPORTER: Do you want to go  
19 green?

20 MR. HEMLEPP: Yes.

21 (The witness, after having been advised  
22 of her right to read and sign this transcript,  
23 waives that right.)

24 (The deposition was concluded at 5:50  
25 p.m.)

CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered  
Professional Reporter and Notary Public for the  
State of South Carolina at Large, do hereby certify  
that the foregoing transcript is a true, accurate,  
and complete record.

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

Witness my hand, I have hereunto  
affixed my official seal this 10th day of March,  
2020 at Columbia, Richland County, South Carolina.



Susan M. Valsecchi, RPR, CRR  
My Commission expires  
December 4, 2024

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(No exhibits were proffered.)

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| <b>u</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p><b>u</b> 16:16<br/><b>u.s.</b> 13:9<br/><b>uh</b> 5:24 8:21,21<br/>21:23 29:22 43:12<br/><b>uk</b> 11:24 12:6<br/><b>um</b> 11:20 13:19,25<br/>22:6,8 24:5 25:1<br/>28:25 29:3,21<br/>33:12 34:1 36:4<br/>37:5,17<br/><b>uncle</b> 25:6 42:4,22<br/>42:24,24<br/><b>underscore</b> 24:17<br/><b>understand</b> 3:16<br/>4:21 5:3 6:9,20,24<br/>6:25 7:2 25:9,13<br/>25:23 31:12<br/><b>understood</b> 7:6<br/><b>united</b> 11:2<br/><b>university</b> 10:9<br/>12:8<br/><b>use</b> 23:16 24:6,8<br/><b>usually</b> 13:20<br/><b>utah</b> 33:15</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign  
require rejection of the deposition in whole or in  
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES  
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.  
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,  
2019. PLEASE REFER TO THE APPLICABLE STATE RULES  
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Elisa Montgomery Edwards and Emily  
Cecile Edwards,

Plaintiff,

v.

David C. Bryan, III,

Defendant.

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
Civil Action No: 2018-CP-32-0927

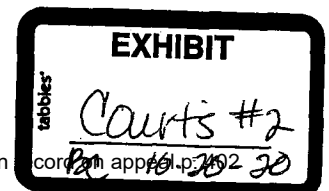
**JURY CHARGE**

**INTRODUCTION**

MEMBERS OF THE JURY, IT IS NOW MY DUTY AS THE TRIAL JUDGE TO INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE. AND IN THAT REGARD, IT IS YOUR DUTY AS JURORS TO ACCEPT, AND APPLY THE LAW AS I NOW STATE IT TO YOU. FURTHERMORE, IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL THE ISSUES OF FACT IN THIS CASE, AND TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE. ALL THE PARTIES HAVE THE RIGHT TO EXPECT THAT YOU WILL CAREFULLY CONSIDER AND EVALUATE THE EVIDENCE, AND APPLY THE LAW OF THIS CASE TO IT, SO THAT IN THE END – ALL PARTIES WILL RECEIVE A FAIR AND IMPARTIAL TRIAL.

**DUTIES OF JUDGE AND JURY**

DURING THIS TRIAL, YOU AND I HAVE SEPARATE DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THIS TRIAL AND TO RULE UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE TRIAL. IN THAT REGARD, YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. THUS YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THE WITNESS STAND, TOGETHER WITH ANY EXHIBITS ADMITTED INTO THE



RECORD OF THIS CASE.

IN THIS TRIAL YOU ARE THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. DO NOT INFER THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE FROM ANYTHING I HAVE SAID OR DONE DURING THE COURSE OF THIS TRIAL. IN THIS REGARD, THE LAW SIMPLY DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS. AS JURORS, IT IS YOUR DUTY ALONE TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THE COURSE OF THIS TRIAL.

FURTHERMORE, IT IS YOUR JOB AS JURORS TO DETERMINE THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. YOU MUST EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER MANY OR MANY OVER ONE. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT IT IN FULL. YOU MAY CONSIDER WHETHER THE WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS PREJUDICED TOWARD EITHER PARTY, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AND THE WAY THE WITNESS ACTS ON THE WITNESS STAND.

### **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

FURTHERMORE, EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS TESTIMONY BY A WITNESS ABOUT WHAT THE WITNESS PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE. IN OTHER WORDS, IT IS PROOF OF ONE OR MORE



FACTS FROM WHICH ONE CAN FIND ANOTHER FACT. YOU MAY CONSIDER BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE EQUALLY.

### **WHAT IS NOT EVIDENCE**

THE FOLLOWING THINGS ARE NOT EVIDENCE AND YOU MUST NOT CONSIDER THEM AS EVIDENCE IN DECIDING THE FACTS OF THIS CASE: (1) STATEMENTS AND ARGUMENTS OF THE ATTORNEYS; (2) QUESTIONS AND OBJECTIONS OF THE ATTORNEYS; (3) TESTIMONY THAT I INSTRUCT YOU TO DISREGARD.

WHILE ARGUMENT OF COUNSEL IS A BENEFICIAL PART OF EVERY TRIAL, YOU SHOULD REMEMBER THAT THE STATEMENTS MADE BY COUNSEL ARE NOT EVIDENCE. IN PRESENTING ARGUMENTS, COUNSEL OFTEN REFER TO EVIDENCE. HOWEVER, YOU SHOULD BASE YOUR VERDICT ON THE EVIDENCE AS YOU REMEMBER IT. THEREFORE, IF THERE ARE ANY CONFLICTS BETWEEN THE RECOLLECTION OF COUNSEL ABOUT THE EVIDENCE AND YOUR OWN RECOLLECTION, YOU SHOULD RELY UPON YOUR OWN UNDERSTANDING OF THE EVIDENCE.

### **BURDEN OF PROOF**

THE BURDEN OF PROOF IN THIS CASE IS BY CLEAR AND CONVINCING EVIDENCE BECAUSE THE SOLE REMAINING CLAIM FOR YOU TO DECIDE IS PLAINTIFF'S ACTION FOR FRAUD. YOU MAY RECALL THAT IN MY PRELIMINARY REMARKS BEFORE OPENING STATEMENTS I MENTIONED THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE, WHICH IS GENERALLY THE APPLICABLE BURDEN OF PROOF IN CIVIL CASES.

A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE. IT IS EVIDENCE WHICH, AS A WHOLE, SHOWS THAT THE FACT SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE.

IN THIS SPECIFIC CASE HOWEVER THE PLAINTIFF'S BURDEN IS CLEAR AND CONVINCING EVIDENCE. CLEAR AND CONVINCING EVIDENCE IS THAT DEGREE OF PROOF WHICH WILL GIVE YOU A FIRM BELIEF AS TO THE FACTS SOUGHT TO BE PROVED. THIS IS MORE THAN A MERE PREPONDERANCE OF THE EVIDENCE, BUT LESS THAN BEYOND A REASONABLE DOUBT.

### **DEPOSITION TESTIMONY**

LADIES AND GENTLEMAN, DURING THIS TRIAL YOU HEARD DEPOSITION TESTIMONY FROM A WITNESS. A DEPOSITION IS A DOCUMENT CONTAINING SWORN TESTIMONY GIVEN BY A WITNESS OUTSIDE OF COURT IN THE PRESENCE OF LAWYERS FOR EACH PARTY WHO MAY ASK QUESTIONS OF THE WITNESS. THIS TESTIMONY IS ENTITLED TO THE SAME CONSIDERATION AND IS TO BE JUDGED AS TO CREDIBILITY AND WEIGHED BY YOU IN THE SAME WAY AS IF THE WITNESS WERE PRESENT AND GAVE THE TESTIMONY ABOUT TO BE READ TO YOU FROM THE WITNESS STAND. IT IS THEN FOR YOU, THE JURY, TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE TESTIMONY GIVEN IN THE DEPOSITION.

### **FRAUD / MISREPRESENTATION**

THE PLAINTIFF CLAIMS THAT THE DEFENDANT COMMITTED FRAUD AND DECEIT. THE PLAINTIFF MUST PROVE EACH AND EVERY ELEMENT OF FRAUD AND DECEIT BY CLEAR AND CONVINCING EVIDENCE. FRAUD CANNOT BE PRESUMED. CLEAR MEANS EVIDENCE WHICH IS NOT AMBIGUOUS, DOUBTFUL, OR CONTRADICTORY. CONVINCE MEANS TO CAUSE ONE TO BELIEVE IN THE TRUTH OF WHAT IS ASSERTED.

FRAUD MEANS BAD FAITH AND DISHONESTY AS OPPOSED TO MISTAKE OR NEGLECT OR NEGLIGENCE. DECEIT MEANS A FRAUDULENT MISREPRESENTATION BY WHICH ONE PERSON DECEIVES ANOTHER.

IN ORDER TO PREVAIL ON AN ACTION FOR FRAUD AND DECEIT, THE PLAINTIFF MUST PROVE ALL OF THE FOLLOWING NINE ELEMENTS BY CLEAR, COGENT, AND CONVINCING EVIDENCE:

(1) THE PLAINTIFF MUST PROVE THAT A REPRESENTATION WAS MADE BY THE DEFENDANT; (2) THE FALSITY OF THE REPRESENTATION; (3) THE MATERIALITY OF THE REPRESENTATION; (4) THE SPEAKER'S KNOWLEDGE OF ITS FALSITY OR A RECKLESS DISREGARD FOR ITS TRUTH OR FALSITY; (5) THE SPEAKER'S INTENT THAT THE REPRESENTATION BE ACTED UPON BY THE PERSON HEARING THE REPRESENTATION; (6) THE HEARER'S IGNORANCE OF ITS FALSITY; (7) THE HEARER'S RELIANCE ON ITS TRUTH; (8) THE HEARER'S RIGHT TO RELY THEREON; AND (9) THE HEARER'S CONSEQUENTIAL AND PROXIMATE INJURY

REPRESENTATIONS MAY BE MADE ORALLY, IN WRITING, BY ACTS AND CONDUCT, OR BY ACTS MEANT TO DECEIVE. IT IS NOT NECESSARY FOR THE DEFENDANT TO HAVE MADE THE REPRESENTATION DIRECTLY. A FALSE IMPRESSION MADE BY WORDS OR ACTS MAY CONSTITUTE FRAUD.

THE REPRESENTATION MUST BE FALSE. A FRAUDULENT ACT IS CHARACTERIZED BY DISHONESTY IN FACT, UNFAIR DEALING, OR UNLAWFUL APPROPRIATION OF ANOTHER'S PROPERTY BY DESIGN. BAD FAITH IS THE TEST OF FRAUD. NONDISCLOSURE, OR SILENCE, BECOMES FRAUDULENT WHEN IT IS THE DUTY OF THE PARTY HAVING KNOWLEDGE OF THE FACTS TO UNCOVER THEM TO THE OTHER. THE TRUTH OR FALSITY OF A REPRESENTATION MUST BE DETERMINED AS OF THE TIME IT WAS MADE OR ACTED ON AND NOT AT SOME LATER DATE.

THE REPRESENTATION MUST BE MATERIAL. IF AN OBJECTIVE, REASONABLE PERSON USING THE MISREPRESENTATION WOULD HAVE VIEWED THE REPRESENTATION AS SUFFICIENTLY IMPORTANT AND SIGNIFICANT THAT IT WOULD HAVE PLAYED A

ROLE IN THE DECISION TO ENTER INTO A CONTRACTUAL RELATIONSHIP, THE REPRESENTATION MAY BE DEEMED MATERIAL. THE MATTER IS MATERIAL IF:

(1) A REASONABLE PERSON WOULD ATTACH IMPORTANCE TO ITS EXISTENCE OR NONEXISTENCE IN DETERMINING HIS CHOICE OF ACTION IN THE TRANSACTION IN QUESTION; OR

(2) THE MAKER OF THE REPRESENTATION KNOWS OR HAS REASON TO KNOW THAT ITS RECIPIENT REGARDS OR IS LIKELY TO REGARD THE MATTER AS IMPORTANT IN DETERMINING HIS CHOICE OF ACTION, ALTHOUGH A REASONABLE MAN WOULD NOT SO REGARD IT.

THE KNOWLEDGE OF FALSITY EXTENDS TO STATEMENTS MADE IN RECKLESS DISREGARD OF THE TRUTH. RECKLESS DISREGARD EXISTS WHERE ONE MAKES A STATEMENT AND KNOWS HE LACKS THE KNOWLEDGE NECESSARY TO BE CONFIDENT THAT THE STATEMENT IS TRUE.

### **DAMAGES FOR FRAUD**

THE AMOUNT OF DAMAGES FOR FRAUD IS THE DIFFERENCE BETWEEN THE VALUE THE PLAINTIFF WOULD HAVE RECEIVED IF THE DEFENDANT'S REPRESENTATIONS HAD BEEN TRUE AND THE VALUE THE PLAINTIFF ACTUALLY RECEIVED, PLUS ANY CONSEQUENTIAL OR SPECIAL DAMAGES PROXIMATELY CAUSED BY THE DEFENDANT'S REPRESENTATIONS

THE MEASURE OF DAMAGES FOR FRAUD IS THE ACTUAL PECUNIARY LOSS SUSTAINED. THUS, AS A GENERAL RULE, ONE INJURED BY THE COMMISSION OF FRAUD IS ENTITLED TO RECOVER SUCH DAMAGES AS WILL COMPENSATE HIM FOR THE LOSS OR INJURY ACTUALLY SUSTAINED AND PLACE HIM IN THE SAME POSITION THAT HE WOULD HAVE OCCUPIED HAD HE NOT BEEN DEFRAUDED.

## **PUNITIVE DAMAGES**

IN AN ACTION FOR FRAUD, PUNITIVE DAMAGES ARE WARRANTED WHERE THE DEFENDANT KNOWS THE REPRESENTATION TO BE FALSE, OR WHERE A FALSE REPRESENTATION IS RECKLESSLY MADE, AS A POSITIVE ASSERTION, WITHOUT KNOWING OR CARING WHETHER IT IS TRUE OR FALSE. IN THE LATTER INSTANCE, LIABILITY FOR PUNITIVE DAMAGES IS DEPENDENT UPON WHETHER THE DEFENDANT WAS CONSCIOUS OR CHARGEABLE WITH CONSCIOUSNESS OF HIS WRONGDOING.

THE RECOVERY OF PUNITIVE DAMAGES IS NOT LIMITED TO CASES WHERE THE FALSE REPRESENTATIONS WERE ACTUALLY KNOWN TO BE FALSE AT THE TIME OF THE MAKING OF THE REPRESENTATIONS. THAT IS TO SAY, KNOWLEDGE BY THE DEFENDANT THAT HIS REPRESENTATIONS WERE FALSE IS NOT REQUIRED FOR AN AWARD OF PUNITIVE DAMAGES. IT IS ONLY NECESSARY THAT THE DEFENDANT WAS CONSCIOUS, OR CHARGEABLE WITH CONSCIOUSNESS, OF HIS WRONGDOING.

TO AWARD PUNITIVE DAMAGES, YOU MUST FIND BY CLEAR AND CONVINCING EVIDENCE THAT THE FRAUD WAS COMMITTED IN SUCH A MANNER OR UNDER SUCH CIRCUMSTANCES THAT A PERSON OF ORDINARY REASON OR PRUDENCE WOULD HAVE BEEN CONSCIOUS OF IT AS AN INVASION OF THE PLAINTIFF'S RIGHTS.

THE PLAINTIFF MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT HE IS ENTITLED TO AN AWARD OF PUNITIVE DAMAGES. THIS BURDEN OF PROOF IS OVER AND ABOVE THE NORMAL BURDEN OF PROOF OF PROOF BY A PREPONDERANCE OF THE EVIDENCE. CLEAR AND CONVINCING EVIDENCE IS THAT DEGREE OF PROOF WHICH WILL GIVE YOU A FIRM BELIEF AS TO THE FACTS SOUGHT TO BE PROVED. THIS IS MORE THAN A MERE PREPONDERANCE OF THE EVIDENCE, BUT LESS THAN BEYOND A REASONABLE DOUBT.

## SYMPATHY

A VERDICT IN THIS CASE CANNOT BE BASED UPON SYMPATHY, PASSION, PREJUDICE OR EMOTION, OR SOME OTHER CONSIDERATION NOT FOUND IN THE EVIDENCE. I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUES INVOLVED IN THIS PROCEEDING BASED SOLELY UPON THE EVIDENCE WHICH YOU HEAR DURING THE COURSE OF THE TRIAL. YOUR VERDICT MUST BE WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELVES TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY PASSION, BY PUBLIC OPINION, OR BY SOME OTHER CONSIDERATION NOT FOUND IN THE EVIDENCE.

## CLOSING

LET ME SAY SOMETHING ABOUT YOUR DELIBERATIONS. DELIBERATION IS DEFINED AS “CAREFUL CONSIDERATION, WEIGHING UP WITH A VIEW TO DECISION.”

THE GENIUS OF OUR JURY SYSTEM IS THAT IT ALLOWS 12 GOOD MEN AND WOMEN, FROM 12 DIFFERENT BACKGROUNDS, LIFE EXPERIENCES, AND PERSPECTIVES TO CONSIDER THE EVIDENCE, TALK ABOUT IT, AND ULTIMATELY, REACH A VERDICT.

WE CALL THEM DELIBERATIONS FOR A REASON – YOU ARE TO CONSIDER THE EVIDENCE IN THIS CASE CAREFULLY AND DELIBERATELY – AND DISCUSS IT IN A CALM, THOROUGH, AND COURTEOUS MANNER.

LISTEN TO THE VIEWS OF ALL OF YOUR FELLOW JURORS; CONSIDER OTHER PEOPLE’S POINTS AND POINTS OF VIEW, AND TALK THROUGH AND DISCUSS THE EVIDENCE. AND REMEMBER, IF YOU ARE DOING SOMETHING DELIBERATELY, YOU ARE NOT IN A BIG HURRY, AND YOU SHOULD NOT BE IN A HURRY HERE. THIS CASE IS VERY IMPORTANT TO BOTH SIDES, AND THIS IS THEIR ONLY DAY IN COURT.

WHEN YOU RETIRE TO THE JURY ROOM, YOU SHOULD DISCUSS THE CASE WITH YOUR FELLOW JURORS TO REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT MUST BE UNANIMOUS.

EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE IMPARTIALLY CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS, AND LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A DECISION SIMPLY BECAUSE OTHER JURORS THINK IT IS RIGHT.

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE. MR. FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

How & When did she find  
out about the will?

EXHIBIT

tabbies

Courtis #3  
BC 10-20-20



|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
|                              | ) | ELEVENTH JUDICIAL CIRCUIT    |
| COUNTY OF LEXINGTON          | ) |                              |
| Elisa Montgomery Edwards and | ) | C/A No.: 2018-CP-32-0927     |
| Emily Cecile Edwards,        | ) |                              |
|                              | ) |                              |
| Plaintiffs,                  | ) |                              |
|                              | ) |                              |
| vs.                          | ) |                              |
|                              | ) |                              |
| David C. Bryan, III,         | ) |                              |
|                              | ) |                              |
| Defendant.                   | ) |                              |

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE  
VERDICT OR, ALTERNATIVELY, FOR A NEW TRIAL OR REMITTITUR**

Plaintiffs, through undersigned counsel, hereby submit this *Memorandum of Law* in opposition to Defendant's post-trial motions filed on October 30, 2020.

**I. MOTION FOR NEW TRIAL**

**a. Defendant's Ground 1: The Jury could not judge the credibility of the two (2) live witnesses because the witnesses were required to wear masks.**

Defendant's argument is patently specious because:

1) Defendant did not timely object at any point during the trial to the witnesses wearing masks during their testimony, thereby depriving the trial judge of any opportunity to take remedial action for the Defendant's alleged "structural defect in the trial";

2) Defendant's failure to timely object constitutes a waiver of this "issue" because it was not raised contemporaneously with the alleged "issue";

3) Defendant did not raise this issue in a post-trial motion, thereby failing to preserve this issue in any way; therefore, Defendant was clearly not deprived of any element of “Due Process of Law”; and,

4) Defendant raises no cognizable evidence in support of its bald assertion that the jury was unable to assess the credibility of the trial witnesses.

**b. The Court should have granted a Directed Verdict on the Fraud Cause of Action because Plaintiffs failed to show an alleged fraudulent act resulted in proximate or consequential damages.**

Plaintiffs’ witness clearly testified that Defendant directly lied to her (the “fraudulent act”) a number of times over a number of years about having money in a “trust” with Smith Barney being held for Plaintiffs’ benefit. Defendant now asserts that there “...is no evidence that Defendant intended at the time of the representation to disregard this obligation” [to create a Trust]. This is a misstatement of the evidence. Plaintiff’s witness clearly testified that when confronted in December 2015 about the “Trust”, the Defendant stated that there “wasn’t a Trust” and “there is no money for you”. This clearly evidences Defendant’s intent to deceive, as the Jury so found.

Both Plaintiffs’ witness and Defendant testified, without defense objection, that Defendant filed documents with the Lexington County Probate Court establishing an exact numerical value of the “trust” (\$468,587.06). Plaintiffs’ witness clearly established that the Will in question provided for each Plaintiff to receive one-fourth (1/4) of the remaining corpus of the “trust”. Plaintiffs’ witness clearly established calculations, based on conservative historical performance of the stock market, demonstrating that the “trust” funds not distributed by Defendant would have accrued to at least Six Hundred Seven Thousand Six Hundred Eighty Dollars (\$607,680). Defendant did not object to Plaintiffs’ calculations; therefore, the trial Court committed no error in sending this to the

jury, which found by clear and convincing evidence that the Defendant had committed Fraud and assessed actual and punitive damages.

Plaintiffs witness also clearly testified to the damage caused by Defendant's Fraud, stating that not receiving the Trust money withheld by the Defendant created financial issues that directly affected Plaintiff Emily Cecile Edwards' college choices and Plaintiff Elisa Montgomery Edwards' ability to pay for such college.

Finally, Defendant shows no credible prejudice from the "time constraints of the trial". The trial judge did not place any time constraints on the parties of any kind. Defendant and counsel presented the case they were prepared to try, without limitation of any kind.

**c. The Court erred by not requiring a verdict for each Plaintiff.**

Defendant did not object to the proposed *Verdict* form before it was sent to the Jury, nor did Defendant make any post-trial motion objecting to the form. Defendant waived this issue by not raising it in a timely manner while it was "ripe".

**d. The verdict was motivated by supposition, passion, prejudice, bias and unsupported by facts.**

Defendant did not make any post-trial motion objecting to the verdict. The Plaintiffs' witness supported each and every element of the Fraud Cause of Action. The verdict amount was less than the Plaintiffs damages request, thereby rendering Defendant's motion for *remittitur* to be particularly implausible. Plaintiffs' witness clearly testified, without defense objection, about the principal amount of the actual damages and the methodology used to calculate a present value.

**e. The speed of the trial prejudiced the Due Process rights of the Defendant, especially regarding the preservation of errors.**

This is a particularly specious argument. The trial Judge did not place any time constraints on the parties in any way. In particular, the trial Judge accepted a number of defense objections which he ruled upon, sustaining the majority in favor of the defense. The Judge did nothing to impair Defendant's right to object to evidence to preserve errors. Defense counsel just failed to make objections in a timely manner.

**f. The jury verdict was not supported by clear and convincing evidence.**

The Jury in this case was clearly charged and instructed that, to return a Fraud verdict, it could only do so by finding "clear and convincing evidence" - and then the Jury returned a Fraud verdict. Defendant has absolutely nothing to show the Court that the Jury failed to follow the Judge's instructions.

For the reasons stated hereinabove, Defendant's motion should be denied.

Respectfully submitted,

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s/ David E. Belding  
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ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina

November 3, 2020

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**RECEIVED**

**Jun 27 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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Walton J. McLeod, Circuit Judge

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Appellate Case No. 2020-001673

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Elisa Montgomery Edwards and Emily Cecile Edwards,.....Respondents,

v.

David C. Bryan, III,.....Appellant.

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CERTIFICATE OF COUNSEL

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I certify that the record on appeal contains all material proposed to be included  
by any of the parties and not any other material.

Respectfully submitted,

/s/ Andrew S. Radeker

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